

BILL ANALYSIS

Senate Research Center

S.B. 859
By: Eltife
Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 859 makes both technical and substantive changes to the Business Organizations Code relating to partnerships and limited liability companies (LLCs) to ensure Texas has the appropriate statutory framework in place for current business organizational practices.

Current law does not reflect best practices in partnerships and LLCs. S.B. 859 will do the following: replace and modernize the annual renewal-of-registration requirement for limited liability partnerships with a requirement of an annual report filing, confirm that a partnership agreement or company agreement may contain an irrevocable power-of-attorney (modeled on provisions in comparable Delaware statutes), and remove a potentially confusing provision in the code relating to voting by the governing person and members of a limited company.

S.B. 859 amends current law relating to partnerships and 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 Section 4.158, Business Organizations Code, effective January 1, 2016, as follows:

Sec. 4.158. **FILING FEES: GENERAL PARTNERSHIPS.** Requires the secretary of state (SOS), for a filing by or for a general partnership, to impose certain fees, including \$200 for each partner on the date of filing of the report of, in the case of any past due annual report, \$200 for the number of partners as of May 31 of the year that the report was due for filing a limited liability partnership annual report, rather than to impose \$200 for each partner on the date of renewal for filing a limited liability partnership renewal application.

SECTION 2. Amends Subchapter B, Chapter 101, Business Organizations Code, by adding Section 101.055, as follows:

Sec. 101.055. **IRREVOCABLE POWER OF ATTORNEY.** (a) Provides that this section applies only to:

(1) a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a limited liability company; or

(2) a power of attorney granted by:

(A) a person as a member of or assignee of a membership interest in a limited liability company; or

(B) a person seeking to become a member of or assignee of a membership interest in a limited liability company.

(b) Provides that a power of attorney is irrevocable for all purposes if the power of attorney:

(1) is coupled with an interest sufficient in law to support an irrevocable power; and

(2) states that it is irrevocable.

(c) Prohibits an irrevocable power of attorney created under this section, unless otherwise provided in the power of attorney, from being affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.

(d) Provides that a power of attorney granted to the limited liability company, a member of the company, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

SECTION 3. Amends Section 152.002(b), Business Organizations Code, to include Section 11.057(f) (defines "majority-in-interest") of Title 1 (General Provisions) in the limitations on the provision that prohibits a partnership agreement or partners from waiving or modifying the certain provisions of Title 1, as cited, except as provided in Subsections (c) and (d) of this section (Section 152.002).

SECTION 4. Amends Section 152.802, Business Organizations Code, by amending Subsections (a), (c), (e), (f), and (h) and adding Subsections (c-1) and (k), effective January 1, 2016, as follows:

(a) Requires that a partnership, in addition to complying with Section 152.803 (Name), to become a limited liability partnership, file an application for registration with SOS in accordance with Chapter 4 and this section.

(c) Provides that a partnership is registered as a limited liability partnership by SOS on the date on which a completed application, rather than a completed initial or renewal application, is filed in accordance with Chapter 4.

(c-1) Provides that an application for registration of a limited liability partnership accepted by SOS is an effective registration and is conclusive evidence of the satisfaction of all conditions precedent to an effective registration.

(e) Provides that the registration of a limited liability partnership is effective until it is withdrawn or terminated, rather than is effective until the first anniversary of the date of registration or a later effective date unless the application is withdrawn or revoked at an earlier time or renewed in accordance with Subsection (g).

(f) Provides that a withdrawal notice terminates the status of the partnership as a limited liability partnership from the date on which the notice is filed or a later date specified in the notice. Deletes existing text providing that a withdrawal notice terminates the status of the partnership as a limited liability partnership not later than the expiration date under Subsection (e). Requires that a withdrawal notice contain the date of registration of the partnership's application, rather than the partnership's last application, under this subchapter.

(h) Authorizes SOS to remove from its active records the registration of a limited liability partnership the registration of which has been withdrawn or terminated, rather than has been withdrawn or revoked or expired and not been renewed.

(k) Provides that, except in a proceeding by the state to terminate the registration of a limited liability partnership, the registration of a limited liability partnership continues in

effect so long as there has been substantial compliance with the registration provisions of this section and substantial compliance with the annual reporting requirements of Section 152.806.

SECTION 5. Amends Subchapter J, Chapter 152, Business Organizations Code, by adding Section 152.806, effective January 1, 2016, as follows:

Sec. 152.806. ANNUAL REPORT. (a) Requires a limited liability partnership that has an effective registration to, not later than June 1 of each year following the calendar year in which the application for registration as a limited liability partnership takes effect, file with SOS, in accordance with Chapter 4, a report that contains:

(1) the name of the partnership; and

(2) the number of partners of the partnership as of the date of filing of the report or, in the case of any past due annual reports, the number of partners as of May 31 of each year that a report was due.

(b) Requires SOS, not later than March 31 of each year, to provide to each limited liability partnership that had an effective registration as of December 31 of the preceding year a written notice stating that:

(1) the annual report and applicable filing fee are due on June 1 of that year; and

(2) the registration of the partnership is required to be terminated unless the report is filed and the filing fee is paid on or before the date prescribed by Subsection (c).

(c) Provides that the registration of a limited liability partnership that fails to file an annual report or pay the required filing fee not later than May 31 of the calendar year following the year on which the report or fee is due is automatically terminated.

(d) Provides that a termination of registration under Subsection (c) affects only the partnership's status as a limited liability partnership and is not an event requiring a winding up and termination of the partnership under Chapter 11.

(e) Authorizes a partnership whose registration as a limited liability partnership is terminated under Subsection (c) to apply to SOS for reinstatement of limited liability partnership status not later than the third anniversary of the effective date of the termination. Requires that the application be filed in accordance with Chapter 4 and contain:

(1) the name of the partnership;

(2) the effective date of the termination; and

(3) a statement that the circumstances giving rise to the termination will be corrected by filing an annual report and paying the filing for each year that an annual report was not filed, including the annual report and filing fee due that year.

(f) Requires that an application for reinstatement be accompanied by a tax clearance letter from the comptroller of public accounts of the State of Texas stating that the limited liability partnership has satisfied all of its franchise tax liabilities under Chapter 171 (Franchise Tax), Tax Code.

(g) Requires that all annual reports and fees to be filed and paid as required by this section be filed and paid concurrently with the filing of an application for reinstatement of limited liability partnership status.

(h) Provides that a reinstatement under Subsection (e) that is approved by SOS relates back to the effective date of the termination and takes effect as of that date, and the partnership's status as a limited liability partnership continues in effect as if the termination of its registration had never occurred.

SECTION 6. Amends Section 153.051(a), Business Organizations Code, as follows:

(a) Requires a general partner to file a certificate of amendment reflecting the occurrence of one or more of the following events not later than the 30th day after the date on which the event occurred:

(1)-(3) Makes no change to these subdivisions;

(4) except as provided by Sections 5.202 (Change by Entity to Registered Office or Registered Agent) and 5.203 (Change by Registered Agent to Name or Address of Registered Office), rather than except as provided by Section 5.202, a change in the address of the registered office, or the name or address of the registered agent of the limited partnership.

SECTION 7. Amends Subchapter C, Chapter 154, Business Organizations Code, by adding Section 154.204, as follows:

Sec. 154.204. IRREVOCABLE POWER OF ATTORNEY. (a) Provides that this section applies only to:

(1) a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a partnership; or

(2) a power of attorney granted by:

(A) a person as a partner of or a transferee or assignee of a partnership interest in a partnership; or

(B) a person seeking to become a partner of or a transferee or assignee of a partnership interest in a partnership.

(b) Provides that a power of attorney is irrevocable for all purposes if the power of attorney:

(1) is coupled with an interest sufficient in law to support an irrevocable power; and

(2) states that it is irrevocable.

(c) Provides that an irrevocable power of attorney created under this section, unless otherwise provided in the power of attorney, is not affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.

(d) Provides that a power of attorney granted to the partnership, a partner of the partnership, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

SECTION 8. Amends Section 402.001(c), Business Organizations Code, effective January 1, 2016, as follows:

(c) Provides that notwithstanding Subsections (a) (setting forth certain domestic and foreign entities to which this code applies) and (b) (providing that the registration of a domestic limited liability partnership or foreign limited liability partnership under prior law and in effect on the effective date of this code continues to be governed by the prior law until expiration of the current term of registration, unless earlier withdrawn or revoked), after the effective date of this code, Sections 152.802 (Registration) and 152.803, instead of prior law, govern a filing, rather than a renewal of registration or other filing, with SOS made on behalf of a domestic limited liability partnership registered under prior law.

SECTION 9. Repealer: Section 101.351 (Applicability of Subchapter), Business Organizations Code.

SECTION 10. Repealer, effective January 1, 2016: Section 152.802(g) (authorizing an effective registration to be renewed before its expiration by filing an application with SOS in accordance with Chapter 4), Business Organizations Code.

SECTION 11. Effective date, except as otherwise provided by this Act: September 1, 2015.