

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 1737  
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Business & Commerce  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Business Organizations Code (code) was adopted by the 78th Legislature. The code was a joint project of the Business Law Section of the State Bar of Texas and the Office of the Texas Secretary of State. The Texas Legislative Council also assisted in the editing and drafting of the code. H.B. 1156 enacted by the 79th Legislature, Regular Session, 2005, contained numerous technical amendments to the code.

The code codified the provisions of prior law found in the Texas Business Corporation Act, Texas Non-Profit Corporation Act, Texas Miscellaneous Corporation Laws Act, Texas Limited Liability Company Act, Texas Revised Limited Partnership Act, Texas Real Estate Investment Trust Act, Texas Uniform Unincorporated Nonprofit Associations Act, Texas Professional Corporation Act, Texas Professional Associations Act, the Texas Revised Partnership Act, the Cooperative Associations Act, and other existing provisions of Texas statutes governing domestic entities.

The effective date of the code was January 1, 2006, and the code applies to domestic entities formed after that date. The code generally will not apply prior to January 1, 2010, to an entity that existed on January 1, 2006, unless the entity expressly elects to adopt the code as its governing statute.

H.B. 1737 makes both technical and substantive amendments to the code. This bill provides technical amendments of the code, including, correcting errors; clarifying certain provisions; filling gaps in coverage of certain provisions; clarifying the transition rules for electing to be governed by the code's provisions versus the provisions of prior law; eliminating certain redundant or antiquated provisions; and conforming the language of the code to the language of its source statutes in certain instances where the code's language unintentionally deviated. This bill also provides substantive amendments, including, enhancing flexibility for partnerships by creating new rights to cancel events requiring winding up when there are no limited partners, when all or substantially all assets have been sold and upon a request of a partner; enhancing flexibility for nonprofit corporations by eliminating strict requirements for delivery of non-unanimous consents of directors and for setting a new record date for adjournment of a meeting of members; providing additional logical information requirements for certificates of merger, conversion and exchange; eliminating an outmoded statement required for a certificate of formation of a professional association; adding express authority for corporate director resignations that are irrevocable or take effect on a later date or specified event; and enhancing flexibility for limited liability companies by creating a new right to cancel an event requiring winding up arising from the termination of membership of a company's last remaining member.

### **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 1.002, Business Organizations Code, by amending Subdivision (43) and adding Subdivisions (69-a) and (69-b), to define "period of duration" and "person," and redefine "jurisdiction of formation."

SECTION 2. Amends Section 1.006, Business Organizations Code, to add "certificate of cancellation," "incorporator," "certificate of authority to transact business," "regulations," and "business corporation" to the list of synonymous terms that may be found in this code, any other statute or code, or any governing documents.

SECTION 3. Amends Sections 1.008(g), (h), and (i), Business Organizations Code, as follows:

(g) Includes the provisions of Chapter 152 (General Partnerships) among the list of provisions to be cited as the "Texas Limited Partnership Law," to the extent applicable to limited partnerships.

(h) Includes the provisions of Chapters 20 (General Provisions) and 21 (For-Profit Corporations) among the list of provisions to be cited as the "Texas Real Estate Investment Trust Law," to the extent applicable to real estate investment trusts.

(i) Includes the provisions of Chapter 20 (General Provisions) and 22 (Nonprofit Corporations) among the list of provisions to be cited as the "Texas Cooperative Association Law," to the extent applicable to cooperative associations.

SECTION 4. Amends Section 2.003, Business Organizations Code, to delete existing text prohibiting a domestic entity to engage in a prohibited business or activity without first obtaining a license under the laws of Texas, and a license to engage in the business or activity cannot lawfully be granted to the corporation. Prohibits a domestic entity from operating as a cemetery organization, except as authorized by Chapter 711 (General Provisions Related to Cemeteries), 712 (Perpetual Care Cemeteries), or 715 (Certain Historic Cemeteries), Health and Safety Code.

SECTION 5. Amends Section 2.007, Business Organizations Code, to prohibit a for-profit corporation from engaging in a prohibited business or activity without first obtaining a license under the laws of Texas, and a license to engage in that business or activity cannot lawfully be granted to the corporation.

SECTION 6. Amends Section 2.010, Business Organizations Code, to prohibit a nonprofit corporation from being organized or registered under this code to conduct its affairs in Texas to engage in a prohibited business or activity without first obtaining a license under the laws of Texas, and a license to engage in the business or activity cannot lawfully be granted to the corporation.

SECTION 7. Amends Section 2.101, Business Organizations Code, as follows:

Sec. 2.101. GENERAL POWERS. Provides certain powers of a domestic entity, including the power to engage in lending money, investing funds, and receiving and holding property as security for repayment in the powers of a domestic entity without an expectation for the loan or assistance to directly or indirectly benefit the entity. Deletes existing text providing a domestic entity's power to lend money, invest its funds, and receive and hold property as security for repayment only if the loan or assistance reasonably may be expected to benefit, directly or indirectly, the entity.

SECTION 8. Amends Section 2.104(a), Business Organizations Code, to redefine "guaranty."

SECTION 9. Amends Section 3.005(a), Business Organizations Code, to require the certificate of formation to state a specific period of duration for filing entities other than limited partnerships if the entity is not formed to exist perpetually.

SECTION 10. Amends Section 3.007, Business Organizations Code, as follows:

Sec. 3.007. New heading: SUPPLEMENTAL PROVISIONS REQUIRED IN CERTIFICATE OF FORMATION OF FOR-PROFIT OR PROFESSIONAL CORPORATION. Sets forth certain required information to be included on the certificate of formation of a for-profit or professional corporation. Makes conforming changes.

SECTION 11. Amends Section 3.008(a), Business Organizations Code, to make a conforming change.

SECTION 12. Amends Section 3.015, Business Organizations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires the certificate of formation of a professional association to state whether the association is to be governed by a board of directors or by an executive committee and the name and address of each person serving as an initial member of the board of directors or executive committee. Deletes existing text requiring the certificate of formation to state that a member of the association is prohibited from dissolving the association independently of other members of the association.

(c) Requires the certificate of formation to comply with Section 3.007 if the certificate of formation of a professional association contains provisions regarding shares in the associations.

SECTION 13. Amends the heading to Section 3.060, Business Organizations Code, to read as follows:

Sec. 3.060. SUPPLEMENTAL PROVISIONS FOR RESTATED CERTIFICATE OF FORMATION FOR FOR-PROFIT CORPORATION OR PROFESSIONAL CORPORATION.

SECTION 14. Amends Section 3.060(a), Business Organizations Code, to make a conforming change.

SECTION 15. Amends Subchapter B, Chapter 3, Business Organizations Code, by adding Section 3.0611, as follows:

Sec. 3.0611. SUPPLEMENTAL PROVISIONS FOR RESTATED CERTIFICATE OF FORMATION FOR LIMITED LIABILITY COMPANY. Authorizes a restated certificate of formation for a limited liability company to update the names and addresses of managers or members of the company, in addition to the provisions authorized or required by Section 3.059 (Restated Certificate of Formation).

SECTION 16. Amends Section 4.056(a), Business Organizations Code, to provide that this section does not preclude the filing of a subsequent filing instrument required by this code to make the action, rather than event, or transaction evidenced by the original filing instrument effective.

SECTION 17. Amends Section 4.151, Business Organizations Code, to require the secretary of state to impose a fee for filing a notice of transfer of a name reservation, rather than a name or registration, for \$15.

SECTION 18. Amends Section 4.152, Business Organizations Code, to require the secretary of state to impose a fee for filing a certificate for reinstatement after involuntary termination, rather than dissolution, for a filing by or for a nonprofit corporation.

SECTION 19. Amends Section 4.158, Business Organizations Code, to require the secretary of state to impose a fee for filing an application for registration, rather than a statement of foreign qualification, by a foreign limited liability partnership.

SECTION 20. Amends the heading to Section 5.054, Business Organizations Code, to read as follows:

Sec. 5.054. NAME OF CORPORATION, FOREIGN CORPORATION, PROFESSIONAL CORPORATION, OR FOREIGN PROFESSIONAL CORPORATION.

SECTION 21. Amends Section 5.054(c), Business Organizations Code, to authorize the name of a professional corporation or foreign professional corporation to contain the phrase "professional corporation" or an abbreviation of the phrase.

SECTION 22. Amends Section 5.055, Business Organizations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires the name of a domestic or foreign limited partnership that is a limited liability limited partnership to also contain the phrase "limited liability partnership" or an abbreviation of that phrase.

(c) Provides that the name of a domestic or foreign limited partnership that is a limited liability limited partnership complies with the requirements of Subsections (a) and (b) if the name contains the phrase "limited liability limited partnership" or an abbreviation of that phrase.

SECTION 23. Amends the heading to Section 5.057, Business Organizations Code, to read as follows:

Sec. 5.057. NAME OF COOPERATIVE ASSOCIATION OR FOREIGN COOPERATIVE ASSOCIATION.

SECTION 24. Amends 5.057(a), Business Organizations Code, to require the name of a cooperative association or foreign cooperative association to contain the word "cooperative" or an abbreviation of the word.

SECTION 25. Amends Section 5.058, Business Organizations Code, as follows:

Sec. 5.058. New heading: NAME OF PROFESSIONAL ASSOCIATION OR FOREIGN PROFESSIONAL ASSOCIATION. Requires the name of a professional association or a foreign professional association to contain certain words, phrases, or abbreviations.

SECTION 26. Amends Section 5.059, Business Organizations Code, as follows:

Sec. 5.059. New heading: NAME OF PROFESSIONAL LIMITED LIABILITY COMPANY OR FOREIGN PROFESSIONAL LIMITED LIABILITY COMPANY. Requires the name of a professional limited liability company or foreign professional limited liability company to contain the phrase "professional limited liability company" or an abbreviation of that phrase.

SECTION 27. Amends Section 5.060, Business Organizations Code, as follows:

Sec. 5.060. New heading: NAME OF PROFESSIONAL ENTITY OR FOREIGN PROFESSIONAL ENTITY; CONFLICTS WITH OTHER LAW OR ETHICAL RULE. Prohibits the name of a professional entity or foreign professional entity from being contrary to certain statutes or regulations of this state..

SECTION 28. Amends Section 5.201(b), Business Organizations Code, to authorize a registered agent to be an organization, rather than a domestic entity or foreign entity, that is registered or authorized to do business in this state.

SECTION 29. Amends the heading to Chapter 6, Business Organizations Code, to read as follows:

#### CHAPTER 6. MEETINGS AND VOTING FOR DOMESTIC ENTITIES

SECTION 30. Amends Section 6.051(b), Business Organizations Code, to provide that, subject to this code and the governing documents of a domestic entity, notice of a meeting that is mailed is considered to be given, rather than delivered, on the date notice is deposited in the United States mail with postage paid in an envelope addressed to the person at the person's address as it appears on the ownership or membership records of the entity, and notice of a meeting that is

transmitted by facsimile or electronic message is considered to be given when the facsimile or electronic message is transmitted to a facsimile number or an electronic message address provided by the person, or to which the person consents, for the purpose of receiving notice. Makes a conforming change.

SECTION 31. Amends Sections 6.053(d) and (e), Business Organizations Code, as follows:

(d) Authorizes the a certificate or other document filed with the filing officer, rather than the secretary of state, to state that notice of the meetings or action was given to each person entitled to notice.

(e) Requires a notice of a meeting to be given to a person not entitled to notice under this section if the person delivers a written notice of the person's address to the filing entity.

SECTION 32. Amends Section 6.101(d), Business Organizations Code, as follows:

(d) Sets forth information necessary to determine owners or members of a domestic entity, rather than an entity. Makes a conforming change.

SECTION 33. Amends Section 6.102, Business Organizations Code, to make conforming changes.

SECTION 34. Amends Section 6.152(a), Business Organizations Code, to make conforming changes.

SECTION 35. Amends Section 6.153, Business Organizations Code, to make a conforming change.

SECTION 36. Amends Section 6.154(a), Business Organizations Code, to authorize an administrator, executor, guardian, or conservator of an estate who holds an ownership interest as part of the estate to vote the interest, in person or by proxy, without transferring the interest into the person's name.

SECTION 37. Amends Section 6.204, Business Organizations Code, to provide that any advance notice required by this code for an action to be taken at a meeting is not required to be given to take the action by written consent as provided by this subchapter.

SECTION 38. Amends Sections 6.251(a) and (c), Business Organizations Code, to make conforming changes.

SECTION 39. Amends Sections 6.252(a), (b), and (c), Business Organizations Code, as follows:

(a) and (b) Makes conforming changes.

(c) Provides that a voting agreement entered into under Subsection (a) is specifically enforceable against the holder of an ownership interest that is the subject of the agreement, and any successor or transferee of the holder, if a notation of the voting agreement is contained in a notice sent by or on behalf of the domestic entity in accordance with Section 3.205 (Notice for Uncertified Ownership Interest), if the ownership interest is not represented by a certificate.

SECTION 40. Amends Section 8.002(b), Business Organizations Code, to authorize the governing documents of a general partnership or limited liability company to adopt provisions of this chapter or to contain certain other provisions, which will be enforceable, rather than to contain certain enforceable provisions.

SECTION 41. Amends Section 8.103, Business Organizations Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires the determinations required under Section 8.101(a) to be made by special legal counsel selected by the governing authority of the enterprise, or selected by a

committee of the governing authority, rather than the board of directors, by vote in accordance with Subdivision (1) or (2).

(d) Provides that, with respect to a limited partnership, a vote of a majority-in-interest of the limited partners in a vote that excludes the interest held by each general partner who is not disinterested and independent constitutes a determination under Subsection (a)(4).

SECTION 42. Amends Section 8.104, Business Organizations Code, by adding Subsection (d), to provide that, with respect to a limited partnership, a vote of majority-in-interest of the limited partners in a vote that excludes the interest held by each general partner who is not disinterested and independent constitutes an authorization under Subsection (b).

SECTION 43. Amends Section 8.105(b), Business Organizations Code, to delete existing text requiring an enterprise to advance expenses to an officer.

SECTION 44. Amends Section 8.152(b), Business Organizations Code, to make nonsubstantive changes.

SECTION 45. Amends Section 9.010, Business Organizations Code, as follows:

Sec. 9.010. Requires an entity's registration to be suspended if a foreign filing entity authorized to transact business, rather than to conduct affairs, in this state changes its name to a name that would cause the entity to be denied an application for registration under this subchapter. Makes a conforming change.

SECTION 46. Amends Section 9.054, Business Organizations Code, as follows:

Sec. 9.054. LATE FILING FEE. (a) Creates this subsection from existing text. Authorizes the secretary of state to collect from a foreign filing entity a late filing fee if the entity has transacted business in this state for more than 90 days without registering under this chapter. Authorizes the secretary of state to condition the effectiveness of a registration after the 90-day period on the payment of the late filing fee. Deletes existing text providing that the late filing fee is equal to the registration fee for the entity for each year of delinquency.

(b) Provides the computation to determine the amount of the late filing fee.

SECTION 47. Amends Section 9.101(b), Business Organizations Code, as follows:

(b) Authorizes the secretary of state to revoke a foreign filing entity's registration if the secretary finds that the entity has failed to, and before the 16th day after the date notice was mailed, has not corrected the entity's failure to pay a fee required in connection with the application for registration, rather than a filing, or payment of the fee was dishonored when presented by the state for payment.

SECTION 48. Amends Section 9.201, Business Organizations Code, as follows:

Sec. 9.201. BUSINESS OF FOREIGN ENTITY. (a) Creates an exception to this subsection provided by Subsection (b).

(b) Authorizes a foreign business trust to engage in a business or activity permitted by this code to be transacted by a limited liability company.

SECTION 49. Amends Sections 10.005(b) and (c), Business Organizations Code, as follows:

(b) Authorizes a domestic entity, without owner or member approval and pursuant to a plan of merger, to restructure the ownership or membership structure of that entity to create a holding company structure under this chapter and the provisions of this code under which the entity was formed.

(c) Makes a conforming change.

SECTION 50. Amends Section 10.008(a), Business Organizations Code, to entitle the interested parties to a merger only to the rights provided by the plan or merger or, if applicable, any rights to receive the fair value for the ownership, rather than ownership or membership, interests provided under Subchapter H, rather than this code.

SECTION 51. Amends Section 10.055, Business Organizations Code, to make conforming and nonsubstantive changes.

SECTION 52. Amends Section 10.101(e), Business Organizations Code, to make a conforming change.

SECTION 53. Amends Section 10.151(b), Business Organizations Code, to require a certificate of merger or exchange to include the plan of merger or exchange or a statement certifying certain items if the certificate is filed in connection with an interest exchange or merger.

SECTION 54. Amends Section 10.154(b), Business Organizations Code, to require a certificate of conversion to include the plan of conversion or a statement certifying certain items if the certificate is filed in connection with a conversion.

SECTION 55. Amends Section 10.254(b), Business Organizations Code, to make a nonsubstantive change.

SECTION 56. Amends Section 10.351(c), Business Organizations Code, to provide that the rights provided by this subchapter are subject to any modification to those rights as provided by the entity's governing documents.

SECTION 57. Amends Section 10.362(b), Business Organizations Code, as follows:

(b) Requires consideration to be given to the value of the domestic entity, in computing the fair value of an ownership interest under this subchapter, as a going concern without including in the computation of value any control premium, any minority ownership discount, or any discount for lack of marketability, rather than payment for a control premium or minority discount other than a discount attributable to the type of ownership interest held by the dissenting owner and limitation placed on the rights and preferences of those ownership interests. Requires the relative rights and preferences of and limitations placed on the class or series of ownership interests, other than relative voting rights, held by the dissenting owner to be taken into account in the computation of value.

SECTION 58. Amends Section 10.367(b), Business Organizations Code, to make a nonsubstantive change.

SECTION 59. Amends Section 10.368, Business Organizations Code, to provide that any right of the owner of an ownership interest to dissent from an action and obtain the fair value of the ownership interest under this subchapter is the exclusive remedy for recovery of the value of the ownership interest or money damages to the owner with respect to the action, rather than the owner's right in the organization with respect to a fundamental business transaction.

SECTION 60. Amends Sections 11.001(2) and (6), Business Organizations Code, to redefine "event requiring a winding up," "event requiring winding up," and "voluntary decision to wind up."

SECTION 61. Amends Section 11.051, Business Organizations Code, to require winding up of a domestic entity on certain specific events.

SECTION 62. Amends Section 11.056, Business Organizations Code, as follows:

Sec. 11.056. New heading: SUPPLEMENTAL PROVISIONS FOR LIMITED LIABILITY COMPANY. (a) Creates this subsection from existing text. 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).

Deletes existing text providing that this is in addition to an event listed under Section 11.051.

(b) Authorizes the cancellation of the event requiring winding up specified in Subsection (a) in accordance with Sections 11.152(a) and 101.552(c).

SECTION 63. Amends Section 11.057, Business Organizations Code, as follows:

Sec. 11.057. New heading: SUPPLEMENTAL PROVISIONS FOR DOMESTIC GENERAL PARTNERSHIP. (a) Provides that, unless otherwise provided by the partnership agreement, a voluntary decision to wind up a domestic general partnership, other than a partnership described by Subsection (b), requires the express will of a majority-in-interest of the partners who have not assigned their interests. Authorizes a voluntary decision to wind up a partnership under this subsection to be revoked in accordance with Sections 11.151 and 152.709(e).

(b) Provides that, unless otherwise provided by the partnership agreement, a voluntary decision to wind up a domestic general partnership that has a period of duration or is for a particular undertaking, or in which the partnership agreement provides for the winding up of the partnership on occurrence of a specific event, requires the express will of all of the partners. Authorizes a voluntary decision to wind up a partnership under this subsection to be revoked in accordance with Sections 11.151 and 152.709(d).

(c) Provides that an event requiring the winding up of a domestic general partnership under Section 11.051(4) includes certain components. Deletes existing Subdivisions (1) through (3).

(d) Provides that if a domestic general partnership does not have a period of duration, is not for a particular undertaking, and is not required under its partnership agreement to wind up the partnership on occurrence of a specified event, an event requiring winding up of the partnership under Section 11.051(4) occurs on the 60th day after the date on which the partnership receives notice of a request for winding up the partnership from a partner, other than a partner who has agreed not to withdraw, or a later date as specified by the request, unless a majority-in-interest of the partners deny the request for winding up or agree to continue the partnership. Provides that the continuation of the business by the other partners or by those who habitually acted in the business before the request, other than the partner making the request, without any settlement or liquidation of the partnership business, is prima facie evidence of an agreement to continue the partnership under this subsection.

(e) Authorizes the cancellation of an event requiring winding up specified in Subsection (c)(1), (c)(3), or (d) in accordance with Sections 11.152 and 152.709.

SECTION 64. Amends Section 11.058, Business Organizations Code, as follows:

Sec. 11.058. New heading: SUPPLEMENTAL PROVISION FOR LIMITED PARTNERSHIP. (a) Provides that a voluntary decision to wind up a domestic limited partnership requires the written consent of all partners unless otherwise provided by the partnership agreement. Authorizes the voluntary decision to wind up to be revoked in accordance with Sections 11.151 and 153.501(d).

(b) Provides that an event of withdrawal of a general partner of a domestic limited partnership is an event requiring winding up under Section 11.051(4) unless otherwise provided by the partnership agreement. Authorizes the cancellation of the event requiring winding up specified in this subsection in accordance with Sections 11.152(a) and 153.501(b).

(c) Provides that an event requiring winding up of a limited partnership under Section 11.051(4) includes when there are no limited partners in the limited

partnership. Authorizes the cancellation of the event requiring winding up specified in this subsection in accordance with Sections 11.152(a) and 153.501(e).

SECTION 65. Amends Section 11.059, Business Organizations Code, to make nonsubstantive changes.

SECTION 66. Amends Section 11.104, Business Organizations Code, to include that the period of duration for a domestic filing entity is specified in its certificate of formation. Makes a conforming change.

SECTION 67. Amends Section 11.152(b), Business Organizations Code, as follows:

(b) Authorizes a domestic entity whose specified period of duration has expired to cancel that event requiring winding up by amending its governing documents in the manner provided by this code, not later than the third anniversary of the date the period expired or an earlier date prescribed by the title of this code governing the domestic entity, to extend its period of duration. Makes conforming changes.

SECTION 68. Amends Section 11.251(b), Business Organizations Code, as follows:

(b)(2) Authorizes the secretary of state to terminate a filing entity's existence if the secretary finds that the entity has failed to, and, before the 16th day after the date notice was mailed has not corrected the entity's failure to, pay a fee required in connection with the filing of its certificate of formation, or payment of the fee was dishonored when presented by the state for payment.

SECTION 69. Amends Section 11.412, Business Organizations Code, to require the court to enter a decree terminating the existence of the entity in certain circumstances in an action in which the court has ordered the liquidating of the property and business of a domestic entity in accordance with other provisions of this code.

SECTION 70. Amends Section 12.260, Business Organizations Code, to make a conforming change.

SECTION 71. Amends Section 21.211(a), Business Organizations Code, to provide that a restriction placed on the transfer or registration of transfer of a security of a corporation is valid if the restriction reasonably takes certain actions without limiting the general powers granted by Sections 21.210 and 21.213 to impose and enforce reasonable restrictions.

SECTION 72. Amends Section 21.220, Business Organizations Code, to make a reference to a list of shareholders, rather than a list of owners. Makes a conforming change.

SECTION 73. Amends Section 21.221, Business Organizations Code, to make conforming changes.

SECTION 74. Amends Section 21.223(a), Business Organizations Code, to prohibit certain parties from being liable to the corporation or its obligees with respect to the failure to comply with this code or the certificate of formation, rather than articles of incorporation, or bylaws of the corporation. Makes a conforming change.

SECTION 75. Amends Sections 21.364(a) and (b), Business Organizations Code, as follows:

(a) Redefines "fundamental action."

(b) Provides the specific voting actions required, except as otherwise provided by this code of the certificate of formation of a corporation in accordance with Section 21.365 (Changes in Vote Required for Certain Matters), rather than Section 21.363 (Voting on Matters Other than Election of Directors).

SECTION 76. Amends Section 21.372(a), Business Organizations Code, to require an officer or agent of the corporation in charge of the corporation's share transfer, rather than shareholder,

records to prepare a list of the shareholders entitled to vote at the meeting or at any adjournment of the meeting within a certain amount of time.

SECTION 77. Amends Section 21.408(b), Business Organizations Code, to provide that the term of office of an initial director is extended until the director's successor is elected and has qualified.

SECTION 78. Amends Section 21.4091, Business Organizations Code, as follows:

Sec. 21.4091. RESIGNATION OF DIRECTORS. (a) Creates this subsection from existing text.

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

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

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

SECTION 79. Amends Sections 21.410(a) and (b), Business Organizations Code, to authorize a vacancy to be filled by the affirmative vote or written consent of the majority of the organizers or remaining directors, even if the remaining directors, rather than a majority of the remaining directors, constitute less than a quorum of the board of directors. Makes conforming changes.

SECTION 80. Amends Section 21.452(e), Business Organizations Code, to require shareholders of the corporation to approve the plan of merger as provided by this subchapter, except as provided by Chapter 10 or Sections 21.457 and 21.459, rather than Sections 21.457 through 21.459.

SECTION 81. Amends Section 21.453(e), Business Organizations Code, to make conforming changes.

SECTION 82. Amends Section 21.454(e), Business Organizations Code, to make conforming changes.

SECTION 83. Amends Section 21.501, Business Organizations Code, to make a reference to a cancellation of an event requiring winding up under Section 11.152(a), rather than Section 11.152.

SECTION 84. Amends Section 21.563(b), Business Organizations Code, to delete existing text providing that this subsection is subject to Subsection (c).

SECTION 85. Amends Section 21.604, Business Organizations Code, to make a conforming change.

SECTION 86. Amends Section 21.707, Business Organizations Code, by amending Subsections (a), (b), (d), and (e) and adding Subsection (f), as follows:

(a) Provides that this section applies to an existing corporation that elected to become a close corporation before the mandatory application date, rather than effective date, of this code and has not terminated that status.

(b) Makes a conforming change.

(d) and (e) Makes a conforming change.

(f) Defines "mandatory application date."

SECTION 87. Amends Section 22.154, Business Organizations Code, to authorize a member of the corporation to demand that the annual meeting of members be held within a reasonable time if the board of directors of a corporation fails to call the meeting when required, rather than at the designated time. Makes conforming changes.

SECTION 88. Amends Section 22.163(c), Business Organizations Code,

(c) Provides that the record date for the determination of members entitled to notice of or to vote at a meeting is effective for an adjournment of the meeting unless the board of directors of a corporation sets a new date for determining the right to notice of or to vote at the adjournment. Deletes existing text authorizing and requiring the board of directors of a corporation to set a new date of a meeting under certain conditions.

SECTION 89. Amends Section 22.164(a), Business Organizations Code, to redefine "fundamental action."

SECTION 90. Amends Section 22.220, Business Organizations Code, as follows:

(a) Authorizes the certificate of formation or bylaws of a corporation to provide that certain actions are taken. Deletes existing Subsections (b) and (c) relating to a written consent signed by all the directors or committee members and delivered by hand or certified mail to the president or principal executive officer of the corporation.

(b) Creates this subsection from existing Subsection (d).

SECTION 91. Amends Section 22.222, Business Organizations Code, to make a reference to a minister, priest, rabbi, or other person whose position or duties in the religious organization, rather than the corporation, justify reliance and confidence.

SECTION 92. Amends Section 22.234, Business Organizations Code, to authorize an officer of a religious corporation to rely in good faith and with ordinary care on information or on an opinion, report, or statement, including a financial statement or other financial data, concerning the corporation or another person that was prepared or presented by certain religious authorities. Makes conforming changes.

SECTION 93. Amends Section 22.301, Business Organizations Code, to make a conforming change.

SECTION 94. Amends Section 23.053(b), Business Organizations Code, to require the certificate of formation of a business development corporation to state that the purposes of the corporation are to take certain actions in accordance with Section 3.005(a)(3).

SECTION 95. Amends Section 23.058(a), Business Organizations Code, to require certain responsibilities of the organizers, rather than the incorporators, of a corporation.

SECTION 96. Amends Subchapter B, Chapter 101, Business Organizations Code, by adding Section 101.0515, as follows:

Sec. 101.0515. EXECUTIVE OF FILINGS. Requires a filing instrument of a limited liability company to be signed by an authorized officer, manager, or member of the limited liability company unless otherwise provided by this title.

SECTION 97. Amends Section 101.054(a), Business Organizations Code, to prohibit Section 101.151 (Requirements for Enforceable Promise), among others, from being waived or modified in the company agreement of a limited liability company, except as provided by this section.

SECTION 98. Amends Section 101.112, Business Organizations Code, as follows:

Sec. 101.112. New heading: MEMBER'S MEMBERSHIP INTEREST SUBJECT TO CHARGING ORDER. (a) Authorizes a court having jurisdiction to charge the membership interest of the judgment debtor to satisfy the judgment, rather than of the member or owner, as appropriate, with payment of the unsatisfied amount of the judgment.

(b) Provides that the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise be entitled in respect of the membership interest, rather than only the rights of an assignee of the membership interest.

(c) Provides that a charging order constitutes a lien on the judgment debtor's membership interest.

(d) Provides that the entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of any other owner of a membership interest may satisfy a judgment out of the judgment debtor's membership interest.

(e) Creates this subsection from existing Subsection (c).

(f) Provides that a creditor of a member or of any other owner of a membership interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

SECTION 99. Amends Section 101.352(b), Business Organizations Code, to require a notice of a meeting of members required by subsection (a) to be given by or at the direction of the governing authority within a certain timeframe if the members of a limited liability company do not constitute the governing authority of the company.

SECTION 100. Amends Section 101.463(b), Business Organizations Code, to provide that Sections 101.452-101.459 do not apply to a closely held limited liability and that this subsection is not subject to Subsection (c).

SECTION 101. Amends Sections 101.501(a) and (b), Business Organizations Code, to require a limited liability company to keep a current list that states certain information within a specific time of being requested.

SECTION 102. Amends Section 101.552, Business Organizations Code, as follows:

Sec. 101.552. APPROVAL OF VOLUNTARY WINDING UP, REVOCATION, CANCELLATION, OR REINSTATEMENT. (a) Creates this subsection from existing text. Deletes existing text providing that a majority vote of all of the managers of the company is required to approve a cancellation of an event requiring the winding up of the company under Section 11.152.

(b) Requires the consent of all of the members of the limited liability company to approve a cancellation under Section 11.152 of an event requiring winding up specified in Section 11.051(1) or (3).

(c) Authorizes the cancellation of an event requiring winding up specified in Section 11.056 in accordance with Section 11.152(a) if the legal representative or successor of the last remaining member of the domestic limited liability company agrees to take certain actions.

SECTION 103. Amends Section 151.001(2), Business Organizations Code, to redefine "distribution."

SECTION 104. Amends Section 152.002(b), Business Organizations Code, to prohibit a partnership agreement or the partners from waiving or modifying Chapters 4, 5, 10, 11, and 12,

other than Sections 11.057(a), (b), (c)(1), (c)(3), and (d), rather than Sections 11.057(a)(1), (2), (5), and (6).

SECTION 105. Amends Section 152.302(c), Business Organizations Code, to make a nonsubstantive change.

SECTION 106. Amends Section 152.304(a), Business Organizations Code, to provide that all partners are liable jointly and severally for a debt or obligation of the partnership unless agreed by the claimant or provided by law, except as provided by Subsection (b) or Section 152.801(a), rather than Section 152.801(b).

SECTION 107. Amends Section 152.501(b), Business Organizations Code, to provide that an event of withdrawal of a partner occurs on an agreement to continue the partnership under Section 11.057(d), rather than 11.057(b), if the partnership has received a notice from the partner under Section 11.057(d), rather than Section 11.057(a)(6), requesting that the partnership be wound up. Deletes existing Subdivision (11).

SECTION 108. Amends Section 152.503(b), Business Organizations Code, to provide that a partner's withdrawal is wrongful only if in the case of a partnership that has a period of duration, is for a particular undertaking, or is required under its partnership agreement to wind up the partnership on occurrence of a specified event, before the expiration of the period of duration, the completion of the undertaking, or the occurrence of the event.

SECTION 109. Amends Section 152.602(b), Business Organizations Code, to make a reference to the expiration of the partnership's period of duration, rather than the expiration of a definite term. Makes conforming changes.

SECTION 110. Amends Section 152.608(a), Business Organizations Code, to make conforming changes.

SECTION 111. Amends Section 152.611(a), Business Organizations Code, to make conforming changes.

SECTION 112. Amends Section 152.709, Business Organizations Code, as follows:

Sec. 152.709. New heading: CANCELLATION OR REVOCATION OF EVENT REQUIRING WINDING UP; CONTINUATION OF PARTNERSHIP. (a) Authorizes all partners of a partnership to cancel under Section 11.152 an event requiring a winding up specified in Section 11.051(1) or (3), or Section 11.057(c)(1) if a partnership has a period of duration, is for a particular undertaking, or is required under its partnership agreement to wind up the partnership on occurrence of a specified event. Provides that upon reaching a certain agreement, the event requiring a winding up is canceled, the partnership is continued, and the partnership agreement is considered amended to provide that the expiration, the completion, or the occurrence of the event did not result in an event requiring winding up of the partnership. Makes a conforming change.

(b) Makes conforming changes.

(c) Authorizes all of the partners of a partnership, by agreeing to continue the partnership, to cancel under Section 11.152 an event requiring winding up specified in Section 11.057(d) that arises from a request to wind up from a partner.

(d) Provides that to approve a revocation under Section 11.151 by a partnership of a voluntary decision to wind up pursuant to the express will of all the partners as specified in Section 11.057(b), rather than Section 11.057(a)(2) or (3), prior to completion of the winding up process, requires all the partners to agree in writing to revoke the voluntary decision to wind up and to continue the business of the partnership.

(e) Provides that to approve a revocation under Section 11.151 by a partnership of a voluntary decision to wind up pursuant to the express will of a majority-in-interest of the partners as specified in Section 11.057(a), rather than Section 11.057(a)(1), prior to completion of the winding up process, requires a majority-in-interest of the partners to agree in writing to revoke the voluntary decision to wind up and to continue the business of the partnership.

(f) Authorizes all the partners of a partnership, by agreeing to continue the partnership, to cancel under Section 11.152 an event requiring winding up specified in Section 11.057(c)(3) that arises from the sale of all or substantially all of the property of the partnership.

SECTION 113. Amends Section 152.901(b), Business Organizations Code, to prohibit a foreign limited liability partnership from being denied registration because of a difference between the laws of the jurisdiction, rather than laws of the state, under which the partnership is formed and the laws of this state.

SECTION 114. Amends Section 152.902, Business Organizations Code, to make a conforming change.

SECTION 115. Amends the heading to Section 152.905, Business Organizations Code, to read as follows:

Sec. 152.905. REGISTRATION PROCEDURE.

SECTION 116. Amends Sections 152.905(c) and (e), Business Organizations Code, to make conforming changes.

SECTION 117. Amends Section 152.908(b), Business Organizations Code, to make a conforming change.

SECTION 118. Amends the heading to Section 152.910, Business Organizations Code, to read as follows:

Sec. 152.910. EFFECT OF FAILURE TO REGISTER.

SECTION 119. Amends Section 152.914(b), Business Organizations Code, to require the secretary of state to provide notice to the partnership in the same manner and to the same extent as notice is required to be provided to a foreign filing entity under Sections 9.101 and 9.102, rather than Sections 9.101(a) and 9.102(a), if it appears that, with respect to a foreign limited liability partnership, a circumstance described by Subsection (a) exists.

SECTION 120. Amends Section 153.052(b), Business Organizations Code, to authorize a certificate of formation to be amended to state certain information of the business or each person winding up the limited partnership's affairs if, after an event requiring the winding up of a limited partnership but before the limited partnership is reconstituted or a certificate of termination is filed as provided by Section 11.101 (Certificate of Termination for Filing Entity), rather than Section 153.451 (Certificate of Termination).

SECTION 121. Amends Section 153.103, Business Organizations Code, to make a conforming change.

SECTION 122. Amends Section 153.155(a), Business Organizations Code, to make a conforming change.

SECTION 123. Amends Section 153.157, Business Organizations Code, to make conforming changes.

SECTION 124. Amends Section 153.251(b), Business Organizations Code, to make a conforming change.

SECTION 125. Amends Section 153.256, Business Organizations Code, as follows:

Sec. 153.256. New heading: PARTNER'S PARTNERSHIP INTEREST SUBJECT TO CHARGING ORDER. (a) Authorizes a court having jurisdiction to charge the partnership interest of the judgment debtor to satisfy the judgment. Deletes existing text authorizing a court to make certain orders, directions, and inquiries that circumstances of the case requires.

(b) Makes conforming changes.

(c) Provides that a charging order constitutes a lien on the judgment debtor's partnership interest. Deletes existing text authorizing the partnership interest charged to be redeemed or purchased under certain circumstances.

(d) Provides that the entry of a charging order is the exclusive remedy by which a judgment creditor of a partner or of any other owner of a partnership interest may satisfy a judgment out of the judgment debtor's partnership interest. Deletes existing text providing that the remedies provided by Subsection (a) are exclusive of other remedies that may exist, including remedies under laws of this state applicable to partnerships without limited partners.

(e) Provides that this section does not deprive a partner or other owner of a partnership interest of a right under exemption laws with respect to the judgment debtor's partnership interest.

(f) Provides that a creditor of a partner or of any other owner of a partnership interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited partnership.

SECTION 126. Amends Section 153.501, Business Organizations Code, as follows:

Sec. 153.501. New heading: CANCELLATION OR REVOCATION OF EVENT REQUIRING WINDING UP; CONTINUATION OF BUSINESS. (a) Authorizes the limited partnership to cancel under Section 11.152 an event requiring winding up arising from the expiration of its period of duration as specified in Section 11.051(1) or from the occurrence of an event specified in its governing documents as specified in Section 11.051(3) if, not later than the 90th day after the event, all remaining partners, or another group or percentage of partners as specified by the partnership agreement, agree in writing to continue the business of the limited partnership.

(b) Authorizes the limited partnership to cancel under Section 11.152 an event requiring winding up arising from an event of withdrawal of a general partner as specified in Section 11.058(b).

(d) Requires all remaining partners, or another group or percentage of partners as specified by the partnership agreement, to agree in writing to revoke the voluntary decision to wind up, as specified in Section 11.058(a), prior to filing the certificate of termination required by Section 11.101, and continue the business of the limited partnership.

(e) Authorizes the limited partnership to cancel under Section 11.152 an event requiring winding up arising when there are no limited partners in the limited partnership, as specified in Section 11.058(c), if, not later than the first anniversary of the date of the event requiring winding up certain actions are taken.

SECTION 127. Amends Section 153.503(a), Business Organizations Code, to authorize a person winding up a limited partnership's business in the name of and on behalf of the limited partnership to take the actions specified in Sections 11.052 and 11.053 after the occurrence of an event requiring the winding up of the limited partnership and until the filing of a certificate of termination as provided by Section 11.101, unless a written partnership agreement provides otherwise.

SECTION 128. Amends Subchapter K, Chapter 153, Business Organizations Code, by adding Section 153.505, as follows:

Sec. 153.505. APPROVAL OF REINSTATEMENT. Requires all of the remaining partners, or another group or percentage of partners as specified by the partnership agreement, to agree in writing to reinstate and continue the business of the limited partnership as specified under Section 11.202.

SECTION 129. Amends Section 153.551(a), Business Organizations Code, to require a domestic limited partnership to maintain certain records in its principal office in the United States or make the records available in that office not later than the fifth day after the date on which a written request under Section 153.552(a) is received.

SECTION 130. Amends the heading to Section 153.553, Business Organizations Code, to read as follows:

Sec. 153.553. EXECUTION OF FILINGS.

SECTION 131. Amends Section 153.553, Business Organizations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires a filing instrument required by this code to be signed by at least one general partner and filed by a limited partnership with the secretary of state.

(a-1) Requires certain certificates to be executed in a specific manner.

SECTION 132. Amends Section 200.261(a), Business Organizations Code, to redefine "fundamental action."

SECTION 133. Amends Section 251.403, Business Organizations Code, to make a conforming change.

SECTION 134. Amends Section 301.001(c), Business Organizations Code, to provide that this title does not apply to a partnership, including a limited liability partnership.

SECTION 135. Amends Section 301.003(3), Business Organizations Code, to redefine "professional corporation."

SECTION 136. Amends Section 301.006(b), Business Organizations Code, to make conforming changes.

SECTION 137. Amends Section 303.006, Business Organizations Code, as follows:

Sec. 303.006. New heading: EXECUTION OF CERTIFICATE OF TERMINATION.

(a) Requires a certificate of termination filed in accordance with Chapter 11 to be executed by an officer of the professional corporation on behalf of the corporation, except as provided by Subsection (b).

(b) Requires the certificate of termination to be executed by the director of a corporation if the professional corporation does not have any living officer. Requires the certificate of termination to be executed by the legal representative of the last living director of the corporation if the professional corporation does not have any living director.

SECTION 138. Amends Section 402.001(a), Business Organizations Code, to provide that this code applies to certain entities on or after the effective date of this code.

SECTION 139. Amends Section 402.003, Business Organizations Code, to authorize a domestic entity formed before the effective date of this code to voluntarily elect to adopt and become subject to this code by taking certain actions. Deletes existing Subsection (b).

SECTION 140. Amends Article 2.32, Texas Business Corporation Act, by amending Section A and adding Section E, as follows:

(A) Deletes existing text authorizing a director to resign at any time by giving notice in writing or by electronic transmission to the corporation unless otherwise provided by the articles of incorporation or the bylaws.

(E) Authorizes a director to resign at any time by giving notice in writing or by electronic transmission to the corporation unless otherwise provided by the articles of incorporation or the bylaws. Provides that the director's resignation takes effect on the date the notice is received by the corporation, unless the notice prescribes a later effective date or states that the resignation takes effect on the occurrence of a future event, such as the director's failure to receive a specified vote for reelection as a director. Provides that if the director's resignation is to take effect on a later date or on the occurrence of a future event, the resignation takes effect on the later date or when the event occurs. Provides that the director's resignation is irrevocable when it takes effect. Provides that the director's resignation is revocable before it takes effect unless the notice of resignation expressly states that it is irrevocable.

SECTION 141. Amends Section A, Article 5.12, Texas Business Corporation Act, as follows:

(1)(a) Requires consideration to be given to the value of the corporation, in computing the fair value of the shares under this article, as a going concern without including in the computation of value any control premium, any minority discount, or any discount for lack of marketability. Requires the relative rights and preferences of and limitations placed on the class or series of shares, other than relative voting rights, held by the dissenting shareholder to be taken into account in the computation of value if the corporation has different classes or series of shares.

SECTION 142. Amends Article 4.06, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

Art. 4.06. RIGHTS OF JUDGMENT CREDITOR. A. Authorizes the court to charge the membership interest of the judgment debtor to satisfy the judgment on application by a judgment creditor of a member or of any other owner of a membership interest. Provides that, to the extent that the membership interest is charged in this manner, the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise have been entitled in respect, rather than the rights of the assignee, of the membership interest.

B. Provides that a charging order constitutes a lien on the judgment debtor's membership interest.

C. Provides that the entry of a charging order is the exclusive remedy by which a judgment creditor of a member or of any other owner of a membership interest may satisfy a judgment out of the judgment debtor's membership interest.

D. Provides that this section does not deprive any member or other owner of a membership interest of the benefit of any exemption laws applicable to the judgment debtor's, rather than that member's, membership interest.

E. Provides that a creditor of a member or of any other owner of a membership interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

SECTION 143. Amends Section 7.03, Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), as follows:

Sec. 7.03. RIGHTS OF JUDGMENT CREDITOR. (a) Authorizes the court to charge the partnership interest of the judgment debtor to satisfy the judgment. Provides that, to the extent that the partnership interest is charged in this manner, the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise have been entitled in respect, rather than only the rights of an assignee, of the partnership interest. Deletes existing text authorizing the court to charge the partnership interest of the partner or other owner with payment of the unsatisfied amount of the judgment, with interest, may then or later appoint a receiver of the debtor partner's share of the partnership's profits and of any other money payable or that becomes payable to the debtor partner with respect to the partnership, and may make all other orders, directions, and inquiries that the circumstances of the case require.

(b) Provides that a charging order constitutes a lien on the judgment debtor's partnership interest. Deletes existing text authorizing the partnership interest to be redeemed or purchased under certain circumstances.

(c) Provides that the entry of a charging order is the exclusive remedy by which a judgment debtor of a partner or of any other owner of a partnership interest may satisfy a judgment out of the judgment debtor's partnership interest. Deletes existing text providing that the remedies provided by Subsection (a) are exclusive of others that may exist, including remedies under laws of this state applicable to partnerships without limited partners.

(d) Provides that this section does not deprive any partner or other owner of a partnership interest of the benefit of any exemption laws applicable to the judgment debtor's, rather than that partner's, partnership interest.

(e) Provides that a creditor of a partner or of any other owner of a partnership interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited partnership.

SECTION 144. Repealer: Section 22.306 (Limited Survival After Natural Expiration), Section 152.501(c) (regarding the effective date of a withdrawal of a partner), and Subchapter J, Chapter 153 (Cancellation Of Certificate Of Formation), Business Organizations Code.

SECTION 145. Makes application of Sections 101.112 and 153.256, Business Organizations Code, Article 4.06, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), and Section 7.03, Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), of this Act prospective.

SECTION 146. Effective date: September 1, 2007.