

SUBJECT: Revising corporate organization requirements

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 9 ayes — Giddings, Elkins, Bailey, Bohac, Martinez, Solomons, Taylor, Vo, Zedler
0 nays

WITNESSES: For — J. Leon Lebowitz, Texas Business Law Foundation
Against — None
On — Robert M. Sumners, Secretary of State's Office

BACKGROUND: The 78th Legislative in 2003 enacted HB 1156 by Giddings, which adopted a new Business Organizations Code (BOC) effective January 1, 2006. The development of the BOC was a combined effort of the Business Law Section of the State Bar of Texas, the Secretary of State's Office, and the Texas Legislative Council.

Corporations formed in Texas on or after January 1, 2006, will be governed by the BOC, while corporations formed prior to that date will continue to be governed by the Texas Business Corporation Act (TBCA) until January 1, 2010, unless any such corporation elects to be governed by the BOC earlier. As a result, the existing TBCA will continue to govern many corporations for the next four years.

DIGEST: HB 1507 would amend the TBCA to make various revisions, adding:

- required language to be set forth on stock certificates regarding the limitation or denial of preemptive rights;
- required provisions in articles of incorporation regarding any limitation or denial of preemptive rights;
- required provisions of articles of incorporation regarding the granting of cumulative voting in the election of directors;
- definitions of the terms "organizational documents" and "direct or indirect wholly owned subsidiary"; and

- Travis County as a venue, in addition to any other venue, in which a suit could be brought for transacting business without a certificate of authority.

The existence of a corporation would cease upon the filing of a certified copy of a decree of dissolution with the Secretary of State's Office.

An offense under the TBCA would continue to be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), except that the bill would add that if the actor's intent was to defraud or harm another, the offense would be a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

The bill would take effect September 1, 2005, and apply to offenses that occurred on or after that date.

**SUPPORTERS
SAY:**

HB 1507 would revise the TBCA to incorporate changes that conform to the BOC, correct technical errors in the TBCA, and clarify other TBCA provisions. Most of the bill includes clean-up measures to make the TBCA conform with language in the new BOC when it takes effect on January 1.

HB 1507 would more closely align the TBCA to the BOC so that filing requirements affecting articles of amendment would not be dependent on the date the entity was created. Instead, filing procedures would be more uniform. The bill also would clarify dissolution proceedings and correct various technical errors.

**OPPONENTS
SAY:**

No apparent opposition

NOTES:

The companion bill, SB 746 by Fraser, has been referred to the Senate Business and Commerce Committee.