

Your Business and the 83rd Legislature

Gray Reed & McGraw Legal Alert

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Our friends in the Texas Legislature recently adjourned its regular legislative session for the 83rd time. They filed 5,868 bills and passed around 1,400. Below is a summary of few of these bills that could impact your business involving taxes, trade secrets and maybe even your company's "social purpose."

House Bill 500

HB 500 is an omnibus franchise tax bill that is the first major revision of the franchise tax law since it was enacted in 2006. Highlights of the new law include:

- Temporarily lowers the franchise tax rate for 2014 to 0.4875% (from 0.5%) for qualified retailers or wholesalers and 0.975% (from 1%) for other taxpayers.
- Temporarily lowers the franchise tax rate for 2015 to 0.475% for qualified retailers or wholesalers and 0.95% for other taxpayers. This rate for 2015 is only available if the Comptroller certifies on or after September 14, 2014 that probable revenue estimates exceed previous estimates so that any lost revenue due to the rate reduction would be offset. The rates return to the current levels after 2015.
- The small business exemption for paying franchise tax is now permanently set at \$1 million. The exemption was scheduled to be reduced to \$600,000 in 2014.
- Provides taxpayers a new \$1 million deduction, adding to the options of current deductions of 30% of revenue, cost of goods sold, or compensation.
- Allows pipeline companies to deduct cost of goods sold for depreciation, operations, and maintenance costs related to its services even if they do not own the petroleum products flowing through the pipe.
- Allows landman service companies to exclude from revenue payments to subcontractor landmen.
- Allows healthcare providers or other taxpayers that provide vaccinations to exclude from revenue amounts paid for the vaccines.

- Expands definition of “retailers” that are subject to the retail rate to include auto repair shops, rent-to-own stores, heavy equipment rental companies, and tool rental, party rental and furniture rental companies.
- Allows businesses moving to Texas to deduct relocation costs in its initial franchise tax report.

House Bill 800

HB 800 creates incentives for research and development investment in Texas. This new law provides that a taxpayer may elect to take either (i) a sales tax exemption for tangible personal property used for research and development or (ii) a franchise tax credit for certain qualified research expenditures. The qualified research must be conducted in Texas. The sales tax exemption is effective January 1, 2014 and the franchise tax credit applies to reports originally due on or after January 1, 2014.

Texas Uniform Trade Secrets Act

Texas has joined most other states in adopting its version of the Uniform Trade Secrets Act. The Texas Uniform Trade Secrets Act (TUTSA) (Senate Bill 953) should provide more certainty and predictability in trade secret misappropriation litigation. Trade secret owners now have a statute, as opposed to years of case law, to look to on how to analyze whether their trade secrets have been misappropriated. TUTSA takes effect September 1, 2013 and only applies to misappropriation occurring after that date. Highlights of the new law include:

- Expanded definition of protectable trade secrets and eliminates any “continuous use” requirement in order to afford protection
- Under Texas common law, there must be a substantial element of secrecy before information can be termed a trade secret, but under TUTSA a trade secret means information that “is the subject of efforts that are reasonable under the circumstances to maintain its secrecy”
- Provides injunctive relief for threatened trade secret misappropriation
- Grants courts discretion to award attorneys’ fees to a prevailing party in certain cases

A Company's Social Purpose

Senate Bill 849 amends the Texas Business Organizations Code to allow for-profit corporations to include “social purposes” in their certificates of formation. It also provides

that governing persons are entitled to consider those social purposes in making decisions on behalf of the corporation. Other states have adopted similar legislation in response to the rise of for-profit social entrepreneurship, consumer social buying and social investing, i.e., buying and investing in alliance with a sense of social and environmental responsibility. Under current Texas law, officers and directors of for-profit corporations may violate the duty they owe to shareholders to maximize shareholder profit if they were to pursue business decisions based solely on a social purpose. This new law authorizes directors and officers to consider the stated social purpose when making decisions relating to the corporation's business and shields them from liability from shareholder suits when making decisions based on the stated social purpose. The effective date of this law is September 1, 2013 and after this date existing for-profit corporations can amend their certificates of formation to include this social purpose provision.

If you have any questions, contact your attorney or Gray Reed business attorneys are available at your request.