



**BUSINESS ORGANIZATION CODE**  
**TITLE 2: CHAPTER 22. NONPROFIT CORPORATIONS**  
(also accessible at <http://tlo2.tlc.state.tx.us/statutes/bo.toc.htm> )

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 22.001. DEFINITIONS.**

In this chapter:

- (1) "Board of directors" means the group of persons vested with the management of the affairs of the corporation, regardless of the name used to designate the group.
- (2) "Bylaws" means the rules adopted to regulate or manage the corporation, regardless of the name used to designate the rules.
- (3) "Corporation" or "domestic corporation" means a domestic [nonprofit\[0\]](#) corporation subject to this chapter.
- (4) "Foreign corporation" means a foreign [nonprofit\[0\]](#) corporation.
- (5) "[Nonprofit\[0\]](#) corporation" means a corporation no part of the income of which is distributable to a member, director, or officer of the corporation.
- (6) "Ordinary care" means the care that an ordinarily prudent person in a similar position would exercise under similar circumstances.

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

**§ 22.002. MEETINGS BY REMOTE COMMUNICATIONS TECHNOLOGY.**

Subject to the provisions of this code and the certificate of formation and bylaws of a corporation, a meeting of the members of a corporation, the board of directors of a corporation, or any committee designated by the board of directors of a corporation may be held by means of a remote electronic communications system, including videoconferencing technology or the Internet, only if:

- (1) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and
- (2) the system provides access to the meeting in a manner or using a method by which each person participating in the meeting can communicate concurrently with each other participant.

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



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### SUBCHAPTER B. PURPOSES AND POWERS

#### § 22.051. GENERAL PURPOSES.

A [nonprofit\[0\]](#) corporation may be formed for any lawful purpose or purposes not expressly prohibited under this chapter or Chapter 2, including any purpose described by Section 2.002.

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

#### § 22.052. DENTAL HEALTH SERVICE CORPORATION.

(a) A charitable corporation may be formed to operate a dental health service corporation that manages and coordinates the relationship between a dentist who contracts to perform dental services and a patient who will receive the services as a member of a group that contracted with the dental health service corporation to provide dental care to group members.

(b) The certificate of formation for a charitable corporation formed under this section must have attached as an exhibit:

- (1) an affidavit of the organizer or organizers stating:
  - (A) that not less than 30 percent of the dentists legally engaged in the practice of dentistry in this state have signed a contract to perform the required dental services for a period of at least one year after incorporation; and
  - (B) the names and addresses of those dentists; and
- (2) a certification by the State Board of Dental Examiners that:
  - (A) the applicants are reputable residents of this state of good moral character; and
  - (B) the corporation will be in the best interest of the public health.

(c) A corporation formed under this section must have at least 12 directors, including 9 directors who are licensed to practice dentistry in this state and are actively engaged in the practice of dentistry in this state.

(d) A corporation formed under this section shall maintain as participating or contracting dentists at least 30 percent of the number of dentists actually engaged in the practice of dentistry in this state. The corporation shall file annually in September with the State Board of Dental Examiners the name and address of each participating or contracting dentist.

(e) A corporation formed under this section may not:

- (1) prevent a patient from selecting the licensed dentist of the patient's choice to provide dental services to the patient;



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- (2) deny a licensed dentist the right to participate as a contracting dentist to perform the dental services contracted for by the patient;
  - (3) discriminate among patients or licensed dentists regarding payment or reimbursement for the cost of performing dental services; or
  - (4) authorize any person to regulate, interfere with, or intervene in any manner in the diagnosis or treatment provided by a licensed dentist to a patient.
- (f) A corporation formed under this section may require the attending dentist to provide a narrative oral or written description of the dental services provided to determine benefits or provide proof of treatment. The corporation may request but may not require diagnostic aids used in the course of treatment.

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

**§ 22.053. DIVIDENDS PROHIBITED.**

A dividend may not be paid to, and no part of the income of a corporation may be distributed to, the corporation's members, directors, or officers.

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

**§ 22.054. AUTHORIZED BENEFITS AND DISTRIBUTIONS.**

A corporation may:

- (1) pay compensation in a reasonable amount to the members, directors, or officers of the corporation for services provided;
- (2) confer benefits on the corporation's members in conformity with the corporation's purposes; and
- (3) make distributions to the corporation's members onwinding up and termination to the extent authorized by this chapter.

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

**§ 22.055. POWER TO ASSIST EMPLOYEE OR OFFICER.**

(a) A corporation may lend money to or otherwise assist an employee or officer of the corporation, but not a director, if the loan or assistance may reasonably be expected to directly or indirectly benefit the c

(b) A loan made to an officer must be:



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- (1) made for the purpose of financing the officer's principal residence; or
- (2) set in an original principal amount that does not exceed:
  - (A) 100 percent of the officer's annual salary, if the loan is made before the first anniversary of the officer's employment; or
  - (B) 50 percent of the officer's annual salary, if the loan is made in any subsequent year.

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

### **SUBCHAPTER C. FORMATION AND GOVERNING DOCUMENTS**

#### **§ 22.101. INCORPORATION OF CERTAIN ORGANIZATIONS.**

A religious society, a charitable, benevolent, literary, or social association, or a church may incorporate as a corporation governed by this chapter with the consent of a majority of its members. Those members shall authorize the organizers to execute the certificate of formation.

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

#### **§ 22.102. BYLAWS.**

- (a) The initial bylaws of a corporation shall be adopted by the corporation's board of directors or, if the management of the corporation is vested in the corporation's members, by the members.
- (b) The bylaws may contain provisions for the regulation and management of the affairs of the corporation that are consistent with law and the certificate of formation.
- (c) The board of directors may amend or repeal the bylaws, or adopt new bylaws, unless:
  - (1) this chapter or the corporation's certificate of formation wholly or partly reserves the power exclusively to the corporation's members;
  - (2) the management of the corporation is vested in the corporation's members; or
  - (3) in amending, repealing, or adopting a bylaw, the members expressly provide that the board of directors may not amend or repeal the bylaw.

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

#### **§ 22.103. INCONSISTENCY BETWEEN CERTIFICATE OF FORMATION AND BYLAW.**



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(a) A provision of a certificate of formation of a corporation that is inconsistent with a bylaw controls over the bylaw, except as provided by Subsection (b).

(b) A change in the number of directors by amendment to the bylaws controls over the number stated in the certificate of formation, unless the certificate of formation provides that a change in the number of directors may be made only by amendment to the certificate.

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

**§ 22.104. ORGANIZATION MEETING.**

(a) After the certificate of formation is filed, the board of directors named in the certificate of formation of a corporation shall hold an organization meeting of the board, either in or out of this state, at the call of the organizers or a majority of the directors to adopt bylaws and elect officers and for other purposes determined by the board at the meeting. The organizers or directors calling the meeting shall send notice of the time and place of the meeting to each director named in the certificate of formation not later than the third day before the date of the meeting.

(b) A first meeting of the members may be held at the call of the majority of the directors on notice provided not later than the third day before the date of the meeting. The notice must state the purposes of the meeting.

(c) If the management of a corporation is vested in the corporation's members, the members shall hold the organization meeting on the call of an organizer. An organizer who calls the meeting shall:

- (1) send notice of the time and place of the meeting to each member not later than the third day before the date of the meeting;
- (2) if the corporation is a church, make an oral announcement of the time and place of the meeting at a regularly scheduled worship service before the meeting; or
- (3) send notice of the meeting in the manner provided by the certificate of formation.

Acts 2003, 78th Leg., ch. 182, § 1, eff. Jan. 1, 2006. Amended by  
Acts 2005, 79th Leg., ch. 64, § 66, eff. Jan. 1, 2006.

**§ 22.105. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE OF FORMATION BY MEMBERS HAVING VOTING RIGHTS.**

(a) Except as provided by Section 22.107(b), to amend the certificate of formation of a corporation with members having voting rights, the board of directors of the corporation must adopt a resolution specifying the proposed amendment and directing that the amendment be submitted to a vote at an annual or special meeting of the members having voting rights.

(b) Written notice containing the proposed amendment or a summary of the changes to be effected by the amendment shall be given to each member entitled to vote at the meeting within the time and in the manner provided by this chapter for giving notice of a meeting of members.



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(c) The proposed amendment shall be adopted on receiving the vote required by Section 22.164.

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

**§ 22.106. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE OF FORMATION BY MANAGING MEMBERS.**

(a) To be approved, a proposed amendment to the certificate of formation of a corporation the management of the affairs of which is vested in the corporation's members under Section 22.202 must be submitted to a vote at an annual, regular, or special meeting of the members.

(b) Except as otherwise provided by the certificate of formation or bylaws, notice containing the proposed amendment or a summary of the changes to be effected by the amendment shall be given to the members within the time and in the manner provided by this chapter for giving notice of a meeting of members.

(c) The proposed amendment shall be adopted on receiving the vote required by Section 22.164.

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

**§ 22.107. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE OF FORMATION BY BOARD OF DIRECTORS.**

(a) If a corporation has no members or has no members with voting rights, or in the case of an amendment under Subsection (b), an amendment to the corporation's certificate of formation shall be adopted at a meeting of the board of directors on receiving the vote of directors required by Section 22.164.

(b) Except as otherwise provided by the certificate of formation, the board of directors of a corporation with members having voting rights may, without member approval, adopt amendments to the certificate of formation to:

- (1) extend the duration of the corporation if the corporation was incorporated when limited duration was required by law;
- (2) delete the names and addresses of the initial directors;
- (3) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state; or
- (4) change the corporate name by:
  - (A) substituting the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name; or
  - (B) adding, deleting, or changing a geographical attribution to the name.



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

**§ 22.108. NUMBER OF AMENDMENTS SUBJECT TO VOTE AT MEETING.**

Any number of amendments to the corporation's certificate of formation may be submitted to and voted on by a corporation's members at any one meeting of the members.

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

**§ 22.109. RESTATED CERTIFICATE OF FORMATION.**

(a) The board of directors of a corporation may adopt a restated certificate of formation as provided by Subchapter B, Chapter 3, by following the same procedure to amend the corporation's certificate of formation provided by Sections 22.104-22.107, except that member approval is required only if the restated certificate of formation contains an amendment.

(b) A person shall file a restated certificate of formation as provided by Chapter 4, and the restated certificate of formation takes effect as provided by Subchapter B, Chapter 3.

Added by Acts 2005, 79th Leg., ch. 64, § 67, eff. Jan. 1, 2006.

**SUBCHAPTER D. MEMBERS**

**§ 22.151. MEMBERS.**

(a) A corporation may have one or more classes of members or may have no members.

(b) If the corporation has one or more classes of members, the corporation's certificate of formation or bylaws must include:

- (1) a designation of each class;
- (2) the manner of the election or appointment of the members of each class; and
- (3) the qualifications and rights of the members of each class.

(c) A corporation may issue a certificate, card, or other instrument evidencing membership rights, voting rights, or ownership rights as authorized by the certificate of formation or bylaws.

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



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**§ 22.152. IMMUNITY FROM LIABILITY.**

The members of a corporation are not personally liable for a debt, liability, or obligation of the corporation.

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

**§ 22.153. ANNUAL MEETING.**

(a) Except as provided by Subsection (b), a corporation shall hold an annual meeting of the members at a time that is stated in or determined in accordance with the corporation's bylaws.

(b) If the bylaws provide for more than one regular meeting of members each year, an annual meeting is not required. If an annual meeting is not required, directors may be elected at a meeting as provided by the bylaws.

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

**§ 22.154. FAILURE TO CALL ANNUAL MEETING.**

(a) If the board of directors of a corporation fails to call the annual meeting of members at the designated time, a member of the corporation may demand that the meeting be held within a reasonable time. The demand must be made in writing and sent to an officer of the corporation by registered mail.

(b) If the annual meeting is not called before the 61st day after the date of demand, a member of the corporation may compel the holding of the meeting by legal action directed against the board of directors, and each of the extraordinary writs of common law and of courts of equity are available to the member to compel the holding of the meeting. Each member has a justiciable interest sufficient to enable the member to institute and prosecute the legal proceedings.

(c) Failure to hold the annual meeting at the designated time does not result in the winding up and termination of the corporation.

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

**§ 22.155. SPECIAL MEETINGS OF MEMBERS.** A special meeting of the members of a corporation may be called by:

- (1) the president;
- (2) the board of directors;
- (3) members having not less than one-tenth of the votes entitled to be cast at the meeting; or



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(4) other officers or persons as provided by the certificate of formation or bylaws of the corporation.

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

**§ 22.156. NOTICE OF MEETING.**

(a) A corporation other than a church shall provide written notice of the place, date, and time of a meeting of the members of the corporation and, if the meeting is a special meeting, the purpose or purposes for which the meeting is called. The notice shall be delivered to each member 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. Notice may be delivered personally or in accordance with Section 6.051(b).

(b) Notice of a meeting of the members of a corporation that is a church is sufficient if given by oral announcement at a regularly scheduled worship service before the meeting or as otherwise provided by the certificate of formation or bylaws of the corporation.

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

**§ 22.157. SPECIAL BYLAWS AFFECTING NOTICE.**

(a) A corporation may provide in the corporation's bylaws that notice of an annual or regular meeting is not required.

(b) A corporation having more than 1,000 members at the time a meeting is scheduled or called may provide notice of a meeting by publication in a newspaper of general circulation in the community in which the principal office of the corporation is located, if the corporation provides for that notice in its bylaws.

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

**§ 22.158. PREPARATION AND INSPECTION OF LIST OF VOTING MEMBERS.**

(a) After setting a record date for the notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its voting members. The list must identify:

- (1) the members who are entitled to notice and the members who are not entitled to notice of the meeting;
- (2) the address of each voting member; and
- (3) the number of votes each voting member is entitled to cast at the meeting.

(b) Not later than the second business day after the date notice is given of a meeting for which a list was prepared in accordance with Subsection (a), and continuing through the meeting, the list of voting members must be available at



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the corporation's principal office or at a reasonable place in the municipality in which the meeting will be held, as identified in the notice of the meeting, for inspection by members entitled to vote at the meeting for the purpose of communication with other members concerning the meeting.

(c) A voting member or voting member's agent or attorney is entitled on written demand to inspect and, at the member's expense and subject to Section 22.351, copy the list at a reasonable time during the period the list is available for inspection.

(d) The corporation shall make the list of voting members available at the meeting. A voting member or voting member's agent or attorney is entitled to inspect the list at any time during the meeting or an adjournment of the meeting.

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

### **§ 22.159. QUORUM OF MEMBERS.**

(a) Unless otherwise provided by the certificate of formation or bylaws of a corporation, members of the corporation holding one-tenth of the votes entitled to be cast, in person or by proxy, constitute a quorum.

(b) The vote of the majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present is the act of the members meeting, unless the vote of a greater number is required by law or the certificate of formation or bylaws.

(c) Unless otherwise provided by the certificate of formation or bylaws, a church incorporated before May 12, 1959, is considered to have provided in the certificate of formation or bylaws that members present at a meeting for which notice has been given constitute a quorum.

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

### **§ 22.160. VOTING OF MEMBERS.**

(a) Each member of a corporation, regardless of class, is entitled to one vote on each matter submitted to a vote of the corporation's members, except to the extent that the voting rights of members of a class are limited, enlarged, or denied by the certificate of formation or bylaws of the corporation.

(b) A member may vote in person or, unless otherwise provided by the certificate of formation or bylaws, by proxy executed in writing by the member or the member's attorney-in-fact.

(c) Unless otherwise provided by the proxy, a proxy is revocable and expires 11 months after the date of its execution. A proxy may not be irrevocable for longer than 11 months.

(d) If authorized by the certificate of formation or bylaws of the corporation, a member vote on any matter may be conducted by mail, by facsimile transmission, by electronic message, or by any combination of those methods.

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



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**§ 22.161. ELECTION OF DIRECTORS.**

(a) A member entitled to vote at an election of directors is entitled to vote, in person or by proxy, for as many persons as there are directors to be elected and for whose election the member has a right to vote.

(b) If expressly authorized by the corporation's certificate of formation, the member may cumulate the member's vote by:

(1) giving one candidate a number of votes equal to the number of the directors to be elected multiplied by the member's vote; or

(2) distributing the votes on the same principle among any number of the candidates.

(c) A member who intends to cumulate votes under Subsection (b) shall give written notice of the member's intention to the secretary of the corporation not later than the day preceding the date of the election.

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

**§ 22.162. GREATER VOTING REQUIREMENTS UNDER CERTIFICATE OF FORMATION.**

If the corporation's certificate of formation requires the vote or concurrence of a greater proportion of the members of a corporation than is required by this chapter with respect to an action to be taken by the members, the certificate of formation controls.

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

**§ 22.163. RECORD DATE FOR DETERMINATION OF MEMBERS.**

(a) The record date for determining members of a corporation may be set as provided by Section 6.101.

(b) If a record date is not set under Section 6.101:

(1) members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting;

(2) members at the close of business on the business day preceding the date notice is given, or if notice is waived, at the close of business on the business day preceding the date of the meeting, are entitled to notice of a meeting of members; and

(3) members at the close of business on the later of the day the board of directors adopts the resolution relating to the action or the 60th day before the date of the action are entitled to exercise any rights regarding any other lawful action.



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(c) The board of directors of a corporation may set a new date for determining the right to notice of or to vote at any adjournment of a members' meeting. The board shall set a new date if the meeting is adjourned to a date more than 90 days after the record date for determining members entitled to notice of the original meeting.

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

**§ 22.164. VOTE REQUIRED TO APPROVE FUNDAMENTAL ACTION.**

(a) In this section, "fundamental action" means:

- (1) an amendment of a certificate of formation;
- (2) a voluntary winding up under Chapter 11;
- (3) a revocation of a voluntary decision to wind up under Section 11.151;
- (4) a cancellation of an event requiring winding up under Section 11.152;
- (5) a reinstatement under Section 11.202;
- (6) a distribution plan under Section 22.305;
- (7) a plan of merger under Subchapter F;
- (8) a sale of all or substantially all of the assets of a corporation under Subchapter F;
- (9) a plan of conversion under Subchapter F; or
- (10) a plan of exchange under Subchapter F.

(b) Except as otherwise provided by Subsection (c) or the certificate of formation in accordance with Section 22.162, the vote required for approval of a fundamental action is:

- (1) at least two-thirds of the votes that members present in person or by proxy are entitled to cast at the meeting at which the action is submitted for a vote, if the corporation has members with voting rights;
- (2) at least two-thirds of the votes of members present at the meeting at which the action is submitted for a vote, if the management of the affairs of the corporation is vested in the corporation's members under Section 22.202; or
- (3) the affirmative vote of the majority of the directors in office, if the corporation has no members or has no members with voting rights.

(c) If any class of members is entitled to vote on the fundamental action as a class by the terms of the certificate of formation or the bylaws, the vote required for the approval of the fundamental action is the vote required by



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Subsection (b)(1) and at least two-thirds of the votes that the members of each class in person or by proxy are entitled to cast at the meeting at which the action is submitted for a vote.

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

### **SUBCHAPTER E. MANAGEMENT**

#### **§ 22.201. MANAGEMENT BY BOARD OF DIRECTORS.**

Except as provided by Section 22.202, the affairs of a corporation are managed by a board of directors. The board of directors may be designated by any name appropriate to the customs, usages, or tenets of the corporation.

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

#### **§ 22.202. MANAGEMENT BY MEMBERS.**

(a) The certificate of formation of a corporation may vest the management of the affairs of the corporation in the members of the corporation. If the corporation has a board of directors, the corporation may limit the authority of the board to the extent provided by the certificate of formation or bylaws.

(b) A corporation is considered to have vested the management of the corporation's affairs in the board of directors of the corporation in the absence of a provision to the contrary in the certificate of formation, unless the corporation is a church organized and operating under a congregational system that:

- (1) was incorporated before January 1, 1994; and
- (2) has the management of its affairs vested in the corporation's members.

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

#### **§ 22.203. BOARD MEMBER ELIGIBILITY REQUIREMENTS.**

A director of a corporation is not required to be a resident of this state or a member of the corporation unless the certificate of formation or a bylaw of the corporation imposes that requirement. The certificate of formation or bylaws may prescribe other qualifications for directors.

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

#### **§ 22.204. NUMBER OF DIRECTORS.**



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(a) If the corporation has a board of directors, a corporation may not have fewer than three directors. The number of directors shall be set by, or in the manner provided by, the certificate of formation or bylaws of the corporation, except that the number of directors on the initial board of directors must be set by the certificate of formation.

(b) The number of directors may be increased or decreased by amendment to, or in the manner provided by, the certificate of formation or bylaws. A decrease in the number of directors may not shorten the term of an incumbent director.

(c) In the absence of a provision of the certificate of formation or a bylaw setting the number of directors or providing for the manner in which the number of directors shall be determined, the number of directors is the same as the number constituting the initial board of directors.

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

### **§ 22.205. DESIGNATION OF INITIAL BOARD OF DIRECTORS.**

If the corporation is to be managed by a board of directors, the certificate of formation of a corporation must state the names of the members of the initial board of directors of the corporation.

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

### **§ 22.206. ELECTION OR APPOINTMENT OF BOARD OF DIRECTORS.**

Directors other than the initial directors are elected, appointed, or designated in the manner provided by the certificate of formation or bylaws. If the method of election, designation, or appointment is not provided by the certificate of formation or bylaws, directors other than the initial directors are elected by the board of directors.

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

### **§ 22.207. ELECTION AND CONTROL BY CERTAIN ENTITIES.**

(a) The board of directors of a religious, charitable, educational, or eleemosynary corporation may be affiliated with, elected, and controlled by an incorporated or unincorporated convention, conference, or association organized under the laws of this or another state, the membership of which is composed of representatives, delegates, or messengers from a church or other religious association.

(b) The board of directors of a corporation may be wholly or partly elected by one or more associations or corporations organized under the laws of this or another state if:

- (1) the certificate of formation or bylaws of the corporation provide for that election; and
- (2) the corporation has no members with voting rights.



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

**§ 22.208. TERM OF OFFICE.**

(a) Unless the director resigns or is removed, a director on the initial board of directors of a corporation holds office until the first annual election of directors or for the period specified in the certificate of formation or bylaws of the corporation. Directors other than the initial directors are elected, appointed, or designated for the terms provided by the certificate of formation or bylaws.

(b) In the absence of a provision in the certificate of formation or bylaws setting the term of office for directors, a director holds office until the next annual election of directors and until a successor is elected, appointed, or designated and qualified.

(c) A director may be removed from office as provided in Section 22.211.

Acts 2003, 78th Leg., ch. 182, § 1, eff. Jan. 1, 2006. Amended by  
Acts 2005, 79th Leg., ch. 64, § 68, eff. Jan. 1, 2006.

**§ 22.209. CLASSIFICATION OF DIRECTORS.**

Directors may be divided into classes. The terms of office of the several classes are not required to be uniform.

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

**§ 22.210. EX OFFICIO MEMBER OF BOARD.**

(a) The certificate of formation or bylaws of a corporation may provide that a person may be an ex officio member of the board of directors of the corporation.

(b) A person designated as an ex officio member of the board is entitled to receive notice of and to attend board meetings.

(c) An ex officio member is not entitled to vote unless the certificate of formation or bylaws authorize the member to vote. An ex officio member of the board who is not entitled to vote does not have the duties or liabilities of a director provided by this chapter.

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

**§ 22.211. REMOVAL OF DIRECTOR.**



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(a) A director of a corporation may be removed from office under any procedure provided by the certificate of formation or bylaws of the corporation.

(b) In the absence of a provision for removal in the certificate of formation or bylaws, a director may be removed from office, with or without cause, by the persons entitled to elect, designate, or appoint the director. If the director was elected to office, removal requires an affirmative vote equal to the vote necessary to elect the director.

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

**§ 22.211. RESIGNATION OF DIRECTOR.**

Except as provided by the certificate of formation or bylaws, a director of a corporation may resign at any time by providing written notice to the corporation.

Added by Acts 2005, 79th Leg., ch. 64, § 69, eff. Jan. 1, 2006.

**§ 22.212. VACANCY.**

(a) Unless otherwise provided by the certificate of formation or bylaws of the corporation, a vacancy in the board of directors of a corporation shall be filled by the affirmative vote of the majority of the remaining directors, regardless of whether that majority is less than a quorum. A director elected to fill a vacancy is elected for the unexpired term of the member's predecessor in office.

(b) A vacancy in the board occurring because of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of members called for that purpose. If a corporation has no members or has no members with the right to vote on the vacancy, the vacancy shall be filled as provided by the certificate of formation or bylaws.

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

**§ 22.213. QUORUM.**

(a) A quorum for the transaction of business by the board of directors of a corporation is the lesser of:

- (1) the majority of the number of directors set by the corporation's bylaws or, in the absence of a bylaw setting the number of directors, a majority of the number of directors stated in the corporation's certificate of formation; or
- (2) any number, not less than three, set as a quorum by the certificate of formation or bylaws.

(b) A director present by proxy at a meeting may not be counted toward a quorum.

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



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**§ 22.214. ACTION BY DIRECTORS.**

The act of a majority of the directors present in person or by proxy at a meeting at which a quorum is present is the act of the board of directors of a corporation, unless the act of a greater number is required by the certificate of formation or bylaws of the corporation.

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

**§ 22.215. VOTING IN PERSON OR BY PROXY.**

A director of a corporation may vote in person or, if authorized by the certificate of formation or bylaws of the corporation, by proxy executed in writing by the director.

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

**§ 22.216. TERM AND REVOCABILITY OF PROXY.**

(a) A proxy expires three months after the date the proxy is executed.

(b) A proxy is revocable unless otherwise provided by the proxy or made irrevocable by law.

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

**§ 22.217. NOTICE OF MEETING; WAIVER OF NOTICE.**

(a) Regular meetings of the board of directors of a corporation may be held with or without notice as prescribed by the corporation's bylaws.

(b) Special meetings of the board of directors shall be held with notice as prescribed by the bylaws. Attendance of a director at a meeting constitutes a waiver of notice, unless the director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) Unless required by the bylaws, the business to be transacted at, or the purpose of, a regular or special meeting of the board of directors is not required to be specified in the notice or waiver of notice of the meeting.

(d) Notice may be delivered personally or in accordance with Section 6.051(b).

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



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**§ 22.218. MANAGEMENT COMMITTEE.**

(a) If authorized by the certificate of formation or bylaws of the corporation, the board of directors of a corporation, by resolution adopted by the majority of the directors in office, may designate one or more committees to have and exercise the authority of the board in the management of the corporation to the extent provided by:

- (1) the resolution;
- (2) the certificate of formation; or
- (3) the bylaws.

(b) A committee designated under this section must consist of at least two persons. The majority of the persons on the committee must be directors. If provided by the certificate of formation or bylaws, the remaining persons on the committee are not required to be directors.

(c) The designation of a committee and the delegation of authority to the committee does not operate to relieve the board of directors, or an individual director, of any responsibility imposed on the board or director by law. A committee member who is not a director has the same responsibility with respect to the committee as a committee member who is a director.

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

**§ 22.219. OTHER COMMITTEES.**

(a) The board of directors of a corporation, by resolution adopted by the majority of the directors at a meeting at which a quorum is present, or the president, if authorized by a similar resolution of the board of directors or by the certificate of formation or bylaws of the corporation, may designate and appoint one or more committees that do not have the authority of the board of directors in the management of the corporation.

(b) The membership on a committee designated under this section may be limited to directors.

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

**§ 22.220. ACTION WITHOUT MEETING OF DIRECTORS OR COMMITTEE.**

(a) The certificate of formation of a corporation may provide that an action required by this chapter to be taken at a meeting of the corporation's directors or an action that may be taken at a meeting of the directors or a committee may be taken without a meeting if a written consent, stating the action to be taken, is signed by the number of directors or committee members necessary to take that action at a meeting at which all of the directors or committee members are present and voting. The consent must state the date of each director's or committee member's signature.

(b) A written consent signed by less than all of the directors or committee members is not effective to take the action that is the subject of the consent unless, not later than the 60th day after the date of the earliest dated consent



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delivered to the corporation in the manner required by this section, a consent or consents signed by the required number of directors or committee members are delivered to the corporation:

- (1) at the registered office or principal place of business of the corporation; or
  - (2) through the corporation's registered agent, transfer agent, registrar, or exchange agent or an officer or agent of the corporation having custody of the books in which proceedings of meetings of directors or committees are recorded.
- (c) Delivery under Subsection (b) must be by hand or by certified or registered mail, return receipt requested. Delivery to the corporation's principal place of business must be addressed to the president or principal executive officer of the corporation.
- (d) Prompt notice of the taking of an action by directors or a committee without a meeting by less than unanimous written consent shall be given to each director or committee member who did not consent in writing to the action.

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

**§ 22.221. GENERAL STANDARDS FOR DIRECTORS.**

- (a) A director shall discharge the director's duties, including duties as a committee member, in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation.
- (b) A director is not liable to the corporation, a member, or another person for an action taken or not taken as a director if the director acted in compliance with this section. A person seeking to establish liability of a director must prove that the director did not act:
- (1) in good faith;
  - (2) with ordinary care; and
  - (3) in a manner the director reasonably believed to be in the best interest of the corporation.

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

**§ 22.222. RELIGIOUS CORPORATION DIRECTOR'S GOOD FAITH RELIANCE ON CERTAIN INFORMATION.**

A director of a religious corporation, in the discharge of a duty imposed or power conferred on the director, including a duty imposed or power conferred as a committee member, may rely in good faith on information or on an opinion, report, or statement, including a financial statement or other financial data, concerning the corporation or another person that was prepared or presented by:



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- (1) a religious authority; or
- (2) a minister, priest, rabbi, or other person whose position or duties in the corporation the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

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

### § 22.223. NOT A TRUSTEE.

A director of a corporation is not considered to have the duties of a trustee of a trust with respect to the corporation or with respect to property held or administered by the corporation, including property subject to restrictions imposed by the donor or transferor of the property.

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

### § 22.224. DELEGATION OF INVESTMENT AUTHORITY.

(a) The board of directors of a corporation may:

- (1) contract with an advisor who is an investment counsel or a trust company, bank, investment advisor, or investment manager; and
- (2) confer on that advisor the authority to:
  - (A) purchase or otherwise acquire a stock, bond, security, or other investment on behalf of the corporation; and
  - (B) sell, transfer, or otherwise dispose of an asset or property of the corporation at a time and for a consideration the advisor considers appropriate.

(b) The board of directors may:

- (1) confer on an advisor described by Subsection (a) other powers regarding the corporation's investments as the board considers appropriate; and
- (2) authorize the advisor to hold title to an asset or property of the corporation, in the advisor's own name or in the name of a nominee, for the benefit of the corporation.

(c) The board of directors is not liable for an action taken or not taken by an advisor under this section if the board acted in good faith and with ordinary care in selecting the advisor. The board of directors may remove or replace the advisor, with or without cause, if the board considers that action appropriate or necessary.

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



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**§ 22.225. LOAN TO DIRECTOR PROHIBITED.**

(a) A corporation may not make a loan to a director.

(b) The directors of a corporation who vote for or assent to the making of a loan to a director, and any officer who participates in making the loan, are jointly and severally liable to the corporation for the amount of the loan until the loan is repaid.

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

**§ 22.226. DIRECTOR LIABILITY FOR CERTAIN DISTRIBUTIONS OF ASSETS.**

(a) In addition to any other liability imposed by law on the directors of a corporation, the directors who vote for or assent to a distribution of assets other than in payment of the corporation's debts, when the corporation is insolvent or when distribution would render the corporation insolvent, or during the liquidation of the corporation, without the payment and discharge of or making adequate provisions for any known debt, obligation, or liability of the corporation, are jointly and severally liable to the corporation for the value of the assets distributed, to the extent that the debt, obligation, or liability is not paid and discharged.

(b) A director is not liable under this section if, in voting for or assenting to a distribution, the director:

- (1) relied in good faith and with ordinary care on information or an opinion, report, or statement in accordance with Section 3.102;
- (2) acting in good faith and with ordinary care, considered the assets of the corporation to be at least equal to their book value; or
- (3) in determining whether the corporation made adequate provision for the discharge of all of its liabilities and obligations as provided in Section 11.053, relied in good faith and with ordinary care on financial statements of, or other information concerning, a person who was or became contractually obligated to discharge some or all of those liabilities or obligations.

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

**§ 22.227. DISSENT TO ACTION.**

(a) A director of a corporation who is present at a meeting of the board of directors at which action is taken on a corporate matter described by Section 22.226(a) is presumed to have assented to the action unless:

- (1) the director's dissent has been entered in the minutes of the meeting;



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- (2) the director has filed a written dissent to the action with the person acting as the secretary of the meeting before the meeting is adjourned; or
- (3) the director has sent a written dissent by registered mail to the secretary of the corporation immediately after the meeting has been adjourned.

(b) The right to dissent under this section does not apply to a director who voted in favor of the action.

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

**§ 22.228. RELIANCE ON WRITTEN OPINION OF ATTORNEY.**

A director is not liable under Section 22.226 or 22.227 if, in the exercise of ordinary care, the director acted in good faith and in reliance on the written opinion of an attorney for the corporation.

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

**§ 22.229. RIGHT TO CONTRIBUTION.**

A director against whom a claim is asserted under Section 22.226 or 22.227 and who is held liable on the claim is entitled to contribution from persons who accepted or received the distribution knowing the distribution to have been made in violation of that section, in proportion to the amounts received by those persons.

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

**§ 22.230. CONTRACTS OR TRANSACTIONS INVOLVING INTERESTED DIRECTORS, OFFICERS, AND MEMBERS.**

(a) This section applies only to a contract or transaction between a corporation and:

- (1) one or more of the corporation's directors, officers, or members; or
- (2) an entity or other organization in which one or more of the corporation's directors, officers, or members:
  - (A) is a managerial official or a member; or
  - (B) has a financial interest.

(b) An otherwise valid contract or transaction is valid notwithstanding that a director, officer, or member of the corporation is present at or participates in the meeting of the board of directors, of a committee of the board, or of the members that authorizes the contract or transaction, or votes to authorize the contract or transaction, if:



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- (1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed to or known by:
    - (A) the corporation's board of directors, a committee of the board of directors, or the members, and the board, the committee, or the members in good faith and with ordinary care authorize the contract or transaction by the affirmative vote of the majority of the disinterested directors, committee members or members, regardless of whether the disinterested directors, committee members or members constitute a quorum; or
    - (B) the members entitled to vote on the authorization of the contract or transaction, and the contract or transaction is specifically approved in good faith and with ordinary care by a vote of the members; or
  - (2) the contract or transaction is fair to the corporation when the contract or transaction is authorized, approved, or ratified by the board of directors, a committee of the board of directors, or the members.
- (c) Common or interested directors or members of a corporation may be included in determining the presence of a quorum at a meeting of the board, a committee of the board, or members that authorizes the contract or transaction.

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

### § 22.231. OFFICERS.

- (a) The officers of a corporation shall include a president and a secretary and may include one or more vice presidents, a treasurer, and other officers and assistant officers as considered necessary. Any two or more offices, other than the offices of president and secretary, may be held by the same person.
- (b) A properly designated committee may perform the functions of an officer. A single committee may perform the functions of any two or more officers, including the functions of president and secretary.
- (c) The officers of a corporation may be designated by other or additional titles as provided by the certificate of formation or bylaws of the corporation.

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

### § 22.232. ELECTION OR APPOINTMENT OF OFFICERS.

- (a) An officer of a corporation shall be elected or appointed at the time, in the manner, and for the terms prescribed by the certificate of formation or bylaws of the corporation. The term of an officer may not exceed three years.
- (b) If the certificate of formation or bylaws do not include provisions for the election or appointment of officers, the officers shall be elected or appointed annually by the board of directors or, if the management of the corporation is vested in the corporation's members, by the members.



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

### **§ 22.233. APPLICATION TO CHURCH.**

A corporation that is a church is not required to have officers as provided by this subchapter. The duties and responsibilities of the officers may be vested in the corporation's board of directors or other designated body in any manner provided for by the certificate of formation or bylaws of the corporation.

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

### **§ 22.234. RELIGIOUS CORPORATION OFFICER'S GOOD FAITH RELIANCE ON CERTAIN INFORMATION.**

An officer of a religious corporation, in the discharge of a duty imposed or power conferred on the officer, may rely in good faith and with ordinary care on information or on an opinion, report, or statement concerning the corporation or another person that was prepared or presented by:

- (1) a religious authority or another religious corporation; or
- (2) a minister, priest, rabbi, or other person whose position or duties in the religious authority or religious corporation the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

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

### **§ 22.235. OFFICER LIABILITY.**

(a) An officer is not liable to the corporation or any other person for an action taken or omission made by the officer in the person's capacity as an officer unless the officer's conduct was not exercised:

- (1) in good faith;
- (2) with ordinary care; and
- (3) in a manner the officer reasonably believes to be in the best interest of the corporation.

(b) This section shall not affect the liability of the corporation for an act or omission of the officer.

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



## SUBCHAPTER F. FUNDAMENTAL BUSINESS TRANSACTIONS

### § 22.251. APPROVAL OF MERGER.

(a) A domestic corporation that is a party to a merger under Chapter 10 must approve the merger by complying with this section.

(b) If the corporation that is a party to the merger has no members or has no members with voting rights, the plan of merger must be approved by the vote of directors required by Section 22.164.

(c) If the management of the affairs of the corporation that is a party to the merger is vested in its members under Section 22.202, the plan of merger:

- (1) must be submitted to a vote at an annual, regular, or special meeting of the members; and
- (2) must be approved by the members by the vote required by Section 22.164.

(d) If the corporation that is a party to the merger has members with voting rights:

- (1) the board of directors must adopt a resolution that:
  - (A) approves the plan of merger; and
  - (B) directs that the plan be submitted to a vote at an annual or special meeting of the members having voting rights; and

- (2) the members must approve the plan of merger by the vote required by Section 22.164.

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

### § 22.252. APPROVAL OF SALE OF ALL OR SUBSTANTIALLY ALL OF ASSETS.

(a) A corporation must approve the sale of all or substantially all of its assets by complying with this section.

(b) If the corporation has no members or has no members with voting rights, the sale of all or substantially all of the assets of the corporation must be authorized by the vote of directors required by Section 22.164.

(c) If the management of the affairs of the corporation is vested in its members under Section 22.202, a resolution authorizing a sale of all or substantially all of the assets of the corporation:

- (1) must be submitted to a vote at an annual, regular, or special meeting of the members; and
- (2) must be approved by the members by the vote required by Section 22.164.

(d) If the corporation has members with voting rights:



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- (1) the board of directors of the corporation must adopt a resolution that:
    - (A) recommends the sale; and
    - (B) directs that the resolution be submitted to a vote at an annual or special meeting of the members having voting rights; and
  - (2) the members must approve the resolution by the vote required by Section 22.164.
- (e) At the meeting required by Subsection (c) or (d), in addition to approving the resolution authorizing the sale, the members may set, or authorize the board of directors to set, the terms and conditions of the sale and the consideration to be received by the corporation for the sale by the same vote of members.
- (f) After the members authorize a sale under Subsection (d), the board of directors may abandon the sale, subject to the rights of third parties under any contracts relating to the sale, without further action or approval by members.
- (g) Notwithstanding Subsection (d), if a corporation is insolvent, a sale of all or substantially all of the assets of the corporation may be authorized on receiving the affirmative vote of the majority of the directors in office.
- (h) The phrase "sale of all or substantially all of the assets" means the sale, lease, exchange, or other disposition, other than a pledge, mortgage, deed of trust, or trust indenture unless otherwise provided by the certificate of formation, of all or substantially all of the property and assets of a domestic corporation that is not made in the usual and regular course of the corporation's activities without regard to whether the disposition is made with the goodwill of the corporation's activities. The term does not include a transaction that results in the corporation directly or indirectly:
- (1) continuing to engage in one or more activities; or
  - (2) applying a portion of the consideration received in connection with the transaction to the conduct of an activity that the corporation engages in after the transaction.

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

### **§ 22.253. MEETING OF MEMBERS; NOTICE.**

- (a) The corporation must give to each member entitled to vote at a meeting described by Section 22.251(c) or (d) or Section 22.252(c) or (d) a written notice stating that the purpose or one of the purposes of the meeting is to consider the plan of merger or the sale of all or substantially all of the assets of the corporation. The notice must be given in the time and manner provided by Chapter 6 and this chapter for giving notice of a meeting to members.
- (b) A vote of members entitled to vote at the meeting shall be taken on the plan of merger or the resolution authorizing the sale of all or substantially all of the assets of the corporation. The members must approve the plan or resolution by the vote required by Section 22.164.
- (c) For a meeting to vote on a plan of merger, the notice of the meeting must contain the plan of merger or a summary of the plan of merger.



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(d) For a corporation the management of the affairs of which is vested in its members under Section 22.202, the notice of the meeting is subject to the provisions of the certificate of formation or bylaws of the corporation.

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

### **§ 22.254. PLEDGE, MORTGAGE, DEED OF TRUST, OR TRUST INDENTURE.**

(a) Except as otherwise provided by Subsection (b) or by the corporation's certificate of formation:

- (1) the board of directors of a corporation may authorize a pledge, mortgage, deed of trust, or trust indenture; and
- (2) an authorization or consent of members is not required for the validity of the transaction or for any sale under the terms of the transaction.

(b) If the management of the affairs of a corporation is vested in the corporation's members under Section 22.202:

- (1) the members may authorize a pledge, mortgage, deed of trust, or trust indenture in the manner provided by Section 22.252(c) for a sale of all or substantially all of the assets of a corporation; and
- (2) an authorization by the board of directors is not required for the validity of the transaction or for any sale under the terms of the transaction.

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

### **§ 22.255. CONVEYANCE BY CORPORATION.**

A corporation may convey real property of the corporation when authorized by appropriate resolution of the board of directors or members.

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

### **§ 22.256. APPROVAL OF CONVERSION.**

(a) A domestic corporation must approve a conversion under Chapter 10 by complying with this section.

(b) If the corporation has no members or has no members with voting rights, the plan of conversion must be approved by the vote of directors required by Section 22.164.

(c) If the management of the affairs of the corporation is vested in its members under Section 22.202, the plan of conversion:

- (1) must be submitted to a vote at an annual, regular, or special meeting of the members; and



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- (2) must be approved by the members by the vote required by Section 22.164.
- (d) If the corporation has members with voting rights:
  - (1) the board of directors must adopt a resolution that:
    - (A) approves the plan of conversion; and
    - (B) directs that the plan be submitted to a vote at an annual or special meeting of the members having voting rights; and
  - (2) the members must approve the plan of conversion by the vote required by Section 22.164.

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

**§ 22.257. APPROVAL OF EXCHANGE.**

- (a) A domestic corporation must approve an exchange under Chapter 10 by complying with this section.
- (b) If the corporation has no members or has no members with voting rights, the plan of exchange must be approved by the vote of directors required by Section 22.164.
- (c) If the management of the affairs of the corporation is vested in its members under Section 22.202, the plan of exchange:
  - (1) must be submitted to a vote at an annual, regular, or special meeting of the members; and
  - (2) must be approved by the members by the vote required by Section 22.164.
- (d) If the corporation has members with voting rights:
  - (1) the board of directors must adopt a resolution that:
    - (A) approves the plan of exchange; and
    - (B) directs that the plan be submitted to a vote at an annual or special meeting of the members having voting rights; and
  - (2) the members must approve the plan of exchange by the vote required by Section 22.164.

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

**SUBCHAPTER G. WINDING UP AND TERMINATION**



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### **§ 22.301. APPROVAL OF VOLUNTARY WINDING UP, REINSTATEMENT, REVOCATION OF VOLUNTARY WINDING UP, OR DISTRIBUTION PLAN.**

A corporation must approve a voluntary winding up in accordance with Chapter 11, a reinstatement in accordance with Section 11.202, a cancellation of an event requiring winding up under Section 11.152, a revocation of a voluntary decision to wind up in accordance with Section 11.151, or a distribution plan in accordance with Section 22.305 by complying with the procedures prescribed by this subchapter.

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

### **§ 22.302. CERTAIN PROCEDURES FOR APPROVAL.**

To approve a voluntary winding up, a reinstatement, a cancellation of an event requiring winding up, a revocation of a voluntary decision to wind up, or a distribution plan, a corporation must follow the following procedures:

- (1) if the corporation has no members or has no members with voting rights, the corporation's board of directors must adopt a resolution to wind up, to reinstate, to cancel the event requiring winding up, to revoke a voluntary decision to wind up, or to effect the distribution plan by the vote of directors required by Section 22.164;
- (2) if the management of the affairs of the corporation is vested in the corporation's members under Section 22.202, the winding up, reinstatement, cancellation of event requiring winding up, revocation of voluntary decision to wind up, or distribution plan:
  - (A) must be submitted to a vote at an annual, regular, or special meeting of members; and
  - (B) must be approved by the members by the vote required by Section 22.164; or
- (3) if the corporation has members with voting rights:
  - (A) the corporation's board of directors must approve a resolution:
    - (i) recommending the winding up, reinstatement, cancellation of event requiring winding up, revocation of a voluntary decision to wind up, or distribution plan; and
    - (ii) directing that the winding up, reinstatement, cancellation of event requiring winding up, revocation of a voluntary decision to wind up, or distribution plan of the corporation be submitted to a vote at an annual or special meeting of members; and
  - (B) the members must approve the action described by Paragraph (A) in accordance with Section 22.303.

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



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**§ 22.303. MEETING OF MEMBERS; NOTICE.**

- (a) The corporation must give to each member entitled to vote at a meeting described by Section 22.302(2) or (3) a written notice stating that the purpose or one of the purposes of the meeting is to consider the winding up, reinstatement, cancellation of event requiring winding up, revocation of the voluntary decision to wind up, or distribution plan of the corporation. The notice must be given in the time and manner provided by Chapter 6 and this chapter for the giving of notice of a meeting to members.
- (b) A vote of members entitled to vote at the meeting shall be taken on the resolution to wind up, reinstate, cancel the event requiring winding up, revoke the voluntary decision to wind up, or effect the distribution plan of the corporation. The members must approve the resolution by the vote required under Section 22.164.
- (c) For a meeting to vote on a distribution plan, the notice of the meeting must contain the proposed plan of distribution or a summary of the plan.
- (d) For a corporation the management of the affairs of which is vested in its members under Section 22.202, the notice of the meeting is subject to the provisions of the certificate of formation or bylaws of the corporation.

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

**§ 22.304. APPLICATION AND DISTRIBUTION OF PROPERTY.**

- (a) After all liabilities and obligations of a corporation in the process of winding up are paid, satisfied, and discharged in accordance with Section 11.053, the property of the corporation shall be applied and distributed as follows:
- (1) property held by the corporation on a condition requiring return, transfer, or conveyance because of the winding up or termination shall be returned, transferred, or conveyed in accordance with that requirement; and
  - (2) unless otherwise provided by the corporation's certificate of formation, the remaining property of the corporation shall be distributed only for tax-exempt purposes to one or more organizations that are exempt under Section 501(c)(3), Internal Revenue Code, or described by Section 170(c)(1) or (2), Internal Revenue Code, under a plan of distribution adopted under this chapter.
- (b) A district court of the county in which the corporation's principal office is located shall distribute to one or more organizations exempt under Section 501(c)(3), Internal Revenue Code, or described by Section 170(c)(1) or (2), Internal Revenue Code, the property of the corporation remaining after a distribution of property under the plan of distribution. The court shall make the distribution in the manner the court determines will best accomplish the general purposes for which the corporation was organized.

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

**§ 22.305. DISTRIBUTION PLAN.**



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A plan providing for the distribution of property may be adopted by a corporation in the process of winding up, and shall be adopted by a corporation to authorize a transfer or conveyance of assets for which this chapter requires a plan of distribution, in the manner provided by this subchapter.

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

### **§ 22.306. LIMITED SURVIVAL AFTER NATURAL EXPIRATION.**

(a) A corporation that was terminated by the expiration of the period of its duration may, during the three-year period following the date of termination, amend the corporation's certificate of formation by following the procedures prescribed by Chapter 11 and this chapter to extend or perpetuate the corporation's period of duration. The expiration of a corporation's period of duration does not give a member or creditor of the corporation a vested right to prevent the corporation from taking action under this subsection.

(b) An act or contract of a terminated corporation during a period within which the corporation could have extended the corporation's existence under this section, regardless of whether the corporation has taken action to extend its existence, is not invalidated by the expiration of the period of duration.

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

### **§ 22.307. RESPONSIBILITY FOR WINDING UP.**

If a corporation determines or is required to wind up, the winding up of the corporation's affairs shall be managed by:

- (1) the directors, if management of the affairs is not vested in the corporation's members under Section 22.202; or
- (2) the members, if management of the affairs is vested in the corporation's members under Section 22.202.

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

## **SUBCHAPTER H. RECORDS AND REPORTS**

### **§ 22.351. MEMBER'S RIGHT TO INSPECT BOOKS AND RECORDS.**

A member of a corporation, on written demand stating the purpose of the demand, is entitled to examine and copy at the member's expense, in person or by agent, accountant, or attorney, at any reasonable time and for a proper purpose, the books and records of the corporation relevant to that purpose.

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



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**§ 22.352. FINANCIAL RECORDS AND ANNUAL REPORTS.**

(a) A corporation shall maintain current and accurate financial records with complete entries as to each financial transaction of the corporation, including income and expenditures, in accordance with generally accepted accounting principles.

(b) Based on the records maintained under Subsection (a), the board of directors of the corporation shall annually prepare or approve a financial report for the corporation for the preceding year. The report must conform to accounting standards as adopted by the American Institute of Certified Public Accountants and must include:

- (1) a statement of support, revenue, and expenses;
- (2) a statement of changes in fund balances;
- (3) a statement of functional expenses; and
- (4) a balance sheet for each fund.

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

**§ 22.353. AVAILABILITY OF FINANCIAL INFORMATION FOR PUBLIC INSPECTION.**

(a) A corporation shall keep records, books, and annual reports of the corporation's financial activity at the corporation's registered or principal office in this state for at least three years after the close of the fiscal year.

(b) The corporation shall make the records, books, and reports available to the public for inspection and copying at the corporation's registered or principal office during regular business hours. The corporation may charge a reasonable fee for preparing a copy of a record or report.

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

**§ 22.354. FAILURE TO MAINTAIN FINANCIAL RECORD OR PREPARE ANNUAL REPORT; OFFENSE.**

(a) A corporation commits an offense if the corporation fails to maintain a financial record, prepare an annual report, or make the record or report available to the public in the manner required by Section 22.353.

(b) An offense under this section is a Class B misdemeanor.

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



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**§ 22.355. EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING TO FINANCIAL RECORDS AND ANNUAL REPORTS.**

Sections 22.352, 22.353, and 22.354 do not apply to:

- (1) a corporation that solicits funds only from members of the corporation;
- (2) a corporation that does not intend to solicit and receive and does not actually raise or receive during a fiscal year contributions in an amount exceeding \$10,000 from a source other than its own membership;
- (3) a private or independent institution of higher education described by Section 61.003, Education Code, accredited by a recognized accrediting agency as defined by Section 61.003, Education Code, a postsecondary educational institution authorized to grant degrees under a certificate of authority issued by the Texas Higher Education Coordinating Board or a foundation chartered for the benefit of the institution or any component part of the institution, a career school or college that has received a certificate of approval from the Texas Workforce Commission, a public institution of higher education or a foundation chartered for the benefit of the institution or any component part of the institution, or an elementary or secondary school;
- (4) a religious institution that is a church, an ecclesiastical or denominational organization, or another established physical place for worship at which religious services are the primary activity and are regularly conducted;
- (5) a trade association or professional society the income of which is principally derived from membership dues and assessments, sales, or services;
- (6) an insurer licensed and regulated by the Texas Department of Insurance; or
- (7) an alumni association of a public or private institution of higher education in this state that is recognized and acknowledged as the official alumni association by the institution.

Acts 2003, 78th Leg., ch. 182, § 1, eff. Jan. 1, 2006. Amended by  
Acts 2005, 79th Leg., ch. 64, § 70, eff. Jan. 1, 2006.

**§ 22.356. CORPORATIONS ASSISTING STATE AGENCIES.**

(a) In this section, "state agency" means:

- (1) a board, commission, department, office, or other entity that is in the executive branch of state government and that was created by the constitution or a statute of this state, including an institution of higher education as defined by Section 61.003, Education Code;
- (2) the legislature or a legislative agency; or
- (3) the supreme court, the court of criminal appeals, a court of appeals, the state bar, or another state judicial agency.



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(b) The books and records of a corporation other than a bona fide alumni association are subject to audit at the discretion of the state auditor if:

- (1) the corporation's charter specifically dedicates the corporation's activities to the benefit of a particular state agency; and
- (2) a board member, officer, or employee of that state agency sits on the board of directors of the corporation in other than an ex officio capacity.

(c) If the corporation's charter specifically dedicates the corporation's activities to the benefit of a particular state agency but the conditions described by Subsection (b)(2) do not exist, a corporation shall file with the secretary of state a copy of the report required by Section 22.352(b) for the preceding fiscal year not later than the 89th day after the last day of the corporation's fiscal year.

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

**§ 22.357. REPORT OF DOMESTIC AND FOREIGN CORPORATIONS.**

(a) The secretary of state may require a domestic corporation or a foreign corporation registered to conduct affairs in this state to file a report in accordance with Chapter 4 not more than once every four years as required by this subchapter. The report must state:

- (1) the name of the corporation;
- (2) the state or country under the laws of which the corporation is incorporated;
- (3) the address of the registered office of the corporation in this state and the name of the registered agent at that address;
- (4) if the corporation is a foreign corporation, the address of the principal office of the corporation in the state or country under the laws of which the corporation is incorporated; and
- (5) the names and addresses of the directors and officers of the corporation.

(b) A corporation required to prepare a report under this section shall prepare the report on a form adopted by the secretary of state for that purpose and shall include in the report information that is accurate as of the date the report is executed. An officer or, if the corporation is in the hands of a receiver or trustee, the receiver or trustee shall sign the report on behalf of the corporation.

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

**§ 22.358. NOTICE REGARDING REPORT.**



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(a) The secretary of state shall send written notice that the report required by Section 22.357 is due. The notice must be:

- (1) addressed to the corporation; and
- (2) mailed to the corporation's registered agent or to the corporation at:
  - (A) the last known address of the corporation as it appears on record in the office of the secretary of state; or
  - (B) any other known place of business of the corporation.

(b) The secretary of state shall include with the notice a report form to be prepared and filed as provided by this subchapter.

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

**§ 22.359. FILING OF REPORT.**

A copy of the report must be filed with the secretary of state in accordance with Chapter 4 not later than the 30th day after the date notice is mailed under Section 22.358.

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

**§ 22.360. FAILURE TO FILE REPORT.**

(a) A domestic or foreign corporation that fails to file a report under Sections 22.357 and 22.359 when the report is due forfeits the corporation's right to conduct affairs in this state.

(b) The forfeiture takes effect, without judicial action, when the secretary of state enters on the record of the corporation kept in the office of the secretary of state:

- (1) the words "right to conduct affairs forfeited"; and
- (2) the date of forfeiture.

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

**§ 22.361. NOTICE OF FORFEITURE.**

Notice of forfeiture under Section 22. 360 shall be mailed to the corporation's registered agent at the registered office or to the corporation at:



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- (1) the address of the principal place of business of the corporation as it appears in the certificate of formation;
- (2) the last known address of the corporation as it appears on record in the office of the secretary of state; or
- (3) any other known place of business of the corporation.

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

**§ 22.362. EFFECT OF FORFEITURE.**

(a) Unless the right of the corporation to conduct affairs in this state is revived under Section 22.363:

- (1) the corporation may not maintain an action, suit, or proceeding i
- (2) a successor or assignee of the corporation may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising from the conduct of affairs by the corporation in this state.

(b) This section does not affect the right of an assignee of the corporation as:

- (1) the holder in due course of a negotiable promissory note, check, or bill of exchange; or
- (2) the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument negotiable by law.

(c) The forfeiture of the right to conduct affairs in this state does not:

- (1) impair the validity of a contract or act of the corporation; or
- (2) prevent the corporation from defending an action, suit, or proceeding in a court of this state.

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

**§ 22.363. REVIVAL OF RIGHT TO CONDUCT AFFAIRS.**

(a) A corporation may be relieved from a forfeiture under Section 22.360 by filing the required report, accompanied by the revival fee, not later than the 120th day after the date of mailing of the notice of forfeiture under Section 22.361.

(b) If a corporation complies with Subsection (a), the secretary of state shall:

- (1) revive the right of the corporation to conduct affairs in this state;



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- (2) cancel the words regarding the forfeiture on the record of the corporation; and
- (3) endorse on that record the word "revived" and the date of revival.

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

**§ 22.364. FAILURE TO REVIVE; TERMINATION OR REVOCATION.**

(a) The failure of a corporation that has forfeited its right to conduct affairs in this state to revive that right under Section 22.363 is grounds for:

- (1) the involuntary termination of the domestic corporation; or
- (2) the revocation of the foreign corporation's registration to transact business in this state.

(b) The termination or revocation takes effect, without judicial action, when the secretary of state enters on the record of the corporation filed in the office of the secretary of state the word "forfeited" and the date of forfeiture and cites this chapter as authority for that forfeiture.

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

**§ 22.365. REINSTATEMENT.**

(a) A corporation that is terminated or the registration of which has been revoked as provided by Section 22.364 may be relieved of the termination or revocation by filing the report required by Section 22.357, accompanied by the filing fee for the report, if the corporation has paid:

- (1) all fees, taxes, penalties, and interest due and accruing before the termination or revocation; and
- (2) an amount equal to the total taxes from the date of termination or revocation to the date of reinstatement that would have been payable if the corporation had not been terminated or had its registration revoked.

(b) When the report is filed and the filing fee is paid to the secretary of state, the secretary of state shall:

- (1) reinstate the certificate of formation or registration without judicial action;
- (2) cancel the word "forfeited" on the record; and
- (3) endorse on the record kept in the secretary's office relating to the corporation the words "set aside" and the date of the reinstatement.

(c) If a termination or revocation is set aside under this section, the corporation shall determine from the secretary of state whether the name of the corporation is available. If the name of the corporation is not available at the time of reinstatement, the corporation shall amend its corporate name under this code.



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

**SUBCHAPTER I. CHURCH BENEFITS BOARDS**

**§ 22.401. DEFINITION.**

In this chapter, "church benefits board" means an organization described by Section 414(e)(3)(A), Internal Revenue Code, that:

- (1) has the principal purpose or function of administering or funding a plan or program to provide retirement benefits, welfare benefits, or both for the ministers or employees of a church or a conference, convention, or association of churches; and
- (2) is controlled by or affiliated with a church or a conference, convention, or association of churches.

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

**§ 22.402. PENSIONS AND BENEFITS.**

When authorized by the corporation's members or as otherwise provided by law, a domestic or foreign [nonprofit\[0\]](#) corporation formed for a religious purpose may provide, directly or through a separate church benefits board, for the support and payment of benefits and pensions to:

- (1) the ministers, teachers, employees, trustees, directors, or other functionaries of the corporation;
- (2) the ministers, teachers, employees, trustees, directors, or other functionaries of organizations controlled by or affiliated with a church or a conference, convention, or association of churches under the jurisdiction and control of the corporation; and
- (3) the spouse, children, dependents, or other beneficiaries of the persons described by Subdivisions (1) and (2).

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

**§ 22.403. CONTRIBUTIONS.**

(a) A church benefits board may provide for:

- (1) the collection of contributions and other payments to assist in providing pensions and benefits under this subchapter; and



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- (2) the creation, maintenance, investment, management, and disbursement of necessary annuities, endowments, reserves, or other funds for a purpose under Subdivision (1).

(b) A church benefits board may receive payments from a trust fund or corporation that funds a church plan as defined by Section 414(e), Internal Revenue Code.

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

### § 22.404. POWER TO ACT AS TRUSTEE.

A church benefits board may act as:

- (1) a trustee under a lawful trust committed to the board by contract, will, or otherwise; and
- (2) an agent for the performance of a lawful act relating to the purposes of the trust.

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

### § 22.405. DOCUMENTS AND AGREEMENTS.

A church benefits board may provide to a program participant a certificate or agreement of participation, a debenture, or an indemnification agreement, as appropriate to accomplish the purposes of the board.

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

### § 22.406. INDEMNIFICATION.

A church benefits board, or an affiliate wholly owned by the board, may agree to indemnify against damage or risk of loss:

- (1) a minister, teacher, employee, trustee, functionary, or director affiliated with the board or a family member, dependent, or beneficiary of one of those persons;
- (2) a church or a convention, conference, or association of churches; or
- (3) an organization that is controlled by or affiliated with the board or with a church or a convention, conference, or association of churches.

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

### § 22.407. PROTECTION OF BENEFITS.



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(a) Money or other benefits that have been or will be provided to a participant or a beneficiary under a plan or program provided by or through a church benefits board under this subchapter are not subject to execution, attachment, garnishment, or other process and may not be appropriated or applied as part of a judicial, legal, or equitable process or operation of a law other than a constitution to pay a debt or liability of the participant or beneficiary.

(b) This section does not apply to a qualified domestic relations order or an amount required by the church benefits board to recover costs or expenses incurred in the plan or program.

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

### **§ 22.408. ASSIGNMENT OF BENEFITS.**

An assignment or transfer or an attempt to make an assignment or transfer by a beneficiary of money, benefits, or other rights under a plan or program under this subchapter is void if:

- (1) the plan or program contains a provision prohibiting the assignment or other transfer without the written consent of the church benefits board; and
- (2) the beneficiary assigns or transfers or attempts to make an assignment or transfer without that consent.

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

### **§ 22.409. INSURANCE CODE NOT APPLICABLE.**

The Insurance Code does not apply to a church benefits board or a program, plan, benefit, or activity of the board or a person affiliated with the board.

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