

By: Carona
(Oliveira)

S.B. No. 847

A BILL TO BE ENTITLED

AN ACT

relating to business entities and associations.

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

SECTION 1. Subsection (d), Section 3.059, Business Organizations Code, is amended to read as follows:

(d) A restated certificate of formation that makes new amendments to the certificate of formation being restated must:

(1) be accompanied by a statement that each new amendment has been made in accordance with this code;

~~(2) [identify by reference or description each added, altered, or deleted provision];~~

~~(3)~~ be accompanied by a statement that each amendment has been approved in the manner required by this code and the governing documents of the entity;

(3) ~~(4)~~ be accompanied by a statement that the restated certificate of formation:

(A) accurately states the text of the certificate of formation being restated and each amendment to the certificate of formation being restated that is in effect, as further amended by the restated certificate of formation; and

(B) does not contain any other change in the certificate of formation being restated except for information omitted under Subsection (b); and

(4) ~~(5)~~ include any other information required by

1 the title of this code applicable to the entity.

2 SECTION 2. Subsection (d), Section 7.001, Business
3 Organizations Code, is amended to read as follows:

4 (d) The liability of a governing person may be limited or
5 eliminated [~~restricted~~]:

6 (1) in a general partnership by its partnership
7 agreement to the same extent Subsections (b) and (c) permit the
8 limitation or elimination of liability of a governing person of an
9 organization to which those subsections apply and to the additional
10 extent permitted under Chapter 152;

11 (2) in a limited partnership by its partnership
12 agreement to the same extent Subsections (b) and (c) permit the
13 limitation or elimination of liability of a governing person of an
14 organization to which those subsections apply and to the additional
15 extent permitted under Chapter 153 and, to the extent applicable to
16 limited partnerships, Chapter 152; and

17 (3) in a limited liability company by its certificate
18 of formation or company agreement to the same extent Subsections
19 (b) and (c) permit the limitation or elimination of liability of a
20 governing person of an organization to which those subsections
21 apply and to the additional extent permitted under Section 101.401.

22 SECTION 3. Subsection (a), Section 11.052, Business
23 Organizations Code, is amended to read as follows:

24 (a) Except as provided by the title of this code governing
25 the domestic entity, on the occurrence of an event requiring
26 winding up of a domestic entity, unless the event requiring winding
27 up is revoked under Section 11.151 or canceled under Section

1 11.152, the owners, members, managerial officials, or other persons
2 specified in the title of this code governing the domestic entity
3 shall, as soon as reasonably practicable, wind up the business and
4 affairs of the domestic entity. The domestic entity shall:

5 (1) cease to carry on its business, except to the
6 extent necessary to wind up its business;

7 (2) if the domestic entity is not a general
8 partnership, send a written notice of the winding up to each known
9 claimant against the domestic entity;

10 (3) collect and sell its property to the extent the
11 property is not to be distributed in kind to the domestic entity's
12 owners or members; and

13 (4) perform any other act required to wind up its
14 business and affairs.

15 SECTION 4. Subdivision (1), Section 21.301, Business
16 Organizations Code, is amended to read as follows:

17 (1) "Distribution limit," with respect to a
18 distribution made by a corporation, other than a distribution
19 described by Subdivision (2), means:

20 (A) the net assets of the corporation if the
21 distribution:

22 (i) is a purchase or redemption of its own
23 shares by a corporation that:

24 (a) is eliminating fractional shares;

25 (b) is collecting or compromising
26 indebtedness owed by or to the corporation; or

27 (c) is paying dissenting shareholders

1 entitled to payment for their shares under this code; or

2 (ii) is made by a consuming assets
3 corporation and is not the purchase or redemption of its own shares
4 [~~by a consuming assets corporation~~]; or

5 (B) the surplus of the corporation for a
6 distribution not described by Paragraph (A).

7 SECTION 5. Section 101.052, Business Organizations Code, is
8 amended by adding Subsection (e) to read as follows:

9 (e) A company agreement may provide rights to any person,
10 including a person who is not a party to the company agreement, to
11 the extent provided by the company agreement.

12 SECTION 6. Section 101.605, Business Organizations Code, is
13 amended to read as follows:

14 Sec. 101.605. GENERAL POWERS OF SERIES. A series
15 established under this subchapter has the power and capacity, in
16 the series' own name, to:

17 (1) sue and be sued;

18 (2) contract;

19 (3) acquire, sell, and hold title to assets of the
20 series, including real property, personal property, and intangible
21 property; [~~and~~]

22 (4) grant liens and security interests in assets of
23 the series; and

24 (5) exercise any power or privilege as necessary or
25 appropriate to the conduct, promotion, or attainment of the
26 business, purposes, or activities of the series.

27 SECTION 7. The heading to Section 101.609, Business

1 Organizations Code, is amended to read as follows:

2 Sec. 101.609. APPLICABILITY OF OTHER PROVISIONS OF CHAPTER
3 OR TITLE 1; SYNONYMOUS TERMS.

4 SECTION 8. Section 101.609, Business Organizations Code, is
5 amended by adding Subsection (c) to read as follows:

6 (c) To the extent not inconsistent with this subchapter, a
7 series and the governing persons and officers associated with the
8 series have the powers and rights provided by Subchapters C and D,
9 Chapter 3, and Subchapter F, Chapter 10. For purposes of those
10 provisions, and as the context requires:

11 (1) a reference to "entity," "domestic entity," or
12 "filing entity" includes the "series";

13 (2) a reference to "governing person" includes
14 "governing person associated with the series";

15 (3) a reference to "governing authority" includes
16 "governing authority associated with the series"; and

17 (4) a reference to "officer" includes "officer
18 associated with the series."

19 SECTION 9. Subchapter M, Chapter 101, Business
20 Organizations Code, is amended by adding Section 101.622 to read as
21 follows:

22 Sec. 101.622. SERIES NOT A SEPARATE DOMESTIC ENTITY OR
23 ORGANIZATION. For purposes of this chapter and Title 1, a series
24 has the rights, powers, and duties provided by this subchapter to
25 the series but is not a separate domestic entity or organization.

26 SECTION 10. Subchapter B, Chapter 154, Business
27 Organizations Code, is amended by adding Section 154.104 to read as

1 follows:

2 Sec. 154.104. RIGHTS OF THIRD PERSONS UNDER PARTNERSHIP
3 AGREEMENT. A partnership agreement may provide rights to any
4 person, including a person who is not a party to the partnership
5 agreement, to the extent provided by the partnership agreement.

6 SECTION 11. Subsection (c), Section 24.003, Business &
7 Commerce Code, is repealed.

8 SECTION 12. This Act takes effect September 1, 2013.