

BILL ANALYSIS

S.B. 323
By: Carona
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties have expressed concern that provisions of the Business Organizations Code establish that a member or manager of a Texas limited liability company (LLC) is not liable for the obligations of the LLC but currently do not state explicitly that a member or manager of an LLC is entitled to the same level of liability protection as an owner of a corporation. These parties further express concern that, in a departure from the majority of state and federal court cases in Texas and elsewhere, two out-of-state courts recently held that the liability shield for an LLC is less protective than that of a for-profit corporation. These parties indicate that the situation presents a problem for the thousands of current Texas LLCs and could impact the decisions of prospective businesses interested in moving to Texas.

S.B. 323 seeks to conform applicable provisions of the Business Organizations Code to the predominant body of case law in Texas and elsewhere addressing this issue by clarifying in statute that the standards for piercing the liability shield of a corporation apply equally to an LLC.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 323 amends the Business Organizations Code to make applicable to a limited liability company and the company's members, owners, assignees, affiliates, and subscribers provisions limiting the liability of certain shareholders of a for-profit corporation to the corporation or its obligees for specified obligations of the corporation, establishing that such a limitation on liability for an obligation is exclusive and preempts any other liability for that obligation, providing exceptions to such liability limitations, and exempting certain pledgees from personal liability as a shareholder of a for-profit corporation and certain trust administrators from personal liability as a holder of or subscriber to shares of such a corporation. The bill specifies that the above applicability is subject to state laws establishing the liability of a member or manager of a limited liability company for a debt, obligation, or liability of the company.

S.B. 323 extends the meaning of the following terms for purposes of the application of the provisions of the bill:

- a reference to "shares" includes "membership interests";
- a reference to "holder," "owner," or "shareholder" includes a "member" and an "assignee";
- a reference to "corporation" or "corporate" includes a "limited liability company";
- a reference to "directors" includes "managers" of a manager-managed limited liability company and "members" of a member-managed limited liability company;

- a reference to "bylaws" includes "company agreement"; and
- the reference to "Sections 21.157-21.162" in the provision limiting the liability of certain shareholders of a for-profit corporation to the corporation or its obligees for specified obligations of the corporation refers to provisions relating to contributions to limited liability companies.

EFFECTIVE DATE

September 1, 2011.