Dexit Heats Up: Texas Reforms Its Corporate Law

Strafford Presentation

September 18, 2025

Hillary H. Holmes
Gregg J. Costa

GIBSON DUNN

Agenda

Context for Recent Changes

01

Context

Booming Economic Growth. Texas has grown into the eighth-largest economy in the world, with an estimated GDP of $2.7 trillion in 2024. And the rapid growth of the Texas economy shows no sign of slowing: In the fourth quarter of 2024, the Texas GDP grew at an annual rate of 3.5%, well ahead of the U.S. average of 2.4%. Texas' low taxes, pro-workforce climate, and burgeoning population, which now exceeds 30 million residents, is a key driver of this economic expansion, providing a deep labor pool and fueling demand for goods and services across the state. The steady influx of new residents attracts businesses and investment, further reinforcing Texas's position as an economic powerhouse.

Pro-Business Government. The Governor of Texas, who is currently the second-longest serving governor in Texas history, is widely recognized for his business-friendly policies. Governor Abbott (since 2014) and the Texas Legislature have a track record of enacting pro-business legislation and have the power to continue to shape Texas policy to favor businesses. They have recently engaged in certain initiatives to demonstrate their support of Texas-based businesses, industry and capital raising.

Business Reaction. 10% of publicly traded companies are Texas based. Due to its large and growing population, thriving economy and favorable regulatory environment, Texas gained more jobs than any other state in the past decade from businesses relocating from other parts of the country, with more than 200 headquarters moving to the state from 2018 to 2024. The high-profile relocation of major companies or their primary or secondary headquarters has generated significant media attention and further cemented Texas's reputation as a top choice for corporate investment.

Context (cont'd)

Legislative Process. Every odd-numbered year, the legislature gathers in its regular session to pass a two-year state budget and other laws for 140 days beginning in January. The governor can also call for special sessions for up to 30 days outside of regular sessions. During these special sessions, lawmakers can pass laws only on issues outlined by the governor. The governor can sign or veto bills. Lawmakers can override a veto with two-thirds votes of each chamber.

Legislative Action. There have been significant changes to improve the business landscape in recent years:

- **Amendments to Corporate Statute.** In May and June of 2025, the Governor of Texas signed into law significant amendments to the Texas Business Organizations Code (the "TBOC"). The new laws introduce consequential changes affecting governance, governing authority liability, shareholder rights, and internal management of companies organized under the TBOC.
- "Texas can seize this moment. S.B. 29 takes a bold step toward making Texas the corporate law capital of America by modernizing the Texas Business Organizations Code…By clarifying and strengthening our legal framework, this bill signals to executives nationwide that Texas is ready for sophisticated business disputes. It will drive investment, create jobs, and cement Texas as America's corporate hub for decades to come."

Texas Business Courts. Texas created specialized business courts staffed by judges with significant experience in business law and expertise in handling the complex legal and financial issues often involved in business disputes. Commenced operation September 2024. Overt 180 cases filed during the first year. Courts have issued over 40 written opinions. Amount in controversy is $45.7 million mean and $11 million median.

Context (cont'd)

Stock Exchanges. The Texas government has actively promoted national stock exchange activity directly in the state.

- **The Texas Stock Exchange (TXSE)**:
  - Proposed new national securities exchange headquartered in Dallas
  - Announced in June 2024 and backed by institutional investors
  - Filed Form 1 registration with the SEC in early 2025 and review is pending (proposed listing rules publicly available)
  - If approval granted, per TXSE, intends to launch trading in early 2026 with listings by end of 2026.
- **NYSE Texas.** NYSE Texas launched in March 2025 as a fully electronic equities exchange based in Dallas and has accepted 49 dual listings as of September 1, 2025. Per NYSE, Texas is the state with the largest number of NYSE listings.
- **Nasdaq.** In March 2025, Nasdaq opened a regional headquarters in Dallas to serve as a convening space for leaders, entrepreneurs and innovators in Texas to connect with each other and Nasdaq's global network. Per Nasdaq, over 200 Texas based companies are listed on Nasdaq.
- **Franchise Tax Exemption for Texas Stock Exchanges**. SB 1058, which was signed into law on May 13, 2025 and takes effect on January 1, 2026, creates a franchise tax exemption for stock exchanges operating in Texas for certain tax liabilities.

Overview of Recent Changes to Texas Corporate Statute

02

Overview of Recent Changes

Four Key Bills That Amend Texas Business Organizations Code *(with links to text):*

1. Senate Bill 29 – Signed into law May 14, 2025. Amendments effective May 14, 2025.
2. Senate Bill 1057 – Signed into law May 19, 2025. Amendments effective September 1, 2025.
3. Senate Bill 2411 – Signed into law May 27, 2025. Amendments effective September 1, 2025.
4. Senate Bill 2337 – Signed into law June 20, 2025. Amendments effective September 1, 2025. (Injunction against AG for ISS and Glass Lewis pending.)

Resulting Collective Changes to TBOC Impact Corporations

in Five Main Categories:

1. Protections for Officers and Directors
2. Limitations on Litigation-Related Matters
3. Limitations on Shareholder Proposals and Inspection Requests
4. Improvements on Technical Transaction Execution Matters
5. Proxy Advisor Disclosure Requirements

❖ Note that some provisions automatically apply to certain corporations and other provisions require corporations to affirmatively opt in.

Key Changes

(1) Protections for Officers and Directors

Protections for Officers and Directors

- **Codification of the Business Judgment Rule.** TBOC codifies the Business Judgment Rule (the "BJR Statute"). To take advantage of this presumption, Texas corporation must be (a) publicly traded or (b) opt in to the BJR Statute in its certificate of formation or bylaws. The BJR Statute creates presumptions concerning compliance by directors and officers with duty of care and duty of loyalty. Expressly presumes that their actions are (i) taken in good faith, (ii) on an informed basis, (iii) in the best interests of the corporation, and (iv) in obedience to applicable law and the corporation's governing documents. A plaintiff bears the burden of rebutting these presumptions and must plead with particularity that the alleged breach by the director or officer constitutes fraud, intentional misconduct, an ultra vires act, or a knowing violation of law. This protection is in addition to any existing statutory or common law defenses.
- **Protection of Officers and Directors in Conflicts of Interest.** Directors and officers of a corporation that (a) is publicly traded or (b) opts into the BJR Statute are shielded from any cause of action brought by shareholders for a breach of duty with respect to making, authorizing or performing a transaction because the director or officer had an interest in the transaction unless the alleged breach involved fraud, intentional misconduct, ultra vires acts or knowing violations of law. This new provision is complementary to existing protections provided under TBOC Section 21.418(b) for transactions involving conflicts of interests that were approved by an independent committee, by shareholders, or conducted on fair terms, in accordance with the requirements of the statute.
- **Extension of Exculpation to Officers.** Texas corporation may affirmatively elect in its certificate of formation to limit or eliminate liability of officers for monetary damages for an act or omission taken by the officer in his capacity as an officer to the same extent already permitted for directors. Exculpation cannot be provided for breaches of loyalty, intentional misconduct, transactions in which the officer received an improper benefit, or statutory violations.

Key Changes

(1) Protections for Officers and Directors (cont'd)

Protections for Officers and Directors

- **Judicial Determination of Independence of Committees Reviewing RPTs.** A board of a Texas corporation that (a) is publicly traded or (b) opts into the BJR Statute may petition the Texas Business Court (or, if none, district court with proper jurisdiction) to determine whether the directors on a committee formed to review transactions involving directors, officers or controlling shareholders are independent and disinterested with respect to any transactions involving the corporation and such persons. The corporation must notify shareholders that it has filed the petition (e.g., by filing a Form 8-K with the SEC). The court may not hold the preliminary hearing until at least 10 days after the date notice is given. After an evidentiary hearing, court will render a dispositive determination (absent new facts). Corporation must give shareholders notice of court petition. (Similar process for derivative suit committees.)
- **Texas Law Governs, No Obligation to Follow Other States' Practices.** New Section 1.057 of the TBOC affirms that directors and officers of a Texas corporation may, but are not required to, consider the laws, judicial decisions, or business practices of other states in exercising their powers. The statute further clarifies that a failure to consider or conform to such out-of-state authorities does not constitute or imply a breach of the TBOC or any duty under Texas law. The statute also provides that the provisions of the TBOC may not be supplanted, contravened, or modified by the laws or judicial decisions of another state. This provision underscores Texas' intent to establish and preserve a distinct and self-governing body of corporate law, independent of other jurisdictions.

Key Changes

(2) Limitations on Litigation-Related Matters

Limitations on Litigation-Related Matters

- **Minimum Share Ownership Requirements for Derivative Claims.** A Texas corporation that (a) is publicly traded or (b) has at least 500 shareholders and has elected to opt into the BJR Statute may impose a requirement that shareholders must own up to 3% of the corporation's outstanding shares before they can initiate a derivative claim. This ownership threshold may be set forth in the certificate of formation or the bylaws.
- **Waiver of Jury Trial.** A Texas corporation may include in its certificate of formation or bylaws a waiver of the right to a jury trial for any "internal entity claims." Internal entity claims include, for example, derivative claims that directors of a corporation breached their fiduciary duties. Such waivers are enforceable even if not individually signed by owners, officers or governing persons. A person is considered to have knowingly waived the right to a jury trial if they voted for or ratified the document containing the waiver, acquired stock at, or continued to hold stock in a corporation with a class of its equity securities listed on a national securities exchange after, a time in which the waiver was included in the certificate of formation or bylaws.
- **Exclusive Forum**. A Texas corporation may choose an exclusive Texas forum and Texas venue for all internal entity claims in the bylaws or certificate of formation.
- **Elimination of Plaintiff's Attorney's Fees for Disclosure Suits.** Under Texas law, upon conclusion of a derivative proceeding, the court may order that a Texas corporation pay the plaintiff's attorney's fees if the derivative action resulted in a "substantial benefit to the corporation." Under the amendments, a substantial benefit to a corporation does not include additional or amended disclosures made to shareholders (e.g., supplements to a proxy statement for a merger), regardless of materiality.

Key Changes

(3) Limitations on Shareholder Proposals and Information Requests

Limitations on Shareholder Proposals and Information Requests

- **Option to Set Requirement for Shareholder Proposals.** A Texas corporation that is a "nationally listed corporation" (as defined) and that elects to adopt these requirements by an amendment to bylaws or certificate of formation, may require that, in order to submit a proposal, shareholders must (i) beneficially own shares equal to at least $1 million in market value or 3% of the corporation's outstanding voting shares for at least six months prior to the meeting and continue to hold such shares through the duration of the meeting and (ii) solicit holders of shares representing at least 67% of the voting power entitled to vote on the proposal. These heightened requirements apply to proposals on any matter to be submitted to shareholders for approval at a meeting of shareholders, including proposals submitted under Exchange Act Rule 14a-8 and floor proposals under advance notice bylaws, other than director nominations and procedural resolutions that are "ancillary to the conduct of the meeting."
  - A "nationally listed corporation" is defined as a Texas corporation (a) with equity securities registered under Section 12(b) of the Securities Exchange Act of 1934, (b) that is listed on a national securities exchange, and (c) that has either (i) a principal office in Texas or (ii) a listing on a Texas-headquartered stock exchange approved by the Texas Securities Commissioner.
- **Limitations on Corporate Records Inspection Rights.** Emails, text messages and social media communications are excluded from corporate records to which shareholders can access under the statute's provisions, unless those records effectuate an action by the corporation. Furthermore, a Texas corporation that (a) is publicly traded or (b) opts in to the BJR Statute may deny inspection demands from shareholders with ongoing or expected litigation involving the corporation or derivative proceedings involving the shareholders or its affiliates. These changes do not impair the shareholders' right to obtain discovery of records from the corporation in an active or pending lawsuit (including pre-trial discovery).

Key Changes

(4) Technical Transaction Execution Improvements

Technical Transaction Execution Improvements

- **Clarity that Board Does Not Have to Approve Final and Complete Version of Agreements.** The board of directors of a Texas corporation may approve corporate documents such as plans, agreements and instruments in the final or “substantially final form.” Disclosure letters and other similar documents to be delivered in connection with a plan of merger are not considered a part of the plan of merger unless expressly stated.
- **Clarity that Agents Can Act for Entity.** A plan of merger may appoint representatives to act on behalf of owners, with exclusive authority to enforce or settle post-transaction rights. The appointment may be made irrevocable and binding on the parties upon approval of the plan.
- **Further Acts in Conversions.** A plan of conversion can authorize any additional actions taken by the converted entity in connection with the plan of conversion without any additional approvals.

Key Changes

(5) Proxy Advisor Disclosure Requirements

Proxy Advisor Disclosure Requirements

- New Chapter 6A, titled "**Proxy Advisory Services**," requires proxy advisory firms to make new public disclosures when advising on votes involving certain companies with a Texas nexus. Applies to any "proxy advisor," which is defined as a person who, for compensation, provides a proxy advisory service to shareholders of a company or to other persons with authority to vote on behalf of shareholders of a company.
  - "Company" includes any publicly traded corporation that (i) is incorporated in Texas, (ii) has its principal place of business in Texas, or (iii) is incorporated in another state and has made a proposal to redomesticate to Texas.
  - "Proxy advisory services" are broadly defined and include, among other things, advice or recommendations on how to vote on proposals, proxy statement research or analysis, ratings or research regarding corporate governance, and development of voting recommendations or policies.
- Scope covered by the law includes all proposals that are included in the company's proxy statement, whether made by the company or by shareholders, including director elections and executive compensation.
- **Proxy advisor is required to make certain public disclosures** when (i) its recommendations are "not provided solely in the financial interest" of the shareholders of such an entity or (ii) the advisor provides advice that is defined as "materially different" (ie, conflicting).
- **Advice is "not provided solely in financial interest of the shareholders**" when: it takes into account non-financial factors, including ESG, DEI, social credit or sustainability factor; recommendation is inconsistent with the recommendation of the board and fails to include a written economic analysis of financial impact on shareholders (as defined); it is not based solely on financial factors and subordinates shareholders' financial interests to other objectives; or it recommends a vote against a company proposal to elect a governing person, unless the firm states that the recommendation is solely based on financial interests of shareholders.
- **Advice is "materially different**" when recommendations are inconsistent between clients or inconsistent with management's recommendation under specified circumstances.
- Statute allows for both **public and private enforcement**, remedies and injunctive relief. A violation of Chapter 6A is also a deceptive trade practice under the Texas Deceptive Trade Practices-Consumer Protection Act.
- A Texas federal court preliminary enjoined enforcement of the law by the Texas Attorney General against Institutional Shareholder Services and Glass Lewis while the case proceeds to trial, set for February 2, 2026.

Summary of Select 2025 TBOC Amendments

03

Amendments to Texas Business Organizations Code: Summary of Key Changes

Provision	Key Changes	Application/Scope
Senate Bill 29 (Amendments Effective May 14, 2025)		
§ 21.419 – Business Judgment Rule (BJR)	Codifies BJR: acts of directors/officers are presumed (i) in good faith, (ii) informed, (iii) in the corporation's best interests, and (iv) lawful. Rebuttal requires proof of (a) breach of duty **and** (b) fraud, intentional misconduct, ultra vires acts, or knowing violations of law. Does not limit monetary liability-limiting provisions in governing documents.	**Automatically** applies to any publicly traded Texas corporation; a non-publicly traded Texas corporation may **Opt In** by affirmatively electing in its certificate of formation or bylaws to be governed by this section. Applies in addition to any presumption under common law or the TBOC.
§ 21.418(e) – Related Party Transaction Approval	Shields directors/officers from shareholder breach of duty claims regarding interested transactions, unless the cause of action is permitted under § 21.419.	**Automatically** applies to any publicly traded Texas corporation; any other Texas corporation may **Opt In** by affirmatively electing in its certificate of formation or bylaws to be governed by § 21.419 – BJR Statute. Does not shield controlling stockholders.
§§ 21.416 & 21.4161 – Committees and Related Party Transactions	Allows a Texas corporation to petition Texas Business Court (or in certain cases a district court) to determine if committee members reviewing related party transactions are "independent and disinterested." The court's determination is binding unless new facts arise. Requires notice of the petition to shareholders.	**Automatically** applies to any publicly traded Texas corporation; any other Texas corporation may **Opt In** by affirmatively electing in its certificate of formation or bylaws to be governed by § 21.419 – BJR Statute.
§ 21.552 – Limitations on Derivative Actions	Permits a Texas corporation to impose a minimum ownership threshold (up to 3% of outstanding shares) to bring derivative actions. Must be in certificate of formation or bylaws.	**Automatically** applies to any publicly traded Texas corporation; any other Texas corporation with at least 500 shareholders may **Opt In** by affirmatively electing in its certificate of formation or bylaws to be governed by § 21.419 – BJR Statute.
§§ 2.115 & 2.116 – Jury Trial Waivers and Forum Selection	May (i) include waivers of jury trial for internal entity claims in certificate of formation or bylaws; and (ii) select an exclusive Texas forum and venue for internal entity claims.	A Texas corporation may **Opt In** by including such waiver in its certificate of formation or bylaws. Includes derivative actions.

Amendments to Texas Business Organizations Code: Summary of Key Changes (cont.)

Provision	Key Changes	Application/Scope
§ 21.218 – Inspection Rights	A publicly traded Texas corporation and a Texas corporation that opts in to § 21.419 may deny inspection to shareholders involved in active/pending derivative proceedings or civil lawsuits. Excludes emails, texts, and social media from all corporate records subject to inspection rights unless they effectuate corporate action. Discovery rights remain intact.	**Automatically** applies to any publicly traded Texas corporation; any other Texas corporation may **Opt In** by affirmatively electing in its certificate of formation or bylaws to be governed by § 21.419 – BJR Statute.
§ 1.057 – Texas Law Controls	TBOC's plain meaning governs; TBOC cannot be supplemented or modified by caselaw or statutes from other states. Directors and officers of a Texas corporation may, but are not required to, consider the laws and practices of other states in exercising their powers. A failure to consider or conform to such out-of-state authorities does not constitute or imply a breach of the TBOC or any duty under Texas law.	Applies **Automatically**.
§ 21.561(c) – Excluding Attorney Fee Awards for Enhanced Disclosure	Prohibits recovery of attorneys' fees for "disclosure only" settlements, regardless of materiality. A shareholder plaintiff may not recover attorneys' fees unless the court finds the proceeding resulted in a substantial benefit to the corporation. New Section 21.561(c) provides a substantial benefit does not include "additional or amended disclosures made to shareholders."	Applies **Automatically**.
Senate Bill 1057 (Amendments Effective September 1, 2025)		
§ 21.373 – Requirements for Shareholder Proposals	To submit a proposal, a shareholder/group must hold $1 million in market value or 3% of voting shares as of the date proposal is submitted, must have held the shares for at least six months and through the shareholder meeting, and must solicit at least 67% of voting power with respect to the proposal.	A "nationally listed corporation" may **Opt In** by affirmatively electing to include such requirements in its certificate of formation or bylaws and disclosed in proxy, together with certain instructional information. No shareholder approval required (unless added as an amendment to the certificate of formation).
Senate Bill 2411 (Amendments Effective September 1, 2025)		
§ 7.001 – Officer Exculpation	Permits exculpation of officers for monetary damages to same extent as statutorily permitted for directors. Exclusions: breaches of loyalty, intentional misconduct, improper benefit, statutory violations.	A Texas corporation may **Opt In** by including such provision in its certificate of formation.
§§ 3.106, 10.002, 10.004, 10.104 – Approval of Forms, Plan of Merger, and Additional Administrative Changes	Authorizes approval of corporate documents (e.g., plan of merger) in final or substantially final form. Disclosure schedules are not part of the plan unless expressly included. Permits irrevocable appointment of representatives to enforce post-transaction rights.	Applies **Automatically**.
Senate Bill 2337 (Amendments Effective September 1, 2025)		
(New Chapter) 6A.001, 6A.201-202 – Proxy Advisory Firm Regulation	Requires proxy advisors to provide certain disclosures to shareholders and the company if the proxy advisor makes recommendation or provides voting advice, where the advice/recommendation is based on non-financial factors or where the proxy advisor provides conflicting advice/recommendations to clients.	Applies **Automatically** to any proxy advisor or proxy advisory service provider that makes recommendations or provides voting advice with respect to any publicly traded entity that (i) is organized or created in Texas, (ii) has its principal place of business in Texas or (iii) has made a proposal in its proxy statement to become a Texas entity.

SENATE BILL 29 (TBOC Amendments Effective May 14, 2025)

Codification of Business Judgment Rule (TBOC Section 21.419)

- **Eligibility**. **Automatically** applies to any publicly traded Texas corporation; any other Texas corporation may **Opt In** by affirmatively electing in its certificate of formation or bylaws to be governed by this section. Applies in addition to any presumption under common law or the TBOC.
- **Codification of the Business Judgment Rule (BJR)**. Creates presumptions with respect to directors' and officers' fulfillment of duties, including duty of care and duty of loyalty in related party transactions. Under the amendments, which codify the BJR, actions of directors and officers are expressly presumed to be:
  - taken in good faith;
  - on an informed basis;
  - in the best interests of the corporation; and
  - in obedience to the law and governing documents.
- Presumption is in addition to any presumption under common law or the TBOC.
- **Overcoming the presumption**. To have a cause of action against directors and officers for any act or omission taken in their capacity as such, claimant corporation or shareholder must (a) rebut at least one of the express presumptions and (b) prove (i) breach of a duty <u>and</u> (ii) that the breach involved fraud, intentional misconduct, ultra vires acts, or knowing violations of law. Claimant must "state with particularity the circumstances constituting" one of these four elements in clause (b)(ii).
- Does not limit effectiveness of provisions in governing documents limiting monetary liability.
- **Side note**. In addition to having a similar codification of the BJR, the amendments clarify that LLCs and LPs may expand, restrict, or <u>eliminate</u> fiduciary duties and related liabilities (TBOC Sections 101.401 and 152.002).

Related Party Transaction Approval (TBOC Section 21.418)

- **Eligibility. Automatically** applies to any publicly traded Texas corporation; any other Texas corporation may **Opt In** by affirmatively electing in its certificate of formation or bylaws to be governed by § 21.419 – BJR Statute.
- **No cause of action for certain interested party transactions.** Neither the corporation nor its shareholders have a cause of action against any director or officer of the corporation for breach of duty with respect to the making, authorization, or performance of a contract or transaction because the director or officer had an interest in the transaction or took certain actions in connection with approving the transaction unless the cause of action is permitted by the BJR statute *(i.e.,* involved fraud, intentional misconduct, ultra vires acts, or knowing violations of law) *(*Section 21.418(e)).
- The protection does not extend to controlling shareholders.

Committees and Related Party Transactions (TBOC Sections 21.416 and 21.4161, 21.554)

- **Eligibility**. **Automatically** applies to any publicly traded Texas corporation; any other Texas corporation may **Opt In** by affirmatively electing in its certificate of formation or bylaws to be governed by § 21.419 – BJR Statute.
- **Court determination of director independence**. The Board of a Texas corporation may petition the appropriate business court (or district court) to determine whether directors appointed to a committee to review and approve transactions involving controlling shareholders, directors, or officers are "independent and disinterested" with respect to any such transactions involving the corporation or any of its subsidiaries and a controlling shareholder, director, or officer.
- **Venue**. Petition must be filed in the business court unless the corporation's principal place of business is located in a county not contained within an operating division of the business court, in which case the petition must be filed in a district court in the county where its principal place of business is located.
- **Binding determination**. The court's determination is dispositive unless new facts emerge which were not presented to the court.
- **Required disclosure**. A corporation utilizing this statute must provide notice to shareholders, including that a petition has been filed, name of counsel acting for company, that shareholders may participate, and other information. (Publicly traded companies may choose to provide this disclosure using Form 8-K.) Hearing cannot be held sooner than 10 days after notice is given.
- **Derivative Suits**. A similar procedure for determination of whether committee is independent and disinterested in connection with derivative proceedings is available.

Limitation on Derivative Actions (TBOC Section 21.552)

- **Eligibility. Automatically** applies to any publicly traded Texas corporation; any other Texas corporation with at least 500 shareholders may **Opt In** by affirmatively electing in its certificate of formation or bylaws to be governed by § 21.419 – BJR Statute.
- **Minimum ownership threshold.** A corporation may set a minimum ownership threshold for shareholders to bring derivative actions.
  - Threshold may be up to a maximum of 3% of the outstanding shares of the corporation.
  - Threshold must be set out in the certificate of formation or the bylaws.

Jury Trial Waivers and Forum Selection (TBOC Sections 2.115 and 2.116)

- **Eligibility**. A Texas corporation may **Opt In** by including such waiver/exclusive venue in its certificate of formation or bylaws. Includes derivative actions.
- **A Texas corporation may, in the bylaws or certificate of formation**:
  - Include a waiver of the right to a jury trial for all internal entity claims; and
  - Select one or more courts having jurisdiction as the exclusive forum and venue for all internal entity claims.
- **Waiver**. TBOC provides that the waiver is enforceable even if not individually signed by members, owners, officers or governing persons. A person is considered to have knowingly waived the right to a jury trial if the person voted for or ratified the document containing the waiver, acquired stock in the entity at, or continued to hold stock in an entity with a class of its equity securities listed on a national securities exchange after, a time when the waiver was included in the governing documents.
- **Internal entity claims**. Defined term in the TBOC. Includes claims of any nature that are based on (i) rights, powers, and duties of its governing authority, governing persons, officers, owners, and members; and (ii) matters relating to its membership or ownership interests *(e.g.,* derivative claims for breach of fiduciary duties).

Inspection Rights (TBOC Section 21.218)

- **Eligibility**. **Automatically** applies to any publicly traded Texas corporation; any other Texas corporation may **Opt In** by affirmatively electing in its certificate of formation or bylaws to be governed by § 21.419 – BJR Statute.
- **Background.** Section 21.218 already provided that a holder of shares for at least six months and holders of 5% or more of outstanding shares were entitled to examine certain corporate records if reasonably related to and appropriate for a proper purpose.
- **Denial of Certain Requests**. Under the amendments, any publicly traded Texas corporation and any Texas corporation that opts in to Section 21.419, may deny inspection demands from shareholders involved in (1) an active or expected derivative proceeding or (2) an active or expected civil lawsuit.
  - Discovery rights expressly remain intact.
- **Corporate Records**. Under the amendments, emails, text messages, and social media communications are excluded from entity records unless they effectuate a corporate action.

Elimination of Plaintiff's Attorney's Fees for Disclosure Suits (TBOC Section 21.561)

- **Eligibility**. Applies **Automatically**.
- **Background.** Under existing Section 21.561(b), upon conclusion of a derivative proceeding, the court may order that a Texas corporation pay the plaintiff's attorney's fees if the derivative action resulted in a "substantial benefit to the corporation."
- **Disclosure Only Settlements Do Not Constitute Substantial Benefit**. Under the amendments, a substantial benefit to a corporation does not include additional or amended disclosures made to shareholders (e.g., supplements to a proxy statement for a merger), regardless of materiality.

Governing Laws (TBOC Section 1.057)

- **Eligibility.** Applies **Automatically**.
- Establishes that the TBOC's plain meaning governs; the TBOC cannot be supplemented, contravened or modified by the case law or statutes from other states. Directors and officers of a Texas corporation may, but are not required to, consider the laws and practices of other states in exercising their powers.
  - The failure to do so does not constitute or imply a breach of their fiduciary duties.

SENATE BILL 1057 (TBOC Amendments Effective September 1, 2025)

Requirements for Shareholder Proposals (TBOC Section 21.373)

- **Eligibility**. A "nationally listed corporation" may **Opt In** to adopt limitations on shareholder proposals. A "nationally listed corporation" is defined as a Texas corporation (a) with equity securities registered under Section 12(b) of the Securities Exchange Act of 1934, (b) that is listed on a national securities exchange, and (c) that has either (i) a principal office in Texas or (ii) a listing on a Texas-headquartered stock exchange approved by the Texas Securities Commissioner. Under Texas case law, a corporation's "principal office" is where its officers direct, control, and coordinate activities.
  - Provisions must be set out in its certificate of formation or bylaws.
  - The corporation must provide notice to its shareholders in "any proxy statement provided to shareholders preceding the amendment's adoption" and must include in its proxy statements certain instructional information to shareholders after adoption.
- **Proposal Submission Requirements**. There are two main requirements in order to submit a proposal:
  - Shareholder or a group of shareholders must hold the number of shares equal to at least $1 million dollars in market value or 3% of the corporation's voting shares.
    - Ownership of the shares is determined as of the date the proposal is submitted. Shareholders must hold voting shares (i) for at least six months prior to the shareholder meeting and (ii) through the duration of the shareholder meeting.
  - Shareholders must solicit at least 67% of the voting power of the voting shares.
- **Voting shares**. Means shares that entitle the holders to vote on the subject proposal.
- **Exceptions**. Does not apply to director nominations and procedural resolutions that are "ancillary to the conduct of the meeting" (the scope of which is not defined).

SENATE BILL 2411 (TBOC Amendments Effective September 1, 2025)

Exculpation of Officers (TBOC Section 7.001)

- **Eligibility**. A Texas corporation may **Opt In** by including such provision in its certificate of formation.
- **Exculpation**. Allows exculpation, from monetary damages, for officers to the same extent already permitted for directors under the TBOC.
  - Entities may limit or eliminate the liability of corporate officers for monetary damages for an act or omission taken by the officer in his or her capacity as an officer of the entity.
- **Limitations**. Exculpation cannot be provided for (1) breaches of loyalty, (2) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of the law, (3) transactions in which the officer received an improper benefit, or (4) statutory violations. (Same exceptions that already applied for directors.)

Approval of Forms, Plan of Merger, and Additional Administrative Changes (TBOC Sections 3.106, 10.002, 10.004 and 10.104)

- **Eligibility**. Applies **Automatically**.
- **Authorization of Plans**. Governing authorities can approve corporate documents (plans, agreements, instruments) in final or substantially final form.
  - Disclosure letters, schedules, and similar documents related to a plan of merger or exchange are not part of the plan unless expressly included.
- **Appointed Representatives**. Plans of merger or exchange may now appoint representatives of the owners or members of a party with exclusive authority to enforce or settle post-transaction rights.
  - Appointments can be made irrevocable and binding on the parties to the plan upon approval of the plan.
- **Plans of conversion**. Plans of conversion can authorize additional actions by the converted entity without further approvals beyond approval of the plan itself.

SENATE BILL 2337 (TBOC Amendments Effective September 1, 2025)

Proxy Advisory Firm Regulation (TBOC New Chapter 6A – 6A.001; 6A.201-202)

- **Eligibility**. Applies **Automatically** to any publicly traded entity that (i) is organized or created in Texas, (ii) has its principal place of business in Texas or (iii) has made a proposal in its proxy statement to become a Texas entity.
- "**Proxy advisor**" means a person who, for compensation, provides a "proxy advisory service" to shareholders of a company or to other persons with authority to vote on behalf of shareholders.
- "**Proxy advisory service**" includes specified services such as voting advice and recommendations, proxy statement research or proposal analysis, a rating or research regarding corporate governance, and the development of proxy voting recommendations and polices.
- **Disclosure**. Required of any proxy advisor when (i) its recommendations are "not provided solely in the financial interest of the shareholders of a company" or (ii) the advisor provides advice on how to vote on a proposal that is "materially different" ("Materially Different Advice") to clients who have not expressly requested services for a nonfinancial purpose.

Proxy Advisory Firm Regulation (TBOC 6A.001; 6A.201-202) (cont.)

- **A recommendation is not provided "solely in the financial interests of shareholders"**:
  - When it is wholly or partly based on, or otherwise takes into account, one or more non-financial factors, including a commitment, initiative, policy, or value-based standard based on: an environmental, social or governance (ESG) goal, factor or investment principle; diversity, equity or inclusion (DEI); a social credit or sustainability factor or score; or membership in or commitment to an organization that bases any of its evaluation of the company's value on nonfinancial factors;
  - When it involves a voting recommendation with respect to any shareholder-sponsored proposal that is inconsistent with the recommendation of the board of directors or a committee of a majority of independent directors and fails to include a written economic analysis of the financial impact of the proposal on the shareholders;
  - When it is not based solely on financial factors and subordinates shareholders' financial interests to other objectives; or
  - When it recommends a vote against a company proposal to elect a governing person, unless the firm affirmatively states that the firm's recommendation is made solely based on the financial interests of shareholders.
- The required written economic analysis must include the short and long-term benefits and costs of implementing any shareholder-sponsored proposal, an analysis of whether the recommendation is consistent with the investment objectives and policies of the client, the projected quantifiable impact of adopting the proposal on the investment returns of the client, and an explanation of the methods and processes used to prepare the economic analysis.
- When the advice is based on non-financial factors, the disclosure must (i) state it is not solely in the financial interest of shareholders, (ii) explain the nonfinancial basis and how it may subordinate the financial interests of shareholders, and (iii) be made publicly on the proxy advisor's website.

Proxy Advisory Firm Regulation (Pending TBOC 6A.001; 6A.201-202) (cont.)

- **Materially Different Advice.** The statute provides that a proxy advisor gives Materially Different Advice when it simultaneously advises (i) one or more clients to vote for, and one or more clients to vote against, the same proposal, (ii) one or more clients to vote for, and one or more clients to vote against (or abstain), the same director nominee, or (iii) that one or more clients vote for or against a proposal in opposition to the recommendation of the company's management.
  - If the proxy advisor provides Materially Different Advice, the proxy advisor must, in addition to complying with the disclosure requirement listed on the prior slide, disclose which of the advice is provided based solely on the financial interests of shareholders and which is supported by any specific financial analysis. The proxy advisor is also required to disclose the conflicting advice to each shareholder receiving the advice, any entity receiving the advice on behalf of a shareholder, the company that is the subject of the proposal, and the Attorney General of Texas.

- **Enforcement.** TBOC Section 6A.201 provides that a violation of its provisions is a deceptive trade practice under the Deceptive Trade Practices-Consumer Protection Act, which allows for broad-sweeping private and public rights of action. The statute also provides that the recipient of the proxy advisory services, the company subject to the proxy proposal, and any shareholder of the subject company can bring actions seeking injunctive relief or a declaratory judgment against the proxy advisor. The plaintiff is then required to give notice to the Attorney General, who may intervene in the action.

Institutional Shareholder Services v. Paxton (August 2025) and *Glass Lewis v. Paxton* (August 2025)

- Institutional Shareholder Services and Glass Lewis brought **as-applied challenges** against SB 2337 asserting that the law:
  - **Violates the First and Fourteenth Amendments of the U.S. Constitution** through compelled speech, content-based regulation of speech and viewpoint discrimination. Glass Lewis also argued that SB 2337 infringes on its freedom of association by penalizing it for membership in a group that evaluates value based on nonfinancial factors.
  - **Is unconstitutionally vague**, given the undefined and/or politically charged terms of, for example, “nonfinancial factors,” “financial interest,” “ESG,” and “DEI”; and
  - **Violates the Dormant Commerce Clause** by regulating speech of out-of-state advisors to out-of-state clients..
  - **Is preempted by federal law.** Institutional Shareholder Services argued that it is expressly preempted by the Investment Advisers Act of 1940 and Glass Lewis argued that it is expressly preempted by the Employee Retirement Income Security Act of 1974.
- **On August 29, 2025, federal court in Texas enjoined enforcement of the law by the Texas Attorney General against Institutional Shareholder Services and Glass Lewis** while the cases proceed to discovery and **trial, set for February 2, 2026**.
  - Notably, the injunction does not apply to other proxy advisors and enjoins actions only by the Texas Attorney General.

Litigation and Courts Updates

Texas Case Updates: *Keyes v. Weller* (June 2024)

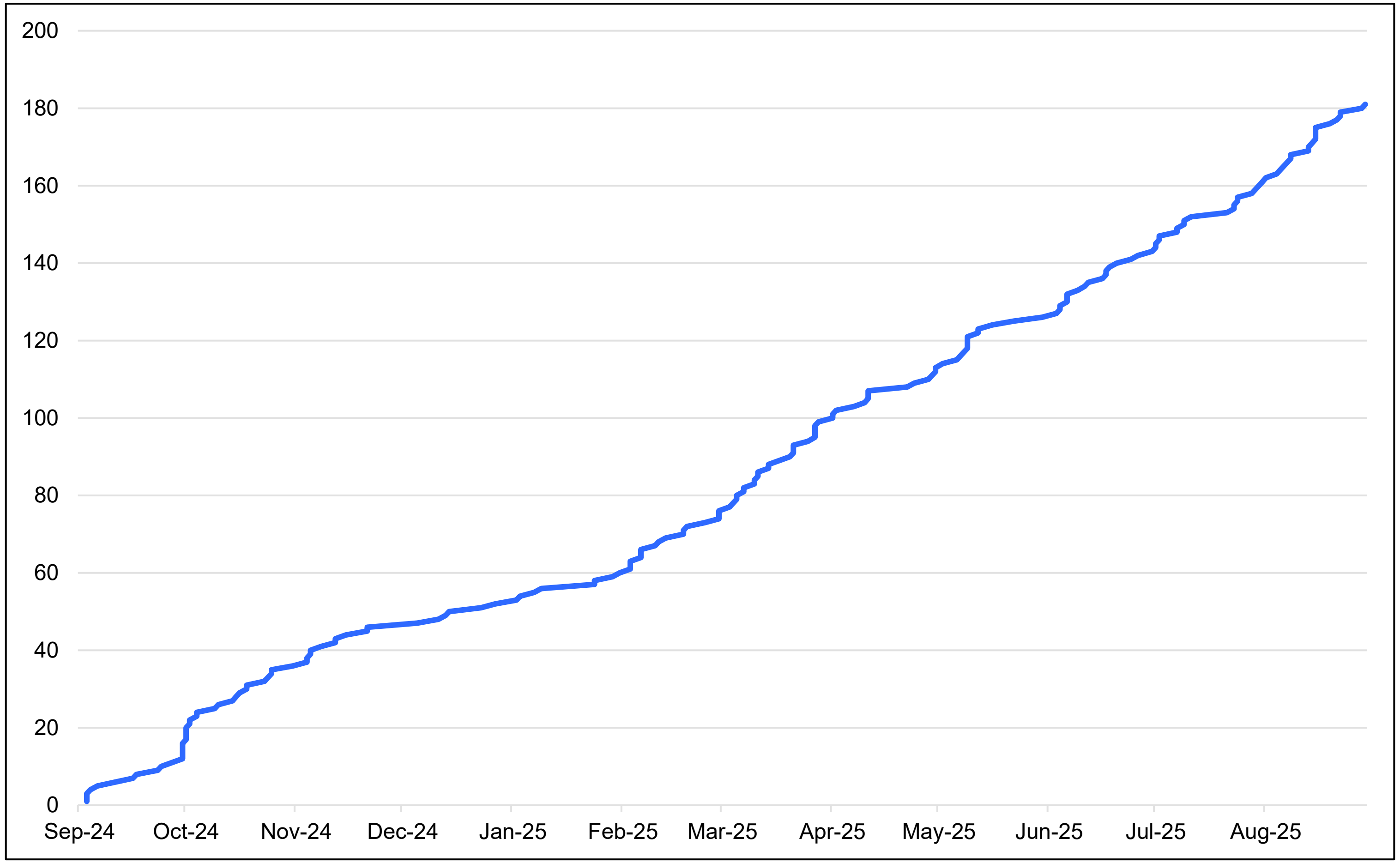
- Texas Supreme Court: D&Os can be personally liable for their own fraudulent and tortious actions, even if committed in corporate capacity.
- Reminder that TBOC § 21.223 shields shareholder liability for matters related to **corporate contractual obligations.**
- Affirms common law rule that individuals can't hide behind their corporate roles to avoid personal liability for fraudulent acts.

Texas Case Updates: *Bertucci v. Watkins* (April 2025)

- Limited partners don't owe each other fiduciary duties.
- Potential liability if their actions are outside the scope of their position as limited partners.
- Self-described "managing partner" does not automatically assume legal role of a managing partner.

Business Court Update: Case Statistics*

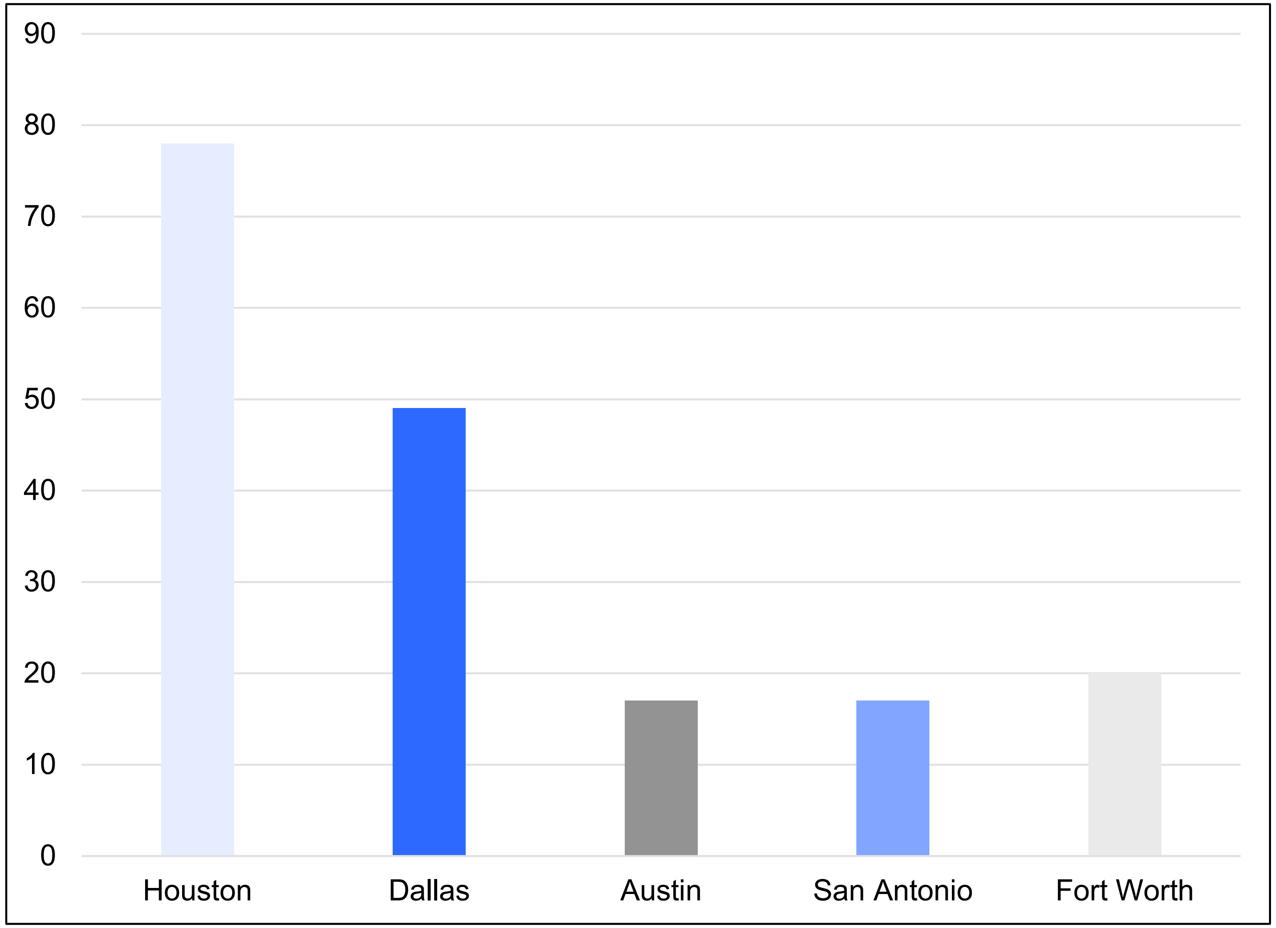
Many Cases



*All data current to 09/01/2025

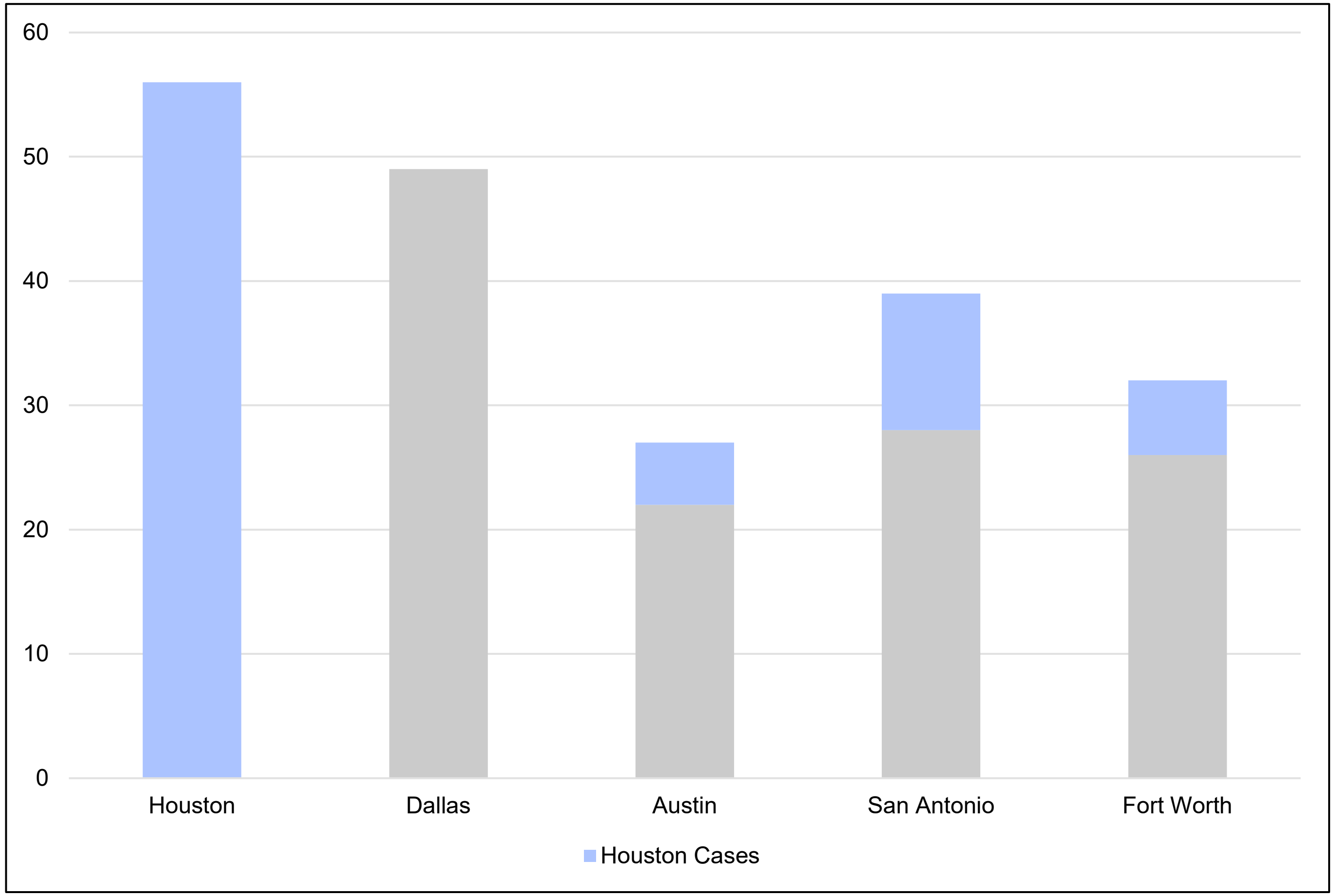
Business Court Update: Case Statistics (cont.)

Most Cases Filed in Houston or Dallas



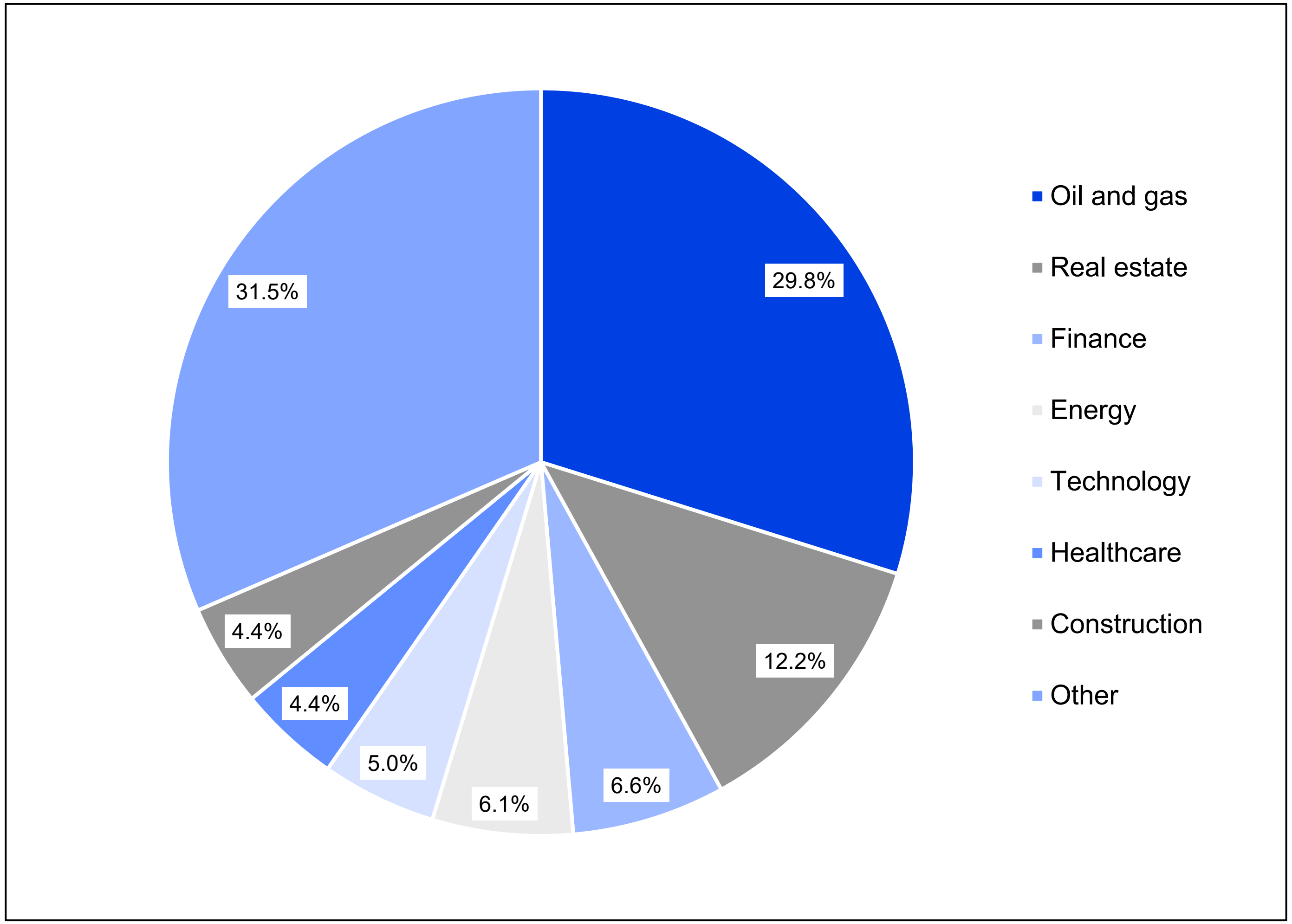
Business Court Update: Case Statistics (cont.)

Some Houston Cases Reassigned to Other Judges



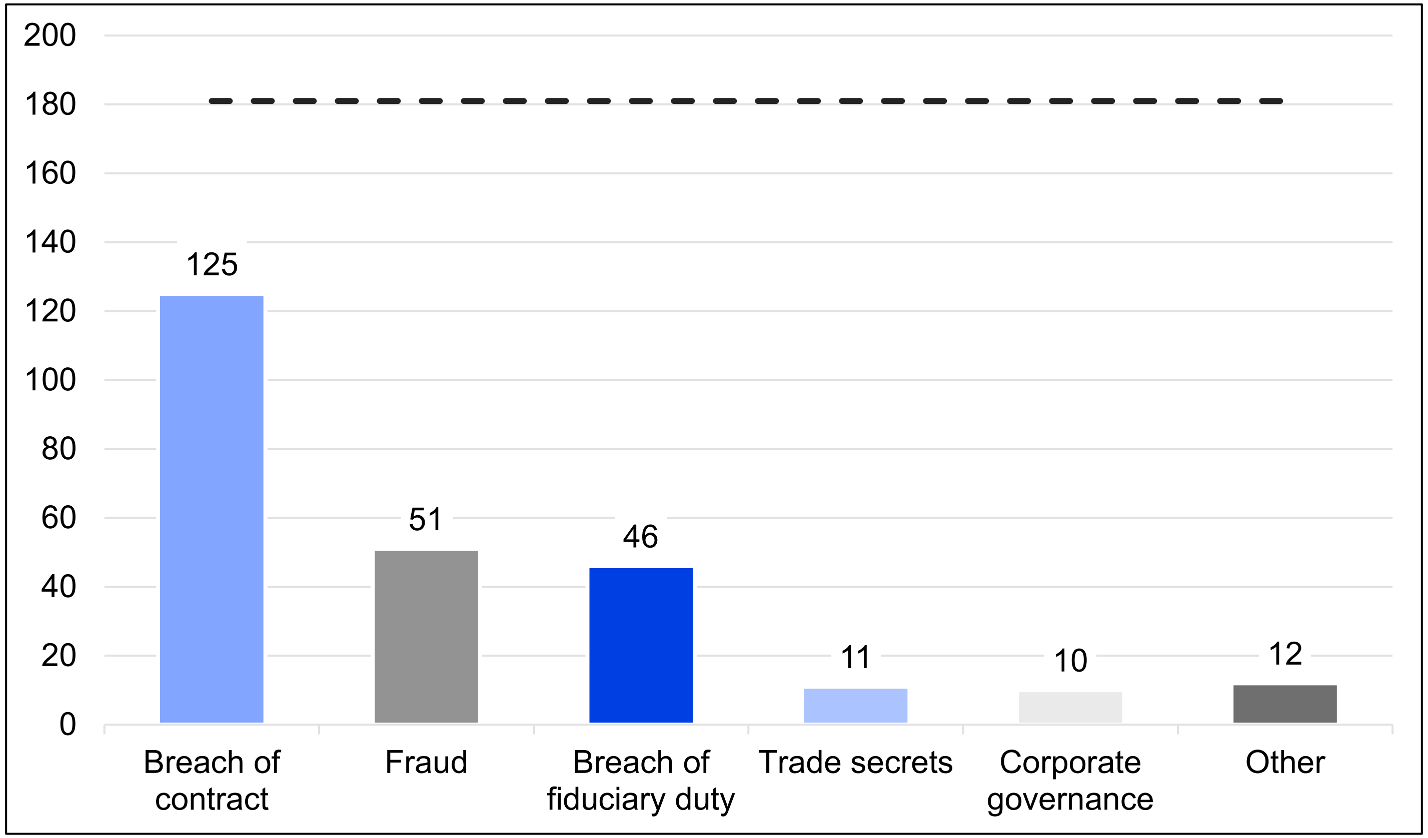
Business Court Update: Case Statistics (cont.)

Plurality Oil & Gas Cases



Business Court Update: Case Statistics (cont.)

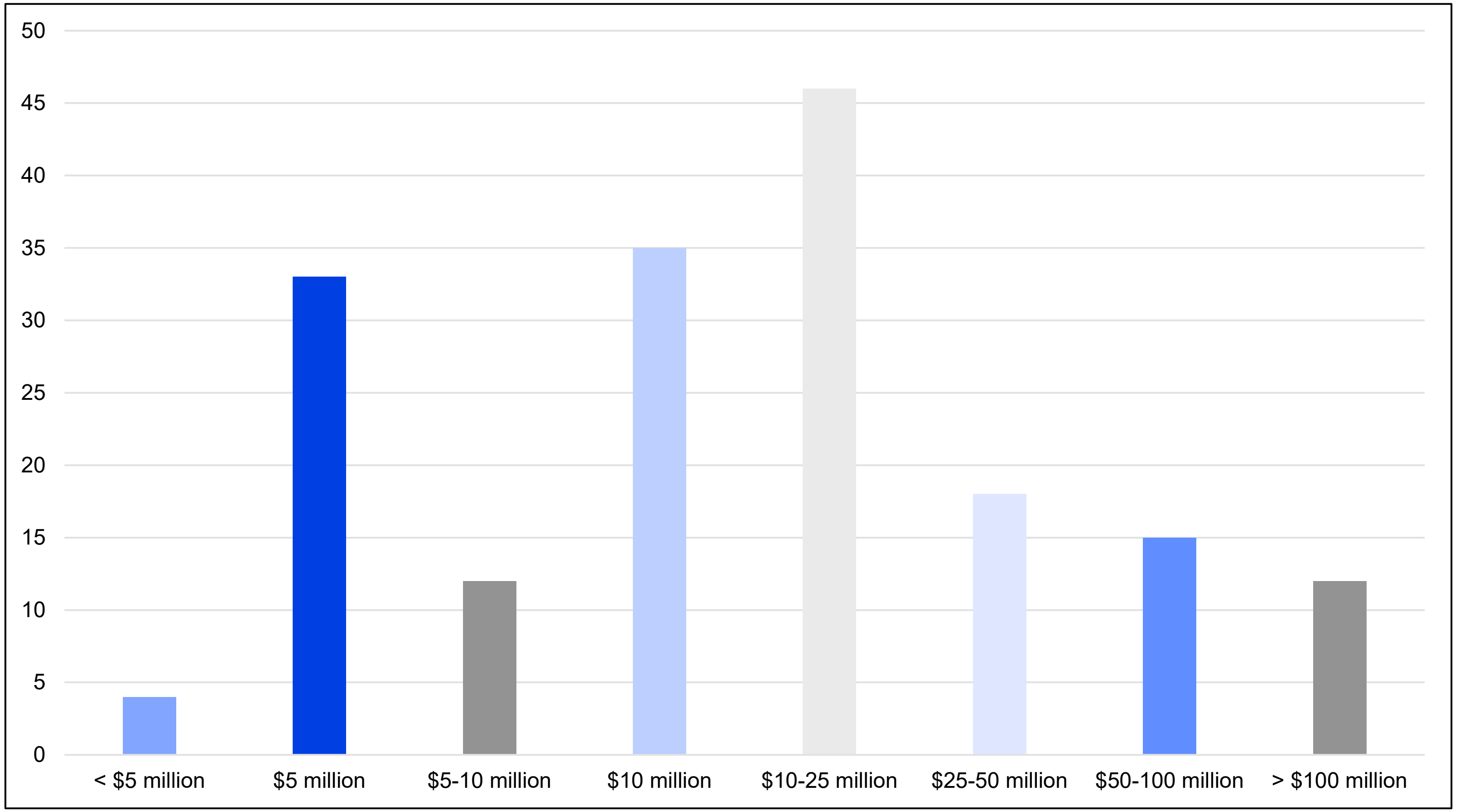
(As Expected) Breach of Contract Claims Predominate



Business Court Update: Case Statistics (cont.)

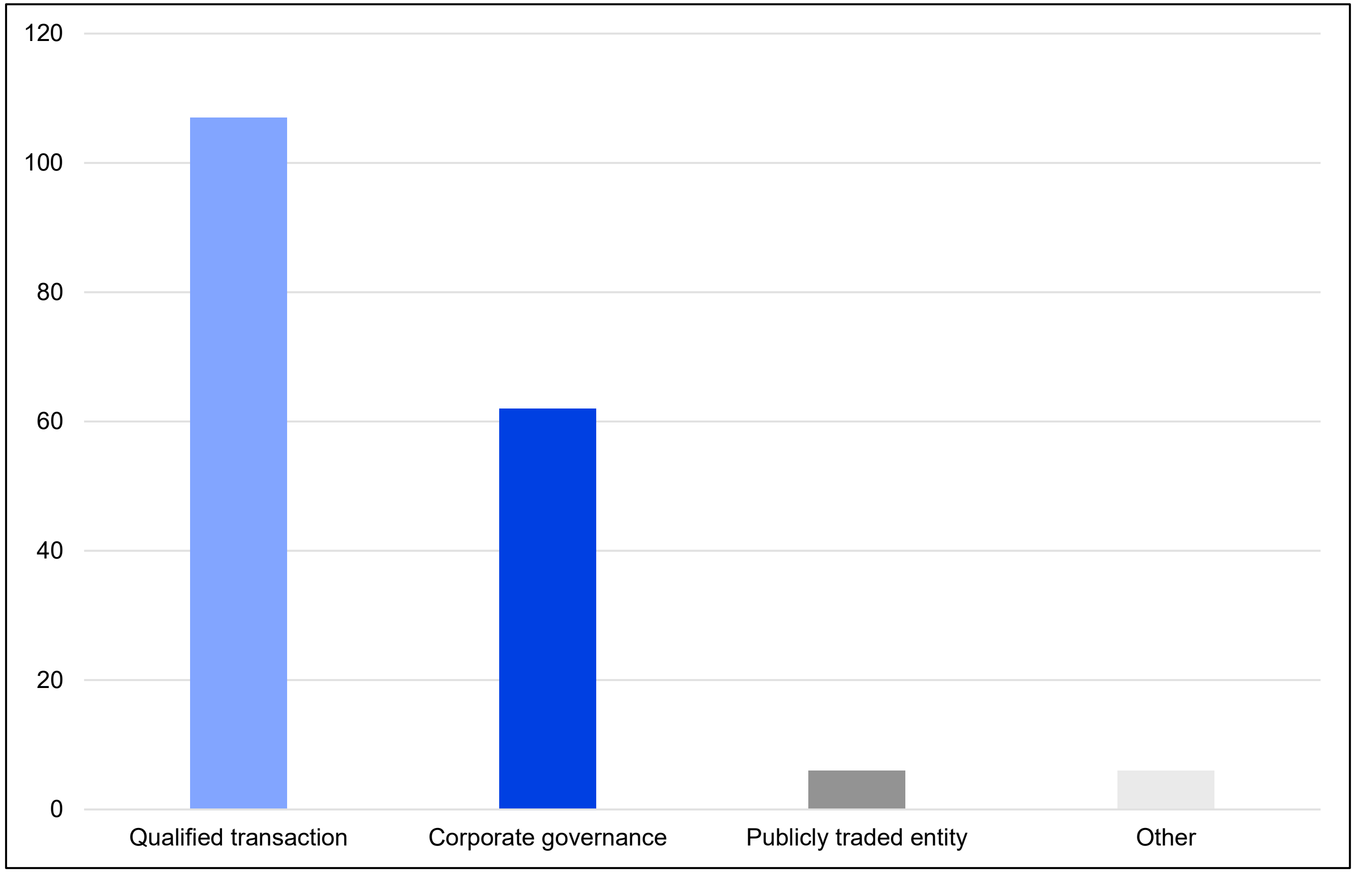
High Amount in Controversy

Mean	$45,676,571.43
Median	$11,000,000.00



Business Court Update: Case Statistics (cont.)

Jurisdiction in Most Cases Based on Qualified Transaction



Business Court Update: Case Statistics (cont.)

Written Opinions

- **42 written opinions so far**
- Mostly about jurisdiction or procedure. For example:
- The amount in controversy includes the value of all rights reasonably at issue in the case, not just the sum of legal damages.
  - *Slant Operating, LLC v. Octane Energy Operating, LLC*, 717 S.W.3d 409 (Tex. Bus. Ct. 2025)
- A party removing a case to Business Court is not required to submit evidence of the court's jurisdiction, and a party seeking remand bears the burden to introduce evidence defeating jurisdiction.
  - *CTen 31 LLC v. Tarbox,* 708 S.W.3d 223 (Tex. Bus. Ct. 2024)
- Parties may not remove a case to Business Court that was filed before 09.01.2024 (though subsequent amendments permit removal in certain circumstances)
  - *Energy Transfer LP v. Culberson Midstream LLC,* 705 S.W.3d 219 (Tex. Bus. Ct. 2024).

Business Court Update: Recent Legislation

- **Legislature passed H.B. 40, which will impact the Business Court.**
  - Lowers jurisdictional amount-in-controversy requirement and value threshold for "qualified transactions" from $10 million to $5 million
  - Extends jurisdiction to include:
    - IP / trade secret disputes
    - Enforce arbitration agreements and confirm arbitration awards
  - Provides for expedited resolution of jurisdictional challenges
  - Allows cases filed before Sept. 1, 2024, to be heard by the Business Court if all parties agree, subject to new procedural rules
  - No additional judges for Houston and Dallas
  - Other divisions not yet implemented, but may be considered at next session (El Paso, RGV, Tyler, Beaumont, Amarillo, Midland/Odessa)

Business Court Update: New Local Rules

- Rule 4: Mandatory corporate disclosure statement
- Rule 4(d): Short form resolution of discovery disputes
- Rule 6: “Mediation Wheel” and court-ordered mediation
  - Parties can still agree to use a mediator not on the “wheel”
- Rule 2: Judges may “exchange benches”
  - fewer case disruptions, less forum shopping, less predictability for litigants

Appendix – Abbreviated Comparison Chart of Texas and Delaware Corporate Law

Provision	Texas	Delaware
Formation Documents	• Certificate of formation filed with the Texas Secretary of State. (Tex. Bus. Orgs. Code Ann. § 3.001(a))	• Certificate of incorporation filed with the Delaware Division of Corporations. (DGCL § 101(a))
Amendment of Formation Document	• If the corporation has shares that are issued and outstanding, an amendment to certificate of formation requires approval by the board of directors and, subject to certain exceptions (name changes), the shareholders. (Tex. Bus. Orgs. Code Ann. §§ 21.052-055)	• After a corporation has received payment for its capital stock, an amendment to its certificate of incorporation requires approval by the board of directors and stockholders subject to certain limited exceptions where stockholder approval may not be required. (8 Del. C. § 242(a), (d))
Requirement for Bylaws	• Required. (Tex. Bus. Orgs. Code Ann. §§ 21.057, 21.704, 21.714)	• Required. (8 Del. C. § 109)
Amendment of Bylaws	• The directors may adopt, amend, or repeal bylaws unless the power is reserved to the shareholder. (Tex. Bus. Orgs. Code Ann. § 21.057(c)) • Unless provided otherwise by the certificate of formation or a shareholder-adopted bylaw, the shareholders may amend, repeal, or adopt bylaws even if the directors also have that power. (Tex. Bus. Orgs. Code Ann. § 21.058)	• The bylaws may be amended or repealed by: (i) the stockholders entitled to vote and (ii) the board of directors, if permitted by the certificate of incorporation. (DGCL § 109(a))
Authorized Shares	• The number of authorized shares can be increased by amending the certificate of formation with board and shareholder approval. (Tex. Bus. Orgs. Code Ann. §§ 21.052(a)-054) • Shareholder approval is not required for forward and reverse stock splits if certain conditions are met. (Tex. Bus. Orgs. Code Ann. § 21.053(r))	• The number of authorized shares can be increased by amending the certificate of incorporation, which requires board and stockholder approval. (8 Del. C. § 242(b)(1) – (2), (d)(2)) • Stockholder approval is not required for forward stock splits if certain conditions are met. (8 Del. C. § 242(d))
Classes and Series of Shares	• Multiple classes and series of shares with different rights and preferences are permitted. (Tex. Bus. Orgs. Code Ann. § 21.152)	• Multiple classes and series of shares with different rights and preferences are permitted. (8 Del. C. § 151)

Provision	Texas	Delaware
Preferred Shares	• Terms must be set out in either certificate of formation or a statement with the SOS containing the board resolution establishing the series of shares. (Tex. Bus. Orgs. Code Ann. §§ 21.153-156) • If permitted by the certificate of formation, the board may issue preferred stock and define the terms of such preferred stock (i.e., "blank check" preferred stock) without shareholder approval. (Tex. Bus. Orgs. Code Ann. § 21.155)	• Terms of preferred stock are typically set out in certificate of incorporation or, if permitted by certificate of incorporation, certificate of designation. (8 Del. C. §§ 102(a)(4), 151(g)) • If permitted by the certificate of incorporation, the board may issue preferred stock and define the terms of such preferred stock (i.e., "blank check" preferred stock) without stockholder approval. (8 Del. C. § 102(a)(4))
Shareholder Meetings	• A shareholder meeting must be held annually. (Tex. Bus. Orgs. Code Ann. § 21.351(a)) • On the application of a shareholder who has previously submitted a written request to the corporation that an annual meeting be held, a court in the county in which the principal executive office of the corporation is located may order a meeting to be held if the annual meeting is not held or written consent instead of the annual meeting is not executed within any 13-month period. (Tex. Bus. Orgs. Code Ann. § 21.351(b)) • Written notice of a meeting shall be given to each shareholder entitled to vote at the meeting not later than the 10th day and not earlier than the 60th day before the date of the meeting. (Tex. Bus. Orgs. Code Ann. § 21.35)	• A stockholder meeting must be held either within or without this State as may be designated by or in the manner provided in the certificate of incorporation or bylaws, or if not so designated, as determined by the board of directors to elect directors. (8 Del. C. § 211(a)) Unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws. (8 Del. C. § 211(b)) • If the annual meeting is not held within 13 months of the prior annual meeting or within 30 days of the date designated in the corporation's bylaws, any stockholder or director may petition the Court of Chancery to direct that a meeting be held. (8 Del. C. § 211(c)) • Notice of a meeting must be given not more than 60 and not less than 10 days before such meeting. (8 Del. C. § 213)

Provision	Texas	Delaware
Shareholder Rights to Call a Meeting / Written Consent / Shareholder Proposals	• Unless the certificate of formation states a different percentage (which cannot be more than 50%) shareholders holding at least 10% of shares entitled to vote may call a special shareholders' meeting. (Tex. Bus. Orgs. Code Ann. § 21.352(a)(2)) • Shareholders may act without a meeting with the written consent of all shareholders or, if authorized by the certificate of formation, shareholders having at least the minimum number of votes necessary to act at a meeting at which all shares entitled to vote on the action were present and voted. If acting by less than unanimous written consent, the corporation must promptly notify the non-consenting shareholders of the action taken. (Tex. Bus. Orgs. Code Ann. § 6.201-202)	• Stockholders may call a special meeting of stockholders only if authorized by the certificate of incorporation or bylaws. (8 Del. C. 211(d)). • Unless otherwise restricted by the certificate of incorporation, stockholders may act without a meeting with the consent of the stockholders having the minimum number of votes necessary to act at a meeting at which all shares entitled to vote on the action were present and voted. The consent must be in writing or in an electronic transmission, executed by stockholders of record as of the record date for such action. (8 Del. C. § 228(a), (c)). • The corporation must give prompt notice of any action taken by less than unanimous consent to all non-consenting stockholders entitled to notice of a meeting to vote on the action. (8 Del. C. § 228(e)) • DGCL does not contain any additional provisions specifically addressing Rule 14a-8 proposals, which are governed by the Securities Exchange Act of 1934, as amended.
Board of Directors	• The corporation is governed by a board of directors unless otherwise provided by the certificate of formation or a shareholders' agreement. (Tex. Bus. Orgs. Code Ann. § 21.401) • The shareholders may agree to limit the powers of or supplant the board of directors. (Tex. Bus. Orgs. Code Ann. §§ 21.101(a) (1-2) & 21.106(a))	• The corporation is governed by or under the direction of a board of directors unless otherwise provided by the certificate of incorporation. (8 Del. C. § 141(a)) • Certain restrictions on board power are possible pursuant to stockholder contracts. (8 Del. C. §122(18))

Provision	Texas	Delaware
Officers	• The board of directors must appoint a president and a secretary in the manner set forth in the bylaws, may appoint other officers according to the certificate of formation and bylaws. (Tex. Bus. Orgs. Code Ann. §§ 21.417 & 3.103(a)) • A person may hold more than one office unless prohibited by the TBOC, the certificate of formation, or bylaws. (Tex. Bus. Orgs. Code Ann. § 3.103(c))	• A corporation will have officers stated in bylaws or a resolution of the board of directors consistent with the by-laws. One officer must have the duty to record the minutes of meetings of the stockholders and board of directors. (8 Del. C. § 142(a)) • A person may hold more than one office unless the certificate of incorporation or bylaws provides otherwise. (8 Del C. 142(a))
Committees	• The board of directors may delegate certain decision-making to committees if authorized by the certificate of formation. (Tex. Bus. Orgs. Code Ann. § 21.416(a))	• The board of directors may delegate certain decision-making to committees. (8 Del. C. § 141(c))
Fiduciary Duties of the Board of Directors	• Duty of care, duty of loyalty and duty of obedience. The duty of obedience prohibits directors from committing acts beyond the scope of their enumerated powers (i.e., *ultra vires* acts) or behaving unlawfully. • Directors owe fiduciary duties to the corporation and the shareholders collectively. • [*Gearhart Indus., Inc. v. Smith Int'l, Inc.*, 741 F.2d 707, 719 (5th Cir. 1984); *Somers ex rel EGL, Inc. v Crane*, 295 S.W.3d 5, 11 (Tex. App. Houston [1st Dist.] 2009); *Landon v. S & H Mktg. Grp., Inc.*, 82 S.W.3d 666, 672 (Tex. App. Eastland 2002); *Matter of Estate of Poe*, 648 S.W.3d 277 (Tex. 2022).]	• Duty of care and duty of loyalty. Includes duty to act in good faith, duty to obey the law, duty of oversight, duty of candor and disclosure. • Directors owe fiduciary duties to the corporation and to the stockholders. • Delaware law provides that directors may violate the duty of loyalty if they fail to conduct proper oversight. • [*Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984); *McRitchie v. Zuckerberg*, 315 A.3d 518, 526-29 (Del. Ch. 2024); *Arnold v. Soc'y for Sav. Bancorp, Inc.*, 678 A.2d 533, 539 (Del. 1996); *In re Caremark International, Inc. Derivative Litigation*, 698 A. 2d 959 (Del. Ch. 1996)]

Provision	Texas	Delaware
Business Judgment Rule	• By statute, actions of directors and officers are presumed to be taken (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. • To prevail in a cause of action claiming a breach of duty, the claimant must rebut one or more of the presumptions listed above and prove (1) the act or omission was a breach of the person's duties and (2) the breach involved fraud, intentional misconduct, ultra vires acts, or knowing violations of law. (Tex. Bus. Orgs. Code Ann. § 21.419) • The presumptions created by § 21.419 are in addition to legal presumptions arising under common law or the code in favor of managerial officials (which include all officers of the corporation) and apply to publicly traded corporations or to corporations electing to be covered in their governing documents. • Under common law, a director action is presumed valid if no conflict exists and the action is not ultra vires or tainted by fraud [*Gearhart Indus., Inc. v. Smith Int'l, Inc*. 741 F.2d 707, 721 (5th Cir. 1984)] • Directors are generally protected from liability for actions within the honest exercise of their business judgment and discretion. [*Sneed v. Webre*, 465 S.W.3d 169, 173 (Tex. 2015); *Chapman v. Arfeen*, 2018 WL 4139001, (Tex. App.—Beaumont 2018, pet. denied)]	• By common law, director action is presumed valid if the director acted (1) on an informed basis (2) in good faith (3) in the honest belief that the action was in the corporation's best interest. [*Aronson v. Lewis*, 472 A.2d 805, 811-12 (Del. 1984)] • Standard of review is generally business judgment rule unless directors did not fulfill duty of care or duty of loyalty or there is conflict of interest with no Delaware safe harbor. When the business judgment rule applies, a court will not substitute its business judgment for the board's as long as there is any informed rational business purpose for the decision made.
Director Reliance	• Director can rely (unless director knows reliance is unwarranted) in good faith and with ordinary are on information, opinions, reports, including financial statements and other financial data, concerning a domestic entity or another person prepared or presented by: officers, employees, legal counsel, certified public accountants, investment bankers, a person reasonably believed to have professional expertise in the matter and board members of a committee of which the director is not a member. (Tex. Bus. Orgs. Code Ann. § 3.102)	• A director is fully protected in relying in good faith upon (1) the records of the corporation and (2) upon such information, opinions, reports or statements presented to the corporation by (i) any of the corporation's officers or employees, or (ii) committees of the board of directors, or (iii) by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation. (8 Del. C. § 141(e))

Provision	Texas	Delaware
Exculpation Exceptions	• Charter may include a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. Charter may also provide same exculpation for officers. • This does not authorize the elimination or limitation of the liability of a governing person to the extent the person is found liable under applicable law for: (1) a breach of the person's duty of loyalty, if any, to the organization or its owners or members; (2) an act or omission not in good faith that: (A) constitutes a breach of duty of the person to the organization; or (B) involves intentional misconduct or a knowing violation of law; (3) a transaction from which the person received an improper benefit, regardless of whether the benefit resulted from an action taken within the scope of the person's duties; or (4) an act or omission for which the liability of a governing person is expressly provided by an applicable statute. (Tex. Bus. Orgs. Code Ann. § 7.001(c))	• Organizational documents may include a provision eliminating or limiting the personal liability of a director or officer to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, provided that such provision shall not eliminate or limit the liability of: (i) a director or officer for any breach of the director's or officer's duty of loyalty to the corporation or its stockholders; (ii) a director or officer for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) a director under § 174 of the DGCL (dealing with unlawful dividends and stock repurchases); (iv) a director or officer for any transaction from which the director or officer derived an improper personal benefit; or (v) an officer in any action by or in the right of the corporation. (8 Del. C. § 102(b)(7)) • Controlling stockholders and members of a control group are exculpated from liability for duty of care violations. (8 Del. C. §144) • Corporation generally may indemnify directors and officers for expenses, judgments, fines and amounts paid in settlement in connection with direct claims if the director acted in good faith. Such permissive indemnification is limited to expenses in connection with derivative claims (and if the director or officer was adjudged liable, must have approval of court for indemnification of such expenses in derivative claims). Corporation must indemnify directors and certain officers who have been successful (on the merits or otherwise) in defending litigation. Corporations also may advance expenses to directors and officers in advance of a final judgment, subject to an obligation to repay if the director or officer is ultimately not indemnifiable, and may also obtain insurance for liability generally (including in connection with losses arising from derivative claims). DGCL recently amended to allow a company to insure using captive insurance, subject to certain statutory requirements.
Controlling Shareholder Duties	• Controlling shareholders owe fiduciary duties to the corporation but not to the minority shareholders. • While this has not been addressed directly, based on cases involving closely held corporations under Texas law, transactions with controlling shareholders are expected to be subject to business judgement rule deference, as Texas courts have not adopted the entire fairness doctrine for review of controlling shareholder transactions. • [*Ritchie v. Rupe*, 443 S.W.3d 856, 868 (Tex. 2014); *Hogget v. Brown*, 971 S.W.2d 472, 488 (Tex. App. 1997); *Flanary v. Mills*, 150 S.W.3d 785, 794 (Tex. App. 2004)]	• Subject to elimination of liability for duty of care violations in Section 144, controlling stockholders have fiduciary duties, albeit limited ones, when they exercise their controlling voting power to alter the corporation's "status quo." Examples of altering the status quo include changing the entity's governance or blocking the board's chosen course of action. • [*In re Sears Hometown & Outlet Stores, Inc. S'holder Litig.*, 309 A.3d 474 (Del. Ch. 2024); *Kahn v. Lynch Commc'n Sys., Inc.*, 638 A.2d 1110, 1114 (Del. 1994)]

Provision	Texas	Delaware
Interested-Party Transaction Approvals	• Similar to Delaware except that it expressly provides that if at least one of the permissible conditions is satisfied (generally the same as Delaware prongs), shareholders do not have a cause of action against any director or officer for breach of duty with respect to the making, authorizing, or performance of the contract or transaction because the director or officer had a relationship of interest or took any of the actions authorized by the section. (Tex. Bus. Orgs. Code Ann. § 21.418) • The burden is on the interested party to establish the transaction was approved under the statutory procedure or the transaction was fair to the corporation at the time. [*Landon v. S & H Mktg. Grp.*, Inc., 82 S.W.3d 667 (Tex. App.—Amarillo 2002)] • Regardless of whether any of the permissible conditions is satisfied, shareholders do not have a cause of action against any director or officer for breach of duty with respect to the making, authorizing, or performance of the contract or transaction because the director or officer had a relationship of interest or took any of the actions authorized by the section, unless the cause of action is permitted by § 21.419. This subsection (f) only applies to publicly held corporations or corporations electing to be governed by Business Judgement Rule presumption codified in § 21.419. (Tex. Bus. Orgs. Code Ann. § 21.418(f)) • Applicable to publicly traded corporations and corporations electing to be governed by Business Judgement Rule presumption codified in § 21.419, the board may adopt resolutions that authorize the formation of a committee of independent and disinterested directors to review and approve transactions involving controlling shareholders, directors or officers, whether or not contemplated at the time of committee's formation. Board may petition a court with proper jurisdiction to make a determination on the independence of the committee of directors. The corporation must give notice to the shareholders that such a petition has been filed. After expedited proceedings to determine appropriate legal counsel to represent the corporation and its shareholders (other than any relevant controlling shareholder), the court will hold an evidentiary hearing and render a binding determination regarding the independence of the directors on the committee. The finding is "dispositive" absent facts not presented to the court. (Tex. Bus. Orgs. Code Ann. § 21.4161)	• By statute, Delaware provides safe harbors for interested party transactions. A "going-private" transaction (with a controlling stockholder) would fall into in the safe harbor if both approval from a committee comprised at least two disinterested directors and disinterested stockholder approval is obtained. All other related-party transactions with controlling stockholders will receive the benefit of a safe-harbor from liability if either disinterested director approval from a committee comprised of at least two disinterested directors or disinterested stockholder approval or ratification is obtained, as listed below. (8 Del. C. §144) ○ If there a majority interested board but no controlling stockholder then the transaction must be approved by a majority of disinterested directors or if less than majority, by a committee comprised of at least two disinterested directors, or approved or ratified by disinterested stockholders. • Provides statutory definitions for determining who qualifies as controlling stockholders, disinterested stockholders, and disinterested directors. There is a presumption of independence for a board member if the Board deems him or her independent under the rules of a national stock exchange. • A controlling stockholder is defined as the following: (i) a stockholder with majority voting power; or (ii) a stockholder with the right to cause the election of nominees that constitute • a majority of the board or a majority of the board's voting power; or (iii) otherwise, a stockholder with less than majority voting power is controlling if it has both (a) power functionally equivalent to majority voting power by virtue at least of one-third in voting power of the outstanding stock of the corporation entitled to vote (1) generally in the election of directors or (2) for the election of directors who have a majority in voting power of the votes of all directors on the board of directors, and (b) power to exercise managerial authority over the business and affairs of the corporation. (8 Del. C. § 144) • If these cleansing mechanisms are not put in place, fiduciaries may seek to prove that the act or transaction is entirely fair, or use common law procedural protections if, for example, there are not two disinterested directors.

Provision	Texas	Delaware
Fiduciary Duties in Context of Change of Control	• Texas law emphasizes that directors must act in good faith, with due care, and in the best interests of the corporation and its shareholders and the Revlon Duties are not among the fiduciary duties listed in *Gearhart*, which predates *Revlon*. *Gearhart* is the leading case stating the fiduciary duties for boards of directors in Texas. [*Gearhart Indus., Inc. v. Smith Int'l, Inc.*, 741 F.2d 707, 719 (5th Cir. 1984)]	• Delaware law requires directors to act reasonably in connection with extraordinary transactions—and in approving a change in control transaction, the directors must act reasonably to maximize stockholder value (so-called "*Revlon*" duties). [*Revlon, Inc. v. MacAndrews & Forbes Holdings*, 506 A.2d 173 (1986); *Paramount Communications Inc. v. QVC Network Inc.*, 637 A.2d 34 (Del. 1994); *Cede & Co. v. Technicolor, Inc.*, 637 A.2d 34 (Del. 1994)]
Voting for Change of Control	• Requires board approval and at least two-thirds of the outstanding shares of a class. Shareholders holding at least two-thirds of the corporation's outstanding shares must typically approve fundamental business transactions which include: ○ A merger ○ An interest exchange ○ A conversion ○ A sale of all or substantially all the corporation's assets. (Tex. Bus. Orgs. Code Ann. §§ 1.002(32); 21.451-459) • The certificate of formation may provide for a different threshold of approval, but not less than a majority of the shares entitled to vote. • Permits a merger to be effected without shareholder approval if the corporation is the sole surviving corporation, the shares of stock of the corporation are not changed as a result of the merger and the total number of shares of stock issued pursuant to the merger does not exceed 20% of the shares of the corporation outstanding immediately prior to the merger. (Tex. Bus. Orgs. Code Ann. § 21.459)	• Generally requires board approval and a approval of majority of the outstanding stock of the corporation entitled to vote thereon to a fundamental changes such as: ○ A merger or consolidation ○ A sale, lease, or exchange of all or substantially all the corporation's assets, except collateral securing a mortgage or pledged under specified circumstances. (8 Del. C. §§ 251-258; 271-72) • Permits a merger to be effected without stockholder approval if the corporation is the sole surviving corporation, the shares of stock of the corporation are not changed as a result of the merger and the total number of shares of stock issued pursuant to the merger does not exceed 20% of the shares of the corporation outstanding immediately prior to the merger. (8. Del. C. § 251(f)) • Also permits a merger to be effected without shareholder approval if the merger follows a tender offer and certain other specified conditions are satisfied.

Provision	Texas	Delaware

Appraisal Rights	• Provides appraisal rights in more types of transactions than Delaware, including:
	  ○ Plan of merger to which the domestic entity is a party if owner approval is required by TBOC and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of merger;
	  ○ Sale of all or substantially all of the assets of the domestic entity if owner approval is required by TBOC and the owner owns in the domestic entity an ownership interest that was entitled to vote on the sale;
	  ○ Plan of exchange in which the ownership interest of the owner is to be acquired;
	  ○ Plan of conversion in which the domestic entity is the converting entity if owner approval is required by TBOC and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of conversion;
	  ○ Merger effected under Section 10.006 in which: (i) the owner is entitled to vote on the merger; or (ii) the ownership interest of the owner is converted or exchanged;
	  ○ Merger effected under Section 21.459(c) in which the shares of the shareholders are converted or exchanged; or
	  ○ In certain circumstances, if the owner owns shares that were entitled to vote on the amendment, an amendment to a domestic for-profit corporation's certificate of formation to: (i) add the provisions required by Section 3.007(e) to elect to be a public benefit corporation; or (ii) delete the provisions required by Section 3.007(e), which in effect cancels the corporation's election to be a public benefit corporation. (Tex. Bus. Orgs. Code Ann. § 10.354)
	• An owner may not dissent from a plan of merger or conversion in which there is a single surviving or new domestic entity or non-code organization, or from a plan of exchange, if (among others):
	  ○ The ownership interest is listed on a national exchange or held by at least 2,000 owners
	  ○ The owner is not required by the terms of the plan of merger, conversion, or exchange to accept consideration that is different from the consideration provided to any other holder
	  ○ The owner is not required to accept any consideration other than shares listed on a national exchange or held by at least 2,000 owners (Tex. Bus. Orgs. Code Ann § 10.354(b))
	• An owner may not dissent from an amendment to the corporation's certificate of formation if the shares held by the owner are part of a class or series of shares listed on a national exchange or held by at least 2,000 owners. (Tex. Bus. Orgs. Code Ann § 10.354(d))
		• Under the DGCL, a stockholder is entitled to appraisal rights pursuant to which the stockholder may receive cash in the amount of the fair market value of the stockholder's shares as determined by a Delaware Court. Unless an exception is applicable, appraisal rights are available under DGCL for:
		  ○ Merger or consolidation of a domestic corporation (§ 251),
		  ○ Merger or consolidation of domestic and foreign corporation (§ 252),
		  ○ Short-form mergers where subsidiary not wholly owned (§§ 253, 267),
		  ○ Merger or consolidation of domestic corporations and joint-stock or other associations (§ 254),
		  ○ merger or consolidation of domestic nonstock corporations (§ 255),
		  ○ merger or consolidation of domestic and foreign nonstock corporation (§ 256),
		  ○ Merger or consolidation of domestic stock and nonstock corporations (§ 257),
		  ○ Merger or consolidation of domestic and foreign stock and nonstock corporations (§ 258),
		  ○ Merger or consolidation of domestic corporations and partnerships (§ 263), and
		  ○ Merger or consolidation of domestic corporations and limited liability companies (§ 264).
		• Appraisal rights not available for:
		  ○ The surviving company in mergers (not requiring stockholder approval under DGCL § 251(f)),
		  ○ Mergers with or into direct or indirect a wholly owned subsidiary of the constituent corporation under DGCL 251(g), which do not require vote of the stockholders of the constituent corporation,
		  ○ Mergers, consolidations, conversions, transfers, domestications, or continuances in which the stockholders hold stock that is either listed on a national securities exchange or held of record by more than 2,000 holders, and the stockholders are not cashed out in the merger (DGCL § 262(b)(1)),
		  ○ Mergers consolidations, conversions, transfers, domestications, or continuances involving corporations whose shares had been traded on a national securities exchange, if the value of the consideration received by the stockholders entitled to appraisal does not exceed $1 million or the total number of shares entitled to appraisal does not exceed 1% of the outstanding shares of the class or series of shares eligible for appraisal (DGCL § 262(g)), and
		  ○ Mergers, consolidations, conversions, transfers, domestications, or continuances of non-US entities that have converted or domesticated as Delaware corporations under either § 265 or § 388 of the DGCL. (8 Del. C. § 262)

Provision	Texas	Delaware
Business Combination Statutes	• A corporation cannot combine with an affiliated shareholder for 3 years after it became "affiliated" (i.e. held 20% voting power) without supermajority approval of disinterested shareholders on date at least 6 months after it became "affiliated." (Tex. Bus. Orgs. Code Ann. §§ 21.606-07)	• A corporation cannot combine with an interested stockholder for 3 years after it became "interested" (i.e. held 15% voting power) without board approval or approval of 66-2/3% vote of disinterested stockholders. Corporation can opt out in its charter. (8 Del. C. § 203)
Books and Records Inspection Rights	• A shareholder may, upon a written demand stating purpose at a reasonable time at the corporation's principal place of business, inspect a Texas corporation's (1) books (2) records of account (3) minutes (4) share transfer records (5) other records if record reasonably related to and appropriate to copy and examine for the stated purpose, subject to certain limitations, if such shareholder holds at least 5% of the outstanding shares of stock of the Texas corporation or has been a holder of shares for at least six months, however this does not impair power of court on presentation of proof of proper purpose by beneficial or record holder of shares to compel production regardless of time period or number of shares held. • Records do not include emails, text messages or similar electronic communications, or information from social media accounts unless the email, text message or information from social media effectuates an action by the corporation. • For corporations with voting shares listed on a national securities exchange or corporations that opt in to the Business Judgment Rule presumption described above, a demand is not for a proper purpose if the demand is in connection with: ○ an active or pending derivative proceeding that is expected to be instituted or maintained by the holder or the holder's affiliates, or ○ an active or pending civil lawsuit to which the corporation, or its affiliates, and the holder, or the holder's affiliate, are or are expected to be adversarial named parties. (Tex. Bus. Orgs. Code Ann. § 21.218) • Pre-Amendment case law: Texas courts generally consider any request proper so long as the information the shareholder requests is related to the protection of the shareholder's interest. [*Perry v. Perry Bros., 753 S.W.2d 773* (Tex. App. 1988); *Gaughan v. Nat'l Cutting Horse Ass'n*, 351 S.W.3d 408 (Tex. App. 2011); *Citizens Ass'n for Sound Energy (CASE) v. Boltz*, 886 S.W.2d 283 (Tex. App. 1994)]. Corporations may withhold documents containing trade secrets from a shareholder request for inspection. [*See Gaughan v. National Cutting Horse Ass'n*, 351 S.W.3d 408 (2011)]. • Allows would-be litigants to petition to take pre-suit discovery to investigate a potential claim or suit before filing litigation and without pleading a specific cause of action. (Tex. R. Civ. P. 202.1(b); *In re Doe*, 444 S.W.3d 603 (Tex. 2014))	• The holder of a single share (or even a fractional share) has the right to demand to inspect "books and records" of the corporation which is defined as the certificate of incorporation, bylaws, minutes and signed consents of stockholder meetings, formal communications to stockholders as a whole, board minutes and board resolutions, committee minutes and committee resolutions, materials provided to the board and committees and annual financial statements. Minutes of stockholder meetings, signed consents, communications to stockholders, and annual financial statements of the corporation are subject to a 3-year limitation. (8 Del. C. § 220(b)) • The stockholder must describe its purpose and the records it seeks with "reasonable particularity." (8 Del. C. § 220) • Proper purposes include: (1) investigating alleged mismanagement (however the stockholder needs a credible basis), (2) ascertaining the value of stockholder's shares, and (3) communicating with other stockholders about a tender offer. [*See Sec. First Corp. v. U.S. Die Casting and Dev. Co.*, 687 A.2d 563, 568)] • The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of books and records and may require, as a condition to producing books and records to a stockholder under any demand under Section 220, that the stockholder agree that any information included in the corporation's books and records is deemed incorporated by reference in any complaint filed by or at the direction of the stockholder in relation to the subject matter referenced in the demand. The corporation may redact portions of any books and records produced to such stockholder under Section 220 to the extent the portions so redacted are not specifically related to the stockholder's purpose. (8 Del. C. § 220(b)(3))

Provision	Texas	Delaware
Derivative Actions	• Shareholder must make formal written demand on board and cannot bring suit until either demand is rejected or 90 days have passed, unless the shareholder can show irreparable injury. ○ There is no demand futility option under Texas law. ○ If the board decides to commence inquiry into allegations, then discovery is stayed while inquiry occurs, and if inquiry results in majority of independent and disinterested directors deciding that pursuing the claim is not in company's best interests, then the suit must be dismissed. • (a) Publicly traded corporations and (b) corporations that have 500 or more shareholders and have made an affirmative election to opt in to the statutory Business Judgment Rule presumption, may institute a minimum ownership threshold for shareholders to bring derivative actions - up to 3% of the outstanding shares. • Attorney's fees may be awarded to a plaintiff if the court finds the proceeding resulted in a substantial benefit to the corporation. Additional or amended disclosures made to shareholders are not considered to be substantial benefits, regardless of materiality. (Tex. Bus. Orgs. Code Ann. §§ 21.551-558) • Creditors may only bring derivative claims for breach of fiduciary duty (1) once the company is insolvent and (2) the company has ceased operations. [*Aurelius Capital Master, Ltd. v. Acosta*, 3:13-CV-1173-P, 2014 WL 10505127 (N.D. Tex. Jan. 28, 2014)] • Organizational documents may include waiver of jury trial for any internal entity claims, including derivative claims • Organizational documents may permit exclusive forum in Texas courts for internal entity claims.	• Action allowed if stockholder meets demand or demand futility requirements. Demand will be deemed futile where at least half of the directors of a corporation: ○ (1) "received a material personal benefit from the alleged misconduct that is the subject of the litigation demand"; ○ (2) faced "a substantial likelihood of liability on any of the claims that are the subject of the litigation demand"; or ○ (3) are not independent of another director "who received a material personal benefit from the alleged misconduct that is the subject of the litigation demand or who would face a substantial likelihood of liability on any of the claims that are the subject of the litigation demand." (Del. Ch. Ct. R. 23.1) [*United Food and Commercial Workers Union and Participating Food Industry Employers Tri-State Pension Fund v. Zuckerberg*, 262 A.3d 1034 (Del. 2021); *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984); *Blasband v. Rales*, 634 A.2d 927 (Del. 1993)] • Creditors have standing to bring derivative claims against directors and officers for breaches of fiduciary duties once the corporation is insolvent. [*North American Catholic Educational Programming Foundation, Inc. v. Gheewalla*, 930 A.2d 92 (Del. 2007)] • Organizational documents may permit exclusive forum in Delaware courts for internal entity claims. Forum selection provision for Securities Act claims are enforceable as well.

Provision	Texas	Delaware
Shareholder Liability (Piercing the Corporate Veil)	• Permits piercing the corporate veil only when a party can demonstrate the shareholder committed actual fraud for their direct personal benefit. Mere allegations of alter ego or claiming a sham-entity are insufficient. (Tex. Bus. Orgs. Code Ann.§ 21.223). [*Metroplex Mailing Servs. v. RR Donnelley & Sons Co.*, 410 S.W.3d 889 (Tex.App.—Dallas 2013, no pet.); *In re JNC Aviation, LLC*, 376 B.R. 500, 527 (Bankr. N.D. Tex. 2007)]	• It is a general principle of corporate law deeply ingrained in economic and legal systems that a stockholder is not liable for the acts of the corporation. "Delaware courts depart from this general rule only in exceptional circumstances." Piercing the corporate veil under the alter ego doctrine "requires that the corporate structure cause fraud or similar injustice." [*Cleveland-Cliffs Burns Harbor LLC v. Boomerang Tube, LLC*, 2023 WL 5788392, at *4 (Del. Ch. Sept. 5, 2023)] • Delaware law allows reverse veil-piercing as well for third-party creditors to recover assets from a parent company's subsidiaries. [*Manichaean Capital, LLC v. Exela Technologies, Inc.*, 251 A.3d 694 (2021)] Delaware law does not allow horizontal veil piercing or enterprise liability. [*Cleveland-Cliffs Burns Harbor LLC v. Boomerang Tube, LLC*, 2023 WL 5788392, at *7 (Del. Ch. Sept. 5, 2023)]
Control Share Acquisitions	• No control share acquisition statute.	• No control share acquisition statute.
Fair Price Statute	• None.	• None.
Limitations on Distributions	• Distributions must be proportion to share ownership within each class of shares (preferential distributions permitted for one class over another). (Tex. Bus. Orgs. Code Ann. §§ 21.152(c) & 21.154(a)(3)) • Distributions are not allowed if they will violate certificate of formation, make the corporation insolvent or exceed the distribution limit. (Tex. Bus. Orgs. Code Ann. § 21.303) • Share dividends cannot be made if (1) they will violate the certificate of formation, (2) the corporation's surplus is less than the amount the BOC requires to be transferred to stated capital, or (3) they will be made to shareholders of another class or series (unless permitted by certificate of formation or authorized by shareholders of the class or series in which the share dividend is being made). (Tex. Bus. Orgs. Code Ann. §§ 21.310-311)	• Dividends generally should be proportionate to stock ownership within each class of stock (preferential dividends permitted for one class over another). (8 Del. C. § 151) • Dividends must be paid out of either (1) surplus or (2) if no surplus then net profits for the current or preceding year. (8 Del. C. § 170(a))

Provision	Texas	Delaware
Director Liability for Unlawful Distributions	• Directors consenting to a prohibited distribution are jointly and severally liable for the amount of the distribution exceeding the permitted amount. A director is not jointly and severally liable if, in voting for or assenting to the distribution, the director: ○ (1) relies in good faith and with ordinary care on: (A) the statements, valuations, or information described by Section 21.314; or (B) other information, opinions, reports, or statements, including financial statements and other financial data, concerning the corporation or another person that are prepared or presented by: (i) one or more officers or employees of the corporation; (ii) a legal counsel, public accountant, investment banker, or other person relating to a matter the director reasonably believes is within the person's professional or expert competence; or (iii) a committee of the board of directors of which the director is not a member; ○ (2) acting in good faith and with ordinary care, considers the assets of the corporation to be valued at least at their book value; or ○ (3) in determining whether the corporation made adequate provision for payment, satisfaction, or discharge of all of the corporation's liabilities and obligations, as provided by Sections 11.053 and 11.356, relies in good faith and with ordinary care on financial statements of, or other information concerning, a person who was or became contractually obligated to pay, satisfy, or discharge some or all of the corporation's liabilities or obligations. (Tex. Bus. Orgs. Code Ann. § 21.316)	• A member of the board of directors, or a member of any committee shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of its officers or employees, or committees of the board of directors, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation, as to the value and amount of the assets, liabilities and/or net profits of the corporation or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed. (8 Del. C. § 172) • Directors willfully or negligently consenting to an unlawful distribution are jointly and severally liable for the full amount of the unlawful distribution (with interest). (8 Del. C. 174(a))
Taxes	• No corporate tax.	• 8.7% of federal taxable income allocated and apportioned to Delaware (which should generally be very limited). ○ Exceptions: (1) Corporation maintaining statutory corporate office but not engaging in business in Delaware and (2) Corporation's activities in Delaware are only maintaining or managing intangible assets. • https://revenue.delaware.gov/business-tax-forms/filing-corporate-income-tax/
Annual Franchise Tax	• Based on "Margin" allocated to Texas with no tax due below $2,470,000 (if revenue is $0, then Margin is $0) • Margin = (i) total revenue times 70%; (ii) total revenue minus COGS; (iii) total revenue minus compensation (W-2 wages paid, subject to a $450,000 per employee maximum for 2025); or (iv) total revenue minus $1,000,000. • Applies regardless of state of incorporation. • https://comptroller.texas.gov/taxes/publications/98-806.php	• Between $175 and $200,000 (maximum) unless corporation qualifies as a "larger corporate filer" which they would then pay $250,000. • (Based on Authorized Shares Method or Assumed Par Value Capital Method) • https://revenue.delaware.gov/business-tax-forms/franchise-taxes/