

BILL ANALYSIS

Senate Research Center

H.B. 1633
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Economic Development
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Engrossed

DIGEST

Currently, Texas, along with 47 states and the District of Columbia, has enacted provisions for domestic limited liability partnerships. The majority of these states have enacted provisions addressing the issue of out-of-state limited liability partnerships. These provisions require the registration of foreign limited liability partnerships transacting business in the state. Texas does not have any provisions setting forth the registration of foreign partnerships. This bill would require foreign limited liability partnerships that transact business in the state to register with the secretary of state. Additionally, this bill would require foreign limited liability partnerships to have and maintain a registered agent and a registered office in Texas. Finally, this bill would require foreign limited liability partnerships to re-qualify each year in order to maintain their qualified status.

PURPOSE

As proposed, H.B. 1633 requires foreign limited liability partnerships that transact business in the state to register with the secretary of state; to have and to maintain a registered agent and a registered office in Texas; and to re-qualify each year in order to maintain their qualified status.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the secretary of state in SECTION 2 (Section 10.02(n), Article 6132b, V.T.C.S. (Texas Revised Partnership Act)) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.01, Article 6132b, V.T.C.S. (Texas Revised Partnership Act), to redefine "debtor in bankruptcy." Defines "foreign limited liability partnership." Makes conforming changes.

SECTION 2. Amends Article 6132b, V.T.C.S., by redesignating Article X as Article XI and by adding a new Article X, as follows:

ARTICLE X. FOREIGN LIMITED LIABILITY PARTNERSHIP

Sec. 10.01. LAW GOVERNING FOREIGN LIMITED LIABILITY PARTNERSHIP. Provides that the laws of the state under which a foreign limited liability partnership is formed govern its organization and internal affairs and the liability of partners for obligations of the partnership. Prohibits a foreign limited liability partnership from being denied a statement of foreign qualification by reason of any difference between the laws of the state under which it is formed and the laws of Texas. Provides that a foreign limited liability partnership is subject to Section 3.01 as if it were a domestic registered limited liability partnership.

Sec. 10.02. STATEMENT OF FOREIGN QUALIFICATION. (a) Requires a foreign limited liability partnership, before transacting business in Texas, to file with the secretary of state a statement of foreign qualification. Sets forth the required contents of the statement.

(b) Requires the statement of qualification to be executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners.

(c) Requires two copies of the statement of foreign qualification to be filed accompanied by a certain fee.

(d) Provides that a partnership is registered as a foreign limited liability partnership on filing a completed initial or renewal statement of foreign qualification, in duplicate with the required fee, or on a later date specified in the statement. Provides that a registration is not affected by later changes in the partners of the partnership.

(e) Provides that an initial statement of foreign qualification filed under this section and registered by the secretary of state expires one year after the date of registration or later effective date unless earlier withdrawn or revoked or unless renewed in accordance with Subsection (g).

(f) Authorizes a registration to be withdrawn by filing in duplicate with the secretary of state a written withdrawal notice executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of partners. Sets forth the required contents of a withdrawal. Provides that a withdrawal notice terminates the status of the partnership as a foreign limited liability partnership as of the date of filing the notice or a later date specified in the notice, but no later than the expiration date under Subsection (e).

(g) Authorizes an effective date to be renewed before its expiration by filing in duplicate with the secretary of state a statement of foreign qualification containing current information of the kind required in an initial statement of qualification and the most recent date of registration of the partnership. Requires the renewal statement of qualification to be accompanied by a certain fee. Provides that a renewal statement of foreign qualification filed under this section continues an effective registration for one year after the date the effective registration would otherwise expire.

(h) Authorizes the secretary of state to remove from its active records the registration of a foreign limited liability partnership whose registration has been withdrawn or revoked or has expired and not been renewed.

(i) Authorizes the secretary of state to revoke the filing of a document filed under this subsection if the secretary of state determines that the filing fee for the document was paid by an instrument that was dishonored when presented by the state for payment. Requires the secretary of state to return the document and to give notice of revocation to the filing party by regular mail. Provides that failure to give or receive notice does not affect an earlier filing.

(j) Authorizes the secretary of state to provide forms for the statement of foreign qualification or renewal of registration.

(k) Sets forth the guidelines for the authorized amending or correcting of documents filed under this subsection by a foreign limited liability partnership.

(l) Authorizes a document filed under this subsection to be a photographic, facsimile, or similar reproduction of a signed document. Authorizes a signature on a document filed under this section to be a facsimile.

(m) Provides that a person commits a Class A misdemeanor if the person signs a document the person knows is false in any material respect with the intent that the document be delivered on behalf of the partnership to the secretary of state for filing.

(n) Authorizes the secretary of state to adopt procedural rules on filing documents under this section.

Sec. 10.03. EFFECT OF FAILURE TO QUALIFY. Prohibits a foreign limited liability partnership transacting business in Texas from maintaining an action, suit, or proceeding in

Texas unless it has registered in Texas and paid to the secretary of state all amounts owing under Section 10.02. Provides that the failure of a foreign limited liability partnership to register in Texas does not impair the validity of a contract or act of the foreign limited liability partnership; the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or defense by the foreign limited liability partnership of any action, suit, or proceeding in any Texas court. Provides that a partner of a foreign limited liability partnership is not liable for the debts and obligations of the foreign limited liability partnership solely because the foreign limited liability partnership transacted business in Texas without registration.

Sec. 10.04. **ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.** Provides that a foreign limited liability partnership is not considered to be transacting business in Texas for purposes of this Act because it carries on in Texas certain activities.

Sec. 10.05. **REGISTERED AGENT.** (a) Requires a foreign limited liability partnership subject to this Act to have and maintain in Texas a registered office; and a registered agent for service of process on the foreign limited liability partnership.

(b) Authorizes a foreign limited liability partnership subject to this Act to change its registered office, its registered agent, or both, by paying the filing fee and filing with the secretary of state a statement and a duplicate copy of the statement, that does not need to be an executed original or a photocopy of an executed original. Sets forth the required contents of the statement.

(c) Requires the statement required by Subsection (b) to be executed on behalf of the foreign limited liability partnership by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. Requires the secretary of state, if the secretary of state finds that the statement conforms to this section and upon receipt of all applicable filing fees, to file the statement in accordance with Section 10.02(k) as if it were an amendment to the statement of foreign qualification.

(d) Authorizes the change of address of the registered office, the appointment of a new registered agent, or both, to become effective on the filing of the statement by the secretary of state.

(e) Provides that the filing of the statement amends the statement of foreign qualification regarding the information required by Section 10.02(a)(5).

(f) Sets forth the guidelines for a registered agent of a foreign limited liability partnership who is authorized to resign by giving written notice to the foreign limited liability partnership and to the secretary of state.

(g) Provides that on compliance with the requirements for giving written notice under Subsection (f), the appointment of an agent terminates on the 31st day after the date of receipt of the notice by the secretary of state. Requires the secretary of state, if the secretary of state finds that the written notice conforms to this section, to file the notice in accordance with Section 10.02(k) as if it were an amendment to the statement of foreign qualification. Provides that a fee is not required for the filing of a resignation under Subsection (f).

(h) Authorizes the location of the registered office in Texas for a foreign limited liability partnership to be changed from one address to another by paying the filing fee to the secretary of state and filing with the secretary of state a statement and a duplicate copy, which need not be an executed original or a photocopy of an executed original. Sets forth the required contents of the statement.

(i) Requires the statement required by Subsection (h) to be signed and verified by the registered agent or, if the registered agent is a corporation, by an office of the corporation. Authorizes each statement, if the registered agent is simultaneously filing statements for

more than one foreign limited liability partnership, to contain a facsimile signature in the execution. Requires the secretary of state, if the secretary of state finds that the statement conforms to this section and upon receipt of the filing fee, to file it in accordance with Section 10.02(k) as if it were an amendment to the statement of foreign qualification. Provides that the address of the registered office of the foreign limited liability partnership is changed on the filing of the statement by the secretary of state. Provides that the filing of the statement amends the statement of foreign qualification regarding the information required by Section 10.02(a)(5) and no further action is required under Section 10.02(k).

(j) Provides that each partner and the registered agent of a foreign limited liability partnership registered in Texas are agents of the foreign limited liability partnership on whom may be served any process, notice, or demand required or permitted by law to be served on the foreign limited liability partnership.

(k) Provides that the secretary of state is an agent of the foreign limited liability partnership on whom any process, notice, demand may be served under certain conditions.

(l) Sets forth the guidelines for service on the secretary of state of any process, notice, or demand.

(m) Requires the secretary of state to keep a record of all processes, notices, and demands served on the secretary of state under this section and to record the time of the service and the action taken with reference to each.

(n) Provides that this section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served on a foreign limited liability partnership in another matter permitted by law.

ARTICLE XI. New heading: MISCELLANEOUS PROVISIONS

Sections 11.01-11.04. Redesignated from existing Sections 10.01-10.04.

SECTION 3. Effective date: September 1, 1997. Makes application of this Act retroactive. Prohibits this Act from affecting any action or proceeding commenced before the effective date.

SECTION 4. Emergency clause.