

BILL ANALYSIS

Senate Research Center
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S.B. 1773
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 101.114 (Liability for Obligations) of the Texas Business Organizations Code (code) and Article 4.03A of the Texas Limited Liability Company Act (TLLCA) provide that a member or manager is not liable for the debts, obligations or liabilities of a limited liability company, except as and to the extent the company agreement or regulations specifically provide otherwise. On its face, this language prohibits a court from holding the members or managers liable for the debts, obligations, and liabilities of the limited liability company. However, recent court cases have applied corporate veil piercing principles to limited liability companies, causing confusion as to the proper standards to be applied.

As proposed, S.B. 1773 provides that subject to Section 101.114, certain sections of the Business Organizations Code apply to a limited liability company and its members, owners, assignees, and subscribers. S.B. 1773 clarifies the standards for the piercing of the liability shield for limited liability companies by adopting the standards set forth in the corporate statutes.

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 A, Chapter 101, Business Organizations Code, by adding Section 101.002, as follows:

Sec. 101.002. APPLICABILITY OF OTHER LAWS. (a) Provides that subject to Section 101.114 (Liability for Obligations), Sections 21.223 (Limitation of Liability for Obligations), 21.224 (Preemption of Liability), 21.225 (Exceptions to Limitations), and 21.226 (Pledgees and Trust Administrators) apply to a limited liability company and the company's members, owners, assignees, and subscribers.

(b) Provides that for purposes of the application of Subsection (a):

- (1) a reference to "shares" includes "membership interests";
- (2) a reference to "holder," "owner," or "shareholder" includes a "member" and an "assignee";
- (3) a reference to "corporation" or "corporate" includes a "limited liability company";
- (4) a reference to "directors" includes "managers" of a manager-managed limited liability company and "members" of a member-managed limited liability company;
- (5) a reference to "bylaws" includes "company agreement;" and
- (6) the reference to "Sections 21.157-21.162" in Section 21.223(a)(1) (relating to certain parties not being held liable for shares, other than the obligation to pay to the corporation the full amount of consideration, fixed

in compliance with Sections 21.157-21.162, for which the shares were or are to be issued) refers to the provisions of Subchapter D of this chapter.

SECTION 2. Amends Section A, Article 8.12, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to provide that subject to Section C of this Article, certain Articles, including Article 2.21 (Liability of Subscribers and Shareholders) and Part Seven of the TBCA apply to a limited liability company and its members, managers, and officers.

SECTION 3. Effective date: September 1, 2009.