

By: Elkins

H.B. No. 1154

A BILL TO BE ENTITLED

AN ACT

relating to limited liability companies and partnerships.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections G and H, Article 2.23, Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), are amended to read as follows:

G. 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, a majority of the managers named in the articles of organization may amend the articles of organization or dissolve the limited liability company. ~~[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, a majority of the members named in the articles of organization may amend the articles of organization or dissolve the limited liability company. In such event, the persons adopting such amendments to the articles of organization or authorizing such dissolution shall sign and file with the Secretary of State the articles of amendment provided for in Articles 3.06 and 3.07 of this Act and the articles of dissolution provided for in Articles 6.05, 6.07, and 6.08 of this Act, as appropriate.]~~

H. Except as provided in Section G of this Article, the

1 articles of organization, or the regulations, [~~if any capital has~~
2 ~~been paid into the limited liability company or the limited~~
3 ~~liability company has otherwise commenced business,~~] the
4 affirmative vote, approval, or consent of all members is required
5 to amend the articles of organization.

6 SECTION 2. Section A, Article 3.06, Texas Limited Liability
7 Company Act (Article 1528n, Vernon's Texas Civil Statutes), is
8 amended to read as follows:

9 A. The articles of amendment shall be executed on behalf of
10 the limited liability company by an authorized manager or member [~~,~~
11 ~~or in the case of an amendment of the articles of organization by~~
12 ~~action of a majority of the initial managers or of a majority of the~~
13 ~~initial members as provided in Section 2.23 of this Act, by a~~
14 ~~majority of the initial managers or a majority of the initial~~
15 ~~members as provided in Section 2.23 of this Act)].~~

16 SECTION 3. Section D, Article 3.09, Texas Limited Liability
17 Company Act (Article 1528n, Vernon's Texas Civil Statutes), is
18 amended to read as follows:

19 D. Restated articles of organization must be executed on
20 behalf of the limited liability company by an authorized manager or
21 member [~~unless capital has not been paid into the limited liability~~
22 ~~company and the restated articles of organization have been adopted~~
23 ~~by action of a majority of the initial managers or a majority of the~~
24 ~~initial members named in the articles of organization as provided~~
25 ~~by Article 2.23 of this Act, in which case the restated articles of~~
26 ~~organization may be executed on behalf of the limited liability~~
27 ~~company by a majority of the persons adopting such restated~~

1 ~~articles~~]. The original and a copy of the restated articles of
2 organization shall be delivered to the Secretary of State. If the
3 Secretary of State finds that the restated articles of organization
4 conform to law, and the appropriate filing fee is paid as required
5 by law, the Secretary of State shall:

6 (1) endorse on the original and the copy the word
7 "Filed" and the month, day, and year of filing;

8 (2) file the original in the Secretary of State's
9 office; and

10 (3) issue a restated certificate of organization and
11 affix the copy to the restated certificate of organization.

12 SECTION 4. Section A, Article 6.01, Texas Limited Liability
13 Company Act (Article 1528n, Vernon's Texas Civil Statutes), is
14 amended to read as follows:

15 A. Except as provided by Section B or C of this Article, a
16 limited liability company shall be dissolved on the first of the
17 following to occur:

18 (1) the period, if any, fixed for the duration of the
19 limited liability company expires;

20 (2) the occurrence of events specified in the articles
21 of organization or regulations to cause dissolution;

22 (3) the action of the members to dissolve the limited
23 liability company;

24 (4) if the limited liability company has no members,
25 no capital has been paid into the limited liability company, and the
26 limited liability company has not otherwise commenced business, the
27 act of a majority of the managers [~~or members~~] named in the articles

1 of organization to dissolve the limited liability company as
2 provided by Section G of Article 2.23 of this Act;

3 (5) except as otherwise provided in the regulations,
4 the occurrence of any event that terminates the continued
5 membership of the last remaining member of the limited liability
6 company; or

7 (6) entry of a decree of judicial dissolution under
8 Section 6.02 of this Act.

9 SECTION 5. Section A, Article 6.03, Texas Limited Liability
10 Company Act (Article 1528n, Vernon's Texas Civil Statutes), is
11 amended to read as follows:

12 A. On the dissolution of a limited liability company, the
13 limited liability company's affairs shall be wound up as soon as
14 reasonably practicable. The winding up shall be accomplished by the
15 managers or members or by any other person or persons designated by
16 the articles of organization, by the regulations, or by resolution
17 of the managers or members. In the case of a dissolution caused by
18 the termination of the continued membership of the last remaining
19 member of the limited liability company, the winding up shall be
20 accomplished by the legal representative or successor of the last
21 remaining member or by one or more persons designated by the legal
22 representative or successor. In addition, a court of competent
23 jurisdiction, on cause shown, may wind up the limited liability
24 company's affairs on application of any member or the member's legal
25 representative or assignee and, in connection with the winding up,
26 may appoint a person to carry out the liquidation and may make all
27 other orders, directions, and inquiries that the circumstances

1 require.

2 SECTION 6. Section A, Article 6.07, Texas Limited Liability
3 Company Act (Article 1528n, Vernon's Texas Civil Statutes), is
4 amended to read as follows:

5 A. If voluntary dissolution proceedings have not been
6 revoked, then, when all liabilities and obligations of the limited
7 liability company have been paid or discharged, or adequate
8 provision has been made therefor, or in case its property and assets
9 are not sufficient to satisfy and discharge all the limited
10 liability company's liabilities and obligations, then when all the
11 property and assets have been applied so far as they will go to the
12 just and equitable payment of the limited liability company's
13 liabilities and obligations, and all of the remaining property and
14 assets of the limited liability have been distributed to its
15 members according to their respective rights and interest, articles
16 of dissolution shall be executed on behalf of the limited liability
17 company by a manager or authorized member, or if the existence of
18 the last remaining member of the limited liability company has
19 terminated, by the legal representative or successor of the last
20 remaining member. The articles of dissolution [~~in accordance with~~
21 ~~Section C, Article 2.23, of this Act, which]~~ shall set forth:

22 (1) The name of the limited liability company.

23 (2) The names and respective addresses of its
24 managers, if any.

25 (3) That all debts, obligations, and liabilities of
26 the limited liability company have been paid or discharged or that
27 adequate provision has been made therefor, or, in case the limited

1 liability company's property and assets were not sufficient to
2 satisfy and discharge all its debts, liabilities, and obligations,
3 that all property and assets have been applied so far as they will
4 go to the payment thereof in a just and equitable manner and that no
5 property or assets remain available for distribution among its
6 members, or, that the limited liability company has not acquired
7 any debts, obligations, or liabilities.

8 (4) That all remaining property and assets of the
9 limited liability company have been distributed among its members
10 in accordance with their respective rights and interest or that no
11 property remained for distribution to members after applying it as
12 far as it would go to the just and equitable payment of the debts,
13 liabilities, and obligations of the limited liability company, or
14 that the limited liability company has not acquired any property or
15 assets and therefore distributions to members were not required.

16 (5) If the limited liability company has no members,
17 has not received any capital [~~has not been paid into the limited~~
18 ~~liability company~~], and has not otherwise commenced business,
19 a statement that the resolution was adopted [~~by the act of a majority~~
20 ~~of the initial managers or a majority of the initial members named~~
21 ~~in the articles of organization~~] in accordance with Section G,
22 Article 2.23, of this Act and of the date of adoption.

23 (6) If the limited liability company elected to
24 dissolve by action of its members, a statement that the resolution
25 was adopted in accordance with Section D, Article 2.23, of this Act
26 or as otherwise provided in the articles of incorporation or the
27 regulations and of the date of adoption.

1 SECTION 7. Section B, Article 8.12, Texas Limited Liability
2 Company Act (Article 1528n, Vernon's Texas Civil Statutes), is
3 amended to read as follows:

4 B. Subject to Section C of this Article, Articles 2.05,
5 [~~2.03 through~~] 2.06, [~~2.09, 2.09A,~~] 3.01, 7.01 through 7.05, and
6 7.07, Texas Miscellaneous Corporation Laws Act (Article 1302-1.01
7 et seq., Vernon's Texas Civil Statutes), as amended, apply to a
8 limited liability company and its members, managers, and officers.

9 SECTION 8. Section 2.03, Texas Revised Limited Partnership
10 Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended by
11 amending Subsection (c) and adding Subsection (d) to read as
12 follows:

13 (c) If, in the case of merger or conversion, one or more
14 limited partnerships formed under this Act are not the surviving or
15 resulting domestic limited partnership or partnerships or other
16 entity or entities, the certificate of merger or conversion filed
17 under Subsection (e) [~~(d)~~] of Section 2.11 or Subsection (e-1)
18 [~~(e)~~] of Section 2.15 of this Act is sufficient, without a filing
19 under this section, to cancel the certificate of limited
20 partnership of those nonsurviving limited partnerships.

21 (d) Except as provided by Subsection (c) of this section,
22 the secretary of state shall regard a limited partnership as
23 continuing in existence until the certificate of cancellation is
24 filed.

25 SECTION 9. Section 1.07(d), Texas Revised Limited
26 Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes),
27 is amended to read as follows:

1 (d) A partner or an assignee of a partnership interest, on
2 written request stating the purpose, may examine and copy, in
3 person or by the partner's or assignee's representative, at any
4 reasonable time, for any proper purpose, and at the partner's
5 expense, records required to be kept under this section and other
6 information regarding the business, affairs, and financial
7 condition of the limited partnership as is just and reasonable for
8 the person to examine and copy. Records and information subject to
9 this subsection include general ledgers.

10 SECTION 10. Article 2, Texas Revised Limited Partnership
11 Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended by
12 adding Section 2.03-A to read as follows:

13 Sec. 2.03-A. REVOCATION OF VOLUNTARY CANCELLATION. (a)
14 Unless prohibited by a written partnership agreement, not later
15 than the 120th day after the date a certificate of cancellation is
16 filed with the secretary of state, a domestic limited partnership
17 may revoke the certificate of cancellation by written consent of
18 all partners.

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

27 (c) The certificate of revocation of cancellation shall set

1 forth:

2 (1) the name of the limited partnership;

3 (2) the date the revocation of the cancellation was
4 authorized and, if the certificate of cancellation has become
5 effective, the effective date of the certificate of cancellation
6 that was revoked; and

7 (3) a statement that the limited partnership elected
8 to revoke the cancellation of its certificate by written consent of
9 all partners.

10 (d) Except as provided by Subsection (e) of this section, if
11 the secretary of state finds that the certificate of revocation of
12 cancellation conforms to law and the appropriate filing fee is paid
13 as required by law, the secretary of state shall file the
14 certificate of revocation of cancellation in accordance with
15 Section 2.07 of this Act.

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

23 (f) Upon the filing of the certificate of revocation of
24 cancellation, the limited partnership may:

25 (1) reconstitute the limited partnership for purposes
26 of continuing its business as permitted by this Act and its
27 partnership agreement; or

1 (2) if the business of the partnership is not to be
2 continued, complete the process of winding up the affairs of the
3 partnership as provided by Section 8.04 of this Act.

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

7 SECTION 11. Section 2.15, Texas Revised Limited Partnership
8 Act (Article 6132a-1, Vernon's Texas Civil Statutes), is amended by
9 adding Subsection (e-1) and amending Subsection (f) to read as
10 follows:

11 (e-1) The original and one copy of the articles of
12 conversion shall be delivered to the secretary of state. Two copies
13 of the certificate of limited partnership of the domestic limited
14 partnership, if the converted entity is a domestic limited
15 partnership, shall also be delivered to the secretary of state with
16 the articles of conversion. If the secretary of state finds that the
17 articles of conversion conform to law, has received all filings
18 required to be received, and has issued any certificates required
19 to be issued in connection with the incorporation, formation, or
20 organization of the converted entity, the secretary of state shall,
21 if all fees and franchise taxes have been paid as required by law or
22 the articles of conversion provide that the converted entity will
23 be liable for the payment of all such fees and franchise taxes:

24 (1) endorse on the original and each copy the word
25 "Filed" and the month, day, and year of filing;

26 (2) file the original in the office of the secretary of
27 state; and

1 (3) issue a certificate of conversion, with a copy of
2 the articles affixed on the certificate, to the converted entity or
3 its representatives.

4 (f) Except as otherwise provided by Section 2.12 [~~2.14~~] of
5 this Act, on the issuance of the certificate of conversion by the
6 secretary of state, the conversion of a converting entity shall be
7 effective.

8 SECTION 12. Section 2.15(h)(4), Texas Revised Limited
9 Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes),
10 is amended to read as follows:

11 (4) "Other entity" means any entity, whether organized
12 for profit or not, that is a corporation, partnership [~~other than a~~
13 ~~limited partnership or a general partnership (including a joint~~
14 ~~venture) governed by the Texas Revised Partnership Act (Article~~
15 ~~6132b-1.01 et seq., Vernon's Texas Civil Statutes)]], limited
16 liability company, joint stock company, cooperative, association,
17 bank, insurance company, or other legal entity organized pursuant
18 to the laws of this state or any other state or country.~~

19 SECTION 13. Section 6.01(b), Texas Revised Partnership Act
20 (Article 6132b-6.01, Vernon's Texas Civil Statutes), is amended to
21 read as follows:

22 (b) Event of Withdrawal. An event of withdrawal of a
23 partner occurs on:

24 (1) receipt by the partnership of notice of the
25 partner's express will to withdraw as a partner on the date of
26 receipt of the notice or on a later date specified in the notice;

27 (2) an event specified in the partnership agreement as

1 causing the partner's withdrawal;

2 (3) the partner's expulsion as provided in the
3 partnership agreement;

4 (4) the partner's expulsion by the vote of a
5 majority-in-interest of the other partners if:

6 (A) it is unlawful to carry on the partnership
7 business with that partner;

8 (B) there has been a transfer of all or
9 substantially all of that partner's partnership interest, other
10 than:

11 (i) a transfer for security purposes that
12 has not been foreclosed; or

13 (ii) the substitution of a successor
14 trustee or successor personal representative;

15 (C) within 90 days after the date the partnership
16 notifies a corporate partner that it will be expelled because it has
17 filed a certificate of dissolution or the equivalent, its charter
18 has been revoked, or its right to conduct business has been
19 suspended by the jurisdiction of its incorporation, the certificate
20 of dissolution is not revoked or its charter or its right to conduct
21 business is not reinstated; or

22 (D) an event requiring a winding up has occurred
23 with respect to a partnership that is a partner;

24 (5) the partner's expulsion by judicial decree, on
25 application by the partnership or another partner for the partner's
26 expulsion, if the decree determines that:

27 (A) the partner engaged in wrongful conduct that

1 adversely and materially affected the partnership business;

2 (B) the partner wilfully or persistently
3 committed a material breach of the partnership agreement or of a
4 duty owed to the partnership or the other partners under Section
5 4.04; or

6 (C) the partner engaged in conduct relating to
7 the partnership business that made it not reasonably practicable to
8 carry on the business in partnership with that partner;

9 (6) the partner:

10 (A) becoming a debtor in bankruptcy;

11 (B) executing an assignment for the benefit of
12 creditors;

13 (C) seeking, consenting to, or acquiescing in the
14 appointment of a trustee, receiver, or liquidator of that partner
15 or of all or substantially all of that partner's property; or

16 (D) failing, within 90 days after the
17 appointment, to have vacated or stayed the appointment of a
18 trustee, receiver, or liquidator of the partner or of all or
19 substantially all of the partner's property obtained without the
20 partner's consent or acquiescence, or failing within 90 days after
21 the date of expiration of a stay to have the appointment vacated;

22 (7) in the case of a partner who is an individual:

23 (A) the partner's death;

24 (B) the appointment of a guardian or general
25 conservator for the partner; or

26 (C) a judicial determination that the partner has
27 otherwise become incapable of performing the partner's duties under

1 the partnership agreement;

2 (8) termination of a partner's existence;

3 (9) in the case of a partner that has transferred all
4 of the partner's partnership interest, redemption of the
5 transferee's interest under Sections 7.01(n)-(r); or

6 (10) an agreement to continue the partnership under
7 Section 8.01(g) if the partnership has received a notice from the
8 partner under Section 8.01(g) requesting that the partnership be
9 wound up[; ~~or~~

10 [~~(11) a conversion of the partnership if the partner:~~
11 [~~(A) did not consent to the conversion; and~~
12 [~~(B) failed to notify the partnership in writing~~
13 ~~of the partner's desire not to withdraw within 60 days after the~~
14 ~~later of:~~

15 [~~(i) the effective date of the conversion;~~
16 ~~or~~

17 [~~(ii) the date the partner receives actual~~
18 ~~notice of the conversion].~~

19 SECTION 14. Section 9.02, Texas Revised Partnership Act
20 (Article 6132b-9.02, Vernon's Texas Civil Statutes), is amended by
21 amending Subsection (d) and adding Subsection (i) to read as
22 follows:

23 (d) Certificate of Merger. After a plan of merger has been
24 approved by each of the partnerships or other entities that is a
25 party to the plan of merger, unless the only parties to the merger
26 are partnerships, a certificate of merger shall be executed on
27 behalf of each partnership or other entity by at least one partner

1 of each domestic partnership that is a party to the plan of merger
2 and by a general partner, officer, agent or other authorized
3 representative of each other partnership or other entity that is a
4 party to the plan of merger and shall set forth:

5 (1) the plan of merger or a statement certifying:

6 (A) the name and the state of incorporation,
7 formation, or organization of each of the parties to the merger and
8 the organizational form of each new or surviving partnership or
9 other entity;

10 (B) that a plan of merger has been approved;

11 (C) that an executed plan of merger is on file at
12 the principal place of business of each surviving or new domestic or
13 foreign partnership or other entity, stating the address of the
14 partnership or other entity;

15 (D) that a copy or summary of the plan of merger
16 has been or is being furnished to each partner of each domestic
17 partnership that is a party to the merger not later than the 20th
18 day before the merger is effective, unless waived by that partner,
19 or that the domestic partnership has complied with the provisions
20 of its partnership agreement regarding furnishing partners copies
21 or summaries of the plan of merger or notices regarding the merger;
22 and

23 (E) in the case of the merger with multiple
24 surviving domestic or foreign partnerships or other entities, that
25 a copy of the plan of merger will be furnished by each new or
26 surviving domestic or foreign partnership or other entity, on
27 written request and without cost, to any creditor or obligee of the

1 parties to the merger at the time of the merger if the obligation is
2 then outstanding; and

3 (2) for each domestic or foreign partnership or other
4 entity that is a party to the plan of merger, a statement that the
5 plan of merger was duly authorized by all action required by the
6 laws under which it was formed or organized and by its constituent
7 documents.

8 (i) "Merger" means:

9 (1) the division of a domestic partnership into two or
10 more domestic partnerships or into a surviving partnership and one
11 or more new domestic or foreign partnerships or other entities; or

12 (2) the combination of one or more domestic
13 partnerships with one or more domestic or foreign partnerships or
14 other entities resulting in:

15 (A) one or more surviving domestic or foreign
16 partnerships or other entities;

17 (B) the creation of one or more new domestic or
18 foreign partnerships or other entities; or

19 (C) one or more surviving domestic or foreign
20 partnerships or other entities and the creation of one or more new
21 domestic or foreign partnerships or other entities.

22 SECTION 15. Sections 9.05(e) and (g), Texas Revised
23 Partnership Act (Article 6132b-9.05, Vernon's Texas Civil
24 Statutes), are amended to read as follows:

25 (e) If a plan of conversion has been approved in accordance
26 with the preceding provisions of this section and has not been
27 abandoned, unless the converted entity and the converting entities

1 are both partnerships:

2 (1) articles of conversion shall be executed by the
3 converting entity by a partner, officer, or other duly authorized
4 representative thereof and shall set forth:

5 (A) the plan of conversion or a statement
6 certifying the following:

7 (i) the name, the state of incorporation,
8 formation, or organization of the converting entity and the
9 organizational form of the converted entity;

10 (ii) that a plan of conversion has been
11 approved;

12 (iii) that an executed plan of conversion
13 is on file at the principal place of business of the converting
14 entity, stating the address thereof, and that an executed plan of
15 conversion will be on file, from and after the conversion, at the
16 principal place of business of the converted entity, stating the
17 address thereof; and

18 (iv) that a copy of the plan of conversion
19 will be furnished by the converting entity (prior to the
20 conversion) or the converted entity (after the conversion), on
21 written request and without cost, to any member of the converting
22 entity or the converted entity; and

23 (B) a statement that the approval of the plan of
24 conversion was duly authorized by all action required by the laws
25 under which the converting entity was incorporated, formed, or
26 organized and by its constituent documents; and

27 (2) the original and one copy of the articles of

1 conversion shall be delivered to the secretary of state [~~, and~~
2 [~~(3) two copies of the certificate of limited~~
3 ~~partnership of the domestic limited partnership, if the converted~~
4 ~~entity is a domestic limited partnership, shall also be delivered~~
5 ~~to the secretary of state with the articles of conversion]~~].

6 (g) Except as otherwise provided by Section 9.06, on the
7 issuance of the certificate of conversion by the secretary of state
8 (or if a certificate of conversion need not be executed, as provided
9 in the plan of conversion [~~merger~~]), the conversion of a converting
10 entity shall be effective.

11 SECTION 16. Section 9.05(i)(6), Texas Revised Partnership
12 Act (Article 6132b-9.05, Vernon's Texas Civil Statutes), is amended
13 to read as follows:

14 (6) "Other entity" means any entity, whether organized
15 for profit or not, that is a corporation, limited partnership
16 [~~(other than a limited partnership formed under the Texas Revised~~
17 ~~Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil~~
18 ~~Statutes))], limited liability company, joint stock company,
19 cooperative, association, bank, insurance company, or other legal
20 entity organized pursuant to the laws of this state or any other
21 state or country.~~

22 SECTION 17. Section 6.01(c), Texas Revised Partnership Act
23 (Article 6132b-6.01, Vernon's Texas Civil Statutes), and Section
24 9.01, Texas Revised Partnership Act (Article 6132b-9.01, Vernon's
25 Texas Civil Statutes), are repealed.

26 SECTION 18. This Act takes effect September 1, 2005.