

BILL ANALYSIS

Senate Research Center
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S.B. 729
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DIGEST

Currently, Texas law includes for the Texas Business Corporation Act, the Texas Professional Corporation Act, and the Texas Limited Liability Company Act. S.B. 729 amends these acts by adding provisions relating to the filing of annual reports by corporations and limited liability companies, civil penalties for noncompliance, forfeiture and involuntary dissolution provisions for failure to file such reports, reinstatement procedures, procedures for filing a disclaimer of status evidenced by a filed report, and authorized fees. S.B. 729 also repeals Section 171.203 and amends 171.207 of the Tax Code relating to the public information report presently filed with the annual franchise tax return.

PURPOSE

As proposed, S.B. 729 regulates reports and other business filings made with the secretary of state and provides penalties.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Part Ten, Texas Business Corporation Act, by adding Articles 10.04 through 10.11, as follows:

Art. 10.4. ANNUAL REPORT. Defines “electronic transmission.” Requires each domestic corporation and each foreign corporation authorized to transact business in this state to file an annual report with the secretary of state on a form prescribed by the secretary of state. Requires the annual report to include certain information. Requires the report to be filed with the secretary of state by a certain date. Requires the annual report to be signed by an authorized officer or agent of the corporation under a certification that provides certain information. Requires the secretary of state to index the filing of any additional reports and make the information contained in the report part of the official record as provided by Article 10.05 of this Act. Requires the corporation to send a copy of the report to each person named in the report under Section B(8) of this article who is not currently employed by the corporation or a related business entity listed in Section B(6) or (7) of this article. Provides that a corporation reporting a change of its registered office or its registered agent under this article is not required to file an amendment to its articles of incorporation or certificate of authority or to a statement under Article 2.10 of this Act. Sets forth the fees for filing an annual report under this article. Provides that a corporation that does not file an annual report complying with this article is subject to dissolution or revocation of its certificate of authority to transact business as provided by Article 10.08 of this Act. Provides that the secretary of state is not required to accept an annual report transmitted electronically if the transmission of the report does not conform to the standards and format established by the secretary of state.

Art. 10.05. ACTION BY SECRETARY OF STATE. Authorizes the secretary of state to furnish copies of the report form to be prepared and filed as provided by Article 10.04 of this Act to each domestic or foreign corporation authorized to transact business in this state. Requires the report to be mailed to the registered office address of the corporation with a notice that the report is due. Provides that the secretary of state’s failure to furnish the report or the notice under Section A of this article or the corporation’s failure to receive the report form or notice does not extend the time for filing or excuse the corporation’s failure to file the annual report. Requires the secretary of

state, when all required fees have been paid, to if the secretary of state finds that the report complies with Article 10.04 of this Act.

Art. 10.06. FAILURE TO FILE ANNUAL REPORT. Provides that a domestic or foreign corporation that fails to file a report by a certain date forfeits the corporation's right to transact business in this state. Provides that a forfeiture under this article is without judicial ascertainment. Requires the secretary of state to note on the record relating to the corporation maintained in the secretary's office certain information when the right to transact business has been forfeited under this article. Requires notice of the forfeiture of the right to transact business to be mailed to the corporation at its registered office. Prohibits the corporation or a successor or assignee from maintaining certain actions, suits, or proceedings in court unless the corporation's right to transact business is revived. Provides that the forfeiture of the right to transact business in this state does not impair the validity of a contract or prevent the corporation from defending an action.

Art. 10.07. REVIVAL OF RIGHT TO TRANSACT BUSINESS. Authorizes a corporation that forfeits the right to transact business in this state under Article 10.06 of this Act to revive its right to transact business by filing the required report by a certain date accompanied by filing the fee for the report and a filing fee of \$5 for each month or fractional part of a month, that has elapsed since the date of the notice of forfeiture. Requires the secretary of state to revive the corporation's right to do business and note the revival, if a corporation complies with Section A of this article.

Art. 10.08. INVOLUNTARY DISSOLUTION OR REVOCATION OF CERTIFICATE AFTER FORFEITURE. Sets forth provisions authorizing the secretary of state to involuntarily dissolve a corporation or revoke the certificate of authority of a foreign corporation. Provides that dissolution of the corporation or revocation of the certificate of authority takes effect without judicial ascertainment. Requires the secretary of state to note the dissolution or revocation and the date of the dissolution or revocation on the record described by Section B(2), Article 10.07, of this Act and change the status of the corporation to inactive.

Art. 10.09. REINSTATEMENT AFTER DISSOLUTION OR REVOCATION. Authorizes a corporation that has been dissolved or has had its certificate of authority revoked under Article 10.08 of this Act to be reinstated by filing the report required by Article 10.04 of this Act accompanied by certain fees and a letter. Requires the secretary of state to take certain actions if the corporation satisfies the requirements of Section A of this article. Requires the secretary of state to require the corporation, as a precondition to reinstatement, to take certain actions if the name of the corporation is not available at the time of reinstatement.

Art. 10.10. DISCLAIMER OF STATUS. Authorizes a person to file with the secretary of state a statement disclaiming the person's status as shown on the report, if a person's name is included in a report under Section b(8), Article 10.04, of this Act and the person is not an officer director of the corporation on the date the report is filed. Requires the secretary of state to maintain a record of a statement filed under this article in the corporation's record. Provides that a filing under this article has no effect on any personal liability imposed during the period the person was an officer or director.

Art. 10.11. FEES. Authorizes the fees collected under Articles 10.04, 10.07, and 10.09 of this Act to be used by the secretary of state only to defray the cost of administering Articles 10.04 through 10.10 of this Act.

SECTION 2. Amends Part Nine, Article 1528n, V.T.C.S.(Texas Limited Liability Company Act), by adding Articles 9.04 through 9.11, as follows:

Art. 9.04. ANNUAL REPORT. Defines "electronic transmission." Requires each domestic limited liability company and each foreign limited liability company authorized to transact business in this state to file an annual report with the secretary of state on a form prescribed by the secretary of state. Requires the annual report to include certain information. Requires the report to be filed with the secretary of state's office by a certain date. Requires the annual report to be signed by an authorized manager or managing member of the limited liability company or an agent for that company under a certification that contains certain information. Requires the secretary of state to index the filing of any additional reports and make the information contained in the report part of the official record as provided by Article 9.05 of this Act. Requires the limited liability company

to send a copy of the report to each person named in the report under Section B(8) of this article who is not currently employed by the corporation or a related business entity listed in Section B(6) or (7) of this article. Provides that a limited liability company reporting a change of its registered office or its registered agent under this article is not required to file an amendment to its articles of incorporation or certificate of authority to a statement under Article 2.10 of this Act. Sets forth the fees for filing an annual report under this article. Provides that a limited liability company that does not file an annual report complying with this article is subjected to dissolution or revocation of its certificate of authority to transact business as provided by Article 9.08 of this Act. Provides that the secretary of state is not required to accept an annual report transmitted electronically if the transmission of the report does not conform to the standards and format established by the secretary of state.

Art. 9.05. ACTION BY SECRETARY OF STATE. Authorizes the secretary of state to furnish copies of the report form to be prepared and filed as provided by Article 9.04 of this Act to each domestic or foreign limited liability company authorized to transact business in this state. Requires the report forms to be mailed to the registered office address of the limited liability company with a notice that the report is due. Provides that the secretary of states failure to furnish the report or the notice under Section A of this article or the limited liability company's failure to receive the report form or notice does not extend the time for filing or excuse the limited liability company's failure to file the annual report. Requires the secretary of state, when all required fees have been paid, to provide for certain provisions if the secretary of state finds that the report complies with Article 9.04 of this Act.

Art. 9.06. FAILURE TO FILE ANNUAL REPORT. Provides that a domestic or foreign limited liability company that fails to file a report by a certain date forfeits the limited liability company's right to transact business in this state. Provides that a forfeiture under this article is without judicial ascertainment. Requires the secretary of state to note on the record relating to the limited liability company maintained in the secretarys office certain information when the right to transact business has been forfeited under this article. Requires notice of the forfeiture of the right to transact business to be mailed to the limited liability company at its registered office. Prohibits the company or its successor or assignee from maintaining an action, suit, or proceeding in court, unless the right of the limited liability company to transact business is revived in accordance with Article 9.07 of this Act. Sets forth certain provisions regarding the forfeiture of the right to transact business in this state.

Art. 9.07. REVIVAL OF RIGHT TO TRANSACT BUSINESS. Authorizes a limited liability company that forfeits the right to transact business in this state under Article 9.06 of this Act to revive its right to transact business by filing the required report by a certain date accompanied by the filing fee for the report and a late filing fee of \$5 for each month or fractional part of a month, that has elapsed since the date of the notice of forfeiture. Requires the secretary of state to take certain actions if a limited liability company complies with Section A of this article.

Art. 9.08. INVOLUNTARY DISSOLUTION OR REVOCATION OF CERTIFICATE AFTER FORFEITURE. Sets forth provisions authorizing the secretary of state to involuntarily dissolve a limited liability company or revoke the certificate of authority of a foreign limited liability company. Provides that dissolution of the limited liability company or revocation of the certificate of authority takes effect without judicial ascertainment. Requires the secretary of state to note the dissolution or revocation and the date of the dissolution or revocation on the record described by Section B(2), Article 9.07, of this Act and change the status of the limited liability company to inactive.

Art. 9.09. REINSTATEMENT AFTER DISSOLUTION OR REVOCATION. Authorizes a limited liability company that has been dissolved or has had its certificate of authority revoked under Article 9.08 of this Act to be reinstated by filing the report required by Article 9.04 of this Act accompanied by certain fees and a letter. Requires the secretary of state to take certain actions if the limited liability company satisfies the requirements of Section A of this article. Requires the secretary of state to require the limited liability company, as a precondition to reinstatement, to take certain actions if the name of the limited liability company is not available at the time of reinstatement.

Art. 9.10. DISCLAIMER OF STATUS. Authorizes a person to file with the secretary of state a

statement disclaiming the person's status as shown on the report, if a person's name is included in a report under Section B(8), Article 9.04, of this Act and the person is not an officer, manger, or managing member of the limited liability company on the date the report is filed. Requires the secretary of state to maintain a record of a statement filed under this article in the limited liability company's record. Provides that a filing under this article has no effect on any personal liability imposed during the period the person was an officer or director.

Art. 9.11. FEES. Authorizes the fees collected under Articles 9.04, 9.07, and 9.09 of this Act to be used by the secretary of state only to defray the cost of administering Articles 9.04 through 9.10 of this Act.

SECTION 3. Amends Article 1528e, V.T.C.S. (The Texas Professional Corporation Act), by adding Section 21, as follows:

Sec 21. ANNUAL REPORT. Requires each professional corporation and each foreign professional legal corporation authorized to transact business in this state to file an annual report with the secretary of state. Requires the annual report to be filed with the secretary of state by a certain date. Provides that Articles 10.04-10.11, the Texas Business Corporation Act, apply to an annual report filed under this section.

SECTION 4. Amends Section 171.207, Tax Code, to provide that information contained in a public information report filed with the comptroller under this chapter before January 1, 2001 is not confidential and shall be made open to public inspection. Deletes text regarding a report required by Section 171.203 of this code.

SECTION 5. Repealer: Section 171.203, Tax Code (Public Information Report)

SECTION 6. Effective date: January 1, 2001.

SECTION 7. Emergency clause.