

BILL ANALYSIS

Senate Research Center
77R8730 T

S.B. 1320
By: Staples
State Affairs
3/19/2001
As Filed

DIGEST AND PURPOSE

As proposed, S.B. 1320 corrects mistakes in certain statutory cross-references and makes procedural changes to conform certain provisions of the Texas Non-Profit Corporation Act, the Texas Professional Corporation Act, the Texas Limited Liability Company Act, the Texas Revised Limited Partnership Act, and the Texas Revised Partnership Act for the purpose of standardizing filing procedures for similar documents.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 2.04, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to authorize any person for whom a specified company name has been reserved pursuant to Section B of this article, during the period for which such name is reserved, to terminate such reservation by filing with the Secretary of State an application for cancellation of reservation of company name, together with the applicable fee.

SECTION 2. Amends Subsection B, Article 3.06, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to require the articles of amendment to set forth a statement that the amendment was approved in accordance with Section G or H of Article 2.23 of this Act or as otherwise provided in the articles of organization or regulations and the date of the approval.

SECTION 3. Amends Subsection D, Article 3.09, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to require the restated articles of organization to be executed on behalf of the limited liability company by an authorized manager or member unless capital has not been paid into the limited liability company and the restated articles of organization have been adopted by action of a majority of the initial managers or a majority of the initial members named in the articles of organization as provided by Article 2.23 of this Act, rather than the organizer, in which case the restated articles of organization are authorized to be executed on behalf of the limited liability company by a majority of the persons adopting such restated articles. Makes a conforming change.

SECTION 4. Amends Subsection A, Article 6.07, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to provide that if voluntary dissolution proceedings have not been revoked, then, when all liabilities and obligations of the limited liability company have been paid or discharged, or adequate provision has been made therefor, or in case its property and assets are not sufficient to satisfy and discharge all the limited liability company's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the limited liability company's liabilities and obligations, and all of the remaining property and assets of the limited liability have been distributed to its members according to their respective rights and interest, articles of dissolution are required to be executed on behalf of the limited liability company by a manager or authorized member, or in accordance with Section G of Article 2.23 of this Act, rather than

the case of a dissolution by action of the organizer of the limited liability company, by the organizer, which is required to set forth: if capital has not been paid into the limited liability company, a statement that the resolution was adopted by the act of a majority of the initial managers or a majority of the initial members named in the articles of organization in accordance with Section G, Article 2.23, of this Act and of the date of adoption. Makes conforming changes.

SECTION 5. Amends Subsection E, Article 7.11, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to authorize any foreign limited liability company whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article to be reinstated by the Secretary of State at any time within a period of 36, rather than 24, months from the date of revocation, upon approval of an application for reinstatement signed by a manager or member of the foreign limited liability company.

SECTION 6. Amends Subsection A, Article 10.03, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), to require articles of merger, after a plan of merger has been approved by certain companies and entities, to be executed on behalf of certain companies. Requires the articles of merger to include the plan of merger or statement certifying the following:

- the name and state of incorporation or organization of certain companies or other entity;
- that a plan of merger has been approved;
- that the articles of organization of each new domestic limited liability company to be created pursuant to the terms of the plan of merger are being filed with the Secretary of State with the articles of merger;
- that an executed plan of merger is on file at the principal place of business of each surviving or new domestic or foreign limited liability company or other entity, stating the address thereof; and
- that a copy of the plan of merger will be furnished by each surviving or new domestic or foreign limited liability company or other entity, on written request and without cost, to any member of each domestic limited liability company that is a party to or created by the plan of merger and, in the case of a merger with multiple surviving domestic or foreign limited liability companies or other entities, to any creditor or obligee of the parties to the merger at the time of the merger if such obligation is then outstanding.

SECTION 7. Amends Subsection A, Article 11.01, Texas Limited Liability Company Act (Article 1528n, V.T.C.S.), by amending Subdivision (2) and renumbering the text of Subdivision (3) as added by Acts 1999, 76th Legislature, Chapter 1245, Section 3, to provide that except as provided by Subdivisions (3) and (4) of this subsection, a professional limited liability company is authorized to be organized under this Act only for certain purposes and is prohibited from rendering more than one kind of professional service.

SECTION 8. Amends Subsection A, Article 6.05, Texas Non-Profit Corporation Act (Article 1396-6.05, V.T.C.S.), to make reference to “copy” as “statement” regarding the plan of distribution of assets.

SECTION 9. Amends Subsection E, Article 7.01, Texas Non-Profit Corporation Act (Article 1396-7.01, V.T.C.S.), to authorize any corporation dissolved by the Secretary of State to be reinstated by the Secretary of State at any time within 36, rather than 12, months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the dissolved corporation.

SECTION 10. Amends Subsection E, Article 8.15, Texas Non-Profit Corporation Act (Article 1396-

8.15, V.T.C.S.), to make a conforming change.

SECTION 11. Amends Section 1.06(i), Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), to require a statement required by Subsection (h) of this section to be signed, rather than signed and verified, by the registered agent or, if the registered agent is a corporation, by an officer of the corporation.

SECTION 12. Amends Section 12.01, Texas Revised Limited Partnership Act (Article 6132a-1, V.T.C.S.), by making a reference to "Section 2.12" as "Section 2.13" regarding a certificate of correction.

SECTION 13. Amends Section 6.01, Texas Revised Partnership Act (Article 6132b-6.01, V.T.C.S.), to provide that an event of withdrawal of a partner occurs on a conversion of the partnership if the partner did not consent to the conversion and failed to notify the partnership in writing of the partner's desire not to withdraw within 60 days after a certain date. Provides that a withdrawal of a partner under the circumstances described by this section is effective immediately before the effective date of the conversion, and is not considered a wrongful withdrawal.

SECTION 14. Amends Section 7.01(a), Texas Revised Partnership Act (Article 6132b-7.01, V.T.C.S.), to provide that if an event of withdrawal occurs under Sections 6.01(b) (1)-(9) and an event requiring a winding up does not occur within 60 days after the date of the withdrawal, or on a partner's withdrawal under Section 6.01(b) (10) or Section 6.01(b) (11), the partnership interest of the withdrawn partner automatically is redeemed by the partnership as of the date of withdrawal in accordance with this section.

SECTION 15. Amends Section 10.05(i), Texas Revised Partnership Act (Article 6132b-10.05, V.T.C.S.), to make a conforming change.

SECTION 16. Repealer: Section 18, Texas Professional Corporation Act (Article 1528e, V.T.C.S.).

SECTION 17. Effective date: September 1, 2001.

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- that a plan of merger has been approved;
- that the articles of organization of each new domestic limited liability company to be created pursuant to the terms of the plan of merger are being filed with the Secretary of State with the articles of merger;
- that an executed plan of merger is on file at the principal place of business of each surviving or new domestic or foreign limited liability company or other entity, stating the address thereof; and
- that a copy of the plan of merger will be furnished by each surviving or new domestic or foreign limited liability company or other entity, on written request and without cost, to any member of each domestic limited liability company that is a party to or created by the plan of merger and, in the case of a merger with multiple surviving domestic or foreign limited liability companies or other entities, to any creditor or obligee of the parties to the merger at the time of the merger if such obligation is then outstanding.

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SECTION 14. Amends Section 7.01(a), Texas Revised Partnership Act (Article 6132b-7.01, V.T.C.S.), to provide that if an event of withdrawal occurs under Sections 6.01(b) (1)-(9) and an event requiring a winding up does not occur within 60 days after the date of the withdrawal, or on a partner's withdrawal under Section 6.01(b) (10) or Section 6.01(b) (11), the partnership interest of the withdrawn partner automatically is redeemed by the partnership as of the date of withdrawal in accordance with this section.

SECTION 15. Amends Section 10.05(i), Texas Revised Partnership Act (Article 6132b-10.05, V.T.C.S.), to make a conforming change.

SECTION 16. Repealer: Section 18, Texas Professional Corporation Act (Article 1528e, V.T.C.S.).

SECTION 17. Effective date: September 1, 2001.