

BILL ANALYSIS

C.S.H.B. 2144
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed concern that current law may not reflect best practices with regard to partnerships and limited liability partnerships. The parties contend that certain provisions of law need to be updated and clarified. C.S.H.B. 2144 seeks to address these concerns.

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. 2144 amends the Business Organizations Code to specify that an application for registration of a limited liability partnership accepted by the secretary of state is considered to be an effective registration and conclusive evidence of the satisfaction of all conditions precedent to an effective registration. The bill repeals a statutory provision authorizing an effective registration to be renewed before its expiration date and changes the period the registration is effective from being effective until the first anniversary of the date of registration or a later effective date, unless the application is withdrawn or revoked at an earlier time or renewed, to being effective until it is withdrawn or terminated. The bill establishes that the registration of a limited liability partnership, except in a proceeding by the state to terminate the registration of a limited liability partnership, continues in effect so long as there has been substantial compliance with statutory provisions relating to the registration generally and with annual reporting requirements established by the bill's provisions. The bill makes these provisions effective January 1, 2016.

C.S.H.B. 2144 requires a limited liability partnership that has an effective registration, not later than June 1 of each year following the calendar year in which the application for registration as a limited liability partnership takes effect, to file with the secretary of state a report that contains the name of the partnership and the number of partners of the partnership as of the date of filing of the report or, in the case of any past due annual reports, the number of partners as of May 31 of each year that a report was due. The bill requires the secretary of state, not later than March 31 of each year, to provide to each limited liability partnership that had an effective registration as of December 31 of the preceding year a written notice stating that the annual report and applicable filing fee are due on June 1 of that year and the registration of the partnership will be terminated unless the report is filed and the filing fee is paid on or before the date prescribed. The bill requires the secretary of state to impose a fee for filing the annual report in an amount

equal to \$200 for each partner on the date of filing the report, or in the case of any past due annual report, \$200 for the number of partners as of May 31 of the year that the report was due. The bill establishes that the registration of a limited liability partnership that fails to file an annual report or pay the required filing fee not later than May 31 of the calendar year following the year on which the report or fee is due is automatically terminated. The bill specifies that the termination of registration affects only the partnership's status as a limited liability partnership and is not an event requiring a winding up and termination of the partnership. The bill authorizes a partnership whose registration was terminated for failure to file the annual report or pay the filing fee to apply to the secretary of state for reinstatement of limited liability partnership status not later than the third anniversary of the effective date of the termination and sets out provisions relating to the reinstatement process. The bill makes these provisions effective January 1, 2016.

C.S.H.B. 2144 establishes that a power of attorney is irrevocable for all purposes if the power of attorney is coupled with an interest sufficient in law to support an irrevocable power and the power of attorney states that it is irrevocable. The bill establishes that the irrevocable power of attorney, unless otherwise provided in the power of attorney, is not affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal. The bill limits the applicability of these provisions to a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a limited liability company; a power of attorney granted by a person as a member of or assignee of or a person seeking to become a member of or assignee of a membership interest in a limited liability company; a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a partnership; or a power of attorney granted by a person as a partner of or a transferee or assignee of or a person seeking to become a partner of or a transferee or assignee of a partnership interest in a partnership. The bill establishes that a power of attorney granted to a limited liability company, a member of the company, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents or that a power of attorney granted to a partnership, a partner of the partnership, or any of the partnership's respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

C.S.H.B. 2144 excludes the term "majority-in-interest," as defined in statutory provisions relating to supplemental provisions for domestic general partnerships, from a provision prohibiting a partnership agreement or the partners from waiving or modifying certain general provisions of the Business Organizations Code. The bill creates an exception to the requirement that a general partner filing a certificate of amendment reflect a change in the address of the registered office or a change in the name or address of the registered agent of the limited partnership if the registered agent of a filing entity or foreign filing entity files the required statement of such change in accordance with statutory provisions related to the filing.

C.S.H.B. 2144 repeals a statutory provision limiting the applicability of statutory provisions relating to meetings and voting by limited liability companies to the governing authority of a limited liability company, the members of a limited liability company if the members do not constitute the governing authority of the company, and a committee of the governing authority of a limited liability company.

C.S.H.B. 2144 repeals the following provisions of the Business Organizations Code:

- Section 101.351
- Section 152.802(g)

EFFECTIVE DATE

Except as otherwise provided, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2144 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Effective January 1, 2016, Section 4.158, Business Organizations Code, is amended to read as follows:

Sec. 4.158. FILING FEES: GENERAL PARTNERSHIPS. For a filing by or for a general partnership, the secretary of state shall impose the following fees:

(1) for filing a limited liability partnership application, \$200 for each partner;

(2) for filing a limited liability partnership annual report [~~renewal application~~], \$200 for each partner on the date of filing of the report [~~renewal~~];

(3) for filing an application for registration by a foreign limited liability partnership, \$200 for each partner in this state, except that the maximum fee may not exceed \$750;

(4) for filing a renewal of registration by a foreign limited liability partnership, \$200 for each partner in this state, except that the maximum fee may not exceed \$750;

(5) for filing a certificate of amendment for a domestic limited liability partnership, \$10, plus \$200 for each partner added by the amendment;

(6) for filing a certificate of amendment for a foreign limited liability partnership, \$10, plus \$200 for each partner in this state added by amendment not to exceed \$750; and

(7) for filing any other filing instrument, the filing fee imposed for a similar instrument under Section 4.155.

SECTION 2. Subchapter B, Chapter 101, Business Organizations Code, is amended by adding Section 101.055 to read as follows:

Sec. 101.055. IRREVOCABLE POWER OF ATTORNEY. (a) This section applies only to:

(1) a power of attorney with respect to matters relating to the organization, internal

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Effective January 1, 2016, Section 4.158, Business Organizations Code, is amended to read as follows:

Sec. 4.158. FILING FEES: GENERAL PARTNERSHIPS. For a filing by or for a general partnership, the secretary of state shall impose the following fees:

(1) for filing a limited liability partnership application, \$200 for each partner;

(2) for filing a limited liability partnership annual report [~~renewal application~~], \$200 for each partner on the date of filing of the report or, in the case of any past due annual report, \$200 for the number of partners as of May 31 of the year that the report was due [~~renewal~~];

(3) for filing an application for registration by a foreign limited liability partnership, \$200 for each partner in this state, except that the maximum fee may not exceed \$750;

(4) for filing a renewal of registration by a foreign limited liability partnership, \$200 for each partner in this state, except that the maximum fee may not exceed \$750;

(5) for filing a certificate of amendment for a domestic limited liability partnership, \$10, plus \$200 for each partner added by the amendment;

(6) for filing a certificate of amendment for a foreign limited liability partnership, \$10, plus \$200 for each partner in this state added by amendment not to exceed \$750; and

(7) for filing any other filing instrument, the filing fee imposed for a similar instrument under Section 4.155.

SECTION 2. Subchapter B, Chapter 101, Business Organizations Code, is amended by adding Section 101.055 to read as follows:

Sec. 101.055. IRREVOCABLE POWER OF ATTORNEY. (a) This section applies only to:

(1) a power of attorney with respect to matters relating to the organization, internal

affairs, or termination of a limited liability company; or
(2) a power of attorney granted by:
(A) a person as a member of or assignee of a membership interest in a limited liability company; or
(B) a person seeking to become a member of or assignee of a membership interest in a limited liability company.
(b) A power of attorney is irrevocable if the power of attorney:
(1) is coupled with an interest sufficient in law to support an irrevocable power; and
(2) states that it is irrevocable.
(c) Unless otherwise provided in the power of attorney, an irrevocable power of attorney created under this section may not be affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.
(d) A power of attorney granted to the limited liability company, a member of the company, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

SECTION 3. Section 152.002(b), Business Organizations Code, is amended.

SECTION 4. Effective January 1, 2016, Section 152.802, Business Organizations Code, is amended.

SECTION 5. Effective January 1, 2016, Subchapter J, Chapter 152, Business Organizations Code, is amended by adding Section 152.806 to read as follows:

Sec. 152.806. ANNUAL REPORT. (a) Not later than June 1 of each year following the calendar year in which the application for registration as that type of partnership takes effect, a registered limited liability partnership shall file with the secretary of state a report that contains:

- (1) the name of the partnership; and
- (2) the number of partners of the partnership as of the date of filing of the

affairs, or termination of a limited liability company; or
(2) a power of attorney granted by:
(A) a person as a member of or assignee of a membership interest in a limited liability company; or
(B) a person seeking to become a member of or assignee of a membership interest in a limited liability company.
(b) A power of attorney is irrevocable for all purposes if the power of attorney:
(1) is coupled with an interest sufficient in law to support an irrevocable power; and
(2) states that it is irrevocable.
(c) Unless otherwise provided in the power of attorney, an irrevocable power of attorney created under this section is not affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.
(d) A power of attorney granted to the limited liability company, a member of the company, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Effective January 1, 2016, Subchapter J, Chapter 152, Business Organizations Code, is amended by adding Section 152.806 to read as follows:

Sec. 152.806. ANNUAL REPORT. (a) Not later than June 1 of each year following the calendar year in which the application for registration as a limited liability partnership takes effect, a limited liability partnership that has an effective registration shall file with the secretary of state, in accordance with Chapter 4, a report that contains:

- (1) the name of the partnership; and
- (2) the number of partners of the partnership as of the date of filing of the

report or, in the case of any past due annual reports, the number of partners as of May 31 of each year that a report was due.

(b) Not later than March 31 of each year, the secretary of state shall provide written notice to each registered limited liability partnership stating that:

(1) the annual report and applicable filing fee are due on June 1 of that year; and

(2) the registration of the partnership shall be terminated unless the report is filed and the filing fee is paid on or before the date prescribed by Subsection (c).

(c) The registration of a limited liability partnership that fails to file an annual report or pay the required filing fee not later than May 31 of the calendar year following the year on which the report or fee is due is automatically terminated.

(d) A termination of registration under Subsection (c) affects only the partnership's status as a limited liability partnership and is not an event requiring a winding up and termination of the partnership under Chapter 11.

(e) A partnership whose registration as a limited liability partnership is terminated under Subsection (c) may apply to the secretary of state for reinstatement of limited liability partnership status not later than the third anniversary of the effective date of the termination. The application must state:

(1) the name of the partnership;

(2) the effective date of the termination; and

(3) that a ground for termination either did not exist or has been or will be corrected by filing an annual report and paying the filing fee as provided by Chapter 4 for each year that an annual report was not filed, including the annual report due that year.

(f) An application for reinstatement must be accompanied by a tax clearance letter from the comptroller stating that the limited liability partnership has satisfied all of its franchise tax liabilities under Chapter 171, Tax Code.

(g) All annual reports and fees to be filed and paid as required by this section may be filed and paid concurrently with the filing of an application for reinstatement of limited

report or, in the case of any past due annual reports, the number of partners as of May 31 of each year that a report was due.

(b) Not later than March 31 of each year, the secretary of state shall provide to each limited liability partnership that had an effective registration as of December 31 of the preceding year a written notice stating that:

(1) the annual report and applicable filing fee are due on June 1 of that year; and

(2) the registration of the partnership shall be terminated unless the report is filed and the filing fee is paid on or before the date prescribed by Subsection (c).

(c) The registration of a limited liability partnership that fails to file an annual report or pay the required filing fee not later than May 31 of the calendar year following the year in which the report or fee is due is automatically terminated.

(d) A termination of registration under Subsection (c) affects only the partnership's status as a limited liability partnership and is not an event requiring a winding up and termination of the partnership under Chapter 11.

(e) A partnership whose registration as a limited liability partnership is terminated under Subsection (c) may apply to the secretary of state for reinstatement of limited liability partnership status not later than the third anniversary of the effective date of the termination. The application must be filed in accordance with Chapter 4 and contain:

(1) the name of the partnership;

(2) the effective date of the termination; and

(3) a statement that the circumstances giving rise to the termination will be corrected by filing an annual report and paying the filing fee for each year that an annual report was not filed, including the annual report and filing fee due that year.

(f) An application for reinstatement must be accompanied by a tax clearance letter from the comptroller stating that the limited liability partnership has satisfied all of its franchise tax liabilities under Chapter 171, Tax Code.

(g) All annual reports and fees to be filed and paid as required by this section must be filed and paid concurrently with the filing of an application for reinstatement of limited

liability partnership status.

(h) A reinstatement under Subsection (e) that is approved by the secretary of state relates back to the effective date of the termination and takes effect as of that date, and the partnership's status as a limited liability partnership continues in effect as if the termination of its registration had never occurred.

SECTION 6. Section 153.051(a), Business Organizations Code, is amended.

SECTION 7. Subchapter C, Chapter 154, Business Organizations Code, is amended by adding Section 154.204 to read as follows:

Sec. 154.204. IRREVOCABLE POWER OF ATTORNEY. (a) This section applies only to:

(1) a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a partnership; or

(2) a power of attorney granted by:

(A) a person as a partner of or a transferee or assignee of a partnership interest in a partnership; or

(B) a person seeking to become a partner of or a transferee or assignee of a partnership interest in a partnership.

(b) A power of attorney is irrevocable for all purposes if the power of attorney:

(1) is coupled with an interest sufficient in law to support an irrevocable power; and

(2) states that it is irrevocable.

(c) Unless otherwise provided in the power of attorney, an irrevocable power of attorney created under this section may not be affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.

(d) A power of attorney granted to the partnership, a partner of the partnership, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

SECTION 8. Effective January 1, 2016,

liability partnership status.

(h) A reinstatement under Subsection (e) that is approved by the secretary of state relates back to the effective date of the termination and takes effect as of that date, and the partnership's status as a limited liability partnership continues in effect as if the termination of its registration had never occurred.

SECTION 6. Same as introduced version.

SECTION 7. Subchapter C, Chapter 154, Business Organizations Code, is amended by adding Section 154.204 to read as follows:

Sec. 154.204. IRREVOCABLE POWER OF ATTORNEY. (a) This section applies only to:

(1) a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a partnership; or

(2) a power of attorney granted by:

(A) a person as a partner of or a transferee or assignee of a partnership interest in a partnership; or

(B) a person seeking to become a partner of or a transferee or assignee of a partnership interest in a partnership.

(b) A power of attorney is irrevocable for all purposes if the power of attorney:

(1) is coupled with an interest sufficient in law to support an irrevocable power; and

(2) states that it is irrevocable.

(c) Unless otherwise provided in the power of attorney, an irrevocable power of attorney created under this section is not affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.

(d) A power of attorney granted to the partnership, a partner of the partnership, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

SECTION 8. Same as introduced version.

Section 402.001(c), Business Organizations Code, is amended.

SECTION 9. Section 101.351, Business Organizations Code, is repealed.

SECTION 10. Effective January 1, 2016, Section 152.802(g), Business Organizations Code, is repealed.

SECTION 11. Except as otherwise provided by this Act, this Act takes effect September 1, 2015.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.