

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

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I. Introduction

This article summarizes several pieces of legislation that have been passed by the Texas Legislature in its 2021 Regular Session and that amend the Texas Business Organizations Code (the “*TBOC*”) and the Texas Business & Commerce Code (the “*TBCC*”). There are many other bills that were passed affecting business law, so this article should not be viewed as containing a listing of all business-related bills. The article contains summaries only and should not be relied on as a complete description of any bill or portion thereof.

Senate Bill No. 1203 (referred to as the “*TBOC Bill*”) was authored by Senator Kelly Hancock, sponsored by Representative Chris Turner and becomes effective on September 1, 2021. The TBOC Bill makes several technical and substantive amendments to the TBOC relating to partnerships, limited liability companies, corporations and other entities.

Senate Bill No. 1523 (referred to as the “*Series LLC Bill*”) was authored by Senator Kelly Hancock, sponsored by Representative Chris Turner and becomes effective on a delayed basis on June 1, 2022. The Series LLC Bill makes amendments to the TBOC and the TBCC to add the concepts of protected series and restricted series of limited liability companies.

Senate Bill No. 938 (referred to as the “*Veterans Bill*”) was authored by Senators Donna Campbell, Roland Gutierrez, Bob Hall, and Beverly Powell and sponsored by Representative Justin Holland. As of June 3, 2021, the Veterans Bill was awaiting approval by the Governor and, if not vetoed, will become effective on a delayed basis as of January 1, 2022. The Veterans Bill makes amendments to the TBOC and the Tax Code to provide franchise tax and filing fee exemptions to new filing entities owned by veterans during an initial period of operation.

House Bill No. 4474 (referred to as the “*Virtual Currency Bill*”) was authored by Representative Tan Parker and sponsored by Senator Angela Paxton. As of June 3, 2021, the Virtual Currency Bill was awaiting approval by the Governor and, if not vetoed, will become effective on September 1, 2021. The Virtual Currency Bill amends the TBCC to add provisions relating to virtual currency.

House Bill No. 3131 (referred to as the “*Mailing Address Bill*”) was authored by Representative Sheryl Cole and sponsored by Senator Kelly Hancock. As of June 3, 2021, the Mailing Address Bill was awaiting approval by the Governor and, if not vetoed, will become effective on a delayed basis as of January 1, 2022. The Mailing Address Bill amends the TBOC to add a requirement that the certificate of formation of any new filing entity must include an initial mailing address for the entity.

Unless otherwise indicated, all references to a “Chapter,” “Section” or “Subsection” are to a Chapter, Section or Subsection of the TBOC or TBCC, as applicable.

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II. Emergency Provisions

The recent Coronavirus pandemic has illustrated the need for a more expansive definition of “emergency” to broaden the applicability of the emergency provisions contained in Subchapter F of Chapter 3 of the TBOC and for better provisions authorizing actions by governing persons of Texas domestic entity during emergency periods. The TBOC Bill amends the definition of “emergency” to include numerous kinds of emergency situations other than catastrophic events and eliminate any dependence on whether a domestic entity’s governing persons cannot readily participate in a meeting. The expanded definition includes an attack on the United States or any state or subdivision thereof, a nuclear or atomic disaster, catastrophic events including but not limited to an epidemic or pandemic, hurricane, tropical storm, tornado or other weather condition or a riot or civil disturbance, declaration of a national, state or local emergency or other similar emergency situations. A new definition of “emergency action” is added to mean any action taken by a majority vote of the governing persons present at a meeting of the governing authority of a domestic entity during an emergency period. A new definition of “emergency period” is also added to mean any period in which the governing authority of a domestic entity is unable to satisfy one or more requirements of its governing documents or the TBOC necessary for action by vote outside any emergency period due to conditions that are a part of or result from the emergency.²

As amended, governing persons, owners and members of a domestic entity may adopt provisions in its governing documents regarding emergency actions, including provisions that apply only during an emergency period that authorize, limit or prohibit specified procedural requirements, such as necessity for a quorum at a meeting of governing persons or procedures for calling a meeting of governing persons. Any provisions in the domestic entity’s governing documents that apply only during an emergency period must be adopted in accordance with the requirements of the governing documents and the applicable provisions of the TBOC, in each case that apply outside any emergency period.³

New provisions authorize the governing authority of a domestic entity to take emergency action during an emergency period without satisfying the requirements of the entity’s governing documents or the TBOC that apply outside an emergency period with respect to specified procedural requirements for action at a meeting of the governing persons, including necessity for a quorum, procedures for calling a meeting and minimum requirements for participation at a meeting of the governing persons. The power of the governing authority to take such emergency actions can be limited or prohibited by the governing documents of the domestic entity. However, the authority to take action during the emergency period does not extend to amending any governing documents of the entity or any action that must be approved by a separate vote of the owners or members of the entity if required by the entity’s governing documents or the TBOC outside of an emergency period.⁴

The provisions specifying the effects of an action taken in accordance with the emergency provisions are amended to specify that an emergency action by the governing persons of a domestic entity in accordance with the governing documents of the entity or by the new provisions authorizing emergency actions is binding on the entity and may not be used to impose liability on a managerial official, employee or agent of the entity if certain standards are met. These standards require that the emergency action must be taken in good faith and based on the reasonable belief that the emergency action is in the entity’s best interests.⁵

² TBOC Bill §7, amending TBOC §3.251.

³ TBOC Bill §8, amending TBOC §3.252.

⁴ TBOC Bill §§9 and 34, adding TBOC §3.2535 and repealing TBOC §§3.253 and 3.254.

⁵ TBOC Bill §10, amending TBOC §3.255.

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