

TITLE 8. MISCELLANEOUS AND TRANSITION PROVISIONS

CHAPTER 401. GENERAL PROVISIONS

Revised Law:

Sec. 401.001. DEFINITIONS. In this title:

(1) "Mandatory application date" means:

(A) for an entity subject to this code under Section 402.001, January 1, 2006;

(B) for an entity subject to this code under Section 402.003 or 402.004, the date of completion of the action required by that section but no earlier than January 1, 2006; and

(C) for any other entity, January 1, 2010.

(2) "Prior law" means the applicable law in effect before January 1, 2006.

CHAPTER 402. MISCELLANEOUS AND TRANSITION PROVISIONS

Sec. 402.001. APPLICABILITY UPON EFFECTIVE DATE. At the effective date of this code, this code applies to:

(1) a domestic entity formed on or after the effective date of this code;

(2) a foreign filing entity or other foreign entity that has not registered with the secretary of state to transact business in this state before the effective date of this code; and

(3) a foreign non-filing entity.

Sec. 402.002. EARLY EFFECTIVENESS OF FEES. On or after the effective date of this code, the fees required by Chapter 4 apply to all filings made with the secretary of state, including comparable filings under prior law regardless of whether an entity is subject to or has adopted this code. The intent of this section is to:

(1) require a filing fee for all documents filed under either this code or the prior law without regard to the difference in designation of the document; and

(2) make the filing fees described by Subdivision (1) uniform from the effective date of this code.

Sec. 402.003. EARLY ADOPTION OF CODE BY EXISTING DOMESTIC ENTITY.

(a) A domestic entity formed before the effective date of this code may voluntarily elect to adopt and become subject to this code by:

(1) complying with the procedures to amend its governing documents to adopt this code and, if necessary, to cause its governing documents to comply with this code; and

(2) if the domestic entity is a filing entity, filing with the secretary of state in accordance with Chapter 4:

(A) a statement that the filing entity is electing to adopt this code; and

(B) if necessary, a certificate of amendment that would cause its certificate of formation to comply with this code.

(b) If amendments to the governing documents of a domestic entity that are necessary to conform the governing documents to this code would not require, under prior law, the vote or consent of the owners or members of the entity, this code and any amendment to the governing documents required by this section may be adopted by the governing authority only in the manner provided for an amendment of the particular governing document.

Sec. 402.004. EARLY ADOPTION OF CODE BY REGISTERED FOREIGN ENTITY. A foreign filing entity registered with the secretary of state to transact business in this state before the effective date of this code may voluntarily elect to adopt and become subject to this code by filing with the secretary of state in accordance with Chapter 4:

(1) a statement that the foreign filing entity is electing to adopt this code; and

(2) an amendment to its application for registration that would cause its application for registration to comply with this code.

Sec. 402.005. APPLICABILITY TO EXISTING ENTITIES ON MANDATORY APPLICATION DATE. On January 1, 2010, if a domestic filing entity formed before the effective date of this code or a foreign filing entity registered with the secretary of state to transact business in this state before the effective date of this code has not taken the actions specified by Section 402.003(a) or 402.004 to elect to adopt this code:

(1) this code applies to the entity and all actions taken by the managerial officials, owners, or members of the entity, except as otherwise expressly provided by this title;

(2) the entity is not considered to have failed to comply with this code if the entity's certificate of formation or application for registration, as appropriate, does not comply with this code;

(3) if the entity is a domestic filing entity, the entity shall conform its certificate of formation to the requirements of this code when it next files an amendment to its certificate of formation; and

(4) if the entity is a foreign filing entity, the entity shall conform its application for registration to the requirements of this code when it next files an amendment to its application for registration.

Sec. 402.006. APPLICABILITY TO CERTAIN ACTS, CONTRACTS, AND TRANSACTIONS. (a) Except as otherwise expressly provided by this title, all of the provisions of this code govern acts, contracts, or other transactions by an entity subject to this code or its managerial officials, owners, or members that occur on or after the mandatory application date. The prior law governs the acts, contracts, or transactions of the entity or its managerial officials, owners or members that occur before the mandatory application date.

(b) No requirement under Subchapter E, Chapter 3, with respect to matters to be set forth on certificates evidencing ownership interests of partnerships shall apply to or affect certificates outstanding when the requirement first becomes applicable to the certificates, but the requirement applies to all subsequently issued certificates whether in connection with an original issue of ownership interests, a transfer of ownership interests, or otherwise.

Sec. 402.007. INDEMNIFICATION. Chapter 8 governs any proposed indemnification by a domestic entity after the mandatory application date, regardless of whether the events on which the indemnification is based occurred before or after the mandatory application date. A statement relating to indemnification contained in the governing documents of a domestic entity on the mandatory application date may not be construed as limiting the indemnification authorized by Chapter 8 unless it expressly states that is the intent.

Sec. 402.008. MEETINGS OF OWNERS AND MEMBERS; CONSENTS; VOTING OF INTERESTS. (a) Except as provided by Subsection (b) and regardless of whether a proxy or consent was executed by an owner or member before the mandatory application date, Chapter 6 and any other applicable provision of this code apply to:

(1) a meeting of owners or members held on or after the mandatory application date;

(2) an action undertaken by owners or members under a written consent that takes effect on or after the mandatory application date;

(3) a vote cast at a meeting described by Subdivision (1);
and

(4) consent given for an action described by Subdivision (2).

(b) Prior law applies to a meeting of owners or members and to any vote cast at a meeting described by this subsection if the meeting was initially called for a date before the mandatory application date and notice of the meeting was given to owners or members entitled to vote at the meeting.

Sec. 402.009. MEETINGS OF GOVERNING AUTHORITY AND COMMITTEES; CONSENTS. (a) Except as provided by Subsection (b), Chapter 6 and any other applicable provision of this code apply to:

(1) a meeting of the governing authority or a committee of the governing authority held on or after the mandatory application date;

(2) an action undertaken by the governing authority or a committee of the governing authority under a written consent that takes effect on or after the mandatory application date;

(3) a vote cast at a meeting described by Subdivision (1);
and

(4) consent given for an action described by Subdivision (2).

(b) Prior law applies to a meeting of the governing authority or a committee of the governing authority and to any vote cast at a meeting described by this subsection if the meeting was initially called for a date before the mandatory application date and notice of the meeting was given to governing persons entitled to vote at the meeting.

Sec. 402.010. SALE OF ASSETS, MERGERS, REORGANIZATIONS, CONVERSIONS. Chapter 10 and any other applicable provisions of this code apply to a transaction consummated by an entity after the mandatory application date, except that if a required approval of the owners or members of the entity has been given before the mandatory application date or has been given after the mandatory application date but at a meeting of owners or members initially called for a date before the mandatory application date, the transaction shall be governed by the prior law.

Sec. 402.011. WINDING UP AND TERMINATION. (a) Chapter 11 applies to:

(1) an action for involuntary or judicial winding up and termination commenced after the mandatory application date; or

(2) a voluntary winding up and termination proceeding initiated after the mandatory application date by:

(A) the governing authority;

(B) the terms of the governing documents; or

(C) applicable law.

(b) The prior law governs:

(1) an action described by Subsection (a)(1) that is pending on the mandatory application date; or

(2) a proceeding described by Subsection (a)(2) initiated before the mandatory application date.

Sec. 402.012. REGISTRATION OF CERTAIN FOREIGN ENTITIES. A foreign entity that has transacted intrastate business in this state before the mandatory application date and that is required by Chapter 9 to register to transact business is not subject to a direct or indirect penalty as a result of failure to register under Chapter 9 if the application for registration is filed not later than the 30th day after the mandatory application date.

Sec. 402.013. ENTITIES UNDER SUSPENSION FOR NONFILING OF REQUIRED REPORTS OR PAYMENT OF TAXES; APPLICABILITY OF PRIOR LAW. (a) If the rights, privileges, and powers of a domestic filing entity have been suspended and are still suspended immediately before the mandatory application date under the prior law, this code applies to the entity on the mandatory application date.

(b) If the rights, privileges, and powers of a domestic filing entity have been suspended and are still suspended under the Tax Code immediately before the mandatory application date, the suspension continues to apply to the entity until the rights, privileges, and powers are restored by the secretary of state under that code.

Sec. 402.014. MAINTENANCE OF PRIOR ACTION. Except as expressly provided by this title, this code does not apply to an action or proceeding commenced before the mandatory application date. Prior law applies to the action or proceeding.

SECTION 2. CONFORMING AMENDMENT. Part Eleven, Texas Business Corporation Act, is amended by adding Article 11.02 to read as follows:

Art. 11.02. APPLICABILITY; EXPIRATION. A. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a corporation to which the Business Organizations Code applies.

B. This Act expires January 1, 2010.

SECTION 3. CONFORMING AMENDMENT. Part Seven, Texas Miscellaneous Corporation Laws Act (Article 1302-7.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Article 7.09 to read as follows:

Art. 7.09. APPLICABILITY; EXPIRATION. A. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a corporation to which the Business Organizations Code applies.

B. This Act expires January 1, 2010.

SECTION 4. CONFORMING AMENDMENT. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 11.02 to read as follows:

Art. 11.02. APPLICABILITY; EXPIRATION. A. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a corporation to which the Business Organizations Code applies.

B. This Act expires January 1, 2010.

SECTION 5. CONFORMING AMENDMENT. The Cooperative Association Act (Article 1396-50.01, Vernon's Texas Civil Statutes) is amended by adding Section 47 to read as follows:

Sec. 47. APPLICABILITY; EXPIRATION. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to an association to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

SECTION 6. CONFORMING AMENDMENT. The Texas Uniform Unincorporated Nonprofit Association Act (Article 1396-70.01, Vernon's Texas Civil Statutes) is amended by adding Section 19 to read as follows:

Sec. 19. APPLICABILITY; EXPIRATION. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a nonprofit association to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

SECTION 7. CONFORMING AMENDMENT. The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes) is amended by adding Section 21 to read as follows:

Sec. 21. APPLICABILITY; EXPIRATION. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a professional corporation to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

SECTION 8. CONFORMING AMENDMENT. The Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) is amended by adding Section 27 to read as follows:

Sec. 27. APPLICABILITY; EXPIRATION. (A) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a professional association to which the Business Organizations Code applies.

(B) This Act expires January 1, 2010.

SECTION 9. CONFORMING AMENDMENT. Part Eight, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), is amended by adding Article 8.13 to read as follows:

Art. 8.13. APPLICABILITY; EXPIRATION. A. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a limited liability company to which the Business Organizations Code applies.

B. This Act expires January 1, 2010.

SECTION 10. CONFORMING AMENDMENT. Article 13, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended by adding Section 13.10 to read as follows:

Sec. 13.10. APPLICABILITY; EXPIRATION. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a limited partnership to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

SECTION 11. CONFORMING AMENDMENT. Article XI, Texas Revised Partnership Act (Article 6132b-11.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 11.05 to read as follows:

Sec. 11.05. APPLICABILITY; EXPIRATION. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a partnership to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

SECTION 12. CONFORMING AMENDMENT. The Texas Real Estate Investment Trust Act (Article 6138A, Vernon's Texas Civil Statutes) is amended by adding Section 29.10 to read as follows:

Sec. 29.10. APPLICABILITY; EXPIRATION. (A) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a real estate investment trust to which the Business Organizations Code applies.

(B) This Act expires January 1, 2010.

SECTION 13. CONFORMING AMENDMENT. Article 1399, Revised Statutes, is amended to read as follows:

Art. 1399. LODGES. The grand lodge of Texas, Ancient, Free and Accepted Masons, the Grand Royal Arch Chapter of Texas, the Grand Commandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders organized for charitable or benevolent purposes may, by the consent of their respective bodies expressed by a resolution or otherwise, become bodies corporate under this title. Except as provided by Title 8, Business Organizations Code, this article and Articles 1400-1407, Revised Statutes, do not apply to a grand body to which the Business Organizations Code applies.

SECTION 14. CONFORMING AMENDMENT. Chapter 963, Acts of the 70th Legislature, Regular Session, 1987 (Article 1407a, Vernon's Texas Civil Statutes), is amended by adding Section 9 to read as follows:

Sec. 9. APPLICABILITY. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a church benefits board to which the Business Organizations Code applies.

SECTION 15. CONFORMING AMENDMENT. Chapter 853, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1528g, Vernon's Texas Civil Statutes), is amended by adding Section 13 to read as follows:

Sec. 13. APPLICABILITY. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a business development corporation to which the Business Organizations Code applies.

SECTION 16. REPEALER. (a) The following Acts and articles as compiled in Vernon's Texas Civil Statutes are repealed:

Articles 1525, 1526, 1527, 1527a, 1528, 1528a, and 1528h.

(b) The following Acts and articles as compiled in Vernon's Texas Civil Statutes are repealed on January 1, 2010: Articles 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1407a, and 1528g.

SECTION 17. EFFECTIVE DATE. This Act takes effect January 1, 2006.