

Texas Legislature Proposes Amendments to Texas Business Organizations Code

Article By:

Joanna D. Enns

Steven M. Haas

Scott H. Kimpel

Daryl B. Robertson

Fatima Anjum

On February 27, 2025, a significant bill affecting entities organized under Texas law was filed in the Texas Legislature as Senate Bill 29 by Senator Bryan Hughes and as House Bill 15 by Representative Morgan Meyer. The Senate and House bills are currently identical and are referred to herein as the “Bill.” The Bill proposes a series of amendments to the Texas Business Organizations Code (“TBOC”) that apply to domestic Texas entities. Most of the amendments are applicable to Texas corporations, including in particular Texas corporations having shares listed on a national securities exchange. The authors of the Bill believe the amendments would reinforce corporate governance protections in Texas and reduce the risk of opportunistic shareholder litigation.

These reforms follow the commencement of operation of specialized Business Courts in Texas last fall and coincide with ongoing efforts to develop a new Texas-based stock exchange in Dallas. Together, these initiatives signal an ongoing commitment in Texas to providing a business-friendly jurisdiction that offers a stable legal environment for corporate governance and investment.

Many of the provisions of the Bill are tailored for publicly traded companies listed on a national securities exchange. The Bill would expand the definition of “national securities exchange” to include exchanges registered with the Securities and Exchange Commission as well as any stock exchange with its principal office in Texas that has received approval to operate by the Texas Securities Commissioner. [Bill Section 1; Amending TBOC Section 1.002(55-a).]

We discuss other key provisions of the Bill below.

Other states’ laws governing internal affairs and governance

The Bill provides that although a Texas entity's managerial officials, in exercising their powers, may consider the laws and judicial decisions of other states and the practices observed by entities formed in other states, the failure to do so does not constitute or imply a breach of the TBOC or of any duty arising under Texas law. In fact, the Bill is clear that the plain meaning of the text of the TBOC "may not be supplanted, contravened, or modified by the laws or judicial decisions of any other state." [Bill Section 2; Adding TBOC Section 1.056.]

Choice of forum and waiver of jury trial

The Bill would amend the TBOC to clarify that a domestic entity's governing documents may require that one or more courts in Texas having jurisdiction shall serve as the exclusive forum and venue for any internal entity claims. [Bill Section 3; Amending TBOC Section 2.115(b).] For purposes of the TBOC, an "internal entity claim" means a claim of any nature, including a derivative claim in the right of an entity, that is based on, arises from or relates to the internal affairs of the entity [TBOC Sec. 2.115(a)].

The Bill would also add a new section to the TBOC to permit the governing documents of a Texas entity to contain an enforceable waiver of the right to jury trial if specified conditions are satisfied. Some commentators have questioned whether such a provision would be found to be constitutional because the Texas Constitution provides that the right to jury trial "shall remain inviolate." In an attempt to satisfy the standards established in prior Texas case law for enforceable jury trial waivers, the Bill affirmatively states that a person's waiver of jury trial is knowing and informed if the person (1) voted for or affirmatively ratified the governing document containing the waiver, (2) acquired an equity security in the entity when the waiver was included in the governing documents, or (3) is shown by evidence in a court proceeding to have knowingly and informedly consented or acquiesced to the waiver. [Bill Section 4; Adding TBOC Section 2.116.]

Codification of the business judgment rule

The Bill seeks to codify the business judgment rule in Texas by stating that, in the case of a Texas for-profit corporation having shares listed on a national securities exchange or affirmatively electing in its governing documents to be governed by this new provision, directors are presumed to act (1) in good faith, (2) on an informed basis, (3) in furtherance of the interests of the corporation, and (4) in a manner consistent with the law and the corporation's governing documents. Neither the corporation nor its shareholders would have a cause of action against the corporation's officers and directors unless one or more of the four preceding presumptions are rebutted by the claimant and the claimant proves both a breach of duty and that the breach involved fraud, intentional misconduct, an *ultra vires* act or a knowing violation of law. In any legal proceeding, the claimant must state with particularity the circumstances constituting the fraud, intentional misconduct, *ultra vires* act or knowing violation of law. The provision expressly states that it is not intended to affect any exculpation of monetary liability included in the corporation's certificate of formation pursuant to TBOC Section 7.001. The Bill would also apply the same standards to any claims against directors or officers for breach of duty as a result of their authorization or performance of any conflict-of-interest contract or transaction with an interested director or officer under the TBOC's interested person statute, if the corporation has shares listed on a national securities exchange or elects to be governed by the new business judgment rule provision. [Bill Sections 9 and 10; Adding TBOC Sections 21.418(f) and 21.419.]

Inspection of books and records

The Bill would amend the shareholder inspection rights provisions of the TBOC to clarify that a shareholder making a demand to inspect a Texas for-profit corporation's books and records is not entitled to review emails, text messages or similar electronic communications, or information from social media accounts, unless the information affects an action by the corporation. Further, building on the existing statutory principle that a shareholder is not permitted to make a books and records demand for an improper purpose, the Bill would provide that, in the case of a corporation having shares listed on a national securities exchange or electing in its governing documents to be governed by the business judgment rule provisions, a written inspection demand will not be for a proper purpose if the corporation reasonably determines that the demand is in connection with a derivative proceeding that has been instituted or is expected to be instituted by the demanding holder or the holder's affiliate, or if the demand is in connection with an active or pending civil lawsuit in which the demanding holder or the holder's affiliate is or is expected to be an adversarial named party. [Bill Section 4, Amending TBOC Section 21.218.]

Advance determinations of independent and disinterested directors

The Bill would permit the board of directors of a Texas for-profit corporation having shares listed on a national securities exchange to adopt resolutions that authorize the formation of a committee of independent and disinterested directors to review and approve transactions, whether or not contemplated at the time of the committee's formation, involving the corporation or any of its subsidiaries and a controlling shareholder, director or officer. In a novel new provision, the corporation adopting such a resolution would be able to petition a court of appropriate jurisdiction to hold an evidentiary hearing to validate the status of committee members as independent and disinterested.

There are various procedural provisions regarding this process that are beyond the scope of this alert. However, importantly, the new provision states that the court's determination that the directors are independent and disinterested is dispositive in the absence of facts, not presented to the court, constituting evidence sufficient to prove that one or more of the directors is not independent and disinterested with respect to a particular transaction. Accordingly, the corporation may be able to avoid in subsequent litigation issues of whether directors are independent and disinterested. [Bill Sections 7 and 8; Adding TBOC Sections 21.416(g) and 21.4161.] The Bill also adds to the TBOC provisions governing shareholder derivative proceedings similar provisions that would authorize a court to make an advance dispositive determination as to whether the directors who are involved in making a decision whether to pursue a derivative action claim on behalf of the corporation are disinterested and independent. [Bill Section 13; Amending TBOC Section 21.554.]

Derivative litigation

The Bill would amend the TBOC to provide, for a Texas for-profit corporation having common shares listed on a national securities exchange or electing to be governed by the new business judgment rule provision, that a shareholder may not institute or maintain a derivative proceeding on behalf of the corporation unless the shareholder beneficially owns, at the time of instituting the derivative proceeding, a number of common shares to meet the required ownership threshold to institute a derivative proceeding in the right of the corporation as specified in the corporation's certificate of formation or bylaws. However, that required ownership threshold may not exceed 3 percent of the corporation's outstanding shares. [Bill Section 12; Adding TBOC Section 21.552(a)(3).] For these purposes, a "shareholder" can be a holder of record, a beneficial owner, or under a proposed amendment, two or more shareholders acting in concert. [Bill Section 11, Amending Section 21.551(2)(c).]

Disclosure-only settlements

Section 21.561 of the TBOC specifies certain circumstances in which a plaintiff's attorneys may be awarded fees and expenses in a derivative proceeding, including the condition that the court finds the proceeding has resulted in a substantial benefit to the corporation. The Bill would amend this section of the TBOC to provide that a substantial benefit does not include "additional or amended disclosures made to shareholders, regardless of materiality." [Bill Section 14; Adding TBOC Section 21.561(c).]

Status of Bill

The full text of SB 29 is [available here](#). HB 15 is an identical companion bill. During the week of March 10, 2025, the Bill was heard in the Senate State Affairs Committee, which is chaired by Senator Hughes, and in the House Judiciary & Civil Jurisprudence Committee. The Bill was left pending in both Committees, and there was no significant testimony at the hearings in opposition to the Bill. Accordingly, the prospects for passage of the Bill by the Texas Legislature appear to be positive. However, the Bill has attracted a negative fiscal note from the Office of Texas Secretary of State, which estimates that the cost of implementing the amendments to TBOC Section 4.051 would be \$1,752,965 for fiscal year 2026 and \$513,040 annually for each fiscal year thereafter. If passed, the Bill would take effect on September 1, 2025, unless adopted by a two-thirds vote in both the Senate and House, in which case it would become immediately effective. In any case, any existing derivative proceedings would be grandfathered under pre-existing laws after the Bill's amendments take effect.

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