

## AN ACT

relating to business entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1.002(33), (49), and (53), Business Organizations Code, are amended to read as follows:

(33) "General partner" means:

(A) each partner in a general partnership; or

(B) a person who has become, and has not ceased to be, ~~[is admitted to a limited partnership as]~~ a general partner in a limited partnership in accordance with the governing documents of the limited partnership or this code.

(49) "Limited partner" means a person who has become,  
and has not ceased to be, ~~[been admitted to a limited partnership~~  
~~as]~~ a limited partner in a limited partnership in accordance with  
the governing documents of the limited partnership or this code ~~[as~~  
~~provided by:~~

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

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

(53) "Member" means:

(A) in the case of a limited liability company, a person who ~~[is a member or]~~ has become, and has not ceased to be, ~~[been admitted as]~~ a member in the limited liability company as

1 provided by ~~[under]~~ its governing documents or this code;

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

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

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

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

13 SECTION 2. Subchapter B, Chapter 2, Business Organizations  
14 Code, is amended by adding Section 2.115 to read as follows:

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

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

24 SECTION 3. Section 3.010, Business Organizations Code, is  
25 amended to read as follows:

26 Sec. 3.010. SUPPLEMENTAL PROVISIONS REQUIRED IN  
27 CERTIFICATE OF FORMATION OF LIMITED LIABILITY COMPANY. In addition

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1 to the information required by Section 3.005, the certificate of  
2 formation of a limited liability company must state:

3 (1) whether the limited liability company initially  
4 has ~~[will]~~ or does ~~[will]~~ not have managers;

5 (2) if the limited liability company initially has  
6 ~~[will have]~~ managers, the name and address of each initial manager  
7 of the limited liability company; and

8 (3) if the limited liability company does ~~[will]~~ not  
9 initially have managers, the name and address of each initial  
10 member of the limited liability company.

11 SECTION 4. Section 3.060(a), Business Organizations Code,  
12 is amended to read as follows:

13 (a) In addition to the provisions authorized or required by  
14 Section 3.059, a restated certificate of formation for a for-profit  
15 corporation or professional corporation may omit any prior  
16 statements regarding ~~[update]~~ the ~~[current]~~ number of directors and  
17 the names and addresses of the persons serving as directors and, at  
18 the corporation's election, may insert a statement regarding the  
19 current number of directors and the names and addresses of the  
20 persons currently serving as directors.

21 SECTION 5. Section 3.061(a), Business Organizations Code,  
22 is amended to read as follows:

23 (a) In addition to the provisions authorized or required by  
24 Section 3.059, a restated certificate of formation for a nonprofit  
25 corporation may omit any prior statements regarding ~~[update]~~ the  
26 ~~[current]~~ number of directors and the names and addresses of the  
27 persons serving as directors and, at the corporation's election,



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1 may insert a statement regarding the current number of directors  
2 and the names and addresses of the persons currently serving as  
3 directors.

4 SECTION 6. Section 3.0611, Business Organizations Code, is  
5 amended to read as follows:

6 Sec. 3.0611. SUPPLEMENTAL PROVISIONS FOR RESTATED  
7 CERTIFICATE OF FORMATION FOR LIMITED LIABILITY COMPANY. In  
8 addition to the provisions authorized or required by Section 3.059,  
9 a restated certificate of formation for a limited liability company  
10 may omit any prior statements regarding whether the company has or  
11 does not have managers and the names and addresses of managers or  
12 members and, at the company's election, may insert a statement:

13 (1) regarding whether ~~[if the company's certificate of~~  
14 ~~formation states that]~~ the company currently has or does not ~~[will]~~  
15 have ~~[one or more]~~ managers~~[, update the names and addresses of the~~  
16 ~~persons serving as managers]; [or]~~

17 (2) ~~[if the certificate of formation states]~~ that the  
18 company currently has ~~[will not have]~~ managers and~~[, update]~~ the  
19 names and addresses of the persons currently serving as managers;  
20 or

21 (3) that the company currently does not have managers  
22 and the names and addresses of the current members of the company.

23 SECTION 7. Section 3.251, Business Organizations Code, is  
24 amended to read as follows:

25 Sec. 3.251. DEFINITIONS ~~[EMERGENCY DEFINED]~~. In ~~[For~~  
26 ~~purposes of]~~ this subchapter:

27 (1) "Emergency" means any of the following:



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1                    (A) an attack on the United States, a state, or a  
2 political subdivision of a state;

3                    (B) a nuclear or atomic disaster;

4                    (C) the occurrence of a catastrophic event,  
5 including:

6                    (i) an epidemic or pandemic;

7                    (ii) a hurricane, tropical storm, tornado,  
8 or other weather condition; or

9                    (iii) a riot or civil disturbance;

10                   (D) the declaration of a national emergency by  
11 the United States government;

12                   (E) the declaration of an emergency by a state or  
13 a political subdivision of a state; or

14                   (F) any other similar emergency situation.

15                   (2) "Emergency action" means an action taken by  
16 majority vote of the governing persons present at a meeting of the  
17 governing authority of a domestic entity during an emergency  
18 period.

19                   (3) "Emergency period" means any period during which  
20 the governing authority of a domestic entity, due to a condition  
21 that is a part of or results from an emergency, is unable to satisfy  
22 one or more requirements of the entity's governing documents or  
23 this code necessary for action by vote of the governing authority  
24 outside of an emergency period~~[, an emergency exists if a majority~~  
25 ~~of a domestic entity's governing persons cannot readily participate~~  
26 ~~in a meeting because of the occurrence of a catastrophic event]~~.

27                   SECTION 8. Section 3.252, Business Organizations Code, is

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1 amended to read as follows:

2       Sec. 3.252. PROVISIONS IN GOVERNING DOCUMENTS. (a) The  
 3 ~~[Except as otherwise provided by the entity's governing documents,~~  
 4 ~~the]~~ governing persons and, if applicable, the owners~~[r]~~ or members  
 5 of a domestic entity may adopt provisions in the domestic entity's  
 6 governing documents regarding ~~[the management of the entity during~~  
 7 ~~an]~~ emergency actions, including provisions that apply only during  
 8 an emergency period that authorize, limit, or prohibit:

9               (1) ~~[prescribing]~~ procedures for calling a meeting of  
 10 the governing persons;

11               (2) the necessity of a quorum for action by vote at a  
 12 meeting of the governing persons;

13               (3) ~~[establishing]~~ minimum requirements for  
 14 participation at the meeting of the governing persons; and

15               (4) the designation of ~~[(3) designating]~~ additional  
 16 or substitute governing persons.

17       (b) Any ~~[The emergency]~~ provisions in a domestic entity's  
 18 governing documents that apply only during an emergency period must  
 19 be adopted in accordance with:

20               (1) the requirements of the governing documents that  
 21 apply outside of an emergency period; and

22               (2) the applicable provisions of this code that apply  
 23 outside of an emergency period.

24       SECTION 9. Subchapter F, Chapter 3, Business Organizations  
 25 Code, is amended by adding Section 3.2535 to read as follows:

26       Sec. 3.2535. ACTIONS DURING EMERGENCY PERIOD. (a) Except  
 27 as otherwise limited or prohibited by the domestic entity's

governing documents or except as provided by Subsection (b), the governing authority of a domestic entity may take an emergency action during an emergency period without satisfying the requirements of the entity's governing documents or this code that apply outside of an emergency period with respect to:

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

(2) the necessity of a quorum for action by vote at a meeting of the governing persons;

(3) minimum requirements for participation at a meeting of the governing persons; and

(4) any other procedural requirements for action at a meeting of the governing persons.

(b) Subsection (a) does not apply to an action by the governing authority of a domestic entity:

(1) to amend the entity's governing documents; or

(2) that must be approved by a separate vote of the owners or members of the entity in accordance with the requirements of the entity's governing documents or this code that apply outside of an emergency period.

SECTION 10. Section 3.255, Business Organizations Code, is amended to read as follows:

Sec. 3.255. EFFECT OF EMERGENCY ACTION [~~TAKEN~~]. An emergency action taken by the governing persons of a domestic entity in accordance with the entity's governing documents or Section 3.2535, if taken in good faith and based on the reasonable belief that the emergency action was in the entity's best interest



1 ~~[in accordance with the emergency provisions]:~~

2 (1) is binding on the entity; and

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

5 SECTION 11. Section 6.201, Business Organizations Code, is  
6 amended by amending Subsection (b) and adding Subsections (b-1),  
7 (b-2), (b-3), (b-4), and (b-5) to read as follows:

8 (b) The owners or members or the governing authority of a  
9 filing entity, or a committee of the governing authority, may take  
10 action without holding a meeting, providing notice, or taking a  
11 vote if each person entitled to vote on the action signs a written  
12 consent or consents stating the action taken. Except as provided by  
13 this section, the written consent or consents take effect when  
14 signed by all persons entitled to vote on the action.

15 (b-1) By a provision in the written consent or consents or  
16 by a written instruction to an agent of the filing entity by one or  
17 more persons granting the written consent or consents, a written  
18 consent or consents may be made to take effect at a future time,  
19 which must be not later than the 60th day after the date all persons  
20 entitled to vote on the action have signed the consent or consents.  
21 If a written consent or consents described by this subsection are to  
22 take effect at a future time, all of the written consents take  
23 effect at that future effective time.

24 (b-2) If two or more of the written consents described by  
25 Subsection (b-1) have different future effective times, the latest  
26 future effective time of those consents applies to all of the  
27 consents. The written consent or consents are considered to have

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1 been given at the applicable effective time so long as all of the  
2 persons entitled to vote on the action, which is determined as of  
3 that effective time or, if applicable, the record date established  
4 under Section 6.102, have:

5 (1) signed the consent or consents; and

6 (2) not revoked their consent or consents before the  
7 applicable effective time.

8 (b-3) By a provision in the written consent or by a written  
9 instruction to an agent of the filing entity, a person signing a  
10 written consent may provide that the person's consent is to take  
11 effect at a future time, which must be not later than the 60th day  
12 after the date all persons entitled to vote on the action have  
13 signed the person's consent or consents. A person's written consent  
14 is considered to have been given at the later of that future  
15 effective time or a later effective time determined under  
16 Subsection (b-1) or (b-2), so long as the person:

17 (1) is entitled to vote on the action subject to the  
18 consent, which is determined as of the applicable effective time  
19 or, if applicable, the record date established under Section 6.102;  
20 and

21 (2) did not revoke the consent before the applicable  
22 effective time.

23 (b-4) A person signing a written consent may revoke the  
24 person's consent any time before the applicable effective time of  
25 the consent.

26 (b-5) For purposes of this section, a "future time" includes  
27 a time that is determined on the happening of an event.



SECTION 12. Section 6.202, Business Organizations Code, is amended by amending Subsection (c) and adding Subsections (c-1), (c-2), (c-3), (c-4), (e), and (f) to read as follows:

(c) A written consent or consents described by Subsection (b) must include:

(1) the date each owner or member signed the consent;

and

(2) the date of signing of the latest dated consent satisfying the minimum number of owners or members necessary to approve the action that is the subject of the consent.

(c-1) The date described by Subsection (c)(2) must be ~~is effective to take the action that is the subject of the consent only if the consent or consents are delivered to the entity~~ not later than the 60th day after the date of the signing of the earliest dated consent of the owners or members signing the consent or consents. If a consent does not contain the date that an owner or member signed the consent, the date that the owner or member signed the consent is considered to be the date that the consent is received by the filing entity. A written consent or consents described by Subsection (b) that are not solicited by or on behalf of a filing entity or the filing entity's governing authority must be delivered to the entity as required by Section 6.203 to take effect ~~is delivered to the entity as required by Section 6.203~~.

(c-2) By a provision in the written consent or consents or by a written instruction to an agent of the filing entity from one or more persons granting the written consent or consents, a written consent or consents described by Subsection (b) may be made to take



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1 effect at a future time, which must be not later than the 60th day  
2 after the date the last of the minimum number of owners or members  
3 necessary to sign the consent or consents as required by Subsection  
4 (b) have signed the consent or consents. If the written consent or  
5 consents described by this subsection are to take effect at a future  
6 time, all of the written consent or consents take effect at that  
7 future effective time.

8 (c-3) If two or more of the written consents described by  
9 Subsection (c-2) have different future effective times, the latest  
10 future effective time of those consents applies to all of the  
11 consents. The written consent or consents are considered to have  
12 been given for purposes of this section at the applicable effective  
13 time so long as owners or members satisfying the minimum  
14 requirements in Subsection (b):

15 (1) are determined to be owners or members, as  
16 applicable, as of:

- 17 (A) that effective time; or  
18 (B) if applicable, the record date established  
19 under Section 6.102; and

20 (2) have signed and not revoked the owner's or member's  
21 consent or consents at any time before the applicable effective  
22 time of the consent.

23 (c-4) By a provision in the written consent or by a written  
24 instruction to an agent of the filing entity, an owner or member of  
25 a filing entity signing a written consent described by Subsection  
26 (b) may provide that the owner's or member's consent is to take  
27 effect at a future time, which must be not later than the 60th day

after the date on which the consent is signed by the last of the  
minimum number of owners or members of the entity necessary to sign  
the consent or consents as required by Subsection (b). The owner's  
or member's consent is considered to have been given for purposes of  
this section at the later of that future effective time or a later  
effective time determined under Subsection (c-3) so long as:

(1) the person is an owner or member, as applicable, as  
of:

- (A) the applicable effective time; or
- (B) if applicable, the record date established  
under Section 6.102; and

(2) the owner or member did not revoke the consent at  
any time before the applicable effective time of the consent.

(e) An owner or member of a filing entity signing a written  
consent may revoke the owner's or member's consent at any time  
before the applicable effective time of the consent.

(f) For purposes of this section, a "future time" includes a  
time that is determined on the happening of an event.

SECTION 13. Section 8.002(a), Business Organizations Code,  
is amended to read as follows:

(a) Except as provided by Subsection (b) and Section 8.005,  
this chapter does not apply to a:

- (1) general partnership; or
- (2) limited liability company.

SECTION 14. Section 8.003, Business Organizations Code, is  
amended to read as follows:

Sec. 8.003. LIMITATIONS IN GOVERNING DOCUMENTS. A

1 governing document [~~(a) The certificate of formation~~] of an  
2 enterprise may restrict the circumstances under which the  
3 enterprise must or may indemnify or may advance expenses to a person  
4 under this chapter.

5 [~~(b) The written partnership agreement of a limited~~  
6 ~~partnership may restrict the circumstances in the same manner as~~  
7 ~~the certificate of formation under Subsection (a).~~]

8 SECTION 15. Subchapter A, Chapter 8, Business Organizations  
9 Code, is amended by adding Section 8.005 to read as follows:

10 Sec. 8.005. INDEMNIFICATION AGAINST NEGLIGENCE. (a) This  
11 section applies to:

- 12 (1) an enterprise subject to this chapter; and  
13 (2) notwithstanding Section 8.002, a general  
14 partnership or limited liability company.

15 (b) A requirement under the laws of this state that  
16 indemnification or exculpation for negligence be expressly and  
17 conspicuously stated does not apply to a provision in an  
18 enterprise's governing documents that provides for indemnification  
19 or exculpation.

20 SECTION 16. Section 9.251, Business Organizations Code, is  
21 amended to read as follows:

22 Sec. 9.251. ACTIVITIES NOT CONSTITUTING TRANSACTING  
23 BUSINESS IN THIS STATE. For purposes of this chapter, activities  
24 that do not constitute transaction of business in this state  
25 include:

- 26 (1) maintaining or defending an action or suit or an  
27 administrative or arbitration proceeding, or effecting the



1 settlement of:

2 (A) such an action, suit, or proceeding; or

3 (B) a claim or dispute to which the entity is a  
4 party;

5 (2) holding a meeting of the entity's managerial  
6 officials, owners, or members or carrying on another activity  
7 concerning the entity's internal affairs;

8 (3) maintaining a bank account;

9 (4) maintaining an office or agency for:

10 (A) transferring, exchanging, or registering  
11 securities the entity issues; or

12 (B) appointing or maintaining a trustee or  
13 depository related to the entity's securities;

14 (5) voting the interest of an entity the foreign  
15 entity has acquired;

16 (6) effecting a sale through an independent  
17 contractor;

18 (7) creating, as borrower or lender, or acquiring  
19 indebtedness or a mortgage or other security interest in real or  
20 personal property;

21 (8) securing or collecting a debt due the entity or  
22 enforcing a right in property that secures a debt due the entity;

23 (9) transacting business in interstate commerce;

24 (10) conducting an isolated transaction that:

25 (A) is completed within a period of 30 days; and

26 (B) is not in the course of a number of repeated,  
27 similar transactions;

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1           (11) in a case that does not involve an activity that  
2 would constitute the transaction of business in this state if the  
3 activity were one of a foreign entity acting in its own right:

4                   (A) exercising a power of executor or  
5 administrator of the estate of a nonresident decedent under  
6 ancillary letters issued by a court of this state; or

7                   (B) exercising a power of a trustee under the  
8 will of a nonresident decedent, or under a trust created by one or  
9 more nonresidents of this state, or by one or more foreign entities;

10           (12) regarding a debt secured by a mortgage or lien on  
11 real or personal property in this state:

12                   (A) acquiring the debt in a transaction outside  
13 this state or in interstate commerce;

14                   (B) collecting or adjusting a principal or  
15 interest payment on the debt;

16                   (C) enforcing or adjusting a right or property  
17 securing the debt;

18                   (D) taking an action necessary to preserve and  
19 protect the interest of the mortgagee in the security; or

20                   (E) engaging in any combination of transactions  
21 described by this subdivision;

22           (13) investing in or acquiring, in a transaction  
23 outside of this state, a royalty or other nonoperating mineral  
24 interest;

25           (14) executing a division order, contract of sale, or  
26 other instrument incidental to ownership of a nonoperating mineral  
27 interest; [~~or~~]

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1           (15) owning, without more, real or personal property  
2 in this state; or

3           (16) acting as a governing person of a domestic or  
4 foreign entity that is registered to transact business in this  
5 state.

6           SECTION 17. Section 11.001(3), Business Organizations  
7 Code, is amended to read as follows:

8           (3) "Existing claim" with respect to an entity means:  
9           (A) a claim that existed before the entity's  
10 termination and is not barred by limitations; or

11           (B) a claim that exists after the entity's  
12 termination and before the third anniversary of the date of the  
13 entity's termination and is not barred by limitations, including a  
14 claim under a contractual or other obligation incurred after  
15 termination.

16           SECTION 18. Section 11.153, Business Organizations Code, is  
17 amended to read as follows:

18           Sec. 11.153. COURT REVOCATION OF FRAUDULENT TERMINATION.  
19 (a) Notwithstanding any provision of this code to the contrary, a  
20 court may order the revocation of termination of an entity's  
21 existence that was terminated as a result of actual or constructive  
22 fraud. In an action under this section, any limitation period  
23 provided by law is tolled in accordance with the discovery  
24 rule. The secretary of state shall take any action necessary to  
25 implement an order under this section.

26           (b) If the termination of an entity's existence is revoked  
27 under Subsection (a):



(1) the revocation relates back to the effective date of the termination and takes effect as of that date; and

(2) the entity's status as an entity continues in effect as if the termination of the entity's existence had never occurred.

SECTION 19. Section 11.254, Business Organizations Code, is amended to read as follows:

Sec. 11.254. REINSTATEMENT OF CERTIFICATE OF FORMATION FOLLOWING TAX FORFEITURE. (a) A filing entity whose certificate of formation has been forfeited under the provisions of the Tax Code must follow the procedures in the Tax Code to reinstate its certificate of formation. A filing entity whose certificate of formation is reinstated under the provisions of the Tax Code is considered to have continued in existence without interruption from the date of forfeiture.

(b) The reinstatement of a filing entity's certificate of formation after its forfeiture has no effect on any issue of the personal liability of the governing persons, officers, or agents of the filing entity during the period between forfeiture and reinstatement of the certificate of formation.

SECTION 20. Section 11.359, Business Organizations Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsections (a) and (b), the extinguishment of an existing claim with respect to a terminated filing entity as provided by this section is nullified if:

(1) the filing entity's termination is revoked with retroactive effect under Section 11.153;

(2) the terminated filing entity is reinstated with retroactive effect as provided by Section 11.206;

(3) the terminated filing entity is reinstated with retroactive effect as provided by Section 11.253(d); or

(4) the terminated filing entity's certificate of formation is reinstated under the Tax Code with retroactive effect as provided by Section 11.254.

SECTION 21. Section 21.314(a), Business Organizations Code, is amended to read as follows:

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

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

(A) ~~[include subsidiary corporations or other corporations accounted for on a consolidated basis or on the equity method of accounting, or~~

~~[(B)]~~ present the financial condition of the corporation, and any subsidiary or other entities included in those financial statements, in accordance with generally accepted

1 accounting principles or international financial reporting  
2 standards; or

3 (B) have been [~~(2) financial statements~~]  
4 prepared using the method of accounting used to file the  
5 corporation's federal income tax return or using any other  
6 accounting practices and principles that are reasonable under the  
7 circumstances;

8 (2) [~~(3)~~] financial information, including condensed  
9 or summary financial statements, that is prepared on the same basis  
10 as financial statements described by Subdivision (1) [~~or (2)~~];

11 (3) [~~(4)~~] a projection, a forecast, or other  
12 forward-looking information relating to the future economic  
13 performance, financial condition, or liquidity of the corporation  
14 that is reasonable under the circumstances;

15 (4) [~~(5)~~] a fair valuation or information from any  
16 other method that is reasonable under the circumstances; or

17 (5) [~~(6)~~] a combination of a statement, a valuation,  
18 or information authorized by this section.

19 SECTION 22. Subchapter H, Chapter 21, Business  
20 Organizations Code, is amended by adding Section 21.3521 to read as  
21 follows:

22 Sec. 21.3521. SHAREHOLDER MEETINGS BY REMOTE  
23 COMMUNICATION. Except for any limitation or other requirements in  
24 the governing documents of the corporation, if a meeting of a  
25 corporation's shareholders under Section 21.351 or 21.352 is held  
26 by means of a telephone conference or other communication system  
27 authorized by Section 6.002, the meeting is considered to have



satisfied the requirement of Section 6.002(a) that shareholders participating in the meeting be able to communicate with all other persons participating in the meeting if the corporation implements reasonable measures to provide each shareholder entitled to vote at the meeting, or the shareholder's proxyholder, a reasonable opportunity to:

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

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

SECTION 23. Section 21.551(2), Business Organizations Code, is amended to read as follows:

(2) "Shareholder" includes ~~[means]~~ a shareholder as defined by Section 1.002 or a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf.

SECTION 24. Section 21.908(a), Business Organizations Code, is amended to read as follows:

(a) If a defective corporate act ratified under this subchapter would have required under any other provision of the corporate statute the filing of a filing instrument or other document with the filing officer, the corporation shall file a certificate of validation with respect to the defective corporate act in accordance with Chapter 4, regardless of whether a filing instrument or other document was previously filed with respect to the defective corporate act. ~~[The filing of another filing instrument or document is not required.]~~

SECTION 25. Section 22.508(a), Business Organizations Code, is amended to read as follows:

1 (a) If a defective corporate act ratified under this  
2 subchapter would have required under any other provision of the  
3 corporate statute the filing of a filing instrument or other  
4 document with the filing officer, the corporation shall file a  
5 certificate of validation with respect to the defective corporate  
6 act in accordance with Chapter 4, regardless of whether a filing  
7 instrument or other document was previously filed with respect to  
8 the defective corporate act. ~~[The filing of another filing~~  
9 ~~instrument or document is not required.]~~

10 SECTION 26. Section 101.052(d), Business Organizations  
11 Code, is amended to read as follows:

12 (d) The company agreement may contain any provisions for the  
13 regulation and management of the affairs of the limited liability  
14 company not inconsistent with law ~~[or the certificate of~~  
15 ~~formation]~~.

16 SECTION 27. Section 101.206, Business Organizations Code,  
17 is amended by adding Subsections (c-1), (c-2), and (g) to read as  
18 follows:

19 (c-1) For purposes of this section, the determination of the  
20 amount of a limited liability company's liabilities or the value of  
21 a company's assets may be based on:

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

26 (A) present the financial condition of the  
27 company and any subsidiary or other entities included in those

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financial statements, in accordance with generally accepted accounting principles or international financial reporting standards; or

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

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

(3) projections, forecasts, or other forward-looking information relating to the future economic performance, financial condition, or liquidity of the company that is reasonable under the circumstances;

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

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

(c-2) Subsection (c-1) does not apply to the computation of the franchise tax or any other tax imposed on a limited liability company under the laws of this state.

(g) An action alleging a distribution is made in violation of this section must be commenced not later than the second anniversary of the date of the distribution.

SECTION 28. Section 101.251, Business Organizations Code, is amended to read as follows:

Sec. 101.251. GOVERNING AUTHORITY. (a) The governing



authority of a limited liability company consists of:

(1) the managers of the company, if the company agreement provides [~~company's certificate of formation states~~] that the company is managed by [~~will have~~] one or more managers; or

(2) the members of the company, if the company agreement provides [~~company's certificate of formation states~~] that the company is managed by the members [~~will not have managers~~].

(b) If the company agreement does not provide otherwise, the governing authority of a limited liability company consists of:

(1) the managers of the company, if the company's certificate of formation states that the company has managers; or

(2) the members of the company, if the company's certificate of formation does not state that the company has managers.

SECTION 29. Section 101.451(3), Business Organizations Code, is amended to read as follows:

(3) "Member" includes [~~means~~] a person who is a member or is an assignee of a membership interest or a person who beneficially owns a membership interest through a voting trust or a nominee on the person's behalf.

SECTION 30. Section 101.457, Business Organizations Code, is amended to read as follows:

Sec. 101.457. TOLLING OF STATUTE OF LIMITATIONS. A written demand filed with the limited liability company under Section 101.453 tolls the statute of limitations on the claim on which demand is made until the later of:

(1) the 31st day after the expiration of any waiting

1 period under Section 101.453(a) [~~153.403~~]; or

2           (2) the 31st day after the expiration of any stay  
3 granted under Section 101.455 [~~153.405~~], including all  
4 continuations of the stay.

5           SECTION 31. Section 153.151, Business Organizations Code,  
6 is amended by adding Subsection (a-1) to read as follows:

7           (a-1) On formation of a limited partnership, a person  
8 becomes a general partner if the person:

9                   (1) has entered into the partnership agreement as a  
10 general partner; and

11                   (2) is named as a general partner in the certificate of  
12 formation of the limited partnership.

13           SECTION 32. Section 153.210, Business Organizations Code,  
14 is amended by adding Subsections (c), (d), and (e) to read as  
15 follows:

16           (c) For purposes of this section, the determination of the  
17 amount of a limited partnership's liabilities or the value of a  
18 limited partnership's assets may be based on:

19                   (1) financial statements of the limited partnership,  
20 which may include the financial statements of subsidiary entities  
21 or other entities accounted for on a consolidated basis or on the  
22 equity method of accounting, that:

23                           (A) present the financial condition of the  
24 limited partnership and any subsidiary or other entities included  
25 in those financial statements in accordance with generally accepted  
26 accounting principles or international financial reporting  
27 standards; or

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

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

8                   (3) projections, forecasts, or other forward-looking  
9 information relating to the future economic performance, financial  
10 condition, or liquidity of the limited partnership that is  
11 reasonable under the circumstances;

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

14                   (5) a combination of a statement, valuation, or  
15 information authorized by this subsection.

16                   (d) Subsection (c) does not apply to the computation of the  
17 franchise tax or any other tax imposed on a limited partnership  
18 under the laws of this state.

19                   (e) An action alleging a distribution is made in violation  
20 of this section must be commenced not later than the second  
21 anniversary of the date of the distribution.

22                   SECTION 33. Section 200.209, Business Organizations Code,  
23 is amended to read as follows:

24                   Sec. 200.209. DETERMINATION OF SOLVENCY, NET ASSETS, STATED  
25 CAPITAL, AND SURPLUS. (a) The determination of whether a real  
26 estate investment trust is or would be insolvent and the  
27 determination of the amount [~~value~~] of a real estate investment



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1 trust's [~~net assets,~~] stated capital[~~7~~] or surplus or any component  
2 of the trust's stated capital or surplus, or the value of the real  
3 estate investment trust's net assets or any component of the trust's  
4 net assets, [and each of the components of net assets, stated  
5 capital, or surplus] may be based on:

6 (1) financial statements of the real estate investment  
7 trust that present the financial condition of the real estate  
8 investment trust in accordance with generally accepted accounting  
9 principles or international financial reporting standards,  
10 including financial statements that include subsidiary entities or  
11 other entities accounted for on a consolidated basis or on the  
12 equity method of accounting;

13 (2) financial statements prepared using the method of  
14 accounting used to file the real estate investment trust's federal  
15 income tax return or using any other accounting practices and  
16 principles that are reasonable under the circumstances;

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

20 (4) a projection, a forecast, or other forward-looking  
21 information relating to the future economic performance, financial  
22 condition, or liquidity of the real estate investment trust that is  
23 reasonable under the circumstances;

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

26 (6) a combination of a statement, a valuation, or  
27 information authorized by this section.

1           (b) Subsection (a) does not apply to the computation of the  
2 franchise tax or any other tax imposed on a real estate investment  
3 trust under the laws of this state.

4           SECTION 34. The following provisions of the Business  
5 Organizations Code are repealed:

6                   (1) Section 3.253; and

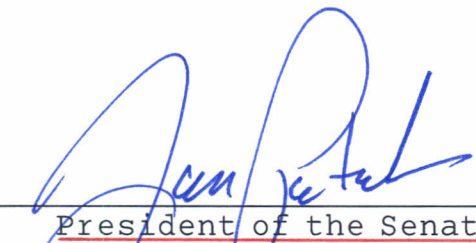
7                   (2) Section 3.254.

8           SECTION 35. Sections 101.206 and 153.210, Business  
9 Organizations Code, as amended by this Act, apply only to a  
10 distribution made on or after the effective date of this Act. A  
11 distribution made before the effective date of this Act is governed  
12 by the law in effect on the date the distribution was made, and the  
13 former law is continued in effect for that purpose.

14          SECTION 36. This Act takes effect September 1, 2021.

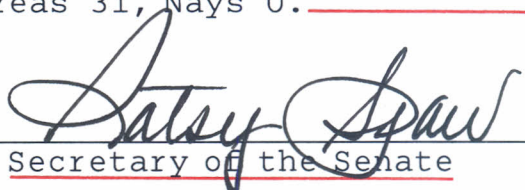
in  
Kee

S.B. No. 1203

  
President of the Senate

  
Speaker of the House

I hereby certify that S.B. No. 1203 passed the Senate on April 9, 2021, by the following vote: Yeas 31, Nays 0. \_\_\_\_\_

  
Secretary of the Senate

I hereby certify that S.B. No. 1203 passed the House on April 30, 2021, by the following vote: Yeas 125, Nays 16, two present not voting. \_\_\_\_\_

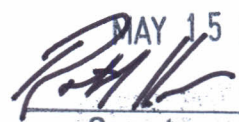
  
Chief Clerk of the House

Approved:

5-14-21  
Date

  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
12:15 pm O'CLOCK

  
Secretary of State