

BILL ANALYSIS

Senate Research Center
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S.B. 323
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Sections 101.114 (Liability for Obligations) and 101.606 (Liability of Member or Manager for Obligations; Duties) of the Texas Business Organizations Code establish that a member or manager of an Texas limited liability company (LLC) is not liable for the obligations of the LLC. Neither of these provisions currently state explicitly that a member or manager of an LLC is entitled to the same level of liability protection as an owner of a corporation, and the Texas Supreme Court has not taken up this question.

Recently, two out-of-state courts have held that the liability shield for an LLC is less protective than that of a for-profit corporation. These rulings are of serious concern for the thousands of current Texas LLCs, and could impact the decision of prospective businesses interested in moving into Texas.

In *Taurus IP, LLC v. DaimlerChrysler Corp.*, the U.S. District Court for the Western District of Wisconsin held that, because a 2005 amendment to the Texas Business Organization Code relating to the liability shield of a corporation did not specifically state that it applied to LLCs, it does not apply to LLCs. Relying on that ruling, the U.S. District Court for the Northern District of California made a similar ruling.

However, the entire body of Texas caselaw has supported the alternative position, that all Texas Business Organizations Code provisions relating to entity liability apply equally to both corporations and LLCs.

SB 323 clarifies in statute that the standards for piercing the liability shield of a corporation apply equally to an LLC, conforming applicable provisions of the Texas Business Organization Code to the vast majority of state and federal court cases in Texas and elsewhere that have addressed this issue.

As proposed, S.B. 323 amends current law relating to the applicability of certain laws governing corporations to limited liability companies.

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 A, Chapter 101, Business Organizations Code, by adding Section 101.002, as follows:

Sec. 101.002. APPLICABILITY OF OTHER LAWS. (a) Provides that subject to Section 101.114 (Liability for Obligations), Sections 21.223 (Limitation of Liability for Obligations), 21.224 (Preemption of Liability), 21.225 (Exceptions to Limitations), and 21.226 (Pledges and Trust Administrators) apply to a limited liability company and the company's members, owners, assignees, affiliates, and subscribers.

(b) Provides that for purposes of the application of Subsection (a):

- (1) a reference to "shares" includes "membership interests;"
- (2) a reference to "holder," "owner," or "shareholder" includes a "member" and an "assignee;"
- (3) a reference to "corporation" or "corporate" includes a "limited liability company;"
- (4) a reference to "directors" includes "managers" of a manager-managed limited liability company and "members" of a member-managed limited liability company;
- (5) a reference to "bylaws" includes "company agreement;" and
- (6) the reference to "Sections 21.157-21.162" in Section 21.223(a)(1) (relating to certain persons not being held liable to the corporation or its obligees with respect to certain shares or obligations) refers to the provisions of Subchapter D (Shares, Options, and Convertible Securities) of this chapter.

SECTION 2. Effective date: September 1, 2011.