

CHAPTER 93

H.B. No. 418

AN ACT

relating to the incorporation, organization, operation, reorganization, and dissolution of certain corporations; providing a criminal penalty.

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

SECTION 1. Subsections (9)–(21), Section A, Article 1.02, Texas Business Corporation Act, are amended to read as follows:

(9) "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 cancelled *and* [~~or~~] 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."*

(10) "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation.

(11) "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,<sup>[,]</sup>

(b) the consideration fixed by the corporation in the manner provided by *Article 2.15 of this Act* ~~[law]~~ 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* ~~[as may have been]~~ *may have* allocated to ~~[capital]~~ surplus; ~~[in a manner permitted by law,]~~ 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* ~~[issue of shares as]~~ 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* ~~[otherwise]~~, minus all reductions from such sum as have been effected in a manner permitted by law.

(12) "Surplus" means the excess of the net assets of a corporation over its stated capital.

~~(13) ["Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.]~~

~~[(14) "Reduction surplus" means the surplus, if any, created by or arising out of a reduction of stated capital by any of the methods authorized by this Act.]~~

~~[(15) "Capital surplus" means the entire surplus of a corporation other than its earned surplus and its reduction surplus.]~~

~~[(16)] "Insolvency" means inability of a corporation to pay its debts as they become due in the usual course of its business.~~

(14) ~~[(17)]~~ "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* ~~[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."

~~[(18) "Verified" means subscribed and sworn to under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.]~~

(15) ~~[(19)]~~ "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."

(16) ~~[(20)]~~ "Certificated shares" means shares represented by instruments in bearer or registered form.

(17) [(21)] "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.

(18) "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 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.

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

SECTION 2. Sections A and C, Article 2.02, Texas Business Corporation Act, are 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 ~~When permitted by the other provisions of this Act, to~~ purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations, ~~and,~~ 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;* ~~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 [~~as, and to the extent, permitted by Article 2.02-1 of this Act~~].

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

C. Nothing contained in this Article shall be deemed to authorize any action in violation of the Anti-Trust Laws of this State [~~or of any of the provisions of Part Four of the Texas Miscellaneous Corporation Laws Act~~], as now existing or hereafter amended.

SECTION 3. Sections C, D, E, K, L, and R, Article 2.02-1, Texas Business Corporation Act, are amended to read as follows:

C. *Except to the extent permitted by Section E of this article, a [A] director may not be indemnified under Section B of this article in respect of [~~for obligations resulting from~~] a proceeding:*

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

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

D. The termination of a proceeding by judgment, order, settlement, or conviction, or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in Section B of this article. *A person shall be deemed to have been found liable in respect of any claim, issue or matter only after the person shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom.*

E. A person may be indemnified under Section B of this article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding; but if the person is found liable to the corporation or is found liable on the basis that personal benefit was improperly received by the person [~~proceeding was brought by or in behalf of the corporation~~], the indemnification (1) is limited to reasonable expenses actually incurred by the person in connection with the proceeding and (2) shall not be made in respect of any proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of his duty to the corporation.

K. Reasonable expenses incurred by a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding may be paid or reimbursed by the corporation, in advance of the final disposition of the proceeding and without any of the determinations specified in Sections F and G of this article, after[~~—(1)~~] the corpora-

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

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

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

R. A corporation may purchase and maintain insurance *or another arrangement* on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against that liability under this article. *If the insurance or other arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the insurance or arrangement may provide for payment of a liability with respect to which the corporation would not have the power to indemnify the person only if including coverage for the additional liability has been approved by the shareholders of the corporation. Without limiting the power of the corporation to procure or maintain any kind of insurance or other arrangement, a corporation may, for the benefit of persons indemnified by the corporation, (1) create a trust fund; (2) establish any form of self-insurance; (3) secure its indemnity obligation by grant of a security interest or other lien on the assets of the corporation; or (4) establish a letter of credit, guaranty, or surety arrangement. The insurance or other arrangement may be procured, maintained, or established within the corporation or with any insurer or other person deemed appropriate by the board of directors regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the corporation. In the absence of fraud, the judgment of the board of directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement shall be conclusive and the insurance or arrangement shall not be voidable and shall not subject the directors approving the insurance or arrangement to liability, on any ground, regardless of whether directors participating in the approval are beneficiaries of the insurance or arrangement.*

SECTION 4. Section B, Article 2.10-1, Texas Business Corporation Act, is amended to read as follows:

B. The statement required by this article shall be signed ~~[and verified]~~ by the registered agent, or, if said agent is a corporation, by *an officer* ~~[the president or vice president]~~ of such corporate agent *on its behalf*. If the registered agent is simultaneously filing statements as to more than one corporation, each such 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 such statement conforms to the provisions of this Act, he shall:

- (1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Return the copy to such registered agent.

SECTION 5. Section B, Article 2.12, Texas Business Corporation Act, is amended to read as follows:

B. Without being limited to the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(1) Subject to the right of the corporation to redeem *all or part of those* ~~[any] shares [having a liquidation preference at the price fixed by the articles of incorporation for the redemption thereof].~~

(2) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends.

(3) Having preference over any other class or classes of shares as to the payment of dividends.

(4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(5) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which shares without par value are to be converted or the amount of any such deficiency is transferred from surplus to stated capital.

SECTION 6. Section A, Article 2.13, Texas Business Corporation Act, is amended to read as follows:

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

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

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

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

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

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

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

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

(8) Voting rights.

(9) Repurchase obligations of the corporation with respect to the shares of each series, subject, however, to the limitations of Article 2.38 ~~[2.03]~~ of this Act.

SECTION 7. Section A, Article 2.19, Texas Business Corporation Act, is amended to read as follows:

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

SECTION 8. Article 2.22, Texas Business Corporation Act, is amended by adding Section G to read as follows:

*G. When shares are registered on the books of a corporation in the names of two or more persons as joint owners with the right of survivorship, after the death of a joint owner and before the time that the corporation receives actual written notice that parties other than the surviving joint owner or owners claim an interest in the shares or any distributions thereon, the corporation may record on its books and otherwise effect the transfer of those shares to any person, firm, or corporation (including that surviving joint owner individually) and pay any distributions made in respect of those shares, in each case as if the surviving joint owner or owners were the absolute owners of the shares. A corporation permitting such a transfer by and making any distribution to such a surviving joint owner or owners before the receipt of written notice from other parties claiming an interest in those shares or distributions is discharged from all liability for the transfer or payment so made; provided, however, that the discharge of the corporation from liability and the transfer of full legal and equitable title of the shares in no way affects, reduces, or limits any cause of action existing in favor of any owner of an interest in those shares or distributions against the surviving owner or owners.*

SECTION 9. Article 2.23, Texas Business Corporation Act, is amended to read as follows:

Art. 2.23. BYLAWS. A. The initial bylaws of a corporation shall be adopted by its board of directors. ~~[The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation.]~~ The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

*B. A corporation's board of directors may amend or repeal the corporation's bylaws, or adopt new bylaws, unless:*

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

*(2) the shareholders in amending, repealing, or adopting a particular bylaw expressly provide that the board of directors may not amend or repeal that bylaw.*

*C. Unless the articles of incorporation or a bylaw adopted by the shareholders provides otherwise as to all or some portion of a corporation's bylaws, a corporation's shareholders may amend, repeal, or adopt the corporation's bylaws even though the bylaws may also be amended, repealed, or adopted by its board of directors.*

SECTION 10. Section C, Article 2.24, Texas Business Corporation Act, is amended to read as follows:

C. Special meetings of the shareholders may be called (1) by the president, the board of directors, [~~the holders of not less than one-tenth of all the shares entitled to vote at the meetings,~~] or such other person or persons as may be authorized in the articles of incorporation or the bylaws or (2) by the holders of at least ten (10) percent of all the shares entitled to vote at the proposed special meeting, unless the articles of incorporation provide for a number of shares greater than or less than ten (10) percent, in which event special meetings of the shareholders may be called by the holders of at least the percentage of shares so specified in the articles of incorporation, but in no event shall the articles of incorporation provide for a number of shares greater than fifty (50) percent. If not otherwise stated in or fixed in accordance with the bylaws of the corporation, the record date for determining shareholders entitled to call a special meeting is the date the first shareholder signs the notice of that meeting. Only business within the purpose or purposes described in the notice required by Article 2.25 of this Act may be conducted at a special meeting of the shareholders.

SECTION 11. Article 2.25, Texas Business Corporation Act, is amended to read as follows:

Art. 2.25. NOTICE OF SHAREHOLDERS' MEETINGS. A. Written or printed notice stating the place, day and 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 or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record 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 shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

B. Any notice required to be given to any shareholder, under any provision of this Act or the articles of incorporation or bylaws of any corporation, need not be given to the shareholder if (1) notice of two consecutive annual meetings and all notices of meetings held during the period between those annual meetings, if any, or (2) all (but in no event less than two) payments (if sent by first class mail) of distributions or interest on securities during a 12-month period have been mailed to that person, addressed at his address as shown on the records of the corporation, and have been returned undeliverable. Any action or meeting taken or held without notice to such a person shall have the same force and effect as if the notice had been duly given and, if the action taken by the corporation is reflected in any articles or document filed with the Secretary of State, those articles or that document may state that notice was duly given to all persons to whom notice was required to be given. If such a person delivers to the corporation a written notice setting forth his then current address, the requirement that notice be given to that person shall be reinstated.

SECTION 12. Article 2.26, Texas Business Corporation Act, is amended to read as follows:

Art. 2.26. CLOSING OF TRANSFER BOOKS AND [~~FIXING~~] RECORD DATE. A. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive a distribution by a corporation (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend [~~payment of any dividend~~], or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, sixty (60) [~~fifty (50)~~] days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty (60) [~~fifty (50)~~] days and, in the case of a meeting of shareholders, not less than ten (10) days, prior to the date on which the particular action[,] requiring such determination of shareholders is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of



shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive a *distribution (other than a distribution involving a purchase or redemption by the corporation of any of its own shares) or a share dividend* [~~payment of a dividend~~], the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such *distribution or share dividend* is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this Article, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of stock transfer books and the stated period of closing has expired.

*B. Distributions of cash or property (tangible or intangible) made or payable by any corporation, whether in liquidation or from earnings, profits, assets, or capital, including all distributions that were payable but not paid to the registered owner of the shares, his heirs, successors, or assigns but that are now being held in suspense by the corporation or that were paid or delivered by it into an escrow account or to a trustee or custodian, shall be payable by the corporation, escrow agent, trustee, or custodian to the person registered as owner of the shares in the corporation's stock transfer books as of the record date determined for that distribution as provided in Section A of this Article, his heirs, successors, or assigns. The person in whose name the shares are or were registered in the stock transfer books of the corporation as of the record date shall be deemed to be the owner of the shares registered in his name at that time. No corporation nor any of its officers, directors, or agents shall be under any liability for making such a distribution to a person in whose name shares were registered in the stock transfer books as of the record date or to the heirs, successors, or assigns of the person, even though the person, or his heirs, successors, or assigns, may not possess a certificate for shares.*

SECTION 13. Section C, Article 2.29, Texas Business Corporation Act, is amended to read as follows:

*C. A shareholder may vote either in person or by proxy executed in writing by the shareholder 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. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest. Proxies coupled with an interest include the appointment as proxy of:*

- (1) a pledgee;*
- (2) a person who purchased or agreed to purchase, or owns or holds an option to purchase, the shares;*
- (3) a creditor of the corporation who extended it credit under terms requiring the appointment;*
- (4) an employee of the corporation whose employment contract requires the appointment; or*
- (5) a party to a voting agreement created under Section B, Article 2.30, of this Act [~~expressly provided therein to be irrevocable and unless otherwise made irrevocable by law~~].*

SECTION 14. Article 2.30, Texas Business Corporation Act, is amended to read as follows:

**Art. 2.30. VOTING TRUSTS AND VOTING AGREEMENTS.** A. Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares [~~for a period of not to exceed ten (10) years,~~] by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to

examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

B. Any number of shareholders may enter into a voting agreement in writing for the purpose of voting their shares as a unit, in the manner prescribed in the agreement, on any matter submitted to a vote at a meeting of the shareholders [~~for a period not exceeding ten (10) years from the date of the execution of the agreement~~]. A counterpart of the agreement shall be deposited with the corporation at its principal office and shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation. Each certificate representing shares held by the parties to the agreement shall contain a statement that the shares represented by the certificate are subject to the provisions of a voting agreement, a counterpart of which has been deposited with the corporation at its principal office. Upon such deposit of the counterpart of the agreement and endorsement of the prescribed statement upon the certificates representing shares, the agreement shall be specifically enforceable in accordance with the principles of equity.

SECTION 15. Article 2.38, Texas Business Corporation Act, is amended to read as follows:

Art. 2.38. *DISTRIBUTIONS [DIVIDENDS]*. A. *The board of directors of a corporation may authorize and the corporation may make distributions subject to any restrictions in its articles of incorporation and to the limitations set forth in Section B of this Article.*

B. *A distribution may not be made by a corporation if:*

- (1) *after giving effect to the distribution, the corporation would be insolvent; or*
- (2) *the distribution exceeds the surplus of the corporation.*

C. *Notwithstanding the limitation set forth in Subsection (2) of Section B of this Article, if the net assets of a corporation are not less than the amount of the proposed distribution:*

(1) *the corporation may make a distribution involving a purchase or redemption of any of its own shares if the corporation is an open-end investment company, registered as such under the Federal Investment Company Act of 1940 (15 U.S.C.A. Sec. 80a-1 (1986)), and its articles of incorporation provide in effect that it may purchase its own shares out of stated capital;*

(2) *the corporation may make a distribution involving a purchase or redemption of any of its own shares if the purchase or redemption is made by the corporation to:*

- (a) *eliminate fractional shares;*
- (b) *collect or compromise indebtedness owed by or to the corporation;*
- (c) *pay dissenting shareholders entitled to payment for their shares under this Act;*

*or*

(d) *effect the purchase or redemption of redeemable shares in accordance with this Act; and*

(3) *the corporation may make a distribution not involving a purchase or redemption of any of its own shares if the corporation is a consuming assets corporation.*

D. *Notwithstanding the limitations set forth in Section B of this Article, the corporation may make distributions pursuant to Article 6.04 of this Act.*

E. *A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this Article shall be at parity with the corporation's indebtedness to its general, unsecured creditors, except to the extent the indebtedness is subordinated, or payment of that indebtedness is secured, by agreement. [The board of directors of a corporation may, from time to time, declare, and the corporation may pay, dividends on its outstanding shares in cash, in property, or in its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, subject to the following provisions:*

~~[(1) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this Act.~~

~~[(2) Dividends may be declared and paid in its own shares out of any treasury shares that have been reacquired out of surplus of the corporation.~~

~~[(3) Dividends may be declared and paid in its own authorized but unissued shares out of unrestricted surplus of the corporation upon the following conditions:~~

~~[(a) If a dividend is payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.~~

~~[(b) If a dividend is payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.~~

~~[(4) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or unless such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.~~

~~[B. A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this Article.~~

~~[C. The board of directors must, when requested by the holders of at least one third of the outstanding shares of the corporation, present written reports of the situation and amount of business of the corporation and, subject to limitations on the authority of the board of directors by provisions of law, or the articles of incorporation or the bylaws, the board shall declare and provide for payment of such dividends of the profits from the business of the corporation as such board shall deem expedient.]~~

SECTION 16. Part 2, Texas Business Corporation Act, is amended by adding Articles 2.38-1, 2.38-2, 2.38-3, and 2.38-4 to read as follows:

*Art. 2.38-1. SHARE DIVIDENDS. A. The board of directors of a corporation may authorize and the corporation may pay share dividends subject to any restrictions in its articles of incorporation and to the limitations set forth in this Article.*

*B. A share dividend payable in authorized but unissued shares may not be paid by a corporation if the surplus of the corporation is less than the amount required by this Article to be transferred to stated capital at the time that share dividend is paid.*

*C. If a share dividend is payable in authorized but unissued shares having a par value, those shares shall be issued at the par value and at the time that share dividend is paid an amount of surplus designated by the board of directors not less than the aggregate par value of the shares to be issued as a share dividend shall be transferred to stated capital.*

*D. If a share dividend is payable in authorized but unissued shares without par value, those shares shall be issued at the value fixed by resolution of the board of directors adopted at the time the share dividend is authorized, and at the time the share dividend is paid an amount of surplus equal to the aggregate value so fixed in respect of those shares shall be transferred to stated capital.*

*E. A share dividend payable in shares of any class may not be paid to the holders of shares of any other class unless the articles of incorporation so provide or unless the payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.*

*Art. 2.38-2. SPLIT-UP OR DIVISION WITHOUT STATED CAPITAL INCREASE. A split-up or division of the issued shares of any class of a corporation into a greater number of shares of the same class without increasing the stated capital of the corporation does not constitute a share dividend or a distribution.*

*Art. 2.38-3. DETERMINATION OF NET ASSETS, STATED CAPITAL, AND SURPLUS. A. Determinations of the net assets, stated capital, and surplus of a corporation, and each of their components, may be based on:*

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

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

*(3) financial information, including without limitation condensed or summary financial statements, that is prepared on a basis consistent with the financial statements referred to in Subsections (1) and (2) of this section;*

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

*(5) any combination of the statements, valuations, or information authorized by this section.*

*B. Section A of this Article and the determinations made in accordance therewith do not apply to the calculation of the Texas franchise tax or any other tax imposed on corporations under the laws of this state.*

*Art. 2.38-4. DATE OF DETERMINATION OF SURPLUS. A. In the case of a distribution by a corporation or the payment of a share dividend, the surplus of the corporation shall be determined, and the determination whether the corporation would be insolvent after giving effect to the distribution shall be made:*

*(1) on the date that action is authorized by the board of directors if the action is taken on or before the 120th day after the date of authorization;*

*(2) if the action is taken after the 120th day after the date of authorization and the board of directors designates a date, within 120 days before the date the action is taken, on which the determination is to be made, on the date so designated by the board of directors; or*

*(3) if the action is taken after the 120th day after the date of authorization and the board of directors does not make the designation described by Subsection (2) of this section, on the date the action is taken.*

*B. For the purposes of this Article, a distribution that involves the incurrence by a corporation of any indebtedness or deferred payment obligation is deemed to have been made on the date the indebtedness or obligation is incurred.*

SECTION 17. Article 2.41, Texas Business Corporation Act, is amended to read as follows:

**Art. 2.41. LIABILITY OF DIRECTORS AND SHAREHOLDERS IN CERTAIN CASES. A.** In addition to any other liabilities imposed by law upon directors of a corporation:

*(1) Directors of a corporation who vote for or assent to a distribution by the corporation [the declaration of any dividend or other distribution of the assets of a corporation to its shareholders] that, on the date of that vote or assent, violates Article 2.38 [the provisions] of this Act, or any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount by which the distributed amount exceeds the amount that could have been distributed without violating Article 2.38 of this Act or the restrictions contained in the articles of incorporation; provided that a director shall have no liability for the excess amount, or any part of that excess, if on any date after the date of the vote or assent*

~~authorizing the distribution, a distribution of that excess or that part could have been made without violating Article 2.38 [of such dividend which is paid, or the value of such assets which are distributed in excess of the amount of such dividends or distribution which could have been paid or distributed without violating the provisions of this Act or the restrictions in the articles of incorporation.~~

~~[(2) Directors of a corporation who vote for or assent to a purchase of its own shares that, on the date of that vote or assent, violates the provisions of this Act shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without violating the provisions of this Act.~~

~~[(3) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all debts, obligations, and liabilities of the corporation known to the directors on the date of that vote or assent shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.~~

~~[(4) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation in violation of this Act shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof].~~

~~(2) [(5)] If the corporation shall commence business before it has received for the issuance of shares consideration of the value of at least One Thousand Dollars (\$1,000), consisting of money, labor done, or property actually received, the directors who assent thereto shall be jointly and severally liable to the corporation for such part of the required consideration as shall not have been received before commencing business, but such liability shall be terminated when the corporation has actually received the required consideration for the issuance of shares.~~

~~(3) An action may not be brought against a director for liability imposed by this section after two years after the date on which the act alleged to give rise to the liability occurred. [(6) In the event of the insolvency of a corporation, directors who have voted for or assented to any payments out of the reduction surplus of the corporation, whether in the course of a distribution in partial liquidation or as the purchase price of shares issued by the corporation and later purchased by it, shall be liable to the corporation, or to its receiver or trustee in bankruptcy, to the extent of the amount of such payments made, for the purpose of discharging creditor claims against the corporation which existed at the time such payments were made or which were incurred within thirty (30) days after notice of the reduction of stated capital had been filed, but such liability shall be imposed only to the extent that such creditor claims have not been fully paid after such creditors have shared with other creditors in the assets of the corporation. Any director against whom a claim shall be asserted under this subsection, and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received such payments out of reduction surplus, to the extent of the amounts of such payments received by them, respectively.]~~

B. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken 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 such action.

C. A director shall not be liable under *Subsection* [subsections] (1), (2) or (3) of Section A of this Article if, in the exercise of ordinary care, he relied and acted in good faith upon financial statements or other information of the corporation represented to him to be correct in all material respects by the president or by the officer of such corporation having charge of its books of account, or reported by an independent public or certified public accountant or firm of such accountants to present fairly the financial position of such corporation, nor shall a director [he] be so liable if, in the exercise of ordinary care

and in good faith, in *voting for or assenting to a distribution by the corporation* [~~determining the amount available for any such dividend or distribution~~], he considered the assets to be of their book value.

D. A director shall not be liable for any claims or damages that may result from his acts in the discharge of any duty imposed or power conferred upon him by the corporation 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 for *a distribution made by the corporation* [~~the payment of a dividend or other distribution of assets of a corporation~~], and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received such *distribution* [~~dividend or assets~~] knowing such [~~dividend or~~] distribution to have been made in violation of this Article, in proportion to the amounts received by them, respectively.

F. A director *found liable with respect to a claim shall be entitled to contribution as appropriate to achieve equity from each of the other directors who are liable with respect to that claim* [~~against whom a claim shall be asserted under this Article shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted~~].

SECTION 18. Article 3.01, Texas Business Corporation Act, is amended to read as follows:

Art. 3.01. INCORPORATORS. A. Any natural person of the age of eighteen (18) years or more, or any partnership, corporation, association, trust, or estate (without regard to place of residence, domicile, or organization) may act as an incorporator of a corporation by signing [~~and verifying~~] the articles of incorporation for such corporation and by delivering the original and a copy of the articles of incorporation to the Secretary of State.

SECTION 19. Section A, Article 3.02, Texas Business Corporation Act, is amended to read as follows:

A. The articles of incorporation shall set forth:

- (1) The name of the corporation;
- (2) The period of duration, which may be perpetual;
- (3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Act;
- (4) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that such shares are to be without par value;
- (5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights in respect of the shares of each class;
- (6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
- (7) A statement that the corporation will not commence business until it has received for the issuance of shares consideration of the value of a stated sum which shall be at least One Thousand Dollars (\$1,000.00), consisting of money, labor done, or property actually received;
- (8) Any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;

(9) If a corporation elects to become a close corporation in conformance with Part Twelve of this Act, any provision (a) required or permitted by this Act to be stated in the articles of incorporation of a close corporation, but not in the articles of incorporation of an ordinary corporation, (b) contained *or permitted to be contained* in a shareholders' agreement in conformance with Part Twelve of this Act which the incorporators elect to set forth in articles of incorporation, or (c) that makes a shareholders' agreement in conformance with Part Twelve of this Act part of the articles of incorporation of a close corporation in the manner prescribed in Section F, Article 2.22 of this Act, but any such provision, other than the statement required by Section A, Article 12.11 of this Act, shall be preceded by a statement that the provision shall be subject to the corporation remaining a close corporation in conformance with Part Twelve of this Act;

(10) 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;

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

(12) The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify, or, in the case of a close corporation that, in conformance with Part Twelve of this Act, is to be managed in some other manner pursuant to a shareholders' agreement by the shareholders or by the persons empowered by the agreement to manage its business and affairs, the names and addresses of the person or persons who, pursuant to the shareholders' agreement, will perform the functions of the initial board of directors provided for by this Act;

(13) The name and address of each incorporator.

SECTION 20. Section D, Article 4.07, Texas Business Corporation Act, is amended to read as follows:

D. Such restated articles of incorporation shall be executed on behalf of the corporation by an officer. *If no shares have been issued, however, and the restated articles of incorporation are adopted by the board of directors, the restated articles of incorporation may be executed on behalf of the corporation by a majority of the directors.* The original and a copy of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation conform to law, he shall, when the appropriate filing fee is paid as required by law:

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

(2) File the original in his office.

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

SECTION 21. Section A, Article 4.08, Texas Business Corporation Act, is amended to read as follows:

A. A corporation may at any time, subject to *Article 2.38 of this Act and to the provisions of its [the] articles of incorporation*, proceed, by resolution of its board of directors, to redeem any or all outstanding shares subject to redemption. If less than all such shares are to be redeemed, the shares to be redeemed shall be selected for redemption in accordance with the provisions in the articles of incorporation, or, in the absence of such provisions therein, may be selected ratably or by lot in such manner as may be prescribed by resolution of the board of directors. Such redemption shall be effected by call and written or printed notice in the following manner:

(1) The notice of redemption of such shares shall set forth:

(a) The class or series of shares or part of any class or series of shares to be redeemed.

(b) The date fixed for redemption.

(c) The redemptive price.

(d) The place at which the shareholders may obtain payment of the redemptive price and, in the case of holders of certificated shares, upon surrender of their respective share certificates.

(2) The notice shall be given to each holder of redeemable shares being called, either personally or by mail, not less than twenty (20) nor more than *sixty (60)* [~~fifty (50)~~] days before the date fixed for redemption. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer book of the corporation, with postage thereon prepaid.

SECTION 22. Article 4.13, Texas Business Corporation Act, is amended to read as follows:

Art. 4.13. SPECIAL PROVISIONS RELATING TO SURPLUS AND RESERVES. *A corporation may, by resolution of its board of directors, create a reserve or reserves out of its surplus or designate or allocate any part or all of surplus in any manner for any proper purpose or purposes, and may increase, decrease, or abolish any such reserve, designation, or allocation in the same manner.* [~~A. The surplus created by any reduction of the stated capital of a corporation, such reduction being accomplished by any of the methods permitted by this Act, shall be deemed to be reduction surplus.~~

[~~B. A corporation may, by resolution of the board of directors, apply any part or all of its capital surplus or reduction surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus or reduction surplus shall, to the extent thereof, effect a reduction of such surplus.~~

[~~C. A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by law.~~]

SECTION 23. Article 4.14, Texas Business Corporation Act, is amended to read as follows:

Art. 4.14. AMENDMENT OF ARTICLES, MERGER, CONSOLIDATION, AND DISSOLUTION PURSUANT TO FEDERAL [OF INCORPORATION IN] REORGANIZATION PROCEEDINGS

A. *Authorization. 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 consolidate with one or more other corporations; or*
- (3) *dissolve.*

B. *Procedure for Corporation Being Reorganized. The individual or individuals designated by the court shall 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 proceeding in which the order or decree was entered; and*
  - (e) *a statement that the court had jurisdiction of the proceeding under federal statute; or*



(2) *articles of merger or consolidation 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 consolidation approved by the court, which shall include the information required in Article 5.01B, 5.02B, 5.07B, or 5.16B of this Act 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 proceeding in which the order or decree was entered; and*

(e) *a statement that the court had jurisdiction of the proceeding under federal statute; or*

(3) *articles of dissolution setting forth:*

(a) *the name of the corporation;*

(b) *the information required in Article 6.06 of this Act;*

(c) *the date of the court's order or decree approving the articles of dissolution;*

(d) *the court, file name, and case number of the reorganization proceeding in which the order or decree was entered; and*

(e) *a statement that the court had jurisdiction of the proceeding under federal statute.*

*C. Procedure for Merging Corporation Not Being Reorganized. When a corporation that is not being reorganized merges or consolidates pursuant to a plan of reorganization with a corporation that is being reorganized:*

(1) *Articles 5.01, 5.02, 5.03, 5.07, 5.11, 5.12, and 5.13 of this Act apply to the corporation that is not being reorganized to the same extent they would apply if it were merging or consolidating with a corporation that is not being reorganized;*

(2) *Article 5.06 of this Act applies to the corporation that is not being reorganized to the same extent it would apply if that corporation were merging or consolidating 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 applies 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 required approval by the shareholders of a corporation that is not being reorganized, articles of merger or articles of consolidation shall be signed on behalf of the corporation that is not being reorganized by an officer of the corporation and on behalf of a corporation that is being reorganized by the persons specified in Section B of this Article; and*

(5) *the articles of merger or consolidation shall set forth the information required in Section B(2) of this Article and, for the corporation not being reorganized, the information required in Articles 5.04A(1)–(3) of this Act.*

*D. Filing. The original and a copy of the articles shall be delivered to the Secretary of State. If the Secretary of State finds that the articles conform to law, he shall, when the appropriate filing fee is paid as prescribed by law:*

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

(2) *file the original in his office;*

(3) *issue an appropriate certificate to which he shall affix the copy; and*

(4) *return the certificate, together with the copy of the articles affixed to the certificate by him, to the corporation or its representative.*

*E. Effect.* On issuance of the certificate by the Secretary of State, the articles become effective with the same effect as if they had been adopted by unanimous action of the directors and shareholders of the corporation being reorganized.

*F. Dissenters' Rights.* Shareholders of a corporation being reorganized under federal statute do not have a right to dissent except as the reorganization plan may provide.

*G. When Applicable.* This Article does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

*H. Nonexclusivity.* This Article does 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. ~~[Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this Article, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.~~

~~[B. In particular, and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:~~

~~[(1) Change the corporate name, period of duration, or corporate purposes of the corporation.~~

~~[(2) Repeal, alter, or amend the bylaws of the corporation.~~

~~[(3) Change the aggregate number of shares, or shares of any class, which the corporation has authority to issue.~~

~~[(4) Change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.~~

~~[(5) Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.~~

~~[(6) Constitute or reconstitute and classify or reclassify the board of directors and officers in place of or in addition to all or any of the directors or officers then in office.~~

~~[C. Amendments to the articles of incorporation pursuant to this Article shall be made in the following manner:~~

~~[(1) Articles of amendment approved by decree or order of such court shall be executed and verified by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.~~

~~[(2) The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when the appropriate filing fee is paid as prescribed by law:~~

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

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

~~[(c) Issue a certificate of amendment to which he shall affix the copy.~~

~~[(3) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be returned to the corporation or its representative.~~

~~[D. Upon the issuance of the certificate of amendment by the Secretary of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.]~~

SECTION 24. Article 5.06, Texas Business Corporation Act, is amended to read as follows:

Art. 5.06. EFFECT OF MERGER OR CONSOLIDATION OF DOMESTIC CORPORATIONS. A. When such merger or consolidation of domestic corporations has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation; which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be ~~[transferred to and]~~ vested in such single corporation without further act or deed *and without any transfer or assignment having occurred.*

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or are permitted to be set forth in the articles of incorporation of corporations organized under this Act shall be deemed to be the articles of incorporation of the new corporation.

SECTION 25. Article 5.09, Texas Business Corporation Act, is amended by adding Section B to read as follows:

*B. A transaction referred to in this Article 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 26. Section B, Article 5.10, Texas Business Corporation Act, is amended to read as follows:

*B. A disposition of any, all, or substantially all, of the property and assets of a corporation, whether or not it requires [requiring] the special authorization of the*

shareholders of the corporation, *effected* under Section A of this article or under Article 5.09 of this Act or otherwise:

(1) is not considered to be a merger or consolidation pursuant to this Act or otherwise; and

(2) Except as otherwise expressly provided by another statute, does not make the acquiring corporation responsible or liable for any liability or obligation of the selling corporation that the acquiring corporation did not expressly assume.

SECTION 27. Section B, Article 5.12, Texas Business Corporation Act, is amended to read as follows:

B. If, within such period of sixty (60) days after the date on which such corporate action was effected, the shareholder and the existing, surviving, or new corporation, as the case may be, do not so agree, then the dissenting shareholder or the corporation 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 such shares. Upon the filing of any such petition by a shareholder, service of a copy thereof shall be made upon the corporation, which shall, within ten (10) days after such service, file in the office of the clerk of the court in which such petition was filed a ~~[duly-verified]~~ list containing the names and addresses of all shareholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the corporation. If the petition shall be filed by the corporation, the petition shall be accompanied by such a ~~[duly-verified]~~ list. The clerk of the court shall give notice of the time and place fixed for the hearing of such petition by registered mail to the corporation and to the shareholders shown upon such list at the addresses therein stated. The forms of the notices by mail shall be approved by the court. All shareholders thus notified and the corporation shall thereafter be bound by the final judgment of the court.

SECTION 28. Section B, Article 5.16, Texas Business Corporation Act, is amended to read as follows:

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

(1) The name of the parent corporation, and the name or names of the subsidiary corporations and the respective jurisdiction under which each such corporation is organized.

(2) The number of outstanding shares of each class of each subsidiary corporation and the number of such shares of each class owned by the parent corporation.

(3) A copy of the resolution adopted by the board of directors of the parent corporation to so merge and the date of the adoption thereof. If the parent corporation does not own all the outstanding shares of each class of each subsidiary corporation party to the merger, the resolution shall state the terms and conditions of the merger, including the securities, cash or other property to be used, paid or delivered by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation.

(4) If the surviving corporation is a foreign corporation, the address, including street number if any, of its registered or principal office in the jurisdiction under whose laws it is governed. It shall comply also with the provisions of Article 5.07B(2) of this Act.

SECTION 29. Article 6.01, Texas Business Corporation Act, is amended to read as follows:

Art. 6.01. VOLUNTARY DISSOLUTION BY INCORPORATORS OR DIRECTORS.

A. A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators or its directors at any time in the following manner:

(1) Articles of dissolution shall be *signed* ~~[executed]~~ by a majority of the incorporators or directors, ~~[and verified by them,]~~ and shall set forth:

- (a) The name of the corporation.
- (b) The date of issuance of its certificate of incorporation.
- (c) That none of its shares has been issued.
- (d) That the corporation has not commenced business.
- (e) That the amount, if any, actually paid on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.
- (f) That no debts of the corporation remain unpaid.
- (g) That a majority of the incorporators or directors elect that the corporation be dissolved.

(2) The original and a copy of the articles of dissolution shall be delivered to the Secretary of State, along with a certificate from the Comptroller of Public Accounts that all franchise taxes have been paid. If the Secretary of State finds that the articles of dissolution conform to law, he shall, when the appropriate filing fee is paid as required by law:

- (a) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.
- (b) File the original in his office.
- (c) Issue a certificate of dissolution, to which he shall affix the copy.

(3) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the incorporators, the directors, or their representatives. Upon the issuance of such certificate of dissolution by the Secretary of State, the existence of the corporation shall cease.

SECTION 30. Section B, Article 7.11, Texas Business Corporation Act, 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 right 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 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 31. Article 7.12, Texas Business Corporation Act, is amended to read as follows:

Art. 7.12. *LIMITED SURVIVAL [~~OF REMEDY~~] AFTER DISSOLUTION.* A. *A 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, shareholders, 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 inadvertently or otherwise omitted from any prior distributions in liquidation to the shareholders or so*

omitted from prior distributions made before liquidation, and distributing them to any shareholders or other persons entitled to them; and

(4) settling any other affairs not completed before its dissolution.

However, such a corporation may not continue its corporate existence for the purpose of continuing the business or affairs for which the 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.

B. During the three-year period, the members of the board of directors 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 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 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 be trustees for the benefit of creditors, shareholders, or other distributees of the corporation and shall be jointly and severally liable to those persons to the extent of the corporate property and assets that have come into their hands. Additional directors may be elected for purposes of this section in accordance with the procedures provided in the bylaws in effect immediately before the dissolution.

C. 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.

D. A corporation dissolved by the expiration of the period of its duration may, during such three-year period, 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 shareholder or creditor to prevent such an action. No act or contract of a 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. [The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this Act, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its officers, directors, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within three years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of three years so as to extend its period of duration.]

SECTION 32. Section B, Article 10.01, Texas Business Corporation Act, is amended to read as follows:

B. Except as otherwise expressly provided in this Act, any instrument to be filed pursuant to this Act shall be signed on behalf of the filing corporation [executed] 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 instrument], and the original and a copy of the instrument shall be delivered to the Secretary of State with copies attached thereto of any document incorporated by reference in or otherwise made a part of such instrument, or to be filed by means of such instrument. If the Secretary of State finds that such

instrument conforms to law, he shall, when all franchise taxes and fees have been paid as prescribed by law:

- (a) endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof;
- (b) file the original in his office;
- (c) issue any certificate required by this Act relating to the subject matter of the filed instrument; and
- (d) return the copy, affixed to any certificate required to be issued by the Secretary of State, to the corporation or its representative.

SECTION 33. Part 12, Texas Business Corporation Act, is amended by adding Article 12.15 to read as follows:

*Art. 12.15. BYLAWS OF CLOSE CORPORATION. A. A close corporation need not adopt bylaws if provisions required by law to be contained in the bylaws are contained in either the articles of incorporation or a shareholders' agreement.*

*B. If a close corporation does not have bylaws when it terminates its status as a close corporation under Article 12.21 of this Act, the corporation shall immediately adopt bylaws in conformance with Article 2.23 of this Act.*

SECTION 34. Section B, Article 12.22, Texas Business Corporation Act, is amended to read as follows:

B. Execution, Delivery and Form. Promptly after the time or event specified in a close corporation provision for termination of close corporation status has occurred, a statement of termination of close corporation status shall be *signed [executed]* on behalf of the close corporation by *an officer [its president or a vice-president and by its secretary or an assistant secretary and shall be verified by one of the officers signing the statement]*. A copy of the applicable close corporation provision must be included in or attached to the statement. The original and a copy of the statement and the inclusion or attachment shall be delivered to the Secretary of State. The statement must set forth:

- (1) the name of the corporation;
- (2) a statement that the corporation has terminated its status as a close corporation in accordance with the included or attached close corporation provision; and
- (3) the time or event that caused the termination and, in the case of an event, the approximate date of the event.

SECTION 35. Section B, Article 12.34, Texas Business Corporation Act, is amended to read as follows:

B. Execution and Delivery. A statement of operation as a close corporation shall be *signed [executed]* on behalf of the close corporation by *an officer [its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing the statement]*. The close corporation shall deliver the original and a copy of the statement to the Secretary of State. The statement must set forth:

- (1) the name of the close corporation;
- (2) a statement that the close corporation is being operated and its business and affairs are being conducted under the terms of a shareholders' agreement made pursuant to the Texas Close Corporation Law; and
- (3) the date when the operation of the corporation began.

SECTION 36. Section B, Article 2.06, Texas Non-Profit Corporation Act (Article 1396-2.06, Vernon's Texas Civil Statutes), is amended to read as follows:

B. The statement required by this Article shall be *signed [executed]* by the corporation by *an officer [its president or 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) Return the copy to the corporation or its representative.

SECTION 37. Section A, Article 3.01, Texas Non-Profit Corporation Act (Article 1396-3.01, Vernon's Texas Civil Statutes), is amended to read as follows:

A. *Any natural person* [~~Three (3) or more natural persons, two (2) of whom must be citizens of the State of Texas,~~] of the age of eighteen (18) years or more *without regard to the person's place of residence or domicile* may act as an incorporator [~~incorporators~~] of a corporation by signing [~~and verifying~~] the articles of incorporation for such corporation and delivering the original and a copy of the articles of incorporation to the Secretary of State.

SECTION 38. Article 4.03, Texas Non-Profit Corporation Act (Article 1396-4.03, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 4.03. ARTICLES OF AMENDMENT. A. The articles of amendment shall be *signed on behalf of* [~~executed by~~] the corporation by *an officer* [~~its president or by a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles,~~] and shall set forth:

- (1) The name of the corporation.
- (2) If the amendment alters any provision of the original or amended articles of incorporation, 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 incorporation, a statement of that fact and the full text of each provision added.
- (3) Where there are members having voting rights, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
- (4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

SECTION 39. Section D, Article 4.06, Texas Non-Profit Corporation Act (Article 1396-4.06, Vernon's Texas Civil Statutes), is amended to read as follows:

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

- (1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Issue a restated certificate of incorporation to which he shall affix the copy.

SECTION 40. Section A, Article 5.04, Texas Non-Profit Corporation Act (Article 1396-5.04, Vernon's Texas Civil Statutes), is amended to read as follows:

A. Upon such approval, articles of merger or articles of consolidation shall be *signed on behalf of* [~~executed by~~] each corporation by *one of its officers* [~~its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles,~~] and shall set forth:

- (1) The plan of merger or the plan of consolidation.



(2) Where the members of any merging or consolidating corporation have voting rights, then as to each corporation (a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

SECTION 41. Article 6.05, Texas Non-Profit Corporation Act (Article 1396-6.05, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 6.05. ARTICLE OF DISSOLUTION. A. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, or, in case its property and assets are not sufficient to satisfy and discharge all the corporation's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the corporation's liabilities and obligations, and all of the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act, articles of dissolution shall be *signed on behalf of* ~~[executed by]~~ the corporation by *an officer and* ~~[its president or a vice president, and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement]~~ shall set forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds ( $\frac{2}{3}$ ) of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds ( $\frac{2}{3}$ ) of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

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

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act; provided, however, that if assets were received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, there shall also be set forth a copy of the plan of distribution adopted as provided in this Act for the distribution of such assets, and a statement that distribution has been effected in accordance with such plan.

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

SECTION 42. 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 [OF REMEDY]~~ AFTER DISSOLUTION. A. A 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 inadvertently or otherwise omitted from any prior distributions in accordance with a plan of distribution during the period of liquidation before dissolution, and distributing them to any members or other persons entitled to them; and

(4) settling any other affairs not completed before its dissolution.

However, such a corporation may not continue its corporate existence for the purpose of continuing the business or affairs for which the 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.

B. During the three-year period, the members of the board of directors 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 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 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 be trustees for the benefit of creditors, members, or other distributees of the corporation and shall be jointly and severally liable to those persons to the extent of the corporate property and assets that shall have come into their hands. 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. 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.

D. A corporation dissolved by the expiration of the period of its duration may, during the three-year period, 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 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. ~~[The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Secretary of State, or (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this Act, or (3) by expiration of its period of duration, shall not~~

take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within three (3) years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of three (3) years so as to extend its period of duration.

[Provided, however, any non-profit cemetery association whose charter expired prior to 1955 shall have until January 1, 1968 to amend its articles of incorporation so as to extend its period of duration.]

SECTION 43. Section B, Article 8.04, Texas Non-Profit Corporation Act (Article 1396-8.04, Vernon's Texas Civil Statutes), is amended to read as follows:

B. Such application shall be made on forms promulgated by the Secretary of State and shall be *signed on behalf* [~~executed by any authorized officer~~] of the corporation [~~and verified~~] by *an* [~~such~~] officer. [~~The verification shall include a statement that the officer executing the application is duly authorized to do so on behalf of the corporation.~~]

SECTION 44. Section B, Article 8.08, Texas Non-Profit Corporation Act (Article 1396-8.08, Vernon's Texas Civil Statutes), is amended to read as follows:

B. Such statement shall be *signed on behalf* [~~executed by any authorized officer~~] of the corporation [~~and verified~~] by *an* [~~such~~] officer. [~~The verification shall include a statement that the officer executing the statement is duly authorized to do so on behalf of the corporation.~~] The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as required by law:

- (1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.
- (2) File the original in his office.
- (3) Return the copy to the corporation or its representative.

SECTION 45. Section B, Article 8.13, Texas Non-Profit Corporation Act (Article 1396-8.13, Vernon's Texas Civil Statutes), is amended to read as follows:

B. The application for withdrawal shall be made on forms promulgated by the Secretary of State and shall be *signed on behalf* [~~executed by any authorized officer~~] of the corporation [~~and verified~~] by *an* [~~such~~] officer, or, if the corporation is in the hands of a receiver or trustee, it shall be *signed* [~~executed and verified~~] on behalf of the corporation by such receiver or trustee. [~~The verification shall include a statement that the officer executing the application is duly authorized to do so on behalf of the corporation.~~]

SECTION 46. Section B, Article 9.01, Texas Non-Profit Corporation Act (Article 1396-9.01, Vernon's Texas Civil Statutes), is amended to read as follows:

B. Such report shall be made on forms promulgated by the Secretary of State, and the information contained shall be given as of the date of the execution of the report. It shall be *signed on behalf* [~~executed by any authorized officer~~] of the corporation [~~and verified~~] by *an* [~~such~~] officer; or, if the corporation is in the hands of a receiver or trustee, it shall be *signed* [~~executed and verified~~] on behalf of the corporation by such receiver or trustee. [~~The verification shall include a statement that the officer executing the report is duly authorized to do so on behalf of the corporation.~~]

SECTION 47. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 9.03A to read as follows:

*Art. 9.03A. PENALTY FOR SIGNING FALSE DOCUMENT. A. A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered on behalf of a corporation to the Secretary of State for filing.*

**Ch. 93, § 47**

**70th LEGISLATURE—REGULAR SESSION**

*B. An offense under this Article is a Class A misdemeanor.*

SECTION 48. (a) Articles 2.03, 2.17, 2.39, 2.40, and 4.09, Texas Business Corporation Act, are repealed.

(b) Article 2.07, Texas Miscellaneous Corporation Laws Act (Article 1302-2.07, Vernon's Texas Civil Statutes), is repealed.

(c) Articles 1349, 1351, 1353, 1354, 1355, and 1356, Revised Statutes, are repealed.

(d) Chapter 444, Acts of the 58th Legislature, 1963 (Article 1358a, Vernon's Texas Civil Statutes), is repealed.

(e) Chapter 188, Acts of the 60th Legislature, Regular Session, 1967 (Article 1358b, Vernon's Texas Civil Statutes), is repealed.

SECTION 49. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 9, 1987, by a non-record vote. Passed by the Senate on April 30, 1987, by a viva-voce vote.

Approved May 14, 1987.

Effective 90 days after date of adjournment.