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2017 Texas Legislative Update on Amendments to Texas Business Organizations Code

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2017 TEXAS LEGISLATIVE UPDATE ON AMENDMENTS TO TEXAS BUSINESS ORGANIZATIONS CODE

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I. Introduction

This article summarizes several pieces of legislation that were passed by the Texas Legislature in its 2017 Regular Session and that amend the Texas Business Organizations Code (the "*Code*"). There are many other bills that were passed affecting business law, so this article should not be viewed as containing a listing of business-related bills. The article contains summaries only and should not be relied on as a complete description of any bill or portion thereof.

Senate Bill No. 1517 ("*SB 1517*") was authored by Senator Kelly Hancock, sponsored by Representative Rene Oliveira and becomes effective on September 1, 2017. SB 1517 makes several technical and substantive amendments to the Code relating to partnerships and limited liability companies.

Senate Bill No. 1518 ("*SB 1518*") was authored by Senator Kelly Hancock, sponsored by Representative Rene Oliveira and becomes effective on September 1, 2017. SB 1518 makes several technical and substantive amendments to the Code relating to corporations and fundamental business transactions.

House Bill No. 1835 ("*HB 2856*") was authored by Representative Jason Villalba, sponsored by Senator Craig Estes, and becomes effective on June 1, 2018. HB 2856 amends the Code to a "distinguishable name" standard for names of entities.

House Bill No. 3488 ("*HB 3488*") was authored by Representative Gina Hinojosa, co-authored by Representatives Rene Oliveira, Tan Parker, Jeff Leach and Morgan Meyer and sponsored by Senator Craig Estes, and becomes effective on September 1, 2017. HB 3488 amends the Code to authorize public benefit corporations.

Senate Bill No. 679 ("*SB 679*") was authored by Senator Kelly Hancock, sponsored by Representative Tony Dale and became effective on June 1, 2017, when it was signed by Governor Abbott. SB 679 amends the Code to authorize chiropractors to form business entities with certain other professions.

Unless otherwise indicated, all references to a "Chapter," "Section" or "Subsection" are to a Chapter, Section or Subsection of the Code.

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II. Series of Limited Liability Companies

SB 1517 amends various provisions of the Code relating to series of limited liability companies. The provisions authorizing series of domestic limited liability companies were added to the Code in 2009 as Subchapter M to Chapter 101.[2]

1. *Service of Process*. SB 1517 adds new Subchapter F-1 to provide for the means of service of process, notice, or demand on a series of a domestic limited liability company or a series of a foreign entity. The existing provisions of the Code are unclear on those matters, and service of process, notice, or demand on a series is made more difficult because there are not requirements in the Code for a series to file a filing instrument with the Secretary of State to declare the identity and address of a registered office or agent. Accordingly, the new amendments choose to place the responsibility on the domestic limited liability company or foreign entity of which the series is a part to inform the series of the service of process, notice, or demand. The new means of service for the series are based on existing elements of Subchapters E and F of Chapter 5 applicable to service of process, notice, or demand on entities. Specifically, the new Subchapter F-1 provides that:

(1) the registered agent of a domestic limited liability company or foreign entity under Subchapter E is an agent of each series of the domestic limited liability company or foreign entity for the purpose of service of process, notice, or demand required or permitted by law to be served on a series;[3]

(2) the Secretary of State is an agent of a series of a domestic limited liability company or foreign entity for purposes of service of process, notice, or demand on the series if the Secretary of State is the agent of the company or foreign entity pursuant to Section 5.251, which provides for certain circumstances in which service may be made by service on the Secretary of State;[4]

(3) each governing person of a series of a domestic limited liability company pursuant to Section 101.608 is an agent of the series for the purpose of service of process, notice, or demand required or permitted by law to be served on the series[5]; and

(4) each governing person of a series of a foreign entity is an agent of the series for the purpose of service of process, notice, or demand required or permitted by law to be served on the series.[6]

Any process, notice, or demand to be served on a series of a domestic limited liability company or foreign entity that is served on the registered agent or on the Secretary of State is

[2] Acts 2009, 81st Leg., Ch. 84,§45, eff. September 1, 2009.
[3] SB1517 §4 adding TBOC §5.302(a).
[4] SB1517 §4 adding TBOC §5.304(a).
[5] SB1517 §4 adding TBOC §5.305(a).
[6] SB1517 §4 adding TBOC §5.305(b).

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