GT GreenbergTraurig

Alert | Texas Government Law & Policy / Corporate



July 2025

Texas Business Organizations Code: Key Amendments Under SB 29

Texas is open for business, and Senate Bill 29 has made it more attractive for corporations to choose Texas as their corporate home

On May 14, 2025, Gov. Greg Abbott signed Senate Bill 29 (SB 29) into law, which seeks to modernize the Texas Business Organizations Code (TBOC) and encourage businesses to incorporate or redomicile in Texas. SB 29 makes several changes to existing laws impacting corporations, limited partnerships, and limited liability companies by enhancing liability protections, streamlining corporate governance, and establishing heightened thresholds for derivative proceedings. SB 29 took effect immediately upon its signing by Gov. Abbott, and this GT Alert outlines its key provisions.

Codification of the Business Judgment Rule

One of the most significant provisions in SB 29 is the codification of the business judgment rule, a common law doctrine that presumes that directors of a corporation make business decisions on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the corporation. This codification of the business judgment rule applies only to corporations that have a class

© 2025 Greenberg Traurig, LLP

or series of voting shares listed on a national securities exchange or that have included a statement in their governing documents affirmatively electing to be governed by the rule.[1]

SB 29 stipulates that a director or officer of an applicable corporation is presumed to act: (1) in good faith; (2) on an informed basis; (3) in furtherance of the interests of the corporation; and (4) in obedience to the law and the corporation's governing documents.[2] SB 29 then shifts the burden of proof by stating that, to sustain a cause of action, a claimant must: (1) rebut one or more of these presumptions; (2) prove that the director's or officer's act or omission constituted a breach of such person's fiduciary duties; and (3) prove that the breach involved fraud, intentional misconduct, an *ultra vires* act, or a knowing violation of law.[3]

SB 29 creates similar presumptions for governing persons of limited partnerships and limited liability companies that have a class or series of voting membership interests listed on a national securities exchange or that have adopted these presumptions in their governing documents.[4] The presumptions establish that a governing person or officer is presumed to act in good faith and in compliance with: (1) the person or officer's duties required under common law or the governing documents of the entity and (2) the governing documents of the entity.[5] To maintain an action, a claimant must satisfy the same requirements referenced above for corporations.

Further, SB 29 allows for a company agreement of a limited liability company to eliminate any duties, including fiduciary duties, and related liabilities that a member, manager, officer, or other person has to the company or to a member or manager of the company.[6] SB 29 similarly allows for the partnership agreement of a limited partnership to eliminate any or all of the duty of loyalty, the duty of care, and the obligation of good faith to the extent the partnership agreement expressly so provides.[7]

These provisions are intended to reduce litigation risks and to make it more difficult for equityholders to sue officers and directors when management makes a decision that turns out poorly. The statutory rule provides additional clarity and enhanced predictability with respect to how courts should review these claims, particularly standard of care claims. SB 29 may result in more summary judgments in favor of directors and officers given the strong statutory presumptions. Shareholders and members that want to avoid the protections offered by SB 29 will need to specifically negotiate protective terms in their governing documents.

Derivative Shareholder Litigation Reform

The amendments to the TBOC allow publicly traded corporations and corporations with 500 or more shareholders that have elected to be governed by the codified business judgment rule to specify in their governing documents a minimum ownership percentage required for a shareholder to initiate derivative litigation, provided that the required ownership threshold cannot exceed 3% of the corporation's outstanding shares.[8] By contrast, the Delaware corporate statute does not expressly empower a corporation to limit which shareholders may initiate derivative proceedings. Among other things, this rule is intended to reduce strike lawsuits where a shareholder, perhaps holding a single share, can file a derivative claim on behalf of the corporation. By requiring a higher threshold, activist shareholders must

[1] New TBOC Section 21.419(a).
[2] New TBOC Section 21.419(c).
[3] New TBOC Section 21.419(d).
[4] New TBOC Section 101.256(a); Section 152.006.
[5] New TBOC Section 101.256(c); Section 153.163(b).
[6] New TBOC Section 101.401.
[7] New TBOC Section 152.002(e).
[8] New TBOC Section 21.552(a)(3).

© 2025 Greenberg Traurig, LLP

now have real skin in the game to have standing to sue or convince other shareholders to participate in the lawsuit.

Exclusive Forum and Venue Provisions

SB 29 amends existing law to allow domestic entities to specify in their governing documents that one or more Texas courts will serve as the exclusive forum and venue for any internal entity claims,[9] which, when implemented, avoids issues of forum shopping or misinterpretation of Texas law. An "internal entity claim" is defined as "a claim of any nature, including a derivative claim in the right of an entity, that is based on, arises from, or relates to the internal affairs of the entity."[10] When combined with the expanded jurisdiction of the Texas Business Court, these amendments should increase predictability in litigation.

Waiver of Jury Trials

SB 29 provides domestic entities with the ability to include a waiver of the right to a jury trial in the entity's governing documents concerning any internal entity claim.[11] It specifies that the waiver of the jury trial contained in the governing documents is enforceable regardless of whether the applicable governing document is signed by the members, owners, officers, or governing persons.[12] Furthermore, these waivers are deemed "informed" and enforceable against a person asserting an internal entity claim if the person: (1) voted for or affirmatively ratified the governing document containing the waiver or (2) acquired or continued to hold an equity security of the domestic entity following adoption of the waiver.[13] This reform is intended to align Texas more closely with proceedings in the Delaware Court of Chancery, where jury trials are unavailable (though factual issues subject to a jury trial may be referred to the Delaware Superior Court).[14] However, constitutional challenges may arise regarding whether litigants knowingly and voluntarily waived the right of trial by jury because the Texas Constitution holds that a person's right of trial by jury "shall remain inviolate"[15] and because the Texas Supreme Court previously has upheld contractual waivers of the right of trial by jury only when knowingly and voluntarily made.[16]

Examination of Records

SB 29 exempts emails, text messages, and social media communications from equityholders' books and records requests, unless the particular email, text message, or social media communication effects action by the applicable corporation, limited partnership, or limited liability company.[17] These exemptions in certain ways may be broader than Section 220 of the Delaware corporate statute, which was recently amended by Delaware SB 21.[18]

These amendments also allow publicly traded corporations and corporations that elect to be governed by the codified business judgment rule to deny a shareholder's books and records request if made in connection with: (1) an active or pending derivative proceeding in the right of the corporation or (2) an active or pending civil lawsuit to which the corporation and the requesting shareholder are, or are

[9] New TBOC Section 2.115(b)(2).
[10] TBOC Section 2.115(a).
[11] New TBOC Section 2.116(b).
[12] New TBOC Section 2.116(c).
[13] New TBOC Section 2.116(d).
[14] *See* 10 Del. C. § 369.
[15] Tex. Const. art. I, § 15; art. V, § 10.
[16] *See In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 133 (Tex. 2004).
[17] New TBOC Section 21.218(b); Section 101.502(a); Section 153.552(a).
[18] *See* July 2025 GT Update, "Drafting of Corporate and M&A Documents for 2025 Delaware General Corporation Law Amendments;" and June 2025 GT Update, "Overview of 2025 Delaware, Nevada, and Texas Corporate Legislation—Impact on Choice of Corporate Domicile."

© 2025 Greenberg Traurig, LLP

expected to be, named as adversarial parties.[19] This does not impair the holder's rights to obtain discovery of records from the corporation in a civil lawsuit or derivative proceeding.[20]

Voting Rights for Classifications of Stock

SB 29 allows a Texas corporation to waive in its certificate of formation certain requirements for separate voting by class or series, including in connection with the increase or decrease of the aggregate number of authorized shares of the class or series (but not below the number of outstanding shares of the class or series) and the approval of any fundamental action or fundamental business transaction.[21]

Novel Mechanism to Predetermine Director Independence

SB 29 implements the following novel method for the board of directors of a Texas corporation that is publicly traded or that opts into the codified business judgment rule to petition the Texas Business Court (or district court if the county in which the corporation's principal place of business is located lacks a business court) to determine in advance the independence of the directors comprising a committee formed to review and approve transactions between the corporation or any of its subsidiaries, on the one hand, and a director, officer, or controlling shareholder of the corporation, on the other hand:

- First, the corporation must file with the applicable court a petition designating legal counsel to act on behalf of the corporation and its shareholders (other than any interested director, officer, or controlling shareholder);[22]
- Second, the corporation must notify shareholders (*e.g.*, by filing a Form 8-K with the SEC) of the petition's filing, the court in which the petition was filed, the counsel designated in the petition, and the right of shareholders (other than any interested director, officer, or controlling shareholder) to participate in the proceeding;[23]
- Third, the court will hold a preliminary hearing to appoint legal counsel to represent the corporation no fewer than 10 days after the date on which notice is given;[24] and
- Fourth, the court will conduct an evidentiary hearing and render a binding determination regarding the independence of the directors on the committee.[25]

The court's finding will be "dispositive" absent facts, not presented to the court, constituting evidence sufficient to prove that a director is not independent and disinterested with respect to the relevant transaction.[26]

Corporations also may employ these procedures to predetermine the independence of a committee established to evaluate how to proceed with respect to allegations asserted in shareholder derivative proceedings.[27]

The designation of an independent special committee to handle sensitive or significant transactions—and whether committee members were impartial—often is at issue in shareholder derivative litigation.

[19] New TBOC Section 21.218(b-2).
[20] New TBOC Section 21.218(b-3).
[21] New TBOC Section 21.364(d)(1); Section 21.365(b)(2).
[22] New TBOC Section 21.4161(c).
[23] New TBOC Section 21.4161(d), (e).
[24] New TBOC Section 21.4161(f).
[25] New TBOC Section 21.4161(g).
[26] New TBOC Section 21.4161(h).
[27] New TBOC Section 21.554(c).

© 2025 Greenberg Traurig, LLP

Whereas courts in other jurisdictions typically evaluate director independence during litigation as part of the demand futility analysis, or in evaluating the fairness of a transaction that already has been approved, SB 29 allows corporations to determine the special committee members' independence and disinterestedness before the transaction is consummated and before the issue is raised in any subsequent derivative suit.

Limitation on Recovery of Attorneys' Fees in Disclosure-Only Settlements

SB 29 prohibits recovery of attorneys' fees when resolution of a derivative proceeding results solely in additional or amended disclosures to equityholders of the applicable corporation, limited partnership, or limited liability company. In derivative proceedings, a court may order that a domestic entity pay expenses the plaintiff incurred if the court finds the proceeding has resulted in a substantial benefit to the entity.[28] SB 29 specifies that a substantial benefit to the corporation, limited partnership, or limited liability company does not include additional or amended disclosures made to shareholders, partners, or members, regardless of materiality.[29] These amendments seek to deter non-substantive derivative lawsuits, which is consistent with decisions by Delaware courts over the past decade that deter disclosure-only settlements, most notably in *In re Trulia, Inc. Stockholder Litigation*, C.A. No. 10020-CB (Del. Ch. Jan. 22, 2016).

Formation, Internal Affairs, and Governance of Domestic Entities

The amendments to the TBOC allow for the managerial officials of a domestic entity to consider the laws and judicial decisions of other states and the practices observed by entities formed in those other states,[30] so long as the law, practice, or judicial decision does not contradict the plain meaning of the TBOC.[31] The amendments clarify that the failure or refusal of a managerial official to consider or conform to the laws, practices, or judicial decisions of another state does not constitute or imply a breach of the TBOC or any duty existing under state law.

Conclusion

SB 29 demonstrates Texas' commitment to enhancing its attractiveness as a jurisdiction for business formation and operation, while balancing the interests of equityholders and managerial officials. SB 29 and the corresponding amendments to the TBOC are intended to reduce the litigation risk of companies and their leadership teams.

[28] TBOC Section 21.561(b)(1); Section 101.461(b); Section 153.411(b).
[29] New TBOC Section 21.561(c); Section 101.461(c); Section 153.411(c).
[30] New TBOC Section 1.057(b).
[31] New TBOC Section 1.057(a).

© 2025 Greenberg Traurig, LLP

Authors

This GT Alert was prepared by:

- Elizabeth Ross Hadley | Government Law & Policy | +1 512.320.7227 | Elizabeth.Hadley@gtlaw.com
- John Thomas Holland | Corporate | +1 214.665.3698 | hollandj@gtlaw.com
- Christopher M. LaVigne | Litigation | +1 214.665.3675 | Chris.LaVigne@gtlaw.com
- Thomas Woolsey | Corporate | +1 214.665.3690 | Tom.Woolsey@gtlaw.com
- Sergio Cavazos | Government Law & Policy | +1 512.320.7258 | Sergio.Cavazos@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Berlin¬. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia«. Las Vegas. London*. Long Island. Los Angeles. Mexico City+. Miami. Milan». Minneapolis. Munich¬. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. São Paulo›. Seoul∞. Shanghai. Silicon Valley. Singapore⁼. Tallahassee. Tampa. Tel Aviv^. Tokyo¤. United Arab Emirates‹. Warsaw~. Washington, D.C. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ¬Greenberg Traurig's Berlin and Munich offices are operated by Greenberg Traurig Germany, LLP, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. «Greenberg Traurig operates in the Kingdom of Saudi Arabia through Greenberg Traurig Khalid Al-Thebity Law Firm, a professional limited liability company, licensed to practice law by the Ministry of Justice. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Studio Legale Associato, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ›Greenberg Traurig's São Paulo office is operated by Greenberg Traurig Brazil Consultores em Direito Estrangeiro – Direito Estadunidense, incorporated in Brazil as a foreign legal consulting firm. Attorneys in the São Paulo office do not practice Brazilian law. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ⁼Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¤Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ‹Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2025 Greenberg Traurig, LLP. All rights reserved.*