BUSINESS ORGANIZATIONS CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. DEFINITIONS AND OTHER GENERAL PROVISIONS
SUBCHAPTER A. DEFINITIONS AND PURPOSE

Sec. 1.001. PURPOSE. The purpose of this code is to make the law encompassed by this code more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

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

Sec. 1.002. DEFINITIONS. In this code:

(1) "Affiliate" means a person who controls, is controlled by, or is under common control with another person.

(2) "Associate," when used to indicate a relationship with a person, means:

(A) a domestic or foreign entity or organization for which the person:

(i) is an officer or governing person; or

(ii) beneficially owns, directly or indirectly, either individually or through an affiliate, 10 percent or more of a class of voting ownership interests or similar securities of the entity or organization;

(B) a trust or estate in which the person has a substantial beneficial interest or for which the person serves as trustee or in a similar fiduciary capacity;

(C) the person's spouse or a relative of the person related by consanguinity or affinity who resides with the person; or

(D) a governing person or an affiliate or officer of the person.

(3) "Association" means an entity governed as an association under Title 6 or 7. The term includes a cooperative association, nonprofit association, and professional association.

(4) "Assumed name" means a name adopted for use by a

person. The term includes an assumed name filed under Chapter 71, Business & Commerce Code.

(5) "Business" means a trade, occupation, profession, or other commercial activity.

(6) "Certificate of formation" means:

(A) the document required to be filed with the filing officer under Chapter 3 to form a filing entity; and

(B) if appropriate, a restated certificate of formation and all amendments of an original or restated certificate of formation.

(7) "Certificated ownership interest" means an ownership interest of a domestic entity represented by a certificate issued in bearer or registered form.

(8) "Close corporation" means a for-profit corporation that elects to be governed as a close corporation in accordance with Subchapter O, Chapter 21.

(9) "Contribution" means a tangible or intangible benefit that a person transfers to an entity in consideration for an ownership interest in the entity or otherwise in the person's capacity as an owner or a member. The benefit includes cash, services rendered, a contract for services to be performed, a promissory note or other obligation of a person to pay cash or transfer property to the entity, or securities or other interests in or obligations of an entity, but does not include cash or property received by the entity:

(A) with respect to a promissory note or other obligation to the extent that the agreed value of the note or obligation has previously been included as a contribution; or

(B) that the person intends to be a loan to the entity.

(10) "Conversion" means:

(A) the continuance of a domestic entity as a non-code organization of any type;

(B) the continuance of a non-code organization as a domestic entity of any type;

(C) the continuance of a domestic entity of one type as a domestic entity of another type;

(D) the continuance of a domestic entity of one type as a foreign entity of the same type that may be treated as a domestication, continuance, or transfer transaction under the laws of the jurisdiction of formation of the foreign entity; or

(E) the continuance of a foreign entity of one type as a domestic entity of the same type that may be treated as a domestication, continuance, or transfer transaction under the laws of the jurisdiction of formation of the foreign entity.

(11) "Converted entity" means an organization resulting from a conversion.

(12) "Converting entity" means an organization as the organization existed before the organization's conversion.

(13) "Cooperative" or "cooperative association" means an association governed as a cooperative association under Chapter 251.

(14) "Corporation" means an entity governed as a corporation under Title 2 or 7. The term includes a for-profit corporation, nonprofit corporation, and professional corporation.

(15) "Debtor in bankruptcy" means a person who is the subject of:

(A) an order for relief under the United States bankruptcy laws (Title 11, United States Code); or

(B) a comparable order under a:

(i) successor statute of general applicability; or

(ii) federal or state law governing insolvency.

(16) "Director" means an individual who serves on the board of directors of a foreign or domestic corporation.

(17) "Domestic" means, with respect to an entity, that the entity is formed under this code or the entity's internal affairs are governed by this code.

(18) "Domestic entity" means an organization formed under or the internal affairs of which are governed by this code.

(19) ""Domestic entity subject to dissenters' rights" means a domestic entity the owners of which have rights of dissent and appraisal under this code or the governing documents of the entity.

(20) "Effective date of this code" means January 1, 2006. The applicability of this code is governed by Title 8.

(20-a) "Electronic data system" means an electronic network or database. The term includes a distributed electronic network or database, including one that employs blockchain or distributed ledger technology.

(20-b) "Electronic transmission" means a form of communication, including communication by use of or participation in one or more electronic data systems, that:

(A) does not directly involve the physical transmission

of paper;

(B) creates a record that may be retained, retrieved, and reviewed by the recipient; and

(C) may be directly reproduced in paper form by the recipient through an automated process.

(21) "Entity" means a domestic entity or foreign entity.

(21-a) "Fictitious name" means an assumed name:

(A) that a foreign filing entity adopts for use because the name of the entity as stated in the entity's certificate of formation or similar organizational instrument is not available for use under the laws of this state; and

(B) under which the foreign filing entity is registered to transact business in this state, in accordance with Chapter 9.

(22) "Filing entity" means a domestic entity that is a corporation, limited partnership, limited liability company, professional association, cooperative, or real estate investment trust.

(23) "Filing instrument" means an instrument, document, consent, or statement that is required or authorized by this code to be filed by or for an entity with the filing officer in accordance with Chapter 4.

(24) "Filing officer" means:

(A) with respect to an entity other than a domestic real estate investment trust, the secretary of state; or

(B) with respect to a domestic real estate investment trust, the county clerk of the county in which the real estate investment trust's principal office is located in this state.

(25) "For-profit corporation" means a corporation governed as a for-profit corporation under Chapter 21.

(26) "For-profit entity" means an entity other than a nonprofit entity.

(27) "Foreign" means, with respect to an entity, that the entity is formed under, and the entity's internal affairs are governed by, the laws of a jurisdiction other than this state.

(28) "Foreign entity" means an organization formed under, and the internal affairs of which are governed by, the laws of a jurisdiction other than this state.

(29) "Foreign filing entity" means a foreign entity, other than a foreign limited liability partnership, that registers or is required to register as a foreign entity under Chapter 9.

(30) "Foreign governmental authority" means a governmental official, agency, or instrumentality of a jurisdiction other than this state.

(31) "Foreign nonfiling entity" means a foreign entity that is not a foreign filing entity.

(32) "Fundamental business transaction" means a merger, interest exchange, conversion, or sale of all or substantially all of an entity's assets.

(33) "General partner" means:

(A) each partner in a general partnership; or

(B) a person who is admitted to a limited partnership as a general partner in accordance with the governing documents of the limited partnership.

(34) "General partnership" means a partnership governed as a general partnership under Chapter 152. The term includes a general partnership registered as a limited liability partnership.

(35)(A) "Governing authority" means a person or group of persons who are entitled to manage and direct the affairs of an entity under this code and the governing documents of the entity, except that if the governing documents of the entity or this code divide the authority to manage and direct the affairs of the entity among different persons or groups of persons according to different matters, "governing authority" means the person or group of persons entitled to manage and direct the affairs of the entity with respect to a matter under the governing documents of the entity or this code. The term includes:

(i) the board of directors of a corporation or other persons authorized to perform the functions of the board of directors of a corporation;

(ii) the general partners of a general partnership or limited partnership;

(iii) the managers of a limited liability company that is managed by managers;

(iv) the members of a limited liability company that is managed by members who are entitled to manage the company;

(v) the board of directors of a cooperative association; and

(vi) the trust managers of a real estate investment trust.

(B) The term does not include an officer who is acting

in the capacity of an officer.

(36) "Governing documents" means:

(A) in the case of a domestic entity:

(i) the certificate of formation for a domestic filing entity or the document or agreement under which a domestic nonfiling entity is formed; and

(ii) the other documents or agreements adopted by the entity under this code to govern the formation or the internal affairs of the entity; or

(B) in the case of a foreign entity, the instruments, documents, or agreements adopted under the law of its jurisdiction of formation to govern the formation or the internal affairs of the entity.

(37) "Governing person" means a person serving as part of the governing authority of an entity.

(38) "Individual" means a natural person.

(39) "Insolvency" means the inability of a person to pay the person's debts as they become due in the usual course of business or affairs.

(40) "Insolvent" means a person who is unable to pay the person's debts as they become due in the usual course of business or affairs.

(41) "Interest exchange" means the acquisition of an ownership or membership interest in a domestic entity as provided by Subchapter B, Chapter 10. The term does not include a merger or conversion.

(42) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended. The term includes corresponding provisions of subsequent federal tax laws.

(43) "Jurisdiction of formation" means:

(A) in the case of a domestic filing entity, this state;

(B) in the case of a foreign entity for which a certificate of formation or similar organizational instrument is filed in connection with its formation, the jurisdiction in which the entity's certificate of formation or similar organizational instrument is filed; or

(C) in the case of a domestic nonfiling entity or a foreign entity for which a certificate of formation or similar organizational instrument is not filed in connection with its

formation:

(i) the jurisdiction the laws of which are chosen in the entity's governing documents to govern its internal affairs if that jurisdiction bears a reasonable relation to the owners or members or to the entity's business and affairs under the principles of this state that otherwise would apply to a contract among the owners or members; or

(ii) if Subparagraph (i) does not apply, the jurisdiction in which the entity has its chief executive office.

(44) "Law" means, unless the context requires otherwise, both statutory and common law.

(45) "License" means a license, certificate of registration, or other legal authorization.

(46) "Limited liability company" means an entity governed as a limited liability company under Title 3 or 7. The term includes a professional limited liability company.

(47) "Limited liability limited partnership" means a partnership governed as a limited liability partnership and a limited partnership under Title 4.

(48) "Limited liability partnership" means a partnership governed as a limited liability partnership under Title 4.

(49) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner as provided by:

(A) in the case of a domestic limited partnership, Chapter 153; or

(B) in the case of a foreign limited partnership, the laws of its jurisdiction of formation.

(50) "Limited partnership" means a partnership that is governed as a limited partnership under Title 4 and that has one or more general partners and one or more limited partners. The term includes a limited partnership registered as a limited liability limited partnership.

(51) "Manager" means a person designated as a manager of a limited liability company that is not managed by members of the company.

(52) "Managerial official" means an officer or a governing person.

(53) "Member" means:

(A) in the case of a limited liability company, a person who is a member or has been admitted as a member in the

limited liability company under its governing documents;

(B) in the case of a nonprofit corporation, a person who has membership rights in the nonprofit corporation under its governing documents;

(C) in the case of a cooperative association, a member of a nonshare or share association;

(D) in the case of a nonprofit association, a person who has membership rights in the nonprofit association under its governing documents; or

(E) in the case of a professional association, a person who has membership rights in the professional association under its governing documents.

(54) "Membership interest" means a member's interest in an entity. With respect to a limited liability company, the term includes a member's share of profits and losses or similar items and the right to receive distributions, but does not include a member's right to participate in management.

(55) "Merger" means:

(A) the division of a domestic entity into two or more new domestic entities or other organizations or into a surviving domestic entity and one or more new domestic or foreign entities or non-code organizations; or

(B) the combination of one or more domestic entities with one or more domestic entities or non-code organizations resulting in:

(i) one or more surviving domestic entities or non-code organizations;

(ii) the creation of one or more new domestic entities or non-code organizations; or

(iii) one or more surviving domestic entities or non-code organizations and the creation of one or more new domestic entities or non-code organizations.

(55-a) "National securities exchange" means an exchange registered as a national securities exchange under Section 6, Securities Exchange Act of 1934 (15 U.S.C. Section 78f).

(56) "Non-code organization" means an organization other than a domestic entity.

(56-a) "Non-United States entity" means a foreign entity formed under, and the internal affairs of which are governed by, the laws of a non-United States jurisdiction.

(56-b) "Non-United States jurisdiction" means a foreign country or other foreign jurisdiction that is not the United States or a state of the United States.

(57) "Nonfiling entity" means a domestic entity that is not a filing entity. The term includes a domestic general partnership and nonprofit association.

(58) "Nonprofit association" means an association governed as a nonprofit association under Chapter 252.

(59) "Nonprofit corporation" means a corporation governed as a nonprofit corporation under Chapter 22.

(60) "Nonprofit entity" means an entity that is a nonprofit corporation, nonprofit association, or other entity that is organized solely for one or more of the purposes specified by Section 2.002.

(61) "Officer" means an individual elected, appointed, or designated as an officer of an entity by the entity's governing authority or under the entity's governing documents.

(62) "Organization" means a corporation, limited or general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization, regardless of whether the organization is for-profit, nonprofit, domestic, or foreign.

(63) "Owner," for purposes of Title 1, 7, or 8, means:

(A) with respect to a foreign or domestic for-profit corporation or real estate investment trust, a shareholder;

(B) with respect to a foreign or domestic partnership, a partner;

(C) with respect to a foreign or domestic limited liability company or professional association, a member; or

(D) with respect to another foreign or domestic entity, an owner of an equity interest in that entity.

(63-a) "Owner liability" means personal liability for a liability or other obligation of an organization that is imposed on a person:

(A) by statute solely because of the person's status as an owner or member of the organization; or

(B) by a governing document of an organization under a provision of this code or the law of the organization's jurisdiction of formation that authorizes the governing document to make one or more specified owners or members of the organization liable in their

capacity as owners or members for all or specified liabilities or other obligations of the organization.

(64) "Ownership interest" means an owner's interest in an entity. The term includes the owner's share of profits and losses or similar items and the right to receive distributions. The term does not include an owner's right to participate in management.

(65) "Parent" means an organization that, directly or indirectly through or with one or more of its subsidiaries:

(A) owns at least 50 percent of the outstanding ownership or membership interests of another organization; or

(B) possesses at least 50 percent of the voting power of the owners or members of another organization.

(66) "Partner" means a limited partner or general partner.

(67) "Partnership" means an entity governed as a partnership under Title 4.

(68) "Partnership interest" means a partner's interest in a partnership. The term includes the partner's share of profits and losses or similar items and the right to receive distributions. The term does not include a partner's right to participate in management.

(69) "Party to the merger" means a domestic entity or non-code organization that under a plan of merger is divided or combined by a merger. The term does not include a domestic entity or non-code organization that is not to be divided or combined into or with one or more domestic entities or non-code organizations, regardless of whether ownership interest of the entity are to be issued under the plan of merger.

(69-a) "Period of duration," in reference to when a domestic entity is required to wind up its business and affairs:

(A) means:

(i) a specified term or period of time, such as a specified number of months or years; or

(ii) a period that expires as of a specified time or date; and

(B) does not include:

(i) a period that expires or whose expiration is made contingent on the occurrence of a future event or fact, other than the passage of time or the occurrence of a specified time or date; or

(ii) a period specified to be perpetual.

(69-b) "Person" means an individual or a corporation,

partnership, limited liability company, business trust, trust, association, or other organization, estate, government or governmental subdivision or agency, or other legal entity, or a series of a domestic limited liability company or foreign entity.

(69-c) "Plan of conversion" means a document that conforms with the requirements of Section 10.103.

(69-d) "Plan of exchange" means a document that conforms with the requirements of Section 10.052.

(69-e) "Plan of merger" means a document that conforms with the requirements of Sections 10.002 and 10.003.

(70) "President" means the:

(A) individual designated as president of an entity under the entity's governing documents; or

(B) officer or committee of persons authorized to perform the functions of the principal executive officer of an entity without regard to the designated name of the officer or committee.

(71) "Professional association" has the meaning assigned by Section 301.003.

(72) "Professional corporation" has the meaning assigned by Section 301.003.

(73) "Professional entity" has the meaning assigned by Section 301.003.

(74) "Professional individual" has the meaning assigned by Section 301.003.

(75) "Professional limited liability company" has the meaning assigned by Section 301.003.

(76) "Professional service" has the meaning assigned by Section 301.003.

(77) "Property" includes tangible and intangible property and an interest in that property.

(78) "Real estate investment trust" means an entity governed as a real estate investment trust under Title 5.

(79) "Secretary" means the:

(A) individual designated as secretary of an entity under the entity's governing documents; or

(B) officer or committee of persons authorized to perform the functions of secretary of an entity without regard to the designated name of the officer or committee.

(80) "Share" means a unit into which the ownership interest in a for-profit corporation, professional corporation, real estate

investment trust, or professional association is divided, regardless of whether the share is certificated or uncertificated.

(81) "Shareholder" or "holder of shares" means:

(A) the person in whose name shares issued by a for-profit corporation, professional corporation, or real estate investment trust are registered in the share transfer records maintained by or on behalf of the for-profit corporation, professional corporation, or real estate investment trust; or

(B) the beneficial owner of shares issued by a for-profit corporation, whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf, to the extent of the rights granted by a nominee statement on file with the for-profit corporation in accordance with Sections 21.201(b) and (c).

(82) "Signature" means any symbol executed or adopted by a person with present intention to authenticate a writing. Unless the context requires otherwise, the term includes a digital signature, an electronic signature, and a facsimile of a signature.

(82-a) "Social purposes" means one or more purposes of a for-profit corporation that are specified in the corporation's certificate of formation and consist of promoting one or more positive impacts on society or the environment or of minimizing one or more adverse impacts of the corporation's activities on society or the environment. Those impacts may include:

(A) providing low-income or underserved individuals or communities with beneficial products or services;

(B) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) preserving the environment;

(D) improving human health;

(E) promoting the arts, sciences, or advancement of knowledge;

(F) increasing the flow of capital to entities with a social purpose; and

(G) conferring any particular benefit on society or the environment.

(83) "Subscriber" means a person who agrees with or makes an offer to an entity to purchase by subscription an ownership interest in the entity.

(84) "Subscription" means an agreement between a subscriber

and an entity, or a written offer made by a subscriber to an entity before or after the entity's formation, in which the subscriber agrees or offers to purchase a specified ownership interest in the entity.

(85) "Subsidiary" means an organization for which another organization, either directly or indirectly through or with one or more of its other subsidiaries:

(A) owns at least 50 percent of the outstanding ownership or membership interests of the organization; or

(B) possesses at least 50 percent of the voting power of the owners or members of the organization.

(86) "Treasurer" means the:

(A) individual designated as treasurer of an entity under the entity's governing documents; or

(B) officer or committee of persons authorized to perform the functions of treasurer of an entity without regard to the designated name of the officer or committee.

(87) "Uncertificated ownership interest" means an ownership interest in a domestic entity that is not represented by an instrument and is transferred by:

(A) amendment of the governing documents of the entity; or

(B) registration on books maintained by or on behalf of the entity for the purpose of registering transfers of ownership interests.

(88) "Vice president" means the:

(A) individual designated as vice president of an entity under the governing documents of the entity; or

(B) officer or committee of persons authorized to perform the functions of the president of the entity on the death, absence, or resignation of the president or on the inability of the president to perform the functions of office without regard to the designated name of the officer or committee.

(89) "Writing" or "written" means an expression of words, letters, characters, numbers, symbols, figures, or other textual information that is inscribed on a tangible medium or that is stored in an electronic or other medium that is retrievable in a perceivable form. Unless the context requires otherwise, the term:

(A) includes stored or transmitted electronic data, electronic transmissions, and reproductions of writings; and

(B) does not include sound or video recordings of speech other than transcriptions that are otherwise writings.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 1, eff. January 1, 2006.
Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 1, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.07, eff. April 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 1, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 100 (S.B. 849), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 1, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 1, eff. June 1, 2018.
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 1, eff. September 1, 2019.

Sec. 1.003. DISINTERESTED PERSON. (a) For purposes of this code, a person is disinterested with respect to the approval of a contract, transaction, or other matter, or to the consideration of the disposition of a claim or challenge relating to a contract, transaction, or particular conduct, if the person or the person's associate:

(1) is not a party to the contract or transaction or materially involved in the conduct that is the subject of the claim or challenge; and

(2) does not have a material financial interest in the outcome of the contract or transaction or the disposition of the claim or challenge.

(b) For purposes of Subsection (a), a person is not materially

involved in a contract or transaction that is the subject of a claim or challenge and does not have a material financial interest in the outcome of a contract or transaction or the disposition of a claim or challenge solely because:

(1) the person was nominated or elected as a governing person by a person who is:

(A) interested in the contract or transaction; or

(B) alleged to have engaged in the conduct that is the subject of the claim or challenge;

(2) the person receives normal fees or customary compensation, reimbursement for expenses, or benefits as a governing person of the entity;

(3) the person has a direct or indirect equity interest in the entity;

(4) the entity has, or its subsidiaries have, an interest in the contract or transaction or was affected by the alleged conduct;

(5) the person or an associate of the person receives ordinary and reasonable compensation for reviewing, making recommendations regarding, or deciding on the disposition of the claim or challenge; or

(6) in the case of a review by the person of the alleged conduct that is the subject of the claim or challenge:

(A) the person is named as a defendant in the derivative proceeding regarding the matter or as a person who engaged in the alleged conduct; or

(B) the person, acting as a governing person, approved, voted for, or acquiesced in the act being challenged if the act did not result in a material personal or financial benefit to the person and the challenging party fails to allege particular facts that, if true, raise a significant prospect that the governing person would be held liable to the entity or its owners or members as a result of the conduct.

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

Sec. 1.004. INDEPENDENT PERSON. (a) For purposes of this code, a person is independent with respect to considering the disposition of a claim or challenge regarding a contract or

transaction, or particular or alleged conduct, if the person:

(1) is disinterested;

(2) either:

(A) is not an associate, or member of the immediate family, of a party to the contract or transaction or of a person who is alleged to have engaged in the conduct that is the subject of the claim or challenge; or

(B) is an associate to a party or person described by Paragraph (A) that is an entity if the person is an associate solely because the person is a governing person of the entity or of the entity's subsidiaries or associates;

(3) does not have a business, financial, or familial relationship with a party to the contract or transaction, or with another person who is alleged to have engaged in the conduct, that is the subject of the claim or challenge that could reasonably be expected to materially and adversely affect the judgment of the person in favor of the party or other person with respect to the consideration of the matter; and

(4) is not shown, by a preponderance of the evidence, to be under the controlling influence of a party to the contract or transaction that is the subject of the claim or challenge or of a person who is alleged to have engaged in the conduct that is the subject of the claim or challenge.

(b) For purposes of Subsection (a), a person does not have a relationship that could reasonably be expected to materially and adversely affect the judgment of the person regarding the disposition of a matter that is the subject of a claim or challenge and is not otherwise under the controlling influence of a party to a contract or transaction that is the subject of a claim or challenge or that is alleged to have engaged in the conduct that is the subject of a claim or challenge solely because:

(1) the person has been nominated or elected as a governing person by a person who is interested in the contract or transaction or alleged to be engaged in the conduct that is the subject of the claim or challenge;

(2) the person receives normal fees or similar customary compensation, reimbursement for expenses, or benefits as a governing person of the entity;

(3) the person has a direct or indirect equity interest in the entity;

(4) the entity has, or its subsidiaries have, an interest in the contract or transaction or was affected by the alleged conduct;

(5) the person or an associate of the person receives ordinary and reasonable compensation for reviewing, making recommendations regarding, or deciding on the disposition of the claim or challenge; or

(6) the person, an associate of the person, other than the entity or its associates, or an immediate family member has a continuing business relationship with the entity that is not material to the person, associate, or family member.

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

Sec. 1.005. CONSPICUOUS INFORMATION. In this code, required information is conspicuous if the information is placed in a manner or displayed using a font that provides or should provide notice to a reasonable person affected by the information. Required information in a document is conspicuous if the font used for the information is capitalized, boldfaced, italicized, or underlined or is larger or of a different color than the remainder of the document.

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

Sec. 1.006. SYNONYMOUS TERMS. To the extent not inconsistent with the provisions of the constitution, other statutes or codes, and governing documents wherein such terms may be found, and as the context requires, in this code, any other statute or code of this state, or any governing documents:

(1) a reference to "articles of incorporation," "articles of organization," "articles of association," "certificate of limited partnership," and "charter" includes a "certificate of formation";

(2) a reference to "authorized capital stock" includes "authorized shares";

(3) a reference to "capital stock" includes "authorized and issued shares," "issued share," and "stated capital";

(4) a reference to a "certificate of registration," "certificate of authority," and "permit to do business" includes "registration";

(5) a reference to "stock" and "shares of stock" includes "shares";

(6) a reference to "stockholder" includes "shareholder";

(7) a reference to "no par stock" includes "shares without par value";

(8) a reference to "paid-up capital" includes "stated capital";

(9) a reference to "articles of merger" includes a "certificate of merger";

(10) a reference to "articles of exchange" includes a "certificate of exchange";

(11) a reference to "articles of conversion" includes a "certificate of conversion";

(12) a reference to "articles of amendment" includes a "certificate of amendment";

(13) a reference to "articles of dissolution" or "certificate of cancellation" includes a "certificate of termination";

(14) a reference to "incorporator" includes an "organizer";

(15) a reference to "certificate of authority to transact business" includes a "registration to transact business";

(16) a reference to "regulations" in connection with a limited liability company includes a "company agreement"; and

(17) a reference to "business corporation" includes a "for-profit 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. 2, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 2, eff. September 1, 2007.

Sec. 1.007. SIGNING OF DOCUMENT OR OTHER WRITING. For purposes of this code, a writing has been signed by a person when the writing includes, bears, or incorporates the person's signature. A transmission or reproduction of a writing signed by a person is considered signed by that person for purposes of this code.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 3, eff. January 1, 2006.

Sec. 1.008. SHORT TITLES. (a) The provisions of this code as described by this section may be cited as provided by this section.

(b) The provisions of Title 2 and the provisions of Title 1 to the extent applicable to corporations may be cited as the "Texas Corporation Law."

(c) The provisions of Chapters 20 and 21 and the provisions of Title 1 to the extent applicable to for-profit corporations may be cited as the "Texas For-Profit Corporation Law."

(d) The provisions of Chapters 20 and 22 and the provisions of Title 1 to the extent applicable to nonprofit corporations may be cited as the "Texas Nonprofit Corporation Law."

(e) The provisions of Title 3 and the provisions of Title 1 to the extent applicable to limited liability companies may be cited as the "Texas Limited Liability Company Law."

(f) The provisions of Chapters 151, 152, and 154 and the provisions of Title 1 to the extent applicable to general partnerships may be cited as the "Texas General Partnership Law."

(g) The provisions of Chapters 151, 153, and 154 and the provisions of Title 1 and Chapter 152 to the extent applicable to limited partnerships may be cited as the "Texas Limited Partnership Law."

(h) The provisions of Title 5 and the provisions of Title 1 and Chapters 20 and 21 to the extent applicable to real estate investment trusts may be cited as the "Texas Real Estate Investment Trust Law."

(i) The provisions of Chapter 251 and the provisions of Title 1 and Chapters 20 and 22 to the extent applicable to cooperative associations may be cited as the "Texas Cooperative Association Law."

(j) The provisions of Title 7 and the provisions of Titles 1, 2, and 3 to the extent applicable to professional entities may be cited as the "Texas Professional Entities Law."

(k) The provisions of Chapter 252 may be cited as the "Uniform Unincorporated Nonprofit Association Act."

(l) The provisions of Chapters 301 and 302 and the provisions of Chapters 20 and 21 and Title 1 to the extent applicable to professional associations may be cited as the "Texas Professional

Association Law."

(m) The provisions of Chapters 301 and 303 and the provisions of Chapters 20 and 21 and Title 1 to the extent applicable to professional corporations may be cited as the "Texas Professional Corporation Law."

(n) The provisions of Chapters 301 and 304 and the provisions of Titles 1 and 3 to the extent applicable to professional limited liability companies may be cited as the "Texas Professional Limited Liability Company Law."

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. 3, eff. September 1, 2007.

Sec. 1.009. DOLLARS AS MONETARY UNITS. Unless the context requires otherwise, a value or amount that is required by this code to be stated in monetary terms must be stated in United States dollars. Currency that is not specified is considered to be in United States dollars.

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

SUBCHAPTER B. CODE CONSTRUCTION

Sec. 1.051. CONSTRUCTION OF CODE. Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this code except as otherwise expressly provided by this code.

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

Sec. 1.052. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of that statute.

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

Sec. 1.053. APPLICABILITY TO FOREIGN AND INTERSTATE AFFAIRS. This code applies to the conduct of affairs with foreign countries and the other states of the United States only to the extent permitted under the United States Constitution.

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

Sec. 1.054. RESERVATION OF POWER. The legislature at all times has the power to amend, repeal, or modify this code and to prescribe regulations, provisions, and limitations as the legislature considers advisable. The regulations, provisions, and limitations are binding on any entity subject to this code.

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

SUBCHAPTER C. DETERMINATION OF APPLICABLE LAW

Sec. 1.101. DOMESTIC FILING ENTITIES. The law of this state governs the formation and internal affairs of an entity if the entity's formation occurs when a certificate of formation filed in accordance with Chapter 4 takes effect.

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

Sec. 1.102. FOREIGN FILING ENTITIES. If the formation of an entity occurs when a certificate of formation or similar instrument filed with a foreign governmental authority takes effect, the law of the state or other jurisdiction in which that foreign governmental authority is located governs the formation and internal affairs of the entity.

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

Sec. 1.103. ENTITIES NOT FORMED BY FILING INSTRUMENT. If the formation of an entity does not occur when a certificate of formation or similar instrument filed with the secretary of state or with a foreign governmental authority takes effect, the law governing the entity's formation and internal affairs is the law of the entity's

jurisdiction of formation.

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

Sec. 1.104. LAW APPLICABLE TO LIABILITY. The law of the jurisdiction that governs an entity as determined under Sections 1.101-1.103 applies to the liability of an owner, a member, or a managerial official of the entity in the capacity as an owner, a member, or a managerial official for an obligation, including a debt or other liability, of the entity for which the owner, member, or managerial official is not otherwise liable by contract or under provisions of law other than this code.

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

Sec. 1.105. INTERNAL AFFAIRS. For purposes of this code, the internal affairs of an entity include:

(1) the rights, powers, and duties of its governing authority, governing persons, officers, owners, and members; and

(2) matters relating to its membership or ownership interests.

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

Sec. 1.106. ORDER OF PRECEDENCE. (a) This title applies to all domestic entities and foreign entities to the extent provided by this title.

(b) Each title of this code, other than this title, applies to a different type of entity to the extent provided by that title.

(c) If a provision of this title conflicts with a provision in another title of this code, the provision of the other title supersedes the provision of this title.

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

CHAPTER 2. PURPOSES AND POWER OF DOMESTIC ENTITY

SUBCHAPTER A. PURPOSES OF DOMESTIC ENTITY

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

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

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

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

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

(3) providing animal husbandry; or

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

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

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

(1) engage in a business or activity that:

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

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

(2) operate as a:

(A) bank;

(B) trust company;

(C) savings association;

(D) insurance company;

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

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

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

Amended by:

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

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

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

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

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

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

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

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

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

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

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

(2) transact a combination of the businesses of:

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

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

(3) engage in a combination of:

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

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

(4) engage in a business or activity that may not be engaged in by a for-profit corporation without first obtaining a license under the laws of this state and a license to engage in that business or activity cannot lawfully be granted to the corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 5, eff. September 1, 2007.

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

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

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

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

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

(1) engage in or operate as a group hospital service, rural credit union, agricultural and livestock pool, mutual loan corporation, cooperative association under Chapter 251, cooperative

credit association, farmers' cooperative society, Co-operative Marketing Act corporation, rural electric cooperative corporation, telephone cooperative corporation, or fraternal organization operating under the lodge system and incorporated under Subchapter C, Chapter 23;

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

(3) engage in a business or activity that may not be engaged in by a nonprofit corporation without first obtaining a license under the laws of this state and a license to engage in that business or activity cannot lawfully be granted to the corporation.

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

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

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

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

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

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

(2) furnish medical or health care; or

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

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

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

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

Section 3.012.

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

SUBCHAPTER B. POWERS OF DOMESTIC ENTITY

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

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

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

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

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

(5) make contracts and guarantees;

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

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

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

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

(10) be a promoter, organizer, owner, partner, member, associate, or manager of an organization;

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

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

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

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

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

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

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

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

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

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

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

(22) take other action necessary or appropriate to further the purposes of the entity.

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

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

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

Sec. 2.102. ADDITIONAL POWERS OF NONPROFIT ENTITY OR

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

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

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

(1) cash;

(2) property;

(3) a contract to receive property;

(4) a debt or other obligation of the entity or of another person;

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

(6) a direct or indirect benefit realized by the entity.

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

(c) The consideration for the indebtedness may be received either directly or indirectly by the domestic entity, including by a domestic or foreign organization that is wholly or partially owned, directly or indirectly, by the domestic entity.

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

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

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

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

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

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

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

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

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

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

(d) This section does not:

(1) apply to a domestic entity governed by the Insurance Code; or

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

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

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

Sec. 2.105. ADDITIONAL POWERS OF CERTAIN PIPELINE BUSINESSES. In addition to the powers provided by the other sections of this subchapter, a corporation, general partnership, limited partnership,

limited liability company, or other combination of those entities engaged as a common carrier in the pipeline business for the purpose of transporting oil, oil products, gas, carbon dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals, or other mineral solutions has all the rights and powers conferred on a common carrier by Sections 111.019-111.022, Natural Resources Code.

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

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

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

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

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

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

Sec. 2.107. STANDARD TAX PROVISIONS FOR CERTAIN CHARITABLE

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

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

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

Sec. 2.108. POWERS OF PROFESSIONAL ASSOCIATION. Except as provided by Title 7, a professional association has the same powers, privileges, duties, restrictions, and liabilities as a for-profit corporation.

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

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

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

Sec. 2.110. POWERS OF COOPERATIVE ASSOCIATION. (a) Except as provided by Chapter 251, a cooperative association may exercise the

same powers and privileges and is subject to the same duties, restrictions, and liabilities as a nonprofit corporation.

(b) A cooperative association may:

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

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

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

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

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

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

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

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

Sec. 2.112. STATED POWERS IN SUBCHAPTER SUFFICIENT. A domestic entity is not required to state any of the powers provided to the entity by this subchapter in its governing documents.

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

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

(b) This code does not authorize any action in violation of the

antitrust laws of this state.

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

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

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

(c) A security described by Subsection (a) that contains the manual or facsimile signature of a person who is no longer an officer when the security is delivered by the entity may be adopted, issued, and delivered by the entity in the same manner and to the same extent as if the person had remained an officer of the entity.

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

CHAPTER 3. FORMATION AND GOVERNANCE

SUBCHAPTER A. FORMATION, EXISTENCE, AND CERTIFICATE OF FORMATION

Sec. 3.001. FORMATION AND EXISTENCE OF FILING ENTITIES. (a) Subject to the other provisions of this code, to form a filing entity, a certificate of formation complying with Sections 3.003, 3.004, and 3.005 must be filed in accordance with Chapter 4.

(b) The filing of a certificate of formation described by Subsection (a) may be included in a filing under Chapter 10.

(c) The existence of a filing entity commences when the filing of the certificate of formation takes effect as provided by Chapter 4.

(d) Except in a proceeding by the state to terminate the

existence of a filing entity, an acknowledgment of the filing of a certificate of formation issued by the filing officer is conclusive evidence of:

(1) the formation and existence of the filing entity;

(2) the satisfaction of all conditions precedent to the formation of the filing entity; and

(3) the authority of the filing entity to transact business in this state.

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

Sec. 3.002. FORMATION AND EXISTENCE OF NONFILING ENTITIES. The requirements for the formation of and the determination of the existence of a nonfiling entity are governed by the title of this code that applies to that entity.

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

Sec. 3.003. DURATION. A domestic entity exists perpetually unless otherwise provided in the governing documents of the entity. A domestic entity may be terminated in accordance with this code or the Tax Code.

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

Sec. 3.004. ORGANIZERS. (a) Any person having the capacity to contract for the person or for another may be an organizer of a filing entity.

(b) Each organizer of a filing entity must sign the certificate of formation of the filing entity, except that:

(1) each general partner must sign the certificate of formation of a domestic limited partnership; and

(2) each trust manager must sign and acknowledge before an officer who is authorized by law to take acknowledgment of a deed the certificate of formation of a domestic real estate investment trust.

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

Sec. 3.005. CERTIFICATE OF FORMATION. (a) The certificate of formation must state:

(1) the name of the filing entity being formed;

(2) the type of filing entity being formed;

(3) for filing entities other than limited partnerships, the purpose or purposes for which the filing entity is formed, which may be stated to be or include any lawful purpose for that type of entity;

(4) for filing entities other than limited partnerships, the period of duration, if the entity is not formed to exist perpetually and is intended to have a specific period of duration;

(5) the street address of the initial registered office of the filing entity and the name of the initial registered agent of the filing entity at the office;

(6) the name and address of each:

(A) organizer for the filing entity, unless the entity is formed under a plan of conversion or merger;

(B) general partner, if the filing entity is a limited partnership; or

(C) trust manager, if the filing entity is a real estate investment trust;

(7) if the filing entity is formed under a plan of conversion or merger, a statement to that effect and, if formed under a plan of conversion, the name, address, date of formation, prior form of organization, and jurisdiction of formation of the converting entity; and

(8) any other information required by this code to be included in the certificate of formation for the filing entity.

(b) The certificate of formation may contain other provisions not inconsistent with law relating to the organization, ownership, governance, business, or affairs of the filing entity.

(c) Except as provided by Section 3.004, Chapter 4 governs the signing and filing of a certificate of formation for a domestic entity.

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. 9, eff. September 1, 2007.

Sec. 3.006. FILINGS IN CASE OF MERGER OR CONVERSION. (a) If a new domestic filing entity is formed under a plan of conversion or merger, the certificate of formation of the entity must be filed with the certificate of conversion or merger under Section 10.155(a) or 10.153(a). The certificate of formation is not required to be filed separately under Section 3.001.

(b) The formation and existence of a domestic filing entity that is a converted entity in a conversion or that is to be created under a plan of merger takes effect and commences on the effectiveness of the conversion or merger, as appropriate.

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

Sec. 3.007. SUPPLEMENTAL PROVISIONS REQUIRED IN CERTIFICATE OF FORMATION OF FOR-PROFIT OR PROFESSIONAL CORPORATION. (a) In addition to the information required by Section 3.005, the certificate of formation of a for-profit or professional corporation must state:

(1) the aggregate number of shares the corporation is authorized to issue;

(2) if the shares the corporation is authorized to issue consist of one class of shares only, the par value of each share or a statement that each share is without par value;

(3) if the corporation is to be managed by a board of directors, the number of directors constituting the initial board of directors and the name and address of each person who will serve as director until the first annual meeting of shareholders and until a successor is elected and qualified; and

(4) if the corporation is to be managed pursuant to a shareholders' agreement in a manner other than by a board of directors, the name and address of each person who will perform the functions required by this code to be performed by the initial board of directors.

(b) If the shares a for-profit or professional corporation is authorized to issue consist of more than one class of shares, the certificate of formation of the corporation must, with respect to each class, state:

(1) the designation of the class;

(2) the aggregate number of shares in the class;

(3) the par value of each share or a statement that each share is without par value;

(4) the preferences, limitations, and relative rights of the shares; and

(5) if the shares in a class the corporation is authorized to issue consist of more than one series, the following with respect to each series:

(A) the designation of the series;

(B) the aggregate number of shares in the series;

(C) any preferences, limitations, and relative rights of the shares to the extent provided in the certificate of formation; and

(D) any authority vested in the board of directors to establish the series and set and determine the preferences, limitations, and relative rights of the series.

(c) If the shareholders of a for-profit or professional corporation are to have a preemptive right or cumulative voting right, the certificate of formation of the corporation must comply with Section 21.203 or 21.360, as appropriate.

(d) Notwithstanding Section 2.008, a for-profit corporation may include one or more social purposes in addition to the purpose or purposes required to be stated in the corporation's certificate of formation by Section 3.005(a)(3). The corporation may also include in the certificate of formation a provision that the board of directors and officers of the corporation shall consider any social purpose specified in the certificate of formation in discharging the duties of directors or officers under this code or otherwise.

(e) Notwithstanding Section 2.008, instead of including in its certificate of formation or amending its certificate of formation to include one or more social purposes as provided by Subsection (d), a for-profit corporation may elect to be a public benefit corporation governed by Subchapter S, Chapter 21, by including in its initially filed certificate of formation, or, subject to Section 21.954, by amending its certificate of formation to include:

(1) one or more specific public benefits, as defined by Section 21.952, to be promoted by the corporation; and

(2) instead of the statement required by Section 3.005(a)(2), a statement that the filing entity is a for-profit corporation electing to be a public benefit corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 10, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 100 (S.B. 849), Sec. 2, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 1, eff. September 1, 2017.

Sec. 3.008. SUPPLEMENTAL PROVISIONS REQUIRED IN CERTIFICATE OF FORMATION OF CLOSE CORPORATION. (a) In addition to a provision required or permitted to be stated in the certificate of formation of a for-profit or professional corporation under Section 3.007, the certificate of formation of a close corporation, whether original, amended, or restated, must include the sentence, "This corporation is a close corporation."

(b) The certificate of formation of the close corporation may contain:

(1) a provision contained or permitted to be contained in a shareholders' agreement conforming to Subchapter O, Chapter 21, that the organizers elect to include in the certificate of formation; or

(2) a copy of a shareholders' agreement that conforms to Subchapter O, Chapter 21, and that may be filed in the manner provided by Section 21.212.

(c) A provision contained in the certificate of formation under Subsection (b) must be preceded by a statement that the provision is subject to the corporation remaining a close corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 11, eff. September 1, 2007.

Sec. 3.009. SUPPLEMENTAL PROVISIONS REQUIRED IN CERTIFICATE OF FORMATION OF NONPROFIT CORPORATION. In addition to the information required by Section 3.005, the certificate of formation of a nonprofit corporation must include:

(1) if the nonprofit corporation is to have no members, a

statement to that effect;

(2) if management of the nonprofit corporation's affairs is to be vested in the nonprofit corporation's members, a statement to that effect;

(3) the number of directors constituting the initial board of directors and the names and addresses of those directors or, if the management of the nonprofit corporation is vested solely in the nonprofit corporation's members, a statement to that effect; and

(4) if the nonprofit corporation is to be authorized on its winding up to distribute the nonprofit corporation's assets in a manner other than as provided by Section 22.304, a statement describing the manner of distribution.

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

Sec. 3.010. SUPPLEMENTAL PROVISIONS REQUIRED IN CERTIFICATE OF FORMATION OF LIMITED LIABILITY COMPANY. In addition to the information required by Section 3.005, the certificate of formation of a limited liability company must state:

(1) whether the limited liability company will or will not have managers;

(2) if the limited liability company will have managers, the name and address of each initial manager of the limited liability company; and

(3) if the limited liability company will not have managers, the name and address of each initial member of the limited liability company.

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

Sec. 3.011. SUPPLEMENTAL PROVISIONS REGARDING CERTIFICATE OF FORMATION OF LIMITED PARTNERSHIP. (a) To form a limited partnership, the partners must enter into a partnership agreement and file a certificate of formation.

(b) The partners of a limited partnership formed under Section 10.001 or 10.101 may include the partnership agreement required under Subsection (a) in the plan of merger or conversion.

(c) A certificate of formation for a limited partnership must include the address of the principal office of the partnership in the

United States where records are to be kept or made available under Section 153.551.

(d) The fact that a certificate of formation is on file with the secretary of state is notice that the partnership is a limited partnership and of all other facts contained in the certificate as required by Section 3.005.

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

Sec. 3.012. SUPPLEMENTAL PROVISIONS REQUIRED IN CERTIFICATE OF FORMATION OF REAL ESTATE INVESTMENT TRUST. In addition to the information required by Section 3.005, the certificate of formation of a real estate investment trust must state:

(1) that an assumed name certificate stating the name of the real estate investment trust has been filed in the manner provided by law;

(2) that the purpose of the real estate investment trust is to:

(A) purchase, hold, lease, manage, sell, exchange, develop, subdivide, and improve real property and interests in real property, other than severed mineral, oil, or gas royalty interests, and carry on any other business and perform any other action in connection with a purpose described by this paragraph;

(B) exercise powers conferred by the laws of this state on a real estate investment trust; and

(C) perform any action described by Chapter 200 or Title 1 to the same extent as an individual;

(3) the post office address of the initial principal office and place of business of the real estate investment trust;

(4) the aggregate number of shares of beneficial interest the real estate investment trust is authorized to issue and the par value to be received by the real estate investment trust for the issuance of each share;

(5) if shares described by Subdivision (4) are divided into classes as authorized by Section 200.102 or 200.103, a description of each class of shares, including any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption; and

(6) that the trust managers shall manage the money or

property received for the issuance of shares for the benefit of the shareholders of the real estate investment trust.

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

Sec. 3.013. SUPPLEMENTAL PROVISIONS REQUIRED IN CERTIFICATE OF FORMATION OF COOPERATIVE ASSOCIATION. In addition to the information required by Section 3.005, the certificate of formation of a cooperative association must state:

(1) whether the cooperative association is organized with or without shares;

(2) the number of shares or memberships subscribed for the cooperative association;

(3) if the cooperative association is organized with shares:

(A) the amount of authorized capital;

(B) the number and type of shares;

(C) par value of the shares, if any; and

(D) the rights, preferences, and restrictions of each type of share;

(4) the method of distribution on winding up and termination of any surplus of the cooperative association in accordance with Section 251.403; and

(5) the names and street addresses of the directors who will manage the affairs of the cooperative association for the initial year, unless sooner changed by the members.

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

Sec. 3.014. SUPPLEMENTAL PROVISIONS REQUIRED IN CERTIFICATE OF FORMATION OF PROFESSIONAL ENTITY. In addition to the information required by Section 3.005, the certificate of formation of a professional entity must state:

(1) the type of professional service to be provided by the professional entity as the purpose of the entity; and

(2) that the professional entity is a:

(A) professional association;

(B) professional corporation; or

(C) professional limited liability company.

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

Sec. 3.015. SUPPLEMENTAL PROVISIONS REQUIRED IN CERTIFICATE OF FORMATION OF PROFESSIONAL ASSOCIATION. (a) In addition to containing the information required under Sections 3.005 and 3.014, the certificate of formation of a professional association must:

(1) be signed by each member of the association; and

(2) state:

(A) the name and address of each original member of the association;

(B) whether the association is to be governed by a board of directors or by an executive committee; and

(C) the name and address of each person serving as an initial member of the board of directors or executive committee of the association.

(b) The certificate of formation of a professional association may contain:

(1) provisions regarding shares or units of ownership in the association;

(2) provisions governing the winding up and termination of the association's business; and

(3) any other provision consistent with state law regulating the internal affairs of a professional association.

(c) If the certificate of formation of a professional association contains provisions regarding shares in the association, the certificate of formation must also comply with Section 3.007.

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. 12, eff. September 1, 2007.

SUBCHAPTER B. AMENDMENTS AND RESTATEMENTS OF CERTIFICATE OF FORMATION

Sec. 3.051. RIGHT TO AMEND CERTIFICATE OF FORMATION. (a) A filing entity may amend its certificate of formation.

(b) An amended certificate of formation may contain only provisions that:

(1) would be permitted at the time of the amendment if the

amended certificate of formation were a newly filed original certificate of formation; or

(2) effect a change, exchange, reclassification, subdivision, combination, or cancellation in the membership or ownership interests or the rights of owners or members of the filing entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 6, eff. January 1, 2006.

Sec. 3.052. PROCEDURES TO AMEND CERTIFICATE OF FORMATION. (a) The procedure to adopt an amendment to the certificate of formation is as provided by the title of this code that applies to the entity.

(b) A filing entity that amends its certificate of formation shall sign and file, in the manner required by Chapter 4, a certificate of amendment complying with Section 3.053 or a restated certificate of formation complying with Section 3.059.

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

Sec. 3.053. CERTIFICATE OF AMENDMENT. A certificate of amendment for a filing entity must state:

(1) the name of the filing entity;

(2) the type of the filing entity;

(3) for each provision of the certificate of formation that is added, altered, or deleted, an identification by reference or description of the added, altered, or deleted provision and, if the provision is added or altered, a statement of the text of the amended or added provision;

(4) that the amendment or amendments have been approved in the manner required by this code and the governing documents of the entity; and

(5) any other matter required by the provisions of this code applicable to the filing entity to be in the certificate of amendment.

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

Sec. 3.054. EXECUTION OF CERTIFICATE OF AMENDMENT OF FOR-PROFIT CORPORATION. Except as provided by Title 2 or this section, an officer shall sign the certificate of amendment on behalf of the for-profit corporation. If shares of the for-profit corporation have not been issued and the certificate of amendment is adopted by the board of directors, one or more of the directors may sign the certificate of amendment on behalf of the for-profit 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. 7, eff. January 1, 2006.
Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 2, eff. September 1, 2015.

Sec. 3.055. SUPPLEMENTAL PROVISIONS FOR CERTIFICATE OF AMENDMENT OF REAL ESTATE INVESTMENT TRUST. (a) In addition to the statements required by Section 3.053, a certificate of amendment for a real estate investment trust must state:

(1) if the amendment provides for an exchange, reclassification, or cancellation of issued shares, the manner in which the exchange, reclassification, or cancellation of the issued shares will be effected if the manner is not specified in the amendment; and

(2) if the amendment effects a change in the amount of stated capital, the manner in which the change in the amount of stated capital is effected and the amount of stated capital expressed in dollar terms as changed by the amendment.

(b) If shares of the real estate investment trust have not been issued and the certificate of amendment is adopted by the trust managers, a majority of the trust managers may execute the certificate of amendment on behalf of the real estate investment trust.

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

Sec. 3.056. EFFECT OF FILING OF CERTIFICATE OF AMENDMENT. (a)

An amendment to a certificate of formation takes effect when the filing of the certificate of amendment takes effect as provided by Chapter 4.

(b) An amendment to a certificate of formation does not affect:

(1) an existing cause of action in favor of or against the entity for which the certificate of amendment is sought;

(2) a pending suit to which the entity is a party; or

(3) an existing right of a person other than an existing owner.

(c) If the name of an entity is changed by amendment, an action brought by or against the entity in the former name of the entity does not abate because of the name change.

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

Sec. 3.057. RIGHT TO RESTATE CERTIFICATE OF FORMATION. (a) A filing entity may restate its certificate of formation.

(b) An amendment effected by a restated certificate of formation must comply with Section 3.051(b).

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

Sec. 3.058. PROCEDURES TO RESTATE CERTIFICATE OF FORMATION. (a) The procedure to adopt a restated certificate of formation is governed by the title of this code that applies to the entity.

(b) A filing entity that restates its certificate of formation shall sign and file, in the manner required by Chapter 4, a restated certificate of formation and accompanying statements complying with Section 3.059.

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

Sec. 3.059. RESTATED CERTIFICATE OF FORMATION. (a) A restated certificate of formation must accurately state the text of the previous certificate of formation, regardless of whether the certificate of formation is an original, corrected, or restated certificate, and include:

(1) each previous amendment to the certificate being

restated that is carried forward; and

(2) each new amendment to the certificate being restated.

(b) A restated certificate of formation may omit:

(1) the name and address of each organizer other than the name and address of each general partner of a limited partnership or trust manager of a real estate investment trust; and

(2) any other information that may be omitted under the provisions of this code applicable to the filing entity.

(c) A restated certificate of formation that does not make new amendments to the certificate of formation being restated must be accompanied by:

(1) a statement that the restated certificate of formation accurately states the text of the certificate of formation being restated, as amended, restated, and corrected, except for information omitted under Subsection (b); and

(2) any other information required by other provisions of this code applicable to the filing entity.

(d) A restated certificate of formation that makes new amendments to the certificate of formation being restated must:

(1) be accompanied by a statement that each new amendment has been made in accordance with this code;

(2) be accompanied by a statement that each amendment has been approved in the manner required by this code and the governing documents of the entity;

(3) be accompanied by a statement that the restated certificate of formation:

(A) accurately states the text of the certificate of formation being restated and each amendment to the certificate of formation being restated that is in effect, as further amended by the restated certificate of formation; and

(B) does not contain any other change in the certificate of formation being restated except for information omitted under Subsection (b); and

(4) include any other information required by the title of this code applicable to the entity.

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. 1, eff. September 1, 2013.

Sec. 3.060. SUPPLEMENTAL PROVISIONS FOR RESTATED CERTIFICATE OF FORMATION FOR FOR-PROFIT CORPORATION OR PROFESSIONAL CORPORATION. (a) In addition to the provisions authorized or required by Section 3.059, a restated certificate of formation for a for-profit corporation or professional corporation may update the current number of directors and the names and addresses of the persons serving as directors.

(b) Except as provided by Title 2 or this subsection, an officer shall sign the restated certificate of formation on behalf of the corporation. If shares of the corporation have not been issued and the restated certificate of formation is adopted by the board of directors, one or more of the directors may sign the restated certificate of formation on behalf of the corporation.

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

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 13, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 14, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 3, eff. September 1, 2015.

Sec. 3.061. SUPPLEMENTAL PROVISIONS FOR RESTATED CERTIFICATE OF FORMATION FOR NONPROFIT CORPORATION. (a) In addition to the provisions authorized or required by Section 3.059, a restated certificate of formation for a nonprofit corporation may update the current number of directors and the names and addresses of the persons serving as directors.

(b) If the nonprofit corporation is a church in which management is vested in the church's members under Section 22.202, and the original certificate of formation is not required to contain a statement to that effect, any restated certificate of formation for the church must contain a statement to that effect in addition to the information required by Section 3.059.

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

Sec. 3.0611. SUPPLEMENTAL PROVISIONS FOR RESTATED CERTIFICATE OF FORMATION FOR LIMITED LIABILITY COMPANY. In addition to the provisions authorized or required by Section 3.059, a restated certificate of formation for a limited liability company may:

(1) if the company's certificate of formation states that the company will have one or more managers, update the names and addresses of the persons serving as managers; or

(2) if the certificate of formation states that the company will not have managers, update the names and addresses of the members of the company.

Added by Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 15, eff. September 1, 2007.

Sec. 3.062. SUPPLEMENTAL PROVISIONS FOR RESTATED CERTIFICATE OF FORMATION FOR REAL ESTATE INVESTMENT TRUST. In addition to the provisions authorized or required by Section 3.059, a restated certificate of formation for a real estate investment trust may update the current number of trust managers and the names and addresses of the persons serving as trust managers.

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

Sec. 3.063. EFFECT OF FILING OF RESTATED CERTIFICATE OF FORMATION. (a) A restated certificate of formation takes effect when the filing of the restated certificate of formation takes effect as provided by Chapter 4.

(b) On the date the restated certificate of formation takes effect, the original certificate of formation and each prior amendment or restatement of the certificate of formation is superseded and the restated certificate of formation is the effective certificate of formation.

(c) Sections 3.056(b) and (c) apply to an amendment effected by a restated certificate of formation.

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

SUBCHAPTER C. GOVERNING PERSONS AND OFFICERS

Sec. 3.101. GOVERNING AUTHORITY. Subject to the title of this code that governs the domestic entity and the governing documents of the domestic entity, the governing authority of a domestic entity manages and directs the business and affairs of the domestic entity.

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

Sec. 3.102. RIGHTS OF GOVERNING PERSONS IN CERTAIN CASES. (a) In discharging a duty or exercising a power, a governing person, including a governing person who is a member of a committee, may, in good faith and with ordinary care, rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning a domestic entity or another person and prepared or presented by:

(1) an officer or employee of the entity;

(2) legal counsel;

(3) a certified public accountant;

(4) an investment banker;

(5) a person who the governing person reasonably believes possesses professional expertise in the matter; or

(6) a committee of the governing authority of which the governing person is not a member.

(b) A governing person may not in good faith rely on the information described by Subsection (a) if the governing person has knowledge of a matter that makes the reliance unwarranted.

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

Sec. 3.103. OFFICERS. (a) Officers of a domestic entity may be elected or appointed in accordance with the governing documents of the entity or by the governing authority of the entity unless prohibited by the governing documents.

(b) An officer of an entity shall perform the duties in the management of the entity and has the authority as provided by the governing documents of the entity or the governing authority that elects or appoints the officer.

(c) A person may simultaneously hold any two or more offices of an entity unless prohibited by this code or the governing documents of the entity.

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

Sec. 3.104. REMOVAL OF OFFICERS. (a) Unless otherwise provided by the governing documents of a domestic entity, an officer may be removed for or without cause by the governing authority or as provided by the governing documents of the entity. The removal of an officer does not prejudice any contract rights of the person removed.

(b) Election or appointment of an officer does not by itself create contract rights.

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

Sec. 3.105. RIGHTS OF OFFICERS IN CERTAIN CASES. (a) In discharging a duty or exercising a power, an officer of a domestic entity may, in good faith and ordinary care, rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the entity or another person and prepared or presented by:

(1) another officer or an employee of the entity;

(2) legal counsel;

(3) a certified public accountant;

(4) an investment banker; or

(5) a person who the officer reasonably believes possesses professional expertise in the matter.

(b) An officer may not in good faith rely on the information described by Subsection (a) if the officer has knowledge of a matter that makes the reliance unwarranted.

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

SUBCHAPTER D. RECORDKEEPING OF FILING ENTITIES

Sec. 3.151. BOOKS AND RECORDS FOR ALL FILING ENTITIES. (a) Each filing entity shall keep:

(1) books and records of accounts;

(2) minutes of the proceedings of the owners or members or governing authority of the filing entity and committees of the owners or members or governing authority of the filing entity;

(3) a current record of the name and mailing address of

each owner or member of the filing entity; and

(4) other books and records as required by the title of this code governing the entity.

(b) The books, records, minutes, and ownership or membership records of any filing entity may be:

(1) in written paper form; or

(2) maintained by or on behalf of the filing entity on, or by means of, an information storage device or method or one or more electronic data systems, provided that any books, records, minutes, and ownership or membership records so maintained can be converted into written paper form within a reasonable time.

(c) The records required by Subsection (a)(2) need not be maintained by a limited partnership or a limited liability company except to the extent required by its governing documents.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 8, eff. January 1, 2006.

Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 2, eff. September 1, 2019.

Sec. 3.152. GOVERNING PERSON'S RIGHT OF INSPECTION. (a) A governing person of a filing entity may examine the entity's books and records maintained under Section 3.151 and other books and records of the entity for a purpose reasonably related to the governing person's service as a governing person.

(b) A court may require a filing entity to open the books and records of the filing entity, including the books and records maintained under Section 3.151, to permit a governing person to inspect, make copies of, or take extracts from the books and records on a showing by the governing person that:

(1) the person is a governing person of the entity;

(2) the person demanded to inspect the entity's books and records;

(3) the person's purpose for inspecting the entity's books and records is reasonably related to the person's service as a governing person; and

(4) the entity refused the person's good faith demand to

inspect the books and records.

(c) A court may award a governing person attorney's fees and any other proper relief in a suit to require a filing entity to open its books and records under Subsection (b).

(d) This section does not apply to limited partnerships. Section 153.552 applies to limited partnerships.

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

Sec. 3.153. RIGHT OF EXAMINATION BY OWNER OR MEMBER. Each owner or member of a filing entity may examine the books and records of the filing entity maintained under Section 3.151 and other books and records of the filing entity to the extent provided by the governing documents of the entity and the title of this code governing the filing entity.

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

SUBCHAPTER E. CERTIFICATES REPRESENTING OWNERSHIP INTEREST

Sec. 3.201. CERTIFICATED OR UNCERTIFICATED OWNERSHIP INTEREST; APPLICABILITY. (a) Ownership interests in a domestic entity may be certificated or uncertificated.

(b) The ownership interests in a for-profit corporation, real estate investment trust, or professional corporation must be certificated, except to the extent a governing document of the entity or a resolution adopted by the governing authority of the entity provides that some or all of the classes or series of the ownership interests are uncertificated or that some or all of the ownership interests in any class or series of the ownership interests are uncertificated. The entity may have outstanding both certificated and uncertificated ownership interests of the same class or series. If a domestic entity changes the form of its ownership interests from certificated to uncertificated, a certificated ownership interest subject to the change becomes an uncertificated ownership interest only after the certificate is surrendered to the domestic entity.

(c) Ownership interests in a domestic entity, other than a domestic entity described by Subsection (b), are uncertificated unless this code or the governing documents of the domestic entity state that the interests are certificated.

(d) Sections 3.202-3.205 do not apply to a partnership or a limited liability company except to the extent that the governing documents of the partnership or limited liability company specify.

(e) The governing documents of a partnership or a limited liability company may:

(1) provide that an owner's ownership interest may be evidenced by a certificate of ownership interest issued by the entity;

(2) provide for the assignment or transfer of ownership interests represented by certificates; and

(3) make other provisions with respect to the certificate.

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. 4, eff. September 1, 2015.

Sec. 3.202. FORM AND VALIDITY OF CERTIFICATES; ENFORCEMENT OF ENTITY'S RIGHTS. (a) A certificate representing the ownership interest in a domestic entity may contain an impression of the seal of the entity, if any. A facsimile of the entity's seal may be printed or lithographed on the certificate.

(b) If a domestic entity is authorized to issue ownership interests of more than one class or series, each certificate representing ownership interests that is issued by the entity must conspicuously state on the front or back of the certificate:

(1) the designations, preferences, limitations, and relative rights of the ownership interests of each class or series to the extent they have been determined and the authority of the governing authority to make those determinations as to subsequent series; or

(2) that the information required by Subdivision (1) is stated in the domestic entity's governing documents and that the domestic entity, on written request to the entity's principal place of business or registered office, will provide a free copy of that information to the record holder of the certificate.

(c) A certificate representing ownership interests must state on the front of the certificate:

(1) that the domestic entity is organized under the laws of

this state;

(2) the name of the person to whom the certificate is issued;

(3) the number and class of ownership interests and the designation of the series, if any, represented by the certificate; and

(4) if the ownership interests are shares, the par value of each share represented by the certificate, or a statement that the shares are without par value.

(d) A certificate representing ownership interests that is subject to a restriction, placed by or agreed to by the domestic entity under this code, or otherwise contained in its governing documents, on the transfer or registration of the transfer of the ownership interests must:

(1) conspicuously state or provide a summary of the restriction on the front of the certificate;

(2) state the restriction on the back of the certificate and conspicuously refer to that statement on the front of the certificate; or

(3) conspicuously state on the front or back of the certificate that a restriction exists pursuant to a specified document and:

(A) that the domestic entity, on written request to the entity's principal place of business, will provide a free copy of the document to the certificate record holder; or

(B) if the document has been filed in accordance with this code, that the document:

(i) is on file with the secretary of state or, in the case of a real estate investment trust, with the county clerk of the county in which the real estate investment trust's principal place of business is located; and

(ii) contains a complete statement of the restriction.

(e) A domestic entity that fails to provide to the record holder of a certificate within a reasonable time a document as required by Subsection (d)(3)(A) may not enforce the entity's rights under the restriction imposed on the certificated ownership interests.

(f) A certificate representing ownership interests may not be issued in bearer form.

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. 3, eff. September 1, 2009.

Sec. 3.203. SIGNATURE REQUIREMENT. (a) The managerial official or officials of a domestic entity authorized by the governing documents of the entity to sign certificated ownership interests of the entity must sign any certificate representing an ownership interest in the entity.

(b) A certificated ownership interest that contains the manual or facsimile signature of a person who is no longer a managerial official of a domestic entity when the certificate is issued may be issued by the entity in the same manner and with the same effect as if the person had remained a managerial official.

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

Sec. 3.204. DELIVERY REQUIREMENT. A domestic entity shall deliver a certificate representing a certificated ownership interest to which the owner is entitled.

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

Sec. 3.205. NOTICE FOR UNCERTIFICATED OWNERSHIP INTEREST. (a) Except as provided by Subsection (c) and in accordance with Chapter 8, Business & Commerce Code, after an issuance or transfer of an uncertificated ownership interest in a domestic entity, the owner of the ownership interest shall be notified in writing or by electronic transmission of any information required under this subchapter to be stated on a certificate representing the ownership interest.

(b) Except as otherwise expressly provided by law, the rights and obligations of the owner of an uncertificated ownership interest are the same as the rights and obligations of the owner of a certificated ownership interest of the same class and series.

(c) The owner of an uncertificated ownership interest in a domestic entity is not required to be notified under Subsection (a) if:

(1) the required information is included in the governing documents of the entity; and

(2) the owner of the uncertificated ownership interest is provided with a copy of the governing documents.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 3, eff. September 1, 2019.

SUBCHAPTER F. EMERGENCY GOVERNANCE

Sec. 3.251. EMERGENCY DEFINED. For purposes of this subchapter, an emergency exists if a majority of a domestic entity's governing persons cannot readily participate in a meeting because of the occurrence of a catastrophic event.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 4, eff. September 1, 2009.

Sec. 3.252. PROVISIONS IN GOVERNING DOCUMENTS. (a) Except as otherwise provided by the entity's governing documents, the governing persons, owners, or members of a domestic entity may adopt provisions in the entity's governing documents regarding the management of the entity during an emergency, including provisions:

(1) prescribing procedures for calling a meeting of the governing persons;

(2) establishing minimum requirements for participation at the meeting of the governing persons; and

(3) designating additional or substitute governing persons.

(b) The emergency provisions must be adopted in accordance with:

(1) the requirements of the governing documents; and

(2) the applicable provisions of this code.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 4, eff. September 1, 2009.

Sec. 3.253. EFFECT OF EMERGENCY PROVISIONS. The emergency

provisions adopted under Section 3.252 take effect only in the event of an emergency. The emergency provisions will no longer be effective after the emergency ends.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 4, eff. September 1, 2009.

Sec. 3.254. EFFECT OF OTHER PROVISIONS IN GOVERNING DOCUMENTS DURING EMERGENCY. A provision of an entity's governing documents that is consistent with the emergency provisions adopted under Section 3.252 remains in effect during an emergency.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 4, eff. September 1, 2009.

Sec. 3.255. EFFECT OF ACTION TAKEN. An action of a domestic entity taken in good faith in accordance with the emergency provisions:

(1) is binding on the entity; and

(2) may not be used to impose liability on a managerial official, employee, or agent of the entity.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 4, eff. September 1, 2009.

CHAPTER 4. FILINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4.001. SIGNATURE AND DELIVERY. (a) A filing instrument must be:

(1) signed by a person authorized by this code to act on behalf of the entity in regard to the filing instrument; and

(2) delivered to the secretary of state in person or by mail, courier, facsimile or electronic transmission, or any other comparable form of delivery.

(b) A person authorized by this code to sign a filing instrument for an entity is not required to show evidence of the person's authority as a requirement for filing.

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

Sec. 4.002. ACTION BY SECRETARY OF STATE. (a) If the secretary of state finds that a filing instrument delivered under Section 4.001 conforms to the provisions of this code that apply to the entity and to applicable rules adopted under Section 12.001 and that all required fees have been paid, the secretary of state shall:

(1) file the instrument by accepting it into the filing system adopted by the secretary of state and assigning the instrument a date of filing; and

(2) deliver a written acknowledgment of filing to the entity or its representative.

(b) If a duplicate copy of the filing instrument is delivered to the secretary of state, on accepting the filing instrument, the secretary of state shall return the duplicate copy, endorsed with the word "Filed" and the month, day, and year of filing, to the entity or its representative with the acknowledgment of filing.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 9, eff. January 1, 2006.

Sec. 4.003. FILING OR ISSUANCE OF REPRODUCTION OR FACSIMILE. (a) A photographic, photostatic, facsimile, electronic, or similar reproduction of a filing instrument, signature, acknowledgment of filing, or communication may be filed or issued in place of:

(1) an original filing instrument;

(2) an original signature on a filing instrument; or

(3) an original acknowledgment of filing or other written communication from the secretary of state relating to a filing instrument.

(b) To the extent any filing or action on a filing conforms to this subchapter, a filing instrument or an acknowledgment of filing issued by the secretary of state is not required to be on paper or to be reduced to printed form.

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

Sec. 4.004. TIME FOR FILING. Unless this code prescribes a specific period for filing, an entity shall promptly file each filing instrument that this code requires the entity to file.

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

Sec. 4.005. CERTIFICATES AND CERTIFIED COPIES. (a) A court, public office, or official body shall accept a certificate issued as provided by this code by the secretary of state or a copy of a filing instrument accepted by the secretary of state for filing as provided by this code that is certified by the secretary of state as prima facie evidence of the facts stated in the certificate or instrument.

(b) A court, public office, or official body may record a certificate or certified copy described by Subsection (a).

(c) A court, public office, or official body shall accept a certificate issued under an official seal by the secretary of state as to the existence or nonexistence of facts that relate to an entity that would not appear from a certified copy of a filing instrument as prima facie evidence of the existence or nonexistence of the facts stated in the certificate.

(d) Subject to any qualification stated in the certificate, a certificate issued by the secretary of state stating that a domestic filing entity is in existence may be relied on as conclusive evidence of the entity's existence.

(e) Subject to any qualification stated in the certificate, a certificate issued by the secretary of state stating that a foreign filing entity is in existence or registered may be relied on as conclusive evidence that the foreign filing entity is registered and authorized to transact business in this state.

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. 5, eff. September 1, 2009.

Sec. 4.006. FORMS ADOPTED BY SECRETARY OF STATE. (a) The secretary of state may adopt forms for a filing instrument or a report authorized or required by this code to be filed with the secretary of state.

(b) A person is not required to use a form adopted by the secretary of state unless this code expressly requires use of that form.

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

Sec. 4.007. LIABILITY FOR FALSE FILING INSTRUMENTS. (a) A person may recover damages, court costs, and reasonable attorney's fees if the person incurs a loss and:

(1) the loss is caused by a:

(A) forged filing instrument; or

(B) filed filing instrument that constitutes an offense under Section 4.008; or

(2) the person reasonably relies on:

(A) a false statement of material fact in a filed filing instrument; or

(B) the omission in a filed filing instrument of a material fact required by this code to be included in the instrument.

(b) A person may recover under Subsection (a) from:

(1) each person who forged the forged filing instrument or signed the filing instrument and knew when the instrument was signed of the false statement or omission;

(2) any managerial official of the entity who directed the signing and filing of the filing instrument who knew or should have known when the instrument was signed or filed of the false statement or omission; or

(3) the entity that authorizes the filing of the filing instrument.

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

Sec. 4.008. OFFENSE; PENALTY. (a) A person commits an offense if the person signs or directs the filing of a filing instrument that the person knows is materially false with intent that the filing instrument be delivered on behalf of an entity to the secretary of state for filing.

(b) An offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony.

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

Sec. 4.009. FILINGS BY REAL ESTATE INVESTMENT TRUST. (a) A filing instrument relating to a domestic real estate investment trust must be filed with the county clerk of the county in which the domestic real estate investment trust's principal place of business is located.

(b) Subject to other state law governing the requirements for filing instruments with a county clerk, this chapter applies to a filing by a domestic real estate investment trust, except that in relation to such a filing a reference in this chapter to the secretary of state is considered to be a reference to the county clerk of the county in which the domestic real estate investment trust's principal place of business is located.

(c) A filing instrument relating to a foreign real estate investment trust must be filed with the secretary of state and not a county clerk.

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

SUBCHAPTER B. WHEN FILINGS TAKE EFFECT

Sec. 4.051. GENERAL RULE. A filing instrument submitted to the secretary of state takes effect on filing, except as permitted by Section 4.052 or as provided by the provisions of this code that apply to the entity making the filing or other law.

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

Sec. 4.052. DELAYED EFFECTIVENESS OF CERTAIN FILINGS. (a) Except as provided by Section 4.058, a filing instrument may take effect after the time the instrument would otherwise take effect as provided by this code for the entity filing the instrument.

(b) If the effectiveness of a filing instrument is to be delayed as permitted by this section, the filing instrument may take effect:

(1) at a specified date;

(2) at a specified date and time;

(3) on the occurrence of a specified future event or fact,

including an act of any person; or

(4) after the occurrence of a future event or fact, including the act of any person, at a specified date, at a specified date and time, or after the passage of a specified period of time.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 4, eff. September 1, 2019.

Sec. 4.053. CONDITIONS FOR DELAYED EFFECTIVENESS. (a) The date, or the date and time, at which a filing instrument takes effect is delayed if the instrument clearly and expressly states, in addition to any other required statement or information:

(1) the specified date, or the specified date and time, at which the instrument takes effect; or

(2) if the instrument takes effect on or after the occurrence of a future event or fact that may occur:

(A) the event or fact that will cause the instrument to take effect;

(B) when the filing instrument is to take effect if the instrument is to take effect after the occurrence of a specified future event or fact; and

(C) the date of the 90th day after the date the instrument is signed.

(b) If the effectiveness of a filing instrument is to be delayed as permitted by Section 4.052:

(1) the effective date may not be later than the 90th day after the date the instrument is signed; and

(2) the specified time at which the instrument is to take effect may not be specified as "12:00 a.m." or "12:00 p.m."

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 4, eff. September 1, 2019.

Sec. 4.054. DELAYED EFFECTIVENESS ON FUTURE EVENT OR FACT. A filing instrument that is to take effect on or after the occurrence

of a future event or fact in accordance with Section 4.053(a)(2) and for which the statement required by Section 4.055 is filed within the prescribed time takes effect on:

(1) the date, or the date and time, at which the event or fact occurs or is waived; or

(2) the specified date, the specified date and time, or the passage of the specified period of time after the occurrence or waiver of the event or fact.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 4, eff. September 1, 2019.

Sec. 4.055. STATEMENT OF EVENT OR FACT. An entity that files a filing instrument that takes effect on or after the occurrence of a future event or fact in accordance with Section 4.053(a)(2) must sign and file as provided by Subchapter A, not later than the 90th day after the date the filing instrument is filed, a statement that:

(1) confirms that each event or fact on which the effect of the instrument is conditioned has been satisfied or waived;

(2) states the date, or the date and time, on which the condition was satisfied or waived; and

(3) if the filing instrument was to take effect after the occurrence of a specified future event or fact, states the date, or the date and time, at which the filing instrument took effect.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 4, eff. September 1, 2019.

Sec. 4.056. FAILURE TO FILE STATEMENT. (a) If the filing instrument is to take effect on or after the occurrence of a future event or fact in accordance with Section 4.053(a)(2) and the statement required by Section 4.055 is not filed before the expiration of the prescribed time, the filing instrument does not take effect. This section does not preclude the filing of a subsequent filing instrument required by this code to make the action

or transaction evidenced by the original filing instrument effective.

(b) If the filing instrument is to take effect on or after the occurrence of a future event or fact and the specified event or fact does not occur and is not waived, the parties to the filing instrument must sign and file a certificate of abandonment as provided by Section 4.057.

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. 16, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 4, eff. September 1, 2019.

Sec. 4.057. ABANDONMENT BEFORE EFFECTIVENESS. (a) The parties to a filing instrument may abandon the filing instrument if the instrument has not taken effect.

(b) To abandon a filing instrument the parties to the instrument must file with the filing officer a certificate of abandonment.

(c) A certificate of abandonment must:

(1) be signed on behalf of each entity that is a party to the action or transaction by the person authorized by this code to act on behalf of the entity;

(2) state the nature of the filing instrument to be abandoned, the date of the instrument, and the parties to the instrument; and

(3) state that the filing instrument has been abandoned in accordance with the agreement of the parties.

(d) On the filing of the certificate of abandonment, the action or transaction evidenced by the original filing instrument is abandoned and may not take effect.

(e) If in the interim before a certificate of abandonment is filed the name of an entity that is a party to the action or transaction becomes indistinguishable from the name of another entity already on file or reserved or registered under this code, the filing officer may not file the certificate of abandonment unless the entity by or for whom the certificate is filed changes its name in the manner provided by this code for that entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 5, eff. September 1, 2019.

Sec. 4.058. DELAYED EFFECTIVENESS NOT PERMITTED. The effect of the following filing instruments may not be delayed:

(1) a reservation of name as provided by Subchapter C, Chapter 5;

(2) a registration of name as provided by Subchapter D, Chapter 5;

(3) a statement of event or fact as provided by Section 4.055; or

(4) a certificate of abandonment as provided by Section 4.057.

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

Sec. 4.059. ACKNOWLEDGMENT OF FILING WITH DELAYED EFFECTIVENESS. (a) An acknowledgment of filing issued or other action taken by the secretary of state affirming the filing of a filing instrument that has a specific delayed effective date, or a specific delayed effective date and time, must state the date, or the date and time, at which the instrument takes effect.

(b) An acknowledgment of filing issued or other action taken by the secretary of state affirming the filing of a filing instrument the effectiveness of which is delayed until on or after the occurrence of a future event or fact must indicate that the effective date, or the effective date and time, of the instrument is conditioned on the occurrence of a future event or fact.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 6, eff. September 1, 2019.

SUBCHAPTER C. CORRECTION AND AMENDMENT

Sec. 4.101. CORRECTION OF FILINGS. (a) A filing instrument

that has been filed with the secretary of state that is an inaccurate record of the event or transaction evidenced in the instrument, that contains an inaccurate or erroneous statement, or that was defectively or erroneously signed, sealed, acknowledged, or verified may be corrected by filing a certificate of correction.

(b) A certificate of correction must be signed by the person authorized by this code to sign the filing instrument to be corrected.

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. 6, eff. September 1, 2009.

Sec. 4.102. LIMITATION ON CORRECTION OF FILINGS. A filing instrument may be corrected to contain only those statements that this code authorizes or requires to be included in the original instrument. A certificate of correction may not alter, add, or delete a statement that by its alteration, addition, or deletion would have caused the secretary of state to determine the filing instrument did not conform to this code at the time of filing.

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

Sec. 4.103. CERTIFICATE OF CORRECTION. The certificate of correction must:

(1) state the name of the entity;

(2) identify the filing instrument to be corrected by description and date of filing with the secretary of state;

(3) identify the inaccuracy, error, or defect to be corrected; and

(4) state in corrected form the portion of the filing instrument to be corrected.

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

Sec. 4.104. FILING CERTIFICATE OF CORRECTION. The certificate of correction shall be filed with and acted on by the secretary of

state as provided by Subchapter A. On filing, the secretary of state shall deliver to the entity or its representative an acknowledgment of the filing.

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

Sec. 4.105. EFFECT OF CERTIFICATE OF CORRECTION. (a) After the secretary of state files the certificate of correction, the filing instrument is considered to have been corrected on the date the filing instrument was originally filed, except as provided by Subsection (b).

(b) As to a person who is adversely affected by the correction, the filing instrument is considered to have been corrected on the date the certificate of correction is filed.

(c) An acknowledgment of filing or a similar instrument issued by the secretary of state before a filing instrument is corrected, with respect to the effect of filing the original filing instrument, applies to the corrected filing instrument as of the date the corrected filing instrument is considered to have been filed under this section.

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

Sec. 4.106. AMENDMENT OF FILINGS. A filing instrument that an entity files with the secretary of state may be amended or supplemented to the extent permitted by the provisions of this code that apply to that entity.

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

SUBCHAPTER D. FILING FEES

Sec. 4.151. FILING FEES: ALL ENTITIES. The secretary of state shall impose the following fees:

(1) for filing a certificate of correction, $15;

(2) for filing an application for reservation or registration of a name, $40;

(3) for filing a notice of transfer of a name reservation, $15;

(4) for filing an application for renewal of registration of a name, $40;

(5) for filing a certificate of merger or conversion, other than a filing on behalf of a nonprofit corporation, $300 plus, with respect to a merger, any fee imposed for filing a certificate of formation for each newly created filing entity or, with respect to a conversion, the fee imposed for filing a certificate of formation for the converted entity;

(6) for filing a certificate of exchange, $300; and

(7) for preclearance of a filing instrument, $50.

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. 17, eff. September 1, 2007.

Sec. 4.152. FILING FEES: FOR-PROFIT CORPORATIONS. For a filing by or for a for-profit corporation, the secretary of state shall impose the following fees:

(1) for filing a certificate of formation, $300;

(2) for filing a certificate of amendment, $150;

(3) for filing an application of a foreign corporation for registration to transact business in this state, $750;

(4) for filing an application of a foreign corporation for an amended registration to transact business in this state, $150;

(5) for filing a restated certificate of formation and accompanying statement, $300;

(6) for filing a statement of change of registered office, registered agent, or both, $15;

(7) for filing a statement of change of name or address of a registered agent, $15, except that the maximum fee for simultaneous filings by a registered agent for more than one corporation may not exceed $750;

(8) for filing a statement of resolution establishing one or more series of shares, $15;

(9) for filing a certificate of termination, $40;

(10) for filing a certificate of withdrawal of a foreign corporation, $15;

(11) for filing a certificate from the home state of a

foreign corporation that the corporation no longer exists in that state, $15;

(12) for filing a bylaw or agreement restricting transfer of shares or securities other than as an amendment to the certificate of formation, $15;

(13) for filing an application for reinstatement of a certificate of formation or registration as a foreign corporation following forfeiture under the Tax Code, $75;

(14) for filing an application for reinstatement of a corporation or registration as a foreign corporation after involuntary termination or revocation, $75;

(15) for filing a certificate of validation, $15, plus the filing fee imposed for filing each new filing instrument that is attached as an exhibit to the certificate of validation under Section 21.908(b)(3)(C); and

(16) for filing any instrument as provided by this code for which this section does not expressly provide a fee, $15.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 10, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 18, eff. September 1, 2007.

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

Sec. 4.153. FILING FEES: NONPROFIT CORPORATIONS. For a filing by or for a nonprofit corporation, the secretary of state shall impose the following fees:

(1) for filing a certificate of formation, $25;

(2) for filing a certificate of amendment, $25;

(3) for filing a certificate of merger, conversion, or consolidation, without regard to whether the surviving or new corporation is a domestic or foreign corporation, $50;

(4) for filing a statement of change of a registered office, registered agent, or both, $5;

(5) for filing a certificate of termination, $5;

(6) for filing an application of a foreign corporation for

registration to conduct affairs in this state, $25;

(7) for filing an application of a foreign corporation for an amended registration to conduct affairs in this state, $25;

(8) for filing a certificate of withdrawal of a foreign corporation, $5;

(9) for filing a restated certificate of formation and accompanying statement, $50;

(10) for filing a statement of change of name or address of a registered agent, $15, except that the maximum fee for simultaneous filings by a registered agent for more than one corporation may not exceed $250;

(11) for filing a report under Chapter 22, $5;

(12) for filing a report under Chapter 22 to reinstate a corporation's right to conduct affairs in this state, $5, plus a late fee in the amount of $5 or in the amount of $1 for each month or part of a month that the report remains unfiled, whichever amount is greater, except that the late fee may not exceed $25;

(13) for filing a report under Chapter 22 to reinstate a corporation or registration following involuntary termination or revocation, $25;

(14) for filing a certificate of validation, $5, plus the filing fee imposed for filing each new filing instrument that is attached as an exhibit to the certificate of validation under Section 22.508(c)(3)(C); and

(15) for filing any instrument of a domestic or foreign corporation as provided by this code for which this section does not expressly provide a fee, $5.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 11, eff. January 1, 2006.

Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 2, eff. September 1, 2019.

Sec. 4.154. FILING FEES: LIMITED LIABILITY COMPANIES. For a filing by or for a limited liability company, the secretary of state shall impose the same fee as the filing fee for a similar instrument under Section 4.152.

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

Sec. 4.155. FILING FEES: LIMITED PARTNERSHIPS. For a filing by or for a limited partnership, the secretary of state shall impose the following fees:

(1) for filing a certificate of formation or an application for registration as a foreign limited partnership, $750;

(2) for filing a certificate of amendment or an amendment of registration of a foreign limited partnership, $150;

(3) for filing a restated certificate of formation, $300;

(4) for filing a statement for change of registered office, registered agent, or both, $15;

(5) for filing a statement of change of name or address of a registered agent, $15, except that the maximum fee for simultaneous filings by a registered agent for more than one limited partnership may not exceed $750;

(6) for filing a certificate of termination, $40;

(7) for filing a certificate of withdrawal of a foreign limited partnership, $15;

(8) for filing a certificate of reinstatement of a limited partnership or registration as a foreign limited partnership after involuntary termination or revocation under Chapter 11 or Chapter 9, $75;

(9) for filing a periodic report required under Chapter 153, $50;

(10) for reviving a limited partnership's right to transact business under Chapter 153, $50 plus a late fee in an amount equal to the lesser of:

(A) $25 for each month or part of a month that elapses after the date of the notice of forfeiture; or

(B) $100;

(11) for reinstatement of a certificate of formation or registration under Chapter 153, $50 plus a late fee of $100 and a reinstatement fee of $75;

(12) for filing any document required or permitted to be filed for a limited liability partnership, the secretary of state shall impose the same fee as the filing fee for a general partnership under Section 4.158. For purposes of calculation of the filing fee, all references to partners in Section 4.158 as applied to limited

partnerships mean general partners only; and

(13) for filing any instrument as provided by this code for which this section does not expressly provide a fee, $15.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 12, eff. January 1, 2006.

Sec. 4.156. FILING FEES: PROFESSIONAL ASSOCIATIONS. For a filing by or for a professional association, the secretary of state shall impose the following fees:

(1) for filing a certificate of formation or an application for registration as a foreign professional association, $750; and

(2) for filing any other instrument, the fee provided for the filing of a similar instrument under Section 4.152.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1097 (H.B. 2891), Sec. 1, eff. January 1, 2016.

Sec. 4.157. FILING FEES: PROFESSIONAL CORPORATIONS. For a filing by or for a professional corporation, the secretary of state shall impose the same fee as the filing fee for a similar instrument under Section 4.152.

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

Sec. 4.158. FILING FEES: GENERAL PARTNERSHIPS. For a filing by or for a general partnership, the secretary of state shall impose the following fees:

(1) for filing a limited liability partnership application, $200 for each partner;

(2) for filing a limited liability partnership annual report, $200 for each partner on the date of filing of the report or, in the case of any past due annual report, $200 for the number of partners as of May 31 of the year that the report was due;

(3) for filing an application for registration by a foreign limited liability partnership, $200 for each partner in this state, except that the maximum fee may not exceed $750;

(4) for filing a renewal of registration by a foreign limited liability partnership, $200 for each partner in this state, except that the maximum fee may not exceed $750;

(5) for filing a certificate of amendment for a domestic limited liability partnership, $10, plus $200 for each partner added by the amendment;

(6) for filing a certificate of amendment for a foreign limited liability partnership, $10, plus $200 for each partner in this state added by amendment not to exceed $750; and

(7) for filing any other filing instrument, the filing fee imposed for a similar instrument under Section 4.155.

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. 19, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 1, eff. January 1, 2016.

Sec. 4.159. FILING FEES: NONPROFIT ASSOCIATIONS. For a filing by or for a nonprofit association, the secretary of state shall impose the following fees:

(1) for filing a statement appointing an agent to receive service of process, $25;

(2) for filing an amendment of a statement appointing an agent, $5;

(3) for filing a cancellation of a statement appointing an agent, $5;

(4) for filing a certificate of merger or conversion, regardless of whether the surviving or new nonprofit organization is a domestic or foreign entity, $50; and

(5) for filing any instrument of a nonprofit association as provided by this code for which this section does not expressly provide a fee, $5.

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. 2, eff. September 1, 2017.

Sec. 4.160. FILING FEES: FOREIGN FILING ENTITIES. For a filing by or for a foreign filing entity when no other fee has been provided, the secretary of state shall impose the same fee as the filing fee for a similar instrument under Section 4.151 or 4.152.

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

Sec. 4.161. FILING FEES: COOPERATIVE ASSOCIATIONS. For a filing by or for a cooperative association, the secretary of state shall impose the same fee as the filing fee for a similar instrument under Section 4.153.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 13, eff. January 1, 2006.

CHAPTER 5. NAMES OF ENTITIES; REGISTERED AGENTS AND REGISTERED OFFICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 5.001. EFFECT ON RIGHTS UNDER OTHER LAW. (a) The filing of a certificate of formation by a filing entity under this code, an application for registration by a foreign filing entity under this code, or an application for reservation or registration of a name under this chapter does not authorize the use of a name in this state in violation of a right of another under:

(1) the Trademark Act of 1946, as amended (15 U.S.C. Section 1051 et seq.);

(2) Chapter 16 or 71, Business & Commerce Code; or

(3) common law.

(b) The secretary of state shall deliver a notice that contains the substance of Subsection (a) to each of the following:

(1) a filing entity that files a certificate of formation under this code;

(2) a foreign filing entity that registers under this code;

(3) a person that reserves a name under Subchapter C; and

(4) a person that registers a name under Subchapter D.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.08, eff. April 1, 2009.

Sec. 5.002. EVIDENCE OF ESTABLISHED RIGHT TO INDISTINGUISHABLE NAME. Notwithstanding Sections 5.053, 5.102, and 5.153, the secretary of state may accept a name if the entity or person seeking acceptance of the filing instrument with the indistinguishable name delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction that establishes the entity's or person's right to the name in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 2, eff. June 1, 2018.

SUBCHAPTER B. GENERAL PROVISIONS RELATING TO NAMES OF ENTITIES

Sec. 5.051. ASSUMED NAME. A domestic entity or a foreign entity having authority to transact business in this state may transact business under an assumed name by filing an assumed name certificate in accordance with Chapter 71, Business & Commerce Code. The requirements of this subchapter do not apply to an assumed name set forth in an assumed name certificate filed under that chapter.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.09, eff. April 1, 2009.

Sec. 5.052. UNAUTHORIZED PURPOSE IN NAME PROHIBITED. A filing entity or a foreign filing entity may not have a name that contains any word or phrase that indicates or implies that the entity is engaged in a business that the entity is not authorized by law to pursue.

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

Sec. 5.053. DISTINGUISHABLE NAMES REQUIRED. (a) The name of a filing entity or the name under which a foreign filing entity registers to transact business in this state must be distinguishable in the records of the secretary of state from:

(1) the name of another existing filing entity;

(2) the name of a foreign filing entity that is registered under Chapter 9;

(3) the fictitious name under which a foreign filing entity is registered to transact business in this state;

(4) a name that is reserved under Subchapter C; or

(5) a name that is registered under Subchapter D.

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 3

(b) Subsection (a) does not apply if the other entity or the person for whom the name is reserved or registered, as appropriate, provides to the secretary of state a notarized written statement of the entity's or person's consent to the use of the name.

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 2

(b) Subsection (a) does not apply if the other entity or the person for whom the name is reserved or registered, as appropriate, provides to the secretary of state a notarized written statement of the entity's or person's consent to the use of the similar name. Sections 4.007 and 4.008 apply to a written consent to the use of a similar name under this subsection to the same extent those sections apply to filing instruments.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 3

(c) Subsection (b) does not apply if the secretary of state determines that the names are the same.

Acts 2003, 78th Leg., Ch. 182 (H.B. 1156), Sec. 1, eff. Jan. 1, 2006.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1195 (S.B. 1313), Sec. 1, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 3, eff. June 1, 2018.

Sec. 5.054. NAME OF CORPORATION, FOREIGN CORPORATION, PROFESSIONAL CORPORATION, OR FOREIGN PROFESSIONAL CORPORATION. (a) The name of a corporation or foreign corporation must contain:

(1) the word "company," "corporation," "incorporated," or "limited"; or

(2) an abbreviation of one of those words.

(b) Subsection (a) does not apply to a nonprofit corporation or foreign nonprofit corporation.

(c) Instead of a word or abbreviation required by Subsection (a), the name of a professional corporation or foreign professional corporation may contain the phrase "professional corporation" or an abbreviation of the phrase.

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. 20, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 21, eff. September 1, 2007.

Sec. 5.055. NAME OF LIMITED PARTNERSHIP OR FOREIGN LIMITED PARTNERSHIP. (a) The name of a limited partnership or foreign limited partnership must contain:

(1) the word "limited";

(2) the phrase "limited partnership"; or

(3) an abbreviation of that word or phrase.

(b) The name of a domestic or foreign limited partnership that is a limited liability limited partnership must also contain the phrase "limited liability partnership" or an abbreviation of that phrase.

(c) The name of a domestic or foreign limited partnership that is a limited liability limited partnership complies with the requirements of Subsections (a) and (b) if the name of the limited partnership contains the phrase "limited liability limited partnership" or an abbreviation of that phrase.

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. 22, eff. September 1, 2007.

Sec. 5.056. NAME OF LIMITED LIABILITY COMPANY OR FOREIGN LIMITED LIABILITY COMPANY. (a) The name of a limited liability company or a foreign limited liability company doing business in this state must contain:

(1) the phrase "limited liability company" or "limited company"; or

(2) an abbreviation of one of those phrases.

(b) A limited liability company formed before September 1, 1993, the name of which complied with the laws of this state on the date of formation but does not comply with this section is not required to change its name.

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

Sec. 5.057. NAME OF COOPERATIVE ASSOCIATION OR FOREIGN COOPERATIVE ASSOCIATION. (a) The name of a cooperative association or foreign cooperative association must contain:

(1) the word "cooperative"; or

(2) an abbreviation of that word.

(b) A domestic or foreign entity may use the word "cooperative" in its name to the extent permitted by Section 251.452.

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. 23, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 24, eff. September 1, 2007.

Sec. 5.058. NAME OF PROFESSIONAL ASSOCIATION OR FOREIGN PROFESSIONAL ASSOCIATION. The name of a professional association or foreign professional association must contain:

(1) the word "associated," "associates," or "association";

(2) the phrase "professional association"; or

(3) an abbreviation of one of those words or that phrase.

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. 25, eff. September 1, 2007.

Sec. 5.059. NAME OF PROFESSIONAL LIMITED LIABILITY COMPANY OR FOREIGN PROFESSIONAL LIMITED LIABILITY COMPANY. (a) The name of a professional limited liability company or foreign professional limited liability company must contain:

(1) the phrase "professional limited liability company"; or

(2) an abbreviation of that phrase.

(b) A professional limited liability company or foreign professional limited liability company formed before September 1, 1993, the name of which complied with the laws of this state on the date of formation but does not comply with this section, is not required to change its name.

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. 26, eff. September 1, 2007.

Sec. 5.060. NAME OF PROFESSIONAL ENTITY OR FOREIGN PROFESSIONAL ENTITY; CONFLICTS WITH OTHER LAW OR ETHICAL RULE. The name of a professional entity or foreign professional entity must not be contrary to a statute or regulation of this state that governs a person who provides a professional service through the professional entity or foreign professional entity, including a rule of professional ethics.

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. 27, eff. September 1, 2007.

Sec. 5.061. NAME CONTAINING "LOTTO" OR "LOTTERY" PROHIBITED. A filing entity or a foreign filing entity may not have a name that contains the word "lotto" or "lottery."

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

Sec. 5.062. VETERANS ORGANIZATIONS; UNAUTHORIZED USE OF NAME. (a) Subject to Subsection (b), a filing entity may not have a name that:

(1) reasonably implies that the entity is created by or for the benefit of war veterans or their families; and

(2) contains the word or phrase, or any variation or abbreviation of:

(A) "veteran";

(B) "legion";

(C) "foreign";

(D) "Spanish";

(E) "disabled";

(F) "war"; or

(G) "world war."

(b) The prohibition in Subsection (a) does not apply to a filing entity with a name approved in writing by:

(1) a congressionally recognized veterans organization with a name containing the same word or phrase, or variation or abbreviation, contained in the filing entity's name; or

(2) if a veterans organization described by Subdivision (1) does not exist, the state commander of the:

(A) American Legion;

(B) Disabled American Veterans of the World War;

(C) Veterans of Foreign Wars of the United States;

(D) United Spanish War Veterans; or

(E) Veterans of the Spanish-American War.

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

Sec. 5.063. NAME OF LIMITED LIABILITY PARTNERSHIP. (a) The name of a domestic or foreign limited liability partnership must contain:

(1) the phrase "limited liability partnership"; or

(2) an abbreviation of the phrase.

(b) A domestic or foreign limited liability partnership is not subject to Section 5.053.

(c) A domestic or foreign limited liability partnership that is also a limited partnership must comply with Section 5.055 and not this 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. 14, eff. January 1, 2006.

SUBCHAPTER C. RESERVATION OF NAMES

Sec. 5.101. APPLICATION FOR RESERVATION OF NAME. (a) Any person may file an application with the secretary of state to reserve the exclusive use of a name under this chapter.

(b) The application must be:

(1) accompanied by any required filing fee; and

(2) signed by the applicant or by the agent or attorney of the applicant.

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

Sec. 5.102. LIMITATION ON THE RESERVATION OF CERTAIN NAMES. (a) The secretary of state may reserve a name under this subchapter only if the name is distinguishable in the records of the secretary of state from:

(1) the name of an existing filing entity;

(2) the name of a foreign filing entity that is registered under Chapter 9;

(3) the fictitious name under which a foreign filing entity is registered to transact business in this state;

(4) a name that is reserved under this subchapter; or

(5) a name that is registered under Subchapter D.

(b) Subsection (a) does not apply if the other entity or the person for whom the name is reserved or registered, as appropriate, provides to the secretary of state a notarized written statement of the entity's or person's consent to the subsequent reservation of the name.

(c) Subsection (b) does not apply if the secretary of state determines that the names are the same.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1195 (S.B. 1313), Sec. 2, eff. June 19, 2015.
Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 4, eff. June 1, 2018.

Sec. 5.103. ACTION ON APPLICATION. If the secretary of state determines that the name specified in the application is eligible for reservation, the secretary shall reserve that name for the exclusive use of the applicant.

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

Sec. 5.104. DURATION OF RESERVATION OF NAME. The secretary of state shall reserve the name for the applicant until the earlier of:
(1) the 121st day after the date the application is accepted for filing; or
(2) the date the applicant files with the secretary of state a written notice of withdrawal of the reservation.

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

Sec. 5.1041. PROHIBITION ON FEE FOR WITHDRAWAL OF RESERVATION OF NAME. The secretary of state may not impose a fee for the filing of a written notice of withdrawal of a reservation of name.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 15, eff. January 1, 2006.

Sec. 5.105. RENEWAL OF RESERVATION. A person may renew the person's reservation of a name under this subchapter for successive 120-day periods if, during the 30-day period preceding the expiration of that reservation, the person:
(1) files a new application to reserve the name; and
(2) pays the required filing fee.

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

Sec. 5.106. TRANSFER OF RESERVATION OF NAME. (a) A person may transfer the person's reservation of a name by filing with the secretary of state a notice of transfer.

(b) The notice of transfer must:

(1) be signed by the person for whom the name is reserved; and

(2) state the name and address of the person to whom the reservation is to be transferred.

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

SUBCHAPTER D. REGISTRATION OF NAMES

Sec. 5.151. APPLICATION BY CERTAIN ENTITIES FOR REGISTRATION OF NAME. An organization that is authorized to do business in this state as a bank, trust company, savings association, or insurance company, or that is a foreign filing entity not registered to do business in this state under this code, may apply to register its name under this subchapter.

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

Sec. 5.152. APPLICATION FOR REGISTRATION OF NAME. (a) To register a name under this subchapter, an organization must file an application with the secretary of state.

(b) The application must:

(1) state that the organization validly exists and is doing business;

(2) contain a brief statement of the nature of the organization's business;

(3) set out:

(A) the name of the organization;

(B) the name of the jurisdiction under whose laws the organization is formed; and

(C) the date the organization was formed; and

(4) be accompanied by any required filing fee.

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

Sec. 5.153. LIMITATION ON THE REGISTRATION OF CERTAIN NAMES. (a) The secretary of state may register a name under this subchapter only if the name is distinguishable in the records of the secretary of state from:

(1) the name of an existing filing entity;

(2) the name of a foreign filing entity that is registered under Chapter 9;

(3) the fictitious name under which a foreign filing entity is registered to transact business in this state;

(4) a name that is reserved under Subchapter C; or

(5) a name that is registered under this subchapter.

(b) Subsection (a) does not apply if:

(1) the other entity or the person for whom the name is reserved or registered, as appropriate, provides to the secretary of state a notarized written statement of the entity's or person's consent to the registration of the name; or

(2) the applicant is a bank, trust company, savings association, or insurance company that has been in continuous existence from a date that precedes the date the indistinguishable name is filed with the secretary of state.

(c) Subsection (b) does not apply if the secretary of state determines that the names are the same.

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

Acts 2015, 84th Leg., R.S., Ch. 1195 (S.B. 1313), Sec. 3, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 5, eff. June 1, 2018.

Sec. 5.154. DURATION OF REGISTRATION OF NAME. The registration of a name under this subchapter is effective until the earlier of:

(1) the first anniversary of the date the application is accepted for filing; or

(2) the date the entity files with the secretary of state a written notice of withdrawal of the registration.

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

Sec. 5.155. RENEWAL OF REGISTRATION. A person may renew the person's registration of a name under this subchapter for successive one-year periods if, during the 90-day period preceding the expiration of that registration, the person:

(1) files an application to renew the registration of the name; and

(2) pays the required filing fee.

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

SUBCHAPTER E. REGISTERED AGENTS AND REGISTERED OFFICES

Sec. 5.200. DEFINITIONS. In this subchapter:

(1) "Registered agent filing" means:

(A) the certificate of formation or similar organizational document of a domestic represented entity;

(B) the application for registration of a foreign represented entity;

(C) an appointment of agent by an unincorporated nonprofit association under Section 252.011;

(D) an appointment of agent by a Texas financial institution under Section 201.103, Finance Code;

(E) an appointment of agent by a defense base development authority under Section 379B.004(b), Local Government Code;

(F) a statement by a represented entity to change the entity's registered agent, registered office, or both;

(G) a certificate of merger or certificate of conversion;

(H) a certificate of amendment to the certificate of formation or similar organizational document or the registration of a represented entity;

(I) a restated certificate of formation or similar organizational document of a represented entity;

(J) any other instrument that is required or permitted by law to be filed by a represented entity that effects a change or correction to the instruments listed in Paragraphs (A)-(I); and

(K) a certificate of reinstatement filed under Chapter 9 or 11.

(2) "Represented domestic entity" means:

(A) a filing entity;

(B) an unincorporated nonprofit association for which an appointment of agent has been filed;

(C) a Texas financial institution for which an appointment of agent has been filed;

(D) a defense base development authority for which an appointment of agent has been filed; or

(E) any corporation, association, or other organization incorporated or organized under any special statute of this state, that is governed wholly or partly by this code, or to which the general corporate laws are applicable.

(3) "Represented entity" means a represented domestic entity or represented foreign entity.

(4) "Represented foreign entity" means:

(A) a foreign filing entity for which a registration has been filed;

(B) a foreign limited liability partnership for which a registration has been filed;

(C) a foreign financial institution for which a registration has been filed; or

(D) any corporation, association, or other organization incorporated or organized under the laws of a jurisdiction other than this state that is granted authority to conduct its affairs in this state under any special statute of this state, that is governed wholly or partly by this code, or to which the general corporate laws are applicable.

Added by Acts 2009, 81st Leg., R.S., Ch. 1123 (H.B. 1787), Sec. 1, eff. January 1, 2010.

Sec. 5.201. DESIGNATION AND MAINTENANCE OF REGISTERED AGENT AND REGISTERED OFFICE. (a) Each filing entity and each foreign filing entity shall designate and continuously maintain in this state:

(1) a registered agent; and

(2) a registered office.

(b) The registered agent:

(1) is an agent of the entity on whom may be served any process, notice, or demand required or permitted by law to be served on the entity;

(2) may be:

(A) an individual who:

(i) is a resident of this state; and

(ii) has consented in a written or electronic form to be developed by the office of the secretary of state to serve as the registered agent of the entity; or

(B) an organization, other than the filing entity or foreign filing entity to be represented, that:

(i) is registered or authorized to do business in this state; and

(ii) has consented in a written or electronic form to be developed by the office of the secretary of state to serve as the registered agent of the entity; and

(3) must maintain a business office at the same address as the entity's registered office.

(c) The registered office:

(1) must be located at a street address where process may be personally served on the entity's registered agent;

(2) is not required to be a place of business of the filing entity or foreign filing entity; and

(3) may not be solely a mailbox service or a telephone answering service.

(d) A registered agent that is an organization must have an employee available at the registered office during normal business hours to receive service of process, notice, or demand. Any employee of the organization may receive service at the registered office.

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. 28, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1123 (H.B. 1787), Sec. 2, eff. January 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 1151 (H.B. 2047), Sec. 1, eff. September 1, 2011.

Sec. 5.2011. CONSENT TO SERVE AS REGISTERED AGENT. (a) The designation or appointment of a person as registered agent by an organizer or managerial official of an entity in a registered agent filing is an affirmation by the organizer or managerial official that the person named as registered agent has consented to serve in that capacity.

(b) If a person designated or appointed as registered agent in a registered agent filing before the sale, acquisition, or transfer of a majority-in-interest or majority interest of the outstanding ownership or membership interests of the represented entity continues to serve in that capacity after the sale, acquisition, or transfer, the person's continuation of service is an affirmation by the governing authority of the represented entity that the governing authority has verified that the person named as registered agent has consented to continue to serve in that capacity.

Added by Acts 2009, 81st Leg., R.S., Ch. 1123 (H.B. 1787), Sec. 3, eff. January 1, 2010.

Sec. 5.202. CHANGE BY ENTITY TO REGISTERED OFFICE OR REGISTERED AGENT. (a) A filing entity or foreign filing entity may change its registered office, its registered agent, or both by filing a statement of the change in accordance with Chapter 4.

(b) The statement must contain:

(1) the name of the entity;

(2) the name of the entity's registered agent;

(3) the street address of the entity's registered agent;

(4) if the change relates to the registered agent, the name of the entity's new registered agent;

(5) if the change relates to the registered office, the street address of the entity's new registered office;

(6) a recitation that the change specified in the statement is authorized by the entity; and

(7) a recitation that the street address of the registered office and the street address of the registered agent's business are the same.

(c) On acceptance of the statement by the filing officer, the statement is effective as an amendment to the appropriate provision of:

(1) the filing entity's certificate of formation; or
(2) the foreign filing entity's registration.

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

Sec. 5.203. CHANGE BY REGISTERED AGENT TO NAME OR ADDRESS OF REGISTERED OFFICE. (a) The registered agent of a filing entity or a foreign filing entity may change its name, its address as the address of the entity's registered office, or both by filing a statement of the change in accordance with Chapter 4.

(b) The statement must be signed by the registered agent, or a person authorized to sign the statement on behalf of the registered agent, and must contain:

(1) the name of the entity represented by the registered agent;

(2) the name of the entity's registered agent and the address at which the registered agent maintained the entity's registered office;

(3) if the change relates to the name of the registered agent, the new name of that agent;

(4) if the change relates to the address of the registered office, the new address of that office; and

(5) a recitation that written notice of the change was given to the entity at least 10 days before the date the statement is filed.

(c) On acceptance of the statement by the filing officer, the statement is effective as an amendment to the appropriate provision of:

(1) the filing entity's certificate of formation; or
(2) the foreign filing entity's registration.

(d) A registered agent may file a statement under this section that applies to more than one entity.

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

Sec. 5.204. RESIGNATION OF REGISTERED AGENT. (a) A registered agent of a filing entity or a foreign filing entity may resign as the registered agent by giving notice to that entity and to the appropriate filing officer.

(b) Notice to the entity must be given to the entity at the address of the entity most recently known by the agent.

(c) Notice to the filing officer must be given before the 11th day after the date notice under Subsection (b) is mailed or delivered and must include:

(1) the address of the entity most recently known by the agent;

(2) a statement that written notice of the resignation has been given to the entity; and

(3) the date on which that written notice of resignation was given.

(d) On compliance with Subsections (b) and (c), the appointment of the registered agent and the designation of the registered office terminate. The termination is effective on the 31st day after the date the secretary of state receives the notice.

(e) If the filing officer finds that a notice of resignation received by the filing officer conforms to Subsections (b) and (c), the filing officer shall:

(1) notify the entity of the registered agent's resignation; and

(2) file the resignation in accordance with Chapter 4, except that a fee is not required to file the resignation.

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

Acts 2009, 81st Leg., R.S., Ch. 1123 (H.B. 1787), Sec. 4, eff. January 1, 2010.

Sec. 5.205. REJECTION OF APPOINTMENT. (a) A person designated or appointed as an entity's registered agent in a registered agent filing without the person's consent may terminate the person's appointment or designation as registered agent by filing a statement of rejection of appointment with the filing officer.

(b) The statement of rejection of appointment must:

(1) be signed by the person named as registered agent;

(2) contain the name of the represented entity; and

(3) contain a statement certifying that the person did not consent to serve as the represented entity's registered agent on the date on which the registered agent filing on which the person is

named as registered agent took effect.

(c) On acceptance of the statement of rejection of appointment by the filing officer, the designation or appointment of that person as registered agent and the designation of the registered office terminate.

(d) On termination of the designation or appointment of a registered agent and the designation of the registered office, the secretary of state shall send notice to the represented entity of the necessity to designate or appoint a new registered agent and registered office in accordance with Section 9.101 or 11.251, as applicable.

(e) The filing officer may not charge a fee for the filing of a statement of rejection of appointment.

Added by Acts 2009, 81st Leg., R.S., Ch. 1123 (H.B. 1787), Sec. 5, eff. January 1, 2010.

Sec. 5.206. DUTIES OF REGISTERED AGENT. (a) The only duties of a registered agent are to:

(1) receive or accept, and forward to the represented entity at the address most recently provided to the registered agent by the represented entity, or otherwise notify the represented entity at that address regarding, any process, notice, or demand that is served on or received by the registered agent; and

(2) provide the notices required or permitted by law to be given to the represented entity to the address most recently provided to the registered agent by the represented entity.

(b) A person named as the registered agent for a represented entity in a registered agent filing without the person's consent is not required to perform the duties prescribed by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1123 (H.B. 1787), Sec. 5, eff. January 1, 2010.

Sec. 5.207. DESIGNATION OF REGISTERED AGENT WITHOUT CONSENT; PENALTIES AND LIABILITIES. Sections 4.007 and 4.008 apply with respect to a false statement in a registered agent filing that names a person the registered agent of a represented entity without the person's consent.

Added by Acts 2009, 81st Leg., R.S., Ch. 1123 (H.B. 1787), Sec. 5, eff. January 1, 2010.

Sec. 5.208. IMMUNITY FROM LIABILITY. (a) A person designated or appointed as the registered agent of a represented entity is not liable solely because of the person's designation or appointment as registered agent for the debts, liabilities, or obligations of the represented entity.

(b) A person who has been designated or appointed as a registered agent in a registered agent filing but has not consented to serve as the represented entity's registered agent may not be held liable:

(1) under a judgment, decree, or order of a court, agency, or tribunal of any type, or in any other manner, in this or any other state, or on any other basis, for a debt, obligation, or liability of the represented entity, whether arising in contract, tort, or otherwise, solely because of the person's designation or appointment as registered agent; or

(2) to the represented entity or to a person who reasonably relied on the unauthorized designation or appointment solely because of the person's failure or refusal to perform the duties of a registered agent under Section 5.206.

Added by Acts 2009, 81st Leg., R.S., Ch. 1123 (H.B. 1787), Sec. 5, eff. January 1, 2010.

SUBCHAPTER F. SERVICE OF PROCESS ON ENTITY

Sec. 5.251. FAILURE TO DESIGNATE REGISTERED AGENT. The secretary of state is an agent of an entity for purposes of service of process, notice, or demand on the entity if:

(1) the entity is a filing entity or a foreign filing entity and:

(A) the entity fails to appoint or does not maintain a registered agent in this state; or

(B) the registered agent of the entity cannot with reasonable diligence be found at the registered office of the entity; or

(2) the entity is a foreign filing entity and:

(A) the entity's registration to do business under this code is revoked; or

(B) the entity transacts business in this state without being registered as required by Chapter 9.

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

Sec. 5.252. SERVICE ON SECRETARY OF STATE. (a) Service on the secretary of state under Section 5.251 is effected by:

(1) delivering to the secretary duplicate copies of the process, notice, or demand; and

(2) accompanying the copies with any fee required by law, including this code or the Government Code, for:

(A) maintenance by the secretary of a record of the service; and

(B) forwarding by the secretary of the process, notice, or demand.

(b) Notice on the secretary of state under Subsection (a) is returnable in not less than 30 days.

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

Sec. 5.253. ACTION BY SECRETARY OF STATE. (a) After service in compliance with Section 5.252, the secretary of state shall immediately send one of the copies of the process, notice, or demand to the named entity.

(b) The notice must be:

(1) addressed to the most recent address of the entity on file with the secretary of state; and

(2) sent by certified mail, with return receipt requested.

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

Sec. 5.254. REQUIRED RECORDS OF SECRETARY OF STATE. The secretary of state shall keep a record of each process, notice, or demand served on the secretary under this subchapter and shall record:

(1) the time when each service on the secretary was made;

and

(2) each subsequent action of the secretary taken in relation to that service.

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

Sec. 5.255. AGENT FOR SERVICE OF PROCESS, NOTICE, OR DEMAND AS MATTER OF LAW. For the purpose of service of process, notice, or demand:

(1) the president and each vice president of a domestic or foreign corporation is an agent of that corporation;

(2) each general partner of a domestic or foreign limited partnership and each partner of a domestic or foreign general partnership is an agent of that partnership;

(3) each manager of a manager-managed domestic or foreign limited liability company and each member of a member-managed domestic or foreign limited liability company is an agent of that limited liability company;

(4) each person who is a governing person of a domestic or foreign entity, other than an entity listed in Subdivisions (1)-(3), is an agent of that entity; and

(5) each member of a committee of a nonprofit corporation authorized to perform the chief executive function of the corporation is an agent of that corporation.

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

Sec. 5.256. OTHER MEANS OF SERVICE NOT PRECLUDED. This chapter does not preclude other means of service of process, notice, or demand on a domestic or foreign entity as provided by other law.

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

Sec. 5.257. SERVICE OF PROCESS BY POLITICAL SUBDIVISION. (a) A process, notice, or demand required or permitted by law to be served by a political subdivision of this state or by a person, including another political subdivision or an attorney, acting on behalf of a political subdivision in connection with the collection

of a delinquent ad valorem tax may be served on a domestic or foreign corporation whose corporate privileges are forfeited under Section 171.251, Tax Code, a domestic or foreign limited liability company whose right to transact business in this state is forfeited under Section 171.2515, Tax Code, or a corporation or limited liability company that is involuntarily terminated under Chapter 11 or whose registration is revoked under Chapter 9 by delivery of the process, notice, or demand to any officer or director of the corporation or manager or member of the limited liability company, as listed in the most recent records of the secretary of state.

(b) If the officers or directors of a corporation or the managers or members of the limited liability company are unknown or cannot be found, service on the corporation or limited liability company may be made in the same manner as service is made on unknown shareholders under law.

(c) Notwithstanding any disability or reinstatement of a corporation or limited liability company, service of process under this section is sufficient for a judgment against the corporation or limited liability company or a judgment in rem against any property to which the corporation or limited liability company holds title.

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

Acts 2011, 82nd Leg., R.S., Ch. 7 (S.B. 582), Sec. 1, eff. September 1, 2011.

SUBCHAPTER F-1. SERVICE OF PROCESS ON SERIES OF LIMITED LIABILITY COMPANY OR FOREIGN ENTITY

Sec. 5.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies to service of process, notice, or demand on a series of a domestic limited liability company or a series of a foreign entity.

Added by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 4, eff. September 1, 2017.

Sec. 5.302. AGENT FOR SERIES. (a) The registered agent designated and maintained by a domestic limited liability company or foreign entity under Subchapter E is an agent of each series of the company or entity for the purpose of service of process, notice, or

demand required or permitted by law to be served on a particular series of the company or entity.

(b) A process, notice, or demand required or permitted by law to be served on a series of a domestic limited liability company or foreign entity that is served on the company's or entity's registered agent must include:

(1) the name of the company or entity; and

(2) the name of the series on which the process, notice, or demand is required or permitted to be served.

Added by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 4, eff. September 1, 2017.

Sec. 5.303. DUTIES OF REGISTERED AGENT. (a) For purposes of Section 5.206, on service or receipt of process, notice, or demand that complies with the requirements of Section 5.302(b), the only duties of the registered agent are to:

(1) receive or accept, and forward to the represented domestic limited liability company or foreign entity at the address most recently provided to the registered agent by the represented company or entity, the process, notice, or demand that is served on or received by the registered agent under Section 5.302(b); or

(2) otherwise notify the represented company or entity at the address described by Subdivision (1) regarding the process, notice, or demand that is served on or received by the registered agent under Section 5.302(b).

(b) The registered agent is not required to send a copy of the process, notice, or demand directly to the series of the represented domestic limited liability company or foreign entity.

Added by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 4, eff. September 1, 2017.

Sec. 5.304. SERVICE ON SECRETARY OF STATE. (a) The secretary of state is an agent of a series of a domestic limited liability company or foreign entity for purposes of service of process, notice, or demand on the series of the company or entity if the secretary of state is the agent of the company or entity pursuant to Section 5.251.

(b) The duplicate copies of a process, notice, or demand that are delivered to the secretary of state pursuant to Section 5.252(a) as agent for a series of a domestic limited liability company or foreign entity must include:

(1) the name of the company or entity; and

(2) the name of the series of the company or entity on which the process, notice, or demand is to be served.

(c) For purposes of Section 5.253, after service on the secretary of state in compliance with the requirements of Subsection (b), the secretary of state shall send to the domestic limited liability company or foreign entity named in the process, notice, or demand one of the copies of the process, notice, or demand as provided in Section 5.253.

(d) The secretary of state is not required to send a copy of the process, notice, or demand directly to the series of the named domestic limited liability company or foreign entity.

Added by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 4, eff. September 1, 2017.

Sec. 5.305. SERVICE ON GOVERNING PERSONS. (a) Each governing person of a series of a domestic limited liability company as described by Section 101.608 is an agent of the series for the purpose of service of process, notice, or demand required or permitted by law to be served on the series.

(b) Each governing person of a series of a foreign entity is an agent of the series for the purpose of service of process, notice, or demand required or permitted by law to be served on the series.

Added by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 4, eff. September 1, 2017.

Sec. 5.306. SERVICE OF PROCESS BY POLITICAL SUBDIVISION. (a) For purposes of Section 5.257, a process, notice, or demand may be served on a series of a domestic limited liability company by delivery of the process, notice, or demand to any governing person of the series as described by Section 101.608.

(b) For purposes of Section 5.257, a process, notice, or demand may be served on a series of a foreign entity by delivery of the

process, notice, or demand to any governing person of the series.

(c) If the governing persons of a series of a domestic limited liability company or foreign entity are unknown or cannot be found, service on the series of the company or entity may be made in the same manner as service is made on unknown shareholders under law.

(d) Notwithstanding any disability or reinstatement of a domestic limited liability company or foreign entity, service of process under this section is sufficient for a judgment against a series of the company or entity or a judgment in rem against any property to which a series of the company or entity holds title.

Added by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 4, eff. September 1, 2017.

CHAPTER 6. MEETINGS AND VOTING FOR DOMESTIC ENTITIES

SUBCHAPTER A. MEETINGS

Sec. 6.001. LOCATION OF MEETINGS. (a) Meetings of the owners or members of a domestic entity may be held at locations in or outside the state as:

(1) provided by or fixed in accordance with the governing documents of the domestic entity; or

(2) agreed to by all persons entitled to notice of the meeting.

(b) If the location of meetings of the owners or members of the entity is not established under Subsection (a), the owners or members may hold meetings only at the registered office of the entity in this state or the principal office of the entity.

(c) The governing persons of a domestic entity, or a committee of the governing persons, may hold meetings in or outside the state as:

(1) provided by or fixed in accordance with:

(A) the governing documents of the domestic entity; or

(B) the person calling the meeting; or

(2) agreed to by all persons entitled to notice of the meeting.

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

Sec. 6.002. ALTERNATIVE FORMS OF MEETINGS. (a) Subject to

this code and the governing documents of a domestic entity, the owners, members, or governing persons of the entity, or a committee of the owners, members, or governing persons, may hold meetings by using a conference telephone or similar communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting.

(b) If voting is to take place at the meeting, the entity must:

(1) implement reasonable measures to verify that every person voting at the meeting by means of remote communications is sufficiently identified; and

(2) keep a record of any vote or other action taken.

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

Sec. 6.003. PARTICIPATION CONSTITUTES PRESENCE. A person participating in a meeting is considered present at the meeting, unless the participation is for the express purpose of objecting to the transaction of business at the meeting on the ground that the meeting has not been lawfully called or convened.

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

SUBCHAPTER B. NOTICE OF MEETINGS

Sec. 6.051. GENERAL NOTICE REQUIREMENTS. (a) Subject to this code and the governing documents of the entity, notice of a meeting of the owners, members, or governing persons of a domestic entity, or a committee of the owners, members, or governing persons, must:

(1) be given in the manner determined by the governing authority of the entity; and

(2) state the date and time of the meeting and:

(A) if the meeting is not held solely by using a conference telephone or other communications system authorized by Section 6.002, the location of the meeting; or

(B) if the meeting is held solely or in part by using a conference telephone or other communications system authorized by Section 6.002, the form of communications system to be used for the

meeting and the means of accessing the communications system.

(b) Subject to this code and the governing documents of a domestic entity, notice of a meeting that is:

(1) mailed is considered to be given on the date notice is deposited in the United States mail with postage paid in an envelope addressed to the person at the person's address as it appears on the ownership or membership records of the entity; 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 person, or to which the person consents, for the purpose of receiving notice.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 16, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 30, eff. September 1, 2007.

Sec. 6.052. WAIVER OF NOTICE. (a) Notice of a meeting is not required to be given to an owner, member, or governing person of a domestic entity, or a member of a committee of the owners, members, or governing persons, entitled to notice under this code or the governing documents of the entity if the person entitled to notice signs a written waiver of notice of the meeting, regardless of whether the waiver is signed before or after the time of the meeting.

(b) If a person entitled to notice of a meeting participates in or attends the meeting, the person's participation or attendance constitutes a waiver of notice of the meeting unless the person participates in or attends the meeting solely to object to the transaction of business at the meeting on the ground that the meeting was not lawfully called or convened.

(c) Unless required by the certificate of formation or the governing documents, the business to be transacted at a meeting of the owners, members, or governing persons of a domestic entity, or the members of a committee of the governing persons, or the purpose of such a meeting, is not required to be specified in a written waiver of notice of the meeting.

(d) The participation or attendance at a meeting of a person entitled to notice of the meeting constitutes a waiver by the person of notice of a particular matter at the meeting that is not included in the purposes or business of the meeting described in the notice unless the person objects to considering the matter when it is presented.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 17, eff. January 1, 2006.
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 7, eff. September 1, 2009.

Sec. 6.053. EXCEPTION. (a) Notice of a meeting is not required to be given to an owner or member of a filing entity entitled to notice under this code or the governing documents of the entity if either of the following is mailed to the person entitled to notice of the meeting to the person's address as it appears on the ownership or membership transfer records of the entity and is returned undeliverable:

(1) notice of two consecutive annual meetings and notice of any meeting held during the period between the two annual meetings; or

(2) all, but in no event less than two, payments of distribution or interest on securities during a 12-month period if the payments are sent by first class mail.

(b) Notice of a meeting is not required to be given to an owner or member entitled to notice under this code or the governing documents of a filing entity the notice requirements of which are subject to the Securities Exchange Act of 1934, as amended (15 U.S.C. Section 78a et seq.), if the person entitled to notice of the meeting is considered a lost security holder under that Act and the regulations adopted under that Act.

(c) An action taken or a meeting held without giving notice to a person not entitled to notice under this section has the same force and effect as if notice had been given to the person.

(d) A certificate or other document filed with the filing officer as a result of a meeting held or an action taken by a filing

entity without giving notice of the meeting or action to a person not entitled to notice under this section may state that notice of the meeting or action was given to each person entitled to notice.

(e) Notice of a meeting must be given to a person not entitled to notice of the meeting under this section if the person delivers to the filing entity a written notice of the person's address.

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. 31, eff. September 1, 2007.

SUBCHAPTER C. RECORD DATES

Sec. 6.101. RECORD DATE FOR PURPOSE OTHER THAN WRITTEN CONSENT TO ACTION. (a) Subject to this code, the governing documents of a domestic entity may provide the record date, or the manner of determining the record date, for:

(1) determining the owners or members of the entity entitled to:

(A) receive notice of a meeting of the owners or members;

(B) vote at a meeting of the owners or members or at any adjournment of a meeting; or

(C) receive a distribution from the entity other than a distribution involving a purchase or redemption by the entity of the entity's own securities; or

(2) any other proper purpose other than for determining the owners or members entitled to consent to action without a meeting of the owners or members.

(b) Subject to this code and the governing documents of a domestic entity, the governing authority of the entity, in advance, may provide a record date for determining the owners or members of the entity, except that the date may not be earlier than the 60th day before the date the action requiring the determination of owners or members is originally to be taken.

(c) Subject to this code and the governing documents of a domestic entity, the governing authority of the entity may provide for the closing of the ownership or membership transfer records of the entity for a period of not longer than 60 days to determine the

owners or members of the entity for a purpose described by Subsection (a).

(d) If the owners or members of a domestic entity are not otherwise determined under this section, the record date for determining the owners or members of a domestic entity is the date on which:

(1) notice of the meeting is given to the owners or members entitled to notice of the meeting; or

(2) with respect to a distribution, other than a distribution involving a purchase or redemption by the domestic entity of any of its own securities, the governing authority adopts the resolution declaring the distribution.

(e) The record date for a meeting applies to any adjournment of the meeting unless:

(1) the owners or members entitled to vote are determined under Subsection (c); and

(2) the period during which the transfer records are closed expires.

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. 32, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 2, eff. September 1, 2011.

Sec. 6.102. RECORD DATE FOR WRITTEN CONSENT TO ACTION. (a) Subject to this code and the governing documents of a domestic entity, the governing authority of the domestic entity may provide the record date for determining the owners or members of the domestic entity entitled to written consent to action without a meeting of the owners or members unless a record date is provided under Section 6.101 for that action. The record date may not be earlier than the date the governing authority adopts the resolution providing for the record date.

(b) Subject to this code and the governing documents of a domestic entity, the record date for determining the owners or members of the domestic entity entitled to written consent to action without a meeting of the owners or members is the date a signed

written consent to action stating the action taken or proposed to be taken is first delivered to the domestic entity if:

(1) the governing authority of the domestic entity does not provide a record date under Subsection (a); and

(2) prior action by the governing authority is not required under this code.

(c) Subject to this code or the governing documents of a domestic entity, the record date for determining the owners or members of the domestic entity entitled to written consent to action without a meeting of the owners or members is at the close of business on the date the governing authority of the domestic entity adopts a resolution taking prior action if:

(1) the governing authority does not provide a record date under Subsection (a); and

(2) prior action by the governing authority is required by this code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 33, eff. September 1, 2007.

Sec. 6.103. RECORD DATE FOR SUSPENDED DISTRIBUTIONS. (a) In this section, "distribution" includes a distribution that:

(1) was payable to an owner or member but not paid and was held in suspension by the entity making the distribution; or

(2) is paid or delivered by the entity making the distribution into an escrow account or to a trustee or custodian.

(b) A distribution made by a domestic entity shall be payable by the entity, or an escrow agent, trustee, or custodian of the distribution, to the owner or member determined on the record date for the distribution as provided by this subchapter.

(c) The right to a distribution under this section may be transferred by contract, by operation of law, or under the laws of descent and distribution.

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

SUBCHAPTER D. VOTING OF OWNERSHIP INTERESTS

Sec. 6.151. MANNER OF VOTING OF INTERESTS. Subject to the title governing the domestic entity, voting of interests of a domestic entity must be conducted in the manner provided by the governing documents of the entity.

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

Sec. 6.152. VOTING OF INTERESTS OWNED BY ENTITY. (a) Except as provided by Subsection (b), an ownership interest owned by the domestic entity that is the issuer of the interest, or by its direct or indirect subsidiary, may not be:

(1) directly or indirectly voted at a meeting; or

(2) included in determining at any time the total number of outstanding ownership interests of the domestic entity.

(b) This section does not preclude a domestic or foreign entity from voting an ownership interest, including an interest in the entity, held or controlled by the entity in a fiduciary capacity or for which the entity otherwise exercises voting power in a fiduciary capacity.

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. 34, eff. September 1, 2007.

Sec. 6.153. VOTING OF INTERESTS OWNED BY ANOTHER ENTITY. An ownership interest in a domestic entity owned by another entity, whether a domestic or foreign entity, may be voted by the officer, agent, or proxy as authorized by:

(1) the governing documents of the entity that owns the interest; or

(2) the governing authority of the entity that owns the interest, if the governing documents do not provide for the manner of voting.

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. 35, eff. September 1, 2007.

Sec. 6.154. VOTING OF INTERESTS IN AN ESTATE OR TRUST. (a) An administrator, executor, guardian, or conservator of an estate who holds an ownership interest as part of the estate may vote the interest, in person or by proxy, without transferring the interest into the person's name.

(b) An ownership interest in the name of a trust may be voted in person or by proxy by:

(1) the trustee; or

(2) a person authorized to act on behalf of the trust by the trust agreement or the trustee.

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. 36, eff. September 1, 2007.

Sec. 6.155. VOTING OF INTERESTS BY RECEIVER. (a) A receiver may vote an ownership interest standing in the name of the receiver.

(b) A receiver may vote an ownership interest held by or under the control of the receiver without transferring the interest into the receiver's name if the court appointing the receiver authorizes the receiver to vote the interest.

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

Sec. 6.156. VOTING OF PLEDGED INTERESTS. A pledged ownership interest may be voted by:

(1) the owner of the pledged interest until the interest is transferred into the pledgee's name; and

(2) the pledgee after the pledged interest is transferred into the pledgee's name.

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

Sec. 6.157. VOTING OF JOINTLY HELD OWNERSHIP INTERESTS. (a) In this section, "jointly held ownership interest" means:

(1) an ownership interest that is held of record in the names of two or more persons, whether fiduciaries, joint tenants, tenants in common, or otherwise; or

(2) an ownership interest for which two or more persons have the right to vote the interest under Section 6.154.

(b) A jointly held ownership interest may be voted by:

(1) for a jointly held ownership interest as defined by Subsection (a)(1), any one of the record owners; or

(2) for a jointly held ownership interest as defined by Subsection (a)(2), any one of the persons having the right to vote the interest, as described by Section 6.154.

(c) If a jointly held ownership interest is voted by more than one person as described by Subsection (b), the act of a majority of the persons voting binds all of the record owners or persons having the right to vote the interest.

(d) If a jointly held ownership interest is voted by more than one person as described by Subsection (b), and the votes of the persons are evenly split on any particular matter, each faction may vote the interest proportionately.

(e) Subsection (b), (c), or (d) does not apply if the secretary or other person tabulating votes on the entity's behalf has a good faith belief, based on written information the person received regarding rights or obligations with respect to voting the jointly held ownership interest, that reliance on Subsection (b), (c), or (d), as applicable, is unwarranted.

Added by Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 3, eff. September 1, 2017.

SUBCHAPTER E. ACTION BY WRITTEN CONSENT

Sec. 6.201. UNANIMOUS WRITTEN CONSENT TO ACTION. (a) This section applies to any action required or authorized to be taken under this code or the governing documents of a filing entity at an annual or special meeting of the owners or members of the entity or at a regular, special, or other meeting of the governing authority of the entity or a committee of the governing authority.

(b) The owners or members or the governing authority of a filing entity, or a committee of the governing authority, may take action without holding a meeting, providing notice, or taking a vote

if each person entitled to vote on the action signs a written consent or consents stating the action taken.

(c) A written consent described by Subsection (b) has the same effect as a unanimous vote at a meeting.

(d) A filing instrument filed with the filing officer may state that an action approved by written consent or consents has the effect of an approval by a unanimous vote at a meeting.

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

Sec. 6.202. ACTION BY LESS THAN UNANIMOUS WRITTEN CONSENT. (a) This section applies to any action required or authorized to be taken under this code or the governing documents of a filing entity at an annual or special meeting of the owners or members of the entity.

(b) Except as provided by this code, the certificate of formation of a filing entity may authorize the owners or members of the entity to take action without holding a meeting, providing notice, or taking a vote if owners or members of the entity having at least the minimum number of votes that would be necessary to take the action that is the subject of the consent at a meeting, in which each owner or member entitled to vote on the action is present and votes, sign a written consent or consents stating the action taken.

(c) A written consent or consents described by Subsection (b) must include the date each owner or member signed the consent and is effective to take the action that is the subject of the consent only if the consent or consents are delivered to the entity not later than the 60th day after the date the earliest dated consent is delivered to the entity as required by Section 6.203.

(d) The entity shall promptly notify each owner or member who did not sign a consent described by Subsection (b) of the action that is the subject of the consent.

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

Sec. 6.203. DELIVERY OF LESS THAN UNANIMOUS WRITTEN CONSENT. (a) A written consent signed by an owner or member of a filing entity as provided by Section 6.202, if the consent is not solicited on behalf of the entity or its governing authority, must be delivered by hand or certified or registered mail, return receipt requested, or

by other means specified in the governing documents, to:

(1) the entity's registered office or principal executive office or place of business; or

(2) the managerial official or agent of the entity having custody of the entity's records of meetings of owners or members.

(b) A consent delivered to an entity's principal executive office or place of business under Subsection (a)(1) must be addressed to the chief managerial official of the entity or, if the entity does not have a chief managerial official, the governing authority of the entity.

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

Sec. 6.204. ADVANCE NOTICE NOT REQUIRED. Any advance notice required by this code for an action to be taken at a meeting is not required to be given to take the action by written consent as provided 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. 37, eff. September 1, 2007.

Sec. 6.205. REPRODUCTION OR ELECTRONIC TRANSMISSION OF CONSENT. (a) Any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by an owner, member, or governing person of a filing entity may be substituted or used instead of the original writing for any purpose for which the original writing could be used.

(b) Except as otherwise provided by an entity's governing documents, an electronic transmission of a consent by an owner, member, or governing person to the taking of an action by the entity is considered a signed writing if the transmission contains or is accompanied by information from which it can be determined:

(1) that the electronic transmission was transmitted by or on behalf of the owner, member, or governing person; and

(2) the date on which the electronic transmission was transmitted by or on behalf of the owner, member, or governing person.

(c) Unless the consent is otherwise dated, the date specified in Subsection (b)(2) is the date on which the consent is considered signed.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 18, eff. January 1, 2006.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 8, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 3, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 7, eff. September 1, 2019.

SUBCHAPTER F. VOTING TRUSTS AND VOTING AGREEMENTS

Sec. 6.251. VOTING TRUSTS. (a) Except as provided by this code or the governing documents, any number of owners of a domestic entity may enter into a written voting trust agreement to confer on a trustee the right to vote or otherwise represent ownership or membership interests of the domestic entity.

(b) An ownership or membership interest that is the subject of a voting trust agreement described by Subsection (a) shall be transferred to the trustee named in the agreement for purposes of the agreement.

(c) A copy of a voting trust agreement described by Subsection (a) shall be deposited with the domestic entity at the domestic entity's principal executive office or registered office and is subject to examination by:

(1) an owner, whether in person or by the owner's agent or attorney, in the same manner as the owner is entitled to examine the books and records of the domestic entity; and

(2) a holder of a beneficial interest in the voting trust, whether in person or by the holder's agent or attorney, at any reasonable time for any proper purpose.

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. 38, eff. September 1, 2007.

Sec. 6.252. VOTING AGREEMENTS. (a) Except as provided by this code or the governing documents, any number of owners of a domestic entity, or any number of owners of the domestic entity and the domestic entity itself, may enter into a written voting agreement that is not set forth in the domestic entity's governing documents to provide the manner of voting of the ownership interests of the domestic entity. A voting agreement entered into under this subsection is not part of the governing documents of the domestic entity.

(b) A copy of a voting agreement entered into under Subsection (a):

(1) may be deposited with the domestic entity at the domestic entity's principal executive office or registered office; and

(2) if deposited as provided by Subdivision (1), is subject to examination by an owner, whether in person or by the owner's agent or attorney, in the same manner as the owner is entitled to examine the books and records of the domestic entity.

(c) A voting agreement entered into under Subsection (a) is specifically enforceable against the owner of an ownership interest that is the subject of the agreement if the owner executes the voting agreement or acknowledges in writing that the owner or the ownership interest is bound by the agreement.

(c-1) A voting agreement entered into under Subsection (a) is specifically enforceable against any subsequent owner of the ownership interest subject to the voting agreement if the subsequent owner:

(1) has notice or actual knowledge of the voting agreement at or before the time of transfer to the subsequent owner;

(2) is not a transferee for value and receives notice or obtains actual knowledge of the voting agreement; or

(3) acknowledges in writing that the subsequent owner or the ownership interest is bound by the voting agreement.

(c-2) A subsequent owner is considered to have notice of a voting agreement for purposes of Subsection (c-1)(1) if, at the time of transfer, the existence of the voting agreement is noted conspicuously on any certificate representing the ownership interest held by the transferor owner. The notice described by this subsection is not the exclusive method by which notice of the voting agreement may be received by a subsequent owner for purposes of

Subsection (c-1)(1).

(c-3) A voting agreement that becomes specifically enforceable against a subsequent owner under Subsection (c-1)(2) is specifically enforceable from the time the subsequent owner first receives notice or obtains actual knowledge of the voting agreement.

(c-4) A voting agreement that becomes specifically enforceable against a subsequent owner under Subsection (c-1)(3) is specifically enforceable from the time of the written acknowledgment by the subsequent owner.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 20, eff. September 1, 2019.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 20, eff. September 1, 2019.

(f) Section 6.251 does not apply to a voting agreement entered into under Subsection (a).

(g) This section does not impair the right of the domestic entity to treat an owner of record as entitled to vote the ownership interest standing in the owner's name or to accept that owner's vote of the ownership interest.

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. 39, eff. September 1, 2007.

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

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 20, eff. September 1, 2019.

SUBCHAPTER G. APPLICABILITY OF CHAPTER

Sec. 6.301. APPLICABILITY OF CHAPTER TO PARTNERSHIPS. This chapter does not apply to a general partnership or a limited partnership except to the extent its governing documents specify.

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

Sec. 6.302. APPLICABILITY OF SUBCHAPTERS C AND D TO LIMITED LIABILITY COMPANIES. Subchapters C and D do not apply to a limited liability company except to the extent its governing documents

specify.

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

CHAPTER 7. LIABILITY

Sec. 7.001. LIMITATION OF LIABILITY OF GOVERNING PERSON. (a) Subsections (b) and (c) apply to:

(1) a domestic entity other than a partnership or limited liability company;

(2) another organization incorporated or organized under another law of this state; and

(3) to the extent permitted by federal law, a federally chartered bank, savings and loan association, or credit union.

(b) The certificate of formation or similar instrument of an organization to which this section applies may provide that a governing person of the organization is not liable, or is liable only to the extent provided by the certificate of formation or similar instrument, to the organization or its owners or members for monetary damages for an act or omission by the person in the person's capacity as a governing person.

(c) Subsection (b) does not authorize the elimination or limitation of the liability of a governing person to the extent the person is found liable under applicable law for:

(1) a breach of the person's duty of loyalty, if any, to the organization or its owners or members;

(2) an act or omission not in good faith that:

(A) constitutes a breach of duty of the person to the organization; or

(B) involves intentional misconduct or a knowing violation of law;

(3) a transaction from which the person received an improper benefit, regardless of whether the benefit resulted from an action taken within the scope of the person's duties; or

(4) an act or omission for which the liability of a governing person is expressly provided by an applicable statute.

(d) The liability of a governing person may be limited or eliminated:

(1) in a general partnership by its partnership agreement to the same extent Subsections (b) and (c) permit the limitation or

elimination of liability of a governing person of an organization to which those subsections apply and to the additional extent permitted under Chapter 152;

(2) in a limited partnership by its partnership agreement to the same extent Subsections (b) and (c) permit the limitation or elimination of liability of a governing person of an organization to which those subsections apply and to the additional extent permitted under Chapter 153 and, to the extent applicable to limited partnerships, Chapter 152; and

(3) in a limited liability company by its certificate of formation or company agreement to the same extent Subsections (b) and (c) permit the limitation or elimination of liability of a governing person of an organization to which those subsections apply and to the additional extent permitted under Section 101.401.

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. 2, eff. September 1, 2013.

CHAPTER 8. INDEMNIFICATION AND INSURANCE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8.001. DEFINITIONS. In this chapter:

(1) "Delegate" means a person who, while serving as a governing person of an enterprise, is or was serving at the request of that enterprise as a representative of another enterprise, another organization, or an employee benefit plan. A person is a delegate to an employee benefit plan if the performance of the person's official duties to the enterprise also imposes duties on or otherwise involves service by the person to the plan or participants in or beneficiaries of the plan.

(2) "Enterprise" means a domestic entity or an organization subject to this chapter. The term includes a predecessor enterprise.

(3) "Expenses" includes:

(A) court costs, a judgment, a penalty, a settlement, a fine, and an excise or similar tax, including an excise tax assessed against the person with respect to an employee benefit plan; and

(B) reasonable attorney's fees.

(4) "Former governing person" means a person who was a

governing person of an enterprise.

(5) "Judgment" includes an arbitration award.

(6) "Official capacity" means:

(A) with respect to a governing person, the office of the governing person in the enterprise or the exercise of authority by or on behalf of the governing person under this code or the governing documents of the enterprise; and

(B) with respect to a person other than a governing person, the elective or appointive office, if any, in the enterprise held by the person or the relationship undertaken by the person on behalf of the enterprise.

(7) "Predecessor enterprise" means a sole proprietorship or organization that is a predecessor to an enterprise in:

(A) a merger, conversion, consolidation, or other transaction in which the liabilities of the predecessor enterprise are transferred or allocated to the enterprise by operation of law; or

(B) any other transaction in which the enterprise assumes the liabilities of the predecessor enterprise and the liabilities that are the subject matter of this chapter are not specifically excluded.

(8) "Proceeding" means:

(A) a threatened, pending, or completed action or other proceeding, whether civil, criminal, administrative, arbitrative, or investigative;

(B) an appeal of an action or proceeding described by Paragraph (A); and

(C) an inquiry or investigation that could lead to an action or proceeding described by Paragraph (A).

(9) "Representative" means a person who is:

(A) serving as a partner, director, officer, venturer, proprietor, trustee, employee, administrator, or agent of an enterprise or other organization or of an employee benefit plan; or

(B) serving a similar function for an enterprise or other organization or for an employee benefit plan.

(10) "Respondent" means a person named as a respondent or defendant in a proceeding.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 20, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 4, eff. September 1, 2011.

Sec. 8.002. APPLICATION OF CHAPTER. (a) Except as provided by Subsection (b), this chapter does not apply to a:

(1) general partnership; or

(2) limited liability company.

(b) The governing documents of a general partnership or limited liability company may adopt provisions of this chapter or may contain other provisions, which will be enforceable, relating to:

(1) indemnification;

(2) advancement of expenses; or

(3) insurance or another arrangement to indemnify or hold harmless a governing person.

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. 40, eff. September 1, 2007.

Sec. 8.003. LIMITATIONS IN GOVERNING DOCUMENTS. (a) The certificate of formation of an enterprise may restrict the circumstances under which the enterprise must or may indemnify or may advance expenses to a person under this chapter.

(b) The written partnership agreement of a limited partnership may restrict the circumstances in the same manner as the certificate of formation under Subsection (a).

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

Sec. 8.004. LIMITATIONS IN CHAPTER. Except as provided in Section 8.151, a provision for an enterprise to indemnify or advance expenses to a governing person is valid only to the extent it is consistent with this chapter.

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

SUBCHAPTER B. MANDATORY AND COURT-ORDERED INDEMNIFICATION

Sec. 8.051. MANDATORY INDEMNIFICATION. (a) An enterprise shall indemnify a governing person, former governing person, or delegate against reasonable expenses actually incurred by the person in connection with a proceeding in which the person is a respondent because the person is or was a governing person or delegate if the person is wholly successful, on the merits or otherwise, in the defense of the proceeding.

(b) A court that determines, in a suit for indemnification, that a governing person, former governing person, or delegate is entitled to indemnification under this section shall order indemnification and award to the person the expenses incurred in securing the indemnification.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 21, eff. January 1, 2006.

Sec. 8.052. COURT-ORDERED INDEMNIFICATION. (a) On application of a governing person, former governing person, or delegate and after notice is provided as required by the court, a court may order an enterprise to indemnify the person to the extent the court determines that the person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances.

(b) This section applies without regard to whether the governing person, former governing person, or delegate applying to the court satisfies the requirements of Section 8.101 or has been found liable:

(1) to the enterprise; or

(2) because the person improperly received a personal benefit, without regard to whether the benefit resulted from an action taken in the person's official capacity.

(c) The indemnification ordered by the court under this section is limited to reasonable expenses if the governing person, former governing person, or delegate is found liable:

(1) to the enterprise; or

(2) because the person improperly received a personal benefit, without regard to whether the benefit resulted from an action taken in the person's official capacity.

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

SUBCHAPTER C. PERMISSIVE INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Sec. 8.101. PERMISSIVE INDEMNIFICATION. (a) An enterprise may indemnify a governing person, former governing person, or delegate who was, is, or is threatened to be made a respondent in a proceeding to the extent permitted by Section 8.102 if it is determined in accordance with Section 8.103 that:

(1) the person:

(A) acted in good faith;

(B) reasonably believed:

(i) in the case of conduct in the person's official capacity, that the person's conduct was in the enterprise's best interests; and

(ii) in any other case, that the person's conduct was not opposed to the enterprise's best interests; and

(C) in the case of a criminal proceeding, did not have a reasonable cause to believe the person's conduct was unlawful;

(2) with respect to expenses, the amount of expenses other than a judgment is reasonable; and

(3) indemnification should be paid.

(b) Action taken or omitted by a governing person or delegate with respect to an employee benefit plan in the performance of the person's duties for a purpose reasonably believed by the person to be in the interest of the participants and beneficiaries of the plan is for a purpose that is not opposed to the best interests of the enterprise.

(c) Action taken or omitted by a delegate to another enterprise for a purpose reasonably believed by the delegate to be in the interest of the other enterprise or its owners or members is for a purpose that is not opposed to the best interests of the enterprise.

(d) A person does not fail to meet the standard under Subsection (a)(1) solely because of the termination of a proceeding by:

(1) judgment;

(2) order;
(3) settlement;
(4) conviction; or
(5) a plea of nolo contendere or its equivalent.

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

Sec. 8.102. GENERAL SCOPE OF PERMISSIVE INDEMNIFICATION. (a) Subject to Subsection (b), an enterprise may indemnify a governing person, former governing person, or delegate against:

(1) a judgment; and

(2) expenses, other than a judgment, that are reasonable and actually incurred by the person in connection with a proceeding.

(b) Indemnification under this subchapter of a person who is found liable to the enterprise or is found liable because the person improperly received a personal benefit:

(1) is limited to reasonable expenses actually incurred by the person in connection with the proceeding;

(2) does not include a judgment, a penalty, a fine, and an excise or similar tax, including an excise tax assessed against the person with respect to an employee benefit plan; and

(3) may not be made in relation to a proceeding in which the person has been found liable for:

(A) wilful or intentional misconduct in the performance of the person's duty to the enterprise;

(B) breach of the person's duty of loyalty owed to the enterprise; or

(C) an act or omission not committed in good faith that constitutes a breach of a duty owed by the person to the enterprise.

(c) A governing person, former governing person, or delegate is considered to have been found liable in relation to a claim, issue, or matter only if the liability is established by an order, including a judgment or decree of a court, and all appeals of the order are exhausted or foreclosed by law.

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

Sec. 8.103. MANNER FOR DETERMINING PERMISSIVE INDEMNIFICATION. (a) Except as provided by Subsections (b) and (c), the

determinations required under Section 8.101(a) must be made by:

(1) a majority vote of the governing persons who at the time of the vote are disinterested and independent, regardless of whether the governing persons who are disinterested and independent constitute a quorum;

(2) a majority vote of a committee of the governing authority of the enterprise if the committee:

(A) is designated by a majority vote of the governing persons who at the time of the vote are disinterested and independent, regardless of whether the governing persons who are disinterested and independent constitute a quorum; and

(B) is composed solely of one or more governing persons who are disinterested and independent;

(3) special legal counsel selected by the governing authority of the enterprise, or selected by a committee of the governing authority, by vote in accordance with Subdivision (1) or (2);

(4) the owners or members of the enterprise in a vote that excludes the ownership or membership interests held by each governing person who is not disinterested and independent; or

(5) a unanimous vote of the owners or members of the enterprise.

(b) If special legal counsel determines under Subsection (a)(3) that a person meets the standard under Section 8.101(a)(1), the special legal counsel shall determine whether the amount of expenses other than a judgment is reasonable under Section 8.101(a)(2) but may not determine whether indemnification should be paid under Section 8.101(a)(3). The determination whether indemnification should be paid must be made in a manner specified by Subsection (a)(1), (2), (4), or (5).

(c) A provision contained in the governing documents of the enterprise, a resolution of the owners, members, or governing authority, or an agreement that requires the indemnification of a person who meets the standard under Section 8.101(a)(1) constitutes a determination under Section 8.101(a)(3) that indemnification should be paid even though the provision may not have been adopted or authorized in the same manner as the determinations required under Section 8.101(a). The determinations required under Sections 8.101(a)(1) and (2) must be made in a manner provided by Subsection (a).

(d) With respect to a limited partnership, a vote of a majority-in-interest of the limited partners in a vote that excludes the interest held by each general partner who is not disinterested and independent constitutes a determination under Subsection (a)(4). For purposes of this subsection, "majority-in-interest" means, with respect to limited partners, limited partners who own more than 50 percent of the current percentage or other interest in the profits of the partnership that is owned by all of the limited partners.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 22, eff. January 1, 2006.
Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 41, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 5, eff. September 1, 2011.

Sec. 8.104. ADVANCEMENT OF EXPENSES TO PRESENT GOVERNING PERSONS OR DELEGATES. (a) An enterprise may pay or reimburse reasonable expenses incurred by a present governing person or delegate who was, is, or is threatened to be made a respondent in a proceeding in advance of the final disposition of the proceeding without making the determinations required under Section 8.101(a) after the enterprise receives:

(1) a written affirmation by the person of the person's good faith belief that the person has met the standard of conduct necessary for indemnification under this chapter; and

(2) a written undertaking by or on behalf of the person to repay the amount paid or reimbursed if the final determination is that the person has not met that standard or that indemnification is prohibited by Section 8.102.

(b) A provision in the governing documents of the enterprise, a resolution of the owners, members, or governing authority, or an agreement that requires the payment or reimbursement permitted under this section authorizes that payment or reimbursement after the enterprise receives an affirmation and undertaking described by Subsection (a).

(c) The written undertaking required by Subsection (a)(2) must

be an unlimited general obligation of the person but need not be secured and may be accepted by the enterprise without regard to the person's ability to make repayment.

(d) With respect to a limited partnership, a vote of a majority-in-interest of the limited partners in a vote that excludes the interest held by each general partner who is not disinterested and independent constitutes an authorization under Subsection (b). For purposes of this subsection, "majority-in-interest" means, with respect to limited partners, limited partners who own more than 50 percent of the current percentage or other interest in the profits of the partnership that is owned by all of the limited partners.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 23, eff. January 1, 2006.

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 24, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 42, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 6, eff. September 1, 2011.

Sec. 8.105. INDEMNIFICATION OF AND ADVANCEMENT OF EXPENSES TO PERSONS OTHER THAN GOVERNING PERSONS. (a) Notwithstanding any other provision of this chapter but subject to Section 8.003 and to the extent consistent with other law, an enterprise may indemnify and advance expenses to a person who is not a governing person, including an officer, employee, or agent, as provided by:

(1) the enterprise's governing documents;

(2) general or specific action of the enterprise's governing authority;

(3) resolution of the enterprise's owners or members;

(4) contract; or

(5) common law.

(b) An enterprise shall indemnify an officer to the same extent that indemnification is required under this chapter for a governing person.

(c) A person described by Subsection (a) may seek

indemnification or advancement of expenses from an enterprise to the same extent that a governing person may seek indemnification or advancement of expenses under this chapter.

(d) Notwithstanding any authorization or determination specified in this chapter, an enterprise may pay or reimburse, in advance of the final disposition of a proceeding and on terms the enterprise considers appropriate, reasonable expenses incurred by:

(1) a former governing person or delegate who was, is, or is threatened to be made a respondent in the proceeding; or

(2) a present or former employee, agent, or officer who is not a governing person of the enterprise and who was, is, or is threatened to be made a respondent in the proceeding.

(e) A determination of indemnification for a person who is not a governing person of an enterprise, including an officer, employee, or agent, is not required to be made in accordance with Section 8.103.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 25, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 43, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 7, eff. September 1, 2011.

Sec. 8.106. PERMISSIVE INDEMNIFICATION OF AND REIMBURSEMENT OF EXPENSES TO WITNESSES. Notwithstanding any other provision of this chapter, an enterprise may pay or reimburse reasonable expenses incurred by a governing person, officer, employee, agent, delegate, or other person in connection with that person's appearance as a witness or other participation in a proceeding at a time when the person is not a respondent in the proceeding.

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

SUBCHAPTER D. LIABILITY INSURANCE; REPORTING REQUIREMENTS

Sec. 8.151. INSURANCE AND OTHER ARRANGEMENTS. (a) Notwithstanding any other provision of this chapter, an enterprise

may purchase or procure or establish and maintain insurance or another arrangement to indemnify or hold harmless an existing or former governing person, delegate, officer, employee, or agent against any liability:

(1) asserted against and incurred by the person in that capacity; or

(2) arising out of the person's status in that capacity.

(b) The insurance or other arrangement established under Subsection (a) may insure or indemnify against the liability described by Subsection (a) without regard to whether the enterprise otherwise would have had the power to indemnify the person against that liability under this chapter.

(c) Insurance or another arrangement that involves self-insurance or an agreement to indemnify made with the enterprise or a person that is not regularly engaged in the business of providing insurance coverage may provide for payment of a liability with respect to which the enterprise does not otherwise have the power to provide indemnification only if the insurance or arrangement is approved by the owners or members of the enterprise.

(c-1) With respect to a limited partnership, a vote of a majority-in-interest of the limited partners constitutes approval of the owners for purposes of Subsection (c).

(d) For the benefit of persons to be indemnified by the enterprise, an enterprise may, in addition to purchasing or procuring or establishing and maintaining insurance or another arrangement:

(1) create a trust fund;

(2) establish any form of self-insurance, including a contract to indemnify;

(3) secure the enterprise's indemnity obligation by grant of a security interest or other lien on the assets of the enterprise; or

(4) establish a letter of credit, guaranty, or surety arrangement.

(e) Insurance or another arrangement established under this section may be purchased or procured or established and maintained:

(1) within the enterprise; or

(2) with any insurer or other person considered appropriate by the governing authority, regardless of whether all or part of the stock, securities, or other ownership interest in the insurer or other person is owned in whole or in part by the enterprise.

(f) The governing authority's decision as to the terms of the insurance or other arrangement and the selection of the insurer or other person participating in an arrangement is conclusive. The insurance or arrangement is not voidable and does not subject the governing persons approving the insurance or arrangement to liability, on any ground, regardless of whether the governing persons participating in approving the insurance or other arrangement are beneficiaries of the insurance or arrangement. This subsection does not apply in case of actual fraud.

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. 8, eff. September 1, 2011.

Sec. 8.152. REPORTS OF INDEMNIFICATION AND ADVANCES. (a) An enterprise shall report in writing to the owners or members of the enterprise an indemnification of or advance of expenses to a governing person.

(b) Subject to Subsection (c), the report must be made with or before:

(1) the notice or waiver of notice of the next meeting of the owners or members of the enterprise; or

(2) the next submission to the owners or members of a consent to action without a meeting.

(c) The report must be made not later than the first anniversary of the date of the indemnification or advance.

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. 44, eff. September 1, 2007.

CHAPTER 9. FOREIGN ENTITIES

SUBCHAPTER A. REGISTRATION

Sec. 9.001. FOREIGN ENTITIES REQUIRED TO REGISTER. (a) To transact business in this state, a foreign entity must register under this chapter if the entity:

(1) is a foreign corporation, foreign limited partnership,

foreign limited liability company, foreign business trust, foreign real estate investment trust, foreign cooperative, foreign public or private limited company, or another foreign entity, the formation of which, if formed in this state, would require the filing under Chapter 3 of a certificate of formation; or

(2) affords limited liability under the law of its jurisdiction of formation for any owner or member.

(b) A foreign entity described by Subsection (a) must maintain the entity's registration while transacting business in this state.

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

Sec. 9.002. FOREIGN ENTITIES NOT REQUIRED TO REGISTER. (a) A foreign entity not described by Section 9.001(a) may transact business in this state without registering under this chapter.

(b) Subsection (a) does not relieve a foreign entity from the duty to comply with applicable requirements under other law to file or register.

(c) A foreign entity is not required to register under this chapter if other state law authorizes the entity to transact business in this state.

(d) A foreign unincorporated nonprofit association is not required to register under this chapter.

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

Sec. 9.003. PERMISSIVE REGISTRATION. A foreign entity that is eligible under other law of this state to register to transact business in this state, but that is not registered under that law, may register under this chapter unless that registration is prohibited by the other law. The registration under this chapter confers only the authority provided by this chapter.

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

Sec. 9.004. REGISTRATION PROCEDURE. (a) A foreign filing entity registers by filing an application for registration as provided by Chapter 4.

(b) The application must state:

(1) the entity's name and, if that name would not comply with Chapter 5, a name that complies with Chapter 5 under which the entity will transact business in this state;

(2) the entity's type;

(3) the entity's jurisdiction of formation;

(4) the date of the entity's formation;

(5) that the entity exists as a valid foreign filing entity of the stated type under the laws of the entity's jurisdiction of formation;

(6) for a foreign entity other than a foreign limited partnership:

(A) each business or activity that the entity proposes to pursue in this state, which may be stated to be any lawful business or activity under the law of this state; and

(B) that the entity is authorized to pursue the same business or activity under the laws of the entity's jurisdiction of formation;

(7) the date the foreign entity began or will begin to transact business in this state;

(8) the address of the principal office of the foreign filing entity;

(9) the address of the initial registered office and the name and the address of the initial registered agent for service of process that Chapter 5 requires to be maintained;

(10) the name and address of each of the entity's governing persons; and

(11) that the secretary of state is appointed the agent of the foreign filing entity for service of process under the circumstances provided by Section 5.251.

(c) A foreign filing entity may register regardless of any differences between the law of the entity's jurisdiction of formation and of this state applicable to the governing of the internal affairs or to the liability of an owner, member, or managerial official.

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

Sec. 9.005. SUPPLEMENTAL INFORMATION REQUIRED IN APPLICATION FOR REGISTRATION OF FOREIGN LIMITED LIABILITY COMPANY. (a) This

section applies only to a foreign limited liability company governed by a company agreement that establishes or provides for the establishment of a designated series of members, managers, membership interests, or assets that has any of the characteristics described by Subsection (b).

(b) A foreign limited liability company must state in its application for registration as a foreign limited liability company whether:

(1) the series has:

(A) separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company; or

(B) separate profits and losses associated with specified property or obligations of the foreign limited liability company;

(2) any debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the company generally or the assets of any other series; and

(3) any debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the company generally or any other series shall be enforceable against the assets of that series.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 9, eff. September 1, 2009.

Sec. 9.006. SUPPLEMENTAL INFORMATION REQUIRED IN APPLICATION FOR REGISTRATION OF FOREIGN NONPROFIT CORPORATION. In addition to the information required by Section 9.004, a foreign nonprofit corporation's application for registration must state:

(1) the names and addresses of the nonprofit corporation's directors and officers;

(2) whether or not the nonprofit corporation has members; and

(3) any additional information as necessary or appropriate to enable the secretary of state to determine whether the nonprofit corporation is entitled to register to conduct affairs in this state.

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

Sec. 9.007. APPLICATION FOR REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIP. (a) A foreign limited liability partnership registers by filing an application for registration under this section as provided by Chapter 4.

(b) The application for registration must state:

(1) the partnership's name;

(2) the federal taxpayer identification number of the partnership;

(3) the partnership's jurisdiction of formation;

(4) the date of initial registration as a limited liability partnership under the laws of the jurisdiction of formation;

(5) the date the foreign entity began or will begin to transact business in this state;

(6) that the partnership exists as a valid limited liability partnership under the laws of the jurisdiction of its formation;

(7) the number of partners at the date of the statement;

(8) each business or activity that the partnership proposes to pursue in this state, which may be stated to be any lawful business or activity under the laws of this state;

(9) the address of the principal office of the partnership;

(10) the address of the initial registered office and the name and address of the initial registered agent for service of process required to be maintained under Section 152.904; and

(11) that the secretary of state is appointed the agent of the partnership for service of process under the same circumstances as set forth by Section 5.251 for a foreign filing entity.

(c) Subchapter K, Chapter 152, governs the registration of a foreign limited liability partnership to transact business in this state.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 26, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 9, eff. September 1, 2011.

Sec. 9.008. EFFECT OF REGISTRATION. (a) The registration of a foreign entity other than a foreign limited liability partnership is effective when the application filed under Chapter 4 takes effect. The registration remains in effect until the registration terminates, is withdrawn, or is revoked.

(b) Except in a proceeding to revoke the registration, the secretary of state's issuance of an acknowledgment that the entity has filed an application is conclusive evidence of the authority of the foreign filing entity to transact business in this state under the entity's name or under another name stated in the application, in accordance with Section 9.004(b)(1).

(c) Subchapter K, Chapter 152, governs the effect of registration of a foreign limited liability partnership to transact business in this state.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 27, eff. January 1, 2006.

Sec. 9.009. AMENDMENTS TO REGISTRATION. (a) A foreign filing entity must amend its registration to reflect:

(1) a change to its name;

(2) a change in the business or activity stated in its application for registration; and

(3) if the foreign filing entity is a limited partnership:

(A) the admission of a new general partner;

(B) the withdrawal of a general partner; and

(C) a change in the name of the general partner stated in its application for registration.

(a-1) A foreign filing entity may amend the entity's application for registration to disclose a change that results from:

(1) a conversion from one type of foreign filing entity to another type of foreign filing entity with the foreign filing entity making the amendment succeeding to the registration of the original foreign filing entity; or

(2) a merger into another foreign filing entity with the

foreign filing entity making the amendment succeeding to the registration of the original foreign filing entity.

(b) A foreign filing entity may amend its application for registration by filing an application for amendment of registration in the manner required by Chapter 4.

(c) The application for amendment must be filed on or before the 91st day following the date of the change.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 28, eff. January 1, 2006.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 10, eff. September 1, 2009.

Sec. 9.010. NAME CHANGE OF FOREIGN FILING ENTITY. If a foreign filing entity authorized to transact business in this state changes its name to a name that would cause the entity to be denied an application for registration under this subchapter, the entity's registration must be suspended. An entity the registration of which has been suspended under this section may transact business in this state only after the entity:

(1) changes its name to a name that is available to it under the laws of this state; or

(2) otherwise complies with this chapter.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 29, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 45, eff. September 1, 2007.

Sec. 9.011. VOLUNTARY WITHDRAWAL OF REGISTRATION. (a) A foreign filing entity or foreign limited liability partnership registered in this state may withdraw the entity's or partnership's registration at any time by filing a certificate of withdrawal in the manner required by Chapter 4.

(b) A certificate of withdrawal must state:

(1) the name of the foreign filing entity or foreign limited liability partnership as registered in this state;

(2) the type of foreign filing entity and the entity's or partnership's jurisdiction of formation;

(3) the address of the principal office of the foreign filing entity or foreign limited liability partnership;

(4) that the foreign filing entity or foreign limited liability partnership no longer is transacting business in this state;

(5) that the foreign filing entity or foreign limited liability partnership:

(A) revokes the authority of the entity's or partnership's registered agent in this state to accept service of process; and

(B) consents that service of process in any action, suit, or proceeding stating a cause of action arising in this state during the time the foreign filing entity or foreign limited liability partnership was authorized to transact business in this state may be made on the foreign filing entity or foreign limited liability partnership by serving the secretary of state;

(6) an address to which the secretary of state may mail a copy of any process against the foreign filing entity or foreign limited liability partnership served on the secretary of state; and

(7) that any money due or accrued to the state has been paid or that adequate provision has been made for the payment of that money.

(c) A certificate from the comptroller stating that all taxes administered by the comptroller under Title 2, Tax Code, have been paid must be filed with the certificate of withdrawal in accordance with Chapter 4 if the foreign filing entity is a taxable entity under Chapter 171, Tax Code, other than a foreign nonprofit corporation.

(d) If the existence or separate existence of a foreign filing entity or foreign limited liability partnership registered in this state terminates because of dissolution, termination, merger, conversion, or other circumstances, a certificate by an authorized governmental official of the entity's jurisdiction of formation that evidences the termination shall be filed with the secretary of state.

(e) The registration of the foreign filing entity in this state terminates when a certificate of withdrawal under this section or a certificate evidencing termination under Subsection (d) is filed.

(f) If the address stated in a certificate of withdrawal under Subsection (b)(6) changes, the foreign filing entity or foreign limited liability partnership must promptly amend the certificate of withdrawal to update the address.

(g) A certificate of withdrawal does not terminate the authority of the secretary of state to accept service of process on the foreign filing entity or foreign limited liability partnership with respect to a cause of action arising out of business or activity in this state.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 30, eff. January 1, 2006.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 11, eff. September 1, 2009.

Sec. 9.012. AUTOMATIC WITHDRAWAL ON CONVERSION TO DOMESTIC FILING ENTITY. A foreign filing entity or foreign limited liability partnership registered in this state that converts to a domestic filing entity is considered to have withdrawn its registration on the effective date of the conversion. This section also applies to a conversion and continuance under Section 10.1025.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 12, eff. September 1, 2009.

SUBCHAPTER B. FAILURE TO REGISTER

Sec. 9.051. TRANSACTING BUSINESS OR MAINTAINING COURT PROCEEDING WITHOUT REGISTRATION. (a) On application by the attorney general, a court may enjoin a foreign filing entity or the entity's agent from transacting business in this state if:

(1) the entity is not registered in this state; or

(2) the entity's registration is obtained on the basis of a false or misleading representation.

(b) A foreign filing entity or the entity's legal representative may not maintain an action, suit, or proceeding in a court of this state, brought either directly by the entity or in the form of a derivative action in the entity's name, on a cause of

action that arises out of the transaction of business in this state unless the foreign filing entity is registered in accordance with this chapter. This subsection does not affect the rights of an assignee of the foreign filing entity as:

(1) the holder in due course of a negotiable instrument; or

(2) the bona fide purchaser for value of a warehouse receipt, security, or other instrument made negotiable by law.

(c) The failure of a foreign filing entity to register does not:

(1) affect the validity of any contract or act of the foreign filing entity;

(2) prevent the entity from defending an action, suit, or proceeding in a court in this state; or

(3) except as provided by Subsection (d), cause any owner, member, or managerial official of the foreign filing entity to become liable for the debts, obligations, or liabilities of the foreign filing entity.

(d) Subsection (c)(3) does not apply to a general partner of a foreign limited partnership.

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

Sec. 9.052. CIVIL PENALTY. (a) A foreign filing entity that transacts business in this state and is not registered under this chapter is liable to this state for a civil penalty in an amount equal to all:

(1) fees and taxes that would have been imposed by law on the entity had the entity registered when first required and filed all reports required by law; and

(2) penalties and interest imposed by law for failure to pay those fees and taxes.

(b) The attorney general may bring suit to recover amounts due to this state under this section.

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

Sec. 9.053. VENUE. In addition to any other venue authorized by law, a suit under Section 9.051 or 9.052 may be brought in Travis

County.

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

Sec. 9.054. LATE FILING FEE. (a) The secretary of state may collect from a foreign filing entity a late filing fee if the entity has transacted business in this state for more than 90 days without registering under this chapter. The secretary may condition the effectiveness of a registration after the 90-day period on the payment of the late filing fee.

(b) The amount of the late filing fee is an amount equal to the product of the amount of the registration fee for the foreign filing entity multiplied by the number of calendar years that the entity transacted business in this state without being registered. For purposes of computing the fee, a partial calendar year is counted as a full calendar year.

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. 46, eff. September 1, 2007.

Sec. 9.055. REQUIREMENTS OF OTHER LAW. This chapter does not excuse a foreign entity from complying with duties imposed under other law, including other chapters of this code, relating to filing or registration requirements.

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

SUBCHAPTER C. REVOCATION OF REGISTRATION BY SECRETARY OF STATE

Sec. 9.101. REVOCATION OF REGISTRATION BY SECRETARY OF STATE. (a) If it appears to the secretary of state that, with respect to a foreign filing entity, a circumstance described by Subsection (b) exists, the secretary of state may notify the entity of the circumstance by mail or certified mail addressed to the foreign filing entity at the entity's registered office or principal place of business as shown on the records of the secretary of state.

(b) The secretary of state may revoke a foreign filing entity's

registration if the secretary of state finds that:

(1) the entity has failed to, and, before the 91st day after the date notice was mailed, has not corrected the entity's failure to:

(A) file a report within the period required by law or pay a fee or penalty prescribed by law when due and payable;

(B) maintain a registered agent or registered office in this state as required by law; or

(C) amend its registration when required by law; or

(2) the entity has failed to, and, before the 16th day after the date notice was mailed, has not corrected the entity's failure to pay a fee required in connection with the application for registration, or payment of the fee was dishonored when presented by the state for payment.

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. 47, eff. September 1, 2007.

Sec. 9.102. CERTIFICATE OF REVOCATION. (a) If revocation of a registration is required, the secretary of state shall:

(1) file a certificate of revocation; and

(2) deliver a certificate of revocation by regular or certified mail to the foreign filing entity at its registered office or principal place of business.

(b) The certificate of revocation must state:

(1) that the foreign filing entity's registration has been revoked; and

(2) the date and cause of the revocation.

(c) Except as otherwise provided by this chapter, the revocation of a foreign filing entity's registration under this subchapter takes effect on the date the certificate of revocation is filed.

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

Sec. 9.103. REINSTATEMENT BY SECRETARY OF STATE AFTER REVOCATION. (a) The secretary of state shall reinstate the

registration of an entity that has been revoked under this subchapter if the entity files an application for reinstatement in accordance with Section 9.104, accompanied by each amendment to the entity's registration that is required by intervening events, including circumstances requiring an amendment to the name of the entity or the name under which the entity is registered to transact business in this state as described in Section 9.105, and:

(1) the entity has corrected the circumstances that led to the revocation and any other circumstances that may exist of the types described by Section 9.101(b), including the payment of fees, interest, or penalties; or

(2) the secretary of state finds that the circumstances that led to the revocation did not exist at the time of revocation.

(b) If a foreign filing entity's registration is reinstated before the third anniversary of the revocation, the entity is considered to have been registered or in existence at all times during the period of revocation.

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

Sec. 9.104. PROCEDURES FOR REINSTATEMENT. (a) A foreign filing entity, to have its registration reinstated, must complete the requirements of this section not later than the third anniversary of the date the revocation of the entity's registration took effect.

(b) The foreign filing entity shall file a certificate of reinstatement in accordance with Chapter 4.

(c) The certificate of reinstatement must contain:

(1) the name of the foreign filing entity;

(2) the filing number assigned by the filing officer to the entity;

(3) the effective date of the revocation of the entity's registration; and

(4) the name of the entity's registered agent and the address of the entity's registered office.

(d) A tax clearance letter from the comptroller stating that the foreign filing entity has satisfied all franchise tax liabilities and its registration may be reinstated must be filed with the certificate of reinstatement if the foreign filing entity is a taxable entity under Chapter 171, Tax Code, other than a foreign

nonprofit corporation.

(e) The registration of a foreign filing entity may not be reinstated under this section if the termination occurred as a result of:

(1) an order of a court; or

(2) forfeiture under the Tax Code.

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. 13, eff. September 1, 2009.

Sec. 9.105. USE OF DISTINGUISHABLE NAME REQUIRED. If the secretary of state determines that the name of a foreign filing entity or the fictitious name under which it is registered to transact business in this state does not comply with Chapter 5, the secretary of state may not accept for filing the certificate of reinstatement unless the foreign filing entity contemporaneously amends its registration to change its name to a name that complies with Chapter 5, or provides a fictitious name under which the foreign filing entity will transact business in this state that complies with Chapter 5.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 6, eff. June 1, 2018.

Sec. 9.106. REINSTATEMENT OF REGISTRATION FOLLOWING TAX FORFEITURE. A foreign filing entity whose registration has been revoked under the provisions of the Tax Code must follow the procedures in the Tax Code to reinstate its registration.

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

SUBCHAPTER D. JUDICIAL REVOCATION OF REGISTRATION

Sec. 9.151. REVOCATION OF REGISTRATION BY COURT ACTION. (a) A court may revoke the registration of a foreign filing entity if, as a

result of an action brought under Section 9.153, the court finds that one or more of the following problems exist:

(1) the entity did not comply with a condition precedent to the issuance of the entity's registration or an amendment to the registration;

(2) the entity's registration or any amendment to the entity's registration was fraudulently filed;

(3) a misrepresentation of a material matter was made in an application, report, affidavit, or other document the entity submitted under this code;

(4) the entity has continued to transact business beyond the scope of the purpose or purposes expressed in the entity's registration; or

(5) public interest requires revocation because:

(A) the entity has been convicted of a felony or a high managerial agent of the entity has been convicted of a felony committed in the conduct of the entity's affairs;

(B) the entity or the high managerial agent has engaged in a persistent course of felonious conduct; and

(C) revocation is necessary to prevent future felonious conduct of the same character.

(b) Sections 9.152-9.157 do not apply to Subsection (a)(5).

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

Sec. 9.152. NOTIFICATION OF CAUSE BY SECRETARY OF STATE. (a) The secretary of state shall provide to the attorney general:

(1) the name of a foreign filing entity that has given cause under Section 9.151 for revocation of its registration; and

(2) the facts relating to the cause for revocation.

(b) When notice is provided under Subsection (a), the secretary of state shall send written notice of the circumstances to the foreign filing entity at its registered office in this state. The notice must state that the secretary of state has given notice under Subsection (a) and the grounds for the notification. The secretary of state must record the date a notice required by this subsection is sent.

(c) A court shall accept a certificate issued by the secretary of state as to the facts relating to the cause for judicial

revocation of a foreign filing entity's registration and the sending of a notice under Subsection (b) as prima facie evidence of the facts stated in the certificate and the sending of the notice.

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

Sec. 9.153. FILING OF ACTION BY ATTORNEY GENERAL. The attorney general shall file an action against a foreign filing entity in the name of the state seeking the revocation of the entity's registration if:

(1) the entity has not cured the problems for which revocation is sought before the 31st day after the date the notice under Section 9.152(b) is mailed; and

(2) the attorney general determines that cause exists for judicial revocation of the entity's registration under Section 9.151.

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

Sec. 9.154. CURE BEFORE FINAL JUDGMENT. An action filed by the attorney general under Section 9.153 shall be abated if, before a district court renders judgment on the action, the foreign filing entity:

(1) cures the problems for which revocation is sought; and

(2) pays the costs of the action.

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

Sec. 9.155. JUDGMENT REQUIRING REVOCATION. If a district court finds in an action brought under this subchapter that proper grounds exist under Section 9.151(a) for revocation of the foreign filing entity's registration, the court shall:

(1) make findings to that effect; and

(2) subject to Section 9.156, enter a judgment not earlier than the fifth day after the date the court makes its findings.

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

Sec. 9.156. STAY OF JUDGMENT. (a) If, in an action brought under this subchapter, a foreign filing entity has proved by a preponderance of the evidence and obtained a finding that the problems for which the foreign filing entity has been found guilty were not wilful or the result of a failure to take reasonable precautions, the entity may make a sworn application to the court for a stay of entry of the judgment to allow the foreign filing entity a reasonable opportunity to cure the problems for which it has been found guilty. An application made under this subsection must be made not later than the fifth day after the date the court makes its findings under Section 9.155.

(b) After a foreign filing entity has made an application under Subsection (a), a court shall stay the entry of the judgment if the court is reasonably satisfied after considering the application and evidence offered for or against the application that the foreign filing entity:

(1) is able and intends in good faith to cure the problems for which it has been found guilty; and

(2) has not applied for the stay without just cause.

(c) A court shall stay an entry of judgment under Subsection (b) for the period the court determines is reasonably necessary to afford the foreign filing entity the opportunity to cure its problems if the entity acts with reasonable diligence. The court may not stay the entry of the judgment for longer than 60 days after the date the court's findings are made.

(d) The court shall dismiss an action against a foreign filing entity that, during the period the action is stayed by the court under this section, cures the problems for which revocation is sought and pays all costs accrued in the action.

(e) If a court finds that a foreign filing entity has not cured the problems for which revocation is sought within the period prescribed by Subsection (c), the court shall enter final judgment requiring revocation of the foreign filing entity's registration.

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

Sec. 9.157. OPPORTUNITY FOR CURE AFTER AFFIRMATION OF FINDINGS BY APPEALS COURT. (a) An appellate court that affirms a trial court's findings against a foreign filing entity under this

subchapter shall remand the case to the trial court with instructions to grant the foreign filing entity an opportunity to cure the problems for which the entity has been found guilty if:

(1) the foreign filing entity did not make an application to the trial court for stay of the entry of the judgment;

(2) the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause;

(3) the appellate court finds that the problems for which the foreign filing entity has been found guilty are capable of being cured; and

(4) the foreign filing entity has prayed for the opportunity to cure its problems in the appeal.

(b) The appellate court shall determine the period, which may not be longer than 60 days after the date the case is remanded to the trial court, to be afforded to a foreign filing entity to enable the foreign filing entity to cure its problems under Subsection (a).

(c) The trial court to which an action against a foreign filing entity has been remanded under this section shall dismiss the action if, during the period prescribed by the appellate court for that conduct, the foreign filing entity cures the problems for which revocation is sought and pays all costs accrued in the action.

(d) If a foreign filing entity has not cured the problems for which revocation is sought within the period prescribed by the appellate court under Subsection (b), the judgment requiring revocation shall become final.

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

Sec. 9.158. JURISDICTION AND VENUE. (a) The attorney general shall bring an action for the revocation of the registration of a foreign filing entity under this subchapter in:

(1) a district court of the county in which the registered office or principal place of business of the filing entity in this state is located; or

(2) a district court of Travis County.

(b) A district court described by Subsection (a) has jurisdiction of the action for revocation of the registration of the foreign filing entity.

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

Sec. 9.159. PROCESS IN STATE ACTION. Citation in an action for the involuntary revocation of a foreign filing entity's registration under this subchapter shall be issued and served as provided by law.

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

Sec. 9.160. PUBLICATION OF NOTICE. (a) Except as provided by Section 17.032, Civil Practice and Remedies Code, if process in an action under this subchapter is returned not found, the attorney general shall publish notice on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper in the county in which the registered office of the foreign filing entity in this state is located. The notice must contain:

(1) a statement of the pendency of the action;

(2) the title of the court;

(3) the title of the action; and

(4) the earliest date on which default judgment may be entered by the court.

(b) Notice under this section must be published on the public information Internet website for at least two consecutive weeks and in a newspaper at least once a week for two consecutive weeks. Notice may be published at any time after the citation has been returned.

(c) The attorney general may include in a published notice the name of each foreign filing entity against which an action for involuntary revocation is pending in the same court.

(d) Not later than the 10th day after the date notice under this section is first published, the attorney general shall send a copy of the notice to the appropriate foreign filing entity at the foreign filing entity's registered office in this state. A certificate from the attorney general regarding the sending of the notice is prima facie evidence that notice was sent under this section.

(e) Unless a foreign filing entity has been served with citation, a default judgment may not be taken against the entity

before the 31st day after the date the notice is first published.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 10.01, eff. June 1, 2020.

Sec. 9.161. FILING OF DECREE OF REVOCATION AGAINST FOREIGN FILING ENTITY. (a) The clerk of a court that enters a decree revoking the registration of a foreign filing entity shall file a certified copy of the decree in accordance with Chapter 4.

(b) A fee may not be charged for the filing of a decree under this section.

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

Sec. 9.162. APPLICABILITY OF SUBCHAPTER TO FOREIGN LIMITED LIABILITY PARTNERSHIPS. This subchapter applies to a partnership registered as a foreign limited liability partnership to the same extent as it applies to a foreign filing entity.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 31, eff. January 1, 2006.

SUBCHAPTER E. BUSINESS, RIGHTS, AND OBLIGATIONS

Sec. 9.201. BUSINESS OF FOREIGN ENTITY. (a) Except as provided by Subsection (b), a foreign entity may not conduct in this state a business or activity that is not permitted by this code to be transacted by the domestic entity to which it most closely corresponds, unless other law of this state authorizes the entity to conduct the business or activity.

(b) A foreign business trust may engage in a business or activity permitted by this code to be transacted by a limited liability company.

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. 48, eff.

September 1, 2007.

Sec. 9.202. RIGHTS AND PRIVILEGES. A foreign nonfiling entity or a foreign filing entity registered under this chapter enjoys the same but no greater rights and privileges as the domestic entity to which it most closely corresponds.

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

Sec. 9.203. OBLIGATIONS AND LIABILITIES. Subject to this code and other laws of this state and except as provided by Subchapter C, Chapter 1, in any matter that affects the transaction of intrastate business in this state, a foreign entity and each member, owner, or managerial official of the entity is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic entity to which it most closely corresponds or on a member, owner, or managerial official of that domestic entity.

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

Sec. 9.204. RIGHT OF FOREIGN ENTITY TO PARTICIPATE IN BUSINESS OF CERTAIN DOMESTIC ENTITIES. A vote cast or consent provided by a foreign entity with respect to its ownership or membership interest in a domestic entity of which the foreign entity is a lawful owner or member, and the foreign entity's participation in the management and control of the business and affairs of the domestic entity to the extent of the participation of other owners or members, are not invalidated if the foreign entity does not register to transact business in this state in accordance with this chapter, subject to all law governing a domestic entity, including the antitrust law of this state.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 32, eff. January 1, 2006.

SUBCHAPTER F. DETERMINATION OF TRANSACTING BUSINESS IN THIS STATE

Sec. 9.251. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS IN THIS STATE. For purposes of this chapter, activities that do not constitute transaction of business in this state include:

(1) maintaining or defending an action or suit or an administrative or arbitration proceeding, or effecting the settlement of:

(A) such an action, suit, or proceeding; or

(B) a claim or dispute to which the entity is a party;

(2) holding a meeting of the entity's managerial officials, owners, or members or carrying on another activity concerning the entity's internal affairs;

(3) maintaining a bank account;

(4) maintaining an office or agency for:

(A) transferring, exchanging, or registering securities the entity issues; or

(B) appointing or maintaining a trustee or depositary related to the entity's securities;

(5) voting the interest of an entity the foreign entity has acquired;

(6) effecting a sale through an independent contractor;

(7) creating, as borrower or lender, or acquiring indebtedness or a mortgage or other security interest in real or personal property;

(8) securing or collecting a debt due the entity or enforcing a right in property that secures a debt due the entity;

(9) transacting business in interstate commerce;

(10) conducting an isolated transaction that:

(A) is completed within a period of 30 days; and

(B) is not in the course of a number of repeated, similar transactions;

(11) in a case that does not involve an activity that would constitute the transaction of business in this state if the activity were one of a foreign entity acting in its own right:

(A) exercising a power of executor or administrator of the estate of a nonresident decedent under ancillary letters issued by a court of this state; or

(B) exercising a power of a trustee under the will of a nonresident decedent, or under a trust created by one or more nonresidents of this state, or by one or more foreign entities;

(12) regarding a debt secured by a mortgage or lien on real or personal property in this state:

(A) acquiring the debt in a transaction outside this state or in interstate commerce;

(B) collecting or adjusting a principal or interest payment on the debt;

(C) enforcing or adjusting a right or property securing the debt;

(D) taking an action necessary to preserve and protect the interest of the mortgagee in the security; or

(E) engaging in any combination of transactions described by this subdivision;

(13) investing in or acquiring, in a transaction outside of this state, a royalty or other nonoperating mineral interest;

(14) executing a division order, contract of sale, or other instrument incidental to ownership of a nonoperating mineral interest; or

(15) owning, without more, real or personal property in this state.

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. 14, eff. September 1, 2009.

Sec. 9.252. OTHER ACTIVITIES. The list provided by Section 9.251 is not exclusive of activities that do not constitute transacting business in this state for the purposes of this code.

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

SUBCHAPTER G. MISCELLANEOUS PROVISIONS

Sec. 9.301. APPLICABILITY OF CODE TO CERTAIN FOREIGN ENTITIES. (a) Except as provided by a statute described by this subsection, the provisions of this code governing a foreign entity apply to a foreign entity registered or granted authority to transact business in this state under:

(1) a special statute that does not contain a provision regarding a matter provided for by this code with respect to a

foreign entity; or

(2) another statute that specifically provides that the general law for the granting of a registration or certificate of authority to the foreign entity to transact business in this state supplements the special statute.

(b) Except as provided by a special statute described by Subsection (a), a document required to be filed with the secretary of state under the special statute must be signed and filed in accordance with Chapter 4.

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

CHAPTER 10. MERGERS, INTEREST EXCHANGES, CONVERSIONS, AND SALES OF ASSETS

SUBCHAPTER A. MERGERS

Sec. 10.001. ADOPTION OF PLAN OF MERGER. (a) A domestic entity may effect a merger by complying with the applicable provisions of this code. A merger must be set forth in a plan of merger.

(b) To effect a merger, each domestic entity that is a party to the merger must act on and approve the plan of merger in the manner prescribed by this code for the approval of mergers by the domestic entity.

(c) A domestic entity subject to dissenters' rights must provide the notice required by Section 10.355.

(d) If one or more non-code organizations is a party to the merger or is to be created by the plan of merger:

(1) to effect the merger each non-code organization must take all action required by this code and its governing documents;

(2) the merger must be permitted by:

(A) the law of the state or country under whose law each non-code organization is incorporated or organized; or

(B) the governing documents of each non-code organization if the documents are not inconsistent with the law under which the non-code organization is incorporated or organized; and

(3) in effecting the merger each non-code organization that is a party to the merger must comply with:

(A) the applicable laws under which it is incorporated or organized; and

(B) the governing documents of the non-code organization.

(e) A domestic entity may not merge under this subchapter if an owner or member of that entity that is a party to the merger will, as a result of the merger, become subject to owner liability, without that owner's or member's consent, for a liability or other obligation of any other person.

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. 5, eff. September 1, 2015.

Sec. 10.002. PLAN OF MERGER: REQUIRED PROVISIONS. (a) A plan of merger must be in writing and must include:

(1) the name of each organization that is a party to the merger;

(2) the name of each organization that will survive the merger;

(3) the name of each new organization that is to be created by the plan of merger;

(4) a description of the organizational form of each organization that is a party to the merger or that is to be created by the plan of merger and its jurisdiction of formation;

(5) the manner and basis, including use of a formula, of converting or exchanging any of the ownership or membership interests of each organization that is a party to the merger into:

(A) ownership interests, membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations;

(B) cash;

(C) other property, including ownership interests, membership interests, obligations, rights to purchase securities, or other securities of any other person or entity; or

(D) any combination of the items described by Paragraphs (A)-(C);

(6) the identification of any of the ownership or membership interests of an organization that is a party to the merger that are:

(A) to be canceled rather than converted or exchanged; or

(B) to remain outstanding rather than converted or exchanged if the organization survives the merger;

(7) the certificate of formation of each new domestic filing entity to be created by the plan of merger;

(8) the governing documents of each new domestic nonfiling entity to be created by the plan of merger; and

(9) the governing documents of each non-code organization that:

(A) is to survive the merger or to be created by the plan of merger; and

(B) is an entity that is not:

(i) organized under the laws of any state or the United States; or

(ii) required to file its certificate of formation or similar document under which the entity is organized with the appropriate governmental authority.

(b) An item required by Subsections (a)(7)-(9) may be included in the plan of merger by an attachment or exhibit to the plan.

(c) If the plan of merger provides for a manner and basis of converting or exchanging an ownership or membership interest that may be converted or exchanged in a manner or basis different than any other ownership or membership interest of the same class or series of the ownership or membership interest, the manner and basis of conversion or exchange must be included in the plan of merger in the same manner as provided by Subsection (a)(5). A plan of merger may provide for cancellation of an ownership or membership interest while providing for the conversion or exchange of other ownership or membership interests of the same class or series as the ownership or membership interest to be canceled.

(d) Any of the terms of the plan of merger may be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the merger is clearly and expressly stated in the plan. In this subsection, "facts" includes the occurrence of any event, including a determination or action by any person.

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. 10, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 6, eff. September 1, 2015.

Sec. 10.003. CONTENTS OF PLAN OF MERGER: MORE THAN ONE SUCCESSOR. If more than one organization is to survive or to be created by the plan of merger, the plan of merger must include:

(1) the manner and basis of allocating and vesting the property of each organization that is a party to the merger among one or more of the surviving or new organizations;

(2) the name of each surviving or new organization that is primarily obligated for the payment of the fair value of an ownership or membership interest of an owner or member of a domestic entity subject to dissenters' rights that is a party to the merger and who complies with the requirements for dissent and appraisal under this code applicable to the domestic entity; and

(3) the manner and basis of allocating each liability and obligation of each organization that is a party to the merger, or adequate provisions for the payment and discharge of each liability and obligation, among one or more of the surviving or new organizations.

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

Sec. 10.004. PLAN OF MERGER: PERMISSIVE PROVISIONS. A plan of merger may include:

(1) amendments to, restatements of, or amendments and restatements of the governing documents of any surviving organization, including a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments;

(2) provisions relating to an interest exchange, including a plan of exchange; and

(3) any other provisions relating to the merger that are not required by this chapter.

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. 7, eff. September 1, 2015.

Sec. 10.005. CREATION OF HOLDING COMPANY BY MERGER. (a) In this section:

(1) "Direct or indirect wholly owned subsidiary" means, with respect to a domestic entity, another domestic entity, all of the outstanding voting ownership or membership interests of which are owned by the domestic entity or by one or more other domestic entities or non-code organizations, all of the outstanding voting ownership or membership interests of which are owned by the domestic entity or one or more other wholly owned domestic entities or non-code organizations.

(2) "Holding company" means a domestic entity that, from its organization until a merger takes effect, was at all times a direct or indirect wholly owned subsidiary of the merging domestic entity and the ownership or membership interests of which are issued to the members or owners of the merging domestic entity in the merger.

(3) "Merging domestic entity" means the original domestic entity that is a party to a merger that is intended to create a holding company structure under a plan of merger that satisfies the requirements of this section and whose members or owners are not required to approve the plan of merger under Subsection (b).

(4) "Surviving entity subsidiary" means the surviving entity in a merger of a merging domestic entity and a direct or indirect wholly owned subsidiary of the merging domestic entity, which immediately following the merger is a direct or indirect wholly owned subsidiary of the holding company.

(b) A domestic entity may, without owner or member approval and pursuant to a plan of merger, restructure the ownership or membership structure of that entity to create a holding company structure under this chapter and the provisions of this code under which the entity was formed. The approval of the owners or members of a merging domestic entity that is a party to a merger under a plan of merger that creates a holding company is not required if:

(1) the holding company is a domestic entity of the same organizational form as the merging domestic entity;

(2) approval is not otherwise required by the governing

documents of the merging domestic entity;

(3) the merging domestic entity merges with a direct or indirect wholly owned subsidiary;

(4) after the merger the merging domestic entity or its successor is a direct or indirect wholly owned subsidiary of a holding company;

(5) the merging domestic entity and the direct or indirect wholly owned subsidiary are the only parties to the merger;

(6) each ownership or membership interest of the merging domestic entity that is outstanding preceding the merger is converted in the merger into an ownership or membership interest of the holding company having the same designations, preferences, limitations, and relative rights and corresponding obligations in respect of the ownership or membership interest as the ownership or membership interest held by the owner or member in the merging domestic entity;

(7) except as provided by Subsection (c), the governing documents of the holding company immediately following the merger contain provisions substantively identical to the governing documents of the merging domestic entity immediately preceding the merger;

(8) except as provided by Subsections (c) and (d), the governing documents of the surviving entity subsidiary immediately following the merger contain provisions substantively identical to the governing documents of the merging domestic entity immediately preceding the merger;

(9) the governing persons of the merging domestic entity become or remain the governing persons of the holding company when the merger takes effect;

(10) the owners or members of the merging domestic entity will not recognize gain or loss for United States federal income tax purposes, the United States federal tax classification of the holding company will be the same as that of the merging domestic entity, and the merger will not result in the loss of any tax benefit or attribute of the merging domestic entity, each as determined by the governing authority of the merging domestic entity; and

(11) the governing authority of the merging domestic entity adopts a resolution approving the plan of merger.

(c) Subsections (b)(7) and (8) do not require identical provisions regarding the organizer or organizers, the entity name, the registered office and agent, the initial governing persons, and the initial subscribers of ownership or membership interests and

provisions contained in any amendment to the governing documents as were necessary to effect a change, exchange, reclassification, or cancellation of ownership or membership interests, if the change, exchange, reclassification, or cancellation was in effect preceding the merger.

(d) Notwithstanding Subsection (b)(8):

(1) the governing documents of the surviving entity subsidiary must require that an act or transaction by or involving the surviving entity subsidiary, other than the election or removal of the governing persons of the surviving entity subsidiary, that requires for its approval under this code or the governing documents of the surviving entity subsidiary the approval of the owners or members of the surviving entity subsidiary must, by specific reference to this section, require the approval of the owners or members of the holding company, or any successor by merger, by the same vote as is required by this code and the governing documents of the surviving entity subsidiary;

(2) if the surviving entity subsidiary is not of the same organizational form as the merging domestic entity, the governing documents of the surviving entity subsidiary may differ from the governing documents of the merging domestic entity to the minimum extent necessary to make a change that takes into account the differences between the types of entities, including a change in reference to the types of owners, members, ownership interests, membership interests, governing persons, or governing authority, each as determined by the governing authority of the merging domestic entity;

(3) if the surviving entity subsidiary is not of the same organizational form as the merging domestic entity, the governing documents of the surviving entity subsidiary must require that:

(A) the surviving entity subsidiary obtain the approval of the owners or members of the holding company for any act or transaction by or involving the surviving entity subsidiary, other than the election or removal of the governing persons of the surviving entity subsidiary, that would require the approval of the owners or members of the surviving entity subsidiary if the surviving entity subsidiary were of the same organizational form as the merging domestic entity;

(B) any amendment to the governing documents of the surviving entity subsidiary that would, if adopted by an entity of

the same organizational form as the merging domestic entity, be required to be included in the certificate of formation of the entity also require, by specific reference to this section, the approval of the owners or members of the holding company, or any successor by merger, by the same vote as is required by this code or by the governing documents of the surviving entity subsidiary; and

(C) the business affairs of the surviving entity subsidiary be managed by or under the direction of governing persons who are:

(i) subject to the same fiduciary duties applicable to the governing persons of an entity of the same organizational form as the merging domestic entity subject to this code; and

(ii) liable for the breach of any duties to the same extent as governing persons of that form of entity;

(4) the governing documents of the surviving entity subsidiary may change the classes and series of ownership or membership interests and the number of ownership or membership interests that the surviving entity subsidiary is authorized to issue; and

(5) this subsection or a provision of a surviving entity subsidiary's governing documents required by this subsection may not be construed as requiring the approval of the owners or members of the holding company to elect or remove governing persons of the surviving entity subsidiary.

(e) To the extent the provisions contained in Section 21.606 apply to a merging domestic entity and its owners or members when a merger takes effect under this section, those provisions continue to apply to the holding company and its owners or members immediately after the merger takes effect as though the holding company were the merging domestic entity. All ownership or membership interests of the holding company acquired in the merger, for purposes of Section 21.606, are considered to have been acquired at the time the ownership or membership interest of the merging domestic entity converted in the merger was acquired. Any owner or member who, preceding the merger, was not an affiliated owner or member as described by Section 21.606 does not solely by reason of the merger become an affiliated owner or member of the holding company.

(f) If the name of a holding company immediately following the effectiveness of a merger under this section is the same as the name of the merging domestic entity preceding the merger, the ownership or

membership interests of the holding company into which the ownership or membership interests of the merging domestic entity are converted pursuant to the merger will be represented by the certificates, if any, that previously represented the ownership or membership interests in the merging domestic entity.

(g) This section shall not apply to a merger of a partnership with or into a domestic entity without the approval of the owners or members of the partnership and domestic entity as provided by this code.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 33, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 49, eff. September 1, 2007.

Sec. 10.006. SHORT FORM MERGER. (a) A parent organization that owns at least 90 percent of the outstanding ownership or membership interests of each class and series of each of one or more subsidiary organizations may merge with one or more of the subsidiary organizations as provided by this section if:

(1) at least one of the parties to the merger is a domestic entity and each other party is a domestic entity or another non-code organization organized under the laws of a jurisdiction that permits a merger of the type authorized by this chapter; and

(2) the resulting organization or organizations are the parent organization, one or more existing subsidiary organizations, or one or more new organizations.

(b) No action by any subsidiary organization that is a domestic entity is required to approve the merger.

(c) If the parent organization will not survive the merger, a plan of merger must be adopted by action of the parent organization in the same manner as a plan of merger not governed by this section or Section 10.005.

(d) If the parent organization will survive the merger, the merger is required to be approved only by a resolution adopted by the governing authority of the parent organization.

(e) Sections 10.001(c)-(e), 10.002(c), 10.003, and 10.007-

10.010 apply to a merger approved under Subsection (d), except that the resolution approving the merger should be considered the plan of merger for purposes of those sections.

(f) The resolution approving the merger under Subsection (d) must describe:

(1) the basic terms of the merger;

(2) the organizations that are party to the merger; and

(3) the organizations that survive the merger.

(g) If the parent organization does not own all of the outstanding ownership or membership interests of each class or series of ownership or membership interests of each subsidiary organization that is a party to the merger, the resolution of the parent organization required by Subsection (d) must describe the terms of the merger, including the cash or other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any person or organization or any combination of the ownership or membership interests, obligations, rights, or other securities, to be used, paid, or delivered by the parent organization on surrender of each ownership or membership interest of the subsidiary organizations not owned by the parent organization.

(h) An entity is not disqualified from effecting a merger under any other provision of this chapter because it qualifies for a merger under this section.

(i) This section shall not apply if a subsidiary organization that is a party to the merger is:

(1) a partnership; or

(2) a domestic entity that has in its governing documents the provision required by Section 10.005(d)(1) and of which there are outstanding ownership or membership interests that would be entitled to vote on the merger absent this 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. 34, eff. January 1, 2006.

Sec. 10.007. EFFECTIVENESS OF MERGER. Except as otherwise provided by Subchapter B, Chapter 4, a merger takes effect at the time provided by the plan of merger, except that a merger that

requires a filing under Subchapter D takes effect on the acceptance of the filing of the certificate of merger by the secretary of state or county clerk, as appropriate.

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

Sec. 10.008. EFFECT OF MERGER. (a) When a merger takes effect:

(1) the separate existence of each domestic entity that is a party to the merger, other than a surviving or new domestic entity, ceases;

(2) all rights, title, and interests to all real estate and other property owned by each organization that is a party to the merger is allocated to and vested, subject to any existing liens or other encumbrances on the property, in one or more of the surviving or new organizations as provided in the plan of merger without:

(A) reversion or impairment;

(B) any further act or deed; or

(C) any transfer or assignment having occurred;

(3) all liabilities and obligations of each organization that is a party to the merger are allocated to one or more of the surviving or new organizations in the manner provided by the plan of merger;

(4) each surviving or new domestic organization to which a liability or obligation is allocated under the plan of merger is the primary obligor for the liability or obligation, and, except as otherwise provided by the plan of merger or by law or contract, no other party to the merger, other than a surviving domestic entity or non-code organization liable or otherwise obligated at the time of the merger, and no other new domestic entity or non-code organization created under the plan of merger is liable for the debt or other obligation;

(5) any proceeding pending by or against any domestic entity or by or against any non-code organization that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic entity or entities or the surviving or new non-code organization or non-code organizations to which the liability, obligation, asset, or right associated with that proceeding is allocated to and vested in under the plan of merger may

be substituted in the proceeding;

(6) the governing documents of each surviving domestic entity are amended, restated, or amended and restated to the extent provided by the plan of merger, and a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments of a surviving filing entity shall have the effect stated in Section 3.063;

(7) each new filing entity whose certificate of formation is included in the plan of merger under this chapter, on meeting any additional requirements, if any, of this code for its formation, is formed as a domestic entity under this code as provided by the plan of merger;

(8) the ownership or membership interests of each organization that is a party to the merger and that are to be converted or exchanged, in whole or part, into ownership or membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations, into cash or other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any organization, or into any combination of these, or that are to be canceled or remain outstanding, are converted, exchanged, canceled, or remain outstanding as provided in the plan of merger, and the former owners or members who held ownership or membership interests of each domestic entity that is a party to the merger are entitled only to the rights provided by the plan of merger or, if applicable, any rights to receive the fair value for the ownership interests provided under Subchapter H; and

(9) notwithstanding Subdivision (4), the surviving or new organization named in the plan of merger as primarily obligated to pay the fair value of an ownership or membership interest under Section 10.003(2) is the primary obligor for that payment and all other surviving or new organizations are secondarily liable for that payment.

(b) If the plan of merger does not provide for the allocation and vesting of the right, title, and interest in any particular real estate or other property or for the allocation of any liability or obligation of any party to the merger, the unallocated property is owned in undivided interest by, or the liability or obligation is the joint and several liability and obligation of, each of the surviving and new organizations, pro rata to the total number of surviving and

new organizations resulting from the merger.

(c) If a surviving organization in a merger is not a domestic entity, the surviving organization is considered to have:

(1) appointed the secretary of state in this state as the organization's agent for service of process in a proceeding to enforce any obligation of a domestic entity that is a party to the merger; and

(2) agreed to promptly pay to the dissenting owners or members of each domestic entity that is a party to the merger who have the right of dissent and appraisal under this code the amount, if any, to which they are entitled under this code.

(d) If the surviving organization in a merger is not a domestic entity, the organization shall register to transact business in this state if the entity is required to register for that purpose by another provision of this code.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 35, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 50, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 11, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 8, eff. September 1, 2015.

Sec. 10.009. SPECIAL PROVISIONS APPLYING TO PARTNERSHIP MERGERS. (a) A partner of a domestic partnership that is a party to a merger does not become liable as a result of the merger for the liability or obligation of another person that is a party to the merger unless the partner consents to becoming personally liable by action taken in connection with the specific plan of merger approved by the partner.

(b) A partner of a domestic partnership that is a party to a merger who remains in or enters a partnership is treated as an incoming partner in the partnership when the merger takes effect for purposes of determining the partner's liability for a debt or obligation of the partnership or partnerships that are parties to the

merger or to be created in the merger and in which the partner was not a partner.

(c) If a partnership merges with an organization and, because of the merger, no longer exists, a former partner who becomes an owner or member of the surviving organization may, until the first anniversary of the effective date of the merger, bind the surviving organization to a transaction for which the owner or member no longer has authority to bind the organization if the transaction is one in which the actions by the owner or member as a partner would have bound the partnership before the effective date of the merger, and the other party to the transaction:

(1) does not have actual or constructive notice of the merger;

(2) had done business with the terminated partnership within one year preceding the effective date of the merger; and

(3) reasonably believes that the partner who was previously an owner or member of the partnership that was merged into the surviving organization and is now an owner or member of the surviving organization has the authority to bind the surviving organization to the transaction at the time of the transaction.

(d) If a partnership is formed under a plan of merger, the existence of the partnership as a partnership begins when the merger takes effect, and the persons to be partners become partners at that time.

(e) A partner in a domestic partnership that is a party to the merger but does not survive shall be treated as a partner who withdrew from the nonsurviving domestic partnership as of the effective date of the merger.

(f) The partnership agreement of each domestic partnership that is a party to the merger must contain provisions that authorize the merger provided for in the plan of merger adopted by the partnership.

(g) Each domestic partnership that is a party to the merger must approve the plan of merger in the manner prescribed in its partnership agreement.

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

Sec. 10.010. SPECIAL PROVISIONS APPLYING TO NONPROFIT CORPORATION AND NONPROFIT ASSOCIATION MERGERS. (a) A domestic

nonprofit corporation or nonprofit association may not merge into another entity if the domestic nonprofit corporation or nonprofit association would, because of the merger, lose or impair its charitable status.

(b) One or more domestic or foreign for-profit entities or non-code organizations may merge into one or more domestic nonprofit corporations or nonprofit associations that continue as the surviving entity or entities.

(c) A domestic nonprofit corporation or nonprofit association may not merge with a foreign for-profit entity if the domestic nonprofit corporation or nonprofit association does not continue as the surviving entity.

(d) One or more domestic nonprofit corporations or nonprofit associations and non-code organizations may merge into one or more foreign nonprofit entities that continue as the surviving entity or entities.

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. 4, eff. September 1, 2017.

SUBCHAPTER B. EXCHANGES OF INTERESTS

Sec. 10.051. INTEREST EXCHANGES. (a) For the purpose of acquiring all of the outstanding ownership or membership interests of one or more classes or series of one or more domestic entities, one or more domestic entities or non-code organizations may adopt a plan of exchange.

(b) To make an interest exchange under this section:

(1) the governing authority of each domestic entity the ownership or membership interests of which are to be acquired in the interest exchange must act on a plan of exchange and, if otherwise required by this code, the owners or members of the domestic entity must approve the plan of exchange in the manner provided by this code; and

(2) each acquiring domestic entity must take all action that may otherwise be required by this code and its governing documents to effect the exchange.

(c) A domestic entity subject to dissenters' rights must

provide the notice required by Section 10.355.

(d) If a non-code organization is to acquire ownership or membership interests in the exchange, each non-code organization must take all action that is required under the laws of the organization's jurisdiction of formation and the organization's governing documents to effect the exchange.

(e) If one or more non-code organizations as part of the plan of exchange are to issue ownership or membership interests, the issuance of the ownership or membership interests must be permitted by the laws under which the non-code organizations are incorporated or organized or not inconsistent with those laws.

(f) A plan of exchange may not be effected if any owner or member of a domestic entity that is a party to the interest exchange will, as a result of the interest exchange, become subject to owner liability, without the consent of the owner or member, for the liabilities or obligations of any other person or organization.

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. 9, eff. September 1, 2015.

Sec. 10.052. PLAN OF EXCHANGE: REQUIRED PROVISIONS. (a) A plan of exchange must be in writing and must include:

(1) the name of each domestic entity the ownership or membership interests of which are to be acquired;

(2) the name of each acquiring organization;

(3) if there is more than one acquiring organization, the ownership or membership interests to be acquired by each organization;

(4) the terms and conditions of the exchange; and

(5) the manner and basis, including use of a formula, of exchanging the ownership or membership interests to be acquired for:

(A) ownership or membership interests, obligations, rights to purchase securities, or other securities of one or more of the acquiring organizations that is a party to the plan of exchange;

(B) cash;

(C) other property, including ownership or membership interests, obligations, rights to purchase securities, or other

securities of any other person or entity; or

(D) any combination of those items.

(b) The manner and basis of exchanging an ownership or membership interest of an owner or member that is exchanged in a manner or basis different from any other owner or member having ownership or membership interests of the same class or series must be included in the plan of exchange in the same manner as provided by Subsection (a)(5).

(c) Any of the terms of the plan of exchange may be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the interest exchange is clearly and expressly stated in the plan. In this subsection, "facts" includes the occurrence of any event, including a determination or action by any person.

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. 12, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 10, eff. September 1, 2015.

Sec. 10.053. PLAN OF EXCHANGE: PERMISSIVE PROVISIONS. A plan of exchange may include any other provisions not required by Section 10.052 relating to the interest exchange.

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

Sec. 10.054. EFFECTIVENESS OF EXCHANGE. Except as otherwise provided by Subchapter B, Chapter 4, an interest exchange takes effect at the time provided in the plan of exchange or otherwise agreed to by the parties, except that an interest exchange that requires a filing under Subchapter D takes effect on the acceptance of the filing of the certificate of exchange by the secretary of state or county clerk, as appropriate.

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

Sec. 10.055. GENERAL EFFECT OF INTEREST EXCHANGE. When an interest exchange takes effect:

(1) the ownership or membership interest of each acquired organization is exchanged as provided in the plan of exchange, and the former owners or members whose interests are exchanged under the plan of exchange are entitled only to the rights provided in the plan of exchange or, if applicable, a right to receive the fair value for the ownership interests provided under Subchapter H; and

(2) the acquiring organization has all rights, title, and interests with respect to the ownership or membership interest to be acquired by it subject to the provisions of the plan of exchange.

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. 51, eff. September 1, 2007.

Sec. 10.056. SPECIAL PROVISIONS APPLYING TO PARTNERSHIPS. To effect an interest exchange:

(1) the partnership agreement of each domestic partnership whose partnership interests are to be acquired pursuant to the plan of exchange must authorize the partnership interest exchange adopted by the partnership;

(2) each domestic partnership whose partnership interests are to be acquired under the plan of exchange must approve the plan of exchange in the manner prescribed by its partnership agreement; and

(3) each acquiring domestic partnership must take all actions that may be required by its partnership agreement in order to effect the exchange.

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

SUBCHAPTER C. CONVERSIONS

Sec. 10.101. CONVERSION OF DOMESTIC ENTITIES. (a) A domestic entity may convert into a different type of domestic entity or a non-code organization by adopting a plan of conversion.

(b) To effect a conversion, the converting entity must act on and the owners or members of the domestic entity must approve a plan

of conversion in the manner prescribed by this code for the approval of conversions by the domestic entity or, if not prescribed by this code, in the same manner as prescribed by this code for the adoption and approval of a plan of merger by the domestic entity when the domestic entity does not survive the merger.

(c) A domestic entity subject to dissenters' rights must provide the notice required by Section 10.355.

(d) A conversion may not take effect if the conversion is prohibited by or inconsistent with the laws of the converted entity's jurisdiction of formation, and the formation, incorporation, or organization of the converted entity under the plan of conversion must be effected in compliance with those laws pursuant to the plan of conversion.

(e) At the time a conversion takes effect, each owner or member of the converting entity, other than those who receive payment of their ownership or membership interest under any applicable provisions of this code relating to dissent and appraisal, has, unless otherwise agreed to by that owner or member, an ownership or membership interest in, and is the owner or member of, the converted entity.

(f) A domestic entity may not convert under this section if an owner or member of the domestic entity, as a result of the conversion, becomes subject to owner liability, without the consent of the owner or member, for a liability or other obligation of the converted entity.

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. 52, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 11, eff. September 1, 2015.

Sec. 10.102. CONVERSION OF NON-CODE ORGANIZATIONS. (a) A non-code organization may convert into a domestic entity by adopting a plan of conversion as provided by this section.

(b) To effect a conversion, the non-code organization must take any action that may be required for a conversion under the laws of the organization's jurisdiction of formation and the organization's

governing documents.

(c) The conversion must be permitted by the laws under which the non-code organization is incorporated or organized or by its governing documents, which may not be inconsistent with the laws of the jurisdiction in which the non-code organization is incorporated or organized.

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

Sec. 10.1025. CONVERSION AND CONTINUANCE. (a) A converting entity may elect to continue its existence in its current organizational form and jurisdiction of formation in connection with the entity's:

(1) conversion under Section 10.101 as a domestic entity of one organizational form into a non-United States entity of the same organizational form; or

(2) conversion under Section 10.102 as a non-United States entity of one organizational form into a domestic entity of the same organizational form.

(b) The election permitted by Subsection (a) for the converting entity to continue its existence in its current organizational form and jurisdiction of formation must be:

(1) adopted and approved as part of the plan of conversion for the converting entity as required by Section 10.101(b) or 10.102(b), as applicable; and

(2) permitted by, or not prohibited by and inconsistent with, the laws of the applicable non-United States jurisdiction.

(c) Section 10.156(2) does not apply in connection with the filing of the certificate of conversion if the converting entity is a domestic filing entity that elects to continue its existence in accordance with this section.

(d) Chapter 9 does not apply to a non-United States entity that also exists as a domestic filing entity because of a conversion and election to continue its existence in accordance with this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 15, eff. September 1, 2009.

Sec. 10.103. PLAN OF CONVERSION: REQUIRED PROVISIONS. (a) A

plan of conversion must be in writing and must include:

(1) the name of the converting entity;

(2) the name of the converted entity;

(3) a statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(4) a statement of the type of entity that the converted entity is to be and the converted entity's jurisdiction of formation;

(5) if Sections 10.1025 and 10.109 do not apply, the manner and basis, including use of a formula, of converting the ownership or membership interests of the converting entity into ownership or membership interests of the converted entity;

(6) any certificate of formation required to be filed under this code if the converted entity is a filing entity;

(7) the certificate of formation or similar organizational document of the converted entity if the converted entity is not a filing entity; and

(8) if Sections 10.1025 and 10.109 apply, a statement that the converting entity is electing to continue its existence in its current organizational form and jurisdiction of formation after the conversion takes effect.

(b) An item required by Subsection (a)(6) or (7) may be included in the plan of conversion by an attachment or exhibit to the plan.

(c) Any of the terms of the plan of conversion may be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the conversion is clearly and expressly stated in the plan. In this subsection, "facts" includes the occurrence of any event, including a determination or action by any person.

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. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 12, eff. September 1, 2015.

Sec. 10.104. PLAN OF CONVERSION: PERMISSIVE PROVISIONS. A plan of conversion may include other provisions relating to the conversion that are not inconsistent with law.

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

Sec. 10.105. EFFECTIVENESS OF CONVERSION. Except as otherwise provided by Subchapter B, Chapter 4, a conversion takes effect at the time provided by the plan of conversion, except that a conversion that requires a filing under Subchapter D takes effect on the acceptance of the filing of the certificate of conversion by the filing officer.

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

Sec. 10.106. GENERAL EFFECT OF CONVERSION. When a conversion takes effect:

(1) the converting entity continues to exist without interruption in the organizational form of the converted entity rather than in the organizational form of the converting entity;

(2) all rights, title, and interests to all property owned by the converting entity continues to be owned, subject to any existing liens or other encumbrances on the property, by the converted entity in the new organizational form without:

(A) reversion or impairment;

(B) further act or deed; or

(C) any transfer or assignment having occurred;

(3) all liabilities and obligations of the converting entity continue to be liabilities and obligations of the converted entity in the new organizational form without impairment or diminution because of the conversion;

(4) the rights of creditors or other parties with respect to or against the previous owners or members of the converting entity in their capacities as owners or members in existence when the conversion takes effect continue to exist as to those liabilities and obligations and may be enforced by the creditors and obligees as if a conversion had not occurred;

(5) a proceeding pending by or against the converting entity or by or against any of the converting entity's owners or

members in their capacities as owners or members may be continued by or against the converted entity in the new organizational form and by or against the previous owners or members without a need for substituting a party;

(6) the ownership or membership interests of the converting entity that are to be converted into ownership or membership interests of the converted entity as provided in the plan of conversion are converted as provided by the plan, and if the converting entity is a domestic entity, the former owners or members of the domestic entity are entitled only to the rights provided in the plan of conversion or a right of dissent and appraisal under this code;

(7) if, after the conversion takes effect, an owner or member of the converted entity as an owner or member is liable for the liabilities or obligations of the converted entity, the owner or member is liable for the liabilities and obligations of the converting entity that existed before the conversion took effect only to the extent that the owner or member:

(A) agrees in writing to be liable for the liabilities or obligations;

(B) was liable, before the conversion took effect, for the liabilities or obligations; or

(C) by becoming an owner or member of the converted entity, becomes liable under other applicable law for the existing liabilities and obligations of the converted entity; and

(8) if the converted entity is a non-code organization, the converted entity is considered to have:

(A) appointed the secretary of state in this state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting owners or members of the converting domestic entity; and

(B) agreed that the converted entity will promptly pay the dissenting owners or members of the converting domestic entity the amount, if any, to which they are entitled under this code.

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

Sec. 10.107. SPECIAL PROVISIONS APPLYING TO PARTNERSHIP CONVERSIONS. (a) If a partnership is formed under a plan of

conversion under this code, the existence of the partnership as a partnership begins when the conversion takes effect, and the owners or members designated to become the partners under the plan of conversion become the partners at that time.

(b) The partnership agreement of a domestic partnership that is converting must contain provisions that authorize the conversion provided for in the plan of conversion adopted by the partnership.

(c) A domestic partnership that is converting must approve the plan of conversion in the manner provided in its partnership agreement.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 36, eff. January 1, 2006.

Sec. 10.108. SPECIAL PROVISIONS APPLYING TO NONPROFIT CORPORATION AND NONPROFIT ASSOCIATION CONVERSIONS. A domestic nonprofit corporation or nonprofit association may not convert into a for-profit entity.

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. 5, eff. September 1, 2017.

Sec. 10.109. SPECIAL PROVISIONS APPLYING TO CONVERSION AND CONTINUANCE. (a) This section applies only to a converting entity that elects to continue its existence in accordance with Section 10.1025.

(b) When the conversion of a converting entity to which this section applies takes effect:

(1) notwithstanding Section 10.106(1), the converting entity continues to exist both in its current organizational form and jurisdiction of formation and, as the converted entity, in the same organizational form in the new jurisdiction of formation;

(2) the converting entity and the converted entity, for purposes of the laws of this state, constitute a single entity formed, incorporated, created, or otherwise having come into being,

as applicable, and existing under the laws of this state and the laws of the applicable non-United States jurisdiction, so long as the entity continues to exist as a domestic entity under the laws of this state following the conversion;

(3) if the converting entity is a domestic entity, this code and the other laws of this state apply to the converted entity to the same extent as the laws applied to the entity before the conversion;

(4) if the converting entity is a non-United States entity, the laws of the applicable non-United States jurisdiction apply to the converted entity to the same extent as the laws applied to the entity before the conversion;

(5) notwithstanding Section 10.106(2), all rights, title, and interests in all property owned by the converting entity continue to be owned by the converted entity, subject to any existing liens or other encumbrances on the property, in both the organizational form of the converting entity and the organizational form of the converted entity without:

(A) reversion or impairment;

(B) further act or deed; or

(C) the occurrence of a transfer or assignment; and

(6) notwithstanding Section 10.106(3), all liabilities and obligations of the converting entity remain the liabilities and obligations of the converted entity in both the organizational form of the converting entity and the organizational form of the converted entity without impairment or diminution because of the conversion.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 17, eff. September 1, 2009.

SUBCHAPTER D. CERTIFICATE OF MERGER, EXCHANGE, OR CONVERSION

Sec. 10.151. CERTIFICATE OF MERGER AND EXCHANGE. (a) After approval of a plan of merger or a plan of exchange as provided by this code, a certificate of merger, which may also include an exchange, or a certificate of exchange, as applicable, must be filed for a merger or interest exchange to become effective if:

(1) for a merger:

(A) any domestic entity that is a party to the merger is a filing entity; or

(B) any domestic entity to be created under the plan of merger is a filing entity; or

(2) for an exchange, an ownership or membership interest in any filing entity is to be acquired in the interest exchange.

(b) If a certificate of merger or exchange is required to be filed in connection with an interest exchange or a merger, other than a merger under Section 10.006, the certificate must be signed on behalf of each domestic entity and non-code organization that is a party to the merger or exchange by an officer or other authorized representative and must include:

(1) the plan of merger or exchange or a statement certifying:

(A) the name and organizational form of each domestic entity or non-code organization that is a party to the merger or exchange;

(B) for a merger, the name and organizational form of each domestic entity or non-code organization that is to be created by the plan of merger;

(C) the name of the jurisdiction in which each domestic entity or non-code organization named under Paragraph (A) or (B) is incorporated or organized;

(D) for a merger, the amendments or changes to the certificate of formation of any filing entity that is a party to the merger, or a statement that amendments or changes are being made to the certificate of formation of any filing entity that is a party to the merger as set forth in a restated certificate of formation containing amendments or a certificate of amendment attached to the certificate of merger under Subsection (d);

(E) for a merger, if no amendments or changes to the certificate of formation of a filing entity are made under Paragraph (D), a statement to that effect, which may also refer to a restated certificate of formation attached to the certificate of merger under Subsection (d);

(F) for a merger, that the certificate of formation of each new filing entity to be created under the plan of merger is being filed with the certificate of merger;

(G) that a plan of merger or exchange is on file at the principal place of business of each surviving, acquiring, or new domestic entity or non-code organization, and the address of each principal place of business; and

(H) that a copy of the plan of merger or exchange will be on written request furnished without cost by each surviving, acquiring, or new domestic entity or non-code organization to any owner or member of any domestic entity that is a party to or created by the plan of merger or exchange and, for a merger with multiple surviving domestic entities or non-code organizations, to any creditor or obligee of the parties to the merger at the time of the merger if a liability or obligation is then outstanding;

(2) if approval of the owners or members of any domestic entity that was a party to the plan of merger or exchange is not required by this code, a statement to that effect; and

(3) a statement that the plan of merger or exchange has been approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger or exchange and by the governing documents of those organizations.

(c) A certificate of merger may also constitute a certificate of exchange if it contains the information required for a certificate of exchange.

(d) As provided by Subsections (b)(1)(D) and (E), a certificate of merger filed under this section may include as an attachment a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments for any filing entity that is a party to the merger.

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. 53, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 13, eff. September 1, 2015.

Sec. 10.152. CERTIFICATE OF MERGER: SHORT FORM MERGER. (a) The certificate of merger for a merger under Section 10.006 is required to be signed only by an officer or other authorized representative of the parent organization described by that section.

(b) Except as provided by Subsection (c), the certificate of merger must include:

(1) the name of the parent organization, the name of each subsidiary organization that is a party to the merger, and the

jurisdiction of formation of each named organization;

(2) the number of outstanding ownership interests of each class or series of each subsidiary organization and the number and percentage of ownership interests of each class or series owned by the parent organization;

(3) a copy of the resolution of merger adopted by the governing authority of the parent organization authorizing the merger and the date of the adoption of the resolution;

(4) a statement that the resolution has been approved as required by the laws of the jurisdiction of formation of the parent organization and by its governing documents; and

(5) if any surviving organization is not a domestic entity, the address, including street number, if any, of its registered or principal office in the organization's jurisdiction of formation.

(c) If a plan of merger is required to be adopted by action of the parent organization under Section 10.006(c), the certificate of merger must include the information required by Section 10.151(b).

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

Sec. 10.153. FILING OF CERTIFICATE OF MERGER OR EXCHANGE. (a) If a certificate of merger or exchange is required to be filed, the certificate of merger or exchange must be filed in accordance with Chapter 4. The certificate of formation of each filing entity that is to be formed under a plan of merger must also be filed with the certificate of merger in accordance with Chapter 4. Except as provided by this section, the certificate must be filed with the secretary of state.

(b) If a domestic real estate investment trust is a party to the merger or if an ownership interest in a domestic real estate investment trust is to be acquired in the interest exchange, the certificate of merger or exchange must be filed in accordance with Chapter 4 with the county clerk of the county in which the domestic real estate investment trust's principal place of business in this state is located.

(c) If a domestic real estate investment trust is to be created under the plan of merger, the certificate of formation of the domestic real estate investment trust must also be filed with the certificate of merger in accordance with Chapter 4 with the county

clerk of the county in which the domestic real estate investment trust's principal place of business in this state is located.

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

Sec. 10.154. CERTIFICATE OF CONVERSION. (a) After approval of a plan of conversion as provided by this code, a certificate of conversion must be filed for the conversion to become effective if:

(1) any domestic entity that is a party to the conversion is a filing entity; or

(2) any domestic entity to be created under the plan of conversion is a filing entity.

(b) If a certificate of conversion is required to be filed in connection with a conversion, the certificate must be signed on behalf of the converting entity and must include:

(1) the plan of conversion or a statement certifying the following:

(A) the name, organizational form, and jurisdiction of formation of the converting entity;

(B) the name, organizational form, and jurisdiction of formation of the converted entity;

(C) that a plan of conversion is on file at the principal place of business of the converting entity, and the address of the principal place of business;

(D) that a plan of conversion will be on file after the conversion at the principal place of business of the converted entity, and the address of the principal place of business; and

(E) that a copy of the plan of conversion will be on written request furnished without cost by the converting entity before the conversion or by the converted entity after the conversion to any owner or member of the converting entity or the converted entity; and

(2) a statement that the plan of conversion has been approved as required by the laws of the jurisdiction of formation and the governing documents of the converting entity.

(c) In addition to complying with the requirements of Subsections (a) and (b), if Sections 10.1025 and 10.109 apply to the conversion, the certificate of conversion required by this section must:

(1) be titled "Certificate of Conversion and Continuance"; and

(2) include a statement certifying that the converting entity is electing to continue its existence in its current organizational form and jurisdiction 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. 54, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 18, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 14, eff. September 1, 2015.

Sec. 10.155. FILING OF CERTIFICATE OF CONVERSION. (a) If a certificate of conversion is required to be filed, the certificate of conversion must be filed in accordance with Chapter 4. If the converted entity is a filing entity, the certificate of formation of the filing entity must also be filed with the certificate of conversion in accordance with Chapter 4. Except as provided by this section, the certificate must be filed with the secretary of state.

(b) If the converting entity is a domestic real estate investment trust, the certificate of conversion must be filed in accordance with Chapter 4 with the county clerk of the county in which the converting entity's principal place of business in this state is located.

(c) If the converted entity is a domestic real estate investment trust, the certificate of formation of the converted entity must also be filed with the certificate of conversion in accordance with Chapter 4 with the county clerk of the county in which the converted entity's principal place of business in this state is located.

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

Sec. 10.156. ACCEPTANCE OF CERTIFICATE FOR FILING. The filing officer may not accept a certificate of merger, exchange, or conversion for filing if:

(1) the filing officer finds that the certificate of merger, exchange, or conversion does not conform to law; or

(2) the required franchise taxes have not been paid or the certificate of merger, exchange, or conversion does not provide that one or more of the surviving, new, or acquiring organizations or the converted entity is liable for the payment of the required franchise taxes.

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

SUBCHAPTER E. ABANDONMENT OF MERGER, EXCHANGE, OR CONVERSION

Sec. 10.201. ABANDONMENT OF PLAN OF MERGER, EXCHANGE, OR CONVERSION. After a merger, interest exchange, or conversion is approved as provided by this code, and at any time before the merger, interest exchange, or conversion takes effect, the plan of merger, interest exchange, or conversion may be abandoned, subject to any contractual rights, by any of the domestic entities that are a party to the merger, interest exchange, or conversion, without action by the owners or members, under the procedures provided by the plan of merger, exchange, or conversion or, if no abandonment procedures are provided, in the manner determined by the governing authority.

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

Sec. 10.202. ABANDONMENT AFTER FILING. If a certificate of merger, exchange, or conversion has been filed, the merger, interest exchange, or conversion may be abandoned before its effectiveness in accordance with Sections 4.057 and 10.201.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 37, eff. January 1, 2006.

Sec. 10.203. ABANDONMENT IF NO FILING REQUIRED. (a) If no filing is required by this chapter for the abandonment of a merger, interest exchange, or conversion, the merger, interest exchange, or conversion is abandoned:

(1) as provided by the procedures in the plan of merger, exchange, or conversion; or

(2) if no abandonment procedures are provided by the plan, in the manner determined by the governing authority of the abandoning entity.

(b) A filing of a certificate of abandonment under Section 4.057 is not required for the abandonment of a merger, interest exchange, or conversion if no filing is required under Subchapter D to make the merger, interest exchange, or conversion effective.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 38, eff. January 1, 2006.

SUBCHAPTER F. PROPERTY TRANSFERS AND DISPOSITIONS

Sec. 10.251. GENERAL POWER OF DOMESTIC ENTITY TO SELL, LEASE, OR CONVEY PROPERTY. (a) Subject to any approval required by this code or the governing documents of the domestic entity, a domestic entity may transfer and convey by sale, lease, assignment, or another method an interest in property of the entity, including real property. The transfer and conveyance may:

(1) be made with or without the goodwill of the entity;

(2) be made on any terms and conditions and for any consideration, which may consist wholly or partly of money or other property, including an ownership interest in a domestic entity or non-code organization; and

(3) be evidenced by a deed, assignment, or other instrument of transfer or conveyance, with or without the seal of the entity.

(b) Subject to any approval required by this code or the governing documents of the domestic entity, a domestic entity may grant a pledge, mortgage, deed of trust, or trust indenture with respect to an interest in property of the entity, including real property, with or without the seal of the entity.

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

Sec. 10.252. NO APPROVAL REQUIRED FOR CERTAIN DISPOSITIONS OF PROPERTY. Except as otherwise provided by this code, the governing documents of the domestic entity, or specific limitations established by the governing authority, a sale, lease, assignment, conveyance,

pledge, mortgage, deed of trust, trust indenture, or other transfer of an interest in real property or other property made by a domestic entity does not require the approval of the members or owners of the entity.

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

Sec. 10.253. RECORDING INSTRUMENT CONVEYING REAL PROPERTY OF DOMESTIC ENTITY. (a) A deed or other instrument executed by a domestic entity that conveys an interest in real property may be recorded in the same manner and with the same effect as other similar instruments if the instrument is signed and acknowledged by:

(1) an officer, authorized attorney-in-fact, or other authorized person of the entity; or

(2) in the case of a partnership or limited liability company, a governing person of the entity.

(b) A deed or other instrument executed by a domestic entity that conveys an interest in real property and that is recorded and signed by an officer, authorized attorney-in-fact, or other authorized person of the entity constitutes prima facie evidence that the sale or conveyance that is the subject of the instrument was authorized under this code and the governing documents of the entity.

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

Sec. 10.254. DISPOSITION OF PROPERTY NOT A MERGER OR CONVERSION; LIABILITY. (a) A disposition of all or part of the property of a domestic entity, regardless of whether the disposition requires the approval of the entity's owners or members, is not a merger or conversion for any purpose.

(b) Except as otherwise expressly provided by another statute, a person acquiring property described by this section may not be held responsible or liable for a liability or obligation of the transferring domestic entity that is not expressly assumed by the person.

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. 55, eff.

September 1, 2007.

SUBCHAPTER G. BANKRUPTCY REORGANIZATION

Sec. 10.301. REORGANIZATION UNDER BANKRUPTCY AND SIMILAR LAWS. (a) A trustee appointed for a domestic entity that is being reorganized under a federal statute, the designated officers of a domestic entity being reorganized under a federal statute, or any other individual designated by a court having jurisdiction of a domestic entity being reorganized under a federal statute to act on behalf of the domestic entity may, without action by or notice to the domestic entity's governing authority, owners, or members, in order to carry out a plan of reorganization ordered by a court under the federal statute:

(1) amend or restate the domestic entity's certificate of formation if the certificate of formation after amendment or restatement contains only provisions required or permitted to be contained in the certificate of formation;

(2) merge or exchange an interest with one or more domestic entities or non-code organizations under a plan of merger or exchange having any provision required or permitted by Sections 10.002, 10.003, 10.004, 10.005, 10.052, and 10.053;

(3) change the location of the domestic entity's registered office, change its registered agent, and remove or appoint any agent to receive service of process;

(4) alter, amend, or repeal the domestic entity's governing documents other than filing instruments;

(5) constitute or reconstitute and classify or reclassify the domestic entity's governing authority and name, constitute, or appoint managerial officials in place of or in addition to all or some of the managerial officials;

(6) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the domestic entity's property and assets;

(7) authorize and fix the terms, manner, and conditions of the issuance of bonds, debentures, or other obligations, regardless of whether the obligation is convertible into ownership interests of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for any ownership interests of any class;

(8) wind up and terminate the entity's existence; or

(9) effect a conversion.

(b) An action taken under Subsection (a)(4) or (5) takes effect on entry of the order approving the plan of reorganization or on another effective date as may be specified, without further action of the domestic entity, as and to the extent provided by the plan of reorganization or the order approving the plan of reorganization.

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

Sec. 10.302. SIGNING OF DOCUMENTS. A trustee appointed for a domestic entity being reorganized under a federal statute, the designated officers of a domestic entity being reorganized under a federal statute, or any other individual designated by a court having jurisdiction of a domestic entity being reorganized under a federal statute may sign on behalf of a domestic entity that is being reorganized:

(1) a certificate of amendment or restated certificate of formation containing:

(A) the name of the domestic entity;

(B) each amendment or the restatement approved by the court;

(C) the date of the court's order approving the certificate of amendment or the restatement;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute;

(2) a certificate of merger or exchange containing:

(A) the name of the domestic entity;

(B) the part of the plan of reorganization that contains the plan of merger or exchange approved by the court, which must include the information required by Section 10.151(b) or 10.152, as applicable, but which is not required to include the resolution of the governing authority referred to in Section 10.152;

(C) the date of the court's order approving the plan of merger or consolidation;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order or decree was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute;

(3) a certificate of termination containing:

(A) the name of the domestic entity;

(B) the information required by Sections 11.101(c)(1)-(4);

(C) the date of the court's order approving the certificate of termination;

(D) a statement that the obligations of the domestic entity, including debts and liabilities, have been paid or discharged as provided by the plan of reorganization and the remaining property and assets of the domestic entity have been distributed as provided by the plan of reorganization;

(E) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order or decree was entered; and

(F) a statement that the court had jurisdiction of the case under a federal statute;

(4) a statement of change of registered office or registered agent, or both, containing:

(A) the name of the domestic entity;

(B) the information required by Section 5.202(b), as applicable, but not the information included in the statement referred to in Section 5.202(b)(6);

(C) the date of the court's order approving the statement of change of registered office or registered agent, or both;

(D) the name of the court having jurisdiction, file name, and case number of the reorganization case in which the order or decree was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute; or

(5) a certificate of conversion containing:

(A) the name of the domestic entity;

(B) the part of the plan of reorganization that contains the plan of conversion approved by the court, which must include the information required by Section 10.103;

(C) the date of the court's order or decree approving the plan of conversion;

(D) the name of the court having jurisdiction, file

name, and case number of the reorganization case in which the order was entered; and

(E) a statement that the court had jurisdiction of the case under a federal statute.

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

Sec. 10.303. REORGANIZATION WITH OTHER ENTITIES. If a domestic entity or non-code organization that is not being reorganized under a federal statute merges or exchanges an interest with a domestic entity that is being reorganized under a plan of reorganization under a federal statute:

(1) Subchapters A, B, D, E, and H apply to the domestic entity or non-code organization that is not being reorganized to the same extent those subchapters would apply if the domestic entity or non-code organization were merging or engaging in an interest exchange with a domestic entity that is not being reorganized, except as otherwise provided by the plan of reorganization ordered by a court under the federal statute;

(2) Subchapter H applies to a subsidiary organization that is not being reorganized to the same extent that subchapter would apply if the subsidiary organization were merging with a parent organization that is not being reorganized;

(3) on the receipt of all required authorization for all action required by this code for each domestic entity that is a party to the plan of merger or exchange that is not being reorganized and all action by each domestic entity or non-code organization that is a party to the plan of merger or exchange required by the laws of the entity's or organization's jurisdiction of formation and governing documents, a certificate of merger or exchange shall be signed by each domestic entity or non-code organization that is a party to the merger or exchange other than the domestic entity that is being reorganized as provided by Section 10.151 and on behalf of the domestic entity that is being reorganized by the persons specified in Section 10.302;

(4) the certificate of merger or exchange must contain the information required by Section 10.302(2);

(5) the certificate of merger or exchange must be filed in the manner provided by Section 10.153; and

(6) on the acceptance for filing of the certificate of merger or exchange in accordance with Subchapter D, the merger or interest exchange, when effective, has the same effect as if it had been adopted by unanimous action of the governing authority and owners or members of the domestic entity being reorganized, and the effectiveness of the merger or interest exchange is determined as provided by Section 10.007 or 10.054.

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

Sec. 10.304. RIGHT OF DISSENT AND APPRAISAL EXCLUDED. An owner or member of a domestic entity subject to dissenters' rights being reorganized under a federal statute does not have a right to dissent and appraisal under this code except as provided by the plan of reorganization.

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

Sec. 10.305. AFTER FINAL DECREE. This subchapter does not apply after the entry of a final decree in a reorganization case under a federal statute even though the court that renders the decree may retain jurisdiction of the case for limited purposes unrelated to consummation of the plan of reorganization.

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

Sec. 10.306. CHAPTER CUMULATIVE OF OTHER CHANGES. This chapter does not preclude other changes in a domestic entity or its ownership or membership interests or securities by a plan of reorganization ordered by a court under a federal statute.

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

SUBCHAPTER H. RIGHTS OF DISSENTING OWNERS

Sec. 10.351. APPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to a fundamental business transaction of a domestic entity if, immediately before the effective date of the fundamental

business transaction, all of the ownership interests of the entity otherwise entitled to rights to dissent and appraisal under this code are held by one owner or only by the owners who approved the fundamental business transaction.

(b) This subchapter applies only to a "domestic entity subject to dissenters' rights," as defined in Section 1.002. That term includes a domestic for-profit corporation, professional corporation, professional association, and real estate investment trust. Except as provided in Subsection (c), that term does not include a partnership or limited liability company.

(c) The governing documents of a partnership or a limited liability company may provide that its owners are entitled to the rights of dissent and appraisal provided by this subchapter, subject to any modification to those rights as provided by the entity's governing documents.

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. 56, eff. September 1, 2007.

Sec. 10.352. DEFINITIONS. In this subchapter:

(1) "Dissenting owner" means an owner of an ownership interest in a domestic entity subject to dissenters' rights who:

(A) provides notice under Section 10.356; and

(B) complies with the requirements for perfecting that owner's right to dissent under this subchapter.

(2) "Responsible organization" means:

(A) the organization responsible for:

(i) the provision of notices under this subchapter; and

(ii) the primary obligation of paying the fair value for an ownership interest held by a dissenting owner;

(B) with respect to a merger or conversion:

(i) for matters occurring before the merger or conversion, the organization that is merging or converting; and

(ii) for matters occurring after the merger or conversion, the surviving or new organization that is primarily obligated for the payment of the fair value of the dissenting owner's

ownership interest in the merger or conversion;

(C) with respect to an interest exchange, the organization the ownership interests of which are being acquired in the interest exchange;

(D) with respect to the sale of all or substantially all of the assets of an organization, the organization the assets of which are to be transferred by sale or in another manner; and

(E) with respect to an amendment to a domestic for-profit corporation's certificate of formation described by Section 10.354(a)(1)(G), the corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 2, eff. September 1, 2017.

Sec. 10.353. FORM AND VALIDITY OF NOTICE. (a) Notice required under this subchapter:

(1) must be in writing; and

(2) may be mailed, hand-delivered, or delivered by courier or electronic transmission.

(b) Failure to provide notice as required by this subchapter does not invalidate any action taken.

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

Sec. 10.354. RIGHTS OF DISSENT AND APPRAISAL. (a) Subject to Subsection (b), an owner of an ownership interest in a domestic entity subject to dissenters' rights is entitled to:

(1) dissent from:

(A) a plan of merger to which the domestic entity is a party if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of merger;

(B) a sale of all or substantially all of the assets of the domestic entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the sale;

(C) a plan of exchange in which the ownership interest

of the owner is to be acquired;

(D) a plan of conversion in which the domestic entity is the converting entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of conversion;

(E) a merger effected under Section 10.006 in which:

(i) the owner is entitled to vote on the merger; or

(ii) the ownership interest of the owner is converted or exchanged;

(F) a merger effected under Section 21.459(c) in which the shares of the shareholders are converted or exchanged; or

(G) if the owner owns shares that were entitled to vote on the amendment, an amendment to a domestic for-profit corporation's certificate of formation to:

(i) add the provisions required by Section 3.007(e) to elect to be a public benefit corporation; or

(ii) delete the provisions required by Section 3.007(e), which in effect cancels the corporation's election to be a public benefit corporation; and

(2) subject to compliance with the procedures set forth in this subchapter, obtain the fair value of that ownership interest through an appraisal.

(b) Notwithstanding Subsection (a), subject to Subsection (c), an owner may not dissent from a plan of merger or conversion in which there is a single surviving or new domestic entity or non-code organization, or from a plan of exchange, if:

(1) the ownership interest, or a depository receipt in respect of the ownership interest, held by the owner:

(A) in the case of a plan of merger, conversion, or exchange, other than a plan of merger pursuant to Section 21.459(c), is part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that, on the record date set for purposes of determining which owners are entitled to vote on the plan of merger, conversion, or exchange, as appropriate, are either:

(i) listed on a national securities exchange; or

(ii) held of record by at least 2,000 owners; or

(B) in the case of a plan of merger pursuant to Section 21.459(c), is part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that,

immediately before the date the board of directors of the corporation that issued the ownership interest held, directly or indirectly, by the owner approves the plan of merger, are either:

(i) listed on a national securities exchange; or

(ii) held of record by at least 2,000 owners;

(2) the owner is not required by the terms of the plan of merger, conversion, or exchange, as appropriate, to accept for the owner's ownership interest any consideration that is different from the consideration to be provided to any other holder of an ownership interest of the same class or series as the ownership interest held by the owner, other than cash instead of fractional shares or interests the owner would otherwise be entitled to receive; and

(3) the owner is not required by the terms of the plan of merger, conversion, or exchange, as appropriate, to accept for the owner's ownership interest any consideration other than:

(A) ownership interests, or depository receipts in respect of ownership interests, of a domestic entity or non-code organization of the same general organizational type that, immediately after the effective date of the merger, conversion, or exchange, as appropriate, will be part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that are:

(i) listed on a national securities exchange or authorized for listing on the exchange on official notice of issuance; or

(ii) held of record by at least 2,000 owners;

(B) cash instead of fractional ownership interests, or fractional depository receipts in respect of ownership interests, the owner would otherwise be entitled to receive; or

(C) any combination of the ownership interests, or fractional depository receipts in respect of ownership interests, and cash described by Paragraphs (A) and (B).

(c) Subsection (b) shall not apply to a domestic entity that is a subsidiary with respect to a merger under Section 10.006.

(d) Notwithstanding Subsection (a), an owner of an ownership interest in a domestic for-profit corporation subject to dissenters' rights may not dissent from an amendment to the corporation's certificate of formation described by Subsection (a)(1)(G) if the shares held by the owner are part of a class or series of shares, on the record date set for purposes of determining which owners are

entitled to vote on the amendment:

(1) listed on a national securities exchange; or

(2) held of record by at least 2,000 owners.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 39, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 14, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 15, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 2, eff. September 1, 2019.

Sec. 10.355. NOTICE OF RIGHT OF DISSENT AND APPRAISAL. (a) A domestic entity subject to dissenters' rights that takes or proposes to take an action regarding which an owner has a right to dissent and obtain an appraisal under Section 10.354 shall notify each affected owner of the owner's rights under that section if:

(1) the action or proposed action is submitted to a vote of the owners at a meeting; or

(2) approval of the action or proposed action is obtained by written consent of the owners instead of being submitted to a vote of the owners.

(b) If a parent organization effects a merger under Section 10.006 and a subsidiary organization that is a party to the merger is a domestic entity subject to dissenters' rights, the responsible organization shall notify the owners of that subsidiary organization who have a right to dissent to the merger under Section 10.354 of their rights under this subchapter not later than the 10th day after the effective date of the merger. The notice must also include a copy of the certificate of merger and a statement that the merger has become effective.

(b-1) If a corporation effects a merger under Section 21.459(c), the responsible organization shall notify the shareholders of that corporation who have a right to dissent to the plan of merger

under Section 10.354 of their rights under this subchapter not later than the 10th day after the effective date of the merger. Notice required under this subsection that is given to shareholders before the effective date of the merger may, but is not required to, contain a statement of the merger's effective date. If the notice is not given to the shareholders until on or after the effective date of the merger, the notice must contain a statement of the merger's effective date.

(c) A notice required to be provided under Subsection (a), (b), or (b-1) must:

(1) be accompanied by a copy of this subchapter; and

(2) advise the owner of the location of the responsible organization's principal executive offices to which a notice required under Section 10.356(b)(1) or a demand under Section 10.356(b)(3), or both, may be provided.

(d) In addition to the requirements prescribed by Subsection (c), a notice required to be provided:

(1) under Subsection (a)(1) must accompany the notice of the meeting to consider the action;

(2) under Subsection (a)(2) must be provided to:

(A) each owner who consents in writing to the action before the owner delivers the written consent; and

(B) each owner who is entitled to vote on the action and does not consent in writing to the action before the 11th day after the date the action takes effect; and

(3) under Subsection (b-1) must be provided:

(A) if given before the consummation of the offer described by Section 21.459(c)(2), to each shareholder to whom that offer is made; or

(B) if given after the consummation of the offer described by Section 21.459(c)(2), to each shareholder who did not tender the shareholder's shares in that offer.

(e) Not later than the 10th day after the date an action described by Subsection (a)(1) takes effect, the responsible organization shall give notice that the action has been effected to each owner who voted against the action and sent notice under Section 10.356(b)(1).

(f) If the notice given under Subsection (b-1) did not include a statement of the effective date of the merger, the responsible organization shall, not later than the 10th day after the effective

date, give a second notice to the shareholders notifying them of the merger's effective date. If the second notice is given after the later of the date on which the offer described by Section 21.459(c)(2) is consummated or the 20th day after the date notice under Subsection (b-1) is given, then the second notice is required to be given to only those shareholders who have made a demand under Section 10.356(b)(3).

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. 15, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 16, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 3, eff. September 1, 2019.

Sec. 10.356. PROCEDURE FOR DISSENT BY OWNERS AS TO ACTIONS; PERFECTION OF RIGHT OF DISSENT AND APPRAISAL. (a) An owner of an ownership interest of a domestic entity subject to dissenters' rights who has the right to dissent and appraisal from any of the actions referred to in Section 10.354 may exercise that right to dissent and appraisal only by complying with the procedures specified in this subchapter. An owner's right of dissent and appraisal under Section 10.354 may be exercised by an owner only with respect to an ownership interest that is not voted in favor of the action.

(b) To perfect the owner's rights of dissent and appraisal under Section 10.354, an owner:

(1) if the proposed action is to be submitted to a vote of the owners at a meeting, must give to the domestic entity a written notice of objection to the action that:

(A) is addressed to the entity's president and secretary;

(B) states that the owner's right to dissent will be exercised if the action takes effect;

(C) provides an address to which notice of effectiveness of the action should be delivered or mailed; and

(D) is delivered to the entity's principal executive offices before the meeting;

(2) with respect to the ownership interest for which the rights of dissent and appraisal are sought:

(A) must vote against the action if the owner is entitled to vote on the action and the action is approved at a meeting of the owners; and

(B) may not consent to the action if the action is approved by written consent; and

(3) must give to the responsible organization a demand in writing that:

(A) is addressed to the president and secretary of the responsible organization;

(B) demands payment of the fair value of the ownership interests for which the rights of dissent and appraisal are sought;

(C) provides to the responsible organization an address to which a notice relating to the dissent and appraisal procedures under this subchapter may be sent;

(D) states the number and class of the ownership interests of the domestic entity owned by the owner and the fair value of the ownership interests as estimated by the owner; and

(E) is delivered to the responsible organization at its principal executive offices at the following time:

(i) not later than the 20th day after the date the responsible organization sends to the owner the notice required by Section 10.355(e) that the action has taken effect, if the action was approved by a vote of the owners at a meeting;

(ii) not later than the 20th day after the date the responsible organization sends to the owner the notice required by Section 10.355(d)(2) that the action has taken effect, if the action was approved by the written consent of the owners;

(iii) not later than the 20th day after the date the responsible organization sends to the owner a notice that the merger was effected, if the action is a merger effected under Section 10.006; or

(iv) not later than the 20th day after the date the responsible organization gives to the shareholder the notice required by Section 10.355(b-1) or the date of the consummation of the offer described by Section 21.459(c)(2), whichever is later, if the action is a merger effected under Section 21.459(c).

(c) An owner who does not make a demand within the period required by Subsection (b)(3)(E) or, if Subsection (b)(1) is

applicable, does not give the notice of objection before the meeting of the owners is bound by the action and is not entitled to exercise the rights of dissent and appraisal under Section 10.354.

(d) Not later than the 20th day after the date an owner makes a demand under Subsection (b)(3), the owner must submit to the responsible organization any certificates representing the ownership interest to which the demand relates for purposes of making a notation on the certificates that a demand for the payment of the fair value of an ownership interest has been made under this section. An owner's failure to submit the certificates within the required period has the effect of terminating, at the option of the responsible organization, the owner's rights to dissent and appraisal under Section 10.354 unless a court, for good cause shown, directs otherwise.

(e) If a domestic entity and responsible organization satisfy the requirements of this subchapter relating to the rights of owners of ownership interests in the entity to dissent to an action and seek appraisal of those ownership interests, an owner of an ownership interest who fails to perfect that owner's right of dissent in accordance with this subchapter may not bring suit to recover the value of the ownership interest or money damages relating to the action.

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. 16, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 17, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 4, eff. September 1, 2019.

Sec. 10.357. WITHDRAWAL OF DEMAND FOR FAIR VALUE OF OWNERSHIP INTEREST. (a) An owner may withdraw a demand for the payment of the fair value of an ownership interest made under Section 10.356 before:

(1) payment for the ownership interest has been made under Sections 10.358 and 10.361; or

(2) a petition has been filed under Section 10.361.

(b) Unless the responsible organization consents to the

withdrawal of the demand, an owner may not withdraw a demand for payment under Subsection (a) after either of the events specified in Subsections (a)(1) and (2).

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

Sec. 10.358. RESPONSE BY ORGANIZATION TO NOTICE OF DISSENT AND DEMAND FOR FAIR VALUE BY DISSENTING OWNER. (a) Not later than the 20th day after the date a responsible organization receives a demand for payment made by a dissenting owner in accordance with Section 10.356(b)(3), the responsible organization shall respond to the dissenting owner in writing by:

(1) accepting the amount claimed in the demand as the fair value of the ownership interests specified in the notice; or

(2) rejecting the demand and including in the response the requirements prescribed by Subsection (c).

(b) If the responsible organization accepts the amount claimed in the demand, the responsible organization shall pay the amount not later than the 90th day after the date the action that is the subject of the demand was effected if the owner delivers to the responsible organization:

(1) endorsed certificates representing the ownership interests if the ownership interests are certificated; or

(2) signed assignments of the ownership interests if the ownership interests are uncertificated.

(c) If the responsible organization rejects the amount claimed in the demand, the responsible organization shall provide to the owner:

(1) an estimate by the responsible organization of the fair value of the ownership interests; and

(2) an offer to pay the amount of the estimate provided under Subdivision (1).

(d) If the dissenting owner decides to accept the offer made by the responsible organization under Subsection (c)(2), the owner must provide to the responsible organization notice of the acceptance of the offer not later than the 90th day after the date the action that is the subject of the demand took effect.

(e) If, not later than the 90th day after the date the action that is the subject of the demand took effect, a dissenting owner

accepts an offer made by a responsible organization under Subsection (c)(2) or a dissenting owner and a responsible organization reach an agreement on the fair value of the ownership interests, the responsible organization shall pay the agreed amount not later than the 120th day after the date the action that is the subject of the demand took effect, if the dissenting owner delivers to the responsible organization:

(1) endorsed certificates representing the ownership interests if the ownership interests are certificated; or

(2) signed assignments of the ownership interests if the ownership interests are uncertificated.

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. 17, eff. September 1, 2011.

Sec. 10.359. RECORD OF DEMAND FOR FAIR VALUE OF OWNERSHIP INTEREST. (a) A responsible organization shall note in the organization's ownership interest records maintained under Section 3.151 the receipt of a demand for payment from any dissenting owner made under Section 10.356.

(b) If an ownership interest that is the subject of a demand for payment made under Section 10.356 is transferred, a new certificate representing that ownership interest must contain:

(1) a reference to the demand; and

(2) the name of the original dissenting owner of the ownership interest.

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

Sec. 10.360. RIGHTS OF TRANSFEREE OF CERTAIN OWNERSHIP INTEREST. A transferee of an ownership interest that is the subject of a demand for payment made under Section 10.356 does not acquire additional rights with respect to the responsible organization following the transfer. The transferee has only the rights the original dissenting owner had with respect to the responsible organization after making the demand.

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

Sec. 10.361. PROCEEDING TO DETERMINE FAIR VALUE OF OWNERSHIP INTEREST AND OWNERS ENTITLED TO PAYMENT; APPOINTMENT OF APPRAISERS. (a) If a responsible organization rejects the amount demanded by a dissenting owner under Section 10.358 and the dissenting owner and responsible organization are unable to reach an agreement relating to the fair value of the ownership interests within the period prescribed by Section 10.358(d), the dissenting owner or responsible organization may file a petition requesting a finding and determination of the fair value of the owner's ownership interests in a court in:

(1) the county in which the organization's principal office is located in this state; or

(2) the county in which the organization's registered office is located in this state, if the organization does not have a business office in this state.

(b) A petition described by Subsection (a) must be filed not later than the 60th day after the expiration of the period required by Section 10.358(d).

(c) On the filing of a petition by an owner under Subsection (a), service of a copy of the petition shall be made to the responsible organization. Not later than the 10th day after the date a responsible organization receives service under this subsection, the responsible organization shall file with the clerk of the court in which the petition was filed a list containing the names and addresses of each owner of the organization who has demanded payment for ownership interests under Section 10.356 and with whom agreement as to the value of the ownership interests has not been reached with the responsible organization. If the responsible organization files a petition under Subsection (a), the petition must be accompanied by this list.

(d) The clerk of the court in which a petition is filed under this section shall provide by registered mail notice of the time and place set for the hearing to:

(1) the responsible organization; and

(2) each owner named on the list described by Subsection (c) at the address shown for the owner on the list.

(e) The court shall:

(1) determine which owners have:

(A) perfected their rights by complying with this subchapter; and

(B) become subsequently entitled to receive payment for the fair value of their ownership interests; and

(2) appoint one or more qualified appraisers to determine the fair value of the ownership interests of the owners described by Subdivision (1).

(f) The court shall approve the form of a notice required to be provided under this section. The judgment of the court is final and binding on the responsible organization, any other organization obligated to make payment under this subchapter for an ownership interest, and each owner who is notified as required by this section.

(g) The beneficial owner of an ownership interest subject to dissenters' rights held in a voting trust or by a nominee on the beneficial owner's behalf may file a petition described by Subsection (a) if no agreement between the dissenting owner of the ownership interest and the responsible organization has been reached within the period prescribed by Section 10.358(d). When the beneficial owner files a petition described by Subsection (a):

(1) the beneficial owner shall at that time be considered, for purposes of this subchapter, the owner, the dissenting owner, and the holder of the ownership interest subject to the petition; and

(2) the dissenting owner who demanded payment under Section 10.356 has no further rights regarding the ownership interest subject to the petition.

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. 19, eff. September 1, 2009.

Sec. 10.362. COMPUTATION AND DETERMINATION OF FAIR VALUE OF OWNERSHIP INTEREST. (a) For purposes of this subchapter, the fair value of an ownership interest of a domestic entity subject to dissenters' rights is the value of the ownership interest on the date preceding the date of the action that is the subject of the appraisal. Any appreciation or depreciation in the value of the ownership interest occurring in anticipation of the proposed action

or as a result of the action must be specifically excluded from the computation of the fair value of the ownership interest.

(b) In computing the fair value of an ownership interest under this subchapter, consideration must be given to the value of the domestic entity as a going concern without including in the computation of value any control premium, any minority ownership discount, or any discount for lack of marketability. If the domestic entity has different classes or series of ownership interests, the relative rights and preferences of and limitations placed on the class or series of ownership interests, other than relative voting rights, held by the dissenting owner must be taken into account in the computation of value.

(c) The determination of the fair value of an ownership interest made for purposes of this subchapter may not be used for purposes of making a determination of the fair value of that ownership interest for another purpose or of the fair value of another ownership interest, including for purposes of determining any minority or liquidity discount that might apply to a sale of an ownership interest.

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. 57, eff. September 1, 2007.

Sec. 10.363. POWERS AND DUTIES OF APPRAISER; APPRAISAL PROCEDURES. (a) An appraiser appointed under Section 10.361 has the power and authority that:

(1) is granted by the court in the order appointing the appraiser; and

(2) may be conferred by a court to a master in chancery as provided by Rule 171, Texas Rules of Civil Procedure.

(b) The appraiser shall:

(1) determine the fair value of an ownership interest of an owner adjudged by the court to be entitled to payment for the ownership interest; and

(2) file with the court a report of that determination.

(c) The appraiser is entitled to examine the books and records of a responsible organization and may conduct investigations as the

appraiser considers appropriate. A dissenting owner or responsible organization may submit to an appraiser evidence or other information relevant to the determination of the fair value of the ownership interest required by Subsection (b)(1).

(d) The clerk of the court appointing the appraiser shall provide notice of the filing of the report under Subsection (b) to each dissenting owner named in the list filed under Section 10.361 and the responsible organization.

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

Sec. 10.364. OBJECTION TO APPRAISAL; HEARING. (a) A dissenting owner or responsible organization may object, based on the law or the facts, to all or part of an appraisal report containing the fair value of an ownership interest determined under Section 10.363(b).

(b) If an objection to a report is raised under Subsection (a), the court shall hold a hearing to determine the fair value of the ownership interest that is the subject of the report. After the hearing, the court shall require the responsible organization to pay to the holders of the ownership interest the amount of the determined value with interest, accruing from the 91st day after the date the applicable action for which the owner elected to dissent was effected until the date of the judgment.

(c) Interest under Subsection (b) accrues at the same rate as is provided for the accrual of prejudgment interest in civil cases.

(d) The responsible organization shall:

(1) immediately pay the amount of the judgment to a holder of an uncertificated ownership interest; and

(2) pay the amount of the judgment to a holder of a certificated ownership interest immediately after the certificate holder surrenders to the responsible organization an endorsed certificate representing the ownership interest.

(e) On payment of the judgment, the dissenting owner does not have an interest in the:

(1) ownership interest for which the payment is made; or

(2) responsible organization with respect to that ownership interest.

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

Sec. 10.365. COURT COSTS; COMPENSATION FOR APPRAISER. (a) An appraiser appointed under Section 10.361 is entitled to a reasonable fee payable from court costs.

(b) All court costs shall be allocated between the responsible organization and the dissenting owners in the manner that the court determines to be fair and equitable.

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

Sec. 10.366. STATUS OF OWNERSHIP INTEREST HELD OR FORMERLY HELD BY DISSENTING OWNER. (a) An ownership interest of an organization acquired by a responsible organization under this subchapter:

(1) in the case of a merger, conversion, or interest exchange, shall be held or disposed of as provided in the plan of merger, conversion, or interest exchange; and

(2) in any other case, may be held or disposed of by the responsible organization in the same manner as other ownership interests acquired by the organization or held in its treasury.

(b) An owner who has demanded payment for the owner's ownership interest under Section 10.356 is not entitled to vote or exercise any other rights of an owner with respect to the ownership interest except the right to:

(1) receive payment for the ownership interest under this subchapter; and

(2) bring an appropriate action to obtain relief on the ground that the action to which the demand relates would be or was fraudulent.

(c) An ownership interest for which payment has been demanded under Section 10.356 may not be considered outstanding for purposes of any subsequent vote or action.

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. 20, eff. September 1, 2009.

Sec. 10.367. RIGHTS OF OWNERS FOLLOWING TERMINATION OF RIGHT OF

DISSENT. (a) The rights of a dissenting owner terminate if:

(1) the owner withdraws the demand under Section 10.356;

(2) the owner's right of dissent is terminated under Section 10.356;

(3) a petition is not filed within the period required by Section 10.361; or

(4) after a hearing held under Section 10.361, the court adjudges that the owner is not entitled to elect to dissent from an action under this subchapter.

(b) On termination of the right of dissent under this section:

(1) the dissenting owner and all persons claiming a right under the owner are conclusively presumed to have approved and ratified the action to which the owner dissented and are bound by that action;

(2) the owner's right to be paid the fair value of the owner's ownership interests ceases;

(3) the owner's status as an owner of those ownership interests is restored, as if the owner's demand for payment of the fair value of the ownership interests had not been made under Section 10.356, if the owner's ownership interests were not canceled, converted, or exchanged as a result of the action or a subsequent action;

(4) the dissenting owner is entitled to receive the same cash, property, rights, and other consideration received by owners of the same class and series of ownership interests held by the owner, as if the owner's demand for payment of the fair value of the ownership interests had not been made under Section 10.356, if the owner's ownership interests were canceled, converted, or exchanged as a result of the action or a subsequent action;

(5) any action of the domestic entity taken after the date of the demand for payment by the owner under Section 10.356 will not be considered ineffective or invalid because of the restoration of the owner's ownership interests or the other rights or entitlements of the owner under this subsection; and

(6) the dissenting owner is entitled to receive dividends or other distributions made after the date of the owner's payment demand under Section 10.356, to owners of the same class and series of ownership interests held by the owner as if the demand had not been made, subject to any change in or adjustment to the ownership interests because of an action taken by the domestic entity after the

date of the demand.

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. 58, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 21, eff. September 1, 2009.

Sec. 10.368. EXCLUSIVITY OF REMEDY OF DISSENT AND APPRAISAL. In the absence of fraud in the transaction, any right of an owner of an ownership interest to dissent from an action and obtain the fair value of the ownership interest under this subchapter is the exclusive remedy for recovery of:

(1) the value of the ownership interest; or

(2) money damages to the owner with respect to the action.

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. 59, eff. September 1, 2007.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 10.901. CREDITORS; ANTITRUST. This code does not affect, nullify, or repeal the antitrust laws or abridge any right or rights of any creditor under existing laws.

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

Sec. 10.902. NONEXCLUSIVITY. This chapter does not limit the power of a domestic entity or non-code organization to acquire all or part of the ownership or membership interests of one or more classes or series of a domestic entity through a voluntary exchange or otherwise.

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

CHAPTER 11. WINDING UP AND TERMINATION OF DOMESTIC ENTITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "Claim" means a right to payment, damages, or property, whether liquidated or unliquidated, accrued or contingent, matured or unmatured.

(2) "Event requiring a winding up" or "event requiring winding up" means an event specified by Section 11.051.

(3) "Existing claim" with respect to an entity means:

(A) a claim that existed before the entity's termination and is not barred by limitations; or

(B) a contractual obligation incurred after termination.

(4) "Terminated entity" means a domestic entity the existence of which has been:

(A) terminated in a manner authorized or required by this code, unless the entity has been reinstated in the manner provided by this code; or

(B) forfeited pursuant to the Tax Code, unless the forfeiture has been set aside.

(5) "Terminated filing entity" means a terminated entity that is a filing entity.

(6) "Voluntary decision to wind up" means the determination to wind up a domestic entity made by the domestic entity or the owners, members, or governing authority of the domestic entity in the manner specified by:

(A) the title of this code governing the domestic entity; or

(B) if applicable to the domestic entity, Section 11.057(a) or (b) or 11.058(a).

(7) "Voluntary winding up" means winding up as a result of a voluntary decision to wind up.

(8) "Winding up" means the process of winding up the business and affairs of a domestic entity as a result of the occurrence of an event requiring winding up.

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. 60, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 18, eff. September 1, 2015.

SUBCHAPTER B. WINDING UP OF DOMESTIC ENTITY

Sec. 11.051. EVENT REQUIRING WINDING UP OF DOMESTIC ENTITY. Winding up of a domestic entity is required on:

(1) the expiration of any period of duration specified in the domestic entity's governing documents;

(2) a voluntary decision to wind up the domestic entity;

(3) an event specified in the governing documents of the domestic entity requiring the winding up, dissolution, or termination of the domestic entity, other than an event specified in another subdivision of this section;

(4) an event specified in other sections of this code requiring the winding up or termination of the domestic entity, other than an event specified in another subdivision of this section; or

(5) a decree by a court requiring the winding up, dissolution, or termination of the domestic entity, rendered under this code or other law.

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. 61, eff. September 1, 2007.

Sec. 11.052. WINDING UP PROCEDURES. (a) Except as provided by the title of this code governing the domestic entity, on the occurrence of an event requiring winding up of a domestic entity, unless the event requiring winding up is revoked under Section 11.151 or canceled under Section 11.152, the owners, members, managerial officials, or other persons specified in the title of this code governing the domestic entity shall, as soon as reasonably practicable, wind up the business and affairs of the domestic entity. The domestic entity shall:

(1) cease to carry on its business, except to the extent necessary to wind up its business;

(2) if the domestic entity is not a general partnership, send a written notice of the winding up to each known claimant

against the domestic entity;

(3) collect and sell its property to the extent the property is not to be distributed in kind to the domestic entity's owners or members; and

(4) perform any other act required to wind up its business and affairs.

(b) During the winding up process, the domestic entity may prosecute or defend a civil, criminal, or administrative action.

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. 3, eff. September 1, 2013.

Sec. 11.053. PROPERTY APPLIED TO DISCHARGE LIABILITIES AND OBLIGATIONS. (a) Except as provided by Subsection (b) and the title of this code governing the domestic entity, a domestic entity in the process of winding up shall apply and distribute its property to discharge, or make adequate provision for the discharge of, all of the domestic entity's liabilities and obligations.

(b) Except as provided by the title of this code governing the domestic entity, if the property of a domestic entity is not sufficient to discharge all of the domestic entity's liabilities and obligations, the domestic entity shall:

(1) apply its property, to the extent possible, to the just and equitable discharge of its liabilities and obligations, including liabilities and obligations owed to owners or members, other than for distributions; or

(2) make adequate provision for the application of the property described by Subdivision (1).

(c) Except as provided by the title of this code governing the domestic entity, after a domestic entity has discharged, or made adequate provision for the discharge of, all of its liabilities and obligations, the domestic entity shall distribute the remainder of its property, in cash or in kind, to the domestic entity's owners according to their respective rights and interests.

(d) A domestic entity may continue its business wholly or partly, including delaying the disposition of property of the domestic entity, for the limited period necessary to avoid

unreasonable loss of the entity's property or business.

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

Sec. 11.054. COURT SUPERVISION OF WINDING UP PROCESS. Subject to the other provisions of this code, on application of a domestic entity or an owner or member of a domestic entity, a court may:

(1) supervise the winding up of the domestic entity;

(2) appoint a person to carry out the winding up of the domestic entity; and

(3) make any other order, direction, or inquiry that the circumstances may require.

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

Sec. 11.055. COURT ACTION OR PROCEEDING DURING WINDING UP. During the winding up process, a domestic entity may continue prosecuting or defending a court action or proceeding by or against the domestic entity.

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

Sec. 11.056. SUPPLEMENTAL PROVISIONS FOR LIMITED LIABILITY COMPANY. (a) The termination of the continued membership of the last remaining member of a domestic limited liability company is an event requiring winding up under Section 11.051(4) unless, not later than the 90th day after the date of the termination, the legal representative or successor of the last remaining member agrees:

(1) to continue the company; and

(2) to become a member of the company effective as of the date of the termination or to designate another person who agrees to become a member of the company effective as of the date of the termination.

(b) The event requiring winding up specified in Subsection (a) may be canceled in accordance with Sections 11.152(a) and 101.552(c).

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. 62, eff. September 1, 2007.

Sec. 11.057. SUPPLEMENTAL PROVISIONS FOR DOMESTIC GENERAL PARTNERSHIP. (a) Unless otherwise provided by the partnership agreement, a voluntary decision to wind up a domestic general partnership, other than a partnership described by Subsection (b), requires the express will of a majority-in-interest of the partners who have not assigned their interests. A voluntary decision to wind up a partnership under this subsection may be revoked in accordance with Sections 11.151 and 152.709(e).

(b) Unless otherwise provided by the partnership agreement, a voluntary decision to wind up a domestic general partnership that has a period of duration or is for a particular undertaking, or in which the partnership agreement provides for the winding up of the partnership on occurrence of a specified event, requires the express will of all of the partners. A voluntary decision to wind up a partnership under this subsection may be revoked in accordance with Sections 11.151 and 152.709(d).

(c) An event requiring the winding up of a domestic general partnership under Section 11.051(4) includes the following:

(1) in a general partnership for a particular undertaking, the completion of the undertaking, unless otherwise provided by the partnership agreement;

(2) an event that makes it illegal for all or substantially all of the partnership business to be continued, but a cure of illegality before the 91st day after the date of notice to the general partnership of the event is effective retroactively to the date of the event for purposes of this subsection; and

(3) the sale of all or substantially all of the property of the general partnership outside the ordinary course of business, unless otherwise provided by the partnership agreement.

(d) In addition to the events specified by Subsection (c), unless otherwise provided by the partnership agreement, if a domestic general partnership does not have a period of duration, is not for a particular undertaking, and is not required under its partnership agreement to wind up the partnership on occurrence of a specified event, an event requiring winding up of the partnership under Section 11.051(4) occurs on the 60th day after the date on

which the partnership receives notice of a request for winding up the partnership from a partner, other than a partner who has agreed not to withdraw, or a later date as specified by the request, unless a majority-in-interest of the partners deny the request for winding up or agree to continue the partnership. The continuation of the business by the other partners or by those who habitually acted in the business before the request, other than the partner making the request, without any settlement or liquidation of the partnership business, is prima facie evidence of an agreement to continue the partnership under this subsection.

(e) An event requiring winding up specified in Subsection (c)(1), (c)(3), or (d) may be canceled in accordance with Sections 11.152 and 152.709.

(f) "Majority-in-interest" means, with respect to all or a specified group of partners, partners who own more than 50 percent of the current percentage or other interest in the profits of the partnership that is owned by all of the partners or by the partners in the specified group, as appropriate.

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. 63, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 18, eff. September 1, 2011.

Sec. 11.058. SUPPLEMENTAL PROVISION FOR LIMITED PARTNERSHIP. (a) A voluntary decision to wind up a domestic limited partnership requires the written consent of all partners in the limited partnership unless otherwise provided by the partnership agreement. The voluntary decision to wind up may be revoked in accordance with Sections 11.151 and 153.501(d).

(b) An event of withdrawal of a general partner of a domestic limited partnership is an event requiring winding up under Section 11.051(4) unless otherwise provided by the partnership agreement. The event requiring winding up specified in this subsection may be canceled in accordance with Sections 11.152(a) and 153.501(b).

(c) An event requiring winding up of a limited partnership under Section 11.051(4) includes when there are no limited partners

in the limited partnership. The event requiring winding up specified in this subsection may be canceled in accordance with Sections 11.152(a) and 153.501(e).

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. 64, eff. September 1, 2007.

Sec. 11.059. SUPPLEMENTAL PROVISIONS FOR CORPORATIONS. For purposes of Section 11.051(3), the event requiring the winding up, dissolution, or termination of a domestic corporation must be specified in:

(1) the certificate of formation of the corporation; or

(2) a bylaw of the corporation adopted by the owners or members of the corporation in the same manner as an amendment to the certificate of formation of the corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 65, eff. September 1, 2007.

SUBCHAPTER C. TERMINATION OF DOMESTIC ENTITY

Sec. 11.101. CERTIFICATE OF TERMINATION FOR FILING ENTITY. (a) On completion of the winding up process under Subchapter B, a filing entity must file a certificate of termination in accordance with Chapter 4.

(b) A certificate from the comptroller that all taxes administered by the comptroller under Title 2, Tax Code, have been paid must be filed with the certificate of termination if the filing entity is a taxable entity under Chapter 171, Tax Code, other than a nonprofit corporation.

(c) The certificate of termination must contain:

(1) the name of the filing entity;

(2) the name and address of each of the filing entity's governing persons;

(3) the entity's file number assigned by the secretary of state, unless the entity is a real estate investment trust;

(4) the nature of the event requiring winding up;

(5) a statement that the filing entity has complied with the provisions of this code governing its winding up; and

(6) any other information required by this code to be included in the certificate of termination for the filing entity.

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. 22, eff. September 1, 2009.

Sec. 11.102. EFFECTIVENESS OF TERMINATION OF FILING ENTITY. Except as otherwise provided by this chapter, the existence of a filing entity terminates on the filing of a certificate of termination with the filing officer.

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

Sec. 11.103. EFFECTIVENESS OF TERMINATION OF NONFILING ENTITY. Except as otherwise provided by this chapter, the existence of a nonfiling entity terminates on the completion of the winding up of its business and affairs. Notice of the termination must be provided by the nonfiling entity in the manner provided in the governing documents of the nonfiling entity if notice of termination is required under the governing documents.

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

Sec. 11.104. ACTION BY SECRETARY OF STATE. The secretary of state shall remove from its active records a domestic filing entity whose period of duration specified in its certificate of formation has expired when the secretary of state determines that:

(1) the entity has failed to file a certificate of termination in accordance with Section 11.101; and

(2) the entity has failed to file an amendment to extend its period of duration in accordance with Section 11.152.

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. 66, eff. September 1, 2007.

Sec. 11.105. SUPPLEMENTAL INFORMATION REQUIRED BY CERTIFICATE OF TERMINATION OF NONPROFIT CORPORATION. (a) In addition to the information required by Section 11.101, the certificate of termination filed by a nonprofit corporation that has completed its winding up process must contain a statement that:

(1) any property of the nonprofit corporation has been transferred, conveyed, applied, or distributed in accordance with this chapter and Chapter 22; and

(2) there is no suit pending against the nonprofit corporation or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the nonprofit corporation in a pending suit.

(b) In addition to the statements required by Subsection (a), if the nonprofit corporation received and held property permitted to be used only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but the nonprofit corporation did not hold the property on a condition requiring return, transfer, or conveyance because of the winding up and termination, the certificate of termination must include a statement that distribution of that property has been effected in accordance with a plan of distribution adopted in compliance with this code for the distribution of that property.

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

SUBCHAPTER D. REVOCATION AND CONTINUATION

Sec. 11.151. REVOCATION OF VOLUNTARY WINDING UP. (a) Before the termination of the existence of a domestic entity takes effect, the domestic entity may revoke a voluntary decision to wind up the entity by approval of the revocation in the manner specified in the title of this code governing the entity.

(b) A domestic entity may continue its business following the revocation of a voluntary decision to wind up under Subsection (a).

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

Sec. 11.152. CONTINUATION OF BUSINESS WITHOUT WINDING UP. (a) Subject to Subsections (c) and (d), a domestic entity to which an event requiring the winding up of the entity occurs as specified by Section 11.051(3) or (4) may cancel the event requiring winding up in the manner specified in the title of this code governing the domestic entity not later than the first anniversary of the date of the event requiring winding up or an earlier period prescribed by the title of this code governing the domestic entity.

(b) A domestic entity whose specified period of duration has expired may cancel that event requiring winding up by amending its governing documents in the manner provided by this code, not later than the third anniversary of the date the period expired or an earlier date prescribed by the title of this code governing the domestic entity, to extend its period of duration. The expiration of its period of duration does not by itself create a vested right on the part of an owner, member, or creditor of the entity to prevent the extension of that period. An act undertaken or a contract entered into by the domestic entity during a period in which the entity could have extended its period of duration as provided by this subsection is not invalidated by the expiration of that period, regardless of whether the entity has taken any action to extend its period of duration.

(c) A domestic entity may not cancel an event requiring winding up specified in Section 11.051(3) and continue its business if the action is prohibited by the entity's governing documents or the title of this code governing the entity.

(d) A domestic entity may cancel an event requiring winding up specified in Section 11.051(4) and continue its business only if the action:

(1) is not prohibited by the entity's governing documents; and

(2) is expressly authorized by the title of this code governing the entity.

(e) On cancellation of an event requiring winding up under this section, the domestic entity may continue its business.

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. 67, eff. September 1, 2007.

Sec. 11.153. COURT REVOCATION OF FRAUDULENT TERMINATION. Notwithstanding any provision of this code to the contrary, a court may order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud. In an action under this section, any limitation period provided by law is tolled in accordance with the discovery rule. The secretary of state shall take any action necessary to implement an order under this section.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 40, eff. January 1, 2006.

SUBCHAPTER E. REINSTATEMENT OF TERMINATED ENTITY

Sec. 11.201. CONDITIONS FOR REINSTATEMENT. (a) A terminated entity may be reinstated under this subchapter if:

(1) the termination was by mistake or inadvertent;

(2) the termination occurred without the approval of the entity's governing persons when their approval is required by the title of this code governing the terminated entity;

(3) the process of winding up before termination had not been completed by the entity; or

(4) the legal existence of the entity is necessary to:

(A) convey or assign property;

(B) settle or release a claim or liability;

(C) take an action; or

(D) sign an instrument or agreement.

(b) A terminated entity may not be reinstated under this section if the termination occurred as a result of:

(1) an order of a court or the secretary of state;

(2) an event requiring winding up that is specified in the title of this code governing the terminated entity, if that title prohibits reinstatement; or

(3) forfeiture under the Tax Code.

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

Sec. 11.202. PROCEDURES FOR REINSTATEMENT. (a) To the extent applicable, a terminated entity, to be reinstated, must complete the requirements of this section not later than the third anniversary of the date the termination of the terminated entity's existence took effect.

(b) The owners, members, governing persons, or other persons must approve the reinstatement of the domestic entity in the manner provided by the title of this code governing the domestic entity.

(c) After approval of the reinstatement of a filing entity that was terminated, and not later than the third anniversary of the date of the filing of the entity's certificate of termination, the filing entity shall file a certificate of reinstatement in accordance with Chapter 4.

(d) A certificate of reinstatement filed under Subsection (c) must contain:

(1) the name of the filing entity;

(2) the filing number the filing officer assigned to the entity;

(3) the effective date of the entity's termination;

(4) a statement that the reinstatement of the filing entity has been approved in the manner required by this code; and

(5) the name of the entity's registered agent and the address of the entity's registered office.

(e) A tax clearance letter from the comptroller stating that the filing entity has satisfied all franchise tax liabilities and may be reinstated must be filed with the certificate of reinstatement if the filing entity is a taxable entity under Chapter 171, Tax Code, other than a nonprofit 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. 23, eff. September 1, 2009.

Text of section as amended by Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 7

For text of section as amended by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 6, see other Sec. 11.203.

Sec. 11.203. USE OF DISTINGUISHABLE NAME REQUIRED. If the

secretary of state determines that a filing entity's name contained in a certificate of reinstatement filed under Section 11.202 does not comply with Chapter 5, the secretary of state may not accept for filing the certificate of reinstatement unless the filing entity contemporaneously amends its certificate of formation to change its name to a name that complies with Chapter 5.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 7, eff. June 1, 2018.

Text of section as amended by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 6

For text of section as amended by Acts 2017, 85th Leg., R.S., Ch. 503 (H.B. 2856), Sec. 7, see other Sec. 11.203.

Sec. 11.203. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED NAME. If the secretary of state determines that a filing entity's name contained in a certificate of reinstatement filed under Section 11.202 is the same as, deceptively similar to, or similar to a name of a filing entity or foreign entity on file as provided by or reserved or registered under this code, the secretary of state may not accept for filing the certificate of reinstatement unless the filing entity contemporaneously amends its certificate of formation to change its name or obtains written consent for the use of the similar name. Sections 4.007 and 4.008 apply to a written consent for the use of a similar name under this section to the same extent those sections apply to filing instruments.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 6, eff. September 1, 2017.

Sec. 11.204. EFFECTIVENESS OF REINSTATEMENT OF NONFILING ENTITY. The reinstatement of a terminated nonfiling entity takes effect on the approval required by Section 11.202(b).

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

Sec. 11.205. EFFECTIVENESS OF REINSTATEMENT OF FILING ENTITY. The reinstatement of a terminated filing entity that previously filed a certificate of termination takes effect on the filing of the entity's certificate of reinstatement.

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

Sec. 11.206. EFFECT OF REINSTATEMENT. When the reinstatement of a terminated entity takes effect:

(1) the existence of the terminated entity is considered to have continued without interruption from the date of termination; and

(2) the terminated entity may carry on its business as if the termination of its existence had not occurred.

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

SUBCHAPTER F. INVOLUNTARY TERMINATION OF FILING ENTITY BY SECRETARY OF STATE

Sec. 11.251. TERMINATION OF FILING ENTITY BY SECRETARY OF STATE. (a) If it appears to the secretary of state that, with respect to a filing entity, a circumstance described by Subsection (b) exists, the secretary of state may notify the entity of the circumstance by regular or certified mail addressed to the entity at the entity's registered office or principal place of business as shown on the records of the secretary of state.

(b) The secretary of state may terminate a filing entity's existence if the secretary finds that:

(1) the entity has failed to, and, before the 91st day after the date notice was mailed has not corrected the entity's failure to:

(A) file a report within the period required by law or pay a fee or penalty prescribed by law when due and payable; or

(B) maintain a registered agent or registered office in this state as required by law; or

(2) the entity has failed to, and, before the 16th day

after the date notice was mailed has not corrected the entity's failure to, pay a fee required in connection with the filing of its certificate of formation, or payment of the fee was dishonored when presented by the state for payment.

(c) This subchapter shall not apply to real estate investment trusts.

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. 68, eff. September 1, 2007.

Sec. 11.252. CERTIFICATE OF TERMINATION. (a) If termination of a filing entity's existence is required, the secretary of state shall:

(1) issue a certificate of termination; and

(2) deliver a certificate of termination by regular or certified mail to the filing entity at its registered office or principal place of business.

(b) The certificate of termination must state:

(1) that the filing entity has been involuntarily terminated; and

(2) the date and cause of the termination.

(c) Except as otherwise provided by this chapter, the existence of the filing entity is terminated on the issuance of the certificate of termination by the secretary of state.

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

Sec. 11.253. REINSTATEMENT BY SECRETARY OF STATE AFTER INVOLUNTARY TERMINATION. (a) The secretary of state shall reinstate a filing entity that has been involuntarily terminated under this subchapter if the entity files a certificate of reinstatement in accordance with Chapter 4 and:

(1) the entity has corrected the circumstances that led to the involuntary termination and any other circumstances that may exist of the types described by Section 11.251(b), including the payment of fees, interest, or penalties; or

(2) the secretary of state finds that the circumstances

that led to the involuntary termination did not exist at the time of termination.

(b) A certificate of reinstatement filed under Subsection (a) must contain:

(1) the name of the filing entity;

(2) the filing number assigned by the filing officer to the entity;

(3) the effective date of the involuntary termination;

(4) a statement that the circumstances giving rise to the involuntary termination have been corrected; and

(5) the name of the entity's registered agent and the address of the entity's registered office.

(c) A certificate of reinstatement must be accompanied by:

(1) each amendment to the entity's certificate of formation that is required by intervening events, including circumstances requiring an amendment to the filing entity's name as described in Section 11.203; and

(2) a tax clearance letter from the comptroller stating that the filing entity has satisfied all franchise tax liabilities and may be reinstated, if the filing entity is a taxable entity under Chapter 171, Tax Code, other than a nonprofit corporation.

(d) If a filing entity is reinstated before the third anniversary of the date of its involuntary termination, the entity is considered to have continued in existence without interruption from the date of termination. The reinstatement shall have no effect on any issue of personal liability of the governing persons, officers, or agents of the filing entity during the period between termination and reinstatement.

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. 24, eff. September 1, 2009.

Sec. 11.254. REINSTATEMENT OF CERTIFICATE OF FORMATION FOLLOWING TAX FORFEITURE. A filing entity whose certificate of formation has been forfeited under the provisions of the Tax Code must follow the procedures in the Tax Code to reinstate its certificate of formation.

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

SUBCHAPTER G. JUDICIAL WINDING UP AND TERMINATION

Sec. 11.301. INVOLUNTARY WINDING UP AND TERMINATION OF FILING ENTITY BY COURT ACTION. (a) A court may enter a decree requiring winding up of a filing entity's business and termination of the filing entity's existence if, as the result of an action brought under Section 11.303, the court finds that one or more of the following problems exist:

(1) the filing entity or its organizers did not comply with a condition precedent to its formation;

(2) the certificate of formation of the filing entity or any amendment to the certificate of formation was fraudulently filed;

(3) a misrepresentation of a material matter has been made in an application, report, affidavit, or other document submitted by the filing entity under this code;

(4) the filing entity has continued to transact business beyond the scope of the purpose of the filing entity as expressed in its certificate of formation; or

(5) public interest requires winding up and termination of the filing entity because:

(A) the filing entity has been convicted of a felony or a high managerial agent of the filing entity has been convicted of a felony committed in the conduct of the filing entity's affairs;

(B) the filing entity or high managerial agent has engaged in a persistent course of felonious conduct; and

(C) termination is necessary to prevent future felonious conduct of the same character.

(b) Sections 11.302-11.307 do not apply to Subsection (a)(5).

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

Sec. 11.302. NOTIFICATION OF CAUSE BY SECRETARY OF STATE. (a) The secretary of state shall provide to the attorney general:

(1) the name of a filing entity that has given cause under Section 11.301 for involuntary winding up of the entity's business and termination of the entity's existence; and

(2) the facts relating to the cause for the winding up and

termination.

(b) When notice is provided under Subsection (a), the secretary of state shall notify the filing entity of the circumstances by writing sent to the entity at its registered office in this state. The notice must state that the secretary of state has given notice under Subsection (a) and the grounds for the notification. The secretary of state must record the date a notice required by this subsection is sent.

(c) A court shall accept a certificate issued by the secretary of state as to the facts relating to the cause for the winding up and termination and the sending of a notice under Subsection (b) as prima facie evidence of the facts stated in the certificate and the sending of the notice.

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

Sec. 11.303. FILING OF ACTION BY ATTORNEY GENERAL. The attorney general shall file an action against a filing entity in the name of the state seeking termination of the entity's existence if:

(1) the filing entity has not cured the problems for which winding up and termination is sought before the 31st day after the date the notice under Section 11.302(b) is mailed; and

(2) the attorney general determines that cause exists for the involuntary winding up of a filing entity's business and termination of the entity's existence under Section 11.301.

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

Sec. 11.304. CURE BEFORE FINAL JUDGMENT. An action filed by the attorney general under Section 11.303 shall be abated if, before a district court renders judgment on the action, the filing entity:

(1) cures the problems for which winding up and termination is sought; and

(2) pays the costs of the action.

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

Sec. 11.305. JUDGMENT REQUIRING WINDING UP AND TERMINATION. If

a district court finds in an action brought under this subchapter that proper grounds exist under Section 11.301(a) for a winding up of a filing entity's business and termination of the filing entity's existence, the court shall:

(1) make findings to that effect; and

(2) subject to Section 11.306, enter a judgment not earlier than the fifth day after the date the court makes its findings.

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

Sec. 11.306. STAY OF JUDGMENT. (a) If, in an action brought under this subchapter, a filing entity has proved by a preponderance of the evidence and obtained a finding that the problems for which the filing entity has been found guilty were not wilful or the result of a failure to take reasonable precautions, the entity may make a sworn application to the court for a stay of entry of the judgment to allow the filing entity a reasonable opportunity to cure the problems for which it has been found guilty. An application made under this subsection must be made not later than the fifth day after the date the court makes its findings under Section 11.305.

(b) After a filing entity has made an application under Subsection (a), a court shall stay the entry of the judgment if the court is reasonably satisfied after considering the application and evidence offered with respect to the application that the filing entity:

(1) is able and intends in good faith to cure the problems for which it has been found guilty; and

(2) has not applied for the stay without just cause.

(c) A court shall stay an entry of judgment under Subsection (b) for the period the court determines is reasonably necessary to afford the filing entity the opportunity to cure its problems if the entity acts with reasonable diligence. The court may not stay the entry of the judgment for longer than 60 days after the date the court's findings are made.

(d) The court shall dismiss an action against a filing entity that, during the period the action is stayed by the court under this section, cures the problems for which winding up and termination is sought and pays all costs accrued in the action.

(e) If a court finds that a filing entity has not cured the

problems for which winding up and termination is sought within the period prescribed by Subsection (c), the court shall enter final judgment requiring a winding up of the filing entity's business.

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

Sec. 11.307. OPPORTUNITY FOR CURE AFTER AFFIRMATION OF FINDINGS BY APPEALS COURT. (a) An appellate court that affirms a trial court's findings against a filing entity under this subchapter shall remand the case to the trial court with instructions to grant the filing entity an opportunity to cure the problems for which the entity has been found guilty if:

(1) the filing entity did not make an application to the trial court for stay of the entry of the judgment;

(2) the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause;

(3) the appellate court finds that the problems for which the filing entity has been found guilty are capable of being cured; and

(4) the filing entity has prayed for the opportunity to cure its problems in the appeal.

(b) The appellate court shall determine the period, which may not be longer than 60 days after the date the case is remanded to the trial court, to be afforded to a filing entity to enable the filing entity to cure its problems under Subsection (a).

(c) The trial court to which an action against a filing entity has been remanded under this section shall dismiss the action if, during the period prescribed by the appellate court for that conduct, the filing entity cures the problems for which winding up and termination is sought and pays all costs accrued in the action.

(d) If a filing entity has not cured the problems for which winding up and termination is sought within the period prescribed by the appellate court under Subsection (b), the judgment requiring winding up and termination shall become final.

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

Sec. 11.308. JURISDICTION AND VENUE. (a) The attorney general

shall bring an action for the involuntary winding up and termination of a filing entity under this subchapter in:

(1) a district court of the county in which the registered office or principal place of business of the filing entity in this state is located; or

(2) a district court of Travis County.

(b) A district court described by Subsection (a) has jurisdiction of the action for involuntary winding up and termination.

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

Sec. 11.309. PROCESS IN STATE ACTION. Citation in an action for the involuntary winding up and termination of a filing entity under this subchapter shall be issued and served as provided by law.

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

Sec. 11.310. PUBLICATION OF NOTICE. (a) Except as provided by Section 17.032, Civil Practice and Remedies Code, if process in an action under this subchapter is returned not found, the attorney general shall publish notice on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper in the county in which the registered office of the filing entity in this state is located. The notice must contain:

(1) a statement of the pendency of the action;

(2) the title of the court;

(3) the title of the action; and

(4) the earliest date on which default judgment may be entered by the court.

(b) Notice under this section must be published on the public information Internet website for at least two consecutive weeks and in a newspaper at least once a week for two consecutive weeks. Notice may be published at any time after the citation has been returned.

(c) The attorney general may include in one published notice the name of each filing entity against which an action for involuntary winding up and termination is pending in the same court.

(d) Not later than the 10th day after the date notice under

this section is first published, the attorney general shall send a copy of the notice to the filing entity at the filing entity's registered office in this state. A certificate from the attorney general regarding the sending of the notice is prima facie evidence that notice was sent under this section.

(e) Unless a filing entity has been served with citation, a default judgment may not be taken against the entity before the 31st day after the date the notice is first published.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 10.02, eff. June 1, 2020.

Sec. 11.311. ACTION ALLOWED AFTER EXPIRATION OF FILING ENTITY'S DURATION. The expiration of a filing entity's period of duration does not, by itself, create a vested right on the part of an owner or creditor of the filing entity to prevent an action by the attorney general for the involuntary winding up of the filing entity's business and termination of the filing entity's existence.

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

Sec. 11.312. COMPLIANCE BY TERMINATED ENTITY. On the decree of a court requiring winding up of a filing entity's business, the filing entity shall comply with:

(1) the requirements of the decree concerning the winding up process; and

(2) Subchapter B to the extent it does not conflict with the decree.

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

Sec. 11.313. TIMING OF TERMINATION. A court may enter a decree under Section 11.301 terminating the existence of a filing entity:

(1) when the court considers it necessary or advisable; or

(2) on completion of the winding up process.

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

Sec. 11.314. INVOLUNTARY WINDING UP AND TERMINATION OF PARTNERSHIP OR LIMITED LIABILITY COMPANY. A district court in the county in which the registered office or principal place of business in this state of a domestic partnership or limited liability company is located has jurisdiction to order the winding up and termination of the domestic partnership or limited liability company on application by an owner of the partnership or limited liability company if the court determines that:

(1) the economic purpose of the entity is likely to be unreasonably frustrated;

(2) another owner has engaged in conduct relating to the entity's business that makes it not reasonably practicable to carry on the business with that owner; or

(3) it is not reasonably practicable to carry on the entity's business in conformity with its governing documents.

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. 25, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 7, eff. September 1, 2017.

Sec. 11.315. FILING OF DECREE OF TERMINATION AGAINST FILING ENTITY. (a) The clerk of a court that enters a decree terminating the existence of a filing entity shall file a certified copy of the decree in accordance with Chapter 4.

(b) A fee may not be charged for the filing of a decree under this section.

(c) Subject to Section 11.356, the existence of the filing entity ceases when the certified copy of the decree is filed in accordance with Chapter 4.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 41, eff. January 1, 2006.

SUBCHAPTER H. CLAIMS RESOLUTION ON TERMINATION

Sec. 11.351. LIABILITY OF TERMINATED FILING ENTITY. A terminated filing entity is liable only for an existing claim.

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

Sec. 11.352. DEPOSIT WITH COMPTROLLER OF AMOUNT DUE OWNERS AND CREDITORS WHO ARE UNKNOWN OR CANNOT BE LOCATED. (a) On the voluntary or involuntary termination of a domestic filing entity, the portion of the entity's assets distributable to creditors or owners who are unknown or cannot be found after the exercise of reasonable diligence by a person responsible for the distribution in liquidation of the domestic filing entity's assets must be reduced to cash and deposited as provided by Subsection (b).

(b) Money from assets liquidated under Subsection (a) shall be deposited with the comptroller in a special account to be maintained by the comptroller. The money must be accompanied by a statement to the comptroller containing:

(1) the name and last known address of each person who is known to be entitled to all or part of the account;

(2) the amount of each entitled person's distributive portion of the money; and

(3) other information about each person who is entitled to all or part of the money as the comptroller may reasonably require.

(c) The comptroller shall issue a receipt for money received under this section.

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

Sec. 11.353. DISCHARGE OF LIABILITY OF PERSON RESPONSIBLE FOR LIQUIDATION. A person responsible for the distribution in liquidation of a filing entity's assets will be released and discharged from further liability with respect to money received from the liquidation when the person deposits the money with the comptroller under Section 11.352.

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

Sec. 11.354. PAYMENT FROM ACCOUNT BY COMPTROLLER. (a) To claim money deposited in an account under Section 11.352, a person must submit to the comptroller satisfactory written proof of the person's right to the money not later than the seventh anniversary of the date the money was deposited with the comptroller.

(b) The comptroller shall issue a warrant drawn on the account created under Section 11.352 in favor of a person who meets the requirements for making a claim under Subsection (a) and in the amount to which the person is entitled.

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

Sec. 11.355. NOTICE OF ESCHEAT; ESCHEAT. (a) If no claimant has made satisfactory proof of a right to the money within the period prescribed by Section 11.354(a), the comptroller shall publish in one issue of a newspaper of general circulation in Travis County a notice of the proposed escheat of the money.

(b) A notice published under Subsection (a) must contain:

(1) the name and last known address of any known creditor or owner entitled to the money;

(2) the amount of money deposited with the comptroller; and

(3) the name of the terminated filing entity from whose assets the money was derived.

(c) If no claimant makes satisfactory proof to the comptroller of a right to the money before the 61st day after the date notice under this section is published, the money automatically escheats to and becomes the property of the state and shall be deposited in the general revenue fund.

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

Sec. 11.356. LIMITED SURVIVAL AFTER TERMINATION. (a) Notwithstanding the termination of a domestic filing entity under this chapter, the terminated filing entity continues in existence until the third anniversary of the effective date of the entity's termination only for purposes of:

(1) prosecuting or defending in the terminated filing entity's name an action or proceeding brought by or against the terminated entity;

(2) permitting the survival of an existing claim by or against the terminated filing entity;

(3) holding title to and liquidating property that remained with the terminated filing entity at the time of termination or property that is collected by the terminated filing entity after termination;

(4) applying or distributing property, or its proceeds, as provided by Section 11.053; and

(5) settling affairs not completed before termination.

(b) A terminated filing entity may not continue its existence for the purpose of continuing the business or affairs for which the terminated filing entity was formed unless the terminated filing entity is reinstated under Subchapter E.

(c) If an action on an existing claim by or against a terminated filing entity has been brought before the expiration of the three-year period after the date of the entity's termination and the claim was not extinguished under Section 11.359, the terminated filing entity continues to survive for purposes of:

(1) the action until all judgments, orders, and decrees have been fully executed; and

(2) the application or distribution of any property of the terminated filing entity as provided by Section 11.053 until the property has been applied or distributed.

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

Sec. 11.357. GOVERNING PERSONS OF ENTITY DURING LIMITED SURVIVAL. (a) Subject to the provisions of the title governing the terminated filing entity, during the three-year period that a terminated filing entity's existence is continued under Section 11.356, the governing persons of the terminated filing entity serving at the time of termination shall continue to manage the affairs of the terminated filing entity for the limited purposes specified by Section 11.356 and have the powers necessary to accomplish those purposes. The number of governing persons:

(1) may be reduced because of the death of a governing

person; and

(2) may include successors to governing persons chosen by the other governing persons.

(b) In exercising powers prescribed under Subsection (a), a governing person:

(1) has the same duties to the terminated filing entity that the person had immediately before the termination; and

(2) is liable to the terminated filing entity for the person's actions taken after the entity's termination to the same extent that the person would have been liable had the person taken those actions before the termination.

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

Sec. 11.358. ACCELERATED PROCEDURE FOR EXISTING CLAIM RESOLUTION. (a) A terminated filing entity may shorten the period for resolving a person's existing claim against the entity by giving notice by registered or certified mail, return receipt requested, to the claimant at the claimant's last known address that the claim must be resolved under this section.

(b) The notice required under Subsection (a) must:

(1) state the requirements of Subsections (c) and (d) for presenting a claim;

(2) provide the mailing address to which the person's claim against the terminated filing entity must be sent;

(3) state that the claim will be extinguished if written presentation of the claim is not received at the address given on or before the date specified in the notice, which may not be earlier than the 120th day after the date the notice is mailed to the person by the terminated filing entity; and

(4) be accompanied by a copy of this section.

(c) To assert a claim, a person who is notified by a terminated filing entity that the person's claim must be resolved under this section must present the claim in writing to the terminated filing entity at the address given by the entity in the notice.

(d) A claim presented under Subsection (c) must:

(1) contain the:

(A) identity of the claimant; and

(B) nature and amount of the claim; and

(2) be received by the terminated filing entity not later than the date specified in the notice under Subsection (b)(3).

(e) If a person presents a claim that meets the requirements of this section, the terminated filing entity to whom the claim is presented may give written notice to the person that the claim is rejected by the terminated entity.

(f) Notice under Subsection (e) must:

(1) be sent by registered or certified mail, return receipt requested, and addressed to the last known address of the person presenting the claim;

(2) state that the claim has been rejected by the terminated entity;

(3) state that the claim will be extinguished unless an action on the claim is brought:

(A) not later than the 180th day after the date the notice of rejection of the claim was mailed to the person; and

(B) not later than the third anniversary of the effective date of the entity's termination; and

(4) state the date on which notice of the claim's rejection was mailed and the effective date of the entity's termination.

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

Sec. 11.359. EXTINGUISHMENT OF EXISTING CLAIM. (a) Except as provided by Subsection (b), an existing claim by or against a terminated filing entity is extinguished unless an action or proceeding is brought on the claim not later than the third anniversary of the date of termination of the entity.

(b) A person's claim against a terminated filing entity may be extinguished before the period prescribed by Subsection (a) if the person is notified under Section 11.358(a) that the claim will be resolved under Section 11.358 and the person:

(1) fails to properly present the claim in writing under Sections 11.358(c) and (d); or

(2) fails to bring an action on a claim rejected under Section 11.358(e) before:

(A) the 180th day after the date the notice rejecting the claim was mailed to the person; and

(B) the third anniversary of the effective date of the

entity's termination.

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

SUBCHAPTER I. RECEIVERSHIP

Sec. 11.401. CODE GOVERNS. A receiver may be appointed for a domestic entity or for a domestic entity's property or business only as provided for and on the conditions set forth in this code.

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

Sec. 11.402. JURISDICTION TO APPOINT RECEIVER. (a) A court that has subject matter jurisdiction over specific property of a domestic or foreign entity that is located in this state and is involved in litigation has jurisdiction to appoint a receiver for that property as provided by Section 11.403.

(b) A district court in the county in which the registered office or principal place of business of a domestic entity is located has jurisdiction to:

(1) appoint a receiver for the property and business of a domestic entity for the purpose of rehabilitating the entity as provided by Section 11.404; or

(2) order the liquidation of the property and business of a domestic entity and appoint a receiver to effect that liquidation as provided by Section 11.405.

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. 19, eff. September 1, 2011.

Sec. 11.403. APPOINTMENT OF RECEIVER FOR SPECIFIC PROPERTY. (a) Subject to Subsection (b), and on the application of a person whose right to or interest in any property or fund or the proceeds from the property or fund is probable, a court that has jurisdiction over specific property of a domestic or foreign entity may appoint a receiver in an action:

(1) by a vendor to vacate a fraudulent purchase of the

property;

(2) by a creditor to subject the property or fund to the creditor's claim;

(3) between partners or others jointly owning or interested in the property or fund;

(4) by a mortgagee of the property for the foreclosure of the mortgage and sale of the property, when:

(A) it appears that the mortgaged property is in danger of being lost, removed, or materially injured; or

(B) it appears that the mortgage is in default and that the property is probably insufficient to discharge the mortgage debt; or

(5) in which receivers for specific property have been previously appointed by courts of equity.

(b) A court may appoint a receiver for the property or fund under Subsection (a) only if:

(1) with respect to an action brought under Subsection (a)(1), (2), or (3), it is shown that the property or fund is in danger of being lost, removed, or materially injured;

(2) circumstances exist that are considered by the court to necessitate the appointment of a receiver to conserve the property or fund and avoid damage to interested parties;

(3) all other requirements of law are complied with; and

(4) the court determines that other available legal and equitable remedies are inadequate.

(c) The court appointing a receiver under this section has and shall retain exclusive jurisdiction over the specific property placed in receivership. The court shall determine the rights of the parties in the property or its proceeds.

(d) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, and the receiver shall redeliver to the domestic entity all of the property remaining in receivership.

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

Sec. 11.404. APPOINTMENT OF RECEIVER TO REHABILITATE DOMESTIC ENTITY. (a) Subject to Subsection (b), a court that has jurisdiction over the property and business of a domestic entity

under Section 11.402(b) may appoint a receiver for the entity's property and business if:

(1) in an action by an owner or member of the domestic entity, it is established that:

(A) the entity is insolvent or in imminent danger of insolvency;

(B) the governing persons of the entity are deadlocked in the management of the entity's affairs, the owners or members of the entity are unable to break the deadlock, and irreparable injury to the entity is being suffered or is threatened because of the deadlock;

(C) the actions of the governing persons of the entity are illegal, oppressive, or fraudulent;

(D) the property of the entity is being misapplied or wasted; or

(E) with respect to a for-profit corporation, the shareholders of the entity are deadlocked in voting power and have failed, for a period of at least two years, to elect successors to the governing persons of the entity whose terms have expired or would have expired on the election and qualification of their successors;

(2) in an action by a creditor of the domestic entity, it is established that:

(A) the entity is insolvent, the claim of the creditor has been reduced to judgment, and an execution on the judgment was returned unsatisfied; or

(B) the entity is insolvent and has admitted in writing that the claim of the creditor is due and owing; or

(3) in an action other than an action described by Subdivision (1) or (2), courts of equity have traditionally appointed a receiver.

(b) A court may appoint a receiver under Subsection (a) only if:

(1) circumstances exist that are considered by the court to necessitate the appointment of a receiver to conserve the property and business of the domestic entity and avoid damage to interested parties;

(2) all other requirements of law are complied with; and

(3) the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity under Section 11.402(a), are

inadequate.

(c) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, the management of the domestic entity shall be restored to its managerial officials, and the receiver shall redeliver to the domestic entity all of its property remaining in receivership.

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. 20, eff. September 1, 2011.

Sec. 11.405. APPOINTMENT OF RECEIVER TO LIQUIDATE DOMESTIC ENTITY; LIQUIDATION. (a) Subject to Subsection (b), a court that has jurisdiction over the property and business of a domestic entity under Section 11.402(b) may order the liquidation of the property and business of the domestic entity and may appoint a receiver to effect the liquidation:

(1) when an action has been filed by the attorney general under this chapter to terminate the existence of the entity and it is established that liquidation of the entity's business and affairs should precede the entry of a decree of termination;

(2) on application of the entity to have its liquidation continued under the supervision of the court;

(3) if the entity is in receivership and the court does not find that any plan presented before the first anniversary of the date the receiver was appointed is feasible for remedying the condition requiring appointment of the receiver;

(4) on application of a creditor of the entity if it is established that irreparable damage will ensue to the unsecured creditors of the domestic entity as a class, generally, unless there is an immediate liquidation of the property of the domestic entity; or

(5) on application of a member or director of a nonprofit corporation or cooperative association and it appears the entity is unable to carry out its purposes.

(b) A court may order a liquidation and appoint a receiver under Subsection (a) only if:

(1) the circumstances demand liquidation to avoid damage to interested persons;

(2) all other requirements of law are complied with; and

(3) the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity and appointment of a receiver to rehabilitate the domestic entity, are inadequate.

(c) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, the management of the domestic entity shall be restored to its managerial officials, and the receiver shall redeliver to the domestic entity all of its property remaining in receivership.

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

Sec. 11.406. RECEIVERS: QUALIFICATIONS, POWERS, AND DUTIES. (a) A receiver appointed under this chapter:

(1) must be an individual citizen of the United States or an entity authorized to act as receiver;

(2) shall give a bond in the amount required by the court and with any sureties as may be required by the court;

(3) may sue and be sued in the receiver's name in any court;

(4) has the powers and duties provided by other laws applicable to receivers; and

(5) has the powers and duties that are stated in the order appointing the receiver or that the appointing court:

(A) considers appropriate to accomplish the objectives for which the receiver was appointed; and

(B) may increase or diminish at any time during the proceedings.

(b) To be appointed a receiver under this chapter, a foreign entity must be registered to transact business in this state.

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

Sec. 11.407. COURT-ORDERED FILING OF CLAIMS. (a) In a proceeding involving a receivership of the property or business of a

domestic entity, the court may require all claimants of the domestic entity to file with the clerk of the court or the receiver, in the form provided by the court, proof of their respective claims under oath.

(b) A court that orders the filing of claims under Subsection (a) shall:

(1) set a date, which may not be earlier than four months after the date of the order, as the last day for the filing of those claims; and

(2) prescribe the notice that shall be given to claimants of the date set under Subdivision (1).

(c) Before the expiration of the period under Subsection (b) for the filing of claims, a court may extend the period for the filing of claims to a later date.

(d) A court may bar a claimant who fails to file a proof of claim during the period authorized by the court from participating in the distribution of the property of the domestic entity unless the claimant presents to the court a justifiable excuse for its delay in filing. A court may not order or effect a discharge of a claim of the claimant described by this subsection.

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

Sec. 11.408. SUPERVISING COURT; JURISDICTION; AUTHORITY. (a) A court supervising a receivership under this subchapter may, from time to time:

(1) make allowances to a receiver or attorney in the proceeding; and

(2) direct the payment of a receiver or attorney from the property of the domestic entity that is within the scope of the receivership or the proceeds of any sale or disposition of that property.

(b) A court that appoints a receiver under this subchapter for the property or business of a domestic entity has exclusive jurisdiction over the domestic entity and all of its property, regardless of where the property is located.

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

Sec. 11.409. ANCILLARY RECEIVERSHIPS OF FOREIGN ENTITIES. (a) Notwithstanding any provision of this code to the contrary, a district court in the county in which the registered office of a foreign entity doing business in this state is located has jurisdiction to appoint an ancillary receiver for the property and business of that entity when the court determines that circumstances exist to require the appointment of an ancillary receiver.

(b) A receiver appointed under Subsection (a) serves ancillary to a receiver acting under orders of an out-of-state court that has jurisdiction to appoint a receiver for the entity.

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

Sec. 11.410. RECEIVERSHIP FOR ALL PROPERTY AND BUSINESS OF FOREIGN ENTITY. (a) A district court may appoint a receiver for all of the property, in and outside this state, of a foreign entity doing business in this state and its business if the court determines, in accordance with the ordinary usages of equity, that circumstances exist that necessitate the appointment of a receiver even if a receiver has not been appointed by another court.

(b) The appointing court shall convert a receivership created under Subsection (a) into an ancillary receivership if the appointing court determines an ancillary receivership is appropriate because a court in another state has ordered a receivership of all property and business of the entity.

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

Sec. 11.411. GOVERNING PERSONS AND OWNERS NOT NECESSARY PARTIES DEFENDANT. Governing persons and owners or members of a domestic entity are not necessary parties to an action for a receivership or liquidation of the property and business of a domestic entity unless relief is sought against those persons individually.

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

Sec. 11.412. DECREE OF INVOLUNTARY TERMINATION. In an action in which the court has ordered the liquidation of the property and

business of a domestic entity in accordance with other provisions of this code, the court shall enter a decree terminating the existence of the entity:

(1) when the costs and expenses of the action and all obligations and liabilities of the domestic entity have been paid and discharged or adequately provided for and all of the entity's remaining property has been distributed to its owners and members; or

(2) if the entity's property is not sufficient to discharge the costs and other expenses of the action and all obligations and liabilities of the entity, when all the property of the entity has been applied toward their payment.

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. 69, eff. September 1, 2007.

Sec. 11.413. SUPPLEMENTAL PROVISIONS FOR APPLICATION OF PROCEEDS FROM LIQUIDATION OF NONPROFIT CORPORATION. (a) In proceedings under Section 11.405, the property of a nonprofit corporation or the proceeds resulting from a sale, conveyance, or other disposition of its property shall be applied to:

(1) pay, satisfy, and discharge all costs and expenses of the court proceedings and all liabilities and obligations of the nonprofit corporation; or

(2) make adequate provision for the payment, satisfaction, and discharge of the costs, expenses, liabilities, or obligations described by Subdivision (1).

(b) Any property remaining after application is made under this section must be applied and distributed in the manner provided by Section 22.304.

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

Sec. 11.414. FILING OF DECREE OF INVOLUNTARY TERMINATION AGAINST FILING ENTITY. (a) The clerk of a court that enters a decree terminating the existence of a filing entity under this subchapter shall file a certified copy of the decree in accordance with Chapter 4.

(b) A fee may not be charged for the filing of a decree under this section.

(c) Subject to Section 11.356, the existence of the filing entity ceases when the certified copy of the decree is filed in accordance with Chapter 4.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 42, eff. January 1, 2006.

CHAPTER 12. ADMINISTRATIVE POWERS

SUBCHAPTER A. SECRETARY OF STATE

Sec. 12.001. AUTHORITY OF SECRETARY OF STATE. (a) The secretary of state may adopt procedural rules for the filing of instruments, including the filing of instruments by electronic or other means, authorized to be filed with the secretary of state under this code.

(b) The secretary of state has the power and authority reasonably necessary to enable the secretary to perform the duties imposed on the secretary under this code.

(c) The secretary of state, on acceptance of the filing of an instrument authorized to be filed with the secretary of state under this code, may issue:

(1) a certificate that evidences the filing of the instrument;

(2) a letter that acknowledges the filing of the instrument; or

(3) a certificate that evidences the filing of the instrument and a letter that acknowledges the filing of the instrument.

(d) This section and Sections 12.003 and 12.004 do not apply to a domestic real estate investment trust.

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. 26, eff. September 1, 2009.

Sec. 12.002. INTERROGATORIES BY SECRETARY OF STATE. (a) As necessary and proper for the secretary of state to determine whether

a filing entity or a foreign filing entity has complied with this code, the secretary of state may serve by mail interrogatories on the entity or a managerial official.

(b) An entity or individual to whom an interrogatory is sent by the secretary of state shall answer the interrogatory before the later of the 31st day after the date the interrogatory is mailed or a date set by the secretary of state. Each answer to an interrogatory must be complete, in writing, and under oath. An interrogatory directed to an individual shall be answered by the individual, and an interrogatory directed to an entity shall be answered by a managerial official.

(c) The secretary of state is not required to file any instrument to which an interrogatory relates until the interrogatory is answered as provided by this section and only if the instrument conforms to the requirements of this code. The secretary of state shall certify to the attorney general for action as the attorney general may consider appropriate an interrogatory and answer to the interrogatory that disclose a violation of this code.

(d) This section and Sections 12.003 and 12.004 do not apply to domestic real estate investment trusts.

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

Sec. 12.003. INFORMATION DISCLOSED BY INTERROGATORIES. An interrogatory sent by the secretary of state and the answer to the interrogatory are subject to Chapter 552, Government Code.

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

Sec. 12.004. APPEALS FROM SECRETARY OF STATE. (a) If the secretary of state does not approve the filing of a filing instrument, the secretary of state shall, before the 11th day after the date of the delivery of the filing instrument to the secretary of state, notify the person delivering the filing instrument of the disapproval and specifying each reason for the disapproval. The disapproval of a filing instrument by the secretary of state may be appealed only to a district court of Travis County by filing with the court clerk a petition, a copy of the filing instrument sought to be filed, and a copy of any written disapproval by the secretary of

state of the filing instrument. The court shall try the appeal de novo and shall sustain the action of the secretary of state or direct the secretary to take any action the court considers to be proper.

(b) A final order or judgment entered by the district court under this section in review of any ruling or decision of the secretary of state may be appealed as in other civil actions.

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

SUBCHAPTER B. ATTORNEY GENERAL

Sec. 12.151. AUTHORITY OF ATTORNEY GENERAL TO EXAMINE BOOKS AND RECORDS. Each filing entity and foreign filing entity shall permit the attorney general to inspect, examine, and make copies, as the attorney general considers necessary in the performance of a power or duty of the attorney general, of any record of the entity. A record of the entity includes minutes and a book, account, letter, memorandum, document, check, voucher, telegram, constitution, and bylaw.

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

Sec. 12.152. REQUEST TO EXAMINE. To examine the business of a filing entity or foreign filing entity, the attorney general shall make a written request to a managerial official, who shall immediately permit the attorney general to inspect, examine, and make copies of the records of the entity.

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

Sec. 12.153. AUTHORITY TO EXAMINE MANAGEMENT OF ENTITY. The attorney general may investigate the organization, conduct, and management of a filing entity or foreign filing entity and determine if the entity has been or is engaged in acts or conduct in violation of:

(1) its governing documents; or

(2) any law of this state.

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

Sec. 12.154. AUTHORITY TO DISCLOSE INFORMATION. Information held by the attorney general and derived in the course of an examination of an entity's records or documents is not public information, is not subject to Chapter 552, Government Code, and may not be disclosed except:

(1) in the course of an administrative or judicial proceeding in which the state is a party;

(2) in a suit by the state to:

(A) revoke the registration of the foreign filing entity or terminate the certificate of formation of the filing entity; or

(B) collect penalties for a violation of the law of this state; or

(3) to provide information to any officer of this state charged with the enforcement of its laws.

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

Sec. 12.155. FORFEITURE OF BUSINESS PRIVILEGES. A foreign filing entity or a filing entity that fails or refuses to permit the attorney general to examine or make copies of a record, without regard to whether the record is located in this or another state, forfeits the right of the entity to do business in this state, and the entity's registration or certificate of formation shall be revoked or terminated.

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

Sec. 12.156. CRIMINAL PENALTY. (a) A managerial official or other individual having the authority to manage the affairs of a filing entity or foreign filing entity commits an offense if the official or individual fails or refuses to permit the attorney general to make an investigation of the entity or to examine or to make copies of a record of the entity.

(b) An offense under this section is a Class B misdemeanor.

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

SUBCHAPTER C. ENFORCEMENT LIEN

Sec. 12.201. LIEN FOR LAW VIOLATIONS. (a) If a filing entity or foreign filing entity violates a law of this state, including the law against trusts, monopolies, and conspiracies, or combinations or contracts in restraint of trade, for the violation of which a fine, penalties, or forfeiture is provided, all of the entity's property in this state at the time of the violation or that after the violation comes into this state is, because of the violation, liable for any fine or penalty under this chapter and for costs of suit and costs of collection.

(b) The state has a lien on all property of a filing entity or foreign filing entity in this state on the date a suit is instituted by or under the direction of the attorney general in a court of this state for the purpose of forfeiting the certificate of formation or revoking the registration of the entity or for the collection of a fine or penalty due to the state.

(c) The filing of a suit for a fine, penalties, or forfeiture is notice of the lien.

(d) In addition to the property subjected to the lien under Subsection (b), the lien applies to any property that comes into the possession of a receiver appointed under Subchapter D.

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

SUBCHAPTER D. ENFORCEMENT PROCEEDINGS

Sec. 12.251. RECEIVER. In a suit filed by this state against a filing entity or foreign filing entity for the termination of the entity's certificate of formation or registration or for a fine or penalty, the court in this state in which the suit is pending:

(1) shall appoint a receiver for the property and business of the entity in this state or that subsequently comes into this state during the receivership if the filing entity or foreign filing entity commences the process of winding up its business in this or another state or a judgment is rendered against it in this or another state for the termination of the entity's certificate of formation or registration; and

(2) may appoint a receiver for the entity if the interest

of the state requires the appointment.

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

Sec. 12.252. FORECLOSURE. (a) The attorney general may bring suit to foreclose a lien created by this chapter.

(b) If a filing entity or a foreign filing entity subject to this code has commenced the winding up process or has had the entity's certificate of formation or registration terminated by a judgment, citation in a suit for foreclosure may be served on any person in this state who acted and was acting as agent of the entity in this state when the entity commenced the winding up process or the entity's certificate of formation or registration was terminated.

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

Sec. 12.253. ACTION AGAINST INSOLVENT ENTITY. When the attorney general is convinced that a filing entity or foreign filing entity is insolvent, the attorney general shall institute quo warranto or other appropriate proceedings to terminate the certificate of formation or registration of the filing entity or foreign filing entity that is insolvent.

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

Sec. 12.254. SUITS BY DISTRICT OR COUNTY ATTORNEY. A district or county attorney shall bring and prosecute a proceeding under Section 12.252 or 12.253 when directed to do so by the attorney general.

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

Sec. 12.255. PERMISSION TO SUE. Before a petition may be filed by the attorney general or by a district or county attorney in a suit authorized by Section 12.252 or 12.253, leave must be granted by the judge of the court in which the proceeding is to be filed.

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

Sec. 12.256. EXAMINATION AND NOTICE. (a) The judge of a court in which a proceeding under Section 12.252 or 12.253 is to be filed shall carefully examine the petition before granting leave to sue. The judge may also require an examination into the facts. If it appears with reasonable certainty from the petition or from the petition and facts that there is a prima facie showing for the relief sought, the judge may grant leave to file.

(b) On an application for the appointment of a receiver, the entity proceeded against is entitled to 10 days' notice before the day set for the hearing.

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

Sec. 12.257. DISMISSAL OF ACTION. (a) A suit authorized by Section 12.253 or 12.258 may not be filed or, if filed, shall be dismissed if the entity, through its owners or members, reduces its indebtedness so that it is not insolvent.

(b) The respondent shall pay the costs of a dismissed suit under this section.

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

Sec. 12.258. LIQUIDATION OF INSOLVENT ENTITY. (a) A court hearing a proceeding under Section 12.253 against an insolvent entity may, after the entity has been shown to be insolvent, appoint one or more receivers for the entity and its property. The receiver may settle the affairs of the entity, collect outstanding debts, and divide the money and property belonging to the entity among its owners after paying the debts of the entity and all expenses incidental to the judicial proceedings and receivership.

(b) The court may continue the existence of the entity for three years and for additional reasonable time as necessary to accomplish the purposes of this subchapter.

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

Sec. 12.259. EXTRAORDINARY REMEDIES; BOND. The state has a right to a writ of attachment, garnishment, sequestration, or injunction, without bond, to aid in the enforcement of the state's rights created by this chapter.

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

Sec. 12.260. ABATEMENT OF SUIT. An action or cause of action for a fine, penalty, or forfeiture that this state has or may have against a filing entity or foreign filing entity does not abate because the entity winds up, voluntarily or otherwise, or the entity's certificate of formation is terminated or the entity's registration is revoked.

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. 70, eff. September 1, 2007.

Sec. 12.261. PROVISIONS CUMULATIVE. Each right or remedy provided by this chapter is cumulative and does not affect any other right or remedy for the enforcement, payment, or collection of a fine, forfeiture, or penalty or any other means provided by law for securing or preserving testimony or inquiring into the rights or privileges of an entity.

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

TITLE 2. CORPORATIONS
CHAPTER 20. GENERAL PROVISIONS

Sec. 20.001. SIGNATURE REQUIREMENTS FOR FILING INSTRUMENTS. (a) Unless otherwise provided by Section 3.054 or 3.060(b) or this title, a filing instrument of a corporation must be signed by an officer of the corporation.

(b) A certificate of termination, a certificate of reinstatement, a certificate of amendment to cancel an event requiring winding up, or a restated certificate of formation that contains an amendment to cancel an event requiring winding up may be

signed by:

(1) one of the organizers if the winding up, the reinstatement, or the cancellation of an event requiring winding up was authorized by the organizers under Section 21.502(2) or 22.302(1)(B); or

(2) one of the directors if the winding up, the reinstatement, or the cancellation of an event requiring winding up was authorized by the board of directors under Section 21.502(2) or 22.302(1)(B).

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. 19, eff. September 1, 2015.

Sec. 20.002. ULTRA VIRES ACTS. (a) Lack of capacity of a corporation may not be the basis of any claim or defense at law or in equity.

(b) An act of a corporation or a transfer of property by or to a corporation is not invalid because the act or transfer was:

(1) beyond the scope of the purpose or purposes of the corporation as expressed in the corporation's certificate of formation; or

(2) inconsistent with a limitation on the authority of an officer or director to exercise a statutory power of the corporation, as that limitation is expressed in the corporation's certificate of formation.

(c) The fact that an act or transfer is beyond the scope of the expressed purpose or purposes of the corporation or is inconsistent with an expressed limitation on the authority of an officer or director may be asserted in a proceeding:

(1) by a shareholder or member against the corporation to enjoin the performance of an act or the transfer of property by or to the corporation;

(2) by the corporation, acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against an officer or director or former officer or director of the corporation for exceeding that person's authority; or

(3) by the attorney general to:

(A) terminate the corporation;

(B) enjoin the corporation from performing an unauthorized act; or

(C) enforce divestment of real property acquired or held contrary to the laws of this state.

(d) If the unauthorized act or transfer sought to be enjoined under Subsection (c)(1) is being or is to be performed or made under a contract to which the corporation is a party and if each party to the contract is a party to the proceeding, the court may set aside and enjoin the performance of the contract. The court may award to the corporation or to another party to the contract, as appropriate, compensation for loss or damage resulting from the action of the court in setting aside and enjoining the performance of the contract, excluding loss of anticipated profits.

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

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 value of a corporation's net assets, stated capital, or surplus and each of the components of net assets, stated capital, or surplus may be based on:

(1) financial statements of the corporation, including financial statements that:

(A) include subsidiary corporations or other corporations accounted for on a consolidated basis or on the equity

method of accounting; or

(B) present the financial condition of the corporation in accordance with generally accepted accounting principles;

(2) financial statements 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;

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

(4) projection, 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;

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

(6) a combination of a statement, 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.

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. 21.353. 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" means 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.

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. The filing of another filing instrument or document is not required.

(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.

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.

CHAPTER 22. NONPROFIT CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 22.001. DEFINITIONS. In this chapter:

(1) "Board of directors" means the group of persons vested with the management of the affairs of the corporation, regardless of the name used to designate the group.

(2) "Bylaws" means the rules adopted to regulate or manage the corporation, regardless of the name used to designate the rules.

(3) "Corporation" or "domestic corporation" means a domestic nonprofit corporation subject to this chapter.

(3-a) "Director" means a person who is a member of the board of directors, regardless of the name or title used to designate the person. The term does not include a person designated as a director of the corporation, or as an ex officio, honorary, or other type of director of the corporation if the person is not entitled to vote as a director.

(4) "Foreign corporation" means a foreign nonprofit corporation.

(5) "Nonprofit corporation" means a corporation no part of the income of which is distributable to a member, director, or

officer of the corporation, except as provided by Section 22.054.

(6) "Ordinary care" means the care that an ordinarily prudent person in a similar position would exercise under similar circumstances.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 121 (S.B. 1233), Sec. 1, eff. May 23, 2015.
Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 16, eff. September 1, 2019.

Sec. 22.002. MEETINGS BY REMOTE COMMUNICATIONS TECHNOLOGY. A meeting of the members of a corporation, the board of directors of a corporation, or any committee designated by the board of directors of a corporation may be held by means of a conference telephone or similar communications equipment, another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination of those means, in accordance with Section 6.002.

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. 17, eff. September 1, 2019.

SUBCHAPTER B. PURPOSES AND POWERS

Sec. 22.051. GENERAL PURPOSES. A nonprofit corporation may be formed for any lawful purpose or purposes not expressly prohibited under this chapter or Chapter 2, including any purpose described by Section 2.002.

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

Sec. 22.052. DENTAL HEALTH SERVICE CORPORATION. (a) A charitable corporation may be formed to operate a dental health service corporation that manages and coordinates the relationship between a dentist who contracts to perform dental services and a

patient who will receive the services as a member of a group that contracted with the dental health service corporation to provide dental care to group members.

(b) The certificate of formation for a charitable corporation formed under this section must have attached as an exhibit:

(1) an affidavit of the organizer or organizers stating:

(A) that not less than 30 percent of the dentists legally engaged in the practice of dentistry in this state have signed a contract to perform the required dental services for a period of at least one year after incorporation; and

(B) the names and addresses of those dentists; and

(2) a certification by the State Board of Dental Examiners that:

(A) the applicants are reputable residents of this state of good moral character; and

(B) the corporation will be in the best interest of the public health.

(c) A corporation formed under this section must have at least 12 directors, including 9 directors who are licensed to practice dentistry in this state and are actively engaged in the practice of dentistry in this state.

(d) A corporation formed under this section shall maintain as participating or contracting dentists at least 30 percent of the number of dentists actually engaged in the practice of dentistry in this state. The corporation shall file annually in September with the State Board of Dental Examiners the name and address of each participating or contracting dentist.

(e) A corporation formed under this section may not:

(1) prevent a patient from selecting the licensed dentist of the patient's choice to provide dental services to the patient;

(2) deny a licensed dentist the right to participate as a contracting dentist to perform the dental services contracted for by the patient;

(3) discriminate among patients or licensed dentists regarding payment or reimbursement for the cost of performing dental services; or

(4) authorize any person to regulate, interfere with, or intervene in any manner in the diagnosis or treatment provided by a licensed dentist to a patient.

(f) A corporation formed under this section may require the

attending dentist to provide a narrative oral or written description of the dental services provided to determine benefits or provide proof of treatment. The corporation may request but may not require diagnostic aids used in the course of treatment.

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

Sec. 22.053. DIVIDENDS PROHIBITED. Except as provided by Section 22.054, a dividend may not be paid to, and no part of the income of a corporation may be distributed to, the corporation's members, directors, or officers.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 121 (S.B. 1233), Sec. 2, eff. May 23, 2015.

Sec. 22.054. AUTHORIZED BENEFITS AND DISTRIBUTIONS. A corporation may:

(1) pay compensation in a reasonable amount to the members, directors, or officers of the corporation for services provided;

(2) confer benefits on the corporation's members in conformity with the corporation's purposes;

(3) make distributions to the corporation's members on winding up and termination to the extent authorized by this chapter; and

(4) make distributions of its income to the corporation's members who are nonprofit corporations organized under this code and who are exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, if:

(A) the distributions are made in accordance with the purpose or purposes of the corporation as stated in the certificate of formation and with the fiduciary responsibilities of the board of directors, including the duty to safeguard restricted funds for their intended purposes; and

(B) after the distributions are complete:

(i) the corporation would be able to pay the corporation's debts as they become due in the usual course of its

activities; and

(ii) the corporation's total assets would at least equal the sum of its total liabilities.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 121 (S.B. 1233), Sec. 3, eff. May 23, 2015.

Sec. 22.055. POWER TO ASSIST EMPLOYEE OR OFFICER. (a) A corporation may lend money to or otherwise assist an employee or officer of the corporation, but not a director, if the loan or assistance may reasonably be expected to directly or indirectly benefit the corporation.

(b) A loan made to an officer must be:

(1) made for the purpose of financing the officer's principal residence; or

(2) set in an original principal amount that does not exceed:

(A) 100 percent of the officer's annual salary, if the loan is made before the first anniversary of the officer's employment; or

(B) 50 percent of the officer's annual salary, if the loan is made in any subsequent year.

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

Sec. 22.056. HEALTH ORGANIZATION CORPORATION. (a) Doctors of medicine and osteopathy licensed by the Texas Medical Board, podiatrists licensed by the Texas Department of Licensing and Regulation, and chiropractors licensed by the Texas Board of Chiropractic Examiners may form a corporation that is jointly owned, managed, and controlled by those practitioners to perform a professional service that falls within the scope of practice of those practitioners and consists of:

(1) carrying out research in the public interest in medical science, medical economics, public health, sociology, or a related field;

(2) supporting medical education in medical schools through

grants or scholarships;

(3) developing the capabilities of individuals or institutions studying, teaching, or practicing medicine, including podiatric medicine, or chiropractic;

(4) delivering health care to the public; or

(5) instructing the public regarding medical science, public health, hygiene, or a related matter.

(b) When doctors of medicine, osteopathy, podiatry, and chiropractic form a corporation that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, the certificate of formation or bylaws of the corporation, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The Texas Medical Board, the Texas Department of Licensing and Regulation, and the Texas Board of Chiropractic Examiners continue to exercise regulatory authority over their respective licenses.

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

Acts 2017, 85th Leg., R.S., Ch. 388 (S.B. 679), Sec. 1, eff. June 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.001, eff. September 1, 2019.

Sec. 22.0561. CORPORATIONS FORMED BY PHYSICIANS AND PHYSICIAN ASSISTANTS. (a) Physicians licensed under Subtitle B, Title 3, Occupations Code, and physician assistants licensed under Chapter 204, Occupations Code, may form a corporation to perform a professional service that falls within the scope of practice of those practitioners and consists of:

(1) carrying out research in the public interest in medical science, medical economics, public health, sociology, or a related field;

(2) supporting medical education in medical schools through grants or scholarships;

(3) developing the capabilities of individuals or

institutions studying, teaching, or practicing medicine or acting as a physician assistant;

(4) delivering health care to the public; or

(5) instructing the public regarding medical science, public health, hygiene, or a related matter.

(b) A physician assistant may not be an officer of the corporation.

(c) A physician assistant may not contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the corporation.

(d) The authority of each practitioner is limited by the scope of practice of the respective practitioner. An organizer of the entity must be a physician and ensure that a physician or physicians control and manage the entity.

(e) Nothing in this section may be construed to allow the practice of medicine by someone not licensed as a physician under Subtitle B, Title 3, Occupations Code, or to allow a person not licensed as a physician to direct the activities of a physician in the practice of medicine.

(f) A physician assistant or combination of physician assistants may have only a minority ownership interest in an entity created under this section. The ownership interest of an individual physician assistant may not equal or exceed the ownership interest of any individual physician owner. A physician assistant or combination of physician assistants may not interfere with the practice of medicine by a physician owner or the supervision of physician assistants by a physician owner.

(g) The Texas Medical Board and the Texas Physician Assistant Board continue to exercise regulatory authority over their respective license holders according to applicable law. To the extent of a conflict between Subtitle B, Title 3, Occupations Code, and Chapter 204, Occupations Code, or any rules adopted under those statutes, Subtitle B, Title 3, or a rule adopted under that subtitle controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 782 (H.B. 2098), Sec. 1, eff. June 17, 2011.

SUBCHAPTER C. FORMATION AND GOVERNING DOCUMENTS

Sec. 22.101. INCORPORATION OF CERTAIN ORGANIZATIONS. A

religious society, a charitable, benevolent, literary, or social association, or a church may incorporate as a corporation governed by this chapter with the consent of a majority of its members. Those members shall authorize the organizers to execute the certificate of formation.

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

Sec. 22.102. BYLAWS. (a) The initial bylaws of a corporation shall be adopted by the corporation's board of directors or, if the management of the corporation is vested in the corporation's members, by the members.

(b) The bylaws may contain provisions for the regulation and management of the affairs of the corporation that are consistent with law and the certificate of formation.

(c) The board of directors may amend or repeal the bylaws, or adopt new bylaws, unless:

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

(2) the management of the corporation is vested in the corporation's members; or

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

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

Sec. 22.103. INCONSISTENCY BETWEEN CERTIFICATE OF FORMATION AND BYLAW. (a) A provision of a certificate of formation of a corporation that is inconsistent with a bylaw controls over the bylaw, except as provided by Subsection (b).

(b) A change in the number of directors by amendment to the bylaws controls over the number stated in the certificate of formation, unless the certificate of formation provides that a change in the number of directors may be made only by amendment to the certificate.

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

Sec. 22.104. ORGANIZATION MEETING. (a) After the certificate of formation is filed, the board of directors named in the certificate of formation of a corporation shall hold an organization meeting of the board, either in or out of this state, at the call of the organizers or a majority of the directors to adopt bylaws and elect officers and for other purposes determined by the board at the meeting. The organizers or directors calling the meeting shall send notice of the time and place of the meeting to each director named in the certificate of formation not later than the third day before the date of the meeting.

(b) A first meeting of the members may be held at the call of the majority of the directors on notice provided not later than the third day before the date of the meeting. The notice must state the purposes of the meeting.

(c) If the management of a corporation is vested in the corporation's members, the members shall hold the organization meeting on the call of an organizer. An organizer who calls the meeting shall:

(1) send notice of the time and place of the meeting to each member not later than the third day before the date of the meeting;

(2) if the corporation is a church, make an oral announcement of the time and place of the meeting at a regularly scheduled worship service before the meeting; or

(3) send notice of the meeting in the manner provided by the 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. 66, eff. January 1, 2006.

Sec. 22.105. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE OF FORMATION BY MEMBERS HAVING VOTING RIGHTS. (a) Except as provided by Section 22.107(b), to amend the certificate of formation of a corporation with members having voting rights, the board of directors of the corporation must adopt a resolution specifying the proposed

amendment and directing that the amendment be submitted to a vote at an annual or special meeting of the members having voting rights.

(b) Written notice containing the proposed amendment or a summary of the changes to be effected by the amendment shall be given to each member entitled to vote at the meeting within the time and in the manner provided by this chapter for giving notice of a meeting of members.

(c) The proposed amendment shall be adopted on receiving the vote required by Section 22.164.

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

Sec. 22.106. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE OF FORMATION BY MANAGING MEMBERS. (a) To be approved, a proposed amendment to the certificate of formation of a corporation the management of the affairs of which is vested in the corporation's members under Section 22.202 must be submitted to a vote at an annual, regular, or special meeting of the members.

(b) Except as otherwise provided by the certificate of formation or bylaws, notice containing the proposed amendment or a summary of the changes to be effected by the amendment shall be given to the members within the time and in the manner provided by this chapter for giving notice of a meeting of members.

(c) The proposed amendment shall be adopted on receiving the vote required by Section 22.164.

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

Sec. 22.107. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE OF FORMATION BY BOARD OF DIRECTORS. (a) If a corporation has no members or has no members with voting rights, or in the case of an amendment under Subsection (b), an amendment to the corporation's certificate of formation shall be adopted at a meeting of the board of directors on receiving the vote of directors required by Section 22.164.

(b) Except as otherwise provided by the certificate of formation, the board of directors of a corporation with members having voting rights may, without member approval, adopt amendments to the certificate of formation to:

(1) extend the duration of the corporation if the corporation was incorporated when limited duration was required by law;

(2) delete the names and addresses of the initial directors;

(3) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state; or

(4) change the corporate name by:

(A) substituting the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name; or

(B) adding, deleting, or changing a geographical attribution to the name.

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

Sec. 22.108. NUMBER OF AMENDMENTS SUBJECT TO VOTE AT MEETING. Any number of amendments to the corporation's certificate of formation may be submitted to and voted on by a corporation's members at any one meeting of the members.

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

Sec. 22.109. 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 procedure to amend its certificate of formation provided by Sections 22.104-22.107, except that:

(1) member approval is required only if the restated certificate of formation contains an amendment; and

(2) the members 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 22.302(1)(B) or 22.302(2), as applicable.

(b) A person shall file a restated certificate of formation as provided by Chapter 4, and the restated certificate of formation

takes effect as provided by Subchapter B, Chapter 3.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 67, eff. January 1, 2006.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 27, eff. September 1, 2015.

SUBCHAPTER D. MEMBERS

Sec. 22.151. MEMBERS. (a) A corporation may have one or more classes of members or may have no members.

(b) If the corporation has one or more classes of members, the corporation's certificate of formation or bylaws must include:

(1) a designation of each class;

(2) the manner of the election or appointment of the members of each class; and

(3) the qualifications and rights of the members of each class.

(c) A corporation may issue a certificate, card, or other instrument evidencing membership rights, voting rights, or ownership rights as authorized by the certificate of formation or bylaws.

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

Sec. 22.152. IMMUNITY FROM LIABILITY. The members of a corporation are not personally liable for a debt, liability, or obligation of the corporation.

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

Sec. 22.153. ANNUAL MEETING. (a) Except as provided by Subsection (b), a corporation shall hold an annual meeting of the members at a time that is stated in or determined in accordance with the corporation's bylaws.

(b) If the bylaws provide for more than one regular meeting of members each year, an annual meeting is not required. If an annual meeting is not required, directors may be elected at a meeting as provided by the bylaws.

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

Sec. 22.154. FAILURE TO CALL ANNUAL MEETING. (a) If the board of directors of a corporation fails to call the annual meeting of members when required, a member of the corporation may demand that the meeting be held within a reasonable time. The demand must be made in writing and sent to an officer of the corporation by certified or registered mail, return receipt requested, or by other means specified in the corporation's governing documents.

(b) If a required annual meeting is not called before the 61st day after the date of demand, a member of the corporation may compel the holding of the meeting by legal action directed against the board of directors, and each of the extraordinary writs of common law and of courts of equity are available to the member to compel the holding of the meeting. Each member has a justiciable interest sufficient to enable the member to institute and prosecute the legal proceedings.

(c) Failure to hold a required annual meeting at the designated time does not result in the winding up and termination of the corporation.

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

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 87, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 28, eff. September 1, 2017.

Sec. 22.155. SPECIAL MEETINGS OF MEMBERS. A special meeting of the members of a corporation may be called by:

(1) the president;

(2) the board of directors;

(3) members having not less than one-tenth of the votes entitled to be cast at the meeting; or

(4) other officers or persons as provided by the certificate of formation or bylaws of the corporation.

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

Sec. 22.156. NOTICE OF MEETING. (a) A corporation other than a church shall provide written notice of the place, date, and time of a meeting of the members of the corporation and, if the meeting is a special meeting, the purpose or purposes for which the meeting is called. The notice shall be delivered to each member 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 may be delivered personally or in accordance with Section 6.051(b).

(b) Notice of a meeting of the members of a corporation that is a church is sufficient if given by oral announcement at a regularly scheduled worship service before the meeting or as otherwise provided by the certificate of formation or bylaws of the corporation.

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

Sec. 22.157. SPECIAL BYLAWS AFFECTING NOTICE. (a) A corporation may provide in the corporation's bylaws that notice of an annual or regular meeting is not required.

(b) A corporation having more than 1,000 members at the time a meeting is scheduled or called may provide notice of a meeting by publication in a newspaper of general circulation in the community in which the principal office of the corporation is located, if the corporation provides for that notice in its bylaws.

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

Sec. 22.158. PREPARATION AND INSPECTION OF LIST OF VOTING MEMBERS. (a) After setting a record date for the notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its voting members. The list must identify:

(1) the members who are entitled to notice and the members who are not entitled to notice of the meeting;

(2) the address of each voting member; and

(3) the number of votes each voting member is entitled to cast at the meeting.

(b) Not later than the second business day after the date notice is given of a meeting for which a list was prepared in accordance with Subsection (a), and continuing through the meeting, the list of voting members must be available at the corporation's

principal office or at a reasonable place in the municipality in which the meeting will be held, as identified in the notice of the meeting, for inspection by members entitled to vote at the meeting for the purpose of communication with other members concerning the meeting.

(c) A voting member or voting member's agent or attorney is entitled on written demand to inspect and, at the member's expense and subject to Section 22.351, copy the list at a reasonable time during the period the list is available for inspection.

(d) The corporation shall make the list of voting members available at the meeting. A voting member or voting member's agent or attorney is entitled to inspect the list at any time during the meeting or an adjournment of the meeting.

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

Sec. 22.159. QUORUM OF MEMBERS. (a) Unless otherwise provided by the certificate of formation or bylaws of a corporation, members of the corporation holding one-tenth of the votes entitled to be cast, in person or by proxy, constitute a quorum.

(b) The vote of the majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present is the act of the members meeting, unless the vote of a greater number is required by law or the certificate of formation or bylaws.

(c) Unless otherwise provided by the certificate of formation or bylaws, a church incorporated before May 12, 1959, is considered to have provided in the certificate of formation or bylaws that members present at a meeting for which notice has been given constitute a quorum.

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

Sec. 22.160. VOTING OF MEMBERS. (a) Each member of a corporation, regardless of class, is entitled to one vote on each matter submitted to a vote of the corporation's members, except to the extent that the voting rights of members of a class are limited, enlarged, or denied by the certificate of formation or bylaws of the corporation.

(b) A member may vote in person or, unless otherwise provided by the certificate of formation or bylaws, by proxy executed in writing by the member or the member's attorney-in-fact.

(c) Unless otherwise provided by the proxy, a proxy is revocable and expires 11 months after the date of its execution. A proxy may not be irrevocable for longer than 11 months.

(d) If authorized by the certificate of formation or bylaws of the corporation, a member vote on any matter may be conducted by mail, by facsimile transmission, by electronic message, or by any combination of those methods.

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

Sec. 22.161. ELECTION OF DIRECTORS. (a) A member entitled to vote at an election of directors is entitled to vote, in person or by proxy, for as many persons as there are directors to be elected and for whose election the member has a right to vote.

(b) If expressly authorized by the corporation's certificate of formation, the member may cumulate the member's vote by:

(1) giving one candidate a number of votes equal to the number of the directors to be elected multiplied by the member's vote; or

(2) distributing the votes on the same principle among any number of the candidates.

(c) A member who intends to cumulate votes under Subsection (b) shall give written notice of the member's intention to the secretary of the corporation not later than the day preceding the date of the election.

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

Sec. 22.162. GREATER VOTING REQUIREMENTS UNDER CERTIFICATE OF FORMATION. If the corporation's certificate of formation requires the vote or concurrence of a greater proportion of the members of a corporation than is required by this chapter with respect to an action to be taken by the members, the certificate of formation controls.

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

Sec. 22.163. RECORD DATE FOR DETERMINATION OF MEMBERS. (a) The record date for determining members of a corporation may be set as provided by Section 6.101.

(b) If a record date is not set under Section 6.101:

(1) members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting;

(2) members at the close of business on the business day preceding the date notice is given, or if notice is waived, at the close of business on the business day preceding the date of the meeting, are entitled to notice of a meeting of members; and

(3) members at the close of business on the later of the day the board of directors adopts the resolution relating to the action or the 60th day before the date of the action are entitled to exercise any rights regarding any other lawful action.

(c) The record date for the determination of members entitled to notice of or to vote at a meeting is effective for an adjournment of the meeting unless the board of directors of a corporation sets a new date for determining the right to notice of or to vote at the adjournment.

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. 88, eff. September 1, 2007.

Sec. 22.164. VOTE REQUIRED TO APPROVE FUNDAMENTAL ACTION. (a) In this section, "fundamental action" means:

(1) an amendment of a certificate of formation, including an amendment required for the 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);

(5) a reinstatement under Section 11.202;

(6) a distribution plan under Section 22.305;

(7) a plan of merger under Subchapter F;

(8) a sale of all or substantially all of the assets of a corporation under Subchapter F;

(9) a plan of conversion under Subchapter F; or

(10) a plan of exchange under Subchapter F.

(b) Except as otherwise provided by Subsection (c) or (d) or the certificate of formation in accordance with Section 22.162, the vote required for approval of a fundamental action is:

(1) at least two-thirds of the votes that members present in person or by proxy are entitled to cast at the meeting at which the action is submitted for a vote, if the corporation has members with voting rights;

(2) at least two-thirds of the votes of members present at the meeting at which the action is submitted for a vote, if the management of the affairs of the corporation is vested in the corporation's members under Section 22.202; or

(3) the affirmative vote of the majority of the directors in office, if the corporation has no members or has no members with voting rights.

(c) If any class of members is entitled to vote on the fundamental action as a class by the terms of the certificate of formation or the bylaws, the vote required for the approval of the fundamental action is the vote required by Subsection (b)(1) and at least two-thirds of the votes that the members of each class in person or by proxy are entitled to cast at the meeting at which the action is submitted for a vote.

(d) If the corporation has no members or has no members with voting rights and the corporation does not hold any assets and has not solicited any assets or otherwise engaged in activities, the vote required for approval of a fundamental action consisting of an amendment to the certificate of formation to cancel an event requiring winding up or any of the actions described by Subsections (a)(2) through (a)(6) is the affirmative vote of a majority of the organizers or a majority of the directors in office.

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. 89, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 28, eff.

September 1, 2015.

SUBCHAPTER E. MANAGEMENT

Sec. 22.201. MANAGEMENT BY BOARD OF DIRECTORS. Except as provided by Section 22.202, the affairs of a corporation are managed by a board of directors. The board of directors may be designated by any name appropriate to the customs, usages, or tenets of the corporation.

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

Sec. 22.202. MANAGEMENT BY MEMBERS. (a) The certificate of formation of a corporation may vest the management of the affairs of the corporation in the members of the corporation. If the corporation has a board of directors, the corporation may limit the authority of the board to the extent provided by the certificate of formation or bylaws.

(b) A corporation is considered to have vested the management of the corporation's affairs in the board of directors of the corporation in the absence of a provision to the contrary in the certificate of formation, unless the corporation is a church organized and operating under a congregational system that:

(1) was incorporated before January 1, 1994; and

(2) has the management of its affairs vested in the corporation's members.

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

Sec. 22.203. BOARD MEMBER ELIGIBILITY REQUIREMENTS. A director of a corporation is not required to be a resident of this state or a member of the corporation unless the certificate of formation or a bylaw of the corporation imposes that requirement. 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. 22.204. NUMBER OF DIRECTORS. (a) If the corporation has a board of directors, a corporation may not have fewer than three 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.

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

(c) In the absence of a provision of the certificate of formation or a bylaw setting the number of directors or providing for the manner in which the number of directors shall be determined, the number of directors is the same as the number constituting the initial board of directors.

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

Sec. 22.205. 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 of the members of the initial board of directors of the corporation.

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

Sec. 22.206. ELECTION OR APPOINTMENT OF BOARD OF DIRECTORS. Directors other than the initial directors are elected, appointed, or designated in the manner provided by the certificate of formation or bylaws. If the method of election, designation, or appointment is not provided by the certificate of formation or bylaws, directors other than the initial directors are elected by the board of directors.

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

Sec. 22.207. ELECTION AND CONTROL BY CERTAIN ENTITIES. (a) The board of directors of a religious, charitable, educational, or eleemosynary corporation may be affiliated with, elected, and

controlled by an incorporated or unincorporated convention, conference, or association organized under the laws of this or another state, the membership of which is composed of representatives, delegates, or messengers from a church or other religious association.

(b) The board of directors of a corporation may be wholly or partly elected by one or more associations or corporations organized under the laws of this or another state if:

(1) the certificate of formation or bylaws of the corporation provide for that election; and

(2) the corporation has no members with voting rights.

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

Sec. 22.208. TERM OF OFFICE. (a) Unless the director resigns or is removed, a director on the initial board of directors of a corporation holds office until the first annual election of directors or for the period specified in the certificate of formation or bylaws of the corporation. Directors other than the initial directors are elected, appointed, or designated for the terms provided by the certificate of formation or bylaws.

(b) In the absence of a provision in the certificate of formation or bylaws setting the term of office for directors, a director holds office until the next annual election of directors and until a successor is elected, appointed, or designated and qualified.

(c) A director may be removed from office as provided in Section 22.211.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 68, eff. January 1, 2006.

Sec. 22.209. CLASSIFICATION OF DIRECTORS. Directors may be divided into classes. The terms of office of the several classes are not required to be uniform.

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

Sec. 22.210. NON-DIRECTOR RIGHTS AND LIMITATIONS. The certificate of formation or bylaws of a corporation may provide that a person who is not a director is entitled to receive notice of and to attend meetings of the board of directors. By having those rights, the person does not have the authority, duties, or liabilities of a director and is not a governing person of the corporation.

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. 18, eff. September 1, 2019.

Sec. 22.211. REMOVAL OF DIRECTOR. (a) A director of a corporation may be removed from office under any procedure provided by the certificate of formation or bylaws of the corporation.

(b) In the absence of a provision for removal in the certificate of formation or bylaws, a director may be removed from office, with or without cause, by the persons entitled to elect, designate, or appoint the director. If the director was elected to office, removal requires an affirmative vote equal to the vote necessary to elect the director.

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

Sec. 22.2111. RESIGNATION OF DIRECTOR. Except as 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.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 69, eff. January 1, 2006.

Sec. 22.212. VACANCY. (a) Unless otherwise provided by the certificate of formation or bylaws of the corporation, a vacancy in the board of directors of a corporation shall be filled by the affirmative vote of the majority of the remaining directors, regardless of whether that majority is less than a quorum. A

director elected to fill a vacancy is elected for the unexpired term of the member's predecessor in office.

(b) A vacancy in the board occurring because of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of members called for that purpose. If a corporation has no members or has no members with the right to vote on the vacancy, the vacancy shall be filled as provided by the certificate of formation or bylaws.

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

Sec. 22.213. QUORUM. (a) A quorum for the transaction of business by the board of directors of a corporation is the lesser of:

(1) the majority of the number of directors set by the corporation's bylaws or, in the absence of a bylaw setting the number of directors, a majority of the number of directors stated in the corporation's certificate of formation; or

(2) any number, not less than three, set as a quorum by the certificate of formation or bylaws.

(b) A director present by proxy at a meeting may not be counted toward a quorum.

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

Sec. 22.214. ACTION BY DIRECTORS. The act of a majority of the directors present in person or by proxy 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.

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. 29, eff. September 1, 2017.

Sec. 22.215. VOTING IN PERSON OR BY PROXY. A director of a corporation may vote in person or, if authorized by the certificate

of formation or bylaws of the corporation, by proxy executed in writing by the director.

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

Sec. 22.216. TERM AND REVOCABILITY OF PROXY. (a) A proxy expires three months after the date the proxy is executed.

(b) A proxy is revocable unless otherwise provided by the proxy or made irrevocable by law.

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

Sec. 22.217. NOTICE OF MEETING; WAIVER OF NOTICE. (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. Attendance of a director at a meeting constitutes a waiver of notice, unless the director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) Unless required by the bylaws, the business to be transacted at, or the purpose of, a regular or special meeting of the board of directors is not required to be specified in the notice or waiver of notice of the meeting.

(d) Notice may be delivered personally or in accordance with Section 6.051(b).

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

Sec. 22.218. MANAGEMENT COMMITTEE. (a) If authorized by the certificate of formation or bylaws of the corporation, the board of directors of a corporation, by resolution adopted by the majority of the directors in office, may designate one or more committees to have and exercise the authority of the board in the management of the corporation to the extent provided by:

(1) the resolution;

(2) the certificate of formation; or

(3) the bylaws.

(b) A committee designated under this section must consist of at least two persons. Except as provided by Subsection (b-1), the majority of the persons on the committee must be directors. If provided by the certificate of formation or bylaws, the remaining persons on the committee are not required to be directors.

(b-1) If a corporation is a religious institution and if provided by the corporation's certificate of formation or bylaws, a committee designated under this section may be composed entirely of persons who are not directors of the corporation.

(c) The designation of a committee and the delegation of authority to the committee does not operate to relieve the board of directors, or an individual director, of any responsibility imposed on the board or director by law. A committee member who is not a director has the same responsibility with respect to the committee as a committee member who is a director.

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

Acts 2009, 81st Leg., R.S., Ch. 1007 (H.B. 4103), Sec. 1, eff. September 1, 2009.

Sec. 22.219. OTHER COMMITTEES. (a) The board of directors of a corporation, by resolution adopted by the majority of the directors at a meeting at which a quorum is present, or the president, if authorized by a similar resolution of the board of directors or by the certificate of formation or bylaws of the corporation, may designate and appoint one or more committees that do not have the authority of the board of directors in the management of the corporation.

(b) The membership on a committee designated under this section may be limited to directors.

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

Sec. 22.220. ACTION WITHOUT MEETING OF DIRECTORS OR COMMITTEE. (a) The certificate of formation or bylaws of a corporation may provide that an action required by this chapter to be taken at a

meeting of the corporation's directors or an action that may be taken at a meeting of the directors or a committee may be taken without a meeting if a written consent, stating the action to be taken, is signed by the number of directors or committee members necessary to take that action at a meeting at which all of the directors or committee members are present and voting. The consent must state the date of each director's or committee member's signature.

(b) Prompt notice of the taking of an action by directors or a committee without a meeting by less than unanimous written consent shall be given to each director or committee member who did not consent in writing to the action.

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. 90, eff. September 1, 2007.

Sec. 22.221. GENERAL STANDARDS FOR DIRECTORS. (a) A director shall discharge the director's duties, including duties as a committee member, in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation.

(b) A director is not liable to the corporation, a member, or another person for an action taken or not taken as a director if the director acted in compliance with this section. A person seeking to establish liability of a director must prove that the director did not act:

(1) in good faith;

(2) with ordinary care; and

(3) in a manner the director reasonably believed to be in the best interest of the corporation.

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

Sec. 22.222. RELIGIOUS CORPORATION DIRECTOR'S GOOD FAITH RELIANCE ON CERTAIN INFORMATION. A director of a religious corporation, in the discharge of a duty imposed or power conferred on the director, including a duty imposed or power conferred as a committee member, may rely in good faith on information or on an

opinion, report, or statement, including a financial statement or other financial data, concerning the corporation or another person that was prepared or presented by:

(1) a religious authority; or

(2) a minister, priest, rabbi, or other person whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

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. 91, eff. September 1, 2007.

Sec. 22.223. NOT A TRUSTEE. A director of a corporation is not considered to have the duties of a trustee of a trust with respect to the corporation or with respect to property held or administered by the corporation, including property subject to restrictions imposed by the donor or transferor of the property.

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

Sec. 22.224. DELEGATION OF INVESTMENT AUTHORITY. (a) The board of directors of a corporation may:

(1) contract with an advisor who is an investment counsel or a trust company, bank, investment advisor, or investment manager; and

(2) confer on that advisor the authority to:

(A) purchase or otherwise acquire a stock, bond, security, or other investment on behalf of the corporation; and

(B) sell, transfer, or otherwise dispose of an asset or property of the corporation at a time and for a consideration the advisor considers appropriate.

(b) The board of directors may:

(1) confer on an advisor described by Subsection (a) other powers regarding the corporation's investments as the board considers appropriate; and

(2) authorize the advisor to hold title to an asset or property of the corporation, in the advisor's own name or in the name

of a nominee, for the benefit of the corporation.

(c) The board of directors is not liable for an action taken or not taken by an advisor under this section if the board acted in good faith and with ordinary care in selecting the advisor. The board of directors may remove or replace the advisor, with or without cause, if the board considers that action appropriate or necessary.

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

Sec. 22.225. LOAN TO DIRECTOR PROHIBITED. (a) A corporation may not make a loan to a director.

(b) The directors of a corporation who vote for or assent to the making of a loan to a director, and any officer who participates in making the loan, are jointly and severally liable to the corporation for the amount of the loan until the loan is repaid.

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

Sec. 22.226. DIRECTOR LIABILITY FOR CERTAIN DISTRIBUTIONS OF ASSETS. (a) In addition to any other liability imposed by law on the directors of a corporation, the directors who vote for or assent to a distribution of assets other than in payment of the corporation's debts, when the corporation is insolvent or when distribution would render the corporation insolvent, or during the liquidation of the corporation, without the payment and discharge of or making adequate provisions for any known debt, obligation, or liability of the corporation, are jointly and severally liable to the corporation for the value of the assets distributed, to the extent that the debt, obligation, or liability is not paid and discharged.

(b) A director is not liable under this section if, in voting for or assenting to a distribution, the director:

(1) relied in good faith and with ordinary care on information or an opinion, report, or statement in accordance with Section 3.102;

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

(3) in determining whether the corporation made adequate provision for the discharge of all of its liabilities and obligations

as provided in Section 11.053, relied in good faith and with ordinary care on financial statements of, or other information concerning, a person who was or became contractually obligated to discharge some or all of those liabilities or obligations.

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

Sec. 22.227. 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 is taken on a corporate matter described by Section 22.226(a) is presumed to have assented to the action 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) The right to dissent or abstain under this section does not apply to a director who voted in favor of 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. 30, eff. September 1, 2017.

Sec. 22.228. RELIANCE ON WRITTEN OPINION OF ATTORNEY. A director is not liable under Section 22.226 or 22.227 if, in the exercise of ordinary care, the director acted in good faith and in reliance on the written opinion of an attorney for the corporation.

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

Sec. 22.229. RIGHT TO CONTRIBUTION. A director against whom a claim is asserted under Section 22.226 or 22.227 and who is held liable on the claim is entitled to contribution from persons who accepted or received the distribution knowing the distribution to have been made in violation of that section, in proportion to the amounts received by those persons.

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

Sec. 22.230. CONTRACTS OR TRANSACTIONS INVOLVING INTERESTED DIRECTORS, OFFICERS, AND MEMBERS. (a) This section applies to a contract or transaction between a corporation and:

(1) one or more directors, officers, or members, or one or more affiliates or associates of one or more directors, officers, or members, of the corporation; or

(2) an entity or other organization in which one or more directors, officers, or members, or one or more affiliates or associates of one or more directors, officers, or members, of the corporation:

(A) is a managerial official or a member; or

(B) has a financial interest.

(b) An otherwise valid and enforceable contract or transaction 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 and as to the contract or transaction are disclosed to or known by:

(A) the corporation's board of directors, a committee of the board of directors, or the members, and the board, the committee, or the members in good faith and with ordinary care authorize the contract or transaction by the affirmative vote of the majority of the disinterested directors, committee members or members, regardless of whether the disinterested directors, committee members or members constitute a quorum; or

(B) the members entitled to vote on the authorization of the contract or transaction, and the contract or transaction is specifically approved in good faith and with ordinary care by a vote of the members; 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 members.

(c) Common or interested directors or members of a corporation may be included in determining the presence of a quorum at a meeting of the board, a committee of the board, or members 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, member, or committee member, may vote at a meeting of the board of directors, of the members, or of a committee of the board that authorizes the contract or transaction; or

(2) sign, in the person's capacity as a director, member, or committee member, a written consent of the directors, members, 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 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 33, eff. September 1, 2011.

Sec. 22.231. OFFICERS. (a) The officers of a corporation shall include a president and a secretary and may include one or more vice presidents, a treasurer, and other officers and assistant officers as considered necessary. Any two or more offices, other than the offices of president and secretary, may be held by the same person.

(b) A properly designated committee may perform the functions of an officer. A single committee may perform the functions of any two or more officers, including the functions of president and

secretary.

(c) The officers of a corporation may be designated by other or additional titles as provided by the certificate of formation or bylaws of the corporation.

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

Sec. 22.232. ELECTION OR APPOINTMENT OF OFFICERS. (a) An officer of a corporation shall be elected or appointed at the time, in the manner, and for the terms prescribed by the certificate of formation or bylaws of the corporation. The term of an officer may not exceed three years.

(b) If the certificate of formation or bylaws do not include provisions for the election or appointment of officers, the officers shall be elected or appointed annually by the board of directors or, if the management of the corporation is vested in the corporation's members, by the members.

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

Sec. 22.233. APPLICATION TO CHURCH. A corporation that is a church is not required to have officers as provided by this subchapter. The duties and responsibilities of the officers may be vested in the corporation's board of directors or other designated body in any manner provided for by the certificate of formation or bylaws of the corporation.

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

Sec. 22.234. RELIGIOUS CORPORATION OFFICER'S GOOD FAITH RELIANCE ON CERTAIN INFORMATION. An officer of a religious corporation, in the discharge of a duty imposed or power conferred on the officer, may rely in good faith and with ordinary care on information or on an opinion, report, or statement, including a financial statement or other financial data, concerning the corporation or another person that was prepared or presented by:

(1) a religious authority; or

(2) a minister, priest, rabbi, or other person whose

position or duties in the religious organization the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

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. 92, eff. September 1, 2007.

Sec. 22.235. OFFICER LIABILITY. (a) An officer is not liable to the corporation or any other person for an action taken or omission made by the officer in the person's capacity as an officer unless the officer's conduct was not exercised:

(1) in good faith;

(2) with ordinary care; and

(3) in a manner the officer reasonably believes to be in the best interest of the corporation.

(b) This section shall not affect the liability of the corporation for an act or omission of the officer.

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

SUBCHAPTER F. FUNDAMENTAL BUSINESS TRANSACTIONS

Sec. 22.251. APPROVAL OF MERGER. (a) A domestic corporation that is a party to a merger under Chapter 10 must approve the merger by complying with this section.

(b) If the corporation that is a party to the merger has no members or has no members with voting rights, the plan of merger must be approved by the vote of directors required by Section 22.164.

(c) If the management of the affairs of the corporation that is a party to the merger is vested in its members under Section 22.202, the plan of merger:

(1) must be submitted to a vote at an annual, regular, or special meeting of the members; and

(2) must be approved by the members by the vote required by Section 22.164.

(d) If the corporation that is a party to the merger has members with voting rights:

(1) the board of directors must adopt a resolution that:

(A) approves the plan of merger; and

(B) directs that the plan be submitted to a vote at an annual or special meeting of the members having voting rights; and

(2) the members must approve the plan of merger by the vote required by Section 22.164.

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

Sec. 22.252. APPROVAL OF SALE OF ALL OR SUBSTANTIALLY ALL OF ASSETS. (a) A corporation must approve the sale of all or substantially all of its assets by complying with this section.

(b) If the corporation has no members or has no members with voting rights, the sale of all or substantially all of the assets of the corporation must be authorized by the vote of directors required by Section 22.164.

(c) If the management of the affairs of the corporation is vested in its members under Section 22.202, a resolution authorizing a sale of all or substantially all of the assets of the corporation:

(1) must be submitted to a vote at an annual, regular, or special meeting of the members; and

(2) must be approved by the members by the vote required by Section 22.164.

(d) If the corporation has members with voting rights:

(1) the board of directors of the corporation must adopt a resolution that:

(A) recommends the sale; and

(B) directs that the resolution be submitted to a vote at an annual or special meeting of the members having voting rights; and

(2) the members must approve the resolution by the vote required by Section 22.164.

(e) At the meeting required by Subsection (c) or (d), in addition to approving the resolution authorizing the sale, the members may set, or authorize the board of directors to set, the terms and conditions of the sale and the consideration to be received by the corporation for the sale by the same vote of members.

(f) After the members authorize a sale under Subsection (d), the board of directors may abandon the sale, subject to the rights of third parties under any contracts relating to the sale, without

further action or approval by members.

(g) Notwithstanding Subsection (d), if a corporation is insolvent, a sale of all or substantially all of the assets of the corporation may be authorized on receiving the affirmative vote of the majority of the directors in office.

(h) The phrase "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 activities without regard to whether the disposition is made with the goodwill of the corporation's activities. The term does not include a transaction that results in the corporation directly or indirectly:

(1) continuing to engage in one or more activities; or

(2) applying a portion of the consideration received in connection with the transaction to the conduct of an activity that the corporation engages in after the transaction.

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

Sec. 22.253. MEETING OF MEMBERS; NOTICE. (a) The corporation must give to each member entitled to vote at a meeting described by Section 22.251(c) or (d) or Section 22.252(c) or (d) a written notice stating that the purpose or one of the purposes of the meeting is to consider the plan of merger or the sale of all or substantially all of the assets of the corporation. The notice must be given in the time and manner provided by Chapter 6 and this chapter for giving notice of a meeting to members.

(b) A vote of members entitled to vote at the meeting shall be taken on the plan of merger or the resolution authorizing the sale of all or substantially all of the assets of the corporation. The members must approve the plan or resolution by the vote required by Section 22.164.

(c) For a meeting to vote on a plan of merger, the notice of the meeting must contain the plan of merger or a summary of the plan of merger.

(d) For a corporation the management of the affairs of which is vested in its members under Section 22.202, the notice of the meeting

is subject to the provisions of the certificate of formation or bylaws of the corporation.

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

Sec. 22.254. PLEDGE, MORTGAGE, DEED OF TRUST, OR TRUST INDENTURE. (a) Except as otherwise provided by Subsection (b) or 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 members is not required for the validity of the transaction or for any sale under the terms of the transaction.

(b) If the management of the affairs of a corporation is vested in the corporation's members under Section 22.202:

(1) the members may authorize a pledge, mortgage, deed of trust, or trust indenture in the manner provided by Section 22.252(c) for a sale of all or substantially all of the assets of a corporation; and

(2) an authorization by the board of directors 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. 22.255. CONVEYANCE BY CORPORATION. A corporation may convey real property of the corporation when authorized by appropriate resolution of the board of directors or members.

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

Sec. 22.256. APPROVAL OF CONVERSION. (a) A domestic corporation must approve a conversion under Chapter 10 by complying with this section.

(b) If the corporation has no members or has no members with voting rights, the plan of conversion must be approved by the vote of directors required by Section 22.164.

(c) If the management of the affairs of the corporation is

vested in its members under Section 22.202, the plan of conversion:

(1) must be submitted to a vote at an annual, regular, or special meeting of the members; and

(2) must be approved by the members by the vote required by Section 22.164.

(d) If the corporation has members with voting rights:

(1) the board of directors must adopt a resolution that:

(A) approves the plan of conversion; and

(B) directs that the plan be submitted to a vote at an annual or special meeting of the members having voting rights; and

(2) the members must approve the plan of conversion by the vote required by Section 22.164.

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

Sec. 22.257. APPROVAL OF EXCHANGE. (a) A domestic corporation must approve an exchange under Chapter 10 by complying with this section.

(b) If the corporation has no members or has no members with voting rights, the plan of exchange must be approved by the vote of directors required by Section 22.164.

(c) If the management of the affairs of the corporation is vested in its members under Section 22.202, the plan of exchange:

(1) must be submitted to a vote at an annual, regular, or special meeting of the members; and

(2) must be approved by the members by the vote required by Section 22.164.

(d) If the corporation has members with voting rights:

(1) the board of directors must adopt a resolution that:

(A) approves the plan of exchange; and

(B) directs that the plan be submitted to a vote at an annual or special meeting of the members having voting rights; and

(2) the members must approve the plan of exchange by the vote required by Section 22.164.

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

SUBCHAPTER G. WINDING UP AND TERMINATION

Sec. 22.301. APPROVAL OF VOLUNTARY WINDING UP, REINSTATEMENT,

REVOCATION OF VOLUNTARY WINDING UP, OR DISTRIBUTION PLAN. 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), a revocation of a voluntary decision to wind up in accordance with Section 11.151, or a distribution plan in accordance with Section 22.305 by complying with 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. 93, eff. September 1, 2007.

Sec. 22.302. CERTAIN PROCEDURES FOR APPROVAL. To approve a voluntary winding up, a reinstatement, a cancellation of an event requiring winding up, a revocation of a voluntary decision to wind up, or a distribution plan, a corporation must follow the following procedures:

(1) if the corporation has no members or has no members with voting rights and the corporation:

(A) holds any assets or has solicited any assets or otherwise engaged in activities, the corporation's board of directors must adopt a resolution to wind up, to reinstate, to cancel the event requiring winding up, to revoke a voluntary decision to wind up, or to effect the distribution plan by the vote of directors required by Section 22.164(b)(3); or

(B) does not hold any assets and has not solicited any assets or otherwise engaged in activities, 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, to revoke a voluntary decision to wind up, or to effect the distribution plan by the vote required by Section 22.164(d);

(2) if the management of the affairs of the corporation is vested in the corporation's members under Section 22.202, the winding up, reinstatement, cancellation of event requiring winding up, revocation of voluntary decision to wind up, or distribution plan:

(A) must be submitted to a vote at an annual, regular, or special meeting of members; and

(B) must be approved by the members by the vote required by Section 22.164(b)(2); or

(3) if the corporation has members with voting rights:

(A) the corporation's board of directors must approve a resolution:

(i) recommending the winding up, reinstatement, cancellation of event requiring winding up, revocation of a voluntary decision to wind up, or distribution plan; and

(ii) directing that the winding up, reinstatement, cancellation of event requiring winding up, revocation of a voluntary decision to wind up, or distribution plan of the corporation be submitted to a vote at an annual or special meeting of members; and

(B) the members must approve the action described by Paragraph (A) in accordance with Section 22.303.

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. 29, eff. September 1, 2015.

Sec. 22.303. MEETING OF MEMBERS; NOTICE. (a) The corporation must give to each member entitled to vote at a meeting described by Section 22.302(2) or (3) a written notice stating that the purpose or one of the purposes of the meeting is to consider the winding up, reinstatement, cancellation of event requiring winding up, revocation of the voluntary decision to wind up, or distribution plan of 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 a meeting to members.

(b) A vote of members entitled to vote at the meeting shall be taken on the resolution to wind up, reinstate, cancel the event requiring winding up, revoke the voluntary decision to wind up, or effect the distribution plan of the corporation. The members must approve the resolution by the vote required under Section 22.164.

(c) For a meeting to vote on a distribution plan, the notice of the meeting must contain the proposed plan of distribution or a summary of the plan.

(d) For a corporation the management of the affairs of which is vested in its members under Section 22.202, the notice of the meeting

is subject to the provisions of the certificate of formation or bylaws of the corporation.

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

Sec. 22.304. APPLICATION AND DISTRIBUTION OF PROPERTY. (a) After all liabilities and obligations of a corporation in the process of winding up are paid, satisfied, and discharged in accordance with Section 11.053, the property of the corporation shall be applied and distributed as follows:

(1) property held by the corporation on a condition requiring return, transfer, or conveyance because of the winding up or termination shall be returned, transferred, or conveyed in accordance with that requirement; and

(2) unless otherwise provided by the corporation's certificate of formation, the remaining property of the corporation shall be distributed only for tax-exempt purposes to one or more organizations that are exempt under Section 501(c)(3), Internal Revenue Code, or described by Section 170(c)(1) or (2), Internal Revenue Code, under a plan of distribution adopted under this chapter.

(b) A district court of the county in which the corporation's principal office is located shall distribute to one or more organizations exempt under Section 501(c)(3), Internal Revenue Code, or described by Section 170(c)(1) or (2), Internal Revenue Code, the property of the corporation remaining after a distribution of property under the plan of distribution. The court shall make the distribution in the manner the court determines will best accomplish the general purposes for which the corporation was organized.

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

Sec. 22.305. DISTRIBUTION PLAN. A plan providing for the distribution of property may be adopted by a corporation in the process of winding up, and shall be adopted by a corporation to authorize a transfer or conveyance of assets for which this chapter requires a plan of distribution, in the manner provided by this subchapter.

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

Sec. 22.307. RESPONSIBILITY FOR WINDING UP. If a corporation determines or is required to wind up, the winding up of the corporation's affairs shall be managed by:

(1) the directors, if management of the affairs is not vested in the corporation's members under Section 22.202; or

(2) the members, if management of the affairs is vested in the corporation's members under Section 22.202.

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

SUBCHAPTER H. RECORDS AND REPORTS

Sec. 22.351. MEMBER'S RIGHT TO INSPECT BOOKS AND RECORDS. A member of a corporation, on written demand stating the purpose of the demand, is entitled to examine and copy at the member's expense, in person or by agent, accountant, or attorney, at any reasonable time and for a proper purpose, the books and records of the corporation relevant to that purpose.

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

Sec. 22.352. FINANCIAL RECORDS AND ANNUAL REPORTS. (a) A corporation shall maintain current and accurate financial records with complete entries as to each financial transaction of the corporation, including income and expenditures, in accordance with generally accepted accounting principles.

(b) Based on the records maintained under Subsection (a), the board of directors of the corporation shall annually prepare or approve a financial report for the corporation for the preceding year. The report must conform to accounting standards as adopted by the American Institute of Certified Public Accountants and must include:

(1) a statement of support, revenue, and expenses;

(2) a statement of changes in fund balances;

(3) a statement of functional expenses; and

(4) a balance sheet for each fund.

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

Sec. 22.353. AVAILABILITY OF FINANCIAL INFORMATION FOR PUBLIC INSPECTION. (a) A corporation shall keep records, books, and annual reports of the corporation's financial activity at the corporation's registered or principal office in this state for at least three years after the close of the fiscal year.

(b) The corporation shall make the records, books, and reports available to the public for inspection and copying at the corporation's registered or principal office during regular business hours. The corporation may charge a reasonable fee for preparing a copy of a record or report.

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

Sec. 22.354. FAILURE TO MAINTAIN FINANCIAL RECORD OR PREPARE ANNUAL REPORT; OFFENSE. (a) A corporation commits an offense if the corporation fails to maintain a financial record, prepare an annual report, or make the record or report available to the public in the manner required by Section 22.353.

(b) An offense under this section is a Class B misdemeanor.

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

Sec. 22.355. EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING TO FINANCIAL RECORDS AND ANNUAL REPORTS. Sections 22.352, 22.353, and 22.354 do not apply to:

(1) a corporation that solicits funds only from members of the corporation;

(2) a corporation that does not intend to solicit and receive and does not actually raise or receive during a fiscal year contributions in an amount exceeding $10,000 from a source other than its own membership;

(3) a private or independent institution of higher education described by Section 61.003, Education Code, accredited by a recognized accrediting agency as defined by Section 61.003, Education Code, a postsecondary educational institution authorized to grant degrees under a certificate of authority issued by the Texas

Higher Education Coordinating Board or a foundation chartered for the benefit of the institution or any component part of the institution, a career school or college that has received a certificate of approval from the Texas Workforce Commission, a public institution of higher education or a foundation chartered for the benefit of the institution or any component part of the institution, or an elementary or secondary school;

(4) a religious institution that is a church, an ecclesiastical or denominational organization, or another established physical place for worship at which religious services are the primary activity and are regularly conducted;

(5) a trade association or professional society the income of which is principally derived from membership dues and assessments, sales, or services;

(6) an insurer licensed and regulated by the Texas Department of Insurance; or

(7) an alumni association of a public or private institution of higher education in this state that is recognized and acknowledged as the official alumni association by the institution.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 70, eff. January 1, 2006.

Sec. 22.356. CORPORATIONS ASSISTING STATE AGENCIES. (a) In this section, "state agency" means:

(1) a board, commission, department, office, or other entity that is in the executive branch of state government and that was created by the constitution or a statute of this state, including an institution of higher education as defined by Section 61.003, Education Code;

(2) the legislature or a legislative agency; or

(3) the supreme court, the court of criminal appeals, a court of appeals, the state bar, or another state judicial agency.

(b) The books and records of a corporation other than a bona fide alumni association are subject to audit at the discretion of the state auditor if:

(1) the corporation's certificate of formation specifically

dedicates the corporation's activities to the benefit of a particular state agency; and

(2) a board member, officer, or employee of that state agency is a director of the corporation.

(c) If the corporation's charter specifically dedicates the corporation's activities to the benefit of a particular state agency but the conditions described by Subsection (b)(2) do not exist, a corporation shall file with the secretary of state a copy of the report required by Section 22.352(b) for the preceding fiscal year not later than the 89th day after the last day of the corporation's fiscal year.

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. 19, eff. September 1, 2019.

Sec. 22.357. REPORT OF DOMESTIC AND FOREIGN CORPORATIONS. (a) The secretary of state may require a domestic corporation or a foreign corporation registered to conduct affairs in this state to file a report in accordance with Chapter 4 not more than once every four years as required by this subchapter. The report must state:

(1) the name of the corporation;

(2) the state or country under the laws of which the corporation is incorporated;

(3) the address of the registered office of the corporation in this state and the name of the registered agent at that address;

(4) if the corporation is a foreign corporation, the address of the principal office of the corporation in the state or country under the laws of which the corporation is incorporated; and

(5) the names and addresses of the directors and officers of the corporation.

(b) A corporation required to prepare a report under this section shall prepare the report on a form adopted by the secretary of state for that purpose and shall include in the report information that is accurate as of the date the report is executed. An officer or, if the corporation is in the hands of a receiver or trustee, the receiver or trustee shall sign the report on behalf of the corporation.

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

Sec. 22.358. NOTICE REGARDING REPORT. (a) The secretary of state shall send written notice that the report required by Section 22.357 is due. The notice must be:

(1) addressed to the corporation; and

(2) mailed to the corporation's registered agent or to the corporation at:

(A) the last known address of the corporation as it appears on record in the office of the secretary of state; or

(B) any other known place of business of the corporation.

(b) The secretary of state shall include with the notice a report form to be prepared and filed as provided by this subchapter.

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

Sec. 22.359. FILING OF REPORT. A copy of the report must be filed with the secretary of state in accordance with Chapter 4 not later than the 30th day after the date notice is mailed under Section 22.358.

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

Sec. 22.360. FAILURE TO FILE REPORT. (a) A domestic or foreign corporation that fails to file a report under Sections 22.357 and 22.359 when the report is due forfeits the corporation's right to conduct affairs in this state.

(b) The forfeiture takes effect, without judicial action, when the secretary of state enters on the record of the corporation kept in the office of the secretary of state:

(1) the words "right to conduct affairs forfeited"; and

(2) the date of forfeiture.

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

Sec. 22.361. NOTICE OF FORFEITURE. Notice of forfeiture under

Section 22. 360 shall be mailed to the corporation's registered agent at the registered office or to the corporation at:

(1) the address of the principal place of business of the corporation as it appears in the certificate of formation;

(2) the last known address of the corporation as it appears on record in the office of the secretary of state; or

(3) any other known place of business of the corporation.

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

Sec. 22.362. EFFECT OF FORFEITURE. (a) Unless the right of the corporation to conduct affairs in this state is revived under Section 22.363:

(1) the corporation may not maintain an action, suit, or proceeding in a court of this state; and

(2) a successor or assignee of the corporation may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising from the conduct of affairs by the corporation in this state.

(b) This section does not affect the right of an assignee of the corporation as:

(1) the holder in due course of a negotiable promissory note, check, or bill of exchange; or

(2) the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument negotiable by law.

(c) The forfeiture of the right to conduct affairs in this state does not:

(1) impair the validity of a contract or act of the corporation; or

(2) prevent the corporation from defending an action, suit, or proceeding in a court of this state.

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

Sec. 22.363. REVIVAL OF RIGHT TO CONDUCT AFFAIRS. (a) A corporation may be relieved from a forfeiture under Section 22.360 by filing the required report, accompanied by the revival fee, not later than the 120th day after the date of mailing of the notice of forfeiture under Section 22.361.

(b) If a corporation complies with Subsection (a), the secretary of state shall:

(1) revive the right of the corporation to conduct affairs in this state;

(2) cancel the words regarding the forfeiture on the record of the corporation; and

(3) endorse on that record the word "revived" and the date of revival.

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

Sec. 22.364. FAILURE TO REVIVE; TERMINATION OR REVOCATION. (a) The failure of a corporation that has forfeited its right to conduct affairs in this state to revive that right under Section 22.363 is grounds for:

(1) the involuntary termination of the domestic corporation; or

(2) the revocation of the foreign corporation's registration to transact business in this state.

(b) The termination or revocation takes effect, without judicial action, when the secretary of state enters on the record of the corporation filed in the office of the secretary of state the word "forfeited" and the date of forfeiture and cites this chapter as authority for that forfeiture.

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

Sec. 22.365. REINSTATEMENT. (a) A corporation that is terminated or the registration of which has been revoked as provided by Section 22.364 may be relieved of the termination or revocation by filing the report required by Section 22.357, accompanied by the filing fee for the report, if the corporation has paid:

(1) all fees, taxes, penalties, and interest due and accruing before the termination or revocation; and

(2) an amount equal to the total taxes from the date of termination or revocation to the date of reinstatement that would have been payable if the corporation had not been terminated or had its registration revoked.

(b) When the report is filed and the filing fee is paid to the

secretary of state, the secretary of state shall:

(1) reinstate the certificate of formation or registration without judicial action;

(2) cancel the word "forfeited" on the record; and

(3) endorse on the record kept in the secretary's office relating to the corporation the words "set aside" and the date of the reinstatement.

(c) If a termination or revocation is set aside under this section, the corporation shall determine from the secretary of state whether the name of the corporation is available. If the name of the corporation is not available at the time of reinstatement, the corporation shall amend its corporate name under this code.

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

SUBCHAPTER I. CHURCH BENEFITS BOARDS

Sec. 22.401. DEFINITION. In this chapter, "church benefits board" means an organization described by Section 414(e)(3)(A), Internal Revenue Code, that:

(1) has the principal purpose or function of administering or funding a plan or program to provide retirement benefits, welfare benefits, or both for the ministers or employees of a church or a conference, convention, or association of churches; and

(2) is controlled by or affiliated with a church or a conference, convention, or association of churches.

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

Sec. 22.402. PENSIONS AND BENEFITS. When authorized by the corporation's members or as otherwise provided by law, a domestic or foreign nonprofit corporation formed for a religious purpose may provide, directly or through a separate church benefits board, for the support and payment of benefits and pensions to:

(1) the ministers, teachers, employees, trustees, directors, or other functionaries of the corporation;

(2) the ministers, teachers, employees, trustees, directors, or other functionaries of organizations controlled by or affiliated with a church or a conference, convention, or association of churches under the jurisdiction and control of the corporation;

and

(3) the spouse, children, dependents, or other beneficiaries of the persons described by Subdivisions (1) and (2).

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

Sec. 22.403. CONTRIBUTIONS. (a) A church benefits board may provide for:

(1) the collection of contributions and other payments to assist in providing pensions and benefits under this subchapter; and

(2) the creation, maintenance, investment, management, and disbursement of necessary annuities, endowments, reserves, or other funds for a purpose under Subdivision (1).

(b) A church benefits board may receive payments from a trust fund or corporation that funds a church plan as defined by Section 414(e), Internal Revenue Code.

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

Sec. 22.404. POWER TO ACT AS TRUSTEE. A church benefits board may act as:

(1) a trustee under a lawful trust committed to the board by contract, will, or otherwise; and

(2) an agent for the performance of a lawful act relating to the purposes of the trust.

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

Sec. 22.405. DOCUMENTS AND AGREEMENTS. A church benefits board may provide to a program participant a certificate or agreement of participation, a debenture, or an indemnification agreement, as appropriate to accomplish the purposes of the board.

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

Sec. 22.406. INDEMNIFICATION. A church benefits board, or an affiliate wholly owned by the board, may agree to indemnify against

damage or risk of loss:

(1) a minister, teacher, employee, trustee, functionary, or director affiliated with the board or a family member, dependent, or beneficiary of one of those persons;

(2) a church or a convention, conference, or association of churches; or

(3) an organization that is controlled by or affiliated with the board or with a church or a convention, conference, or association of churches.

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

Sec. 22.407. PROTECTION OF BENEFITS. (a) Money or other benefits that have been or will be provided to a participant or a beneficiary under a plan or program provided by or through a church benefits board under this subchapter are not subject to execution, attachment, garnishment, or other process and may not be appropriated or applied as part of a judicial, legal, or equitable process or operation of a law other than a constitution to pay a debt or liability of the participant or beneficiary.

(b) This section does not apply to a qualified domestic relations order or an amount required by the church benefits board to recover costs or expenses incurred in the plan or program.

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

Sec. 22.408. ASSIGNMENT OF BENEFITS. An assignment or transfer or an attempt to make an assignment or transfer by a beneficiary of money, benefits, or other rights under a plan or program under this subchapter is void if:

(1) the plan or program contains a provision prohibiting the assignment or other transfer without the written consent of the church benefits board; and

(2) the beneficiary assigns or transfers or attempts to make an assignment or transfer without that consent.

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

Sec. 22.409. INSURANCE CODE NOT APPLICABLE. The Insurance Code does not apply to a church benefits board or a program, plan, benefit, or activity of the board or a person affiliated with the board.

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

SUBCHAPTER J. RATIFICATION OF DEFECTIVE CORPORATE ACTS; PROCEEDINGS

Sec. 22.501. DEFINITIONS. In this subchapter:

(1) "Corporate statute," with respect to an action or filing, means this code, the former Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), or any predecessor statute of this state that governed the action or the filing.

(2) "Defective corporate act" means:

(A) an election or appointment of directors that is void or voidable due to a failure of authorization; or

(B) 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, 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, a corporate resolution, or any plan or agreement to which the corporation is a party, 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) "Time of the defective corporate act" means the date and time the defective corporate act was purported to have been taken or the approximate date and time, if the exact date is unknown.

(6) "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 members for approval under Section 22.505 is approved by the members or, if the corporation has no members or has no members with voting rights or if no member approval is required, the time at which the board of directors adopts the resolutions required by Section 22.503;

(B) if a certificate of validation is not required to be filed under Section 22.508, the time, if any, specified by the board of directors or the members in the resolutions adopted under Section 22.503, 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 22.508 takes effect in accordance with Chapter 4.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.502. RATIFICATION OF DEFECTIVE CORPORATE ACT. Subject to Section 22.509, a defective corporate act is not void or voidable solely as a result of a failure of authorization if the act is:

(1) ratified in accordance with this subchapter; or

(2) validated by the district court in a proceeding brought under Section 22.512.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.503. 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) the nature of the failure of authorization with respect to each defective corporate act to be ratified; and

(4) that the board of directors approves the ratification of the defective corporate act or acts.

(b) If the corporation has members with voting rights, a resolution may also state that, notwithstanding member 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 member action.

(c) If the management of the affairs of the corporation is vested in its members under Section 22.202, the members 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) the nature of the failure of authorization with respect to each corporate act to be ratified; and

(4) that the members approve the ratification of the defective corporate act or acts.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.504. 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 22.503 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 the governing authority 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 governing authority must be required for a quorum to be present or to adopt the resolutions to ratify the defective corporate act, as applicable.

(c) If the corporation has members with voting rights or if the corporation had members with voting rights at the time of the taking of the defective corporate act, the presence or approval of any director elected, appointed, or nominated by a class of members that no longer exists, or by any person that is no longer a member, shall not be required for a quorum to be present or to adopt the resolutions.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.505. APPROVAL OF RATIFIED DEFECTIVE CORPORATE ACT BY MEMBERS WITH VOTING RIGHTS REQUIRED; EXCEPTION. If the corporation has members with voting rights, each defective corporate act ratified under Section 22.503(a) must be submitted to such members of the corporation for approval as provided by Sections 22.506 and 22.507, unless 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 approval by such members of:

(1) the defective corporate act to be ratified at the time of that defective corporate act; or

(2) 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 22.503.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.506. NOTICE REQUIREMENTS FOR RATIFIED DEFECTIVE CORPORATE ACT SUBMITTED FOR APPROVAL OF MEMBERS WITH VOTING RIGHTS. (a) If a corporation has members with voting rights and if the ratification of a defective corporate act is required to be submitted to such members for approval under Section 22.505, 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 member with voting rights as of the record date of the meeting, at the address of the member as it appears or most recently appeared, as appropriate, on the corporation's records; and

(2) each member with voting rights as of the time of the defective corporate act, except that notice is not required to be given to a member whose identity or address cannot be ascertained from the corporation's records.

(b) The notice must contain:

(1) copies of the resolutions adopted by the board of directors under Section 22.503 or the information required by Sections 22.503(a)(1)-(4); and

(2) a statement that, on member approval of the ratification of the defective corporate act made in accordance with this subchapter, the member's right to challenge the defective corporate act is 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 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.507. QUORUM AND VOTING FOR APPROVAL OF RATIFIED DEFECTIVE CORPORATE ACT AT MEETING OF MEMBERS WITH VOTING RIGHTS. (a) If the corporation has members with voting rights, at the meeting of such members, the quorum and voting requirements applicable to the approval of the ratification of a defective corporate act under Section 22.505 are the same as the quorum and voting requirements applicable at the time of the approval by the members 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 of members or of any class of members 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 of members or of the class of members 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 any class that is no longer in existence or has no members, or of any person that is no longer a member with voting rights, is not required.

(c) The approval by the members with voting rights of the ratification of the election of a director requires the affirmative vote of the majority of members 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 of members with voting rights or of any class of members with voting rights to elect the director, in which case the affirmative vote of the larger number of members or of the class of members is required to ratify the election of the director, except that the presence or approval of any class that is no longer in existence or has no members, or of any person that is no longer a member with voting rights, is not required.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.508. 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. The filing of another filing instrument or document is not required.

(b) 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 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.

(c) The certificate of validation must include:

(1) each defective corporate act that is a subject of the certificate of validation, including:

(A) the date of the defective corporate act; and

(B) 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) if the corporation has members with voting rights, the date, if any, on which the members approved the ratification of each defective corporate act or, if the management of the affairs of the corporation is vested in its members under Section 22.202, the date on which the members ratified 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.

(d) A filing instrument attached to a certificate of validation under Subsection (c)(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 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.509. ADOPTION OF RESOLUTIONS; EFFECT ON DEFECTIVE CORPORATE ACT. On or after the validation effective time, unless determined otherwise in an action brought under Section 22.512, 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

22.503 and 22.504, and the effect shall be retroactive to the time of the defective corporate act.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.510. NOTICE TO MEMBERS FOLLOWING RATIFICATION OF DEFECTIVE CORPORATE ACT. (a) If the management of the affairs of a corporation is vested in its members under Section 22.202 or if a corporation has members with voting rights, for each defective corporate act ratified by the governing authority under Sections 22.503 and 22.504, notice of the ratification shall be given promptly to:

(1) each member having voting rights as of the date the governing authority adopted the resolutions ratifying the defective corporate act; or

(2) each member having voting rights as of a date not later than the 60th day after the date of adoption, as established by the governing authority.

(b) Notice under this section shall be sent to the address of a member 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 member having voting rights as of the time of the defective corporate act, except that notice is not required to be given to a member 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 governing authority under Section 22.503 or the information required by Sections 22.503(a)(1)-(4) or 22.503(c)(1)-(4), as applicable; and

(2) a statement that, on ratification of the defective corporate act made in accordance with this subchapter, the member's right to challenge the defective corporate act is 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), 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 22.506.

(f) For purposes of Sections 22.505, 22.506, and 22.507 and this section, notice to members with voting rights as of the time of the defective corporate act shall be treated as notice to such members for purposes of Sections 6.051, 6.052, 6.053, 6.201, 6.202, 6.203, 6.204, 6.205, and 22.156.

(g) If the ratification of a defective corporate act has been approved by the members 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 members entitled to the notice under Section 6.202(d) and all other members otherwise entitled to the notice under Subsection (a); and

(2) is not required to be sent to members who signed a consent described by Section 6.202(b).

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.511. 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 22.512 through 22.515 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 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 22.512 through 22.515 does

not, of itself, affect the validity or effectiveness of any act or transaction 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.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.512. PROCEEDING REGARDING VALIDITY OF DEFECTIVE CORPORATE ACTS. (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 or other person having fiduciary responsibility in relation to the actions of the corporation;

(4) any member with voting rights; or

(5) any record member with voting rights as of the time a defective corporate act was ratified in accordance with this subchapter.

(b) Subject to Section 22.515, 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

(5) modify or waive any of the procedures set forth in Sections 22.501 through 22.511 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 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) if the corporation has members with voting rights, order that a meeting of such members be held and determine the right and power of persons to vote at the meeting;

(6) 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; and

(7) 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 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.513. EXCLUSIVE JURISDICTION. The district court has exclusive jurisdiction to hear and determine any action brought under Section 22.512.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.514. SERVICE. (a) Service of an application filed under Section 22.512 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 22.512, 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 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.515. 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 22.506 and 22.510.

(b) Notwithstanding any other provision of this subchapter:

(1) an action claiming that a defective corporate act is void or voidable due to a failure of authorization identified in the resolutions adopted in accordance with Section 22.503 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 22.510 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 22.510 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 member at the member'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 member, or to which the member consents, for the purpose of receiving notice.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

Sec. 22.516. NOTICE TO ATTORNEY GENERAL. (a) In this section, "charitable entity" has the meaning assigned by Section 123.001, Property Code.

(b) An action brought under Section 22.512 that involves a charitable entity is considered a "proceeding involving a charitable trust" to which Chapter 123, Property Code, applies.

Added by Acts 2019, 86th Leg., R.S., Ch. 664 (S.B. 1969), Sec. 1, eff. September 1, 2019.

CHAPTER 23. SPECIAL-PURPOSE CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 23.001. DETERMINATION OF APPLICABLE LAW. (a) A corporation created under this chapter or under a special statute outside this code, to the extent not inconsistent with a special statute regarding a particular corporation, is governed by:

(1) Title 1 and Chapter 21, if the corporation is organized

for profit; and

(2) Title 1 and Chapter 22, if the corporation is organized not for profit.

(b) If a special statute does not contain any provision regarding a matter provided for in Title 1 or Chapter 21 or 22, or if the special statute specifically provides that the general laws for corporations supplement the statute, to the extent consistent with the special statute:

(1) Title 1 and Chapter 21 apply to a corporation organized for profit; and

(2) Title 1 and Chapter 22 apply to a corporation organized not for profit.

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

Sec. 23.002. APPLICABILITY OF FILING REQUIREMENTS. Except as otherwise provided by the special statute, a document to be filed with the secretary of state under a special statute shall be executed and filed in accordance with Chapter 4.

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

Sec. 23.003. DOMESTIC CORPORATION ORGANIZED UNDER SPECIAL STATUTE. A corporation organized under a special statute other than this code is not considered a "domestic corporation" formed under this code, although this code may apply to the corporation.

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

SUBCHAPTER B. BUSINESS DEVELOPMENT CORPORATIONS

Sec. 23.051. DEFINITIONS. In this subchapter:

(1) "Corporation" means a business development corporation organized under this subchapter.

(2) "Financial institution" means a banking corporation or trust company, savings and loan association, governmental agency, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) "Loan limit" means the maximum amount permitted to be

outstanding at one time on loans made by a member to a corporation.

(4) "Member" means a financial institution authorized to do business in this state that undertakes to lend money to a corporation.

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

Text of section effective until January 1, 2022

Sec. 23.052. ORGANIZERS. Subject to The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), 25 or more persons, the majority of whom must be residents of this state, may form a business development corporation to promote, develop, and advance the prosperity and economic welfare of this state.

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

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.05, eff. January 1, 2022.

Text of section effective on January 1, 2022

Sec. 23.052. ORGANIZERS. Subject to The Securities Act (Title 12, Government Code), 25 or more persons, the majority of whom must be residents of this state, may form a business development corporation to promote, develop, and advance the prosperity and economic welfare of this state.

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

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.05, eff. January 1, 2022.

Sec. 23.053. PURPOSES. (a) A business development corporation may be organized as a:

(1) for-profit corporation under Chapter 21; or

(2) nonprofit corporation under Chapter 22.

(b) In accordance with Section 3.005(a)(3), the certificate of formation of a business development corporation must state that the

purposes of the corporation are to:

(1) promote, stimulate, develop, and advance the business prosperity and economic welfare of this state and the residents of this state;

(2) encourage and assist, through loans, investments, or other business transactions, new business and industry in this state;

(3) rehabilitate and assist existing industry in this state;

(4) stimulate and assist in the expansion of business activity that will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the residents of this state;

(5) cooperate and act in conjunction with other public or private organizations in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and

(6) provide financing for the promotion, development, and conduct of business activity in this state.

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. 94, eff. September 1, 2007.

Sec. 23.054. POWERS. (a) The powers of a corporation include, in addition to the powers conferred on the corporation by Chapters 2 and 21 or 22, as applicable, the power to:

(1) elect, appoint, and employ officers, agents, and employees;

(2) make contracts and incur liabilities for a purpose of the corporation;

(3) borrow money on a secured or unsecured basis to carry out a purpose of the corporation;

(4) issue for the purpose of borrowing money a bond, debenture, note, or other evidence of indebtedness, whether secured or unsecured;

(5) secure an evidence of indebtedness by mortgage, pledge, deed of trust, or other lien on a property, franchise, right, or

privilege of the corporation, or any part of or interest in those items, without securing shareholder or member approval;

(6) make a secured or unsecured loan and establish and regulate the terms and conditions of that loan and the charges for interest or service connected with that loan;

(7) purchase, receive, hold, lease, or otherwise acquire, and sell, convey, transfer, lease, or otherwise dispose of, property and exercise those rights and privileges incidental and appurtenant to the acquisition or disposal of the property and to the use of the property, including any property acquired by the corporation periodically in the satisfaction of a debt or enforcement of an obligation;

(8) acquire improved or unimproved real property to construct an industrial plant or other business establishment on the property or dispose of the real property for the construction of an industrial plant or other business establishment;

(9) acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of an industrial plant or business establishment;

(10) protect the corporation's position as creditor by acquiring the goodwill, business, rights, property, including a share, bond, debenture, note, other evidence of indebtedness, other asset, or any part of an asset or interest in an asset, of a person to whom the corporation loaned money and assume, undertake, or pay an obligation, debt, or liability of the person;

(11) mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired under Subdivision (7), (8), (9), or (10), as security for the payment of a part of the purchase price;

(12) promote the establishment of local development corporations in the various communities of this state, enter into agreements with those local development corporations, and cooperate with, assist, or otherwise encourage the local foundations; and

(13) participate with a properly authorized federal lending agency in the making of loans.

(b) A corporation may approve an application for a loan under Subsection (a)(6) only if the applicant demonstrates that:

(1) the applicant applied for the loan through ordinary banking channels; and

(2) the loan has been refused by at least two banks or other financial institutions.

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

Sec. 23.055. STATEWIDE OPERATION. A corporation organized under this subchapter is a state development company as defined by Section 103, Small Business Investment Act of 1958 (15 U.S.C. Section 662), as amended, or similar federal legislation, and may operate on a statewide basis.

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

Sec. 23.056. CERTIFICATE OF FORMATION. (a) The certificate of formation of a corporation must state:

(1) the name of the corporation;

(2) the purpose or purposes for which the corporation is organized as required by Section 23.053; and

(3) any other information required by:

(A) Chapter 4; and

(B) Chapter 21 or 22, as applicable.

(b) The name of a corporation must include the words "Business Development Corporation."

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

Sec. 23.057. MANAGEMENT BY BOARD OF DIRECTORS; NUMBER OF DIRECTORS. (a) The organization, control, and management of a corporation are vested in a board of directors. The board must consist of not fewer than 15 and not more than 21 directors.

(b) The board of directors may exercise any power of the corporation not conferred on the shareholders or members by law or by the corporation's bylaws.

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

Sec. 23.058. ELECTION OR APPOINTMENT OF DIRECTORS. (a) The organizers of a corporation shall name the directors constituting the initial board of directors of the corporation. Directors other than the initial directors shall be elected at each annual meeting of the

corporation. If an annual meeting is not held at the time designated by the bylaws of the corporation, the directors shall be elected at a special meeting held in lieu of the annual meeting.

(b) At an annual meeting or special meeting held in lieu of the annual meeting, the members of the corporation shall elect two-thirds of the directors, and the shareholders of the corporation shall elect the remaining directors.

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. 95, eff. September 1, 2007.

Sec. 23.059. TERM OF OFFICE; VACANCY. (a) A director of a corporation holds office until the next annual election of directors and until a successor is elected and qualified, unless the director is removed at an earlier date in accordance with the corporation's bylaws.

(b) A vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and a vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders.

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

Sec. 23.060. OFFICERS. The board of directors of a corporation shall appoint a president, a treasurer, and any other agent or officer of the corporation and shall fill each vacancy other than a vacancy on the board.

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

Sec. 23.061. PARTICIPATION AS OWNER. (a) An individual, corporation, or other organization authorized to conduct business in this state, including a public utility company, insurance and casualty company, or foreign corporation licensed to do business in this state, or a trust may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of a bond, security,

or other evidence of indebtedness created by, or shares of, the corporation.

(b) An owner of shares of the corporation may exercise any right, power, or privilege of that ownership, including the right to vote.

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

Sec. 23.062. FINANCIAL INSTITUTION AS MEMBER OF CORPORATION. (a) A financial institution may become a member of a corporation and may make loans to the corporation as provided by this chapter.

(b) A financial institution may request membership in the corporation by applying to the corporation's board of directors in the manner prescribed by the board. Membership in the corporation takes effect on the board's acceptance of the application.

(c) A financial institution that is a member of a corporation may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of a bond, security, or other evidence of indebtedness created by, or a share of, the corporation. As owner of shares of the corporation, a financial institution may exercise any right, power, or privilege of that ownership, including the right to vote. A member of a corporation may not acquire shares of the corporation in an amount greater than 10 percent of the member's loan limit. The amount of shares of the corporation that a member may acquire is in addition to the amount of shares of corporations that the member may otherwise acquire.

(d) A financial institution that is not a member of the corporation may not acquire any shares of the corporation.

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

Sec. 23.063. WITHDRAWAL OF MEMBER. (a) On written notice to the corporation's board of directors, a member may withdraw from a corporation on the date stated in the notice. The date of a member's withdrawal must be at least six months after the date notice is given under this subsection.

(b) A member is not obligated to make a loan to the corporation pursuant to a call made after the date of the member's withdrawal from the corporation, but a member shall fulfill any obligation that

has accrued or for which a commitment has been made before the withdrawal date.

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

Sec. 23.064. POWERS OF SHAREHOLDERS AND MEMBERS. The shareholders and members of a corporation may:

(1) determine the number of directors and elect the directors as provided by Section 23.058;

(2) make, amend, and repeal bylaws of the corporation; or

(3) exercise any other power of the corporation that is conferred on the shareholders and members by the bylaws.

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

Sec. 23.065. VOTING BY SHAREHOLDER OR MEMBER. (a) Each shareholder of a corporation has one vote, in person or by proxy, for each share held by the shareholder.

(b) Each member of a corporation has one vote in person or by proxy.

(c) A member with a loan limit that exceeds $1,000 has one additional vote, in person or by proxy, for each additional $1,000 the member may have outstanding on loans to the corporation at any one time as determined under Section 23.068.

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

Sec. 23.066. LOAN TO CORPORATION. (a) When called on by a corporation to make a loan to the corporation, a member of the corporation shall make the loan on those terms and conditions periodically approved by the board of directors.

(b) A loan made to the corporation by a member shall be evidenced by a bond, debenture, note, or other evidence of indebtedness of the corporation that:

(1) is freely transferable at any time; and

(2) accrues interest at a rate of not less than one-fourth of one percent more than the rate of interest determined by the board of directors to be the prime rate prevailing on the date of issuance

on unsecured commercial loans.

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

Sec. 23.067. PROHIBITED LOAN. (a) A member may not make a loan to a corporation if, immediately after the loan would be made, the total amount of the obligations of the corporation would exceed 50 times the capital of the corporation.

(b) For purposes of this section, the capital of the corporation includes the amount of the outstanding shares of the corporation, whether common or preferred, and the earned or paid-in surplus of the corporation.

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

Sec. 23.068. LOAN LIMITS. (a) A loan limit shall be established at the $1,000 amount nearest to the amount computed in accordance with this section.

(b) The total amount outstanding on loans made to a corporation by a member at any one time, when added to the amount of the investment in the shares of the corporation then held by the member, may not exceed:

(1) 20 percent of the total amount then outstanding on loans to the corporation by all members, including outstanding amounts validly called for a loan but not yet loaned; or

(2) the following limit, to be determined as of the time the member becomes a member of the corporation, or at any time requested by a member on the basis of the audited balance sheet of the member at the close of its fiscal year immediately preceding its application for membership or, in the case of an insurance company, its last annual statement to the Texas Department of Insurance:

(A) an amount equal to the lesser of $750,000 or two percent of the capital and surplus of a commercial bank or trust company;

(B) an amount equal to one percent of the total outstanding loans made by a savings and loan association;

(C) an amount equal to one percent of the capital and unassigned surplus of a stock insurance company other than a fire insurance company;

(D) an amount equal to one percent of the unassigned surplus of a mutual insurance company other than a fire insurance company;

(E) an amount equal to one-tenth of one percent of the assets of a fire insurance company; or

(F) the limits approved by the board of directors of the corporation for a government pension fund or other financial institution.

(c) Subject to Subsection (b), each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members.

(d) For purposes of Subsection (c), the adjusted loan limit of a member is the amount of the member's loan limit, reduced by the balance of outstanding loans made by the member to the corporation and the investment in shares of the corporation held by the member at the time of the call.

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

Sec. 23.069. SURPLUS. (a) A corporation shall set apart as earned surplus not less than 10 percent of the corporation's net earnings each year until the surplus, with any unimpaired surplus paid in, is equal to one-half of the amount paid in on the shares then outstanding. The surplus shall be kept to secure against losses and contingencies. If the surplus becomes impaired, the surplus shall be reimbursed in the manner provided for its accumulation.

(b) Net earnings and surplus shall be determined by the board of directors after providing for the required reserves as the directors consider advisable. A good faith determination of net earnings and surplus by the directors under this subsection is conclusive.

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

Sec. 23.070. DEPOSITORY. (a) A corporation may deposit the corporation's funds in a banking institution that has been designated as a depository by a vote of the majority of the directors present at

an authorized meeting of the board of directors of the corporation, excluding a director who is an officer or director of the designated depository.

(b) The corporation may not receive money on deposit.

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

Sec. 23.071. ANNUAL REPORT; PROVISION OF REQUIRED INFORMATION. (a) A corporation shall annually make a report of its condition to the banking commissioner and the Texas Department of Insurance.

(b) A corporation shall provide any information that is required by the secretary of state.

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

SUBCHAPTER C. GRAND LODGES

Sec. 23.101. FORMATION. (a) An institution or order, by resolution or other consent of its members, may incorporate under this subchapter if the institution or order is:

(1) the grand lodge of Texas, Ancient, Free and Accepted Masons;

(2) the Grand Royal Arch Chapter of Texas;

(3) the Grand Commandery of Knights Templars of Texas;

(4) the grand lodge of the Independent Order of Odd Fellows of Texas; or

(5) another similar institution or order organized for charitable or benevolent purposes.

(b) A corporation formed under this subchapter shall file a certificate of formation in accordance with Chapter 4 that complies with this subchapter.

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

Sec. 23.102. APPLICABILITY OF CHAPTER 22. If this subchapter does not contain any provision regarding a matter provided for in Chapter 22, to the extent consistent with this subchapter, Chapter 22 applies to a corporation formed under this subchapter.

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

Sec. 23.103. DURATION. A grand body that incorporates under this subchapter may provide in the grand body's certificate of formation for the expiration of its corporate powers at the end of a stated number of years. If the certificate of formation does not provide for the duration of the grand body, the grand body has perpetual existence. The grand body may by its corporate name have perpetual succession of its officers and members.

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

Sec. 23.104. SUBORDINATE LODGES. (a) The incorporation of a grand body includes each of its subordinate lodges or bodies holding a warrant or charter under the grand body.

(b) A subordinate body has all of the rights of other corporations under and by the name given to the grand body in the warrant or charter issued to the grand body to which it is attached. Those rights shall be provided for in the charter of the grand body.

(c) A subordinate body is subject to the jurisdiction and control of its respective grand body, and the warrant or charter of the subordinate body may be revoked by the grand body.

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

Sec. 23.105. TRUSTEES AND DIRECTORS. A grand body and a subordinate of the grand body may elect trustees and directors or may appoint trustees or directors from among their officers.

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

Sec. 23.106. FRANCHISE TAXES. A corporation formed under this subchapter is not subject to or required to pay a franchise tax, except that a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

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

Sec. 23.107. GENERAL POWERS. A grand body and a subordinate of the grand body may take action as directed or provided by law in the case of other corporations and may make constitutions and bylaws to govern their affairs.

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

Sec. 23.108. AUTHORITY REGARDING PROPERTY. (a) A grand body or subordinate body may acquire and hold property as necessary or convenient for a site on which to erect a building for the use and occupancy of the body and to erect homes and schools for members' widows or orphans or elderly, disabled, or indigent members and may sell or mortgage the property.

(b) A conveyance must be executed by the presiding officer and attested to by the secretary with the seal.

(c) The authority of a subordinate body to sell or to mortgage property is subject to the conditions periodically prescribed or established by the grand body to which the subordinate is attached.

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

Sec. 23.109. AUTHORITY REGARDING LOANS. (a) A grand body incorporated under this subchapter may:

(1) loan money held and owned by the grand body for charitable purposes, for the endowment of any of the institutions of the grand body, or otherwise; and

(2) secure loans by taking and receiving liens on real property or by another method elected by the grand body.

(b) On sale of real property secured by a lien, a grand body may become the purchaser of the real property and hold title to the property.

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

Sec. 23.110. WINDING UP AND TERMINATION OF SUBORDINATE BODY.

(a) On the winding up and termination of a subordinate body attached to a grand body, all property and rights existing in the subordinate body pass to and vest in the grand body to which it was attached, subject to the payment of any debt owed by the subordinate body.

(b) Notwithstanding a grand body's liability for the debt of a subordinate body under Subsection (a), the grand body is not liable for an amount greater than the actual cash value of the subordinate body's effects or authority.

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

TITLE 3. LIMITED LIABILITY COMPANIES
CHAPTER 101. LIMITED LIABILITY COMPANIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. DEFINITIONS. In this title:

(1) "Company agreement" means any agreement, written or oral, of the members concerning the affairs or the conduct of the business of a limited liability company. A company agreement of a limited liability company having only one member is not unenforceable because only one person is a party to the company agreement.

(2) "Foreign limited liability company" or "foreign company" means a limited liability company formed under the laws of a jurisdiction other than this state.

(3) "Limited liability company" or "company" means a domestic limited liability company subject to this title.

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

Sec. 101.002. APPLICABILITY OF OTHER LAWS. (a) Subject to Section 101.114, Sections 21.223, 21.224, 21.225, and 21.226 apply to a limited liability company and the company's members, owners, assignees, affiliates, and subscribers.

(b) For purposes of the application of Subsection (a):

(1) a reference to "shares" includes "membership interests";

(2) a reference to "holder," "owner," or "shareholder" includes a "member" and an "assignee";

(3) a reference to "corporation" or "corporate" includes a "limited liability company";

(4) a reference to "directors" includes "managers" of a manager-managed limited liability company and "members" of a member-managed limited liability company;

(5) a reference to "bylaws" includes "company agreement"; and

(6) the reference to "Sections 21.157-21.162" in Section 21.223(a)(1) refers to the provisions of Subchapter D of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 25 (S.B. 323), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

Sec. 101.051. CERTAIN PROVISIONS CONTAINED IN CERTIFICATE OF FORMATION. (a) A provision that may be contained in the company agreement of a limited liability company may alternatively be included in the certificate of formation of the company as provided by Section 3.005(b).

(b) A reference in this title to the company agreement of a limited liability company includes any provision contained in the company's certificate of formation instead of the company agreement as provided by Subsection (a).

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

Sec. 101.0515. EXECUTION OF FILINGS. Unless otherwise provided by this title, a filing instrument of a limited liability company must be signed by an authorized officer, manager, or member of the limited liability company.

Added by Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 96, eff. September 1, 2007.

Sec. 101.052. COMPANY AGREEMENT. (a) Except as provided by Section 101.054, the company agreement of a limited liability company governs:

(1) the relations among members, managers, and officers of the company, assignees of membership interests in the company, and

the company itself; and

(2) other internal affairs of the company.

(b) To the extent that the company agreement of a limited liability company does not otherwise provide, this title and the provisions of Title 1 applicable to a limited liability company govern the internal affairs of the company.

(c) Except as provided by Section 101.054, a provision of this title or Title 1 that is applicable to a limited liability company may be waived or modified in the company agreement of a limited liability company.

(d) The company agreement may contain any provisions for the regulation and management of the affairs of the limited liability company not inconsistent with law or the certificate of formation.

(e) A company agreement may provide rights to any person, including a person who is not a party to the company agreement, to the extent provided by the company agreement.

(f) A company agreement is enforceable by or against the limited liability company, regardless of whether the company has signed or otherwise expressly adopted the agreement.

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. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 8, eff. September 1, 2017.

Sec. 101.053. AMENDMENT OF COMPANY AGREEMENT. The company agreement of a limited liability company may be amended only if each member of the company consents to the amendment.

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

Sec. 101.054. WAIVER OR MODIFICATION OF CERTAIN STATUTORY PROVISIONS PROHIBITED; EXCEPTIONS. (a) Except as provided by this section, the following provisions may not be waived or modified in the company agreement of a limited liability company:

(1) this section;

(2) Section 101.101, 101.151, 101.206, 101.501, 101.602(b),

or 101.613;

(3) Chapter 1, if the provision is used to interpret a provision or define a word or phrase contained in a section listed in this subsection;

(4) Chapter 2, except that Section 2.104(c)(2), 2.104(c)(3), or 2.113 may be waived or modified in the company agreement;

(5) Chapter 3, except that Subchapters C and E may be waived or modified in the company agreement; or

(6) Chapter 4, 5, 10, 11, or 12, other than Section 11.056.

(b) A provision listed in Subsection (a) may be waived or modified in the company agreement if the provision that is waived or modified authorizes the limited liability company to waive or modify the provision in the company's governing documents.

(c) A provision listed in Subsection (a) may be modified in the company agreement if the provision that is modified specifies:

(1) the person or group of persons entitled to approve a modification; or

(2) the vote or other method by which a modification is required to be approved.

(d) A provision in this title or in that part of Title 1 applicable to a limited liability company that grants a right to a person, other than a member, manager, officer, or assignee of a membership interest in a limited liability company, may be waived or modified in the company agreement of the company only if the person consents to the waiver or modification.

(e) The company agreement may not unreasonably restrict a person's right of access to records and information under Section 101.502.

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. 97, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 38, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 34, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 9, eff. September 1, 2017.

Sec. 101.055. IRREVOCABLE POWER OF ATTORNEY. (a) This section applies only to:

(1) a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a limited liability company; or

(2) a power of attorney granted by:

(A) a person as a member of or assignee of a membership interest in a limited liability company; or

(B) a person seeking to become a member of or assignee of a membership interest in a limited liability company.

(b) A power of attorney is irrevocable for all purposes if the power of attorney:

(1) is coupled with an interest sufficient in law to support an irrevocable power; and

(2) states that it is irrevocable.

(c) Unless otherwise provided in the power of attorney, an irrevocable power of attorney created under this section is not affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.

(d) A power of attorney granted to the limited liability company, a member of the company, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

Added by Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 2, eff. September 1, 2015.

SUBCHAPTER C. MEMBERSHIP

Sec. 101.101. MEMBERS REQUIRED. (a) A limited liability company may have one or more members. Except as provided by this section, a limited liability company must have at least one member.

(b) A limited liability company that has managers is not required to have any members during a reasonable period between the date the company is formed and the date the first member is admitted to the company.

(c) A limited liability company is not required to have any members during the period between the date the continued membership of the last remaining member of the company is terminated and the date the agreement to continue the company described by Section 11.056 is executed.

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

Sec. 101.102. QUALIFICATION FOR MEMBERSHIP. (a) A person may be a member of or acquire a membership interest in a limited liability company unless the person lacks capacity apart from this code.

(b) A person is not required, as a condition to becoming a member of or acquiring a membership interest in a limited liability company, to:

(1) make a contribution to the company;

(2) otherwise pay cash or transfer property to the company; or

(3) assume an obligation to make a contribution or otherwise pay cash or transfer property to the company.

(c) If one or more persons own a membership interest in a limited liability company, the company agreement may provide for a person to be admitted to the company as a member without acquiring a membership interest in the company.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 71, eff. January 1, 2006.

Sec. 101.103. EFFECTIVE DATE OF MEMBERSHIP. (a) In connection with the formation of a company, a person becomes a member of the company on the date the company is formed if the person is named as an initial member in the company's certificate of formation.

(b) In connection with the formation of a company, a person being admitted as a member of the company but not named as an initial member in the company's certificate of formation becomes a member of the company on the latest of:

(1) the date the company is formed;

(2) the date stated in the company's records as the date the person becomes a member of the company; or

(3) if the company's records do not state a date described by Subdivision (2), the date the person's admission to the company is first reflected in the company's records.

(c) A person who, after the formation of a limited liability company, acquires directly or is assigned a membership interest in the company or is admitted as a member of the company without acquiring a membership interest becomes a member of the company on approval or consent of all of the company's members.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 72, eff. January 1, 2006.

Sec. 101.104. CLASSES OR GROUPS OF MEMBERS OR MEMBERSHIP INTERESTS. (a) The company agreement of a limited liability company may:

(1) establish within the company classes or groups of one or more members or membership interests each of which has certain expressed relative rights, powers, and duties, including voting rights; and

(2) provide for the manner of establishing within the company additional classes or groups of one or more members or membership interests each of which has certain expressed relative rights, powers, and duties, including voting rights.

(b) The rights, powers, and duties of a class or group of members or membership interests described by Subsection (a)(2) may be stated in the company agreement or stated at the time the class or group is established.

(c) If the company agreement of a limited liability company does not provide for the manner of establishing classes or groups of members or membership interests under Subsection (a)(2), additional classes or groups of members or membership interests may be established only by the adoption of an amendment to the company agreement.

(d) The rights, powers, or duties of any class or group of members or membership interests of a limited liability company may be

senior to the rights, powers, or duties of any other class or group of members or membership interests in the company, including a previously established class or group.

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

Sec. 101.105. ISSUANCE OF MEMBERSHIP INTERESTS AFTER FORMATION OF COMPANY. A limited liability company, after the formation of the company, may:

(1) issue membership interests in the company to any person with the approval of all of the members of the company; and

(2) if the issuance of a membership interest requires the establishment of a new class or group of members or membership interests, establish a new class or group as provided by Sections 101.104(a)(2), (b), and (c).

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

Sec. 101.106. NATURE OF MEMBERSHIP INTEREST. (a) A membership interest in a limited liability company is personal property.

(a-1) A membership interest may be community property under applicable law.

(a-2) A member's right to participate in the management and conduct of the business of the limited liability company is not community property.

(b) A member of a limited liability company or an assignee of a membership interest in a limited liability company does not have an interest in any specific property of the company.

(c) Sections 9.406 and 9.408, Business & Commerce Code, do not apply to a membership interest in a limited liability company, including the rights, powers, and interests arising under the company's certificate of formation or company agreement or under this code. To the extent of any conflict between this subsection and Section 9.406 or 9.408, Business & Commerce Code, this subsection controls. It is the express intent of this subsection to permit the enforcement, as a contract among the members of a limited liability company, of any provision of a company agreement that would otherwise be ineffective under Section 9.406 or 9.408, Business & Commerce Code.

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. 39, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 35, eff. September 1, 2011.

Sec. 101.107. WITHDRAWAL OR EXPULSION OF MEMBER PROHIBITED. A member of a limited liability company may not withdraw or be expelled from the company.

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

Sec. 101.108. ASSIGNMENT OF MEMBERSHIP INTEREST. (a) A membership interest in a limited liability company may be wholly or partly assigned.
(b) An assignment of a membership interest in a limited liability company:
(1) is not an event requiring the winding up of the company; and
(2) does not entitle the assignee to:
(A) participate in the management and affairs of the company;
(B) become a member of the company; or
(C) exercise any rights of a member of the company.

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

Sec. 101.109. RIGHTS AND DUTIES OF ASSIGNEE OF MEMBERSHIP INTEREST BEFORE MEMBERSHIP. (a) A person who is assigned a membership interest in a limited liability company is entitled to:
(1) receive any allocation of income, gain, loss, deduction, credit, or a similar item that the assignor is entitled to receive to the extent the allocation of the item is assigned;
(2) receive any distribution the assignor is entitled to receive to the extent the distribution is assigned;
(3) require, for any proper purpose, reasonable information or a reasonable account of the transactions of the company; and

(4) make, for any proper purpose, reasonable inspections of the books and records of the company.

(b) An assignee of a membership interest in a limited liability company is entitled to become a member of the company on the approval of all of the company's members.

(c) An assignee of a membership interest in a limited liability company is not liable as a member of the company until the assignee becomes a member of the company.

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

Sec. 101.110. RIGHTS AND LIABILITIES OF ASSIGNEE OF MEMBERSHIP INTEREST AFTER BECOMING MEMBER. (a) An assignee of a membership interest in a limited liability company, after becoming a member of the company, is:

(1) entitled, to the extent assigned, to the same rights and powers granted or provided to a member of the company by the company agreement or this code;

(2) subject to the same restrictions and liabilities placed or imposed on a member of the company by the company agreement or this code; and

(3) except as provided by Subsection (b), liable for the assignor's obligation to make contributions to the company.

(b) An assignee of a membership interest in a limited liability company, after becoming a member of the company, is not obligated for a liability of the assignor that:

(1) the assignee did not have knowledge of on the date the assignee became a member of the company; and

(2) could not be ascertained from the company agreement.

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

Sec. 101.111. RIGHTS AND DUTIES OF ASSIGNOR OF MEMBERSHIP INTEREST. (a) An assignor of a membership interest in a limited liability company continues to be a member of the company and is entitled to exercise any unassigned rights or powers of a member of the company until the assignee becomes a member of the company.

(b) An assignor of a membership interest in a limited liability company is not released from the assignor's liability to the company,

regardless of whether the assignee of the membership interest becomes a member of the company.

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

Sec. 101.1115. EFFECT OF DEATH OR DIVORCE ON MEMBERSHIP INTEREST. (a) For purposes of this code:

(1) on the divorce of a member, the member's spouse, to the extent of the spouse's membership interest, if any, is an assignee of the membership interest;

(2) on the death of a member, the member's surviving spouse, if any, and an heir, devisee, personal representative, or other successor of the member, to the extent of their respective membership interest, are assignees of the membership interest; and

(3) on the death of a member's spouse, an heir, devisee, personal representative, or other successor of the spouse, other than the member, to the extent of their respective membership interest, if any, is an assignee of the membership interest.

(b) This chapter does not impair an agreement for the purchase or sale of a membership interest at any time, including on the death or divorce of an owner of the membership interest.

Added by Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 36, eff. September 1, 2011.

Sec. 101.112. MEMBER'S MEMBERSHIP INTEREST SUBJECT TO CHARGING ORDER. (a) On application by a judgment creditor of a member of a limited liability company or of any other owner of a membership interest in a limited liability company, a court having jurisdiction may charge the membership interest of the judgment debtor to satisfy the judgment.

(b) If a court charges a membership interest with payment of a judgment as provided by Subsection (a), the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise be entitled in respect of the membership interest.

(c) A charging order constitutes a lien on the judgment debtor's membership interest. The charging order lien may not be foreclosed on under this code or any other law.

(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of any other owner of a membership interest may satisfy a judgment out of the judgment debtor's membership interest.

(e) This section may not be construed to deprive a member of a limited liability company or any other owner of a membership interest in a limited liability company of the benefit of any exemption laws applicable to the membership interest of the member or owner.

(f) A creditor of a member or of any other owner of a membership interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

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. 98, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 40, eff. September 1, 2009.

Sec. 101.113. PARTIES TO ACTIONS. A member of a limited liability company may be named as a party in an action by or against the limited liability company only if the action is brought to enforce the member's right against or liability to the company.

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

Sec. 101.114. LIABILITY FOR OBLIGATIONS. Except as and to the extent the company agreement specifically provides otherwise, a member or manager is not liable for a debt, obligation, or liability of a limited liability company, including a debt, obligation, or liability under a judgment, decree, or order of a court.

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

SUBCHAPTER D. CONTRIBUTIONS

Sec. 101.151. REQUIREMENTS FOR ENFORCEABLE PROMISE. A promise to make a contribution or otherwise pay cash or transfer property to

a limited liability company is enforceable only if the promise is:

(1) in writing; and

(2) signed by the person making the promise.

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

Sec. 101.152. ENFORCEABLE PROMISE NOT AFFECTED BY CHANGE IN CIRCUMSTANCES. A member of a limited liability company is obligated to perform an enforceable promise to make a contribution or otherwise pay cash or transfer property to the company without regard to the death, disability, or other change in circumstances of the member.

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

Sec. 101.153. FAILURE TO PERFORM ENFORCEABLE PROMISE; CONSEQUENCES. (a) A member of a limited liability company, or the member's legal representative or successor, who does not perform an enforceable promise to make a contribution, including a previously made contribution, or to otherwise pay cash or transfer property to the company, is obligated, at the request of the company, to pay in cash the agreed value of the contribution, as stated in the company agreement or the company's records required under Sections 3.151 and 101.501, less:

(1) any amount already paid for the contribution; and

(2) the value of any property already transferred.

(b) The company agreement of a limited liability company may provide that the membership interest of a member who fails to perform an enforceable promise to make a payment of cash or transfer property to the company, whether as a contribution or in connection with a contribution already made, may be:

(1) reduced;

(2) subordinated to other membership interests of nondefaulting members;

(3) redeemed or sold at a value determined by appraisal or other formula; or

(4) made the subject of:

(A) a forced sale;

(B) forfeiture;

(C) a loan from other members of the company in an

amount necessary to satisfy the enforceable promise; or

(D) another penalty or consequence.

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

Sec. 101.154. CONSENT REQUIRED TO RELEASE ENFORCEABLE OBLIGATION. The obligation of a member of a limited liability company, or of the member's legal representative or successor, to make a contribution or otherwise pay cash or transfer property to the company, or to return cash or property to the company paid or distributed to the member in violation of this code or the company agreement, may be released or settled only by consent of each member of the company.

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

Sec. 101.155. CREDITOR'S RIGHT TO ENFORCE CERTAIN OBLIGATIONS. A creditor of a limited liability company who extends credit or otherwise acts in reasonable reliance on an enforceable obligation of a member of the company that is released or settled as provided by Section 101.154 may enforce the original obligation if the obligation is stated in a document that is:

(1) signed by the member; and

(2) not amended or canceled to evidence the release or settlement of the obligation.

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

Sec. 101.156. REQUIREMENTS TO ENFORCE CONDITIONAL OBLIGATION. (a) An obligation of a member of a limited liability company that is subject to a condition may be enforced by the company or a creditor described by Section 101.155 only if the condition is satisfied or waived by or with respect to the member.

(b) A conditional obligation of a member of a limited liability company under this section includes a contribution payable on a discretionary call of the limited liability company before the time the call occurs.

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

SUBCHAPTER E. ALLOCATIONS AND DISTRIBUTIONS

Sec. 101.201. ALLOCATION OF PROFITS AND LOSSES. The profits and losses of a limited liability company shall be allocated to each member of the company on the basis of the agreed value of the contributions made by each member, as stated in the company's records required under Section 101.501.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 73, eff. January 1, 2006.

Sec. 101.202. DISTRIBUTION IN KIND. A member of a limited liability company is entitled to receive or demand a distribution from the company only in the form of cash, regardless of the form of the member's contribution to the company.

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

Sec. 101.203. SHARING OF DISTRIBUTIONS. Distributions of cash and other assets of a limited liability company shall be made to each member of the company according to the agreed value of the member's contribution to the company as stated in the company's records required under Sections 3.151 and 101.501.

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

Sec. 101.204. INTERIM DISTRIBUTIONS. A member of a limited liability company, before the winding up of the company, is not entitled to receive and may not demand a distribution from the company until the company's governing authority declares a distribution to:

(1) each member of the company; or

(2) a class or group of members that includes the member.

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

Sec. 101.205. DISTRIBUTION ON WITHDRAWAL. A member of a limited liability company who validly exercises the member's right to withdraw from the company granted under the company agreement is entitled to receive, within a reasonable time after the date of withdrawal, the fair value of the member's interest in the company as determined as of the date of withdrawal.

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

Sec. 101.206. PROHIBITED DISTRIBUTION; DUTY TO RETURN. (a) Unless the distribution is made in compliance with Chapter 11, a limited liability company may not make a distribution to a member of the company if, immediately after making the distribution, the company's total liabilities, other than liabilities described by Subsection (b), exceed the fair value of the company's total assets.

(b) For purposes of Subsection (a), the liabilities of a limited liability company do not include:

(1) a liability related to the member's membership interest; or

(2) except as provided by Subsection (c), a liability for which the recourse of creditors is limited to specified property of the company.

(c) For purposes of Subsection (a), the assets of a limited liability company include the fair value of property subject to a liability for which recourse of creditors is limited to specified property of the company only if the fair value of that property exceeds the liability.

(d) A member of a limited liability company who receives a distribution from the company in violation of this section is not required to return the distribution to the company unless the member had knowledge of the violation.

(e) This section may not be construed to affect the obligation of a member of a limited liability company to return a distribution to the company under the company agreement or other state or federal law.

(f) For purposes of this section, "distribution" does not

include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or other benefits program.

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. 41, eff. September 1, 2009.

Sec. 101.207. CREDITOR STATUS WITH RESPECT TO DISTRIBUTION. Subject to Sections 11.053 and 101.206, when a member of a limited liability company is entitled to receive a distribution from the company, the member, with respect to the distribution, has the same status as a creditor of the company and is entitled to any remedy available to a creditor of the company.

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

Sec. 101.208. RECORD DATE. A company agreement may establish or provide for the establishment of a record date with respect to allocations and distributions.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 42, eff. September 1, 2009.

SUBCHAPTER F. MANAGEMENT

Sec. 101.251. GOVERNING AUTHORITY. The governing authority of a limited liability company consists of:

(1) the managers of the company, if the company's certificate of formation states that the company will have one or more managers; or

(2) the members of the company, if the company's certificate of formation states that the company will not have managers.

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. 43, eff.

September 1, 2009.

Sec. 101.252. MANAGEMENT BY GOVERNING AUTHORITY. The governing authority of a limited liability company shall manage the business and affairs of the company as provided by:

(1) the company agreement; and

(2) this title and the provisions of Title 1 applicable to a limited liability company to the extent that the company agreement does not provide for the management of the company.

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

Sec. 101.253. DESIGNATION OF COMMITTEES; DELEGATION OF AUTHORITY. (a) The governing authority of a limited liability company by resolution may designate:

(1) one or more committees of the governing authority consisting of one or more governing persons of the company; and

(2) subject to any limitation imposed by the governing authority, a governing person to serve as an alternate member of a committee designated under Subdivision (1) at a committee meeting from which a member of the committee is absent or disqualified.

(b) A committee of the governing authority of a limited liability company may exercise the authority of the governing authority as provided by the resolution designating the committee.

(c) The designation of a committee under this section does not relieve the governing authority of any responsibility imposed by law.

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

Sec. 101.254. DESIGNATION OF AGENTS; BINDING ACTS. (a) Except as provided by this title and Title 1, each governing person of a limited liability company and each officer of a limited liability company vested with actual or apparent authority by the governing authority of the company is an agent of the company for purposes of carrying out the company's business.

(b) An act committed by an agent of a limited liability company described by Subsection (a) for the purpose of apparently carrying out the ordinary course of business of the company, including the

execution of an instrument, document, mortgage, or conveyance in the name of the company, binds the company unless:

(1) the agent does not have actual authority to act for the company; and

(2) the person with whom the agent is dealing has knowledge of the agent's lack of actual authority.

(c) An act committed by an agent of a limited liability company described by Subsection (a) that is not apparently for carrying out the ordinary course of business of the company binds the company only if the act is authorized in accordance with this title.

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. 37, eff. September 1, 2011.

Sec. 101.255. CONTRACTS OR TRANSACTIONS INVOLVING INTERESTED GOVERNING PERSONS OR OFFICERS. (a) This section applies to a contract or transaction between a limited liability company and:

(1) one or more governing persons or officers, or one or more affiliates or associates of one or more governing persons or officers, of the company; or

(2) an entity or other organization in which one or more governing persons or officers, or one or more affiliates or associates of one or more governing persons or officers, of the company:

(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 company's governing authority or a committee of the governing authority and the governing authority or committee in good faith authorizes the contract or transaction by the approval of

the majority of the disinterested governing persons or committee members, regardless of whether the disinterested governing persons or committee members constitute a quorum; or

(B) the members of the company, and the members in good faith approve the contract or transaction by vote of the members; or

(2) the contract or transaction is fair to the company when the contract or transaction is authorized, approved, or ratified by the governing authority, a committee of the governing authority, or the members of the company.

(c) Common or interested governing persons of a limited liability company may be included in determining the presence of a quorum at a meeting of the company's governing authority or of a committee of the governing authority 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 governing person or committee member, may vote at a meeting of the governing authority or of a committee of the governing authority that authorizes the contract or transaction; or

(2) sign, in the person's capacity as a governing person or committee member, a written consent of the governing persons or committee members to authorize the contract or transaction.

(e) If at least one of the conditions of Subsection (b) is satisfied, neither the company nor any of the company's members 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. 44, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 38, eff. September 1, 2011.

SUBCHAPTER G. MANAGERS

Sec. 101.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a limited liability company that has one or more managers.

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

Sec. 101.302. NUMBER AND QUALIFICATIONS. (a) The managers of a limited liability company may consist of one or more persons.

(b) Except as provided by Subsection (c), the number of managers of a limited liability company consists of the number of initial managers listed in the company's certificate of formation.

(c) The number of managers of a limited liability company may be increased or decreased by amendment to, or as provided by, the company agreement.

(d) A manager of a limited liability company is not required to be a:

(1) resident of this state; or

(2) member of the company.

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

Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 8, eff. September 1, 2019.

Sec. 101.303. TERM. A manager of a limited liability company serves:

(1) for the term, if any, for which the manager is elected and until the manager's successor is elected; or

(2) until the earlier resignation, removal, or death of the manager.

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

Sec. 101.304. REMOVAL. Subject to Section 101.306(a), a manager of a limited liability company may be removed, with or without cause, at a meeting of the company's members called for that purpose.

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

Sec. 101.305. MANAGER VACANCY. (a) Subject to Section 101.306(b), a vacancy in the position of a manager of a limited liability company may be filled by:

(1) the affirmative vote of the majority of the remaining managers of the company, without regard to whether the remaining managers constitute a quorum; or

(2) the members at a meeting of the company's members called for that purpose.

(b) A person elected to fill a vacancy in the position of a manager serves for the unexpired term, if any, of the person's predecessor.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 10, eff. September 1, 2017.

Sec. 101.306. REMOVAL AND REPLACEMENT OF MANAGER ELECTED BY CLASS OR GROUP. (a) If a class or group of the members of a limited liability company is entitled by the company agreement of the company to elect one or more managers of the company, a manager may be removed from office only by the class or group that elected the manager.

(b) A vacancy in the position of a manager elected as provided by Subsection (a) may be filled only by:

(1) a majority vote of the managers serving on the date the vacancy occurs who were elected by the class or group of members; or

(2) a majority vote of the members of the class or group.

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

Sec. 101.307. METHODS OF CLASSIFYING MANAGERS. Other methods of classifying managers of a limited liability company, including providing for managers who serve for staggered terms of office or terms that are not uniform, may be established in the company agreement.

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

SUBCHAPTER H. MEETINGS AND VOTING

Sec. 101.352. GENERAL NOTICE REQUIREMENTS. (a) Except as provided by Subsection (b), notice of a regular or special meeting of the governing authority or members of a limited liability company, or a committee of the company's governing authority, shall be given in writing to each governing person, member, or committee member, as appropriate, and as provided by Section 6.051.

(b) If the members of a limited liability company do not constitute the governing authority of the company, notice of a meeting of members required by Subsection (a) shall be given by or at the direction of the governing authority not later than the 10th day or earlier than the 60th day before the date of the meeting. Notice of a meeting required under this subsection must state the business to be transacted at the meeting or the purpose of the meeting if:

(1) the meeting is a special meeting; or

(2) a purpose of the meeting is to consider a matter described by Section 101.356.

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. 99, eff. September 1, 2007.

Sec. 101.353. QUORUM. A majority of all of the governing persons, members, or committee members of a limited liability company constitutes a quorum for the purpose of transacting business at a meeting of the governing authority, members, or committee of the company, as appropriate.

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

Sec. 101.354. EQUAL VOTING RIGHTS. Each governing person, member, or committee member of a limited liability company has an equal vote at a meeting of the governing authority, members, or committee of the company, as appropriate.

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

Sec. 101.355. ACT OF GOVERNING AUTHORITY, MEMBERS, OR COMMITTEE. Except as provided by this title or Title 1, the affirmative vote of the majority of the governing persons, members, or committee members of a limited liability company present at a meeting at which a quorum is present constitutes an act of the governing authority, members, or committee of the company, as appropriate.

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

Sec. 101.356. VOTES REQUIRED TO APPROVE CERTAIN ACTIONS. (a) Except as provided in this section or any other section in this title, an action of a limited liability company may be approved by the company's governing authority as provided by Section 101.355.

(b) Except as provided by Subsection (c), (d), or (e) or any other section in this title, an action of a limited liability company not apparently for carrying out the ordinary course of business of the company must be approved by the affirmative vote of the majority of all of the company's governing persons.

(c) Except as provided by Subsection (d) or (e) or any other section in this title, a fundamental business transaction of a limited liability company, or an action that would make it impossible for a limited liability company to carry out the ordinary business of the company, must be approved by the affirmative vote of the majority of all of the company's members.

(d) Except as provided by Subsection (e) or any other section of this title, the company's members must approve by an affirmative vote of all the members:

(1) an amendment to the certificate of formation of a limited liability company; or

(2) a restated certificate of formation that contains an amendment to the certificate of formation of a limited liability company.

(e) A requirement that an action of a limited liability company must be approved by the company's members does not apply during the period prescribed by Section 101.101(b).

(f) Approval of a restated certificate of formation by a limited liability company's members is required only if the restated certificate contains an amendment.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 74, eff. January 1, 2006.

Sec. 101.357. MANNER OF VOTING. (a) A member of a limited liability company may vote:
(1) in person; or
(2) by a proxy executed in writing by the member.
(b) A manager or committee member of a limited liability company may vote:
(1) in person; or
(2) if authorized by the company agreement, by a proxy executed in writing by the manager or committee member, as appropriate.

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. 39, eff. September 1, 2011.

Sec. 101.358. ACTION BY LESS THAN UNANIMOUS WRITTEN CONSENT. (a) This section applies only to an action required or authorized to be taken at an annual or special meeting of the governing authority, the members, or a committee of the governing authority of a limited liability company under this title, Title 1, or the governing documents of the company.
(b) Notwithstanding Sections 6.201 and 6.202, an action may be taken without holding a meeting, providing notice, or taking a vote if a written consent or consents stating the action to be taken is signed by the number of governing persons, members, or committee members of a limited liability company, as appropriate, necessary to have at least the minimum number of votes that would be necessary to take the action at a meeting at which each governing person, member, or committee member, as appropriate, entitled to vote on the action

is present and votes.

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

Sec. 101.359. EFFECTIVE ACTION BY MEMBERS OR MANAGERS WITH OR WITHOUT MEETING. Members or managers of a limited liability company may take action at a meeting of the members or managers or without a meeting in any manner permitted by this title, Title 1, or the governing documents of the company. Unless otherwise provided by the governing documents, an action is effective if it is taken:

(1) by an affirmative vote of those persons having at least the minimum number of votes that would be necessary to take the action at a meeting at which each member or manager, as appropriate, entitled to vote on the action is present and votes; or

(2) with the consent of each member of the limited liability company, which may be established by:

(A) the member's failure to object to the action in a timely manner, if the member has full knowledge of the action;

(B) consent to the action in writing signed by the member; or

(C) any other means reasonably evidencing consent.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 75, eff. January 1, 2006.

SUBCHAPTER I. MODIFICATION OF DUTIES; INDEMNIFICATION

Sec. 101.401. EXPANSION OR RESTRICTION OF DUTIES AND LIABILITIES. The company agreement of a limited liability company may expand or restrict any duties, including fiduciary duties, and related liabilities that a member, manager, officer, or other person has to the company or to a member or manager of the company.

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

Sec. 101.402. PERMISSIVE INDEMNIFICATION, ADVANCEMENT OF EXPENSES, AND INSURANCE OR OTHER ARRANGEMENTS. (a) A limited liability company may:

(1) indemnify a person;

(2) pay in advance or reimburse expenses incurred by a person; and

(3) purchase or procure or establish and maintain insurance or another arrangement to indemnify or hold harmless a person.

(b) In this section, "person" includes a member, manager, or officer of a limited liability company or an assignee of a membership interest in the company.

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

SUBCHAPTER J. DERIVATIVE PROCEEDINGS

Sec. 101.451. DEFINITIONS. In this subchapter:

(1) "Derivative proceeding" means a civil suit in the right of a domestic limited liability company or, to the extent provided by Section 101.462, in the right of a foreign limited liability company.

(2) "Managing entity" means an entity that is either:

(A) a manager of a limited liability company that is managed by managers; or

(B) a member of a limited liability company that is managed by members who are entitled to manage the company.

(3) "Member" means a person who is a member or is an assignee of a membership interest or a person who beneficially owns a membership interest through a voting trust or a nominee on the person'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. 13, eff. September 1, 2019.

Sec. 101.452. STANDING TO BRING PROCEEDING. (a) Subject to Subsection (b), a member may not institute or maintain a derivative proceeding unless:

(1) the member:

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

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

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

(b) If the converted entity in a conversion is a limited liability company, a member of that limited liability company 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 member was an equity owner of the converting entity at the time of the act or omission; and

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

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. 14, eff. September 1, 2019.

Sec. 101.453. DEMAND. (a) A member may not institute a derivative proceeding until the 91st day after the date a written demand is filed with the limited liability company stating with particularity the act, omission, or other matter that is the subject of the claim or challenge and requesting that the limited liability company 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 member has been notified that the demand has been rejected by the limited liability company;

(2) the limited liability company is suffering irreparable injury; or

(3) irreparable injury to the limited liability company 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. 15, eff. September 1, 2019.

Sec. 101.454. DETERMINATION BY GOVERNING OR INDEPENDENT PERSONS. (a) The 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) the independent and disinterested governing persons of the limited liability company, whether one or more, even if the independent and disinterested governing persons are not a majority of the governing persons of the limited liability company;

(2) a committee consisting of one or more independent and disinterested governing persons appointed by the majority of one or more independent and disinterested governing persons of the limited liability company, even if the appointing independent and disinterested governing persons are not a majority of the governing persons of the limited liability company; or

(3) a panel of one or more independent and disinterested individuals appointed by the court on a motion by the limited liability company listing the names of the individuals to be appointed and stating that, to the best of the limited liability company's knowledge, the individuals to be appointed are disinterested and qualified to make the determinations contemplated by Section 101.458.

(b) An entity to which this subsection applies is independent and disinterested under this section only if its decision with respect to the limited liability company's derivative proceeding is made by a majority of its governing persons who are independent and disinterested with respect to that derivative proceeding, even if those governing persons are not a majority of its governing persons. This subsection applies to an entity that is:

(1) a managing entity of the limited liability company; or

(2) directly, or indirectly through one or more other entities, a governing person of that managing entity.

(c) The court shall appoint a panel under Subsection (a)(3) if the court finds that the individuals recommended by the limited liability company 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 limited liability company or the limited liability company's members for an action taken or omission made by the

individual in that capacity, except for acts or omissions 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. 16, eff. September 1, 2019.

Sec. 101.455. STAY OF PROCEEDING. (a) If the limited liability company 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 101.454 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 limited liability company must provide the court with a written statement agreeing to advise the court and the member 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 limited liability company provides the court and the member 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 limited liability company.

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. 17, eff. September 1, 2019.

Sec. 101.456. DISCOVERY. (a) If a limited liability company proposes to dismiss a derivative proceeding under Section 101.458, discovery by a member 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 101.454 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 101.454 and 101.458.

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. 18, eff. September 1, 2019.

Sec. 101.457. TOLLING OF STATUTE OF LIMITATIONS. A written demand filed with the limited liability company under Section 101.453 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 153.403; or

(2) the 31st day after the expiration of any stay granted under Section 153.405, 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. 19, eff. September 1, 2019.

Sec. 101.458. 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 limited liability company if the person or group of persons described by Section 101.454 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 limited liability company.

(b) In determining whether the requirements of Subsection (a) have been met, the burden of proof shall be on:

(1) the plaintiff member if:

(A) the applicable person or persons making the determination under Section 101.454(a)(1) or (2) are independent and disinterested 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 101.454(a)(3); or

(C) the limited liability company presents prima facie evidence that demonstrates that the applicable person or persons making the determination under Section 101.454(a) are independent and disinterested; or

(2) the limited liability company 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. 20, eff. September 1, 2019.

Sec. 101.459. 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 101.454 and 101.458.

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. 21, eff. September 1, 2019.

Sec. 101.460. 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 members if the court determines that a proposed discontinuance or settlement may substantially affect the interests of other members.

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

Sec. 101.461. 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 limited liability company may be required to indemnify another person.

(b) On termination of a derivative proceeding, the court may order:

(1) the limited liability company to pay expenses the plaintiff incurred in the proceeding if the court finds the proceeding has resulted in a substantial benefit to the limited liability company;

(2) the plaintiff to pay expenses the limited liability company 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. 22, eff. September 1, 2019.

Sec. 101.462. APPLICATION TO FOREIGN LIMITED LIABILITY

COMPANIES. (a) In a derivative proceeding brought in the right of a foreign limited liability company, the matters covered by this subchapter are governed by the laws of the jurisdiction of formation of the foreign limited liability company, except for Sections 101.455, 101.460, and 101.461, which are procedural provisions and do not relate to the internal affairs of the foreign limited liability company, unless applying the laws of the jurisdiction of formation of the foreign limited liability company requires otherwise with respect to Section 101.455.

(b) In the case of matters relating to a foreign limited liability company under Section 101.455, a reference to a person or group of persons described by Section 101.454 refers to a person or group entitled under the laws of the jurisdiction of formation of the foreign limited liability company to make the determination described by Section 101.454(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 limited liability company.

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. 23, eff. September 1, 2019.

Sec. 101.463. CLOSELY HELD LIMITED LIABILITY COMPANY. (a) In this section, "closely held limited liability company" means a limited liability company that has:

(1) fewer than 35 members; and

(2) no membership interests 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 101.452-101.460 do not apply to a claim or a derivative proceeding by a member of a closely held limited liability company against a governing person, member, or officer of the limited liability company. In the event the claim or derivative proceeding is also made against a person who is not that governing person, member, or officer, this subsection applies only to the claim or derivative proceeding against the governing person, member, or officer.

(c) If Sections 101.452-101.460 do not apply because of

Subsection (b) and if justice requires:

(1) a derivative proceeding brought by a member of a closely held limited liability company may be treated by a court as a direct action brought by the member for the member's own benefit; and

(2) a recovery in a direct or derivative proceeding by a member may be paid directly to the plaintiff or to the limited liability company if necessary to protect the interests of creditors or other members of the limited liability company.

(d) Other provisions of state law govern whether a member has a direct cause of action or right to sue a governing person, member, or officer, 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. 100, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 24, eff. September 1, 2019.

SUBCHAPTER K. SUPPLEMENTAL RECORDKEEPING REQUIREMENTS

Sec. 101.501. SUPPLEMENTAL RECORDS REQUIRED FOR LIMITED LIABILITY COMPANIES. (a) In addition to the books and records required to be kept under Section 3.151, a limited liability company shall keep at its principal office in the United States, or make available to a person at its principal office in the United States not later than the fifth day after the date the person submits a written request to examine the books and records of the company under Section 3.152(a) or 101.502:

(1) a current list that states:

(A) the percentage or other interest in the limited liability company owned by each member; and

(B) if one or more classes or groups of membership interests are established in or under the certificate of formation or company agreement, the names of the members of each specified class or group;

(2) a copy of the company's federal, state, and local tax information or income tax returns for each of the six preceding tax years;

(3) a copy of the company's certificate of formation, including any amendments to or restatements of the certificate of formation;

(4) if the company agreement is in writing, a copy of the company agreement, including any amendments to or restatements of the company agreement;

(5) an executed copy of any powers of attorney;

(6) a copy of any document that establishes a class or group of members of the company as provided by the company agreement; and

(7) except as provided by Subsection (b), a written statement of:

(A) the amount of a cash contribution and a description and statement of the agreed value of any other contribution made or agreed to be made by each member;

(B) the dates any additional contributions are to be made by a member;

(C) any event the occurrence of which requires a member to make additional contributions;

(D) any event the occurrence of which requires the winding up of the company; and

(E) the date each member became a member of the company.

(b) A limited liability company is not required to keep or make available at its principal office in the United States a written statement of the information required by Subsection (a)(7) if that information is stated in a written company agreement.

(c) A limited liability company shall keep at its registered office located in this state and make available to a member of the company on reasonable request the street address of the company's principal office in the United States in which the records required by this section and Section 3.151 are maintained or made available.

(d) All books and records required to be maintained by a limited liability company under this section may be maintained in any form and manner permitted under Section 3.151(b).

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. 101, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 9, eff. September 1, 2019.

Sec. 101.502. RIGHT TO EXAMINE RECORDS AND CERTAIN OTHER INFORMATION. (a) A member of a limited liability company or an assignee of a membership interest in a limited liability company, or a representative of the member or assignee, on written request and for a proper purpose, may examine and copy at any reasonable time and at the member's or assignee's expense:

(1) records required under Sections 3.151 and 101.501; and

(2) other information regarding the business, affairs, and financial condition of the company that is reasonable for the person to examine and copy.

(b) A limited liability company shall provide to a member of the company or an assignee of a membership interest in the company, on written request by the member or assignee sent to the company's principal office in the United States or, if different, the person and address designated in the company agreement, a free copy of:

(1) the company's certificate of formation, including any amendments to or restatements of the certificate of formation;

(2) if in writing, the company agreement, including any amendments to or restatements of the company agreement; and

(3) any tax returns described by Section 101.501(a)(2).

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

Sec. 101.503. PENALTY FOR REFUSAL TO PERMIT EXAMINATION OF CERTAIN RECORDS. (a) A limited liability company that refuses to allow a member or an assignee of a membership interest to examine and copy, on written request that complies with Section 101.502(a), records or other information described by that section is liable to the member or assignee for any cost or expense, including attorney's fees, incurred in enforcing the member's or assignee's rights under Section 101.502. The liability imposed on a limited liability company under this subsection is in addition to any other damages or remedy afforded to the member or assignee by law.

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

(1) has improperly used information obtained through a prior examination of the records or other information of the limited liability company or any other limited liability company, under Section 101.502; or

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

Added by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 11, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 10, eff. September 1, 2019.

SUBCHAPTER L. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

Sec. 101.551. PERSONS ELIGIBLE TO WIND UP COMPANY. After an event requiring the winding up of a limited liability company unless a revocation as provided by Section 11.151 or a cancellation as provided by Section 11.152 occurs, the winding up of the company must be carried out by:

(1) the company's governing authority or one or more persons, including a governing person, designated by the governing authority, the members, or the governing documents;

(2) if the event requiring the winding up of the company is the termination of the continued membership of the last remaining member of the company, the legal representative or successor of the last remaining member or one or more persons designated by the legal representative or successor; or

(3) a person appointed by the court to carry out the winding up of the company under Section 11.054, 11.405, 11.409, or 11.410.

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

Sec. 101.552. APPROVAL OF VOLUNTARY WINDING UP, REVOCATION, CANCELLATION, OR REINSTATEMENT. (a) A majority vote of all of the members of a limited liability company or, if the limited liability company has no members, a majority vote of all of the managers of the company is required to approve:

(1) a voluntary winding up of the company under Chapter 11;

(2) a revocation of a voluntary decision to wind up the company under Section 11.151; or

(3) a reinstatement of a terminated company under Section 11.202.

(b) The consent of all of the members of the limited liability company is required to approve a cancellation under Section 11.152 of an event requiring winding up specified in Section 11.051(1) or (3).

(c) An event requiring winding up specified in Section 11.056 may be canceled in accordance with Section 11.152(a) if the legal representative or successor of the last remaining member of the domestic limited liability company agrees to:

(1) cancel the event requiring winding up and continue the company; and

(2) become a member of the company effective as of the date of termination of the membership of the last remaining member of the company, or designate another person who agrees to become a member of the company effective as of the date of the termination.

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. 102, eff. September 1, 2007.

SUBCHAPTER M. SERIES LIMITED LIABILITY COMPANY

Sec. 101.601. SERIES OF MEMBERS, MANAGERS, MEMBERSHIP INTERESTS, OR ASSETS. (a) A company agreement may establish or provide for the establishment of one or more designated series of members, managers, membership interests, or assets that:

(1) has separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations; or

(2) has a separate business purpose or investment objective.

(b) A series established in accordance with Subsection (a) may carry on any business, purpose, or activity, whether or not for profit, that is not prohibited by Section 2.003.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.602. ENFORCEABILITY OF OBLIGATIONS AND EXPENSES OF SERIES AGAINST ASSETS. (a) Notwithstanding any other provision of this chapter or any other law, but subject to Subsection (b) and any other provision of this subchapter:

(1) the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and shall not be enforceable against the assets of the limited liability company generally or any other series; and

(2) none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series shall be enforceable against the assets of a particular series.

(b) Subsection (a) applies only if:

(1) the records maintained for that particular series account for the assets associated with that series separately from the other assets of the company or any other series;

(2) the company agreement contains a statement to the effect of the limitations provided in Subsection (a); and

(3) the company's certificate of formation contains a notice of the limitations provided in Subsection (a).

(c) Subsection (a) or any provision contained in a limited liability company agreement or certificate of formation pursuant to Subsection (a) does not restrict:

(1) a particular series or a limited liability company on behalf of a particular series from expressly agreeing in the company agreement or other written agreement that any or all of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the company generally or any other series of the company shall be enforceable against the assets of that particular series; or

(2) a limited liability company from expressly agreeing in the company agreement or other written agreement that any or all of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of the company generally.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 12, eff. September 1, 2017.

Sec. 101.603. ASSETS OF SERIES. (a) Assets associated with a series may be held directly or indirectly, including being held in the name of the series, in the name of the limited liability company, through a nominee, or otherwise.

(b) If the records of a series are maintained in a manner so that the assets of the series can be reasonably identified by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any assets, or by any other method in which the identity of the assets can be objectively determined, the records are considered to satisfy the requirements of Section 101.602(b)(1).

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.604. NOTICE OF LIMITATION ON LIABILITIES OF SERIES. Notice of the limitation on liabilities of a series required by Section 101.602 that is contained in a certificate of formation filed with the secretary of state satisfies the requirements of Section 101.602(b)(3), regardless of whether:

(1) the limited liability company has established any series under this subchapter when the notice is contained in the certificate of formation; and

(2) the notice makes a reference to a specific series of the limited liability company.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.605. GENERAL POWERS OF SERIES. A series established under this subchapter has the power and capacity, in the series' own name, to:

(1) sue and be sued;
(2) contract;
(3) acquire, sell, and hold title to assets of the series, including real property, personal property, and intangible property;
(4) grant liens and security interests in assets of the series;
(5) be a promoter, organizer, partner, owner, member, associate, or manager of an organization; and
(6) exercise any power or privilege as necessary or appropriate to the conduct, promotion, or attainment of the business, purposes, or activities of the series.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 9 (S.B. 847), Sec. 6, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 13, eff. September 1, 2017.

Sec. 101.606. LIABILITY OF MEMBER OR MANAGER FOR OBLIGATIONS; DUTIES. (a) Except as and to the extent the company agreement specifically provides otherwise, a member or manager associated with a series or a member or manager of the company is not liable for a debt, obligation, or liability of a series, including a debt, obligation, or liability under a judgment, decree, or court order.
(b) The company agreement may expand or restrict any duties, including fiduciary duties, and related liabilities that a member, manager, officer, or other person associated with a series has to:
(1) the series or the company;
(2) a member or manager associated with the series; or
(3) a member or manager of the company.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.607. CLASS OR GROUP OF MEMBERS OR MANAGERS. (a) The company agreement may:
(1) establish classes or groups of one or more members or

managers associated with a series each of which has certain express relative rights, powers, and duties, including voting rights; and

(2) provide for the manner of establishing additional classes or groups of one or more members or managers associated with the series each of which has certain express rights, powers, and duties, including providing for voting rights and rights, powers, and duties senior to existing classes and groups of members or managers associated with the series.

(b) The company agreement may provide for the taking of an action, including the amendment of the company agreement, without the vote or approval of any member or manager or class or group of members or managers, to create under the provisions of the company agreement a class or group of the series of membership interests that was not previously outstanding.

(c) The company agreement may provide that:

(1) all or certain identified members or managers or a specified class or group of the members or managers associated with a series have the right to vote on any matter separately or with all or any class or group of the members or managers associated with the series;

(2) any member or class or group of members associated with a series has no voting rights; and

(3) voting by members or managers associated with a series is on a per capita, number, financial interest, class, group, or any other basis.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.608. GOVERNING AUTHORITY. (a) Notwithstanding any conflicting provision of the certificate of formation of a limited liability company, the governing authority of a series consists of the managers or members associated with the series as provided in the company agreement.

(b) If the company agreement does not provide for the governing authority of the series, the governing authority of the series consists of:

(1) the managers associated with the series, if the company's certificate of formation states that the company will have

one or more managers; or

(2) the members associated with the series, if the company's certificate of formation states that the company will not have managers.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.609. APPLICABILITY OF OTHER PROVISIONS OF CHAPTER OR TITLE 1; SYNONYMOUS TERMS. (a) To the extent not inconsistent with this subchapter, this chapter applies to a series and its associated members and managers.

(b) For purposes of the application of any other provision of this chapter to a provision of this subchapter, and as the context requires:

(1) a reference to "limited liability company" or "company" means the "series";

(2) a reference to "member" means "member associated with the series"; and

(3) a reference to "manager" means "manager associated with the series."

(c) To the extent not inconsistent with this subchapter, a series and the governing persons and officers associated with the series have the powers and rights provided by Subchapters C and D, Chapter 3, and Subchapter F, Chapter 10. For purposes of those provisions, and as the context requires:

(1) a reference to "entity," "domestic entity," or "filing entity" includes the "series";

(2) a reference to "governing person" includes "governing person associated with the series";

(3) a reference to "governing authority" includes "governing authority associated with the series"; and

(4) a reference to "officer" includes "officer associated with the series."

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 9 (S.B. 847), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 9 (S.B. 847), Sec. 8, eff. September 1, 2013.

Sec. 101.610. EFFECT OF CERTAIN EVENT ON MANAGER OR MEMBER. (a) An event that under this chapter or the company agreement causes a manager to cease to be a manager with respect to a series does not, in and of itself, cause the manager to cease to be a manager of the limited liability company or with respect to any other series of the company.

(b) An event that under this chapter or the company agreement causes a member to cease to be associated with a series does not, in and of itself, cause the member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company or require the winding up of the series, regardless of whether the member was the last remaining member associated with the series.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.611. MEMBER STATUS WITH RESPECT TO DISTRIBUTION. (a) Subject to Sections 101.613, 101.617, 101.618, 101.619, and 101.620, when a member associated with a series established under this subchapter is entitled to receive a distribution with respect to the series, the member, with respect to the distribution, has the same status as a creditor of the series and is entitled to any remedy available to a creditor of the series.

(b) Section 101.206 does not apply to a distribution with respect to the series.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 40, eff. September 1, 2011.

Sec. 101.612. RECORD DATE FOR ALLOCATIONS AND DISTRIBUTIONS. A company agreement may establish or provide for the establishment of a

record date for allocations and distributions with respect to a series.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.613. DISTRIBUTIONS. (a) A limited liability company may make a distribution with respect to a series.

(b) A limited liability company may not make a distribution with respect to a series to a member if, immediately after making the distribution, the total amount of the liabilities of the series, other than liabilities described by Subsection (c), exceeds the fair value of the assets associated with the series.

(c) For purposes of Subsection (b), the liabilities of a series do not include:

(1) a liability related to the member's membership interest; or

(2) except as provided by Subsection (e), a liability of the series for which the recourse of creditors is limited to specified property of the series.

(d) For purposes of Subsection (b), the assets associated with a series include the fair value of property of the series subject to a liability for which recourse of creditors is limited to specified property of the series only if the fair value of that property exceeds the liability.

(e) A member who receives a distribution from a series in violation of this section is not required to return the distribution to the series unless the member had knowledge of the violation.

(f) This section may not be construed to affect the obligation of a member to return a distribution to the series under the company agreement or other state or federal law.

(g) Section 101.206 does not apply to a distribution with respect to a series.

(h) For purposes of this section, "distribution" does not include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or other benefits program.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.614. AUTHORITY TO WIND UP AND TERMINATE SERIES. Except to the extent otherwise provided in the company agreement and subject to Sections 101.617, 101.618, 101.619, and 101.620, a series and its business and affairs may be wound up and terminated without causing the winding up of the limited liability company.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.615. TERMINATION OF SERIES. (a) Except as otherwise provided by Sections 101.617, 101.618, 101.619, and 101.620, the series terminates on the completion of the winding up of the business and affairs of the series in accordance with Sections 101.617, 101.618, 101.619, and 101.620.

(b) The limited liability company shall provide notice of the termination of a series in the manner provided in the company agreement for notice of termination, if any.

(c) The termination of the series does not affect the limitation on liabilities of the series provided by Section 101.602.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.616. EVENT REQUIRING WINDING UP. Subject to Sections 101.617, 101.618, 101.619, and 101.620, the business and affairs of a series are required to be wound up:

(1) if the winding up of the limited liability company is required under Section 101.552(a) or Chapter 11; or

(2) on the earlier of:

(A) the time specified for winding up the series in the company agreement;

(B) the occurrence of an event specified with respect to the series in the company agreement;

(C) the occurrence of a majority vote of all of the members associated with the series approving the winding up of the series or, if there is more than one class or group of members associated with the series, a majority vote of the members of each

class or group of members associated with the series approving the winding up of the series;

(D) if the series has no members, the occurrence of a majority vote of all of the managers associated with the series approving the winding up of the series or, if there is more than one class or group of managers associated with the series, a majority vote of the managers of each class or group of managers associated with the series approving the winding up of the series; or

(E) a determination by a court in accordance with Section 101.621.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.617. PROCEDURES FOR WINDING UP AND TERMINATION OF SERIES. (a) The following provisions apply to a series and the associated members and managers of the series:

(1) Subchapters A, G, H, and I, Chapter 11; and

(2) Subchapter B, Chapter 11, other than Sections 11.051, 11.056, 11.057, 11.058, and 11.059.

(b) For purposes of the application of Chapter 11 to a series and as the context requires:

(1) a reference to "domestic entity," "filing entity," or "entity" means the "series";

(2) a reference to an "owner" means a "member associated with the series";

(3) a reference to the "governing authority" or a "governing person" means the "governing authority associated with the series" or a "governing person associated with the series"; and

(4) a reference to "business," "property," "obligations," or "liabilities" means the "business associated with the series," "property associated with the series," "obligations associated with the series," or "liabilities associated with the series."

(c) After the occurrence of an event requiring winding up of a series under Section 101.616, unless a revocation as provided by Section 101.618 or a cancellation as provided by Section 101.619 occurs, the winding up of the series must be carried out by:

(1) the governing authority of the series or one or more persons, including a governing person, designated by:

(A) the governing authority of the series;
(B) the members associated with the series; or
(C) the company agreement; or
(2) a person appointed by the court to carry out the winding up of the series under Section 11.054, 11.405, 11.409, or 11.410.

(d) An action taken in accordance with this section does not affect the limitation on liability of members and managers provided by Section 101.606.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.618. REVOCATION OF VOLUNTARY WINDING UP. Before the termination of the series takes effect, a voluntary decision to wind up the series under Section 101.616(2)(C) or (D) may be revoked by:

(1) a majority vote of all of the members associated with the series approving the revocation or, if there is more than one class or group of members associated with the series, a majority vote of the members of each class or group of members associated with the series approving the revocation; or

(2) if the series has no members, a majority vote of all the managers associated with the series approving the revocation or, if there is more than one class or group of managers associated with the series, a majority vote of the managers of each class or group of managers associated with the series approving the revocation.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.619. CANCELLATION OF EVENT REQUIRING WINDING UP. (a) Unless the cancellation is prohibited by the company agreement, an event requiring winding up of the series under Section 101.616(1) or (2) may be canceled by the consent of all of the members of the series before the termination of the series takes effect.

(b) In connection with the cancellation, the members must amend the company agreement to:

(1) eliminate or extend the time specified for the series if the event requiring winding up of the series occurred under

Section 101.616(1); or

(2) eliminate or revise the event specified with respect to the series if the event requiring winding up of the series occurred under Section 101.616(2).

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.620. CONTINUATION OF BUSINESS. The series may continue its business following the revocation under Section 101.618 or the cancellation under Section 101.619.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.

Sec. 101.621. WINDING UP BY COURT ORDER. A district court in the county in which the registered office or principal place of business in this state of a domestic limited liability company is located, on application by or for a member associated with the series, has jurisdiction to order the winding up and termination of a series if the court determines that:

(1) it is not reasonably practicable to carry on the business of the series in conformity with the company agreement;

(2) the economic purpose of the series is likely to be unreasonably frustrated; or

(3) another member associated with the series has engaged in conduct relating to the series' business that makes it not reasonably practicable to carry on the business with that member.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 45, eff. September 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 11, eff. September 1, 2019.

Sec. 101.622. SERIES NOT A SEPARATE DOMESTIC ENTITY OR ORGANIZATION. For purposes of this chapter and Title 1, a series has the rights, powers, and duties provided by this subchapter to the

series but is not a separate domestic entity or organization.

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

TITLE 4. PARTNERSHIPS
CHAPTER 151. GENERAL PROVISIONS

Sec. 151.001. DEFINITIONS. In this title:

(1) "Capital account" means the amount computed by:

(A) adding the amount of a partner's original and additional contributions of cash to a partnership, the agreed value of any other property that that partner originally or additionally contributed to the partnership, and allocations of partnership profits to that partner; and

(B) subtracting the amount of distributions to that partner and allocations of partnership losses to that partner.

(2) "Distribution" means a transfer of property, including cash, from a partnership to a partner in the partner's capacity as a partner or the partner's transferee.

(3) "Foreign limited partnership" means a partnership formed under the laws of another state that has one or more general partners and one or more limited partners.

(4) "Majority-in-interest," with respect to all or a specified group of partners, means partners who own more than 50 percent of the current percentage or other interest in the profits of the partnership that is owned by all of the partners or by the partners in the specified group, as appropriate.

(5) "Partnership agreement" means any agreement, written or oral, of the partners concerning a partnership.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 76, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 103, eff. September 1, 2007.

Sec. 151.002. KNOWLEDGE OF FACT. For purposes of this title, a person has knowledge of a fact only if the person has actual

knowledge of the fact.

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

Sec. 151.003. NOTICE OF FACT. (a) For purposes of this title, a person has notice of a fact if the person:

(1) has knowledge of the fact;

(2) has received a communication of the fact as provided by Subsection (c); or

(3) reasonably should have concluded, from all facts then known to that person, that the fact exists.

(b) A person notifies or gives notice to another person of a fact by taking actions reasonably required to inform the other person of the fact in the ordinary course of business, regardless of whether the other person actually has knowledge of the fact.

(c) A person is notified or receives notice of a fact when the fact is communicated to:

(1) the person;

(2) the person's place of business; or

(3) another place held out by the person as the place for receipt of communications.

(d) Receipt of notice by a general partner of a fact relating to the partnership is effective immediately as notice to the partnership unless fraud against the partnership is committed by or with the consent of the partner receiving the notice.

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. 41, eff. September 1, 2011.

Sec. 151.004. OFFICERS. A partnership may have elected or appointed officers in accordance with Section 3.103.

Added by Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 46, eff. September 1, 2009.

CHAPTER 152. GENERAL PARTNERSHIPS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 152.001. DEFINITIONS. In this chapter:

(1) "Event of withdrawal" or "withdrawal" means an event specified by Section 152.501(b).

(2) "Event requiring a winding up" means an event specified by Section 11.051 or 11.057.

(3) "Foreign limited liability partnership" means a partnership that:

(A) is foreign; and

(B) has the status of a limited liability partnership pursuant to the laws of the jurisdiction of formation.

(4) "Other partnership provisions" means the provisions of Chapters 151 and 154 and Title 1 to the extent applicable to partnerships.

(5) "Transfer" includes:

(A) an assignment;

(B) a conveyance;

(C) a lease;

(D) a mortgage;

(E) a deed;

(F) an encumbrance; and

(G) the creation of a security interest.

(6) "Withdrawn partner" means a partner with respect to whom an event of withdrawal has occurred.

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

Sec. 152.002. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE AND VARIABLE PROVISIONS. (a) Except as provided by Subsection (b), a partnership agreement governs the relations of the partners and between the partners and the partnership. To the extent that the partnership agreement does not otherwise provide, this chapter and the other partnership provisions govern the relationship of the partners and between the partners and the partnership.

(b) A partnership agreement or the partners may not:

(1) unreasonably restrict a partner's right of access to books and records under Section 152.212;

(2) eliminate the duty of loyalty under Section 152.205, except that the partners by agreement may identify specific types of

activities or categories of activities that do not violate the duty of loyalty if the types or categories are not manifestly unreasonable;

(3) eliminate the duty of care under Section 152.206, except that the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(4) eliminate the obligation of good faith under Section 152.204(b), except that the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(5) vary the power to withdraw as a partner under Section 152.501(b)(1), (7), or (8), except for the requirement that notice be in writing;

(6) vary the right to expel a partner by a court in an event specified by Section 152.501(b)(5);

(7) restrict rights of a third party under this chapter or the other partnership provisions, except for a limitation on an individual partner's liability in a limited liability partnership as provided by this chapter;

(8) select a governing law not permitted under Sections 1.103 and 1.002(43)(C); or

(9) except as provided in Subsections (c) and (d), waive or modify the following provisions of Title 1:

(A) Chapter 1, if the provision is used to interpret a provision or to define a word or phrase contained in a section listed in this subsection;

(B) Chapter 2, other than Sections 2.104(c)(2), 2.104(c)(3), and 2.113;

(C) Chapter 3, other than Subchapters C and E of that chapter; or

(D) Chapters 4, 5, 10, 11, and 12, other than Sections 11.057(a), (b), (c)(1), (c)(3), (d), and (f).

(c) A provision listed in Subsection (b)(9) may be waived or modified in a partnership agreement if the provision that is waived or modified authorizes the partnership to waive or modify the provision in the partnership's governing documents.

(d) A provision listed in Subsection (b)(9) may be waived or modified in a partnership agreement if the provision that is modified specifies:

(1) the person or group of persons entitled to approve a modification; or

(2) the vote or other method by which a modification is required to be approved.

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. 104, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 3, eff. September 1, 2015.

Sec. 152.003. SUPPLEMENTAL PRINCIPLES OF LAW. The principles of law and equity and the other partnership provisions supplement this chapter unless otherwise provided by this chapter or the other partnership provisions.

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

Sec. 152.004. RULE OF STATUTORY CONSTRUCTION NOT APPLICABLE. The rule that a statute in derogation of the common law is to be strictly construed does not apply to this chapter or the other partnership provisions.

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

Sec. 152.005. APPLICABLE INTEREST RATE. If an obligation to pay interest arises under this chapter and the rate is not specified, the interest rate is the rate specified by Section 302.002, Finance Code.

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

SUBCHAPTER B. NATURE AND CREATION OF PARTNERSHIP

Sec. 152.051. PARTNERSHIP DEFINED. (a) In this section, "association" does not have the meaning of the term "association" under Section 1.002.

(b) Except as provided by Subsection (c) and Section 152.053(a), an association of two or more persons to carry on a business for profit as owners creates a partnership, regardless of whether:

(1) the persons intend to create a partnership; or

(2) the association is called a "partnership," "joint venture," or other name.

(c) An association or organization is not a partnership if it was created under a statute other than:

(1) this title and the provisions of Title 1 applicable to partnerships and limited partnerships;

(2) a predecessor to a statute referred to in Subdivision (1); or

(3) a comparable statute of another jurisdiction.

(d) The provisions of this chapter govern limited partnerships only to the extent provided by Sections 153.003 and 153.152 and Subchapter H, Chapter 153.

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

Sec. 152.052. RULES FOR DETERMINING IF PARTNERSHIP IS CREATED. (a) Factors indicating that persons have created a partnership include the persons':

(1) receipt or right to receive a share of profits of the business;

(2) expression of an intent to be partners in the business;

(3) participation or right to participate in control of the business;

(4) agreement to share or sharing:

(A) losses of the business; or

(B) liability for claims by third parties against the business; and

(5) agreement to contribute or contributing money or property to the business.

(b) One of the following circumstances, by itself, does not indicate that a person is a partner in the business:

(1) the receipt or right to receive a share of profits as payment:

(A) of a debt, including repayment by installments;

(B) of wages or other compensation to an employee or independent contractor;

(C) of rent;

(D) to a former partner, surviving spouse or representative of a deceased or disabled partner, or transferee of a partnership interest;

(E) of interest or other charge on a loan, regardless of whether the amount varies with the profits of the business, including a direct or indirect present or future ownership interest in collateral or rights to income, proceeds, or increase in value derived from collateral; or

(F) of consideration for the sale of a business or other property, including payment by installments;

(2) co-ownership of property, regardless of whether the co-ownership:

(A) is a joint tenancy, tenancy in common, tenancy by the entirety, joint property, community property, or part ownership; or

(B) is combined with sharing of profits from the property;

(3) the right to share or sharing gross returns or revenues, regardless of whether the persons sharing the gross returns or revenues have a common or joint interest in the property from which the returns or revenues are derived; or

(4) ownership of mineral property under a joint operating agreement.

(c) An agreement by the owners of a business to share losses is not necessary to create a partnership.

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

Sec. 152.053. QUALIFICATIONS TO BE PARTNER; NONPARTNER'S LIABILITY TO THIRD PERSON. (a) A person may be a partner unless the person lacks capacity apart from this chapter.

(b) Except as provided by Section 152.307, a person who is not a partner in a partnership under Section 152.051 is not a partner as to a third person and is not liable to a third person under this chapter.

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

Sec. 152.054. FALSE REPRESENTATION OF PARTNERSHIP OR PARTNER. (a) A false representation or other conduct falsely indicating that a person is a partner with another person does not of itself create a partnership.

(b) A representation or other conduct indicating that a person is a partner in an existing partnership, if that is not the case, does not of itself make that person a partner in the partnership.

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

Sec. 152.055. AUTHORITY OF CERTAIN PROFESSIONALS TO CREATE PARTNERSHIP. (a) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy by the Texas Medical Board, persons licensed as podiatrists by the Texas Department of Licensing and Regulation, and persons licensed as chiropractors by the Texas Board of Chiropractic Examiners may create a partnership that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners.

(b) When doctors of medicine, osteopathy, podiatry, and chiropractic create a partnership that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner.

(c) The Texas Medical Board, the Texas Department of Licensing and Regulation, and the Texas Board of Chiropractic Examiners continue to exercise regulatory authority over their respective licenses.

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

Acts 2017, 85th Leg., R.S., Ch. 388 (S.B. 679), Sec. 2, eff. June 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.002, eff. September 1, 2019.

Sec. 152.0551. PARTNERSHIPS FORMED BY PHYSICIANS AND PHYSICIAN ASSISTANTS. (a) Physicians licensed under Subtitle B, Title 3, Occupations Code, and physician assistants licensed under Chapter 204, Occupations Code, may create a partnership to perform a professional service that falls within the scope of practice of those practitioners.

(b) A physician assistant may not be a general partner or participate in the management of the partnership.

(c) A physician assistant may not contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the partnership.

(d) The authority of each practitioner is limited by the scope of practice of the respective practitioner. An organizer of the entity must be a physician and ensure that a physician or physicians control and manage the entity.

(e) Nothing in this section may be construed to allow the practice of medicine by someone not licensed as a physician under Subtitle B, Title 3, Occupations Code, or to allow a person not licensed as a physician to direct the activities of a physician in the practice of medicine.

(f) A physician assistant or combination of physician assistants may have only a minority ownership interest in an entity created under this section. The ownership interest of an individual physician assistant may not equal or exceed the ownership interest of any individual physician owner. A physician assistant or combination of physician assistants may not interfere with the practice of medicine by a physician owner or the supervision of physician assistants by a physician owner.

(g) The Texas Medical Board and the Texas Physician Assistant Board continue to exercise regulatory authority over their respective license holders according to applicable law. To the extent of a conflict between Subtitle B, Title 3, Occupations Code, and Chapter 204, Occupations Code, or any rules adopted under those statutes, Subtitle B, Title 3, or a rule adopted under that subtitle controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 782 (H.B. 2098), Sec. 2, eff. June 17, 2011.

Sec. 152.056. PARTNERSHIP AS ENTITY. A partnership is an entity distinct from its partners.

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

SUBCHAPTER C. PARTNERSHIP PROPERTY

Sec. 152.101. NATURE OF PARTNERSHIP PROPERTY. Partnership property is not property of the partners. A partner or a partner's spouse does not have an interest in partnership property.

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

Sec. 152.102. CLASSIFICATION AS PARTNERSHIP PROPERTY. (a) Property is partnership property if acquired in the name of:

(1) the partnership; or

(2) one or more partners, regardless of whether the name of the partnership is indicated, if the instrument transferring title to the property indicates:

(A) the person's capacity as a partner; or

(B) the existence of a partnership.

(b) Property is presumed to be partnership property if acquired with partnership property, regardless of whether the property is acquired as provided by Subsection (a).

(c) Property acquired in the name of one or more partners is presumed to be the partner's property, regardless of whether the property is used for partnership purposes, if the instrument transferring title to the property does not indicate the person's capacity as a partner or the existence of a partnership, and if the property is not acquired with partnership property.

(d) For purposes of this section, property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more partners in the partners' capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

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

SUBCHAPTER D. RELATIONSHIP BETWEEN PARTNERS AND BETWEEN PARTNERS AND PARTNERSHIPS

Sec. 152.201. ADMISSION AS PARTNER. A person may become a partner only with the consent of all partners.

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

Sec. 152.202. CREDITS OF AND CHARGES TO PARTNER. (a) Each partner is credited with an amount equal to:

(1) the cash and the value of property the partner contributes to a partnership; and

(2) the partner's share of the partnership's profits.

(b) Each partner is charged with an amount equal to:

(1) the cash and the value of other property distributed by the partnership to the partner; and

(2) the partner's share of the partnership's losses.

(c) Each partner is entitled to be credited with an equal share of the partnership's profits and is chargeable with a share of the partnership's capital or operating losses in proportion to the partner's share of the profits.

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

Sec. 152.203. RIGHTS AND DUTIES OF PARTNER. (a) Each partner has equal rights in the management and conduct of the business of a partnership. A partner's right to participate in the management and conduct of the business is not community property.

(b) A partner may use or possess partnership property only on behalf of the partnership.

(c) A partner is not entitled to receive compensation for services performed for a partnership other than reasonable compensation for services rendered in winding up the business of the partnership.

(d) A partner who, in the proper conduct of the business of the partnership or for the preservation of its business or property, reasonably makes a payment or advance beyond the amount the partner agreed to contribute, or who reasonably incurs a liability, is entitled to be repaid and to receive interest from the date of the:

(1) payment or advance; or

(2) incurrence of the liability.

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

Sec. 152.204. GENERAL STANDARDS OF PARTNER'S CONDUCT. (a) A partner owes to the partnership, the other partners, and a transferee of a deceased partner's partnership interest as designated in Section 152.406(a)(2):

(1) a duty of loyalty; and

(2) a duty of care.

(b) A partner shall discharge the partner's duties to the partnership and the other partners under this code or under the partnership agreement and exercise any rights and powers in the conduct or winding up of the partnership business:

(1) in good faith; and

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

(c) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(d) A partner, in the partner's capacity as partner, is not a trustee and is not held to the standards of a trustee.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 77, eff. January 1, 2006.

Sec. 152.205. PARTNER'S DUTY OF LOYALTY. A partner's duty of loyalty includes:

(1) accounting to and holding for the partnership property, profit, or benefit derived by the partner:

(A) in the conduct and winding up of the partnership business; or

(B) from use by the partner of partnership property;

(2) refraining from dealing with the partnership on behalf of a person who has an interest adverse to the partnership; and

(3) refraining from competing or dealing with the partnership in a manner adverse to the partnership.

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

Sec. 152.206. PARTNER'S DUTY OF CARE. (a) A partner's duty of care to the partnership and the other partners is to act in the conduct and winding up of the partnership business with the care an ordinarily prudent person would exercise in similar circumstances.

(b) An error in judgment does not by itself constitute a breach of the duty of care.

(c) A partner is presumed to satisfy the duty of care if the partner acts on an informed basis and in compliance with Section 152.204(b).

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

Sec. 152.207. STANDARDS OF CONDUCT APPLICABLE TO PERSON WINDING UP PARTNERSHIP BUSINESS. Sections 152.204-152.206 apply to a person winding up the partnership business as the personal or legal representative of the last surviving partner to the same extent that those sections apply to a partner.

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

Sec. 152.208. AMENDMENT TO PARTNERSHIP AGREEMENT. A partnership agreement may be amended only with the consent of all partners.

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

Sec. 152.209. DECISION-MAKING REQUIREMENT. (a) A difference arising in a matter in the ordinary course of the partnership business may be decided by a majority-in-interest of the partners.

(b) An act outside the ordinary course of business of a partnership may be undertaken only with the consent of all partners.

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

Sec. 152.210. PARTNER'S LIABILITY TO PARTNERSHIP AND OTHER PARTNERS. A partner is liable to a partnership and the other partners for:

(1) a breach of the partnership agreement; or

(2) a violation of a duty to the partnership or other partners under this chapter that causes harm to the partnership or the other partners.

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

Sec. 152.211. REMEDIES OF PARTNERSHIP AND PARTNERS. (a) A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting of partnership business, to:

(1) enforce a right under the partnership agreement;

(2) enforce a right under this chapter, including:

(A) the partner's rights under Sections 152.201-152.209, 152.212, and 152.213;

(B) the partner's right on withdrawal to have the partner's interest in the partnership redeemed under Subchapter H or to enforce any other right under Subchapters G and H; and

(C) the partner's rights under Subchapter I;

(3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship; or

(4) enforce a right under Chapter 11.

(c) The accrual of and a time limitation on a right of action for a remedy under this section is governed by other applicable law.

(d) A right to an accounting does not revive a claim barred by law.

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

Sec. 152.212. BOOKS AND RECORDS OF PARTNERSHIP. (a) In this section, "access" includes the opportunity to inspect and copy books and records during ordinary business hours.

(b) A partnership shall keep or make available its books and records, if any, at its chief executive office.

(c) A partnership shall make available or provide access to its books and records to a partner or an agent or attorney of a partner.

(d) The partnership shall provide a former partner or an agent or attorney of a former partner access to books and records pertaining to the period during which the former partner was a partner or for any other proper purpose with respect to another period.

(e) A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished under this section.

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

Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 14, eff. September 1, 2017.

Sec. 152.213. INFORMATION REGARDING PARTNERSHIP. (a) On request and to the extent just and reasonable, each partner and the partnership shall furnish complete and accurate information concerning the partnership to:

(1) a partner;

(2) the legal representative of a deceased partner or a partner who has a legal disability; or

(3) an assignee.

(b) A legal representative of a deceased partner or a partner who has a legal disability and an assignee are subject to the duties of a partner with respect to information made available.

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

Sec. 152.214. CERTAIN THIRD-PARTY OBLIGATIONS NOT AFFECTED. Sections 152. 203, 152.208, and 152.209 do not limit a partnership's obligations to another person under Sections 152.301 and 152.302.

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

SUBCHAPTER E. RELATIONSHIP BETWEEN PARTNERS AND OTHER PERSONS

Sec. 152.301. PARTNER AS AGENT. Each partner is an agent of the partnership for the purpose of its business.

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

Sec. 152.302. BINDING EFFECT OF PARTNER'S ACTION. (a) Unless a partner does not have authority to act for the partnership in a particular matter and the person with whom the partner is dealing knows that the partner lacks authority, an act of a partner, including the execution of an instrument in the partnership name, binds the partnership if the act is apparently for carrying on in the ordinary course:

(1) the partnership business; or

(2) business of the kind carried on by the partnership.

(b) An act of a partner that is not apparently for carrying on in the ordinary course a business described by Subsection (a) binds the partnership only if authorized by the other partners.

(c) A conveyance of real property by a partner on behalf of the partnership not otherwise binding on the partnership binds the partnership if the property has been conveyed by the grantee or a person claiming through the grantee to a holder for value without knowledge that the partner exceeded that partner's authority in making the conveyance.

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. 105, eff. September 1, 2007.

Sec. 152.303. LIABILITY OF PARTNERSHIP FOR CONDUCT OF PARTNER. (a) A partnership is liable for loss or injury to a person, including a partner, or for a penalty caused by or incurred as a result of a wrongful act or omission or other actionable conduct of a partner acting:

(1) in the ordinary course of business of the partnership; or

(2) with the authority of the partnership.

(b) A partnership is liable for the loss of money or property

of a person who is not a partner that is:

(1) received in the course of the partnership's business; and

(2) misapplied by a partner while in the custody of the partnership.

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

Sec. 152.304. NATURE OF PARTNER'S LIABILITY. (a) Except as provided by Subsection (b) or Section 152.801(a), all partners are jointly and severally liable for all obligations of the partnership unless otherwise:

(1) agreed by the claimant; or

(2) provided by law.

(b) A person who is admitted as a partner into an existing partnership does not have personal liability under Subsection (a) for an obligation of the partnership that:

(1) arises before the partner's admission to the partnership;

(2) relates to an action taken or omission occurring before the partner's admission to the partnership; or

(3) arises before or after the partner's admission to the partnership under a contract or commitment entered into before the partner's admission.

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. 106, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 42, eff. September 1, 2011.

Sec. 152.305. REMEDY. An action may be brought against a partnership and any or all of the partners in the same action or in separate actions.

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

Sec. 152.306. ENFORCEMENT OF REMEDY. (a) A judgment against a partnership is not by itself a judgment against a partner. A judgment may be entered against a partner who has been served with process in a suit against the partnership.

(b) Except as provided by Subsection (c), a creditor may proceed against the property of one or more partners to satisfy a judgment based on a claim against the partnership only if a judgment:

(1) is obtained against the partner; and

(2) based on the same claim:

(A) is obtained against the partnership;

(B) has not been reversed or vacated; and

(C) remains unsatisfied for 90 days after:

(i) the date on which the judgment is entered; or

(ii) the date on which the stay expires, if the judgment is contested by appropriate proceedings and execution on the judgment is stayed.

(c) Subsection (b)(2) does not prohibit a creditor from proceeding directly against the property of one or more partners if:

(1) the partnership is a debtor in bankruptcy;

(2) the creditor and the partner or partners whose property is the subject of the proceeding brought by the creditor agreed that the creditor is not required to comply with Subsection (b)(2);

(3) a court orders otherwise, based on a finding that partnership property subject to execution in the state is clearly insufficient to satisfy the judgment or that compliance with Subsection (b)(2) is excessively burdensome; or

(4) liability is imposed on the partner by law or contract independently of the person's status as a partner.

(d) This section does not limit the effect of Section 152.801 with respect to a limited liability partnership.

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

Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 12, eff. September 1, 2019.

Sec. 152.307. EXTENSION OF CREDIT IN RELIANCE ON FALSE REPRESENTATION. (a) The rights of a person extending credit in reliance on a representation described by Section 152.054 are

determined by applicable law other than this chapter and the other partnership provisions, including the law of estoppel, agency, negligence, fraud, and unjust enrichment.

(b) The rights and duties of a person held liable under Subsection (a) are also determined by law other than the law described by Subsection (a).

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

Sec. 152.308. PARTNER'S PARTNERSHIP INTEREST SUBJECT TO CHARGING ORDER. (a) On application by a judgment creditor of a partner or of any other owner of a partnership interest, a court having jurisdiction may charge the partnership interest of the judgment debtor to satisfy the judgment.

(b) To the extent that the partnership interest is charged in the manner provided by Subsection (a), the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise be entitled in respect of the partnership interest.

(c) A charging order constitutes a lien on the judgment debtor's partnership interest. The charging order lien may not be foreclosed on under this code or any other law.

(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of a partner or of any other owner of a partnership interest may satisfy a judgment out of the judgment debtor's partnership interest.

(e) This section does not deprive a partner or other owner of a partnership interest of a right under exemption laws with respect to the judgment debtor's partnership interest.

(f) A creditor of a partner or of any other owner of a partnership interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the partnership.

Added by Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 43, eff. September 1, 2011.

SUBCHAPTER F. TRANSFER OF PARTNERSHIP INTERESTS

Sec. 152.401. TRANSFER OF PARTNERSHIP INTEREST. A partner may transfer all or part of the partner's partnership interest.

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

Sec. 152.402. GENERAL EFFECT OF TRANSFER. A transfer of all or part of a partner's partnership interest:

(1) is not an event of withdrawal;

(2) does not by itself cause a winding up of the partnership business; and

(3) against the other partners or the partnership, does not entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business.

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

Sec. 152.403. EFFECT OF TRANSFER ON TRANSFEROR. After transfer, the transferor continues to have the rights and duties of a partner other than the interest transferred.

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

Sec. 152.404. RIGHTS AND DUTIES OF TRANSFEREE. (a) A transferee of a partner's partnership interest is entitled to receive, to the extent transferred, distributions to which the transferor otherwise would be entitled.

(b) If an event requires a winding up of partnership business under Subchapter I, a transferee is entitled to receive, to the extent transferred, the net amount otherwise distributable to the transferor.

(c) Until a transferee becomes a partner, the transferee does not have liability as a partner solely as a result of the transfer.

(d) For a proper purpose the transferee may require reasonable information or an account of a partnership transaction and make reasonable inspection of the partnership books. In a winding up of partnership business, a transferee may require an accounting only from the date of the latest account agreed to by all of the partners.

(e) Until receipt of notice of a transfer, a partnership is not required to give effect to a transferee's rights under this section and Sections 152.401-152.403.

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

Sec. 152.405. POWER TO EFFECT TRANSFER OR GRANT OF SECURITY INTEREST. A partnership is not required to give effect to a transfer prohibited by a partnership agreement.

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

Sec. 152.406. EFFECT OF DEATH OR DIVORCE ON PARTNERSHIP INTEREST. (a) For purposes of this code:

(1) on the divorce of a partner, the partner's spouse, to the extent of the spouse's partnership interest, if any, is a transferee of the partnership interest;

(2) on the death of a partner:

(A) if the partnership interest of the deceased partner is subject to redemption under Subchapter H, the partner's surviving spouse, if any, and an heir, devisee, personal representative, or other successor of the partner, to the extent of their respective right to the redemption price, are creditors of the partnership until the redemption price is paid; or

(B) if the partnership interest of the deceased partner is not subject to redemption under Subchapter H, the partner's surviving spouse, if any, and an heir, devisee, personal representative, or other successor of the partner, to the extent of their respective partnership interest, are transferees of the partnership interest; and

(3) on the death of a partner's spouse, an heir, devisee, personal representative, or other successor of the spouse, other than the partner, to the extent of their respective partnership interest, if any, is a transferee of the partnership interest.

(b) An event of the type described by Section 152.501 occurring with respect to a partner's spouse is not an event of withdrawal.

(c) This chapter does not impair an agreement for the purchase or sale of a partnership interest at any time, including on the death or divorce of an owner of the partnership interest.

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. 44, eff.

September 1, 2011.

SUBCHAPTER G. WITHDRAWAL OF PARTNER

Sec. 152.501. EVENTS OF WITHDRAWAL. (a) A person ceases to be a partner on the occurrence of an event of withdrawal.

(b) An event of withdrawal of a partner occurs on:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner on:

(A) the date on which the notice is received; or

(B) a later date specified by the notice;

(2) an event specified in the partnership agreement as causing the partner's withdrawal;

(3) the partner's expulsion as provided by the partnership agreement;

(4) the partner's expulsion by vote of a majority-in-interest of the other partners if:

(A) it is unlawful to carry on the partnership business with that partner;

(B) there has been a transfer of all or substantially all of that partner's partnership interest, other than:

(i) a transfer for security purposes that has not been foreclosed; or

(ii) the substitution of a successor trustee or successor personal representative;

(C) not later than the 90th day after the date on which the partnership notifies an entity partner, other than a nonfiling entity or foreign nonfiling entity partner, that it will be expelled because it has filed a certificate of termination or the equivalent, its existence has been involuntarily terminated or its charter has been revoked, or its right to conduct business has been terminated or suspended by the jurisdiction of its formation, if the certificate of termination or the equivalent is not revoked or its existence, charter, or right to conduct business is not reinstated; or

(D) an event requiring a winding up has occurred with respect to a nonfiling entity or foreign nonfiling entity that is a partner;

(5) the partner's expulsion by judicial decree, on application by the partnership or another partner, if the judicial decree determines that the partner:

(A) engaged in wrongful conduct that adversely and materially affected the partnership business;

(B) wilfully or persistently committed a material breach of:

(i) the partnership agreement; or

(ii) a duty owed to the partnership or the other partners under Sections 152.204-152.206; or

(C) engaged in conduct relating to the partnership business that made it not reasonably practicable to carry on the business in partnership with that partner;

(6) the partner's:

(A) becoming a debtor in bankruptcy;

(B) executing an assignment for the benefit of a creditor;

(C) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(D) failing, not later than the 90th day after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or not later than the 90th day after the date of expiration of a stay, failing to have the appointment vacated;

(7) if a partner is an individual:

(A) the partner's death;

(B) the appointment of a guardian or general conservator for the partner; or

(C) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) termination of a partner's existence;

(9) if a partner has transferred all of the partner's partnership interest, redemption of the transferee's interest under Section 152.611; or

(10) an agreement to continue the partnership under Section 11.057(d) if the partnership has received a notice from the partner under Section 11.057(d) requesting that the partnership be wound up.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 688, Sec. 144(2), eff. September 1, 2007.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 78, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 107, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 144(2), eff. September 1, 2007.

Sec. 152.502. EFFECT OF EVENT OF WITHDRAWAL ON PARTNERSHIP AND OTHER PARTNERS. A partnership continues after an event of withdrawal. The event of withdrawal affects the relationships among the withdrawn partner, the partnership, and the continuing partners as provided by Sections 152.503-152.506 and Subchapter H.

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

Sec. 152.503. WRONGFUL WITHDRAWAL; LIABILITY. (a) At any time before the occurrence of an event requiring a winding up of partnership business, a partner may withdraw from the partnership and cease to be a partner as provided by Section 152.501.

(b) A partner's withdrawal is wrongful only if:

(1) the withdrawal breaches an express provision of the partnership agreement;

(2) in the case of a partnership that has a period of duration, is for a particular undertaking, or is required under its partnership agreement to wind up the partnership on occurrence of a specified event, before the expiration of the period of duration, the completion of the undertaking, or the occurrence of the event, as appropriate:

(A) the partner withdraws by express will;

(B) the partner withdraws by becoming a debtor in bankruptcy; or

(C) in the case of a partner that is not an individual, a trust other than a business trust, or an estate, the partner is expelled or otherwise withdraws because the partner wilfully dissolved or terminated; or

(3) the partner is expelled by judicial decree under

Section 152.501(b)(5).

(c) In addition to other liability of the partner to the partnership or to the other partners, a wrongfully withdrawing partner is liable to the partnership and to the other partners for damages caused by the withdrawal.

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. 108, eff. September 1, 2007.

Sec. 152.504. WITHDRAWN PARTNER'S POWER TO BIND PARTNERSHIP. (a) The action of a withdrawn partner occurring not later than the first anniversary of the date of the person's withdrawal binds the partnership if the transaction would bind the partnership before the person's withdrawal and the other party to the transaction:

(1) does not have notice of the person's withdrawal as a partner;

(2) had done business with the partnership within one year preceding the date of withdrawal; and

(3) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

(b) A withdrawn partner is liable to the partnership for loss caused to the partnership arising from an obligation incurred by the withdrawn partner after the withdrawal date and for which the partnership is liable under Subsection (a).

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

Sec. 152.505. EFFECT OF WITHDRAWAL ON PARTNER'S EXISTING LIABILITY. (a) Withdrawal of a partner does not by itself discharge the partner's liability for an obligation of the partnership incurred before the date of withdrawal.

(b) The estate of a deceased partner is liable for an obligation of the partnership incurred while the deceased was a partner to the same extent that a withdrawn partner is liable for an obligation of the partnership incurred before the date of withdrawal.

(c) A withdrawn partner is discharged from liability incurred before the date of withdrawal by an agreement to that effect between

the partner and a partnership creditor.

(d) If a creditor of a partnership has notice of a partner's withdrawal and without the consent of the withdrawn partner agrees to a material alteration in the nature or time of payment of an obligation of the partnership incurred before the date of withdrawal, the withdrawn partner is discharged from the obligation.

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

Sec. 152.506. LIABILITY OF WITHDRAWN PARTNER TO THIRD PARTY. A person who withdraws as a partner in a circumstance that is not an event requiring a winding up of partnership business under Section 11.051 or 11.057 is liable to another party as a partner in a transaction entered into by the partnership or a surviving partnership under Section 10.001 not later than the second anniversary of the date of the partner's withdrawal only if the other party to the transaction:

(1) does not have notice of the partner's withdrawal; and

(2) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

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

SUBCHAPTER H. REDEMPTION OF WITHDRAWING PARTNER'S OR TRANSFEREE'S INTEREST

Sec. 152.601. REDEMPTION IF PARTNERSHIP NOT WOUND UP. The partnership interest of a withdrawn partner automatically is redeemed by the partnership as of the date of withdrawal in accordance with this subchapter if:

(1) the event of withdrawal occurs under Sections 152.501(b)(1)-(9) and an event requiring a winding up of partnership business does not occur before the 61st day after the date of the withdrawal; or

(2) the event of a withdrawal occurs under Section 152.501(b)(10).

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

Sec. 152.602. REDEMPTION PRICE. (a) Except as provided by Subsection (b) , the redemption price of a withdrawn partner's partnership interest is the fair value of the interest on the date of withdrawal.

(b) The redemption price of the partnership interest of a partner who wrongfully withdraws before the expiration of the partnership's period of duration, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up of partnership business is the lesser of:

(1) the fair value of the withdrawn partner's partnership interest on the date of withdrawal; or

(2) the amount that the withdrawn partner would have received if an event requiring a winding up of partnership business had occurred at the time of the partner's withdrawal.

(c) Interest is payable on the amount owed under this section.

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. 109, eff. September 1, 2007.

Sec. 152.603. CONTRIBUTION OBLIGATION. If a wrongfully withdrawing partner would have been required to make contributions to the partnership under Section 152.707 or 152.708 if an event requiring winding up of the partnership business had occurred at the time of withdrawal, the withdrawn partner is liable to the partnership to make contributions to the partnership in that amount and pay interest on the amount owed.

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

Sec. 152.604. SETOFF FOR CERTAIN DAMAGES. The partnership may set off against the redemption price payable to the withdrawn partner the damages for wrongful withdrawal under Section 152.503(b) and all other amounts owed by the withdrawn partner to the partnership, whether currently due, including interest.

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

Sec. 152.605. ACCRUAL OF INTEREST. Interest payable under Sections 152.602-152.604 accrues from the date of the withdrawal to the date of payment.

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

Sec. 152.606. INDEMNIFICATION OF WITHDRAWN PARTNER. A partnership shall indemnify a withdrawn partner whose interest is redeemed against all partnership obligations, whether incurred before or after the date of withdrawal, except for an obligation incurred by an act of the withdrawn partner under Section 152.504.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 13, eff. September 1, 2019.

Sec. 152.607. DEMAND OR PAYMENT OF ESTIMATED REDEMPTION. (a) If a deferred payment is not authorized under Section 152.608 and an agreement on the redemption price of a withdrawn partner's interest is not reached before the 121st day after the date a written demand for payment is made by either party, not later than the 30th day after the expiration of the period, the partnership shall:

(1) pay to the withdrawn partner in cash the amount the partnership estimates to be the redemption price and any accrued interest, reduced by any setoffs and accrued interest under Section 152.604; or

(2) make written demand for payment of its estimate of the amount owed by the withdrawn partner to the partnership, minus any amount owed to the withdrawn partner by the partnership.

(b) If a deferred payment is authorized under Section 152.608 or a contribution or other amount is owed by the withdrawn partner to the partnership, the partnership may offer in writing to pay, or deliver a written statement of demand for, the amount it estimates to be the net amount owed, stating the amount and other terms of the obligation.

(c) On request of the other party, the payment, tender, offer, or demand required or allowed by Subsection (a) or (b) must be accompanied or followed promptly by:

(1) if payment, tender, offer, or demand is made or delivered by the partnership, a statement of partnership property and liabilities from the date of the partner's withdrawal and the most recent available partnership balance sheet and income statement, if any; and

(2) an explanation of the computation of the estimated payment obligation.

(d) The terms of a payment, tender, offer, or demand under Subsection (a) or (b) govern a redemption if:

(1) accompanied by written notice that:

(A) the payment or tendered amount, if made, fully satisfies a party's obligations relating to the redemption of the withdrawn partner's partnership interest; and

(B) an action to determine the redemption price, a contribution obligation or setoff under Section 152.603 or 152.604, or other terms of the redemption obligation must be commenced not later than the first anniversary of the later of:

(i) the date on which the written notice is given; or

(ii) the date on which the information required by Subsection (c) is delivered; and

(2) the party receiving the payment, tender, offer, or demand does not commence an action in the period described by Subdivision (1)(B).

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

Sec. 152.608. DEFERRED PAYMENT ON WRONGFUL WITHDRAWAL. (a) A partner who wrongfully withdraws before the expiration of the partnership's period of duration, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up of partnership business is not entitled to receive any portion of the redemption price until the expiration of the period, the completion of the undertaking, or the occurrence of the specified event, as appropriate, unless the partner establishes to the satisfaction of a court that earlier payment will not cause undue hardship to the partnership.

(b) A deferred payment accrues interest.

(c) The withdrawn partner may seek to demonstrate to the

satisfaction of the court that security for a deferred payment is appropriate.

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. 110, eff. September 1, 2007.

Sec. 152.609. ACTION TO DETERMINE TERMS OF REDEMPTION. (a) A withdrawn partner or the partnership may maintain an action against the other party under Section 152.211 to determine:

(1) the terms of redemption of that partner's interest, including a contribution obligation or setoff under Section 152.603 or 152.604; or

(2) other terms of the redemption obligations of either party.

(b) The action must be commenced not later than the first anniversary of the later of:

(1) the date of delivery of information required by Section 152.607(c); or

(2) the date written notice is given under Section 152.607(d).

(c) The court shall determine the terms of the redemption of the withdrawn partner's interest, any contribution obligation or setoff due under Section 152.603 or 152.604, and accrued interest and shall enter judgment for an additional payment or refund.

(d) If deferred payment is authorized under Section 152.608, the court shall also determine the security for payment if requested to consider whether security is appropriate.

(e) If the court finds that a party failed to tender payment or make an offer to pay or to comply with the requirements of Section 152.607(c) or otherwise acted arbitrarily, vexatiously, or not in good faith, the court may assess damages against the party, including, if appropriate, in an amount the court finds equitable:

(1) a share of the profits of the continuing business;

(2) reasonable attorney's fees; and

(3) fees and expenses of appraisers or other experts for a party to the action.

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

Sec. 152.610. DEFERRED PAYMENT ON WINDING UP PARTNERSHIP. If a partner withdraws under Section 152.501 and not later than the 60th day after the date of withdrawal an event requiring winding up occurs under Section 11.051 or 11.057:

(1) the partnership may defer paying the redemption price to the withdrawn partner until the partnership makes a winding up distribution to the remaining partners; and

(2) the redemption price or contribution obligation is the amount the withdrawn partner would have received or contributed if the event requiring winding up had occurred at the time of the partner's withdrawal.

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

Sec. 152.611. REDEMPTION OF TRANSFEREE'S PARTNERSHIP INTEREST. (a) A partnership must redeem the partnership interest of a transferee for its fair value if:

(1) the interest was transferred when:

(A) the partnership had a period of duration that had not yet expired;

(B) the partnership was for a particular undertaking not yet completed; or

(C) the partnership agreement provided for winding up of the partnership business on a specified event that had not yet occurred;

(2) the partnership's period of duration has expired, the particular undertaking has been completed, or the specified event has occurred; and

(3) the transferee makes a written demand for redemption.

(b) If an agreement for the redemption price of a transferee's interest is not reached before the 121st day after the date a written demand for redemption is made, the partnership must pay to the transferee in cash the amount the partnership estimates to be the redemption price and any accrued interest from the date of demand not later than the 30th day after the expiration of the period.

(c) On request of the transferee, the payment required by Subsection (b) must be accompanied or followed by:

(1) a statement of partnership property and liabilities from the date of the demand for redemption;

(2) the most recent available partnership balance sheet and income statement, if any; and

(3) an explanation of the computation of the estimated payment obligation.

(d) If the payment required by Subsection (b) is accompanied by written notice that the payment is in full satisfaction of the partnership's obligations relating to the redemption of the transferee's interest, the payment, less interest, is the redemption price unless the transferee, not later than the first anniversary of the written notice, commences an action to determine the redemption price.

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. 111, eff. September 1, 2007.

Sec. 152.612. ACTION TO DETERMINE TRANSFEREE'S REDEMPTION PRICE. (a) A transferee may maintain an action against a partnership to determine the redemption price of the transferee's interest.

(b) The court shall determine the redemption price of the transferee's interest and accrued interest and enter judgment for payment or refund.

(c) If the court finds that the partnership failed to make payment or otherwise acted arbitrarily, vexatiously, or not in good faith, the court may assess against the partnership in an amount the court finds equitable:

(1) reasonable attorney's fees; and

(2) fees and expenses of appraisers or other experts for a party to the action.

(d) The redemption of a transferee's interest under Sections 152.611(a) and (b) may be deferred as determined by the court if the partnership establishes to the satisfaction of the court that failure to defer redemption will cause undue hardship to the partnership business.

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

SUBCHAPTER I. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

Sec. 152.701. EFFECT OF EVENT REQUIRING WINDING UP. On the occurrence of an event requiring winding up of a partnership business under Section 11.051 or 11.057:

(1) the partnership continues until the winding up of its business is completed, at which time the partnership is terminated; and

(2) the relationship among the partners is changed as provided by this subchapter.

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

Sec. 152.702. PERSONS ELIGIBLE TO WIND UP PARTNERSHIP BUSINESS. (a) After the occurrence of an event requiring a winding up of a partnership business, the partnership business may be wound up by:

(1) the partners who have not withdrawn;

(2) the legal representative of the last surviving partner; or

(3) a person appointed by the court to carry out the winding up under Subsection (b).

(b) On application of a partner, a partner's legal representative or transferee, or a withdrawn partner whose interest is not redeemed under Section 152.608, a court, for good cause, may appoint a person to carry out the winding up and may make an order, direction, or inquiry that the circumstances require.

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

Sec. 152.703. RIGHTS AND DUTIES OF PERSON WINDING UP PARTNERSHIP BUSINESS. (a) To the extent appropriate for winding up, as soon as reasonably practicable, and in the name of and for and on behalf of the partnership, a person winding up a partnership's business may take the actions specified in Sections 11.052, 11.053, and 11.055.

(b) Section 11.052(a)(2) shall not be applicable to a partnership.

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

Sec. 152.704. BINDING EFFECT OF PARTNER'S ACTION AFTER EVENT REQUIRING WINDING UP. After the occurrence of an event requiring winding up of the partnership business, a partnership is bound by a partner's act that:

(1) is appropriate for winding up; or

(2) would bind the partnership under Sections 152.301 and 152.302 before the occurrence of the event requiring winding up, if the other party to the transaction does not have notice that an event requiring winding up has occurred.

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

Sec. 152.705. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER EVENT REQUIRING WINDING UP. (a) Except as provided by Subsection (b), after the occurrence of an event requiring winding up of the partnership business, the losses with respect to which a partner must contribute under Section 152.708(a) include losses from a liability incurred under Section 152.704.

(b) A partner who incurs, with notice that an event requiring a winding up of the partnership business has occurred, a partnership liability under Section 152.704(2) by an act that is not appropriate for winding up is liable to the partnership for a loss caused to the partnership arising from that liability.

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

Sec. 152.706. DISPOSITION OF ASSETS. (a) In winding up the partnership business, the property of the partnership, including any required contributions of the partners under Sections 152.707 and 152.708, shall be applied to discharge its obligations to creditors, including partners who are creditors other than in the partners' capacities as partners.

(b) A surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Section 152.707.

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

Sec. 152.707. SETTLEMENT OF ACCOUNTS. (a) Each partner is entitled to a settlement of all partnership accounts on winding up the partnership business.

(b) In settling accounts among the partners, the partnership interest of a withdrawn partner that is redeemed under Section 152.610 is credited with a share of any profits for the period after the partner's withdrawal but is charged with a share of losses for that period only to the extent of profits credited for that period.

(c) The profits and losses that result from the liquidation of the partnership property must be credited and charged to the partners' capital accounts.

(d) The partnership shall make a distribution to a partner in an amount equal to that partner's positive balance in the partner's capital account. Except as provided by Section 152.304(b) or 152.801, a partner shall contribute to the partnership an amount equal to that partner's negative balance in the partner's capital account.

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. 45, eff. September 1, 2011.

Sec. 152.708. CONTRIBUTIONS TO DISCHARGE OBLIGATIONS. (a) Except as provided by Sections 152.304(b) and 152.801, to the extent not taken into account in settling the accounts among partners under Section 152.707:

(1) each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations, excluding liabilities that creditors have agreed may be satisfied only with partnership property without recourse to individual partners;

(2) if a partner fails to contribute, the other partners shall contribute the additional amount necessary to satisfy the partnership obligations in the proportions in which the partners share partnership losses; and

(3) a partner or partner's legal representative may enforce or recover from the other partners, or from the estate of a deceased partner, contributions the partner or estate makes to the extent the amount contributed exceeds that partner's or the estate's share of the partnership obligations.

(b) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(c) The following persons may enforce the obligation of a partner or the estate of a deceased partner to contribute to a partnership:

(1) the partnership;

(2) an assignee for the benefit of creditors of a partnership or a partner; or

(3) a person appointed by a court to represent creditors of a partnership or a partner.

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

Sec. 152.709. CANCELLATION OR REVOCATION OF EVENT REQUIRING WINDING UP; CONTINUATION OF PARTNERSHIP. (a) If a partnership has a period of duration, is for a particular undertaking, or is required under its partnership agreement to wind up the partnership on occurrence of a specified event, all of the partners in the partnership may cancel under Section 11.152 an event requiring a winding up specified in Section 11.051(1) or (3), or Section 11.057(c)(1), by agreeing to continue the partnership business notwithstanding the expiration of the partnership's period of duration, the completion of the undertaking, or the occurrence of the event, as appropriate, other than the withdrawal of a partner. On reaching that agreement, the event requiring a winding up is canceled, the partnership is continued, and the partnership agreement is considered amended to provide that the expiration, the completion, or the occurrence of the event did not result in an event requiring winding up of the partnership.

(b) A continuation of the business for 90 days by the partners or those who habitually acted in the business during the partnership's period of duration or the undertaking or preceding the event, without a settlement or liquidation of the partnership business and without objection from a partner, is prima facie

evidence of agreement by all partners to continue the business under Subsection (a).

(c) All of the partners of a partnership, by agreeing to continue the partnership, may cancel under Section 11.152 an event requiring winding up specified in Section 11.057(d) that arises from a request to wind up from a partner.

(d) To approve a revocation under Section 11.151 by a partnership of a voluntary decision to wind up pursuant to the express will of all the partners as specified in Section 11.057(b), prior to completion of the winding up process, all the partners must agree in writing to revoke the voluntary decision to wind up and to continue the business of the partnership.

(e) To approve a revocation under Section 11.151 by a partnership of a voluntary decision to wind up pursuant to the express will of a majority-in-interest of the partners as specified in Section 11.057(a), prior to completion of the winding up process, a majority-in-interest of the partners must agree in writing to revoke the voluntary decision to wind up and to continue the business of the partnership.

(f) All of the partners of a partnership, by agreeing to continue the partnership, may cancel under Section 11.152 an event requiring winding up specified in Section 11.057(c)(3) that arises from the sale of all or substantially all of the property of the partnership.

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. 112, eff. September 1, 2007.

Sec. 152.710. REINSTATEMENT. To approve a reinstatement of a partnership under Section 11.202, all remaining partners, or another group or percentage of partners as specified by the partnership agreement, must agree in writing to reinstate and continue the business of the partnership.

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

SUBCHAPTER J. LIMITED LIABILITY PARTNERSHIPS

Sec. 152.801. LIABILITY OF PARTNER. (a) Except as provided by the partnership agreement, a partner is not personally liable to any person, including a partner, directly or indirectly, by contribution, indemnity, or otherwise, for any obligation of the partnership incurred while the partnership is a limited liability partnership.

(b) Sections 2.101(1), 152.305, and 152.306 do not limit the effect of Subsection (a) in a limited liability partnership.

(c) For purposes of this section, an obligation is incurred while a partnership is a limited liability partnership if:

(1) the obligation relates to an action or omission occurring while the partnership is a limited liability partnership; or

(2) the obligation arises under a contract or commitment entered into while the partnership is a limited liability partnership.

(d) Subsection (a) does not affect:

(1) the liability of a partnership to pay its obligations from partnership property;

(2) the liability of a partner, if any, imposed by law or contract independently of the partner's status as a partner; or

(3) the manner in which service of citation or other civil process may be served in an action against a partnership.

(e) This section controls over the other parts of this chapter and the other partnership provisions regarding the liability of partners of a limited liability partnership, the chargeability of the partners for the obligations of the partnership, and the obligations of the partners regarding contributions and indemnity.

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. 47, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 46, eff. September 1, 2011.

Sec. 152.802. REGISTRATION. (a) In addition to complying with Section 152.803, a partnership, to become a limited liability partnership, must file an application for registration with the secretary of state in accordance with Chapter 4 and this section.

The application must:

(1) set out:

(A) the name of the partnership;

(B) the federal taxpayer identification number of the partnership;

(C) the street address of the partnership's principal office in this state or outside of this state, as applicable; and

(D) the number of partners at the date of application; and

(2) contain a brief statement of the partnership's business.

(b) The application must be signed by:

(1) a majority-in-interest of the partners; or

(2) one or more partners authorized by a majority-in-interest of the partners.

(c) A partnership is registered as a limited liability partnership by the secretary of state on:

(1) the date on which a completed application is filed in accordance with Chapter 4; or

(2) a later date specified in the application.

(c-1) An application for registration of a limited liability partnership accepted by the secretary of state is an effective registration and is conclusive evidence of the satisfaction of all conditions precedent to an effective registration.

(d) A registration is not affected by subsequent changes in the partners of the partnership.

(e) The registration of a limited liability partnership is effective until it is withdrawn or terminated.

(f) A registration may be withdrawn by filing a withdrawal notice with the secretary of state in accordance with Chapter 4. A certificate from the comptroller stating that all taxes administered by the comptroller under Title 2, Tax Code, have been paid must be filed with the notice of withdrawal. A withdrawal notice terminates the status of the partnership as a limited liability partnership from the date on which the notice is filed or a later date specified in the notice. A withdrawal notice must:

(1) contain:

(A) the name of the partnership;

(B) the federal taxpayer identification number of the partnership;

(C) the date of registration of the partnership's application under this subchapter; and

(D) the current street address of the partnership's principal office in this state and outside this state, if applicable; and

(2) be signed by:

(A) a majority-in-interest of the partners; or

(B) one or more partners authorized by a majority-in-interest of the partners.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 23 , Sec. 10, eff. January 1, 2016.

(h) The secretary of state may remove from its active records the registration of a limited liability partnership the registration of which has been withdrawn or terminated.

(i) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 139, Sec. 66(2), eff. September 1, 2011.

(j) A document filed under this subchapter may be amended by filing an application for amendment of registration with the secretary of state in accordance with Chapter 4 and this subsection. The application for amendment must:

(1) contain:

(A) the name of the partnership;

(B) the taxpayer identification number of the partnership;

(C) the identity of the document being amended;

(D) the date on which the document being amended was filed;

(E) a reference to the part of the document being amended; and

(F) the amendment or correction; and

(2) be signed by:

(A) a majority-in-interest of the partners; or

(B) one or more partners authorized by a majority-in-interest of the partners.

(k) Except in a proceeding by the state to terminate the registration of a limited liability partnership, the registration of a limited liability partnership continues in effect so long as there has been substantial compliance with the registration provisions of this section and substantial compliance with the annual reporting requirements of Section 152.806.

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. 48, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 47, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 66(2), eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 4, eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 10, eff. January 1, 2016.

Sec. 152.803. NAME. The name of a limited liability partnership must comply with Section 5.063.

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

Sec. 152.805. LIMITED PARTNERSHIP. A limited partnership may become a limited liability partnership by complying with applicable provisions of Chapter 153.

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

Sec. 152.806. ANNUAL REPORT. (a) Not later than June 1 of each year following the calendar year in which the application for registration as a limited liability partnership takes effect, a limited liability partnership that has an effective registration shall file with the secretary of state, in accordance with Chapter 4, a report that contains:

(1) the name of the partnership; and

(2) the number of partners of the partnership as of the date of filing of the report or, in the case of any past due annual reports, the number of partners as of May 31 of each year that a report was due.

(b) Not later than March 31 of each year, the secretary of state shall provide to each limited liability partnership that had an effective registration as of December 31 of the preceding year a

written notice stating that:

(1) the annual report and applicable filing fee are due on June 1 of that year; and

(2) the registration of the partnership shall be terminated unless the report is filed and the filing fee is paid on or before the date prescribed by Subsection (c).

(c) The registration of a limited liability partnership that fails to file an annual report or pay the required filing fee not later than May 31 of the calendar year following the year in which the report or fee is due is automatically terminated.

(d) A termination of registration under Subsection (c) affects only the partnership's status as a limited liability partnership and is not an event requiring a winding up and termination of the partnership under Chapter 11.

(e) A partnership whose registration as a limited liability partnership is terminated under Subsection (c) may apply to the secretary of state for reinstatement of limited liability partnership status not later than the third anniversary of the effective date of the termination. The application must be filed in accordance with Chapter 4 and contain:

(1) the name of the partnership;

(2) the effective date of the termination; and

(3) a statement that the circumstances giving rise to the termination will be corrected by filing an annual report and paying the filing fee for each year that an annual report was not filed, including the annual report and filing fee due that year.

(f) An application for reinstatement must be accompanied by a tax clearance letter from the comptroller stating that the limited liability partnership has satisfied all of its franchise tax liabilities under Chapter 171, Tax Code.

(g) All annual reports and fees to be filed and paid as required by this section must be filed and paid concurrently with the filing of an application for reinstatement of limited liability partnership status.

(h) A reinstatement under Subsection (e) that is approved by the secretary of state relates back to the effective date of the termination and takes effect as of that date, and the partnership's status as a limited liability partnership continues in effect as if the termination of its registration had never occurred.

Added by Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 5, eff. January 1, 2016.

SUBCHAPTER K. FOREIGN LIMITED LIABILITY PARTNERSHIPS

Sec. 152.901. GENERAL. (a) A foreign limited liability partnership is subject to Section 2.101 with respect to its activities in this state to the same extent as a domestic limited liability partnership.

(b) A foreign limited liability partnership may not be denied registration because of a difference between the laws of the jurisdiction under which the partnership is formed and the laws of this state.

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. 113, eff. September 1, 2007.

Sec. 152.902. NAME. The name of a foreign limited liability partnership must:

(1) satisfy the requirements of the jurisdiction of formation; and

(2) comply with Section 5.063.

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. 114, eff. September 1, 2007.

Sec. 152.903. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS. Without excluding other activities that do not constitute transacting business in this state, a foreign limited liability partnership is not considered to be transacting business in this state for purposes of this code because it carries on in this state one or more of the activities listed by Section 9.251.

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

Sec. 152.904. REGISTERED AGENT AND REGISTERED OFFICE. A foreign limited liability partnership subject to this chapter shall maintain a registered office and registered agent in this state in the same manner and to the same extent as if the partnership were a foreign filing entity. Subchapters E and F, Chapter 5, apply to a foreign limited liability partnership to the same extent those subchapters apply to a foreign filing entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 79, eff. January 1, 2006.

Sec. 152.905. REGISTRATION PROCEDURE. (a) Before transacting business in this state, a foreign limited liability partnership must file an application for registration in accordance with this section and Chapters 4 and 9.

(b) The application must be signed by:

(1) a majority-in-interest of the partners; or

(2) one or more partners authorized by a majority-in-interest of the partners.

(c) A partnership is registered as a foreign limited liability partnership on:

(1) the date on which a completed initial or renewal application for registration is filed with the secretary of state in accordance with Chapter 4; or

(2) a later date specified in the application.

(d) A registration is not affected by subsequent changes in the partners of the partnership.

(e) The registration of a foreign limited liability partnership is effective until the first anniversary of the date after the date of registration or a later effective date, unless the registration is:

(1) withdrawn or revoked at an earlier time; or

(2) renewed in accordance with Section 152.908.

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. 115, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 116, eff. September 1, 2007.

Sec. 152.906. WITHDRAWAL OF REGISTRATION. (a) A registration may be voluntarily withdrawn by filing a certificate of withdrawal in accordance with this section and Section 9.011.

(b) In addition to the information required by Section 9.011, the certificate of withdrawal must:

(1) contain:

(A) the federal taxpayer identification number of the partnership; and

(B) the date of effectiveness of the partnership's last application for registration under this subchapter; and

(2) be signed by:

(A) a majority-in-interest of the partners; or

(B) one or more partners authorized by a majority-in-interest of the partners.

(c) A certificate from the comptroller stating that all taxes administered by the comptroller under Title 2, Tax Code, have been paid must be filed with the withdrawal of registration.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 80, eff. January 1, 2006.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 49, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 48, eff. September 1, 2011.

Sec. 152.907. EFFECT OF CERTIFICATE OF WITHDRAWAL. A certificate of withdrawal terminates the registration of the partnership as a foreign limited liability partnership as of the date on which the notice is filed or a later date specified in the notice, but not later than the expiration date under Section 152.905(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. 81, eff. January

1, 2006.

Sec. 152.908. RENEWAL OF REGISTRATION. (a) An effective registration may be renewed before its expiration by filing a renewal application for registration with the secretary of state in accordance with Chapter 4.

(b) The renewal application must contain:

(1) current information required for an initial application for registration; and

(2) the most recent date of registration of the partnership.

(c) An application for registration filed under this section continues an effective registration for one year after the date the registration would otherwise expire.

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. 117, eff. September 1, 2007.

Sec. 152.909. ACTION BY SECRETARY OF STATE. The secretary of state may remove from its active records the registration of a foreign limited liability partnership the registration of which has:

(1) been withdrawn or revoked; or

(2) expired and not been renewed.

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

Sec. 152.910. EFFECT OF FAILURE TO REGISTER. (a) A foreign limited liability partnership that transacts business in this state without being registered is subject to Subchapter B, Chapter 9, to the same extent as a foreign filing entity.

(b) A partner of a foreign limited liability partnership is not liable for an obligation of the partnership solely because the partnership transacted business in this state without being registered.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 82, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 118, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 49, eff. September 1, 2011.

Sec. 152.911. AMENDMENT. (a) A document filed under this subchapter or an application for registration filed under Section 9.007 may be amended by filing with the secretary of state an application for amendment of registration in accordance with Chapter 4.

(b) The application for amendment must contain:

(1) the name of the partnership;

(2) the taxpayer identification number of the partnership;

(3) the identity of the document being amended;

(4) a reference to the date on which the document being amended was filed;

(5) the part of the document being amended; and

(6) the amendment or correction.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 83, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 50, eff. September 1, 2011.

Sec. 152.912. EXECUTION OF APPLICATION FOR AMENDMENT. The application for amendment must be signed by:

(1) a majority-in-interest of the partners; or

(2) one or more partners authorized by a majority-in-interest of the partners.

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

Sec. 152.913. EXECUTION OF STATEMENT OF CHANGE OF REGISTERED

OFFICE OR REGISTERED AGENT. A statement filed by a foreign limited liability partnership in accordance with Section 5.202 must be signed by:

(1) a majority-in-interest of the partners; or

(2) one or more partners authorized by a majority-in-interest of the partners.

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

Sec. 152.914. REVOCATION OF REGISTRATION BY SECRETARY OF STATE. (a) The secretary of state may revoke the registration of a foreign limited liability partnership for the partnership's failure to:

(1) file a report within the period required by law or pay a fee or penalty prescribed by law when due and payable;

(2) maintain a registered agent or registered office address in this state as required by law; or

(3) pay a fee required in connection with a filing, or payment of the fee was dishonored when presented by the state for payment.

(b) If it appears to the secretary of state that, with respect to a foreign limited liability partnership, a circumstance described by Subsection (a) exists, the secretary of state shall provide notice to the partnership in the same manner and to the same extent as notice is required to be provided to a foreign filing entity under Sections 9.101 and 9.102.

(c) The secretary of state shall reinstate the registration of a foreign limited liability partnership if the partnership files an application for reinstatement in accordance with Subsection (e), accompanied by each amendment of the partnership's registration that is required by intervening events, and:

(1) the foreign limited liability partnership has corrected the circumstances that led to the revocation and any other circumstances described by Subsection (a) that may exist, including the payment of fees, interest, or penalties; or

(2) the secretary of state finds that the circumstances that led to the revocation did not exist at the time of revocation.

(d) A foreign limited liability partnership, to have its registration reinstated, must comply with the requirements of this section not later than the date the registration would have expired

under Section 152.905(e) had the registration not been revoked under this section.

(e) The foreign limited liability partnership shall file a certificate of reinstatement in accordance with Chapter 4. The certificate of reinstatement must contain:

(1) the name of the partnership;

(2) the filing number assigned by the filing officer to the partnership;

(3) the effective date of the revocation of the partnership's registration; and

(4) the name of the partnership's registered agent and the address of the partnership's registered office.

(f) A tax clearance letter from the comptroller stating that a foreign limited liability partnership has satisfied all franchise tax liabilities and may be reinstated must be filed with the certificate of reinstatement if the foreign limited liability partnership is a taxable entity under Chapter 171, Tax Code.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 84, eff. January 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 119, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 50, eff. September 1, 2009.

CHAPTER 153. LIMITED PARTNERSHIPS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 153.001. DEFINITION. In this chapter, "other limited partnership provisions" means the provisions of Title 1 and Chapters 151 and 154, to the extent applicable to limited partnerships.

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

Sec. 153.002. CONSTRUCTION. (a) This chapter and the other limited partnership provisions shall be applied and construed to effect its general purpose to make uniform the law with respect to limited partnerships among states that have similar laws.

(b) The rule that a statute in derogation of the common law is

to be strictly construed does not apply to this chapter and the other limited partnership provisions.

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

Sec. 153.003. APPLICABILITY OF OTHER LAWS. (a) Except as provided by Subsection (b), in a case not provided for by this chapter and the other limited partnership provisions, the provisions of Chapter 152 governing partnerships that are not limited partnerships and the rules of law and equity govern.

(b) The powers and duties of a limited partner shall not be governed by a provision of Chapter 152 that would be inconsistent with the nature and role of a limited partner as contemplated by this chapter.

(c) A limited partner shall not have any obligation or duty of a general partner solely by reason of being a limited partner.

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

Sec. 153.004. NONWAIVABLE TITLE 1 PROVISIONS. (a) Except as provided by this section, the following provisions of Title 1 may not be waived or modified in the partnership agreement of a limited partnership:

(1) Chapter 1, if the provision is used to interpret a provision or define a word or phrase contained in a section listed in this subsection;

(2) Chapter 2, other than Section 2.104(c)(2), 2.104(c)(3), or 2.113;

(3) Chapter 3, other than Subchapters C and E of that chapter and Section 3.151 (provided, that in all events a partnership agreement may not validly waive or modify Section 153.551 or unreasonably restrict a partner's right of access to books and records under Section 153.552); or

(4) Chapter 4, 5, 10, 11, or 12, other than Section 11.058.

(b) A provision listed in Subsection (a) may be waived or modified in the partnership agreement if the provision that is waived or modified authorizes the limited partnership to waive or modify the provision in the limited partnership's governing documents.

(c) A provision listed in Subsection (a) may be modified in the

partnership agreement if the provision that is modified specifies:

(1) the person or group of persons who are entitled to approve a modification; or

(2) the vote or other method by which a modification is required to be approved.

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. 51, eff. September 1, 2011.

Sec. 153.005. WAIVER OR MODIFICATION OF RIGHTS OF THIRD PARTIES. A provision in this title or in that part of Title 1 applicable to a limited partnership that grants a right to a person, other than a general partner, a limited partner, or assignee of a partnership interest in a limited partnership, may be waived or modified in the partnership agreement of the limited partnership only if the person consents to the waiver or modification.

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

SUBCHAPTER B. SUPPLEMENTAL PROVISIONS REGARDING AMENDMENT TO CERTIFICATE OF FORMATION

Sec. 153.051. REQUIRED AMENDMENT TO CERTIFICATE OF FORMATION. (a) A general partner shall file a certificate of amendment reflecting the occurrence of one or more of the following events not later than the 30th day after the date on which the event occurred:

(1) the admission of a new general partner;

(2) the withdrawal of a general partner;

(3) a change in the name of the limited partnership; or

(4) except as provided by Sections 5.202 and 5.203, a change in:

(A) the address of the registered office; or

(B) the name or address of the registered agent of the limited partnership.

(b) A general partner who becomes aware that a statement in a certificate of formation was false when made or that a matter described in the certificate has changed, making the certificate false in any material respect, shall promptly amend the certificate

to make it accurate.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 6, eff. September 1, 2015.

Sec. 153.052. DISCRETIONARY AMENDMENT TO CERTIFICATE OF FORMATION. (a) A certificate of formation may be amended at any time for a proper purpose as determined by the general partners.

(b) A certificate of formation may be amended to state the name, mailing address, and street address of the business or residence of each person winding up the limited partnership's affairs if, after an event requiring the winding up of a limited partnership but before the limited partnership is reconstituted or a certificate of termination is filed as provided by Section 11.101:

(1) the certificate of formation has been amended to reflect the withdrawal of all general partners; or

(2) a person who is not shown on the certificate of formation as a general partner is carrying out the winding up of a limited partnership's affairs.

(c) If the certificate of formation is amended under Subsection (b), each person winding up the limited partnership's affairs shall execute and file the certificate of amendment. A person winding up the partnership's affairs is not subject to liability as a general partner because of the filing of the certificate of amendment.

(d) A general partner who is not winding up the limited partnership's affairs is not required to execute and file a certificate of amendment as provided by this 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. 85, eff. January 1, 2006.
Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 120, eff. September 1, 2007.

Sec. 153.053. RESTATED CERTIFICATE OF FORMATION. (a) The general partners may adopt at any time a restated certificate of

formation that does not contain an amendment to the certificate of formation.

(b) A restated certificate of formation that contains an amendment to the certificate of formation may be adopted at any time for a proper purpose as determined by the general partners.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 86, eff. January 1, 2006.

SUBCHAPTER C. LIMITED PARTNERS

Sec. 153.101. ADMISSION OF LIMITED PARTNERS. (a) In connection with the formation of a limited partnership, a person acquiring a limited partnership interest becomes a limited partner on the later of:

(1) the date on which the limited partnership is formed; or

(2) the date stated in the records of the limited partnership as the date on which the person becomes a limited partner or, if that date is not stated in those records, the date on which the person's admission is first reflected in the records of the limited partnership.

(b) After a limited partnership is formed, a person who acquires a partnership interest directly from the limited partnership becomes a new limited partner on:

(1) compliance with the provisions of the partnership agreement governing admission of new limited partners; or

(2) if the partnership agreement does not contain relevant admission provisions, the written consent of all partners.

(c) After formation of a limited partnership, an assignee of a partnership interest becomes a new limited partner as provided by Section 153.253(a).

(d) A person may be a limited partner unless the person lacks capacity apart from this chapter and the other limited partnership provisions.

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

Sec. 153.102. LIABILITY TO THIRD PARTIES. (a) A limited partner is not liable for the obligations of a limited partnership

unless:

(1) the limited partner is also a general partner; or

(2) in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business.

(b) If the limited partner participates in the control of the business, the limited partner is liable only to a person who transacts business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

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

Sec. 153.103. ACTIONS NOT CONSTITUTING PARTICIPATION IN BUSINESS FOR LIABILITY PURPOSES. For purposes of this section and Sections 153.102, 153.104, and 153.105, a limited partner does not participate in the control of the business because the limited partner has or has acted in one or more of the following capacities or possesses or exercises one or more of the following powers:

(1) acting as:

(A) a contractor for or an officer or other agent or employee of the limited partnership;

(B) a contractor for or an agent or employee of a general partner;

(C) an officer, director, or stockholder of a corporate general partner;

(D) a partner of a partnership that is a general partner of the limited partnership; or

(E) a member or manager of a limited liability company that is a general partner of the limited partnership;

(2) acting in a capacity similar to that described in Subdivision (1) with any other person that is a general partner of the limited partnership;

(3) consulting with or advising a general partner on any matter, including the business of the limited partnership;

(4) acting as surety, guarantor, or endorser for the limited partnership, guaranteeing or assuming one or more specific obligations of the limited partnership, or providing collateral for borrowings of the limited partnership;

(5) calling, requesting, attending, or participating in a meeting of the partners or the limited partners;

(6) winding up the business of a limited partnership under Chapter 11 and Subchapter K of this chapter;

(7) taking an action required or permitted by law to bring, pursue, settle, or otherwise terminate a derivative action in the right of the limited partnership;

(8) serving on a committee of the limited partnership or the limited partners; or

(9) proposing, approving, or disapproving, by vote or otherwise, one or more of the following matters:

(A) the winding up or termination of the limited partnership;

(B) an election to reconstitute the limited partnership or continue the business of the limited partnership;

(C) the sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, an asset of the limited partnership;

(D) the incurring, renewal, refinancing, or payment or other discharge of indebtedness by the limited partnership;

(E) a change in the nature of the business of the limited partnership;

(F) the admission, removal, or retention of a general partner;

(G) the admission, removal, or retention of a limited partner;

(H) a transaction or other matter involving an actual or potential conflict of interest;

(I) an amendment to the partnership agreement or certificate of formation;

(J) if the limited partnership is qualified as an investment company under the federal Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended, any matter required by that Act or the rules and regulations of the Securities and Exchange Commission under that Act, to be approved by the holders of beneficial interests in an investment company, including:

(i) electing directors or trustees of the investment company;

(ii) approving or terminating an investment advisory or underwriting contract;

(iii) approving an auditor; and

(iv) acting on another matter that that Act requires to be approved by the holders of beneficial interests in the investment company;

(K) indemnification of a general partner under Chapter 8 or otherwise;

(L) any other matter stated in the partnership agreement;

(M) the exercising of a right or power granted or permitted to limited partners under this code and not specifically enumerated in this section; or

(N) the merger, conversion, or interest exchange with respect to a limited partnership.

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. 121, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 51, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 52, eff. September 1, 2011.

Sec. 153.104. ENUMERATION OF ACTIONS NOT EXCLUSIVE. The enumeration in Section 153.103 does not mean that a limited partner who has acted or acts in another capacity or possesses or exercises another power constitutes participation by that limited partner in the control of the business of the limited partnership.

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

Sec. 153.105. CREATION OF RIGHTS. Sections 153.103 and 153.104 do not create rights of limited partners. Rights of limited partners may be created only by:

(1) the certificate of formation;

(2) the partnership agreement;

(3) other sections of this chapter; or

(4) the other limited partnership provisions.

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

Sec. 153.106. ERRONEOUS BELIEF OF CONTRIBUTOR BEING LIMITED PARTNER. Except as provided by Section 153.109, a person who erroneously but in good faith believes that the person has made a contribution to and has become a limited partner in a limited partnership is not liable as a general partner or otherwise obligated because of making or attempting to make the contribution, receiving distributions from the partnership, or exercising the rights of a limited partner if, within a reasonable time after ascertaining the mistake, the person:

(1) causes an appropriate certificate of formation or certificate of amendment to be signed and filed;

(2) files or causes to be filed with the secretary of state a written statement in accordance with Section 153.107; or

(3) withdraws from participation in future profits of the enterprise by executing and filing with the secretary of state a certificate declaring the person's withdrawal under this section.

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

Sec. 153.107. STATEMENT REQUIRED FOR LIABILITY PROTECTION. (a) A written statement filed under Section 153.106(2) must be entitled "Filing under Section 153.106(2), Business Organizations Code," and contain:

(1) the name of the partnership;

(2) the name and mailing address of the person signing the written statement; and

(3) a statement that:

(A) the person signing the written statement acquired a limited partnership interest in the partnership;

(B) the person signing the written statement has made an effort to cause a general partner of the partnership to file an accurate certificate of formation required by the code and the general partner has failed or refused to file the certificate; and

(C) the statement is being filed under Section 153.106(2) and the person signing the written statement is claiming status as a limited partner of the partnership named in the document.

(b) The statement is effective for 180 days.

(c) A statement filed under Section 153.106(2) may be signed by more than one person claiming limited partnership status under this section and Sections 153.106, 153.108, and 153.109.

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

Sec. 153.108. REQUIREMENTS FOR LIABILITY PROTECTION FOLLOWING EXPIRATION OF STATEMENT. (a) If a certificate described by Section 153.106(1) has not been filed before the expiration of the 180-day period described by Section 153.107(b), the person filing the statement has no further protection from liability under Section 153.106(2) unless the person complies with this section. To be protected under Section 153.106 the person must, not later than the 10th day after the date of expiration of the 180-day period:

(1) withdraw under Section 153.106(3); or

(2) bring an action under Section 153.554 to compel the execution and filing of a certificate of formation or amendment.

(b) If an action is brought within the applicable period and is diligently prosecuted to conclusion, the person bringing the action continues to be protected from liability under Section 153.106(2) until the action is finally decided adversely to that person.

(c) This section and Sections 153.106, 153.107, and 153.109 do not protect a person from liability that arises under Sections 153.102-153.105.

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

Sec. 153.109. LIABILITY OF ERRONEOUS CONTRIBUTOR. Regardless of whether Sections 153.106, 153.107, and 153.108 apply, a person who makes a contribution in the circumstances described by Section 153.106 is liable as a general partner to a third party who transacts business with the partnership before an action taken under Section 153.106 if:

(1) the contributor has knowledge or notice that no certificate has been filed or that the certificate inaccurately referred to the contributor as a general partner; and

(2) the third party reasonably believed, based on the contributor's conduct, that the contributor was a general partner at

the time of the transaction and extended credit to the partnership in reasonable reliance on the credit of the contributor.

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

Sec. 153.110. WITHDRAWAL OF LIMITED PARTNER. A limited partner may withdraw from a limited partnership only at the time or on the occurrence of an event specified in a written partnership agreement. The withdrawal of the partner must be made in accordance with that agreement.

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

Sec. 153.111. DISTRIBUTION ON WITHDRAWAL. Except as otherwise provided by Section 153.210 or the partnership agreement, on withdrawal a withdrawing limited partner is entitled to receive, not later than a reasonable time after withdrawal, the fair value of that limited partner's interest in the limited partnership as of the date of withdrawal.

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

Sec. 153.112. RECEIPT OF WRONGFUL DISTRIBUTION. A limited partner who receives a distribution that is not permitted under Section 153.210 is not required to return the distribution unless the limited partner knew that the distribution violated the prohibition of Section 153.210. This section does not affect an obligation of the limited partner under the partnership agreement or other applicable law to return the distribution.

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

Sec. 153.113. POWERS OF ESTATE OF LIMITED PARTNER WHO IS DECEASED OR INCAPACITATED. If a limited partner who is an individual dies or a court adjudges the limited partner to be incapacitated in managing the limited partner's person or property, the limited partner's executor, administrator, guardian, conservator, or other

legal representative may exercise all of the limited partner's rights and powers to settle the limited partner's estate or administer the limited partner's property, including the power of an assignee to become a limited partner under the partnership agreement.

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

SUBCHAPTER D. GENERAL PARTNERS

Sec. 153.151. ADMISSION OF GENERAL PARTNERS. (a) After a limited partnership is formed, additional general partners may be admitted:

(1) in the manner provided by a written partnership agreement; or

(2) if a written partnership agreement does not provide for the admission of additional general partners, with the written consent of all partners.

(b) A person may be a general partner unless the person lacks capacity apart from this chapter.

(c) A written partnership agreement may provide that a person may be admitted as a general partner in a limited partnership, including as a sole general partner, and may acquire a partnership interest in the limited partnership without:

(1) making a contribution to the limited partnership; or

(2) assuming an obligation to make a contribution to the limited partnership.

(d) A written partnership agreement may provide that a person may be admitted as a general partner in a limited partnership, including as the sole general partner, without acquiring a partnership interest in the limited partnership.

(e) This section is not a limitation of or does not otherwise affect Section 153.152.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 87, eff. January 1, 2006.

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 88, eff. January 1, 2006.

Sec. 153.152. GENERAL POWERS AND LIABILITIES OF GENERAL PARTNER. (a) Except as provided by this chapter, the other limited partnership provisions, or a partnership agreement, a general partner of a limited partnership:

(1) has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners; and

(2) has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

(b) Except as provided by this chapter or the other limited partnership provisions, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to a person other than the partnership and the other partners.

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

Sec. 153.153. POWERS AND LIABILITIES OF PERSON WHO IS BOTH GENERAL PARTNER AND LIMITED PARTNER. A person who is both a general partner and a limited partner:

(1) has the rights and powers and is subject to the restrictions and liabilities of a general partner; and

(2) except as otherwise provided by the partnership agreement, this chapter, or the other limited partnership provisions, has the rights and powers and is subject to the restrictions and liabilities, if any, of a limited partner to the extent of the general partner's participation in the partnership as a limited partner.

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

Sec. 153.154. CONTRIBUTIONS BY AND DISTRIBUTIONS TO GENERAL PARTNER. A general partner of a limited partnership may make a contribution to, be allocated profits and losses of, and receive a distribution from the limited partnership as a general partner, a limited partner, or both.

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

Sec. 153.155. WITHDRAWAL OF GENERAL PARTNER. (a) A person ceases to be a general partner of a limited partnership on the occurrence of one or more of the following events of withdrawal:

(1) the general partner withdraws as a general partner from the limited partnership as provided by Subsection (b);

(2) the general partner ceases to be a general partner of the limited partnership as provided by Section 153.252(b);

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided by a written partnership agreement, or with the written consent of all partners, the general partner:

(A) makes a general assignment for the benefit of creditors;

(B) files a voluntary bankruptcy petition;

(C) becomes the subject of an order for relief or is declared insolvent in a federal or state bankruptcy or insolvency proceeding;

(D) files a petition or answer seeking for the general partner a reorganization, arrangement, composition, readjustment, liquidation, winding up, termination, dissolution, or similar relief under law;

(E) files a pleading admitting or failing to contest the material allegations of a petition filed against the general partner in a proceeding of the type described by Paragraphs (A)-(D); or

(F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties;

(5) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the expiration of:

(A) 120 days after the date of the commencement of a proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under law if the proceeding has not been previously dismissed;

(B) 90 days after the date of the appointment, without the general partner's consent, of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties if the appointment has not previously been vacated or stayed; or

(C) 90 days after the date of expiration of a stay, if the appointment has not previously been vacated;

(6) the death of a general partner;

(7) a court adjudicating a general partner who is an individual mentally incompetent to manage the general partner's person or property;

(8) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the commencement of winding up activities intended to conclude in the termination of a trust that is a general partner, but not merely the substitution of a new trustee;

(9) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the commencement of winding up activities of a separate partnership that is a general partner;

(10) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the:

(A) filing of a certificate of termination or its equivalent for an entity, other than a nonfiling entity or a foreign nonfiling entity, that is a general partner; or

(B) termination or revocation of the certificate of formation or its equivalent of an entity, other than a nonfiling entity or a foreign nonfiling entity, that is a general partner and the expiration of 90 days after the date of notice to the entity of termination or revocation without a reinstatement of its certificate of formation or its equivalent; or

(11) the distribution by the fiduciary of an estate that is a general partner of the estate's entire interest in the limited partnership.

(b) A general partner may withdraw at any time from a limited partnership and cease to be a general partner under Subsection (a) by giving written notice to the other partners.

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. 122, eff. September 1, 2007.

Sec. 153.156. NOTICE OF EVENT OF WITHDRAWAL. A general partner who is subject to an event that with the passage of the specified period becomes an event of withdrawal under Section 153.155(a)(4) or (5) shall notify the other partners of the event not later than the 30th day after the date on which the event occurred.

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

Sec. 153.157. WITHDRAWAL OF GENERAL PARTNER IN VIOLATION OF PARTNERSHIP AGREEMENT. Unless otherwise provided by the partnership agreement, a withdrawal by a general partner of a partnership having a period of duration or for a particular undertaking before the expiration of that period or completion of that undertaking is a breach of the partnership agreement.

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. 123, eff. September 1, 2007.

Sec. 153.158. EFFECT OF WITHDRAWAL. (a) Unless otherwise provided by a written partnership agreement and subject to the liability created under Section 153.162, if a general partner ceases to be a general partner under Section 153.155, the remaining general partner or partners, or, if there are no remaining general partners, a majority-in-interest of the limited partners in a vote that excludes any limited partnership interest held by the withdrawing general partner, may:

(1) convert that general partner's partnership interest to that of a limited partner; or

(2) pay to the withdrawn general partner in cash, or secure by bond approved by a court of competent jurisdiction, the value of that partner's partnership interest minus the damages caused if the withdrawal constituted a breach of the partnership agreement.

(b) Until an action described by Subsection (a) is taken, the

owner of the partnership interest of the withdrawn general partner has the status of an assignee under Subchapter F.

(c) If there are no remaining general partners following the withdrawal of a general partner, the partnership may be reconstituted.

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. 53, eff. September 1, 2011.

Sec. 153.159. CONVERSION OF PARTNERSHIP INTEREST AFTER WITHDRAWAL. If the partners convert the partnership interest under Section 153.158(a)(1), the limited partnership interest may be reduced pro rata with all other partners to provide compensation, an interest in the partnership, or both, to a replacement general partner.

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

Sec. 153.160. EFFECT OF CONVERSION OF PARTNERSHIP INTEREST. (a) After an amendment to the certificate of formation reflecting the general partner's withdrawal as a general partner is filed under Section 153.051, the withdrawing general partner:

(1) may vote as a limited partner in all matters, to the same extent as the members of the class of limited partners having the least voting rights with respect to the matter on which the vote is taken; and

(2) may not vote on the admission and compensation of a general partner who replaces the withdrawing general partner.

(b) If the general partner's withdrawal violates the partnership agreement, the general partner does not have voting rights.

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

Sec. 153.161. LIABILITY OF GENERAL PARTNER FOR DEBT INCURRED AFTER EVENT OF WITHDRAWAL. (a) Unless otherwise provided by a

written partnership agreement and subject to the liability created under Section 153.162, a general partner who ceases to be a general partner under Section 153.155 is not personally liable in the partner's capacity as a general partner for partnership debt incurred after that partner ceases to be a general partner unless the applicable creditor at the time the debt was incurred reasonably believed that the partner remained a general partner.

(b) A creditor of the partnership has reason to believe that a partner remains a general partner if:

(1) the creditor had no knowledge or notice of the general partner's withdrawal and:

(A) was a creditor of the partnership at the time of the general partner's withdrawal; or

(B) had extended credit to the partnership within two years before the date of withdrawal; or

(2) the creditor had known that the partner was a general partner in the partnership before the general partner's withdrawal and had no knowledge or notice of the withdrawal and the general partner's withdrawal had not been advertised in a newspaper of general circulation in each place at which the partnership business was regularly conducted.

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

Sec. 153.162. LIABILITY FOR WRONGFUL WITHDRAWAL. (a) If a general partner's withdrawal from a limited partnership violates the partnership agreement, the partnership may recover damages from the withdrawing general partner for breach of the partnership agreement, including the reasonable cost of obtaining replacement of the services the withdrawn partner was obligated to perform.

(b) In addition to pursuing any remedy available under applicable law, the partnership may effect the recovery of damages under Subsection (a) by offsetting those damages against the amount otherwise distributable to the withdrawing general partner, reducing the limited partner interest into which the withdrawing general partner's interest may be converted under Section 153.158(a)(1), or both.

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

SUBCHAPTER E. FINANCES

Sec. 153.201. FORM OF CONTRIBUTION. The contribution of a partner may consist of a tangible or intangible benefit to the limited partnership or other property of any kind or nature, including:

(1) cash;

(2) a promissory note;

(3) services performed;

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

(5) another interest in or security of the limited partnership, another domestic or foreign limited partnership, or other entity.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 89, eff. January 1, 2006.

Sec. 153.202. ENFORCEABILITY OF PROMISE TO MAKE CONTRIBUTION. (a) A promise by a limited partner to make a contribution to, or pay cash or transfer other property to, a limited partnership is not enforceable unless the promise is in writing and signed by the limited partner.

(b) Except as otherwise provided by the partnership agreement, a partner or the partner's legal representative or successor is obligated to the limited partnership to perform an enforceable promise to make a contribution to or pay cash or transfer other property to a limited partnership, notwithstanding the partner's death, disability, or other change in circumstances.

(c) If a partner or a partner's legal representative or successor does not make a contribution or other payment of cash or transfer of other property required by the enforceable promise, whether as a contribution or with respect to a contribution previously made, that partner or the partner's legal representative or successor is obligated, at the option of the limited partnership, to pay to the partnership an amount of cash equal to the portion of the agreed value, as stated in the partnership agreement or in the partnership records required to be kept under Sections 153.551 and 153.552, of the contribution represented by the amount of cash that

has not been paid or the value of the property that has not been transferred.

(d) A partnership agreement may provide that the partnership interest of a partner who fails to make a payment of cash or transfer of other property to the partnership, whether as a contribution or with respect to a contribution previously made, required by an enforceable promise is subject to specified consequences, which may include:

(1) a reduction of the defaulting partner's percentage or other interest in the limited partnership;

(2) subordination of the partner's partnership interest to the interest of nondefaulting partners;

(3) a forced sale of the partner's partnership interest;

(4) forfeiture of the partner's partnership interest;

(5) the lending of money to the defaulting partner by other partners of the amount necessary to meet the defaulting partner's commitment;

(6) a determination of the value of the defaulting partner's partnership interest by appraisal or by formula and redemption or sale of the partnership interest at that value; or

(7) another penalty or consequence.

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

Sec. 153.203. RELEASE OF OBLIGATION TO PARTNERSHIP. Unless otherwise provided by the partnership agreement, the obligation of a partner or the legal representative or successor of a partner to make a contribution, pay cash, transfer other property, or return cash or property paid or distributed to the partner in violation of this chapter or the partnership agreement may be compromised or released only by consent of all of the partners.

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

Sec. 153.204. ENFORCEABILITY OF OBLIGATION. (a) Notwithstanding a compromise or release under Section 153.203, a creditor of a limited partnership who extends credit or otherwise acts in reasonable reliance on an obligation described by Section 153.203 may enforce the original obligation if:

(1) the obligation is reflected in a document signed by the partner; and

(2) the document is not amended or canceled to reflect the compromise or release.

(b) Notwithstanding the compromise or release, a general partner remains liable to persons other than the partnership and the other partners, as provided by Sections 153.152(a)(2) and (b).

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

Sec. 153.205. REQUIREMENTS TO ENFORCE CONDITIONAL OBLIGATION. (a) An obligation of a limited partner of a limited partnership that is subject to a condition may be enforced by the partnership creditor described by Section 153.204 only if the condition is satisfied or waived by or with respect to the limited partner.

(b) A conditional obligation of a limited partner of a limited partnership includes a contribution payable on a discretionary call of the limited partnership before the time the call occurs.

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

Sec. 153.206. ALLOCATION OF PROFITS AND LOSSES. (a) The profits and losses of a limited partnership shall be allocated among the partners in the manner provided by a written partnership agreement.

(b) If a written partnership agreement does not provide for the allocation of profits and losses, the profits and losses shall be allocated:

(1) in accordance with the current percentage or other interest in the partnership stated in partnership records of the kind described by Section 153.551(a); or

(2) if the allocation of profits and losses is not provided for in partnership records of the kind described by Section 153.551(a), in proportion to capital accounts.

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

Sec. 153.207. RIGHT TO DISTRIBUTION. Subject to Section

153.210, when a partner becomes entitled to receive a distribution, the partner has with respect to the distribution the status of and is entitled to all remedies available to a creditor of the limited partnership.

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

Sec. 153.208. SHARING OF DISTRIBUTIONS. (a) A distribution of cash or another asset of a limited partnership shall be made to a partner in the manner provided by a written partnership agreement.

(b) If a written partnership agreement does not provide otherwise, a distribution that is a return of capital shall be made on the basis of the agreed value, as stated in the partnership records required to be maintained under Section 153.551(a), of the contribution made by each partner to the extent that the contribution has not been returned. A distribution that is not a return of capital shall be made in proportion to the allocation of profits as determined under Section 153.206.

(c) Unless otherwise defined by a written partnership agreement, in this section, "return of capital" means a distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contribution to the partnership as reduced by a prior distribution that was a return of capital.

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

Sec. 153.209. INTERIM DISTRIBUTIONS. Except as otherwise provided by this section and Section 153.210, a partner is entitled to receive a distribution from a limited partnership to the extent and at the time or on the occurrence of an event specified in the partnership agreement before:

(1) the partner withdraws from the partnership; and

(2) the winding up of the partnership business.

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

Sec. 153.210. LIMITATION ON DISTRIBUTION. (a) Unless the

distribution is made in compliance with Chapter 11, a limited partnership may not make a distribution to a partner if, immediately after giving effect to the distribution and despite any compromise of a claim referred to by Sections 153.203 and 153.204, all liabilities of the limited partnership, other than liabilities to partners with respect to their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the partnership assets. The fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in the partnership assets for purposes of this subsection only to the extent that the fair value of that property exceeds that liability.

(b) For purposes of this section, "distribution" does not include an amount constituting reasonable compensation for present or past services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or other benefits program.

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. 52, eff. September 1, 2009.

SUBCHAPTER F. PARTNERSHIP INTEREST

Sec. 153.251. ASSIGNMENT OF PARTNERSHIP INTEREST. (a) Except as otherwise provided by the partnership agreement, a partnership interest is assignable wholly or partly.

(b) Except as otherwise provided by the partnership agreement, an assignment of a partnership interest:

(1) does not require the winding up of a limited partnership;

(2) does not entitle the assignee to become, or to exercise rights or powers of, a partner; and

(3) entitles the assignee to be allocated income, gain, loss, deduction, credit, or similar items and to receive distributions to which the assignor was entitled to the extent those items are assigned.

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. 124, eff.

September 1, 2007.

Sec. 153.252. RIGHTS OF ASSIGNOR. (a) Except as otherwise provided by the partnership agreement, until the assignee becomes a partner, the assignor partner continues to be a partner in the limited partnership. The assignor partner may exercise any rights or powers of a partner, except to the extent those rights or powers are assigned.

(b) Except as otherwise provided by the partnership agreement, on the assignment by a general partner of all of the general partner's rights as a general partner, the general partner's status as a general partner may be terminated by the affirmative vote of a majority-in-interest of the limited partners.

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

Sec. 153.253. RIGHTS OF ASSIGNEE. (a) An assignee of a partnership interest, including the partnership interest of a general partner, may become a limited partner if and to the extent that:

(1) the partnership agreement provides; or

(2) all partners consent.

(b) An assignee who becomes a limited partner, to the extent of the rights and powers assigned, has the rights and powers and is subject to the restrictions and liabilities of a limited partner under a partnership agreement and this code.

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

Sec. 153.254. LIABILITY OF ASSIGNEE. (a) Until an assignee of the partnership interest in a limited partnership becomes a partner, the assignee does not have liability as a partner solely as a result of the assignment.

(b) Unless otherwise provided by a written partnership agreement, an assignee who becomes a limited partner:

(1) is liable for the obligations of the assignor to make contributions as provided by Sections 153.202-153.204;

(2) is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and that

could not be ascertained from a written partnership agreement; and

(3) is not liable for the obligations of the assignor under Sections 153. 105, 153.112, and 153.162.

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

Sec. 153.255. LIABILITY OF ASSIGNOR. Regardless of whether an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under Subchapter E and Sections 153.105, 153.112, and 153.162.

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

Sec. 153.256. PARTNER'S PARTNERSHIP INTEREST SUBJECT TO CHARGING ORDER. (a) On application by a judgment creditor of a partner or of any other owner of a partnership interest, a court having jurisdiction may charge the partnership interest of the judgment debtor to satisfy the judgment.

(b) To the extent that the partnership interest is charged in the manner provided by Subsection (a), the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise be entitled in respect of the partnership interest.

(c) A charging order constitutes a lien on the judgment debtor's partnership interest. The charging order lien may not be foreclosed on under this code or any other law.

(d) The entry of a charging order is the exclusive remedy by which a judgment creditor of a partner or of any other owner of a partnership interest may satisfy a judgment out of the judgment debtor's partnership interest.

(e) This section does not deprive a partner or other owner of a partnership interest of a right under exemption laws with respect to the judgment debtor's partnership interest.

(f) A creditor of a partner or of any other owner of a partnership interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited partnership.

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. 125, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 53, eff. September 1, 2009.

Sec. 153.257. EXEMPTION LAWS APPLICABLE TO PARTNERSHIP INTEREST NOT AFFECTED. Section 153.256 does not deprive a partner of the benefit of an exemption law applicable to that partner's partnership interest.

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

SUBCHAPTER G. REPORTS

Sec. 153.301. PERIODIC REPORT. The secretary of state may require a domestic limited partnership or a foreign limited partnership registered to transact business in this state that is not required to file a public information report with the comptroller under Section 171.203, Tax Code, to file a report not more than once every four years as required by this subchapter.

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

Acts 2015, 84th Leg., R.S., Ch. 1097 (H.B. 2891), Sec. 2, eff. January 1, 2016.

Sec. 153.302. FORM AND CONTENTS OF REPORT. (a) The report must:

(1) include:

(A) the name of the limited partnership;

(B) the state or territory under the laws of which the limited partnership is formed;

(C) the address of the registered office of the limited partnership in this state and the name of the registered agent at that address;

(D) the address of the principal office in the United States where records are to be kept or made available under Sections 153.551 and 153.552; and

(E) the name, mailing address, and street address of the business or residence of each general partner;

(2) be made on a form adopted by the secretary of state for that purpose; and

(3) be signed on behalf of the limited partnership by at least one general partner.

(b) The information contained in the report must be given as of the date of the execution of the report.

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

Sec. 153.303. FILING FEE. The filing fee for the report is as provided by Chapter 4.

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

Sec. 153.304. DELIVERY OF REPORT. The report must be delivered to the secretary of state not later than the 30th day after the date on which notice is mailed under Section 153.305.

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

Sec. 153.305. ACTION BY SECRETARY OF STATE. (a) The secretary of state shall send a notice that the report required by Section 153.301 is due.

(b) The notice must be:

(1) addressed to the limited partnership; and

(2) mailed to:

(A) the registered office of the limited partnership;

(B) the last known address of the limited partnership as it appears on record in the office of the secretary of state; or

(C) any other known place of business of the limited partnership.

(c) The secretary of state shall include with the notice a copy of a report form to be prepared and filed as provided by this subchapter.

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

Sec. 153.306. EFFECT OF FILING REPORT. (a) If the secretary of state finds that the report complies with this subchapter, the secretary shall:

(1) accept the report for filing;

(2) acknowledge to the limited partnership the filing of the report; and

(3) update the records of the secretary of state's office to reflect:

(A) a reported change in the address of the registered office or principal office, or in the business or residence address of a general partner; and

(B) a reported change in the name of the registered agent.

(b) The filing of a report under Section 153.301 does not relieve the limited partnership of the requirement to file an amendment to the certificate of formation required under Section 153.051 or 153.052, except that the limited partnership is not required to file an amendment to change the information specified in Subsection (a)(3).

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

Sec. 153.307. EFFECT OF FAILURE TO FILE REPORT. (a) A domestic or foreign limited partnership that fails to file a report under Section 153.301 when the report is due forfeits the limited partnership's right to transact business in this state. A forfeiture under this section takes effect without judicial ascertainment.

(b) When the right to transact business has been forfeited under this section, the secretary of state shall note that the right to transact business has been forfeited and the date of forfeiture on the record kept in the secretary's office relating to the limited partnership.

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

Sec. 153.308. NOTICE OF FORFEITURE OF RIGHT TO TRANSACT BUSINESS. Notice of the forfeiture under Section 153.307 shall be

mailed to the limited partnership at:

(1) the registered office of the limited partnership;

(2) the last known address of the limited partnership; or

(3) any other place of business of the limited partnership.

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

Sec. 153.309. EFFECT OF FORFEITURE OF RIGHT TO TRANSACT BUSINESS. (a) Unless the right of the limited partnership to transact business is revived in accordance with Section 153.310:

(1) the limited partnership may not maintain an action, suit, or proceeding in a court of this state; and

(2) a successor or assignee of the limited partnership may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising from the transaction of business by the limited partnership in this state.

(b) The forfeiture of the right to transact business in this state does not:

(1) impair the validity of a contract or act of the limited partnership; or

(2) prevent the limited partnership from defending an action, suit, or proceeding in a court of this state.

(c) This section and Sections 153.307 and 153.308 do not affect the liability of a limited partner.

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. 54, eff. September 1, 2009.

Sec. 153.310. REVIVAL OF RIGHT TO TRANSACT BUSINESS. (a) A limited partnership that forfeits the right to transact business in this state as provided by Section 153.309 may be relieved from the forfeiture by filing the required report not later than the 120th day after the date of mailing of the notice of forfeiture under Section 153.308, accompanied by the filing fees as provided by Chapter 4.

(b) If a limited partnership complies with Subsection (a), the secretary of state shall:

(1) revive the right of the limited partnership to transact

business in this state;

(2) cancel the note regarding the forfeiture; and

(3) note the revival and the date of revival on the record kept in the secretary's office relating to the limited partnership.

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

Sec. 153.311. TERMINATION OF CERTIFICATE OR REVOCATION OF REGISTRATION AFTER FORFEITURE. (a) The secretary of state may terminate the certificate of formation of a domestic limited partnership, or revoke the registration of a foreign limited partnership, if the limited partnership:

(1) forfeits its right to transact business in this state under Section 153.307; and

(2) fails to revive that right under Section 153.310.

(b) Termination of the certificate or revocation of registration takes effect without judicial ascertainment.

(c) The secretary of state shall note the termination or revocation and the date on the record kept in the secretary's office relating to the limited partnership.

(d) On termination or revocation, the status of the limited partnership is changed to inactive according to the records of the secretary of state. The change to inactive status does not affect the liability of a limited partner.

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. 55, eff. September 1, 2009.

Sec. 153.312. REINSTATEMENT OF CERTIFICATE OF FORMATION OR REGISTRATION. (a) A limited partnership the certificate of formation or registration of which has been terminated or revoked as provided by Section 153.311 may be relieved of the termination or revocation by filing the report required by Section 153.301, accompanied by the filing fees provided by Chapter 4.

(b) If the limited partnership pays the fees required by Subsection (a) and all taxes, penalties, and interest due and accruing before termination or revocation, the secretary of state

shall:

(1) reinstate the certificate or registration of the limited partnership without judicial ascertainment;

(2) change the status of the limited partnership to active; and

(3) note the reinstatement on the record kept in the secretary's office relating to the limited partnership.

(c) If the name of the limited partnership is not available at the time of reinstatement, the secretary of state shall require the limited partnership as a precondition to reinstatement to:

(1) file an amendment to the partnership's certificate of formation; or

(2) in the case of a foreign limited partnership, amend its application for registration to adopt an assumed name for use in this state.

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. 56, eff. September 1, 2009.

SUBCHAPTER H. LIMITED PARTNERSHIP AS LIMITED LIABILITY PARTNERSHIP

Sec. 153.351. REQUIREMENTS. A limited partnership is a limited liability partnership and a limited partnership if the partnership:

(1) registers as a limited liability partnership:

(A) as permitted by its partnership agreement; or

(B) if its partnership agreement does not include a provision for becoming a limited liability partnership, with the consent of partners required to amend its partnership agreement;

(2) complies with Subchapter J, Chapter 152; and

(3) complies with Chapter 5.

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

Sec. 153.352. APPLICABILITY OF OTHER REQUIREMENTS. For purposes of applying Section 152.802 to a limited partnership:

(1) an application to become a limited liability partnership or to withdraw a registration must be signed by at least one general partner; and

(2) other references to a partner mean a general partner only.

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

Sec. 153.353. LAW APPLICABLE TO PARTNERS. If a limited partnership is a limited liability partnership, Section 152.801 applies to a general partner and to a limited partner who is liable under other provisions of this chapter for the debts or obligations of the limited partnership.

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

SUBCHAPTER I. DERIVATIVE ACTIONS

Sec. 153.401. DEFINITIONS. In this subchapter:

(1) "Derivative proceeding" means a civil suit in the right of a domestic limited partnership or, to the extent provided by Section 153.412, in the right of a foreign limited partnership.

(2) "Limited partner" means a person who is a limited partner or is an assignee of a partnership interest, including the partnership interest of a general partner.

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. 25, eff. September 1, 2019.

Sec. 153.402. STANDING TO BRING PROCEEDING. (a) Subject to Subsection (b), a limited partner may not institute or maintain a derivative proceeding unless:

(1) the limited partner:

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

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

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

the limited partnership.

(b) If the converted entity in a conversion is a limited partnership, a limited partner of that limited partnership 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 limited partner was an equity owner of the converting entity at the time of the act or omission; and

(2) the limited partner fairly and adequately represents the interests of the limited partnership in enforcing the right of the limited partnership.

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. 26, eff. September 1, 2019.

Sec. 153.403. DEMAND. (a) A limited partner may not institute a derivative proceeding until the 91st day after the date a written demand is filed with the limited partnership stating with particularity the act, omission, or other matter that is the subject of the claim or challenge and requesting that the limited partnership 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 limited partner has been notified that the demand has been rejected by the limited partnership;

(2) the limited partnership is suffering irreparable injury; or

(3) irreparable injury to the limited partnership 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. 27, eff. September 1, 2019.

Sec. 153.404. DETERMINATION BY 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) the independent and disinterested general partners of the limited partnership, whether one or more, even if the independent and disinterested general partners are not a majority of the general partners of the limited partnership;

(2) a committee consisting of one or more independent and disinterested general partners appointed by a majority of one or more independent and disinterested general partners of the limited partnership, even if the appointing independent and disinterested general partners are not a majority of the general partners of the limited partnership; or

(3) a panel of one or more independent and disinterested individuals appointed by the court on a motion by the limited partnership listing the names of the individuals to be appointed and stating that, to the best of the limited partnership's knowledge, the individuals to be appointed are disinterested and qualified to make the determinations contemplated by Section 153.408.

(b) An entity to which this subsection applies is independent and disinterested under this section only if its decision with respect to the limited partnership's derivative proceeding is made by a majority of its governing persons who are independent and disinterested with respect to that derivative proceeding, even if those governing persons are not a majority of its governing persons. This subsection applies to an entity that is:

(1) a general partner of the limited partnership; or

(2) directly, or indirectly through one or more other entities, a governing person of that general partner.

(c) The court shall appoint a panel under Subsection (a)(3) if the court finds that the individuals recommended by the limited partnership 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 limited partnership or the limited partnership's partners 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. 28, eff. September 1, 2019.

Sec. 153.405. STAY OF PROCEEDING. (a) If the limited partnership 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 153.404 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 limited partnership must provide the court with a written statement agreeing to advise the court and the limited partner 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 limited partnership provides the court and the limited partner 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 partnership.

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. 29, eff. September 1, 2019.

Sec. 153.406. DISCOVERY. (a) If a limited partnership proposes to dismiss a derivative proceeding under Section 153.408, discovery by a limited partner 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 153.404 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 153.404 and 153.408.

Added by Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 30, eff. September 1, 2019.

Sec. 153.407. TOLLING OF STATUTE OF LIMITATIONS. A written demand filed with the limited partnership under Section 153.403 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 153.403; or

(2) the 31st day after the expiration of any stay granted under Section 153.405, including all continuations of the stay.

Added by Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 30, eff. September 1, 2019.

Sec. 153.408. 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 limited partnership if the person or group of persons described by Section 153.404 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 limited partnership.

(b) In determining whether the requirements of Subsection (a) have been met, the burden of proof shall be on:

(1) the plaintiff limited partner if:

(A) the applicable person or persons making the determination under Section 153.404(a)(1) or (2) are independent and

disinterested at the time the determination is made;

(B) the determination is made by a panel of one or more independent and disinterested individuals appointed under Section 153.404(a)(3); or

(C) the limited partnership presents prima facie evidence that demonstrates that the applicable person or persons making the determination under Section 153.404(a) are independent and disinterested; or

(2) the limited partnership in any other circumstance.

Added by Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 30, eff. September 1, 2019.

Sec. 153.409. 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 153.404 and 153.408.

Added by Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 30, eff. September 1, 2019.

Sec. 153.410. 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 partners if the court determines that a proposed discontinuance or settlement may substantially affect the interests of other partners.

Added by Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 30, eff. September 1, 2019.

Sec. 153.411. 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 limited partnership may be

required to indemnify another person.

(b) On termination of a derivative proceeding, the court may order:

(1) the limited partnership to pay expenses the plaintiff incurred in the proceeding if the court finds the proceeding has resulted in a substantial benefit to the limited partnership;

(2) the plaintiff to pay expenses the limited partnership 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.

Added by Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 30, eff. September 1, 2019.

Sec. 153.412. APPLICATION TO FOREIGN LIMITED PARTNERSHIPS. (a) In a derivative proceeding brought in the right of a foreign limited partnership, the matters covered by this subchapter are governed by the laws of the jurisdiction of formation of the foreign limited partnership, except for Sections 153.405, 153.410, and 153.411, which are procedural provisions and do not relate to the internal affairs of the foreign limited partnership, unless applying the laws of the jurisdiction of formation of the foreign limited partnership requires otherwise with respect to Section 153.405.

(b) In the case of matters relating to a foreign limited partnership under Section 153.405, a reference to a person or group of persons described by Section 153.404 refers to a person or group entitled under the laws of the jurisdiction of formation of the foreign limited partnership to make the determination described by

Section 153.404(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 limited partnership.

Added by Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 30, eff. September 1, 2019.

Sec. 153.413. CLOSELY HELD LIMITED PARTNERSHIP. (a) In this section, "closely held limited partnership" means a limited partnership that has:

(1) fewer than 35 limited partners; and

(2) no partnership interests 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 153.402-153.410 do not apply to a claim or a derivative proceeding by a limited partner of a closely held limited partnership against a general partner, limited partner, or officer of the limited partnership. In the event the claim or derivative proceeding is also made against a person who is not that general partner, limited partner, or officer, this subsection shall apply only to the claim or derivative proceeding against the general partner, limited partner, or officer.

(c) If Sections 153.402-153.410 do not apply because of Subsection (b) and if justice requires:

(1) a derivative proceeding brought by a limited partner of a closely held limited partnership may be treated by a court as a direct action brought by the limited partner for the limited partner's own benefit; and

(2) a recovery in a direct or derivative proceeding by a limited partner may be paid directly to the plaintiff or to the limited partnership if necessary to protect the interests of creditors or other partners of the limited partnership.

(d) Other provisions of state law govern whether a limited partner has a direct cause of action or right to sue a general partner, limited partner, or officer, and this section may not be construed to create that direct cause of action or right to sue.

Added by Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 30, eff. September 1, 2019.

SUBCHAPTER K. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

Sec. 153.501. CANCELLATION OR REVOCATION OF EVENT REQUIRING WINDING UP; CONTINUATION OF BUSINESS. (a) The limited partnership may cancel under Section 11.152 an event requiring winding up arising from the expiration of its period of duration as specified in Section 11.051(1) or from the occurrence of an event specified in its governing documents as specified in Section 11.051(3) if, not later than the 90th day after the event, all remaining partners, or another group or percentage of partners as specified by the partnership agreement, agree in writing to continue the business of the limited partnership.

(b) The limited partnership may cancel under Section 11.152 an event requiring winding up arising from an event of withdrawal of a general partner as specified in Section 11.058(b) if:

(1) there remains at least one general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partners and those remaining general partners carry on the business; or

(2) not later than one year after the event, all remaining partners, or another group or percentage of partners specified in the partnership agreement:

(A) agree in writing to continue the business of the limited partnership; and

(B) to the extent that they desire or if there are no remaining general partners, agree to the appointment of one or more new general partners.

(c) The appointment of one or more new general partners under Subsection (b)(2)(B) is effective from the date of withdrawal.

(d) To approve a revocation under Section 11.151 by a limited partnership of a voluntary decision to wind up as specified in Section 11.058(a), prior to filing the certificate of termination required by Section 11.101, all remaining partners, or another group or percentage of partners as specified by the partnership agreement, must agree in writing to revoke the voluntary decision to wind up and continue the business of the limited partnership.

(e) The limited partnership may cancel under Section 11.152 an event requiring winding up arising when there are no limited partners in the limited partnership, as specified in Section 11.058(c), if, not later than the first anniversary of the date of the event requiring winding up:

(1) the legal representative or successor of the last remaining limited partner and all of the general partners agree to:

(A) continue the business of the limited partnership; and

(B) admit the legal representative or successor of the last remaining limited partner, or the person's nominee or designee, to the limited partnership as a limited partner, effective as of the date the event that caused the last remaining limited partner to cease to be a limited partner occurred; or

(2) a limited partner is admitted to the limited partnership in the manner provided by the partnership agreement, effective as of the date the event that caused the last remaining limited partner to cease to be a limited partner occurred.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 93, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 126, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 54, eff. September 1, 2011.

Sec. 153.502. WINDING UP PROCEDURES. (a) Except as provided by the partnership agreement, the winding up of the partnership's affairs shall be accomplished by:

(1) the general partners;

(2) if there are no general partners, the limited partners or a person chosen by the limited partners; or

(3) a person appointed by the court to carry out the winding up under Subsection (b).

(b) On application of a partner or a partner's legal representative or transferee, a court, on cause shown, may wind up the limited partnership's affairs and, in connection with the winding up, may appoint a person to carry out the liquidation and may make all other orders, directions, and inquiries that the circumstances require.

(c) Section 11.052(a)(2) shall not be applicable to a limited partnership.

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

Sec. 153.503. POWERS OF PERSON CONDUCTING WIND UP. (a) After the occurrence of an event requiring winding up of a limited partnership and until the filing of a certificate of termination as provided by Section 11.101, unless a written partnership agreement provides otherwise, a person winding up the limited partnership's business in the name of and on behalf of the limited partnership may take the actions specified in Sections 11.052 and 11.053.

(b) The acts described by Subsection (a) do not create a liability for a limited partner that did not exist before an action to wind up the business of the partnership was taken.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 94, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 127, eff. September 1, 2007.

Sec. 153.504. DISPOSITION OF ASSETS. On the winding up of a limited partnership, its assets shall be paid or transferred as follows:

(1) to the extent otherwise permitted by law, to creditors, including partners who are creditors other than solely because of the application of Section 153.207, for the payment or the making of reasonable provision for payment to satisfy the liabilities of the limited partnership;

(2) unless otherwise provided by the partnership agreement, to partners and former partners to satisfy the partnership's liability for distributions under Section 153.111 or 153.209; and

(3) unless otherwise provided by the partnership agreement, to partners first for the return of their capital and second with respect to their partnership interests, in the proportions provided by Sections 153.208(a) and (b).

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. 55, eff.

September 1, 2011.

Sec. 153.505. APPROVAL OF REINSTATEMENT. To approve a reinstatement of a limited partnership under Section 11.202, all of the remaining partners, or another group or percentage of partners as specified by the partnership agreement, must agree in writing to reinstate and continue the business of the limited partnership.

Added by Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 128, eff. September 1, 2007.

SUBCHAPTER L. MISCELLANEOUS PROVISIONS

Sec. 153.551. RECORDS. (a) A domestic limited partnership shall maintain the following records in its principal office in the United States or make the records available in that office not later than the fifth day after the date on which a written request under Section 153.552(a) is received:

(1) a current list that states:

(A) the name and mailing address of each partner, separately identifying in alphabetical order the general partners and the limited partners;

(B) the last known street address of the business or residence of each general partner;

(C) the percentage or other interest in the partnership owned by each partner; and

(D) if one or more classes or groups are established under the partnership agreement, the names of the partners who are members of each specified class or group;

(2) a copy of:

(A) the limited partnership's federal, state, and local information or income tax returns for each of the partnership's six most recent tax years;

(B) the partnership agreement and certificate of formation; and

(C) all amendments or restatements;

(3) copies of any document that creates, in the manner provided by the partnership agreement, classes or groups of partners;

(4) an executed copy of any powers of attorney under which

the partnership agreement, certificate of formation, and all amendments or restatements to the agreement and certificate have been executed;

(5) unless contained in the written partnership agreement, a written statement of:

(A) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each partner;

(B) the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the partner has agreed to make in the future as an additional contribution;

(C) the events requiring additional contributions to be made or the date on which additional contributions are to be made;

(D) the events requiring the winding up of the limited partnership; and

(E) the date on which each partner in the limited partnership became a partner; and

(6) books and records of the accounts of the limited partnership.

(b) All books and records required to be maintained by a limited partnership under this section may be maintained in any form and manner permitted under Section 3.151(b).

(c) A limited partnership shall keep in its registered office in this state and make available to a partner on reasonable request the street address of its principal office in the United States in which the records required by this section are maintained or made available.

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. 129, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 56, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 658 (S.B. 1859), Sec. 14, eff. September 1, 2019.

Sec. 153.552. EXAMINATION OF RECORDS AND INFORMATION. (a) On

written request stating a proper purpose, a partner or an assignee of a partnership interest may examine and copy, in person or through a representative, records required to be kept under Section 153.551 and other information regarding the business, affairs, and financial condition of the limited partnership as is just and reasonable for the person to examine and copy.

(b) The records requested under Subsection (a) may be examined and copied at a reasonable time and at the partner's sole expense.

(c) On written request by a partner or an assignee of a partnership interest, the partnership shall provide to the requesting partner or assignee without charge copies of:

(1) the partnership agreement and certificate of formation and all amendments or restatements; and

(2) any tax return described by Section 153.551(a)(2).

(d) A request made under Subsection (c) must be made to:

(1) the person who is designated to receive the request in the partnership agreement at the address designated in the partnership agreement; or

(2) if there is no designation, a general partner at the partnership's principal office in the United States.

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

Sec. 153.5521. PENALTY FOR REFUSAL TO PERMIT EXAMINATION OF CERTAIN RECORDS. (a) A limited partnership that refuses to allow a partner or assignee of a partnership interest to examine and copy, on written request that complies with Section 153.552(a), records or other information described by that section is liable to the partner or assignee for any cost or expense, including attorney's fees, incurred in enforcing the partner's or assignee's rights under Section 153.552. The liability imposed on a limited partnership under this subsection is in addition to any other damages or remedy afforded to the partner or assignee by law.

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

(1) has improperly used information obtained through a prior examination of the records or other information of the limited partnership or any other limited partnership under Section 153.552; or

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

Added by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 15, eff. September 1, 2017.

Sec. 153.553. EXECUTION OF FILINGS. (a) Except as provided by Subsection (a-1), a filing instrument required by this code to be filed by a limited partnership with the secretary of state must be signed by at least one general partner.

(a-1) The following certificates shall be executed as follows:

(1) an initial certificate of formation must be signed as provided in Section 3.004(b)(1);

(2) a certificate of amendment or restated certificate of formation must be signed by at least one general partner and by each other general partner designated in the certificate of amendment as a new general partner, unless signed and filed by a person under Section 153.052(b) or (c), but the certificate of amendment need not be signed by a withdrawing general partner;

(3) a certificate of termination must be signed by all general partners participating in the winding up of the limited partnership's business or, if no general partners are winding up the limited partnership's business, by all nonpartner liquidators or, if the limited partners are winding up the limited partnership's business, by a majority-in-interest of the limited partners;

(4) a certificate of merger, conversion, or exchange filed on behalf of a domestic limited partnership must be signed as provided by Chapter 10; and

(5) a certificate filed under Subchapter G, Chapter 10, must be signed by the person designated by the court.

(b) Any person may sign a certificate or partnership agreement or amendment or restated certificate by an attorney in fact. A power of attorney relating to the signing of a certificate or partnership agreement or amendment or restated certificate by an attorney in fact:

(1) is not required to be sworn to, verified, or acknowledged;

(2) is not required to be filed with the secretary of state; and

(3) shall be retained with the partnership records under Sections 153.551 and 153.552.

(c) The execution of a certificate by a general partner or the execution of a written statement by a person under Section 153.106(2) is an oath or affirmation, under a penalty of perjury, that, to the best of the executing party's knowledge and belief, the facts stated in the certificate or statement are true.

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

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 95, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 130, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 131, eff. September 1, 2007.

Sec. 153.554. EXECUTION, AMENDMENT, OR CANCELLATION BY JUDICIAL ORDER. (a) If a person fails or refuses to execute or file a certificate as required by this chapter or Title 1 or to execute a partnership agreement, another person adversely affected by the failure or refusal may petition a court to direct the execution or filing of the certificate or the execution of the partnership agreement, as appropriate.

(b) If the court finds that the execution or filing of the certificate is proper and that a person required to execute or file the certificate has failed or refused to execute or file the certificate, the court shall order the secretary of state to record an appropriate certificate.

(c) The judicial remedy described by Subsection (b) is not a limit on the rights of a person to file a written statement under Section 153.106(2).

(d) If the court finds that the partnership agreement should be executed and that a person required to execute the partnership agreement has failed or refused to execute the agreement, the court shall enter an order granting appropriate relief.

(e) If a court enters an order in favor of the adversely affected person requesting relief under this section, the court shall award to that person reasonable expenses, including reasonable

attorney's fees.

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

Sec. 153.555. PERMITTED TRANSFER IN CONNECTION WITH RACETRACK LICENSE. The following transfer relating to a limited partnership is not a prohibited transfer that violates Section 2025.107(a), Occupations Code:

(1) a transfer by a general partnership of its assets to a limited partnership, the corporate general partner of which is controlled by the partners of the general partnership; or

(2) a transfer by a limited partnership of the beneficial use of or interest in any of its rights, privileges, or assets to a local development corporation incorporated before January 31, 1993, under Subchapter D, Chapter 431, Transportation Code.

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

Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.02, eff. April 1, 2019.

CHAPTER 154. PROVISIONS APPLICABLE TO BOTH GENERAL AND LIMITED PARTNERSHIPS

SUBCHAPTER A. PARTNERSHIP INTERESTS

Sec. 154.001. NATURE OF PARTNER'S PARTNERSHIP INTEREST. (a) A partner's partnership interest is personal property for all purposes.

(b) A partner's partnership interest may be community property under applicable law.

(c) A partner is not a co-owner of partnership property.

(d) Sections 9.406 and 9.408, Business & Commerce Code, do not apply to a partnership interest in a partnership, including the rights, powers, and interests arising under the governing documents of the partnership or under this code. To the extent of any conflict between this subsection and Section 9.406 or 9.408, Business & Commerce Code, this subsection controls. It is the express intent of this subsection to permit the enforcement, as a contract among the partners of a partnership, of any provision of a partnership agreement that would otherwise be ineffective under Section 9.406 or 9.408, Business & Commerce Code.

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. 57, eff. September 1, 2009.

Sec. 154.002. TRANSFER OF INTEREST IN PARTNERSHIP PROPERTY PROHIBITED. A partner does not have an interest that can be transferred, voluntarily or involuntarily, in partnership property.

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

SUBCHAPTER B. PARTNERSHIP AGREEMENT

Sec. 154.101. CLASS OR GROUP OF PARTNERS. (a) A partnership agreement may establish or provide for the future creation of additional classes or groups of one or more partners that have certain express relative rights, powers, and duties, including voting rights. The future creation of additional classes or groups may be expressed in the partnership agreement or at the time of creation of the class or group.

(b) The rights, powers, or duties of a class or group of partners may be senior to those partners of an existing class or group.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 16, eff. September 1, 2017.

Sec. 154.102. PROVISIONS RELATING TO VOTING. A partnership agreement that grants or provides for granting a right to vote to a partner may contain a provision relating to:

(1) giving notice of the time, place, or purpose of a meeting at which a matter is to be voted on by the partners;
(2) waiver of notice;
(3) action by consent without a meeting;
(4) the establishment of a record date;
(5) quorum requirements;
(6) voting in person or by proxy; or

(7) other matters relating to the exercise of the right to vote.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 17, eff. September 1, 2017.

Sec. 154.104. RIGHTS OF THIRD PERSONS UNDER PARTNERSHIP AGREEMENT. A partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent provided by the partnership agreement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 9 (S.B. 847), Sec. 10, eff. September 1, 2013.

Sec. 154.105. PARTNERSHIP BOUND BY PARTNERSHIP AGREEMENT. A partnership agreement is enforceable by or against the partnership, regardless of whether the partnership has signed or otherwise expressly adopted the agreement.

Added by Acts 2017, 85th Leg., R.S., Ch. 74 (S.B. 1517), Sec. 18, eff. September 1, 2017.

SUBCHAPTER C. PARTNERSHIP TRANSACTIONS AND RELATIONSHIPS

Sec. 154.201. BUSINESS TRANSACTIONS BETWEEN PARTNER AND PARTNERSHIP. Except as otherwise provided by the partnership agreement, a partner may lend money to and transact other business with the partnership. Subject to other applicable law, a partner has the same rights and obligations with respect to those matters as a person who is not a partner.

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

Sec. 154.202. EFFECT OF PARTNER CHANGE ON RELATIONSHIP BETWEEN PARTNERSHIP AND CREDITORS. The relationships between a partnership and its creditors are not affected by the:

(1) withdrawal of a partner; or

(2) addition of a new partner.

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

Sec. 154.203. DISTRIBUTIONS IN KIND. (a) Except as provided by the partnership agreement, a partner, regardless of the nature of the partner's contribution, is not entitled to demand or receive from a partnership a distribution in any form other than cash.

(b) Except as provided by the partnership agreement, a partner may not be compelled to accept a disproportionate distribution of an asset in kind from a partnership to the extent that the percentage portion of assets distributed to the partner exceeds the percentage of those assets that equals the percentage in which the partner shares in distributions from the partnership.

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

Sec. 154.204. IRREVOCABLE POWER OF ATTORNEY. (a) This section applies only to:

(1) a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a partnership; or

(2) a power of attorney granted by:

(A) a person as a partner of or a transferee or assignee of a partnership interest in a partnership; or

(B) a person seeking to become a partner of or a transferee or assignee of a partnership interest in a partnership.

(b) A power of attorney is irrevocable for all purposes if the power of attorney:

(1) is coupled with an interest sufficient in law to support an irrevocable power; and

(2) states that it is irrevocable.

(c) Unless otherwise provided in the power of attorney, an irrevocable power of attorney created under this section is not affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.

(d) A power of attorney granted to the partnership, a partner

of the partnership, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

Added by Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 7, eff. September 1, 2015.

TITLE 5. REAL ESTATE INVESTMENT TRUSTS
CHAPTER 200. REAL ESTATE INVESTMENT TRUSTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 200.001. DEFINITION. In this chapter, "real estate investment trust" means an unincorporated trust:

(1) formed by one or more trust managers under this chapter and Chapter 3; and

(2) managed under this chapter.

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

Sec. 200.002. APPLICABILITY OF CHAPTER. (a) The provisions of Chapters 20 and 21 govern a matter to the extent that this chapter or Title 1 does not govern the matter.

(b) An unincorporated trust that does not meet the requirements of this chapter is an unincorporated association.

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

Sec. 200.003. CONFLICT WITH OTHER LAW. In case of conflict between this chapter and Chapters 20 and 21, this chapter controls. Chapters 20 and 21 do not control over this chapter merely because a provision of Chapter 20 or 21 is more or less extensive, restrictive, or detailed than a similar provision of this chapter.

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

Sec. 200.004. ULTRA VIRES ACTS. (a) Lack of capacity of a real estate investment trust may not be the basis of any claim or

defense at law or in equity.

(b) An act of a real estate investment trust or a transfer of property by or to a real estate investment trust is not invalid because the act or transfer was:

(1) beyond the scope of the purpose or purposes of the real estate investment trust as expressed in the real estate investment trust's certificate of formation; or

(2) inconsistent with a limitation on the authority of an officer or trust manager to exercise a statutory power of the real estate investment trust, as that limitation is expressed in the real estate investment trust's certificate of formation.

(c) The fact that an act or transfer is beyond the scope of the expressed purpose or purposes of the real estate investment trust or is inconsistent with an expressed limitation on the authority of an officer or trust manager may be asserted in a proceeding:

(1) by a shareholder against the real estate investment trust to enjoin the performance of an act or the transfer of property by or to the real estate investment trust; or

(2) by the real estate investment trust, acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against an officer or trust manager or former officer or trust manager of the real estate investment trust for exceeding that person's authority.

(d) If the unauthorized act or transfer sought to be enjoined under Subsection (c)(1) is being or is to be performed or made under a contract to which the real estate investment trust is a party and if each party to the contract is a party to the proceeding, the court may set aside and enjoin the performance of the contract. The court may award to the real estate investment trust or to another party to the contract, as appropriate, compensation for loss or damage resulting from the action of the court in setting aside and enjoining the performance of the contract, excluding loss of anticipated profits.

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

Sec. 200.005. SUPPLEMENTARY POWERS OF REAL ESTATE INVESTMENT TRUST. (a) Subject to Section 2.113(a) and in addition to the powers specified in Section 2.101, a real estate investment trust may

engage in activities mandated or authorized by:

(1) provisions of the Internal Revenue Code that are related to or govern real estate investment trusts; and

(2) regulations adopted under the Internal Revenue Code.

(b) This section does not authorize a real estate investment trust or an officer or trust manager of a real estate investment trust to exercise a power in a manner inconsistent with a limitation on the purposes or powers of the real estate investment trust contained in:

(1) the trust's certificate of formation;

(2) this code; or

(3) another law of this state.

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

Sec. 200.006. REQUIREMENT THAT FILING INSTRUMENT BE SIGNED BY OFFICER. Unless otherwise provided by this chapter, a filing instrument of a real estate investment trust may be signed by an officer of the real estate investment trust.

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

SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

Sec. 200.051. DECLARATION OF TRUST. For purposes of this code, the certificate of formation of a real estate investment trust is a declaration of trust. The certificate of formation may be titled "declaration of trust" or "certificate of formation."

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

Sec. 200.052. NO PROPERTY RIGHT IN CERTIFICATE OF FORMATION. A shareholder of a real estate investment trust 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 real estate investment trust.

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

Sec. 200.053. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE OF FORMATION. (a) To adopt an amendment to the certificate of formation of a real estate investment trust as provided by Subchapter B, Chapter 3, the trust managers shall:

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

(2) follow the procedures prescribed by Sections 200.054-200.056.

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

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

Sec. 200.054. ADOPTION OF AMENDMENT BY TRUST MANAGERS. If a real estate investment trust does not have any issued and outstanding shares, the trust managers may adopt a proposed amendment to the real estate investment trust's certificate of formation by resolution without shareholder approval.

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

Sec. 200.055. ADOPTION OF AMENDMENT BY SHAREHOLDERS. If a real estate investment trust has issued and outstanding shares:

(1) a resolution described by Section 200.053 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 200.056.

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

Sec. 200.056. 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. If the proposed amendment is to be considered at an annual meeting,

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 200.261.

(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. 200.057. ADOPTION OF RESTATED CERTIFICATE OF FORMATION. (a) A real estate investment trust 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 200.053-200.056, except that shareholder approval is not required if an amendment is not adopted.

(b) If shares of the real estate investment trust have not been issued and the restated certificate of formation is adopted by the trust managers, the majority of the trust managers may sign the restated certificate of formation on behalf of the real estate investment trust.

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

Sec. 200.058. BYLAWS. (a) The trust managers of a real estate investment trust shall adopt initial bylaws.

(b) The bylaws may contain provisions for the regulation and management of the affairs of the real estate investment trust that are consistent with law and the real estate investment trust's certificate of formation.

(c) The trust managers of a real estate investment trust may amend or repeal bylaws or adopt new bylaws unless:

(1) the real estate investment trust's certificate of formation or this chapter wholly or partly reserves the power exclusively to the real estate investment trust's shareholders; or

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

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

Sec. 200.059. DUAL AUTHORITY. Unless the certificate of formation or a bylaw adopted by the shareholders provides otherwise as to all or a part of a real estate investment trust's bylaws, the shareholders of a real estate investment trust may amend, repeal, or adopt the bylaws of the real estate investment trust even if the bylaws may also be amended, repealed, or adopted by the trust managers of the real estate investment trust.

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

Sec. 200.060. ORGANIZATION MEETING. (a) After the real estate investment trust has been formed, the initial trust managers of the real estate investment trust shall hold an organization meeting, at the call of a majority of those trust managers, for the purpose of adopting bylaws, electing officers, and transacting other business.

(b) Not later than the third day before the date of the meeting, the initial trust managers calling the meeting shall send notice of the time and place of the meeting to the other initial trust managers named in the certificate of formation.

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

SUBCHAPTER C. SHARES

Sec. 200.101. NUMBER. A real estate investment trust may issue the number of shares stated in the real estate investment trust's certificate of formation.

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

Sec. 200.102. CLASSIFICATION OF SHARES. A real estate investment trust may provide in the real estate investment trust's certificate of formation:

(1) that a specified class of shares is preferred over another class of shares as to its distributive share of the assets on voluntary or involuntary liquidation of the real estate investment

trust;

(2) the amount of a preference described by Subdivision (1);

(3) that a specified class of shares may be redeemed at the option of the real estate investment trust or of the holders of the shares;

(4) the terms and conditions of a redemption of shares described by Subdivision (3), including the time and price of redemption;

(5) that a specified class of shares may be converted into shares of one or more other classes;

(6) the terms and conditions of a conversion described by Subdivision (5);

(7) that a holder of a specified security issued or to be issued by the real estate investment trust has voting or other rights authorized by law; and

(8) for other preferences, rights, restrictions, including restrictions on transferability, and qualifications consistent with law.

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

Sec. 200.103. CLASSES OF SHARES ESTABLISHED BY TRUST MANAGERS. (a) A real estate investment trust may provide in the real estate investment trust's certificate of formation that the trust managers may classify or reclassify any unissued shares by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of the shares.

(b) Before issuing shares, the trust managers who perform as authorized by the certificate of formation an action described by Subsection (a) must file with the county clerk of the county of the principal place of business of the real estate investment trust a statement of designation that contains:

(1) a description of the shares, including the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption, as set or changed by the trust managers; and

(2) a statement that the shares have been classified or

reclassified by the trust managers as authorized by the certificate of formation.

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

Sec. 200.104. ISSUANCE OF SHARES. (a) A real estate investment trust may issue shares for consideration if authorized by the trust managers.

(b) Shares may not be issued until the consideration, determined in accordance with this subchapter, has been paid to the real estate investment trust or to another entity of which all of the outstanding ownership interests are directly or indirectly owned by the real estate investment trust. When the consideration is paid:

(1) the shares are considered to be issued;

(2) the shareholder entitled to receive the shares is a shareholder with respect to the shares; and

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

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

Sec. 200.105. TYPES OF CONSIDERATION FOR ISSUANCE OF SHARES. Shares with or without par value may be issued by a real estate investment trust for the following types of consideration:

(1) a tangible or intangible benefit to the real estate investment trust;

(2) cash;

(3) a promissory note;

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

(5) a security of the real estate investment trust 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. 200.106. DETERMINATION OF CONSIDERATION FOR SHARES. Consideration to be received by a real estate investment trust for shares shall be determined by the trust managers.

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

Sec. 200.107. AMOUNT OF CONSIDERATION FOR ISSUANCE OF SHARES WITH PAR VALUE. Consideration to be received by a real estate investment trust for the issuance of shares with par value may not be less than the par value of the shares.

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

Sec. 200.108. VALUE OF CONSIDERATION. In the absence of fraud in the transaction, the judgment of the trust managers is conclusive in determining the value of the consideration received for the shares.

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

Sec. 200.109. 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 real estate investment trust or a creditor of the real estate investment trust for an unpaid portion of the consideration.

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

Sec. 200.110. SUBSCRIPTIONS. (a) A real estate investment trust may accept a subscription by notifying the subscriber in writing.

(b) A subscription to purchase shares in a real estate investment trust that is 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 real estate investment trust is formed is a contract between the subscriber and

the real estate investment trust.

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

Sec. 200.111. PREFORMATION SUBSCRIPTION. (a) A real estate investment trust 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 real estate investment trust shall make calls placed to all subscribers of similar interests for payment on preformation subscriptions uniform as far as practicable.

(c) After the real estate investment trust is formed, if a subscriber fails to pay any installment or call when due, the real estate investment trust 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 real estate investment trust may retain any amount previously paid on the subscription.

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

Sec. 200.112. COMMITMENT IN CONNECTION WITH PURCHASE OF SHARES. (a) A person who contemplates the acquisition of shares in a real estate investment trust 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 real estate investment trust.

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

Sec. 200.113. SUPPLEMENTAL REQUIRED RECORDS. In addition to the books and records required to be kept under Section 3.151, a real estate investment trust must keep at its principal office or place of business, or at the office of its transfer agent or registrar, a record of the number of shares held by each shareholder.

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

SUBCHAPTER D. SHAREHOLDER RIGHTS AND RESTRICTIONS

Sec. 200.151. REGISTERED HOLDERS AS OWNERS. Except as otherwise provided by this code and subject to Chapter 8, Business & Commerce Code, a real estate investment trust may consider the person registered as the owner of a share in the share transfer records of the real estate investment trust at a particular time, including a record date set under Section 6.102, 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 and appraisal, exercising or waiving a preemptive right, or giving proxies with respect to that share; or

(5) entering into agreements with respect to that share in accordance with Section 6.251 or 6.252 or with this subchapter.

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

Sec. 200.152. NO STATUTORY PREEMPTIVE RIGHT UNLESS SPECIFICALLY PROVIDED BY CERTIFICATE OF FORMATION. A shareholder of a real estate investment trust does not have a preemptive right to acquire securities except to the extent specifically provided by the certificate of formation.

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

Sec. 200.153. CHARACTERIZATION AND TRANSFER OF SHARES AND OTHER

SECURITIES. Except as otherwise provided by this code, the shares and other securities of a real estate investment trust are:

(1) personal property for all purposes; and

(2) transferable in accordance with Chapter 8, Business & Commerce Code.

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

Sec. 200.154. RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES. (a) A restriction on the transfer or registration of transfer of a security may be imposed by:

(1) the real estate investment trust's certificate of formation;

(2) the real estate investment trust'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 real estate investment trust if:

(A) the real estate investment trust files a copy of the agreement at the principal place of business or registered office of the real estate investment trust; and

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

(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.

Sec. 200.155. VALID RESTRICTION ON TRANSFER. Notwithstanding Sections 200.154 and 200.157, a restriction placed on the transfer or registration of transfer of a security of a real estate investment trust is valid if the restriction reasonably:

(1) obligates the holder of the restricted security to offer a person, including the real estate investment trust or other holders of securities of the real estate investment trust, an

opportunity to acquire the restricted security within a reasonable time before the transfer;

(2) obligates the real estate investment trust, to the extent provided by this code, or another person to purchase a security that is the subject of an agreement relating to the purchase and sale of the restricted security;

(3) requires the real estate investment trust or the holders of a class of the real estate investment trust'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; or

(5) maintains a tax advantage to the real estate investment trust, including maintaining its status as a real estate investment trust under the relevant provisions of the Internal Revenue Code and regulations adopted under the Internal Revenue Code.

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

Sec. 200.156. BYLAW OR AGREEMENT RESTRICTING TRANSFER OF SHARES OR OTHER SECURITIES. (a) A real estate investment trust that has adopted a bylaw or is a party to an agreement that restricts the transfer of the shares or other securities of the real estate investment trust may file with the county clerk of the county of the principal place of business of the real estate investment trust a copy of the bylaw or agreement and a statement attached to the copy that:

(1) contains the name of the real estate investment trust;

(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 trust managers or shareholders, as appropriate.

(b) After the statement is filed with the county clerk, 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 must be stated on a certificate representing the restricted shares or securities if required by Section 3.202.

(c) A real estate investment trust that is a party to an agreement restricting the transfer of the shares or other securities of the real estate investment trust may make the agreement part of the real estate investment trust's certificate of formation without restating the provisions of the agreement in the certificate of formation by complying with this code or amending the certificate of formation. If the agreement alters the original or amended certificate of formation, the altered provision must be identified by reference or description in the certificate of amendment. If the agreement is an addition to the original or amended 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. 200.157. 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 real estate investment trust 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. 200.158. JOINT OWNERSHIP OF SHARES. (a) If shares are registered on the books of a real estate investment trust in the names of two or more persons as joint owners with the right of survivorship and one of the owners dies, the real estate investment trust 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 sole 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 real estate investment trust 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 real estate investment trust from liability under Section 200.160 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 distribution against the surviving owner.

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

Sec. 200.159. LIABILITY FOR DESIGNATING OWNER OF SHARES. A real estate investment trust or an officer, trust manager, employee, or agent of the real estate investment trust may not be held liable for considering a person to be the owner of a share for a purpose described by Section 200.151, regardless of whether the person possesses a certificate for those shares.

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

Sec. 200.160. LIABILITY REGARDING JOINT OWNERSHIP OF SHARES. A real estate investment trust that transfers shares or makes a distribution to a surviving joint owner under Section 200.158 before

the real estate investment trust 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. 200.161. 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 is not under an obligation to the real estate investment trust or its obligees with respect to:

(1) the shares, other than the obligation to pay to the real estate investment trust the full amount of consideration, fixed in compliance with Sections 200.104-200.108, for which the shares were or are to be issued;

(2) any contractual obligation of the real estate investment trust on the basis that the holder, beneficial owner, or subscriber is or was the alter ego of the real estate investment trust 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 real estate investment trust on the basis of the failure of the real estate investment trust to observe any formality, including the failure to:

(A) comply with this code or the declaration of trust or bylaws of the real estate investment trust; or

(B) observe any requirement prescribed by this code or the declaration of trust or bylaws of the real estate investment trust for acts to be taken by the real estate investment trust or its trust managers or shareholders.

(b) Subsection (a)(2) does not prevent or limit the liability of a holder, beneficial owner, or subscriber if the obligee demonstrates that the holder, beneficial owner, or subscriber caused the real estate investment trust 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, or subscriber.

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

Sec. 200.162. PREEMPTION OF LIABILITY. The liability of a holder, beneficial owner, or subscriber of shares of a real estate investment trust for an obligation that is limited by Section 200.161 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.

Sec. 200.163. EXCEPTIONS TO LIMITATIONS. Section 200.161 or 200.162 does not limit the obligation of a holder, beneficial owner, or subscriber to the obligee of the real estate investment trust 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. 200.164. 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 real estate investment trust.

(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 E. DISTRIBUTIONS AND SHARE DIVIDENDS

Sec. 200.201. AUTHORITY FOR DISTRIBUTIONS. The trust managers of a real estate investment trust may authorize a distribution and the real estate investment trust may make a distribution, subject to Section 200.202 and any restriction in the certificate of formation.

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

Sec. 200.202. LIMITATIONS ON DISTRIBUTIONS. (a) A real estate investment trust may not make a distribution:

(1) if the real estate investment trust would be insolvent after the distribution; or

(2) that is more than the surplus of the real estate investment trust.

(b) Notwithstanding Subsection (a)(2), if the net assets of a real estate investment trust are not less than the amount of the proposed distribution, the real estate investment trust may make a distribution involving a purchase or redemption of its own shares if the purchase or redemption is made by the real estate investment trust to:

(1) eliminate fractional shares;

(2) collect or settle indebtedness owed by or to the real estate investment trust;

(3) pay dissenting shareholders entitled to receive payment for their shares under this chapter; or

(4) effect the purchase or redemption of redeemable shares in accordance with this code.

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

Sec. 200.203. PRIORITY OF DISTRIBUTIONS. A real estate investment trust's indebtedness that arises as a result of the declaration of a distribution and a real estate investment trust's indebtedness issued in a distribution are at parity with the real estate investment trust's indebtedness to its general, unsecured creditors, except to the extent the indebtedness is subordinated, or payment of that indebtedness is secured, by agreement.

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

Sec. 200.204. RESERVES, DESIGNATIONS, AND ALLOCATIONS FROM SURPLUS. (a) A real estate investment trust, by resolution of the trust managers of the real estate investment trust, may:

(1) create a reserve out of the surplus of the real estate

investment trust; or

(2) designate or allocate in any manner a part or all of the real estate investment trust's surplus for a proper purpose.

(b) A real estate investment trust 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. 200.205. AUTHORITY FOR SHARE DIVIDENDS. The trust managers of a real estate investment trust may authorize a share dividend, and the real estate investment trust may pay a share dividend subject to Section 200.206 and any restriction in the certificate of formation.

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

Sec. 200.206. LIMITATIONS ON SHARE DIVIDENDS. (a) A real estate investment trust may not pay a share dividend in authorized but unissued shares of any class if the surplus of the real estate investment trust is less than the amount required by Section 200.208 to be transferred to stated capital at the time the share dividend is made.

(b) A share dividend in shares of any class may not be made to a holder of shares of any other class unless:

(1) the real estate investment trust's certificate of formation provides for the dividend; or

(2) the share dividend is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the share dividend is to be made.

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

Sec. 200.207. 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 shares.

(b) A share dividend payable in authorized but unissued shares

without par value shall be issued at the value set by the trust managers when the share dividend is authorized.

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

Sec. 200.208. TRANSFER OF SURPLUS FOR SHARE DIVIDENDS. (a) When a share dividend payable in authorized but unissued shares with par value is made by a real estate investment trust, an amount of surplus designated by the trust managers 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 real estate investment trust, an amount of surplus equal to the aggregate value set by the trust managers with respect to the shares under Section 200.207(b) shall be transferred to stated capital.

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

Sec. 200.209. DETERMINATION OF SOLVENCY, NET ASSETS, STATED CAPITAL, AND SURPLUS. (a) The determination of whether a real estate investment trust is or would be insolvent and the determination of the value of a real estate investment trust's net assets, stated capital, or surplus and each of the components of net assets, stated capital, or surplus may be based on:

(1) financial statements of the real estate investment trust that present the financial condition of the real estate investment trust in accordance with generally accepted accounting principles, including financial statements that include subsidiary entities or other entities accounted for on a consolidated basis or on the equity method of accounting;

(2) financial statements prepared using the method of accounting used to file the real estate investment trust's federal income tax return or using any other accounting practices and principles that are reasonable under the circumstances;

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

(4) a projection, a forecast, or other forward-looking

information relating to the future economic performance, financial condition, or liquidity of the real estate investment trust that is reasonable under the circumstances;

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

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

(b) Subsection (a) does not apply to the computation of any tax imposed under the laws of this state.

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

Sec. 200.210. DATE OF DETERMINATION OF SURPLUS. (a) For purposes of this subchapter, a determination of whether a real estate investment trust is or would be made insolvent by a distribution or share dividend or a determination of the value of a real estate investment trust's surplus shall be made:

(1) on the date the distribution or share dividend is authorized by the trust managers of the real estate investment trust if the distribution or the share dividend is made not later than the 120th day after the date of authorization; or

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

(A) on the date designated by the trust managers if the date so designated is not earlier than 120 days before the date the distribution or the share dividend is made; or

(B) on the date the distribution or the share dividend is made if the trust managers do not designate a date as described in Paragraph (A).

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

(1) the incurrence by a real estate investment trust 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 contract by the real estate investment trust to acquire any of its own shares is considered to have been made on the date when the contract is made or takes effect or on the date the shares are acquired, at the option of the real estate investment trust.

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

Sec. 200.211. SPLIT-UP OR DIVISION OF SHARES. The trust managers of a real estate investment trust may authorize the real estate investment trust to carry out any split-up or division of the issued shares of a class of the real estate investment trust into a larger number of shares within the same class that does not increase the stated capital of the real estate investment trust because the split-up or division of issued shares is not a share dividend or a distribution.

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

SUBCHAPTER F. SHAREHOLDERS' MEETINGS; VOTING AND QUORUM

Sec. 200.251. ANNUAL MEETING. (a) An annual meeting of the shareholders of a real estate investment trust shall be held at a time that is stated in or set in accordance with the bylaws of the real estate investment trust.

(b) If the annual meeting is not held at the designated time, a shareholder may make a written request to an officer or trust manager of the real estate investment trust that the meeting be held within a reasonable time. The request calling for the meeting must be made by:

(1) certified or registered mail, return receipt requested; or

(2) other means specified in the real estate investment trust's governing documents.

(b-1) If the annual meeting is not called before the 61st day after the date the written request calling for a meeting is made under Subsection (b), any shareholder may bring suit at law or in equity to compel the meeting to be held.

(c) Each shareholder has a justifiable interest sufficient to enable the shareholder to institute and prosecute a legal proceeding described by this section.

(d) The failure to hold an annual meeting at the designated time does not result in the winding up or termination of the real estate investment trust.

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. 31, eff. September 1, 2017.

Sec. 200.252. SPECIAL MEETINGS. A special meeting of the shareholders of a real estate investment trust may be called by:

(1) a trust manager, an officer of the real estate investment trust, or any other person authorized to call special meetings by the certificate of formation or bylaws of the real estate investment trust; or

(2) the holders of at least 10 percent of all of the shares of the real estate investment trust entitled to vote at the proposed special meeting unless a greater or lesser percentage of shares is specified in the certificate of formation, not to exceed 50 percent of the shares entitled to vote.

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

Sec. 200.253. NOTICE OF MEETING. (a) 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 in person or by mail by or at the direction of a trust manager, officer, 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.

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

Sec. 200.254. 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. 200.255. 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 trust managers adopt the resolution setting the record date.

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

Sec. 200.256. RECORD DATE FOR PURPOSE OTHER THAN WRITTEN CONSENT TO ACTION. The record date provided by the trust managers in accordance with Section 6.101 must be at least 10 days before the date on which the particular action requiring the determination of shareholders is to be taken.

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

Sec. 200.257. 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 real estate investment trust 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 real estate investment trust 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 real estate investment trust, 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 real estate investment trust 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. 200.258. VOTING IN ELECTION OF TRUST MANAGERS. (a) Subject to Subsection (b), trust managers of a real estate investment trust shall be elected by two-thirds of the votes cast by the holders of shares entitled to vote in the election of trust managers at a meeting of shareholders at which a quorum is present.

(b) The certificate of formation or bylaws of a real estate investment trust may provide that a trust manager of the real estate investment trust shall be elected only if the trust manager 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 trust managers;

(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 trust managers 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 trust managers at a meeting of shareholders at which a quorum is present.

(c) Subject to Section 200.259, at each election of trust managers of a real estate investment trust, each shareholder entitled to vote at the election is entitled to vote, in person or by proxy, the number of shares owned by the shareholder for as many candidates as there are trust managers to be elected and for whose election the shareholder is entitled to vote.

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

Sec. 200.259. CUMULATIVE VOTING IN ELECTION OF TRUST MANAGERS. (a) Cumulative voting is allowed only if specifically authorized by the certificate of formation of a real estate investment trust.

(b) Cumulative voting occurs when a shareholder:

(1) gives one candidate as many votes as the total of the

number of the trust managers to be elected multiplied by the shareholder's shares; or

(2) distributes the votes among one or more candidates using the same principle.

(c) If cumulative voting is specifically authorized by the certificate of formation, a shareholder who intends to cumulate votes must give written notice of that intention to the trust managers on or before the day preceding the date of the election at which the shareholder intends to cumulate votes.

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

Sec. 200.260. VOTING ON MATTERS OTHER THAN ELECTION OF TRUST MANAGERS. (a) Subject to Subsection (b), with respect to a matter other than the election of trust managers 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 real estate investment trust at which a quorum is present is the act of the shareholders.

(b) With respect to a matter other than the election of trust managers 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 real estate investment trust may provide that the act of the shareholders of the real estate investment trust 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. 200.261. 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 or bylaws of a real estate investment trust in accordance with Section 200.260, 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 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 generally or otherwise provided by the certificate of formation.

(d) Unless an amendment to the certificate of formation is undertaken by the trust managers under Section 200.103, separate voting by a class or series of shares of a real estate investment trust 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, 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; or

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

(e) 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.

(f) 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 real estate investment trust that have been established under the authority granted to the trust managers in the certificate of formation in accordance with Section 200.103 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 trust managers with respect to the establishment of a new series of shares under the authority granted to the trust managers in the certificate of formation in accordance with Section 200.103; 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. 132, eff. September 1, 2007.

Sec. 200.262. 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 real estate investment trust 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. 200.263. NUMBER OF VOTES PER SHARE. (a) Except as provided by the certificate of formation of a real estate investment trust or this title or Title 1, each outstanding share, regardless of class, is 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. 200.264. 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. 200.265. 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. 200.266. 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 real estate investment trust who extended the real estate investment trust credit under terms requiring the appointment;

(5) an employee of the real estate investment trust whose employment contract requires the appointment; or

(6) a party to a voting agreement created under Section 6.252.

(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. 200.267. 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:

(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.

(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. 200.268. PROCEDURES IN BYLAWS RELATING TO PROXIES. A real estate investment trust may establish in the bylaws of the real estate investment trust procedures consistent with this code for determining the validity of proxies and determining whether shares 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 self-regulatory organization regulating that bank, broker, or other nominee.

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

SUBCHAPTER G. TRUST MANAGERS

Sec. 200.301. MANAGEMENT BY TRUST MANAGERS. The control, operation, disposition, investment, and management of the trust

estate and the powers necessary or appropriate to effect any purpose for which a real estate investment trust is organized are vested in one or more trust managers.

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

Sec. 200.302. DESIGNATION OF TRUST MANAGERS. (a) The certificate of formation of a real estate investment trust must contain the name of each trust manager.

(b) A successor trust manager must be selected in accordance with the certificate of formation. The selection of a successor trust manager is considered an amendment to the certificate of formation of a real estate investment trust.

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

Sec. 200.303. TRUST MANAGER ELIGIBILITY REQUIREMENTS. A trust manager of a real estate investment trust must be an individual. Unless the certificate of formation or bylaws of a real estate investment trust provide otherwise, a person is not required to be a resident of this state or a shareholder of the real estate investment trust to serve as a trust manager. The certificate of formation or bylaws may prescribe other qualifications for trust managers.

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

Sec. 200.304. NUMBER OF TRUST MANAGERS. (a) The certificate of formation or bylaws of the real estate investment trust shall set the number of trust managers or provide for the manner of determining the number of trust managers, except that the certificate of formation shall set the number constituting the initial trust managers.

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

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

Sec. 200.305. COMPENSATION. A trust manager or officer of a real estate investment trust is entitled to receive compensation set by or in the manner provided by the certificate of formation or bylaws of the real estate investment trust. If the certificate of formation or bylaws do not provide for compensation to trust managers and officers, the trust managers of the real estate investment trust must determine the compensation by vote at a meeting or by written consent.

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

Sec. 200.306. TERM OF TRUST MANAGER. (a) Except as provided by the certificate of formation or bylaws of a real estate investment trust, a trust manager of the real estate investment trust serves until the trust manager's successor is elected.

(b) A trust manager may succeed himself or herself in office.

(c) If a successor trust manager is not elected, the trust manager in office continues to serve as trust manager until the trust manager's successor is elected.

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

Sec. 200.307. STAGGERED TERMS OF TRUST MANAGERS. (a) A governing document of a real estate investment trust may provide that all or some of the board of trust managers may be divided into two or three classes. Each class must include the same or a similar number of trust managers as each other class.

(b) The terms of office of trust managers constituting the first class expire on the election of successors at the first annual meeting of shareholders after the election of those trust managers. The terms of office of trust managers constituting the second class expire on the election of successors at the second annual meeting of shareholders after election of those trust managers. The terms of office of trust managers constituting the third class, if any, expire on the election of successors at the third annual meeting of shareholders after election of those trust managers.

(c) If a governing document of the real estate investment trust

provides for the classification of trust managers, an annual election for trust managers as a whole is not necessary. At each annual meeting held after the classification of trust managers, an election shall be held to elect the number of trust managers equal to the number of trust managers in the class the term of which expires on the date of the meeting, and those trust managers serve until:

(1) the second succeeding annual meeting if there are two classes; or

(2) the third succeeding annual meeting if there are three classes.

(d) Unless provided by the certificate of formation or a bylaw adopted by shareholders, staggered terms for trust managers do not take effect until the next annual meeting of shareholders at which trust managers are elected. Staggered terms for trust managers may not be effected if any shareholder has the right to cumulate votes for the election of trust managers and the number of trust managers is fewer than nine trust managers.

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

Sec. 200.308. VACANCY. (a) Except as provided by Subsection (b), a vacancy occurring in the office of a trust manager of a real estate investment trust may be filled by the affirmative vote of the majority of the remaining trust managers, even if the majority of trust managers constitutes less than a quorum of the trust managers.

(b) The certificate of formation or bylaws of the real estate investment trust may provide an alternative procedure for filling a vacancy occurring in the office of a trust manager, including filling vacancies by simple majority or super majority votes of the shareholders.

(c) The term of a trust manager elected to fill a vacancy occurring in the office of a trust manager is the unexpired term of the trust manager's predecessor in office and until the trust manager's successor is elected and has qualified.

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

Sec. 200.309. NOTICE OF MEETING. (a) Regular meetings of the trust managers of a real estate investment trust may be held with or

without notice as prescribed by the real estate investment trust's bylaws.

(b) Special meetings of the trust managers 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.

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

Sec. 200.310. QUORUM. A quorum of the board of trust managers of a real estate investment trust is the majority of the number of trust managers unless the certificate of formation or bylaws require a greater number.

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

Sec. 200.311. COMMITTEES OF TRUST MANAGERS. (a) If authorized by the certificate of formation or bylaws, the trust managers of a real estate investment trust, by resolution adopted by a majority of the trust managers, may designate:

(1) committees composed of one or more trust managers; or

(2) trust managers as alternate committee members to replace absent or disqualified committee members at a committee meeting, subject to any limitations imposed by the trust managers.

(b) To the extent provided by the resolution designating a committee or the certificate of formation or bylaws and subject to Subsection (c), the committee has the authority of the trust managers.

(c) A committee of the trust managers may not:

(1) amend the certificate of formation, except to classify or reclassify shares in accordance with Section 200.103 if authorized by the resolution designating the committee, certificate of formation, or bylaws;

(2) propose a reduction of stated capital of the real estate investment trust;

(3) approve a plan of merger or share exchange of the real estate investment trust;

(4) recommend to shareholders the sale, lease, or exchange

of all or substantially all of the property and assets of the real estate investment trust 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 the real estate investment trust;

(6) amend, alter, or repeal the bylaws or adopt new bylaws;

(7) fill vacancies in the offices of the trust managers;

(8) fill vacancies in or designate alternate members of a committee of the trust managers;

(9) fill a vacancy to be filled because of an increase in the number of trust managers;

(10) elect or remove officers of the real estate investment trust or members or alternate members of a committee of the trust managers;

(11) set the compensation of the members or alternate members of a committee of the trust managers; or

(12) alter or repeal a resolution of the trust managers that states that it may not be amended or repealed.

(d) A committee of the trust managers may authorize a distribution or the issuance of shares if authorized by the resolution designating the committee or by the certificate of formation or bylaws.

(e) The designation of and delegation of authority to a committee of the trust managers does not relieve a trust manager of responsibility imposed by law.

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

Sec. 200.312. LIABILITY OF TRUST MANAGERS. (a) A trust manager of a real estate investment trust who votes for or assents to a distribution of assets made by the real estate investment trust to its shareholders during the liquidation of the real estate investment trust without the payment and discharge of or the making of adequate provision for the payment of all of the known debts, liabilities, and other obligations of the real estate investment trust is jointly and severally liable to the real estate investment trust for the value of the distributed assets to the extent the debts, liabilities, and other obligations are not paid and discharged.

(b) A trust manager of a real estate investment trust who votes

for or assents to the making of a loan to another trust manager or officer of the real estate investment trust or to the making of a loan secured by shares of the real estate investment trust is jointly and severally liable to the real estate investment trust for the loan amount until the loan is repaid.

(c) A trust manager is not jointly and severally liable under Subsection (a) if, in determining the amount available for the distribution, the trust manager, acting in good faith and with ordinary care:

(1) relied on information, opinions, reports, or statements in accordance with Section 3.102; or

(2) considered the assets of the real estate investment trust to be valued at least at book value.

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

Sec. 200.313. STATUTE OF LIMITATIONS ON CERTAIN ACTION AGAINST TRUST MANAGERS. An action may not be brought against a trust manager of a real estate investment trust under Section 200.312 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. 200.314. IMMUNITY FROM LIABILITY FOR PERFORMANCE OF DUTY. A trust manager of a real estate investment trust may not be held liable to the real estate investment trust for an act, omission, loss, damage, or expense arising from the performance of the trust manager's duties under the trust, except for liability arising from the wilful misfeasance, wilful malfeasance, or gross negligence of the trust manager.

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

Sec. 200.315. RIGHT OF CONTRIBUTION. A trust manager who is liable for a claim asserted under Section 200.312 is entitled to receive contribution from each of the other trust managers who are liable with respect to that claim in an amount appropriate to achieve

equity.

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

Sec. 200.316. OFFICERS. (a) An officer of a real estate investment trust designated by the trust managers under Section 3.103 may exercise all of the powers of a trust manager relating to the business and affairs of the real estate investment trust, unless action by the trust managers is specified by this code or another applicable law.

(b) A designation of or delegation of authority to an officer of a real estate investment trust described by this section does not relieve a trust manager of responsibility imposed by law.

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

Sec. 200.317. CONTRACTS OR TRANSACTIONS INVOLVING INTERESTED TRUST MANAGERS AND OFFICERS. (a) This section applies to a contract or transaction between a real estate investment trust and:

(1) one or more trust managers or officers, or one or more affiliates or associates of one or more directors or officers, of the trust; or

(2) an entity or other organization in which one or more trust managers or officers, or one or more affiliates or associates of one or more directors or officers, of the trust:

(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 trust managers or a committee of the trust managers, and the trust managers or committee of the trust managers in good faith authorize the contract or transaction by the approval of the majority of disinterested trust managers or committee members,

regardless of whether the disinterested trust managers 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 real estate investment trust when the contract or transaction is authorized, approved, or ratified by the trust managers, a committee of the trust managers, or the shareholders.

(c) Common or interested trust managers may be included in determining the presence of a quorum at a meeting of the trust managers, or a committee of the trust managers, 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 trust manager or committee member, may vote at a meeting of the trust managers, or of a committee of the trust managers, that authorizes the contract or transaction; or

(2) sign, in the person's capacity as a trust manager or committee member, a unanimous written consent of the trust managers or committee members to authorize the contract or transaction.

(e) If at least one of the conditions of Subsection (b) is satisfied, neither the trust nor any of the trust'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. 58, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 57, eff. September 1, 2011.

SUBCHAPTER H. INVESTMENTS

Sec. 200.351. INVESTMENTS. A trust manager or officer of a real estate investment trust has complete discretion with respect to the investment of the trust estate unless the investment is contrary to or inconsistent with:

(1) this chapter;

(2) a provision of the Internal Revenue Code relating to or governing real estate investment trusts; or

(3) regulations adopted under a provision of the Internal Revenue Code relating to or governing real estate investment trusts.

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

SUBCHAPTER I. FUNDAMENTAL BUSINESS TRANSACTIONS

Sec. 200.401. 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 real estate investment trust that is not made in the usual and regular course of the trust'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 real estate investment trust 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 real estate investment trust 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 real estate investment trust that are deposited with the depository.

(4) "Voting shares" means shares that entitle the holders of the shares to vote unconditionally in elections of trust managers.

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

Sec. 200.402. APPROVAL OF MERGER. (a) A real estate investment trust that is a party to the merger under Chapter 10 must approve the merger by complying with this section.

(b) The trust managers of the real estate investment trust 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 real estate investment trust; or

(B) directs that the plan of merger be submitted to the shareholders for approval without recommendation if the trust managers determine for any reason not to recommend approval of the plan of merger.

(c) Except as provided by this subchapter or Chapter 10, the plan of merger shall be submitted to the shareholders of the real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the plan of merger to the shareholders.

(d) If the trust managers approve a plan of merger required to be approved by the shareholders of the real estate investment trust but do not adopt a resolution recommending that the plan of merger be approved by the shareholders, the trust managers shall communicate to the shareholders the reason for the trust managers' determination to submit the plan of merger without a recommendation.

(e) Except as provided by Chapter 10 or Sections 200.407-200.409, the shareholders of the real estate investment trust shall approve the plan of merger as provided by this subchapter.

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

Sec. 200.403. APPROVAL OF CONVERSION. (a) A real estate investment trust must approve a conversion under Chapter 10 by complying with this section.

(b) The trust managers of the real estate investment trust 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 real estate investment trust; or

(2) directs that the plan of conversion be submitted to the

shareholders for approval without recommendation if the trust managers determine 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 real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the plan of conversion to the shareholders.

(d) If the trust managers approve a plan of conversion but do not adopt a resolution recommending that the plan of conversion be approved by the shareholders of the real estate investment trust, the trust managers shall communicate to the shareholders the reason for the trust managers' determination to submit the plan of conversion without a recommendation.

(e) Except as provided by Sections 200.407-200.409, the shareholders of the real estate investment trust must approve the plan of conversion as provided by this subchapter.

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

Sec. 200.404. APPROVAL OF EXCHANGE. (a) A real estate investment trust 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 trust managers 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 real estate investment trust; or

(2) directs that the plan of exchange be submitted to the shareholders for approval without recommendation if the trust managers determine 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 real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the plan of exchange to the shareholders.

(d) If the trust managers approve a plan of exchange but do not adopt a resolution recommending that the plan of exchange be approved by the shareholders of the real estate investment trust, the trust managers shall communicate to the shareholders the reason for the

trust managers' determination to submit the plan of exchange to shareholders without a recommendation.

(e) Except as provided by Sections 200.407-200.409, the shareholders of the real estate investment trust shall approve the plan of exchange as provided by this subchapter.

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

Sec. 200.405. APPROVAL OF SALE OF ALL OR SUBSTANTIALLY ALL OF ASSETS. (a) Except as provided by the certificate of formation of a domestic real estate investment trust, a sale, lease, pledge, mortgage, assignment, transfer, or other conveyance of an interest in real property or other assets of the real estate investment trust does not require the approval or consent of the shareholders of the real estate investment trust unless the transaction constitutes a sale of all or substantially all of the assets of the real estate investment trust.

(b) A real estate investment trust must approve the sale of all or substantially all of its assets by complying with this section.

(c) The trust managers of the real estate investment trust shall adopt a resolution that approves the sale of all or substantially all of the assets of the real estate investment trust and:

(1) recommends that the sale of all or substantially all of the assets of the real estate investment trust be approved by the shareholders of the real estate investment trust; or

(2) directs that the sale of all or substantially all of the assets of the real estate investment trust be submitted to the shareholders for approval without recommendation if the trust managers determine for any reason not to recommend approval of the sale.

(d) The sale of all or substantially all of the assets of the real estate investment trust shall be submitted to the shareholders of the real estate investment trust for approval as provided by this subchapter. The trust managers may place conditions on the submission of the proposed sale to the shareholders.

(e) If the trust managers approve the sale of all or substantially all of the assets of the real estate investment trust but do not adopt a resolution recommending that the proposed sale be

approved by the shareholders of the real estate investment trust, the trust managers shall communicate to the shareholders the reason for the trust managers' determination to submit the proposed sale to shareholders without a recommendation.

(f) The shareholders of the real estate investment trust shall approve the sale of all or substantially all of the assets of the real estate investment trust as provided by this subchapter.

(g) After the approval of the sale by the shareholders, the trust managers may abandon the sale of all or substantially all of the assets of the real estate investment trust, 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. 200.406. GENERAL PROCEDURE FOR SUBMISSION TO SHAREHOLDERS OF FUNDAMENTAL BUSINESS TRANSACTION. (a) If a fundamental business transaction involving a real estate investment trust is required to be submitted to the shareholders of the real estate investment trust under this subchapter, the real estate investment trust shall notify each shareholder of the real estate investment trust 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. 200.407. GENERAL VOTE REQUIREMENT FOR APPROVAL OF

FUNDAMENTAL BUSINESS TRANSACTION. (a) Except as provided by this code or the certificate of formation or bylaws of a real estate investment trust in accordance with Section 200.261, the affirmative vote of the holders of at least two-thirds of the outstanding shares of the real estate investment trust entitled to vote on a fundamental business transaction is required to approve the transaction.

(b) Unless provided by the certificate of formation or Section 200.408, shares of a class or series that are not otherwise entitled to vote on matters submitted to shareholders generally will not be 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 real estate investment trust 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.

(d) Unless required by the certificate of formation, approval of a merger by shareholders is not required under this code for a real estate investment trust that is a party to the plan of merger unless that real estate investment trust is also a party to the merger.

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

Sec. 200.408. CLASS VOTING REQUIREMENTS FOR CERTAIN FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Separate voting by a class or series of shares of a real estate investment trust is required for approval of a plan of merger or conversion if:

(1) the plan of merger or conversion contains a provision that would require approval by that class or series of shares under Section 200.262 if the provision was contained in a proposed amendment to the real estate investment trust's certificate of formation; or

(2) 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 real estate investment trust 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 real estate investment trust is required for approval of a sale of all or substantially all of the assets of the real estate investment trust 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 real estate investment trust's assets.

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

Sec. 200.409. NO SHAREHOLDER VOTE REQUIREMENT FOR CERTAIN FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Unless required by the real estate investment trust's certificate of formation, a plan of merger is not required to be approved by the shareholders of a real estate investment trust if:

(1) the real estate investment trust is the sole surviving real estate investment trust in the merger;

(2) the certificate of formation of the real estate investment trust following the merger will not differ from the real estate investment trust's certificate of formation before the merger;

(3) immediately after the effective date of the merger, each shareholder of the real estate investment trust 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 real estate investment trust 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 real estate investment trust 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 real estate investment trust.

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

Sec. 200.410. RIGHTS OF DISSENT AND APPRAISAL. A shareholder of a domestic real estate investment trust 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.

SUBCHAPTER J. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

Sec. 200.451. APPROVAL OF VOLUNTARY WINDING UP. A real estate investment trust must approve a voluntary winding up under Chapter 11 by the affirmative vote of the shareholders in accordance with Section 200.261.

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

Sec. 200.452. APPROVAL OF REINSTATEMENT, CANCELLATION, OR REVOCATION OF VOLUNTARY WINDING UP. A real estate investment trust may reinstate its existence under Section 11.202, revoke a voluntary decision to wind up under Section 11.151, or cancel an event requiring winding up under Section 11.152 by the affirmative vote of the shareholders in accordance with Section 200.261.

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

Sec. 200.453. RESPONSIBILITY FOR WINDING UP. If a real estate

investment trust determines or is required to wind up, the trust managers shall manage the winding up of the business or affairs of the real estate investment trust.

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

SUBCHAPTER K. MISCELLANEOUS PROVISIONS

Sec. 200.501. EXAMINATION OF RECORDS. (a) On written demand stating a proper purpose, a shareholder of record of a real estate investment trust for at least six months immediately preceding the shareholder's demand, or a holder of record of at least five percent of all of the outstanding shares of a real estate investment trust, is entitled to examine and copy, at a reasonable time, the real estate investment trust's relevant books and records of account, minutes, and share transfer records. The examination may be conducted in person or through an agent or attorney.

(b) This section does not impair the power of a court, on the presentation of proof of proper purpose by a shareholder, to compel the production for examination by the shareholder of the books and records of account, minutes, and share transfer records of a real estate investment trust, regardless of the period during which the shareholder was a 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.

Sec. 200.502. JOINDER OF SHAREHOLDERS NOT REQUIRED. The joinder of shareholders of a real estate investment trust is not required for any sale, lease, mortgage, or other disposition of all or part of the assets of the real estate investment trust.

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

Sec. 200.503. TAX LAW REQUIREMENTS. In connection with a real estate investment trust qualifying or attempting to qualify as a real estate investment trust under the Internal Revenue Code and the regulations adopted under the Internal Revenue Code, a provision of this chapter is subject to the provisions of the Internal Revenue

Code or the regulations relating to or governing real estate investment trusts adopted under those provisions if:

(1) the provision of this chapter is contrary to or inconsistent with the federal provisions or regulations;

(2) the federal provisions or regulations require a real estate investment trust to take any action required to secure or maintain its status as a real estate investment trust under the federal provisions or regulations; or

(3) the federal provisions or regulations prohibit the real estate investment trust from taking any action required to secure or maintain its status as a real estate investment trust under the federal provision or regulation.

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

TITLE 6. ASSOCIATIONS
CHAPTER 251. COOPERATIVE ASSOCIATIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. DEFINITIONS. In this chapter:

(1) "Cooperative basis" means that net savings, after payment of any investment dividends or after provision for separate funds has been made as required or authorized by law, the certificate of formation, or bylaws, are:

(A) allocated or distributed to a member patron or to each patron in proportion to patronage; or

(B) retained by the entity for:

(i) actual or potential expansion of the entity's services;

(ii) the reduction of charges to patrons; or

(iii) any other purpose consistent with the entity's nonprofit character.

(2) "Invested capital" means funds invested in a cooperative association by an investor with the expectation of receiving an investment dividend.

(3) "Investment dividend" means the return on invested capital or on membership capital derived from the net savings of the cooperative association.

(4) "Membership capital" means the funds of a cooperative association derived from members of the cooperative association

generally as a requirement of membership or in lieu of patronage dividends. The term does not include deposits or loans from members.

(5) "Net savings" means the total income of a cooperative association less the costs of operation.

(6) "Patronage dividend" means a share of the net savings distributed among members of the cooperative association on the basis of patronage, as provided by the certificate of formation.

(7) "Savings returns" means the amount returned by a cooperative association to patrons of a cooperative association in proportion to patronage or otherwise.

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

Sec. 251.002. APPLICABILITY OF NONPROFIT CORPORATION PROVISIONS. (a) A provision of Title 1 and Chapters 20 and 22 governing nonprofit corporations applies to a cooperative association.

(b) Notwithstanding Subsection (a), this chapter controls over any conflicting provision of Title 1 and Chapters 20 and 22 governing nonprofit corporations.

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

Sec. 251.003. EXEMPTION. This chapter does not apply to a corporation or association organized on a cooperative basis under a statute of this state other than this chapter unless that other statute specifically states that this chapter does apply.

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

SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

Sec. 251.051. ORGANIZATION MEETING. After a cooperative association's certificate of formation is filed, the cooperative association shall hold an organization meeting in accordance with Section 22.104.

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

Sec. 251.052. AMENDMENT OF CERTIFICATE OF FORMATION. (a) The board of directors of a cooperative association may propose an amendment to the cooperative association's certificate of formation by a two-thirds vote of the board members. The members of a cooperative association may petition to amend the certificate of formation as provided by the bylaws.

(b) Not later than the 31st day before the date of the meeting, the secretary shall:

(1) send notice of a meeting to consider a proposed amendment to each member of the cooperative association at the member's last known address; or

(2) post notice of a meeting to consider a proposed amendment in a conspicuous place in all principal places of activity of the cooperative association.

(c) The notice required by Subsection (b) must include the full text of the proposed amendment and the text of the part of the certificate of formation to be amended.

(d) To be approved, an amendment must be adopted by the affirmative vote of two-thirds of the members voting on the amendment.

(e) Not later than the 30th day after the date an amendment is adopted by the members of a cooperative association, the cooperative association shall file a certificate of amendment with the secretary of state in accordance with Chapter 4. The certificate of amendment must be:

(1) signed by an authorized officer of the cooperative association; and

(2) in the form required by Section 3.052.

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

Sec. 251.053. BYLAWS. (a) Unless the certificate of formation or bylaws of a cooperative association require a greater majority, the bylaws may be adopted, amended, or repealed by a majority vote of the cooperative association's members voting on the matter.

(b) Except as provided by this code, the bylaws may contain:

(1) requirements for admission to membership;

(2) requirements for disposal of a member's interest on cessation of membership;

(3) the time, place, and manner of calling and conducting meetings;

(4) the number or percentage of the members constituting a quorum;

(5) the number, qualifications, powers, duties, and term of directors and officers;

(6) the method of electing, removing, and filling a vacancy of directors and officers;

(7) the division or classification, if any, of directors to provide for staggered terms;

(8) the compensation, if any, of the directors;

(9) the number of directors necessary to constitute a quorum;

(10) the method for distributing the net savings;

(11) a requirement that each officer or employee of the cooperative association who handles funds or securities be bonded;

(12) other discretionary provisions of this chapter, Title 1, and Chapters 20 and 22; and

(13) any other provision incident to a purpose or activity of the cooperative association.

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

Sec. 251.054. RESTATED CERTIFICATE OF FORMATION. (a) The board of directors of a cooperative association may adopt a restated certificate of formation as provided by Subchapter B, Chapter 3, by following the procedure to amend the association's certificate of formation provided by Section 251.052, except that member approval is required if the restated certificate of formation contains an amendment.

(b) A person shall file a restated certificate of formation as provided by Chapter 4, and the restated certificate of formation takes effect as provided by Subchapter B, Chapter 3.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 96, eff. January 1, 2006.

SUBCHAPTER C. MANAGEMENT

Sec. 251.101. BOARD OF DIRECTORS. (a) Except as provided by

Subsections (b) and (c), a cooperative association is managed by a board of directors in accordance with Chapter 22.

(b) The board shall contain at least five directors elected by and from the cooperative association's members. A director:

(1) serves a term not to exceed three years as provided by the bylaws; and

(2) holds office until the director is removed or the director's successor is elected.

(c) The bylaws of a cooperative association may:

(1) apportion the number of directors among the units into which the cooperative association may be divided; and

(2) provide for the election of the directors by the respective units to which the directors are apportioned.

(d) An executive committee of the board of directors may be elected in the manner and with the powers and duties specified by the certificate of formation or bylaws.

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

Sec. 251.102. OFFICERS. (a) The directors of a cooperative association shall annually elect, unless otherwise provided by the bylaws, the following officers for the cooperative association:

(1) a president;

(2) one or more vice presidents; and

(3) a secretary and treasurer or a secretary-treasurer.

(b) Any two or more offices, other than the offices of president and secretary, may be held by the same person.

(c) The officers of a cooperative association may be designated by other titles as provided by the certificate of formation or the bylaws of the cooperative association.

(d) A committee duly designated by the board of directors may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary.

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

Sec. 251.103. REMOVAL OF DIRECTORS AND OFFICERS. (a) A director or officer of a cooperative association may be removed from

office in the manner provided by the certificate of formation or bylaws of the cooperative association.

(b) If the certificate of formation or bylaws do not provide for the person's removal, a director or officer may be removed with cause by a vote of a majority of the members voting at a regular or special meeting. The director or officer who is to be removed is entitled to be heard at the meeting.

(c) Except as provided by the certificate of formation or bylaws, a vacancy on the board of directors caused by removal shall be filled by a director elected in the same manner provided by the bylaws for the election of directors.

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

Sec. 251.104. REFERENDUM. (a) The certificate of formation or bylaws of a cooperative association may provide for a referendum on any action undertaken by the cooperative association's board of directors if the referendum is:

(1) requested by petition of 10 percent or more of all of the members of the cooperative association; or

(2) requested and approved by the vote of at least a majority of the directors of the cooperative association.

(b) The proposition to be voted on in a referendum authorized under Subsection (a) must be submitted to the members of the cooperative association for consideration within the time specified in the document authorizing the referendum.

(c) A right of a third party that has vested between the time of the action and the time of the referendum is not impaired by the referendum results.

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

SUBCHAPTER D. MEMBERSHIP

Sec. 251.151. ELIGIBILITY AND ADMISSION. A person, an unincorporated group or other person organized on a cooperative basis, or a nonprofit group may be admitted to membership in a cooperative association only if the person meets the qualifications for eligibility stated in the certificate of formation or bylaws of the cooperative association.

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

Sec. 251.152. EXPULSION. (a) A member of a cooperative association may be expelled by the vote of a majority of the cooperative association's members voting at a regular or special meeting.

(b) Not later than the 11th day before the date of the meeting, the cooperative association shall give the member written notice of the charges. The member is entitled to be heard at the meeting in person or by counsel.

(c) If the cooperative association votes to expel a member, the cooperative association's board of directors shall cause the cooperative association to purchase the member's capital holdings at par value if the purchase does not jeopardize the cooperative association's solvency.

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

Sec. 251.153. SUBSCRIBERS. (a) A person is a subscriber of a cooperative association only if the person is:

(1) eligible for membership in the cooperative association under Section 251.151; and

(2) legally obligated to purchase a share or membership in the cooperative association.

(b) The certificate of formation or bylaws of a cooperative association may state whether and the conditions under which voting rights or other membership rights are granted to a subscriber of the cooperative association.

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

Sec. 251.154. LIABILITY. (a) Except as provided by Subsection (b), a member or subscriber of a cooperative association is not jointly or severally liable for a debt of the cooperative association. A subscriber is liable for any unpaid amount on the subscriber's membership certificates or invested capital certificates.

(b) A subscriber who assigns the subscriber's interest in

membership certificates or invested capital certificates is jointly and severally liable with the assignee until the appropriate certificates are fully paid.

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

SUBCHAPTER E. SHARES

Sec. 251.201. SHARE AND MEMBERSHIP CERTIFICATES: ISSUANCE AND CONTENTS. (a) A cooperative association may not issue a certificate for membership capital or for invested capital until any par value of the certificate has been paid in full.

(b) Each certificate for membership capital issued by a cooperative association must contain a statement of the requirements of Sections 251.202(a) and (b), 251.254, and 251.255.

(c) Each certificate for invested capital issued by a cooperative association must contain a statement of the restrictions on transferability as provided by the cooperative association's bylaws.

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

Sec. 251.202. TRANSFER OF SHARES AND MEMBERSHIP; WITHDRAWAL. (a) A member who decides to withdraw from a cooperative association shall make a written offer to sell the member's membership certificates to the cooperative association's board of directors.

(b) Not later than the 90th day after the date the directors receive an offer under Subsection (a), the directors may cause the cooperative association to purchase the holdings by paying the member the par value of the certificates and the directors shall cause the cooperative association to reissue or cancel the shares after purchasing the holdings. The directors shall cause the cooperative association to purchase the shares if a majority of the cooperative association's members voting at a regular or special meeting vote to require the purchase.

(c) An investor owning investor certificates must sell, assign, or convey the certificates in accordance with the cooperative association's bylaws. If an investor fails to sell, assign, or convey investor certificates in accordance with the bylaws, the cooperative association on written notice to its directors shall

repurchase the certificates by paying the investor the par value of the certificate plus all accrued investment dividends. The certificates must be repurchased not later than the 90th day after the date the cooperative association receives notice of the failure.

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

Sec. 251.203. SHARE AND MEMBERSHIP CERTIFICATES; RECALL. (a) The bylaws of a cooperative association may authorize the cooperative association's board of directors to recall during a specified time and in accordance with the bylaws the membership certificates of a member who fails to patronize the cooperative association. The board may use the reserve funds to recall, at par value, the membership certificates of any member in excess of the amount required for membership.

(b) After the board of directors of a cooperative association recalls a membership certificate under Subsection (a), membership in the cooperative association is terminated and the board shall cause the cooperative association to reissue or cancel the certificate. The board of directors may not recall membership certificates if recalling the certificates would jeopardize the cooperative association's solvency.

(c) The board of directors may use the reserve funds to recall and repurchase the investment certificates of an investor at par value plus any investment dividends due.

(d) The bylaws of a cooperative association may establish specific procedures, terms, and conditions for recalls and repurchases of investment certificates.

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

Sec. 251.204. CERTIFICATES; ATTACHMENT. The minimum amount necessary for membership in a cooperative association, not to exceed $50, is exempt from attachment, execution, or garnishment for the debts of a member of a cooperative association. If a member's holdings are subject to attachment, execution, or garnishment, the directors of the cooperative association may admit the purchaser to membership or may purchase the holdings at par value.

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

SUBCHAPTER F. MEETINGS AND VOTING

Sec. 251.251. MEETINGS. (a) Regular meetings of members of a cooperative association shall be held at least once a year as prescribed by the cooperative association's bylaws.

(b) A special meeting of the members of a cooperative association may be requested by a majority vote of the directors or by written petition of at least one-tenth of the membership of the cooperative association. The secretary shall call a special meeting to be held 30 days after receipt of the request for a special meeting.

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

Sec. 251.252. NOTICE OF SPECIAL MEETING. The notice of a special meeting of the members of a cooperative association shall state the purpose of the meeting.

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

Sec. 251.253. MEETINGS BY UNITS OF MEMBERSHIP. (a) The certificate of formation or bylaws of a cooperative association may provide for the holding of meetings by units of the membership of the cooperative association and may provide for:

(1) a method of transmitting the votes cast at unit meetings to the central meeting;

(2) a method of representation of units of the membership by the election of delegates to the central meeting; or

(3) a combination of both methods.

(b) Except as otherwise provided by the certificate of formation or bylaws, a meeting by a unit of the membership shall be called and held in the same manner as a regular meeting of the members.

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

Sec. 251.254. ONE MEMBER--ONE VOTE. (a) Except as provided by Subsection (b), a member of a cooperative association has one vote.

(b) If a cooperative association includes among its membership another cooperative association or a group that is organized on a cooperative basis, the voting rights of the cooperative association member or group member may be prescribed by the certificate of formation or bylaws of the cooperative association.

(c) Any voting agreement or other device that is made to evade the one-member-one-vote rule is not enforceable.

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

Sec. 251.255. NO PROXY. A member is not entitled to vote by proxy.

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

Sec. 251.256. VOTING BY MAIL. (a) The certificate of formation or bylaws of a cooperative association may contain the procedures in Subsection (b) or (c), or both, for voting by mail.

(b) With notice of a meeting sent to members of the cooperative association, the secretary may include a copy of a proposal to be offered at the meeting. If a mail vote is returned to the cooperative association within the specified number of days, the mail vote shall be counted with the votes cast at the meeting.

(c) The secretary may send to a member of the cooperative association who is absent from a meeting an exact copy of the proposal considered at the meeting. If the vote is returned to the cooperative association within the specified number of days, the mail vote is counted with the votes cast at the meeting.

(d) The certificate of formation or bylaws may state whether and to what extent mail votes are counted in computing a quorum.

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

Sec. 251.257. VOTING BY MAIL OR BY DELEGATES. (a) If a cooperative association has provided for voting by mail or by delegates, a provision of this chapter referring to votes cast by

members of the cooperative association applies to votes cast by mail or by delegates.

(b) A delegate may not vote by mail.

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

SUBCHAPTER G. CAPITAL AND NET SAVINGS

Sec. 251.301. LIMITATIONS ON RETURN ON CAPITAL. (a) Except as otherwise provided by the cooperative association's bylaws, an investment dividend of a cooperative association may not be cumulative and may not exceed eight percent of investment capital.

(b) Total investment dividends distributed for a fiscal year may not exceed 50 percent of the net savings for the period.

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

Sec. 251.302. ALLOCATION AND DISTRIBUTION OF NET SAVINGS. (a) At least once each year the members or directors of a cooperative association, as provided by the certificate of formation or bylaws of the cooperative association, shall apportion the net savings of the cooperative association in the following order:

(1) subject to Section 251.301, investment dividends payable from the surplus of the total assets over total liabilities may be paid on invested capital or, if authorized by the bylaws, may be paid on the membership certificates;

(2) a portion of the remainder, as determined by the certificate of formation or bylaws, may be allocated to an educational fund to be used in teaching cooperation;

(3) a portion of the remainder may be allocated to funds for the general welfare of the members of the cooperative association;

(4) a portion of the remainder may be allocated to retained earnings; and

(5) the remainder shall be allocated at the same uniform rate to each patron of the cooperative association in proportion to individual patronage as follows:

(A) for a member patron, the proportionate amount of savings return distributed to the member may be any combination of cash, property, membership certificates, or investment certificates;

and

(B) for a subscriber patron, the patron's proportionate amount of savings returns as provided by the certificate of formation or bylaws may be distributed to the subscriber patron or credited to the subscriber patron's account until the amount of capital subscribed for has been fully paid.

(b) This section does not prevent a cooperative association engaged in rendering services from disposing of the net savings from the rendering of services in a manner that lowers the fees charged for services or furthers the common benefit of the members.

(c) A cooperative association may adopt a system in which:

(1) the payment of savings returns that would otherwise be distributed are deferred for a fixed period; or

(2) the savings returns distributed are partly in cash or partly in shares, to be retired at a fixed future date, in the order of the shares' serial numbers or issuance dates.

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

SUBCHAPTER H. REPORTS AND RECORDS

Sec. 251.351. RECORDKEEPING. A cooperative association shall keep books and records relating to the cooperative association's business operation in accordance with standard accounting practices.

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

Sec. 251.352. REPORTS TO MEMBERS. (a) A cooperative association shall submit a written report to its members at the annual meeting of the cooperative association. The annual report must contain:

(1) a balance sheet;

(2) an income and expense statement;

(3) the amount and nature of the cooperative association's authorized, subscribed, and paid-in capital;

(4) the total number of shareholders;

(5) the number of shareholders who were admitted to or withdrew from the association during the year;

(6) the par value of the association's shares;

(7) the rate at which any investment dividends have been

paid; and

(8) if the cooperative association does not issue shares:

(A) the total number of members;

(B) the number of members who were admitted to or withdrew from the association during the year; and

(C) the amount of membership fees received.

(b) The directors shall appoint a committee composed of members who are not principal bookkeepers, accountants, or employees of the cooperative association to review the cooperative association.

(c) The committee appointed under Subsection (b) shall report on the quality of the annual report required by this section and the bookkeeping system of the cooperative association at the annual meeting.

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

Sec. 251.353. ANNUAL REPORT OF FINANCIAL CONDITION. (a) This section applies only to a cooperative association that has at least 100 members or at least $20,000 in annual business.

(b) Not later than the 120th day after the date on which the association closes its business each year, a cooperative association shall file in the association's registered office a report of the association's financial condition stating:

(1) the name of the association;

(2) the address of the association's principal office;

(3) the name, address, occupation, and date of expiration of the term of office of each officer and director;

(4) any compensation paid by the association to each officer or director of the association;

(5) the amount and nature of the authorized, subscribed, and paid-in capital;

(6) the total number of shareholders;

(7) the number of shareholders who were admitted to or withdrew from the association during the year;

(8) the par value of the association's shares;

(9) the rate at which any investment dividends have been paid; and

(10) if the association has no shares:

(A) the total number of members;

(B) the number of members who were admitted to or withdrew from the association during the year; and

(C) the amount of membership fees received.

(c) The report required by Subsection (b) must:

(1) include a balance sheet and income and expense statement of the cooperative association; and

(2) be signed by the president and secretary.

(d) A cooperative association that has at least 3,000 members or at least $750,000 in annual business shall file a copy of the report required by this section with the secretary of state.

(e) A person commits an offense if the person signs a report that is required by this section and contains a materially false statement that the person knows is false. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than $25 or more than $200;

(2) confinement in county jail for a term of not less than 30 days or more than one year; or

(3) both the fine and confinement.

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

Sec. 251.354. FAILURE TO FILE REPORT. (a) If a cooperative association required by Section 251.353 to file a copy of a report with the secretary of state does not file the report within the prescribed time, the secretary of state shall send written notice of the requirement to the cooperative association at the cooperative association's principal office not later than the 60th day after the date the report becomes due.

(b) If a cooperative association required by Section 251.353 to file a report at the cooperative association's registered office, but not with the secretary of state, fails to file the report within the prescribed time, the secretary of state or any member of the cooperative association may send written notice of the requirement to the cooperative association's principal office.

(c) If the cooperative association does not file the report before the 61st day after the date notice is sent under Subsection (a) or (b), a member of the cooperative association or the attorney general may seek a writ of mandamus against the cooperative association and the appropriate officer or officers to compel the

filing of the report. The court shall require the cooperative association or the officer who is determined to be at fault to pay the expenses of the proceeding, including attorney's fees.

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. 32, eff. September 1, 2017.

SUBCHAPTER I. WINDING UP AND TERMINATION

Sec. 251.401. VOLUNTARY WINDING UP AND TERMINATION. (a) A cooperative association may wind up and terminate its affairs in accordance with Chapter 11 and Sections 22.301-22.303.

(b) If a cooperative association is directed to wind up and liquidate its affairs, three members of the cooperative association elected by a vote of at least a majority of the members voting shall be designated as trustees on behalf of the cooperative association to:

(1) pay debts;

(2) liquidate the cooperative association's assets within the time set in the trustees' designation or any extension of time; and

(3) distribute the cooperative association's assets in the manner provided by Section 251.403.

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

Sec. 251.402. EXECUTION OF CERTIFICATE OF TERMINATION. An officer of a cooperative association or one or more of the persons designated as a liquidating trustee under Section 251.401 shall execute the certificate of termination on behalf of the cooperative association.

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

Sec. 251.403. DISTRIBUTION OF ASSETS. Subject to Sections 11.052 and 11.053(a), the trustees designated under Section 251.401 shall distribute the cooperative association's assets in the

following order:

(1) by returning the par value of the investors' capital to investors;

(2) by returning the amounts paid on subscriptions to subscribers for invested capital;

(3) by returning the amount of patronage dividends credited to patrons' accounts to the patrons;

(4) by returning to members their membership capital; and

(5) by distributing any surplus in the manner provided by the certificate of formation:

(A) among the patrons who have been members or subscribers of the cooperative association during the six years preceding the date of termination, on the basis of patronage during that period;

(B) as a gift to any cooperative association or other nonprofit enterprise designated in the certificate of formation; or

(C) by a combination of both methods of distribution.

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. 133, eff. September 1, 2007.

Sec. 251.404. INVOLUNTARY TERMINATION. A suit for involuntary termination of a cooperative association organized under this chapter may be instituted for the causes and prosecuted in the manner provided by Chapter 11. The assets of a cooperative association that is involuntarily terminated shall be distributed in accordance with Section 251.403.

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

SUBCHAPTER J. MISCELLANEOUS PROVISIONS

Sec. 251.451. EXEMPTION FROM TAXES. A cooperative association organized under this chapter is exempt from the franchise tax and license fees imposed by the state or a political subdivision of the state, except that a cooperative association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the cooperative association is exempt under that chapter.

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

Sec. 251.452. USE OF NAME "COOPERATIVE." (a) Only a cooperative association governed by this chapter, a group organized on a cooperative basis under another law of this state, or a foreign entity operating on a cooperative basis and authorized to do business in this state may use the term "cooperative" or any abbreviation or derivation of the term "cooperative" as part of its business name or represent itself, in advertising or otherwise, as conducting business on a cooperative basis.

(b) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not less than $25 or more than $200 for the first month in which the violation occurs;

(2) a fine of not more than $200 for each month during which a violation occurs after the first month;

(3) confinement in the county jail for not less than 30 days or more than one year; or

(4) a combination of those punishments.

(c) The attorney general may sue to enjoin a violation of this section.

(d) If a court renders a judgment that a person who used the term "cooperative" before September 1, 1975, is not organized on a cooperative basis but is authorized to continue to use the term, the business shall place immediately after its name the words "does not comply with the cooperative association law of Texas" in the same kind of type and in letters not less than two-thirds the size of the letters used in the word "cooperative."

(e) Notwithstanding this section, The University Cooperative Society, a domestic nonprofit corporation related to The University of Texas, may continue to use the word "cooperative" in its name.

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

CHAPTER 252. UNINCORPORATED NONPROFIT ASSOCIATIONS

Sec. 252.001. DEFINITIONS. In this chapter:

(1) "Member" means a person who, under the rules or

practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust, consisting of three or more members joined by mutual consent for a common, nonprofit purpose. A form of joint tenancy, tenancy in common, or tenancy by the entirety does not by itself establish a nonprofit association, regardless of whether the co-owners share use of the property for a nonprofit purpose.

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

Sec. 252.002. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW AND EQUITY. Principles of law and equity supplement this chapter unless displaced by a particular provision of this chapter.

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

Sec. 252.003. TERRITORIAL APPLICATION. Real and personal property in this state may be acquired, held, encumbered, and transferred by a nonprofit association, regardless of whether the nonprofit association or a member has any other relationship to this state.

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

Sec. 252.004. REAL AND PERSONAL PROPERTY; NONPROFIT ASSOCIATION AS BENEFICIARY. (a) A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(b) A nonprofit association may be a beneficiary of a trust, contract, or will.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.005. STATEMENT OF AUTHORITY AS TO REAL PROPERTY. (a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the county clerk's office in the county in which a transfer of the property would be recorded.

(c) A statement of authority must contain:

(1) the name of the nonprofit association;

(2) the address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(3) the name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(d) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(e) The county clerk may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is canceled by operation of law on the fifth anniversary of the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the county clerk's office of the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a person who gives value without notice that the person lacks authority.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.006. LIABILITY IN TORT AND CONTRACT. (a) A nonprofit

association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

(b) A person is not liable for a breach of a nonprofit association's contract or for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.

(c) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.

(d) A member of, or a person considered as a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered as a member by the nonprofit association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.007. CAPACITY TO ASSERT AND DEFEND; STANDING. (a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of members of the nonprofit association if:

(1) one or more of the nonprofit association's members have standing to assert a claim in their own right;

(2) the interests the nonprofit association seeks to protect are germane to its purposes; and

(3) neither the claim asserted nor the relief requested requires the participation of a member.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.008. EFFECT OF JUDGMENT OR ORDER. A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person considered as a member by the nonprofit association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.009. DISPOSITION OF PERSONAL PROPERTY OF INACTIVE NONPROFIT ASSOCIATION. (a) If a nonprofit association has been inactive for three years or longer, or a shorter period as specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer the custody of the property:

(1) if a document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) if no person is specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

(b) Notwithstanding the above, if a nonprofit association is classified under the Internal Revenue Code as a 501(c)(3) organization or is or holds itself out to be established or operating for a charitable, religious, or educational purpose, as defined by Section 501(c)(3), Internal Revenue Code, then any distribution must be made to another nonprofit association or nonprofit corporation with similar charitable, religious, or educational purposes.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.010. BOOKS AND RECORDS. (a) A nonprofit association shall keep correct and complete books and records of account for at least three years after the end of each fiscal year and shall make the books and records available on request to members of the association for inspection and copying.

(b) The attorney general may inspect, examine, and make copies of the books, records, and other documents the attorney general considers necessary and may investigate the association to determine if a violation of any law of this state has occurred.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.011. APPOINTMENT OF AGENT TO RECEIVE SERVICE OF PROCESS. (a) A nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must contain:

(1) the name of the nonprofit association;

(2) the federal taxpayer identification number of the nonprofit association, if applicable;

(3) the address in this state, including the street address, if any, of the nonprofit association or, if the nonprofit association does not have an address in this state, its address out of state; and

(4) the name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed by a person authorized to manage the affairs of the nonprofit association. The statement must also be signed by the person appointed agent, who by signing accepts the appointment. The appointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the nonprofit association.

(d) The secretary of state may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

(e) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

(f) A statement appointing an agent may be canceled by filing with the secretary of state a written notice of cancellation executed by a person authorized to manage the affairs of the nonprofit association. A notice of cancellation must contain:

(1) the name of the nonprofit association;

(2) the federal taxpayer identification number of the nonprofit association, if applicable;

(3) the date of filing of the nonprofit association's statement appointing the agent; and

(4) a current street address, if any, of the nonprofit association in this state or, if the nonprofit association does not have an address in this state, its address out of state.

(g) The secretary of state may adopt forms and procedural rules for filing documents under this section.

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. 58, eff. September 1, 2011.

Sec. 252.012. CLAIM NOT ABATED BY CHANGE. A claim for relief against a nonprofit association does not abate merely because of a change in the members or persons authorized to manage the affairs of the nonprofit association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.013. SUMMONS AND COMPLAINT; SERVICE. (a) In an action or proceeding against a nonprofit association, a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, a managing or general agent, or a person authorized to participate in the management of its affairs, in accordance with the Civil Practice and Remedies Code.

(b) Not later than the 10th day after the date of a request by the attorney general to an officer or board member of a nonprofit association or to the nonprofit association, the nonprofit association shall provide to the attorney general the names, current addresses, and telephone numbers of:

(1) each agent authorized to receive service of process on behalf of the nonprofit association; and

(2) each officer, managing or general agent, and other person authorized to participate in the management of the affairs of the nonprofit association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.014. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This

chapter shall be applied and construed to make uniform the law with respect to the subject of this chapter among states enacting it.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.015. TRANSITION CONCERNING REAL AND PERSONAL PROPERTY. If, before September 1, 1995, an estate or interest in real or personal property was by the terms of the transfer purportedly transferred to a nonprofit association, but under the law the estate or interest was vested in a fiduciary such as officers of the nonprofit association to hold the estate or interest for members of the nonprofit association, on or after September 1, 1995, the fiduciary may transfer the estate or interest to the nonprofit association in its name, or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.016. EFFECT ON OTHER LAW. This chapter replaces existing law with respect to matters covered by this chapter but does not affect other law covering unincorporated nonprofit associations.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 252.017. CHAPTER CONTROLLING. (a) Except as provided by Subsection (b), the only provisions of this code that apply to or govern a nonprofit association are the provisions of this chapter.

(b) Chapters 1, 4, and 10 and, if a nonprofit association designates an agent for service of process, Subchapter E, Chapter 5, apply to a nonprofit association.

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. 33, eff. September 1, 2017.

Sec. 252.018. MERGERS AND CONVERSIONS. A nonprofit association may effect a merger or conversion by complying with the applicable provisions of Chapter 10 and the nonprofit association's governing documents.

Added by Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 34, eff. September 1, 2017.

TITLE 7. PROFESSIONAL ENTITIES

CHAPTER 301. PROVISIONS RELATING TO PROFESSIONAL ENTITIES

Sec. 301.001. APPLICABILITY OF TITLE. (a) This title applies only to a professional entity or foreign professional entity.

(b) This title does not affect:

(1) the professional or confidential relationship between a person who provides a professional service and the recipient of that service; or

(2) a person's legal remedies against another person who commits an error, omission, negligent or incompetent act, or malfeasance while providing a professional service.

(c) This title does not apply to a partnership, including a limited liability partnership.

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. 134, eff. September 1, 2007.

Sec. 301.002. CONFLICTS OF LAW. This title prevails over a conflicting provision of Title 1, 2, or 3.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 301.003. DEFINITIONS. In this title:

(1) "Licensed mental health professional" means a person, other than a physician, who is licensed by the state to engage in the practice of psychology or psychiatric nursing or to provide professional therapy or counseling services.

(2) "Professional association" means an association, as

distinguished from either a partnership or a corporation, that is:

(A) formed for the purpose of providing the professional service rendered by a doctor of medicine, doctor of osteopathy, doctor of podiatry, dentist, chiropractor, optometrist, therapeutic optometrist, veterinarian, or licensed mental health professional; and

(B) governed as a professional entity under this title.

(3) "Professional corporation" means a corporation that is:

(A) formed for the purpose of providing a professional service, other than the practice of medicine by physicians, surgeons, or other doctors of medicine, that by law a corporation governed by Title 2 is prohibited from rendering; and

(B) governed as a professional entity under this title.

(4) "Professional entity" means a professional association, professional corporation, or professional limited liability company.

(5) "Professional individual," with respect to a professional entity, means an individual who is licensed to provide in this state or another jurisdiction the same professional service as is rendered by that professional entity.

(6) "Professional limited liability company" means a limited liability company formed for the purpose of providing a professional service and governed as a professional entity under this title.

(7) "Professional organization," with respect to a professional corporation or a professional limited liability company, means a person other than an individual, whether nonprofit, for-profit, domestic, or foreign and including a nonprofit corporation or nonprofit association, that renders the same professional service as the professional corporation or professional limited liability company only through owners, members, managerial officials, employees, or agents, each of whom is a professional individual or professional organization.

(8) "Professional service" means any type of service that requires, as a condition precedent to the rendering of the service, the obtaining of a license in this state, including the personal service rendered by an architect, attorney, certified public accountant, dentist, physician, public accountant, or veterinarian.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 97, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 135, eff. September 1, 2007.

Sec. 301.004. AUTHORIZED PERSON. For purposes of this title, a person is an authorized person with respect to:

(1) a professional association if the person is a professional individual; and

(2) a professional corporation or a professional limited liability company if the person is a professional individual or professional organization.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 301.005. APPLICATION FOR REGISTRATION OF FOREIGN PROFESSIONAL ENTITY. (a) When required by Chapter 9, a foreign professional entity must file an application for registration to transact business in this state.

(b) The secretary of state may accept an application filed under Subsection (a) only if:

(1) the name and purpose of the foreign professional entity stated in the application comply with this title and Chapters 2 and 5; and

(2) the application states that the jurisdiction of formation of the foreign professional entity permits reciprocal admission of an entity formed under this code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 301.006. LICENSE REQUIRED TO PROVIDE PROFESSIONAL SERVICE. (a) A professional association or foreign professional association may provide a professional service in this state only through owners, managerial officials, employees, or agents, each of whom:

(1) is a professional individual; and

(2) is licensed in this state to provide the same professional service provided by the entity.

(b) A professional entity or foreign professional entity, other

than a professional association or foreign professional association, may provide a professional service in this state only through owners, managerial officials, employees, or agents, each of whom is an authorized person.

(c) An individual may not, under the guise of employment, provide a professional service in this state unless the individual is licensed to provide the professional service under the laws of this state.

(d) This section may not be construed to prohibit a professional entity or foreign professional entity from employing nurses or from employing individuals who do not, according to general custom and practice, ordinarily provide a professional service, including clerks, secretaries, bookkeepers, technicians, or assistants. To the extent this subsection conflicts with any other law, this subsection controls.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 98, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 136, eff. September 1, 2007.

Sec. 301.007. CERTAIN REQUIREMENTS TO BE OWNER, GOVERNING PERSON, OR OFFICER. (a) A person may be an owner of a professional entity or a governing person of a professional limited liability company only if the person is an authorized person.

(b) An individual may be an officer of a professional entity or a governing person of a professional association or professional corporation only if the individual is a professional individual.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 301.008. DUTIES AND POWERS OF OWNER OR MANAGERIAL OFFICIAL WHO CEASES TO BE LICENSED; PURCHASE OF OWNERSHIP INTEREST. (a) A managerial official of a professional entity who ceases to satisfy the requirements of Section 301.007 shall promptly resign the person's position and employment with the entity.

(b) An owner of a professional entity who ceases to be an

authorized person as required by Section 301.007 shall promptly relinquish the person's ownership interest in the entity.

(c) A person who succeeds to the ownership interest of an owner shall promptly relinquish the person's financial interest in the entity if the person is not an authorized person as required by Section 301.007.

(d) A professional entity shall purchase or cause to be purchased the ownership interest in the entity of a person who is required to relinquish the person's financial interest in the entity under this section. The price and terms of a purchase of an ownership interest required under this subsection may be provided by the governing documents of the entity or an applicable agreement.

(e) A person who owns all of the outstanding ownership interests in a professional entity but is required under this section to relinquish the person's financial interest in the entity may act as a managerial official or owner of the entity only for the purpose of winding up the affairs of the entity, including selling the outstanding ownership interests and other assets of the entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 301.009. TRANSFER OF OWNERSHIP INTEREST. Except as limited by the governing documents of the professional entity or an applicable agreement, an ownership interest in a professional entity may be transferred only to:

(1) an owner of the entity;

(2) the entity itself; or

(3) an authorized person.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 301.010. LIABILITY. (a) A professional entity is jointly and severally liable for an error, omission, negligent or incompetent act, or malfeasance committed by a person who:

(1) is an owner, managerial official, employee, or agent of the entity; and

(2) while providing a professional service for the entity or during the course of the person's employment, commits the error, omission, negligent or incompetent act, or malfeasance.

(b) An owner, managerial official, employee, or agent of a professional entity other than an owner, managerial official, employee, or agent liable under Subsection (a) is not subject to the same liability imposed on the professional entity under this section.

(c) If a person described by Subsection (a) is a professional organization, the professional organization and the professional entity are jointly and severally liable for the error, omission, negligent or incompetent act, or malfeasance committed by the person, or the person's owner, member, managerial official, employee, or agent, while providing a professional service for the professional entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 301.011. EXEMPTION FROM SECURITIES LAWS. (a) A sale, issuance, or offer for sale of an ownership interest in a professional entity to a person authorized under this title to own an ownership interest in the professional entity is exempt from any state law, other than this code, that regulates the sale, issuance, or offer for sale of securities.

(b) A transaction described by Subsection (a) does not require the approval of or other action by a state official or regulatory agency authorized to regulate the sale, issuance, or offer for sale of securities.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 301.012. JOINT PRACTICE BY CERTAIN PROFESSIONALS. (a) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy by the Texas Medical Board, persons licensed as podiatrists by the Texas Department of Licensing and Regulation, and persons licensed as chiropractors by the Texas Board of Chiropractic Examiners may jointly form and own a professional association or a professional limited liability company to perform professional services that fall within the scope of practice of those practitioners.

(a-1) Persons licensed as physicians under Subtitle B, Title 3, Occupations Code, and persons licensed as physician assistants under Chapter 204, Occupations Code, may form and own a professional

association or a professional limited liability company to perform professional services that fall within the scope of practice of those practitioners.

(a-2) A physician assistant may not be an officer in the professional association or limited liability company.

(a-3) A physician assistant may not contract with or employ a physician to be a supervising physician of the physician assistant or of any physician in the professional association or limited liability company.

(a-4) The authority of each practitioner is limited by the scope of practice of the respective practitioner. An organizer of the entity must be a physician and ensure that a physician or physicians control and manage the entity.

(a-5) Nothing in this section may be construed to allow the practice of medicine by someone not licensed as a physician under Subtitle B, Title 3, Occupations Code, or to allow a person not licensed as a physician to direct the activities of a physician in the practice of medicine.

(a-6) A physician assistant or combination of physician assistants may have only a minority ownership interest in an entity created under this section. The ownership interest of an individual physician assistant may not equal or exceed the ownership interest of any individual physician owner. A physician assistant or combination of physician assistants may not interfere with the practice of medicine by a physician owner or the supervision of physician assistants by a physician owner.

(a-7) The Texas Medical Board and the Texas Physician Assistant Board continue to exercise regulatory authority over their respective license holders according to applicable law. To the extent of a conflict between Subtitle B, Title 3, Occupations Code, and Chapter 204, Occupations Code, or any rules adopted under those statutes, Subtitle B, Title 3, or a rule adopted under that subtitle controls.

(b) Professionals, other than physicians, engaged in related mental health fields such as psychology, clinical social work, licensed professional counseling, and licensed marriage and family therapy may form a professional entity that is jointly owned by those practitioners to perform professional services that fall within the scope of practice of those practitioners.

(c) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy by the Texas State Board of Medical

Examiners and persons licensed as optometrists or therapeutic optometrists by the Texas Optometry Board may, subject to the provisions regulating those professionals, jointly form and own a professional association or a professional limited liability company to perform professional services that fall within the scope of practice of those practitioners.

(d) Only a physician, optometrist, or therapeutic optometrist may have an ownership interest in a professional association or professional limited liability company formed under Subsection (c).

(e) An entity formed under Subsection (c) is not prohibited from making one or more payments to an owner's estate following the owner's death under an agreement with the owner or as otherwise authorized or required by law.

(f) When doctors of medicine, osteopathy, podiatry, and chiropractic, or doctors of medicine, osteopathy, and optometry or therapeutic optometry, or mental health professionals form a professional entity as provided by Subsections (a), (b), and (c), the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner.

(g) The state agencies exercising regulatory control over professions to which this section applies continue to exercise regulatory authority over their respective licenses.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 782 (H.B. 2098), Sec. 3, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 388 (S.B. 679), Sec. 3, eff. June 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.003, eff. September 1, 2019.

CHAPTER 302. PROVISIONS RELATING TO PROFESSIONAL ASSOCIATIONS

Sec. 302.001. APPLICABILITY OF CERTAIN PROVISIONS GOVERNING FOR-PROFIT CORPORATIONS. The provisions of Chapters 20 and 21

governing a for-profit corporation apply to a professional association, unless there is a conflict with this title.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 302.002. DURATION OF PROFESSIONAL ASSOCIATION. A professional association continues:

(1) for all purposes as a separate entity independent of the association's members until:

(A) the expiration of the period of duration stated in the certificate of formation; or

(B) the association is wound up and terminated in the manner provided by the certificate of formation or, if the certificate of formation does not provide a manner for winding up and termination, by a two-thirds vote of the association's members; and

(2) in existence notwithstanding:

(A) the death, insanity, incompetency, felony conviction, resignation, withdrawal, transfer of ownership interest, or expulsion of a member other than the last surviving member of the association;

(B) the admission of a new member or the transfer of ownership interest to a new or existing member; or

(C) the occurrence of an event that would require the winding up of a partnership under state law or similar circumstances.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 302.003. AMENDMENT OF CERTIFICATE OF FORMATION. (a) A professional association may amend the association's certificate of formation as provided by Chapter 3 and:

(1) by the procedure for amendment stated in the certificate of formation; or

(2) if the certificate of formation does not provide a procedure for amending the certificate, by a two-thirds vote of the association's members.

(b) A professional association is not required to amend the association's certificate of formation to reflect a change in membership or a transfer of ownership interests in the association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 99, eff. January 1, 2006.

Sec. 302.004. ADOPTION OF BYLAWS; DELEGATION OF AUTHORITY. (a) The members of a professional association may adopt bylaws for the association.

(b) The authority to adopt bylaws for a professional association granted under Subsection (a) may be delegated under the certificate of formation to the governing authority of the association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 302.005. GOVERNING AUTHORITY. (a) A professional association shall be governed by:

(1) a board of directors; or

(2) an executive committee.

(b) The governing authority of a professional association shall be elected by the members of the association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 302.006. MEMBERS' VOTING RIGHTS. A member of a professional association is entitled to cast a vote at a meeting of the members as provided by the certificate of formation of the association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 302.007. ELECTION OF OFFICERS. The governing authority of a professional association shall elect the officers of the association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 302.008. OFFICER AND GOVERNING PERSON ELIGIBILITY REQUIREMENTS. (a) Only a member of the professional association is eligible to serve as an officer or governing person of a professional association.

(b) Except as provided by Subsection (c), a person is not required to be a governing person of a professional association to serve as an officer of the association.

(c) Only a governing person of a professional association is eligible to serve as the president of the professional association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 302.009. EMPLOYMENT OF AGENTS AND EMPLOYEES. The officers of a professional association may employ agents or employees for the association as the officers consider advisable.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 302.010. LIMITATION ON MEMBER'S POWER TO BIND ASSOCIATION. A member of a professional association is not entitled to bind the association within the scope of the association's business or profession merely by virtue of being a member of the professional association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 302.011. DIVISION OF PROFITS. The members of a professional association shall divide the profits derived from the association in the manner provided by the governing documents of the association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 302.013. WINDING UP AND TERMINATION; CERTIFICATE OF TERMINATION. (a) A professional association may wind up and terminate the association's business as provided by:

(1) the association's certificate of formation; or

(2) if the certificate of formation does not provide for the winding up and termination of the association, a two-thirds vote of the association's members.

(b) Except as provided by Subsection (c), a certificate of termination filed in accordance with Chapter 11 must be executed by an officer of the professional association on behalf of the association.

(c) If a professional association does not have any living officer, the certificate of termination must be executed by the legal representative of the last surviving officer of the association.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

CHAPTER 303. PROVISIONS RELATING TO PROFESSIONAL CORPORATIONS

Sec. 303.001. APPLICABILITY OF CERTAIN PROVISIONS GOVERNING FOR-PROFIT CORPORATIONS. The provisions of Chapters 20 and 21 governing a for-profit corporation apply to a professional corporation, unless there is a conflict with this title.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 303.002. AUTHORITY AND LIABILITY OF SHAREHOLDER. (a) A shareholder of a professional corporation is not required to supervise the performance of duties by an officer or employee of the corporation.

(b) A shareholder of a professional corporation is subject to no greater liability than a shareholder of a for-profit corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 303.003. NOTICE OF RESTRICTION ON TRANSFER OF SHARES. Any restriction on the transfer of shares in a professional corporation that is imposed by the governing documents of the corporation or an applicable agreement must be:

(1) noted on each certificate representing the shares; or

(2) incorporated by reference in the manner provided by Chapter 21.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 303.004. REDEMPTION OF SHARES; PRICE AND TERMS. (a) A professional corporation may redeem shares of a shareholder, including a deceased shareholder.

(b) The price and other terms of a redemption of shares may be:

(1) agreed to between the board of directors of the professional corporation and the shareholder or the shareholder's personal representative; or

(2) specified in the governing documents of the professional corporation or an applicable agreement.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 303.005. EXISTENCE OF PROFESSIONAL CORPORATION BEFORE WINDING UP AND TERMINATION. A professional corporation continues to exist until the winding up and termination of the corporation as provided by Chapter 11 without regard to:

(1) the death, incompetency, bankruptcy, resignation, withdrawal, retirement, or expulsion of any shareholder of the corporation;

(2) the transfer of shares to a new shareholder; or

(3) the occurrence of an event requiring the winding up of a partnership.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 303.006. EXECUTION OF CERTIFICATE OF TERMINATION. (a) Except as provided by Subsection (b), a certificate of termination filed in accordance with Chapter 11 must be executed by an officer of the professional corporation on behalf of the corporation.

(b) If a professional corporation does not have any living officer, the certificate of termination must be executed by a director of the corporation. If the professional corporation does not have any living director, the certificate of termination must be executed by the legal representative of the last living director of the corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 137, eff. September 1, 2007.

CHAPTER 304. PROVISIONS RELATING TO PROFESSIONAL LIMITED LIABILITY COMPANIES

Sec. 304.001. APPLICABILITY OF CERTAIN PROVISIONS GOVERNING LIMITED LIABILITY COMPANIES. Title 3 applies to a professional limited liability company, unless there is a conflict with this title.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

TITLE 8. MISCELLANEOUS AND TRANSITION PROVISIONS

CHAPTER 401. GENERAL PROVISIONS

Sec. 401.001. DEFINITIONS. In this title:

(1) "Mandatory application date" means:

(A) for an entity subject to this code under Section 402.001, January 1, 2006;

(B) for an entity subject to this code under Section 402.003 or 402.004, the date of completion of the action required by that section but no earlier than January 1, 2006; and

(C) for any other entity, January 1, 2010.

(2) "Prior law" means the applicable law in effect before January 1, 2006.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

CHAPTER 402. MISCELLANEOUS AND TRANSITION PROVISIONS

Sec. 402.001. APPLICABILITY UPON EFFECTIVE DATE. (a) On or after the effective date of this code, this code applies to:

(1) a domestic entity formed on or after the effective date of this code;

(2) a domestic entity that is a converted entity resulting from a conversion that takes effect on or after the effective date of this code;

(3) a foreign filing entity, or other foreign entity, that

is not registered with the secretary of state to transact business in this state before the effective date of this code; and

(4) a foreign nonfiling entity, including a foreign limited liability partnership.

(b) The registration of a domestic limited liability partnership or foreign limited liability partnership under prior law and in effect on the effective date of this code continues to be governed by the prior law until expiration of the current term of registration, unless earlier withdrawn or revoked.

(c) Notwithstanding Subsections (a) and (b), after the effective date of this code, Sections 152.802 and 152.803, instead of prior law, govern a filing with the secretary of state made on behalf of a domestic limited liability partnership registered under prior law.

(d) Notwithstanding Subsection (a), a domestic partnership that files an initial application for registration as a limited liability partnership after the effective date of this code is governed by Subchapter J, Chapter 152.

(e) Except as provided by Subsection (b), on or after the effective date of this code, Subchapter K, Chapter 152, applies to the registration of a foreign limited liability partnership registered under prior 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. 100, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 138, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 8, eff. January 1, 2016.

Sec. 402.002. EARLY EFFECTIVENESS OF FEES. On or after the effective date of this code, the fees required by Chapter 4 apply to all filings made with the secretary of state, including comparable filings under prior law, regardless of whether an entity is subject to or has adopted this code. The intent of this section is to:

(1) require a filing fee for all documents filed under either this code or the prior law without regard to the difference in

designation of the document; and

(2) make the filing fees described by Subdivision (1) uniform from the effective date of this code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.003. EARLY ADOPTION OF CODE BY EXISTING DOMESTIC ENTITY. (a) A domestic entity formed before the effective date of this code may voluntarily elect to adopt and become subject to this code by:

(1) adopting the code by complying with the procedures for approval, under prior law and its governing documents, of an amendment to:

(A) its articles of incorporation, with respect to a corporation or cooperative association;

(B) its regulations, with respect to a limited liability company;

(C) its articles of association, with respect to a professional association;

(D) its declaration of trust, with respect to a real estate investment trust;

(E) its partnership agreement, with respect to a partnership; or

(F) its primary governing document, with respect to another type of domestic entity;

(2) if any of its governing documents, including its certificate of formation, do not comply with this code, complying with the procedures, under prior law and its governing documents, to amend the noncomplying governing documents to comply with this code, including filing with the filing officer in accordance with Chapter 4 a certificate of amendment to cause its certificate of formation to comply with this code; and

(3) if the domestic entity is a filing entity, filing with the filing officer in accordance with Chapter 4 a statement that the filing entity is electing to adopt this code.

(b) A domestic entity that elected to adopt and become subject to this code as provided by Subsection (a) is not considered to have failed to comply with Subsection (a)(2) because:

(1) the entity's governing documents do not state the type

of entity formed; or

(2) a circumstance described by Section 402.0051 applies.

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. 139, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 59, eff. September 1, 2011.

Sec. 402.004. EARLY ADOPTION OF CODE BY REGISTERED FOREIGN FILING ENTITY. (a) A foreign filing entity registered with the secretary of state to transact business in this state before the effective date of this code may voluntarily elect to adopt and become subject to this code by filing with the secretary of state in accordance with Chapter 4:

(1) a statement that the foreign filing entity is electing to adopt this code; and

(2) an amendment to its application for registration that would cause its application for registration to comply with this code.

(b) A foreign filing entity that elected to adopt and become subject to this code as provided by Subsection (a) is not considered to have failed to comply with Subsection (a)(2) because:

(1) the application for registration or any amendment to the registration:

(A) does not state the entity's type; or

(B) does not include the appointment of the secretary of state as agent for service of process under the circumstances provided by Section 5.251; or

(2) a circumstance described by Section 402.0051 applies.

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. 60, eff. September 1, 2011.

Sec. 402.005. APPLICABILITY TO EXISTING ENTITIES. (a) On or after January 1, 2010, if a domestic entity formed before January 1,

2006, or a foreign filing entity registered with the secretary of state to transact business in this state before January 1, 2006, has not taken the actions specified by Section 402.003 or 402.004 to elect to adopt this code:

(1) this code applies to the entity and all actions taken by the managerial officials, owners, or members of the entity, except as otherwise expressly provided by this title;

(2) if the entity is a domestic or foreign filing entity, the entity is not considered to have failed to comply with this code if the entity's certificate of formation or application for registration, as appropriate, does not comply with this code;

(3) if the entity is a domestic filing entity, the entity shall conform its certificate of formation to the requirements of this code when it next files an amendment to its certificate of formation; and

(4) if the entity is a foreign filing entity, the entity shall conform its application for registration to the requirements of this code when it next files an amendment to its application for registration.

(b) On or after January 1, 2010, and to the extent provided in Subchapter A, Chapter 23, this code applies to a corporation created under a special statute of this state outside this code before January 1, 2006. The corporation, if its certificate of formation, or equivalent governing document, is filed with the secretary of state, may elect for this code to apply to the corporation at any time on or after January 1, 2006, and prior to January 1, 2010, to the extent provided in Subchapter A, Chapter 23, by filing a statement and taking other actions in a manner similar to a domestic filing entity under Section 402.003.

(c) A domestic or foreign filing entity is not considered to have failed to comply with Subsection (a)(3) or (4) because:

(1) the certificate of formation does not state the type of entity formed;

(2) the application for registration or any amendment to the registration:

(A) does not state the entity's type; or

(B) does not include the appointment of the secretary of state as agent for service of process, notice, or demand under the circumstances provided by Section 5.251; or

(3) a circumstance described by Section 402.0051 applies.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 102, eff. January 1, 2006.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 59, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 61, eff. September 1, 2011.

Sec. 402.0051. EFFECT OF REFERENCES TO PRIOR LAW AND USE OF SYNONYMOUS TERMS. (a) A governing document or a filing instrument, including a certificate of formation or application for registration, is not considered to have failed to conform to this code if the governing document or filing instrument:

(1) contains a reference to prior law that was applicable at the time of its filing or adoption;

(2) contains a provision that was authorized by prior law at the time of its filing or adoption;

(3) includes a term or phrase described by Section 1.006; or

(4) includes a term or phrase from prior law that is different from the corresponding term or phrase used in this code.

(b) A reference in a governing document or filing instrument to a statute or provision of a statute in effect before January 1, 2010, that was repealed by this code is considered to be a reference to the provision or provisions of this code that correspond to the repealed statute or provision unless the governing document or filing instrument expressly provides otherwise.

(c) An entity is not considered to have failed to comply with this code if a governing document or filing instrument makes a reference to prior law rather than to the corresponding provisions of the prior law in this code.

(d) For purposes of this section, prior law includes a predecessor statute to the prior law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 62, eff. September 1, 2011.

Sec. 402.006. APPLICABILITY TO CERTAIN ACTS, CONTRACTS, AND TRANSACTIONS. Except as otherwise expressly provided by this title, all of the provisions of this code govern acts, contracts, or other transactions by an entity subject to this code or its managerial officials, owners, or members that occur on or after the mandatory application date. The prior law governs the acts, contracts, or transactions of the entity or its managerial officials, owners, or members that occur before the mandatory application date.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:
Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 103, eff. January 1, 2006.

Sec. 402.007. INDEMNIFICATION. Chapter 8 governs any proposed indemnification by a domestic entity after the mandatory application date, regardless of whether the events on which the indemnification is based occurred before or after the mandatory application date. In a case in which indemnification is permitted but not required under Chapter 8, a provision relating to indemnification contained in the governing documents of a domestic entity on the mandatory application date that would otherwise have the effect of limiting the nature or type of indemnification permitted by Chapter 8 may not be construed after the mandatory application date as limiting the indemnification authorized by Chapter 8 unless the provision is intended to limit or restrict permissive indemnification under applicable 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. 104, eff. January 1, 2006.

Sec. 402.008. MEETINGS OF OWNERS AND MEMBERS; CONSENTS; VOTING OF INTERESTS. (a) Except as provided by Subsection (b) and regardless of whether a proxy or consent was executed by an owner or member before the mandatory application date, Chapter 6 and any other applicable provision of this code apply to:

(1) a meeting of owners or members held on or after the mandatory application date;

(2) an action undertaken by owners or members under a written consent that takes effect on or after the mandatory application date;

(3) a vote cast at a meeting described by Subdivision (1); and

(4) consent given for an action described by Subdivision (2).

(b) Prior law applies to a meeting of owners or members and to any vote cast at a meeting described by this section if the meeting was initially called for a date before the mandatory application date and notice of the meeting was given to owners or members entitled to vote at the meeting.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.009. MEETINGS OF GOVERNING AUTHORITY AND COMMITTEES; CONSENTS. (a) Except as provided by Subsection (b), Chapter 6 and any other applicable provision of this code apply to:

(1) a meeting of the governing authority or a committee of the governing authority held on or after the mandatory application date;

(2) an action undertaken by the governing authority or a committee of the governing authority under a written consent that takes effect on or after the mandatory application date;

(3) a vote cast at a meeting described by Subdivision (1); and

(4) consent given for an action described by Subdivision (2).

(b) Prior law applies to a meeting of the governing authority or a committee of the governing authority and to any vote cast at a meeting described by this section if the meeting was initially called for a date before the mandatory application date and notice of the meeting was given to governing persons entitled to vote at the meeting.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.010. SALE OF ASSETS, MERGERS, REORGANIZATIONS, CONVERSIONS. Chapter 10 and any other applicable provisions of this

code apply to a transaction consummated by an entity after the mandatory application date, except that if a required approval of the owners or members of the entity has been given before the mandatory application date or has been given after the mandatory application date but at a meeting of owners or members initially called for a date before the mandatory application date, the transaction shall be governed by the prior law.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.011. WINDING UP AND TERMINATION. (a) Chapter 11 applies to:

(1) an action for involuntary or judicial winding up and termination commenced after the mandatory application date; or

(2) a voluntary winding up and termination proceeding initiated after the mandatory application date by:

(A) the governing authority;

(B) the terms of the governing documents; or

(C) applicable law.

(b) The prior law governs:

(1) an action described by Subsection (a)(1) that is pending on the mandatory application date; or

(2) a proceeding described by Subsection (a)(2) initiated before the mandatory application date.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.012. REGISTRATION OF CERTAIN FOREIGN ENTITIES. A foreign entity that has transacted intrastate business in this state before the mandatory application date and that is required by Chapter 9 to register to transact business is not subject to a direct or indirect penalty as a result of failure to register under Chapter 9 if the application for registration is filed not later than the 30th day after the mandatory application date.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.013. REINSTATEMENT OF ENTITIES CANCELED, REVOKED,

DISSOLVED, INVOLUNTARILY DISSOLVED, SUSPENDED, OR FORFEITED UNDER PRIOR LAW. (a) On or after January 1, 2006, and before January 1, 2010, a domestic filing entity whose certificate of formation or equivalent governing document has been canceled, revoked, involuntarily dissolved, suspended, or forfeited under prior law may reinstate its certificate of formation or equivalent governing document in accordance with:

(1) prior law; or

(2) this code if it also complies with Section 402.003.

(b) On or after January 1, 2006, and before January 1, 2010, a foreign filing entity whose registration to do business has been canceled, revoked, involuntarily dissolved, suspended, or forfeited under prior law may reinstate its registration in accordance with:

(1) prior law; or

(2) this code if it also complies with Section 402.004.

(b-1) On or after January 1, 2010, a domestic filing entity whose existence has been voluntarily dissolved or involuntarily dissolved under prior law or whose certificate of formation or equivalent governing document has been canceled, revoked, suspended, or forfeited under prior law may reinstate the entity in accordance with this code.

(b-2) On or after January 1, 2010, a foreign filing entity whose registration to do business has been canceled, revoked, suspended, or forfeited under prior law may reinstate its registration in accordance with this code.

(c) If the certificate of formation of a domestic filing entity or the registration to do business of a foreign filing entity is forfeited under the Tax Code, the entity must revive the certificate of formation or registration in accordance with that code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.
Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 105, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 63, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 64, eff. September 1, 2011.

Sec. 402.014. MAINTENANCE OF PRIOR ACTION. Except as expressly provided by this title, this code does not apply to an action or proceeding commenced before the mandatory application date. Prior law applies to the action or proceeding.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.015. PERPETUAL DURATION OF OLD CORPORATIONS. (a) Notwithstanding any provision in the articles of incorporation limiting the period of duration of a domestic for-profit corporation formed before September 6, 1955, the period of duration of the corporation became perpetual on May 2, 1979, if the corporation was in existence according to the records of the secretary of state on May 2, 1979. A corporation described by this subsection may amend the corporation's articles of incorporation or certificate of formation, as applicable, to limit the corporation's period of duration after May 2, 1979.

(b) Notwithstanding a provision in the articles of incorporation limiting the period of duration of a domestic nonprofit corporation formed before August 10, 1959, the period of duration of the corporation became perpetual on May 2, 1979, if the corporation was in existence according to the records of the secretary of state on May 2, 1979. A corporation described by this subsection may amend the corporation's articles of incorporation or certificate of formation, as applicable, to limit the corporation's period of duration after May 2, 1979.

Added by Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 35, eff. September 1, 2017.