

BILL ANALYSIS

H.B. 2826
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert the importance of updating provisions of the Business Organizations Code biennially to keep Texas competitive with other leading business-law states. H.B. 2826 seeks to provide for these statutory updates with regard to partnerships, limited liability companies, and other domestic and foreign entities and to series of limited liability companies and foreign entities.

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

H.B. 2826 amends the Business Organizations Code to classify a series of a domestic limited liability company or foreign entity as a person under that code. The bill applies statutory provisions governing the liability and penalty for false filing instruments to a written consent for the use of a similar name by a filing entity or foreign filing entity to the same extent those provisions apply to filing instruments. The bill clarifies that the consent to use a similar name obtained by an entity, if applicable, for acceptance of a certificate of reinstatement is written consent.

H.B. 2826 makes the registered agent designated and maintained by a domestic limited liability company or foreign entity 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. The bill requires 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 to include the name of the company or entity and the name of the series on which the process, notice, or demand is required or permitted to be served. The bill limits the duties of a registered agent on service or receipt of a process, notice, or demand that complies with that requirement to receiving or accepting, and forwarding 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 and received by the registered agent or otherwise notifying the represented company or entity at that address regarding the process, notice, or demand that is served on or received by the registered agent. 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.

H.B. 2826 makes the secretary of state 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 statutory provisions relating to the failure to designate a registered agent. The bill requires the duplicate copies of a process, notice, or demand that are delivered to the secretary of state as agent for a series of a domestic limited liability company or foreign entity to include the name of the company or entity and the name of the series of the company or entity on which the process, notice, or demand is to be served. The bill requires the secretary of state, after service on the secretary of state in compliance with that requirement, to 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 demand as provided by applicable law. The secretary of state is not required to send a copy of the process, notice, or demand directly to the series of the named domestic limited liability company or foreign entity.

H.B. 2826 makes each governing person of a series of a domestic limited liability company or a series of a foreign entity an agent of the series for the purpose of service of process, notice, or demand required or permitted by law to be served on the series. The bill authorizes a process, notice, or demand served by a political subdivision or by a person acting on behalf of a political subdivision in connection with the collection of delinquent property tax to be served on a series of a domestic limited liability company or on a series of a foreign entity by delivery of the process, notice, or demand to any governing person of the series. The bill authorizes service on a series of a domestic limited liability company or foreign entity to be made in the same manner as service is made on unknown shareholders under law if the governing persons of the series are unknown or cannot be found. The bill establishes that service of process by a political subdivision under these provisions is sufficient for a judgment against a series of the company or entity or a judgment in rem against any property to which a series of the company or entity holds title, notwithstanding any disability or reinstatement of the company or entity.

H.B. 2826 expands the circumstances under which a district court in a county in which a registered office or principal space of business in Texas of a limited liability company is located has jurisdiction to order the winding up and termination of the limited liability company on application by an owner of the limited liability company. The bill makes a company agreement of a limited liability company enforceable by or against the limited liability company, regardless of whether the company has signed or otherwise expressly adopted the agreement. The bill removes statutory provisions relating to the limitation of liability of a governing person from the list of statutory provisions that may not be waived or modified in the company agreement of a limited liability company. The bill replaces an authorization for a vacancy in the position of manager of a limited liability company that is a result of an increase in the number of managers to be filled by an election at an annual or special meeting of the company's members called for that purpose with an authorization for any vacancy in the position of manager of a limited liability company to be filled by the members at a meeting of the company's members called for that purpose.

H.B. 2826 makes a limited liability company that refuses to allow a member to examine and copy, on written request that complies with applicable provisions, records or other information for which the member has a statutory right to do so liable to the member for any cost or expense, including attorney's fees, incurred in enforcing the member's rights. This liability is in addition to any other damages or remedy afforded to the member by law. The bill establishes as a defense to such an action that the person suing 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 or that the person suing was not acting in good faith or for a proper purpose in making the person's request for examination.

H.B. 2826 establishes that statutory provisions relating to the enforceability of obligations and expenses of a series against assets or any provisions contained in a limited liability company

agreement or certificate of formation pursuant to those statutory provisions do not restrict a particular series or a limited liability company on behalf of a particular series from expressly agreeing in the company agreement or other written agreement that any or all of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the company generally or any other series of the company shall be enforceable against the assets of that particular series, nor do such provisions restrict a limited liability company from expressly agreeing in the company agreement or other written agreement that any or all of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of the company generally. The bill expands the powers and capacities that a series established under statutory provisions governing series limited liability companies has in the series' own name to include the power and capacity to be a promoter, organizer, partner, owner, member, associate, or manager of an organization.

H.B. 2826 gives a partnership the option of making its books and records, if any, available at its chief executive office and available to a partner or an agent or attorney of a partner as an alternative to keeping the books and records at the office and providing access to the books and records to those persons. The bill makes 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 applicable provisions, records or other information for which the partner or assignee has a statutory right to do so liable to the partner or assignee for any cost or expense, including attorney's fees, incurred in enforcing the partner's or assignee's rights. This liability is in addition to any other damages or remedy afforded to the partner or assignee by law. The bill establishes as a defense to such an action that the person suing has improperly used information obtained through a prior examination of the records or other information of the limited partnership or any other limited partnership or that the person suing was not acting in good faith or for a proper purpose in making the person's request for examination.

H.B. 2826 removes the specification that the partnership agreement is written from the authorization for a partnership agreement to establish or provide for the future creation of additional classes or groups of one or more partners that have certain express relative rights, powers, and duties and from the authorization for a partnership agreement that grants or provides for granting a right to vote to a partner to contain certain provisions relating to voting. The bill makes a partnership agreement enforceable by or against the partnership, regardless of whether the partnership has signed or otherwise expressly adopted the agreement.

H.B. 2826 repeals Section 154.103, Business Organizations Code, which requires prompt notice of the taking of an action under a partnership agreement that may be taken without a meeting by consent of fewer than all of the partners to be given to a partner who has not given written consent to the action.

EFFECTIVE DATE

September 1, 2017.