

Texas Adopts Significant Pro-Business Corporate Law Reforms

Update

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With a pair of bills signed by Texas Governor Greg Abbott on May 14, 2025, and May 20, 2025, Texas took a major step in positioning itself as the pro-business jurisdiction of choice for public and private companies. The legislation adopts a series of amendments to the Texas Business Organizations Code (TBOC), which governs Texas corporations, limited liability companies, limited partnerships and other legal entities, that are designed to make Texas more attractive for entity formation and redomestication.

Senate Bill 29

On May 14, 2025, Governor Abbott signed Senate Bill 29 (S.B. 29) into law with immediate effect. The changes to the TBOC enacted by S.B. 29 clarify areas of existing Texas law and strengthen a company's defenses against certain types of shareholder litigation.

Business Judgment Rule Statute

S.B. 29 enacts new Section 21.419 codifying the "business judgment rule" presumption. The statute applies automatically to public corporations (any corporation with a class or series of voting shares listed on a national securities exchange) and includes an option for any private corporation to "opt-in" by including an affirmative election in its governing documents.

Directors and officers of corporations that are subject to the statute are presumed to have acted (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, in taking or declining to take any action on any matters of the corporation's business.

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Further, the statute provides that neither the corporation nor any of its shareholders has a cause of action against a director or officer as a result of any act or omission in the person's capacity as a director or officer unless (1) the claimant rebuts one or more of the codified presumptions and (2) it is proven by the claimant that (A) the director's or officer's act or omission constituted a breach of the person's duties as a director or officer **and** (B) the breach involved fraud, intentional misconduct, an *ultra vires* act or a knowing violation of law.

Advance Independence Determination

S.B. 29 also overhauls provisions of the TBOC relevant to the evaluation and approval of certain conflict of interest transactions.

Specifically, the new legislation expressly empowers a board of directors of a public corporation or a private corporation that has opted-in to the business judgment rule statute (new Section 21.419) to form a committee of independent and disinterested directors to review and approve transactions involving the corporation or any of its subsidiaries and a controlling shareholder, director or officer, and to petition the Texas Business Court (or the district court in the county in which the corporation's principal place of business in Texas is located, if that county is not located within an operating division of the Texas Business Court), to seek an advance determination as to whether the directors on the committee are independent and disinterested.

The court's determination in such a proceeding is dispositive in the absence of evidence not presented to the court that one or more of the directors is not independent and disinterested with respect to a particular transaction involving the corporation or any of its subsidiaries and a controlling shareholder, director or officer.

Minimum Ownership Threshold for Derivative Actions

S.B. 29 allows public corporations and private corporations that have opted-in to the business judgment rule statute and have 500 or more shareholders (at the time the derivative proceeding is instituted) to proscribe, in the corporation's certificate of formation or bylaws, a minimum ownership threshold for shareholders that are eligible to bring a derivative lawsuit, provided that such minimum ownership threshold does not exceed three percent of the corporation's outstanding shares.

Limitation of Books and Records Demands

For public corporations and private corporations that have opted-in to the business judgment rule statute, S.B. 29 provides that a shareholder is not entitled to bring a books and records demand if it is reasonably determined by the corporation that the demand is in connection with (1) an active or pending derivative proceeding in the right of the corporation that is or is expected to be instituted or maintained by the holder or the holder's affiliate or (2) an active or

pending civil lawsuit to which the corporation or its affiliate and the holder or the holder's affiliate are or are expected to be adversarial.

S.B. 29 also clarifies that, for all Texas corporations, "e-mails, text messages or similar electronic communications, or information from social media accounts" are not records that may be subject to a books and records demand, unless the particular communication effectuates action by the corporation.

Limiting Recovery of Attorney's Fees in "Disclosure Only" Settlements

Under existing provisions of the TBOC, a court may order a corporation to reimburse a plaintiff's attorney's fees and other litigation costs incurred in a derivative proceeding if it is determined that the proceeding has resulted in a "substantial benefit" to the corporation. Under S.B. 29, the provision is amended to provide that additional or amended disclosures made to the shareholders, regardless of materiality, are not a "substantial benefit" to the corporation.

Waiver of Jury Trial

S.B. 29 codifies the right of a Texas entity to contain in its governing documents a provision waiving the right to a jury trial concerning any "internal entity claim," which is a claim of any nature, including a derivative claim, that is based on, arises from, or relates to the internal affairs of the entity.

Exclusive Forum Selection

S.B. 29 also codifies the right of a Texas entity to contain in its governing documents a provision stipulating one or more courts in Texas as the exclusive forum and venue for "internal entity claims."

Class and Series Voting Rights

S.B. 29 eliminates certain mandatory separate class and series voting requirements, providing greater flexibility for a Texas corporation to structure its voting rights among different classes and series of stock. The amendment addresses one of the more significant hurdles that corporations seeking to redomicile in Texas have historically encountered, as the rigidity of the prior regime was often incompatible with the way voting rights are typically structured in certain types of corporations with multiple classes or series of stock.

Limited Liability Companies and Limited Partnerships

While S.B. 29 will have the greatest impact on Texas corporations, the legislation also includes a number of analogous reforms for Texas limited liability companies and limited partnerships.

Senate Bill 1057

Senate Bill 1057 (S.B. 1057) was signed by Governor Abbott on May 19, 2025, and will become effective on September 1, 2025. While not as expansive as S.B. 29, S.B. 1057 allows public companies with a specific nexus to Texas, either due to the location of its principal office or its decision to list its shares on one of the new Texas-based stock exchanges, the ability to “opt-in” to a statute that applies minimum ownership requirements to shareholder proposals.

A Texas corporation is eligible to opt-in to the statute by adopting an amendment to its governing documents if it (1) has a class of equity securities registered under Section 12(B) of the Securities Exchange Act of 1934; (2) is admitted to listing on a national securities exchange; and (3) either (A) has its principal office in Texas or (B) is admitted to listing on a Texas-based stock exchange.

Once a corporation has opted-in, in order to be eligible to submit a proposal on a matter to the shareholders for approval, a shareholder or group of shareholders must (1) hold an amount of voting shares of the corporation equal to at least (A) \$1 million in market value or (B) three percent of the corporation’s outstanding voting shares; (2) hold the shares for a continuous period of at least six months before the date of the meeting and throughout the duration of the meeting; and (3) solicit the holders of shares representing at least 67 percent of the voting power of shares entitled to vote on the proposal.

Summary

The changes implemented by S.B. 29 and S.B. 1057 represent a significant evolution in Texas corporate law. We expect the changes will promote new entity formation in Texas and will influence many companies organized in Delaware and other jurisdictions to consider a move to Texas. We also expect many existing Texas companies to adopt amendments to their governing documents to take advantage of various features of the new legislation.

Considering Reincorporation in Texas?

Bracewell has recent, extensive experience guiding major corporations through the reincorporation process. If your company is considering a move to Texas, or would like to better understand how these legislative developments may impact your governance, charter documents or litigation exposure, our team is here to help.

