

BILL ANALYSIS

C.S.H.B. 1154
By: Elkins
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During the 78th Legislative session, the Legislature passed H.B. 1156 adopting a new Business Organizations Code (BOC) effective January 1, 2006. Limited liability companies (“LLCs”) 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 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 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 the Secretary of State’s office. For example, the proposed amendments eliminate outmoded conversion provisions applicable to certain partnership conversions. These conversion provisions, which predated the more comprehensive and modern conversion provisions applicable to all other types of conversions, were not carried forward into the BOC and are a source of confusion under current law that would be exacerbated when the BOC takes effect. Repealing these provisions and subsuming these types of partnership conversions in the general conversion provisions will eliminate this source of confusion. Additional amendments proposed by the bill resolve other inconsistencies in the statutes and make clarifications and corrections with respect to transactions involving filings with the Secretary of State’s office in order to facilitate these transactions during the transition period leading up to the full implementation of the BOC.

The purpose of C.S.H.B. 1154 is to make amendments to the TLLCA, TRLPA, and TRPA that generally (1) make technical corrections and clarifications to provisions that involve filings with the Secretary of State, and (2) more closely conform the current statutes to the BOC with respect to procedures involved in certain transactions that culminate in a filing with the Secretary of State. These changes will eliminate confusion that might otherwise arise if differing procedures are involved depending upon the formation date of the entity when an entity is effecting a transaction that involves a filing with the Secretary of State’s office.

RULEMAKING AUTHORITY

It is the opinion of the author that this bill does not expressly grant any rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Sections G and H, Article 2.23, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), to simplify the provisions and more closely conform the approval requirements for dissolution and amendment of the articles of organization prior to the commencement of an LLC’s business to the BOC.

- SECTION 2. Amends Section A, Article 3.06, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), to simplify the provisions regarding execution of articles of amendment and conform them to the BOC.
- SECTION 3. Amends Section D, Article 3.09 Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), to simplify the provisions regarding execution of restated articles of amendment and conform them to the BOC.
- SECTION 4. Amends Section A, Article 6.01, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), to conform to the changes in Article 2.23.
- SECTION 5. Amends Section A, Article 6.03, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), to clarify, consistent with the BOC, who has authority to wind up an LLC in the case of a dissolution caused by the termination of the continued membership of the last remaining member of the LLC.
- SECTION 6. Amends Section A, Article 6.07, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), to conform the requirements for articles of dissolution to the changes made to Articles 2.23 and 6.03.
- SECTION 7. Amends Section B, Article 8.12, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), to eliminate cross-references to statutes that were repealed during the 78th Legislative session.
- SECTION 8. Amends Section 2.03(c), and adds a new Subsection (d), Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), follows:
- Makes conforming changes Section 2.15.
- Provides that the Secretary of State shall regard a limited partnership as continuing in existence until the certificate of cancellation is filed.
- SECTION 9. Adds a new Section 2.03-A, Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), providing for revocation of a voluntary cancellation by a limited partnership as is provided under existing law for corporations and LLCs and under the BOC.
- SECTION 10. Amends Section 2.15(e-1) and (f), Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes), as follows:
- Corrects an omission and clarifies the filing requirements for a conversion.
- Corrects an incorrect cross-reference.
- SECTION 11. Amends Section 2.15(h)(4), Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes Texas), by defining “other entity” to conform to the repeal of the conversion provisions in Section 9.01 of the TRPA and make the general conversion provisions applicable to a limited partnership to general partnership conversion.

SECTION 12. Amends Section 6.01(b), Texas Revised Partnership Act (Article 6132b-6.01, Vernon's Texas Civil Statutes), to conform to the repeal of the conversion provisions in Section 9.01 of the TRPA.

SECTION 13. Amends Section 9.02, Texas Revised Partnership Act (Article 6132b-9.02, Vernon's Texas Civil Statutes), by amending Subsection (d) and adding a new Subsection (i), as follows:

Provides that articles of merger may contain a statement in lieu of the actual plan of merger, in conformity with the merger provisions in the other existing business entity statutes and the BOC.

Adds a new Subsection (i) to correct an omission and provide a definition of "merger" in conformity with the other existing statutes and the BOC.

SECTION 14. Amends Sections 9.05(e) and (g), Texas Revised Partnership Act (Article 6132b-9.05, Vernon's Texas Civil Statutes), as follows:

Makes conforming changes.

Corrects the incorrect reference to "merger" and replaces it with "conversion".

SECTION 15. Amends Section 9.05(i)(6), Texas Revised Partnership Act (Article 6132b-9.05, Vernon's Texas Civil Statutes), to define "other entity" to conform to the repeal of the conversion provisions in Section 9.01 of the TRPA and make the general conversion provisions applicable to a general partnership to limited partnership conversion.

SECTION 16. Repeals Section 9.01, Texas Revised Partnership Act (Article 6132b-9.01, Vernon's Texas Civil Statutes), to eliminate outmoded conversion provisions applicable to conversions of a partnership to a limited partnership and vice versa, and repeals Section 6.01(c), TRPA to conform with the repeal of Section 9.01.

SECTION 17. Effective Date.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 14. Adds a new SECTION 14 to Amend Sections 9.05(e) and (g), Texas Revised Partnership Act (Article 6132b-9.05, Vernon's Texas Civil Statutes), as follows:

Makes conforming changes.

Corrects the incorrect reference to "merger" and replaces it with "conversion".

Renumbers subsequent sections accordingly.