

By: Eltife

S.B. No. 859

A BILL TO BE ENTITLED

AN ACT

relating to partnerships and limited liability companies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Effective January 1, 2016, Section 4.158, Business Organizations Code, is amended to read as follows:

Sec. 4.158. FILING FEES: GENERAL PARTNERSHIPS. For a filing by or for a general partnership, the secretary of state shall impose the following fees:

(1) for filing a limited liability partnership application, \$200 for each partner;

(2) for filing a limited liability partnership annual report [~~renewal application~~], \$200 for each partner on the date of filing of the report [~~renewal~~];

(3) for filing an application for registration by a foreign limited liability partnership, \$200 for each partner in this state, except that the maximum fee may not exceed \$750;

(4) for filing a renewal of registration by a foreign limited liability partnership, \$200 for each partner in this state, except that the maximum fee may not exceed \$750;

(5) for filing a certificate of amendment for a domestic limited liability partnership, \$10, plus \$200 for each partner added by the amendment;

(6) for filing a certificate of amendment for a foreign limited liability partnership, \$10, plus \$200 for each

partner in this state added by amendment not to exceed \$750; and

(7) for filing any other filing instrument, the filing fee imposed for a similar instrument under Section 4.155.

SECTION 2. Subchapter B, Chapter 101, Business Organizations Code, is amended by adding Section 101.055 to read as follows:

Sec. 101.055. IRREVOCABLE POWER OF ATTORNEY. (a) 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) A power of attorney is irrevocable 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) Unless otherwise provided in the power of attorney, an irrevocable power of attorney created under this section may not be affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal.

(d) A power of attorney granted to the limited liability

1 company, a member of the company, or any of their respective
2 officers, directors, managers, members, partners, trustees,
3 employees, or agents is conclusively presumed to be coupled with an
4 interest sufficient in law to support an irrevocable power.

5 SECTION 3. Section 152.002(b), Business Organizations
6 Code, is amended to read as follows:

7 (b) A partnership agreement or the partners may not:

8 (1) unreasonably restrict a partner's right of access
9 to books and records under Section 152.212;

10 (2) eliminate the duty of loyalty under Section
11 152.205, except that the partners by agreement may identify
12 specific types of activities or categories of activities that do
13 not violate the duty of loyalty if the types or categories are not
14 manifestly unreasonable;

15 (3) eliminate the duty of care under Section 152.206,
16 except that the partners by agreement may determine the standards
17 by which the performance of the obligation is to be measured if the
18 standards are not manifestly unreasonable;

19 (4) eliminate the obligation of good faith under
20 Section 152.204(b), except that the partners by agreement may
21 determine the standards by which the performance of the obligation
22 is to be measured if the standards are not manifestly unreasonable;

23 (5) vary the power to withdraw as a partner under
24 Section 152.501(b)(1), (7), or (8), except for the requirement that
25 notice be in writing;

26 (6) vary the right to expel a partner by a court in an
27 event specified by Section 152.501(b)(5);

1 (7) restrict rights of a third party under this
2 chapter or the other partnership provisions, except for a
3 limitation on an individual partner's liability in a limited
4 liability partnership as provided by this chapter;

5 (8) select a governing law not permitted under
6 Sections 1.103 and 1.002(43)(C); or

7 (9) except as provided in Subsections (c) and (d),
8 waive or modify the following provisions of Title 1:

9 (A) Chapter 1, if the provision is used to
10 interpret a provision or to define a word or phrase contained in a
11 section listed in this subsection;

12 (B) Chapter 2, other than Sections 2.104(c)(2),
13 2.104(c)(3), and 2.113;

14 (C) Chapter 3, other than Subchapters C and E of
15 that chapter; or

16 (D) Chapters 4, 5, 10, 11, and 12, other than
17 Sections 11.057(a), (b), (c)(1), (c)(3), ~~and~~ (d), and (f).

18 SECTION 4. Effective January 1, 2016, Section 152.802,
19 Business Organizations Code, is amended by amending Subsections
20 (a), (c), (e), (f), and (h) and adding Subsections (c-1) and (k) to
21 read as follows:

22 (a) In addition to complying with Section 152.803, a
23 partnership, to become a limited liability partnership, must file
24 an application for registration with the secretary of state in
25 accordance with Chapter 4 and this section. The application must:

26 (1) set out:

27 (A) the name of the partnership;

(B) the federal taxpayer identification number of the partnership;

(C) the street address of the partnership's principal office in this state or outside of this state, as applicable; and

(D) the number of partners at the date of application; and

(2) contain a brief statement of the partnership's business.

(c) A partnership is registered as a limited liability partnership by the secretary of state on:

(1) the date on which a completed ~~[initial or renewal]~~ application is filed in accordance with Chapter 4; or

(2) a later date specified in the application.

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

(e) The registration of a limited liability partnership is effective until it is withdrawn or terminated ~~[the first anniversary of the date of registration or a later effective date, unless the application is:~~

~~[(1) withdrawn or revoked at an earlier time; or~~

~~[(2) renewed in accordance with Subsection (g)].~~

(f) A registration may be withdrawn by filing a withdrawal notice with the secretary of state in accordance with Chapter 4. A

1 certificate from the comptroller stating that all taxes
 2 administered by the comptroller under Title 2, Tax Code, have been
 3 paid must be filed with the notice of withdrawal. A withdrawal
 4 notice terminates the status of the partnership as a limited
 5 liability partnership from the date on which the notice is filed or
 6 a later date specified in the notice~~[, but not later than the~~
 7 ~~expiration date under Subsection (e)]~~. A withdrawal notice must:

8 (1) contain:

9 (A) the name of the partnership;

10 (B) the federal taxpayer identification number
 11 of the partnership;

12 (C) the date of registration of the partnership's
 13 ~~[last]~~ application under this subchapter; and

14 (D) the current street address of the
 15 partnership's principal office in this state and outside this
 16 state, if applicable; and

17 (2) be signed by:

18 (A) a majority-in-interest of the partners; or

19 (B) one or more partners authorized by a
 20 majority-in-interest of the partners.

21 (h) The secretary of state may remove from its active
 22 records the registration of a limited liability partnership the
 23 registration of which has ~~[+~~

24 ~~[-1-]]~~ been withdrawn or terminated ~~[revoked, or~~

25 ~~[-2-] expired and not been renewed]~~.

26 (k) Except in a proceeding by the state to terminate the
 27 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. Effective January 1, 2016, Subchapter J, Chapter 152, Business Organizations Code, is amended by adding Section 152.806 to read as follows:

Sec. 152.806. ANNUAL REPORT. (a) Not later than June 1 of each year following the calendar year in which the application for registration as that type of partnership takes effect, a registered limited liability partnership shall file with the secretary of state 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) Not later than March 31 of each year, the secretary of state shall provide written notice to each registered limited liability partnership 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 shall be terminated unless the report is filed and the filing fee is paid on or before the date prescribed by Subsection (c).

(c) The registration of a limited liability partnership that fails to file an annual report or pay the required filing fee

1 not later than May 31 of the calendar year following the year on
2 which the report or fee is due is automatically terminated.

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

7 (e) A partnership whose registration as a limited liability
8 partnership is terminated under Subsection (c) may apply to the
9 secretary of state for reinstatement of limited liability
10 partnership status not later than the third anniversary of the
11 effective date of the termination. The application must state:

12 (1) the name of the partnership;

13 (2) the effective date of the termination; and

14 (3) that a ground for termination either did not exist
15 or has been or will be corrected by filing an annual report and
16 paying the filing fee as provided by Chapter 4 for each year that an
17 annual report was not filed, including the annual report due that
18 year.

19 (f) An application for reinstatement must be accompanied by
20 a tax clearance letter from the comptroller stating that the
21 limited liability partnership has satisfied all of its franchise
22 tax liabilities under Chapter 171, Tax Code.

23 (g) All annual reports and fees to be filed and paid as
24 required by this section may be filed and paid concurrently with the
25 filing of an application for reinstatement of limited liability
26 partnership status.

27 (h) A reinstatement under Subsection (e) that is approved by

1 the secretary of state relates back to the effective date of the
2 termination and takes effect as of that date, and the partnership's
3 status as a limited liability partnership continues in effect as if
4 the termination of its registration had never occurred.

5 SECTION 6. Section 153.051(a), Business Organizations
6 Code, is amended to read as follows:

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

- 10 (1) the admission of a new general partner;
11 (2) the withdrawal of a general partner;
12 (3) a change in the name of the limited partnership; or
13 (4) except as provided by Sections ~~[Section]~~ 5.202 and
14 5.203, a change in:

- 15 (A) the address of the registered office; or
16 (B) the name or address of the registered agent
17 of the limited partnership.

18 SECTION 7. Subchapter C, Chapter 154, Business
19 Organizations Code, is amended by adding Section 154.204 to read as
20 follows:

21 Sec. 154.204. IRREVOCABLE POWER OF ATTORNEY. (a) This
22 section applies only to:

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

- 26 (2) a power of attorney granted by:

- 27 (A) a person as a partner of or a transferee or

1 assignee of a partnership interest in a partnership; or

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

4 (b) A power of attorney is irrevocable for all purposes if
5 the power of attorney:

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

8 (2) states that it is irrevocable.

9 (c) Unless otherwise provided in the power of attorney, an
10 irrevocable power of attorney created under this section may not be
11 affected by the subsequent death, disability, incapacity, winding
12 up, dissolution, termination of existence, or bankruptcy of, or any
13 other event concerning, the principal.

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

19 SECTION 8. Effective January 1, 2016, Section 402.001(c),
20 Business Organizations Code, is amended to read as follows:

21 (c) Notwithstanding Subsections (a) and (b), after the
22 effective date of this code, Sections 152.802 and 152.803, instead
23 of prior law, govern a ~~[renewal of registration or other]~~ filing
24 with the secretary of state made on behalf of a domestic limited
25 liability partnership registered under prior law.

26 SECTION 9. Section 101.351, Business Organizations Code, is
27 repealed.

S.B. No. 859

1 SECTION 10. Effective January 1, 2016, Section [152.802\(g\)](#),
2 Business Organizations Code, is repealed.

3 SECTION 11. Except as otherwise provided by this Act, this
4 Act takes effect September 1, 2015.