

BILL ANALYSIS

Senate Research Center
83R12222 CLG-F

C.S.S.B. 849
By: Carona
Business & Commerce
3/13/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Both federal income tax law and state corporate law have historically divided corporations into either for-profit or nonprofit corporations. The primary purpose of a for-profit corporation is creating financial gain for its shareholders. Nonprofit corporations can have a social purpose or cause, but cannot have economic owners or make dividends to investors.

Nationally, the movement of social entrepreneurship is on the rise and continuing to gain prominence in the corporate community. Broadly, social entrepreneurship refers to a person or entity who uses entrepreneurial principles to affect change in a particular social purpose or cause. This movement has reached both consumers and investors and more businesses are seeking to distinguish themselves by aligning with a particular social purpose. However, within the current legal framework in Texas, officers and directors of for-profit corporations would violate the duty they owe to shareholders to maximize shareholder profit if they were to pursue business decisions based solely on a social purpose.

C.S.S.B. 849 amends the Business Organizations Code to authorize a for-profit corporation to include a "social purpose" in its certificate of formation. C.S.S.B. 849 provides a non-exhaustive list of acceptable social purposes, including providing low-income or underserved individuals or communities with beneficial products or services, promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business, preserving the environment, and increasing the flow of capital to entities with a social purpose. Additionally, C.S.S.B. 849 explicitly authorizes directors and officers of a for-profit corporation to consider the stated social purpose when making decisions relating to the corporation's business and shields directors and officers from liability from shareholder suits when making a decision based on the stated social purpose.

C.S.S.B. 849 amends current law relating to social purposes of a for-profit corporation and the consideration of social purposes and other interests by officers and directors of a for-profit corporation.

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 1.002, Business Organizations Code, by adding Subdivision (82-a) to define "social purposes."

SECTION 2. Amends Section 3.007, Business Organizations Code, by adding Subsection (d), as follows:

(d) Authorizes a for-profit corporation, notwithstanding Section 2.008 (Nonprofit Corporations), to include one or more social purposes in addition to the purpose or purposes required to be stated in the corporation's certificate of formation by Section 3.005(a)(3) (relating to requiring the certificate of formation to state, for filing entities other than limited partnerships, the purpose or purposes for which the filing entity is

formed). Authorizes the corporation to also include in the certificate of formation a provision that the board of directors and officers of the corporation are required to consider any social purpose specified in the certificate of formation in discharging the duties of directors or officers under this code or otherwise.

SECTION 3. Amends Section 21.101(a), Business Organizations Code, as follows:

(a) Authorizes the shareholders of a corporation to enter into an agreement that contains certain provisions, including a provision that, with regard to one or more social purposes specified in the corporation's certificate of formation, governs the exercise of corporate powers, the management of the operations and affairs of the corporation, the approval by shareholders or other persons of corporate action, or the relationship among the shareholders, the directors, and the corporation. Makes nonsubstantive changes.

SECTION 4. Amends Section 21.401, Business Organizations Code, by amending Subsection (b) and adding Subsections (c), (d), and (e) as follows:

(b) Entitles, rather than authorizes, a director to, in discharging the duties of director under this code or otherwise and in considering the best interests of the corporation, consider the long-term and short-term interests of the corporation and the shareholders of the corporation, including the possibility that those interests may be best served by the continued independence of the corporation.

(c) Entitles a director to, in discharging the duties of a director under this code or otherwise, consider any social purposes specified in the corporation's certificate of formation.

(d) Entitles an officer to, subject to direction by the board of directors of the corporation, in discharging the duties of an officer under this code or otherwise, consider the long-term and short-term interests of the corporation and of the corporation's shareholders, including the possibility that those interests may be best served by the continued independence of the corporation and any social purposes specified in the corporation's certificate of formation.

(e) Provides that nothing in this section prohibits or limits a director or officer of a corporation that does not have a social purpose specified as a purpose in the corporation's certificate of formation from considering, approving, or taking an action that promotes or has the effect of promoting a social, charitable, or environmental purpose.

SECTION 5. Effective date: September 1, 2013.