

BILL ANALYSIS

Senate Research Center
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H.B. 1507
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Business & Commerce
4/19/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 1507 contains amendments to the Texas Business Corporation Act (TBCA) that incorporate changes that conform to the Business Organizations Code with respect to procedures involved in certain transactions that culminated in a filing with the secretary of state, correct technical errors in the TBCA, and clarify certain TBCA provisions. These changes eliminate confusion that might otherwise arise if differing procedures are involved depending upon the formation date of the entity when an entity is effecting a transaction that involves a filing with the Office of the Secretary of State.

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 Section A, Article 2.05, Texas Business Corporation Act, as follows:

A. Sets forth requirements with which the corporate name is required to comply, including that it is required to contain the word "corporation," "company," "incorporated," or "limited," or an abbreviation of the word, rather than "corporation," "company," or "incorporated."

SECTION 2. Amends Sections A and B, Article 2.06, Texas Business Corporation Act, as follows:

A. Authorizes the exclusive right to the use of a corporate name to be reserved by any person. Deletes existing text setting forth those persons authorized to have exclusive right to the use of a corporate name.

B. Authorizes a person to renew the person's reservation of a corporate name under this part for successive 120-day periods if, during the 30-day period preceding the expiration of that reservation, the person files a new application to reserve the name and pays the required filing fee.

SECTION 3. Amends Section B, Article 2.07, Texas Business Corporation Act, by deleting text relating to a certificate setting forth that a corporation is in good standing. Requires a corporation, in order to register its corporate name, to file a statement with the secretary of state providing that the corporation validly exists.

SECTION 4. Amends Section A, Article 2.10, Texas Business Corporation Act, to replace references to "post-office address" with a reference to "street address."

SECTION 5. Amends Section B, Article 2.19, Texas Business Corporation Act, by deleting text setting forth requirements for certificates representing shares issued by a corporation that has by its articles of incorporation limited or denied the preemptive right of shareholders to acquire unissued or treasury shares of the corporation.

SECTION 6. Amends Section B, Article 2.24, Texas Business Corporation Act, to specify that, if an annual meeting is not held within any 13-month period, a county court is authorized to

order a meeting to be held upon the application of any shareholder who has previously submitted a written request to the corporation that an annual meeting be held.

SECTION 7. Amends Section A, Article 3.02, Texas Business Corporation Act, to require the articles of incorporation to set forth certain provisions, including a provision complying with the requirements of Article 2.22-1 (Shareholder's Preemptive Acts) and a provision complying with the requirements of Section D, Article 2.29 (relating to the rights of voting shareholders).

SECTION 8. Amends Section B, Article 4.04, Texas Business Corporation Act, by deleting the requirement that the date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued, is to be included in the articles of amendment.

SECTION 9. Amends Section B, Article 5.01, Texas Business Corporation Act, as follows:

(1) Requires that a plan of merger set forth the name, type of entity, and jurisdiction of formation of each domestic or foreign corporation or other entity that is party to the merger. Makes a conforming change.

(2) and (3) Makes no changes to these subdivisions.

(4) Requires that a plan of merger set forth, as an exhibit or attachment, the articles of incorporation or other organizational documents of any other new domestic entity to be created by the terms of the plan of merger.

(5) Requires that a plan of merger set forth the articles of incorporation or other organizational documents of each other entity that is a party to the merger and that is to survive the merger or is to be created by the terms of the plan of merger if it is an entity that is not organized under the laws of any state of the United States or is not required to file its articles of incorporation or other organizational documents with the appropriate governmental authority.

SECTION 10. Amends Section H-1, Article 5.03, Texas Business Corporation Act, to redefine "organizational documents."

SECTION 11. Amends Section I(1), Article 5.03, Texas Business Corporation Act, to redefine "direct or indirect wholly owned subsidiary."

SECTION 12. Amends Section A, Article 5.06, Texas Business Corporation Act, to provide that, when a merger takes effect, notwithstanding Subdivision (3) of this section, the surviving or new corporation or other entity named in the plan of merger as primarily obligated to pay the fair value of any shares under Section B(2) (relating to information included in a plan of merger), Article 5.01, is the primary obligor for that payment and all other surviving or new organizations are secondarily liable for that payment.

SECTION 13. Amends Section A, Article 5.12, Texas Business Corporation Act, to require that, in computing the fair value of the shares under this article, consideration be given to the value of the corporation as a going concern without including in the computation of value any payment for a control premium or minority discount other than a discount attributable to the type of share held by the dissenting shareholder and any limitation placed on the rights and preference of those shares.

SECTION 14. Amends Article 6.04, Texas Business Corporation Act, by adding Section B, as follows:

B. Authorizes the corporation to continue its business wholly or partly, including delaying the disposition of property of the corporation, for the period necessary to avoid unreasonable loss of the corporation's property or business.

SECTION 15. Amends Section A, Article 7.07, Texas Business Corporation Act, to make a conforming change.

SECTION 16. Amends Article 7.09, Texas Business Corporation Act, to require the existence of the corporation to cease when a certified copy of the decree is filed with the secretary of state as provided by Article 7.10 (Filing of Decree of Dissolution).

SECTION 17. Amends Article 7.10, Texas Business Corporation Act, by adding Section B, as follows:

B. Requires the existence of the corporation to cease on the filing of the certified copy of the decree of dissolution with the secretary of state.

SECTION 18. Amends Section A, Article 8.13, Texas Business Corporation Act, to require the application for amendment to be filed before the 91st day after the date of the change of name.

SECTION 19. Amends Section B, Article 8.16, Texas Business Corporation Act, to include the particular that the corporation has changed its corporate name or has changed or added to the corporation purposes other than those authorized in its existing certificate of authority, and has failed to file with the secretary of state before the 91st day, rather than within 30 days, after such a name or change or addition to purposes authorized in its existing certificate of authority became effective amongst the particulars that constitute the revocation of the certificate of authority of a foreign corporation to transact business in this state.

SECTION 20. Amends Part 8, Texas Business Corporation Act, by adding Article 8.19, as follows:

Art. 8.19. VENUE. Authorizes a suit under Article 8.18 (Transacting Business without Certificate of Authority) of this Act to be brought in Travis County in addition to any other venue authorized by law.

SECTION 21. Amends Section B, Article 10.02, Texas Business Corporation Act, to provide that an offense under this article is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony.

SECTION 22. Makes application of this Act prospective.

SECTION 23. Effective date: September 1, 2005.