

BILL ANALYSIS

C.S.H.B. 1929
By: Oliveira
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that there is a need to make certain clarifying changes to the Business Organizations Code in provisions relating to partnerships and limited liability companies. These parties also have identified various substantive amendments to that code and to the Business & Commerce Code that should be addressed with respect to the contents of a restated certificate of formation, the notice sent to claimants on the winding up of a business entity, and partnership insolvency. C.S.H.B. 1929 seeks to address these issues through clarifying and substantive amendments to the Business Organizations Code and the Business & Commerce Code.

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

C.S.H.B. 1929 amends the Business Organizations Code to remove the requirement for a restated certificate of formation that makes new amendments to the certificate of formation being restated to identify by reference or description each added, altered, or deleted provision.

C.S.H.B. 1929 authorizes a partnership agreement for a general partnership, a partnership agreement for a limited partnership, or the certificate of formation or company agreement for a limited liability company to provide for the limitation or elimination of a governing person's liability to the same extent certain statutory provisions permit the limitation or elimination of a governing person's liability by a certificate of formation or similar instrument for a domestic entity other than a partnership or limited liability company, another organization incorporated or organized under another state law, or certain financial institutions.

C.S.H.B. 1929 specifies that a general partnership, rather than a partnership, is exempt from the requirement that a domestic entity send a written notice of the winding up of the domestic entity to each known claimant against the domestic entity.

C.S.H.B. 1929 clarifies that the definition of "distribution limit," with respect to certain distributions made by a for-profit corporation, includes the net assets of the corporation if the distribution is made by a consuming assets corporation and is not the purchase or redemption of its own shares, rather than if the distribution is not the purchase or redemption of its own shares by a consuming assets corporation.

C.S.H.B. 1929 authorizes a company agreement of a limited liability company to provide rights to any person, including a person who is not a party to the company agreement, to the extent provided by the company agreement. The bill authorizes a partnership agreement to provide rights to any person, including a person who is not a party to the partnership agreement, to the extent provided by the partnership agreement.

C.S.H.B. 1929 expands the general powers of a series established by a limited liability company's company agreement by granting such a series the power and capacity to acquire and sell title to assets of the series and to exercise any power or privilege as necessary or appropriate to the conduct, promotion, or attainment of the business, purposes, or activities of the series. The bill grants such a series and the governing person and officer associated with the series the powers and rights provided by statutory provisions relating to governing persons and officers, recordkeeping of filing entities, and the transfer and disposition of property, to the extent that such powers and rights are not inconsistent with other provisions governing the series. The bill establishes that, for the purposes of Texas Limited Liability Company Law, a series has the rights, powers, and duties provided to a series under applicable statutory provisions, but the series is not a separate domestic entity or organization.

C.S.H.B. 1929 repeals Section 24.003(c), Business & Commerce Code, relating to the specification that a partnership is insolvent under the Uniform Fraudulent Transfer Act if the sum of the partnership's debts is greater than the aggregate, at a fair evaluation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1929 differs from the original in minor or nonsubstantive ways by conforming to certain bill drafting conventions.