

CHAPTER 128

S.B. No. 533

An Act relating to certain technical corrections and miscellaneous amendments to certain provisions of the Texas Business Corporation Act, as amended, the Texas Miscellaneous Corporation Laws Act, as amended, the Texas Non-Profit Corporation Act, as amended, and the Texas Professional Corporation Act, as amended, including those pertaining to indemnification of directors, officers, and others by business and nonprofit corporations, the officers of corporations, the execution of documents, authorized shares, determination of net assets and surplus, directors and boards of directors, mergers, foreign corporations, dissolution of corporations, meetings; providing a penalty; amending the Texas Business Corporation Act, as amended (Volume 3A, Article 1.01 et seq., Vernon's Texas Civil Statutes), by amending Subdivision (4) of Section A and Sections B, G, H, J, M, P, Q, and R, Article 2.02-1; Section B, Article 2.10; Section A, Article 2.12; Article 2.13; Sections B and E, Article 2.17; Section A, Article 2.19; Subsection (2), Section E, Article 2.22; Section A, Article 2.36; Section A, Article 2.42; Section B, Article 4.03; Section A, Article 4.04; Section D, Article 4.07; Section B, Article 4.10; Section B, Article 4.11; Section B, Article 4.12; Section A, Article 5.04; Section B, Article 5.16; Section A, Article 6.06; Section A, Article 8.01; Section A, Article 8.02; Section B, Article 8.05; Section B, Article 8.09; and Section B, Article 8.14; and by adding Section D, Article 2.34; Article 2.35-1; and Article 10.02; amending the Texas Miscellaneous 1 Corporation Laws Act, as amended (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), by amending Section A, Article 1302-2.08; and Article 1302-7.01; and repealing Articles 1302-6.25 and 1302-6.26; and amending the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), by adding Articles 1396-2.22A and 1396-9.11 and repealing Article 1396-2.22; and amending Section 14 of the Texas Professional Corporation Act, as amended (Article 1528e, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision (4) of Section A and Sections B, G, H, J, M, P, Q, and R, Article 2.02-1, Texas Business Corporation Act, as amended, are amended to read as follows:

“(4) ‘Official capacity’ means

“(a) when used with respect to a director, the office of director in the corporation, [s] and

“(b) when used with respect to a person other than a director, the elective or appointive office, in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation, but

“(c) in both Paragraphs (a) and (b) [each case] does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.”

“B. A corporation may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director [of the corporation] only if it is determined in accordance with Section F of this article that the person:

“(1) conducted himself in good faith;

“(2) reasonably believed:

“(a) in the case of conduct in his official capacity as a director of the corporation, that his conduct was in the corporation’s best interests [interest]; and

“(b) in all other cases, that his conduct was at least not opposed to the corporation’s best interests; and

“(3) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.”

“G. Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by Subsection (3) of Section F of this article for the selection of special legal counsel. *A provision contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, or an agreement that makes mandatory the indemnification permitted under Section B of this article shall be deemed to constitute authorization of indemnification in the manner required by this section even though such provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.*

“H. A corporation shall indemnify a director against reasonable expenses incurred by him in connection with a proceeding in which he is a *named defendant or respondent* [~~party~~] because he is or was a director if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.”

“J. If, upon application of a director, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the [s] director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Section B of this article or has been adjudged liable in the circumstances described by Section C of this article, the court may order the indemnification that the court determines is proper and equitable. The court shall limit indemnification to reasonable expenses if the proceeding is brought by or in behalf of the corporation or if the director is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person’s official capacity.”

“M. A provision for a corporation to indemnify or to advance expenses to a director who *was, is, or is threatened to be made* a named defendant or respondent in a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise, except in accordance with Section R of this article, is *valid only to the extent* [~~void unless~~] it is consistent with this article as limited by the articles of incorporation, if such a limitation exists.”

“P. A corporation may indemnify and advance expenses to *persons* [~~nominees and designees~~] who are not or were not officers, employees, or agents of the corporation *but* who are or were serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, [~~other enterprise, or~~] employee benefit plan, *or other enterprise* to the same extent that it may indemnify and advance expenses to directors under this article.

“Q. A corporation may indemnify and advance expenses to an officer, employee, [~~or~~] agent, or person [~~who is~~] identified in [~~by~~] Section P of this article [~~as a nominee or designee~~] and who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract or as permitted or required by common law.

“R. A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, [~~other enterprise, or~~] employee benefit plan, *or other enterprise*, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against that liability under this article.”

SECTION 2. Section B, Article 2.10, Texas Business Corporation Act, as amended, is amended to read as follows:

“B. The statement required by this article shall be executed *on behalf of* [~~by~~] the corporation *by an officer* [~~its president or a vice-president, and verified by him~~]. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when the appropriate filing fee is paid as prescribed by law:

“(1) Endorse on the original and the copy the word [:] ‘Filed,’ and the month, day, and year of the filing thereof.

“(2) File the original in his office.

“(3) Return the copy to the corporation or its representative.”

SECTION 3. Section A, Article 2.12, Texas Business Corporation Act, as amended, is amended to read as follows:

“A. Each corporation may issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights, *including voting rights*, as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide *special voting rights* for the shares of any class to the extent that such limitation, ~~or~~ denial, or provision is not inconsistent with the provisions of this Act. *Any of the designations, preferences, limitations, or relative rights, including voting rights, of any such class of shares may be made dependent upon facts ascertainable outside the articles of incorporation, provided that the manner in which such facts shall operate upon the designations, preferences, limitations, and relative rights, including voting rights, of such class of shares is clearly and expressly set forth in the articles of incorporation.*”

SECTION 4. Article 2.13, Texas Business Corporation Act, as amended, is amended to read as follows:

“Article 2.13. ISSUANCE OF SHARES OF PREFERRED OR SPECIAL CLASSES IN SERIES. A. If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation. *Any of the designations, preferences, limitations, or relative rights, including the voting rights, of any series of shares may be dependent upon facts ascertainable outside the articles of incorporation, provided that the manner in which such facts shall operate upon the designations, preferences, limitations, and relative rights, including voting rights, of such series of shares is clearly and expressly set forth in the articles of incorporation. The articles of incorporation may provide that the relative rights and preferences of shares of the same class may vary between series in any and all respects, in which case shares of the same class need not be identical so long as all shares of the same series are identical in all respects. The articles of incorporation may also provide that the relative rights and preferences of shares of the same class may vary between series only in certain specified respects, in which case shares of the same class shall be identical except in such specified respects. In all other cases, ~~but~~ all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:*

“(1) The rate of dividend payable with respect to shares of such series and the dates, terms, and other conditions on which such dividends shall be payable.

“(2) The nature of the dividend payable with respect to shares of such series as cumulative, noncumulative, or partially cumulative.

“(3) The price at and the terms and conditions on which shares may be redeemed.

“(4)~~(3)~~ The amount payable upon shares in event of involuntary liquidation.

“(5)~~(4)~~ The amount payable upon shares in event of voluntary liquidation.

“(6)~~(5)~~ Sinking fund provisions for the redemption or purchase of shares.

“(7)~~(6)~~ The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

“(8)~~(7)~~ Voting rights.

“(9) Repurchase obligations of the corporation with respect to the shares of each series, subject, however, to the limitations of Article 2.03 of this Act.

“B. If the articles of incorporation shall expressly vest *such* authority in the board of directors, then ~~to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series,~~ the board of directors shall have authority to establish ~~divide any or all of such classes into~~ series of unissued shares of any or all preferred or special classes by fixing ~~and, within the limitations set forth in this Article and in the articles of incorporation, to fix~~ and determining ~~determine~~ the relative rights and preferences of the shares of any series so established within the limitations set forth in this article and in the articles of incorporation, and to increase or decrease the number of shares within each such series; provided, however, that the board of directors may not decrease the number of shares within a series below the number of shares within such series that is then issued.

“C. In order to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof [;] or so much thereof as shall not be fixed and determined by the articles of incorporation. *In order to increase or decrease the number of shares of a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution fixing and determining the new number of shares of each series in which the number of shares is increased or decreased.*

“D. Prior to the issuance of any shares of a series established by resolution adopted by the board of directors, *and prior to the issuance of any shares of a series in which the number of shares has been increased or decreased by resolution adopted by the board of directors, if such issuance is the first issuance of shares of such series since such resolution was adopted,* the corporation shall file with ~~in the office of~~ the Secretary of State a statement setting forth:

“(1) The name of the corporation.

“(2) A copy of the resolution establishing and designating the series [;] and fixing and determining the relative rights and preferences thereof *or a copy of the resolution fixing and determining the new number of shares of each series in which the number of shares is increased or decreased, as appropriate.*

“(3) The date of adoption of such resolution.

“(4) That such resolution was duly adopted by the board of directors.

“E. Such statement shall be executed *on behalf of* [by] the corporation by an officer ~~its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement~~. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as prescribed by law:

“(1) Endorse on the original and the copy the word ‘Filed,’ and the month, day, and year of the filing thereof.

“(2) File the original in his office.

“(3) Return the copy to the corporation or its representative.

“F. Upon the filing of such statement by the Secretary of State, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof *or the resolution fixing the new number of shares of each series in which the number of shares is increased or decreased, as appropriate,* shall become an amendment of the articles of incorporation. *An amendment of the articles of incorporation effected pursuant to this Article 2.13 is not subject to the procedure to amend the articles of incorporation contained in Article 4.02 of this Act.*”

SECTION 5. Sections B and E, Article 2.17, Texas Business Corporation Act, as amended, are amended to read as follows:

“B. In case of the issuance by a corporation of shares without par value, the consideration fixed by the corporation in the manner provided by law shall constitute stated capital, unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of sixty (60) days after the issuance of any shares without par value, the board of directors may allocate to capital surplus *any part, but not all,* ~~not more than twenty-five per cent (25%)~~ of the consideration received for the issuance of such shares. No such allocations shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of voluntary liquidation except the amount, if any, of such consideration in excess of such preference.”

“E. (1) Determinations of the net assets and the surplus of a corporation, and each of their components, may be based on:

“(a) financial statements of the corporation, including without limitation financial statements that include subsidiary corporations or other corporations accounted for on a consolidated basis or on the equity method of accounting, that present the financial condition of the corporation in accordance with generally accepted accounting principles;

“(b) financial statements prepared on the basis of accounting used to file the corporation’s federal income tax return or any other accounting practices and principles that are reasonable in the circumstances;

“(c) financial information, including without limitation condensed or summary financial statements, that is prepared on a basis consistent with the financial statements referred to in Paragraphs ~~Subsections~~ (a) ~~[(1)]~~ and (b) ~~[(2)]~~ of this Subsection (1) ~~[section]~~;

“(d) a fair valuation or information from any other method that is reasonable in the circumstances; or

“(e) any combination of the statements, *valuations,* or information authorized by this Subsection (1) ~~[section]~~.

“(2) This Section E and the determinations made in accordance with this section do not apply to the calculation of the Texas franchise tax or any other tax imposed on corporations under the laws of this state.”

SECTION 6. Section A, Article 2.19, Texas Business Corporation Act, as amended, is amended to read as follows:

“A. A corporation shall deliver certificates representing shares to which shareholders are entitled, or the shares of a corporation may be uncertificated shares. Unless otherwise provided by the articles of incorporation or ~~bylaws~~ ~~[bylaws]~~, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Certificates representing shares shall be signed by ~~[the president or a vice-president and either the secretary or assistant secretary or]~~ such officer or officers as the ~~bylaws~~ ~~[bylaws]~~ of the corporation shall prescribe, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of ~~[the president or vice-president, secretary or assistant secretary or]~~ such officer or officers as the ~~bylaws~~ ~~[bylaws]~~ of the corporation shall prescribe upon a certificate may be facsimiles, if the certificate is countersigned by a transfer agent or registered by a registrar, either of which is other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issuance.”

SECTION 7. Subsection (2), Section E, Article 2.22, Texas Business Corporation Act, as amended, is amended to read as follows:

“E. A corporation that has adopted a bylaw, or is a party to an agreement, restricting the transfer of its shares or other securities may file such bylaw or agreement as a matter of public record with the Secretary of State, as follows:

“(1) The corporation shall file a copy of the bylaw or agreement in the office of the Secretary of State together with an attached statement setting forth:

“(a) the name of the corporation;

“(b) that the copy of the bylaw or agreement is a true and correct copy of the same; and

“(c) that such filing has been duly authorized by the board of directors or, in the case of a close corporation that, in conformance with Part Twelve of this Act, is managed in some other manner pursuant to a shareholders' agreement, by the shareholders or by the persons empowered by the agreement to manage its business and affairs.

“(2) Such statement shall be executed *on behalf of* ~~[by]~~ the corporation ~~[by its president or a vice-president and verified]~~ by *an* ~~[the]~~ officer ~~[signing such statement]~~. The original and a copy of the statement shall be delivered to the Secretary of State with copies of such bylaw or agreement restricting the transfer of shares or other securities attached thereto. If the Secretary of State finds that such statement conforms to law and the appropriate filing fee has been paid as prescribed by law, he shall:

“(a) endorse on the original and the copy the word ‘Filed’, and the month, day, and year of the filing thereof;

“(b) file the original in his office; and

“(c) return the copy to the corporation or its representative.

“(3) After the filing of such statement by the Secretary of State, the bylaw or agreement restricting the transfer of shares or other securities shall become a matter of public record and the fact of such filing shall be stated on any certificate representing the shares or other securities so restricted if required by Section G, Article 2.19, of this Act.”

SECTION 8. Article 2.34, Texas Business Corporation Act, as amended, is amended by adding Section D to read as follows:

“D. Notwithstanding Sections A, B, and C of this article, whenever the holders of any class or series of shares are entitled to elect one or more directors by the provisions of the articles of incorporation, any vacancies in such directorships and any newly created directorships of such class or series to be filled by reason of an increase in the number of such directors may be filled by the affirmative vote of a majority of the directors elected by such class or series then in office or by a sole remaining director so elected, or by the vote of the holders of the outstanding shares of such class or series, and such directorships shall not in any case be filled by the vote of the remaining directors or the holders of the outstanding shares as a whole unless otherwise provided in the articles of incorporation.”

SECTION 9. The Texas Business Corporation Act, as amended, is amended by adding Article 2.35-1 to read as follows:

“Article 2.35-1. INTERESTED DIRECTORS. A. No contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

“(1) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

“(2) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or

“(3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved, or ratified by the board of directors, a committee thereof, or the shareholders.

“B. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.”

SECTION 10. Section A, Article 2.36, Texas Business Corporation Act, as amended, is amended to read as follows:

“A. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees, each of which shall be comprised of one or more members and, to the extent provided in such resolution or in the articles of incorporation or in the bylaws of the corporation, shall have and may exercise all of the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, approving a plan of merger or consolidation, recommending to the shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, amending, altering, or repealing the bylaws of the corporation or adopting new bylaws for the corporation, filling vacancies in the board of directors or any such committee, filling any directorship to be filled by reason of an increase in the number of directors, electing or removing officers or members of any such committee, fixing the compensation of any member of such committee, or altering or repealing any resolution of the board of directors which by its terms provides that it shall not be so amendable or repealable; and, unless such resolution, the articles of incorporation, or the bylaws of the corporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of shares of the corporation. The designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.”

SECTION 11. Section A, Article 2.42, Texas Business Corporation Act, as amended, is amended to read as follows:

“A. The officers of a corporation shall consist of a president and [~~one or more vice/~~ presidents as may be prescribed by the bylaws,] a secretary, [~~and a treasurer,~~] each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers, including [~~and~~] assistant officers, and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two (2) or more offices may be held by the same person.”

SECTION 12. Section B, Article 4.03, Texas Business Corporation Act, as amended, is amended to read as follows:

“B. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would accomplish any of the following, unless the amendment is undertaken pursuant to authority granted to the board of directors in the articles of incorporation in accordance with Section B of Article 2.13 of this Act:

“(1) Increase or decrease the aggregate number of authorized shares of such class.

“(2) Increase or decrease the par value of the shares of such class.

“(3) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

“(4) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

“(5) Change the designations, preferences, limitations, or relative rights of the shares of such class.

“(6) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

“(7) Create a new class of shares having rights and preferences equal, prior, or superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences equal, prior, or superior to the shares of such class, or increase the rights and preferences of any class having rights or preferences later or inferior to the shares of such class in such a manner as to become equal, prior, or superior to the shares of such class.

“(8) In case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series.

“(9) Limit or deny the existing preemptive rights of the shares of such class.

“(10) Cancel or otherwise affect dividends on the shares of such class which had accrued but had not been declared.

“(11) Include in or delete from the articles of incorporation any provisions required or permitted to be included in the articles of incorporation of a close corporation in conformance with Part Twelve of this Act.”

SECTION 13. Section A, Article 4.04, Texas Business Corporation Act, as amended, is amended to read as follows:

“A. The articles of amendment shall be executed *on behalf of the corporation by an officer* [~~by the corporation by its president or a vice/president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles~~]. If no shares have been issued, however, and the articles of amendment are adopted by the board of directors, the articles of amendment may be executed *on behalf of the corporation* by a majority of the directors [~~and verified by them~~].”

SECTION 14. Section D, Article 4.07, Texas Business Corporation Act, as amended, is amended to read as follows:

“D. Such restated articles of incorporation shall be executed *on behalf of the corporation by an officer* [~~by the corporation by its president or a vice/president and by its secretary or an assistant secretary, and shall be verified by one of the officers signing such articles~~]. The original and a copy of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation conform to law, he shall, when the appropriate filing fee is paid as required by law:

“(1) Endorse on the original and the copy the word ‘Filed,’ and the month, day, and year of the filing thereof.

“(2) File the original in his office.

“(3) Issue a restated certificate of incorporation to which he shall affix the copy.”

SECTION 15. Section B, Article 4.10, Texas Business Corporation Act, as amended, is amended to read as follows:

“B. The statement of cancellation shall be executed *on behalf of the corporation by an officer* [~~by the corporation by its president or a vice/president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement~~]; and shall set forth:

“(1) The name of the corporation.

“(2) The number of redeemable shares cancelled through the redemption or purchase, itemized by classes and series.

“(3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

“(4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

“(5) If the articles of incorporation provide that the cancelled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.”

SECTION 16. Section B, Article 4.11, Texas Business Corporation Act, as amended, is amended to read as follows:

"B. The statement of cancellation shall be executed *on behalf of the corporation by an officer* ~~[by the corporation by its president or a vice/president and by its secretary or an assistant secretary, shall be verified by one of the officers signing such statement,]~~ and shall set forth:

- "(1) The name of the corporation.
- "(2) A statement that a resolution has been duly adopted by the board of directors authorizing the cancellation, the date of adoption of such resolution, and a summary of its contents, including a statement of the number of treasury shares to be cancelled, itemized by classes and series, and the amount of stated capital represented by the shares to be cancelled.
- "(3) The aggregate number of shares, itemized by classes and series and par value, if any, which are to retain the status of issued shares after the cancellation becomes effective.
- "(4) The amount, expressed in dollars, which is to constitute the stated capital of the corporation after the cancellation becomes effective."

SECTION 17. Section B, Article 4.12, Texas Business Corporation Act, as amended, is amended to read as follows:

"B. When a reduction of the stated capital of a corporation has been approved as provided in this Article, a statement shall be executed *on behalf of the corporation by an officer* ~~[by the corporation by its president or a vice/president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement,]~~ and shall set forth:

- "(1) The name of the corporation.
- "(2) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.
- "(3) The number of shares outstanding, and the number of shares entitled to vote on the resolution.
- "(4) The number of shares voted for and against such reduction, respectively.
- "(5) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction."

SECTION 18. Section A, Article 5.04, Texas Business Corporation Act, as amended, is amended to read as follows:

"A. Upon the required approval by the shareholders of two or more corporations of a plan of merger or consolidation, articles of merger or articles of consolidation shall be executed *on behalf of* ~~[by] each corporation by an officer thereof~~ ~~[its president or a vice/president and by its secretary or an assistant secretary, verified by one of the officers of each corporation signing such articles,]~~ and shall set forth:

- "(1) The plan of merger or the plan of consolidation.
- "(2) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.
- "(3) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively."

SECTION 19. Section B, Article 5.16, Texas Business Corporation Act, as amended, is amended to read as follows:

"B. The articles of merger shall be executed by the parent corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

- "(1) The name of the parent corporation, and the name or names of the subsidiary corporations and the respective jurisdiction under which each such corporation is organized.
- "(2) The number of outstanding shares of each class of each subsidiary corporation and the number of such shares of each class owned by the parent corporation.
- "(3) A copy of the resolution adopted by the board of directors of the parent corporation to so merge and the date of the adoption thereof. If the parent corporation does not own all the outstanding shares of each class of each subsidiary corporation party to the merger, the resolution shall state the terms and conditions of the merger, including the securities, cash or other property to be used, paid or delivered by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation.
- "(4) If the surviving corporation is a foreign corporation, the address, including street number if any, of its registered or principal office in the jurisdiction under whose laws it is governed. It shall comply also with the provisions of Article 5.07B(2) ~~[5.07B(3)]~~ of this Act."

SECTION 20. Section A, Article 6.06, Texas Business Corporation Act, as amended, is amended to read as follows:

“A. If voluntary dissolution proceedings have not been revoked, then, when all liabilities and obligations of the corporation have been paid or discharged, or adequate provision has been made therefor, or in case its property and assets are not sufficient to satisfy and discharge all the corporation’s liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the corporation’s liabilities and obligations, and all of the remaining property and assets of the corporation have been distributed to its shareholders according to their respective rights and interest, articles of dissolution shall be executed *on behalf of the corporation by an officer* ~~[by the corporation by its president or a vice/president and by its secretary or an assistant secretary; and verified by one of the officers signing such statement]~~, which ~~[statement]~~ shall set forth:

“(1) The name of the corporation.

“(2) The names and respective addresses of its officers.

“(3) The names and respective addresses of its directors.

“(4) That all debts, obligations, and liabilities of the corporation have been paid or discharged or that adequate provision has been made therefor, or, in case the corporation’s property and assets were not sufficient to satisfy and discharge all its liabilities and obligations, that all property and assets have been applied so far as they would go to the payment thereof in a just and equitable manner and that no property or assets remained available for distribution among its shareholders.

“(5) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests or that no property remained for distribution to shareholders after applying it as far as it would go to the just and equitable payment of the liabilities and obligations of the corporation.

“(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

“(7) If the corporation elected to dissolve by written consent of all shareholders:

“(a) A copy of the written consent to dissolve, and a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

“(8) If the corporation elected to dissolve by act of the corporation:

“(a) A copy of the resolution to dissolve, and a statement that such resolution was adopted by the shareholders of the corporation and the date of the adoption thereof.

“(b) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

“(c) The number of shares voted for and against such resolution respectively and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution respectively.”

SECTION 21. Section A, Article 8.01, Texas Business Corporation Act, as amended, is hereby amended to read as follows:

“A. No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State. No foreign corporation shall be entitled to procure a certificate of authority under this Act to transact in this State any business which a corporation organized under this Act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the State or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State, and nothing in this Act contained shall be construed to authorize this State to regulate the organization of such corporation [s] or its internal affairs ~~[not intrastate in Texas].~~”

SECTION 22. Section A, Article 8.02, Texas Business Corporation Act, as amended, is amended to read as follows:

“A. A foreign corporation which shall have received a certificate of authority under this Act shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the transaction of intrastate business in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors: *provided, however, that the internal affairs of a*

foreign corporation, including but not limited to the rights, powers, and duties of its board of directors and shareholders and matters relating to its shares, shall be governed solely by the laws of its jurisdiction of incorporation.”

SECTION 23. Section B, Article 8.05, Texas Business Corporation Act, as amended, is amended to read as follows:

“B. Such application shall be made on forms promulgated by the Secretary of State and shall be executed *on behalf of the corporation by an officer* [~~by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.~~”

SECTION 24. Section B, Article 8.09, Texas Business Corporation Act, as amended, is amended to read as follows:

“B. Such statement shall be executed *on behalf of the corporation by an officer* [~~by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement.~~]. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as required by law:

“(1) Endorse on the original and the copy the word ‘Filed,’ and the month, day, and year of the filing thereof.

“(2) File the original in his office.

“(3) Return the copy to the corporation or its representative.”

SECTION 25. Section B, Article 8.14, Texas Business Corporation Act, as amended, is amended to read as follows:

“B. The application for withdrawal may be made on forms promulgated by the Secretary of State and shall be executed *on behalf of the corporation by an officer* [~~by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application.~~”

SECTION 26. The Texas Business Corporation Act is amended by adding Article 10.02 to read as follows:

“*Article 10.02. PENALTY FOR SIGNING FALSE DOCUMENT. A. A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered on behalf of a corporation to the Secretary of State for filing.*

“*B. An offense under this article is a Class A misdemeanor.*”

SECTION 27. Section A, Article 1302-2.08, Texas Miscellaneous Corporation Laws Act, as amended (Article 1302-2.08, Vernon’s Texas Civil Statutes), is amended to read as follows:

“A. As a part of the application of a foreign corporation, whether for profit or not for profit, for a certificate of authority, *an officer of such corporation* [~~its president, vice president, secretary or treasurer, or two of the directors thereof,~~] shall make and file in the office of the Secretary of State, *on behalf of such corporation*, an affidavit stating that such corporation is not a trust or organization in restraint of trade in violation of the laws of this State, has not within twelve (12) months next preceding the making of such affidavit, become or been a part to any trust agreement of any kind which would constitute a violation of any antitrust law of Texas existing at the date of such affidavit, and has not within that time, entered into or been in any wise a party to, any combination in restraint of trade within the United States, and that no officer of such corporation has, within the knowledge of affiant, within such time and on behalf of such corporation or for its benefit, made any such contract, or entered into or become a party to any such combination in restraint of trade. [~~The jurat of the officer making such affidavit shall be attested by his official signature and seal of office.~~”

SECTION 28. The Texas Miscellaneous Corporation Laws Act, as amended, is amended by repealing Article 1302-6.25 and Article 1302-6.26.

SECTION 29. Article 1302-7.01, Texas Miscellaneous Corporation Act, as amended, is amended to read as follows:

“**Article 1302-7.01. PROCEDURE TO CORRECT INACCURATE OR DEFECTIVE INSTRUMENT.** Whenever any instrument authorized to be filed with the Secretary of State under any statute to which this Act applies has been filed and is an inaccurate record of the corporate action referred to in the instrument, contains an inaccurate or erroneous statement, or was defectively or erroneously executed, sealed, acknowledged, or verified, the instrument may be corrected by articles of correction. Articles of correction must be executed *on behalf of the corporation by an officer or director* [~~by the corporation by its president or a vice president and by its secretary or an assistant secretary and must be verified by one of the officers signing the articles.~~”

SECTION 30. The Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 1396-2.22A to read as follows:

"Article 1396-2.22A. POWER TO INDEMNIFY AND TO PURCHASE INDEMNITY INSURANCE; DUTY TO INDEMNIFY. A. In this article:

"(1) 'Corporation' includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the corporation by operation of law and in any other transaction in which the corporation assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this article.

"(2) 'Director' means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

"(3) 'Expenses' includes court costs and attorneys' fees.

"(4) 'Official capacity' means:

"(a) when used with respect to a director, the office of director in the corporation; and

"(b) when used with respect to a person other than a director, the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation; but

"(c) in both Paragraphs (a) and (b) does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

"(5) 'Proceeding' means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

"B. A corporation may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director only if it is determined in accordance with Section F of this article that the person:

"(1) conducted himself in good faith;

"(2) reasonably believed:

"(a) in the case of conduct in his official capacity as a director of the corporation, that his conduct was in the corporation's best interests; and

"(b) in all other cases, that his conduct was at least not opposed to the corporation's best interests; and

"(3) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

"C. A director may not be indemnified under Section B of this article for obligations resulting from a proceeding:

"(1) in which the person is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity; or

"(2) in which the person is found liable to the corporation.

"D. The termination of a proceeding by judgment, order, settlement, or conviction or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in Section B of this article.

"E. A person may be indemnified under Section B of this article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding; but if the proceeding was brought by or in behalf of the corporation, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

"F. A determination of indemnification under Section B of this article must be made:

"(1) by a majority vote of a quorum consisting of directors who at the time of the vote are not named defendants or respondents in the proceeding;

"(2) if such a quorum cannot be obtained, by a majority vote of a committee of the board of directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the proceeding;

"(3) by special legal counsel selected by the board of directors or a committee of the board by vote as set forth in Subsection (1) or (2) of this section, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors; or

“(4) by the members in a vote that excludes the vote of directors who are named defendants or respondents in the proceeding.

“G. Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by Subsection (3) of Section F of this article for the selection of special legal counsel. A provision contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, or an agreement that makes mandatory the indemnification permitted under Section B of this article shall be deemed to constitute authorization of indemnification in the manner required by this section even though such provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

“H. A corporation shall indemnify a director against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent because he is or was a director if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

“I. If, in a suit for the indemnification required by Section H of this article, a court of competent jurisdiction determines that the director is entitled to indemnification under that section, the court shall order indemnification and shall award to the director the expenses incurred in securing the indemnification.

“J. If, upon application of a director, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Section B of this article or has been adjudged liable in the circumstances described by Section C of this article, the court may order the indemnification that the court determines is proper and equitable. The court shall limit indemnification to reasonable expenses if the proceeding is brought by or in behalf of the corporation or if the director is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity.

“K. Reasonable expenses incurred by a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of the proceeding after:

“(1) the corporation receives a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification under this article and a written undertaking by or on behalf of the director to repay the amount paid or reimbursed if it is ultimately determined that he has not met those requirements; and

“(2) a determination that the facts then known to those making the determination would not preclude indemnification under this article.

“L. The written undertaking required by Section K of this article must be an unlimited general obligation of the director but need not be secured. It may be accepted without reference to financial ability to make repayment. Determinations and authorizations of payments under Section K of this article must be made in the manner specified by Section F of this article for determining that indemnification is permissible.

“M. A provision for a corporation to indemnify or to advance expenses to a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of members or directors, an agreement, or otherwise, except in accordance with Section R of this article, is valid only to the extent it is consistent with this article as limited by the articles of incorporation, if such a limitation exists.

“N. Notwithstanding any other provision of this article, a corporation may pay or reimburse expenses incurred by a director in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding.

“O. An officer of the corporation shall be indemnified as, and to the same extent, provided by Sections H, I, and J of this article for a director and is entitled to seek indemnification under those sections to the same extent as a director. A corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to directors under this article.

“P. A corporation may indemnify and advance expenses to a person who is not or was not an officer, employee, or agent of the corporation but who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to directors under this article.

“Q. A corporation may indemnify and advance expenses to an officer, employee, agent, or person identified in Section P of this article and who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract or as permitted or required by common law.

“R. A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against that liability under this article.

“S. Any indemnification of or advance of expenses to a director in accordance with this article shall be reported in writing to the members of the corporation with or before the notice or waiver of notice of the next meeting of members or with or before the next submission to members of a consent to action without a meeting pursuant to Section A, Article 1396-9.10 of this Act and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

“T. For purposes of this article, the corporation is deemed to have requested a director to serve an employee benefit plan whenever the performance by him of his duties to the corporation also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law are deemed fines. Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan is deemed to be for a purpose which is not opposed to the best interests of the corporation.

“U. The articles of incorporation of a corporation may restrict the circumstances under which the corporation is required or permitted to indemnify a person under Section H, I, J, O, P, or Q of this article.”

SECTION 31. Article 1396-2.22 of the Texas Non-Profit Corporation Act is repealed.

SECTION 32. The Texas Non-Profit Corporation Act is amended by adding Article 1396-9.11 to read as follows:

“Article 1396-9.11. TELEPHONE MEETINGS. Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the articles of incorporation or bylaws, members of a corporation, members of the board of directors of a corporation, or members of any committee designated by such board may participate in and hold a meeting of such members, board, or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Article shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.”

SECTION 33. Section 14, Texas Professional Corporation Act, as amended (Article 1528e, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 14. If any shareholder, officer or director of a professional corporation, or any agent or employee thereof who has been rendering professional service for or with it of the same type which such professional corporation was organized to render, becomes legally disqualified to render such professional service, he shall sever all employment with such professional corporation and shall terminate all financial interest therein forthwith; and such corporation shall thereupon purchase or cause to be purchased from him all shares owned by him in such professional corporation, at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement; provided, however, that if he was the sole shareholder of the professional corporation, he may continue to act as officer, director and shareholder for the purposes of winding up the affairs of the corporation and effecting its dissolution, selling the assets of the corporation, or selling the outstanding shares of the corporation, but not for rendering any professional service. Likewise, if any person who is not licensed or duly authorized to render the professional service which a professional corporation was organized to render should succeed to the interest of any shareholder of such professional corporation, the person holding such interest shall terminate all financial interest in such professional corporation forthwith; and such corporation shall thereupon purchase or cause to be purchased from such person all shares owned by such person in such professional corporation, at such price and upon such terms as may be provided in the Articles of Incorporation, the bylaws or any applicable stock purchase or redemption agreement; provided, however, that if such person has succeeded to all of the shares of the professional corporation, such

person may act as officer, director and shareholder for the purposes of winding up the affairs of the corporation and effecting its dissolution, selling the assets of the corporation, or selling the outstanding shares of the corporation, but not for rendering any professional service.”

SECTION 34. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 14, 1985, by the following vote: Yeas 28, Nays 0; passed the House on May 7, 1985, by the following vote: Yeas 137, Nays 0, two present not voting.

Approved: May 20, 1985

Effective: Immediately