

BILL ANALYSIS

H.B. 1507
By: Solomons
Business & Industry
Committee Report (Unamended)

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. The BOC was the product of a combined effort by the Business Law Section of the State Bar of Texas, the Texas Secretary of State's office and the Texas Legislative Council.

Corporations formed in Texas on or after January 1, 2006 will be governed by the BOC, while corporations formed prior to that date will continue to be governed by the Texas Business Corporation Act (TBCA) until January 1, 2010, unless any such corporation elects to be governed by the BOC on an earlier date. Therefore, the existing TBCA will continue to govern many corporations for the next four (4) years.

HB 1507 contains amendments to the TBCA that generally: (1) incorporate into the TBCA changes that conform the TBCA to the BOC with respect to procedures involved in certain transactions that culminate in a filing with the Secretary of State; (2) correct technical errors in the TBCA; and (3) clarify certain TBCA provisions. 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

This bill does not expressly grant any rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. amends Section 2.05 of the TBCA to conform to BOC Section 5.054 which sets forth the approved words that a domestic corporation's name must contain.

SECTION 2. amends Section 2.06(A) of the TBCA to conform to BOC Section 5.101 which addresses what individuals or entities may reserve a corporate name.

SECTION 3. amends Section 2.06(B) of the TBCA to codify the provision in BOC Section 5.105 addressing successive renewals of an application for a corporate name reservation.

SECTION 4. amends Section 2.07(B) of the TBCA to conform with BOC Section 5.152 which addresses the requirements for a corporation in its registration of a corporate name.

SECTION 5. amends Section 2.10(A) of the TBCA to conform with BOC Section 5.202 which, for clarification purposes, replaces references to a registered agent's "post office address" with "street address."

SECTION 6. amends Section 2.19(B) of the TBCA to make a correction with respect to the required language to be set forth on stock certificates regarding the limitation or denial of preemptive rights.

SECTION 7. amends Section 2.24(B) of the TBCA to conform to an addition made by BOC Section 21.351 with respect to a shareholder's attempting to obtain a court order requiring a shareholder meeting.

SECTION 8. amends Section 3.02(A) of the TBCA to make a correction to current TBCA Section 3.02 with respect to (1) the required provisions in articles of incorporation regarding any limitation or denial of preemptive rights and (2) the omission of a required provision of articles of incorporation regarding the granting of cumulative voting in the election of directors.

SECTION 9. amends Section 4.04(B) of the TBCA to conform to BOC Section 3.053 which provides that a certificate of amendment need not specify the date of amendment adoption.

H.B. 1507 79(R)

SECTION 10. amends Section 5.01(B) of the TBCA to conform with BOC Section 10.002 which clarifies the required disclosure set forth in a plan of merger.

SECTION 11. amends Section 5.03(H-1) of the TBCA to make a correction to current TBCA Section 5.03(H-1) with respect to the definition of the term “organizational documents.”

SECTION 12. amends Section 5.03(I) of the TBCA to make a correction to current TBCA Section 5.03(I) with respect to the definition of “direct or indirect wholly owned subsidiary.”

SECTION 13. amends Section 5.06A of the TBCA to conform with BOC Section 10.008 which addresses the ability of merging parties to allocate the obligation to pay dissenting owners the fair value of their interests.

SECTION 14. amends Section 5.12 of the TBCA to conform to the addition made by BOC Section 10.362 with respect to the determination of “fair value” for an ownership interest.

SECTION 15. amends Section 6.04 of the TBCA by adding Section B to conform to BOC Section 11.053 which addresses the procedure and timing with respect to filing a corporation’s articles of dissolution.

SECTION 16. amends Section 7.07(A) of the TBCA to conform with BOC Section 11.406 which describes who may serve as a receiver for a corporation.

SECTION 17. amends Section 7.09(A) of the TBCA to clarify that the procedure in proposed Section 7.10(B) (set forth below) determines when the existence of a judicially dissolved corporation shall cease.

SECTION 18. amends Section 7.10 of the TBCA by adding Section B to state what event effects the cessation of corporate existence pursuant to a judicial decree.

SECTION 19. amends Section 8.13(A) of the TBCA to conform with BOC Section 9.009 addressing the deadline for an application for amendment with respect to a certificate of authority of a foreign corporation.

SECTION 20. amends Section 8.16 of the TBCA to conform with BOC Section 9.009 which states that grounds for revocation of a certificate of authority of a foreign corporation.

SECTION 21. adds a new Section 8.19 to the TBCA to correct an omission in the proper venues for lawsuits brought under TBCA Section 8.18.

SECTION 22. amends Section 10.02 of the TBCA to conform with BOC Section 4.008 which addresses penalties for a person’s signing or directing the filing of a materially false document.

EFFECTIVE DATE

HB 1507 is effective September 1, 2005 and would apply to offenses that occur on or after the effective date of the bill.