

SUBJECT: Revising laws pertaining to limited liability companies

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Giddings, Elkins, Kolkhorst, Bohac, J. Moreno, Oliveira, Solomons, Zedler

0 nays

1 absent — Martinez Fischer

WITNESSES: For — Elizabeth S. Miller

Against — None

On — Carmen Flores, Secretary of State’s Office

BACKGROUND: The 72nd Legislature in 1991 established limited liability companies (LLCs) under the Texas Limited Liability Company Act (TLLCA). LLCs also are subject to the Texas Revised Partnership Act (TRPA) and the Texas Revised Limited Partnership Act.

Under TLLCA, art. 11.01, one or more natural persons may form an LLC by filing articles of organization with the secretary of state. An LLC may have one or more members (owners) that may be entities rather than people. Under Art. 2.72, an LLC’s business affairs are conducted under the direction of one or more managers, unless the articles of organization or regulations reserve management to the company’s members. Managers need not be members of the LLC or residents of Texas, unless the regulations so require. Officers designated by the managing group need not be members or managers.

TLLCA, art. 6.01 requires an LLC to dissolve upon the death, withdrawal, or other events terminating a member’s membership, unless the LLC’s articles of incorporation provide otherwise. An LLC must be dissolved upon the death of a sole member.

Art. 7.03 requires that a foreign entity requesting a certificate of authority from the secretary of state attach the words “limited liability company” or “limited company” or the abbreviations “L.L.C.,” “LLC,” “LC,” “L.C.,” or “Ltd. Co.” to the ends of their names. Foreign LLCs that obtained their certificates before September 1, 1993, need not change their names.

Under Art. 7.06, a foreign entity registering as a foreign LLC must deliver to the secretary of state, along with the application for a certificate, additional documentation from the foreign LLC’s jurisdiction of formation evidencing the LLC’s existence.

A limited partnership comprises general partner(s) and limited partner(s) and is formed when the partners file a certificate of limited partnership with the secretary of state. The general partner has more control over the partnership and is subject to greater liability than the limited partner. TRPA, sec. 6.01(b) provides that a partner withdraws from the partnership if the partner gives notice of withdrawal; if an event described in the partnership agreement as causing the partner’s withdrawal or expulsion occurs; if a majority-in-interest of the other partners vote the partner out under certain circumstances; or if an application is made for a judicial decree to expel the partner because of the partner’s conduct.

Government Code, chapter 405 governs the duties of the secretary of state, which include maintaining and facilitating the filing of documents relating to business entities. Sec. 405.018 allows the secretary to transmit public data electronically.

DIGEST: HB 1637 would make various revisions to the laws concerning limited liability companies.

The bill would remove the specific requirement that an LLC be dissolved upon a member’s death, expulsion, withdrawal, bankruptcy, or dissolution. Instead, an LLC would be dissolved upon the occurrence of any event that ended the continued membership of the last remaining member. The bill would provide for continuing an LLC upon the death of its sole member through the appointment of a successor member.

A foreign entity not characterized as an LLC by the jurisdiction of its formation would not have to include the word “limited” or any abbreviation thereof in its name to procure a certificate of authority from the secretary of state.

HB 1637 would remove the requirement of filing a document from a foreign jurisdiction evidencing the existence of a foreign LLC. Instead, it would require that the application include a statement that the LLC exists as a valid entity under the laws of its jurisdiction of formation.

The bill would amend TRPA, sec. 6.01(b) to specify that a partner withdraws upon the issuance of a judicial decree of expulsion, rather than upon an application for such a decree.

HB 1637 would require the secretary of state to maintain permanent public records, in any format the secretary considered appropriate, relating to entities formed under the laws of Texas.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 1637 would remove outdated provisions in current law to give LLCs the flexibility they were intended to have when the Legislature established them and to prevent future complications for the unwary.

Current law requires LLCs to dissolve upon the death, expulsion, withdrawal, bankruptcy, or dissolution of a member because, at the time the law was enacted, this provision was essential for LLCs to maintain their tax status. However, new federal tax rules effective January 1, 1997, changed the steps by which an entity preserves its tax status. Therefore, this requirement no longer is necessary, and many states have amended their statutes to reflect this. Besides being superfluous, this requirement often is not suited to businesses that use the LLC structure, and unless an experienced attorney drafts its governing documents, the LLC may suffer greatly upon the death or withdrawal of a member.

Requiring a foreign entity to change its name to reflect LLC status, even though it does not hold that status, creates confusion for consumers and

wastes resources of the secretary of state as well as of the entity. HB 1637 would repeal that requirement.

Requiring a foreign LLC to file a document from its formation jurisdiction indicating its valid existence is burdensome. The secretary of state often must reject applications for lack of this documentation, adding to expenses for both the LLC and the secretary. Also, the proliferation of required documents can deter business formation in Texas. Current law establishes a criminal penalty for filing a false document, so allowing the LLC to state the necessary formation facts in its application should be sufficient.

Requiring the issuance of a judicial decree for the expulsion of a partner, rather than a mere accusation, would ensure that a partner's withdrawal was based on true accusations and valid evidence.

In the electronic age, it does not make sense to allow the secretary of state to use computers for document transmission and storage but not to simplify filing and related procedures to facilitate this. HB 1637 would give the secretary express authority to use its resources in the most efficient manner possible. It also would enable business entities to obtain access to documents filed with the secretary in a direct and cost-effective manner.

**OPPONENTS
SAY:**

A company registering in Texas as an LLC should have to include that in its name so that Texas consumers can be aware of its status. Because LLC status provides certain liability protections for its members and officers, consumers should be aware of that status.

The requirement of filing a document certifying that an entity is valid in another jurisdiction provides an additional deterrent to fraud. The current criminal penalties for false filing rarely are enforced.

Requiring that a judicial decree be entered before a partner could be removed for wrongdoing would erode the power of the other partners.

By changing the events that would require dissolution, HB 1637 could require LLCs to amend their articles, creating additional expenses.

NOTES:

Most of the changes proposed by HB 1637 also are contained in HB 1156 by Giddings, et al., also on today's House calendar. However, HB 1156 would not amend TRPA, sec. 6.01(b) in regard to withdrawal of a partner. Also, HB 1156 would address the issue of electronic filing and powers of the secretary of state by recodifying those procedures and powers, rather than by amending the Government Code.