

House Bill 1787
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subchapter E, Chapter 5, Business Organizations Code, is amended by adding Section 5.200 to read as follows:

Sec. 5.200. DEFINITIONS. In this subchapter:

(1) "Registered agent filing" means:

(A) the certificate of formation or similar organizational document of a domestic represented entity;

(B) the application for registration of a foreign represented entity;

(C) an appointment of agent by an unincorporated nonprofit association under Section 252.011;

(D) an appointment of agent by a Texas financial institution under Section 201.103, Finance Code;

(E) an appointment of agent by a defense base development authority under Section 379B.004(b), Local Government Code;

(F) a statement by a represented entity to change the entity's registered agent, registered office, or both;

(G) a certificate of merger or certificate of conversion;

(H) a certificate of amendment to the certificate of formation or similar organizational document or the registration of a represented entity;

(I) a restated certificate of formation or similar organizational document of a represented entity;

(J) any other instrument that is required or permitted by law to be filed by a represented entity that effects a change or correction to the instruments listed in Paragraphs (A)-(I); and

(K) a certificate of reinstatement filed under Chapter 9 or 11.

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(2) "Represented domestic entity" means:

(A) a filing entity;

(B) an unincorporated nonprofit association for which an appointment of agent has been filed;

(C) a Texas financial institution for which an appointment of agent has been filed;

(D) a defense base development authority for which an appointment of agent has been filed; or

(E) any corporation, association, or other organization incorporated or organized under any special statute of this state, that is governed wholly or partly by this code, or to which the general corporate laws are applicable.

(3) "Represented entity" means a represented domestic entity or represented foreign entity.

(4) "Represented foreign entity" means:

(A) a foreign filing entity for which a registration has been filed;

(B) a foreign limited liability partnership for which a registration has been filed;

(C) a foreign financial institution for which a registration has been filed; or

(D) any corporation, association, or other organization incorporated or organized under the laws of a jurisdiction other than this state that is granted authority to conduct its affairs in this state under any special statute of this state, that is governed wholly or partly by this code, or to which the general corporate laws are applicable.

SECTION 2. Section 5.201(b), Business Organizations

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Code, is amended to read as follows:

(b) The registered agent:

(1) is an agent of the entity on whom may be served any process, notice, or demand required or permitted by law to be served on the entity;

(2) may be:

(A) an individual who:

(i) is a resident of this state; and

(ii) has consented to serve as the registered agent of the entity; or

(B) an organization, other than the filing entity or foreign filing entity to be represented, that:

(i) is registered or authorized to do business in this state; and

(ii) has consented to serve as the registered agent of the entity; and

(3) must maintain a business office at the same address as the entity's registered office.

SECTION 3. Subchapter E, Chapter 5, Business Organizations Code, is amended by adding Section 5.2011 to read as follows:

Sec. 5.2011. CONSENT TO SERVE AS REGISTERED AGENT. (a) The designation or appointment of a person as registered agent by an organizer or managerial official of an entity in a registered agent filing is an affirmation by the organizer or managerial official that

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Code, is amended to read as follows:

(b) The registered agent:

(1) is an agent of the entity on whom may be served any process, notice, or demand required or permitted by law to be served on the entity;

(2) may be:

(A) an individual who:

(i) is a resident of this state; and

(ii) has consented in a written or electronic form to be developed by the office of the secretary of state to serve as the registered agent of the entity; or

(B) an organization, other than the filing entity or foreign filing entity to be represented, that:

(i) is registered or authorized to do business in this state; and

(ii) has consented in a written or electronic form to be developed by the office of the secretary of state to serve as the registered agent of the entity; and

(3) must maintain a business office at the same address as the entity's registered office.

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the person named as registered agent has consented to serve in that capacity.

(b) If a person designated or appointed as registered agent in a registered agent filing before the sale, acquisition, or transfer of a majority-in-interest or majority interest of the outstanding ownership or membership interests of the represented entity continues to serve in that capacity after the sale, acquisition, or transfer, the person's continuation of service is an affirmation by the governing authority of the represented entity that the governing authority has verified that the person named as registered agent has consented to continue to serve in that capacity.

SECTION 4. Section 5.204(d), Business Organizations Code, is amended to read as follows:

(d) On compliance with Subsections (b) and (c), the appointment of the registered agent and the designation of the registered office terminate [~~terminates~~]. The termination is effective on the 31st day after the date the secretary of state receives the notice.

SECTION 5. Subchapter E, Chapter 5, Business Organizations Code, is amended by adding Sections 5.205, 5.206, 5.207, and 5.208 to read as follows:

Sec. 5.205. REJECTION OF APPOINTMENT. (a) A person designated or appointed as an entity's registered agent in a registered agent filing without the person's

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consent may terminate the person's appointment or designation as registered agent by filing a statement of rejection of appointment with the filing officer.

(b) The statement of rejection of appointment must:

(1) be signed by the person named as registered agent;

(2) contain the name of the represented entity; and

(3) contain a statement certifying that the person did not consent to serve as the represented entity's registered agent on the date on which the registered agent filing on which the person is named as registered agent took effect.

(c) On acceptance of the statement of rejection of appointment by the filing officer, the designation or appointment of that person as registered agent and the designation of the registered office terminate.

(d) On termination of the designation or appointment of a registered agent and the designation of the registered office, the secretary of state shall send notice to the represented entity of the necessity to designate or appoint a new registered agent and registered office in accordance with Section 9.101 or 11.251, as applicable.

(e) The filing officer may not charge a fee for the filing of a statement of rejection of appointment.

Sec. 5.206. DUTIES OF REGISTERED AGENT. (a) The only duties of a registered agent are to:

(1) receive or accept, and forward to the represented entity at the address most recently provided to the registered agent by the represented entity, or otherwise notify the represented entity at that address regarding, any process, notice, or demand that is served on or

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received by the registered agent; and

(2) provide the notices required or permitted by law to be given to the represented entity to the address most recently provided to the registered agent by the represented entity.

(b) A person named as the registered agent for a represented entity in a registered agent filing without the person's consent is not required to perform the duties prescribed by this section.

Sec. 5.207. DESIGNATION OF REGISTERED AGENT WITHOUT CONSENT; PENALTIES AND LIABILITIES. Sections 4.007 and 4.008 apply with respect to a false statement in a registered agent filing that names a person the registered agent of a represented entity without the person's consent.

Sec. 5.208. IMMUNITY FROM LIABILITY. (a) A person designated or appointed as the registered agent of a represented entity is not liable solely because of the person's designation or appointment as registered agent for the debts, liabilities, or obligations of the represented entity.

(b) A person who has been designated or appointed as a registered agent in a registered agent filing but has not consented to serve as the represented entity's registered agent may not be held liable:

(1) under a judgment, decree, or order of a court, agency, or tribunal of any type, or in any other manner, in this or any other state, or on any other basis, for a debt, obligation, or liability of the represented entity, whether arising in contract, tort, or otherwise, solely

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because of the person's designation or appointment as registered agent; or
(2) to the represented entity or to a person who reasonably relied on the unauthorized designation or appointment solely because of the person's failure or refusal to perform the duties of a registered agent under Section 5.206.

SECTION 6. The changes in law made by this Act apply only to the designation or appointment of a registered agent made on or after the effective date of this Act. The designation or appointment of a registered agent made before the effective date of this Act is governed by the law in effect on the date the designation or appointment was made, and the former law is continued in effect for that purpose.

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SECTION 7. This Act takes effect January 1, 2010.

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