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Texas Legislature Considers Entity Governance Legislation and Business Court Amendments

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The 2025 Texas Legislature is considering a host of bills that relate to the governance of Texas entities. For lawyers who have a taste for entity governance issues, your mouths are probably salivating over the prospects of the Legislature passing several bills. In addition, an important bill that would amend various statutes relating to the Texas business court is also under consideration. It remains to be seen which of these numerous bills will pass the organized chaos of the Legislature. Most of these bills are intended to attract more entities to move to and be formed in Texas, thereby enhancing the growth of business in Texas.

You can learn more about any of these bills that is passed by this year's Legislature by attending the "Choice, Governance and Acquisition of Entities" CLE course that will take place May 30 in Dallas. Other important topics that will be addressed at the conference include, among other things, multistate tax update, structuring joint ventures, fiduciary duties in Texas entities, death and divorce in closely held entities, business capital formation and SAFE transactions, and an annotated LLC agreement. Register today by visiting the event website at www.texasBarCLE.com.

Business Court

The 2023 Texas Legislature passed a new Chapter 25A for the Texas Government Code establishing the Texas business court. The business court opened for business Sept. 1, 2024. Various stakeholders and interested parties have come

together to prepare new legislation that would expand the jurisdiction of the business court and tweak various provisions of Chapter 25A and amend other statutory provisions so that they properly contemplate the business court. This legislation has been filed in the form of House Bill 40 by Rep. Brooks Landgraf, R-Odessa. The final content of HB 40 is somewhat fluid because of ongoing backroom negotiations, but based solely on this author's review of the latest version of HB 40 available on the Legislature's website, some of the highlights of HB 40 include:

- Authorizing commencement of operation of the business court in the remaining six geographic divisions and the transfer of Montgomery County into the 11th Business Court Division,
- Increasing the compensation for business court judges,
- Authorizing the governor to appoint an additional judge to each of the 1st and 11th Business Court Divisions,
- Decreasing the amount in controversy requirement from \$10 million to \$5 million for one of the major categories of jurisdiction of the business court,
- For supplemental claims jurisdiction of the business court, removing the requirement that all parties

The Texas Lawbook

to the supplemental claims and the business court judge have to agree,

- Allowing jurisdiction for an action seeking only injunctive or other equitable relief regardless of the amount of controversy if it is otherwise within certain categories of the business court's jurisdiction,
- Authorizing civil actions commenced prior to Sept. 1, 2024, that would otherwise be within the jurisdiction of the business court, to be transferred to the business court,
- Clarifying the reimbursable expenses of a business court judge,
- Allowing jurisdiction in the business court for actions transferred to it by the judicial panel on multidistrict litigation, without regard to the amount in controversy in any single action, and
- Expanding the jurisdiction of the business court, assuming any applicable threshold amount in controversy is met, to include: (1) actions arising out of insurance contracts that indemnify an organization or its managerial officials against losses arising from their service in those positions or their alleged wrongful or negligent actions, (2) actions arising out of a fundamental business transaction, (3) actions to enforce an arbitration agreement, appoint an arbitrator or review an arbitral award, (4) actions relating to intellectual property and (5) actions arising out of malpractice or professional misconduct by an attorney, CPA or other licensed professional where the client of a professional is an organization.

Texas Entity Governance Legislation

The Legislature is considering numer-

ous bills that relate to the governance of Texas entities. The overall theme appears to be adding new limitations on the rights of entity owners in favor of Texas entities and their management or control parties.

One example of this kind of legislation is House Bill 4115 by Rep. Morgan Meyer, R-University Park, and its companion Senate Bill 1057 by Sen. Tan Parker, R-Flower Mound. This bill would only apply to publicly traded Texas corporations that opt into the provision by amending their governing documents and providing notice to shareholders in its proxy statement. The bill would prohibit any shareholder from submitting a proposal for consideration at a meeting of shareholders unless the shareholder (or group of shareholders) (1) owns at least the lesser of \$1 million of market value of voting securities or 3 percent of the corporation's voting securities, (2) has owned those shares for at least six months prior to and through the shareholders meeting and (3) solicits holders of at least 67 percent of the voting shares to vote on the proposal. Director nominations and ancillary procedural resolutions are not covered by this restriction.

Another bill (Senate Bill 2337 by Sen. Bryan Hughes, R-Mineola; House Bill 4079 by Rep. Jeff Leach, R-Allen) would purport to regulate professional proxy advisors to public company shareholders. The bill would require any services provided by a proxy advisor to be in the best financial interest of shareholders based on quantitative impartial standards for the sole purpose of maximizing the financial return. Those services cannot be provided based on nonfinancial factors such as ESG or DEI principles, social credit or sustainability scores and other similar criteria.

Senate Bill 1056, also by Sen. Parker, proposes an amendment specifying that a director or officer of Texas corporation, which is publicly traded and has its principal office in Texas, is presumed to act in good faith, on an informed basis and with a view to the interests of the corporation. The bill prohibits personal liability for damages for the director or officer

The Texas Lawbook

unless the director or officer violated a duty of good faith, loyalty or due care and engaged in intentional misconduct, fraud or knowing violation of law.

Perhaps the most aggressive and controversial bill that relates to entity governance provisions is Senate Bill 29 by Sen. Hughes and its companion, House Bill 15 by Rep. Meyer. This bill has garnered some nationwide publicity and notoriety. The low bill numbers for this set of bills indicates that it is supported by leadership in the Legislature. The latest committee substitute for SB 29, which was passed by the Texas Senate April 3, contains a host of new entity governance provisions, some highlights of which are summarized below:

- Authorizes waiver of jury trials concerning internal entity claims in entity governing documents,
- Provisions of the Texas Business Organizations Code control over jurisprudence from other states,
- Entity governing documents can choose an exclusive court forum and venue for internal entity claims,
- Owner records inspection rights are severely limited for a publicly traded entity if the requesting owner has pending any litigation or derivative proceeding with the entity,
- Authorizes a novel procedure for advance court determination of independence and disinterested status of directors in the context of shareholder derivative actions or conflict of interest transactions,
- Codifies the presumption that the governing persons of a Texas entity acted in good faith and in compliance with their duties, which could be viewed as a codification of the so-called “business judgment rule” for corporations, although similar provisions are

added for limited liability companies and limited partnerships as well,

- Authorizes the governing documents of a publicly traded Texas entity to establish an ownership threshold for owner derivative actions, with the threshold not to exceed three percent of the outstanding ownership interests of the entity, and
- Eliminates awards of attorney fees to a plaintiff for a settlement in a derivative proceeding based only on amending disclosures to owners.

A shorter, less controversial bill (House Bill 5567 by Rep. Mano DeAyala, R-Houston, would attempt to improve the processing time for expedited handling of filings with the Texas secretary of state. The bill would authorize the secretary of state to charge an expedited handling fee of no more than \$5,000. The filer would receive a refund if the secretary of state failed to process the filing of the document in the time period agreed between the secretary of state and the filer.

Another bill that might have significant impacts is Senate Bill 1875 by Sen. Charles Perry, R-Lubbock. This bill would amend various statutes to repeal the requirement for most Texas entities to file public information reports with the Texas comptroller. It remains to be seen whether the comptroller’s office will step in to oppose this bill.

Senate Bill 2411 by Sen. Charles Schwertner, R-Georgetown, and its companion House Bill 4862 by Rep. Oscar Longoria, D-Mission, was prepared by the State Bar Business Law Section’s TBOC Committee and was the result of careful consideration, drafting and discussions by committee members during several dozen meetings since the fall of 2023. This bill would make an array of amendments to the TBOC covering various topics, many of which were derived from recent changes in the Model Business Corporation Act and Delaware entity statutes. Some of the

The Texas Lawbook

more substantive amendments are summarized below.

- Specifying that a reference or grant of jurisdiction to a “district court” in the Code also constitutes a reference or grant of concurrent jurisdiction to the new Texas business court,
- Authorizing notice of an action by less than unanimous written consent of owners to the nonconsenting owners through a publicly available electronic resource,
- Extending the authority for provisions in the certificate of formation exculpating governing persons from monetary liability for breaches of duty of due care to apply to officers,
- Specifying that a properly adopted plan of conversion may authorize additional entity action to be taken by the converted entity without further approvals being required,
- Specifying that for-profit and nonprofit corporations can retroactively ratify a transaction that was ineffective because of a failure to file with the secretary of state a filing instrument that was required to complete the effectiveness of the transaction,
- Simplifying the information required for a certificate of validation and limiting the circumstances under which a certificate of

validation must be filed under the ratification provisions for for-profit and nonprofit corporations,

- Eliminating redundant annual reporting requirements for cooperative associations and the requirement for larger cooperative associations to file their annual reports with the secretary of state,
- Authorizing the board of directors of a for-profit corporation, without shareholder approval, to effect certain limited amendments to the corporation’s certificate of formation, subject to specified conditions,
- Authorizing the governing authority to approve a plan, agreement, instrument or other document in substantially final form and subsequently to ratify, with retroactive effect, the final form of such document before the effectiveness of the filing of such document, or a certificate referencing it, with the secretary of state, and
- Recognizing that owners in a domestic entity that is party to a merger or interest exchange can appoint a representative to represent them in enforcing the plan of merger or exchange.

Daryl Robertson is special counsel at Hunton Andrews Kurth, where he focuses on business and finance transactions, entity formation, M&A and securities law. He is based in Dallas.