

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 1637  
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Business & Commerce  
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Committee Report (Substituted)

### **DIGEST AND PURPOSE**

The secretary of state's office and the Partnership and Limited Liability Company Law Committee of the Business Law Section of the State Bar of Texas have worked together to update and improve Texas statutes governing partnerships and limited liability companies ("LLCs") so that Texas will continue to have modern, flexible laws in these areas. The work focuses on the Texas Limited Liability Company Act ("TLLCA"), the Texas Revised Limited Partnership Act ("TRLPA"), and the Texas Revised Partnership Act ("TRPA"). Currently, there are inconsistencies in these statutes and some believe that a need exists to provide additional flexibility in the structuring and operation of the affected entities.

C.S.H.B. 1637 provides amendments to the TLLCA, TRLPA, and TRPA to eliminate certain inconsistencies and uncertainties in the statutes; updates, clarifies and adds flexibility to the current statutory provisions in view of changes to the federal income tax classification rules and trends in other states, including eliminating the outmoded dissolution provisions and providing a mechanism for continuation of an LLC upon the death of the LLC's sole member by appointment of a successor member; and corrects and clarifies provisions dealing with filing procedures as proposed by the secretary of state. The bill also contains a provision to be added to the Government Code codifying the Secretary of State's current practice of maintaining business organizations filings as permanent records in order to clarify the status of certain organizations under Chapter 9 of the Texas Business and Commerce Code.

### **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 Article 2.23, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), by adding Section C-1 and amending Sections D, G, and H, as follows:

C-1. Authorizes members or managers to take action at a meeting of the members or managers or without a meeting in any manner permitted by the articles of organization, regulations, or this Act. Provides that unless otherwise provided by the articles of organization or the regulations, an action is effective if it is taken in a certain manner.

D. Provides that except as provided in the articles of organization or the regulations, the affirmative vote, approval, or consent of a majority of all the members is required to: approve any merger, consolidation, share or interest exchange, or other transaction authorized by or subject to the provisions of Part Ten of this Act; voluntarily cause the dissolution of the limited liability company; and authorize any act that would make it impossible to carry on the ordinary business of the limited liability company. Deletes text regarding certain requirements.

G. Authorizes a majority of the managers named in the articles of organization, except as provided in the articles of organization or the regulations, if the limited liability company has no members, has not received any capital, and has not otherwise commenced business, to amend the articles of organization or dissolve the limited liability company.

Authorizes a majority of the members named in the articles of organization, except as provided by the articles of organization or the regulations, if the limited liability company has not received any capital, the limited liability company has not otherwise commenced business, and the management has been reserved to the members, to amend the articles of organization or dissolve the limited liability company.

H. Provides that except as provided in the articles of organization or the regulations, if any capital has been paid into the limited liability company or the limited liability company has otherwise commenced business, the affirmative vote, approval, or consent of all members is required to amend the articles of organization.

SECTION 2. Amends Article 4.01, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

Art. 4.01. New heading: **ADMISSION OF MEMBERS AND ISSUANCE OF MEMBERSHIP INTERESTS.** A. Provides that in connection with the formation of a limited liability company, a person becomes a member on a certain date. Deletes text regarding acquiring an interest as a member.

B. Provides that after the formation of a limited liability company, a person becomes a new member under certain conditions.

B-1. Authorizes the limited liability company, after the formation of a limited liability company, to issue a membership interest in the limited liability company to a person on compliance with the provisions of the regulations governing issuance of membership interests or, if the regulations contain no relevant issuance provisions, upon the consent of all members.

B-2. Authorizes the regulations to provide that a person may be admitted as a member of a limited liability company and acquire a membership interest in the limited liability company, including a person who will be the sole member, without meeting certain criteria. Authorizes the regulations, if one or more persons own a membership interest in a limited liability company, to provide that a person may be admitted to the limited liability company as a member without acquiring a membership interest in the limited liability company.

C. Makes nonsubstantive changes.

SECTION 3. Amends Article 5.02-1, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

Art. 5.02-1. **ALLOCATION OF PROFITS AND LOSSES.** A. Requires the profits and losses, if the regulations do not otherwise provide, to be allocated on the basis of the agreed value of the contributions made by each member, as stated in limited liability company records of the kind described in Section A of Article 2.22 of this Act.

SECTION 4. Amends Article 5.05, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

Art. 5.05. **WITHDRAWAL OR EXPULSION OF MEMBER.** A. Authorizes a member to withdraw or be expelled from a limited liability company only at the time or on the occurrence of events specified in the regulations.

SECTION 5. Amends Article 6.01, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

Art. 6.01. **DISSOLUTION.** A. Requires a limited liability company, except as provided by Section B or C of this Article, to be dissolved at a certain time.

B. Provides that a limited liability company is not dissolved if an event of dissolution described by Subsection (1) or (2), but not (5), of Section A of this Article occurs, there is at least one remaining member, and the business of the limited liability company is continued by the vote of the members or class as stated in the articles of organization or regulations of the limited liability company, or if not so stated, by all remaining members.

C. Provides that a limited liability company is not dissolved on the occurrence of an event of dissolution described by Subsection (5) of Section A of this Article if the legal representative or successor of the last remaining member agrees to continue the limited liability company and to become a member as of the date of the termination of the last remaining member's membership in the limited liability company or designates another person who agrees to become a member of the limited liability company as of the date of the termination. Requires the agreement of the legal representative or successor to continue the limited liability company and to become a member or the designation of another person who agrees to become a member, unless otherwise provided in the articles of organization or in the regulations, to be made not later than 90 days after the date of termination of the last remaining member's membership in the limited liability company.

SECTION 6. Amends Article 6.06, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

Art. 6.06. REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS. A. Authorizes a limited liability company, at any time before the issuance of a certificate of dissolution by the Secretary of State, or not later than 120 days after the date of the issuance of the certificate of dissolution, to revoke voluntary dissolution proceedings by the written consent of all its members.

A-1. Requires the limited liability company, after revocation of voluntary dissolution is authorized as provided in Section A of this Article, to, if a certificate of dissolution of the limited liability company has been issued by the secretary of state, deliver to the secretary of state for filing not later than 120 days after the date the certificate was issued, the original and a copy of the articles of revocation of dissolution executed on behalf of the limited liability company by a manager or authorized member, that set forth certain information.

A-2. Requires the secretary of state, except as provided by Section A-3 of this Article, if the secretary of state finds that the articles of revocation of dissolution conform to law, to, when the appropriate filing fee is paid as required by law, to perform certain acts.

A-3. Requires the secretary of state, if the limited liability company's name is the same as or deceptively similar to a name already on file or reserved or registered as specified in Article 2.03 of this Act, to issue to the limited liability company a certificate of revocation of dissolution as provided by Section A-2 of this Article only if the limited liability company contemporaneously amends its articles of organization to change its name.

B. Authorizes the limited liability company, if a limited liability company revokes voluntary dissolution proceedings prior to the issuance by the secretary of state of a certificate of dissolution of the limited liability company, to again carry on its business as though voluntary dissolution proceedings had not occurred. Provides that if a limited liability company revokes voluntary dissolution proceedings after the issuance by the secretary of state of a certificate of dissolution of the limited liability company, then on the issuance by the secretary of state of a certificate of revocation of dissolution certain acts will occur.

SECTION 7. Amends Article 7.03, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

Art. 7.03. LIMITED LIABILITY COMPANY NAME OF FOREIGN LIMITED LIABILITY COMPANY. A. Requires no certificate of authority to be issued to a foreign limited liability company unless certain conditions apply.

SECTION 8. Amends Section A, Article 7.05, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

A. Requires a foreign limited liability company, to procure a Certificate of Authority to transact business in this state, to make application therefor to the secretary of state, which application shall set forth certain information.

SECTION 9. Amends Section A, Article 7.06, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

A. Requires the original and a copy of the application of the foreign limited liability company for a Certificate of Authority to be delivered to the secretary of state. Deletes text regarding a certificate evidencing the foreign limited liability company existence.

SECTION 10. Amends Section A, Article 8.12, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

A. Provides that subject to Section C of this Article, Articles 2.07, 2.08, 4.14, and 5.14 and Part Seven of TBCA apply to a limited liability company and its members, managers, and officers.

SECTION 11. Amends Section B, Article 11.04, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to provide that this Article does not prohibit employment by a professional limited liability company of nurses or of clerks, secretaries, bookkeepers, technicians, assistants, and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required. Provides that to the extent of a conflict between this section and any other law, this section controls.

SECTION 12. Amends Section 1.02(12), Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), to redefine “person.”

SECTION 13. Amends Section 1.03, Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), as follows:

Sec. 1.03. PARTNERSHIP NAME. Provides that except as provided by Section 2.14(a)(3) of this Act, the name of a limited partnership as stated in its certificate of limited partnership, a reserved or registered name, or the name under which a foreign limited partnership is permitted to register to do business in Texas as contained in its application for registration as a foreign limited partnership must contain the words “Limited Partnership,” “Limited,” or the abbreviation “LP,” “L.P.,” or “Ltd.” as the last words or letters of its name and prohibits including certain information.

SECTION 14. Amends Section 1.06(a), Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), to require a limited partnership or foreign limited partnership subject to this Act to have and maintain in Texas certain persons and entities.

SECTION 15. Amends Section 2.11(i), Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), to redefine “other entity.”

SECTION 16. Amends Section 2.14(a), Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), to provide that a limited partnership is a registered limited liability partnership as

well as a limited partnership if it meets certain criteria.

SECTION 17. Amends Section 4.01, Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), as follows:

Sec. 4.01. New heading: **ADMISSION OF GENERAL PARTNERS.** (a)-(b) Make no substantive changes.

(c) Authorizes a person, if provided in a written partnership agreement, to be admitted as a general partner in a limited partnership, including as the sole general partner, and acquire a partnership interest in the limited partnership without committing certain acts. Authorizes a person, if provided in a written partnership agreement, to be admitted as a general partner in a limited partnership, including as the sole general partner, without acquiring a partnership interest in the limited partnership.

(d) Provides that nothing contained in this section limits or otherwise affects the provisions of Section 4.03 of this Act.

SECTION 18. Amends Section 5.01, Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), as follows:

Sec. 5.01. **FORM OF CONTRIBUTION.** Authorizes the contribution of a partner, rather than limited partner, to consist of any tangible or intangible benefit to the limited partnership or other property of any kind or nature, including cash, a promissory note, services performed, a contract for services to be performed, other interests in or securities of the limited partnership, or interests in or securities of any other limited partnership, domestic or foreign, or other entity.

SECTION 19. Amends Section 3.08(c), Texas Revised Partnership Act (Article 6132b-3.08, V.T.C.S.), to require a registered limited liability partnership's name to contain the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "LLP" or "L.L.P." as the last words or letters of its name.

SECTION 20. Amends Section 4.04(a), Texas Revised Partnership Act (Article 6132b-4.04, V.T.C.S.), to provide that a partner owes to the partnership, the other partners, and transferees of deceased partners, designated in Section 5.04(b), a duty of loyalty and a duty of care.

SECTION 21. Amends Section 6.01(b), Texas Revised Partnership Act (Article 6132b-6.01, V.T.C.S.), to provide that an event of withdrawal of a partner occurs upon a certain event.

SECTION 22. Amends Subchapter B, Chapter 405, Government Code, by adding Section 405.020, as follows:

Sec. 405.020. **PUBLIC RECORDS.** (a) Requires the secretary of state to permanently maintain as a public record any instrument, or the information included in any instrument, that is filed with the secretary of state evidencing the organization of, or otherwise in connection with, any entity formed under the laws of this state.

(b) Requires the secretary of state to maintain the records required under Subsection (a) in any form the secretary of state considers appropriate.

SECTION 23. Provides that Section 405.020, Government Code, as added by this Act, applies only to an instrument or information on file with the secretary of state on the effective date of this Act or filed with the secretary of state after the effective date of this Act.

SECTION 24. Effective date: September 1, 2003.