

BILL ANALYSIS

Senate Research Center

H.B. 1154
By: Elkins (Averitt)
Business & Commerce
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

During the 78th legislative session, 2003, the legislature passed H.B. 1156 adopting a new Business Organizations Code (BOC), effective January 1, 2006. Limited liability companies (LLC) and partnerships formed on or after January 1, 2006, will be governed by the BOC, but LLCs and partnerships formed prior to that date will continue to be governed by the existing LLC and partnership statutes until January 1, 2010, unless such an entity elects to be governed by the BOC on an earlier date. Therefore, the existing Texas Limited Liability Company Act (TLLCA), Texas Revised Limited Partnership Act (TRLPA), and Texas Revised Partnership Act (TRPA) will continue to govern many entities for the next four years.

The Office of the Secretary of State (SOS) and the Partnership and Limited Liability Company Law Committee of the Business Law Section of the State Bar of Texas have worked together to draft proposed amendments that will make certain technical corrections, clarifications, and changes to the TLLCA, TRLPA, and TRPA to more closely conform the existing statutes with the BOC with respect to certain transactions that involve filings with the secretary of state's office. These changes will eliminate confusion that might otherwise arise if differing procedures are involved depending upon the formation date of an entity when the entity is effecting a transaction that involves a filing with SOS.

H.B. 1154 makes technical corrections and clarifications to provisions that involve filings with SOS, and more closely conforms the current statutes to the BOC with respect to procedures involved in certain transactions that culminate in a filing with SOS.

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 Sections G and H, Article 2.23, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

G. Deletes existing text relating to the dissolution of the limited liability company or amending the articles of organization of said company.

H. Deletes existing text relating to the limited liability company and its commencement of business. Makes a conforming change.

SECTION 2. Amends Section A, Article 3.06, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to delete existing text relating to the amendment of articles of organization by action of a majority of the initial managers or initial members.

SECTION 3. Amends Section D, Article 3.09, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.) to delete existing text providing an exception to this section under certain conditions.

SECTION 4. Amends Section A, Article 6.01, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to require a limited liability company to be dissolved in the event that it has no members.

SECTION 5. Amends Section A, Article 6.03, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to require, in the case of a dissolution caused by the termination of the continued membership of the last remaining member of the limited liability company, the winding up to be accomplished by the legal representative or successor of the last remaining member or by one or more persons designated by the legal representative or successor.

SECTION 6. Amends Section A, Article 6.07, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

A. Requires, if voluntary dissolution proceedings have not been revoked, then, when all liabilities and obligations of the limited liability company have been paid or discharged, or adequate provision has been made therefor, or in case its property and assets are not sufficient to satisfy and discharge all the limited liability company's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the limited liability company's liabilities and obligations, and all of the remaining property and assets of the limited liability have been distributed to its members according to their respective rights and interest, articles of dissolution to be executed on behalf of the limited liability company by a manager or authorized member, or if the existence of the last remaining member of the limited liability company has terminated, by the legal representative or successor of the last remaining member. Requires the articles of dissolution to set forth certain amended information.

SECTION 7. Amends Section B, Article 8.12, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), as follows:

B. Deletes and includes existing text specifying articles that formerly applied to a limited liability company and its members, managers, and officers. Makes conforming changes.

SECTION 8. Amends Section 2.03, Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), by amending Subsection (c) and adding Subsection (d), as follows:

(c) Makes conforming changes.

(d) Requires the secretary of state, except as provided by Subsection (c) of this section, to regard a limited partnership as continuing in existence until the certificate of cancellation is filed.

SECTION 9. Amends Section 1.07(d), Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), to provide that records and information subject to this subsection include general ledgers.

SECTION 10. Amends Article 2, Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), by adding Section 2.03-A, as follows:

Sec. 2.03-A. REVOCATION OF VOLUNTARY CANCELLATION. (a) Authorizes a domestic limited partnership, unless prohibited by a written partnership agreement, not later than the 120th day after the date a certificate of cancellation is filed with the secretary of state, to revoke the certificate of cancellation by written consent of all partners.

(b) Requires the limited partnership, after revocation of the certificate of cancellation has been authorized as provided by Subsection (a) of this section, to deliver to the secretary of state for filing not later than the 120th day after the date the certificate of cancellation is issued, the certificate of revocation of cancellation executed on behalf of the limited partnership by all general partners, or by a majority in interest of the limited partners if there are no general partners.

(c) Requires the certificate of revocation of cancellation to set forth certain information.

(d) Requires the secretary of state, except as provided by Subsection (e) of this section, if the secretary of state finds that the certificate of revocation of cancellation conforms to law and the appropriate filing fee is paid as required by law, to file the certificate of revocation of cancellation in accordance with Section 2.07 of this Act.

(e) Requires the secretary of state, if the limited partnership's name is the same as or deceptively similar to a name already on file or reserved or registered as specified in Section 1.03 of this Act, to issue to the limited partnership a certificate of revocation of cancellation only if the limited partnership contemporaneously amends its certificate of limited partnership to change its name.

(f) Authorizes the limited partnership, upon the filing of the certificate of revocation of cancellation, to take certain actions relating to either reconstituting or dissolving the limited partnership.

(g) Provides that this section does not apply if the certificate of cancellation was filed in accordance with Section 2.05 or 2.06 of this Act.

SECTION 11. Amends Section 2.15, Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), by adding Subsection (e-1) and amending Subsection (f), as follows:

(e-1) Requires the original and one copy of the articles of conversion to be delivered to the secretary of state. Requires two copies of the certificate of limited partnership of the domestic limited partnership, if the converted entity is a domestic limited partnership, to also be delivered to the secretary of state with the articles of conversion. Requires the secretary of state, if the secretary of state finds that the articles of conversion conform to law, has received all filings required to be received, and has issued any certificates required to be issued in connection with the incorporation, formation, or organization of the converted entity, to take certain actions relating to the articles of conversion, if all fees and franchise taxes have been paid as required by law or the articles of conversion provide that the converted entity will be liable for the payment of all such fees and franchise taxes.

(f) Makes a conforming change.

SECTION 12. Amends Section 2.15(h)(4), Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), to redefine "other entity."

SECTION 13. Amends Section 6.01(b), Texas Revised Partnership Act (Article 6132b-6.01, V.T.C.S.), to delete existing text relating to the results of the event of a withdrawal of a partner.

SECTION 14. Amends Section 9.02, Texas Revised Partnership Act (Article 6132b-9.02, V.T.C.S.), by amending Subsection (d) and adding Subsection (i), as follows:

(d) Amends the requirements for the information to be included in the certificate of merger.

(i) Defines "merger."

SECTION 15. Amends Sections 9.05(e) and (g), Texas Revised Partnership Act (Article 6132b-9.05, V.T.C.S.), as follows:

(e) Amends the subsequent results if a plan of conversion has been approved in accordance with the preceding provisions of this section and has not been abandoned, unless the converted entity and the converting entities are both partnerships.

(g) Requires the conversion of a converting entity to be effective, except as otherwise provided by Section 9.06, on the issuance of the certificate of conversion by the secretary

of state (or if a certificate of conversion need not be executed, as provided in the plan of conversion, rather than merger.)

SECTION 16. Amends Section 9.05(i)(6), Texas Revised Partnership Act (Article 6132b-9.05, V.T.C.S.), to redefine "other entity."

SECTION 17. Repealer: Section 6.01(c) (General Definitions), Texas Revised Partnership Act (Article 6132b-6.01, V.T.C.S.).

Section 9.01 (Conversions), Texas Revised Partnership Act (Article 6132b-9.01, V.T.C.S.).

SECTION 18. Effective date: September 1, 2005.