

## **BILL ANALYSIS**

C.S.H.B. 3608  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been noted that, since its adoption in 2003, the Business Organizations Code has undergone a number of technical and substantive revisions. There have been calls for that code to be revised once again, particularly with respect to partnerships, limited liability companies, use of electronic data systems, and the delayed effectiveness of filing instruments. C.S.H.B. 3608 seeks to make those revisions.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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. 3608 amends the Business Organizations Code to authorize the books, records, minutes, and ownership or membership records of any domestic filing entity to be maintained by or on behalf of the filing entity on, or by means of, an information storage device or method or one or more electronic data systems, provided that any books, records, minutes, and ownership or membership records so maintained can be converted into written paper form within a reasonable time. The bill clarifies that the term "electronic data system" includes a distributed electronic network or database, including one that employs blockchain or distributed ledger technology. The bill removes the specification that the location at which the filing entity is required to keep the current record of the name and mailing address of each owner or member of the filing entity is at the entity's registered office or principal place of business or at the office of the entity's transfer agent or registrar. The bill authorizes all supplemental books and records required to be maintained by a limited liability company, and all books and records required to be maintained by a domestic limited partnership, to be maintained in any form and manner permitted for the primary records of a domestic filing entity.

C.S.H.B. 3608 revises the definition of "shareholder" or "holder of shares" to clarify that share transfer records may be maintained on behalf of a for-profit corporation, professional corporation, or real estate investment trust. The bill provides the option for notice regarding an uncertificated ownership interest in a domestic entity to be provided to the owner of that interest by electronic transmission as an alternative to being provided in writing. The bill removes the specification that the domestic entity provides that notice.

C.S.H.B. 3608 expands the options for delaying the effectiveness of a filing instrument to authorize a filing instrument whose effectiveness is to be delayed to take effect:

- at a specified date;
- at a specified date and time;
- on the occurrence of a specified future event or fact, including an act of any person; or
- after the occurrence of a future event or fact, including the act of any person, at a specified date, at a specified date and time, or after the passage of a specified period of time.

The bill makes conforming changes and other clarifying revisions with respect to a filing instrument with delayed effectiveness.

C.S.H.B. 3608 updates language regarding indistinguishable entity names in a provision relating to the abandonment of a filing instrument before effectiveness. The bill clarifies that an electronic transmission of a consent by an owner, member, or governing person of a filing entity may be transmitted on behalf of the owner, member, or governing person. The bill removes the prohibition against a decrease in the number of managers of a limited liability company shortening the term of an incumbent manager. The bill makes a limited liability company that refuses to allow an assignee of a membership interest to examine and copy records or certain other information on written request liable to the assignee for any cost or expense incurred in enforcing the assignee's rights with regard to that examination. That liability is in addition to any other damages or remedy afforded to the assignee by law.

C.S.H.B. 3608 grants an applicable district court jurisdiction to order the winding up and termination of a series of a domestic limited liability company, on application by or for a member associated with the series, if the court determines that the economic purpose of the series is likely to be unreasonably frustrated or that another member associated with the series has engaged in conduct relating to the series' business that makes it not reasonably practicable to carry on the business with that member.

C.S.H.B. 3608 removes the authorization for a creditor to proceed against one or more partners of a general partnership under certain circumstances to satisfy a judgment based on a claim against the partnership. The bill makes revisions to the exception that specifies circumstances under which a creditor may proceed directly against the property of one or more partners to satisfy such a judgment without satisfying certain requisite conditions.

C.S.H.B. 3608 replaces provisions providing for the indemnification of a withdrawn partner for certain liability under a general partnership with a requirement for such a partnership to indemnify a withdrawn partner whose interest is redeemed against all partnership obligations, whether incurred before or after the date of withdrawal, except for an obligation incurred by an act of the withdrawn partner under the withdrawn partner's power to bind the partnership.

### **EFFECTIVE DATE**

September 1, 2019.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3608 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the definition of "electronic data system."