

## **BILL ANALYSIS**

Senate Research Center

S.B. 1517  
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Business & Commerce  
6/22/2017  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1517 amends provisions in the Texas Business Organizations Code (TBOC) primarily impacting the operation of limited liability companies (LLCs) and partnerships. The bill updates Texas LLC and partnership laws, keeping Texas competitive with other leading business law states.

TBOC consolidates all of the state's business organizations laws to promote uniformity and efficiency. It was enacted by the legislature in 2003 pursuant to a joint drafting effort by the business law section of the State Bar and the Texas secretary of state, with assistance from the Texas Legislative Council in editing and formatting. It took partial effect on January 1, 2006, with full application on January 1, 2010. To continually improve TBOC's effectiveness, packages of both substantive and technical amendments have been enacted during each legislative session since its initial adoption.

The bill contains five general categories of modifications: LLC specific, series LLC specific, partnership specific, records transparency, and business names.

S.B. 1517 amends current law relating to partnerships, limited liability companies, and other domestic and foreign entities and to series of limited liability companies and foreign entities.

### **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 Section 1.002(69-b), Business Organizations Code, to redefine "person."

SECTION 2. Amends Section 5.053(b), Business Organizations Code, to provide that Sections 4.007 (Liability for False Filing Instruments) and 4.008 (Offense; Penalty) apply to a written consent to the use of a similar name under this subsection to the same extent those sections apply to filing instruments.

SECTION 3. Amends the heading to Subchapter F, Chapter 5, Business Organizations Code, to read as follows:

#### **SUBCHAPTER F. SERVICE OF PROCESS ON ENTITY**

SECTION 4. Amends Chapter 5, Business Organizations Code, by adding Subchapter F-1, as follows:

#### **SUBCHAPTER F-1. SERVICE OF PROCESS ON SERIES OF LIMITED LIABILITY COMPANY OR FOREIGN ENTITY**

Sec. 5.301. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies to service of process, notice, or demand on a series of a domestic limited liability company (LLC) or a series of a foreign entity.

Sec. 5.302. AGENT FOR SERIES. (a) Provides that the registered agent designated and maintained by a domestic LLC or foreign entity under Subchapter E (Registered Agents and Registered Offices) is an agent of each series of the company or entity for the purpose of service of process, notice, or demand required or permitted by law to be served on a particular series of the company or entity.

(b) Requires that a process, notice, or demand required or permitted by law to be served on a series of a domestic LLC or foreign entity that is served on the LLC's or entity's registered agent include the name of the LLC or entity and the name of the series on which the process, notice, or demand is required or permitted to be served.

Sec. 5.303. DUTIES OF REGISTERED AGENT. (a) Provides that for purposes of Section 5.206 (Duties of Registered Agent) on service or receipt of process, notice, or demand that complies with the requirements of Section 5.302(b), the only duties of the registered agent are to receive or accept, and forward to the represented domestic LLC or foreign entity at the address most recently provided to the registered agent by the represented LLC or entity, the process, notice, or demand that is served on or received by the registered agent under Section 5.302(b), or otherwise notify the represented LLC or entity at the described address regarding the process, notice, or demand that is served on or received by the registered agent under Section 5.302(b).

(b) Exempts the registered agent from the requirement of sending a copy of the process, notice, or demand directly to the series of the represented domestic LLC or foreign entity.

Sec. 5.304. SERVICE ON SECRETARY OF STATE. (a) Provides that the Texas secretary of state (SOS) is an agent of a series of a domestic LLC or foreign entity for purposes of service of process, notice, or demand on the series of the LLC or entity if SOS is the agent of the LLC or entity pursuant to Section 5.251 (Failure to Designate Registered Agent).

(b) Requires that the duplicate copies of a process, notice, or demand that are delivered to SOS pursuant to Section 5.252(a) (relating to how service on SOS is effected) as agent for a series of a domestic LLC or foreign entity include the name of the LLC or entity and the name of the series of the LLC or entity on which the process, notice, or demand is to be served.

(c) Requires SOS, for purposes of Section 5.253 (Action By Secretary of State), after service on SOS in compliance with the requirements of Subsection (b), to send to the domestic LLC or foreign entity named in the process, notice, or demand one of the copies of the process, notice, or demand as provided in Section 5.253.

(d) Provides that SOS is not required to send a copy of the process, notice, or demand directly to the series of the named domestic LLC or foreign entity.

Sec. 5.305. SERVICE ON GOVERNING PERSONS. (a) Provides that each governing person of a series of a domestic LLC as described by Section 101.608 (Governing Authority) is an agent of the series for the purpose of service of process, notice, or demand required or permitted by law to be served on the series.

(b) Provides that each governing person of a series of a foreign entity is an agent of the series for the purpose of service of process, notice, or demand required or permitted by law to be served on the series.

Sec. 5.306. SERVICE OF PROCESS BY POLITICAL SUBDIVISION. (a) Authorizes a process, notice, or demand, for purposes of Section 5.257 (Service of Process by Political

Subdivision), to be served on a series of a domestic LLC by delivery of the process, notice, or demand to any governing person of the series as described by Section 101.608.

(b) Authorizes a process, notice, or demand, for purposes of Section 5.257, to be served on a series of a foreign entity by delivery of the process, notice, or demand to any governing person of the series.

(c) Authorizes service on the series of the LLC or entity, if the governing persons of a series of a domestic LLC or foreign entity are unknown or cannot be found, to be made in the same manner as service is made on unknown shareholders under law.

(d) Provides that, notwithstanding any disability or reinstatement of a domestic LLC or foreign entity, service of process under this section is sufficient for a judgment against a series of the LLC or entity or a judgment in rem against any property to which a series of the LLC or entity holds title.

SECTION 5. Amends Section 9.105, Business Organizations Code, as follows:

Sec. 9.105. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED NAME. Prohibits SOS, under certain situations, from accepting for filing the certificate of reinstatement unless the foreign filing entity amends its registration to change its name or obtains written consent for the use of the similar name. Provides that Sections 4.007 and 4.008 apply to a written consent for the use of a similar name under this section to the same extent those sections apply to filing instruments.

SECTION 6. Amends Section 11.203, Business Organizations Code, as follows:

Sec. 11.203. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED NAME. Prohibits SOS, under certain situations, from accepting for filing the certificate of reinstatement unless the filing entity contemporaneously amends its certificate of formation to change its name or obtains written consent for the use of the similar name. Provides that Sections 4.007 and 4.008 apply to a written consent for the use of a similar name under this section to the same extent those sections apply to filing instruments.

SECTION 7. Amends Section 11.314, Business Organizations Code, as follows:

Sec. 11.314. INVOLUNTARY WINDING UP AND TERMINATION OF PARTNERSHIP OR LIMITED LIABILITY COMPANY. Provides that a district court in the county in which the registered office or principal place of business in this state of a domestic partnership or LLC is located has jurisdiction to order the winding up and termination of the domestic partnership or LLC on application by an owner of, rather than a partner in, the partnership or LLC if the court determines that the economic purpose of the entity, rather than partnership, is likely to be unreasonably frustrated; another owner, rather than partner, has engaged in conduct relating to the entity's, rather than partnership's, business that makes it not reasonably practicable to carry on the business with that owner, rather than in partnership with that partner, or it is not reasonably practicable to carry on the entity's business in conformity with its governing documents. Deletes existing text including an owner of the partnership or LLC in the court's determination that it is not reasonably practicable to carry on the entity's business. Makes nonsubstantive changes.

SECTION 8. Amends Section 101.052, Business Organizations Code, by adding Subsection (f), to provide that a company agreement is enforceable by or against the LLC, regardless of whether the LLC has signed or otherwise expressly adopted the agreement.

SECTION 9. Amends Section 101.054(a), Business Organizations Code, to delete a reference to Chapter 7 (Liability) from a list of provisions that are prohibited from being waived or modified in the company agreement of an LLC.

SECTION 10. Amends Section 101.305, Business Organizations Code, as follows:

Sec. 101.305. MANAGER VACANCY. (a) Authorizes a vacancy in the position of a manager of an LLC to be filled by the members at a meeting, rather than an election at an annual or special meeting, of the company's members called for that purpose. Deletes existing text establishing whether the vacancy is a result of an increase in the numbers of managers.

(b) Makes a nonsubstantive change.

SECTION 11. Amends Subchapter K, Chapter 101, Business Organizations Code, by adding Section 101.503, as follows:

Sec. 101.503. PENALTY FOR REFUSAL TO PERMIT EXAMINATION OF CERTAIN RECORDS. (a) Provides that an LLC that refuses to allow a member to examine and copy, on written request that complies with Section 101.502(a) (relating to the authority of a member of an LLC, on written request, to examine and copy certain information at any reasonable time and at the member's or assignee's expense), records or other information described by that section is liable to the member for any cost or expense, including attorney's fees, incurred in enforcing the member's rights under Section 101.502 (Right to Examine Records and Certain Other Information). Provides that the liability imposed on an LLC under this subsection is in addition to any other damages or remedy afforded to the member by law.

(b) Provides that it is a defense to an action brought under this section that the person suing has improperly used information obtained through a prior examination of the records or other information of the LLC or any other LLC, under Section 101.502, or was not acting in good faith or for a proper purpose in making the person's request for examination.

SECTION 12. Amends Section 101.602, Business Organizations Code, by adding Subsection (c), as follows:

(c) Provides that Subsection (a) (relating to certain debts, liabilities, obligations, and expenses) or any provision contained in an LLC agreement or certificate of formation pursuant to Subsection (a) does not restrict a particular series or an LLC on behalf of a particular series from expressly agreeing in the LLC agreement or other written agreement that any or all of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the LLC generally or any other series of the LLC are required to be enforceable against the assets of that particular series, or an LLC from expressly agreeing in the company agreement or other written agreement that any or all of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series are required to be enforceable against the assets of the LLC generally.

SECTION 13. Amends Section 101.605, Business Organizations Code, to provide that a series established under this subchapter (Series Limited Liability Company) has the power and capacity, in the series' own name, to be a promoter, organizer, partner, owner, member, associate, or manager of an organization and to redesignate existing Subdivision (5) as Subdivision (6).

SECTION 14. Amends Sections 152.212(b) and (c), Business Organizations Code, to require a partnership to keep or make available its books and records, if any, at its chief executive office, and make available or provide access to its books and records to a partner or an agent or attorney of a partner.

SECTION 15. Amends Subchapter L, Chapter 153, Business Organizations Code, by adding Section 153.5521, as follows:

Sec. 153.5521. PENALTY FOR REFUSAL TO PERMIT EXAMINATION OF CERTAIN RECORDS. (a) Provides that a limited partnership that refuses to allow a

partner or assignee of a partnership interest to examine and copy, on written request that complies with Section 153.552(a) (relating to the examination of partnership records), records or other information described by that section is liable to the partner or assignee for any cost or expense, including attorney's fees, incurred in enforcing the partner's or assignee's rights under Section 153.552 (Examination of Records and Information). Provides that the liability imposed on a limited partnership under this subsection is in addition to any other damages or remedy afforded to the partner or assignee by law.

(b) Provides that it is a defense to an action brought under this section that the person suing has improperly used information obtained through a prior examination of the records or other information of the limited partnership or any other limited partnership under Section 153.552, or was not acting in good faith or for a proper purpose in making the person's request for examination.

SECTION 16. Amends Section 154.101(a), Business Organizations Code, to change a reference to a written partnership agreement to a partnership agreement.

SECTION 17. Amends Section 154.102, Business Organizations Code, to change a reference to a written partnership agreement to a partnership agreement.

SECTION 18. Amends Subchapter B, Chapter 154, Business Organizations Code, by adding Section 154.105, as follows:

Sec. 154.105. PARTNERSHIP BOUND BY PARTNERSHIP AGREEMENT. Provides that a partnership agreement is enforceable by or against the partnership, regardless of whether the partnership has signed or otherwise expressly adopted the agreement.

SECTION 19. Repealer: Section 154.103 (Notice of Action By Consent Without a Meeting), Business Organizations Code.

SECTION 20. Effective date: September 1, 2017.