

AN ACT

relating to corporations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section A, Article 1.02, Texas Business Corporation Act, is amended by adding Subsection (30) to read as follows:

(30) "Electronic transmission" means a form of communication that:

(a) does not directly involve the physical transmission of paper;

(b) creates a record that may be retained, retrieved, and reviewed by the recipient; and

(c) may be directly reproduced in paper form by the recipient through an automated process.

SECTION 2. Section A, Article 2.02, Texas Business Corporation Act, is amended to read as follows:

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

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

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

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

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

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

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

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

27 (8) To purchase or otherwise acquire its own bonds,

1 debentures, or other evidences of its indebtedness or obligations;
2 to purchase or otherwise acquire its own unredeemable shares and
3 hold those acquired shares as treasury shares or cancel or
4 otherwise dispose of those acquired shares; and to redeem or
5 purchase shares made redeemable by the provisions of its articles
6 of incorporation.

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

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

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

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

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

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

27 (15) To transact any lawful business which the board

1 of directors shall find will be in aid of government policy.

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

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

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

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

15 (20) To renounce, in its articles of incorporation or
16 by action of its board of directors, an interest or expectancy of
17 the corporation in, or an interest or expectancy of the corporation
18 in being offered an opportunity to participate in, specified
19 business opportunities or specified classes or categories of
20 business opportunities that are presented to the corporation or one
21 or more of its officers, directors, or shareholders.

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

25 SECTION 3. Sections F, K, and O, Article 2.02-1, Texas
26 Business Corporation Act, are amended to read as follows:

27 F. A determination of indemnification under Section B of

1 this article must be made:

2 (1) by a majority vote of the [~~a quorum consisting of~~]
3 directors who at the time of the vote are not named defendants or
4 respondents in the proceeding, regardless of whether the directors
5 not named defendants or respondents constitute a quorum;

6 (2) [~~if such a quorum cannot be obtained,~~] by a
7 majority vote of a committee of the board of directors, if:

8 (a) the committee is designated [~~to act in the~~
9 ~~matter~~] by a majority vote of the [~~all directors, consisting solely~~
10 ~~of two or more~~] directors who at the time of the vote are not named
11 defendants or respondents in the proceeding, regardless of whether
12 the directors not named defendants or respondents constitute a
13 quorum; and

14 (b) the committee consists solely of one or more
15 of the directors not named as defendants or respondents in the
16 proceeding;

17 (3) by special legal counsel selected by the board of
18 directors or a committee of the board by vote as set forth in
19 Subsection (1) or (2) of this section[~~, or, if such a quorum cannot~~
20 ~~be obtained and such a committee cannot be established, by a~~
21 ~~majority vote of all directors~~]; or

22 (4) by the shareholders in a vote that excludes the
23 shares held by directors who are named defendants or respondents in
24 the proceeding.

25 K. Reasonable expenses incurred by a present director who
26 was, is, or is threatened to be made a named defendant or respondent
27 in a proceeding may be paid or reimbursed by the corporation, in

1 advance of the final disposition of the proceeding and without the
2 determination specified in Section F of this article or the
3 authorization or determination specified in Section G of this
4 article, after the corporation receives a written affirmation by
5 the director of his good faith belief that he has met the standard
6 of conduct necessary for indemnification under this article and a
7 written undertaking by or on behalf of the director to repay the
8 amount paid or reimbursed if it is ultimately determined that he has
9 not met that standard or if it is ultimately determined that
10 indemnification of the director against expenses incurred by him in
11 connection with that proceeding is prohibited by Section E of this
12 article. Notwithstanding any authorization or determination
13 specified in this article, reasonable expenses incurred by a former
14 director or officer, or a present or former employee or agent of the
15 corporation, who was, is, or is threatened to be made a named
16 defendant or respondent in a proceeding may be paid or reimbursed by
17 the corporation, in advance of the final disposition of the
18 proceeding, on any terms the corporation considers appropriate. A
19 provision contained in the articles of incorporation, the bylaws, a
20 resolution of shareholders or directors, or an agreement that makes
21 mandatory the payment or reimbursement permitted under this section
22 shall be deemed to constitute authorization of that payment or
23 reimbursement.

24 O. An officer of the corporation shall be indemnified as,
25 and to the same extent, provided by Sections H, I, and J of this
26 article for a director and is entitled to seek indemnification
27 under those sections to the same extent as a director. A

1 corporation may indemnify and advance expenses to an officer,
2 employee, or agent of the corporation to the same extent that it may
3 indemnify and advance expenses to directors under this article. A
4 determination of indemnification for an employee or agent of the
5 corporation is not required to be made in accordance with Section F
6 of this article.

7 SECTION 4. Section A, Article 2.09, Texas Business
8 Corporation Act, is amended to read as follows:

9 A. Each corporation shall have and continuously maintain in
10 this State:

11 (1) A registered office which may be, but need not be,
12 the same as its place of business.

13 (2) A registered agent, which agent may be either an
14 individual resident in this State [~~whose business office is~~
15 ~~identical with such registered office,~~] or a domestic corporation,
16 or other entity organized under the laws of this state or [~~a foreign~~
17 ~~corporation~~] authorized to transact business in this State that
18 [~~which~~] has a business office identical with each such registered
19 office that is generally open during normal business hours to
20 accept service of process and otherwise perform the functions of a
21 registered agent.

22 SECTION 5. Article 2.13, Texas Business Corporation Act, is
23 amended by adding a new Section E and redesignating and amending
24 existing Sections E and F as Sections F and G to read as follows:

25 E. If the articles of incorporation expressly authorize the
26 board of directors to establish series of unissued shares of a class
27 and if no shares of a series established by resolution of the board

1 of directors have been issued, the board of directors may amend the
2 designations, preferences, limitations, and relative rights,
3 including voting rights, of the series, unless otherwise provided
4 in the articles of incorporation. To amend the designations,
5 preferences, limitations, and relative rights of a series, the
6 board of directors shall adopt a resolution amending the
7 designations, preferences, limitations, and relative rights of the
8 series. Before the issuance of any shares of the series, the
9 corporation shall file with the secretary of state a statement
10 setting forth:

11 (1) The name of the corporation.

12 (2) That no shares of the series have been issued.

13 (3) If the designation of the series is being changed,
14 a statement of the original designation and the new designation.

15 (4) A copy of the resolution amending the
16 designations, preferences, limitations, or relative rights of the
17 series.

18 (5) The date of adoption of the resolution.

19 (6) That the resolution was adopted by all necessary
20 action on the part of the corporation.

21 F. A [~~E. — Such~~] statement filed in accordance with Section D
22 or E of this article shall be executed on behalf of the corporation
23 by an officer. The original and a copy of the statement shall be
24 delivered to the Secretary of State. If the Secretary of State
25 finds that such statement conforms to law, he shall, when the
26 appropriate filing fee is paid as prescribed by law:

27 (1) Endorse on the original and the copy the word

1 "Filed," and the month, day, and year of the filing thereof.

2 (2) File the original in his office.

3 (3) Return the copy to the corporation or its
4 representative.

5 G [F]. Upon the filing of a [such] statement described in
6 Section D or E of this article by the Secretary of State, the
7 resolution establishing and designating the series and fixing and
8 determining the preferences, limitations, and relative rights
9 thereof, the resolution fixing the new number of shares of each
10 series in which the number of shares is increased or decreased, ~~[e]~~
11 the resolution eliminating a series and all references to such
12 series from the articles of incorporation, or the resolution
13 amending the preferences, limitations, and relative rights of the
14 series, as appropriate, shall become an amendment of the articles
15 of incorporation. The filing of the statement or the filing of a
16 restated certificate of incorporation under Article 4.07 of this
17 Act does not prohibit the board of directors from subsequently
18 adopting a resolution as authorized by this article. An amendment
19 of the articles of incorporation effected pursuant to this Article
20 2.13 is not subject to the procedure to amend the articles of
21 incorporation contained in Article 4.02 of this Act.

22 SECTION 6. Article 2.14, Texas Business Corporation Act, is
23 amended by amending Sections C and D and adding Section E to read as
24 follows:

25 C. Acceptance of a subscription ~~[In the case of an existing~~
26 ~~corporation, acceptance]~~ shall be effected by a resolution of
27 acceptance by the board of directors or by a written memorandum of

1 acceptance executed by one authorized by the board of directors and
2 delivered to the subscriber or his assignee.

3 D. Subscriptions for shares, whether made before or after
4 the organization of a corporation, shall be paid in full at such
5 time, or in such installments and at such times, as shall be
6 determined by the board of directors unless the payment terms are
7 specified by the subscription. Unless otherwise specified by the
8 subscription, a [Any] call made by the board of directors for
9 payment on subscriptions shall be uniform as to all shares of the
10 same class or as to all shares of the same series, as the case may
11 be, as far as practicable. In case of default in the payment of any
12 installment or call when such payment is due, the corporation may
13 proceed to collect the amount due in the same manner as any debt due
14 the corporation or declare the subscription forfeited if [~~The~~
15 ~~bylaws may prescribe other penalties for failure to pay~~
16 ~~installments or calls that may become due, but no penalty working a~~
17 ~~forfeiture of a subscription, or of the amounts paid thereon, shall~~
18 ~~be declared against any subscriber unless~~] the amount due remains
19 [~~thereon shall remain~~] unpaid for a period of twenty (20) days after
20 written demand has been made therefor to the subscriber. If mailed,
21 such written demand shall be deemed to be made when deposited in the
22 United States mail in a sealed envelope addressed to the subscriber
23 at his last post office address known to the corporation, with
24 postage thereon prepaid. [~~If the demand remains unsatisfied for a~~
25 ~~period of twenty (20) days, and if the corporation is solvent, the~~
26 ~~corporation may declare the subscription to be forfeited.~~] The
27 effect of such declaration of forfeiture shall be to terminate all

1 the rights and obligations of the subscriber as such, but the
2 corporation may retain any amount previously paid on the
3 subscription.

4 E. Before acquiring shares in a corporation, a person may
5 commit to act in a specified manner with respect to the shares after
6 the acquisition, including with respect to the voting of the shares
7 or the retention or disposition of the shares. To be binding, the
8 commitment must be in writing and be signed by the person acquiring
9 the shares. A written commitment entered into under this section is
10 a contract between the shareholder and the corporation.

11 SECTION 7. Article 2.14-1, Texas Business Corporation Act,
12 is amended to read as follows:

13 Art. 2.14-1. STOCK RIGHTS, OPTIONS, AND CONVERTIBLE
14 INDEBTEDNESS. A. Subject to any limitations in its articles of
15 incorporation, a corporation may create and issue, whether or not
16 in connection with the issuance and sale of any of its shares or
17 other securities, (1) rights or options entitling the holders
18 thereof to purchase or receive from the corporation any of its
19 shares of any class, classes or series or other securities and (2)
20 indebtedness convertible into any of its shares of any class,
21 classes or series or other securities.

22 B. The terms of rights or options may:

23 (1) prohibit or limit the exercise, transfer, or
24 receipt of the rights or options by certain persons or classes of
25 persons, including:

26 (a) a person who beneficially owns or offers to
27 acquire a specified number or percentage of the outstanding common

1 shares, voting power, or other securities of the corporation; or

2 (b) a transferee of a person described by
3 Paragraph (a) of this subsection; or

4 (2) invalidate the rights or options held by a person
5 or transferee described by Subsection (1) of this section.

6 C. Such rights, options or indebtedness shall be evidenced
7 in such manner as the board of directors shall approve and, subject
8 to the provisions of the articles of incorporation, shall set
9 forth:

10 (1) [~~a~~] in the case of rights or options, the terms
11 upon which, the time or times within which, and any [the]
12 consideration, including a formula by which the consideration may
13 be determined, [~~if any~~] for which[~~7~~] such shares may be purchased
14 or received from the corporation upon the exercise of any such right
15 or option;~~[7]~~ or

16 (2) [~~b~~] in the case of convertible indebtedness, the
17 terms and conditions upon which, the time or times within which, and
18 the conversion ratio or ratios at which, such indebtedness may be
19 converted into such shares.

20 D. In the absence of fraud in the transaction, the judgment
21 of the board of directors as to the adequacy of the consideration
22 received for such rights, options, or indebtedness shall be
23 conclusive; provided that rights or options may be issued by a
24 corporation to its shareholders, employees, or directors without
25 consideration if, in the judgment of the board of directors, the
26 issuance of those rights or options is in the interests of the
27 corporation. The consideration to be received for any shares

1 having a par value, other than treasury shares, to be issued upon
2 the exercise of such rights or options shall not be less than the
3 par value thereof. No privilege of conversion shall be conferred
4 upon, or altered in respect to, any indebtedness that would result
5 in receipt by the corporation of less than the minimum
6 consideration required to be received upon issuance of the shares.
7 The consideration for shares issued upon the exercise of
8 convertible indebtedness shall be that provided in Section E of
9 Article 2.15 of this Act. The consideration for shares issued upon
10 the exercise of rights or options shall be that provided in Section
11 F of Article 2.15 of this Act.

12 E. Except as provided by Section F of this article, the
13 authority to grant, amend, redeem, extend, or replace the rights or
14 options on behalf of a corporation is vested exclusively in the
15 board of directors of the corporation. A bylaw may not require the
16 board to grant, amend, redeem, extend, or replace the rights or
17 options.

18 F. The terms of the rights or options or the agreement or
19 plan under which the rights or options are issued may provide that
20 the board of directors may by resolution authorize one or more
21 officers of the corporation to do one or both of the following:

22 (1) designate officers and employees of the
23 corporation or of any of its subsidiaries to receive rights or
24 options created by the corporation; or

25 (2) determine the number of the rights or options to be
26 received by the officers and employees.

27 G. A resolution adopted under Section F of this article

1 authorizing an officer of the corporation to designate recipients
2 of rights or options shall specify the total number of rights or
3 options the officer may award. The board of directors may not
4 authorize an officer to designate himself or herself as a recipient
5 of any rights or options.

6 SECTION 8. Article 2.22, Texas Business Corporation Act, is
7 amended by amending Sections B and D and adding Section H to read as
8 follows:

9 B. A restriction on the transfer or registration of transfer
10 of a security, or on the amount of the corporation's securities that
11 may be owned by any person or group of persons, may be imposed by the
12 articles of incorporation, or by-laws, or a written agreement among
13 any number of the holders of such securities, or a written agreement
14 among any number of the holders and the corporation provided a
15 counterpart of such agreement shall be placed on file by the
16 corporation at its principal place of business or its registered
17 office and shall be subject to the same right of examination by a
18 shareholder of the corporation, in person or by agent, attorney or
19 accountant, as are the books and records of the corporation. No
20 restriction so imposed shall be valid with respect to any security
21 issued prior to the adoption of the restriction unless the holder of
22 the security voted in favor of the restriction or is a party to the
23 agreement imposing it.

24 D. In particular and without limiting the general power
25 granted in Sections B and C of this Article to impose reasonable
26 restrictions, a restriction on the transfer or registration of
27 transfer of securities of a corporation shall be valid if it

1 reasonably:

2 (1) Obligates the holders of the restricted securities
3 to offer to the corporation or to any other holders of securities of
4 the corporation or to any other person or to any combination of the
5 foregoing, a prior opportunity, to be exercised within a reasonable
6 time, to acquire the restricted securities; or

7 (2) Obligates the corporation to the extent permitted
8 by this Act or any holder of securities of the corporation or any
9 other person, or any combination of the foregoing, to purchase the
10 securities which are the subject of an agreement respecting the
11 purchase and sale of the restricted securities; or

12 (3) Requires the corporation or the holders of any
13 class of securities of the corporation to consent to any proposed
14 transfer of the restricted securities or to approve the proposed
15 transferee of the restricted securities for the purpose of
16 preventing violations of federal or state laws; or

17 (4) Prohibits the transfer of the restricted
18 securities to designated persons or classes of persons, and such
19 designation is not manifestly unreasonable; or

20 (5) Maintains the status of the corporation as an
21 electing small business corporation under Subchapter S of the
22 United States Internal Revenue Code, maintains any other tax
23 advantage to the corporation, or maintains the status of the
24 corporation as a close corporation under Part Twelve of this Act; or

25 (6) Obligates the holder of the restricted securities
26 to sell or transfer an amount of restricted securities to the
27 corporation, to any other holders of securities of the corporation,

1 or to any other person or combination of persons; or.

2 (7) Causes or results in the automatic sale or
3 transfer of an amount of restricted securities to the corporation,
4 to any other holders of securities of the corporation, or to any
5 other person or combination of persons.

6 H. A restriction on the transfer or the registration of a
7 transfer of the securities of a corporation, the amount of
8 securities of a corporation, or the amount of securities of a
9 corporation that may be owned by a person or group of persons for
10 any of the following purposes is conclusively presumed to be for a
11 reasonable purpose:

12 (1) maintaining a local, state, federal, or foreign
13 tax advantage to the corporation or its shareholders, including:

14 (a) maintaining the corporation's status as an
15 electing small business corporation under Subchapter S of the
16 Internal Revenue Code of 1986;

17 (b) maintaining or preserving any tax attribute,
18 including net operating losses; or

19 (c) qualifying or maintaining the qualification
20 of the corporation as a real estate investment trust under the
21 Internal Revenue Code of 1986 or regulations adopted under the
22 Internal Revenue Code of 1986; or

23 (2) maintaining a statutory or regulatory advantage or
24 complying with a statutory or regulatory requirement under
25 applicable local, state, federal, or foreign law.

26 SECTION 9. Article 2.22-1, Texas Business Corporation Act,
27 is amended to read as follows:

1 Art. 2.22-1. SHAREHOLDERS' PREEMPTIVE RIGHTS. A. Except
2 as provided by Section F of this article, the [The] shareholders of
3 a corporation shall not have a preemptive right to acquire
4 additional, unissued, or treasury shares of the corporation, or
5 securities of the corporation convertible into or carrying a right
6 to subscribe to or acquire shares, except to the extent provided
7 [limited or denied by this Article or] by the articles of
8 incorporation or by agreement.

9 B. The articles of incorporation may provide that the
10 shareholders of a corporation shall have a preemptive right by
11 including a statement that the corporation "elects to have a
12 preemptive right" or a similar statement. Section C of this article
13 applies to the shareholders' preemptive right except as otherwise
14 provided by the articles of incorporation.

15 C. (1) If the shareholders of a corporation have a
16 preemptive right under this article, the shareholders have a
17 preemptive right to acquire proportional amounts of the
18 corporation's additional unissued or treasury shares, or
19 securities of the corporation convertible into or carrying a right
20 to subscribe to or acquire shares on the decision of the
21 corporation's board of directors to issue the shares.

22 (2) Unless otherwise provided in the articles of
23 incorporation, no [~~1~~ No] preemptive right shall exist with
24 respect to:

25 (a) [~~to acquire any~~] shares issued or granted to
26 a director, officer, agent, or employee of the corporation or a
27 subsidiary or affiliate of the corporation [~~to employees pursuant~~

1 ~~to approval by the affirmative vote of the holders of a majority of~~
2 ~~the shares entitled to vote thereon or when authorized by and~~
3 ~~consistent with a plan theretofore approved by such a vote of~~
4 ~~shareholders]; [or]~~

5 (b) shares issued or granted to satisfy
6 conversion or option rights created to provide compensation to a
7 director, officer, agent, or employee of the corporation or a
8 subsidiary or affiliate of the corporation;

9 (c) shares authorized in the corporation's
10 articles of incorporation that are issued not later than the 180th
11 day after the effective date of the corporation's formation; or

12 (d) ~~[to acquire any]~~ shares sold, issued, or
13 granted by the corporation for consideration other than money
14 ~~[otherwise than for cash].~~

15 (3) ~~[(2)]~~ Holders of shares of any class or series
16 without general voting rights but that is preferred ~~[or limited]~~ as
17 to distributions ~~[dividends or assets]~~ shall not be entitled to any
18 preemptive right.

19 (4) ~~[(3)]~~ Holders of shares of any class or series
20 with general voting rights that is not preferred ~~[or limited]~~ as to
21 distributions ~~[dividends or assets]~~ shall not be entitled to any
22 preemptive right to shares of any class or series that is preferred
23 ~~[or limited]~~ as to distributions ~~[dividends or assets]~~ or to any
24 obligations, unless the shares with preferential rights or
25 obligations are convertible into ~~[shares of such class or series~~
26 ~~that is not preferred or limited]~~ or carry ~~[carrying]~~ a right to
27 subscribe to or acquire shares without preferential rights ~~[of such~~

1 ~~class or series].~~

2 ~~[(4) Holders of shares without voting power shall have~~
3 ~~no preemptive right to shares with voting power.]~~

4 (5) The preemptive right shall be only an opportunity
5 to acquire shares or other securities under such uniform terms and
6 conditions as the board of directors may fix for the purpose of
7 providing a fair and reasonable opportunity for the exercise of
8 such right.

9 (6) For a one-year period beginning on the date on
10 which the shares are offered to shareholders, shares subject to
11 preemptive rights that are not acquired by a shareholder may be
12 issued to a person for consideration set by the corporation's board
13 of directors that is not lower than the consideration set for the
14 exercise of preemptive rights. An offer at a lower consideration or
15 after the expiration of the period prescribed by this subsection is
16 subject to the shareholders' preemptive rights.

17 D [E]. An action may not be brought against the corporation,
18 its directors, officers, or agents, any holder of shares or
19 securities of the corporation, or any owner of any beneficial
20 interest in shares or securities of the corporation on account of
21 any violation of any preemptive right of a shareholder to acquire
22 any shares of the corporation, or any securities of the corporation
23 convertible into or carrying a right to subscribe to or acquire
24 shares, unless such action is brought within the earlier of:

25 (1) One year after the date on which written notice is
26 given to each shareholder whose preemptive right was violated by
27 the issuance, sale, or other distribution of those shares or

1 securities, which notice shall be mailed to the shareholder at the
2 address of the shareholder as it appears on the share transfer
3 records of the corporation and shall inform the shareholder that
4 the issuance, sale, or other distribution of those shares or
5 securities was in violation of the preemptive right of the
6 shareholder; and

7 (2) Four years after the date on which the corporation
8 issued, sold, or otherwise distributed those shares or securities
9 or August 28, 1989 [~~the effective date of this provision~~],
10 whichever is later.

11 E [D]. In the event of a transfer or other disposition of
12 shares by any shareholder of a corporation whose preemptive right
13 to acquire shares of the corporation, or securities of the
14 corporation convertible into or carrying a right to subscribe to or
15 acquire shares, shall have been violated, the transferee or
16 successor of the shareholder shall not acquire the preemptive
17 right, or any right or claim based on that violation, unless the
18 shareholder shall have assigned the preemptive right to the
19 transferee or successor.

20 F. Subject to the articles of incorporation, shareholders
21 of a corporation incorporated before September 1, 2003, have a
22 preemptive right to acquire additional unissued or treasury shares
23 of the corporation, or securities of the corporation convertible
24 into or carrying a right to subscribe to or acquire shares, to the
25 extent provided by Sections C, D, and E of this article. After
26 September 1, 2003, a corporation may limit or deny the preemptive
27 right of the shareholders of the corporation by amending the

1 corporation's articles of incorporation.

2 G. A shareholder may waive a preemptive right granted to the
3 shareholder. A written waiver of a preemptive right is irrevocable
4 regardless of whether the waiver is supported by consideration.

5 SECTION 10. Sections A and B, Article 2.24, Texas Business
6 Corporation Act, are amended to read as follows:

7 A. Meetings of shareholders may be held at such place within
8 or without this State as may be stated in or fixed in accordance
9 with the bylaws. If no other place is so stated or fixed, the board
10 of directors of the corporation is not authorized to designate a
11 place, or the board of directors chooses not to designate a place,
12 meetings shall be held at the registered office of the corporation.

13 (1) If, under the articles of incorporation or the
14 bylaws, the board of directors is authorized to determine the place
15 of a meeting of shareholders, the board of directors may, in its
16 discretion, determine that the meeting may be held solely by means
17 of remote communication as provided by Subsection (2) of this
18 section.

19 (2) If authorized by the board of directors, and
20 subject to any guidelines and procedures adopted by the board of
21 directors, shareholders not physically present at a meeting of
22 shareholders, by means of remote communication:

23 (a) may participate in a meeting of shareholders;
24 and

25 (b) may be considered present in person and may
26 vote at a meeting of shareholders held at a designated place or held
27 solely by means of remote communication if:

1 (i) the corporation implements reasonable
2 measures to verify that each person considered present and
3 permitted to vote at the meeting by means of remote communication is
4 a shareholder;

5 (ii) the corporation implements reasonable
6 measures to provide the shareholders at the meeting by means of
7 remote communication a reasonable opportunity to participate in the
8 meeting and to vote on matters submitted to the shareholders,
9 including an opportunity to read or hear the proceedings of a
10 meeting substantially concurrently with the proceedings; and

11 (iii) the corporation maintains a record of
12 any shareholder vote or other action taken at the meeting by means
13 of remote communication.

14 B. An annual meeting of the shareholders shall be held at
15 such time as may be stated in or fixed in accordance with the
16 bylaws. If the annual meeting is not held within any 13-month
17 period and a written consent of shareholders has not been executed
18 instead of the meeting, any court of competent jurisdiction in the
19 county in which the principal office of the corporation is located
20 may, on the application of any shareholder, summarily order a
21 meeting to be held unless the meeting is not required to be held
22 under Section D of this article. Failure to hold the annual meeting
23 at the designated time shall not work a dissolution of the
24 corporation.

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

27 A. Written or printed notice stating the place, day and hour

1 of the meeting, the means of any remote communications by which
2 shareholders may be considered present and may vote at the meeting,
3 and, in case of a special meeting, the purpose or purposes for which
4 the meeting is called, shall be delivered not less than ten (10)
5 days nor more than sixty (60) days before the date of the meeting,
6 ~~[either]~~ personally, by electronic transmission, or by mail, by or
7 at the direction of the president, the secretary, or the officer or
8 person calling the meeting, to each shareholder entitled to vote at
9 such meeting. If mailed, such notice shall be deemed to be
10 delivered when deposited in the United States mail addressed to the
11 shareholder at his address as it appears on the share transfer
12 records of the corporation, with postage thereon prepaid.

13 SECTION 12. Sections A and C, Article 2.27, Texas Business
14 Corporation Act, are amended to read as follows:

15 A. The officer or agent having charge of the share transfer
16 records for shares of a corporation shall make, at least ten (10)
17 days before each meeting of shareholders, a complete list of the
18 shareholders entitled to vote at such meeting or any adjournment
19 thereof, arranged in alphabetical order, with the address of and
20 the number of shares held by each, which list, for a period of ten
21 (10) days prior to such meeting, shall be kept on file at the
22 registered office or principal place of business of the corporation
23 and shall be subject to inspection by any shareholder at any time
24 during usual business hours. Alternatively, the list of the
25 shareholders may be kept on a reasonably accessible electronic
26 network, if the information required to gain access to the list is
27 provided with the notice of the meeting. This article does not

1 require the corporation to include any electronic contact
2 information of any shareholder on the list. If the corporation
3 elects to make the list available on an electronic network, the
4 corporation shall take reasonable steps to ensure that the
5 information is available only to shareholders of the corporation.
6 Such list shall also be produced and kept open at the time and place
7 of the meeting and shall be subject to the inspection of any
8 shareholder during the whole time of the meeting. If the meeting is
9 held by means of remote communication, the list must be open to the
10 examination of any shareholder for the duration of the meeting on a
11 reasonably accessible electronic network, and the information
12 required to access the list must be provided to shareholders with
13 the notice of the meeting. The original share transfer records
14 shall be prima-facie evidence as to who are the shareholders
15 entitled to examine such list or transfer records or to vote at any
16 meeting of shareholders.

17 C. An officer or agent having charge of the share transfer
18 records who shall fail to prepare the list of shareholders or keep
19 the same accessible to shareholders electronically or physically on
20 file at the principal place of business for a period of ten (10)
21 days, or produce and keep it accessible [~~open~~] for inspection
22 during [~~at~~] the meeting, as provided in this Article, shall be
23 liable to any shareholder suffering damages [~~damage~~] on account of
24 such failure, to the extent of such damage. In the event that such
25 officer or agent does not receive notice of the date of the [a]
26 meeting [~~of shareholders sufficiently in advance of the date of~~
27 ~~such meeting~~] reasonably to enable him to comply with the duties

1 prescribed by this Article, the corporation, [~~but~~] not such officer
2 or agent, shall be liable to any shareholder suffering damage on
3 account of such failure, to the extent of such damage.

4 SECTION 13. Part 2, Texas Business Corporation Act, is
5 amended by adding Article 2.25-1 to read as follows:

6 Art. 2.25-1. NOTICE BY ELECTRONIC TRANSMISSION. A. On
7 consent of a shareholder, notice from a corporation under any
8 provision of this Act, the articles of incorporation, or the bylaws
9 may be given to the shareholder by electronic transmission. The
10 shareholder may specify the form of electronic transmission to be
11 used to communicate notice. The shareholder may revoke this
12 consent by written notice to the corporation. The shareholder's
13 consent is deemed to be revoked if the corporation is unable to
14 deliver by electronic transmission two consecutive notices, and the
15 secretary, assistant secretary, or transfer agent of the
16 corporation, or another person responsible for delivering notice on
17 behalf of the corporation knows that delivery of these two
18 electronic transmissions was unsuccessful. The inadvertent failure
19 to treat the unsuccessful transmissions as a revocation of
20 shareholder consent does not invalidate a meeting or other action.

21 B. Notice under this article is deemed given when the notice
22 is:

23 (1) transmitted to a facsimile number provided by the
24 shareholder for the purpose of receiving notice;

25 (2) transmitted to an electronic mail address provided
26 by the shareholder for the purpose of receiving notice;

27 (3) posted on an electronic network and a message is

1 sent to the shareholder at the address provided by the shareholder
2 for the purpose of alerting the shareholder of a posting; or
3 (4) communicated to the shareholder by any other form
4 of electronic transmission consented to by the shareholder.

5 C. An affidavit of the secretary, assistant secretary,
6 transfer agent, or other agent of the corporation that notice has
7 been given by electronic transmission is, in the absence of fraud,
8 prima facie evidence that the notice was given.

9 SECTION 14. Sections C and D, Article 2.29, Texas Business
10 Corporation Act, are amended to read as follows:

11 C. Any shareholder may vote either in person or by proxy
12 executed in writing by the shareholder. A telegram, telex,
13 cablegram, or other form of electronic [similar] transmission,
14 including telephone transmission, by the shareholder, or a
15 photographic, photostatic, facsimile, or similar reproduction of a
16 writing executed by the shareholder, shall be treated as an
17 execution in writing for purposes of this Section. Any electronic
18 transmission must contain or be accompanied by information from
19 which it can be determined that the transmission was authorized by
20 the shareholder. No proxy shall be valid after eleven (11) months
21 from the date of its execution unless otherwise provided in the
22 proxy. A proxy shall be revocable unless the proxy form
23 conspicuously states that the proxy is irrevocable and the proxy is
24 coupled with an interest. Proxies coupled with an interest include
25 the appointment as proxy of:

26 (1) a pledgee;

27 (2) a person who purchased or agreed to purchase, or

1 owns or holds an option to purchase, the shares;

2 (3) a creditor of the corporation who extended it
3 credit under terms requiring the appointment;

4 (4) an employee of the corporation whose employment
5 contract requires the appointment; or

6 (5) a party to a voting agreement created under
7 Section B, Article 2.30, of this Act.

8 An irrevocable proxy, if noted conspicuously on the
9 certificate representing the shares that are subject to the
10 irrevocable proxy or, in the case of uncertificated shares, if
11 notation of the irrevocable proxy is contained in the notice sent
12 pursuant to Section D of Article 2.19 of this Act with respect to
13 the shares that are subject to the irrevocable proxy, shall be
14 specifically enforceable against the holder of those shares or any
15 successor or transferee of the holder. Unless noted conspicuously
16 on the certificate representing the shares that are subject to the
17 irrevocable proxy or, in the case of uncertificated shares, unless
18 notation of the irrevocable proxy is contained in the notice sent
19 pursuant to Section D of Article 2.19 of this Act with respect to
20 the shares that are subject to the irrevocable proxy, an
21 irrevocable proxy, even though otherwise enforceable, is
22 ineffective against a transferee for value without actual knowledge
23 of the existence of the irrevocable proxy at the time of the
24 transfer or against any subsequent transferee (whether or not for
25 value), but such an irrevocable proxy shall be specifically
26 enforceable against any other person who is not a transferee for
27 value from and after the time that the person acquires actual

1 knowledge of the existence of the irrevocable proxy.

2 D. (1) At each election for directors every shareholder
3 entitled to vote at such election shall have the right (a) to vote
4 the number of shares owned by him for as many persons as there are
5 directors to be elected and for whose election he has a right to
6 vote or (b) only if ~~[unless]~~ expressly permitted ~~[prohibited]~~ by
7 the articles of incorporation (in general or with respect to a
8 specified class or series of shares or group of classes or series of
9 shares) and subject to subsection (2) of this Section D, to cumulate
10 his votes by giving one candidate as many votes as the number of
11 such directors multiplied by his shares shall equal, or by
12 distributing such votes on the same principle among any number of
13 such candidates.

14 (2) Cumulative voting shall not be allowed in an
15 election of directors unless the articles of incorporation
16 expressly grant that right, and a shareholder who intends to
17 cumulate his votes as herein authorized shall have given written
18 notice of such intention to the secretary of the corporation on or
19 before the day preceding the election at which such shareholder
20 intends to cumulate his votes. All shareholders entitled to vote
21 cumulatively may cumulate their votes if any shareholder gives the
22 written notice provided for herein.

23 (3) Except as provided by the articles of
24 incorporation, a shareholder of a corporation incorporated before
25 September 1, 2003, has the right to cumulatively vote the number of
26 shares the shareholder owns in the election of directors to the
27 extent permitted by this article. A corporation may limit or deny a

1 shareholder's right to cumulatively vote any time after September
2 1, 2003, by amending its articles of incorporation.

3 SECTION 15. Article 2.32, Texas Business Corporation Act,
4 is amended to read as follows:

5 Art. 2.32. NUMBER AND ELECTION OF DIRECTORS. A. The board
6 of directors of a corporation shall consist of one or more members.
7 The number of directors shall be fixed by, or in the manner provided
8 in, the articles of incorporation or the bylaws, except as to the
9 number constituting the initial board of directors, which number
10 shall be fixed by the articles of incorporation. The number of
11 directors may be increased or decreased from time to time by
12 amendment to, or in the manner provided in, the articles of
13 incorporation or the bylaws, but no decrease shall have the effect
14 of shortening the term of any incumbent director. In the absence of
15 a bylaw or a provision of the articles of incorporation fixing the
16 number of directors or providing for the manner in which the number
17 of directors shall be fixed, the number of directors shall be the
18 same as the number constituting the initial board of directors as
19 fixed by the articles of incorporation. The names and addresses of
20 the members of the initial board of directors shall be stated in the
21 articles of incorporation. Unless otherwise provided by the
22 articles of incorporation or the bylaws, a director may resign at
23 any time by giving notice in writing or by electronic transmission
24 to the corporation. Absent resignation or removal [removed] in
25 accordance with the provisions of the bylaws or the articles of
26 incorporation, such persons shall hold office until the first
27 annual meeting of shareholders, and until their successors shall

1 have been elected and qualified. At the first annual meeting of
2 shareholders and at each annual meeting thereafter, the holders of
3 shares entitled to vote in the election of directors shall elect
4 directors to hold office until the next succeeding annual meeting,
5 except in case of the classification of directors as permitted by
6 this Act.

7 B. The articles of incorporation may provide that the
8 holders of any class or series of shares or any group of classes or
9 series of shares shall be entitled to elect one or more directors,
10 who shall hold office for such terms as shall be stated in the
11 articles of incorporation. The articles of incorporation may
12 provide that any directors elected by the holders of any such class
13 or series of shares or any such group shall be entitled to more or
14 less than one vote on all or any specified matters, in which case
15 every reference in this Act (or in the articles of incorporation or
16 bylaws, unless expressly stated otherwise therein) to a specified
17 portion of the directors shall mean such portion of the votes
18 entitled to be cast by the directors to which such reference is
19 applicable. Absent resignation or removal [~~Unless removed~~] in
20 accordance with provisions of the bylaws or the articles of
21 incorporation, each director shall hold office for the term for
22 which he is elected and until his successor shall have been elected
23 and qualified.

24 C. Except as otherwise provided in this Article, the bylaws,
25 or the articles of incorporation, [~~may provide that~~] at any meeting
26 of shareholders called expressly for that purpose, any director or
27 the entire board of directors may be removed, with or without cause,

1 by a vote of the holders of a [~~specified portion, but not less than~~
2 ~~a~~] majority[~~7~~] of the shares then entitled to vote at an election of
3 the director or directors [~~, subject to any further restrictions on~~
4 ~~removal that may be contained in the bylaws~~]. Whenever the holders
5 of any class or series of shares or any such group are entitled to
6 elect one or more directors by the provisions of the articles of
7 incorporation, only the holders of shares of that class or series or
8 group shall be entitled to vote for or against the removal of any
9 director elected by the holders of shares of that class or series or
10 group. In the case of a corporation having cumulative voting, if
11 less than the entire board is to be removed, no one of the directors
12 may be removed if the votes cast against his removal would be
13 sufficient to elect him if then cumulatively voted at an election of
14 the entire board of directors, or if there be classes of directors,
15 at an election of the class of directors of which he is a part. In
16 the case of a corporation whose directors have been classified as
17 permitted by this Act, unless the articles of incorporation
18 otherwise provide, a director may not be removed except for cause.

19 D. Notwithstanding Section B of this Article, a director of
20 a corporation registered under the Investment Company Act, absent
21 resignation or removal [~~unless removed~~] in accordance with the
22 provisions of the articles of incorporation or bylaws, holds office
23 for the term for which the director is elected and until the
24 director's successor has been elected and qualified.

25 SECTION 16. Section A, Article 2.36, Texas Business
26 Corporation Act, is amended to read as follows:

27 A. If the articles of incorporation or the bylaws so

1 provide, the board of directors [~~, by resolution adopted by a~~
2 ~~majority of the full board of directors,~~] may designate from among
3 its members one or more committees, each of which shall be comprised
4 of one or more of its members, and may designate one or more of its
5 members as alternate members of any committee, who may, subject to
6 any limitations imposed by the board of directors, replace absent
7 or disqualified members at any meeting of that committee. Any such
8 committee, to the extent provided in the [such] resolution of the
9 board of directors or in the articles of incorporation or the
10 bylaws, shall have and may exercise all of the authority of the
11 board of directors, subject to the limitations set forth in
12 Sections B and C of this Article.

13 SECTION 17. Article 2.37, Texas Business Corporation Act,
14 is amended by adding Section C to read as follows:

15 C. On consent of a director, notice of the date, time,
16 place, or purpose of a regular or special meeting of the board of
17 directors may be given to the director by electronic transmission.
18 The director may specify the form of electronic transmission to be
19 used to communicate notice. The director may revoke this consent by
20 written notice to the corporation. The director's consent is
21 deemed to be revoked if the corporation is unable to deliver by
22 electronic transmission two consecutive notices and the secretary
23 of the corporation or other person responsible for delivering the
24 notice on behalf of the corporation knows that the delivery of these
25 two electronic transmissions was unsuccessful. The inadvertent
26 failure to treat the unsuccessful transmissions as a revocation of
27 the director's consent does not invalidate a meeting or other

1 action. An affidavit of the secretary or other agent of the
2 corporation that notice has been given by electronic transmission
3 is, in the absence of fraud, prima facie evidence that the notice
4 was given. Notice under this section is deemed given when the
5 notice is:

6 (1) transmitted to a facsimile number provided by the
7 director for the purpose of receiving notice;

8 (2) transmitted to an electronic mail address provided
9 by the director for the purpose of receiving notice;

10 (3) posted on an electronic network and a message is
11 sent to the director at the address provided by the director for the
12 purpose of alerting the director of a posting; or

13 (4) communicated to the director by any other form of
14 electronic transmission consented to by the director.

15 SECTION 18. Section A, Article 2.41, Texas Business
16 Corporation Act, is amended to read as follows:

17 A. In addition to any other liabilities imposed by law upon
18 directors of a corporation:

19 (1) Directors of a corporation who vote for or assent
20 to a distribution by the corporation that is not permitted by
21 Article 2.38 of this Act shall be jointly and severally liable to
22 the corporation for the amount by which the distributed amount
23 exceeds the amount permitted by Article 2.38 of this Act to be
24 distributed; provided that a director shall have no liability for
25 the excess amount, or any part of that excess, if on any date after
26 the date of the vote or assent authorizing the distribution, a
27 distribution of that excess or that part would have been permitted

1 by Article 2.38.

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

11 ~~[(3)]~~ An action may not be brought against a director
12 for liability imposed by this section after two years after the date
13 on which the act alleged to give rise to the liability occurred.

14 SECTION 19. Section A, Article 2.44, Texas Business
15 Corporation Act, is amended to read as follows:

16 A. Each corporation shall keep books and records of account
17 and shall keep minutes of the proceedings of its shareholders, its
18 board of directors, and each committee of its board of directors.
19 Each corporation shall keep at its registered office or principal
20 place of business, or at the office of its transfer agent or
21 registrar, a record of the original issuance of shares issued by the
22 corporation and a record of each transfer of those shares that have
23 been presented to the corporation for registration of transfer.
24 Such records shall contain the names and addresses of all past and
25 current shareholders of the corporation and the number and class or
26 series of shares issued by the corporation held by each of them.
27 Any books, records, minutes, and share transfer records may be in

1 written form or in any other form capable of being converted into
2 written paper form within a reasonable time. The principal place of
3 business of a corporation, or the office of its transfer agent or
4 registrar, may be located outside the State of Texas.

5 SECTION 20. Section A, Article 3.02, Texas Business
6 Corporation Act, is amended to read as follows:

7 A. The articles of incorporation shall set forth:

8 (1) The name of the corporation;

9 (2) The period of duration, which may be perpetual;

10 (3) The purpose or purposes for which the corporation
11 is organized which may be stated to be, or to include, the
12 transaction of any or all lawful business for which corporations
13 may be incorporated under this Act;

14 (4) The aggregate number of shares which the
15 corporation shall have authority to issue; if such shares are to
16 consist of one class only, the par value of each of such shares, or a
17 statement that all of such shares are without par value; or, if such
18 shares are to be divided into classes, the number of shares of each
19 class, and a statement of the par value of the shares of each class
20 or that such shares are to be without par value;

21 (5) If the shares are to be divided into classes, the
22 designation of each class and statement of the preferences,
23 limitations, and relative rights in respect of the shares of each
24 class;

25 (6) If the corporation is to issue the shares of any
26 class in series, then the designation of each series and a statement
27 of the variations in the preferences, limitations and relative

1 rights as between series insofar as the same are to be fixed in the
2 articles of incorporation, and a statement of any authority to be
3 vested in the board of directors to establish series and fix and
4 determine the preferences, limitations and relative rights of each
5 series;

6 (7) [~~A statement that the corporation will not~~
7 ~~commence business until it has received for the issuance of shares~~
8 ~~consideration of the value of a stated sum which shall be at least~~
9 ~~One Thousand Dollars (\$1,000.00),~~

10 [~~8~~] Any provision limiting or denying to
11 shareholders the preemptive right to acquire additional or treasury
12 shares of the corporation;

13 (8) [~~9~~] If a corporation elects to become a close
14 corporation in conformance with Part Twelve of this Act, any
15 provision (a) required or permitted by this Act to be stated in the
16 articles of incorporation of a close corporation, but not in the
17 articles of incorporation of an ordinary corporation, (b) contained
18 or permitted to be contained in a shareholders' agreement in
19 conformance with Part Twelve of this Act which the incorporators
20 elect to set forth in articles of incorporation, or (c) that makes a
21 shareholders' agreement in conformance with Part Twelve of this Act
22 part of the articles of incorporation of a close corporation in the
23 manner prescribed in Section F, Article 2.22 of this Act, but any
24 such provision, other than the statement required by Section A,
25 Article 12.11 of this Act, shall be preceded by a statement that the
26 provision shall be subject to the corporation remaining a close
27 corporation in conformance with Part Twelve of this Act;

1 (9) [~~(10)~~] Any provision, not inconsistent with law,
2 including any provision which under this Act is required or
3 permitted to be set forth in the bylaws or which is permitted to be
4 included pursuant to Article 2.30-1 of this Act, providing for the
5 regulation of the internal affairs of the corporation;

6 (10) [~~(11)~~] The street address of its initial
7 registered office and the name of its initial registered agent at
8 such address;

9 (11) [~~(12)~~] Subject to Article 2.30-1 of this Act, the
10 number of directors constituting the initial board of directors and
11 the names and addresses of the person or persons who are to serve as
12 directors until the first annual meeting of shareholders or until
13 their successors be elected and qualify, or, in the case of a close
14 corporation that, in conformance with Part Twelve of this Act, is to
15 be managed in some other manner pursuant to a shareholders'
16 agreement by the shareholders or by the persons empowered by the
17 agreement to manage its business and affairs, the names and
18 addresses of the person or persons who, pursuant to the
19 shareholders' agreement, will perform the functions of the initial
20 board of directors provided for by this Act;

21 (12) [~~(13)~~] The name and address of each incorporator,
22 unless the corporation is being incorporated pursuant to a plan of
23 conversion or a plan of merger, in which case the articles need not
24 include such information; and

25 (13) [~~(14)~~] If the corporation is being incorporated
26 pursuant to a plan of conversion or a plan of merger, a statement to
27 that effect, and in the case of a plan of conversion, the name,

1 address, date of formation, and prior form of organization and
2 jurisdiction of incorporation or organization of the converting
3 entity.

4 SECTION 21. Section A, Article 4.01, Texas Business
5 Corporation Act, is amended to read as follows:

6 A. A corporation may amend its articles of incorporation,
7 from time to time, in any and as many respects as may be desired, so
8 long as its articles of incorporation as amended contain only such
9 provisions as might be lawfully contained in original articles of
10 incorporation at the time of making such amendment, and, if a change
11 in shares or the rights of shareholders, or an exchange,
12 reclassification, subdivision, combination, or cancellation of
13 shares or rights of shareholders is to be made, such provisions as
14 may be necessary to effect such change, exchange, reclassification,
15 subdivision, combination, or cancellation.

16 SECTION 22. Section A, Article 4.02, Texas Business
17 Corporation Act, is amended to read as follows:

18 A. The articles of incorporation may be amended in the
19 following manner:

20 (1) The board of directors shall adopt a resolution
21 setting forth the proposed amendment and, unless the amendment is
22 undertaken under authority granted to the board of directors in the
23 articles of incorporation in accordance with Article 2.13 of this
24 Act, if shares have been issued, directing that it be submitted to a
25 vote at a meeting of shareholders, which may be either an annual or
26 a special meeting. If no shares have been issued, the amendment
27 shall be adopted by resolution of the board of directors and the

1 provisions for adoption by shareholders shall not apply. The
2 resolution may incorporate the proposed amendment in restated
3 articles of incorporation which contain a statement that except for
4 the designated amendment the restated articles of incorporation
5 correctly set forth without change the corresponding provisions of
6 the articles of incorporation as heretofore amended, and that the
7 restated articles of incorporation together with the designated
8 amendment supersede the original articles of incorporation and all
9 amendments thereto.

10 (2) Written or printed notice setting forth the
11 proposed amendment or a summary of the changes to be effected
12 thereby shall be given to each shareholder of record entitled to
13 vote thereon within the time and in the manner provided in this Act
14 for the giving of notice of meetings of shareholders. If the
15 meeting be an annual meeting, the proposed amendment or such
16 summary may be included in the notice of such annual meeting.

17 (3) At such meeting a vote of the shareholders
18 entitled to vote thereon shall be taken on the proposed amendment.
19 The proposed amendment shall be adopted upon receiving the
20 affirmative vote of the holders of at least two-thirds of the
21 outstanding shares entitled to vote thereon, unless any class or
22 series of shares is entitled to vote thereon as a class, in which
23 event the proposed amendment shall be adopted upon receiving the
24 affirmative vote of the holders of at least two-thirds of the shares
25 within each class or series of outstanding shares entitled to vote
26 thereon as a class and of at least two-thirds of the total
27 outstanding shares entitled to vote thereon.

1 (4) The resolution authorizing a proposed amendment to
2 the articles of incorporation may provide that at any time before
3 the filing of the amendment with the secretary of state is
4 effective, notwithstanding authorization of the proposed amendment
5 by the shareholders of the corporation, the board of directors may
6 abandon the proposed amendment without further action by the
7 shareholders.

8 SECTION 23. Section B, Article 4.04, Texas Business
9 Corporation Act, is amended to read as follows:

10 B. The articles of amendment shall set forth:

11 (1) The name of the corporation.

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

18 (3) The date of the adoption of the amendment by the
19 shareholders, or by the board of directors where no shares have been
20 issued.

21 (4) A statement that the amendment has been approved
22 in the manner required by this Act and the constituent documents of
23 the corporation. [~~The number of shares outstanding, and the number~~
24 ~~of shares entitled to vote on the amendment, and if the shares of~~
25 ~~any class or series are entitled to vote thereon as a class, the~~
26 ~~designation and number of outstanding shares entitled to vote~~
27 ~~thereon of each such class or series.~~

1 ~~[(5) The number of shares voted for and against the~~
2 ~~amendment, respectively, and, if the shares of any class are~~
3 ~~entitled to vote thereon as a class or series, the number of shares~~
4 ~~of each such class or series voted for and against the amendment,~~
5 ~~respectively, or if no shares have been issued a statement to that~~
6 ~~effect.~~

7 ~~[(6) If the amendment provides for an exchange,~~
8 ~~reclassification or cancellation of issued shares, and if the~~
9 ~~manner in which the same shall be effected is not set forth in the~~
10 ~~amendment, then a statement of the manner in which the same shall be~~
11 ~~effected.~~

12 ~~[(7) If the amendment effects a change in the amount of~~
13 ~~stated capital, then a statement of the manner in which the same is~~
14 ~~effected and a statement, expressed in dollars, of the amount of~~
15 ~~stated capital as changed by the amendment.]~~

16 SECTION 24. Sections A and D, Article 4.10, Texas Business
17 Corporation Act, are amended to read as follows:

18 A. When redeemable shares of a corporation are redeemed or
19 purchased by the corporation, the redemption or purchase shall
20 effect a cancellation of such shares~~[, and a statement of~~
21 ~~cancellation shall be filed as provided in this Article].~~
22 Thereupon such shares shall be restored to the status of authorized
23 but unissued shares, unless the articles of incorporation provide
24 that such shares when redeemed or purchased shall not be reissued,
25 in which case the ~~[filing of the statement of cancellation shall~~
26 ~~operate as an amendment to the articles of incorporation and shall~~
27 ~~reduce the] number of shares of the class so cancelled which the~~

1 corporation is authorized to issue shall be reduced by the number of
2 shares so cancelled. If the shares so redeemed and purchased
3 constitute all the outstanding shares of any particular class of
4 shares and if the articles of incorporation provide that the shares
5 of such class when redeemed and repurchased shall not be reissued,
6 the corporation may not issue any additional shares of the [filing
7 ~~of the statement of cancellation shall operate as an amendment to~~
8 ~~the articles of incorporation by eliminating therefrom all~~
9 ~~reference to such]~~ class of shares [~~and shall reduce the classes of~~
10 ~~shares which the corporation is authorized to issue accordingly)].~~

11 D. The [~~filing of the statement of]~~ cancellation of shares
12 under this article shall effect a reduction of the stated capital of
13 the corporation by an amount equal to that part of the stated
14 capital which was, at the time of the cancellation, represented by
15 the shares so cancelled.

16 SECTION 25. Sections A and D, Article 4.11, Texas Business
17 Corporation Act, are amended to read as follows:

18 A. A corporation may, at any time, by resolution of its
19 board of directors, cancel all or any part of its treasury shares[
20 ~~and in such event a statement of cancellation shall be filed as~~
21 ~~provided in this Article)].~~

22 D. Upon the [~~filing of such statement of]~~ cancellation of
23 the treasury shares, the stated capital of the corporation shall be
24 deemed to be reduced by that part of the stated capital which was,
25 at the time of such cancellation, represented by the shares so
26 cancelled, and the shares so cancelled shall be restored to the
27 status of authorized but unissued shares.

1 SECTION 26. Section D, Article 4.12, Texas Business
2 Corporation Act, is amended to read as follows:

3 D. Upon the approval [~~filing~~] of such resolution by the
4 shareholders [~~statement~~], the stated capital of the corporation
5 shall be reduced as therein set forth.

6 SECTION 27. Section C, Article 5.01, Texas Business
7 Corporation Act, is amended to read as follows:

8 C. The plan of merger may set forth:

9 (1) any amendments to the articles of incorporation of
10 any surviving corporation;

11 (2) provisions relating to a share exchange; and

12 (3) any other provisions relating to the merger,
13 including a provision requiring that the plan of merger be
14 submitted to shareholders regardless of whether the board of
15 directors determines after adopting the resolution or making the
16 determination required by Section B, Article 5.03 of this Act, that
17 the plan of merger is not advisable and recommends that the
18 shareholders reject it.

19 SECTION 28. Section C, Article 5.02, Texas Business
20 Corporation Act, is amended to read as follows:

21 C. The plan of exchange may set forth any other provisions
22 relating to the exchange and may be contained in and be a part of a
23 plan of merger, including a provision requiring that the plan of
24 exchange be submitted to shareholders regardless of whether the
25 board of directors determines after adopting the resolution or
26 making the determination required by Section B, Article 5.03 of
27 this Act, that the plan of exchange is not advisable and recommends

1 that the shareholders reject it.

2 SECTION 29. Article 5.03, Texas Business Corporation Act,
3 is amended by amending Sections C and H and adding Sections H-1 and
4 M to read as follows:

5 C. The board of directors may condition its submission to
6 shareholders of a plan of merger or exchange on any basis. If,
7 after the adoption of a resolution recommending that the plan of
8 merger or exchange be approved or after a determination by the board
9 of directors that a recommendation should not be made, the board of
10 directors determines that the plan of merger or exchange is not
11 advisable, the plan of merger or exchange may be submitted to the
12 shareholders with a recommendation that the shareholders not
13 approve the plan of merger or exchange.

14 H. Unless the articles of incorporation otherwise require,
15 approval by the shareholders of a corporation of a plan of merger
16 shall not be required and Sections A, B, C, D, E, and F of this
17 Article do not apply if:

18 (1) the merger is a merger of the corporation with or
19 into a direct or indirect wholly owned subsidiary of the
20 corporation and after the merger the corporation or its successor
21 is a direct or indirect wholly owned subsidiary of a holding
22 company;

23 (2) the corporation and the direct or indirect wholly
24 owned subsidiary of the corporation are the only parties to the
25 merger;

26 (3) each share or a fraction of a share of stock of the
27 corporation outstanding immediately prior to the effectiveness of

1 the merger is converted in the merger into a share or fraction of
2 share of capital stock of the holding company having the same
3 designations, preferences, limitations, and relative rights as a
4 share of stock of the corporation being converted in the merger;

5 (4) the holding company and the corporation are
6 domestic corporations and the direct or indirect wholly owned
7 subsidiary that is the other party to the merger is a domestic
8 corporation or domestic limited liability company;

9 (5) the articles of incorporation and bylaws of the
10 holding company immediately following the effective time of the
11 merger contain provisions identical to the articles of
12 incorporation and bylaws of the corporation immediately prior to
13 the effective time of the merger (other than provisions, if any,
14 regarding the incorporator or incorporators, the corporate name,
15 the registered office and agent, the initial board of directors,
16 and the initial subscribers of shares and such provisions contained
17 in any amendment to the certificate as were necessary to effect a
18 change, exchange, reclassification, or cancellation of shares, if
19 such change, exchange, reclassification, or cancellation has
20 become effective);

21 (6) the organizational documents or corresponding
22 documents [~~articles of incorporation and bylaws~~] of the surviving
23 entity [~~corporation~~] immediately following the effective time of
24 the merger contain provisions identical to the organizational
25 documents or corresponding documents [~~articles of incorporation~~
26 ~~and bylaws~~] of the corporation immediately prior to the effective
27 time of the merger (other than provisions, if any, regarding the

1 incorporator or incorporators, the corporate or entity name, the
2 registered office and agent, the initial board of directors, and
3 the initial subscribers of shares, references to members rather
4 than shareholders, references to interests, units, or similar
5 property rather than stock or shares, references to managers,
6 managing members, or other members of the governing body rather
7 than directors, and such provisions contained in any amendment to
8 the certificate as were necessary to effect a change, exchange,
9 reclassification, or cancellation of shares, if such change,
10 exchange, reclassification, or cancellation has become effective);
11 provided, however, that:

12 (a) if the organizational documents [~~articles of~~
13 ~~incorporation~~] of the surviving entity do not contain the following
14 provisions, they [~~corporation~~] shall be amended in the merger to
15 contain provisions [~~a provision~~] requiring that:

16 (i) any act or transaction by or involving a
17 surviving entity, other than the election or removal of directors
18 or managers, managing members, or other members of the governing
19 body of the surviving entity, [~~corporation~~] that requires for its
20 approval under this Act or its organizational documents [~~the~~
21 ~~corporation's articles of incorporation~~] the approval of
22 shareholders or members of the surviving entity [~~corporation~~]
23 shall, by specific reference to this section, require the approval
24 of the shareholders of the holding company (or any successor by
25 merger) by the same vote as is required by this Act or by [~~and~~] the
26 organizational documents [~~articles of incorporation~~] of the
27 surviving entity;

1 (ii) a surviving entity that is not a
2 corporation obtain the approval of the shareholders of the holding
3 company for any act or transaction by or involving the surviving
4 entity, other than the election or removal of directors or
5 managers, managing members, or other members of the governing body
6 of the surviving entity, that would require the approval of the
7 shareholders of the surviving entity if the surviving entity were a
8 corporation subject to this Act;

9 (iii) any amendment of the organizational
10 documents of a surviving entity that is not a corporation, that
11 would, if adopted by a corporation subject to this Act, be required
12 to be included in the articles of incorporation of the corporation,
13 shall also require, by specific reference to this section, the
14 approval of the shareholders of the holding company, or any
15 successor by merger, by the same vote as is required by this Act or
16 by the organizational documents of the surviving entity; and

17 (iv) the business affairs of a surviving
18 entity that is not a corporation shall be managed by or under the
19 direction of a board of directors, board of managers, or other
20 governing body consisting of individuals who are subject to the
21 same fiduciary duties applicable to directors of a corporation
22 subject to this Act, and who are liable for breach of the duties to
23 the same extent as directors of a corporation subject to this Act
24 [corporation]; [and]

25 (b) the organizational documents [~~articles of~~
26 ~~incorporation~~] of the surviving entity [~~corporation~~] may be amended
27 in the merger to change the classes and series of shares and the

1 number of shares that the surviving entity [~~corporation~~] is
2 authorized to issue; and

3 (c) Subsection (6)(a) of this section or a
4 provision of a surviving entity's organizational documents
5 required by Subdivision (a) may not be construed as requiring
6 approval of the shareholders of the holding company to elect or
7 remove directors, managers, managing members, or other members of
8 the governing body of the surviving entity;

9 (7) the directors of the corporation become or remain
10 directors of the holding company on the effective time of the
11 merger;

12 (8) the shareholders of the corporation will not
13 recognize gain or loss for United States federal income tax
14 purposes as determined by the board of directors of the
15 corporation; and

16 (9) the board of directors of the corporation adopts a
17 resolution approving the plan of merger.

18 H-1. The term "organizational documents," as used in
19 Section H(6) of this article, means:

20 (1) in reference to a corporation, the articles of
21 incorporation of the corporation; or

22 (2) in reference to a limited liability company, the
23 limited liability company agreement of the limited liability
24 company.

25 M. To the extent a shareholder of a corporation has standing
26 to institute or maintain derivative litigation on behalf of the
27 corporation immediately before a merger, nothing in this article

1 may be construed to limit or extinguish the shareholder's standing.

2 SECTION 30. Section A, Article 5.06, Texas Business
3 Corporation Act, is amended to read as follows:

4 A. When a merger takes effect:

5 (1) the separate existence of every domestic
6 corporation that is a party to the merger, except any surviving or
7 new domestic corporation, shall cease;

8 (2) all rights, title and interests to all real estate
9 and other property owned by each domestic or foreign corporation
10 and by each other entity that is a party to the merger shall be
11 allocated to and vested in one or more of the surviving or new
12 domestic or foreign corporations and other entities as provided in
13 the plan of merger without reversion or impairment, without further
14 act or deed, and without any transfer or assignment having
15 occurred, but subject to any existing liens or other encumbrances
16 thereon;

17 (3) all liabilities and obligations of each domestic
18 or foreign corporation and other entity that is a party to the
19 merger shall be allocated to one or more of the surviving or new
20 domestic or foreign corporations and other entities in the manner
21 set forth in the plan of merger, and each surviving or new domestic
22 or foreign corporation, and each surviving or new other entity to
23 which a liability or obligation shall have been allocated pursuant
24 to the plan of merger, shall be the primary obligor therefor and,
25 except as otherwise set forth in the plan of merger or as otherwise
26 provided by law or contract, no other party to the merger, other
27 than a surviving domestic or foreign corporation or other entity

1 liable thereon at the time of the merger and no other new domestic
2 or foreign corporation or other entity created thereby, shall be
3 liable therefor;

4 (4) a proceeding pending by or against any domestic or
5 foreign corporation or by or against any other entity that is a
6 party to the merger may be continued as if the merger did not occur,
7 or the surviving or new domestic or foreign corporation or
8 corporations or the surviving or new other entity or other entities
9 to which the liability, obligation, asset or right associated with
10 such proceeding is allocated to and vested in pursuant to the plan
11 of merger may be substituted in the proceeding;

12 (5) the articles of incorporation of each surviving
13 corporation shall be amended to the extent provided in the plan of
14 merger;

15 (6) each new domestic corporation, the articles of
16 incorporation of which are set forth in the plan of merger pursuant
17 to Article 5.01 of this Act, shall be incorporated as a corporation
18 under this Act; and each other entity to be incorporated or
19 organized under the laws of this State, the organizational
20 documents of which are set forth in the plan of merger[7] shall,
21 upon an executed copy of the articles of merger being delivered to
22 or filed with any required governmental entity with which
23 organizational documents of such other entity are required to be
24 delivered or filed, and upon meeting such additional requirements,
25 if any, of law for its incorporation or organization, shall be
26 incorporated or organized as provided in the plan of merger; and

27 (7) the shares of each domestic or foreign corporation

1 and the shares or evidences of ownership in each other entity that
2 is a party to the merger that are to be converted or exchanged, in
3 whole or part, into shares, obligations, evidences of ownership,
4 rights to purchase securities or other securities of one or more of
5 the surviving or new domestic or foreign corporations or other
6 entities, into cash or other property, including shares,
7 obligations, evidences of ownership, rights to purchase securities
8 or other securities of any other person or entity, or into any
9 combination of the foregoing, shall be so converted and exchanged
10 and the former holders of the shares of each domestic corporation
11 that is a party to the merger shall be entitled only to the rights
12 provided in the plan [~~articles~~] of merger or to their rights under
13 Article 5.11 of this Act.

14 SECTION 31. Section B, Article 5.11, Texas Business
15 Corporation Act, is amended to read as follows:

16 B. Notwithstanding the provisions of Section A of this
17 Article, a shareholder shall not have the right to dissent from any
18 plan of merger in which there is a single surviving or new domestic
19 or foreign corporation, or from any plan of exchange, if:

20 (1) the shares, or depository receipts in respect of
21 the shares, held by the shareholder are part of a class or series,
22 shares, or depository receipts in respect of the shares, of which
23 are on the record date fixed to determine the shareholders entitled
24 to vote on the plan of merger or plan of exchange:

25 (a) listed on a national securities exchange;

26 (b) listed on the Nasdaq Stock Market (or
27 successor quotation system) or designated as a national market

1 security on an interdealer quotation system by the National
2 Association of Securities Dealers, Inc., or successor entity; or

3 (c) held of record by not less than 2,000
4 holders;

5 (2) the shareholder is not required by the terms of the
6 plan of merger or plan of exchange to accept for the shareholder's
7 shares any consideration that is different than the consideration
8 (other than cash in lieu of fractional shares that the shareholder
9 would otherwise be entitled to receive) to be provided to any other
10 holder of shares of the same class or series of shares held by such
11 shareholder; and

12 (3) the shareholder is not required by the terms of the
13 plan of merger or the plan of exchange to accept for the
14 shareholder's shares any consideration other than:

15 (a) shares, or depository receipts in respect of
16 the shares, of a domestic or foreign corporation that, immediately
17 after the effective time of the merger or exchange, will be part of
18 a class or series, shares, or depository receipts in respect of the
19 shares, of which are:

20 (i) listed, or authorized for listing upon
21 official notice of issuance, on a national securities exchange;

22 (ii) approved for quotation as a national
23 market security on an interdealer quotation system by the National
24 Association of Securities Dealers, Inc., or successor entity; or

25 (iii) held of record by not less than 2,000
26 holders;

27 (b) cash in lieu of fractional shares otherwise

1 entitled to be received; or

2 (c) any combination of the securities and cash
3 described in Subdivisions (a) and (b) of this subsection.

4 SECTION 32. Section A, Article 5.16, Texas Business
5 Corporation Act, is amended to read as follows:

6 A. In any case in which at least ninety (90%) per cent of the
7 outstanding shares of each class and series of shares, membership
8 interests, or other ownership interests of one or more domestic or
9 foreign corporations or other entities, other than a corporation
10 that has in its articles of incorporation the provision required by
11 Article 5.03(H)(6)(a) of this Act, of which there are outstanding
12 shares that would be entitled to vote on the merger absent this
13 section, is owned by another domestic or foreign corporation or
14 other entity, and at least one of the parent or subsidiary entities
15 is a domestic corporation and the other or others are domestic
16 corporations, foreign corporations, or other entities organized
17 under the laws of a jurisdiction that permit such a merger or whose
18 organizational documents or other constituent documents not
19 inconsistent with those laws permit such a merger, the corporation
20 or other entity [~~having such share ownership~~] may enter into a
21 merger [~~(1) merge such other domestic or foreign corporation or~~
22 ~~corporations or other entities into itself, (2) merge itself into~~
23 ~~any one or more of such other corporations or other entities, or (3)~~
24 ~~merge itself and any one or more of such entities or corporations~~
25 ~~into one or more of the other entities]:~~

26 (a) in the event that the corporation or other
27 entity having at least 90 percent ownership will be a surviving

1 entity in the merger, by executing and filing articles of merger in
2 accordance with Section B of this Article; or

3 (b) in the event that the corporation or other
4 entity having at least 90 percent ownership will not be a surviving
5 entity in the merger, by the entity having such ownership adopting a
6 plan of merger in the manner required by the laws of its
7 jurisdiction of organization or formation and its organizational or
8 other constituent documents, except that no action under Section
9 5.03 shall be required to be taken by the corporation or
10 corporations whose shares are so owned, and executing and filing
11 articles of merger in accordance with Section B of this Article.

12 SECTION 33. Section A, Article 6.04, Texas Business
13 Corporation Act, is amended to read as follows:

14 A. Before filing articles of dissolution:

15 (1) The corporation shall cease to carry on its
16 business, except insofar as may be necessary for the winding up
17 thereof.

18 (2) The corporation shall cause written notice by
19 registered or certified mail of its intention to dissolve to be
20 mailed to each known claimant against the corporation.

21 (3) The directors of the corporation shall manage the
22 process of winding up the business or affairs of the corporation.

23 The corporation shall proceed to collect its assets, dispose of
24 such of its properties as are not to be distributed in kind to its
25 shareholders, pay, satisfy, or discharge all its debts,
26 liabilities, and obligations, or make adequate provision for
27 payment, satisfaction, or discharge thereof, and do all other acts

1 required to liquidate its business and affairs, except that if the
2 properties and assets of the corporation are not sufficient to pay,
3 satisfy, or discharge all the corporation's debts, liabilities, and
4 obligations, the corporation shall apply its properties and assets
5 so far as they will go to the just and equitable payment,
6 satisfaction, or discharge of its debts, liabilities, and
7 obligations or shall make adequate provision for such application.
8 After paying, satisfying, or discharging all its debts,
9 liabilities, and obligations, or making adequate provision for
10 payment, satisfaction, or discharge thereof, the corporation shall
11 then distribute the remainder of its properties and assets, either
12 in cash or in kind, to its shareholders according to their
13 respective rights and interests.

14 (4) The corporation, at any time during the
15 liquidation of its business and affairs, may make application to
16 any district court of this State in the county in which the
17 registered office of the corporation is situated to have the
18 liquidation continued under the supervision of such court as
19 provided in this Act.

20 SECTION 34. Part Six, Texas Business Corporation Act, is
21 amended by adding Article 6.08 to read as follows:

22 Art. 6.08. FRAUDULENT TERMINATION. A. Notwithstanding any
23 other provision of this Act, a court may order the revocation of
24 dissolution of a corporation that was dissolved as a result of
25 actual or constructive fraud. In an action under this Article, any
26 limitation period provided by law is tolled in accordance with the
27 discovery rule.

1 B. The Secretary of State shall take any action necessary to
2 implement an order under this Article.

3 SECTION 35. Section A, Article 8.05, Texas Business
4 Corporation Act, is amended to read as follows:

5 A. In order to procure a certificate of authority to
6 transact business in this State, a foreign corporation shall make
7 application therefor to the Secretary of State, which application
8 shall set forth:

9 (1) The name of the corporation and the State or
10 country under the laws of which it is incorporated.

11 (2) If the name of the corporation does not contain the
12 word "corporation," "company," "incorporated," or "limited," and
13 does not contain an abbreviation of one (1) of such words, then the
14 name of the corporation with the word or abbreviation which it
15 elects to add thereto for use in this State; if the corporation is
16 required to qualify under a name other than its corporate name, then
17 the name under which the corporation is to be qualified.

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

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

23 (5) The address of the registered office of the
24 corporation in this State, and the name of its registered agent in
25 this State at such address.

26 (6) The purpose or purposes of the corporation which
27 it proposes to pursue in the transaction of business in this State

1 and a statement that it is authorized to pursue such purpose or
2 purposes in the state or country under the laws of which it is
3 incorporated.

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

6 (8) A statement that the corporation exists as a valid
7 corporation under the laws of the corporation's jurisdiction of
8 formation [~~of the aggregate number of shares which the corporation~~
9 ~~has authority to issue, itemized by classes, par value of shares,~~
10 ~~shares without par value, and series, if any, within a class].~~

11 [~~(9) A statement of the aggregate number of issued~~
12 ~~shares itemized by classes, par value of shares, shares without par~~
13 ~~value, and series, if any, within a class.~~

14 [~~(10) A statement, expressed in dollars, of the amount~~
15 ~~of stated capital of the corporation, as defined in this Act.~~

16 [~~(11) A statement that consideration of the value of~~
17 ~~at least One Thousand Dollars (\$1,000) has been paid for the~~
18 ~~issuance of shares.]~~

19 SECTION 36. Section A, Article 8.06, Texas Business
20 Corporation Act, is amended to read as follows:

21 A. The original and a copy of the application of the
22 corporation for a certificate of authority shall be delivered to
23 the Secretary of State [~~, together with a certificate issued by an~~
24 ~~authorized officer of the jurisdiction of the corporation's~~
25 ~~incorporation evidencing its corporate existence. If the~~
26 ~~certificate is in a language other than English, a translation of~~
27 ~~the certificate, under the oath of the translator, must be attached~~

1 ~~to the certificate. The certificate must be dated after the 91st~~
2 ~~day preceding the date on which the application is filed].~~ If the
3 Secretary of State finds that the application conforms to law, he
4 shall, when the appropriate filing fee is paid as required by law:

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

7 (2) File in his office the original [~~and the~~
8 ~~certificate evidencing corporate existence]~~.

9 (3) Issue a certificate of authority to transact
10 business in this State to which he shall affix the copy.

11 SECTION 37. Article 9.09, Texas Business Corporation Act,
12 is amended to read as follows:

13 Art. 9.09. WAIVER OF NOTICE. [~~A~~] Whenever any notice is
14 required to be given to any shareholder or director of a corporation
15 under the provisions of this Act or under the provisions of the
16 articles of incorporation or bylaws of the corporation, a waiver
17 thereof in writing signed by the person or persons entitled to such
18 notice, or a waiver by electronic transmission by the person
19 entitled to notice, whether before or after the time stated
20 therein, shall be equivalent to the giving of such notice. The
21 business to be transacted at a regular or special meeting of the
22 shareholders, directors, or members of a committee of directors or
23 the purpose of a meeting is not required to be specified in a
24 written waiver of notice or a waiver by electronic transmission
25 unless required by the articles of incorporation or the bylaws.

26 SECTION 38. Sections A and B, Article 9.10, Texas Business
27 Corporation Act, are amended to read as follows:

1 A.(1) Any action required by this Act to be taken at any
2 annual or special meeting of shareholders, or any action which may
3 be taken at any annual or special meeting of shareholders, may be
4 taken without a meeting, without prior notice, and without a vote,
5 if a consent or consents in writing, setting forth the action so
6 taken, shall have been signed by the holder or holders of all the
7 shares entitled to vote with respect to the action that is the
8 subject of the consent. The articles of incorporation may provide
9 that any action required by this Act to be taken at any annual or
10 special meeting of shareholders, or any action which may be taken at
11 any annual or special meeting of shareholders, may be taken without
12 a meeting, without prior notice, and without a vote, if a consent or
13 consents in writing, setting forth the action so taken, shall be
14 signed by the holder or holders of [~~or~~] shares having not less than
15 the minimum number of votes that would be necessary to take such
16 action at a meeting at which [~~the~~] holders of all shares entitled to
17 vote on the action were present and voted.

18 (2) Every written consent signed by the holders of
19 less than all the shares entitled to vote with respect to the action
20 that is the subject of the consent shall bear the date of signature
21 of each shareholder who signs the consent. No written consent
22 signed by the holder [~~holders~~] of less than all the shares entitled
23 to vote with respect to the action that is the subject of the
24 consent shall be effective to take the action that is the subject of
25 the consent unless, within 60 days after the date of the earliest
26 dated consent delivered to the corporation in a [~~the~~] manner
27 required by this Article, a consent or consents signed by the holder

1 or holders of shares having not less than the minimum number of
2 votes that would be necessary to take the action that is the subject
3 of the consent are delivered to the corporation by delivery to its
4 registered office, registered agent, principal place of business,
5 transfer agent, registrar, exchange agent or an officer or agent of
6 the corporation having custody of the books in which proceedings of
7 meetings of shareholders are recorded. Delivery shall be by hand or
8 certified or registered mail, return receipt requested. Delivery
9 to the corporation's principal place of business shall be addressed
10 to the president or principal executive officer of the corporation.

11 (3) A telegram, telex, cablegram, or other electronic
12 [similar] transmission by a shareholder consenting to an action to
13 be taken is considered to be written, signed, and dated for the
14 purposes of this article if the transmission sets forth or is
15 delivered with information from which the corporation can determine
16 that the transmission was transmitted by the shareholder and the
17 date on which the shareholder transmitted the transmission. The
18 date of transmission is the date on which the consent was signed.
19 Consent given by telegram, telex, cablegram, or other electronic
20 transmission may not be considered delivered until the consent is
21 reproduced in paper form and the paper form is delivered to the
22 corporation at its registered office in this state or its principal
23 place of business, or to an officer or agent of the corporation
24 having custody of the book in which proceedings of shareholder
25 meetings are recorded. Notwithstanding Subsection (2) of this
26 section, consent given by telegram, telex, cablegram, or other
27 electronic transmission may be delivered to the principal place of

1 business of the corporation or to an officer or agent of the
2 corporation having custody of the book in which proceedings of
3 shareholder meetings are recorded to the extent and in the manner
4 provided by resolution of the board of directors of the
5 corporation.

6 (4) Any~~[, or a]~~ photographic, photostatic, facsimile,
7 or similarly reliable [~~similar~~] reproduction of a consent in
8 writing signed by a shareholder may be substituted or used instead
9 of the original writing for any purpose for which the original
10 writing could be used, if the reproduction is a complete
11 reproduction of the entire original writing [~~, shall be regarded as~~
12 ~~signed by the shareholder for purposes of this Section~~].

13 (5) [~~(4)~~] Prompt notice of the taking of any action by
14 shareholders without a meeting by less than unanimous written
15 consent shall be given to those shareholders who did not consent in
16 writing to the action.

17 (6) [~~(5)~~] If any action by shareholders is taken by
18 written consent, any articles or documents filed with the Secretary
19 of State as a result of the taking of the action shall state, in lieu
20 of any statement required by the [~~this~~] Act concerning the number of
21 shares outstanding and entitled to vote on the action or concerning
22 any vote of shareholders, that written consent has been given in
23 accordance with the provisions of this Article and that any written
24 notice required by this Article has been given.

25 B. Unless otherwise restricted by the articles of
26 incorporation or bylaws [~~by-laws~~], any action required or permitted
27 to be taken at a meeting of the board of directors or any committee

1 may be taken without a meeting if a consent in writing, setting
2 forth the action so taken, is signed by all the members of the board
3 of directors or committee, as the case may be. A telegram, telex,
4 cablegram, or other electronic transmission by a director
5 consenting to an action to be taken and transmitted by a director is
6 considered written, signed, and dated for the purposes of this
7 article if the transmission sets forth or is delivered with
8 information from which the corporation can determine that the
9 transmission was transmitted by the director and the date on which
10 the director transmitted the transmission. Such consent shall have
11 the same force and effect as a unanimous vote at a meeting, and may
12 be stated as such in any document or instrument filed with the
13 Secretary of State.

14 SECTION 39. Section A, Article 9.14, Texas Business
15 Corporation Act, is amended to read as follows:

16 A. This Act applies to each domestic corporation and to each
17 foreign corporation that is transacting business in this state,
18 regardless of whether the foreign corporation is registered to
19 transact business in this state. This Act does not apply to
20 domestic corporations organized under any statute other than this
21 Act or to any foreign corporations granted authority to transact
22 business within this State under any statute other than this Act;
23 provided, however, that if any domestic corporation was heretofore
24 or is hereafter organized under or is governed by a statute other
25 than this Act or the Texas Non-Profit Corporation Act (Article
26 1396-1.01 et seq., Vernon's Texas Civil Statutes) that contains no
27 provisions in regard to some of the matters provided for in this

1 Act, or any foreign corporation was heretofore or is hereafter
2 granted authority to transact business within this State under a
3 statute other than this Act or the Texas Non-Profit Corporation Act
4 that contains no provisions in regard to some of the matters
5 provided for in this Act in respect of foreign corporations, or if
6 such a statute specifically provides that the general laws for
7 incorporation or for the granting of a certificate of authority to
8 transact business in this State, as the case may be, shall
9 supplement the provisions of such statute, then the provisions of
10 this Act shall apply to the extent that they are not inconsistent
11 with the provisions of such other statute; provided further,
12 however, that this Act shall not apply to any domestic corporation
13 organized under or governed by the Texas Non-Profit Corporation Act
14 or any foreign corporation granted authority to transact business
15 within this State under the Texas Non-Profit Corporation Act.

16 SECTION 40. Section A(4), Article 13.02, Texas Business
17 Corporation Act, is amended to read as follows:

18 (4) "Business combination" means:

19 (a) any merger, share exchange, or conversion of
20 an issuing public corporation or a subsidiary with:

21 (i) an affiliated shareholder;

22 (ii) a foreign or domestic corporation or
23 other entity that is, or after the merger, share exchange, or
24 conversion would be, an affiliate or associate of the affiliated
25 shareholder; or

26 (iii) another domestic or foreign
27 corporation or other entity, if the merger, share exchange, or

1 conversion is caused by an affiliated shareholder, or an affiliate
2 or associate of an affiliated shareholder, and as a result of the
3 merger, share exchange, or conversion this part does not apply to
4 the surviving corporation or other entity;

5 (b) a sale, lease, exchange, mortgage, pledge,
6 transfer, or other disposition, in one transaction or a series of
7 transactions, including an allocation of assets pursuant to a
8 merger, to or with the affiliated shareholder, or an affiliate or
9 associate of the affiliated shareholder, of assets of the issuing
10 public corporation or any subsidiary that:

11 (i) have an aggregate market value equal to
12 10 percent or more of the aggregate market value of all the assets,
13 determined on a consolidated basis, of the issuing public
14 corporation;

15 (ii) have an aggregate market value equal
16 to 10 percent or more of the aggregate market value of all the
17 outstanding voting shares [~~common stock~~] of the issuing public
18 corporation; or

19 (iii) represent 10 percent or more of the
20 earning power or net income, determined on a consolidated basis, of
21 the issuing public corporation;

22 (c) the issuance or transfer by an issuing public
23 corporation or a subsidiary to an affiliated shareholder or an
24 affiliate or associate of the affiliated shareholder, in one
25 transaction or a series of transactions, of shares of the issuing
26 public corporation or a subsidiary, except by the exercise of
27 warrants or rights to purchase shares of the issuing public

1 corporation offered, or a share dividend paid, pro rata to all
2 shareholders of the issuing public corporation after the affiliated
3 shareholder's share acquisition date;

4 (d) the adoption of a plan or proposal for the
5 liquidation or dissolution of an issuing public corporation
6 proposed by, or pursuant to any agreement, arrangement, or
7 understanding, whether or not in writing, with an affiliated
8 shareholder or an affiliate or associate of the affiliated
9 shareholder;

10 (e) a reclassification of securities, including
11 a reverse share split or a share split-up, share dividend, or other
12 distribution of shares, a recapitalization of the issuing public
13 corporation, a merger of the issuing public corporation with a
14 subsidiary or pursuant to which the assets and liabilities of the
15 issuing public corporation are allocated among two or more
16 surviving or new domestic or foreign corporations or other
17 entities, or any other transaction, whether or not with, into, or
18 otherwise involving the affiliated shareholder, proposed by, or
19 pursuant to an agreement, arrangement, or understanding, whether or
20 not in writing, with an affiliated shareholder or an affiliate or
21 associate of the affiliated shareholder that has the effect,
22 directly or indirectly, of increasing the proportionate ownership
23 percentage of the outstanding shares of a class or series of voting
24 shares or securities convertible into voting shares of the issuing
25 public corporation that is beneficially owned by the affiliated
26 shareholder or an affiliate or associate of the affiliated
27 shareholder, except as a result of immaterial changes due to

1 fractional share adjustments; or

2 (f) the direct or indirect receipt by an
3 affiliated shareholder or an affiliate or associate of the
4 affiliated shareholder of the benefit of a loan, advance,
5 guarantee, pledge, or other financial assistance or a tax credit or
6 other tax advantage provided by or through the issuing public
7 corporation, except proportionately as a shareholder of the issuing
8 public corporation.

9 SECTION 41. Section B, Article 13.07, Texas Business
10 Corporation Act, is amended to read as follows:

11 B. The affirmative vote or concurrence of shareholders
12 required for approval of an action required or permitted to be
13 submitted for shareholder vote under Part 13 of this Act may be
14 increased, but not decreased, under Article 2.28 of this Act.

15 SECTION 42. Section E, Article 2.23A, Texas Non-Profit
16 Corporation Act (Article 1396-2.23A, Vernon's Texas Civil
17 Statutes), is amended to read as follows:

18 E. This article does not apply to:

19 (1) a corporation that solicits funds only from its
20 members;

21 (2) a corporation which does not intend to solicit and
22 receive and does not actually raise or receive contributions from
23 sources other than its own membership in excess of \$10,000 during a
24 fiscal year;

25 (3) a proprietary school that has received a
26 certificate of approval from the State Commissioner of Education, a
27 public institution of higher education and foundations chartered

1 for the benefit of such institutions or any component part thereof,
2 a private institution of higher education with a certificate of
3 authority to grant a degree issued by the Coordinating Board, Texas
4 College and University System, or an elementary or secondary
5 school;

6 (4) religious institutions which shall be limited to
7 churches, ecclesiastical or denominational organizations, or other
8 established physical places for worship at which religious services
9 are the primary activity and such activities are regularly
10 conducted;

11 (5) a trade association or professional society whose
12 income is principally derived from membership dues and assessments,
13 sales, or services;

14 (6) any insurer licensed and regulated by the State
15 Board of Insurance;

16 (7) ~~[an organization whose charitable activities~~
17 ~~relate to public concern in the conservation and protection of~~
18 ~~wildlife, fisheries, and allied natural resources,~~

19 [(8)] an alumni association of a public or private
20 institution of higher education in this state, provided that such
21 association is recognized and acknowledged by the institution as
22 its official alumni association.

23 SECTION 43. The Texas Non-Profit Corporation Act (Article
24 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by
25 adding Article 6.07 to read as follows:

26 Art. 6.07. FRAUDULENT TERMINATION. A. Notwithstanding any
27 other provision of this Act, a court may order the revocation of

1 dissolution of a corporation that was dissolved as a result of
2 actual or constructive fraud. In an action under this article, any
3 limitation period provided by law is tolled in accordance with the
4 discovery rule.

5 B. The secretary of state shall take any action necessary to
6 implement an order under this article.

7 SECTION 44. The following laws are repealed:

- 8 (1) Section B, Article 2.14, Texas Business
9 Corporation Act;
- 10 (2) Article 3.05, Texas Business Corporation Act;
- 11 (3) Sections B and C, Article 4.10, Texas Business
12 Corporation Act;
- 13 (4) Sections B and C, Article 4.11, Texas Business
14 Corporation Act;
- 15 (5) Sections B and C, Article 4.12, Texas Business
16 Corporation Act;
- 17 (6) Article 2.01, Texas Miscellaneous Corporation
18 Laws Act (Article 1302-2.01, Vernon's Texas Civil Statutes);
- 19 (7) Article 2.02, Texas Miscellaneous Corporation
20 Laws Act (Article 1302-2.02, Vernon's Texas Civil Statutes);
- 21 (8) Article 2.03, Texas Miscellaneous Corporation
22 Laws Act (Article 1302-2.03, Vernon's Texas Civil Statutes);
- 23 (9) Article 2.04, Texas Miscellaneous Corporation
24 Laws Act (Article 1302-2.04, Vernon's Texas Civil Statutes);
- 25 (10) Article 2.09, Texas Miscellaneous Corporation
26 Laws Act (Article 1302-2.09, Vernon's Texas Civil Statutes);
- 27 (11) Article 2.09A, Texas Miscellaneous Corporation

1 Laws Act (Article 1302-2.02.09A, Vernon's Texas Civil Statutes);
2 (12) Article 2.10, Texas Miscellaneous Corporation
3 Laws Act (Article 1302-2.10, Vernon's Texas Civil Statutes);
4 (13) Article 3.02, Texas Miscellaneous Corporation
5 Laws Act (Article 1302-3.02, Vernon's Texas Civil Statutes); and
6 (14) Article 3.03, Texas Miscellaneous Corporation
7 Laws Act (Article 1302-3.03, Vernon's Texas Civil Statutes).

8 SECTION 45. This Act takes effect September 1, 2003.

David Newkirk

President of the Senate

Jim Cudde


Speaker of the House

I certify that H.B. No. 1165 was passed by the House on April 23, 2003, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1165 on May 24, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1165 on May 30, 2003, by a non-record vote.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 1165 was passed by the Senate, with amendments, on May 22, 2003, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1165 on May 31, 2003, by a viva-voce vote.

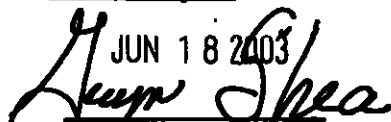

Secretary of the Senate

APPROVED: 18 June '03

Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
9:30 pm O'CLOCK

JUN 18 2003

Secretary of State