

CHAPTER 733

H.B. No. 1494

AN ACT

relating to the organization and operation of nonprofit corporations.

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

SECTION 1. Section A, Article 1.02, Texas Non-Profit Corporation Act (Article 1396-1.02, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (14) and (15) to read as follows:

(14) "Director" means a member of the board of directors of a corporation organized under this Act.

(15) "Ordinary care" means the care that an ordinarily prudent person in a similar position would exercise under similar circumstances.

SECTION 2. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 2.04A to read as follows:

Art. 2.04A. RESERVED NAME. A. The exclusive right to the use of a corporate name may be reserved by:

- (1) a person intending to organize a corporation under this Act;
- (2) a domestic corporation intending to change its name;

(3) a foreign corporation intending to apply for a certificate of authority to conduct affairs in this State;

(4) a foreign corporation authorized to conduct affairs in this State and intending to change its name; or

(5) a person intending to organize a foreign corporation and intending to have that corporation apply for a certificate of authority to conduct affairs in this State.

B. An application for name reservation or transfer of the exclusive use of a specified corporate name is subject to the procedures and period prescribed by Article 2.06, Texas Business Corporation Act.

SECTION 3. Article 2.05, Texas Non-Profit Corporation Act (Article 1396-2.05, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.05. REGISTERED OFFICE AND REGISTERED AGENT. [A.] Each corporation shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this State which has a [principal or] business office identical with such registered office.

~~[B. On or before the 15th day of November, 1961, each not for profit corporation organized under the laws of this State prior to the effective date of this Act shall designate its registered office and appoint its registered agent by filing in the office of the Secretary of State a statement setting forth:~~

~~[(1) The name of the corporation.~~

~~[(2) The street address of its registered office.~~

~~[(3) The name of its registered agent.~~

~~[(4) The street address of its registered agent.~~

~~[(5) That the street address of its registered office and the street address of its registered agent are the same.~~

~~[(6) That such designation and appointment were authorized by resolution duly adopted by its board of directors or, if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act, by the members.~~

~~[C. The statement required by this Article shall be executed by the corporation by its president or a vice-president, and verified by him. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as prescribed by law:~~

~~[(1) Endorse on the original and the copy the word "Filed" and the month, day, and year of the filing thereof.~~

~~[(2) File the original in his office.~~

~~[(3) Deliver the copy to the corporation or its representative.~~

~~[D. Upon such filing the designation of the registered office and the appointment of the registered agent shall become effective.]~~

SECTION 4. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 2.06A to read as follows:

Art. 2.06A. CHANGE OF ADDRESS OF REGISTERED AGENT. A. The location of the registered office in this State for a corporation may be changed from one address to another by filing in the office of the Secretary of State a statement setting forth:

(1) the name of the corporation represented by the registered agent;

(2) the street address at which the registered agent has maintained the registered office for that corporation;

(3) the new street address at which the registered agent will maintain the registered office for that corporation; and

(4) a statement that notice of the change has been given to the corporation in writing at least ten (10) days before the date of the filing.

B. The statement required by this article shall be signed by the registered agent or, if the agent is a corporation, by an officer of the corporate agent on its behalf. If the registered agent is simultaneously filing statements for more than one corporation, each statement may contain facsimile signatures in the execution. The original and one copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to this Act, the Secretary of State shall:

(1) endorse on the original and the copy the word "Filed," and the month, day, and year of the filing;

(2) file the original in the Secretary of State's office; and

(3) return the copy to the registered agent.

C. The registered office of the corporation named in the statement shall be changed to the new street address of the registered agent on the filing of the statement by the Secretary of State.

SECTION 5. Article 2.09, Texas Non-Profit Corporation Act (Article 1396-2.09, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.09. BY-LAWS. A. The initial by-laws of a corporation shall be adopted by its board of directors or, if the management of the corporation is vested in its members [pursuant to Article 2.14C of this Act], by the members. [~~The power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the members, if any, but such power may be delegated by the members to the board of directors. In the event the corporation has no members, the power to alter, amend, or repeal the by-laws or to adopt new by-laws shall be vested in the board of directors.~~] The by-laws may contain any provisions for the regulation and management of the affairs of the [a] corporation not inconsistent with law or [with] the articles of incorporation.

B. A corporation's board of directors may amend or repeal the corporation's by-laws, or adopt new by-laws, unless:

(1) the articles of incorporation or this Act reserves the power exclusively to the members in whole or in part;

(2) the management of the corporation is vested in its members; or

(3) the members in amending, repealing, or adopting a particular by-law expressly provide that the board of directors may not amend or repeal that by-law.

SECTION 6. Section A, Article 2.11, Texas Non-Profit Corporation Act (Article 1396-2.11, Vernon's Texas Civil Statutes), is amended to read as follows:

A. In the case of a corporation other than a church, written or printed notice stating the place, day, and [or] hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) [~~fifty (50)~~] days before the date of the meeting, either personally, by facsimile transmission, or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon paid. If transmitted by facsimile, notice is deemed to be delivered on successful transmission of the facsimile.

SECTION 7. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Articles 2.11A and 2.11B to read as follows:

Art. 2.11A. RECORD DATE FOR DETERMINING MEMBERS ENTITLED TO NOTICE AND VOTE. A. The by-laws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the by-laws do not fix and do not provide for fixing the record date, the board of directors may fix a future date as the record date. If a record date is not fixed, members at

the close of business on the business day preceding the date on which notice is given, or if notice is waived, at the close of business on the business day preceding the date of the meeting, are entitled to notice of the meeting.

B. The by-laws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the by-laws do not fix and do not provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

C. The by-laws may fix or provide the manner for fixing a date as the record date for the purpose of determining the members entitled to exercise any rights regarding any other lawful action. If the by-laws do not fix and do not provide for fixing a record date, the board of directors may fix in advance a record date. If a record date is not fixed, members at the close of business on the date on which the board of directors adopts the resolution relating to the record date, or the 60th day before the date of the other action, whichever is later, are entitled to exercise those rights.

D. A record date fixed under this section may not be more than sixty (60) days before the date of the meeting or action that requires the determination of the members.

E. A determination of members entitled to notice of or to vote at a members' meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote. The board must fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date more than ninety (90) days after the record date for determining members entitled to notice of the original meeting.

Art. 2.11B. VOTING MEMBERS' LIST FOR MEETING. A. After fixing a record date for the notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its voting members who are entitled to notice of the meeting. The list must show the address and number of votes each voting member is entitled to cast at the meeting. The corporation shall maintain, through the time of the members' meeting, a list of members who are entitled to vote at the meeting but are not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of voting members.

B. Not later than two (2) business days after the date notice is given of a meeting for which a list was prepared, as provided by Section A of this article, and continuing through the meeting, the list of voting members must be available for inspection by any member entitled to vote at the meeting for the purpose of communication with other members concerning the meeting at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A voting member or voting member's agent or attorney is entitled on written demand to inspect and, subject to the limitations of Section B, Article 2.23, of this Act to copy the list at a reasonable time and at the member's expense during the period it is available for inspection.

C. The corporation shall make the list of voting members available at the meeting, and any voting member or voting member's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

SECTION 8. Sections A and B, Article 2.13, Texas Non-Profit Corporation Act (Article 1396-2.13, Vernon's Texas Civil Statutes), are amended to read as follows:

A. Each member, regardless of class, shall be entitled to one (1) vote on each matter submitted to a vote [at a meeting] of the members, except to the extent that the voting rights of members of any class or classes are limited, enlarged, or denied by the articles of incorporation or the by-laws.

B. A member may vote in person or, unless the articles of incorporation or the by-laws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy[; ~~provided, however, proxies executed before and in existence on the effective date of this Act shall continue in and have such effect as they then have in accordance with whatever may then be their terms~~]. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months. Where directors or officers are to be elected

by members, the by-laws may provide that such elections may be conducted by mail, *by facsimile transmission, or by any combination of the two.*

SECTION 9. Article 2.14, Texas Non-Profit Corporation Act (Article 1396–2.14, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.14. BOARD OF DIRECTORS [~~OR TRUSTEES~~]. A. The affairs of a corporation shall be managed by a board of directors [~~, or trustees~~]. Directors [~~or trustees~~] need not be residents of this State or members of the corporation unless the articles of incorporation or the by-laws so require. The articles of incorporation or the by-laws may prescribe other qualifications for directors [~~or trustees~~].

B. Boards of directors [~~or trustees~~] of religious, charitable, educational, or eleemosynary institutions may be affiliated with, elected and controlled by a convention, conference or association organized under the laws of this State or another state, whether incorporated or unincorporated, whose membership is composed of representatives, delegates, or messengers from any church or other religious association.

C. The articles of incorporation of a corporation [~~church~~] may vest the management of the affairs of the corporation in its members. If the corporation [~~church~~] has a board of directors [~~or similar body~~], it may limit the authority of *the* [~~such~~] board of directors to whatever extent as may be set forth in the articles of incorporation or by-laws. *Except for a church organized and operating under a congregational system, was incorporated before January 1, 1994, and has the management of its affairs vested in its members, a [A] corporation [~~church organized and operating under a congregational system and incorporated prior to the effective date of this Act~~]* shall be deemed to have vested the management of the affairs of the corporation in its board of directors [~~members~~] in the absence of an express provision to the contrary in the articles of incorporation or the by-laws.

D. *The board of directors [~~In the case of a corporation which is a church, the Board~~]* may be designated by any name appropriate to the customs, usages, or tenets of the corporation [~~church~~].

E. The board of directors [~~or trustees~~] of a [~~non-profit~~] corporation may be elected (in whole or in part) by *one or more associations* [~~another non-profit corporation~~] or corporations, *organized under the laws of this State or another state* [~~domestic or foreign,~~] if (1) the articles of incorporation or the by-laws [~~bylaws~~] of the former corporation so provide, and (2) the former corporation has no members with voting rights.

F. *The articles of incorporation or the by-laws may provide that any one or more persons may be ex-officio members of the board of directors. A person designated as an ex-officio member of the board of directors is entitled to notice of and to attend meetings of the board of directors. The ex-officio member is not entitled to vote unless otherwise provided in the articles of incorporation or the by-laws. An ex-officio member of the board of directors who is not entitled to vote does not have the duties or liabilities of a director as provided in this Act.*

SECTION 10. Article 2.15, Texas Non-Profit Corporation Act (Article 1396–2.15, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.15. NUMBER, ELECTION, CLASSIFICATION, AND REMOVAL OF DIRECTORS. A. The number of directors of a corporation shall be not less than three (3). Subject to such limitation, the number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the by-laws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the by-laws, but no decrease shall have the effect of shortening the term of any incumbent director. *The number of directors may not be decreased to fewer than three (3).* In the absence of a by-law or a provision of the articles of incorporation fixing the number of directors or providing for the manner in which the number of directors shall be fixed, the number of directors shall be the same as the number constituting the initial board of directors as fixed by the articles of incorporation.

B. The directors constituting the initial board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other

period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected, ~~or~~ appointed, or designated in the manner and for the terms provided in the articles of incorporation or the by-laws. *If the method of election, designation, or appointment is not provided in the articles of incorporation or by-laws, the directors, other than the initial directors, shall be elected by the board of directors.* In the absence of a provision in the articles of incorporation or the by-laws fixing the term of office, a director shall hold office until the next annual election of directors and until his successor shall have been elected, ~~or~~ appointed, or designated and qualified.

C. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Unless removed in accordance with the provisions of the articles of incorporation or the by-laws, each director shall hold office for the term for which he is elected, ~~or~~ appointed, or designated and until his successor shall have been elected, ~~or~~ appointed, or designated and qualified.

D. A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or by-laws. *In the absence of a provision providing for removal, a director may be removed from office, with or without cause, by the persons entitled to elect, designate, or appoint the director. If the director was elected to office, removal requires an affirmative vote equal to the vote necessary to elect the director.*

SECTION 11. Article 2.20, Texas Non-Profit Corporation Act (Article 1396-2.20, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.20. OFFICERS. A. The officers of a corporation shall consist of a president *and a secretary and may also consist of*, one or more vice-presidents, ~~a secretary,~~ a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three (3) years as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors, or, if the management of the corporation is vested in its members ~~[pursuant to Article 2.14C of this Act],~~ by the members. Any two or more offices may be held by the same person, except the offices of president and secretary. A committee duly designated may perform the functions of any officer and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary.

B. ~~[The articles of incorporation or the by-laws may provide that any one or more officers of the corporation shall be ex-officio members of the board of directors.]~~

~~[C.]~~ The officers of a corporation may be designated by such other or additional titles as may be provided in the articles of incorporation or the by-laws.

C. ~~[D.]~~ In the case of a corporation which is a church, it shall not be necessary that there be officers as provided herein, but such duties and responsibilities may be vested in the board of ~~directors~~ trustees or other designated body in any manner provided for in the articles of incorporation or the by-laws.

D. *In the discharge of a duty imposed or power conferred on an officer of a corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the corporation or another person, that were prepared or presented by:*

(1) *one or more other officers or employees of the corporation, including members of the board of directors;*

(2) *legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or*

(3) *in the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.*

E. *An officer is not relying in good faith as required by Section D of this article if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by Section D of this article unwarranted.*

SECTION 12. Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes), is amended to read as follows:

B. *A member of a corporation, on written demand stating the purpose of the demand, has the right to examine and copy, in person or by agent, accountant, or attorney, at any reasonable time, [All books and records of a corporation may be inspected by any member, or his agent or attorney,] for any proper purpose, the books and records of the corporation relevant to that purpose, at the expense of the member [at any reasonable time].*

SECTION 13. Section B, Article 2.23A, Texas Non-Profit Corporation Act (Article 1396-2.23A, Vernon's Texas Civil Statutes), is amended to read as follows:

B. Based on these records, the board of directors [~~or trustees~~] shall annually prepare or approve a report of the financial activity of the corporation for the preceding year. The report must conform to accounting standards as promulgated by the American Institute of Certified Public Accountants and must include a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses, and balance sheets for all funds.

SECTION 14. Article 2.26, Texas Non-Profit Corporation Act (Article 1396-2.26, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 2.26. ~~LIABILITY OF DIRECTORS IN CERTAIN CASES [AND OTHER PERSONS FOR WRONGFUL DISTRIBUTION OF ASSETS].~~ A. In addition to any other liabilities imposed by law upon directors of a corporation, the directors who vote for or assent to any distribution of assets other than in payment of its debts, when the corporation is insolvent or when such distribution would render the corporation insolvent, or during the liquidation of the corporation without the payment and discharge of or making adequate provisions for all known debts, obligations and liabilities of the corporation, shall be jointly and severally liable to the corporation for the value of such assets which are thus distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

B. A director of a corporation who is present at a meeting of its board of directors at which action was taken on such corporate matter shall be presumed to have assented to such action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of the action.

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

(1) *relied in good faith and with ordinary care on 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, 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 that 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 Article 6.03 of this Act, relied in good faith and with ordinary care on financial statements of, or other information concerning, a person who was or became contractually obligated to pay, satisfy, or discharge some or all of those liabilities or obligations [the exercise of ordinary care, he relied and acted in good faith upon written financial statements of the corporation represented to him to be correct by the president or by the officer of such corporation having charge of its books of account, or certified by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if, in the exercise of ordinary care and good faith, in*

~~determining the amount available for such distribution, he considered the assets to be of their book value].~~

D. A director shall not be liable under this Article if, in the exercise of ordinary care, he acted in good faith and in reliance upon the written opinion of an attorney for the corporation.

E. A director against whom a claim shall be asserted under this Article and who shall be held liable thereon shall be entitled to contribution from persons who accepted or received such distribution knowing such distribution to have been made in violation of this Article, in proportion to the amounts received by them respectively.

SECTION 15. Sections A and C, Article 2.27, Texas Non-Profit Corporation Act (Article 1396–2.27, Vernon's Texas Civil Statutes), are amended to read as follows:

A. Notwithstanding any provision in this Act or in the articles of incorporation to the contrary (except as provided in Section B), the articles of incorporation of each corporation which is a private foundation described in Section 509 of the Internal Revenue Code of 1986 [1954] shall be deemed to contain the following provisions: "The corporation shall make distributions at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1986 [1954]; the corporation shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code; the corporation shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code; the corporation shall not make any investments which would subject it to tax under Section 4944 of the Code; and the corporation shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code." With respect to any such corporation organized prior to January 1, 1970, this Section A shall apply only for its taxable years beginning on or after January 1, 1972.

C. All references in this Article to "the Code" are to the Internal Revenue Code of 1986 [1954], and all references in this Article to specific sections of the Code include corresponding provisions of any subsequent Federal tax laws.

SECTION 16. The Texas Non-Profit Corporation Act (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Articles 2.28, 2.29, and 2.30 to read as follows:

Art. 2.28. *GENERAL STANDARDS FOR DIRECTORS.* A. A director shall discharge the director's duties, including the director's duties as a member of a committee, in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation.

B. In the discharge of any duty imposed or power conferred on a director, including as a member of a committee, the director may in good faith rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the corporation or another person that were prepared or presented by:

- (1) one or more officers or employees of the corporation;
- (2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence;
- (3) a committee of the board of directors of which the director is not a member; or
- (4) in the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

C. A director is not relying in good faith, within the meaning of this article, if the director has knowledge concerning a matter in question that makes reliance otherwise permitted by this article unwarranted.

D. A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this article. A person seeking to establish liability of a director must prove that the director has not acted:

- (1) in good faith;
- (2) with ordinary care; and



(3) in a manner the director reasonably believes to be in the best interest of the corporation.

E. A director is not deemed to have the duties of a trustee of a trust with respect to the corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

Art. 2.29. **DELEGATION OF INVESTMENT AUTHORITY.** A. The board of directors of a corporation may:

(1) from time to time contract with investment counsel, trust companies, banks, investment advisors, or investment managers; and

(2) confer on those advisors full power and authority to:

(a) purchase or otherwise acquire stocks, bonds, securities, and other investments on behalf of the corporation; and

(b) sell, transfer, or otherwise dispose of any of the corporation's assets and properties at a time and for a consideration that the advisor deems appropriate.

B. The board of directors also may:

(1) confer on an advisor described by Section A of this article other powers regarding the corporation's investments as the board of directors deems appropriate; and

(2) authorize the advisor to hold title to any of the corporation's assets and properties in its own name for the benefit of the corporation or in the name of a nominee for the benefit of the corporation.

C. The board of directors has no liability regarding any action taken or omitted by an advisor engaged under this article if the board of directors acted in good faith and with ordinary care in selecting the advisor. The board of directors may remove or replace the advisor, with or without cause, if they deem that action appropriate or necessary.

Art. 2.30. **INTERESTED DIRECTORS.** A. A contract or transaction between a corporation and one or more of its directors, officers, or members, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors, officers, or members are directors, officers, or members, or have a financial interest, is not void or voidable solely for that reason, solely because the director, officer, or member is present at or participates in the meeting of the board or committee of the board or of the members that authorizes the contract or transaction, or solely because the director's, officer's, or member's votes are counted for that purpose, if:

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

(2) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote on the contract or transaction, and the contract or transaction is specifically approved in good faith and with ordinary care by vote of the disinterested members; or

(3) the contract or transaction is fair to the corporation when it is authorized, approved, or ratified by the board of directors, a committee of the board, or the members.

B. Common or interested directors or members may be counted in determining the presence of a quorum at a meeting of the board of directors, of a committee, or of the members that authorizes the contract or transaction.

SECTION 17. Sections A and D, Article 3.02, Texas Non-Profit Corporation Act (Article 1396-3.02, Vernon's Texas Civil Statutes), are amended to read as follows:

A. The articles of incorporation shall set forth:

(1) The name of the corporation.

(2) A statement that the corporation is a non-profit corporation.

(3) The period of duration, which may be perpetual.

(4) The purpose or purposes for which the corporation is organized.

(5) If the corporation is to have no members, a statement to that effect.

(6) If ~~[the corporation is a church and the]~~ management of *the* [its] affairs of the corporation is to be vested in its members ~~[pursuant to Article 2.14C of this Act]~~, a statement to that effect.

(7) Any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation.

(8) The street address of its initial registered office and the name of its initial registered agent at such street address.

(9) The number of directors ~~[or trustees]~~ constituting the initial board of directors ~~[or trustees]~~, and the names and addresses of the persons who are to serve as the initial directors *unless the management of the corporation is vested in its members, in which event a statement to that effect shall be set forth* ~~[or trustees. A church vesting management of its affairs in its members pursuant to Article 2.14C of this Act may, in lieu of providing for a board of directors or trustees, set forth in the articles of incorporation the officers or other body designated pursuant to Article 2.20D of this Act].~~

(10) The name and street *or post office* address of each incorporator.

(11) *If the corporation is to be authorized on its dissolution to distribute its assets in a manner other than as provided by Article 6.02(3) of this Act, a statement describing the manner of distribution of the corporation's assets.*

D. Unless the articles of incorporation provide that a change in the number of directors ~~[or trustees]~~ shall be made only by amendment to the articles of incorporation, a change in the number of directors ~~[or trustees]~~ made by amendment to the by-laws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a by-law, the provision of the articles of incorporation shall be controlling.

SECTION 18. Sections A and C, Article 3.05, Texas Non-Profit Corporation Act (Article 1396-3.05, Vernon's Texas Civil Statutes), are amended to read as follows:

A. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of ~~[a majority of]~~ the incorporators *or the call of a majority of the directors named in the articles of incorporation*, for the purpose of adopting by-laws, electing officers, and for such other purposes as may come before the meeting. The incorporators *or directors* calling the meeting shall give at least three (3) days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

C. If the management of a corporation ~~[church]~~ is vested in its members ~~[pursuant to Article 2.14C of this Act]~~, the organization meeting shall be held by the members upon the call of *any* ~~[a majority]~~ of the incorporators. The incorporators calling the meeting shall (a) give at least three (3) days' notice by mail to each member stating the time and place of the meeting, or shall (b) make an oral announcement of the time and place of meeting at a regularly scheduled worship service prior to such meeting *if the corporation is a church*, or shall (c) give such notice of the meeting as may be provided for in the articles of incorporation.

SECTION 19. Section A, Article 4.02, Texas Non-Profit Corporation Act (Article 1396-4.02, Vernon's Texas Civil Statutes), is amended to read as follows:

A. Amendments to the articles of incorporation may be made in the following manner:

(1) *Except as provided in Section A(4) of this article, where* ~~[Where]~~ there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be

effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event the proposed amendment shall not be adopted unless it also receives at least two-thirds of the votes which the members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where there are no members, [or] no members having voting rights, or in the case of an amendment under Section A(4) of this article, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in the members pursuant to Article 2.14C of this Act, the proposed amendment shall be submitted to a vote at a meeting of members which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to the members within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes of members present at such meeting.

(4) Unless the articles of incorporation provide otherwise, the board of directors of a corporation with members having voting rights may adopt one or more of the following amendments to the articles of incorporation without member approval:

(a) extend the duration of the corporation if it was incorporated when limited duration was required by law;

(b) delete the names and addresses of the initial directors;

(c) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State; or

(d) change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," "ltd.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution to the name.

SECTION 20. Section A, Article 4.06, Texas Non-Profit Corporation Act (Article 1396-4.06, Vernon's Texas Civil Statutes), is amended to read as follows:

A. A corporation may, by following the procedure to amend the articles of incorporation provided by this Act, authorize, execute and file restated articles of incorporation, *except that member approval, if the corporation has members with voting rights, is not required if no amendments are made.* The restated articles of incorporation [which] may restate either:

(1) The entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the Secretary of State; or

(2) The entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the Secretary of State, and as further amended by such restated articles of incorporation.

SECTION 21. Article 5.05, Texas Non-Profit Corporation Act (Article 1396-5.05, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 5.05. EFFECTIVE DATE OF MERGER OR CONSOLIDATION OF DOMESTIC CORPORATIONS. A. *Except as provided by Article 10.07 of this Act, on [Upon] the issuance of the certificate of merger or the certificate of consolidation by the Secretary of State, the merger or consolidation of domestic corporations shall be effected.*

SECTION 22. Article 5.08, Texas Non-Profit Corporation Act (Article 1396-5.08, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 5.08. CONVEYANCE BY CORPORATION. A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by an officer [~~the president or vice-president~~] or attorney in fact of the corporation when authorized by appropriate

resolution of the board of directors or members. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by *an officer* [~~the president or any vice-president~~] of the corporation, shall constitute prima facie evidence that such resolution of the board of directors or members was duly adopted.

SECTION 23. Article 6.02, Texas Non-Profit Corporation Act (Article 1396-6.02, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6.02. APPLICATION AND DISTRIBUTION OF ASSETS. A. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the corporation shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations.

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

(3) Unless provided otherwise by a provision of the corporation's articles of incorporation [~~that refers to this subsection~~], the remaining assets of the corporation shall be distributed only for tax exempt purposes to one or more organizations which are exempt under Section 501(c)(3), Internal Revenue Code of 1986 [1954] (26 U.S.C. Section 501(c)(3)), or its successor statute, or which are described in Section 170(c)(1) or (2), Internal Revenue Code of 1986 [1954] (26 U.S.C. Section 170(c)(1) or (2)), or its successor statute, pursuant to a plan of distribution adopted as provided in this Act. A district court of the county in which the corporation's principal office is located shall distribute to one or more organizations exempt under Section 501(c)(3) or described in Section 170(c)(1) or (2), or their successor statutes, the remaining assets of the corporation not distributed under the plan of distribution. Any distribution by the court shall be made in such manner as, in the judgment of the court, will best accomplish the general purposes for which the corporation was organized.

SECTION 24. Article 7.09, Texas Non-Profit Corporation Act (Article 1396-7.09, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 7.09. DECREE OF INVOLUNTARY DISSOLUTION. A. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged, *or adequate provision has been made for the discharge*, and all of its remaining property and assets distributed in accordance with the provisions of this Act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, when all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the [~~existence of the~~] corporation shall cease to exist.

SECTION 25. Section B, Article 7.11, Texas Non-Profit Corporation Act (Article 1396-7.11, Vernon's Texas Civil Statutes), is amended to read as follows:

B. On receipt of satisfactory written [~~and verified~~] proof of ownership or of right to such fund within seven (7) years from the date such fund was so deposited, the State Treasurer shall certify such fact to the Comptroller of Public Accounts, who shall issue proper warrant therefor drawn on the State Treasurer in favor of the person or persons then entitled thereto. If no claimant has made satisfactory proof of rights to such fund within seven (7) years from the time of such deposit the State Treasurer shall then cause to be published in one issue of a newspaper of general circulation in Travis County, Texas, a notice of the proposed escheat of such fund, giving the name of the creditor, *member, or other person* [~~or shareholder~~] apparently entitled thereto, his last known address, if any, the amount of the fund so deposited, and the name of the dissolved corporation from whose assets such fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the General Revenue Fund of the State of Texas.

SECTION 26. Article 7.12, Texas Non-Profit Corporation Act (Article 1396-7.12, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 7.12. LIMITED SURVIVAL AFTER DISSOLUTION. A. A *dissolved* corporation [~~dissolved (1) by the issuance of a certificate of dissolution or other action by the Secretary of State, (2) by a decree of a court when the court has not liquidated all the assets and business of the corporation as provided in this Act, or (3) by expiration of its period of duration,~~] shall continue its corporate existence for a period of three (3) years from the date of dissolution, for the following purposes:

- (1) prosecuting or defending in its corporate name any action or proceeding by or against the corporation;
- (2) permitting the survival of any remedy not otherwise barred by limitations available to or against the corporation, its officers, directors, members, or creditors, for any right or claim existing, or any liability incurred, before the dissolution;
- (3) holding title to and liquidating any assets or property that remain in the corporation at the time of, or are collected by the corporation after, its dissolution, and applying or distributing those assets or properties, or the proceeds thereof, as provided in Subsection (3) of Section A of Article 6.04 of this Act; and
- (4) settling any other affairs not completed before its dissolution.

However, such a *dissolved* corporation may not continue its corporate existence for the purpose of continuing the business or affairs for which the *dissolved* corporation was organized, except in the case of a corporation whose period of duration has expired and that has chosen to revive its existence as provided in this Act or a corporation that has been dissolved by the Secretary of State pursuant to Section B of Article 7.01 of this Act and that has been reinstated pursuant to Section E of Article 7.01 of this Act.

B. During the three-year period, the members of the board of directors of a *dissolved corporation* [~~or trustees~~] serving at the time of dissolution or the majority of them then living, however reduced in number, or their successors selected by them, shall continue to manage the affairs of the *dissolved* corporation for the limited purpose or purposes specified in this Article, and shall have the powers necessary to accomplish those purposes, including the power to prosecute, pay, compromise, defend, and satisfy any action, claim, demand, or judgment by or against the *dissolved* corporation, and to administer, sell, and distribute in final liquidation any property or assets still remaining. In the exercise of those powers, the directors shall have the same duties to the *dissolved* corporation that they had immediately prior to the dissolution of the corporation and shall be liable to the *dissolved* corporation for actions taken by them after the dissolution to the same extent that they would have been liable had those actions been taken by them prior to the dissolution. Additional directors [~~or trustees~~] may be elected for purposes of this section in accordance with the procedures provided in the bylaws in effect before the dissolution.

C. *A corporation is not liable for any claim other than an existing claim. An existing claim by or against a dissolved corporation is extinguished unless an action or proceeding on the existing claim is brought before the third anniversary of the date of dissolution. If an action or proceeding on an existing claim by or against a dissolved corporation is brought within the period provided by this section and the existing claim is not extinguished under this article, the dissolved corporation continues to survive:*

(1) *for purposes of that action or proceeding until all judgments, orders, and decrees in that action or proceeding have been fully executed; and*

(2) *for purposes of applying or distributing any properties or assets of the dissolved corporation as provided in Article 6.02 of this Act, until the properties or assets are applied or distributed [If after the expiration of the three-year period there still remains unresolved any action or proceeding not otherwise barred by limitations begun by or against the corporation before its dissolution or within three (3) years after the date of its dissolution, the corporation shall continue to survive only for the purpose of that action or proceeding, until any judgment, order, or decree in the action or proceeding is fully executed. If at the expiration of the three-year period no action or proceeding on any remedy available to or against the corporation, its officers, directors, members, or creditors,*

~~for any right or claim existing, or any liability incurred, before the dissolution shall have been brought, then that remedy shall abate].~~

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

(1) state that the person's 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 the person;

(2) state that the written presentation of the claim must describe the claim in sufficient detail to reasonably inform the dissolved corporation of the identity of the person and to 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 state that if the written presentation of the claim is not received at that address on or before the date stated in the notice, the claim will be extinguished; and

(4) be accompanied by a copy of this section.

E. If a written presentation of a person's claim against the dissolved corporation that meets the requirements of Section D of this article has been 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 give written notice to that person that the claim is rejected by the dissolved corporation. The notice of rejection must be sent by registered or certified mail, return receipt requested, addressed to the person at the person's last known address, and must state:

(1) that the claim is rejected by the dissolved corporation;

(2) that the claim will be extinguished unless an action or proceeding on the claim is brought within 180 days after the date the notice of rejection was sent to the person and before the third anniversary of the date of dissolution; and

(3) the date the notice of rejection was sent and the date of dissolution.

F. A person's claim against a dissolved corporation is extinguished if:

(1) a written presentation of that claim meeting the requirements of this article is not received at the address of the dissolved corporation stated in the notice to the person on or before the date stated in the notice; or

(2) an action or proceeding on the claim is not brought within 180 days after the date a notice of rejection was sent to the person and before the third anniversary of the date of dissolution.

G. A dissolved corporation that was dissolved by the expiration of the period of its duration may, during the three-year period following the date of dissolution, amend its articles of incorporation by following the procedure prescribed in this Act to extend or perpetuate its period of existence. That expiration shall not of itself create any vested right on the part of any member or creditor to prevent such an action. No act or contract of a dissolved corporation during a period within which it could have extended its existence as permitted by this Article, whether or not it has taken action so to extend its existence, shall be in any degree invalidated by the expiration of its period of duration.

H. In this article:

(1) "Dissolved corporation" means a corporation that was dissolved:

(a) by the issuance of a certificate of dissolution or other action by the Secretary of State;

(b) by a decree of a court when the court has not liquidated all the assets and affairs of the corporation as provided in this Act; or

(c) by expiration of its period of duration if the corporation has not revived its existence as provided in this Act.

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

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

SECTION 27. Section B, Article 8.01, Texas Non-Profit Corporation Act (Article 1396-8.01, Vernon's Texas Civil Statutes), is amended to read as follows:

B. Without excluding other activities which may not constitute conducting affairs in this State, a foreign corporation shall not be considered to be conducting affairs in this State, for the purposes of this Act, by reason of carrying on in this State any one (1) or more of the following activities:

(1) Maintaining or defending any action or suit or any administration or arbitration proceedings, or affecting the settlement thereof or the settlement of claims or disputes to which it is a party.

(2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) *Maintaining offices or agencies for the transfer, exchange, and registration of securities issued by it, or appointing and maintaining trustees or depositaries with relation to its securities.*

(5) Voting the stock of any corporation which it has lawfully acquired.

(6) [(5)] Effecting sales through independent contractors.

(7) *Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property* [(6) ~~Creating evidence of debt, mortgages, or liens on real or personal property~~].

(8) [(7)] Securing or collecting debts due to it or enforcing any rights in property securing the same.

(9) [(8)] Conducting any affairs in interstate commerce.

(10) [(9)] Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature.

(11) [(10)] Exercising the powers of executor or administrator of the estate of a non-resident decedent under ancillary letters issued by a court of this State, or exercising the powers of a trustee under the will of a non-resident decedent, or under a trust created by a person, corporation or association, non-resident of this State, if the exercise of such powers in such case will not involve activities which would be deemed to constitute the transacting of business in this State in the case of a foreign corporation acting in its own right.

(12) [(11)] Acquiring, in transactions outside Texas, or in interstate commerce, of debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting of principal and interest payments thereon, enforcing or adjusting any rights and property securing said debts, taking any actions necessary to preserve and protect the interest of the mortgagee in said security, or any combinations of such transactions.

(13) [(12)] Investing in or acquiring, in transactions outside of Texas, royalties and other non-operating mineral interests, and the execution of division orders, contracts of sale and other instruments incidental to the ownership of such non-operating mineral interests.

SECTION 28. Section A, Article 8.04, Texas Non-Profit Corporation Act (Article 1396-8.04, Vernon's Texas Civil Statutes), is amended to read as follows:

A. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this State, shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated and, if the corporation is required to qualify under a name other than its corporate name, the name under which the corporation is to be qualified.

(2) A statement that the corporation is a non-profit corporation.

(3) The date of incorporation and the period of duration of the corporation.

(4) The *street* address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The *street* address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this State.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) *A statement of whether or not the corporation has members.*

(9) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this State.

SECTION 29. Article 8.06, Texas Non-Profit Corporation Act (Article 1396–8.06, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8.06. EFFECT OF CERTIFICATE OF AUTHORITY. A. Upon the issuance of a certificate of authority by the Secretary of State, the corporation shall be authorized to conduct affairs in this State for those purposes set forth in its application *and the certificate shall be conclusive evidence of the right of the corporation to conduct affairs in this State for that purpose, except as against this State in a proceeding to revoke the certificate*~~[, subject, however, to the right of this State to revoke such authority as provided in this Act].~~

SECTION 30. Section A, Article 8.08, Texas Non-Profit Corporation Act (Article 1396–8.08, Vernon's Texas Civil Statutes), is amended to read as follows:

A. A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The *street* ~~[post-office]~~ address of its then registered office.

(3) If the *street* ~~[post-office]~~ address of its registered office is to be changed, the *street* ~~[post-office]~~ address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent is to be changed, the name of its successor registered agent.

(6) That the *street* ~~[post-office]~~ address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical.

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors, or if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act, by the members.

SECTION 31. Article 8.12, Texas Non-Profit Corporation Act (Article 1396–8.12, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 8.12. AMENDED CERTIFICATE OF AUTHORITY. A. *If a foreign corporation authorized to conduct affairs in this State changes its corporate name or desires to pursue in this State purposes other than or in addition to the purposes authorized by its existing certificate of authority, the corporation shall file with the Secretary of State an application for amended certificate of authority setting forth the change* ~~[A foreign corporation authorized to conduct affairs in this State shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this State other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Secretary of State].~~

B. *A foreign corporation may change any other statement on its original application for certificate of authority or any amendment to that certificate by filing with the Secretary of State an application for an amended certificate of authority setting forth the change* ~~[Any other statement on the original application for a certificate of authority may be changed by filing an application for an amended certificate of authority setting forth the change].~~



C. An application for an amended certificate of authority submitted because of a name change must be accompanied by a certificate from the proper filing officer in the jurisdiction of incorporation evidencing the name change.

D. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the original and a copy of the application with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

SECTION 32. Section A, Article 8.13, Texas Non-Profit Corporation Act (Article 1396-8.13, Vernon's Texas Civil Statutes), is amended to read as follows:

A. A foreign corporation authorized to conduct affairs 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 conducting affairs in this State.

(3) That the corporation surrenders its authority to conduct affairs 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 conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State.

(5) A *street* or 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.

(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, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suits.

SECTION 33. Section B, Article 8.15, Texas Non-Profit Corporation Act (Article 1396-8.15, Vernon's Texas Civil Statutes), is amended to read as follows:

B. The certificate of authority of a foreign corporation to conduct affairs in this *State* [~~state~~] may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes, or penalties prescribed by law when the same have become due and payable; or

(2) The corporation has failed to maintain a registered agent in this *State* [~~state~~] as required by law; or

(3) The corporation has changed *its corporate name or the purposes authorized by its existing certificate of authority* [~~its corporate name~~] and has failed to file with the Secretary of State within thirty days after such change [~~of name~~] became effective, an application for an amended certificate of authority, or that the corporation has changed its corporate name and that the newly adopted name is not available for use in this *State* [~~state~~]; or

(4) The corporation has failed to pay the filing fee for the corporation's certificate of authority, or the fee was paid by an instrument that was dishonored when presented by *this State* [~~the state~~] for payment.

SECTION 34. Section A, Article 9.03, Texas Non-Profit Corporation Act (Article 1396-9.03, Vernon's Texas Civil Statutes), is amended to read as follows:

A. The Secretary of State shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, Twenty-five Dollars (\$25).

(2) Filing articles of amendment and issuing a certificate of amendment, Twenty-five Dollars (\$25).

(3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, Fifty Dollars (\$50).

(4) Filing a statement of change of address of registered office or change of registered agent, or both, Five Dollars (\$5).

(5) Filing articles of dissolution, Five Dollars (\$5).

(6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, Twenty-five Dollars (\$25).

(7) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, Twenty-five Dollars (\$25).

(8) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, Five Dollars (\$5).

(9) Filing any other statement or report of a domestic or foreign corporation, Five Dollars (\$5).

(10) Filing restatement of articles of incorporation, Fifty Dollars (\$50).

(11) *Filing a statement of change of address of registered agent, Fifteen Dollars (\$15), except that the maximum fee for simultaneous filings by a registered agent for more than one corporation may not exceed Two Hundred Fifty Dollars (\$250).*

SECTION 35. Article 9.10, Texas Non-Profit Corporation Act (Article 1396-9.10, Vernon's Texas Civil Statutes), is amended by adding Section C to read as follows:

C. (1) *The articles of incorporation may provide that any action required by this Act to be taken at a meeting of the members or directors of a corporation or any action that may be taken at a meeting of the members or directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of members, directors, or committee members as would be necessary to take that action at a meeting at which all of the members, directors, or members of the committee were present and voted.*

(2) *Each written consent shall bear the date of signature of each member, director, or committee member who signs the consent. A written consent signed by less than all of the members, directors, or committee members is not effective to take the action that is the subject of the consent unless, within 60 days after the date of the earliest dated consent delivered to the corporation in the manner required by this article, a consent or consents signed by the required number of members, directors, or committee members is delivered to the corporation at its registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of members, directors, or committees are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the corporation's principal place of business shall be addressed to the president or principal executive officer of the corporation.*

(3) *Prompt notice of the taking of any action by members, directors, or a committee without a meeting by less than unanimous written consent shall be given to all members, directors, or committee members who did not consent in writing to the action.*

(4) *If any action by members, directors, or a committee is taken by written consent signed by less than all of the members, directors, or committee members, any articles or documents filed with the Secretary of State as a result of the taking of the action shall state, in lieu of any statement required by this Act concerning any vote of the members or directors, that written consent has been given in accordance with the provisions of this article and that any written notice required by this article has been given.*

(5) *A telegram, telex, cablegram, or similar transmission by a member, director, or member of a committee or a photographic, photostatic, facsimile, or similar reproduction*

of a writing signed by a member, director, or member of a committee shall be regarded as signed by the member, director, or member of a committee for purposes of this article.

SECTION 36. Article 10.04, Texas Non-Profit Corporation Act (Article 1396-10.04, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 10.04. TO WHAT CORPORATIONS THIS ACT APPLIES; PROCEDURE FOR ADOPTION OF ACT BY EXISTING CORPORATION. A. *Except as otherwise provided by this article, this Act does not apply to domestic corporations organized under any statute other than this Act or to any foreign corporations granted authority to conduct affairs within this State under any statute other than this Act. If any domestic corporation is organized under or is governed by a statute that does not contain a provision regarding a matter provided for in this Act, or any foreign corporation is granted authority to conduct affairs within this State under a statute that does not contain a provision regarding a matter provided for in this Act in respect of foreign corporations, or if a statute specifically provides that the general laws for incorporation or for the granting of a certificate of authority to conduct affairs in this State supplement the provisions of that statute, the provisions of this Act apply only to the extent not inconsistent with the provisions of the other statute.* [Until September 1, 1961, this Act shall not apply to any domestic corporation duly chartered and existing on the effective date of this Act, or to any foreign corporation, unless such domestic corporation shall voluntarily elect to adopt the provisions of this Act and shall comply with the procedure prescribed by Section B of this Article, and unless such foreign corporation shall procure a certificate of authority pursuant to Part Eight of this Act.

[B. ~~From and after the effective date of this Act and prior to September 1, 1961, any domestic corporation duly chartered and existing on the effective date of this Act may voluntarily elect to adopt the provisions of this Act and may become subject to its provisions by taking the following steps:~~

~~(1) A resolution reciting that the corporation voluntarily adopts this Act shall be adopted by the board of directors and/or the members in accordance with the procedure prescribed by this Act for the amendment of articles of incorporation of such corporation.~~

~~(2) Upon adoption of the required resolution or resolutions, an instrument shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which shall set forth:~~

~~(a) The name of the corporation.~~

~~(b) Each resolution adopted by the corporation.~~

~~(c) The date of the adoption of each resolution.~~

~~(d) The street address of its initial registered office and the name of its initial registered agent at such address.~~

~~(3) Duplicate originals of such document shall be delivered to the Secretary of State. If the Secretary of State finds that such document conforms to law, he shall, when all fees and franchise taxes have been paid as prescribed by law:~~

~~(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.~~

~~(b) File one of such duplicate originals in his office.~~

~~(c) Deliver the other duplicate original to the corporation or its representative.~~

~~(4) Upon the filing of such document, all provisions of this Act shall thereafter apply to the corporation; provided, however, that such delivery to and filing by the Secretary of State need not precede action by the directors and/or the members of a corporation in connection with amendments to its articles of incorporation or its by-laws under this Act so long as (a) such amendments do not become effective until after the Secretary of State has filed the document whereby such corporation adopts this Act and (b) the procedures and requirements of this Act for the adoption of such amendments, including requirements as to notice, shall have been complied with and satisfied.~~

[C. ~~Except for the exceptions and limitations of Section A of this Article, this Act shall apply to all domestic corporations organized after the date on which this Act becomes~~

effective and to all domestic corporations electing to adopt this Act and manifesting their election in the manner provided in Section B of this Article, prior to September 1, 1961.

[D. From and after September 1, 1961, this Act shall apply to all domestic corporations and to all foreign corporations conducting or seeking to conduct affairs within this State. Those domestic corporations existing at the time that this Act becomes effective which have not meanwhile adopted this Act by complying with Section B of this Article shall, on September 1, 1961, be deemed to have elected to adopt this Act by not voluntarily dissolving.

[E. No foreign corporation shall conduct affairs in this State after September 1, 1961, unless and until it shall have procured a certificate of authority in accordance with the requirements of Part Eight of this Act. Such certificates may be applied for and issued at any time after the effective date of this Act and this Act shall thereafter apply to such corporation from the date of the issuance of its certificate of authority; provided, however, that if such corporation expressly so requests in its application, the effective date of its certificate may be delayed until September 1, 1961, even though issued prior to such date.]

B. [F.] In so far as the same are not inconsistent with or contrary to any applicable provision of the Insurance Code of Texas, or any amendment thereto, the provisions of this Act shall apply to and govern burial associations as defined in Article 14.37, Texas Insurance Code local mutual aid associations, statewide mutual assessment corporations, and county mutual insurance companies; provided however, (a) that any such mutual insurance associations or companies may, upon advance approval of the Commissioner of Insurance, pay dividends to its members, and (b) that wherever in this Act some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the Secretary of State, such is to be vested in, required of, or performed by the Commissioner of Insurance in so far as such mutual insurance companies or associations are concerned.

C. [G.] This Act shall not apply to those corporations excepted under Article 2.01 B, Subsections (3), (4), and (5) of this Act; provided however, that if any of said excepted domestic corporations were heretofore or are hereafter organized not for profit under special statutes which contain no provisions in regard to some of the matters provided for in this Act, or if such special statutes specifically applicable provide that the general laws for incorporation shall supplement the provisions of such statutes, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such special statutes.

SECTION 37. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 10.07 to read as follows:

Art. 10.07. *DELAYED EFFECTIVENESS OF CERTAIN FILINGS.* A. *In this article the following are permitted acts:*

- (1) *the incorporation of a corporation under this Act;*
- (2) *an amendment to a corporation's articles of incorporation;*
- (3) *the restatement of articles of incorporation of a corporation;*
- (4) *a voluntary dissolution;*
- (5) *the authorization or withdrawal of a foreign corporation to conduct affairs in this State;*
- (6) *an amendment to the certificate of authority of a foreign corporation;*
- (7) *a change in registered office or registered agent;*
- (8) *a change of address of a registered agent; or*
- (9) *a merger or consolidation of domestic corporations or of domestic and foreign corporations.*

B. *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 or entity, if:*

- (1) *the articles, statement, application, or other filing that is required by this Act to be filed with the Secretary of State to make the permitted act effective clearly and expressly sets forth, in addition to any other statement or information required to be set forth:*
  - (a) *the time and date 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, the manner in which the events or facts will operate to cause the permitted act to become effective;

(2) in the case of a permitted act that is to become effective on the mere passage of time as of a time or date after the time and date otherwise provided in this Act, the subsequent time and date must not be 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 the permitted act; and

(3) in the case of a permitted act that is to be made effective on the occurrence of events or facts that may occur in the future, other than the mere passage of time, a statement 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 must be 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 the permitted act to become effective.

C. The statement required by Section A(3) of this article shall be executed on behalf of each domestic or foreign corporation or other entity that was required to execute 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 the permitted act by an officer or other duly authorized representative, including an officer or duly authorized representative of any successor domestic or foreign corporation or other entity, and an original and copy shall be filed with the Secretary of State. If the Secretary of State finds that the statement conforms to the provisions of this Act, the Secretary of State shall:

(1) endorse on the original and the copy the word "Filed" and the month, day, and year of the filing;

(2) file the original in the Secretary of State's office; and

(3) return the copy to the filing party or its representative.

D. If any permitted act is to become effective as of a time or date after the time and date otherwise provided in this Act, for the permitted act to become effective, notwithstanding any other provision of this Act to the contrary, the permitted act shall become, to the extent permitted by Section A of this article, effective as of the subsequent time and date, and any certificate issued by the Secretary of State on the filing of the articles, statement, application, or other filing that is otherwise required by this Act for the permitted act to become effective shall expressly state the time and date on which the permitted act is to become effective.

E. If a permitted act is 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 the statement required by Section A(3) of this article is filed with the Secretary of State within the time prescribed, the permitted act becomes effective as of the time and date on which the latest specified event or fact occurs or the time and date on which the condition is otherwise satisfied or waived. Any certificate issued or notation, acknowledgement, or other statement made by the Secretary of State on the filing of the articles, statement, application, or other filing that is otherwise required by this Act for the permitted act to become effective shall 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 shall make reference in a manner the Secretary of State approves, to the fact that the effectiveness of the action is conditioned. 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 Section A(3) of this article shall be conclusively regarded as the time and date on which the condition was satisfied or waived for purposes of this article.

F. 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 Section A(3) of this article is not filed with the Secretary of State within the time prescribed, the permitted act is not effective unless there is subsequently filed with the Secretary of State the articles, statement, application, or other filing required by this Act to be filed with the Secretary of State to make the permitted act effective.

SECTION 38. This Act takes effect January 1, 1994.

**SECTION 39.** 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 May 8, 1993, by a non-record vote; passed by the Senate on May 24, 1993: Yeas 31, Nays 0.

Approved June 16, 1993.

Effective Jan. 1, 1994.