

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1165
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Business & Commerce
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Committee Report (Substituted)

DIGEST AND PURPOSE

Neither the Texas Business Corporation Act, nor the Texas Miscellaneous Corporation Laws have been substantively amended since 1997. The subsequent changes in technology and corporate law necessitate amending both of these Acts. C.S.H.B. 1165 aligns both Acts with modern technology and business practices.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section A, Article 1.02, Texas Business Corporation Act, by adding Subsection (30) to define “electronic transmission.”

SECTION 2. Amends Section A, Article 2.02, Texas Business Corporation Act, to include in the list of powers each corporation has, subject to the provisions of Sections B and C of this Article, that each corporation has the power to renounce, in its articles of incorporation or by action of its board of directors, an interest or expectancy of the corporation in, or an interest or expectancy of the corporation in being offered the opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation or one or more of its officers, directors, or shareholders; and to create Subdivision (21) from existing text.

SECTION 3. Amends Sections F, K, and O, Article 2.02-1, Texas Business Corporation Act, as follows:

F. Requires a determination of indemnification under Section B of this articles to be made by a majority vote of the directors who are not defendants or respondents, rather than a majority vote of a quorum of directors who are not defendants or respondents, regardless of whether the directors not named defendants or respondents constitute a quorum; or by a majority vote of a committee of the board of directors if the committee is designated by a majority vote of the directors who are not named as defendants or respondents, regardless of whether the directors not named defendants or respondents constitute a quorum and the committee consists solely of one or more, rather than two or more, of the directors not named as defendants or respondents in the proceedings. Makes conforming changes.

K. Authorizes the corporation to reimburse reasonable expenses incurred in a proceeding to a present director who was, is, or is threatened to be made a named defendant or respondent. Authorizes the corporation, notwithstanding any authorization or determination specified in this article, to reimburse reasonable expenses incurred by a former director or officer, or a present or former employee or agent of the corporation, who was, is, or is threatened to be made a named defendant or respondent in a proceeding, in advance of the final disposition of the proceeding, on any terms the corporation considers appropriate.

O. Provides that a determination of indemnification for an employee or agent of the

corporation is not required to be made in accordance with Section F of this article.

SECTION 4. Amends Section A, Article 2.09, Texas Business Corporation Act, as follows:

A. Requires each corporation to have and continuously maintain in this state a registered agent, which agent may be either an individual resident of this state, a domestic corporation, or other entity organized under the laws of this state or authorized to transact business in this state that has a business office identical with each such registered office that is generally open during normal business hours to accept service of process and otherwise perform the functions of a registered agent. Deletes authorization for a foreign corporation.

SECTION 5. Amends Article 2.13, Texas Business Corporation Act, by adding a new Section E and redesignating and amending existing Sections E and F as Sections F and G, as follows:

E. Authorizes the board of directors, if the articles of incorporation expressly authorize the board of directors to establish a series of unissued shares of a class and if no shares of a series established by resolution of the board directors have been issued, to amend the designations, preferences, limitations, and relative rights of the series, unless otherwise provided in the articles of incorporation. Requires the board of directors, to amend the designations, preferences, limitations, and relative rights of a series, to adopt a resolution that accomplishes such an amendment. Requires the corporation, before the issuance of any shares of the series, to file a statement including certain information with the secretary of state.

F. Redesignated from Section E. Requires a statement filed in accordance with Section D or E of this article to be executed on behalf of the corporation by an officer.

G. Redesignated from Section F. Provides that the filing of the statement or the filing of a restated certificate of incorporation under Article 4.07 (Restated Articles of Incorporation) of this Act does not prohibit the board of directors from subsequently adopting a resolution as authorized by this article. Makes conforming changes.

SECTION 6. Amends Article 2.14, Texas Business Corporation Act, by amending Sections C and D and adding Section E, as follows:

C. Requires acceptance of subscription to be effected by a resolution of acceptance by the board of directors or by a written memorandum of acceptance executed by a certain person and delivered to the subscriber or the subscriber's assignee.

D. Includes in the list of required payment options for subscriptions for shares the exception from the requirements if the payment terms are specified by the subscription and requires a board of directors' call for payment to be uniform in certain ways as far as practicable. Authorizes the corporation, in case of default in any installment payment or call when such payment is due, to proceed collecting the amount due in the same manner as any debt due the corporation or to declare the subscription forfeited if the amount due remains unpaid for 20 days after a written demand for payment has been made to the subscriber. Requires the declaration of forfeiture to result in terminating the rights and obligations of the subscriber as such, but authorizes the corporation to retain any amount previously paid on the subscription. Deletes text referring to bylaws prescribing penalties for failure to pay installments or calls that become due. Deletes text referring to declaring the subscription forfeited if the demand remains unsatisfied for 20 days.

E. Authorizes a person, before acquiring shares in a corporation, to commit to act in a specified manner with respect to the shares after the acquisition, including with respect to the voting of the shares or the retention or disposition of the shares, which is required to be in writing and signed by the person acquiring the share to be binding. Provides that such a written commitment is a contract between the shareholder and the corporation.

SECTION 7. Amends Article 2.14-1, Texas Business Corporation Act, as follows:

Art. 2.14-1. STOCK RIGHTS, OPTIONS, AND CONVERTIBLE INDEBTEDNESS.

A. No changes in this section.

B. Authorizes the terms of rights or options to prohibit or limit the exercise, transfer, or receipt of the rights or options by certain persons or classes of persons or to invalidate the rights or options held by a person or transferee described by Subsection (1) of this section.

C. Creates this section from existing text. Requires the board of directors, in the case of rights or options, the terms upon which, the time or times within which, and any, rather than the, consideration, including a formula by which the consideration may be determined, for which such shares are authorized to be purchased or received from the corporation upon the exercise of any such right or option, or certain other information.

D. Creates this section from existing text.

E. Provides, except as provided by Section F of this article, certain authorities are vested exclusively in the board of directors of the corporation. Prohibits a bylaw from requiring the board to grant, amend, redeem, extend, or replace the rights or options.

F. Authorizes the terms of the rights or options or the agreement or plan under which the rights or options or the agreement or plan under which the rights or options are issued to provide that the board of directors is authorized by resolution to authorize one or more officers of the corporation to take certain actions.

G. Requires a resolution adopted under Section F. of this article authorizing an officer of the corporation to designate recipients of rights or options to specify the total number of rights or options the officer is authorized to award. Prohibits the board of directors from authorizing an officer to designate himself or herself as a recipient of any rights or options.

SECTION 8. Amends Article 2.22, Texas Business Corporation Act, by amending Sections B and D and adding Section H, as follows:

B. Authorizes a restriction on the transfer or registration of transfer of a security, or on the amount of the corporation's securities that are authorized to be owned by any person or group of persons, to be imposed by certain documents.

D. Includes in the list of prerequisites for a restriction on the transfer or registration of transfer of securities of a corporation required to be valid that it reasonably obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to the corporation, to any other holders of securities of the corporation, or to any other person or combination of persons, or that it reasonably causes or results in the automatic sale or transfer of an amount of restricted securities to the corporation to any other holders of securities of the corporation, or to any other person or combination of persons.

H. Provides that a restriction on the transfer or the registration of a transfer of the securities of a corporation, the amount of securities of a corporation, the amount of securities of a corporation, or the amount of securities of a corporation authorized to be owned by a person or group of persons for certain purposes is conclusively presumed to be for a certain reasonable purpose.

SECTION 9. Amends Article 2.22-1, Texas Business Corporation Act, as follows:

Art. 2.22-1. SHAREHOLDER'S PREEMPTIVE RIGHTS. A. Prohibits the

shareholders of a corporation from having, rather than requires such shareholders to have, except as provided by Section F of this article, a preemptive right to acquire certain shares or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, except to the extent provided by the articles of incorporation or by agreement, rather than limited or denied by this article.

B. Authorizes the articles of incorporation to provide that the shareholders of a corporation are required to have a preemptive right by including a statement that the corporation "elects to have a preemptive right" or a similar statement. Provides that Section C of this article applies to the shareholders' preemptive right except as otherwise provided by the articles of incorporation.

C. (1) Provides that if the shareholders of a corporation have a preemptive right under this article, the shareholders have a preemptive right to acquire proportional amounts of the corporation's additional unissued or treasury shares, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares on the decision of the corporation's board of directors to issue the shares.

(2) Creates this subsection from existing text. Provides that, unless otherwise provided in the articles of incorporation, no preemptive right shall exist with respect to certain shares.

(3) Redesignated from Subdivision (2). Provides that holders of shares of any class or series without general voting rights but that is preferred as to distributions shall not be entitled to any preemptive right.

(4) Redesignated from Subdivision (3). Prohibits holders of shares of any class or series with general voting rights that is not preferred as to distributions, rather than dividends or assets, from being entitled to any preemptive right to shares of any class or series that is preferred as to distributions, rather than dividends or assets, or to any obligations, unless the shares with preferential rights or obligations are convertible into or carry a right to subscribe to or acquire shares without preferential rights. Deletes text referring to prohibiting share holders without voting power from having a preemptive right to shares with voting power.

(5) Specifies uniform terms and conditions, rather than terms and conditions, as the board of directors authorized to fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

(6) Authorizes shares subject to preemptive rights that are not acquired by a shareholder, for a one-year period beginning on the date on which the shares are offered to shareholders, to be issued to a person for consideration set by the corporation's board of directors that is not lower than the consideration set for the exercise of preemptive rights. Provides that an offer at a lower consideration or after the expiration of the period prescribed by this subsection is subject to the shareholders' preemptive rights.

D. Redesignated from Section C. Sets forth August 28, 1989, rather than the effective date of this provision, as one of the dates before which an action must be brought against a corporation and certain related persons on account of any violation of any preemptive right of a shareholder to acquire any shares of the corporation, or any securities of the corporation convertible into or carrying a right to subscribe to or acquire shares.

E. Redesignated from Section D.

F. Provides that subject to the articles of incorporation, shareholders of a

corporation incorporated before September 1, 2003, have a preemptive right to acquire additional unissued or treasury shares of the corporation, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, to the extent provided by Sections C, D, and E of this article. Authorizes a corporation, after September 1, 2003, to limit or deny the preemptive right of the shareholders of the corporation by amending the corporation's articles of incorporation.

G. Authorizes a shareholder to waive a preemptive right granted to the shareholder. Provides that a written waiver of a preemptive right is irrevocable regardless of whether the waiver is supported by consideration.

SECTION 10. Amends Sections A and B, Article 2.24, Texas Business Corporation Act, as follows:

A. Requires meetings to be held at the registered office of the corporation, if no other place is so stated or fixed, the board of directors of the corporation is not authorized to designate a place, or the board of directors chooses not to designate a place.

(1) Authorizes the board of directors, if, under the articles of incorporation or the bylaws, the board of directors is authorized to determine the place of a meeting of shareholders, in its discretion, to determine that the meeting is authorized to be held solely by means of remote communication as provided by Subsection (2) of this section.

(2) Provides that if authorized by the board of directors, and subject to any guidelines and procedures adopted by the board of directors, shareholders not physically present at a meeting of shareholders, by means of remote communication are authorized to participate in a meeting of shareholders and to be considered present in person and may vote at a meeting of shareholders held at a designated place or held solely by means of remote communication under certain circumstances.

B. Authorizes any court of competent jurisdiction in the county in which the principal office of the corporation is located, if the annual meeting is not held within any 13-month period and a written consent of shareholders has not been executed instead of the meeting, on the application of any shareholder, to summarily order a meeting to be held unless the meeting is not required to be held under Section D of this article.

SECTION 11. Amends Article 2.25, Texas Business Corporation Act, by amending Section A to require written or printed notice stating the place, day and hour of the meeting, the means of any remote communications by which shareholders are authorized to be considered present and to vote at the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, to be delivered not less than ten days nor more than sixty days before the date of the meeting by certain methods by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder entitled to vote at such meeting.

SECTION 12. Amends Sections A and C, Article 2.27, Texas Business Corporation Act, as follows:

A. Authorizes, as an alternative, the list of the shareholders to be kept on a reasonably accessible electronic network, if the information required to gain access to the list is provided with the notice of the meeting. Provides that this article does not require the corporation to include any electronic contact information of any shareholder on the list. Requires the corporation, if it elects to make the list available on an electronic network, to take reasonable steps to ensure that the information is available only to shareholders of the corporation. Requires the list to be open to the examination of any shareholder for the duration of the meeting on a reasonably accessible electronic network, and the information required to access the list to be provided to shareholders with the notice of the meeting, if the meeting is held by means of remote communication.

C. Requires an officer or agent having charge of the share transfer records who fails to prepare the list of shareholders or keep the same accessible to shareholders electronically or physically on file at the principal place of business for a period of ten days, or produce and keep it accessible, rather than open for inspection during the meeting, as provided in this article, to be liable to any shareholder suffering damages on account of such failure, to the extent of such damage. Requires the corporation, not such officer or agent, in the event that such officer or agent does not receive notice of the date of the meeting reasonably to enable him to comply with the duties prescribed by this article, to be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

SECTION 13. Amends Part Two, Texas Business Corporation Act, by adding Article 2.25-1, as follows:

Art. 2.25-1. NOTICE BY ELECTRONIC TRANSMISSION. A. Authorizes, on consent of a shareholder, notice from a corporation under any provision of this Act, the articles of incorporation, or the bylaws to be given to the shareholder by electronic transmission. Authorizes the shareholder to specify the form of electronic transmission to be used to communicate notice. Authorizes the shareholder to revoke this consent by written notice to the corporation. Provides that the shareholder's consent is deemed to be revoked 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 these two electronic transmissions was unsuccessful. Provides that the inadvertent failure to treat the unsuccessful transmissions as a revocation of shareholder consent does not invalidate a meeting or other action.

B. Provides conditions under which notice under this section is deemed given.

C. Provides that an affidavit of the secretary, assistant secretary, transfer agent, or other agent of the corporation that notice has been given by electronic transmission is, in the absence of fraud, prima facie evidence that the notice was given.

SECTION 14. Amends Sections C and D, Article 2.29, Texas Business Corporation Act, as follows:

C. Requires a telegram, telex, cablegram, or other form of electronic transmission, including telephone transmission, by the shareholder, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the shareholder, to be treated as an execution in writing for purposes of this section. Requires any electronic transmission to contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder.

D. (1) Requires at each election for directors every shareholder entitled to vote at such election to have the right to vote the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote or only if, rather than unless, expressly permitted, rather than prohibited, by the articles of incorporation (in general or with respect to a specified class or series of shares or group of classes or series of shares) and subject to Subsection (2), to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

(2) Prohibits cumulative voting in an election of directors, unless the articles of incorporation expressly grant that right, and a shareholder who intends to cumulate his votes as herein authorized has given required written notice of such intention to the secretary of the corporation on or before the day preceding the election at which such shareholder intends to cumulate his votes.

(3) Provides that except as provided by the articles of incorporation, 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 by this article. Authorizes a corporation to limit or deny a shareholder's right to cumulatively vote any time after September 1, 2003, by amending its articles of incorporation.

SECTION 15. Amends Article 2.32, Texas Business Corporation Act, as follows:

Art. 2.32. NUMBER AND ELECTION OF DIRECTORS. A. Authorizes a director, unless otherwise provided by the articles of incorporation or the bylaws, to resign at any time by giving notice in writing or by electronic transmission to the corporation. Requires such persons, absent resignation or removal in accordance with the provisions of the bylaws or the articles of incorporation, to hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified

B. Requires each director, absent resignation or removal, rather than unless removed, in accordance with provisions of the bylaws or the articles of incorporation, to hold office for the term for which he is elected and until his successor shall have been elected and qualified.

C. Authorizes any director or the entire board of directors, except as otherwise provided in this article, the bylaws, or the articles of incorporation, at any meeting of shareholders called expressly for that purpose, to be removed, with or without cause, by a vote of the holders of a majority, rather than a specified portion but not less than a majority, of the shares then entitled to vote at an election of the director or directors. Deletes text referring to any further restrictions on removal that may be contained in the bylaws.

D. Provides that, notwithstanding Section B of this Article, a director of a corporation registered under the Investment Company Act, absent resignation or removal, rather than unless removed, in accordance with the provisions of the articles of incorporation or bylaws, holds office for the term for which the director is elected and until the director's successor has been elected and qualified.

SECTION 16. Amends Section A, Article 2.36, Texas Business Corporation Act, to authorize the board of directors, if the articles of incorporation or the bylaws so provide, to designate committees and deletes the requirement that a resolution be adopted by a majority of the full board of directors to do so. Requires any such committee, to the extent provided in the resolution of the board of directors or in the articles of incorporation or the bylaws, to have and authorizes such a committee to exercise all of the authority of the board of directors, subject to the limitations set forth in Sections B and C of this Article.

SECTION 17. Amends Article 2.37, Texas Business Corporation Act, by adding Section C to authorize, on consent of the director, notice of the date, time, place or purpose of a regular or special meeting of the board of directors to be given to the director by electronic transmission. Authorizes the director to revoke this consent by written notice to the corporation. Provides that the director's consent is deemed to be revoked if the corporation is unable to deliver by electronic transmission two consecutive notices, and the secretary of the corporation or other person responsible for delivering the notice on behalf of the corporation knows that the delivery of these two electronic transmissions was unsuccessful. Provides that the inadvertent failure to treat the unsuccessful transmissions as a revocation of the director's consent does not invalidate a meeting or other action. Provides that an affidavit of the secretary or other agent of the corporation that notice has been given by electronic transmission is, in the absence of fraud, prima facie evidence that notice was given. Provides the circumstances under which notice is deemed given.

SECTION 18. Amends Section A, Article 2.41, Texas Business Corporation Act, to delete from the list of liabilities imposed by law upon directors of a corporation, the requirement that the directors who assent to be jointly and severally liable to the corporation for such part of the

required consideration as shall not have been received before commencing business, for the corporation commencing business before it has received for the issuance of shares consideration of the value of at least \$1,000, consisting of money, labor done, or property actually received, that is required to be terminated when the corporation has actually received the required consideration for the issuance of shares. Redesignates Subsection (3) as Subsection (2).

SECTION 19. Amends Section A, Article 2.44, Texas Business Corporation Act, to authorize any books, records, minutes, and share transfer records to be in written form or in any other form capable of being converted into written paper form within a reasonable time.

SECTION 20. Amends Section A, Article 3.02, Texas Business Corporation Act, to delete from the articles of incorporation a statement that the corporation will not commence business until it has received for the issuance of shares consideration of the value of a stated sum required to be at least \$1,000.00 and to redesignate Subsections (9) - (14) as Subsections (8) - (14).

SECTION 21. Amends Section A, Article 4.01, Texas Business Corporation Act, to include subdivision and combination of shares or rights of shareholders in the list of authorized changes in a corporation's articles of incorporation. Makes a conforming change.

SECTION 22. Amends Section A, Article 4.02, Texas Business Corporation Act, to authorize the articles of incorporation to be amended, among other methods, by requiring the board of directors to adopt a resolution setting forth the proposed amendment and, unless the amendment is undertaken under authority granted to the board of directors in the articles of incorporation in accordance with Article 2.13 of this Act, if shares have been issued, to direct that it be submitted to a vote at a meeting of shareholders, authorized to be either an annual or a special meeting. Authorizes the resolution authorizing a proposed amendment to the articles of incorporation to provide that at any time before the filing of the amendment with the secretary of state is effective, notwithstanding authorization of the proposed amendment by the shareholders of the corporation, the board of directors is authorized to abandon the proposed amendment without further action by the shareholders.

SECTION 23. Amends Section B, Article 4.04, Texas Business Corporation Act, to include in the required content of the articles of amendment a statement that the amendment has been approved in the manner required by this Act and the constituent documents of the corporation and to delete information regarding shares outstanding and entitled to vote; shares voted for and against the amendments; if the amendment provides for an exchange, reclassification, or cancellation of issued shares; whether and how the amendment effects a change in the amount of stated capital.

SECTION 24. Amends Sections A and D, Article 4.10, Texas Business Corporation Act, as follows:

A. Requires the redemption or purchase, when redeemable shares of a corporation are redeemed or purchased by the corporation, to effect a cancellation of such shares. Deletes text referring to a requirement that a statement of cancellation be filed. Requires such shares to be restored to the status of authorized but unissued shares, unless the articles of incorporation prohibit such shares when redeemed or purchased from being reissued, in which case the number of shares of the class so cancelled which the corporation is authorized to issue is required to be reduced by the number of shares so cancelled. Deletes text referring to the requirement that filing of the statement of cancellation operate as an amendment to the articles of incorporation. Prohibits the corporation, if the shares so redeemed and purchased constitute all the outstanding shares of any particular class of shares and if the articles of incorporation provide that the shares of such class when redeemed and repurchased are required to not be reissued, from issuing any additional shares of the class of shares. Deletes text referring to requirement to reduce the classes of shares which the corporation is authorized to issue. Makes a conforming change.

D. Requires the cancellation of shares under this article to effect a reduction of the stated

capital of the corporation by an amount equal to that part of the stated capital which was, at the time of the cancellation, represented by the shares so cancelled. Makes a conforming change.

SECTION 25. Amends Sections A and D, Article 4.11, Texas Business Corporation Act, as follows:

A. Deletes the requirement that a statement of cancellation be filed when a corporation, at any time, by resolution of its board of directors, cancels all or any part of its treasury shares.

D. Requires the stated capital of the corporation, upon the cancellation of the treasury shares, to be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so cancelled, and the shares so cancelled are required to be restored to the status of authorized but unissued shares.

SECTION 26. Amends Section D, Article 4.12, Texas Business Corporation Act, to require the stated capital of the corporation, upon the approval, rather than filing, of such resolution by the shareholders, rather than statement, to be reduced as therein set forth.

SECTION 27. Amends Section C, Article 5.01, Texas Business Corporation Act, to, in the content of the merger plan provisions relating to the merger, include a provision requiring that the plan of merger be submitted to shareholders regardless of whether the board of directors determines after adopting the resolution or making the determination required by Section B, Article 5.03 of this Act, that the plan of merger is not advisable and recommends that the shareholders reject it.

SECTION 28. Amends Section C, Article 5.02, Texas Business Corporation Act, to authorize the plan of exchange to set forth any other provisions relating to the exchange and to be contained in and be a part of a plan of merger, including a provision requiring that the plan of exchange be submitted to shareholders regardless of whether the board of directors determines after adopting the resolution or making the determination required by Section B, Article 5.03 of this Act, that the plan of exchange is not advisable and recommends that the shareholders reject it.

SECTION 29. Article 5.03, Texas Business Corporation Act, by amending Sections C and H and adding Sections H-1 and M, as follows:

C. Authorizes the plan of merger or exchange, if, after the adoption of a resolution recommending that the plan of merger or exchange be approved or after a determination by the board of directors that a recommendation should not be made, the board of directors determines that the plan of merger or exchange is not advisable, to be submitted to the shareholders with a recommendation that the shareholders not approve the plan of merger or exchange.

H. Provides that unless the articles of incorporation otherwise require, approval by the shareholders of a corporation of a plan of merger shall not be required and Sections A, B, C, D, E, and F of this Article do not apply under certain circumstances.

H-1. Defines "organizational documents."

M. Prohibits, to the extent a shareholder of a corporation has standing to institute or maintain derivative litigation on behalf of the corporation immediately before a merger, anything in this article from being construed to limit or extinguish the shareholder's standing.

SECTION 30. Amends Section A, Article 5.06, Texas Business Corporation Act, to replace a reference to articles of merger with the plan of merger.

SECTION 31. Amends Section B, Article 5.11, Texas Business Corporation Act, to prohibit, notwithstanding the provisions of Section A of this article, a shareholder from having the right to dissent from any plan of merger in which there is a single surviving or new domestic or foreign corporation, or from any plan of exchange if the shares, or depository receipts in respect of the shares, held by the shareholder are part of a class or series, shares, or depository receipts in respect of the shares, of which are on the record date fixed to determine the shareholders entitled to vote on the plan of merger or plan of exchange under certain circumstances. Makes conforming changes.

SECTION 32. Amends Section A, Article 5.16, Texas Business Corporation Act, to authorize the corporation or other entity, in any case in which at least ninety percent of the outstanding shares of each class and series of shares, membership interests, or other ownership interests of one or more domestic or foreign corporations or other entities, other than a corporation that has in its articles of incorporation the provision required by Article 5.03(H)(6)(a) of this Act, of which there are outstanding shares that would be entitled to vote on the merger absent this section, is owned by another domestic or foreign corporation or other entity, and at least one of the parent or subsidiary entities is a domestic corporation and the other or others are domestic corporations, foreign corporations, or other entities organized under the laws of a jurisdiction that permit such a merger or whose organizational documents or other constituent documents not inconsistent with those laws permit such a merger, the corporation or other entity to enter into a merger under certain circumstances. Deletes text referring to types of mergers.

SECTION 33. Amends Section A, Article 6.04, Texas Business Corporation Act, to include in the list of prerequisites to filing articles of dissolution, the requirement that the directors of the corporation manage the process of winding up the business or affairs of the corporation.

SECTION 34. Amends Part Six, Texas Business Corporation Act, by adding Article 6.08, as follows:

Art. 6.08. FRAUDULENT TERMINATION. A. Authorizes a court, notwithstanding any other provision of this Act, to order the revocation of dissolution of a corporation that was dissolved as a result of actual or constructive fraud. Provides that in an action under this article, any limitation period provided by law is tolled in accordance with the discovery rule.

B. Requires the secretary of state to take any action necessary to implement an order under this article.

SECTION 35. Amends Section A, Article 8.05, Texas Business Corporation Act, to include in the required content of an application to the secretary of state by a foreign corporation to procure a certificate of authority to transact business in this state a statement that the corporation exists as a valid corporation under the laws of the corporation's jurisdiction of formation. Deletes text referring to statements of aggregate number of shares which the corporation has authority to issue, aggregate number of issued shares, the amount of stated capital and that the value of at least \$1,000 has been paid for the issuance of shares.

SECTION 36. Amends Section A, Article 8.06, Texas Business Corporation Act, to delete text referring to a certificate evidencing the corporation's corporate existence, the requirement of an English translation thereof, if not in English, and the required date thereof. Makes a conforming change.

SECTION 37. Amends Article 9.09, Texas Business Corporation Act, to delete a section reference and to require that a waiver by electronic transmission by the person entitled to notice, whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, to be equivalent to the giving of such notice. Provides that the business to be transacted at a regular or special meeting of the shareholders, directors, or members of a committee of directors or the purpose of a meeting is not required to be specified in a written waiver of notice or a waiver by electronic transmission unless required by the articles of

incorporation or the bylaws.

SECTION 38. Amends Sections A and B, Article 9.10, Texas Business Corporation Act, as follows:

A.(1) Authorizes the articles of incorporation to provide that any action required by this Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, to be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, is required to be signed by the holder or holders of, rather than or, shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which holders of all shares entitled to vote on the action were present and voted.

(2) Requires that no written consent signed by the holder, rather than holders, of less than all the shares entitled to vote with respect to the action that is the subject of the consent be effective to take the action that is the subject of the consent unless, within 60 days after the date of the earliest dated consent delivered to the corporation in a, rather than the, manner required by this article, a consent or consents that meet certain criteria are delivered to the corporation by delivery to one of certain locations.

(3) Provides that a telegram, telex, cablegram, or other electronic transmission by a shareholder consenting to an action to be taken is considered to be written, signed, and dated for the purposes of this article if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the shareholder and the date on which the shareholder transmitted the transmission. Provides that the date of transmission is the date on which the consent was signed. Prohibits consent given by telegram, telex, cablegram, or other electronic transmission from being considered delivered until the consent is reproduced in paper form and the paper form is delivered to the corporation at its registered office in this state or its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded. Authorizes consent given by telegram, telex, cablegram, or other electronic transmission, notwithstanding Subsection (2) of this section, to be delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded to the extent and in the manner provided by resolution of the board of directors of the corporation.

(4) Authorizes any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by a shareholder to be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing.

(5) Redesignates this subsection from Subsection (4)

(6) Redesignates this subsection from Subsection (5). Provides that if any action by shareholders is taken by written consent, any articles or documents filed with the secretary of state as a result of the taking of the action shall state, in lieu of any statement required by the Act concerning the number of shares outstanding and entitled to vote on the action or concerning any vote of shareholders, that written consent has been given in accordance with the provisions of this article and that any written notice required by this article has been given.

B. Authorizes any action required or permitted to be taken at a meeting of the board of directors or any committee, unless otherwise restricted by the articles of incorporation or

bylaws, to be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the board of directors or committee, as the case may be. Provides that a telegram, telex, cablegram, or other electronic transmission by a director consenting to an action to be taken and transmitted by a director is considered written, signed, and dated for the purposes of this article if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the director and the date on which the director transmitted the transmission.

SECTION 39. Amends Section A, Article 9.14, Texas Business Corporation Act, to provide that this Act applies to each domestic corporation and to each foreign corporation that is transacting business in this state, regardless of whether the foreign corporation is registered to transact business in this state.

SECTION 40. Amends Section A(4), Article 13.02, Texas Business Corporation Act, to redefine "business combination."

SECTION 41. Amends Section B, Article 13.07, Texas Business Corporation Act, to include a reference to Part 13 of this Act.

SECTION 42. Amends Article 1396-1.01 et seq., V.T.C.S. by adding Article 6.07, as follows:

Art. 6.07. FRAUDULENT TERMINATION. A. Authorizes a court, notwithstanding any other provision of this Act, to order the revocation of dissolution of a corporation that was dissolved as a result of actual or constructive fraud. Provides that in an action under this Article, any limitation period provided by law is tolled in accordance with the discovery rule.

B. Requires the secretary of state to take any action necessary to implement an order under this article.

SECTION 43. Repealers: Section B, Article 2.14, Texas Business Corporation Act;
Article 3.05, Texas Business Corporation Act;
Sections B and C, Article 4.10, Texas Business Corporation Act;
Sections B and C, Article 4.11, Texas Business Corporation Act;
Sections B and C, Article 4.12, Texas Business Corporation Act;
Article 2.01, Texas Miscellaneous Corporation Laws Act (Article 1302-2.01, Vernon's Texas Civil Statutes);
Article 2.02, Texas Miscellaneous Corporation Laws Act (Article 1302-2.02, Vernon's Texas Civil Statutes);
Article 2.03, Texas Miscellaneous Corporation Laws Act (Article 1302-2.03, Vernon's Texas Civil Statutes);
Article 2.04, Texas Miscellaneous Corporation Laws Act (Article 1302-2.04, Vernon's Texas Civil Statutes);
Article 2.09, Texas Miscellaneous Corporation Laws Act (Article 1302-2.09, Vernon's Texas Civil Statutes);
Article 2.09A, Texas Miscellaneous Corporation Laws Act (Article 1302-2.02.09A, Vernon's Texas Civil Statutes);
Article 2.10, Texas Miscellaneous Corporation Laws Act (Article 1302-2.10, Vernon's Texas Civil Statutes);
Article 3.02, Texas Miscellaneous Corporation Laws Act (Article 1302-3.02, Vernon's Texas Civil Statutes); and
Article 3.03, Texas Miscellaneous Corporation Laws Act (Article 1302-3.03, Vernon's Texas Civil Statutes).

SECTION 44. Effective date: September 1, 2003.