

**2023 TEXAS LEGISLATIVE UPDATE ON
AMENDMENTS TO TEXAS BUSINESS
ORGANIZATIONS CODE**

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TABLE OF CONTENTS

I.	Introduction.....	1
II.	Omission of Initial Mailing Address in Restated Certificate of Formation	2
III.	Delayed Effective Date Filings for Mergers, Conversions and Exchanges	2
IV.	Notice of Dissent Rights; Surrender by Dissenting Owners of Ownership Interest Certificates.....	2
V.	Changes Relating to Assumed Name Certificates	3
VI.	Replacement Member of LLC After Termination of Last Member.....	3
VII.	Reinstatement and Continuation of Terminated Entities	4
VIII.	Availability of Lists of Shareholders and Voting Members at Corporate Meetings.....	5
IX.	Ratification of Void or Voidable Acts by Partnerships or LLCs	5
X.	Doctrine of Independent Legal Significance.....	6
XI.	Electronic Signatures on Certificated Ownership Interests.....	6
XII.	Secretary of State Certificates of Existence for Registered Series.....	6
XIII.	Reinstatement of LLC Series	6
XIV.	Harmonizing Provisions Relating to Issuance of Shares, Rights and Options by For-Profit Corporations.....	7
XV.	Harmonizing Inspection Rights of Owners.....	8
XVI.	Contents of Company Agreements and Partnership Agreements	9
XVII.	Divisive Merger of Series of an LLC.....	10
XVIII.	Return of Distribution by Limited Partner or LLC Member.....	10
XIX.	Direction of Management of LLC by Governing Authority	11
XX.	Notices for Written Consents.....	11
XXI.	Amending Certificate of Registered Series if LLC Changes Name.....	11
XXII.	LLC Charging Orders	11
XXIII.	Public Inspection of Records of Texas Nonprofit Corporations	12

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I. Introduction

This article summarizes several bills that were passed by the Texas Legislature in its 2023 Regular Session and that amend the Texas Business Organizations Code (the “*TBOC*”). There are many other bills that will be 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. 1514 authored by Senator Charles Schwertner and sponsored in the House by Representative Oscar Longoria (the “*TBOC Bill*”) has been passed by the Texas Legislature. Governor Abbott has signed the bill into law. The TBOC Bill will become effective on September 1, 2023. The TBOC Bill makes several technical and substantive amendments to the TBOC relating to partnerships, limited liability companies, corporations and other entities. The TBOC Bill also make a couple of minor amendments to the Texas Business & Commerce Code (the “*TBCC*”).

Senate Bill No. 2075 authored by Senators Angela Paxton and Tan Parker and its companion House Bill No. 5011 authored by Representative Giovanni Capriglione (in either case, referred to as the “*TBCC Bill*”) were introduced but were not passed by either chamber of the Texas Legislature. The TBCC Bill would have adopted essentially the uniform 2022 Amendments to the Uniform Commercial Code (the “*UCC*”) that have been approved by American Law Institute and Uniform Law Commissioners, including a new Article 12 to the UCC. Unfortunately, a similar bill in South Dakota was vetoed by its governor based on false allegations that the bill somehow endangered the viability of crypto currencies such as Bitcoin and fostered the ability of the federal government to adopt a central bank digital currency for the United States. Those false allegations were quickly spread nationwide through conservative media outlets, and, before the Uniform Law Commissioners were able effectively to counteract the false allegations, they resulted in a reluctance of the House and Senate sponsors of the TBCC Bill and others in the Texas Legislature to move the TBCC Bill forward through the legislative process.

Senate Bill No. 2314 (“*SB 2314*”) authored by Senator Bryan Hughes and sponsored in the House by Representative Gary VanDeaver has been passed by the Texas Legislature. SB 2314 will become effective on September 1, 2023. SB 2314 clarifies that the provisions in the TBOC governing charging orders against membership interests in limited liability companies apply to both single-member and multiple-member LLCs.

House Bill No. 1957 (“*HB 1957*”) authored by Representative Charlie Geren and sponsored in the Senate by Senator Phil King has been passed by the Texas Legislature. HB 1957 will become effective on September 1, 2023. HB 1957 amends TBOC §22.353 to limit to IRC Sec. 501(c)(3) nonprofit corporations the requirement of a Texas nonprofit corporation to make available its documents for public inspection.

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. Omission of Initial Mailing Address in Restated Certificate of Formation

The TBOC Bill amends the TBOC to permit omission of the initial mailing address of a filing entity in a restated certificate of formation.² The 2021 Texas Legislature added a provision requiring that the initial certificate of formation of a domestic filing entity must include its initial mailing address.³ The revision in the TBOC Bill allows the initial mailing address to be treated in a manner similar to the name and address of the organizer of a filing entity and to be omitted from any restatement of the certificate of formation. Because a filing entity may move its offices or change its mailing address after its initial formation, the initial mailing address in the certificate of formation may no longer be accurate at the time of filing a restated certificate of formation so retaining the address in the restated certificate of formation is potentially not useful and might be misleading for third parties.

III. Delayed Effective Date Filings for Mergers, Conversions and Exchanges

The TBOC Bill amends several TBOC sections to enhance the flexibility to file a certificate of merger, exchange or conversion with a delayed effective date. Unnecessary language in several existing provisions requires that a certificate of merger, exchange or conversion must be filed after the approval of the related plan of merger, exchange or conversion. This unnecessary language is deleted by the amendments thereby permitting a certificate of merger, exchange or conversion to be filed with a delayed effective date that occurs after a subsequent approval of the related plan of merger, exchange or conversion.⁴ The deletion will improve the flexibility for filing certificates of merger, exchange or conversion with a future effective time that is a date subsequent to the anticipated approval of the related plan of merger, plan of exchange or plan of conversion or that is conditioned upon the occurrence of such subsequent approval. The approval of the plan of merger, plan of exchange or plan of conversion is required in other TBOC sections and must also be certified to in the filed certificate of merger, exchange or conversion.⁵ These revisions are derived in concept from 2022 amendments to Section 265(h) of the Delaware General Corporation Law (“*DGCL*”) relating to conversions of Delaware corporations, Section 15-901(h) of the Delaware Revised Uniform Partnership Act (“*DRUPA*”) relating to conversions of entities to a Delaware general partnership, Section 17-217(h) of the Delaware Revised Uniform Limited Partnership Act (“*DRULPA*”) relating to conversions of entities to a Delaware limited partnership, and Section 18-214(h) of the Delaware Limited Liability Company Act (“*DLLCA*”) relating to conversions of entities to a Delaware limited liability companies.

In a similar manner, the TBOC Bill deletes unnecessary language restricting the filing of a certificate of conversion or merger for a series of a limited liability company to only after adoption of the related plan of conversion or merger.⁶ The deletion will improve the flexibility for filing a certificate of conversion or merger with a future effective time that is a date subsequent to the anticipated adoption of the related plan of conversion or plan of merger or that is conditioned upon the occurrence of such subsequent adoption. The adoption of the plan of conversion or plan of merger for a series of an LLC is required in other sections and must also be certified to in the filed certificate of conversion or merger.

IV. Notice of Dissent Rights; Surrender by Dissenting Owners of Ownership Interest Certificates

The TBOC Bill amends Section 10.355(c) in relation to the contents of a notice to owners of a meeting of owners, or solicitation of written consents of owners in lieu of a meeting, to approve a

² TBOC Bill §3, amending TBOC §3.059(b).

³ TBOC §3.005(a)(6), as added by Acts 2021, 87th Leg., ch. 894 (H.B. 3131), §1, eff. Jan. 1, 2022

⁴ TBOC Bill §§10 and 11, amending TBOC §§10.151(a) and 10.154(a).

⁵ See, e.g., TBOC §§10.006, 10.151(b)(3), 10.154(b)(2), 21.452-21.454, 22.251, 22.256, 22.257, and 101.356.

⁶ TBOC Bill §§48 and 51, amending TBOC §§101.631(a) and 101.634(a).

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