

BILL ANALYSIS

Senate Research Center

S.B. 1568
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Business & Commerce
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 21.552(b), Business Organizations Code, has caused confusion in the Texas legal community about whether a shareholder has standing to institute or maintain a derivative proceeding after a corporation's shares are converted into cash or securities of another entity pursuant to a merger. This provision appears to conflict with Section 21.552(a), Business Organizations Code, which emphasizes continuity of shareholder status during a derivative proceeding. In *Somers v. Crane*, 295 S.W.3d 5, 13 (Tex. App.–Houston [1st Dist.] Mar. 26, 2009), a Texas appellate court clarified that "a shareholder must own stock at the time of filing a derivative suit and continuously through the completion of the suit to have derivative standing."

S.B. 1568 deletes Section 21.552(b), which will eliminate ambiguity and align the Business Organizations Code with the current state of the law regarding derivative proceedings.

As proposed, S.B. 1568 amends current law relating to shareholder standing after mergers.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21.552, Business Organizations Code, to delete existing Subsection (b) prohibiting Subchapter J (Fundamental Business Transactions) or Chapter 10 (Mergers, Interest Exchanges, Conversions, and Sales of Assets), to the extent a shareholder of a corporation has standing to institute or maintain a derivative proceeding on behalf of the corporation immediately before a merger, from being construed to limit or terminate the shareholder's standing after the merger. Makes a nonsubstantive change.

SECTION 2. Effective date: September 1, 2011.