

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

DARYL B. ROBERTSON, *Dallas*
Hunton Andrews Kurth LLP
Dallas, Texas

UT LAW CLE
2021 LLCs, LPS AND PARTNERSHIPS
July 7, 2021
Austin

US_85443386_1

1

1

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

2

2

- 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

3

3

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

4

4

- 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

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: 2021 Texas Legislative Update on Amendments to Texas Business Organizations Code and Texas Business and Commerce Code

Also available as part of the eCourse

[2021 LLCs, LPs, and Partnerships eConference](#)

First appeared as part of the conference materials for the
30th Annual LLCs, LPs and Partnerships session
"Texas Legislative Update"