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S.B. No. 1859

A BILL TO BE ENTITLED

AN ACT

relating to business entities.

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

SECTION 1. Section 1.002, Business Organizations Code, is amended by amending Subdivisions (20-a) and (81) and adding Subdivision (20-b) to read as follows:

(20-a) "Electronic data system" means an electronic network or database. The term includes a distributed electronic network or database, including one that employs blockchain or distributed ledger technology.

(20-b) "Electronic transmission" means a form of communication, including communication by use of or participation in one or more electronic data systems, that:

(A) does not directly involve the physical transmission of paper;

(B) creates a record that may be retained, retrieved, and reviewed by the recipient; and

(C) may be directly reproduced in paper form by the recipient through an automated process.

(81) "Shareholder" or "holder of shares" means:

(A) the person in whose name shares issued by a for-profit corporation, professional corporation, or real estate investment trust are registered in the share transfer records maintained by or on behalf of the for-profit corporation,

1 professional corporation, or real estate investment trust; or

2 (B) the beneficial owner of shares issued by a
3 for-profit corporation, whose shares are held in a voting trust or
4 by a nominee on the beneficial owner's behalf, to the extent of the
5 rights granted by a nominee statement on file with the for-profit
6 corporation in accordance with Sections 21.201(b) and (c).

7 SECTION 2. Sections 3.151(a) and (b), Business
8 Organizations Code, are amended to read as follows:

9 (a) Each filing entity shall keep:

10 (1) books and records of accounts;

11 (2) minutes of the proceedings of the owners or
12 members or governing authority of the filing entity and committees
13 of the owners or members or governing authority of the filing
14 entity;

15 (3) ~~[at its registered office or principal place of~~
16 ~~business, or at the office of its transfer agent or registrar,]~~ a
17 current record of the name and mailing address of each owner or
18 member of the filing entity; and

19 (4) other books and records as required by the title of
20 this code governing the entity.

21 (b) The books, records, minutes, and ownership or
22 membership records of any filing entity~~[, including those described~~
23 ~~in Subsection (a)(4),]~~ may be:

24 (1) in written paper form; or

25 (2) maintained by or on behalf of the filing entity on,
26 or by means of, an information storage device or method or one or
27 more electronic data systems, provided that any books, records,

1 minutes, and ownership or membership records so maintained can be
2 ~~[another form capable of being]~~ converted into written paper form
3 within a reasonable time.

4 SECTION 3. Sections 3.205(a) and (c), Business
5 Organizations Code, are amended to read as follows:

6 (a) Except as provided by Subsection (c) and in accordance
7 with Chapter 8, Business & Commerce Code, after an issuance
8 ~~[issuing]~~ or transfer of ~~[transferring]~~ an uncertificated
9 ownership interest in a domestic entity, ~~[a domestic entity shall~~
10 ~~notify]~~ the owner of the ownership interest shall be notified in
11 writing or by electronic transmission of any information required
12 under this subchapter to be stated on a certificate representing
13 the ownership interest.

14 (c) The owner of an uncertificated ownership interest in a
15 ~~[A]~~ domestic entity is not required to be notified ~~[send a notice]~~
16 under Subsection (a) if:

17 (1) the required information is included in the
18 governing documents of the entity; and

19 (2) the owner of the uncertificated ownership interest
20 is provided with a copy of the governing documents.

21 SECTION 4. Sections 4.052, 4.053, 4.054, 4.055, and 4.056,
22 Business Organizations Code, are amended to read as follows:

23 Sec. 4.052. DELAYED EFFECTIVENESS OF CERTAIN FILINGS.

24 (a) Except as provided by Section 4.058, a filing instrument may
25 take effect after the time the instrument would otherwise take
26 effect as provided by this code for the entity filing the
27 instrument.

1 (b) If the effectiveness of a filing instrument is to be
2 delayed as permitted by this section, the filing instrument may
3 take effect [~~and~~]:

4 (1) at a specified date;

5 (2) at a specified date and time; [~~or~~]

6 (3) [~~(2)~~] on the occurrence of a specified future
7 event or fact, including an act of any person; or

8 (4) after the occurrence of a future event or fact,
9 including the act of any person, at a specified date, at a specified
10 date and time, or after the passage of a specified period of time.

11 Sec. 4.053. CONDITIONS FOR DELAYED EFFECTIVENESS. (a) The
12 date, or the date and time, at which a filing instrument takes
13 effect is delayed if the instrument clearly and expressly states,
14 in addition to any other required statement or information:

15 (1) the specified date, or the specified [~~specific~~]
16 date and time, at which the instrument takes effect; or

17 (2) if the instrument takes effect on or after the
18 occurrence of a future event or fact that may occur:

19 (A) the [~~manner in which the~~] event or fact that
20 will cause the instrument to take effect; [~~and~~]

21 (B) when the filing instrument is to take effect
22 if the instrument is to take effect after the occurrence of a
23 specified future event or fact; and

24 (C) the date of the 90th day after the date the
25 instrument is signed.

26 (b) If the effectiveness of a filing instrument is to be
27 delayed as permitted by Section 4.052 [~~take effect on a specific~~

1 ~~date and time other than that provided by this code]:~~

2 (1) the effective date may not be later than the 90th
3 day after the date the instrument is signed; and

4 (2) the specified [~~specific~~] time at which the
5 instrument is to take effect may not be specified as "12:00 a.m." or
6 "12:00 p.m."

7 Sec. 4.054. DELAYED EFFECTIVENESS ON FUTURE EVENT OR FACT.
8 A filing instrument that is to take effect on or after the
9 occurrence of a future event or fact in accordance with Section
10 4.053(a)(2) [~~other than the passage of time,~~] and for which the
11 statement required by Section 4.055 is filed within the prescribed
12 time[~~7~~] takes effect on:

13 (1) the date, or the date and time, at which the [~~last~~
14 ~~specified~~] event or fact occurs or is waived; or

15 (2) the specified date, the specified date and time,
16 or the passage of the specified period of time after the occurrence
17 or waiver of the event or fact [~~or the date and time at which a~~
18 ~~condition is satisfied or waived~~].

19 Sec. 4.055. STATEMENT OF EVENT OR FACT. An entity that
20 files a filing instrument that takes effect on or after the
21 occurrence of a future event or fact in accordance with Section
22 4.053(a)(2) [~~other than the passage of time,~~] must sign and file as
23 provided by Subchapter A, not later than the 90th day after the date
24 the filing instrument is filed, a statement that:

25 (1) confirms that each event or fact on which the
26 effect of the instrument is conditioned has been satisfied or
27 waived; [~~and~~]

1 (2) states the date, or the date and time, on which the
2 condition was satisfied or waived; and

3 (3) if the filing instrument was to take effect after
4 the occurrence of a specified future event or fact, states the date,
5 or the date and time, at which the filing instrument took effect.

6 Sec. 4.056. FAILURE TO FILE STATEMENT. (a) If the [~~effect~~
7 ~~of a~~] filing instrument is to take effect on or after [~~conditioned~~
8 ~~on~~] the occurrence of a future event or fact in accordance with
9 Section 4.053(a)(2) [~~, other than the passage of time,~~] and the
10 statement required by Section 4.055 is not filed before the
11 expiration of the prescribed time, the filing instrument does not
12 take effect. This section does not preclude the filing of a
13 subsequent filing instrument required by this code to make the
14 action or transaction evidenced by the original filing instrument
15 effective.

16 (b) If the [~~effect of a~~] filing instrument is to take effect
17 on or after [~~conditioned on~~] the occurrence of a future event or
18 fact [~~, other than the passage of time,~~] and the specified event or
19 fact does not occur and is not waived, the parties to the filing
20 instrument must sign and file a certificate of abandonment as
21 provided by Section 4.057.

22 SECTION 5. Section 4.057(e), Business Organizations Code,
23 is amended to read as follows:

24 (e) If in the interim before a certificate of abandonment is
25 filed the name of an entity that is a party to the action or
26 transaction becomes indistinguishable from [~~the same as or~~
27 ~~deceptively similar to~~] the name of another entity already on file

1 or reserved or registered under this code, the filing officer may
2 not file the certificate of abandonment unless the entity by or for
3 whom the certificate is filed changes its name in the manner
4 provided by this code for that entity.

5 SECTION 6. Section 4.059, Business Organizations Code, is
6 amended to read as follows:

7 Sec. 4.059. ACKNOWLEDGMENT OF FILING WITH DELAYED
8 EFFECTIVENESS. (a) An acknowledgment of filing issued or other
9 action taken by the secretary of state affirming the filing of a
10 filing instrument that has a specific delayed effective date, or a
11 specific delayed effective date and time, must state the date, or
12 the date and time, at which the instrument takes effect.

13 (b) An acknowledgment of filing issued or other action taken
14 by the secretary of state affirming the filing of a filing
15 instrument the effectiveness [~~effect~~] of which is delayed until on
16 or after the occurrence of a future event or fact must [+

17 [~~(1) state that the effective date and time of the~~
18 ~~filing instrument is conditioned on the occurrence of a future~~
19 ~~event or fact as described in the filing instrument, or~~

20 [~~(2) otherwise~~] indicate that the effective date, or
21 the effective date and time, of the instrument is conditioned on the
22 occurrence of a future event or fact.

23 SECTION 7. Section 6.205(b), Business Organizations Code,
24 is amended to read as follows:

25 (b) Except as otherwise provided by an entity's governing
26 documents, an electronic transmission of a consent by an owner,
27 member, or governing person to the taking of an action by the entity

1 is considered a signed writing if the transmission contains or is
2 accompanied by information from which it can be determined:

3 (1) that the electronic transmission was transmitted
4 by or on behalf of the owner, member, or governing person; and

5 (2) the date on which the electronic transmission was
6 transmitted by or on behalf of the owner, member, or governing
7 person [~~transmitted the electronic transmission~~].

8 SECTION 8. Section 101.302(c), Business Organizations
9 Code, is amended to read as follows:

10 (c) The number of managers of a limited liability company
11 may be increased or decreased by amendment to, or as provided by,
12 the company agreement [~~, except that a decrease in the number of~~
13 ~~managers may not shorten the term of an incumbent manager~~].

14 SECTION 9. Section 101.501, Business Organizations Code, is
15 amended by adding Subsection (d) to read as follows:

16 (d) All books and records required to be maintained by a
17 limited liability company under this section may be maintained in
18 any form and manner permitted under Section 3.151(b).

19 SECTION 10. Section 101.503(a), Business Organizations
20 Code, is amended to read as follows:

21 (a) A limited liability company that refuses to allow a
22 member or an assignee of a membership interest to examine and copy,
23 on written request that complies with Section 101.502(a), records
24 or other information described by that section is liable to the
25 member or assignee for any cost or expense, including attorney's
26 fees, incurred in enforcing the member's or assignee's rights under
27 Section 101.502. The liability imposed on a limited liability

1 company under this subsection is in addition to any other damages or
2 remedy afforded to the member or assignee by law.

3 SECTION 11. Section 101.621, Business Organizations Code,
4 is amended to read as follows:

5 Sec. 101.621. WINDING UP BY COURT ORDER. A district court
6 in the county in which the registered office or principal place of
7 business in this state of a domestic limited liability company is
8 located, on application by or for a member associated with the
9 series, has jurisdiction to order the winding up and termination of
10 a series if the court determines that:

11 (1) it is not reasonably practicable to carry on the
12 business of the series in conformity with the company agreement;

13 (2) the economic purpose of the series is likely to be
14 unreasonably frustrated; or

15 (3) another member associated with the series has
16 engaged in conduct relating to the series' business that makes it
17 not reasonably practicable to carry on the business with that
18 member.

19 SECTION 12. Sections 152.306(b) and (c), Business
20 Organizations Code, are amended to read as follows:

21 (b) Except as provided by Subsection (c), a creditor may
22 proceed against [~~one or more partners or~~] the property of one or
23 more [~~the~~] partners to satisfy a judgment based on a claim against
24 the partnership only if a judgment:

25 (1) is [~~also~~] obtained against the partner; and

26 (2) based on the same claim:

27 (A) is obtained against the partnership;

1 (B) has not been reversed or vacated; and

2 (C) remains unsatisfied for 90 days after:

3 (i) the date on which the judgment is
4 entered; or

5 (ii) the date on which the stay expires, if
6 the judgment is contested by appropriate proceedings and execution
7 on the judgment is stayed.

8 (c) Subsection (b)(2) [~~(b)~~] does not prohibit a creditor
9 from proceeding directly against [~~one or more partners or~~] the
10 property of one or more [~~the~~] partners [~~without first seeking~~
11 ~~satisfaction from partnership property~~] if:

12 (1) the partnership is a debtor in bankruptcy;

13 (2) the creditor and the partner or partners whose
14 property is the subject of the proceeding brought by the creditor
15 [~~partnership~~] agreed that the creditor is not required to comply
16 with Subsection (b)(2) [~~(b)~~];

17 (3) a court orders otherwise, based on a finding that
18 partnership property subject to execution in the state is clearly
19 insufficient to satisfy the judgment or that compliance with
20 Subsection (b)(2) [~~(b)~~] is excessively burdensome; or

21 (4) liability is imposed on the partner by law or
22 contract independently of the person's status as a partner.

23 SECTION 13. Section 152.606, Business Organizations Code,
24 is amended to read as follows:

25 Sec. 152.606. INDEMNIFICATION OF WITHDRAWN PARTNER [~~FOR~~
26 ~~CERTAIN LIABILITY~~]. [~~(a)~~] A partnership shall indemnify a
27 withdrawn partner whose interest is redeemed against all [~~a~~]

1 partnership obligations, whether [~~liability~~] incurred before or
2 after the date of withdrawal, except for an obligation [~~a~~
3 ~~liability~~].

4 [~~(1) that is unknown to the partnership at the time, or~~
5 [~~(2)~~] incurred by an act of the withdrawn partner
6 under Section 152.504.

7 [~~(b) For purposes of this section, a liability is unknown to~~
8 ~~the partnership if it is not known to a partner other than the~~
9 ~~withdrawn partner.~~]

10 SECTION 14. Sections 153.551(b) and (c), Business
11 Organizations Code, are amended to read as follows:

12 (b) All books and records required to be maintained by a [A]
13 limited partnership under this section may be maintained in any
14 form and manner permitted under Section 3.151(b) [~~shall maintain~~
15 ~~its records in written form or in another form capable of being~~
16 ~~converted to written form in a reasonable time].~~

17 (c) A limited partnership shall keep in its registered
18 office in this state and make available to a partner on reasonable
19 request the street address of its principal office in the United
20 States in which the records required by this section are maintained
21 or made available.

22 SECTION 15. This Act takes effect September 1, 2019.