

TEXAS ENACTS SB 29: MAJOR CORPORATE LAW REFORMS NOW EFFECTIVE

May 19, 2025

As discussed in our recent *Texas Lawbook* article, “Texas Takes Aim at Delaware’s State of Incorporation Crown,” the Texas Legislature has been actively pursuing reforms to make the state a premier destination for corporate formation and governance. On May 14, Governor Greg Abbott signed Senate Bill 29 (SB 29) into law, and the amendments are effective immediately.

Key Provisions of SB 29

SB 29 introduces sweeping changes to the Texas Business Organizations Code (TBOC), designed to enhance legal certainty, reduce litigation risk and make Texas a more attractive jurisdiction for businesses.

The most notable provisions include:

Codification of the Business Judgment Rule – TBOC § 21.419

SB 29 formally codifies the business judgment rule in Texas law, providing corporate officers and directors with a rebuttable presumption that their decisions are made in: “(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.” The rule is designed to protect business leaders from personal liability for decisions made in good faith and with reasonable care, offering greater predictability than recent developments in Delaware.

Minimum Ownership Requirement for Derivative Actions – TBOC § 21.552

The law now allows corporations to impose a minimum ownership threshold (up to 3% of outstanding shares) for shareholders seeking to bring derivative lawsuits. This measure aims to deter meritless suits by shareholders with only a nominal stake in the company.

Restriction on Recovery of Attorneys' Fees – TBOC § 21.561

The law prohibits the recovery of attorneys' fees for "disclosure only" settlements in derivative actions. Under the statute, a shareholder plaintiff may not recover attorneys' fees unless the court finds the proceeding has resulted in a substantial benefit to the corporation. Section 21.561 (c) provides that a substantial benefit does not include "additional or amended disclosures made to shareholders, regardless of materiality."

Restrictions on Books and Records Requests – TBOC § 21.218

The law places new limits on the scope and availability of books and records requests by shareholders, further protecting companies from burdensome and potentially abusive discovery demands. Section 21.218 now specifies that the records of the corporation do not include e-mails, text messages or similar electronic communications, or information from social media accounts unless the particular e-mail, communication or social media information effectuates an action by the corporation.

Exclusive Forum Selection – TBOC § 2.115

The new law permits corporations to mandate in their governing documents that one or more courts in the state serve as the "exclusive forum and venue" for internal governance claims. The amendments reinforce the application of Texas law to internal governance disputes, providing greater certainty that Texas-incorporated entities will resolve such matters under Texas law.

Waiver of Jury Trials – TBOC § 2.116

Corporations may now include provisions in their governance documents to waive jury trials in internal entity disputes, including derivative claims. This is expected to streamline litigation and reduce uncertainty for companies facing internal challenges.

Context and Implications

As highlighted in our *Texas Lawbook* article, these reforms are part of a coordinated effort by Texas to rival Delaware's long-standing dominance as the state of choice for corporate incorporations. The creation of specialized Texas Business Courts and the passage of SB 29 reflect Texas's commitment to providing a modern, business-friendly legal environment.

While Delaware remains the leading jurisdiction for incorporations, Texas's recent reforms—combined with its economic incentives and new court infrastructure—are likely to prompt more companies to consider Texas as a viable alternative for incorporation and governance.

If your company is currently incorporated in Texas or considering a move, we recommend reviewing your governance documents and internal policies in light of these changes. The new law may present opportunities to enhance legal protections, streamline dispute resolution and reduce litigation risk. We also recommend incorporating language into the venue provision of your contracts to require eligible



disputes to be brought in the new Business Courts. We are happy to provide sample venue language to incorporate upon request.

Related Practices

Litigation

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