

CHAPTER 215

H.B. No. 1239

AN ACT

relating to the organization and operation of certain business organizations that provide for limited liability; providing penalties.

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

ARTICLE 1. LIMITED LIABILITY COMPANIES

SECTION 1.01. Section A, Article 1.02, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended by amending Subsection (9) and adding Subsection (10) to read as follows:

(9) "Foreign Limited Liability Company" means an entity formed under the laws of a jurisdiction other than this state (a) that is characterized as a limited liability company by such laws or (b) although not so characterized by such laws, that elects to procure a certificate of authority pursuant to Article 7.01 of this act, that is formed under laws which *provide* [~~provides~~] that some or all of the persons entitled to receive a distribution of the assets thereof upon the entity's dissolution or otherwise or to exercise voting rights with respect to an interest in the entity shall not be liable for the debts, obligations or liabilities

of the entity and which is not *eligible to become* authorized to [qualify to] do business in this state under any other statute.

(10) "Merger" means (a) the division of a domestic limited liability company into two or more new domestic limited liability companies or into a surviving limited liability company and one or more new domestic or foreign limited liability companies or other entities, or (b) the combination of one or more domestic limited liability companies with one or more domestic or foreign limited liability companies or other entities resulting in (i) one or more surviving domestic or foreign limited liability companies or other entities, (ii) the creation of one or more new domestic or foreign limited liability companies or other entities, or (iii) one or more surviving domestic or foreign limited liability companies or other entities and the creation of one or more new domestic or foreign limited liability companies or other entities.

SECTION 1.02. Section A, Article 2.03, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

A. The limited liability company name shall conform to the following requirements:

(1) It shall either contain the words [word] "Limited Liability Company" or "Limited Company" or the abbreviations [abbreviation "~~Ltd.~~" or "L.L.C.," "LLC," "LC," or "L.C."] and shall contain such additional words as may be required by law. The word "Limited" may be abbreviated as "Ltd." or "LTD" and the word "Company" may be abbreviated as "Co." However, a limited liability company formed before September 1, 1993, that complied with this Section on the date of formation, but does not comply with this Section as revised, is not required to change its name.

(2) It shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of organization.

(3) It shall not be the same as, or deceptively similar to, the name of any domestic limited liability company, corporation or limited partnership existing under the laws of this state, or the name of any foreign limited liability company, corporation or limited partnership authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Act or any other statute providing for reservation of names by a corporation or limited partnership, or the name of a limited liability company, corporation or limited partnership which has in effect a registration of its company name as provided in this act or any other applicable law provided that a name may be similar if written consent is obtained from the existing limited liability company, corporation or limited partnership having the name deemed to be similar or the person for whom the name deemed to be similar is reserved in the office of the Secretary of State.

SECTION 1.03. Section A, Article 2.08, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

A. The managers, *if any*, and the registered agent shall be agents of a limited liability company or foreign limited liability company upon whom any process, notice, or demand required or permitted by law to be served upon the limited liability company or foreign limited liability company may be served.

SECTION 1.04. Article 2.09, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.09. REGULATIONS OF LIMITED LIABILITY COMPANY. A. The power to adopt, alter, amend, or repeal the regulations of a limited liability company shall be vested in the members of the company unless vested in whole or part in the manager or managers of the company by the articles of organization or regulations. Regulations adopted by the members or by the managers may be repealed or altered; new regulations may be adopted by the members; and regulations may provide that they may not, in whole or specified part, be altered, amended, or repealed by the managers. The regulations may contain any provisions for the regulation and management of the affairs of the limited liability company not inconsistent with law or the articles of organization. *Unless otherwise provided in the articles of organization, the [The] initial regulations of the limited liability company shall be adopted by the manager or managers named in the articles of organization, if any, or by the member or members named in the articles of organization, if any. Any provision of this Act*

*subject to variation or modification by the regulations of a limited liability company is also subject to variation or modification by the articles of organization of the limited liability company.*

SECTION 1.05. Article 2.11, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.11. LIMITED LIABILITY COMPANY PROPERTY. A. Real or personal property owned or purchased by a limited liability company *may* [shall] be held and owned, and conveyance *may* [shall] be made, in the name of the limited liability company. Instruments and documents providing for the acquisition, mortgage, or disposition of the property of the limited liability company shall be valid and binding upon the company, if they are executed by one or more persons as provided in *Article 2.21 of this Act* [~~the preceding Article~~].

SECTION 1.06. Article 2.12, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.12. MANAGERS. A. Except and to the extent *the articles of organization or the regulations shall reserve management of the limited liability company* [~~the same~~] to the members in whole or in part, *and subject to provisions in the articles of organization, the regulations, or this Act restricting or enlarging the powers, rights, and duties of any manager or group or class of managers*, the powers of a limited liability company shall be exercised by or under the authority of, and the business and affairs of a limited liability company shall be managed under the direction of, the *manager or managers* of the limited liability company. *If management of the limited liability company is fully reserved to the members, the limited liability company need not have managers.* Managers need not be residents of this State or members of the limited liability company unless the regulations so require. The regulations may prescribe other qualifications for managers. *If the management of the limited liability company is reserved in whole or in part to the members, Articles 2.17, 2.18, 2.19, and 2.20 of this Act apply to the members who manage the limited liability company to the same extent as those articles would otherwise apply to managers of a limited liability company.*

SECTION 1.07. Article 2.13, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.13. NUMBER AND ELECTION OF MANAGERS. A. The managers of a limited liability company, *if any*, shall consist of one or more persons. The number of managers shall be fixed by, or in the manner provided in, the regulations, except as to the number constituting the initial managers, which number shall be fixed by the articles of organization. The number of managers may be increased or decreased from time to time by amendment to, or in the manner provided in, the regulations, but no decrease shall have the effect of shortening the term of any incumbent manager. In the absence of a regulation fixing the number of managers or providing for the manner in which the number of managers shall be fixed, the number of managers shall be the same as the number constituting the initial managers. The names and addresses of the initial managers, *if any*, shall be stated in the articles of organization. Unless *otherwise provided in the regulations or in any resolution of the managers or members appointing that manager in accordance with* [~~removed in accordance with the provisions of~~] the regulations or articles of organization, *each manager [such persons]* shall hold office for the term for which elected, *if any term is specified, and until that manager's successor has been elected, or until that manager's earlier death, resignation, or removal.* The regulations may provide for the time or times at which the members entitled to vote in the election of managers shall elect managers and the term for which the managers shall hold office [~~until the first annual meeting of members, and until their successors shall have been elected and qualified.~~ At the first annual meeting of members and at each annual meeting thereafter, the holders of membership interests entitled to vote in the election of managers shall elect managers to hold office until the next succeeding annual meeting, except in case of the classification of managers as permitted by this Act]. The regulations may provide that [~~the holders of~~] any class or group of members [~~series of membership interests~~] shall be entitled to elect one or more managers, who shall hold office for such terms as shall be stated in the regulations. [~~Unless removed in accordance with provisions of the regulations, each manager shall hold office for the term for which elected and until a successor shall have been duly elected and qualified.~~] The regulations may

provide that at any meeting of members called expressly for that purpose any managers may be removed, with or without cause, as provided therein; *however, if*, ~~Whenever the holders of~~ any class or *group* [~~series~~] of *members* is [~~shares are~~] entitled to elect one or more managers by the provisions of the regulations, only the *members* [~~holders of membership interests~~] of that class or *group* [~~series~~] shall be entitled to vote for or against the removal of any managers elected by the *members* [~~holders~~] of that class or *group* [~~series~~].

SECTION 1.08. Article 2.14, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.14. CLASSIFICATION OF MANAGERS. A. The regulations may provide that the managers shall be divided into *more than one class* [~~either two or three classes~~], each class to be *the number specified in the regulations* [~~as nearly equal in number as possible~~], the terms [~~of office~~] of managers of *each* [~~the first~~] class to expire *in the order provided in the regulations and at the meetings of the members at which the regulations provide that managers are to be elected* [~~at the first annual meeting of members after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election~~]. If the regulations provide for the classification of managers, (1) the whole number of managers of the *limited liability company* need not be elected annually or at any regularly scheduled meeting of the members, and (2) [~~at each annual meeting~~] after such classification, *at each meeting at which the regulations provide that managers are to be elected*, the number of managers equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until *the next succeeding meeting at which the regulations provide that the successors to the managers are to be elected*. A classification of managers adopted after the last meeting of members at which managers were elected may not be effective before the next meeting of members at which managers are elected unless the classification is effected by an amendment to the regulations adopted by the members [~~the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes~~].

SECTION 1.09. Section A, Article 2.18, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

A. If the regulations so provide, the managers, by resolution, may designate from among the managers one or more committees, each of which shall be comprised of one or more of the managers, and may designate one or more of the managers as alternate members of any committee, who may, subject to any limitations imposed by the managers, replace absent or disqualified managers at any meeting of that committee. Any such committee, to the extent provided in such resolution or in the regulations, shall have and may exercise all of the authority of the managers, subject to the limitations set forth in Sections B and C of this Article. *Unless the resolution designating a particular committee, the articles of organization, or the regulations expressly so provides, a committee of the managers does not have the authority to authorize or make a distribution of limited liability company cash or property to the members or to authorize the issuance of interests in the limited liability company.*

SECTION 1.10. Article 2.21, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.21. DESIGNATION OF OFFICERS; AUTHORITY AND APPARENT AUTHORITY OF OFFICERS, AGENTS, MANAGERS, AND MEMBERS [~~POWERS OF MANAGERS AND OFFICERS~~]. A. *One or more persons, who may or may not be managers or members, may be designated as officers of the limited liability company by the manager or managers, if management is vested in one or more managers, or by the member or members, if management of the limited liability company is reserved to the members* [~~The managers may designate one or more persons as officers of the limited liability company who are not managers. Every manager and officer is an agent of the limited liability company for the purpose of its business and the act of a manager or officer, including the execution in the name of the limited liability company of any instrument for apparently carrying on in the usual way the business of the limited liability company, binds the limited liability company unless the manager or officer so acting otherwise lacks the authority to act for the limited liability company and the person with whom the manager or officer is dealing has knowledge of the fact that the manager or officer has no such authority.~~].

B. All officers, agents, managers, and members of the limited liability company, as among themselves and the limited liability company, have authority and perform duties in the management of the limited liability company as may be provided in the regulations or as may be determined by resolution of the manager or managers, if management is vested in one or more managers, or of the member or members, if management is reserved to the members, in each case not inconsistent with the regulations or the articles of organization.

C. Except as otherwise provided in this Article, the following are agents of a limited liability company for the purpose of its business:

(1) any one or more officers or other agents of a limited liability company who are vested with actual or apparent authority;

(2) each manager, to the extent that management of the limited liability company is vested in that manager; and

(3) each member, to the extent that management of the limited liability company has been reserved to that member.

D. An act, including the execution in the name of the limited liability company of any instrument, for the purpose of apparently carrying on in the usual way the business of the limited liability company by any of the persons described in Section C of this Article binds the limited liability company unless:

(1) the officer, agent, manager, or member so acting otherwise lacks the authority to act for the limited liability company; and

(2) the person with whom the officer, agent, manager, or member is dealing has knowledge of the fact that the officer, agent, manager, or member does not have that authority.

SECTION 1.11. Part Two, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended by adding Article 2.23 to read as follows:

Art. 2.23. VOTING, QUORUM, AND ACTION. A. Except as otherwise provided in this Article, in the articles of organization, or in the regulations, a majority of the members, managers, or members of any committee constitutes a quorum for the transaction of business at any meeting of the members, the managers, or the committee. An act of a majority of the members entitled to vote, the managers, or the members of a committee, who are present at a meeting of the members, the managers, or the committee at which a quorum is present is the act of the members, the managers, or the committee.

B. (1) Unless otherwise provided by the articles of organization or the regulations, any act required or permitted to be taken at any meeting of the members, the managers, or any committee may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the members, managers, or committee members, as the case may be, having not fewer than the minimum number of votes that would be necessary to take the action at a meeting at which all members, managers, or committee members, as the case may be, entitled to vote on the action were present and voted.

(2) Unless otherwise provided in the regulations, a telegram, telex, cablegram, or similar transmission by a person, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a person, shall be regarded as signed by that person for the purposes of this Article.

C. Subject to the provisions required or permitted by this Act, unless otherwise provided in the articles of organization or the regulations, members, managers, or members of any committee may participate in and hold a meeting of the members, managers, or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear each other. Participation in a meeting pursuant to this Section constitutes presence in person at the 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.

D. Except as provided in the articles of organization or the regulations, the affirmative vote, approval, or consent of a majority of all the members is required to:

(1) amend the articles of organization or regulations;

(2) *change the status of the limited liability company from one in which management is reserved to the members to one in which management is vested in one or more managers, or vice versa;*

(3) *issue any additional membership interests in the limited liability company subsequent to the issuance of membership interests to the initial members of the limited liability company;*

(4) *approve any merger, consolidation, share or interest exchange, or other transaction authorized by or subject to the provisions of Part Ten of this Act;*

(5) *voluntarily cause the dissolution of the limited liability company;*

(6) *authorize any transaction, agreement, or action on behalf of the limited liability company that is unrelated to its purpose as set forth in the regulations or articles of organization or that otherwise contravenes the regulations; or*

(7) *authorize any act that would make it impossible to carry on the ordinary business of the limited liability company.*

*E. Except as provided in the regulations, the affirmative vote, approval, or consent of a majority of all of the managers, if management of the limited liability company is vested in one or more managers, or of the members, if management of the limited liability company is reserved to the members, is required to take any action, other than an action listed in Section D of this Article, that is not apparently for the carrying on of the business of the limited liability company in the usual way.*

*F. Except as otherwise provided in the articles of organization or the regulations, for purposes of this Act, a "majority" of the members, managers, or any committee of the managers means more than one-half, by number, of all the members, managers, or members of the committee, as the case may be.*

SECTION 1.12. Section A, Article 3.02, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

A. The *initial* Articles of Organization shall set forth:

(1) The name of the limited liability company;

(2) The period of duration, which may be *perpetual* [~~not exceed 30 years from the date of filing with the Secretary of State~~];

(3) The purpose for which the limited liability company is organized which may be stated to be, or to include, the transaction of any or all lawful business for which limited liability companies may be organized under this Act;

(4) The address of its *initial registered office* [~~principal place of business in the state~~] and the name [~~and address~~] of its initial registered agent at that address [~~in the state~~];

(5) If the limited liability company is to *have* [~~be managed by~~] a manager or managers, a statement to that effect [~~that the company is to be managed by a manager or managers~~] and the names and addresses of the *initial manager or* [~~such~~] managers [~~who are to serve as managers until the first annual meeting of members or until their successors are duly elected~~]. If the [~~management of a~~] limited liability company *will not have managers, a statement to that effect and* [~~is reserved to the members,~~] the name and addresses of the *initial members*;[-]

(6) *The name and address of each organizer;*

(7) *Any provision required by Part Eleven of this Act, if the limited liability company is a professional limited liability company; and*

(8) Any other provisions, not inconsistent with law, which the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provisions which under this Act are [~~required or~~] permitted to be set out in the regulations of the limited liability company.

SECTION 1.13. Section B, Article 3.06, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

B. The articles of amendment shall set forth:

(1) The name of the limited liability company.

(2) If the amendment alters any provision of the original or amended articles of organization an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of organization a statement of that fact and the text of each provision added.

(3) A statement that the amendment was approved in accordance with Section D of Article 2.23 of this Act or as otherwise provided in the articles of organization or regulations and the date of the approval.

SECTION 1.14. Part Three, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended by adding Article 3.09 to read as follows:

Art. 3.09. *RESTATED ARTICLES OF ORGANIZATION.* A. *By following the procedure to amend the articles of organization provided by this Act, a limited liability company may authorize, execute, and file restated articles of organization that restate the entire text of the articles of organization, as amended or supplemented by:*

- (1) *all certificates of amendment previously issued by the Secretary of State; or*
- (2) *all certificates of amendment previously issued by the Secretary of State and by further amendments included in the restated articles of organization.*

*Unless otherwise provided by the articles of organization or the regulations, member approval is not required if further amendment is not made by the restated articles of organization.*

B. *Restated articles of organization that restate the entire articles of organization as amended and supplemented by all certificates of amendment previously issued by the Secretary of State, without making a further amendment, must contain an introductory paragraph stating that the instrument accurately copies the articles of organization and all amendments to the articles of organization that are in effect to date and that the instrument does not contain any other change in a provision of the articles of organization or a previous amendment, other than:*

- (1) *the insertion of the current number of managers, if any, and the names and addresses of the persons then serving as managers, if any, in lieu of similar information concerning the initial managers; and*
- (2) *the omission of the name and address of each organizer.*

C. *An instrument containing restated articles of organization that restate the entire articles of organization as amended and supplemented by all certificates of amendment previously issued by the Secretary of State and as further amended by the restated articles of organization must:*

- (1) *state that each amendment made by the restated articles of organization has been effected in conformity with this Act;*
- (2) *include the statements required by this Act to be contained in articles of amendment; and*
- (3) *state that the instrument accurately copies the articles of organization and all amendments that are in effect to date and as further amended by the restated articles of organization and that the instrument does not contain any other change in a provision of the articles of organization or the previous amendments, other than:*

*(a) the insertion of the current number of managers, if any, and the names and addresses of the persons then serving as managers, if any, in lieu of similar information concerning the initial managers; and*

*(b) the omission of the name and address of each organizer.*

D. *Restated articles of organization must be executed on behalf of the limited liability company by an authorized manager or member unless capital has not been paid into the limited liability company and the restated articles of organization have been adopted by the organizer, in which case the restated articles of organization may be executed on behalf of the limited liability company by the organizer. The original and a copy of the restated articles of organization shall be delivered to the Secretary of State. If the Secretary of State*

*finds that the restated articles of organization conform to law, and the appropriate filing fee is paid as required by law, the Secretary of State shall:*

- (1) *endorse on the original and the copy the word "Filed" and the month, day, and year of filing;*
- (2) *file the original in the Secretary of State's office; and*
- (3) *issue a restated certificate of organization and affix the copy to the restated certificate of organization.*

*E. The restated certificate of organization, together with the copy of the restated articles of organization affixed to the restated certificate of organization by the Secretary of State, shall be delivered to the limited liability company or its representative.*

*F. On issuance of a restated certificate of organization by the Secretary of State, the original articles of organization and all amendments to the original articles are superseded, and the restated articles of organization are the articles of organization of the limited liability company.*

SECTION 1.15. Section A, Article 4.01, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

A. *A limited liability company may have one or more members.* In connection with the formation of a limited liability company, a person acquiring an interest as a member becomes a member on the latter of:

- (1) the date of formation of the limited liability company; or
- (2) the date stated in the records of the limited liability company as the date that the person becomes a member or, if no date is stated in those records, on the date that the person's admission is first reflected in the records of the limited liability company.

SECTION 1.16. Article 4.05, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended by amending Section A and adding Section C to read as follows:

A. Unless otherwise provided by the regulations:

- (1) a membership interest is assignable in whole or in part;
- (2) an assignment of a membership interest does not *of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become[,] or [tø] exercise any rights [or powers] of[,] a member;*
- (3) an assignment entitles the assignee *to be allocated income, gain, loss, deduction, credit, or similar items, and to receive distributions, to which the assignor was entitled, to the extent those items are assigned, and, for any proper purpose, to require reasonable information or account of transactions of the limited liability company and to make reasonable inspection of the books and records of the limited liability company;* and
- (4) until the assignee becomes a member, the assignor member continues to be a member and to have the power to exercise any rights or powers of a member, except to the extent those rights or powers are assigned.

*C. Until an assignee of the interest of a member in a limited liability company is admitted as a member, the assignee does not have liability as a member solely as a result of the assignment.*

SECTION 1.17. Section B, Article 5.02, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

B. Except as otherwise provided by the articles of organization or regulations, a member or the member's *legal* representative or successor is obligated to the limited liability company to perform an enforceable promise to make a contribution to or otherwise pay cash or transfer property to a limited liability company, notwithstanding the member's death, disability, or other change in circumstances. If *a member or a member's legal representative or successor does not make a contribution or other payment of cash or transfer of property required by the enforceable promise, whether as a contribution or with respect to a contribution previously made, that member or the member's legal representative or successor is obligated, at the option of the limited liability company, to pay to the limited liability*



company an amount of cash equal to that portion of the agreed value, as stated in the regulations or in the limited liability company records required to be kept under Article 2.22 of this Act [act], of the contribution represented by the amount of cash that has not been paid or the value of the property that has not been transferred.

SECTION 1.18. Part Five, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended by adding Article 5.02-1 to read as follows:

Art. 5.02-1. *ALLOCATION OF PROFITS AND LOSSES.* A. *The profits and losses of a limited liability company shall be allocated among the members and among classes of members in the manner provided in the regulations. If the regulations do not otherwise provide, the profits and losses shall be allocated in accordance with the then current percentage or other interest in the limited liability company of the members stated in limited liability company records of the kind described in Section A of Article 2.22 of this Act.*

SECTION 1.19. Article 5.05, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 5.05. *WITHDRAWAL OR EXPULSION [RESIGNATION] OF MEMBER.* A. *member may withdraw or be expelled from a limited liability company at the time or on the occurrence of events specified in the regulations.*

SECTION 1.20. Article 6.01, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6.01. *DISSOLUTION.* A. *Except as provided by Section B of this Article, a [A] limited liability company shall be dissolved on the first of the following to occur:*

(1) [~~When~~] *the period fixed for the duration of the limited liability company expires;[-]*

(2) [~~On~~] *the occurrence of events specified in the articles of organization or regulations to cause dissolution;[-]*

(3) *the action of the members to dissolve the limited liability company; [~~Written consent of all members to dissolution.~~]*

(4) *if no capital has been paid into the limited liability company, the act of the organizer or the managers of the limited company to dissolve the limited liability company;*

(5) *except [~~Except~~] as otherwise provided in the regulations, upon the death, [~~retirement, resignation,~~] expulsion, withdrawal pursuant to or as provided in the articles of organization or regulations, bankruptcy, or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member in the limited liability company, unless there is at least one remaining member and the business of the limited liability company is continued by the consent of the number of members or class thereof stated in the articles of organization or regulations of the limited liability company or if not so stated, by all remaining members.]; or*

(6) *entry [~~(5) Entry~~] of a decree of judicial dissolution under Section 6.02 of this Act.*

B. *A limited liability company is not dissolved if an event of dissolution described by Subsection (1), (2), or (5) of Section A of this Article occurs, there is at least one remaining member, and the business of the limited liability company is continued by the vote of the members or class as stated in the articles of organization or regulations of the limited liability company, or if not so stated, by all remaining members. Unless otherwise provided in the articles of organization or in the regulations, an election to continue the business of the limited liability company must be made within 90 days after the date of the occurrence of the event of dissolution. If an election to continue the business of the limited liability company is made following the termination of the period fixed for the duration of the limited liability company or the occurrence of events specified in the articles of organization to cause dissolution, the election is not effective unless an appropriate amendment is made by the limited liability company to its articles of organization during the three-year period following the date of the event of dissolution, extending the period fixed for the duration of the limited liability company or deleting the event specified in the articles of organization that caused the dissolution, as applicable.*

SECTION 1.21. Article 6.03, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6.03. WINDING UP. A. On the dissolution of a limited liability company, the limited liability company's affairs shall be wound up as soon as reasonably practicable. The winding up shall be accomplished by the managers or members or *by any other person or persons designated by the articles of organization, by the regulations, or by resolution of the managers or members.* In addition, a court of competent jurisdiction, on cause shown, may wind up the limited liability company's affairs on application of any member or the member's legal representative or assignee and, in connection with the winding up, may appoint a person to carry out the liquidation and may make all other orders, directions, and inquiries that the circumstances require.

SECTION 1.22. Article 6.05, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6.05. PROCEDURE BEFORE FILING ARTICLES OF DISSOLUTION. A. Before filing articles of dissolution:

(1) The limited liability company shall cease to carry on its business, except insofar as may be necessary for the winding up thereof.

(2) The limited liability company shall cause written notice by registered or certified mail of its intention to dissolve to be mailed to each known creditor of and claimant against the limited liability company.

(3) The limited liability company shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its members, pay, satisfy or discharge its liabilities and obligations, or make adequate provisions for payment and discharge thereof, and do all other acts required to liquidate its business and affairs; in case its property and assets are not sufficient to satisfy or discharge all the limited liability company's liabilities and obligations, the limited liability company shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations. After paying or discharging all of its obligations, or making adequate provisions for payment and discharge thereof, the limited liability company shall then distribute the remainder of its assets, either in cash or in kind, among its *members* [shareholders] according to their respective rights and interest.

(4) The limited liability company, at any time during the liquidation of its business and affairs, may make application to any district court of this state in the county in which the registered office of the limited liability company is situated to have the liquidation continued under the supervision of such court as provided in this Act.

SECTION 1.23. Article 6.07, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6.07. ARTICLES OF DISSOLUTION. A. If voluntary dissolution proceedings have not been revoked, then, when all liabilities and obligations of the limited liability company have been paid or discharged, or adequate provision has been made *therefor* [thereof], or in case its property and assets are not sufficient to satisfy and discharge all the limited liability company'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 limited liability company's liabilities and obligations, and all of the remaining property and assets of the limited liability have been distributed to its members according to their respective rights and interest, articles of dissolution shall be executed on behalf of the limited liability company by a manager or authorized member, *or in the case of a dissolution by action of the organizer of the limited liability company, by the organizer,* which shall set forth:

(1) The name of the limited liability company.

(2) The names and respective addresses of its managers, *if any.*

(3) That all debts, obligations, and liabilities of the limited liability company have been paid or discharged or that adequate provision has been made therefor, or, in case the limited liability company's property and assets were not sufficient to satisfy and discharge all its debts, liabilities, and obligations, that all property and assets have been applied so far as they will go to the payment thereof in a just and equitable manner and that no property or assets remain available for distribution among its members, *or, that the limited liability company has not acquired any debts, obligations, or liabilities.*

(4) That all remaining property and assets of the limited liability company have been distributed among its members in accordance with their respective rights and interest or that no property remained for distribution to members after applying it as far as it would go to the just and equitable payment of the debts, liabilities, and obligations of the limited liability company, or that the limited liability company has not acquired any property or assets and therefore distributions to members were not required.

(5) If capital has not been paid into the limited liability company, a copy of the resolution to dissolve, together with a statement that the resolution was adopted by the act of the organizer or the managers of the limited liability company and of the date of adoption [~~There are no suits pending against the limited liability company in any court, or that adequate provisions have been made for satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.~~]

(6) If the limited liability company elected to dissolve by *action* [~~written consent~~] of its [~~all~~] members, a[~~l~~]:

[(a)—A] copy of the *resolution* [~~written consent~~] to dissolve, together with [~~and~~] a statement that *the resolution was adopted in accordance with Section D, Article 2.23, of this Act or as otherwise provided in the articles of incorporation or the regulations and the date of adoption* [~~such written consent has been signed by all members of the limited liability company or signed in their names by their attorneys thereunto duly authorized~~].

SECTION 1.24. Article 7.03, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 7.03. LIMITED LIABILITY COMPANY NAME OF FOREIGN LIMITED LIABILITY COMPANY. A. No certificate of authority shall be issued to a foreign limited liability company unless the limited liability company name of such limited liability company:

(1) Shall contain the word "*Limited Liability Company*" or "*Limited Company*" or the abbreviations "*L.L.C.*," "*LLC*," "*LC*," [~~"Ltd.~~"] or "*L.C.*" and shall contain such additional words as may be required by law. *The word "Limited" may be abbreviated as "Ltd." or "LTD" and the word "Company" may be abbreviated as "Co."* However, a foreign limited liability company that procured a certificate of authority to transact business in this state before September 1, 1993, and that complied with this Section on the date of procuring the certificate, but does not comply with this Section as revised, is not required to change its name.

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of organization.

(3) Shall not be the same as, or deceptively similar to, the name of any domestic limited liability company, corporation or limited partnership existing under the laws of this state or of any foreign limited liability company, corporation or limited partnership authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved or registered in the manner provided in this Act or any other statute relating to corporations, partnerships, or other business entities; provided that a name may be similar if written consent is obtained from the existing limited liability company, corporation or limited partnership having the name deemed to be similar or the person, or limited liability company, for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State. A certificate of authority shall be issued as provided in this Act to any foreign limited liability company having a name the same as, deceptively similar to, or, if no consent is given, similar to the name of any limited liability company existing under the laws of this state or of any foreign limited liability company authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved or registered, provided such foreign limited liability company qualifies and does business under a name that meets the requirements of this article. The foreign limited liability company shall set forth in the application for a certificate of authority the name under which it is qualifying and shall file an assumed name certificate as required by law.

SECTION 1.25. Article 8.12, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8.12. APPLICABILITY OF OTHER STATUTES. A. *Subject to Section C of this Article, Articles 2.07, 4.14, and 5.14 and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.*

B. *Subject to Section C of this Article, Articles 2.03 through 2.06, 2.09, 2.09A, 3.01, and 7.01 through 7.07, Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), as amended, apply to a limited liability company and its members, managers, and officers.*

C. *For purposes of the application of the articles of the TBCA and the Texas Miscellaneous Corporation Laws Act as provided by Sections A and B of this Article, as context requires:*

- (1) *a reference to a corporation includes a limited liability company;*
- (2) *a reference to a share includes a membership interest;*
- (3) *a reference to a shareholder includes a member;*
- (4) *a reference to a director includes a manager;*
- (5) *a reference to articles of incorporation includes articles of organization; and*
- (6) *a reference to bylaws includes regulations. [To the extent this Act contains no provision with respect to one of the matters provided for in the TBCA or the Texas Miscellaneous Corporation Laws Act as such acts shall be amended from time to time, the provisions of the TBCA and the Texas Miscellaneous Corporation Laws Act shall supplement the provisions of this Act to the extent they are not inconsistent with the provisions of this Act. Without limiting the generality of the foregoing, Article 5 of the TBCA shall supplement the provisions of this Act and a limited liability company shall be an "other entity" as that term is defined in the TBCA and Article 7.06 of the Texas Miscellaneous Corporation Laws Act shall be applicable to limited liability company managers to the same extent as to directors.]*

SECTION 1.26. Section A, Article 9.01, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended to read as follows:

A. The Secretary of State is authorized and required to collect for the use of the State the following fees:

- (1) Filing articles of organization of a domestic limited liability company and issuing the certificate of organization, Two Hundred Dollars (\$200.00).
- (2) Filing articles of amendment of a domestic limited liability company and issuing the certificate of amendment, One Hundred Dollars (\$100.00).
- (3) Filing articles of merger involving *one or more* [a] domestic or foreign limited liability companies: [company,]
  - (a) Two Hundred Dollars (\$200.00), *if another type of domestic entity is not a party to the merger; or*
  - (b) *the greater of Two Hundred Dollars (\$200.00) or the highest filing fee for articles of merger under the applicable Texas statute under which the other domestic entity or entities are incorporated or organized, if another type of domestic entity is party to the merger.*
- (4) Filing an application of a foreign limited liability company for certificate of authority to transact business in this state and issuing such a certificate of authority, Five Hundred Dollars (\$500.00).
- (5) Filing an application of a foreign limited liability company for an amended certificate of authority to transact business in this state and issuing such an amended certificate of authority, One Hundred Dollars (\$100.00).
- (6) Filing restated articles of organization of a domestic limited liability company, Two Hundred Dollars (\$200.00).
- (7) Filing application for reservations of a limited liability company name and issuing certificate thereof, Twenty-Five Dollars (\$25.00).
- (8) Filing notice of transfer of reserved limited liability company name and issuing a certificate therefor, Ten Dollars (\$10.00).

(9) Filing statement of change of registered office or registered agent, or both, Ten Dollars (\$10.00).

(10) Filing statement of change of address of registered agent, Ten Dollars (\$10.00); provided, however, that the maximum fee for simultaneous filings by a registered agent for more than one limited liability company shall not exceed Five Hundred Dollars (\$500.00).

(11) Filing articles of dissolution and issuing certificate therefor, Twenty-Five Dollars (\$25.00).

(12) Filing application for withdrawal and issuing certificate therefor, Ten Dollars (\$10.00).

(13) Filing certificate from home state that foreign limited liability company is no longer existent in said state, Ten Dollars (\$10.00).

(14) Maintaining the record of service of any process, notice or demand upon the Secretary of State as agent for foreign and domestic limited liability companies, Twenty-Five Dollars (\$25.00).

(15) Filing any instrument pursuant to this act not expressly provided for above, Ten Dollars (\$10.00).

SECTION 1.27. Part Nine, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended by adding Article 9.03 to read as follows:

*Art. 9.03. DELAYED EFFECTIVENESS OF CERTAIN FILINGS.* A. (1) For purposes of this Article, "permitted act" means a filing with the Secretary of State under this Act for:

(a) the articles of organization of a limited liability company under this Act;

(b) an amendment to or restatement of the articles of organization;

(c) a merger;

(d) the application of a foreign limited liability company to procure a certificate of authority to transact business in this state or to withdraw from doing business in this state;

(e) an amendment to the certificate of authority of a foreign limited liability company to transact business in this state;

(f) a change in registered office or registered agent;

(g) a change of address of a registered agent; or

(h) a voluntary dissolution.

(2) A permitted act may be made effective as of a time and date after the time and date otherwise provided in this Act or may be made effective on the occurrence of events or facts that may occur in the future. Those events or facts may include future acts of any person if the articles of organization, articles of amendment or restatement, articles of merger, application, or other document required by this Act to be filed with the Secretary of State to make the permitted act effective clearly and expressly states, in addition to any other statement or information required:

(a) a time and date certain on which the permitted act is to become effective; or

(b) if the permitted act is to become effective on the occurrence of events or facts that may occur in the future:

(i) the manner in which the events or facts cause the permitted act to become effective; and

(ii) the date of the 90th day after the date of the filing of the articles of organization, articles of amendment or restatement, articles of merger, application, or other document.

(3) A permitted act becoming effective as of a time or date certain that is after the time and date otherwise provided in this Act must specify a subsequent effective time and date that is not more than 90 days after the date of the filing of the articles of organization, articles of amendment or restatement, articles of merger, application, or other document

required by this Act. The time certain on which the permitted act is to become effective may not be midnight or 12 p.m.

(4) Within 90 days after the date of filing of the articles of organization, articles of amendment or restatement, articles of merger, application, or other document for a permitted act becoming effective on the occurrence of events or facts that may occur in the future, other than the mere passage of time, a statement must be filed with the Secretary of State confirming that all the events or facts on which the effectiveness of the permitted act is conditioned have been satisfied or waived and the date on which the condition was satisfied or waived.

B. A statement required by Section A of this Article must be executed on behalf of each domestic or foreign limited liability company or other person required to execute the articles of organization, articles of amendment or restatement, articles of merger, application, or other document required by this Act to be filed with the Secretary of State to make the permitted act effective by a member, manager, officer, or other duly authorized representative, including a member, manager, officer, or duly authorized representative of any successor domestic or foreign limited liability company or other entity. An original and a copy of the statement must be filed with the Secretary of State.

C. Notwithstanding any other provision of this Act to the contrary, a permitted act that is to become effective as of a time or date after the time and date otherwise provided in this Act, to the extent permitted by this Article, shall become effective as of the subsequent time and date. Any certificate issued by the Secretary of State on the filing of the articles of organization, articles of amendment or restatement, articles of merger, application, or other document otherwise required by this Act for the permitted act to become effective shall expressly set forth the time and date on which the permitted act is to become effective.

D. (1) A permitted act to be made effective on the occurrence of events or facts that may occur in the future, other than the mere passage of time, and for which the statement required by Subsection (4) of Section A of this Article is filed with the Secretary of State within the prescribed time becomes effective as of the time and date on which the latest specified event or fact occurred or the time and date on which the condition is otherwise satisfied or waived. Any certificate issued or notation, acknowledgment, or other statement made by the Secretary of State on the filing of the articles of organization, articles of amendment or restatement, articles of merger, application, or other document otherwise required by this Act for the permitted act to become effective must:

(a) state that "The effectiveness of the action to which this instrument relates is conditioned on the occurrence of certain facts or events described in the filing to which this instrument relates"; or

(b) make reference in any manner approved by the Secretary of State to the fact that the effectiveness of the action is so conditioned.

(2) The time and date on which a condition to the effectiveness of a permitted act is satisfied or waived as set forth in a statement filed with the Secretary of State pursuant to Subsection (4) of Section A of this Article shall be conclusively regarded as the time and date on which the condition was satisfied or waived for purposes of this section.

E. If the effectiveness of any permitted act is conditioned on the occurrence of events or facts that may occur in the future, other than the mere passage of time, and the statement required by Subsection (4) of Section A of this Article is not filed with the Secretary of State within the prescribed time, the permitted act does not become effective unless there is subsequently filed with the Secretary of State the articles of organization, articles of amendment or restatement, articles of merger, application, or other document required by this Act to be filed with the Secretary of State to make the permitted act effective.

F. If articles of organization, articles of amendment or restatement, articles of merger, an application, or any other document permitted to be filed pursuant to this Act with the Secretary of State have been filed but the event or transaction evidenced by the filing has not become effective, the filing may be abandoned in accordance with the agreement of the parties to the filing by filing a certificate of abandonment with the Secretary of State before the effectiveness of the event or transaction in accordance with the terms of the document so filed. The certificate of abandonment must be signed on behalf of each domestic or foreign

limited liability company or other entity that is a party to the event or transaction by a member, manager, officer, or other authorized representative and must state the nature of the filing to be abandoned, the date of the filing to be abandoned, the parties to the filing to be abandoned, and that the event or transaction has been abandoned in accordance with the agreement of the parties. On the filing of the statement of abandonment with the Secretary of State, the event or transaction evidenced by the original filing shall be considered abandoned and may not become effective.

SECTION 1.28. The Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) is amended by adding Parts Ten and Eleven to read as follows:

#### PART TEN

Art. 10.01. **MERGER.** A. A domestic limited liability company may adopt a plan of merger and one or more domestic limited liability companies may merge with one or more domestic or foreign limited liability companies or other entities if:

(1) each constituent entity enters into a written plan of merger containing the provisions set forth in Article 10.02 of this Act for which:

(a) approval exists by all domestic limited liability companies by the vote of a majority of their respective members, unless the respective regulations or articles of organization of each limited liability company provide otherwise; and

(b) if one or more foreign limited liability companies or other entities is a party to the merger or is to be created by the terms of the plan of merger:

(i) the merger is permitted by the laws under which each foreign limited liability company and each other entity that is a party to the merger is formed or organized or by the organizational documents or other constituent documents of the foreign limited liability company or other entity that are not inconsistent with those laws; and

(ii) each foreign limited liability company or other entity that is a party to the merger complies with those laws or documents in effecting the merger; and

(2) a member of a domestic limited liability company that is a party to the merger, as a result of the merger, will not become personally liable for the liabilities or obligations of any other person unless the member consents to becoming personally liable by action taken in connection with the specific plan of merger approved by the domestic limited liability company.

Art. 10.02. **PLAN OF MERGER.** A. A plan of merger must include:

(1) the name and state of domicile of each domestic or foreign limited liability company or other entity that is a party to the merger;

(2) the name of each domestic or foreign limited liability company or other entity, if any, that will survive the merger, which may be one or more of the domestic or foreign limited companies or other entities party to the merger;

(3) the name and state of domicile of each new domestic or foreign limited liability company or other entity, if any, that may be created by the terms of the plan of merger;

(4) the terms and conditions of the merger, including, if more than one domestic or foreign limited liability company or other entity is to survive or to be created by the terms of the plan of merger, the manner and basis of allocating and vesting:

(a) real estate and other property of each domestic or foreign limited liability company and of each other entity that is a party to the merger among one or more of the surviving or new domestic or foreign limited liability companies and other entities; and

(b) all liabilities and obligations of each domestic or foreign limited liability company and other entity that is a party to the merger among one or more of the surviving or new domestic or foreign limited liability companies and other entities or making adequate provision for the payment and discharge of the liabilities and obligations;

(5) the manner and basis of converting any of the limited liability company interests or other evidences of ownership of each domestic or foreign limited liability company or other entity that is a party to the merger into:

(a) *limited liability company interests, shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving or new domestic or foreign limited liability company or other entities;*

(b) *cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any other person or entity; or*

(c) *any combination of the items described in Subdivisions (a) and (b) of this Subsection;*

(6) *the articles of organization of any new domestic limited liability company to be created by the terms of the plan of merger; and*

(7) *the articles of organization or other organizational documents of each other entity that is a party to the merger and that is to be created by the terms of the plan of merger.*

*B. The plan of merger may include:*

(1) *any amendments to the articles of organization or regulations of any surviving domestic limited liability company or to the organizational documents or other constituent documents of any other surviving entity; and*

(2) *any other provision relating to the merger.*

**Art. 10.03. ARTICLES OF MERGER.** *A. After a plan of merger has been approved by each of the limited liability companies or other entities that is a party to the plan of merger, articles of merger shall be executed on behalf of each domestic limited liability company that is a party to the plan of merger by at least one member, manager, officer, or other agent or representative of the limited liability company who is authorized to execute articles of merger by the articles of organization or regulations or shall be approved by authorizing resolutions adopted by the act of the members. At least one authorized representative of each other foreign limited liability company or other entity that is a party to the plan of merger shall also execute the articles of merger. The articles of merger must include:*

(1) *the plan of merger; and*

(2) *as to each domestic or foreign limited liability company or other entity that is a party to the plan of merger, a statement that the plan of merger was authorized by all action required by the laws under which it was formed or organized or by its constituent documents.*

*B. The original of the articles of merger and a number of copies equal to the number of surviving and new domestic or foreign limited liability companies and other entities that are a party to the plan of merger or that will be created by its terms shall be delivered to the Secretary of State. Unless the Secretary of State finds that the articles of merger do not conform to law, on receipt of all applicable filing fees and franchise taxes, if any, required by law, the Secretary of State shall:*

(1) *certify that the articles of merger have been filed in the Secretary of State's office by endorsing on the original the word "Filed" and the date of the filing;*

(2) *file and index the endorsed articles of merger; and*

(3) *issue a certificate of merger, together with a copy of the articles affixed to the certificate, to each surviving or new domestic or foreign limited liability company or other entity that is a party to the plan of merger or that is created by the merger, or to its respective representatives.*

*C. Except as provided by Article 9.03 of this Act, the merger is effective on the issuance of the certificate of merger by the Secretary of State.*

**Art. 10.04. EFFECT OF MERGER.** *A. When a merger takes effect:*

(1) *the separate existence of every domestic or foreign limited liability company or other entity that is a party to the merger, except any surviving or new domestic or foreign limited liability company or other entity, ceases;*

(2) *all rights, title, and interests to all real estate and other property owned by each domestic or foreign limited liability company and by each other entity that is a party to the merger shall be allocated to and vested in one or more of the surviving or resulting entities as provided in the plan of merger without reversion or impairment, without*



further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances on the property;

(3) all liabilities and obligations of each domestic or foreign limited liability company and each other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign limited liability companies and other entities in the manner provided by the plan of merger, and each surviving or new domestic or foreign limited liability company or other entity to which a liability or obligation has been allocated under the plan of merger becomes the primary obligor for the liability or obligation, and, except as otherwise provided by the plan of merger, law, or contract, a party to the merger other than a surviving domestic or foreign limited liability company or other entity liable at the time of the merger or another new domestic or foreign limited liability company or other entity created is not liable for the liability or obligation;

(4) a proceeding pending by or against a domestic or foreign limited liability company or another entity that is a party to the merger may be continued as if the merger did not occur, or the surviving or new domestic or foreign limited liability company or limited liability companies or the surviving or new other entity or other entities the liability, obligation, asset, or right associated with the proceeding is allocated to and vested in under the plan of merger may be substituted in the proceeding;

(5) the articles of organization and regulations of each surviving domestic limited liability company and the organizational documents and other constituent documents of each surviving foreign limited liability company and other entity shall be amended to the extent provided in the plan of merger;

(6) each new domestic limited liability company, the articles of organization of which are included in the plan of merger under Article 10.02 of this Act, shall be formed as a limited liability company under this Act, and each other entity to be formed or organized under the laws of this state, the organizational documents of which are included in the plan of merger, on an executed copy of the certificate of merger being delivered to or filed with any required governmental entity with which organizational documents of the other entity are required to be delivered or filed and on meeting additional requirements, if any, of law for its formation or organization, shall be formed or organized as provided in the plan of merger;

(7) the limited liability company interests of each domestic or foreign limited liability company and the interests, shares, or evidences of ownership in each other entity that is a party to the merger that are to be converted or exchanged, in whole or in part, into limited liability company interests, shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving or new domestic or foreign limited liability companies or other entities, into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any other person or entity, or into a combination of those items, shall be so converted and exchanged, and the former members of each domestic limited liability company that is a party to the merger shall be entitled only to the rights provided in the plan of merger; and

(8) if the plan of merger does not provide for the allocation and vesting of the right, title, and interest in a particular item of real estate or other property or for the allocation of a liability or obligation of a party to the merger, the item of real estate or other property shall be owned in undivided interests by, or the liability or obligation shall be a joint and several liability and obligation of, each of the surviving and new domestic and foreign limited liability companies and other entities, pro rata to the total number of surviving and new domestic and foreign limited liability companies and other entities resulting from the merger.

#### Art. 10.05. MERGER INVOLVING SUBSIDIARY ENTITIES.

A. (1) This article applies to a merger if:

(a) at least 90 per cent of the outstanding membership interests, shares of stock, or other ownership interests of one or more domestic or foreign limited liability companies or other entities is owned by another domestic or foreign limited liability company or other entity;

(b) at least one of the parent or subsidiary entities is a domestic limited liability company; and

(c) for each parent or subsidiary entity that is not a domestic limited liability company:

(i) the merger of the entity with or into a domestic limited liability company is permitted by the laws under which that entity is formed or organized or by the organizational documents or other constituent documents of the entity that are not inconsistent with those laws; and

(ii) the entity complies with those laws or documents in effectuating the merger.

(2) A parent entity described in Subsection (1) of this Section having at least 90 percent ownership may:

(a) merge the other entity or entities into itself;

(b) merge itself into the other entity or entities; or

(c) merge any one or more of the entities, including itself, into one or more of the other entities.

(3) If the parent entity having at least 90 percent ownership is a surviving entity in the merger, the parent entity must execute and file articles of merger as provided by Section B of this Article. If the parent entity having at least 90 percent ownership is not a surviving entity in the merger, the parent entity must:

(a) adopt a plan of merger in the manner required by Article 10.01 of this Act, except that an action under Article 10.01 is not required by the entity or entities whose membership interests, shares of stock, or other ownership interests are so owned; and

(b) execute and file articles of merger as provided by Section B of this Article.

B. The articles of merger must be signed on behalf of the parent entity by a member, manager, officer, or other agent or representative authorized by (i) the organizational or other constituent documents of the parent entity, or (ii) resolutions adopted by the parent entity in accordance with the laws of its jurisdiction of organization or formation and the documents. The articles of merger must include:

(1) the name of the parent entity and the name of each respective subsidiary entity;

(2) for each entity listed in Subsection (1) of this Section, the type of entity and the respective jurisdiction under which the entity is formed or organized;

(3) the total number or percentage of membership interests, shares, or other ownership interests in each subsidiary entity, identified by class, series, or group, and the number or percentage of membership interests, shares, or other ownership interests in each class, series, or group owned by the parent entity;

(4) a copy of the resolution of merger adopted by the parent entity in accordance with the laws of its jurisdiction of organization or formation and its organizational or other constituent documents, together with a statement that the resolution was so adopted and the date of adoption;

(5) if the parent entity does not own all of the outstanding membership interest, shares, or other ownership interests of each subsidiary entity party to the merger, the resolution described in Subsection (4) of this Section must 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 on surrender of each membership interest, share, or other ownership interest of the subsidiary entity or entities not owned by the parent entity;

(6) if the surviving entity is a foreign limited liability company or other entity, the address, including street number, if any, of its registered or principal office in the jurisdiction under whose laws it is governed; and

(7) if a plan of merger is required by Section A of this Article to be adopted in the manner required by Article 10.01 of this Act, the information required by Section A of Article 10.03 of this Act.

C. The articles of merger shall be filed as provided by Section B of Article 10.03 of this Act, become effective as provided by Section C of Article 10.03 of this Act, and have the effect stated in Article 10.04 of this Act.

**Art. 10.06. INTEREST EXCHANGE.** A. One or more domestic or foreign limited liability companies or other entities may adopt a plan of exchange by which an entity acquires all of the outstanding limited liability company interests of one or more domestic limited liability companies or all of the outstanding interests, stock, partnership interests, or other ownership interests in one or more other entities in exchange for cash or securities of the acquiring entity if:

(1) each domestic limited liability company, the interests of which are to be acquired under the plan of exchange, approves the plan of exchange by majority vote or consent of its members or in a manner prescribed in its regulations; and

(2) each acquiring domestic or foreign limited liability company or other entity takes all action that may be required by the laws of the state or country under which it was formed and as required by its constituent documents to effect the exchange.

B. A filing with the Secretary of State is not necessary to evidence or effect the interest exchange with respect to a domestic limited liability company that is a party to the interest exchange. When an interest exchange takes effect as provided in the plan of exchange:

(1) the limited liability company interests of each domestic limited liability company that are to be acquired under the plan of exchange are considered exchanged as provided in the plan of exchange;

(2) the former holders of the limited liability company interests exchanged under the plan of exchange are entitled only to the exchange rights provided in the plan of exchange; and

(3) the acquiring domestic or foreign limited liability company or other entity or entities are entitled to all rights, title, and interests with respect to the interests so acquired and exchanged, subject to the provisions in the plan of exchange.

**Art. 10.07. DEFINITION OF "OTHER ENTITY."** A. For purposes of this Part, "other entity" means any entity, whether organized for profit or not, that is a corporation, limited partnership, general partnership, joint venture, joint stock company, cooperative, association, bank, insurance company, or other legal entity organized under the laws of this state or any other state or country to the extent the laws or the constituent documents of that entity, not inconsistent with law, permit that entity to enter into a merger or interest exchange as permitted by this Part.

## PART ELEVEN

**Art. 11.01. PROFESSIONAL LIMITED LIABILITY COMPANIES AUTHORIZED; DEFINITIONS.** A. (1) One or more persons may organize a professional limited liability company by filing articles of organization with the Secretary of State in accordance with Part Three of this Act. In addition to other provisions required or permitted by law, the articles of organization of a professional limited liability company must include a statement:

(a) that the limited liability company is a professional limited liability company; and

(b) describing the one specific kind of professional service to be rendered by the limited liability company.

(2) A professional limited liability company may be organized under this Act only for the purpose of rendering one specific type of professional service and ancillary services. A professional limited liability company organized under this Act may not render more than one kind of professional service.

B. In this Act:

(1) "Professional service" means any type of personal service that requires as a condition precedent to the rendering of the service the obtaining of a license, permit, certificate of registration, or other legal authorization, including the personal service

rendered by an architect, attorney-at-law, certified public accountant, dentist, doctor, physician, public accountant, surgeon, or veterinarian.

(2) "Professional limited liability company" means a limited liability company that is organized under this Act for the sole and specific purpose of rendering professional service and that has as its members only individuals licensed or otherwise authorized within this state to render the same professional service as the limited liability company.

Art. 11.02. NAME. A. A professional limited liability company may adopt a name not contrary to the law or ethics regulating the practice of the professional service rendered through the professional limited liability company. The name of the limited liability company must contain the words "Professional Limited Liability Company" or the abbreviations "P.L.L.C." or "PLLC" and must contain other words as may be required by law. A limited liability company formed before September 1, 1993, that complied with Section A of Article 2.03 of this Act or with Section A of Article 7.03 of this Act on the date of formation, but does not comply with this Article, is not required to change its name.

Art. 11.03. RESTRICTIONS ON MEMBERS, MANAGERS, AND OFFICERS. A. A person who is not licensed or otherwise authorized to render the professional service of the professional limited liability company may not be a member, manager, or officer of the professional limited liability company. A membership interest in the professional limited liability company may not be transferred to a person who is not licensed or otherwise authorized to render the professional service of the professional limited liability company.

B. If a member, manager, or officer of a professional limited liability company, or an agent or employee of the company who has been rendering professional service for or with the company of the same type for which the professional limited liability company was organized to render, becomes legally disqualified to render the professional service, the person shall sever all employment with the professional limited liability company and immediately terminate all financial interest in the company. The professional limited liability company shall purchase or cause to be purchased from the person all membership interests owned by the person in the professional limited liability company, at a price and on terms as may be provided in the articles of organization, the regulations, or any applicable agreement among the members and the professional limited liability company. If the person is the sole member of the professional limited liability company, the person may continue to act as member, manager, or officer only for the purposes of winding up the affairs of the professional limited liability company and effecting its dissolution, including selling the assets of or outstanding membership interests in the professional limited liability company, but not including rendering professional service.

C. If a person who is not licensed or authorized to render the professional service that a professional limited liability company was organized to render succeeds to the interest of a member of the professional limited liability company, the person holding the interest shall immediately terminate all financial interest in the professional limited liability company, and the professional limited liability company shall purchase or cause to be purchased from the person all membership interests owned by the person in the professional limited liability company, at a price and on terms as may be provided in the articles of organization, the regulations, or any applicable agreement among the members and the professional limited liability company. If the person succeeded to all of the membership interests in the professional limited liability company, the person may continue to act as member, manager, or officer only for the purposes of winding up the affairs of the professional limited liability company and effecting its dissolution, including selling the assets of or the outstanding membership interests in the professional limited liability company, but not including rendering professional service.

Art. 11.04. RENDERING OF PROFESSIONAL SERVICES. A. A professional limited liability company may render professional service in this state only through:

(1) an individual member, manager, officer, employee, or agent who is licensed to render the professional service in this state; or

(2) an agent of the professional limited liability company that is a professional limited liability company, professional corporation, or professional association that is authorized in this state to render the professional service of the professional limited liability company

and that renders the professional service only through a licensed individual member, manager, officer, or employee.

B. This Article does not prohibit employment by a professional limited liability company of clerks, secretaries, bookkeepers, technicians, nurses, assistants, and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required. A person may not, under the guise of employment, practice a profession in this state unless licensed or otherwise legally authorized to practice that profession under the laws of this state.

Art. 11.05. **PROFESSIONAL RELATIONSHIPS NOT AFFECTED.** A. Notwithstanding anything contained in Article 4.03 of this Act to the contrary, this Act does not alter or affect the professional relationship between a person rendering professional service and a person receiving the service, and a confidential relationship enjoyed in this state between those persons remains unchanged. This Act does not remove or diminish any rights at law that a person receiving professional service has against a person rendering the service for an error, an omission, negligence, incompetence, or malfeasance. A limited liability company, but not the other individual members, managers, or officers, is jointly and severally liable with a member, manager, officer, employee, or agent rendering professional service for an error, omission, negligence, incompetence, or malfeasance on the part of the member, manager, officer, employee, or agent when the member, manager, officer, employee, or agent is rendering professional service in the course of employment for the limited liability company.

Art. 11.06. **EXEMPTION FROM SECURITIES LAWS.** A. The sale, issuance, or offering of membership interests of a professional limited liability company to persons permitted by this Part to own the membership interests is exempt from all laws of this state, other than this Act, that provide for supervision, registration, or regulation in connection with the sale, issuance, or offering of securities. The sale, issuance, or offering of membership interests to those persons is legal without any action or approval on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

Art. 11.07. **FOREIGN PROFESSIONAL LIMITED LIABILITY COMPANIES.** A. A foreign professional limited liability company may apply for a certificate of authority to perform professional service in this state by filing an application in accordance with Part Seven of this Act. The Secretary of State may not issue the certificate unless the name of the limited liability company or the name the limited liability company elects in this state meets the requirements of Article 11.02 of this Act. A member, manager, officer, employee, or agent of the limited liability company who renders professional service in this state on behalf of the limited liability company must be licensed or otherwise authorized to render that professional service in this state.

B. A certificate may not be issued to a limited liability company under this Article unless the application for the certificate includes a statement that the jurisdiction in which the limited liability company is organized would permit reciprocal admission of the limited liability company if it were organized in this state.

SECTION 1.29. Section 36.02, Business & Commerce Code, is amended to read as follows:

Sec. 36.02. **DEFINITIONS.** In this chapter, unless the context otherwise requires:

(1) "Partnership" means a joint venture or[,] general partnership *other than a limited partnership or a registered limited liability[, or limited] partnership.*

(2) "Company" means a real estate investment trust, joint-stock company, or any other business, professional, or other association or legal entity that is not incorporated other than a partnership, *limited partnership, limited liability company, or registered limited liability partnership.*

(3) "Corporation" means a domestic or foreign corporation, professional corporation, professional association, other corporation, or any other business, professional, or other association or legal entity that is incorporated.

(4) "Person" includes an individual, partnership, *limited partnership, limited liability company, registered limited liability partnership, company, or corporation.*

(5) "Representative" means a trustee, administrator, executor, independent executor, guardian, conservator, trustee in bankruptcy, receiver, or any other person appointed by a court or by trust or will to have custody of, take possession of, have title to, or otherwise be empowered to control the person or property of any person.

(6) "Estate" means the property of any person which is administered by a representative.

(7) "Assumed name" means:

(A) in the case of an individual, a name that does not include the surname of the individual;

(B) in the case of a [~~joint venture or general~~] partnership, a name that does not include the surname or other legal name of each joint venturer or general partner;

(C) in the case of an individual[, ~~joint venture,~~] or a [~~general~~] partnership, a name, including a surname, that suggests the existence of additional owners by including words such as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and the like, but not words that merely describe the business or professional service being conducted or rendered;

(D) in the case of a limited partnership, any name other than the name stated in its certificate of limited partnership;

(E) in the case of a company, any name used by the company; [~~and~~]

(F) in the case of a corporation, any name other than the name stated in its articles of incorporation or association or comparable document;

(G) *in the case of a registered limited liability partnership, any name other than the name stated in its application filed with the office of the Secretary of State or comparable document; and*

(H) *in the case of a limited liability company, any name other than the name stated in its articles of organization or comparable document.*

(8) "Registrant" means any person that has filed, or on whose behalf there has been filed, an assumed name certificate under the provisions of this chapter or other law.

(9) "Office" means, in the case of any person that is not an individual or that is a corporation which is not required to or does not maintain a registered office in this state, the principal office of such person and also its principal place of business if not the same as its principal office. In the case of a corporation, *limited partnership, registered limited liability partnership, or limited liability company* which is required to maintain a registered office in this state, "office" means the registered office and also its principal office if not the same as its registered office.

(10) "Address" means a post office address and also the street address if not the same as the post office address.

SECTION 1.30. Section 36.10, Business & Commerce Code, is amended by amending the section heading and Subsection (a) to read as follows:

Sec. 36.10. FOR UNINCORPORATED BUSINESS OR PROFESSION *OTHER THAN A LIMITED PARTNERSHIP, REGISTERED LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY.* (a) Any person who regularly conducts business or renders professional services other than as a corporation, *limited partnership, registered limited liability partnership, or limited liability company* in this state under an assumed name shall file in the office of the county clerk in each county in which such person has or will maintain business or professional premises or, if no business or professional premises are or will be maintained in any county, in each county where such person conducts business or renders a professional service, a certificate setting forth:

(1) the assumed name under which such business or professional service is or is to be conducted or rendered;

(2) if the registrant is:

(A) an individual, his full name and residence address;

(B) a partnership, (i) the venture or partnership name, (ii) the venture or partnership office address, and (iii) the full name of each joint venturer or general partner and his residence address if he is an individual or its office address if not an individual;

(C) an estate, (i) the name of the estate, (ii) the estate's office address, if any, and (iii) the full name of each representative of the estate and his residence address if he is an individual or its office address if not an individual;

(D) a real estate investment trust, (i) the name of the trust, (ii) the address of the trust, (iii) the full name of each trustee manager and his residence address if he is an individual and its office address if not an individual; or

(E) a company other than a real estate investment trust, or a corporation, (i) the name of the company or corporation, (ii) the state, country, or other jurisdiction under the laws of which it was organized, incorporated, or associated, and (iii) its office address;

(3) the period, not to exceed 10 years, during which the assumed name will be used; and

(4) a statement specifying that the business or professional service that is or is to be conducted or rendered in the county under such assumed name is being or will be conducted or rendered as a proprietorship, sole practitioner, ~~[joint venture, general partnership, [limited partnership,]~~ real estate investment trust, joint-stock company, or some other form of unincorporated business or professional association or entity, *other than a limited partnership, limited liability company, or registered limited liability partnership*, as the case may be.

SECTION 1.31. Section 36.11, Business & Commerce Code, is amended to read as follows:

Sec. 36.11. FOR INCORPORATED BUSINESS OR PROFESSION, *LIMITED PARTNERSHIP, REGISTERED LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY*. (a) Any corporation, *limited partnership, registered limited liability partnership, or limited liability company* which regularly conducts business or renders professional services in this state under an assumed name, or which may be required by law to use an assumed name in this state to conduct such business or render such services, shall file in the office of the Secretary of State and, (1) if such corporation, *limited partnership, registered limited liability partnership, or limited liability company* is required to maintain a registered office in this state, in the office of the county clerk of the county in which such registered office is located and of the county in which its principal office is located if within this state and not the same county where the registered office is located; or (2) if such corporation, *limited partnership, registered limited liability partnership, or limited liability company* is not required to or does not maintain a registered office in this state, in the office of the county clerk of the county in which its office within this state is located or if the corporation, *limited partnership, registered limited liability partnership, or limited liability company* is not incorporated, organized, or associated under the laws of this state, in the office of the county clerk of the county in which its principal place of business in this state is located if not the same as its office, a certificate setting forth:

(1) the assumed name under which such business or professional service is or is to be conducted or rendered;

(2) the name of the corporation, *limited partnership, registered limited liability partnership, or limited liability company* as stated in its articles of incorporation, ~~or~~ association, or organization or in its certificate of *limited partnership* or application filed with the office of the Secretary of State, or other comparable document;

(3) the state, country, or other jurisdiction under the laws of which it was incorporated, organized, or associated and address of its registered or similar office in that state, country, or jurisdiction;

(4) the period, not to exceed 10 years, during which the assumed name will be used;

(5) a statement specifying that the *entity* ~~[corporation]~~ is a business corporation, nonprofit corporation, professional corporation, professional association, or other type of corporation, *limited partnership, registered limited liability partnership, limited liability company*, or some other type of incorporated business, professional or other association, or legal entity;

(6) if the corporation, *limited partnership, registered limited liability partnership, or limited liability company* is required to maintain a registered office in this state, (A) the address of such registered office and the name of its registered agent at such address, and (B) the address of its principal office if not the same as that of its registered office in this state;

(7) if the corporation, *limited partnership, registered limited liability partnership, or limited liability company* is not required to or does not maintain a registered office in this state, its office address in this state and if the corporation, *limited partnership, registered limited liability partnership, or limited liability company* is not incorporated, organized, or associated under the laws of this state, the address of its place of business in this state and its office address elsewhere, if any; and

(8) the county or counties within the state where business or professional services are being or are to be conducted or rendered under such assumed name.

(b) A certificate filed under Subsection (a) of this section shall be executed and duly acknowledged by an officer, *general partner, member, manager, representative, or attorney* in fact for the corporation, *limited partnership, registered limited liability partnership, or limited liability company*. A certificate executed and acknowledged by an attorney in fact shall include a statement that the attorney in fact has been duly authorized in writing by his principal to execute and acknowledge the same.

(c) Nothing in this chapter shall require a corporation, *limited partnership, registered limited liability partnership, or limited liability company* or its shareholders, associates, *partners, or members* to file an assumed business or professional name certificate in order to conduct business or render a professional service within this state under the name of the corporation, *limited partnership, registered limited liability partnership, or limited liability company* as stated in its articles of incorporation, association, or organization, *certificate of limited partnership, application filed with the office of the Secretary of State, or other comparable document*.

(d) *Notwithstanding Subsections (a)–(c) of this section, a limited partnership, registered limited liability partnership, or limited liability company that filed a certificate in compliance with Section 36.10 of this chapter before September 1, 1993, is not required to file a new certificate that complies with this section until the earlier of:*

(1) *the expiration of the period specified in the existing certificate during which the assumed name will be used; or*

(2) *a material change occurs in the information set forth in the existing certificate.*

SECTION 1.32. The following articles or sections of the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) are repealed:

(1) Article 2.10;

(2) Article 2.16; and

(3) Sections B, C, and D, Article 4.02.

## ARTICLE 2. BUSINESS CORPORATIONS; PROFESSIONAL ASSOCIATIONS

SECTION 2.01. Article 1.02, Texas Business Corporation Act, is amended by amending Section A and adding Section C to read as follows:

A. As used in this Act, unless the context otherwise requires, the term:

(1) "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto.

(2) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(3) "Cancel" means to restore issued shares to the status of authorized but unissued shares.

(4) "Certificated shares" means shares represented by instruments in bearer or registered form.



(5) "Conspicuous" or "conspicuously," when prescribed for information appearing on a certificate for shares or other securities, means the location of such information or use of type of sufficient size, color, or character that a reasonable person against whom such information may operate should notice it. For example, a printed or typed statement in capitals, or boldface or underlined type, or in type that is larger than or that contrasts in color with that used for other statements on the same certificate, is "conspicuous."

(6) "Consuming assets corporation" means a corporation which is engaged in the business of exploiting assets subject to depletion or amortization and which elects to state in its articles of incorporation that it is a consuming assets corporation and includes as a part of its official corporate name the phrase "a consuming assets corporation," giving such phrase equal prominence with the rest of the corporate name on its financial statements and certificates representing shares. All its certificates representing shares shall also contain a further sentence: "This corporation is permitted by law to pay dividends out of reserves which may impair its stated capital."

(7) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this Act, except a foreign corporation.

(8) "Distribution" means a transfer of money or other property (except its own shares or rights to acquire its own shares), or issuance of indebtedness, by a corporation to its shareholders in the form of:

(a) a dividend on any class or series of the corporation's outstanding shares;

(b) a purchase, [or] redemption, or other acquisition by the corporation, directly or indirectly, of any of its own shares; or

(c) a payment by the corporation in liquidation of all or a portion of its assets.

(9) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this State.

(10) "Insolvency" means inability of a corporation to pay its debts as they become due in the usual course of its business.

(11) "*Investment Company Act*" means the *Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.)*;

(12) "Merger" means (a) the division of a domestic corporation into two or more new domestic corporations or into a surviving corporation and one or more new domestic or foreign corporations or other entities, or (b) the combination of one or more domestic corporations with one or more domestic or foreign corporations or other entities resulting in (i) one or more surviving domestic or foreign corporations or other entities, (ii) the creation of one or more new domestic or foreign corporations or other entities, or (iii) one or more surviving domestic or foreign corporations or other entities and the creation of one or more new domestic or foreign corporations or other entities.

(13) [(12)] "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation.

(14) [(13)] "Other entity" means any entity, whether organized for profit or not, that is a corporation (other than a domestic or foreign corporation), limited or general partnership, joint venture, joint stock company, cooperative, association, bank, insurance company or other legal entity organized pursuant to the laws of this state or any other state or country to the extent such laws or the constituent documents of that entity, not inconsistent with such laws, permit that entity to enter into a merger or share exchange as permitted by Article 5.03 of this Act.

(15) [(14)] "Share dividend" means a dividend by a corporation that is payable in its own authorized but unissued shares or in treasury shares.

(16) [(15)] "Shareholder" or "holder of shares" means the person in whose name shares issued by a corporation are registered at the relevant time in the share transfer records maintained by the corporation pursuant to Article 2.44 of this Act.

(17) [(16)] "Shares" means the units into which the proprietary interests in a corporation are divided, whether certificated or uncertificated shares.

(18) [(17)] "Stated capital" means, at any particular time, the sum of:

(a) the par value of all shares of the corporation having a par value that have been issued;

(b) the consideration fixed by the corporation in the manner provided by Article 2.15 of this Act for all shares of the corporation without par value that have been issued, except such part of the consideration that is actually received therefor (which part must be less than all of that consideration) that the board by resolution adopted no later than sixty (60) days after the issuance of those shares may have allocated to surplus; and

(c) such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the payment of a share dividend or upon adoption by the board of directors of a resolution directing that all or part of surplus be transferred to stated capital, minus all reductions from such sum as have been effected in a manner permitted by law.

(19) [(18)] "Subscriber" means the offeror in a subscription.

(20) [(19)] "Subscription" means a memorandum in writing, executed before or after incorporation, wherein an offer is made to purchase and pay for a specified number of theretofore unissued shares of a corporation.

(21) [(20)] "Surplus" means the excess of the net assets of a corporation over its stated capital.

(22) [(21)] "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not been canceled and restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares but not "outstanding" shares, and shall not be included in the total assets of a corporation for purposes of determining its "net assets."

(23) [(22)] "Uncertificated shares" means shares not represented by instruments and the transfers of which are registered upon books maintained for that purpose by or on behalf of the issuing corporation.

C. A reference in this Act to another statute is a reference to that statute as amended.

SECTION 2.02. Section A, Article 2.02, Texas Business Corporation Act, is amended to read as follows:

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation. Notwithstanding the articles of incorporation, the period of duration for any corporation incorporated before September 6, 1955, is perpetual if all fees and franchise taxes have been paid as provided by law.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers.

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money to, and otherwise assist, its employees, officers, and directors if such a loan or assistance reasonably may be expected to benefit, directly or indirectly, the lending or assisting corporation.

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(8) To purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations; to purchase or otherwise acquire its own unredeemable shares and hold those acquired shares as treasury shares or cancel or otherwise dispose of those acquired shares; and to redeem or purchase shares made redeemable by the provisions of its articles of incorporation.

(9) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(10) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(11) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act, within or without this State.

(12) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine, and define their duties and fix their compensation.

(13) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(14) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(15) To transact any lawful business which the board of directors shall find will be in aid of government policy.

(16) To indemnify directors, officers, employees, and agents of the corporation and to purchase and maintain liability insurance for those persons.

(17) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, and other incentive plans for *any* or all of, or *any* class[,], or classes of, [~~its officers and employees, or~~] its *directors*, officers, or [~~its~~] employees.

(18) To be an organizer, partner, member, associate, or manager of any partnership, joint venture, or other enterprise, and to the extent permitted in any other jurisdiction to be an incorporator of any other corporation of any type or kind.

(19) To cease its corporate activities and terminate its existence by voluntary dissolution.

(20) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

SECTION 2.03. Section B, Article 2.05, Texas Business Corporation Act, is amended to read as follows:

B. Any domestic or foreign corporation having authority to transact business in this State[,], may do so under an assumed name[,], by filing an assumed name certificate in the manner prescribed by law. *The assumed name may, but is not required to, comply with the requirements of Section A(1) of this Article.*

SECTION 2.04. Article 2.12, Texas Business Corporation Act, is amended by amending Section A and adding Section C 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, as shall be stated in the articles of incorporation. Any such class of shares may be divided into one or more series, as shall be stated in the articles of incorporation. All shares of the same class shall be of the same par value or be without par value. Unless the shares of a class have been divided into series, all shares of the same class shall be identical in all respects. If the shares of a class have been divided into series, shares of the same class may vary between series, but all shares of the same series shall be identical in all respects. Any such class or series of shares shall be so designated as to distinguish the shares of that class or series from the shares of all other classes and series. Any such class or series shall have 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 or series to the extent that such limitation,

denial, or provision is not inconsistent with the provisions of this Act. Any of the designations, preferences, limitations, and [œ] relative rights, including voting rights, of any class or series of shares may be made dependent upon facts ascertainable outside the articles of incorporation, which facts may include future acts of the corporation, provided that the manner in which such facts shall operate upon the designations, preferences, limitations, and relative rights, including voting rights, of such class or series of shares is clearly and expressly set forth in the articles of incorporation.

C. (1) *The board of directors of a corporation registered as an open-end company under the Investment Company Act may:*

(a) *establish classes of shares and series of unissued shares of any class by fixing and determining the designations, preferences, limitations, and relative rights, including voting rights, of the shares of any class or series so established to the same extent that the designations, preferences, limitations, and relative rights could be stated if fully set forth in the articles of incorporation; and*

(b) *increase or decrease the aggregate number of shares or the number of shares of, or eliminate and remove from the articles of incorporation, a class or series of shares that the corporation has authority to issue, unless a provision has been included in the articles of incorporation of the corporation after September 1, 1993, expressly prohibiting those actions by the board of directors. The board of directors may not:*

(i) *decrease the number of shares within a class or series to less than the number of shares of that class or series that are then outstanding; or*

(ii) *eliminate or remove from the articles of incorporation any reference to any class or series of which shares are then outstanding.*

*To establish a class or series, the board of directors shall adopt a resolution setting forth the designation of the class or series and fixing and determining the designations, preferences, limitations, and relative rights, including voting rights, of the class or series. In order to increase or decrease the number of shares of, or eliminate and remove from the articles of incorporation any reference to, a class or series of shares, the board of directors shall adopt a resolution fixing and determining the new number of shares of each class or series in which the number of shares is increased or decreased or eliminating the class or series and removing references to the class or series from the articles of incorporation. The shares of any eliminated series shall resume the status of authorized but unissued shares of the class of shares from which the series was established unless otherwise provided in the resolution or the articles of incorporation.*

(2) *Before the first issuance of any shares of a class or series established or increased or decreased by resolution adopted by the board of directors under Subsection (1) of this section, and in order to eliminate from the articles of incorporation a class or series of shares and all references to the class or series contained in the articles, the corporation shall file with the Secretary of State a statement setting forth:*

(a) *the name of the corporation;*

(b) *if the statement relates to the establishment of a class or series of shares, a copy of the resolution establishing and designating the class or series and fixing and determining the preferences, limitations, and relative rights of the class or series;*

(c) *if the statement relates to an increase or decrease in the number of shares of any class or series, a copy of the resolution fixing and determining the new number of shares of each class or series in which the number of shares is increased or decreased;*

(d) *if the statement relates to the elimination of a class or series of shares and to the removal of all references to the class or series from the articles of incorporation, a copy of the resolution eliminating the class or series and removing all references to the class or series from the articles of incorporation;*

(e) *the date of adoption of the resolution; and*

(f) *that the resolution was duly adopted by all necessary action on the part of the corporation.*

(3) *The statement shall be executed on behalf of the corporation by an officer. The original and a copy of the statement shall be delivered to the Secretary of State. If the*

*Secretary of State finds that the statement conforms to law, when the appropriate filing fee is paid as provided by law, the Secretary of State shall:*

- (a) endorse on the original and the copy the word "Filed," and the month, day, and year of the filing of the statement;*
- (b) file the original in the Secretary of State's office; and*
- (c) return the copy to the corporation or its representative.*

*(4) On the filing of a statement by the Secretary of State, the resolution establishing and designating the class or series and fixing and determining the preferences, limitations, and relative rights of the class or series, the resolution fixing the new number of shares of each class or series in which the number of shares is increased or decreased, or the resolution eliminating a class or series and all references to the class or series from the articles of incorporation, as appropriate, becomes an amendment of the articles of incorporation. An amendment of the articles of incorporation effected as provided by this Article is not subject to the procedure to amend the articles contained in Article 4.02 of this Act.*

SECTION 2.05. Sections A and B, Article 2.21, Texas Business Corporation Act, are amended to read as follows:

A. A holder of shares, an owner of any beneficial interest in shares, or a subscriber for shares whose subscription has been accepted shall be under no obligation to the corporation or to its obligees with respect to:

(1) such shares other than the obligation to pay to the corporation the full amount of the consideration, fixed in compliance with Article 2.15 of this Act, for which such shares were or are to be issued;

(2) any contractual obligation of the corporation on the basis *that the holder, owner, or subscriber is or was the alter ego of the corporation, or on the basis of actual fraud or constructive fraud, [or] a sham to perpetrate a fraud, or other similar theory*, unless the obligee demonstrates that the holder, owner, or subscriber caused the corporation to be used for the purpose of perpetrating and did perpetrate an actual fraud on the obligee primarily for the direct personal benefit of the holder, owner, or subscriber; or

(3) any contractual obligation of the corporation on the basis of the failure of the corporation to observe any corporate formality, including without limitation: (a) the failure to comply with any requirement of this Act or of the articles of incorporation or bylaws of the corporation; or (b) the failure to observe any requirement prescribed by this Act or by the articles of incorporation or bylaws for acts to be taken by the corporation, its board of directors, or its shareholders.

B. *The liability of a holder, owner, or subscriber of shares of a corporation for an obligation that is limited by Section A of this article is exclusive and preempts any other liability imposed on a holder, owner, or subscriber of shares of a corporation for that obligation under common law or otherwise, except that nothing [Nothing] contained in this article shall limit the obligation of a holder, owner, or subscriber to an obligee of the corporation when:*

(1) the holder, owner, or subscriber has expressly assumed, guaranteed, or agreed to be personally liable to the obligee for the obligation; or

(2) the holder, owner, or subscriber is otherwise liable to the obligee for the obligation under this Act or another applicable statute.

SECTION 2.06. Article 2.24, Texas Business Corporation Act, is amended by adding Section D to read as follows:

D. *If the articles of incorporation or bylaws of a corporation registered under the Investment Company Act so provide, the corporation is not required to hold an annual meeting of shareholders or elect directors in any year that the election of directors is not required to be acted on under the Investment Company Act. If the corporation is required by the Investment Company Act to hold a meeting of shareholders to elect directors, the meeting shall be designated as the annual meeting of shareholders for that year.*

SECTION 2.07. Sections A and C, Article 2.27, Texas Business Corporation Act, are amended to read as follows:

A. The officer or agent having charge of the *share* [stock] transfer records [books] for shares of a corporation shall make, at least ten (10) days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office or principal place of business of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original *share* [stock] transfer records [books] shall be prima-facie evidence as to who are the shareholders entitled to examine such list or transfer records [books] or to vote at any meeting of shareholders.

C. An officer or agent having charge of the *share* [stock] transfer records [books] who shall fail to prepare the list of shareholders or keep the same on file for a period of ten (10) days, or produce and keep it open for inspection at the meeting, as provided in this Article, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage. In the event that such officer or agent does not receive notice of a meeting of shareholders sufficiently in advance of the date of such meeting reasonably to enable him to comply with the duties prescribed by this Article, the corporation, but not such officer or agent, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

SECTION 2.08. Article 2.32, Texas Business Corporation Act, is amended by adding Section B to read as follows:

*B. Notwithstanding Section A of this Article, a director of a corporation registered under the Investment Company Act, unless removed in accordance with the provisions of the articles of incorporation or bylaws, holds office for the term for which the director is elected and until the director's successor has been elected and qualified.*

SECTION 2.09. Article 2.34, Texas Business Corporation Act, is amended to read as follows:

Art. 2.34. VACANCIES. A. *Any vacancy occurring in the initial board of directors before the issuance of shares may be filled by the affirmative vote or written consent of a majority of the incorporators or by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of the director's predecessor in office.*

B. *Any vacancy occurring in the board of directors after the issuance of shares may be filled in accordance with Section D [C] of this article or may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.*

C [B]. *A directorship to be filled by reason of an increase in the number of directors may be filled in accordance with Section D [C] of this article or may be filled by the board of directors for a term of office continuing only until the next election of one or more directors by the shareholders; provided that the board of directors may not fill more than two such directorships during the period between any two successive annual meetings of shareholders.*

D [C]. *Any vacancy occurring in the board of directors or any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual or special meeting of shareholders called for that purpose.*

E [D]. *Notwithstanding Sections [A,] B, [and] C, and D of this article, whenever the holders of any class or series of shares or group of classes 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, or by such group, 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 or of such group, 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 2.10. Section C, Article 2.41, Texas Business Corporation Act, is amended to read as follows:

C. A director shall not be liable under Subsection (1) of Section A of this Article if, in voting for or assenting to the distribution, the director:

(1) relied in good faith and with ordinary care upon the statements, valuations, or information referred to in Article 2.38–3 of this Act, or upon other information, opinions, reports, or statements, including financial statements and other financial data, concerning the corporation or another person, that were prepared or presented by:

(a) one or more officers or employees of the corporation;

(b) legal counsel, public accountants, investment bankers, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board of directors of which the director is not a member;

(2) acting in good faith and with ordinary care, considered the assets of the corporation to be at least of their book value; or

(3) in determining whether the corporation made adequate provision for payment, satisfaction or discharge of all of its liabilities and obligations as provided in *Articles [Article] 6.04 and 7.12* of this Act, relied in good faith and with ordinary care upon financial statements of, or other information concerning, any person who was or became contractually obligated to pay, satisfy, or discharge some or all of those liabilities or obligations.

SECTION 2.11. Sections B-F, Article 2.44, Texas Business Corporation Act, are amended to read as follows:

B. *A director may examine the corporation's books and records of account, share transfer records, corporate minutes and any other corporate books and records for any purpose reasonably related to the director's service as a director. A court of competent jurisdiction may compel a corporation to open its books and records of account, share transfer records, corporate minutes or any other corporate books and records to permit the director to inspect the books or records and make copies or extracts from the books or records on a showing by a director that:*

*(1) he is a director;*

*(2) he demanded to inspect the corporate books and records;*

*(3) his purpose for inspecting the corporate books and records was reasonably related to his service as a director; and*

*(4) his right of access to the books and records was refused by the corporation.*

*The court may also award the director attorneys' fees and any other relief that the court deems just and proper.*

C. Any person who shall have been a shareholder for at least six (6) months immediately preceding his demand, or shall be the holder of at least five per cent (5%) of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent, accountant, or attorney, at any reasonable time or times, for any proper purpose, its relevant books and records of account, minutes, and share transfer records, and to make extracts therefrom.

D [C]. Any corporation which shall refuse to allow any such shareholder or his agent, accountant or attorney, so to examine and make extracts from its books and records of account, minutes, and share transfer records, for any proper purpose, shall be liable to such shareholder for all costs and expenses, including attorneys' fees, incurred in enforcing his rights under this Article in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two (2) years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust

certificates for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, minutes, or share transfer records of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

*E* [~~D~~]. Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof of proper purpose by a beneficial or record holder of shares, irrespective of the period of time during which such holder shall have been a beneficial or record holder and irrespective of the number of shares held by him, to compel the production for examination by such holder of the books and records of account, minutes, and share transfer records of a corporation.

*F* [~~E~~]. Upon the written request of any shareholder of a corporation, the corporation shall mail to such shareholder its annual statements for its last fiscal year showing in reasonable detail its assets and liabilities and the results of its operations and the most recent interim statements, if any, which have been filed in a public record or otherwise published. The corporation shall be allowed a reasonable time to prepare such annual statements.

*G* [~~F~~]. A holder of a beneficial interest in a voting trust entered into pursuant to Article 2.30 of this Act shall be regarded as a holder of the shares represented by such beneficial interest for the purposes of this Article.

SECTION 2.12. Article 4.14, Texas Business Corporation Act, is amended to read as follows:

Art. 4.14. *REORGANIZATION UNDER A FEDERAL STATUTE* [~~AMENDMENT OF ARTICLES, MERGER, SHARE EXCHANGE, AND DISSOLUTION PURSUANT TO FEDERAL REORGANIZATION PROCEEDINGS~~]. A. Authorization. Notwithstanding any other provision of this Act to the contrary, *a trustee appointed for a corporation being reorganized under a federal statute, the designated officers of the corporation, or any other individual or individuals designated by the court to act on behalf of the corporation* [~~a corporation being reorganized under a federal statute~~] may do any of the following without action by or notice to its board of directors or shareholders in order to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the federal statute:

(1) amend or restate its articles of incorporation if the articles after amendment or restatement contain only provisions required or permitted in articles;

(2) merge or engage in a share exchange with one or more domestic or foreign corporations or other entities pursuant to a plan of merger or exchange having such terms and provisions as required or permitted by *Articles* [~~Article~~] 5.01 and 5.02 of this Act;

(3) *change the location of its registered office, change its registered agent, and remove or appoint any agent to receive service of process;*

(4) *alter, amend, or repeal its bylaws;*

(5) *constitute or reconstitute and classify or reclassify its board of directors, and name, constitute, or appoint directors and officers in place of or in addition to all or some of the officers or directors then in place;*

(6) sell, lease, exchange or otherwise dispose of all, or substantially all, of its property and assets; [~~or~~]

(7) *authorize and fix the terms, manner, and conditions of the issuance of bonds, debentures, or other obligations, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for any shares of any class; or*

(8) [~~(4)~~] dissolve.

*Actions taken under Subsection (4) or (5) of this section are effective on entry of the order or decree approving the plan of reorganization or on another effective date as may be specified, without further action of the corporation, as and to the extent set forth in the plan of reorganization or the order or decree approving the plan of reorganization.*

B. Authority to Sign Documents. *A trustee appointed for a corporation being reorganized under a federal statute, the designated officers of the corporation, or any other* [~~The~~]



individual or individuals designated by the court may sign on behalf of a corporation that is being reorganized:

- (1) articles of amendment or restated articles of incorporation setting forth:
  - (a) the name of the corporation;
  - (b) the text of each amendment or the restatement approved by the court;
  - (c) the date of the court's order or decree approving the articles of amendment or restatement;
  - (d) the court, file name, and case number of the reorganization case [proceeding] in which the order or decree was entered; and
  - (e) a statement that the court had jurisdiction of the case [proceeding] under federal statute; or
- (2) articles of merger or exchange setting forth:
  - (a) the name of the corporation;
  - (b) the text of the part of the plan of reorganization that contains the plan of merger or exchange approved by the court, which shall include the information required by Article 5.04A or 5.16B of this Act, as applicable, but need not include the resolution of the board of directors referred to in Article 5.16B(3) of this Act;
  - (c) the date of the court's order or decree approving the plan of merger or consolidation;
  - (d) the court, file name, and case number of the reorganization case [proceeding] in which the order or decree was entered; and
  - (e) a statement that the court had jurisdiction of the case [proceeding] under federal statute; or
- (3) articles of dissolution setting forth:
  - (a) the name of the corporation;
  - (b) the information required by Articles [Article] 6.06A(1)(2) and (3) of this Act;
  - (c) the date of the court's order or decree approving the articles of dissolution;
  - (d) that the debts, obligations and liabilities of the corporation have been paid or discharged as provided in the plan of reorganization and that the remaining property and assets of the corporation have been distributed as provided in the plan of reorganization;
  - (e) the court, file name, and case number of the reorganization case [proceeding] in which the order or decree was entered; and
  - (f) a statement that the court had jurisdiction of the case [proceeding] under federal statute; or
- (4) a statement of change of registered office or registered agent, or both, setting forth:
  - (a) the name of the corporation;
  - (b) the information required by Article 2.10A of this Act, as applicable, but not the information included in the statement referred to in Article 2.10A(7) of this Act;
  - (c) the date of the court's order or decree approving the statement of change of registered office or registered agent, or both;
  - (d) the court, file name, and case number of the reorganization case in which the order or decree was entered; and
  - (e) a statement that the court had jurisdiction of the case under federal statute.

C. Procedure for Merger or Share Exchange. When a domestic or foreign corporation or other entity that is not being reorganized merges or engages in a share exchange with a corporation that is being reorganized pursuant to a plan of reorganization:

- (1) Articles 5.01, 5.02, 5.03, 5.11, 5.12, and 5.13 of this Act shall apply to the domestic or foreign corporation or other entity that is not being reorganized to the same extent they would apply if it were merging or engaging in a share exchange with a corporation that is not being reorganized;

(2) Article 5.06 of this Act shall apply to the domestic or foreign corporation or other entity that is not being reorganized to the same extent it would apply if that domestic or foreign corporation or other entity were merging or engaging in a share exchange with a corporation that is not being reorganized, except as otherwise provided in the plan of reorganization ordered or decreed by a court of competent jurisdiction under the federal statute;

(3) Article 5.16E of this Act shall apply to a subsidiary corporation that is not being reorganized to the same extent it would apply if that corporation were merging with a parent corporation that is not being reorganized;

(4) Upon the receipt of all required authorization for all action required by this Act for each corporation that is a party to the plan of merger or exchange that is not being reorganized and all action by each *corporation*, foreign corporation, or other entity that is a party to the plan of merger or exchange required by the laws under which it is incorporated or organized and its constituent documents, articles of merger or exchange shall be signed by each domestic or foreign corporation or other entity that is a party to the merger or exchange other than the corporation that is being reorganized as provided in Article 5.04 of this Act and on behalf of the corporation that is being reorganized by the persons specified in Section B of this Article; ~~and~~

(5) The articles of merger or exchange shall set forth the information required in Section B(2) of this Article; ~~]~~

(6) ~~[D. Filing.]~~ The articles of merger or exchange shall be filed with the Secretary of State in the manner and with such number of copies as is provided in Article 5.04B of this Act; ~~and~~ ~~]~~

(7) ~~[E. Effect.]~~ Upon the issuance of the certificate of merger or share exchange by the Secretary of State as provided in Article 5.04 of this Act, the merger or share exchange shall become effective with the same effect as if it had been adopted by unanimous action of the directors and shareholders of the corporation being reorganized. The effectiveness of the merger or share exchange shall be determined as provided in Article 5.05 of this Act.

~~D [F].~~ Dissenters' Rights. Shareholders of a corporation being reorganized under a federal statute do not have a right to dissent under Article 5.11 or 5.16E of this Act, except as the plan of reorganization may provide.

~~E [G].~~ When Applicable. This Article shall not apply after the entry of a final decree in the reorganization case ~~[proceeding]~~ even though the court may retain jurisdiction of the case ~~[proceeding]~~ for limited purposes unrelated to consummation of the plan of reorganization.

~~F [H].~~ Nonexclusivity. This Article shall not preclude other changes in a corporation or its securities by a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute.

SECTION 2.13. Sections A, B, and G, Article 5.03, Texas Business Corporation Act, are amended to read as follows:

A. *Except as provided by Section G of this Article, after* ~~[After]~~ acting on a plan of merger or exchange in the manner prescribed by Subsection (1) of Section B of this Article, the board of directors of each domestic corporation that is a party to the merger, and the board of directors of each domestic corporation whose shares are to be acquired in the share exchange, shall submit the plan of merger ~~[(except as provided in Section G of this Article)]~~ or exchange for approval by its shareholders.

B. *Except as provided by Section G of this Article, for* ~~[For]~~ a plan of merger or exchange to be approved:

(1) the board of directors of the corporation may adopt a resolution recommending that the plan of merger or exchange be approved by the shareholders of the corporation, unless the board of directors determines that for any reason it should not make that recommendation, in which case the board of directors may adopt a resolution directing that the plan of merger or exchange be submitted to shareholders for approval without recommendation and, in connection with the submission, communicate the basis for its determination that the plan be submitted to shareholders without any recommendation; and

(2) [~~except as provided in Section G of this Article,~~] the shareholders entitled to vote on the plan of merger or exchange must approve the plan.

G. Unless the articles of incorporation otherwise require, approval by the shareholders of a corporation on a plan of merger shall not be required *and the provisions of Sections A, B, C, D, E, and F of this Article do not apply if:*

(1) the corporation is the sole surviving corporation in the merger;

(2) the articles of incorporation of the corporation will not differ from its articles of incorporation before the merger;

(3) each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the effective date of the merger;

(4) the voting power of the number of voting shares outstanding immediately after the merger, plus the voting power of the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights to purchase securities issued pursuant to the merger), will not exceed by more than 20 percent the voting power of the total number of voting shares of the corporation outstanding immediately before the merger;

(5) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights to purchase securities issued pursuant to the merger), will not exceed by more than 20 percent the total number of participating shares of the corporation outstanding immediately before the merger; and

(6) the board of directors of the corporation adopts a resolution approving the plan of merger.

SECTION 2.14. Section B, Article 5.09, Texas Business Corporation Act, is amended to read as follows:

B. A transaction referred to in this Article *and in Article 5.10 of this Act* shall be in the usual and regular course of business if the corporation shall, directly or indirectly, either continue to engage in one or more businesses or apply a portion of the consideration received in connection with the transaction to the conduct of a business in which it engages following the transaction.

SECTION 2.15. Section A, Article 5.10, Texas Business Corporation Act, is amended to read as follows:

A. A sale, lease, exchange, or other disposition (not including any pledge, mortgage, deed of trust or trust indenture unless otherwise provided in the articles of incorporation) of all, or substantially all, the property and assets, with or without the good will of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors may adopt a resolution recommending that such sale, lease, exchange, or other disposition be approved by shareholders of the corporation, unless the board of directors determines that for any reason it should not make the recommendation in which case the board of directors may adopt a resolution directing that such sale, lease, exchange, or other disposition be submitted to shareholders without recommendation and, in connection with the submission, communicate the basis for its determination that the sale, lease, exchange or other disposition be submitted without recommendation.

(2) The board of directors may submit the proposed sale, lease, exchange or other disposition for authorization by the corporation's shareholders at a meeting of shareholders, which may be either an annual or a special meeting.

(3) Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided for in this Act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special

meeting shall state that the purpose, or one of the purposes, of such meeting is to consider the proposed sale, lease, exchange, or other disposition.

(4) At such meeting, the shareholders may authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation entitled to vote thereon, unless any class or series of shares of the corporation is entitled to vote as a class thereon, in which event the vote required for authorization by the shareholders shall be the affirmative vote of the holders of at least two-thirds of the outstanding shares within each such class or series entitled to vote thereon as a class and at least two-thirds of the outstanding shares otherwise entitled to vote thereon. Shares entitled to vote as a class shall be entitled to vote only as a class unless otherwise *entitled to vote on each matter submitted to the shareholders generally* or provided in the articles of incorporation.

(5) After such authorization by vote of shareholders, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

SECTION 2.16. Sections A and D, Article 5.12, Texas Business Corporation Act, are amended to read as follows:

A. Any shareholder of any domestic corporation who has the right to dissent from any of the corporate actions referred to in Article 5.11 of this Act may exercise that right to dissent only by complying with the following procedures:

(1)(a) With respect to proposed corporate action that is submitted to a vote of shareholders at a meeting, the shareholder shall file with the corporation, prior to the meeting, a written objection to the action, setting out that the shareholder's right to dissent will be exercised if the action is effective and giving the shareholder's address, to which notice thereof shall be delivered or mailed in that event. If the action is effected and the shareholder shall not have voted in favor of the action, the corporation, in the case of action other than a merger, or the surviving or new corporation (foreign or domestic) or other entity that is liable to discharge the shareholder's right of dissent, in the case of a merger, shall, within ten (10) days after the action is effected, deliver or mail to the shareholder written notice that the action has been effected, and the shareholder may, within ten (10) days from the delivery or mailing of the notice, make written demand on the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, for payment of the fair value of the shareholder's shares. The fair value of the shares shall be the value thereof as of the day immediately preceding the meeting, excluding any appreciation or depreciation in anticipation of the proposed action. The demand shall state the number and class of the shares owned by the shareholder and the fair value of the shares as estimated by the shareholder. Any shareholder failing to make demand within the ten (10) day period shall be bound by the action.

(b) With respect to proposed corporate action that is approved pursuant to Section A of Article 9.10 of this Act, the corporation, in the case of action other than a merger, and the surviving or new corporation (foreign or domestic) or other entity that is liable to discharge the shareholder's right of dissent, in the case of a merger, shall, within ten (10) days after the date the action is effected, mail to each shareholder of record as of the effective date of the action notice of the fact and date of the action and that the shareholder may exercise the shareholder's right to dissent from the action. The notice shall be accompanied by a copy of this Article and any articles or documents filed by the corporation with the Secretary of State to effect the action. If the shareholder shall not have consented to the taking of the action, the shareholder may, within twenty (20) days after the mailing of the notice, make written demand on the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, for payment of the fair value of the shareholder's shares. The fair value of the shares shall be the value thereof as of the date the written consent authorizing the action was delivered to the corporation pursuant to Section A of Article 9.10 of this Act, excluding any appreciation or depreciation in anticipation of the [proposed] action. The demand shall state the

number and class of shares owned by the dissenting shareholder and the fair value of the shares as estimated by the shareholder. Any shareholder failing to make demand within the twenty (20) day period shall be bound by the action.

(2) Within twenty (20) days after receipt by the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, of a demand for payment made by a dissenting shareholder in accordance with Subsection (1) of this Section, the corporation (foreign or domestic) or other entity shall deliver or mail to the shareholder a written notice that shall either set out that the corporation (foreign or domestic) or other entity accepts the amount claimed in the demand and agrees to pay that amount within ninety (90) days after the date on which the action was effected, and, in the case of shares represented by certificates, upon the surrender of the certificates duly endorsed, or shall contain an estimate by the corporation (foreign or domestic) or other entity of the fair value of the shares, together with an offer to pay the amount of that estimate within ninety (90) days after the date on which the action was effected, upon receipt of notice within sixty (60) days after that date from the shareholder that the shareholder agrees to accept that amount *and, in the case of shares represented by certificates, upon the surrender of the certificates duly endorsed.*

(3) If, within sixty (60) days after the date on which the corporate action was effected, the value of the shares is agreed upon between the shareholder and the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, payment for the shares shall be made within ninety (90) days after the date on which the action was effected and, in the case of shares represented by certificates, upon surrender of the certificates duly endorsed. Upon payment of the agreed value, the shareholder shall cease to have any interest in the shares or in the corporation.

D. The appraisers shall determine the fair value of the shares of the shareholders adjudged by the court to be entitled to payment for their shares and shall file their report of that value in the office of the clerk of the court. Notice of the filing of the report shall be given by the clerk to the parties in interest. The report shall be subject to exceptions to be heard before the court both upon the law and the facts. The court shall by its judgment determine the fair value of the shares of the shareholders entitled to payment for their shares and shall direct the payment of that value by the existing, surviving, or new corporation (foreign or domestic) or other entity, together with interest thereon, *beginning 91 days after the date on which the applicable corporate action from which the shareholder elected to dissent was effected to the date of such judgment, to the shareholders entitled to payment.* The judgment shall be payable to the holders of uncertificated shares immediately but to the holders of shares represented by certificates only upon, and simultaneously with, the surrender to the existing, surviving, or new corporation (foreign or domestic) or other entity, as the case may be, of duly endorsed certificates for those shares. Upon payment of the judgment, the dissenting shareholders shall cease to have any interest in those shares or in the corporation. The court shall allow the appraisers a reasonable fee as court costs, and all court costs shall be allotted between the parties in the manner that the court determines to be fair and equitable.

SECTION 2.17. Article 5.13, Texas Business Corporation Act, is amended to read as follows:

Art. 5.13. PROVISIONS AFFECTING REMEDIES OF DISSENTING SHAREHOLDERS. A. Any shareholder who has demanded payment for his shares in accordance with *either Article 5.12 or 5.16 of this Act* shall not thereafter be entitled to vote or exercise any other rights of a shareholder except the right to receive payment for his shares pursuant to the provisions of *those articles* [~~said Article 5.12~~] and the right to maintain an appropriate action to obtain relief on the ground that the corporate action would be or was fraudulent, and the respective shares for which payment has been demanded shall not thereafter be considered outstanding for the purposes of any subsequent vote of shareholders.

B. Upon receiving a demand for payment from any dissenting shareholder, the corporation shall make an appropriate notation thereof in its shareholder records. Within twenty (20) days after demanding payment for his shares in accordance with *either Article 5.12 or 5.16 of this Act*, each holder of certificates representing shares so demanding payment shall submit such certificates to the corporation for notation thereon that such demand has been

made. The failure of holders of certificated shares to do so shall, at the option of the corporation, terminate such shareholder's rights under *Articles [Article] 5.12 and 5.16 of this Act* unless a court of competent jurisdiction for good and sufficient cause shown shall otherwise direct. If uncertificated shares for which payment has been demanded or shares represented by a certificate on which notation has been so made shall be transferred, any new certificate issued thereafter shall bear similar notation together with the name of the original dissenting holder of such shares and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

C. Any shareholder who has demanded payment for his shares in accordance with *either Article 5.12 or 5.16 of this Act* may withdraw such demand at any time before payment for his shares or before any petition has been filed pursuant to Article 5.12 or 5.16 of this Act asking for a finding and determination of the fair value of such shares, but no such demand may be withdrawn after such payment has been made or, unless the corporation shall consent thereto, after any such petition has been filed. If, however, such demand shall be withdrawn as hereinbefore provided, or if pursuant to Section B of this Article the corporation shall terminate the shareholder's rights under Article 5.12 or 5.16 of this Act, *as the case may be*, or if no petition asking for a finding and determination of fair value of such shares by a court shall have been filed within the time provided in Article 5.12 or 5.16 of this Act, *as the case may be*, or if after the hearing of a petition filed pursuant to Article 5.12 or 5.16, the court shall determine that such shareholder is not entitled to the relief provided by *those articles [Article 5.12]*, then, in any such case, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the corporate action from which he dissented and shall be bound thereby, the right of such shareholder to be paid the fair value of his shares shall cease, and his status as a shareholder shall be restored without prejudice to any corporate proceedings which may have been taken during the interim, and such shareholder shall be entitled to receive any dividends or other distributions made to shareholders in the interim.

SECTION 2.18. Sections B, E, and F, Article 5.16, Texas Business Corporation Act, are amended to read as follows:

B. SIGNATURE OF ARTICLES; CONTENTS. The articles of merger shall be signed on behalf of the parent corporation by an officer 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 *that is a party to the merger*, the resolution shall state the terms and conditions of the merger, including the ~~[securities,]~~ cash or other property, *including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of any person or entity or any combination of the shares, obligations, evidences of ownership, rights, or other securities*, 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. *If the surviving corporation is a foreign corporation, on the merger taking effect the surviving foreign corporation is deemed to (a) appoint the Secretary of State of this state as its agent for service of process to enforce an obligation or the rights of dissenting shareholders of each domestic corporation that is a party to the merger, and (b) agree that it will promptly pay to the dissenting shareholders of each domestic corporation that is a party to the merger the amount, if any, to which they are entitled under this Article [It shall comply also with the provisions of Section D of Article 5.01 of this Act].*

(5) If a plan of merger is required by Section A of this Article to be adopted in the manner required by Article 5.03 of this Act, the information required by Section A of Article 5.04 of this Act.

E. REMEDY OF MINORITY SHAREHOLDERS. In the event all of the shares of a subsidiary domestic corporation *that is a party to a merger* effected under this Article are not owned by the parent corporation immediately prior to the merger, the surviving corporation (*foreign or domestic*) shall, within ten (10) days after the effective date of the merger, mail to each shareholder of record of each subsidiary domestic corporation a copy of the articles of merger and notify *the shareholder* [him] that the merger has become effective. *Any* [~~In case any~~] such shareholder who holds shares of a class or series that would have been entitled to vote on the merger if it had been effected pursuant to Article 5.03 of this Act *shall have the right* [~~and who elects~~] to dissent *from the merger* and demand payment of the fair value for his shares in lieu of the [~~securities,~~] cash or other property to be used, paid or delivered to such shareholder upon the surrender of such shareholder's shares pursuant to the terms and conditions of the merger, *with the following procedure* [~~shall be followed~~]:

(1) Such shareholder shall within twenty (20) days after the mailing of the notice and copy of the articles of merger make written demand on the surviving corporation, domestic or foreign, for payment of the fair value of his shares. The fair value of *the* [such] shares shall be the value thereof as of the day before the effective date of the merger, excluding any appreciation or depreciation in anticipation of such [~~proposed~~] act. *The* [Such] demand shall state the number and class of the shares owned by the dissenting shareholder and the fair value of such shares as estimated by him. Any shareholder failing to make demand within the twenty (20) day period shall be bound by *the* [such] corporate action.

(2) Within ten (10) days after receipt by the surviving corporation of a demand for payment *by the dissenting shareholder* of the fair value of his shares [~~made by such dissenting shareholder~~] in accordance with Subsection (1) *of this section, the* [~~hereof, such~~] corporation (*foreign or domestic*) shall deliver or mail to *the* [such] dissenting shareholder a written notice which shall either set out that the corporation (*foreign or domestic*) accepts the amount claimed in *the* [such] demand and agrees to pay such amount within ninety (90) days after the date on which *the* [such] corporate action was effected and, in the case of shares represented by certificates, upon the surrender of the shares certificates duly endorsed, or shall contain an estimate by the corporation of the fair value of such shares, together with an offer to pay the amount of *that* [such] estimate within ninety (90) days after the date on which such *corporate* [~~corporation~~] action was effected, upon receipt of notice within sixty (60) days after *that* [such] date from *the* [such] shareholder that *the shareholder* [he] agrees to accept *that* [such] amount and, in the case of shares represented by certificates, upon the surrender of the shares certificates duly endorsed.

(3) If, within sixty (60) days after the date on which *the* [such] corporate action was effected, the value of *the* [such] shares is agreed upon between the dissenting shareholder and the surviving corporation (*foreign or domestic*), payment *for the shares* [~~therefor~~] shall be made within ninety (90) days after the date on which *the* [such] corporate action was effected and, in the case of shares represented by certificates, upon surrender of his certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(4) If, within [~~such period of~~] sixty (60) days after the date on which such corporate action was effected, the shareholder and the surviving corporation (*foreign or domestic*) do not so agree, then the dissenting shareholder or the corporation (*foreign or domestic*) may, within sixty (60) days after the expiration of the sixty (60) day period, file a petition in any court of competent jurisdiction in the county in which the principal office of the corporation is located, asking for a finding and determination of the fair value of *the shareholder's* [such] shares as provided in Section B of Article 5.12 of this Act and thereupon the parties shall have the rights and duties and follow the procedure set forth in Sections B to D inclusive of Article 5.12 [~~and set forth in Article 5.13~~].

(5) In the absence of fraud in the transaction, the remedy provided by this Article to a shareholder objecting to *the* [such] corporate action is the exclusive remedy for the recovery of the value of his shares or money damages to *the* [such] shareholder with respect to *the* [such] corporate action. *If* [~~and if~~] the surviving corporation (*foreign or domestic*) complies with the requirements of this Article, any such shareholder who fails to comply with the requirements of this Article shall not be entitled to bring suit for the

recovery of the value of his shares or money damages to such shareholder with respect to such corporate action.

F. DISSENTING SHAREHOLDERS. If a plan of merger is required by Section A of this Article to be adopted in the manner required by Article 5.03 of this Act, the provisions of Articles 5.11 *and*[,] 5.12[, ~~and 5.13~~] of this Act shall apply to the rights of the shareholders of the parent corporation to dissent from such merger. Except as otherwise provided in this Article, the provisions of Articles 5.11 *and*[,] 5.12 [~~and 5.13~~] of this Act shall not be applicable to a merger effected under the provisions of this Article. *The provisions of Article 5.13 of this Act shall be applicable to any merger effected under the provisions of this Article to the extent provided in Article 5.13 of this Act.*

SECTION 2.19. Sections D and F, Article 7.12, Texas Business Corporation Act, are amended to read as follows:

D. A dissolved corporation may give written notice to a person having or asserting an existing claim against the dissolved corporation to present such existing claim to the dissolved corporation in accordance with the notice. The notice shall be sent by registered or certified mail, return receipt requested, to the person having or asserting the existing claim at such person's last known address, and the notice shall:

- (1) state that such person's [~~such~~] claim against the dissolved corporation must be presented in writing to the dissolved corporation on or before the date stated in the notice, which shall be not earlier than 120 days after the date the notice is sent to such person;
- (2) state that the written presentation of the claim must describe such claim in sufficient detail to reasonably inform the dissolved corporation of the identity of such person and of the nature and amount of the claim;
- (3) *state* a mailing address where the written presentation of the person's claim against the dissolved corporation is to be sent; [~~and~~]
- (4) state that if the written presentation of the claim is not received at such address on or before the date stated in the notice, the claim will be extinguished; and
- (5) be accompanied by a copy of this Section D.

If a written presentation of such person's claim against the dissolved corporation that meets the requirements of this section is received at the address of the dissolved corporation stated in the notice on or before the date stated in the notice, the dissolved corporation may thereafter give written notice to such person that such claim is rejected by the dissolved corporation. The notice shall be sent by registered or certified mail, return receipt requested, addressed to such person at such person's last known address, and the notice shall state:

- (1) that such claim is rejected by the dissolved corporation;
- (2) that such claim will be extinguished unless an action or proceeding on such claim is brought within 180 days after the date such notice of rejection was sent to such person and before the expiration of the three-year period following the date of dissolution; and
- (3) the date such notice of rejection was sent and the date of dissolution.

Such person's claim against the dissolved corporation shall be extinguished if (a) a written presentation of that claim meeting the requirements of this section is not received at the address of the dissolved corporation stated in the notice to such person on or before the date stated in the notice or (b) an action or proceeding on such claim is not brought within 180 days after the date a notice of rejection was sent to such person and before the expiration of the three-year period following the date of dissolution.

F. In this Article:

- (1) The term "dissolved corporation" means a corporation (a) that was voluntarily dissolved by the issuance of a certificate of dissolution by the Secretary of State and was not issued a certificate of revocation of *dissolution* pursuant to Section C of Article 6.05 of this Act, (b) that was involuntarily dissolved by the Secretary of State and was not reinstated pursuant to Section E of Article 7.01 of this Act, (c) that was dissolved by decree of a court when the court has not liquidated all the assets and business of the corporation as provided in this Act, [~~or~~] (d) that was dissolved by the expiration of its period of duration



and has not revived its existence as provided in this Act, or (e) whose charter was forfeited pursuant to the Tax Code, unless the forfeiture has been set aside.

(2) The term "claim" means a right to payment, damages, or property, whether liquidated or unliquidated, accrued or contingent, matured or unmatured.

(3) The term "existing claim" means a claim that existed before dissolution and is not otherwise barred by limitations or a contractual obligation incurred after dissolution.

SECTION 2.20. Section A, Article 8.14, Texas Business Corporation Act, is amended to read as follows:

A. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) That the corporation is not transacting business in this state;

(3) That the corporation surrenders its authority to transact business in this state;

(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the Secretary of State;

(5) A post office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him;

(6) A statement that all sums due, or accrued, to this state have been paid, or that adequate provision has been made for the payment thereof; *and*

(7) A statement that all known creditors or claimants have been paid or provided for [~~and that the corporation is not involved in or threatened with litigation in any court in this state~~].

SECTION 2.21. Section A, Article 10.03, Texas Business Corporation Act, is amended to read as follows:

A. The effectiveness of (i) the incorporation of a corporation under this Act, (ii) an amendment to a corporation's articles of incorporation, including an amendment effected pursuant to a statement of resolution establishing a series of shares, (iii) the restatement of articles of incorporation of a corporation, (iv) a merger or share exchange, (v) a cancellation of redeemable or reacquired shares or a reduction in stated capital, (vi) a voluntary dissolution, (vii) the authorization or withdrawal of a foreign corporation to transact business in this State, (viii) an amendment to the certificate of authority of a foreign corporation, (ix) a bylaw or agreement restricting the transfer of shares or securities of a corporation pursuant to this Act, (x) a change in registered office or registered agent, or (xi) a change of address of a registered agent (each such act or document being a "Permitted Act") may be made effective as of a time and date after the time and date otherwise provided in this Act or may be made effective upon the occurrence of events or facts that may occur in the future, which events or facts may include future acts of any person or entity, if:

(1) the articles, statement, application, ~~[(4)]~~ or other filing that is required by this Act to be filed with the Secretary of State to make effective such Permitted Act clearly and expressly set forth, in addition to any other statement or information required to be set forth therein, (i) the time and date on which such Permitted Act is to become effective or (ii) if such Permitted Act is to become effective upon the occurrence of events or facts that may occur in the future, (a) the manner in which such events or facts shall operate to cause such Permitted Act to become effective and (b) the date of the 90th day after the date of the filing of such articles, statement, application or other filing;

(2) in the case of a Permitted Act that is to become effective as of a time or date after the time and date otherwise provided in this Act, (i) such subsequent time and date is not more than 90 days after the date of the filing of the articles, statement, application, or other

filing that is otherwise required by this Act to be filed with the Secretary of State to make effective such Permitted Act and (ii) the time on which the Permitted Act is to become effective is not midnight or 12:00 p.m.; and

(3) in the case of a Permitted Act that is to be made effective upon the occurrence of events or facts that may occur in the future, other than the mere passage of time, a statement that all such events or facts upon which the effectiveness of such Permitted Act is conditioned have been satisfied or waived, and of the date on which such condition was satisfied or waived, is filed with the Secretary of State within 90 days of the date of the filing of the articles, statement, application or other filing that is otherwise required by this Act for such Permitted Act to become effective.

SECTION 2.22. Section 8(E), Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes), is amended to read as follows:

(E) Execution. The articles of association shall be signed [~~and verified~~] by each of the members.

SECTION 2.23. Section 15, Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. ARTICLES OF AMENDMENT. The *articles* [~~Articles~~] of amendment shall be executed *on behalf of* [~~by~~] the association *by an officer* [~~by its president or a vice president and by its secretary or an assistant secretary, and certified by one of the officers signing such articles,~~] and shall set forth:

(1) The name and address of the association;

(2) If the amendment alters any provision of the original or amended articles of association, an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of association, a statement of that fact and the full text of each provision added;

(3) The date of the adoption of the amendment; *and*

(4) A statement that the amendment was adopted in accordance with the procedure for amendment stated in the articles of association, or, if none is stated therein, a statement that the amendment was adopted by two-thirds vote of its members.

SECTION 2.24. Section 18, Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. ARTICLES OF DISSOLUTION. The articles of dissolution shall be executed *on behalf of* [~~by~~] the association *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 articles~~]. If there are no living officers of the association, the articles shall be executed by the legal representative of the last surviving officer. The articles of dissolution shall set forth:

(1) The name and address of the association;

(2) The names and respective addresses of its officers;

(3) The names and respective addresses of the members of its Board of Directors or Executive Committee; *and*

(4) A statement that the association is dissolving in accordance with its articles of association or, if there is no dissolution provision in the articles, by two-thirds vote of its members.

SECTION 2.25. The Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) is amended by adding Section 26 to read as follows:

Sec. 26. *PENALTY FOR SIGNING FALSE DOCUMENT.* (A) *A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered on behalf of a professional association to the Secretary of State for filing.*

(B) *An offense under this section is a Class A misdemeanor.*

SECTION 2.26. The change in law made by Section 2.05 of this Act, amending Sections A and B, Article 2.21, Texas Business Corporation Act, applies to the liability of a shareholder,

beneficial interest owner, or subscriber for a contractual obligation of a corporation entered into before, on, or after the effective date of this Act unless the liability has been finally adjudicated by a court of competent jurisdiction before the effective date of this Act.

SECTION 2.27. Section 21, Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 21. ANNUAL STATEMENT. A professional association shall in June of each year file with the Secretary of State a statement showing the name and address of the association; the names and addresses of all members of the association, and all officers and all members of the Board of Directors or Executive Committee; and shall *state* [~~certify~~] that all members are licensed to perform the type of professional service for which the association is formed. The statement shall be on such form as the Secretary of State shall prescribe and furnish. It shall be *executed on behalf of the association by an officer* [~~signed by the president or a vice-president and by the secretary or an assistant secretary of the association, and verified by one of the officers signing the statement~~].

ARTICLE 3. EFFECTIVE DATE; EMERGENCY

SECTION 3.01. This Act takes effect September 1, 1993.

SECTION 3.02. 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.

Passed by the House on April 19, 1993, by a non-record vote; passed by the Senate on May 7, 1993: Yeas 30, Nays 0.

Approved May 19, 1993.

Effective Sept. 1, 1993.