

# 2015 TEXAS LEGISLATIVE UPDATE ON ENTITY LAW

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## I. INTRODUCTION AND BACKGROUND

This article summarizes several pieces of legislation passed by the Texas Legislature in its 2015 Regular Session that amend primarily the Texas Business Organizations Code (the “Code”).<sup>2</sup>

Senate Bill No. 859 (*S.B. 859*) was authored by Senator Kevin Eltife, sponsored by Representative Rene Oliveira, and became effective on September 1, 2015, with portions becoming effective on January 1, 2016. S.B. 859 makes several technical and substantive amendments to the Code relating to partnerships and limited liability companies.

Senate Bill No. 860 (*S.B. 860*) was authored by Senator Kevin Eltife, sponsored by Representative Rene Oliveira, and became effective on September 1, 2015. S.B. 860 makes several technical and substantive amendments to the Code relating to corporations and fundamental business transactions.

Senate Bill No. 1077 (*S.B. 1077*) was authored by Senator Kevin Eltife, sponsored by Representatives Rene Oliveira and Tan Parker, and became effective immediately upon signature by Governor Greg Abbott on May 23, 2015. S.B. 1077 makes a clarifying amendment to the defined term “person” in Chapter 1 of the Texas Business & Commerce Code (the *TBCC*).

House Bill No. 2891 (*H.B. 2891*) was authored by Representatives John Otto, Andrew Murr, and Chris Fallon, sponsored by Senators Charles Perry and Konni Burton, and becomes effective on January 1, 2016. H.B. 2891 makes substantive amendments to the Code and the Texas Tax Code to make professional associations and limited partnerships subject to annual public information report filing requirements.

Senate Bill 1313 (*S.B. 1313*) was authored by Senators Kirk Watson and Royce West, sponsored by Representative Jason Villalba, and became effective immediately upon signature by the Governor on June 19, 2015. S.B. 1313 amends the Code to require a notarized written consent by any person or entity that is consenting to the use by another entity of a similar name.

As background information, the Code was originally adopted by the 2003 Texas Legislature.<sup>3</sup> The Code codified the provisions of prior law found in the Texas Business Corporation Act (*TBCA*), Texas Non-Profit Corporation Act (*TNPCA*), Texas Miscellaneous Corporation Laws Act (*TMCLA*), Texas Limited Liability Company Act (*TLLCA*), Texas Revised Limited Partnership Act (*TRLPA*), Texas Real Estate Investment Trust Act (*TREITA*), Texas Uniform Unincorporated Nonprofit Associations Act (*TUUNAA*), Texas Professional Corporation Act (*TPCA*), Texas Professional Associations Act (*TPAA*), the Texas Revised Partnership Act (*TRPA*), the Cooperative Associations Act (*CAA*), and other existing provisions of Texas statutes governing domestic entities.<sup>4</sup>

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<sup>2</sup> TEX. BUS. ORGS. CODE ANN. (Vernon Supp. 2008).

<sup>3</sup> Acts 2003, 78<sup>th</sup> Leg., ch. 182 (H.B. 1156), effective January 1, 2006.

<sup>4</sup> The Code was a joint project of the Business Law Section of the State Bar of Texas and the Office of the

The effective date of the Code was January 1, 2006, and the Code applied to domestic (Texas) entities formed after that date. The Code generally did not apply prior to January 1, 2010 to a domestic entity that existed on or before January 1, 2006, unless the entity expressly elected to adopt the Code as its governing statute. On January 1, 2010, the Code began to apply to all domestic entities that existed on or before January 1, 2006.<sup>5</sup>

Unless otherwise indicated, all references to a “Chapter,” “Section” or “Subsection” are to a Chapter, Section or Subsection of the Code.

## II. FUNDAMENTAL BUSINESS TRANSACTIONS

S.B. 860 amended various provisions of Chapter 10 of the Code relating to fundamental business transactions, which include mergers, conversions or interest exchanges. Most of the changes are based on provisions contained in the Model Business Corporation Act (*MBCA*) or the Delaware General Corporation Law (*DGCL*).

*Owner Liability.* The first set of amendments are based on the *MBCA* and clarify that an owner or a member of a domestic entity cannot become subject to owner liability as a result of a merger, conversion, or interest exchange transaction without the consent of that owner or member. The provisions introduce a new definition of “owner liability” in Section 1.002 of the Code.<sup>6</sup> The new defined term refers to personal liability only for liabilities or other obligations that are imposed on a person (a) by statute solely by reason of the person’s status as an owner or member or (b) by a governing document of an organization under a provision of the Code or the law of the organization’s jurisdiction of formation that authorizes the governing document to make one or more specified owners or members liable in their capacity as such for all or specified liabilities or other obligations of the organization. It does not include liabilities or other obligations that an owner or member may incur or assume by contract or agreement, such as a guaranty of an organization’s obligations, other than an agreement contained within a governing document of the organization. The definition is based on Section 1.40(15C) of the *MBCA*.

With the new defined term, amendments are made to the corresponding provisions governing mergers, conversions, and interest exchanges in Chapter 10.<sup>7</sup> These amendments specify that the consent of an owner or a member to becoming personally liable as a result of a merger, interest exchange, or conversion is required as a condition to the plan of merger, plan of exchange or plan of conversion only if that personal liability is “owner liability.” These provisions are based on sections 11.04(i) and 9.52(7) of the *MBCA*. These amendments are

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Texas Secretary of State. The Texas Legislative Council also assisted in the editing and drafting of the Code. The 2005 Texas Legislature passed House Bill 1156 containing numerous technical amendments to the Code. The 2007 Texas Legislature passed House Bill 1737 containing numerous technical amendments and several substantive amendments to the Code. The 2009 Texas Legislature passed Senate Bill 1442 containing numerous technical and substantive amendments to the Code. The 2011 Texas Legislature passed Senate Bill 748 containing numerous technical and substantive amendments to the Code. The 2013 Texas Legislature passed Senate Bill 847 containing several technical and substantive amendments to the Code and Senate Bill 849 authorizing for-profit corporations to specify one or more “social purposes” in their certificates of formation.

<sup>5</sup> See TEX. BUS. ORGS. CODE ANN §§402.001–.005.

<sup>6</sup> S.B. 860 § 1 (adding TEX. BUS. ORGS. CODE ANN. § 1.002(63-a)).

<sup>7</sup> *Id.* §§ 5, 9, 11 (amending TEX. BUS. ORGS. CODE ANN. §§ 10.001(e), 10.051(f), 10.101(f)).

clarifications of Texas law because the provisions in effect before the amendments, which required consent to becoming “personally liable” (based on a previous version of the MBCA), have been understood by practitioners to refer only to personal liabilities imposed on owners or members directly or indirectly pursuant to statute or the governing documents.

*Use of Formula.* Various provisions of Chapter 10 were revised to clarify that a formula can be used to determine the manner and basis of converting or exchanging ownership or membership interests (a) in a plan of merger, (b) in a plan of exchange, or (c) in a plan of conversion.<sup>8</sup> These changes are intended to correspond in concept to recent changes made to the DGCL merger and conversion provisions. These changes are clarifications of Texas law because the use of a formula has been considered implicitly authorized by the existing provisions of the Code. S.B. 860 also makes a parallel amendment to clarify that the board of directors of a for-profit corporation can specify that a formula be used to determine the amount of consideration to be received for the issuance of shares in the corporation.<sup>9</sup> This change is based on a recent change in the DGCL and is intended to confirm what is implicit in existing Texas law.<sup>10</sup>

*Interests Can Remain Outstanding.* Several provisions of Chapter 10 were also revised to clarify that the ownership or membership interests of an organization that is a party to the merger can remain outstanding rather than being converted or exchanged as part of the merger if the organization survives the merger.<sup>11</sup> Again, these changes are based on language in the DGCL and confirm what has been understood to be existing Texas law and practice in this area.

*Plans Not Required to be Signed.* Several extraneous references to “signed” with respect to a plan of merger, plan of exchange, or plan of conversion have been removed. While a plan of merger, exchange, or conversion must be in written form, it does not need to be separately signed, but only needs to be adopted or approved in conformance with the requirements of the Code.<sup>12</sup>

*Plans can be Dependent on Outside Facts.* S.B. 860 clarifies that any of the terms of a plan of merger, plan of exchange, or plan of conversion may be made dependent on facts ascertainable outside of the plan if the plan clearly and expressly states the manner in which those facts will operate on the terms of such transaction.<sup>13</sup> The term “facts” includes the occurrence of any event, including the determination or action by any person.<sup>14</sup> As an example, a merger can be conditioned on the occurrence of certain events, such as a necessary regulatory approval. The added provisions are based primarily on language in the DGCL<sup>15</sup> and are considered clarifying, and not substantive, changes to prior Texas law.

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<sup>8</sup> *Id.* §§ 6, 10, 12 (amending TEX. BUS. ORGS. CODE ANN. §§ 10.002(a)(5), 10.052(a)(5), 10.103(a)(5)).

<sup>9</sup> *Id.* § 24 (adding TEX. BUS. ORGS. CODE ANN. § 21.160(d)).

<sup>10</sup> *See* DEL. CODE ANN. tit. 8, § 152 (2015).

<sup>11</sup> S.B. 860 §§ 6, 8 (amending TEX. BUS. ORGS. CODE ANN. §§ 10.002(a)(6) and 10.008(a)(8)).

<sup>12</sup> *Id.* §§ 13, 14 (amending TEX. BUS. ORGS. CODE ANN. §§ 10.151(b)(1)(G), 10.154(b)(1)(C)–(D)).

<sup>13</sup> *Id.* §§ 6, 10, 12 (adding TEX. BUS. ORGS. CODE ANN. §§ 10.002(d), 10.052(c), 10.103(c)).

<sup>14</sup> *Id.*

<sup>15</sup> *See, e.g.,* DEL. CODE ANN. tit. 8, § 251(b).

*Attachment of Amended and Restated Certificate of Formation to Plan of Merger.* The Texas Secretary of State has interpreted the provisions of the Code prior to S.B. 860 as prohibiting the attachment of an amended and restated certificate of formation to a certificate of merger to reflect any amendments that were adopted as part of the plan of merger. Such procedure is allowed in various other states, including in Delaware.<sup>16</sup> In Texas, prior practice has been to include any amendments specifically as part of the certificate of merger, but not to amend and restate the certificate of formation of a surviving filing entity. Substantive amendments have been made by S.B. 860 to authorize a plan of merger to include restatements or amendments and restatements of governing documents, including a certificate of amendment, a restated certificate for formation without amendment, or a restated certificate of formation containing amendments.<sup>17</sup> As a result of other changes made by S.B. 860, amendments to the certificate of formation of a surviving domestic filing entity are authorized to be set forth in a restated certificate of formation containing amendments or a certificate of amendment attached to the certificate of merger so long as the certificate of merger includes a statement that the amendments are being made as set forth in such attachments. In addition, a restated certificate of formation containing no amendments may be attached to the certificate of merger.<sup>18</sup> The Code was also amended to make clear that a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments of a surviving filing entity will have the effect stated in Code section 3.063 (which makes the restated certificate of formation the superseding and effective certificate of formation).<sup>19</sup>

### III. CERTIFICATED AND UNCERTIFICATED OWNERSHIP INTERESTS

S.B. 860 clarifies that a for-profit corporation, real estate investment trust, or professional corporation may issue and have outstanding both certificated and uncertificated ownership interests of the same class or series at the same time, as provided by the entity's governing documents or a resolution adopted by its governing authority.<sup>20</sup> The amendment conforms certain of the language more closely to former Article 2.19.A of the TBCA and to current section 158 of the DGCL.

### IV. RATIFICATION OF VOID OR VOIDABLE CORPORATE ACTS OR SHARE ISSUANCES

S.B. 860 adds new Subchapter R to Chapter 21, containing provisions that specify procedures for ratification of void or voidable corporate acts or share issuances by for-profit corporations. These provisions are modeled on relatively new provisions added to the DGCL.<sup>21</sup>

*Definitions.* New definitions of “corporate statute,” “defective corporate act,” “district court,” “failure of authorization,” “overissue,” “putative shares,” “time of the defective

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<sup>16</sup> See, e.g., *id.* § 251(c).

<sup>17</sup> S.B. 860 § 7 (amending TEX. BUS. ORGS. CODE ANN. § 10.004(1)).

<sup>18</sup> *Id.* § 13 (amending TEX. BUS. ORGS. CODE ANN. § 10.151(b)(1) and adding § 10.151(d)).

<sup>19</sup> *Id.* § 8 (amending TEX. BUS. ORGS. CODE ANN. § 10.008(a)(6)).

<sup>20</sup> *Id.* § 4 (amending TEX. BUS. ORGS. CODE ANN. § 3.201(b)).

<sup>21</sup> See DEL. CODE ANN. tit. 8, §§ 204–05.

corporate act,” “validation effective time,” and “valid shares” have been added that apply to Subchapter R.<sup>22</sup>

1. “district court” is defined to mean a district court in the county where the corporation’s principal office in Texas is located or a county in which the corporation’s registered office in Texas is located if the corporation does not have a principal office in Texas.<sup>23</sup>
2. “defective corporate act” means an overissue; an election or appointment of directors that is void or voidable due to a failure of authorization; or any act or transaction purportedly taken by the corporation that is, and at the time the act or transaction was purportedly taken would have been, within the power of the corporation to take under the corporate statute, but is void or voidable due to a failure of authorization.<sup>24</sup>
3. “failure of authorization” means the failure to authorize or effect an act or transaction in compliance with the provisions of the corporate statute, the corporation’s governing documents, or any plan or agreement to which the corporation is a party, to the extent the failure would render the act or transaction void or voidable.<sup>25</sup>
4. “overissue” means the purported issuance of shares in excess of the number of shares that the corporation has the power to issue at the time of issuance of shares that are not at the time authorized for issuance by the governing documents of the corporation.<sup>26</sup>
5. “corporate statute” means the Code, the TBCA, or any predecessor Texas statute that governs the action or the filing.<sup>27</sup>
6. “putative shares” means the shares of the corporation that were created or issued pursuant to a defective corporate act that would constitute valid shares, if not for a failure of authorization, or cannot be determined by the board of directors to be valid shares.<sup>28</sup>
7. “valid shares” means the shares of any class or series of the corporation that have been authorized and validly issued in accordance with the corporate statute.<sup>29</sup>
8. “time of the defective corporate act” means the date and time the defective

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<sup>22</sup> S.B. 860 § 30 (adding TEX. BUS. ORGS. CODE ANN. § 21.901).

<sup>23</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.901(c)).

<sup>24</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.901(2)).

<sup>25</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.901(4)).

<sup>26</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.901(5)).

<sup>27</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.901(1)).

<sup>28</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.901(6)).

<sup>29</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.901(9)).

corporate act was purported to have been taken.<sup>30</sup>

9. “validation effective time” or “effective time of the validation” means the later of (a) the time at which the resolution submitted to the shareholders for adoption under Subchapter R is adopted by the shareholders or, if no shareholder approval is required, the time at which the notice required by Subchapter R is given, or (b) the time at which any certificate of validation filed under Subchapter R takes effect.<sup>31</sup>

*General Effect of Ratification or Court Validation.* Defective corporate acts or putative shares are not void or voidable solely as a result of a failure of authorization if the act or shares are ratified in accordance with Subchapter R or validated by the district court in a proceeding brought under Section 21.914 of Subchapter R.<sup>32</sup> The board and shareholder ratification procedures and the court validation procedure under Subchapter R are not the exclusive means of ratifying or validating any defective corporate act or defective issuance of shares.<sup>33</sup> The absence or failure of the ratification of an act or transaction in accordance with Subchapter R or a validation of an act or transaction by a district court under Subchapter R does not, of itself, affect the validity or effectiveness of any act or transaction or the issuance of any shares properly ratified under common law or otherwise. Nor does this absence or failure create a presumption that any such act or transaction is or was a defective corporate act or that those shares are void or voidable.<sup>34</sup>

*Ratification by Board.* Ratification of the defective corporate act or putative shares requires that the board of directors first adopt a resolution stating (a) the defective corporate act to be ratified, (b) the time of the defective corporate act, (c) if the defective corporate act involved the issuance of putative shares, the number and type of putative shares issued, and the date or dates on which the putative shares were purportedly issued, (d) the nature of the failure of authorization with respect to the defective corporate act to be ratified, and (e) that the board of directors approves the ratification of the defective corporate act.<sup>35</sup> The resolution may also state that, notwithstanding adoption of the resolution by the shareholders, the board may decide, at any time before the validation effective time, to abandon the resolution without further shareholder action.<sup>36</sup> In the absence of actual fraud in the transaction, the judgment of the board of directors that shares of the corporation are valid shares or putative shares is conclusive, unless otherwise determined by the district court in a proceeding brought under Subchapter R.<sup>37</sup>

*Shareholder Approval.* The board’s resolution must be submitted to shareholders for adoption unless no provision of the corporate statute and no provision of the governing documents of the corporation or any plan or agreement to which the corporation is a party

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<sup>30</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.901(7)).

<sup>31</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.901(8)).

<sup>32</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.902).

<sup>33</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.913(a)).

<sup>34</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.913(b)).

<sup>35</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.903(a)).

<sup>36</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.903(b)).

<sup>37</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.912).

would have required shareholder approval of the defective corporate act to be ratified either at the time of the defective corporate act or at the time when the board adopts the required resolution.<sup>38</sup> In addition, shareholder approval will always be required if the defective corporate act results from a failure to comply with Subchapter M of Chapter 21 relating to business combination transactions with affiliated shareholders.<sup>39</sup>

The procedures for submission of the resolution to shareholders and the voting requirements are specified in detail. Notice of the time, place (if any) and purpose of the meeting must be given at least 20 days before the date of the meeting to each holder of valid shares and putative shares, whether voting or nonvoting.<sup>40</sup> In addition, notice must be given to each holder of record of valid shares and putative shares, regardless of whether the shares are voting or nonvoting, as of the time of the defective corporate act, except that notice is not required to be given to a holder whose identity or address cannot be ascertained from the corporation's records.<sup>41</sup> The notice must contain a copy of the board resolution<sup>42</sup> and a statement of the 120-day deadline after the validation effective time for any claim that the defective corporate act or putative shares ratified under Subchapter R are void or voidable due to the identified failure of authorization or any claim that the district court, in its discretion, should declare that a ratification made in accordance with Subchapter R not take effect or that it take effect only on certain conditions.<sup>43</sup> The quorum and voting requirements for shareholders at the meeting are the same as those applicable at the time of such adoption by the shareholders for the type of defective corporate act to be ratified.<sup>44</sup> If a larger number or portion of shares of any class or series of shares or of specified shareholders would have been required under the corporation's governing documents, any plan or agreement to which the corporation was a party or any provision of the corporate statute as in effect at the time of the defective corporate act, then such larger number or portion of shares or of any class or series of shares or specified shareholders is required for a quorum to be present and to adopt the resolution.<sup>45</sup> The adoption of a resolution to ratify the election of a director requires the affirmative vote of a majority of shares present at the meeting and entitled to vote on the election of the director unless the governing documents of the corporation then in effect or in effect at the time of the defective election require or required a larger number or portion of shares to elect the director, in which case the affirmative vote of such larger number or portion of shares is required.<sup>46</sup>

*Certificate of Validation.* The filing of a certificate of validation with the filing officer is required if the defective corporate act being ratified would have required the filing of a filing instrument or document with the filing officer.<sup>47</sup> The certificate of validation must include the following: (a) a copy and “the date of adoption of the resolution by the board of directors and,

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<sup>38</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.905).

<sup>39</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.905(2)).

<sup>40</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.906(a)).

<sup>41</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.906(a) and (b)).

<sup>42</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.906(c)(1)).

<sup>43</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.906(c)).

<sup>44</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.907(a)).

<sup>45</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.907(a) and (b)).

<sup>46</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.907(c)).

<sup>47</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.908(a)).



if applicable, the date of adoption by the shareholders and a statement that the resolution was adopted in accordance with [Subchapter R]”; (b) ”the title and date of filing of [any previously filed] filing instrument or document” related to the defective corporate act and any “certificate of correction to the filing instrument”; and (c) ”the provisions that would be required under [the Code] to be included in the filing instrument that otherwise would have been required to be filed with respect to the defective corporate act.”<sup>48</sup>

*Effect of Ratification.* On and after the validation effective time, the defective corporate act is no longer deemed void or voidable retroactive to the time of the defective corporate act.<sup>49</sup> In addition, on or after the validation effective time, any putative share purportedly issued pursuant to such defective corporate act will no longer be deemed void or voidable as a result of a failure of authorization identified in the curative resolution but will be deemed to be an identical share outstanding as of the time it was purportedly issued.<sup>50</sup>

*Notice of Ratification to Shareholders.* A notice must be given to all holders of valid shares and putative shares, whether voting or nonvoting, of the adoption of the ratifying resolution by the board of directors.<sup>51</sup> The “notice [. . . must] also be given to each holder of record of valid shares and putative shares, . . . whether . . . voting or nonvoting, as of the time of the defective corporate act, except that notice is not required to be given to a holder whose identity or address cannot be ascertained from the corporation’s records.”<sup>52</sup> The foregoing notice is not required if notice of the resolution is given in accordance with procedures for shareholder approval of the resolution as described above.<sup>53</sup> The notice must contain a copy of the resolution and a statement that the following must be brought not later than 120 days after the validation effective time: (a) any claim that the defective corporate act or putative shares ratified under Subchapter R are void or voidable due to the identified failure of authorization or (b) any claim that the district court, in its discretion, should declare that a ratification made in accordance with Subchapter R not take effect or that it take effect only on certain conditions.<sup>54</sup>

*Validation Procedures for a District Court.* A corporation, any successor entity to the corporation, any member of the board of directors, any record or beneficial holder of valid shares or putative shares currently or as of the time of the defective corporate act that was ratified pursuant to Subchapter R, or any other person claiming to be substantially and adversely affected by a ratification under Subchapter R may apply to a district court, pursuant to new Section 21.914, to determine the validity and effectiveness of various matters relating to any defective corporate act or transaction or to modify or waive any of the procedures set forth in Subchapter R to ratify a defective corporate act.<sup>55</sup> Actions that the district court may take as a result of the application include declaring that putative shares are valid shares, ordering the filing officer to accept an instrument for filing with a prior effective date and time,

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<sup>48</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.908(b)).

<sup>49</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.909).

<sup>50</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.910).

<sup>51</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.911(a)).

<sup>52</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.911(c)).

<sup>53</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.911(e)).

<sup>54</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.911(d)).

<sup>55</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.914(a) and (b)).

and validating and declaring effective any defective corporate act or putative shares, among other things.<sup>56</sup> New Subsection 21.914(d) specifies various factors for the district court to consider in connection with the resolution of matters.

The district court is vested with exclusive jurisdiction to hear and determine all actions brought under Section 21.914.<sup>57</sup> Service of the application made to the district court may be made upon the registered agent of the corporation, and the district court may require a notice of the action to be provided to other persons to permit such other persons to intervene in the action.<sup>58</sup> A time limit of 120 days after the validation-effective time is established for any action asserting that a ratification by the corporation's board of directors in accordance with Section 21.903 is void or voidable due to a failure of authorization in accordance with that section or that the district court should declare in its discretion that a ratification in accordance with Subchapter R not take effect or should take effect only on certain conditions.<sup>59</sup> This time limit does not apply to an action asserting that a ratification was not accomplished in accordance with Subchapter R or to any person to whom notice of ratification was not given as required by Section 21.906 and 21.911.<sup>60</sup>

## V. TERM OF SHAREHOLDERS' AGREEMENTS

S.B. 860 removes the antiquated ten-year time limit on the valid duration of shareholders' agreements under Subchapter C of Chapter 21. The ten-year time limit is retained for those shareholders' agreements that were in effect prior to the effective date of the amendment (September 1, 2015).<sup>61</sup> This provision is modeled on recently amended Section 7.32 of the MBCA.

## VI. AUTHORIZING SHAREHOLDER ACCESS TO PROXY STATEMENTS

S.B. 860 adds provisions that expressly authorize bylaws of for-profit corporations to allow shareholder access to proxy statements.<sup>62</sup> These provisions specify that the bylaws of a for-profit corporation may contain a provision requiring the corporation to include in its proxy statement, when soliciting proxies or consents with respect to the election of directors, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors, subject to such procedures or conditions as may be provided in the bylaws. In addition, the bylaws may contain a provision requiring that the corporation reimburse a shareholder's expenses in soliciting proxies or consents with respect to an election of directors, subject to such procedures and conditions as provided in the bylaws. These bylaw provisions are entirely elective, and not mandatory, on the part of a for-profit corporation and its board of directors. These provisions are conceptually similar to provisions recently added to the MBCA and DGCL.

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<sup>56</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.914(c)).

<sup>57</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.915).

<sup>58</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.916).

<sup>59</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.917(b)).

<sup>60</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 21.917(a)).

<sup>61</sup> *Id.* § 23 (amending TEX. BUS. ORGS. CODE ANN. § 21.102).

<sup>62</sup> *Id.* § 25 (adding TEX. BUS. ORGS. CODE ANN. § 21.371(d)).

## VII. COMBINED TENDER OFFER AND SHORT-FORM MERGER

S.B. 860 adds new authorization for the acquisition of a Texas public for-profit corporation, whose shares are listed on a national securities exchange or are held of record by more than 2,000 holders, through a “two-step” tender or exchange offer and merger process.<sup>63</sup> The process consists of a “front-end” tender or exchange offer for the public corporation’s shares by the acquirer followed by a “back-end” merger between the acquirer and the public corporation. If the conditions stated in new Section 21.459(c) are met, the back-end merger may be effected without a shareholder vote or consent regarding the merger. The key conditions include:

1. The plan of merger must require or permit reliance on Section 21.459(c).
2. When the tender or exchange offer is consummated, the acquirer must own, by acquisition through the offer or otherwise, the number or percentage of the shares, and of each class or series of those shares, that would be necessary under the Code and the certificate of formation to approve a merger at a shareholders’ meeting of the for-profit corporation.<sup>64</sup>
3. The holders whose shares are converted and exchanged in the merger must be entitled to receive the same consideration as the holders who tendered shares to the acquirer in the tender or exchange offer.
4. The merger must be effected as soon as practicable after the tender or exchange offer is consummated.<sup>65</sup>

This new type of merger, which applies only to Texas public for-profit corporations, is in addition to the existing right of an acquirer under Section 10.006 to effect a “short-form” merger without a shareholder vote or consent when the acquirer owns at least 90% of the outstanding shares of the corporation. New definitions are added for “consummates,” “consummation,” “consummating,” “depository” and “received” for purposes of Section 21.459(c) and certain newly revised sections of Chapter 10 regarding the dissenters’ rights that apply to a back-end merger.<sup>66</sup> The new provisions added to Code Section 21.459 are based on Section 251(h) of the DGCL as adopted in 2013 and amended in 2014.

Corresponding amendments were also made to various Chapter 10 provisions to confirm that dissenters’ rights apply to a back-end merger under Section 21.459(c). S.B. 860 amends Section 10.354(c) to state that the exception from dissenters’ rights provided in Section 10.354(b), which applies to a merger (or an interest exchange or a conversion) involving a Texas public corporation described in that subsection, does not apply to a back-end

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<sup>63</sup> *Id.* § 26 (adding TEX. BUS. ORGS. CODE ANN. § 21.459(c), (d), (e)).

<sup>64</sup> Under the Code, in general terms, the vote or consent of two-thirds of the outstanding shares of a Texas for-profit corporation is required to approve a merger, though the corporation’s certificate of formation may reduce that threshold to as little as a majority of the outstanding shares. *See* TEX. BUS. ORGS. CODE ANN. § 21.457.

<sup>65</sup> *Id.* § 26 (adding TEX. BUS. ORGS. CODE ANN. § 21.459(c)).

<sup>66</sup> *Id.* (adding TEX. BUS. ORGS. CODE § 21.459(d)).

merger effected under Section 21.459(c).<sup>67</sup> The responsible organization is required to notify the shareholders who have dissenters' rights of their rights at any time before, but no later than ten days after, the effective date of the merger. If the notice is given after the effective date of the merger, the notice must state the effective date of the merger.<sup>68</sup> If the notice is given before the effective date of the merger, a second notice must be given after the effective date of the merger stating the effective date of the merger.<sup>69</sup> The shareholders to whom the first and any second notice of dissenters' rights regarding a back-end merger subject to Section 21.459(c) must be given are described in the revised provisions. Such shareholders will vary depending on whether the relevant notice is given before or after the consummation of the front-end tender or exchange offer.<sup>70</sup> Another new provision describes the deadline for a dissenting shareholder's delivery of a demand to the organization responsible for dissenters' rights regarding such a back-end merger.<sup>71</sup> The deadline is the later of (a) the 20<sup>th</sup> day after the date the responsible organization gives to the shareholder the initial required notice of the right to dissent to the plan of merger or (b) the date of the consummation of the tender or exchange offer.

### VIII. ADOPTION OF CERTAIN CORPORATE NAME AMENDMENTS

S.B. 860 authorizes the board of directors of a for-profit corporation, without shareholder approval, to adopt an amendment to the corporation's certificate of formation to change a word or abbreviation in its corporate name required by Section 5.054(a) to be a different word or abbreviation required by that section.<sup>72</sup> For example, the board of directors could authorize an amendment that changes the word "Inc." to "Corporation" in the corporate name without shareholder approval as a result of this amendment.

### IX. EXECUTION OF CERTAIN FILING INSTRUMENTS BY ORGANIZERS OR DIRECTORS OF FOR-PROFIT CORPORATION

S.B. 860 adopts amendments to provide more flexibility by broadening the exception to the requirement that a certificate of amendment or a restated certificate of formation of a for-profit corporation must be signed by an officer of the corporation. If shares of the corporation have not been issued and the certificate of amendment or restated certificate of formation is adopted by the board of directors, then one or more of the directors, instead of a majority of the directors, may sign such a filing instrument.<sup>73</sup> Language is also added that references to Title 2 of the Code as containing a second exception to such general rule of officer execution. This exception is now found in new subsection (b) of Section 20.001, which authorizes an organizer or a director, rather than an officer, to sign a certificate of termination, a certificate of reinstatement, and a certificate of amendment to cancel an event requiring winding up or a restated certificate of formation that contains an amendment to cancel an event requiring winding up, in each case that is filed before the for-profit corporation commences business.

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<sup>67</sup> *Id.* § 15 (amending TEX. BUS. ORGS. CODE § 10.354(a), (c)).

<sup>68</sup> *Id.* § 16 (adding TEX. BUS. ORGS. CODE ANN. § 10.355(b-1)).

<sup>69</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 10.355(f)).

<sup>70</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. §§ 10.355(b)(3), (f)).

<sup>71</sup> *Id.* § 17 (adding TEX. BUS. ORGS. CODE ANN. § 10.356(b)(3)(E)(iv)).

<sup>72</sup> *Id.* § 21 (adding TEX. BUS. ORGS. CODE ANN. § 21.053(c) and amending § 21.053(a)).

<sup>73</sup> *Id.* §§ 2–3 (amending TEX. BUS. ORGS. CODE ANN. §§ 3.054, 3.060(b)).

The authority to sign corresponds with the authority of organizers or directors of a for-profit corporation, without shareholder approval, to approve a winding up, a reinstatement or a cancellation of an event requiring winding up under existing Section 21.502(2). Section 21.502(2) only applies if the corporation has not commenced business and has not issued any shares.

#### **X. POWER OF SHAREHOLDERS OR ORGANIZERS TO CANCEL EVENT REQUIRING WINDING UP**

S.B. 860 clarifies that action by the board of directors is not required for an amendment to a certificate of formation to cancel an event requiring winding up that is adopted or authorized by all of the shareholders or a majority of the organizers of a for-profit corporation under Section 21.502(1) or Section 21.502(2), respectively.<sup>74</sup> Such action may involve a certificate of amendment to a certificate of formation or a restated certificate of formation that contains an amendment to the certificate of formation. Section 21.502(2) only applies if the corporation has not commenced business and has not issued any shares. A corresponding amendment recognizes that a restated certificate of formation containing an amendment to cancel an event requiring winding up may be adopted or authorized by the shareholders or the organizers under Section 21.502(1) or Section 21.502(2), respectively.<sup>75</sup>

#### **XI. WINDING UP OF INACTIVE NON-PROFIT CORPORATIONS**

S.B. 860 makes several amendments that authorize the organizers and the board of directors of a nonprofit corporation that has no members or no members with voting rights to take the same actions before the nonprofit corporation holds or solicits any assets or otherwise engages in any activities as the organizers and the board of directors of a for-profit corporation may take under Code Section 21.502(2) before a for-profit corporation commences business and issues shares. A majority of the organizers or a majority of the directors, before the nonprofit corporation holds or solicits any assets or otherwise engages in any activities, may adopt a resolution to wind up, reinstate, cancel an event requiring winding up, revoke a voluntary decision to wind up, or effect a distribution plan for the corporation.<sup>76</sup> Another amendment specifies that, if a majority of the organizers or a majority of the directors approves the winding up, the reinstatement or the cancellation of an event requiring winding up, then the certificate of termination, certificate of reinstatement, certificate of amendment to cancel event requiring winding up or restated certificate of formation that contains an amendment to cancel an event requiring winding up may be signed by one of the organizers or one of the directors, as applicable.<sup>77</sup>

A corresponding amendment is made with respect to the “fundamental actions” of a nonprofit corporation.<sup>78</sup> If the nonprofit corporation has no members or no members with voting rights and has no assets and has not solicited any assets or otherwise engaged in any activities, the affirmative vote of a majority of the organizers or a majority of the directors is

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<sup>74</sup> *Id.* § 20 (adding TEX. BUS. ORGS. CODE ANN. § 21.052(d)).

<sup>75</sup> *Id.* § 22 (adding TEX. BUS. ORGS. CODE ANN. § 21.056(a)(2)).

<sup>76</sup> *Id.* § 29 (adding TEX. BUS. ORGS. CODE ANN. § 22.302(1)(B)).

<sup>77</sup> *Id.* § 19 (amending TEX. BUS. ORGS. CODE ANN. § 20.001).

<sup>78</sup> *Id.* § 28 (adding TEX. BUS. ORGS. CODE ANN. § 22.164(d)).

required to approve a fundamental action consisting of an amendment to the certificate of formation to cancel an event requiring winding up or to approve any of the fundamental actions described in subsections (a)(2) through (a)(6) of Section 22.164.<sup>79</sup>

Another amendment specifies that the members or organizers of a nonprofit corporation have authority, without action of the board of directors, to approve a restated certificate of formation that contains an amendment to the certificate of formation to cancel an event requiring winding up under existing Section 22.302(2) and new Section 22.302(1)(B).<sup>80</sup>

## **XII. REPLACEMENT OF ANNUAL REGISTRATION REQUIREMENT FOR LLPS**

In substantive amendments to Subchapter J of Code Chapter 152, S.B. 859 eliminates the antiquated requirements for a limited liability partnership to file an annual renewal of registration. The amendments adopt the more modern approach of Delaware and the majority of states to require limited liability partnerships to file an annual report. The requirement for, and the contents of, the new annual report are specified in new Section 152.806(a). The new annual report must specify the name of the partnership and the number of partners of the partnership as of the date of filing of the report.<sup>81</sup> The fees required to be paid in connection with the annual report are the same as for the previously required annual renewal of registration.<sup>82</sup>

The due date for filing of the annual report is June 1 of each year following the year of effectiveness of the application for registration.<sup>83</sup> The failure to file the annual report and pay the required fee by May 31 of the year following the year in which the annual report was due will result in automatic termination of the partnership's registration.<sup>84</sup> The Secretary of State is required to provide each limited liability partnership that has an effective registration as of December 31 of the preceding year a written notice not later than March 31 stating the due date of the annual report and the filing fee and that the registration of the partnership will be terminated unless the report and the filing fee are timely filed and paid.<sup>85</sup>

The termination of registration of the limited liability partnership does not constitute an event requiring winding up of the partnership under Code Chapter 11.<sup>86</sup> The amendments also provide procedures by which a partnership whose registration has been terminated may apply for reinstatement of its registration within three years after the date of termination.<sup>87</sup>

Existing provisions are also amended to reflect the change from an annual renewal-of-registration requirement to an annual report requirement for domestic limited liability

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.* § 27 (amending TEX. BUS. ORGS. CODE ANN. § 22.109(a)).

<sup>81</sup> S.B. 859 § 5 (adding TEX. BUS. ORGS. CODE ANN. § 152.806(a)).

<sup>82</sup> *Id.* § 1 (amending TEX. BUS. ORGS. CODE ANN. § 4.158(2)).

<sup>83</sup> *Id.* § 5 (adding TEX. BUS. ORGS. CODE ANN. § 152.806(a)).

<sup>84</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 152.806(c)).

<sup>85</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 152.806(b)).

<sup>86</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 152.806(d)).

<sup>87</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 152.806(e)–(g)).

partnerships. In Code Section 152.802, subsection (g) is deleted<sup>88</sup> and subsections (c) and (e) are amended to eliminate the renewal-of-registration requirement.<sup>89</sup> In several places, the word “revoked” is amended to read “terminated” to harmonize with the revised language.<sup>90</sup> To mitigate potential liability problems arising from minor compliance errors, the amendments clarify that the acceptance by the Secretary of State of an application for registration is conclusive evidence of the satisfaction of all conditions precedent to an effective registration and that the registration remains effective so long as there is substantial compliance with the registration and annual reporting requirements of Sections 152.802 and 152.806.<sup>91</sup>

Unlike the rest of S.B. 859, the limited liability partnership amendments take effect on January 1, 2016 to allow time for the Secretary of State to amend its systems and forms to accommodate the replacement of the annual registration requirement for domestic limited liability partnerships with an annual report requirement.<sup>92</sup>

### **XIII. PUBLIC INFORMATION REPORTS FOR PROFESSIONAL ASSOCIATIONS AND LIMITED PARTNERSHIPS**

H.B. 2891 amends the Code and the Tax Code to make professional associations and limited partnerships subject to the annual public information reports that are required to be filed with the Texas Comptroller under Tax Code Section 171.203.<sup>93</sup> Effective January 1, 2016, limited partnerships and professional associations will be required to file the same public information report that corporations and limited liability companies have been required to file with the Texas Comptroller for many years. The Code’s requirement for a professional association to file an annual statement with the Texas Secretary of State has been deleted.<sup>94</sup> The Code’s requirement for a limited partnership to file a report not more than once every four years with the Texas Secretary of State is no longer applicable to any limited partnership that is required to file the public information report under Tax Code Section 171.203.<sup>95</sup>

The public information report required under the Tax Code requires, in a manner similar to requirements for corporations and limited liability companies, (a) the name of each corporation, limited liability company, limited partnership or professional association in which the limited partnership or professional association owns a 10% or greater interest or that owns a 10% or greater interest in the limited partnership or professional association filing the report, (b) the name, title and mailing address of each person who is an officer or director of the professional association, (c) the name and address of the agent of the limited partnership or professional association designated under Tax Code Section 171.354, and (d) the address of the principal office and principal place of business of the limited partnership or professional association.<sup>96</sup> For limited partnerships, in lieu of providing the identity of the officer or

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<sup>88</sup> *Id.* § 10.

<sup>89</sup> *Id.* § 4 (amending TEX. BUS. ORGS. CODE ANN. § 152.802(c), (e)).

<sup>90</sup> *Id.* (amending TEX. BUS. ORGS. CODE ANN. § 152.802(e), (h)).

<sup>91</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. § 152.802(C-1), (k)).

<sup>92</sup> *Id.* §§ 4, 5, 11.

<sup>93</sup> H.B. 2891 § 3 (amending TEX. TAX CODE ANN. § 173.203(a)–(b)).

<sup>94</sup> *Id.* § 1 (amending TEX. BUS. ORGS. CODE ANN. § 4.156).

<sup>95</sup> *Id.* § 2 (amending TEX. BUS. ORGS. CODE ANN. § 153.301).

<sup>96</sup> *Id.* § 3 (amending TEX. TAX CODE ANN. § 173.203(a)).

director, the name, title and mailing address of each general partner of the limited partnership must be provided in the public information report. An officer or director of the professional association or a general partner of the limited partnership must sign the report under a specified certification.<sup>97</sup>

#### **XIV. ENFORCEABILITY OF POWERS OF ATTORNEY IN GOVERNING DOCUMENTS**

Powers of attorney are frequently included in limited liability company agreements, partnership agreements and related documents. S.B. 859 makes several amendments to clarify the enforceability of irrevocable power-of-attorney provisions relating to the organization, internal affairs or termination of a limited liability company, general partnership or limited partnership.<sup>98</sup> The new provisions also apply to (1) a power of attorney granted by a partner of a partnership, a transferee or assignee of a partnership interest in the partnership or a person seeking to become a partner of a partnership or a transferee or assignee of a partnership interest in a partnership, or (2) a power of attorney granted by a member of a limited liability company or assignee of a membership interest in the limited liability company or a person seeking to become a member of or assignee of a membership interest in a limited liability company.<sup>99</sup> A power of attorney is irrevocable for all purposes under the new provisions if the power of attorney is coupled with an interest sufficient in law to support an irrevocable power and states that it is irrevocable.<sup>100</sup> A power of attorney granted to the limited liability company or the partnership, or a member of the company, a partner of the partnership or the respective officers, directors, managers, members, partners, trustees, employees or agents of the company or the partnership is conclusively presumed to be coupled with an interest sufficient in law to support the irrevocable power.<sup>101</sup> The irrevocable power of attorney is not affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence or bankruptcy of or any other event concerning the principal, unless otherwise provided in the power of attorney.<sup>102</sup> The new provisions are modeled after provisions added to the Delaware Limited Liability Company Act, the Delaware Revised Uniform Partnership Act and the Delaware Revised Uniform Limited Partnership Act in 2010.

#### **XV. SERIES OF ENTITY TREATED AS PERSON UNDER TEXAS UCC**

S.B. 1077 amended Chapter 1 of the TBCC to clarify that the definition of the term “person” includes a particular series of a for-profit entity.<sup>103</sup> This change confirms that a series of a Texas limited liability company can enter into contracts relating to the sale and lease of goods and other transactions that are subject to the Uniform Commercial Code as adopted in Texas in the TBCC. This change conforms to the intent of the authority granted to a series of a Texas limited liability company by Section 101.605 of the Code.<sup>104</sup> The amendment also is

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<sup>97</sup> *Id.* (amending TEX. TAX CODE ANN. § 173.203(d)).

<sup>98</sup> S.B. 859 §§ 2, 7 (adding TEX. BUS. ORGS. CODE ANN. §§ 101.055, 154.204).

<sup>99</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. §§ 101.055(a), 154.204(a)).

<sup>100</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. §§ 101.055(b), 154.204(b)).

<sup>101</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. §§ 101.055(d), 154.204(d)).

<sup>102</sup> *Id.* (adding TEX. BUS. ORGS. CODE ANN. §§ 101.055(c), 154.204(c)).

<sup>103</sup> S.B. 1077 § 1 (amending TEX. BUS. & COM. CODE ANN. § 1.201(b)(27)).

<sup>104</sup> TEX. BUS. ORGS. CODE ANN. § 101.605 provides that a series has the power and capacity, in the series' own



intended to apply to a series of a for-profit entity formed under the laws of another state. As a result, any particular series of a foreign for-profit entity is also considered a “person” for purposes of the chapters of the TBCC consisting of the Uniform Commercial Code. There are other states that authorize creation of series of business trusts and limited partnerships in addition to limited liability companies. Limited liability companies are the only type of Texas domestic entities that are specifically authorized by the Code to have series with liability limitations.<sup>105</sup>

## **XVI. NOTARIZED CONSENT TO USE OF SIMILAR NAME**

S.B. 1313 amends the Code to require consents to use of similar entity names in certain filings with the Secretary of State to be notarized and delivered to the Secretary of State. The prohibitions contained in several sections of the Code against reservation or registration of a name with the Secretary of State when a similar name is already reserved or registered by another entity or person do not apply if that other person or entity provides to the Texas Secretary of State a notarized written statement of the consent of such entity or person to the use of the similar name.<sup>106</sup> Similarly, the other entity or person for whom a name is reserved or registered can consent by providing to the Texas Secretary of State a notarized written statement of the consent to use of a similar name in the formation of a new domestic filing entity or the registration to transact business of a foreign filing entity.<sup>107</sup> In each case, these written consents were not previously required to be notarized or specifically required to be provided to the Texas Secretary of State. Nevertheless, the Texas Secretary of State has in practice required evidence of the consent to be filed in connection with the certificate of formation, application for registration to transact business or new name registration or reservation before accepting such filings.

## **XVII. OTHER MINOR AMENDMENTS**

S.B. 860 clarifies the definition of “existing claim” in Chapter 11 of the Code by conforming it to the predecessor statutory provision, Article 7.12.F(3) of the TBCA.<sup>108</sup> This change makes the definition consistent with usage of the term in other provisions of Chapter 11, such as Sections 11.356(a)(2) and 11.359(a).

S.B. 859 effects an amendment to clarify that Code Section 5.203 is another exception to the requirement that a limited partnership must amend its certificate of formation to reflect any change in the address of its registered office or the name or address of its registered agent.<sup>109</sup> Section 5.203 permits a registered agent to file an amendment to effect a change in its name or office address.

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name, to: (1) sue and be sued; (2) contract; (3) acquire, sell, and hold title to assets of the series, including real property, personal property, and intangible properties; (4) grant liens and security interests in assets of the series; and (5) exercise any power or privilege as necessary or appropriate to the conduct, promotion, or attainment of the business, purposes or activities of the series.

<sup>105</sup> See TEX. BUS. ORGS. CODE ANN. § 101(m).

<sup>106</sup> S.B. 1313 §§ 2–3 (amending TEX. BUS. ORGS. CODE ANN. §§ 5.102(b), 5.153(b)(1)).

<sup>107</sup> *Id.* § 1 (amending TEX. BUS. ORGS. CODE ANN. § 5.053(b)).

<sup>108</sup> S.B. 860 § 18 (amending TEX. BUS. ORGS. CODE ANN. § 11.001(3)).

<sup>109</sup> S.B. 859 § 6 (amending TEX. BUS. ORGS. CODE ANN. § 153.051(a)).

Another amendment makes clear that Section 11.057(f), which was added to the Code in 2011 and defines “majority-in-interest” for purposes relating to winding up a domestic general partnership, may be modified by the partnership agreement.<sup>110</sup>

S.B. 859 repeals Code Section 101.351 because the provision is not essential and creates the possibility of confusion regarding the interpretation of some of the provisions of Subchapter H of Chapter 101.<sup>111</sup> Section 101.351 provided that Subchapter H applied only to a meeting of and voting by the governing authority, the members if the members do not constitute the governing authority and a committee of the governing authority of a limited liability company. That limited applicability is inaccurate because Subchapter H applies to matters other than meeting of or voting by the governing authority (or a committee thereof) or the members of the limited liability company.

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<sup>110</sup> *Id.* § 3 (amending TEX. BUS. ORGS. CODE ANN. § 152.052(b)(9)(D)).

<sup>111</sup> *Id.* § 9.