

## **BILL ANALYSIS**

C.S.H.B. 4279  
By: Longoria  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Business Organizations Code is an innovative codification that brings together all of the state's business organizations laws together in a relatively easy-to-use format. The code helps keep Texas at the forefront of leading business states. Keeping it current, however, requires ongoing technical and substantive modifications. The Business Law Section of the State Bar of Texas, in consultation with the Secretary of State's office, works during the biennium to develop and suggest such improvements. C.S.H.B. 4279 seeks to use those suggestions to address needed updates and modernizations impacting all Texas business organizations, and specific modifications affecting corporations, limited liability companies, and partnerships.

### **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**

#### **Assumed Name of Limited Liability Company**

C.S.H.B. 4279 amends the Business & Commerce Code to clarify that, under the Assumed Business or Professional Name Act, the assumed name of a limited liability company includes the name of any protected series of the limited liability company established by its company agreement if the name of the protected series does not include the name of the limited liability company stated in the limited liability company's certificate of formation or a comparable document.

#### **General Provisions**

C.S.H.B. 4279 amends the Business Organizations Code to revise provisions relating to a domestic corporation, limited partnership, limited liability company, professional association, cooperative, or real estate investment trust. The bill, as follows:

- authorizes a restated certificate of formation to omit the initial mailing address of the filing entity; and
- specifies for the purpose of defining an emergency period that such a period is one in which an applicable entity's governing authority is unable to fulfill a requirement necessary for action by vote at a meeting of the governing authority outside of that period.

The bill clarifies the existence of a doctrine of independent legal significance under which an action validly taken under a provision of the Business Organizations Code is prohibited from being considered invalid because the action is identical or similar in substance to an action that could have been taken under another provision of that code but fails to satisfy one or more requirements prescribed by that other provision.

### **Winding Up and Termination of a Domestic Entity**

C.S.H.B. 4279 revises procedures for the reinstatement of a terminated domestic entity. The bill, as follows:

- removes the requirement that a terminated entity complete the requirements for reinstatement not later than the third anniversary of the date the termination took effect;
- removes the requirement that a reinstated entity file a certificate of reinstatement not later than the third anniversary of the date of the filing of the entity's certificate of termination; and
- establishes that any protected series or registered series that terminated because of the involuntary termination of a limited liability company or the certificate of formation thereof are automatically reinstated on the reinstatement of the company or certificate of formation, as applicable.

C.S.H.B. 4279 gives a domestic entity subject to dissenters' rights the option of providing the required notice of an action or proposed action to which an affected owner has a right to dissent along with accompanying information directing the owner to a publicly available electronic resource at which statutory provisions regarding dissenters' rights may be accessed without subscription or cost. This is an alternative to providing the required notice along with an accompanying copy of those statutory provisions. With respect to a court judgment of the fair value of an ownership interest in an appraisal proceeding after the dissenting owner's objection, the bill requires the organization required to pay the amount of the judgment to do so on the terms and conditions ordered by the court. The bill removes the requirement that the payment be made immediately to an owner of an uncertificated interest.

C.S.H.B. 4279 authorizes the company agreement of a limited liability company to provide for the legal representative or successor of the last remaining company member to be admitted as a member on termination of the last remaining member for purposes of continuing the company. The bill includes such an admission among the actions that may be taken to prevent the required winding up of the company on termination of the last remaining member. The bill extends from the 90th day after the termination of the last remaining member to one year after that date the deadline for taking such an action and also provides for the action to be taken within the period of time provided by the company agreement.

### **Limited Liability Companies**

#### Governing Documents

C.S.H.B. 4279 revises provisions relating to the formation and governing documents of a limited liability company. The bill, as follows:

- includes the name of a registered series that does not comply with requirements for naming registered series as one of the circumstances under which a manager or member associated with a registered series, as applicable, must promptly amend the certificate of registered series;
- for the purpose of defining a company agreement, includes as a company agreement an implied agreement of the members concerning the affairs or the conduct of the business of the limited liability company;
- establishes that a reference to a company agreement includes a provision contained in the certificate of formation to the extent that the provision reflects the agreement of each

member concerning the affairs or the conduct of the business of the limited liability company;

- authorizes a written company agreement to consist of one or more agreements, instruments, or other writings and to include or incorporate one or more schedules, supplements, or other writings providing for the conduct of the business and affairs of the limited liability company or of a series of the limited liability company;
- makes a company agreement enforceable by or against a protected series or registered series of the limited liability company, regardless of whether the protected series or registered series has signed or otherwise expressly adopted the agreement;
- establishes that a member or manager of the limited liability company, or an assignee of a membership interest of the company, is bound by the company agreement, regardless of whether the member, manager, or assignee signs the company agreement; and
- removes the exception for provisions relating to the continuation of a limited liability company from the prohibition on waiving or modifying certain provisions in the company agreement.

### Management

C.S.H.B. 4279 removes a requirement for the governing authority of a limited liability company to manage the business and affairs of the company and requires the governing authority instead to direct the management of such business and affairs and to exercise or authorize the exercise of the powers of the company. The bill specifies, for the purposes of taking an action by less than unanimous written consent, that such an action may be taken without providing prior or subsequent notice.

### Series Limited Liability Companies

C.S.H.B. 4279 authorizes a certificate issued by the secretary of state stating that a domestic registered series is in existence to be relied on as conclusive evidence of the existence of the domestic registered series, subject to any qualification stated in the certificate.

C.S.H.B. 4279 provides for the division of a merging series of the same limited liability company into a surviving merging series and one or more new protected series or registered series. The bill authorizes the plan of merger to include any amendment to a requisite affected certificate of registered series by an attachment or exhibit to the plan. The bill clarifies that the requirement to file a certificate of merger may be satisfied by the filing of the plan of merger containing the information required to be included in the certificate of merger.

### **Corporations**

C.S.H.B. 4279 authorizes shareholders of a for-profit corporation to assert in a representative suit the fact that an act or transfer is beyond the scope of the expressed purpose or purposes of the corporation or is inconsistent with an expressed limitation on the authority of an officer or director. The bill authorizes the board of directors of a corporation to delegate to a person or persons the authority to enter into one or more transactions to issue shares, rights, or options. The bill provides for the issuance by such a delegated person and prohibits information related to the maximum number and minimum amount of consideration of issued shares from depending on a determination or action by the person to whom authority was delegated. The bill repeals the following authorizations regarding the issuance of shares, rights, and options:

- an authorization for the amount of the consideration to be determined by the approval of a minimum amount of consideration or a formula to determine that amount; and
- an authorization for the terms, agreement, or plan under which rights or options are issued to provide for the designation of officers or employees of the corporation or its subsidiary to receive rights or options created by the corporation.

C.S.H.B. 4279 removes a requirement for a list of shareholders entitled to vote at a shareholders meeting to be produced and kept open at the meeting. The bill repeals a requirement for such a list at a meeting held by remote communication to be open to inspection by a shareholder during the meeting on a reasonably accessible electronic network.

## **Partnerships**

C.S.H.B. 4279 expands the definition of partnership agreement for the purposes of the Texas General Partnership Law. The bill, as follows:

- specifies that the agreement means any implied agreement of the partners;
- specifies that the agreement concerns the partnership's affairs or business, and includes amendments to the agreement;
- establishes that a partnership is not required to sign its partnership agreement, but the partnership or a partner, transferee or assignee of a partnership interest is bound by the agreement whether or not the agreement is signed by the applicable party;
- authorizes the agreement to provide rights to any person, including a person who is not a party to the partnership agreement, to the extent contained in the agreement; and
- authorizes the agreement to consist of one or more agreements, instruments, or other writings and to include or incorporate one or more schedules, supplements, or other writings providing for the conduct of the business and affairs of the partnership.

C.S.H.B. 4279 establishes retroactive reinstatement for a limited partnership whose certificate of formation has been terminated for failure to timely file a required report if the limited partnership files the required report not later than the 120th day after being notified of the resulting forfeiture to conduct business in Texas. Retroactive reinstatement nullifies the extinguishment of an existing claim by or against the terminated partnership.

## **Right to Examine Records**

C.S.H.B. 4279 requires the examination or copying of the records of a corporation, limited liability company, and limited partnership to be conducted at a reasonable time and at the organization's principal office or another location approved by the applicable person entitled to examine and copy the records for a proper purpose. The bill revises provisions relating to the examination and copying. The bill, as follows:

- specifies that the records to which such a person is entitled to examine and copy include any records, whether in written or other tangible form, which are reasonably related to and appropriate to examine and copy for that proper purpose;
- specifies that the examination and copying may be conducted by an agent, accountant, or attorney of a shareholder, limited liability company member, partner in a limited partnership, or an assignee thereof;
- makes such an agent, accountant, or attorney subject to any obligations of the shareholder, member, partner, or assignee with respect to the records made available for examination and copying; and
- establishes required addressees of a demand or request for examination or copies of certain records made by an applicable member, partner, or assignee.

The bill further specifies that a shareholder's examination of records is at the shareholder's cost if a court has compelled a corporation to produce the records for examination. The bill prohibits a partnership agreement or the partners from unreasonably restricting a former partner's right of access to books and records.

## **Void and Voidable Acts and Transactions**

C.S.H.B. 4279 provides for the ratification of any act or transaction taken by or with respect to a limited liability company and a partnership under state law or the entity's governing document that is void or voidable when taken. The bill authorizes the failure to comply with applicable

requirements that caused the act or transaction to be void or voidable to be waived or ratified and sets out the following with respect to the ratification or waiver, as applicable:

- an authorization for the act or transaction to be ratified or waived with the approval of the persons whose approval would be required under the company or partnership agreement for the act or transaction to be validly taken or for the agreement to be amended to permit the act or transaction to be validly taken;
- a provision establishing that a void or voidable issuance or assignment of any membership or partnership interest results in such interest being deemed to have not been issued or assigned for purposes of determining whether the issuance or assignment is ratified or waived;
- a provision clarifying that a ratified or waived act or transaction is deemed validly taken at the time the act or transaction occurred; and
- a prohibition on construing the provisions to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other lawful means.

## **Nonprofits**

C.S.H.B. 4279 authorizes the certificate of formation or bylaws of a nonprofit corporation to provide that an action required or authorized to be taken at a meeting may be taken without providing prior notice or taking a vote if a written consent, stating the action to be taken, is signed by the necessary number of members. The bill establishes that advance notice is not required to be given to take an action by written consent.

C.S.H.B. 4279 establishes retroactive reinstatement for a nonprofit corporation whose certificate of formation has been terminated for failure to timely file a required report if the nonprofit files the required report, accompanied by the revival fee, not later than the 120th day after being notified of the resulting forfeiture to conduct business in Texas. Retroactive reinstatement nullifies the extinguishment of an existing claim by or against the terminated nonprofit corporation.

## **Repealed Provisions**

C.S.H.B. 4279 repeals the following provisions of the Business Organizations Code:

- Section 21.160(d);
- Sections 21.169(d) and (e);
- Section 21.354(a-1); and
- Section 22.158(d).

## **EFFECTIVE DATE**

September 1, 2023.

## **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 4279 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The introduced established that an authorization of the board of directors of a corporation may delegate the authority to enter into one or more transactions to issue rights or options. The substitute includes a clarification absent from the introduced that the authorization may delegate that authority to a person or persons.

The substitute includes a specification absent from the introduced that a partnership agreement means any implied agreement of the partners.