

BILL ANALYSIS

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C.S.S.B. 1514
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This package of amendments to the Business Organizations Code (BOC) is derived from working meetings conducted during the biennium by the State Bar of Texas Business Law Section Business Organizations Code Committee, in consultation with the Texas Secretary of State.

Keeping the BOC current requires ongoing technical and substantive updates and modifications. Similar amendment packages have been enacted every session since its initial adoption.

Highlights of substantive changes follow:

Certificates of Formation. Eliminates the need for repeating an 'initial mailing address' in a restated COF. Recognizes that outdated names and addresses can be omitted in a restated COF.

Names, Filings and Mergers. The definition of "assumed name" is amended to confirm that a protected series of an LLC does not have an assumed name if its name includes the name of its associated LLC. Also, the definition of "office" is amended to be, for a non-individual, that entity's principal office in Texas or outside Texas, as applicable. This eliminates the need for an entity's registered office to be listed in an assumed name certificate.

For all entities, including LLC series, improves the flexibility for filing certificates of merger, exchange, or conversion with a future effective time that is a date subsequent to the anticipated approval of the related plan or that is conditioned upon the occurrence of such subsequent approval. The approval of the plan of merger, exchange, or conversion, of course, must comply with applicable entity requirements, including certification in related filed certificates.

Meetings, Consents and Transparency. Permits alternative notice to owners of a meeting of owners, or solicitation of written consents of owners in lieu of a meeting, to approve a proposed action regarding which the owners have dissent and appraisal rights which directs the owners to a publicly available electronic resource without subscription or cost.

Eliminates the requirement that dissenting owners must surrender endorsed certificates representing ownership interests to obtain payment of a judgment resulting from an appraisal proceeding.

Eliminates for corporations the requirement to produce and keep open lists of shareholders or voting members at shareholder or voting member meetings. These lists are continually available, both physically and electronically, before meetings.

Eliminates the three-year deadline for reinstatement of a voluntarily terminated entity, which corresponds to what's applicable to an involuntarily terminated entity.

Following current law applicable to corporations, adds provisions for the ratification of void acts by or transactions by LLCs and partnerships.

Winding Up. For LLCs, adds a provision that permits a "springing member" when the member status of the last remaining member terminates, so the LLC may be responsibly closed out. Also,

extends the default deadline from 90 days to one year for replacement of the last remaining member whose status terminates.

The amendment package also includes numerous non-substantive technical and clarifying amendments. For instance, it confirms the doctrine of independent legal significance in interpreting BOC provisions, which has always been the practice.

Committee Substitute. The committee substitute corrected drafting errors and cross-references.

C.S.S.B. 1514 amends current law relating to business entities and nonprofit entities.

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 Sections 71.002(2) and (7), Business and Commerce Code, to redefine "assumed name" and "office."

SECTION 2. Amends Subchapter B, Chapter 1, Business Organizations Code, by adding Section 1.055, as follows:

Sec. 1.055. DOCTRINE OF INDEPENDENT LEGAL SIGNIFICANCE. Prohibits an action validly taken under a provision of this code from being considered invalid because the action is identical or similar in substance to an action that could have been taken under another provision of this code but fails to satisfy one or more requirements prescribed by that other provision.

SECTION 3. Amends Section 3.059(b), Business Organizations Code, as follows:

(b) Authorizes a restated certificate of formation to omit:

- (1) makes a nonsubstantive change to this subdivision;
- (2) the initial mailing address of the filing entity; and
- (3) redesignates existing Subdivision (2) as Subdivision (3).

SECTION 4. Amends Section 3.203, Business Organizations Code, as follows:

Sec. 3.203. SIGNATURE REQUIREMENT. (a) Requires a certificate representing an ownership interest in a domestic entity to contain the signature or signatures of each managerial official of the entity that is authorized by the governing documents of the entity to sign certificated ownership interests of the entity. Deletes existing text requiring 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 to sign any certificate representing an ownership interest in the entity.

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

SECTION 5. Amends Section 3.251(3), Business Organizations Code, to redefine "emergency period."

SECTION 6. Amends Section 4.005, Business Organizations Code, by adding Subsection (f), to authorize a certificate issued by the secretary of state stating that a domestic registered series is in existence, subject to any qualification stated in the certificate, to be relied on as conclusive evidence of the existence of the domestic registered series.

SECTION 7. Amends Section 5.051, Business Organizations Code, as follows:

Sec. 5.051. ASSUMED NAME. Authorizes a domestic entity, a protected series or registered series of a domestic limited liability company, or a foreign entity having authority to transact business in this state to transact business under an assumed name on compliance with, rather than by filing an assumed name certificate in accordance with, Chapter 71 (Assumed Business or Professional Name), Business and Commerce Code.

SECTION 8. Amends Section 6.201(b-3), Business Organizations Code, as follows:

(b-3) Authorizes a person signing a written consent, by a provision in the written consent or by a written instruction to an agent of the filing entity, to provide that the person's consent is to take effect at a future time, which is prohibited from being later than the 60th day after the date all persons entitled to vote on the action have signed the consent or consents, rather than the person's consent or consents. Makes a nonsubstantive change.

SECTION 9. Amends Sections 6.202(b) and (c-3), Business Organizations Code, as follows:

(b) Authorizes the certificate of formation of a filing entity, except as provided by this code, to authorize the owners or members of the entity to take action without holding a meeting, providing prior notice, rather than 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-3) Provides that the written consent or consents are considered to have been given for purposes of Section 6.202 (Action by Less Than Unanimous Written Consent) at the applicable effective time so long as owners or members satisfying the minimum requirements in Subsection (b) meet certain criteria, including having signed and not revoked the consent or consents, rather than the owner's or member's consent or consents, at any time before the applicable effective time of the consent or consents.

SECTION 10. Amends Section 10.151(a), Business Organizations Code, to delete existing text specifying that the filing of a certificate of merger, which may also include an exchange, or a certificate of exchange, as applicable, and which must be filed for a merger or interest exchange to become effective is to occur after approval of a plan of merger or a plan of exchange as provided by this code.

SECTION 11. Amends Section 10.154(a), Business Organizations Code, to delete existing text specifying that the filing of a certificate of conversion, which must be filed for the conversion to become effective, is to occur after approval of a plan of conversion as provided by this code.

SECTION 12. Amends Section 10.355(c), Business Organizations Code, as follows:

(c) Requires that a notice required to be provided under Subsection (a) (relating to requiring a domestic entity that is 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 to notify each affected owner of owner's rights if certain criteria are met), (b) (relating to requiring the responsible organization to notify the owners of a subsidiary organization who have a right to dissent to the merger), or (b-1) (relating to requiring the responsible organization to notify the shareholders of a corporation who have a right to dissent to the plan of merger):

(1) be accompanied by:

(A) creates this paragraph from existing text; or

(B) information directing the owner to a publicly available electronic resource at which Subchapter H (Rights of Dissenting Owners) may be accessed without subscription or cost; and

(2) makes no changes to this subdivision.

SECTION 13. Amends Section 10.364(d), Business Organizations Code, as follows:

(d) Requires the responsible organization to pay the amount of the judgment to the holder of the ownership interest on the terms and conditions ordered by the court. Deletes existing text requiring the responsible organization to immediately pay the amount of the judgment to a holder of an uncertificated ownership interest and 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. Makes nonsubstantive changes.

SECTION 14. Amends Section 11.056, Business Organizations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that 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) (relating to providing that winding up of a domestic entity is required on an event specified in other sections of this code requiring the winding up or termination of the domestic entity, other than certain events) unless, not later than one year, rather than not later than the 90th day, after the date of the termination or within the period of time provided by the company agreement:

(1) creates this subdivision from existing text; or

(2) a member is admitted to the company in the manner provided by the company agreement, effective as of the occurrence of the termination, under a provision of the company agreement that specifically provides for the admission of a member to the company after there is no longer a remaining member of the company.

(c) Authorizes the company agreement to provide that the legal representative or successor of the last remaining member is obligated to agree to continue the company and to the admission of the legal representative or successor, or the representative's or successor's nominee or designee, as a member effective as of the occurrence of the event that terminates the continued membership of the last remaining member.

Makes nonsubstantive changes.

SECTION 15. Amends Sections 11.202(a) and (c), Business Organizations Code, as follows:

(a) Deletes existing text requiring a terminated entity, to the extent applicable, to be reinstated, to complete the requirements of Section 11.202 (Procedures for Reinstatement) not later than the third anniversary of the date the termination of the terminated entity's existence took effect.

(c) Deletes existing text requiring filing entity, after approval of the reinstatement of the 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, to file a certificate of reinstatement in accordance with Chapter 4 (Filings).

SECTION 16. Amends Section 11.253, Business Organizations Code, by adding Subsection (e), to provide that the reinstatement of a terminated limited liability company automatically reinstates any protected series or registered series that terminated because of the termination of the company.

SECTION 17. Amends Section 11.254, Business Organizations Code, by adding Subsection (c), to provide that the reinstatement of a limited liability company's certificate of formation after its forfeiture automatically reinstates any protected series or registered series that terminated because of the forfeiture.

SECTION 18. Amends Subchapter F, Chapter 11, Business Organizations Code, by adding Section 11.255, as follows:

Sec. 11.255. REINSTATEMENT OF CERTIFICATE OF FORMATION FOLLOWING FAILURE TO REVIVE; REINSTATEMENT RETROACTIVE. (a) Requires a nonprofit corporation whose certificate of formation has been terminated under Section 22.364 (Failure to Revive; Termination or Revocation) to follow the procedure required by Section 22.365 (Reinstatement) to reinstate the nonprofit corporation's certificate of formation. Provides that a nonprofit corporation whose certificate of formation is reinstated under Section 22.365 is considered to have continued in existence without interruption from the date of termination.

(b) Requires a limited partnership whose certificate of formation has been terminated under Section 153.311 (Termination of Certificate or Revocation of Registration After Forfeiture) to follow the procedure required by Section 153.312 (Reinstatement of Certificate of Formation or Registration) to reinstate the limited partnership's certificate of formation. Provides that a limited partnership whose certificate of formation is reinstated under Section 153.312 is considered to have continued in existence without interruption from the date of termination.

SECTION 19. Amends Sections 11.356(a) and (b), Business Organizations Code, as follows:

(a) Provides that the terminated filing entity, notwithstanding the termination of a domestic filing entity under this code or the Tax Code, rather than under Chapter 11 (Winding Up and Termination of Domestic Entity), continues in existence until the third anniversary of the effective date of the entity's termination only for certain purposes.

(b) Prohibits a terminated filing entity from continuing 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 this code or the Tax Code, rather than under Subchapter E (Reinstatement of Terminated Entity).

SECTION 20. Amends Section 11.359(c), Business Organizations Code, as follows:

(c) Provides that the extinguishment of an existing claim with respect to a terminated filing entity as provided by Section 11.359 (Extinguishment of Existing Claim), notwithstanding Subsections (a) (relating to providing that 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) and (b) (relating to authorizing a person's claim against a terminated filing entity to be extinguished before the period under Subsection (a) if certain criteria are met), is nullified if:

(1)-(2) makes no changes to these subdivisions;

(3)-(4) makes nonsubstantive changes to these subdivisions;

(5) the terminated filing entity's certificate of formation is reinstated under Chapter 22 (Nonprofit Corporations) with retroactive effect as provided by Section 11.255(a); or

(6) the terminated filing entity's certificate of formation is reinstated under Chapter 153 (Limited Partnerships) with retroactive effect as provided by Section 11.255(b).

SECTION 21. Amends Section 20.002(c), Business Organizations Code, as follows:

(c) Authorizes 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 to be asserted in a proceeding by certain entities, including by the corporation, acting directly or through shareholders in a representative suit, against an officer or director or former officer or director of the corporation for exceeding that person's authority.

SECTION 22. Amends Section 21.157, Business Organizations Code, by amending Subsections (a) and (d) and adding Subsections (e), (f), and (g), as follows:

(a) Authorizes shares to be issued in one or more transactions in the number, at the time, and for the consideration stated in or determined by the authorization of the board of directors.

(d) Authorizes an authorization of the board of directors to delegate to a person or persons, in addition to the board of directors, the authority to enter into one or more transactions to issue shares. Authorizes shares, with respect to a transaction entered into by a person or persons to whom authority was delegated under this subsection, to be issued in the number, at the time, and for the consideration the person or persons are authorized to determine if that authorization of the board of directors:

(1) states:

(A) makes no changes to this paragraph;

(B) the period of time during which the shares are authorized to be issued; and

(C) makes a nonsubstantive change to this paragraph; and

(2) does not permit the person or persons to whom authority was delegated to issue shares to that person or those persons.

Deletes existing text authorizing the authorization by the board of directors for the issuance of shares to provide that any shares to be issued under the authorization are authorized to be issued in one or more transactions in the numbers and at the times as stated in or determined by the authorization or 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 certain information.

(e) Provides that a provision of an authorization provided under Subsection (a) or (d) may depend on a fact ascertainable outside of the authorization, if the manner in which the fact operates on the authorization is clearly and expressly included in the authorization. Defines "fact."

(f) Prohibits the provisions of the authorization under Subsection (d)(1), if the authorization of the board of directors delegates to a person or persons the authority to enter into a transaction to issue shares under Subsection (d), from depending on a determination or action by the person to whom authority was delegated.

(g) Defines "person."

SECTION 23. Amends Section 21.160(a), Business Organizations Code, to require that consideration to be received for shares, subject to Section 21.157 (Issuance of Shares), be determined by certain entities.

SECTION 24. Amends Section 21.168, Business Organizations Code, by amending Subsections (c) and (d) and adding Subsections (e), (f), (g), and (h), as follows:

(c) Requires that a right or option described by Section 21.168 (Stock Rights, Options, and Convertible Indebtedness), subject to the certificate of formation, state the terms and conditions on which, the time within which, and any consideration, including a formula by which the consideration may be determined, for which the shares are authorized to be purchased or received from the corporation on the exercise of the right or option. Deletes existing text authorizing a formula by which the consideration may be determined to 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) Requires that convertible indebtedness described by this section, subject to the certificate of formation, state the terms and conditions on which, the time within which, and the conversion ratio, which may be stated as a formula by which the conversion ratio may be determined, at which the indebtedness is authorized to be converted into shares. Authorizes the formula to 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 provided by the formula or in the authorization approving the formula.

(e) Authorizes an authorization of the board of directors to delegate to a person or persons, in addition to the board of directors, the authority to enter into one or more transactions to issue rights or options. Authorizes the rights or options, for a transaction entered into by a person or persons to whom authority was delegated under this subsection, to be issued in the number, at the time, and for the consideration as the person or persons are authorized to determine if that authorization of the board of directors:

(1) states:

(A) the maximum number of rights or options, and the maximum number of shares issuable on exercise of those rights or options, that are authorized to be issued under the authorization;

(B) the period of time during which the rights or options, and the shares issuable on exercise of those rights or options, are authorized to be issued; and

(C) the minimum amount of consideration:

(i) if any, for which the rights or options are authorized be issued; and

(ii) for the shares issuable on exercise of the rights or options; and

(2) does not permit the person or persons to whom authority was delegated to issue rights, options, or shares to that person or those persons.

(f) Provides that a provision of a right or option or an authorization of a right or option under this section may depend on a fact ascertainable outside of the right, option, or authorization, if the manner in which the fact operates on the authorization is clearly and expressly set forth in the authorization. Defines "fact."

(g) Prohibits the provisions of the authorization under Subsection (e)(1), if the authorization of the board of directors delegates to a person or persons the authority to enter into a transaction to issue rights or options under Subsection (e), from depending on a determination or action by the person to whom authority was delegated.

(h) Defines "person."

SECTION 25. Amends Section 21.169(c), Business Organizations Code, to create an exception under Section 21.168.

SECTION 26. Amends Section 21.218, Business Organizations Code, by amending Subsections (b) and (c) and adding Subsection (b-1), as follows:

(b) Provides that 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, on written demand stating a proper purpose, is entitled to examine and copy, at a reasonable time at the corporation's principal place of business or other location approved by the corporation and the holder, the corporation's books, records of account, minutes, share transfer records, and other records, whether in written or other tangible form, if the record is reasonably related to and appropriate to examine and copy for that proper purpose, rather than relating to the stated purpose. Makes a nonsubstantive change.

(b-1) Authorizes the examination and copying to be conducted by the holder of shares, rather than conducted in person, or through an agent, accountant, or attorney. Provides that an agent, accountant, or attorney who conducts an examination and copying under Section 21.218 (Examination of Records) is subject to any obligations of the shareholder with respect to the records made available for examination and copying.

(c) Provides that 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, at the holder's cost, of the books and records of account, rather than record of accounts, minutes, share transfer records, and other records, whether in written or other tangible form, 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. Makes a nonsubstantive change.

SECTION 27. Amends Section 21.220, Business Organizations Code, as follows:

Sec. 21.220. PENALTY FOR FAILURE TO PREPARE VOTING LIST. Provides that 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 before the annual meeting, or keep the list available for inspection, rather than produce and keep the list available for inspection at the annual meeting, as required by Sections 21.354 (Inspection of Voting List) and 21.372 (Shareholder Meeting List) is liable to a shareholder who suffers damages because of the failure for the damage caused by the failure.

SECTION 28. Amends Section 21.354(a), Business Organizations Code, to delete existing text requiring that the list of shareholders entitled to vote at the meeting prepared under Section 21.372 be produced and kept open at the meeting. Makes nonsubstantive changes.

SECTION 29. Amends Section 21.372(a-1), Business Organizations Code, to delete existing text prohibiting Section 21.354(a-1) (relating to requiring that the list, if a meeting of the shareholders is held by means of remote communication, be open to inspection by a shareholder during the meeting on a reasonably accessible electronic network) from being construed to require a corporation to include any electronic contact information of a shareholder on the list.

SECTION 30. Amends Section 22.220, Business Organizations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes the certificate of formation or bylaws of a corporation to provide that an action required by this chapter to be taken at a meeting of the corporation's directors or an action that is authorized to be taken at a meeting of the directors or a committee is authorized to be taken without holding a meeting, providing prior notice, or taking a vote 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.

(c) Provides that advance notice, notwithstanding a provision of this code, is not required to be given to take an action by written consent as provided by Section 22.220 (Action Without Meeting of Directors or Committee).

SECTION 31. Amends Section 22.230(e), Business Organizations Code, as follows:

(e) Provides that neither the corporation nor any of the corporation's members, rather than corporation's shareholders, if at least one of the conditions of Subsection (b) (relating to providing that an otherwise valid and enforceable contract or transaction is valid and enforceable, and is not void or voidable, if any one of certain conditions are satisfied) is satisfied, will have a cause of action against any of the persons described by Subsection (a) (relating to a contract or transaction between a corporation and certain entities) 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) (relating to authorizing a person who has the relationship or interest described by Subsection (a) to take certain actions).

SECTION 32. Amends Section 101.001(1), Business Organizations Code, to redefine "company agreement."

SECTION 33. Amends Section 101.051, Business Organizations Code, as follows:

Sec. 101.051. CERTAIN PROVISIONS CONTAINED IN CERTIFICATE OF FORMATION. (a) Authorizes a provision that is authorized to be included, rather than contained, in the company agreement of a limited liability company to be included, rather than to alternatively be included, in the certificate of formation of the company as provided by Section 3.005(b) (relating to authorizing the certificate of formation to contain other provisions not inconsistent with law relating to the organization, ownership, governance, business, or affairs of the filing entity).

(b) Provides that a reference in Title 3 (Limited Liability Companies) to the company agreement of a limited liability company includes any provision contained in the company's certificate of formation to the extent that the provision reflects the agreement of each member concerning the affairs or the conduct of the business of the limited liability company, rather than instead of the company agreement as provided by Subsection (a).

SECTION 34. Amends Section 101.052, Business Organizations Code, by amending Subsection (f) and adding Subsection (g), as follows:

(f) Provides that a company agreement is enforceable by or against the limited liability company, including a protected series or registered series of the company, regardless of whether the company, or the protected series or registered series of the company, has signed or otherwise expressly adopted the agreement.

(g) Provides that a member or manager of a limited liability company, or an assignee of a membership interest of a limited liability company, is bound by the company agreement, regardless of whether the member, manager, or assignee signs the company agreement.

SECTION 35. Amends Sections 101.054(a) and (e), Business Organizations Code, as follows:

(a) Prohibits the following provisions from being waived or modified in the company agreement of a limited liability company, except as provided by this Section 101.054 (Waiver or Modification of Certain Statutory Provisions Prohibited; Exceptions):

(1)-(5) makes no changes to these subdivisions; or

(6) Chapter 4, 5 (Names of Entities; Registered Agents and Registered Offices), 10 (Mergers, Interest Exchanges, Conversions, and Sales of Assets), 11, or 12 (Administrative Powers). Deletes existing text creating an exception under Section 11.056 (Supplemental Provisions for Limited Liability Company).

(e) Prohibits the company agreement from unreasonably restricting a member's or assignee's rights, rather than a person's right of access to records and information, under Section 101.502.

SECTION 36. Amends Subchapter B, Chapter 101, Business Organizations Code, by adding Section 101.056, as follows:

Sec. 101.056. RATIFICATION OF VOID OR VOIDABLE ACTS OR TRANSACTIONS. (a) Authorizes any act or transaction taken by or with respect to a limited liability company under this code or a company agreement that is void or voidable when taken to be ratified, and the failure to comply with any requirements of the company agreement which caused the act or transaction to be void or voidable to be waived, in accordance with this section.

(b) Authorizes an act or transaction to be ratified or waived, as applicable, with the approval of the members, managers, or other persons whose approval would be required under the company agreement at the time of the ratification or waiver:

(1) for the void or voidable act or transaction to be validly taken; or

(2) to amend the company agreement in a manner that would permit the void or voidable act or transaction to be validly taken.

(c) Provides that the membership interests purportedly issued or assigned are deemed to have not been issued or assigned, if the void or voidable act or transaction was the issuance or assignment of any membership interests, for purposes of determining whether the void or voidable act or transaction is ratified or waived under this section.

(d) Provides that any act or transaction ratified or waived under this section is deemed validly taken at the time the act or transaction occurred.

(e) Prohibits this section from being construed to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other lawful means.

SECTION 37. Amends Section 101.206(e), Business Organizations Code, to prohibit Section 101.206 (Prohibited Distribution; Duty to Return) from being construed to affect the obligation of a member of a limited liability company to return a distribution to the company under the company agreement, another agreement, or other state or federal law.

SECTION 38. Amends Section 101.252, Business Organizations Code, as follows:

Sec. 101.252. MANAGEMENT BY GOVERNING AUTHORITY. Requires the governing authority of a limited liability company to direct the management of, rather than to manage, the business and affairs of the company and exercise or authorize the exercise of the powers of the company as provided by certain provisions.

SECTION 39. Amends Section 101.358(b), Business Organizations Code, to authorize an action to be taken without holding a meeting, providing prior or subsequent notice, rather than providing notice, or taking a vote if certain conditions are met.

SECTION 40. Amends Section 101.457, Business Organizations Code, as follows:

Sec. 101.457. TOLLING OF STATUTE OF LIMITATIONS. Provides that a written demand filed with the limited liability company under Section 101.453 (Demand) 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 101.453, rather than Section 101.453(a) (relating to prohibiting a member from instituting a derivative proceeding until the 91st day after the date a written demand is filed with the limited liability company); or

(2) makes no changes to this subdivision.

SECTION 41. Amends Section 101.502, Business Organizations Code, as follows:

Sec. 101.502. New heading: RIGHT TO EXAMINE RECORDS. (a) Provides that a member of a limited liability company or an assignee of a membership interest in a limited liability company, on written demand stating a proper purpose, is entitled to examine and copy at a reasonable time at the limited liability company's principal office identified under Section 101.501(c) (relating to requiring a limited liability company to keep at its registered office located in this state the address of the company's principal office in the United States) or another location approved by the limited liability company and the member or assignee, any records of the limited liability company, whether in written or other tangible form, which are reasonably related to and appropriate to examine and copy for that proper purpose.

Deletes existing text authorizing a representative of the member or assignee, on written request for a proper purpose, to examine and copy at any reasonable time and at the member's or assignee's expense records required under Section 3.151 (Books and Records for All Filing Entities) and 101.501 (Supplemental Records Required for Limited Liability Companies) and other information regarding the business, affairs, and financial condition of the company that is reasonable for the person to examine and copy.

(b) Authorizes the examination and copying under Subsection (a) to be conducted by the member or assignee or through an agent, accountant, or attorney. Provides that an agent, accountant, or attorney who conducts an examination and copying under this section is subject to any obligations of the member or assignee with respect to the records made available for examination and copying.

Deletes existing text requiring a limited liability company to provide to a member of the company or an assignee of a membership interest in the company, on the 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 certain documents.

(c) Requires the limited liability company, on written request of a member or an assignee of a membership interest, to provide to the requesting member or assignee without charge copies of certain documents.

(d) Requires that a demand or request made by a member or assignee under Subsection (a) or (c) be made to:

(1) the person who is designated to receive the demand or request in the company agreement at the address designated in the company agreement; or

- (2) if there is no designation, a manager or managing member at the limited liability company's principal office in the United States.

SECTION 42. Amends Section 101.601(c), Business Organizations Code, to prohibit anything in this subchapter from being construed to limit the application of the principle of freedom of contract to a series that is not a protected series or a registered series. Makes a nonsubstantive change.

SECTION 43. Amends Section 101.623(b), Business Organizations Code, as follows:

- (b) Requires that a certificate of registered series state:
 - (1) makes no changes to this subdivision;
 - (2) the name of the registered series being formed, which is required to conform with the requirements of Section 5.0561 (Names of Registered Series of Limited Liability Company), rather than Section 5.056(c); and
 - (3) makes no changes to this subdivision.

SECTION 44. Amends Section 101.624(d), Business Organizations Code, as follows:

- (d) Requires a manager associated with a registered series or, if there is no manager, any member associated with the registered series who becomes aware that any statement in a certificate of registered series filed with respect to the registered series was false when made, or that any provision in the certificate of registered series has changed making the certificate of registered series false in any material respect, or that the name of the registered series does not comply with Section 101.626 (Name of Registered Series), to promptly amend the certificate of registered series.

SECTION 45. Amends Section 101.625(b), Business Organizations Code, as follows:

- (b) Requires that the certificate of termination contain:
 - (1)-(3) makes no changes to these subdivisions;
 - (4) the nature of the event requiring winding up of the registered series; and
 - (5)-(6) makes no changes to these subdivisions.

SECTION 46. Amends Section 101.627(a), Business Organizations Code, to make nonsubstantive changes.

SECTION 47. Amends Section 101.628(g), Business Organizations Code, as follows:

- (g) Authorizes any of the terms of the plan of conversion to be made dependent on a fact ascertainable outside of the plan if the manner in which the fact, rather than those facts, will operate on the terms of the conversion is clearly and expressly stated in the plan. Defines "fact," rather than "facts."

SECTION 48. Amends Section 101.631(a), Business Organizations Code, as follows:

- (a) Requires that a certificate of conversion be signed by the converting series and include a statement certifying certain criteria. Deletes existing text specifying the signed certificate follows adoption of a plan of conversion as provided by Section 101.628 (Authorization of Conversion).

SECTION 49. Amends Section 101.633(a)(1), Business Organizations Code, to redefine "merger."

SECTION 50. Amends Sections 101.633(b) and (e), Business Organizations Code, as follows:

(b) Authorizes one or more merging series of the same limited liability company to effect, rather than affect, a merger as provided by a plan of merger that is approved in accordance with Section 101.633 (Merger Among Merging Series of Same Limited Liability Company) and that complies with Sections 101.634 (Certificate of Merger) through 101.636 (Prohibition on Merger Permitted). Requires that the plan of merger provide for one or more surviving or new protected series or registered series of the same limited liability company.

(e) Authorizes an item required by Subsection (d)(6) (relating to any amendment to the company agreement that may be necessary to reflect the merger of the merging series and the establishment of any new protected series or registered series that is to be created by the merger), (7) (relating to any amendment to the certificate of registered series of any registered series that is a surviving registered series, including a change in the name of the surviving registered series, that will be effected by the merger), or (8) (relating to the certificate of registered series of each new registered series to be created by the plan of merger), rather than Subsections (6) and (8), to be included In the plan of merger by an attachment or exhibit to the plan.

SECTION 51. Amends Sections 101.634(a), (d), and (e), Business Organizations Code, as follows:

(a) Deletes existing text specifying that the requirement that a certificate of merger be signed by each merging series that is a party the merger and to include a statement certifying certain conditions is to occur after approval of a plan of a merger as provided by Section 101.663.

(d) Makes nonsubstantive changes to this subsection.

(e) Provides that whenever this section requires the filing of a certificate of merger, that requirement may be satisfied, rather than is satisfied, by the filing of the plan of merger containing the information required to be included in the certificate of merger as provided by this section.

SECTION 52. Amends Section 101.636, Business Organizations Code, as follows:

Sec. 101.636. PROHIBITION ON MERGER PERMITTED. Authorizes a company agreement to provide that a protected series or registered series, rather than registered series company, does not have the power to merge under Section 101.633.

SECTION 53. Amends Section 151.001(5), Business Organizations Code, to redefine "partnership agreement."

SECTION 54. Amends Section 152.002(b), Business Organizations Code, as follows:

(b) Prohibits a partnership agreement or the partners from:

(1) unreasonably restricting a partner's or former partner's right of access to books and records under Section 152.212;

(2)-(9) makes no changes to these subdivisions.

SECTION 55. Amends Section 153.004(a), Business Organizations Code, as follows:

(a) Prohibits the following provisions of Title 1 (General Provisions), except as provided by Section 153.004 (Nonwaivable Title I Provisions), from being waived or modified in the partnership agreement of a limited partnership:

(1)-(2) makes no changes to these subdivisions;

(3) Chapter 3, other than Subchapters C (Governing Persons and Officers) and E (Certificates Representing Ownership Interests) of that chapter and Section 3.151 (provided, that in all events a partnership agreement prohibited from validly waiving or modifying Section 153.551 (Records) or unreasonably restricting a partner's or assignee's rights, rather than right of access to books and records, under Section 153.552); or

(4) makes no changes to this subdivision.

SECTION 56. Amends Section 153.112, Business Organizations Code, as follows:

Sec. 153.112. RECEIPT OF WRONGFUL DISTRIBUTION. Provides that this section does not affect an obligation of the limited partner under the partnership agreement, another agreement, or other applicable law to return the distribution.

SECTION 57. Amends Section 153.552, Business Organizations Code, as follows:

Sec. 153.552. New heading: EXAMINATION OF RECORDS. (a) Provides that a partner or an assignee of a partnership interest in a limited partnership, on written demand stating proper purpose, is entitled to examine and copy, at a reasonable time at the partnership's principal office identified under Section 153.551 or other location approved by the partnership and the partner or assignee, any records of partnership, whether in written or other tangible form, which are reasonably related to and appropriate to examine and copy for that proper purpose. Deletes existing text authorizing a partner or assignee of a partnership interest, on written request stating a proper purpose, to 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) Authorizes the examination and copying under Subsection (a) to be conducted by the partner or assignee or through an agent, accountant, or attorney. Provides that an agent, accountant, or attorney who conducts an examination and copying under this section is subject to any obligations of the partner or assignee with respect to the records made available for examination and copying. Deletes existing text authorizing the records requested under Subsection (a) to be examined and copied at a reasonable time and at the partner's sole expense.

(c) Makes no changes to this subsection.

(d) Requires that a demand or request made by a partner or assignee under Subsection (a) or (c) be made to:

(1) the person who is designated to receive the demand or request in the partnership agreement at the address designated in the partnership agreement; or

(2) makes no changes to this subdivision.

SECTION 58. Amends Subchapter C, Chapter 154, Business Organizations Code, by adding Section 154.205, as follows:

Sec. 154.205. RATIFICATION OF VOID OR VOIDABLE ACTS OR TRANSACTIONS. (a) Provides that any act or transaction taken by or with respect to a partnership under this code or a partnership agreement that is void or voidable when taken is authorized to be ratified, and the failure to comply with any requirements of the partnership agreement which caused the act or transaction to be void or voidable are authorized to be waived, in accordance with this section.

(b) Authorizes an act or transaction to be ratified or waived, as applicable, with the approval of the partners or other persons whose approval would be required under the partnership agreement at the time of the ratification or waiver:

(1) for the void or voidable act or transaction to be validly taken; or

(2) to amend the partnership agreement in a manner that would permit the void or voidable act or transaction to be validly taken.

(c) Provides that the partnership interests purportedly issued or assigned are deemed to have not been issued or assigned, if the void or voidable act or transaction was the issuance or assignment of any partnership interests, for purposes of determining whether the void or voidable act or transaction is ratified or waived under Subsection (b).

(d) Provides that any act or transaction ratified or waived under this section is deemed validly taken at the time the act or transaction occurred.

(e) Prohibits this section from being construed to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other lawful means.

SECTION 59. Repealer: Section 21.160(d) (relating to the formula for the amount of the consideration to be received for shares), Business Organizations Code.

Repealers: Sections 21.169(d) (relating to authorizing the terms of rights or options or the agreement or plan under which the rights or options are issued to provide that the board of directors by resolution are authorized to authorize one or more officers of the corporation to take certain actions) and (e) (relating to requiring a resolution adopted under Subsection (d)(1) to specify the total number of rights or options the authorized officer or officers are authorized to award), Business Organizations Code.

Repealer: Section 21.354(a-1) (relating to requiring that the list of shareholders entitled to vote be open to inspection in certain instances), Business and Organizations Code.

Repealer: Section 22.158(d) (relating to requiring a corporation to make the list of voting members available at the meeting), Business Organizations Code.

SECTION 60. Effective date: September 1, 2023.