

By: Oliveira

H.B. No. 2826

A BILL TO BE ENTITLED

AN ACT

relating to partnerships, limited liability companies, and other domestic and foreign entities and to series of limited liability companies and foreign entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.002(69-b), Business Organizations Code, is amended to read as follows:

(69-b) "Person" means an individual or a corporation, partnership, limited liability company, business trust, trust, association, or other organization, estate, government or governmental subdivision or agency, or other legal entity, or a series of a domestic limited liability company or foreign entity.

SECTION 2. Section 5.053(b), Business Organizations Code, is amended to read as follows:

(b) Subsection (a) does not apply if the other entity or the person for whom the name is reserved or registered, as appropriate, provides to the secretary of state a notarized written statement of the entity's or person's consent to the use of the similar name. Sections 4.007 and 4.008 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. The heading to Subchapter F, Chapter 5, Business Organizations Code, is amended to read as follows:

SUBCHAPTER F. SERVICE OF PROCESS ON ENTITY

SECTION 4. Chapter 5, Business Organizations Code, is amended by adding Subchapter F-1 to read as follows:

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

Sec. 5.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies to service of process, notice, or demand on a series of a domestic limited liability company or a series of a foreign entity.

Sec. 5.302. AGENT FOR SERIES. (a) The registered agent designated and maintained by a domestic limited liability company or foreign entity under Subchapter E 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) A process, notice, or demand required or permitted by law to be served on a series of a domestic limited liability company or foreign entity that is served on the company's or entity's registered agent must include:

- (1) the name of the company or entity; and
- (2) 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) For purposes of Section 5.206, 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:

- (1) receive or accept, and forward to the represented domestic limited liability company or foreign entity at the address most recently provided to the registered agent by the represented

company or entity, the process, notice, or demand that is served on or received by the registered agent under Section 5.302(b); or

(2) otherwise notify the represented company or entity at the address described by Subdivision (1) regarding the process, notice, or demand that is served on or received by the registered agent under Section 5.302(b).

(b) The registered agent is not required to send a copy of the process, notice, or demand directly to the series of the represented domestic limited liability company or foreign entity.

Sec. 5.304. SERVICE ON SECRETARY OF STATE. (a) The secretary of state is an agent of a series of a domestic limited liability company or foreign entity for purposes of service of process, notice, or demand on the series of the company or entity if the secretary of state is the agent of the company or entity pursuant to Section 5.251.

(b) The duplicate copies of a process, notice, or demand that are delivered to the secretary of state pursuant to Section 5.252(a) as agent for a series of a domestic limited liability company or foreign entity must include:

(1) the name of the company or entity; and

(2) the name of the series of the company or entity on which the process, notice, or demand is to be served.

(c) For purposes of Section 5.253, after service on the secretary of state in compliance with the requirements of Subsection (b), the secretary of state shall send to the domestic limited liability company or foreign entity named in the process, notice, or demand one of the copies of the process, notice, or

1 demand as provided in Section 5.253.

2 (d) The secretary of state is not required to send a copy of
3 the process, notice, or demand directly to the series of the named
4 domestic limited liability company or foreign entity.

5 Sec. 5.305. SERVICE ON GOVERNING PERSONS. (a) Each
6 governing person of a series of a domestic limited liability
7 company as described by Section 101.608 is an agent of the series
8 for the purpose of service of process, notice, or demand required or
9 permitted by law to be served on the series.

10 (b) Each governing person of a series of a foreign entity is
11 an agent of the series for the purpose of service of process,
12 notice, or demand required or permitted by law to be served on the
13 series.

14 Sec. 5.306. SERVICE OF PROCESS BY POLITICAL SUBDIVISION.
15 (a) For purposes of Section 5.257, a process, notice, or demand may
16 be served on a series of a domestic limited liability company by
17 delivery of the process, notice, or demand to any governing person
18 of the series as described by Section 101.608.

19 (b) For purposes of Section 5.257, a process, notice, or
20 demand may be served on a series of a foreign entity by delivery of
21 the process, notice, or demand to any governing person of the
22 series.

23 (c) If the governing persons of a series of a domestic
24 limited liability company or foreign entity are unknown or cannot
25 be found, service on the series of the company or entity may be made
26 in the same manner as service is made on unknown shareholders under
27 law.

1 (d) Notwithstanding any disability or reinstatement of a
2 domestic limited liability company or foreign entity, service of
3 process under this section is sufficient for a judgment against a
4 series of the company or entity or a judgment in rem against any
5 property to which a series of the company or entity holds title.

6 SECTION 5. Section 9.105, Business Organizations Code, is
7 amended to read as follows:

8 Sec. 9.105. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED
9 NAME. If the secretary of state determines that a foreign filing
10 entity's name or the name under which it is registered to transact
11 business in this state is the same as, deceptively similar to, or
12 similar to a name of a filing entity or foreign filing entity as
13 provided by or reserved or registered under this code, the
14 secretary of state may not accept for filing the certificate of
15 reinstatement unless the foreign filing entity amends its
16 registration to change its name or obtains written consent for the
17 use of the similar name. Sections 4.007 and 4.008 apply to a
18 written consent for the use of a similar name under this section to
19 the same extent those sections apply to filing instruments.

20 SECTION 6. Section 11.203, Business Organizations Code, is
21 amended to read as follows:

22 Sec. 11.203. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED
23 NAME. If the secretary of state determines that a filing entity's
24 name contained in a certificate of reinstatement filed under
25 Section 11.202 is the same as, deceptively similar to, or similar to
26 a name of a filing entity or foreign entity on file as provided by or
27 reserved or registered under this code, the secretary of state may

not accept 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. 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. Section 11.314, Business Organizations Code, is amended to read as follows:

Sec. 11.314. INVOLUNTARY WINDING UP AND TERMINATION OF PARTNERSHIP OR LIMITED LIABILITY COMPANY. A district court in the county in which the registered office or principal place of business in this state of a domestic partnership or limited liability company is located has jurisdiction to order the winding up and termination of the domestic partnership or limited liability company on application by an owner of [+]

~~[(1) a partner in]~~ the partnership or limited liability company if the court determines that:

(1) ~~[(A)]~~ the economic purpose of the entity ~~[partnership]~~ is likely to be unreasonably frustrated; ~~[or]~~

(2) ~~[(B)]~~ another owner ~~[partner]~~ has engaged in conduct relating to the entity's ~~[partnership's]~~ business that makes it not reasonably practicable to carry on the business ~~[in partnership]~~ with that owner ~~[partner]~~; or

(3) ~~[(2) an owner of the partnership or limited liability company if the court determines that]~~ it is not reasonably practicable to carry on the entity's business in conformity with its governing documents.

SECTION 8. Section 101.052, Business Organizations Code, is amended by adding Subsection (f) to read as follows:

(f) A company agreement is enforceable by or against the limited liability company, regardless of whether the company has signed or otherwise expressly adopted the agreement.

SECTION 9. Section 101.054(a), Business Organizations Code, is amended to read as follows:

(a) Except as provided by this section, the following provisions may not be waived or modified in the company agreement of a limited liability company:

(1) this section;

(2) Section 101.101, 101.151, 101.206, 101.501, 101.602(b), or 101.613;

(3) Chapter 1, if the provision is used to interpret a provision or define a word or phrase contained in a section listed in this subsection;

(4) Chapter 2, except that Section 2.104(c)(2), 2.104(c)(3), or 2.113 may be waived or modified in the company agreement;

(5) Chapter 3, except that Subchapters C and E may be waived or modified in the company agreement; or

(6) Chapter 4, 5, ~~7~~ 10, 11, or 12, other than Section 11.056.

SECTION 10. Section 101.305, Business Organizations Code, is amended to read as follows:

Sec. 101.305. MANAGER VACANCY. (a) Subject to Section 101.306(b), a vacancy in the position of a manager of a limited

liability company may be filled by:

(1) the affirmative vote of the majority of the remaining managers of the company, without regard to whether the remaining managers constitute a quorum; or

(2) the members ~~[if the vacancy is a result of an increase in the number of managers, an election]~~ at a [an annual or special] meeting of the company's members called for that purpose.

(b) A person elected to fill a vacancy in the position of a manager serves for the unexpired term, if any, of the person's predecessor.

SECTION 11. Subchapter K, Chapter 101, Business Organizations Code, is amended by adding Section 101.503 to read as follows:

Sec. 101.503. PENALTY FOR REFUSAL TO PERMIT EXAMINATION OF CERTAIN RECORDS. (a) A limited liability company that refuses to allow a member to examine and copy, on written request that complies with Section 101.502(a), 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. The liability imposed on a limited liability company under this subsection is in addition to any other damages or remedy afforded to the member by law.

(b) It is a defense to an action brought under this section that the person suing:

(1) has improperly used information obtained through a prior examination of the records or other information of the limited liability company or any other limited liability company,

1 under Section 101.502; or

2 (2) was not acting in good faith or for a proper
3 purpose in making the person's request for examination.

4 SECTION 12. Section 101.602, Business Organizations Code,
5 is amended by adding Subsection (c) to read as follows:

6 (c) Subsection (a) or any provision contained in a limited
7 liability company agreement or certificate of formation pursuant to
8 Subsection (a) does not restrict:

9 (1) a particular series or a limited liability company
10 on behalf of a particular series from expressly agreeing in the
11 company agreement or other written agreement that any or all of the
12 debts, liabilities, obligations, and expenses incurred, contracted
13 for, or otherwise existing with respect to the company generally or
14 any other series of the company shall be enforceable against the
15 assets of that particular series; or

16 (2) a limited liability company from expressly
17 agreeing in the company agreement or other written agreement that
18 any or all of the debts, liabilities, obligations, and expenses
19 incurred, contracted for, or otherwise existing with respect to a
20 particular series shall be enforceable against the assets of the
21 company generally.

22 SECTION 13. Section 101.605, Business Organizations Code,
23 is amended to read as follows:

24 Sec. 101.605. GENERAL POWERS OF SERIES. A series
25 established under this subchapter has the power and capacity, in
26 the series' own name, to:

27 (1) sue and be sued;

(2) contract;

(3) acquire, sell, and hold title to assets of the series, including real property, personal property, and intangible property;

(4) grant liens and security interests in assets of the series;

(5) be a promoter, organizer, partner, owner, member, associate, or manager of an organization; and

(6) ~~[(5)]~~ exercise any power or privilege as necessary or appropriate to the conduct, promotion, or attainment of the business, purposes, or activities of the series.

SECTION 14. Sections 152.212(b) and (c), Business Organizations Code, are amended to read as follows:

(b) A partnership shall keep or make available its books and records, if any, at its chief executive office.

(c) A partnership shall make available or provide access to its books and records to a partner or an agent or attorney of a partner.

SECTION 15. Subchapter L, Chapter 153, Business Organizations Code, is amended by adding Section 153.5521 to read as follows:

Sec. 153.5521. PENALTY FOR REFUSAL TO PERMIT EXAMINATION OF CERTAIN RECORDS. (a) 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), records or other information described by that section is liable to the partner or assignee for any cost or expense, including attorney's

1 fees, incurred in enforcing the partner's or assignee's rights
2 under Section 153.552. The liability imposed on a limited
3 partnership under this subsection is in addition to any other
4 damages or remedy afforded to the partner or assignee by law.

5 (b) It is a defense to an action brought under this section
6 that the person suing:

7 (1) has improperly used information obtained through a
8 prior examination of the records or other information of the
9 limited partnership or any other limited partnership under Section
10 153.552; or

11 (2) was not acting in good faith or for a proper
12 purpose in making the person's request for examination.

13 SECTION 16. Section 154.101(a), Business Organizations
14 Code, is amended to read as follows:

15 (a) A [~~written~~] partnership agreement may establish or
16 provide for the future creation of additional classes or groups of
17 one or more partners that have certain express relative rights,
18 powers, and duties, including voting rights. The future creation
19 of additional classes or groups may be expressed in the partnership
20 agreement or at the time of creation of the class or group.

21 SECTION 17. Section 154.102, Business Organizations Code,
22 is amended to read as follows:

23 Sec. 154.102. PROVISIONS RELATING TO VOTING. A [~~written~~]
24 partnership agreement that grants or provides for granting a right
25 to vote to a partner may contain a provision relating to:

26 (1) giving notice of the time, place, or purpose of a
27 meeting at which a matter is to be voted on by the partners;

- (2) waiver of notice;
- (3) action by consent without a meeting;
- (4) the establishment of a record date;
- (5) quorum requirements;
- (6) voting in person or by proxy; or
- (7) other matters relating to the exercise of the right to vote.

SECTION 18. Subchapter B, Chapter 154, Business Organizations Code, is amended by adding Section 154.105 to read as follows:

Sec. 154.105. PARTNERSHIP BOUND BY PARTNERSHIP AGREEMENT.
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. Section 154.103, Business Organizations Code, is repealed.

SECTION 20. This Act takes effect September 1, 2017.