

# The Texas Lawbook

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## What Corporate Lawyers Need to Know About Recent Changes to Texas Law

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Texas has made bold moves in its efforts to attract corporations by implementing one of the most sweeping sets of reforms to its corporate law.

The Texas Business Organizations Code positions the Lone Star State as an increasingly attractive option for the state of incorporation. From codifying the business judgment rule to bolstering protections against shareholder litigation, our state's new laws aim to reduce legal uncertainty for corporate officers, directors and counsel so they can focus their resources on business strategy.

For companies incorporated or operating in Texas — or considering redomestication to Texas — here are the key points that corporate lawyers need to know about recent changes to the TBOC.

### **Texas Has Codified the Presumption of the Business Judgment Rule**

New Section 21.419 codifies the business judgment rule for the first time in Texas. This statutory presumption provides a high degree of protection to directors and officers in fulfilling their responsibilities to the corporation. Under the new law, directors and officers are presumed to act:

- In good faith,
- On an informed basis,
- In furtherance of the interests of the corporation, and
- In obedience of the law and

the corporation's governing documents.

To overcome this presumption and have any cause of action against the officer or director as a result of any act or omission in the person's capacity as a director or officer, shareholder plaintiffs must plead and prove both:

- A breach of duty as a director or officer, and
- The breach involved intentional misconduct, fraud, ultra vires acts, or knowing violations of law.

The plaintiff must state with particularity the circumstances constituting these elements.

This so-called BJR Presumption automatically applies to all publicly traded Texas corporations, while private Texas corporations may opt in to Section 21.419 (the BJR Presumption) in their bylaws or certificate of formation. Notably, several other provisions of the TBOC automatically apply to a private Texas corporation if it opts in to Section 21.419.

### **Enhanced Protections for Conflicts and Expanded Exculpation for Officers**

Updated Section 21.418 protects directors and officers who have an interest in a related party transaction unless the plaintiff can plead a breach of duty and that the breach involved fraud, intentional misconduct, ultra vires acts or knowing

# The Texas Lawbook

violations of law. This is essentially the same level of protection as Section 21.419. This new protection is complementary to the statutory protection already provided for transactions that were approved by an independent committee, by shareholders or conducted on fair terms. These protections do not extend to controlling shareholders. The new law automatically applies to all publicly traded Texas corporations and to private Texas corporations that opt in to Section 21.419.

Meanwhile, updated Section 7.001 expands exculpation protections — previously limited to directors — to officers as well. Texas corporations can eliminate monetary liability for officers in their certificate of formation. As before, exculpation is not permitted for breaches of duty of loyalty, intentional misconduct, improper benefits or statutory violations. Texas corporations may provide this exculpation in the certificate of formation.

## **Court-Provided Certainty of Committee Independence**

Updated Sections 21.416 and 41.61 empower corporations to petition the Texas Business Court (or district court, if it has jurisdiction instead) to determine whether members of a special committee are “independent and disinterested” — particularly in the context of conflicts of interests or derivative actions. The corporation must provide public notice and follow certain procedures. In the end, the court’s determination is dispositive absent new facts being presented. This option automatically applies to all publicly traded Texas corporations and to private Texas corporations that opt in to Section 21.419.

## **Texas Law Governs**

New Section 1.057 makes clear that 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. If a director or officer fails to consider or conform to

such out-of-state authorities, it does not constitute or imply a breach of the TBOC or any duty under Texas law. Consistent with historical practice, the TBOC’s plain meaning governs, and the TBOC cannot be supplemented, contravened or modified by the case law or statutes from other states. This statute underscores Texas’ intent to establish a distinct body of corporate law, independent of other jurisdictions.

## **Limitations on Derivative Litigation and Disclosure Suits**

The TBOC curbs the avenues for derivative claims and shareholder access to records, which work in tandem with the BJR Presumption and its pleading requirements described above:

- Section 21.552: Certain corporations can require shareholders to own up to 3 percent of outstanding common shares in order to bring derivative actions. This option applies to all publicly traded Texas corporations, while private corporations with 500 or more shareholders may opt in through their governing documents.
- Section 21.218: Shareholders involved, or whose affiliates are involved, in actual or pending derivative proceedings or civil litigation with the corporation can be denied inspection rights under the TBOC. This option automatically applies to all publicly traded Texas corporations and to private Texas corporations that opt in to Section 21.419.
- Section 21.418: Emails, texts, similar electronic communications and social media accounts are excluded from the scope of corporate records subject to inspection rights under the TBOC unless they effectuate corporate action. This change automatically applies to all Texas corporations.

# The Texas Lawbook

- Section 21.561: Attorney fees for “disclosure-only” settlements in shareholder suits are no longer recoverable and prohibited under the statute. This change automatically applies to all Texas corporations.

## **Jury Trial Waivers and Exclusive Forum Provisions**

Under updated Section 2.116, all Texas corporations can include a waiver of jury trial for internal corporate claims, including derivative actions, in the certificate of formation or bylaws. All Texas corporations may also select exclusive forums and venues, like the applicable Texas Business Court, for all internal disputes.

## **Optional Heightened Eligibility Standards for Shareholder Proposals**

New Section 21.373 allows “nationally listed corporations” — which are, at present, publicly traded Texas corporations with Texas headquarters — to impose minimum thresholds for shareholders to submit proposals, which are:

- Ownership of \$1 million in voting shares or 3 percent of voting shares;
- Holding those shares for at least six months and through the shareholder meeting; and
- Soliciting at least 67 percent of the voting power.

These requirements apply broadly to shareholder proposals, except for board nominations and certain procedural matters. The corporation must provide certain disclosures about these requirements in its proxy statement, but shareholder approval of the new thresholds is not required by the TBOC (unless the thresholds are added to the certificate of formation).

This option is available to any “nationally listed corporation,” which is generally defined as a publicly traded Texas cor-

poration that has either its principal office in Texas or a listing on a Texas-headquartered stock exchange that has received an approval from the Texas securities commissioner.

## **Certainty of Transaction Approval Process**

Amendments to Sections 3.106, 10.002, 10.004 and 10.104 bring clarity to M&A execution and reduce technical challenges to deal approvals for all Texas corporations, consistent with historical practices:

- Boards may approve documents in “substantially final” form;
- Disclosure schedules are not part of a plan of merger unless specifically specified; and
- Corporations may irrevocably appoint representatives to enforce post-closing rights on behalf of the corporation.

## **Proxy Advisors Face New Scrutiny**

New Chapter 6A, titled “Proxy Advisory Services,” takes aim at recommendations made by proxy advisory firms driven by “non-financial factors.” The law imposes extensive public and directed disclosure obligations on proxy advisory firms when their recommendations or services generally:

- Are based in whole or in part on non-financial factors like ESG, DEI, sustainability or social credit scores;
- Recommend against the board’s positions on shareholder proposals without detailed financial analysis;
- Prioritize non-financial goals over the financial interests of shareholders; or
- Recommend against a company-backed director nominee, unless the firm states the rec-

ommendation is based solely on financial interests.

The scope of proposals covered by the law includes all proposals in the company's proxy statement, whether made by the company or by shareholders, including director elections and executive compensation. The law applies to any publicly traded corporation that is incorporated in Texas, has its principal place of business in Texas or is incorporated in another state and has made a proposal in a proxy statement to redomesticate to Texas.

Violations of the law are a violation of the Texas Deceptive Trade Practices-Consumer Protection Act, which allows for public and private rights of action and injunctive relief. The law that implemented the amendment to the TBOC (SB 2337) is subject to challenge by ISS and Glass Lewis in litigation set for trial in February 2026, and a Texas federal court has issued an injunction that blocks enforcement of SB 2337 by the Texas attorney general against ISS and Glass Lewis while the cases proceed to trial. This new law and this litigation could have an impact on proxy season for publicly traded Texas-incorporated and Texas-headquartered corporations.

## **Texas Is an Attractive State for Domestication — On Its Own Terms**

For general counsels, officers and directors of Texas corporations and those considering redomestication to Texas, these reforms offer significant new protections and opportunities — but also raise new compliance considerations. The use of the TBOC as the framework for corporate governance provides a level of certainty. But the landscape will continue to evolve, and it will be critical to monitor it closely.