

SUBJECT: Limited liability partnerships and limited liability insurance companies

COMMITTEE: Insurance — committee substitute recommended

VOTE: 5 ayes — Smithee, Averitt, De La Garza, G. Lewis, Shields

0 nays

1 present, not voting — Counts

3 absent — Duncan, Driver, Dutton

WITNESSES: For — Wade Spilman, Texas Association of Insurance Agents; Kenneth Tooley, Texas Association of Life Underwriters

Against — None

BACKGROUND: The 73rd Legislature authorized two new types of business structures: limited liability companies, under the Texas Limited Liability Company Act, VACS art. 1528n; and limited liability partnerships, under the Texas Revised Partnership Act, VACS art. 6132b, sec. 3.08.

A limited liability partnership (LLP) differs from a general partnership in two ways: 1) it must be registered with the secretary of state and show assets or insurance of \$100,000 before it can do business; and 2) partners are not held to be personally liable for the negligence of others unless they were directly involved in the activity that caused the negligence. LLPs were developed primarily for professional partnerships, such as law firms and medical partnerships, to protect partners from being held liable for the negligent acts of other partners when they were not directly involved in the actions that gave rise to the negligence.

A limited liability company (LLC) is similar to a corporation, but an LLC is taxed like a partnership or LLP, with "pass-through" taxation. Corporations, on the other hand, must file a corporate tax return, and the shareholders are also taxed on any dividends that they receive. Pass-through taxation, used by partnerships, LLPs and LLCs, refers to the practice of only taxing the partners of the company on their profit

distribution; the entity itself is not taxed separately. LLCs also have slightly more relaxed corporate formalities that they must follow.

DIGEST: CSHB 1605 would amend various sections of the Insurance Code to authorize limited liability companies and limited liability partnerships to be licensed by the Texas Department of Insurance to transact insurance and surplus lines insurance business. Limited liability partnerships would be given the same stature as general partnerships and limited liability companies the same stature as other corporations under the Insurance Code.

CSHB 1605 would also make conforming and technical amendments to the affected sections of the Insurance Code.

The bill would take immediate effect if approved by two-thirds of the membership of each house.

SUPPORTERS SAY: LLCs and LLPs were authorized by law in order to expand the ways in which business entities in Texas could be organized. Unfortunately, the Insurance Code was not also amended to keep up with these new developments. Currently, only general partnerships and corporations can be licensed by the Department of Insurance. CSHB 1605 would allow LLPs and LLCs to transact business as insurance companies if they met all of the other necessary requirements. There is no reason to deny insurance companies the flexibility given to every other company in Texas.

The development of LLPs and LLCs was based on the perception that partnerships and corporations would be improved if each were able to incorporate the other's best qualities. LLPs, therefore, are partnerships that incorporate the limited liability aspect of a corporation. LLCs are corporations that incorporate the best aspects of partnerships: "pass-through" taxation" and fewer corporate formalities. Because the Insurance Code currently authorizes both partnerships and corporations to operate, adding LLCs and LLPs would create little change; it merely would mix the two business forms to provide for greater flexibility.

OPPONENTS SAY: LLCs and LLPs may not be an appropriate form of business organization for insurance companies, which should be held to higher standards. These two new forms of business structures allow companies to escape some form

of responsibility: either personal liability through the LLP or tax liability through the LLC.

**OTHER
OPPONENTS
SAY:**

The reformulation of the definition of corporation throughout various sections of the bill refers to the Texas Business Corporations Act but not the Texas Professional Corporations Act. Because many insurance companies are licensed under the Professional Corporations Act, the new definition of corporation should also include those companies.

NOTES:

The substitute made technical and conforming changes, and allowed surplus lines insurance licensure to also be given to LLCs and LLPs. Surplus lines insurance licensure is given to companies out-of-state when there is no comparable state insurer.