

BILL ANALYSIS

Senate Research Center

S.B. 1523
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Texas law (Chapter 101 of the Business Organizations Code) permits the creation and use of series in domestic limited liability companies (LLCs). If required provisions are contained in its certificate of formation, an LLC can create through provisions in its company agreement a series to own and operate particular assets or a particular business, all under the authorized structure of the LLC. Each additional series may be customized to provide for the segregation of specified member interests, assets, and operations. Although not strictly comparable, a series is analogous to a business operating as a division of a corporation.

Each series within an LLC can operate as a separate entity with a unique name, assets, bank account, and separate books and records. A series may enter into contracts, sue or be sued, and hold title to real and personal property. The most important characteristic of a series is the liability protection that can be afforded to each separate series. Assets owned by one series are shielded from the risk of liability for the debts or obligations of any other series in the LLC or of the LLC generally.

The use of series in LLCs is authorized by statutes in a growing number of states, numbering 22 currently plus the District of Columbia. Financial and investment service entities and real estate investment companies have particularly benefited from the convenience in using series of LLCs in their organizational structures.

In 2019, Delaware amended its statutes to enhance the use of series in LLCs by providing for a new type of series, "registered series," which may be formed by an LLC by filing a certificate of registration with the state. The original series format remains available and was simply renamed a "protected series." The required state filing enhances the transparency to third parties in dealing with the series and their ability to confirm the existence and proper name of the registered series.

Adding the option of registering a series with the state permits a series to address the additional documentation that may be necessary in various kinds of transactions. At the same time, if a series does not need that kind of official state documentation and the original format works fine, the series may continue as a protected series.

The amendment package establishes the use of "registered series." A registered series is a more formally created type of series, requiring a more complete and detailed creation-filing with the secretary of state. The existence of a registered series (along with other series information) can be easily verified by checking the public records of the secretary of state. The establishment of registered series will improve the functionality, attractiveness, and transparency of series use by Texas LLCs. The type of series currently available (under existing law) continues as is, but is renamed a "protected series."

(Original Author's / Sponsor's Statement of Intent)

S.B. 1523 amends current law relating to registered and protected series of domestic limited liability companies and authorizes fees.

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 Subchapter M, Chapter 101, Business Organizations Code, as follows:

SUBCHAPTER M. SERIES LIMITED LIABILITY COMPANY

Sec. 101.601. SERIES OF MEMBERS, MANAGERS, MEMBERSHIP INTERESTS, OR ASSETS. (a) Makes no changes to this subsection.

(b) Authorizes a series established in accordance with Subsection (a) (relating to authorizing a company agreement to establish or provide for the establishment of one or more designated series of members, managers, membership interests, or assets that meets certain criteria) or a protected series or registered series established in accordance with Section 101.602, rather than with Subsection (a), to carry on any business, purpose, or activity, whether or not for profit, that is not prohibited by Section 2.003 (General Prohibited Purposes).

(c) Requires that nothing in this subchapter be construed to limit the freedom to contract to a series that is not a protected series or a registered series. Prohibits a series, except as otherwise provided by Sections 101.627 through 101.636, from merging or converting.

(d) Authorizes the provisions of the company agreement that govern a protected series or registered series to be amended by the approval of each member associated with the protected series or registered series, by the approval of the members of each other protected series and registered series if the amendment adversely affects those members, and by the approval of the members of the limited liability company that are not associated with any protected series or registered series if the amendment adversely affects those members.

Sec. 101.602. New heading: ENFORCEABILITY OF OBLIGATIONS AND EXPENSES OF PROTECTED SERIES OR REGISTERED SERIES AGAINST ASSETS. (a) Provides that the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular protected series or registered series, notwithstanding any other provision of Chapter 101 (Limited Liability Companies) or any other law, but subject to Subsection (b) and any other provision of this subchapter, are required to be enforceable against the assets of that series only, and are prohibited from being enforceable against the assets of the limited liability company generally or any other series. Makes a conforming change.

(b) Provides that Subsection (a) applies only:

(1) to the extent the records maintained for that particular protected series or registered series account for the assets associated with that series separately from the other assets of the company or any other series;

(2) if the company agreement contains a statement to the effect of the limitations provided in Subsection (a), subject to any exceptions permitted under Subsection (d); and

(3) if the company's certificate of formation contains a notice of the limitations provided in Subsection (a), subject to any exceptions permitted under Subsection (d).

Makes nonsubstantive changes.

(c) Requires that a certificate of registered series be filed with the secretary of state (SOS) to form a registered series.

(d) Creates this subsection from existing text. Provides that Subsection (a) or any provision contained in a company agreement, certificate of formation, or certificate of registered series pursuant to Subsections (a) and (b), rather than any provision contained in a limited liability company agreement or certificate of formation pursuant to Subsection (a), does not restrict:

(1) a particular protected series or registered series or a limited liability company on behalf of a particular protected series or registered series from expressly agreeing in the company agreement, the certificate of formation, any certificate of registered series, or in another written agreement that does not violate that agreement or those certificates that any of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the company generally or any other series of the company are required to be enforceable against the assets of that particular protected series or registered series if there are one or more liabilities that are recourse to the company generally or any other series and that cannot be enforced against those assets pursuant to the company agreement, the certificate of formation, any certificate of registered series, or in another written agreement that does not violate that agreement or those certificates; or

(2) makes a conforming change to this subdivision.

Makes conforming and nonsubstantive changes.

(e) Provides that a company agreement does not need to use the term "protected" or "registered" or refer to this section when referencing a series. Provides that a series established by a company agreement without designating whether the series is a protected series or registered series and without filing the certificate of registered series required by Subsection (c) is a protected series if it meets the requirements of Subsections (a) and (b), subject to any exceptions permitted by Subsection (d).

(f) Provides that a series established in accordance with this section, but without filing the certificate of registered series under Subsection (c), is a protected series.

(g) Provides that a series established in accordance with this section, including by filing the certificate of registered series under Subsection (c), is a registered series.

Sec. 101.603. New heading: ASSETS OF PROTECTED SERIES OR REGISTERED SERIES. (a) and (b) Makes conforming changes to these subsections.

(c) Defines "assets of a protected series," "assets of a registered series," "assets associated with a protected series," "assets associated with a registered series," "members or managers of a protected series," "members or managers of a registered series," "members or managers associated with a protected series," and "members or managers associated with a registered series" in this subchapter.

Sec. 101.604. New heading: NOTICE OF LIMITATION ON LIABILITIES OF PROTECTED SERIES OR REGISTERED SERIES. (a) Creates this subsection from existing text. Provides that notice of the limitation on liabilities of a protected series or registered series required by Section 101.602 that is contained in a certificate of formation filed with SOS satisfies the requirements of Section 101.602(b)(3), regardless of whether certain criteria are met, including that the notice uses the term "protected" or "registered" when referencing the series or includes a reference to Section 101.602. Makes conforming and nonsubstantive changes.

(b) Provides that the fact that the certificate of formation filed with SOS contains the notice of the limitation on liabilities of a protected series or registered series required by Section 101.602 is notice of that limitation on liabilities of a protected series or registered series.

Sec. 101.605. New heading: GENERAL POWERS OF PROTECTED SERIES OR REGISTERED SERIES. Makes conforming and nonsubstantive changes to this section.

Sec. 101.606. LIABILITY OF MEMBER OR MANAGER FOR OBLIGATIONS; DUTIES. (a) Makes conforming changes to this subsection.

(b) Authorizes a member or manager associated with a protected series or registered series or a member or manager of the company, notwithstanding Subsection (a) (relating to providing that a member or manager associated with a protected series or registered series or a member or manager of the company is not liable for a debt, obligation, or liability of a protected series or registered series), to agree to be obligated personally for any or all of the debts, obligations, and liabilities of one or more protected series or registered series under the company agreement or another agreement.

(c) Creates this subsection from existing text and makes conforming changes.

Sec. 101.607. CLASS OR GROUP OF MEMBERS OR MANAGERS. (a) Makes conforming changes to this subsection.

(b) Authorizes the company agreement to provide for the taking of an action without the vote or approval of any member or manager or class or group of members or managers, including the amendment of the company agreement or an action, rather than including the amendment of the company agreement, to create under the provisions of the company agreement a class or group of the protected series or registered series of membership interests that was not previously outstanding.

(c) Makes conforming changes to this subsection.

Sec. 101.608. GOVERNING AUTHORITY. (a) Provides that, notwithstanding any conflicting provision of the certificate of formation of a limited liability company or the certificate of registered series, rather than of the certificate of formation of a limited liability company, the governing authority of a protected series or registered series consists of the managers or members associated with the protected series or registered series as provided in the company agreement.

(b) Makes conforming and nonsubstantive changes to this subsection.

Sec. 101.609. APPLICABILITY OF OTHER PROVISIONS OF CHAPTER OR TITLE 1; SYNONYMOUS TERMS. (a)-(c) Makes conforming changes to these subsections.

Sec. 101.610. EFFECT OF CERTAIN EVENT ON MANAGER OR MEMBER. (a) and (b) Makes conforming changes to these subsections.

Sec. 101.611. MEMBER STATUS WITH RESPECT TO DISTRIBUTION. (a) and (b) Makes conforming changes to these subsections.

Sec. 101.612. RECORD DATE FOR ALLOCATIONS AND DISTRIBUTIONS. Makes a conforming change to this section.

Sec. 101.613. DISTRIBUTIONS. (a) and (b) Makes conforming changes to these subsections.

(c) Provides that, for purposes of Subsection (b) (relating to prohibiting a limited liability company from making a distribution with respect to a protected series or registered series to a member if certain criteria are met), the liabilities of a protected series or registered series do not include certain liabilities, including a liability to a member related to the member's membership interest associated with the protected series or registered series, rather than a liability related to the member's membership interest. Makes conforming changes.

(d) and (e) Makes conforming changes to these subsections.

(f) Prohibits this section from being construed to affect the obligation of a member to return a distribution to the protected series or registered series under the company agreement, another agreement, or other state or federal law, rather than to return a distribution to the series under the company agreement or other state or federal law.

(g) Makes a conforming change to this subsection.

(h) Makes no changes to this subsection.

(i) Authorizes the determination of the amount of the liabilities or the value of the assets of a protected series or registered series, for purposes of this subchapter, to be based on:

(1) financial statements of the protected series or registered series, which may include the financial statements of subsidiary entities of the protected series or registered series accounted for on a consolidated basis or on the equity method of accounting that:

(A) present the financial condition of the protected series or registered series, and any subsidiary entity included in those financial statements, in accordance with generally accepted accounting principles or international financial reporting standards; or

(B) have been prepared using the method of accounting used to file a federal income tax return for the protected series or registered series or using any other accounting practices or principles that are reasonable under the circumstances;

(2) financial information, including condensed or summary financial statements, that is prepared on the same basis as financial statements described by Subdivision (1);

(3) projections, forecasts, or other forward-looking information relating to the future economic performance, financial condition, or liquidity of the protected series or registered series that is reasonable under the circumstances;

(4) a fair valuation or information from any other method that is reasonable under the circumstances; or

(5) a combination of a statement, valuation, or information authorized by this subsection.

(j) Provides that Subsection (i) does not apply to the computation of any tax imposed on a protected series or registered series under the laws of this state.

(k) Requires that an action alleging a distribution is made in violation of this section be commenced not later than the second anniversary of the date of the distribution.

Sec. 101.614. New heading: **AUTHORITY TO WIND UP AND TERMINATE PROTECTED SERIES OR REGISTERED SERIES.** Makes a conforming change to this section.

Sec. 101.615. New heading: **TERMINATION OF PROTECTED SERIES OR REGISTERED SERIES.** (a) Provides that, except as otherwise provided by Sections 101.617, 101.618, 101.619, and 101.620, the protected series, rather than the series,

terminates on the completion of the winding up of the business and affairs of the protected series in accordance with Sections 101.617, 101.618, 101.619, and 101.620.

(b) Provides that, except as otherwise provided by Sections 101.617, 101.618, 101.619, and 101.620, the registered series terminates on the completion of the winding up of the business and affairs of the registered series in accordance with Sections 101.617, 101.618, 101.619, and 101.620, and on the effectiveness of the filing with SOS of a certificate of termination for the registered series.

(c) Creates this subsection from existing text and makes a conforming change.

(d) Creates this subsection from existing text and makes conforming and nonsubstantive changes.

Sec. 101.616. EVENT REQUIRING WINDING UP. Makes conforming changes to this section.

Sec. 101.617. New heading: PROCEDURES FOR WINDING UP AND TERMINATION OF PROTECTED SERIES OR REGISTERED SERIES. (a) Makes conforming changes to this subsection.

(b) Provides that Subchapters E (Reinstatement of Terminated Entity) and F (Involuntary Termination of Filing Entity by Secretary of State), Chapter 11 (Winding Up and Termination of Domestic Entity), and Section 11.102 (Effectiveness of Termination of Filing Entity) apply to a registered series and the associated members and managers of the registered series.

(c) Creates this subsection from existing text. Redefines "domestic entity," "filing entity," "entity," "owner," "governing authority," "governing person" "business," "property," "obligations," and "liabilities." Defines "domestic filing entity."

(d) Creates this subsection from existing text and makes conforming and nonsubstantive changes.

(e) Creates this subsection from existing text and makes a nonsubstantive change.

Sec. 101.618. REVOCATION OF VOLUNTARY WINDING UP. Makes conforming changes to this section.

Sec. 101.619. CANCELLATION OF EVENT REQUIRING WINDING UP. (a) Authorizes an event requiring winding up of the protected series or registered series under Section 101.616(2)(A) (relating to requiring that the business and affairs of a series be wound up by the time specified for winding up the series in the company agreement) or (B) (relating to requiring that the business and affairs of a series be wound up by the occurrence of an event specified with respect to the series in the company agreement), rather than Section 101.616(1) (relating to requiring that the business and affairs of a series be wound up if the winding up of the limited liability company is required under certain statutes) or (2) (relating to requiring that the business and affairs of a series be wound up on the earlier of certain dates), unless the cancellation is prohibited by the company agreement, to be canceled by the consent of all of the members of the protected series or registered series before the termination of the protected series or registered series takes effect.

(b) Makes conforming changes to this subsection.

Sec. 101.620. CONTINUATION OF BUSINESS. Makes a conforming change to this section.

Sec. 101.621. WINDING UP BY COURT ORDER. Provides that a district court in the county in which the registered office or principal place of business in this state of a domestic limited liability company is located, on application by or for a member associated with a protected series or registered series of the company, rather than a series,

has jurisdiction to order the winding up and termination of the protected series or registered series if the court makes certain determinations. Makes conforming and nonsubstantive changes.

Sec. 101.622. New heading: PROTECTED SERIES OR REGISTERED SERIES NOT A SEPARATE DOMESTIC ENTITY OR ORGANIZATION. Makes conforming changes to this section.

Sec. 101.623. FILING OF CERTIFICATE OF REGISTERED SERIES. (a) Requires that a certificate of registered series for the registered series be filed in accordance with this section to establish a registered series of a limited liability company in accordance with Section 101.602.

(b) Requires that a certificate of registered series state certain information.

(c) Authorizes a certificate of registered series to include any other provisions not inconsistent with law relating to the organization, ownership, governance, business, or affairs of the registered series.

(d) Requires that a certificate of registered series be executed by the limited liability company in accordance with Section 101.0515 (Execution of Filings) and filed with SOS in accordance with and take effect as a filing instrument as specified by Chapter 4 (Filings).

(e) Provides that a certificate of registered series is not an amendment to the certificate of formation of the limited liability company.

(f) Requires that the certificate of registered series of the registered series be filed simultaneously with the certificate of conversion or certificate of merger under Section 101.627(b) or 101.634(e) if a new registered series is established under a plan of conversion or plan of merger. Provides that the certificate of registered series is not required to be filed separately under Subsection (a). Provides that the formation and existence of a registered series that results from a conversion or merger takes effect and commences on the effectiveness of the conversion or merger.

Sec. 101.624. AMENDING CERTIFICATE OF REGISTERED SERIES. (a) Provides that a certificate of registered series is amended by filing a certificate of amendment in accordance with this section.

(b) Requires that the amendment be adopted as specified by the company agreement if the company agreement of the limited liability company specifies the manner of adopting an amendment to the certificate of registered series. Requires that the amendment be adopted as specified in the company agreement for the adoption of an amendment to the provisions of the company agreement governing the registered series if the company agreement does not specify the manner of adopting an amendment to the certificate of registered series but specifies the manner of adopting an amendment to the provisions of the company agreement governing the registered series. Requires that the amendment be approved, if the company agreement does not specify the manner of adopting an amendment to the certificate of registered series or to the provisions of the company agreement governing the registered series:

(1) by all of the members of the registered series;

(2) if the registered series does not yet have any members but has managers, by all of the managers of the registered series; or

(3) if the registered series does not have members or managers, in the manner specified by the company agreement for authorization of the establishment of a new registered series of the limited liability company.

(c) Requires that the certificate of amendment state:

(1) the name of the limited liability company;

(2) the name of the registered series;

(3) for each provision of the certificate of registered series that is added, altered, or deleted, an identification by reference or description of the added, altered, or deleted provision and, if the provision is added or altered, a statement of the text of the altered or added provision; and

(4) that the amendment has been approved in the manner required by this subchapter and by the governing documents of the registered series.

(d) Requires a manager associated with a registered series or, if there is no manager, any member associated with the registered series who becomes aware that any statement in a certificate of registered series filed with respect to the registered series was false when made, or that any provision in the certificate of registered series has changed making the certificate of registered series false in any material respect, to promptly amend the certificate of registered series.

(e) Requires that the certificate of amendment be executed by the registered series in accordance with Section 101.0515 and be filed with SOS in accordance with and take effect as a filing instrument as specified by Chapter 4.

Sec. 101.625. CERTIFICATE OF TERMINATION FOR REGISTERED SERIES. (a) Requires that a certificate of termination be filed in accordance with this section on completion of the winding up of a registered series.

(b) Requires that the certificate of termination contain certain information.

(c) Requires that the certificate of termination be executed by the registered series in accordance with Section 101.0515 and be filed with SOS in accordance with and take effect as a filing instrument as specified by Chapter 4.

(d) Prohibits SOS from issuing a certificate of fact confirming the existence of a registered series if the limited liability company has ceased to be in existence.

Sec. 101.626. NAME OF REGISTERED SERIES. Requires that the name of each registered series included in a series' certificate of registered series comply with the requirements of Chapter 5 (Names of Entities; Registered Agents and Registered Offices), and contain the name of the limited liability company and the phrase or abbreviation required by Section 5.0561.

Sec. 101.627. CONVERSION OF A REGISTERED SERIES TO A PROTECTED SERIES. (a) Authorizes a registered series of a domestic limited liability company, upon compliance with Section 101.628, to convert to a protected series of the domestic limited liability company by filing a certificate of conversion that complies with Section 101.631 with SOS in accordance with, and taking effect as a filing instrument as specified, by Chapter 4.

(b) Authorizes a protected series of a domestic limited liability company, upon compliance with Section 101.628, to convert to a registered series of the domestic limited liability company by filing simultaneously with SOS in accordance with, and taking effect as a filing instrument as specified by, Chapter 4, a certificate of conversion that complies with Section 101.631, and a certificate of registered series as provided by Section 101.623.

(c) Prohibits an existing registered series from becoming a protected series except as provided by Subsection (a) and Sections 101.628 through 101.632.

(d) Defines "conversion," "converted series," "converting series," and "plan of conversion."

Sec. 101.628. AUTHORIZATION OF CONVERSION. (a) Authorizes a converting series of a domestic limited liability company to convert to a converted series of the company by adopting a plan of conversion of the converting series to a converted series of the company.

(b) Requires that, if the company agreement of the limited liability company specifies the manner of adopting a plan of conversion of a converting series to a converted series of that company, the plan of conversion be adopted as specified by the company agreement. Requires that, if the company agreement does not specify the manner of adopting a plan of conversion of a converting series of the company to a converted series of that company and does not prohibit a conversion of a converting series to a converted series, the plan of conversion be authorized by members of the converting series who own more than 50 percent of the then-current percentage or other interest in the profits of the converting series owned by all of the members of the converting series. Requires that if the plan of conversion provides for any amendment to the company agreement, the plan of conversion also be approved in the manner required by this subchapter for the approval of that amendment.

(c) Prohibits a converting series from converting if a member associated with the converting series, as a result of the conversion, would become subject to liability under the company agreement as a member, without that member's consent, for a liability or other obligation of the converted series for which the member is not liable under the company agreement as a member of the converting series before the conversion.

(d) Provides that at the time a conversion takes effect, each member of the converting series has, unless otherwise agreed to by that member, a membership interest in and is the member of the converted series.

(e) Requires that a plan of conversion be in writing and include:

(1) the name of the converting series;

(2) the name of the converted series;

(3) a statement that the converting protected series or registered series, as applicable, is continuing its existence in the form of the converted protected series or registered series, as applicable;

(4) the manner and basis, including use of a formula, of converting the membership interests of the converting series into membership interests of the converted series;

(5) any amendment to the company agreement that may be necessary to reflect the conversion of the converting series and the establishment of the converted series; and

(6) the certificate of registered series required to be filed under this subchapter if the converted series is a registered series.

(f) Authorizes an amendment or certificate of registered series described by Subsection (e)(5) or (6) to be included in the plan of conversion by an attachment or exhibit to the plan.

(g) Authorizes any of the terms of the plan of conversion to be made dependent on a fact ascertainable outside of the plan if the manner in which those facts will operate on the terms of the conversion is clearly and expressly stated in the plan. Defines "facts."

Sec. 101.629. CONVERSION NOT WINDING UP EVENT. Provides that unless otherwise agreed, the conversion of a converting series under Sections 101.627 through 101.631 does not:

(1) require the limited liability company or the converting series to wind up the series' affairs under Section 11.051 (Event Requiring Winding Up of Domestic Entity), 11.056 (Supplemental Provisions for Limited Liability Company), 101.552 (Approval of Voluntary Winding Up, Revocation, Cancellation, or Reinstatement) or 101.616 or to pay the series' liabilities and distribute its assets under Sections 11.053 (Property Applied to Discharge Liabilities and Obligations) and 101.617; or

(2) constitute an event requiring winding up of the company or the converting series.

Sec. 101.630. EFFECT OF CONVERSION. Provides that when a conversion takes effect:

(1) the converting series continues to exist without interruption in the form of the converted series rather than in the form of the converting series;

(2) all rights, title, and interests to all property owned by the converting series continues to be owned, subject to any existing liens or other encumbrances on the property, by the converted series in the new form without reversion or impairment, further act or deed, or any transfer or assignment having occurred;

(3) all liabilities and obligations of the converting series continue to be liabilities and obligations of the converted series in the new form without impairment or diminution because of the conversion;

(4) the rights of creditors or other parties with respect to or against the previous members associated with the converting series in their capacities as members in existence when the conversion takes effect continue to exist as to those liabilities and obligations and are authorized to be enforced by the creditors and obligees as if a conversion had not occurred;

(5) a proceeding pending by or against the converting series or by or against any of the converting series' members in their capacities as members is authorized to be continued by or against the converted series in the new form and by or against the previous members without a need for substituting a party;

(6) the membership interests of the converting series that are to be converted into membership interests of the converted series as provided by the plan of conversion are converted as provided by the plan, and the former members of the converting series are entitled only to the rights provided by the plan of conversion;

(7) the amendment to the company agreement under the plan of conversion becomes effective; and

(8) if, after the conversion takes effect, a member of the converted series as a member is liable for the liabilities or obligations of the converted series, the member is liable for the liabilities and obligations of the converting series that existed before the conversion took effect only to the extent that the member agrees in writing to be liable for the liabilities or obligations, was liable, before the conversion took effect, for the liabilities or obligations, or by becoming a member of the converted series, becomes liable under other applicable law for the existing liabilities and obligations of the converted series.

Sec. 101.631. FILING OF CERTIFICATE OF CONVERSION. (a) Requires that a certificate of conversion, after adoption of a plan of conversion as provided by Section

101.628, be signed by the converting series and include a statement certifying certain information.

(b) Requires that the certificate of conversion be filed with SOS in accordance with Section 101.627.

Sec. 101.632. PROHIBITION ON CONVERSION PERMITTED. Authorizes a company agreement to prohibit the conversion of a registered series or protected series of the company under Sections 101.627 through 101.631.

Sec. 101.633. MERGER AMONG MERGING SERIES OF SAME LIMITED LIABILITY COMPANY. (a) Defines "merger," "merging series," "party to a merger," and "plan of merger."

(b) Authorizes one or more merging series of the same limited liability company to affect a merger as provided by a plan of merger that is approved in accordance with this section and that complies with Sections 101.634 through 101.636. Requires that the plan of merger provide for one or more surviving or new protected series or registered series.

(c) Requires that, unless otherwise provided by the company agreement, the plan of merger be approved by each protected series or registered series that is a party to the merger. Requires that the amendment be adopted as specified in the company agreement if the company agreement specifies the manner of adopting a plan of merger for the merging series. Requires that, if the company agreement does not specify the manner of adopting a plan of merger for the merging series but specifies the manner of adopting an amendment to the provisions of the company agreement governing the merging series, the plan of merger be adopted as specified in the company agreement for the adoption of an amendment to the provisions of the company agreement governing the merging series. Requires that, if the company agreement does not specify the manner of adopting a plan of merger for the merging series or an amendment to the provisions of the company agreement governing the merging series, the amendment be approved by members of that merging series who own more than 50 percent of the then-current percentage or other interest in the profits of that merging series owned by all of the members of that merging series. Requires that if the plan of merger provides for any amendment to the company agreement, the plan of merger also be approved in the manner required by this subchapter for the approval of that amendment.

(d) Requires that a plan of merger be in writing and include:

(1) the name of each merging series that is a party to the merger;

(2) the name of each merging series that will survive the merger;

(3) the name of each new protected series or registered series that is to be created by the plan of merger;

(4) the manner and basis, including use of a formula, of converting or exchanging any of the membership interests of each merging series that is a party to the merger into:

(A) membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving merging series or new protected series or registered series;

(B) cash;

(C) other property, including membership interests, obligations, rights to purchase securities, or other securities of any other person or entity; or

(D) any combination of the items described by Paragraphs (A)-(C);

(5) the identification of any of the membership interests of a merging series that is a party to the merger that are to be canceled rather than converted or exchanged, or to remain outstanding rather than converted or exchanged if the protected series or registered series survives the merger;

(6) any amendment to the company agreement that may be necessary to reflect the merger of the merging series and the establishment of any new protected series or registered series that is to be created by the merger;

(7) any amendment to the certificate of registered series of any registered series that is a surviving registered series, including a change in the name of the surviving registered series, that will be effected by the merger; and

(8) the certificate of registered series of each new registered series to be created by the plan of merger.

(e) Authorizes an item required by Subsections (d)(6) and (8) to be included in the plan of merger by an attachment or exhibit to the plan.

(f) Requires that, if the plan of merger provides for a manner and basis of converting or exchanging a membership interest that may be converted or exchanged in a manner or basis different than any other membership interest of the same class of the membership interest, the manner and basis of conversion or exchange be included in the plan of merger in the same manner as provided by Subsection (d)(4). Authorizes a plan of merger to provide for cancellation of a membership interest while providing for the conversion or exchange of other membership interests of the same class as the membership interest to be canceled.

(g) Authorizes any of the terms of the plan of merger to be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the merger is clearly and expressly stated in the plan. Defines "facts."

(h) Requires that, if more than one series is to survive or to be created by the plan of merger, the plan of merger include:

(1) the manner and basis of allocating and vesting the property of each merging series that is a party to the merger among one or more of the surviving or new series; and

(2) the manner and basis of allocating each liability and obligation of each merging series that is a party to the merger, or adequate provisions for the payment and discharge of each liability and obligation, among one or more of the surviving or new series.

(i) Authorizes a plan of merger to include amendments to provisions of the company agreement relating to any surviving merging series or any new protected series or registered series to be created by the merger, and any other provisions relating to the merger that are not required by this subchapter.

(j) Authorizes a plan of merger, notwithstanding prior approval, to be terminated or amended under a provision for that termination or amendment contained in the plan of merger.

(k) Prohibits a merging series from merging under this section if a member of that merging series that is a party to the merger will, as a result of the merger, become subject to liability under the company agreement as a member, without that member's consent, for a liability or other obligation of any other person for which the member is not liable under the company agreement as a member of that merging series before the merger.

Sec. 101.634. CERTIFICATE OF MERGER. (a) Requires that, after approval of a plan of merger as provided by Section 101.633, if a registered series is a party to the merger or if a new registered series is to be created by the merger, a certificate of merger be signed by each merging series that is a party to the merger and include a statement certifying the following:

(1) the name of each merging series that is a party to the merger and the name of the limited liability company that formed that merging series;

(2) that a plan of merger has been approved and executed by or on behalf of each merging series that is to merge;

(3) the name of each merging series that survives the merger and each new registered series or protected series that is created by the merger;

(4) any amendment to the certificate of registered series of any registered series that is a surviving merging series, including a change in the name of the surviving registered series, to be effected by the merger or a statement that amendments are being made to the certificate of registered series of any registered series that is a surviving merging series under a certificate of amendment attached to the certificate of merger under Subsection (d);

(5) the certificate of registered series for each new registered series that is to be created by the merger is being filed with the certificate of merger;

(6) that the plan of merger is on file at a place of business of each surviving or new registered series or the limited liability company that formed the registered series, and the address of that place of business;

(7) that a copy of the plan of merger will be on written request furnished without cost by each surviving merging series or new registered series or protected series to any member of any merging series that is a party to the merger or any registered series or protected series created by the plan of merger and, for a merger with multiple surviving or new series, to any creditor or obligee of the parties to the merger at the time of the merger if a liability or obligation is then outstanding;

(8) if approval of the members of any merging series that was a party to the plan of merger is not required by this code or the company agreement, a statement to that effect; and

(9) a statement that the plan of merger has been approved as required by this code and by the company agreement.

(b) Authorizes a certificate of merger filed under this section, as provided by Subsection (a)(4), to include as an attachment a certificate of amendment containing amendments to the certificate of registered series for any registered series that is a surviving registered series of the merger.

(c) Provides that a certificate of merger that contains any amendment or certificate of amendment to the certificate of registered series of a registered series that is a surviving registered series in accordance with Subsection (a)(4) and, if applicable, Subsection (b) is considered to be an amendment to the certificate of registered series of that surviving registered series. Provides that no further action is required to amend the certificate of registered series of the surviving registered series under Section 101.624 with respect to the amendment.

(d) Requires that the certificate of merger be filed with SOS in accordance with, and take effect as a filing instrument as specified by Chapter 4. Requires that, if a new registered series is to be created by the merger, a certificate of registered series for the new registered series that complies with Section 101.623 be simultaneously filed with the certificate of merger in accordance with Chapter 4

as a filing instrument and take effect simultaneously with the effectiveness of the certificate of merger.

(e) Provides that whenever this section requires the filing of a certificate of merger, that requirement is satisfied by the filing of the plan of merger containing the information required to be included in the certificate of merger as provided by this section.

Sec. 101.635. EFFECTS OF MERGER OF MERGING SERIES. (a) Provides that when a merger of merging series takes effect:

(1) the separate existence of each merging series that is a party to the merger, other than a surviving merging series or a new protected series or registered series, ceases;

(2) all rights, title, and interests to all real estate and other property owned by each merging series that is a party to the merger is allocated to and vested, subject to any existing liens or other encumbrances on the property, in one or more of the series as provided by the plan of merger without reversion or impairment, any further act or deed, or any transfer or assignment having occurred;

(3) all liabilities and obligations of each merging series that is a party to the merger are allocated to one or more of the surviving or new series provided by the plan of merger;

(4) each surviving or new series to which a liability or obligation is allocated under the plan of merger is the primary obligor for the liability or obligation, and, except as otherwise provided by the plan of merger or by law or contract, no other party to the merger, other than a surviving merging series liable or otherwise obligated at the time of the merger, and no other new registered series or protected series created under the plan of merger is liable for the debt or other obligation;

(5) any proceeding pending by or against any merging series that is a party to the merger is authorized to be continued as if the merger did not occur, or the surviving or new series to which the liability, obligation, asset, or right associated with that proceeding is allocated to and vested in under the plan of merger is authorized to be substituted in the proceeding;

(6) any amendment to the company agreement provided by the plan of merger becomes effective;

(7) any amendment to the certificate of registered series of a surviving registered series that is contained in the certificate of merger, and any certificate of amendment attached to the certificate of merger that contains amendments to the certificate of registered series of a surviving registered series, becomes effective;

(8) each new registered series whose certificate of registered series is included in the plan of merger and filed with the certificate of merger, on meeting any additional requirements, if any, of this subchapter for the series' formation, is formed as a registered series under this subchapter as provided by the plan of merger; and

(9) the membership interests of each merging series that is a party to the merger and that are to be converted or exchanged, wholly or partly, into membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new series, into cash or other property, including membership interests, obligations, rights to purchase securities, or other securities of any organization, or into any combination of these, or that are to be canceled or remain outstanding, are converted,

exchanged, canceled, or remain outstanding as provided in the plan of merger, and the former members who held membership interests of each merging series that is a party to the merger are entitled only to the rights provided by the plan of merger.

(b) Provides that if the plan of merger does not provide for the allocation and vesting of the right, title, and interest in any particular real estate or other property or for the allocation of any liability or obligation of any party to the merger, the unallocated property is owned in undivided interest by, or the liability or obligation is the joint and several liability and obligation of, each of the surviving and new series, pro rata to the total number of surviving and new series resulting from the merger.

(c) Provides that, unless otherwise agreed, a merger of a merging series of a limited liability company, including a merging series which is not a surviving or new series resulting from the merger:

(1) does not require such merging series to wind up its affairs under Section 101.616 or pay its liabilities and distribute its assets under Sections 11.053 and 101.617; and

(2) does not constitute an event requiring winding up of the merging series.

Sec. 101.636. PROHIBITION ON MERGER PERMITTED. Authorizes a company agreement to provide that a protected series or registered series company does not have the power to merge under Section 101.633.

SECTION 2. Amends Section 1.201(b)(27), Business & Commerce Code, to redefine "person."

SECTION 3. Amends Section 9.102(a)(71), Business & Commerce Code, to redefine "registered organization" in Chapter 9 (Secured Transactions).

SECTION 4. Amends Sections 71.002(2), (4), and (9), Business & Commerce Code, to redefine "assumed name," "company," and "person" in Chapter 71 (Assumed Business or Professional Name).

SECTION 5. Amends Section 71.003, Business & Commerce Code, by adding Subsection (b-1), to provide that Chapter 71 does not require a registered series of a limited liability company or its members to file a certificate to conduct business or render a professional service in this state under the name of the registered series as stated in the series' certificate of registered series.

SECTION 6. Amends Section 71.051, Business & Commerce Code, as follows:

Sec. 71.051. CERTIFICATE FOR CERTAIN UNINCORPORATED PERSONS. Requires a person to file a certificate under Subchapter B (Requirements Applicable to Certain Unincorporated Persons) if the person regularly conducts business or renders a professional service in this state under an assumed name other than as certain entities, including a protected series or registered series of a limited liability company.

SECTION 7. Amends Section 71.101, Business & Commerce Code, as follows:

Sec. 71.101. New heading: CERTIFICATE FOR INCORPORATED BUSINESS OR PROFESSION, LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY, REGISTERED SERIES, OR FOREIGN FILING ENTITY. Requires certain entities, including a registered series of a limited liability company, to file a certificate under Subchapter C (Requirements Applicable to Incorporated Business or Profession and Certain Other Entities) if the registered series or entity, rather than the entity, meets certain criteria.

SECTION 8. Amends Section 71.102, Business & Commerce Code, as follows:

Sec. 71.102. CONTENTS OF CERTIFICATE. Requires that the certificate state:

- (1) makes no changes to this subdivision;
- (2) the registrant's name as stated in the registrant's certificate of formation or application filed with the office of SOS or other comparable document, except that:
 - (A) if the registrant is a limited liability company that is filing under an assumed name used by a protected series of the limited liability company, the certificate is required to state the name of that protected series as stated in the company agreement of the limited liability company and the name of the limited liability company as stated in the company's certificate of formation; or
 - (B) if the registrant is a registered series of a limited liability company, the certificate is required to state the registrant's name as stated in its certificate of registered series and the name of the limited liability company as stated in the company's certificate of formation;
- (3) the state, country, or other jurisdiction under the laws of which the registrant was formed, incorporated, or organized, rather than incorporated or organized;
- (4) makes no changes to this subdivision;
- (5) a statement specifying that the registrant is a certain type of entity, including a registered series of a limited liability company;
- (6) and (7) makes no changes to these subdivisions.

SECTION 9. Amends Section 71.103(a), Business & Commerce Code, to require certain entities required to file a certificate under Section 71.101, including a registered series of a limited liability company, to file the certificate in the office of SOS.

SECTION 10. Amends Section 1.002, Business Organizations Code, by amending Subdivision (69-b) and adding Subdivisions (77-a), (78-a), and (79-a), to redefine "person" and to define "protected series," "registered series," and "series" for this code.

SECTION 11. Amends Subchapter D, Chapter 4, Business Organizations Code, by adding Section 4.162, as follows:

Sec. 4.162. **FILING FEES: REGISTERED SERIES OF LIMITED LIABILITY COMPANY.** (a) Requires SOS, for a filing by or for a registered series of a domestic limited liability company, to impose certain fees.

(b) Requires SOS, for a filing by or for a registered series of a domestic limited liability company when no other fee has been provided, to impose the same fee as the filing fee for a similar instrument under Section 4.151 (Filing Fees: All Entities).

SECTION 12. Amends Section 5.001, Business Organizations Code, as follows:

Sec. 5.001. **EFFECT ON RIGHTS UNDER OTHER LAW.** (a) Provides that the filing of certain certificates and applications, including for a certificate of registered series, does not authorize the use of a name in this state in violation of a right of another under certain statutes.

(b) Requires SOS to deliver a notice that contains the substance of Subsection (a) to certain persons, including a registered series of a domestic limited liability company that files a certificate of registered series.

SECTION 13. Amends Section 5.051, Business Organizations Code, as follows:

Sec. 5.051. ASSUMED NAME. Authorizes certain entities, including a protected series or registered series of a domestic limited liability company, to transact business under an assumed name by filing an assumed name certificate in accordance with Chapter 71, Business & Commerce Code.

SECTION 14. Amends Section 5.052, Business Organizations Code, as follows:

Sec. 5.052. UNAUTHORIZED PURPOSE IN NAME PROHIBITED. (a) Creates this subsection from existing text and makes no further changes.

(b) Prohibits a registered series from having a name that contains any word or phrase that indicates or implies that the registered series is engaged in a business that the registered series is not authorized by law to pursue.

SECTION 15. Amends Section 5.053(a), Business Organizations Code, as follows:

(a) Requires that the name of certain entities, including a registered series of a domestic limited liability company, be distinguishable in the records of SOS from the names of certain other entities, including the name of another existing registered series of a domestic limited liability company.

SECTION 16. Amends Subchapter B, Chapter 5, Business Organizations Code, by adding Section 5.0561, as follows:

Sec. 5.0561. NAME OF REGISTERED SERIES OF LIMITED LIABILITY COMPANY. Requires that the name of a registered series of a limited liability company contain the phrase "registered series" or the abbreviation "RS" or "R.S." of that phrase.

SECTION 17. Amends Section 5.061, Business Organizations Code, as follows:

Sec. 5.061. NAME CONTAINING "LOTTO" OR "LOTTERY" PROHIBITED. Prohibits certain entities, including a registered series of a domestic limited liability company, from having a name that contains the word "lotto" or "lottery." Makes a nonsubstantive change.

SECTION 18. Amends Section 5.062(a), Business Organizations Code, as follows:

(a) Prohibits a filing entity or a registered series of a domestic limited liability company, rather than a filing entity, subject to Subsection (b) (relating to the provision that Subsection (a) does not apply to a filing entity with a name approved in writing by certain veteran's organizations), from having certain names. Makes a conforming change.

SECTION 19. Amends Section 5.102(a), Business Organizations Code, as follows:

(a) Authorizes SOS to reserve a name under Subchapter C (Reservation of Names) only if the name is distinguishable in the records of SOS from certain names, including the name of an existing registered series of a domestic limited liability company. Makes nonsubstantive changes.

SECTION 20. Amends Section 5.153(a), Business Organizations Code, as follows:

(a) Authorizes SOS to register a name under Subchapter D (Registration of Names) only if the name is distinguishable in the records of SOS from certain names, including the name of an existing registered series of a domestic limited liability company. Makes nonsubstantive changes.

SECTION 21. Amends Section 5.301, Business Organizations Code, as follows:

Sec. 5.301. APPLICABILITY OF SUBCHAPTER. (a) Creates this subsection from existing text and makes no further changes.

(b) Defines "series" for purposes of Subchapter F-1 (Service of Process on Series of Limited Liability Company or Foreign Entity).

SECTION 22. Amends Section 11.206, Business Organizations Code, as follows:

Sec. 11.206. EFFECT OF REINSTATEMENT. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that the reinstatement of a terminated limited liability company automatically reinstates any protected series or registered series that terminated because of the termination of the company.

SECTION 23. Amends Section 101.0515, Business Organizations Code, as follows:

Sec. 101.0515. EXECUTION OF FILINGS. (a) Creates this subsection from existing text and makes no further changes.

(b) Requires that a filing instrument of a registered series of a domestic limited liability company be signed by an authorized officer, manager, or member of the registered series unless otherwise provided by Title 3 (Limited Liability Companies).

SECTION 24. Amends Section 101.054(a), Business Organizations Code, as follows:

(a) Prohibits the following provisions from being waived or modified in the company agreement of a limited liability company, except as provided by Section 101.054 (Waiver or Modification of Certain Statutory Provisions Prohibited; Exceptions):

(1) makes no change to this subdivision;

(2) certain sections or Subchapter M of Chapter 101, except that Sections 101.601(d), 101.610, 101.611, 101.613(a), 101.616(2)(A) through (D), 101.618, or 101.619(b) are authorized to be waived or modified in the company agreement;

(3)-(6) makes no changes to these subdivisions.

SECTION 25. Makes application of Sections 101.611, 101.612, and 101.613, Business Organizations Code, as amended by this Act, prospective.

SECTION 26. Effective date: June 1, 2022.