

BUSINESS ORGANIZATIONS CODE

TITLE 8. MISCELLANEOUS AND TRANSITION PROVISIONS

CHAPTER 402. MISCELLANEOUS AND TRANSITION PROVISIONS

Sec. 402.001. APPLICABILITY UPON EFFECTIVE DATE. (a) On or after the effective date of this code, this code applies to:

(1) a domestic entity formed on or after the effective date of this code;

(2) a domestic entity that is a converted entity resulting from a conversion that takes effect on or after the effective date of this code;

(3) a foreign filing entity, or other foreign entity, that is not registered with the secretary of state to transact business in this state before the effective date of this code; and

(4) a foreign nonfiling entity, including a foreign limited liability partnership.

(b) The registration of a domestic limited liability partnership or foreign limited liability partnership under prior law and in effect on the effective date of this code continues to be governed by the prior law until expiration of the current term of registration, unless earlier withdrawn or revoked.

(c) Notwithstanding Subsections (a) and (b), after the effective date of this code, Sections 152.802 and 152.803, instead of prior law, govern a filing with the secretary of state made on behalf of a domestic limited liability partnership registered under prior law.

(d) Notwithstanding Subsection (a), a domestic partnership that files an initial application for registration as a limited liability partnership after the effective date of this code is governed by Subchapter J, Chapter 152.

(e) Except as provided by Subsection (b), on or after the effective date of this code, Subchapter K, Chapter 152, applies to the registration of a foreign limited liability partnership registered under prior law.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 100, eff.

January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 138, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 23 (S.B. 859), Sec. 8, eff. January 1, 2016.

Sec. 402.002. EARLY EFFECTIVENESS OF FEES. On or after the effective date of this code, the fees required by Chapter 4 apply to all filings made with the secretary of state, including comparable filings under prior law, regardless of whether an entity is subject to or has adopted this code. The intent of this section is to:

(1) require a filing fee for all documents filed under either this code or the prior law without regard to the difference in designation of the document; and

(2) make the filing fees described by Subdivision (1) uniform from the effective date of this code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.003. EARLY ADOPTION OF CODE BY EXISTING DOMESTIC ENTITY. (a) A domestic entity formed before the effective date of this code may voluntarily elect to adopt and become subject to this code by:

(1) adopting the code by complying with the procedures for approval, under prior law and its governing documents, of an amendment to:

(A) its articles of incorporation, with respect to a corporation or cooperative association;

(B) its regulations, with respect to a limited liability company;

(C) its articles of association, with respect to a professional association;

(D) its declaration of trust, with respect to a real estate investment trust;

(E) its partnership agreement, with respect to a partnership; or

(F) its primary governing document, with respect to another type of domestic entity;

(2) if any of its governing documents, including its certificate of formation, do not comply with this code, complying with the procedures, under prior law and its governing documents, to amend the noncomplying governing documents to comply with this code, including filing with the filing officer in accordance with Chapter 4 a certificate of amendment to cause its certificate of formation to comply with this code; and

(3) if the domestic entity is a filing entity, filing with the filing officer in accordance with Chapter 4 a statement that the filing entity is electing to adopt this code.

(b) A domestic entity that elected to adopt and become subject to this code as provided by Subsection (a) is not considered to have failed to comply with Subsection (a)(2) because:

(1) the entity's governing documents do not state the type of entity formed; or

(2) a circumstance described by Section 402.0051 applies.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 139, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 59, eff. September 1, 2011.

Sec. 402.004. EARLY ADOPTION OF CODE BY REGISTERED FOREIGN FILING ENTITY. (a) A foreign filing entity registered with the secretary of state to transact business in this state before the effective date of this code may voluntarily elect to adopt and become subject to this code by filing with the secretary of state in accordance with Chapter 4:

(1) a statement that the foreign filing entity is electing to adopt this code; and

(2) an amendment to its application for registration that would cause its application for registration to comply with this code.

(b) A foreign filing entity that elected to adopt and become subject to this code as provided by Subsection (a) is not considered

to have failed to comply with Subsection (a)(2) because:

(1) the application for registration or any amendment to the registration:

(A) does not state the entity's type; or

(B) does not include the appointment of the secretary of state as agent for service of process under the circumstances provided by Section 5.251; or

(2) a circumstance described by Section 402.0051 applies.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 60, eff. September 1, 2011.

Sec. 402.005. APPLICABILITY TO EXISTING ENTITIES. (a) On or after January 1, 2010, if a domestic entity formed before January 1, 2006, or a foreign filing entity registered with the secretary of state to transact business in this state before January 1, 2006, has not taken the actions specified by Section 402.003 or 402.004 to elect to adopt this code:

(1) this code applies to the entity and all actions taken by the managerial officials, owners, or members of the entity, except as otherwise expressly provided by this title;

(2) if the entity is a domestic or foreign filing entity, the entity is not considered to have failed to comply with this code if the entity's certificate of formation or application for registration, as appropriate, does not comply with this code;

(3) if the entity is a domestic filing entity, the entity shall conform its certificate of formation to the requirements of this code when it next files an amendment to its certificate of formation; and

(4) if the entity is a foreign filing entity, the entity shall conform its application for registration to the requirements of this code when it next files an amendment to its application for registration.

(b) On or after January 1, 2010, and to the extent provided in Subchapter A, Chapter 23, this code applies to a corporation

created under a special statute of this state outside this code before January 1, 2006. The corporation, if its certificate of formation, or equivalent governing document, is filed with the secretary of state, may elect for this code to apply to the corporation at any time on or after January 1, 2006, and prior to January 1, 2010, to the extent provided in Subchapter A, Chapter 23, by filing a statement and taking other actions in a manner similar to a domestic filing entity under Section 402.003.

(c) A domestic or foreign filing entity is not considered to have failed to comply with Subsection (a)(3) or (4) because:

(1) the certificate of formation does not state the type of entity formed;

(2) the application for registration or any amendment to the registration:

(A) does not state the entity's type; or

(B) does not include the appointment of the secretary of state as agent for service of process, notice, or demand under the circumstances provided by Section 5.251; or

(3) a circumstance described by Section 402.0051 applies.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 102, eff. January 1, 2006.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 59, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 61, eff. September 1, 2011.

Sec. 402.0051. EFFECT OF REFERENCES TO PRIOR LAW AND USE OF SYNONYMOUS TERMS. (a) A governing document or a filing instrument, including a certificate of formation or application for registration, is not considered to have failed to conform to this code if the governing document or filing instrument:

(1) contains a reference to prior law that was applicable at the time of its filing or adoption;

(2) contains a provision that was authorized by prior

law at the time of its filing or adoption;

(3) includes a term or phrase described by Section 1.006; or

(4) includes a term or phrase from prior law that is different from the corresponding term or phrase used in this code.

(b) A reference in a governing document or filing instrument to a statute or provision of a statute in effect before January 1, 2010, that was repealed by this code is considered to be a reference to the provision or provisions of this code that correspond to the repealed statute or provision unless the governing document or filing instrument expressly provides otherwise.

(c) An entity is not considered to have failed to comply with this code if a governing document or filing instrument makes a reference to prior law rather than to the corresponding provisions of the prior law in this code.

(d) For purposes of this section, prior law includes a predecessor statute to the prior law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 62, eff. September 1, 2011.

Sec. 402.006. APPLICABILITY TO CERTAIN ACTS, CONTRACTS, AND TRANSACTIONS. Except as otherwise expressly provided by this title, all of the provisions of this code govern acts, contracts, or other transactions by an entity subject to this code or its managerial officials, owners, or members that occur on or after the mandatory application date. The prior law governs the acts, contracts, or transactions of the entity or its managerial officials, owners, or members that occur before the mandatory application date.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 103, eff. January 1, 2006.

Sec. 402.007. INDEMNIFICATION. Chapter 8 governs any proposed indemnification by a domestic entity after the mandatory application date, regardless of whether the events on which the

indemnification is based occurred before or after the mandatory application date. In a case in which indemnification is permitted but not required under Chapter 8, a provision relating to indemnification contained in the governing documents of a domestic entity on the mandatory application date that would otherwise have the effect of limiting the nature or type of indemnification permitted by Chapter 8 may not be construed after the mandatory application date as limiting the indemnification authorized by Chapter 8 unless the provision is intended to limit or restrict permissive indemnification under applicable law.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 104, eff. January 1, 2006.

Sec. 402.008. MEETINGS OF OWNERS AND MEMBERS; CONSENTS; VOTING OF INTERESTS. (a) Except as provided by Subsection (b) and regardless of whether a proxy or consent was executed by an owner or member before the mandatory application date, Chapter 6 and any other applicable provision of this code apply to:

(1) a meeting of owners or members held on or after the mandatory application date;

(2) an action undertaken by owners or members under a written consent that takes effect on or after the mandatory application date;

(3) a vote cast at a meeting described by Subdivision (1); and

(4) consent given for an action described by Subdivision (2).

(b) Prior law applies to a meeting of owners or members and to any vote cast at a meeting described by this section if the meeting was initially called for a date before the mandatory application date and notice of the meeting was given to owners or members entitled to vote at the meeting.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.009. MEETINGS OF GOVERNING AUTHORITY AND

COMMITTEES; CONSENTS. (a) Except as provided by Subsection (b), Chapter 6 and any other applicable provision of this code apply to:

(1) a meeting of the governing authority or a committee of the governing authority held on or after the mandatory application date;

(2) an action undertaken by the governing authority or a committee of the governing authority under a written consent that takes effect on or after the mandatory application date;

(3) a vote cast at a meeting described by Subdivision (1); and

(4) consent given for an action described by Subdivision (2).

(b) Prior law applies to a meeting of the governing authority or a committee of the governing authority and to any vote cast at a meeting described by this section if the meeting was initially called for a date before the mandatory application date and notice of the meeting was given to governing persons entitled to vote at the meeting.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.010. SALE OF ASSETS, MERGERS, REORGANIZATIONS, CONVERSIONS. Chapter 10 and any other applicable provisions of this code apply to a transaction consummated by an entity after the mandatory application date, except that if a required approval of the owners or members of the entity has been given before the mandatory application date or has been given after the mandatory application date but at a meeting of owners or members initially called for a date before the mandatory application date, the transaction shall be governed by the prior law.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.011. WINDING UP AND TERMINATION. (a) Chapter 11 applies to:

(1) an action for involuntary or judicial winding up and termination commenced after the mandatory application date; or

(2) a voluntary winding up and termination proceeding initiated after the mandatory application date by:

- (A) the governing authority;
- (B) the terms of the governing documents; or
- (C) applicable law.

(b) The prior law governs:

(1) an action described by Subsection (a)(1) that is pending on the mandatory application date; or

(2) a proceeding described by Subsection (a)(2) initiated before the mandatory application date.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.012. REGISTRATION OF CERTAIN FOREIGN ENTITIES. A foreign entity that has transacted intrastate business in this state before the mandatory application date and that is required by Chapter 9 to register to transact business is not subject to a direct or indirect penalty as a result of failure to register under Chapter 9 if the application for registration is filed not later than the 30th day after the mandatory application date.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.013. REINSTATEMENT OF ENTITIES CANCELED, REVOKED, DISSOLVED, INVOLUNTARILY DISSOLVED, SUSPENDED, OR FORFEITED UNDER PRIOR LAW. (a) On or after January 1, 2006, and before January 1, 2010, a domestic filing entity whose certificate of formation or equivalent governing document has been canceled, revoked, involuntarily dissolved, suspended, or forfeited under prior law may reinstate its certificate of formation or equivalent governing document in accordance with:

(1) prior law; or

(2) this code if it also complies with Section [402.003](#).

(b) On or after January 1, 2006, and before January 1, 2010, a foreign filing entity whose registration to do business has been canceled, revoked, involuntarily dissolved, suspended, or forfeited under prior law may reinstate its registration in accordance with:

(1) prior law; or

(2) this code if it also complies with Section

402.004.

(b-1) On or after January 1, 2010, a domestic filing entity whose existence has been voluntarily dissolved or involuntarily dissolved under prior law or whose certificate of formation or equivalent governing document has been canceled, revoked, suspended, or forfeited under prior law may reinstate the entity in accordance with this code.

(b-2) On or after January 1, 2010, a foreign filing entity whose registration to do business has been canceled, revoked, suspended, or forfeited under prior law may reinstate its registration in accordance with this code.

(c) If the certificate of formation of a domestic filing entity or the registration to do business of a foreign filing entity is forfeited under the Tax Code, the entity must revive the certificate of formation or registration in accordance with that code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 105, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 63, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 64, eff. September 1, 2011.

Sec. 402.014. MAINTENANCE OF PRIOR ACTION. Except as expressly provided by this title, this code does not apply to an action or proceeding commenced before the mandatory application date. Prior law applies to the action or proceeding.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 402.015. PERPETUAL DURATION OF OLD CORPORATIONS.
(a) Notwithstanding any provision in the articles of incorporation limiting the period of duration of a domestic for-profit corporation formed before September 6, 1955, the period of duration of the corporation became perpetual on May 2, 1979, if the corporation was in existence according to the records of the

secretary of state on May 2, 1979. A corporation described by this subsection may amend the corporation's articles of incorporation or certificate of formation, as applicable, to limit the corporation's period of duration after May 2, 1979.

(b) Notwithstanding a provision in the articles of incorporation limiting the period of duration of a domestic nonprofit corporation formed before August 10, 1959, the period of duration of the corporation became perpetual on May 2, 1979, if the corporation was in existence according to the records of the secretary of state on May 2, 1979. A corporation described by this subsection may amend the corporation's articles of incorporation or certificate of formation, as applicable, to limit the corporation's period of duration after May 2, 1979.

Added by Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. [1518](#)), Sec. 35, eff. September 1, 2017.