

SUBJECT: Revising requirements for business entities and associations

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Zedler
0 nays
2 absent — Bailey, Solomons

WITNESSES: For — Elizabeth Miller; Daryl Robertson, Texas Business Law Foundation
Against — None
On — Carmen Flores, Office of the Secretary of State

BACKGROUND: The 78th Legislature in 2003 enacted HB 1156 by Giddings, which created the Business Organizations Code (BOC). The BOC was a joint project of the Business Law Section of the State Bar of Texas and the Secretary of State's Office, with editing and drafting assistance from the Texas Legislative Council.

The BOC codified provisions of prior law found in the following:

- Texas Business Corporation Act (TBCA);
- Texas Non-Profit Corporation Act (TNPCA);
- Texas Miscellaneous Corporation Laws Act (TMCLA);
- Texas Limited Liability Company Act (TLLCA);
- Texas Revised Limited Partnership Act (TRLPA);
- Texas Real Estate Investment Trust Act (TREITA);
- Texas Uniform Unincorporated Nonprofit Associations Act (TUUNAA);
- Texas Professional Corporation Act (TPCA);
- Texas Professional Associations Act (TPAA);
- Texas Revised Partnership Act (TRPA);
- Cooperative Associations Act (CAA); and
- other existing provisions of statutes governing domestic entities.

In 2005, the 79th Legislature enacted HB 1319 by Giddings, which made technical amendments to the BOC and incorporated changes made to prior source laws adopted by the 78th Legislature in 2003 — HB 1165 by Solomons, HB 1637 by Averitt, HB 3213 by R. Cook, and SB 280 by Nelson.

The BOC took effect January 1, 2006. Before January 1, 2010, the BOC does not apply to an entity that existed before January 1, 2006, unless that entity expressly elects to adopt the BOC as its governing statute. Entities formed on or after January 1, 2006, are governed by the BOC in lieu of prior law.

DIGEST:

CSHB 1737 would amend the BOC largely to make technical amendments to correct errors, eliminate certain redundant or antiquated provisions, fill gaps in coverage, conform the BOC to language of source statutes where the BOC unintentionally deviates, and make clarifying amendments related to the transition provisions for electing governance by BOC.

The bill also would include a number of substantive amendments affecting the following areas.

Non-profit corporations. BOC, sec. 22.163(c) would eliminate the need to set a new record date for a meeting of members of a nonprofit corporation if the meeting was adjourned to a date more than 90 days after the record day and would reserve the right of the board of directors to set a new record date at its direction.

Sec. 22.220 would remove the requirement that a written consent signed by fewer than all the directors or committee members of a nonprofit corporation be delivered to a certain place or entity. It would authorize the bylaws of a nonprofit corporation to provide that a required action at a meeting of the board of directors could be authorized by less than the board's unanimous written consent.

Partner's interest subject to charging orders. BOC, sec. 153.256 would adopt the Delaware approach to the use of charging orders so that the charging order would constitute a lien on the judgment debtor's partnership interest. The bill also would create a corresponding change to the charging order provisions of the source statute found in the Texas Revised Limited Partnership Act, sec. 7.03 (V.T.C.S., art. 6132a-1).

Limited liability companies' charging orders. BOC, sec. 101.112 would conform the LLC charging order provisions to the charging order language in the partnership provisions. The bill also would amend the source statute in the Texas Limited Liability Company Act, art. 4.06 (V.T.C.S. , art. 1528n).

In addition, CSHB 1737 would:

- provide for greater flexibility and enhancement of termination/winding-up provisions relative to partnerships — BOC, secs. 11.057, 11.058, and 152.709 — and LLCs — BOC, secs. 11.056 and 101.552;
- make changes related to mergers, conversions, and exchanges — BOC, secs. 10.151(b) and 101.154(b);
- change requirements related to certificates of formation for professional associations and whether the association would be governed by a board of directors or by an executive committee — BOC, sec. 3.015; and
- change provisions relating to resignation of corporate directors — BOC, sec. 21.4091 and Texas Business Corporation Act (V.T.C.S., art. 2.32).

The bill would take effect September 1, 2007, and would apply only to the rights of a judgment creditor of a judgment rendered on or after that date.

NOTES:

The companion bill, SB 854 by Fraser, has been referred to the Senate Business and Commerce Committee.