

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 1787  
By: Solomons, Shelton (Wentworth)  
Business & Commerce  
5/17/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law requires certain business entities to file a certificate of formation with the secretary of state and designate and continuously maintain an individual or organization as a registered agent to be served any process, notice, or demand served on the entity.

Occasionally, an individual or organization is designated as a registered agent without the individual's or organization's knowledge or consent. The liability of a person or organization that does not consent to such designation when named as a party in a process, notice, or demand is unclear, as is the liability of a registered agent that did not consent to serve.

This bill seeks to establish liability for represented entities to ensure the consent of their designated registered agent to serve in such capacity and to provide clarification on the liability of a designated registered agent which did not consent to serve.

C.S.H.B. 1787 amends current law relating to the designation or appointment of registered agents for service of process, notice, or demand on certain entities or associations.

### **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 Subchapter E, Chapter 5, Business Organizations Code, by adding Section 5.200, as follows:

Sec. 5.200. DEFINITIONS. Defines "registered agent filing," "represented domestic entity," "represented entity," and "represented foreign entity."

SECTION 2. Amends Section 5.201(b), Business Organizations Code, as follows:

(b) Authorizes the registered agent to be an individual who is a resident of this state and has consented in a written or electronic form to be developed by the Office of the Secretary of State (SOS) to serve as the registered agent of the entity, or an organization, other than the filing entity or foreign filing entity to be represented, that is registered or authorized to do business in this state, and has consented in a written or electronic form to be developed by SOS to serve as the registered agent of the entity and requires the registered agent to maintain a business office at the same address as the entity's registered office.

SECTION 3. Amends Subchapter E, Chapter 5, Business Organizations Code, by adding Section 5.2011, as follows:

Sec. 5.2011. CONSENT TO SERVE AS REGISTERED AGENT. (a) Provides that the designation or appointment of a person as registered agent by an organizer or managerial official of an entity in a registered agent filing is an affirmation by the organizer or managerial official that the person named as registered agent has consented to serve in that capacity.

(b) Provides that if a person designated or appointed as registered agent in a registered agent filing before the sale, acquisition, or transfer of a majority-in-interest or majority interest of the outstanding ownership or membership interests of the represented entity continues to serve in that capacity after the sale, acquisition, or transfer, the person's continuation of service is an affirmation by the governing authority of the represented entity that the governing authority has verified that the person named as registered agent has consented to continue to serve in that capacity.

SECTION 4. Amends Section 5.204(d), Business Organizations Code, as follows:

(d) Provides that on compliance with Subsections (b) (relating to the requirement of the notice to the entity to be given to the entity at a certain address) and (c) (relating to certain requirements of the notice), the appointment of the registered agent and the designation of the registered office terminate. Makes a nonsubstantive change.

SECTION 5. Amends Subchapter E, Chapter 5, Business Organizations Code, by adding Sections 5.205, 5.206, 5.207, and 5.208, as follows:

Sec. 5.205. REJECTION OF APPOINTMENT. (a) Authorizes a person designated or appointed as an entity's registered agent in a registered agent filing without the person's consent to terminate the person's appointment or designation as registered agent by filing a statement of rejection of appointment with the filing officer.

(b) Requires that the statement of rejection of appointment be signed by the person named as registered agent, contain the name of the represented entity, and contain a statement certifying that the person did not consent to serve as the represented entity's registered agent on the date on which the registered agent filing on which the person is named as registered agent took effect.

(c) Provides that on acceptance of the statement of rejection of appointment by the filing officer, the designation or appointment of that person as registered agent and the designation of the registered office terminate.

(d) Requires the secretary of state, on termination of the designation or appointment of a registered agent and the designation of the registered office, to send notice to the represented entity of the necessity to designate or appoint a new registered agent and registered office in accordance with Section 9.101 (Revocation of Registration by Secretary of State) or 11.251 (Termination of Filing Entity by Secretary of State), as applicable.

(e) Prohibits the filing officer from charging a fee for the filing of a statement of rejection of appointment.

Sec. 5.206. DUTIES OF REGISTERED AGENT. (a) Provides that the only duties of a registered agent are to:

(1) receive or accept, and forward to the represented entity at the address most recently provided to the registered agent by the represented entity, or otherwise notify the represented entity at that address regarding, any process, notice, or demand that is served on or received by the registered agent; and

(2) provide the notices required or permitted by law to be given to the represented entity to the address most recently provided to the registered agent by the represented entity.

(b) Provides that a person named as the registered agent for a represented entity in a registered agent filing without the person's consent is not required to perform the duties prescribed by this section.

Sec. 5.207. DESIGNATION OF REGISTERED AGENT WITHOUT CONSENT; PENALTIES AND LIABILITIES. Provides that Sections 4.007 (Liability for False Filing Instruments) and 4.008 (Offense; Penalty) apply with respect to a false statement in a registered agent filing that names a person the registered agent of a represented entity without the person's consent.

Sec. 5.208. IMMUNITY FROM LIABILITY. (a) Provides that a person designated or appointed as the registered agent of a represented entity is not liable solely because of the person's designation or appointment as registered agent for the debts, liabilities, or obligations of the represented entity.

(b) Prohibits a person who has been designated or appointed as a registered agent in a registered agent filing but has not consented to serve as the represented entity's registered agent from being held liable under a judgment, decree, or order of a court, agency, or tribunal of any type, or in any other manner, in this or any other state, or on any other basis, for a debt, obligation, or liability of the represented entity, whether arising in contract, tort, or otherwise, solely because of the person's designation or appointment as registered agent, or to the represented entity or to a person who reasonably relied on the unauthorized designation or appointment solely because of the person's failure or refusal to perform the duties of a registered agent under Section 5.206.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: January 1, 2010.