

Texas Means Business: Senate Bill 29 and the Future of Texas Business

At a pivotal time in the national challenge to Delaware's dominance in corporate law, Texas has continued its strategic push with its passage of Senate Bill 29 ("SB 29"). SB 29 implements significant amendments to the Texas Business Organizations Code ("TBOC") regarding the formation, governance, and internal management of entities formed in Texas. Representative Meyer, who sponsored the bill, said it was designed to build on "Texas' business-friendly climate, efficient legal system, and specialized business courts by reforming [Texas'] corporate laws" to strengthen Texas' goal as a national leader in business formation. H.J of Tex., 89th Leg., R.S. 2674 (2024) (Remarks of Representative Meyer).

After advancing through both the Senate and House during the 89th Regular Session of the Texas Legislature, SB 29 was signed into law by Governor Greg Abbott on May 14, 2025, becoming effective immediately. Alongside the recent establishment of the Texas Business Courts and the Texas Stock Exchange ("TSE"), which is currently under review by the Securities Exchange Commission, this legislation is particularly timely for Texas and further signals Texas' commitment to becoming a corporate law hub.

Summary of Changes

SB 29 introduces 25 amendments to the TBOC as it relates to corporations, limited liability companies, and limited partnerships. Summarized below are some of the standout changes as they relate to corporations and how SB 29 may impact the future and day to day operations of a corporation.

National Securities Exchange

One major change involves redefining what qualifies as a "national securities exchange" under Texas law. The revised definition now includes a stock exchange that has its principal office in Texas and has received approval by the Texas securities commissioner. Tex. Bus. Orgs. Code Ann. § 1.002(55-a). This edit likely lays the foundation in the TBOC for the establishment of the TSE, so that its operations and the entities listing ownership interests thereon can be seamlessly integrated.

Venue and Waiver of Jury Trial

Section 2.115 now explicitly states that an entity may require that a Texas court serves as the exclusive forum and venue for any internal entity claims. Tex. Bus. Orgs. Code Ann. § 2.115(c). Additionally, a new Section 2.116 was added, which confirms that an entity's governing documents may contain a waiver of the right to a jury trial for such disputes. Tex. Bus. Orgs. Code Ann. § 2.116. The jury waiver will be enforceable, regardless of whether the applicable document

was signed by the members, owners, or governing persons, so long as the person asserting such claim is deemed to have been informed of the waiver and knowingly waived that right. *Id.* For example, the person may knowingly waive the right to a jury trial by voting for the applicable document or acquiring an equity interest at the time the jury waiver was included in such document. *Id.*

Information Rights

Further documenting Texas' push to modernize the TBOC in the digital age, a shareholder's information rights, reflected in amendments to Section 21.218(b), were clarified and narrowed. *See* Tex. Bus. Orgs. Code Ann. § 21.218(b). Specifically, a corporation's records will not include e-mails, text messages, social media content, or other electronic communications, unless the particular information effectuates an action by the entity. *Id.*

Additionally, with regard to a corporation that has a class or series of voting shares listed on a national security exchange (or has made an affirmative election to be governed by Section 21.419) (a "Listed Corporation"), written demands to examine books and records will not be considered for a proper purpose if it is in connection with a derivative proceeding or civil lawsuit. Tex. Bus. Orgs. Code Ann. § 21.218(b-2).

Codification of Business Judgment Rule

Perhaps the most impactful change to the TBOC in SB 29 is the codification of the business judgment rule—a long-standing and well-established common law doctrine. While long recognized by Texas courts, the codification of the business judgment rule both ensures a consistent definition of the rule by courts and increases awareness of the rule and its protections for the governing persons of entities.

This codification, featured in Section 21.419, applies to a Listed Corporation and lays out presumptions concerning a director or officer's duties to a corporation, which includes a duty of care and a duty of loyalty. Tex. Bus. Org. Code Ann. § 21.419. Directors or officers, in taking or declining to take an action on behalf of the corporation, 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 obedience to the law and the corporation's governing documents." *Id.*

There will be no cause of action against a director or officer, unless the claimant rebuts at least one of the above presumptions and proves that the director or officer's act or omission constituted a breach of a duty or involved fraud, intentional misconduct, an ultra vires act, or a knowing violation of law. *Id.* Additionally, a claim alleging fraud, intentional misconduct, an ultra vires act, or a knowing violation of law must state with particularity the circumstances constituting such act. *Id.*

These restrictions on a cause of action were also extended, pursuant to Section 21.418, to a cause of action against a Listed Corporation's director or officer with respect to a contract or transaction in which such director or officer had a managerial or financial interest or relationship. Tex. Bus. Orgs. Code Ann. § 21.418.

Independent Directors

Another milestone change is Texas' introduction of a mechanism for judicial determination of whether a director is independent and disinterested prior to a transaction or decision, which adds a new layer of legal certainty for Texas entities.

Section 21.416 authorizes a Listed Corporation's board of directors to form a committee of independent and disinterested directors to review and approve transactions involving the corporation or its subsidiaries and a controlling shareholder, officer, or director. Tex. Bus. Orgs. Code Ann. § 21.416. A Listed Corporation which has formed such a committee may petition a court, under Section 21.4161, to hold an evidentiary hearing to determine whether the directors are in fact independent and disinterested with respect to any transaction. Tex. Bus. Orgs. Code Ann. § 21.4161. The court's determination will be dispositive, but for facts that were not presented to the court in the course of its determination that constitutes sufficient evidence that the directors were in fact not independent or disinterested. *Id.*

As with many of the other changes, this change works in conjunction with the other efforts of Texas to bring Texas to the forefront of the United States' mind when it comes to corporate governance—namely the Business Courts. A petition filed pursuant to Section 21.4161 will be filed in the Business Court, unless the corporation's principal place of business is not within an operating division of the Business Court. *Id.*

Similar to the concepts in Section 21.4161, a corporation may petition a court to make a finding of whether directors or a committee of directors are independent and disinterested for the purpose of determining how to proceed on a derivative proceeding. Tex. Bus. Orgs. Code Ann. § 21.554. The applicable court will be the court in which the derivative proceeding has been instituted. *Id.* In cases in which a derivative proceeding has not been instituted, that court will be the Business Court, unless the corporation's principal place of business is not within an operating division of the Business Court. *Id.* Determinations pursuant to this Section 21.554, absent good cause, will be made within 75 days after the date the petition is filed, and will also be dispositive, except in the discovery of facts that were not presented to the court in the course of its determination that constitutes sufficient evidence that the directors were in fact not independent or disinterested. *Id.*

Derivative Proceedings

Finally, SB 29 raises the threshold for shareholders bringing derivative lawsuits. A shareholder of a Listed Corporation with 500 or more shareholders may not institute or maintain a derivative proceeding unless the shareholder can meet the required ownership threshold. Tex. Bus. Orgs. Code Ann. § 21.552(a)(3). The required ownership threshold is based on the number of common shares beneficially owned by such shareholder and may be set by the corporation in its certification of formation or its bylaws, but will not exceed 3% of the outstanding shares of the corporation. *Id.*

For purposes of determining a shareholder's beneficial ownership, the definition of "shareholder" in Section 21.551 was extended to state that two or more shareholders acting in concert may constitute a shareholder for purposes of a derivative proceeding. Tex. Bus. Orgs. Code Ann. § 21.551(2).

Overall, SB 29 represents more than a routine update to the TBOC and is part of a broader strategy—Texas' ongoing drive to align itself with modern business practices and increase its attractiveness as a leading forum for business formation and governance.