

CHAPTER 12. ADMINISTRATIVE POWERS

SUBCHAPTER A. SECRETARY OF STATE

Revised Law:

Sec. 12.001. AUTHORITY OF SECRETARY OF STATE. (a) The secretary of state may adopt procedural rules for the filing of instruments, including the filing of instruments by electronic or other means, authorized to be filed with the secretary of state under this code.

(b) The secretary of state has the power and authority reasonably necessary to enable the secretary to perform the duties imposed on the secretary under this code.

Source Law:

TBCA 9.03

**Art. 9.03. Powers of Secretary of State**

A. The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

TLLCA 8.03

Art. 8.03. A. The Secretary of State shall have the power and authority reasonably necessary to enable the Secretary of State to administer this Act efficiently and to perform the duties therein imposed upon the Secretary of State.

TNPCA 9.04

**Art. 1396-9.04. Powers of Secretary of State**

A. The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

TRPA 3.08(b)(15)

(15) The secretary of state may adopt procedural rules on filing documents under this subsection.

TRPA 10.02(n)

(n) The secretary of state may adopt procedural rules on filing documents under this section.

TMCLA 1302-7.07A

A. If permitted by the rules of the Secretary of State, any instrument required or authorized to be filed with the Secretary of State under this Act or under any provision of the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, the Texas Limited Liability Company Act, or any special Statute of this State pertaining to a particular type of corporation or entity to which the general corporate laws are applicable, may be transmitted for filing electronically. If the instrument conforms to law and the rules promulgated by the Secretary of State, the Secretary shall file the instrument by acceptance into the filing system adopted by

the Secretary and assigning to the instrument a date of filing. An electronic acknowledgment or certification of the filing, as applicable, shall be provided by the Secretary of State to the corporation or entity or its representative. The Secretary of State may promulgate rules and adopt practices and procedures for the transmission, filing, and retention of instruments filed electronically or by use of other technological means.

Revisor's Note:

No substantive change from current practices is intended. Section 12.001(a) authorizes the Secretary of State to adopt procedural rules for the filing of instruments under the provisions of the Code. Section 12.001(b) confers upon the Secretary of State the power and authority reasonably necessary to perform the duties imposed by the Code. Rulemaking authority is explicitly provided for under the TRPA and TMCLA, and implicit under present provisions of the TBCA, TNPCA, TLLCA and TRLPA. The power to perform the duties of the office are explicitly provided in the TBCA, TLLCA and TNPCA and implicit under all other existing statutes requiring the Secretary of State to file documents.

Chapter 12 does not apply to unincorporated nonprofit associations because of Section 252.017.

Revised Law:

Sec. 12.002. INTERROGATORIES BY SECRETARY OF STATE. (a) As necessary and proper for the secretary of state to determine whether a filing entity or a foreign filing entity has complied with this code, the secretary of state may serve by mail interrogatories on the entity or a managerial official.

(b) An entity or individual to whom an interrogatory is sent by the secretary of state shall answer the interrogatory before the later of the 31st day after the date the interrogatory is mailed or a date set by the secretary of state. Each answer to an interrogatory must be complete, in writing, and under oath. An interrogatory directed to an individual shall be answered by the individual, and an interrogatory directed to an entity shall be answered by a managerial official.

(c) The secretary of state is not required to file any instrument to which an interrogatory relates until the interrogatory is answered as provided by this section and only if the instrument conforms to the requirements of this code. The secretary of state shall certify to the attorney general for action as the attorney general may consider appropriate an interrogatory and answer to the interrogatory that disclose a violation of this code.

(d) Sections 12.002-12.004 do not apply to domestic real estate investment trusts.

Source Law:

TBCA 9.01

**Art. 9.01. Interrogatories by Secretary of State**

A. The Secretary of State may propound to any corporation, domestic or foreign, subject to the provisions of this Act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this Act. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual, they shall be answered by him, and if directed to a corporation, they shall be answered by an officer of the corporation. The Secretary of State need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Act. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of the provisions of this Act.

TLLCA 8.01

Art. 8.01. A. The Secretary of State may propound to any limited liability company, domestic or foreign, subject to the provisions of this Act, and to any manager thereof, such interrogatories as may be reasonably necessary and proper to enable the Secretary of State to ascertain whether such limited liability company has complied with all the provisions of this Act. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual, they shall be answered by such individual, and if directed to a limited liability company, they shall be answered by an authorized manager or member of the limited liability company. The Secretary of State need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Act. The Secretary of State shall certify to the Attorney General, for such action as the Attorney General may deem appropriate, all interrogatories and answers thereto which disclose a violation of the provisions of this Act.

Revisor's Note:

No substantive change for for-profit corporations and limited liability companies is intended. The revised law expands the interrogatory powers of the Secretary of State to encompass other

filing entities governed by the Code, including in particular nonprofit corporations, cooperative associations and limited partnerships. Professional associations and professional corporations are currently subject to those powers by virtue of the incorporation by reference of the TBCA into TPAA and TPCA. Because a real estate investment trust files its certificate of formation with a county clerk and not the Secretary of State, subsection (d) excludes domestic real estate investment trusts from the coverage of Sections 12.002-12.004.

Revised Law:

Sec. 12.003. INFORMATION DISCLOSED BY INTERROGATORIES. An interrogatory sent by the secretary of state and the answer to the interrogatory are subject to Chapter 552, Government Code.

Source Law:

TBCA 9.02

**Art. 9.02. Information Disclosed by Interrogatories**

A. Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this State.

TLLCA 8.02

Art. 8.02. A. Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection nor shall the Secretary of State disclose any facts or information obtained therefrom except insofar as official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this State.

Revisor's Note:

Section 12.003 provides that the interrogatories and answers to the interrogatories issued under Section 12.002 are subject to disclosure under the provisions of the Public Information Act, Chapter 552, Government Code. Existing law prohibits disclosure of any facts or information obtained from an interrogatory except when official duty would require the information to be made public or when needed as evidence in a criminal proceeding or other state action.

Revised Law:

Sec. 12.004. APPEALS FROM SECRETARY OF STATE. (a) If the secretary of state does not approve the filing of a filing instrument, the secretary of state shall, before the 11th day after the date of the delivery of the filing instrument to the secretary of state, notify the person delivering the filing

instrument of the disapproval and specifying each reason for the disapproval. The disapproval of a filing instrument by the secretary of state may be appealed only to a district court of Travis County by filing with the court clerk a petition, a copy of the filing instrument sought to be filed, and a copy of any written disapproval by the secretary of state of the filing instrument. The court shall try the appeal de novo and shall sustain the action of the secretary of state or direct the secretary to take any action the court considers to be proper.

(b) A final order or judgment entered by the district court under this section in review of any ruling or decision of the secretary of state may be appealed as in other civil actions.

Source Law:

TBCA 9.04.A

A. If the Secretary of State shall fail to approve any articles of incorporation, application for certificate of authority to transact business in this State, amendment, merger, share exchange, conversion, or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person, corporation, or other entity, domestic or foreign, delivering the same, specifying in such notice the reasons therefor. From such disapproval such person, corporation, or other entity may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

B. Appeals from all final orders and judgments entered by the district court under this Article in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

TLLCA 8.04

Art. 8.04. A. If the Secretary of State shall fail to approve any articles of organization, application for certificate of authority to transact business in this State, amendment, merger, consolidation, or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in the office of the Secretary of State, the Secretary of State shall, within ten days after the delivery thereof to the Secretary of State, give written notice of disapproval to the person or limited liability company, domestic or foreign, delivering the same, specifying in such notice the reasons therefor. From such disapproval, such person or limited liability company may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the court shall

either sustain the action of the Secretary of State or direct the Secretary of State to take such action as the court may deem proper.

B. Appeals from all final orders and judgments entered by the district court under this Article in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

TNPCA 9.05

**Art. 1396-9.05. Appeals from Secretary of State**

A. If the Secretary of State shall fail to approve any articles of incorporation, application for certificate of authority to conduct affairs in this State, amendment, merger, consolidation, or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in his office, he shall, within ten (10) days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying in such notice the reasons therefor. From such disapproval such person or corporation may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

B. Appeals from all final orders and judgments entered by the district court under this Article in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

Revisor's Note:

The revised law expands the appeal provisions to all filings submitted to the Secretary of State under the provisions of the Code. The source law currently applies to filings submitted by corporations (including nonprofit and professional), professional associations, and limited liability companies under the provisions of the TBCA, TLLCA and TNPCA. This provision does not apply to real estate investment trusts, which do not make a filing with the Secretary of State. The primary filing entity affected by the expansion of the appeal provisions is the limited partnership.

(Sections 12.005-12.150 reserved for expansion)

SUBCHAPTER B. ATTORNEY GENERAL

Revised Law:

Sec. 12.151. AUTHORITY OF ATTORNEY GENERAL TO EXAMINE BOOKS AND RECORDS. Each filing entity and foreign filing entity shall permit the

attorney general to inspect, examine, and make copies, as the attorney general considers necessary in the performance of a power or duty of the attorney general, of any record of the entity. A record of the entity includes minutes and a book, account, letter, memorandum, document, check, voucher, telegram, constitution, and bylaw.

Source Law:

TMCLA 1302-5.01

**Art. 1302-5.01. Authority of Attorney General to Examine Books, Records, etc.**

A. Every corporation, domestic or foreign, doing business in Texas, shall permit the Attorney General or any of his authorized assistants or representatives, to make examination of all the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and bylaws, and other records of said corporation as he may deem necessary.

Revisor's Note:

Subchapter B expands the authority of the Attorney General to examine books and records to all domestic and foreign filing entities. Current authority is limited to those entities subject to the provisions of the TMCLA.

Revised Law:

Sec. 12.152. REQUEST TO EXAMINE. To examine the business of a filing entity or foreign filing entity, the attorney general shall make a written request to a managerial official, who shall immediately permit the attorney general to inspect, examine, and make copies of the records of the entity.

Source Law:

TMCLA 1302-5.02

**Art. 1302-5.02. Request to Examine**

A. A written request shall be made to the president or other officer of said domestic or foreign corporation at the time the Attorney General or his assistants desire to examine the business of said corporation. It shall be the duty of the officer or agent of any corporation to whom said request is presented to immediately permit the Attorney General, or his authorized assistant or representative, to inspect and examine all the said books, records, and other documents of said corporation.

TMCLA 1302-5.03, part

**Art. 1302-5.03. Authority to Examine Management, etc., of Corporation**

A. The Attorney General, or any of his assistants or representatives, when authorized by the Attorney General, has the power and authority to make investigation into the organization, conduct and management of any corporation,

domestic or foreign, authorized to do business within this State, and has authority to inspect and examine any of its said books, records, and other documents, and take such copies thereof as in his judgment may show or tend to show said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this State.

Revisor's Note:

Except as described in the Revisor's Note to Section 12.151, no substantive change is intended.

Revised Law:

Sec. 12.153. AUTHORITY TO EXAMINE MANAGEMENT OF ENTITY. The attorney general may investigate the organization, conduct, and management of a filing entity or foreign filing entity and determine if the entity has been or is engaged in acts or conduct in violation of:

- (1) its governing documents; or
- (2) any law of this state.

Source Law:

TMCLA 1302-5.03

**Art. 1302-5.03. Authority to Examine Management, etc., of Corporation**

A. The Attorney General, or any of his assistants or representatives, when authorized by the Attorney General, has the power and authority to make investigation into the organization, conduct and management of any corporation, domestic or foreign, authorized to do business within this State, and has authority to inspect and examine any of its said books, records, and other documents, and take such copies thereof as in his judgment may show or tend to show said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this State.

Revisor's Note:

Except as described in the Revisor's Note to Section 12.151, no substantive change is intended.

Revised Law:

Sec. 12.154. AUTHORITY TO DISCLOSE INFORMATION. Information held by the attorney general and derived in the course of an examination of an entity's records or documents is not public information, is not subject to Chapter 552, Government Code, and may not be disclosed except:

- (1) in the course of an administrative or judicial proceeding in which the state is a party;

(2) in a suit by the state to:

(A) revoke the registration of the foreign filing entity or terminate the certificate of formation of the filing entity; or

(B) collect penalties for a violation of the law of this state; or

(3) to provide information to any officer of this state charged with the enforcement of its laws.

Source Law:

TMCLA 1302-5.04

**Art. 1302-5.04. Authority to Disclose**

A. The Attorney General, or his authorized assistants or representatives, shall not make public, or use said copies or any information derived in the course of said examination of said records or documents, except in the course of some judicial proceedings in which the State is a party, or in a suit by the State to cancel the permit or forfeit the charter of such domestic or foreign corporation, or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws.

Revisor's Note:

Except as described in the Revisor's Note to Section 12.151, no substantive change is intended.

Revised Law:

Sec. 12.155. FORFEITURE OF BUSINESS PRIVILEGES. A foreign filing entity or a filing entity that fails or refuses to permit the attorney general to examine or make copies of a record, without regard to whether the record is located in this or another state, forfeits the right of the entity to do business in this state, and the entity's registration or certificate of formation shall be revoked or terminated.

Source Law:

TMCLA 1302-5.05A

A. Any foreign corporation doing business in Texas under a permit granted under the laws of this State, or any officer or agent thereof, or any domestic corporation which shall fail or refuse to permit the Attorney General, or his authorized representative or representatives, to examine or take copies of any of its said books, records and other documents whether the same be situated within this or any other state within the United States, shall thereby forfeit its right to do business in this State; and its permit or charter shall be canceled or forfeited.

Revisor's Note:

Except as described in the Revisor's Note to Section 12.151, no substantive change is intended.

Revised Law:

Sec. 12.156. CRIMINAL PENALTY. (a) A managerial official or other individual having the authority to manage the affairs of a filing entity or foreign filing entity commits an offense if the official or individual fails or refuses to permit the attorney general to make an investigation of the entity or to examine or to make copies of a record of the entity.

(b) An offense under this section is a Class B misdemeanor.

Source Law:

TMCLA 1302-5.05B

B. If any president, vice-president, treasurer, secretary, manager, agent or other officer of any domestic or foreign corporation doing business under permit or charter from this State shall fail or refuse to permit the Attorney General or any of his assistants or representatives who may be authorized in writing by the Attorney General to make such examination, to examine or to take copies of any or all of the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of said corporation, he shall be fined not less than one hundred nor more than one thousand dollars, and be imprisoned in jail not less than thirty nor more than one hundred days. Each day of such failure or refusal shall be a separate offense.

Revisor's Note:

Section 12.156 clarifies that the failure or refusal of a managerial official or other authorized individual managing the affairs of an entity to permit the attorney general to make an investigation of the entity or take copies of a record of the entity is a Class B misdemeanor. Existing law establishes a monetary fine and time of imprisonment without referencing that the offense is a Class B misdemeanor. Criminal penalties are extended to the managerial officials of all domestic and foreign filing entities. Current criminal penalties are only applicable to officers, managers and agents of entities that are subject to the TMCLA.

(Sections 12.157-12.200 reserved for expansion)

SUBCHAPTER C. ENFORCEMENT LIEN

Revised Law:

Sec. 12.201. LIEN FOR LAW VIOLATIONS. (a) If a filing entity or foreign filing entity violates a law of this state, including the law against trusts, monopolies, and conspiracies, or combinations or contracts in restraint of trade, for the violation of which a fine, penalties, or

forfeiture is provided, all of the entity's property in this state at the time of the violation or that after the violation comes into this state is, because of the violation, liable for any fine or penalty under this chapter and for costs of suit and costs of collection.

(b) The state has a lien on all property of a filing entity or foreign filing entity in this state on the date a suit is instituted by or under the direction of the attorney general in a court of this state for the purpose of forfeiting the certificate of formation or revoking the registration of the entity or for the collection of a fine or penalty due to the state.

(c) The filing of a suit for a fine, penalties, or forfeiture is notice of the lien.

(d) In addition to the property subjected to the lien under subsection (b), the lien applies to any property that comes into the possession of a receiver appointed under Subchapter D.

Source Law:

TMCLA 1302-5.07

**Art. 1302-5.07. Lien for Law Violations**

A. Whenever any domestic or foreign corporation in this State shall violate any law of this State, including the law against trusts, monopolies and conspiracies or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this State at the time of such violation, or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and for costs of suit and costs of collection.

TMCLA 1302-5.08

**Art. 1302-5.08. Date of Lien and Notice**

A. The State of Texas shall have a lien on all such property from the date that suit shall be instituted by the Attorney General or district or county attorney acting under his direction, in any court of competent jurisdiction within this State, for the purpose of forfeiting the charter or canceling the permit of such domestic or foreign corporation, or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture, shall constitute notice of such lien.

TMCLA 1302-5.11

**Art. 1302-5.11. Rights of State**

A. . . . and all property not otherwise exempt by law that may come into the possession of any receiver appointed under any provision of such Articles, shall be subject to the lien herein created, and for the payment of any such fine or penalty.

Revisor's Note:

Subchapters C and D expand the powers and authorities of the State and the Attorney General to all domestic and foreign filing entities. The source law only applies to those entities subject to the TMCLA.

(Sections 12.202-12.250 reserved for expansion)

SUBCHAPTER D. ENFORCEMENT PROCEEDINGS

Revised Law:

Sec. 12.251. RECEIVER. In a suit filed by this state against a filing entity or foreign filing entity for the termination of the entity's certificate of formation or registration or for a fine or penalty, the court in this state in which the suit is pending:

(1) shall appoint a receiver for the property and business of the entity in this state or that subsequently comes into this state during the receivership if the filing entity or foreign filing entity commences the process of winding up its business in this or another state or a judgment is rendered against it in this or another state for the termination of the entity's certificate of formation or registration; and

(2) may appoint a receiver for the entity if the interest of the state requires the appointment.

Source Law:

TMCLA 1302-5.10

**Art. 1302-5.10. Receiver**

A. Whenever a domestic or foreign corporation, against which the State has instituted suit for forfeiture of its charter or cancellation of its permit or for fines or penalties, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state for the forfeiture of its charter, the court in this State in which such suit is pending shall appoint a receiver for the property and business of such corporation within this State, or that may come or be brought within this State during such receivership; or the court may, in any case wherein the State is suing any such corporation for the forfeiture of its charter, or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation whenever the interest of the State may seem to require such action.

Revisor's Note:

Except as described in the Revisor's Note to Section 12.201, no substantive change is intended. Consistent with the provisions of Title 1 of the Code, the term "termination" is substituted for the term "forfeiture," "certificate of formation" is substituted for the term "charter," the term "registration" is substituted for the term "permit," and the phrase "commences the process of winding up" is substituted for the term "dissolve."

Revised Law:

Sec. 12.252. FORECLOSURE. (a) The attorney general may bring suit to foreclose a lien created by this chapter.

(b) If a filing entity or a foreign filing entity subject to this code has commenced the winding up process or has had the entity's certificate of formation or registration terminated by a judgment, citation in a suit for foreclosure may be served on any person in this state who acted and was acting as agent of the entity in this state when the entity commenced the winding up process or the entity's certificate of formation or registration was terminated.

Source Law:

TMCLA 1302-5.12

**Art. 1302-5.12. Foreclosure**

A. The Attorney General or any district or county attorney acting under his direction, may bring suit in the name of this State for foreclosure of such lien. In case the suit for foreclosure is brought against any domestic or foreign corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such corporation for the forfeiture of its charter or cancellation of its permit or for penalties or fines, service may be had upon any person within this State who acted and was acting as agent of any such corporation in this State at the time of such dissolution or forfeiture of charter or cancellation of permit.

Revisor's Note:

Except as described in the Revisor's Note to Section 12.201, no substantive change is intended. The delegation of authority to the district or county attorney is found in Section 12.254 of the Code.

Revised Law:

Sec. 12.253. ACTION AGAINST INSOLVENT ENTITY. When the attorney general is convinced that a filing entity or foreign filing entity is insolvent, the attorney general shall institute quo warranto or other appropriate proceedings to terminate the certificate of formation or registration of the filing entity or foreign filing entity that is insolvent.

Source Law:

TMCLA 1302-5.14

**Art. 1302-5.14. Authority of Attorney General to Proceed Against an Insolvent Corporation**

A. The Attorney General, when convinced that any corporation is insolvent, shall institute quo warranto or other appropriate proceedings to forfeit its charter or cancel its permit.

Revisor's Note:

Except as described in the Revisor's Note to Section 12.201, no substantive change is intended.

Revised Law:

Sec. 12.254. SUITS BY DISTRICT OR COUNTY ATTORNEY. A district or county attorney shall bring and prosecute a proceeding under Section 12.252 or 12.253 when directed to do so by the attorney general.

Source Law:

TMCLA 1302-5.12

**Art. 1302-5.12. Foreclosure (first sentence)**

A. The Attorney General or any district or county attorney acting under his direction, may bring suit in the name of this State for foreclosure of such lien.

TMCLA 1302-5.15

**Art. 1302-5.15. Liquidation**

A. Each district and county attorney shall bring and prosecute the proceedings mentioned in the preceding Article whenever directed to do so by the Attorney General. The court trying said cause, after the corporation has been shown to be insolvent, may, in its discretion, appoint a receiver or receivers for said corporation and all its properties, with full power to settle its affairs, collect its outstanding debts and divide the moneys and other properties belonging to said company among the stockholders thereof, after paying the debts due and owing by such corporation, and all expenses incident to the judicial proceedings and receivership. The court may continue the existence of such corporation for three (3) years, and for such further reasonable time as may be necessary to accomplish the objects and purposes of this law.

Revisor's Note:

Except as described in the Revisor's Note to Section 12.201, no substantive change is intended. The provisions of Article 1302-5.15 relating to the authority of the court to appoint a receiver are found in Section 12.258 of the Code.

Revised Law:

Sec. 12.255. PERMISSION TO SUE. Before a petition may be filed by the attorney general or by a district or county attorney in a suit authorized by Section 12.252 or 12.253, leave must be granted by the judge of the court in which the proceeding is to be filed.

Source Law:

TMCLA 1302-5.17

**Art. 1302-5.17. Permission to Sue**

A. Before such petition is filed by the Attorney General, or under his authority, as provided in Articles 5.14 and 5.15 of this Part, leave therefor shall first be granted by the judge of the court in which the proceeding is to be instituted.

Revisor's Note:

No substantive change in procedures is intended.

Revised Law:

Sec. 12.256. EXAMINATION AND NOTICE. (a) The judge of a court in which a proceeding under Section 12.252 or 12.253 is to be filed shall carefully examine the petition before granting leave to sue. The judge may also require an examination into the facts. If it appears with reasonable certainty from the petition or from the petition and facts that there is a prima facie showing for the relief sought, the judge may grant leave to file.

(b) On an application for the appointment of a receiver, the entity proceeded against is entitled to 10 days' notice before the day set for the hearing.

Source Law:

TMCLA 1302-5.18

**Art. 1302-5.18. Examination and Notice**

A. On presentation of such petition, before granting leave to sue, the judge shall carefully examine the same; and he may also require an examination into the facts; and if it shall be made to appear with reasonable certainty from said petition, or from the petition and facts, that the relief sought should be granted, the judge may grant such relief. On an application for the appointment of a receiver, the corporation proceeded against shall have ten full days' notice prior to the day set for the hearing.

Revisor's Note:

No substantive change in procedures is intended.

Revised Law:

Sec. 12.257. DISMISSAL OF ACTION. (a) A suit authorized by Section 12.253 or 12.258 may not be filed or, if filed, shall be dismissed if the entity, through its owners or members, reduces its indebtedness so that it is not insolvent.

(b) The respondent shall pay the costs of a dismissed suit under this section.

Source Law:

TMCLA 1302-5.16

**Art. 1302-5.16. May Dismiss Action**

A. If any suit authorized by Articles 5.14 and 5.15 of this Part has been instituted, the same shall be dismissed at the cost of the defendant; or, if not instituted, the same shall not be begun, if the defendant corporation, through its stockholders, shall pay off its indebtedness or reduce the same by paying, so that it is relieved of insolvency.

Revisor's Note:

No substantive change in procedures is intended. Consistent with other provisions of Title 1 of the Code, the terms "owners" and "members" are used in place of "shareholders" to reflect the expansion of these provisions to other filing entities.

Revised Law:

Sec. 12.258. LIQUIDATION OF INSOLVENT ENTITY. (a) A court hearing a proceeding under Section 12.253 against an insolvent entity may, after the entity has been shown to be insolvent, appoint one or more receivers for the entity and its property. The receiver may settle the affairs of the entity, collect outstanding debts, and divide the money and property belonging to the entity among its owners after paying the debts of the entity and all expenses incidental to the judicial proceedings and receivership.

(b) The court may continue the existence of the entity for three years, and for additional reasonable time as necessary to accomplish the purposes of this subchapter.

Source Law:

TMCLA 1302-5.15

**Art. 1302-5.15. Liquidation**

A. Each district and county attorney shall bring and prosecute the proceedings mentioned in the preceding Article whenever directed to do so by the Attorney General. The court trying said cause, after the corporation has been shown to be insolvent, may, in its discretion, appoint a receiver or receivers for said corporation and all its properties, with full power to settle its affairs, collect its outstanding debts and divide the moneys and other properties belonging to said company among the stockholders thereof, after paying the debts due and owing by such corporation, and all expenses incident to the judicial proceedings and receivership. The court may continue the existence of such corporation for three (3) years, and for such further reasonable time as may be necessary to accomplish the objects and purposes of this law.

Revisor's Note:

No substantive change in procedures is intended.

Revised Law:

Sec. 12.259. EXTRAORDINARY REMEDIES; BOND. The state has a right to a writ of attachment, garnishment, sequestration, or injunction, without

bond, to aid in the enforcement of the state's rights created by this chapter.

Source Law:

TMCLA 1302-5.11

**Art. 1302-5.11. Rights of State**

A. The State shall have the right to writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by Articles 5.07, 5.08, 5.09, and 5.10 of this Part; . . . .

Revisor's Note:

No substantive change in procedures or rights of the State is intended other than the expansion of these provisions to other filing entities governed by the Code.

Revised Law:

Sec. 12.260. ABATEMENT OF SUIT. An action or cause of action for a fine, penalty, or forfeiture that this state has or may have against a filing entity or foreign filing entity does not abate because the entity dissolves, voluntarily or otherwise, or the entity's certificate of formation is terminated or the entity's registration is revoked.

Source Law:

TMCLA 1302-5.09

**Art. 1302-5.09. Abatement of Suit**

A. Any action or cause of action for any fine, forfeiture or penalty that the State of Texas has, or may have, against any domestic or foreign corporation shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter or permit.

Revisor's Note:

No substantive change in procedures is intended.

Revised Law:

Sec. 12.261. PROVISIONS CUMULATIVE. Each right or remedy provided by this chapter is cumulative and does not affect any other right or remedy for the enforcement, payment, or collection of a fine, forfeiture, or penalty or any other means provided by law for securing or preserving testimony or inquiring into the rights or privileges of an entity.

Source Law:

TMCLA 1302-5.06

**Art. 1302-5.06. Provisions Cumulative**

A. The provisions of Articles 5.01, 5.02, 5.03, 5.04, and 5.05 of this Part shall be cumulative of all other laws now in force in this State, and shall not be construed as repealing any other means afforded by law for securing testimony or inquiring into the charter rights and privileges of domestic or foreign corporations.

TMCLA 1302-5.13

**Art. 1302-5.13. Law Cumulative**

A. The rights and remedies given by Articles 5.07, 5.08, 5.09, 5.10, 5.11, and 5.12 of this Part shall be construed as cumulative of all other laws in force in this State, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, penalties and forfeitures.

TMCLA 1302-5.19

**Art. 1302-5.19. Provisions Cumulative**

A. The rights and remedies given by Articles 5.14, 5.15, 5.16, 5.17, and 5.18 of this Part are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, forfeitures and penalties.

Revisor's Note:

No substantive change is intended.