

2021 TEXAS LEGISLATIVE UPDATE ON AMENDMENTS TO TEXAS BUSINESS ORGANIZATIONS CODE AND TEXAS BUSINESS AND COMMERCE CODE

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Certain TBOC and Other Bills in 2021 Texas Legislature

- SB 1203 by Senator Hancock and Representative Turner – Substantive and technical amendments to the Texas Business Organizations Code (“TBOC”) developed by the State Bar Business Law Section TBOC Committee
- SB 1523 by Senator Hancock and Representative Turner – Relating to registered and protected series of domestic limited liability companies developed by the State Bar Business Law Section TBOC Committee
- SB 938 by Senators Campbell, Gutierrez, Hall and Powell and Representative Holland – Reinstates exemptions from franchise tax and certain filing fees for new veteran-owned businesses during initial period of operation in Texas

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- HB 4474 by Representative Parker and Senator Paxton – Amends Texas Business & Commerce Code (“TBCC”) to address virtual currency
- HB 3131 by Representative Cole and Senator Hancock – Requiring an initial mailing address to be included in a certificate of formation of a new filing entity
- HB 1875 by Representative Landgraf (Did not pass) – Relating to the creation of Texas Business Courts and a Court of Business Appeals to hear certain large and complicated lawsuits

SB 1203 – Omnibus TBOC Amendments

- Choice of forum provisions in governing documents of Texas entities
 - Authorizes provisions that can require all internal entity claims to be brought only in courts (federal and/or state) located in Texas
 - Requirement must be consistent with applicable state and federal jurisdictional requirements
 - “Internal entity claims” = claims (including derivative claims) based upon, arising from or relating to the internal affairs of the entity as defined in existing TBOC §1.105
 - Internal affairs of an entity include: (1) rights, powers and duties of governing persons, officers, owners and members and (2) matters relating to its membership or ownership interests
 - Modeled in part on DGCL 115, which has been upheld in several court cases

- Registration of foreign entities to transact business in Texas
 - New exclusion for foreign entity that is acting as governing person of domestic entity or foreign entity registered to transact business in Texas
 - Intended to cure ambiguities created by Texas Attorney General Opinion JM-7 dated March 10, 1983
- Revisions to emergency provisions in TBOC Chapter 3, Subchapter F
 - Expands definition of emergency events that trigger “emergency period” - now includes epidemic, pandemic, hurricane, tornado, riot or civil disturbance, governmental emergency declaration and other emergency situations
 - Governing document provisions that apply only during “emergency period” can be adopted by governing persons and owners – can limit or prohibit various specified procedural requirements for meetings of governing persons

- Governing authority of Texas entity can take “emergency action” during emergency period without satisfying specified procedural requirements for meetings of governing persons
- Emergency actions are protected if taken in good faith and based on reasonable belief that they were in entity’s best interests
- Better enabling virtual shareholder meetings by means of remote communications
 - Relaxing rules somewhat to match Delaware GCL requirements
 - Participating shareholders or proxyholders must have reasonable opportunity to vote at the meeting and to read or hear meeting proceedings substantially concurrently with those proceedings

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