

1-1 By: Carona S.B. No. 847
 1-2 (In the Senate - Filed February 26, 2013; March 5, 2013, read
 1-3 first time and referred to Committee on Business and Commerce;
 1-4 March 18, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; March 18, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 847 By: Carona

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to business entities and associations.
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-23 SECTION 1. Subsection (d), Section 3.059, Business
 1-24 Organizations Code, is amended to read as follows:
 1-25 (d) A restated certificate of formation that makes new
 1-26 amendments to the certificate of formation being restated must:
 1-27 (1) be accompanied by a statement that each new
 1-28 amendment has been made in accordance with this code;
 1-29 (2) ~~[identify by reference or description each added,~~
 1-30 ~~altered, or deleted provision;~~
 1-31 ~~(3)]~~ be accompanied by a statement that each
 1-32 amendment has been approved in the manner required by this code and
 1-33 the governing documents of the entity;
 1-34 (3) ~~(4)]~~ be accompanied by a statement that the
 1-35 restated certificate of formation:
 1-36 (A) accurately states the text of the certificate
 1-37 of formation being restated and each amendment to the certificate
 1-38 of formation being restated that is in effect, as further amended by
 1-39 the restated certificate of formation; and
 1-40 (B) does not contain any other change in the
 1-41 certificate of formation being restated except for information
 1-42 omitted under Subsection (b); and
 1-43 (4) ~~(5)]~~ include any other information required by
 1-44 the title of this code applicable to the entity.
 1-45 SECTION 2. Subsection (d), Section 7.001, Business
 1-46 Organizations Code, is amended to read as follows:
 1-47 (d) The liability of a governing person may be limited or
 1-48 eliminated ~~[restricted]~~:
 1-49 (1) in a general partnership by its partnership
 1-50 agreement to the same extent Subsections (b) and (c) permit the
 1-51 limitation or elimination of liability of a governing person of an
 1-52 organization to which those subsections apply and to the additional
 1-53 extent permitted under Chapter 152;
 1-54 (2) in a limited partnership by its partnership
 1-55 agreement to the same extent Subsections (b) and (c) permit the
 1-56 limitation or elimination of liability of a governing person of an
 1-57 organization to which those subsections apply and to the additional
 1-58 extent permitted under Chapter 153 and, to the extent applicable to
 1-59 limited partnerships, Chapter 152; and
 1-60 (3) in a limited liability company by its certificate

2-1 of formation or company agreement to the same extent Subsections
 2-2 (b) and (c) permit the limitation or elimination of liability of a
 2-3 governing person of an organization to which those subsections
 2-4 apply and to the additional extent permitted under Section 101.401.

2-5 SECTION 3. Subsection (a), Section 11.052, Business
 2-6 Organizations Code, is amended to read as follows:

2-7 (a) Except as provided by the title of this code governing
 2-8 the domestic entity, on the occurrence of an event requiring
 2-9 winding up of a domestic entity, unless the event requiring winding
 2-10 up is revoked under Section 11.151 or canceled under Section
 2-11 11.152, the owners, members, managerial officials, or other persons
 2-12 specified in the title of this code governing the domestic entity
 2-13 shall, as soon as reasonably practicable, wind up the business and
 2-14 affairs of the domestic entity. The domestic entity shall:

2-15 (1) cease to carry on its business, except to the
 2-16 extent necessary to wind up its business;

2-17 (2) if the domestic entity is not a general
 2-18 partnership, send a written notice of the winding up to each known
 2-19 claimant against the domestic entity;

2-20 (3) collect and sell its property to the extent the
 2-21 property is not to be distributed in kind to the domestic entity's
 2-22 owners or members; and

2-23 (4) perform any other act required to wind up its
 2-24 business and affairs.

2-25 SECTION 4. Subdivision (1), Section 21.301, Business
 2-26 Organizations Code, is amended to read as follows:

2-27 (1) "Distribution limit," with respect to a
 2-28 distribution made by a corporation, other than a distribution
 2-29 described by Subdivision (2), means:

2-30 (A) the net assets of the corporation if the
 2-31 distribution:

2-32 (i) is a purchase or redemption of its own
 2-33 shares by a corporation that:

2-34 (a) is eliminating fractional shares;

2-35 (b) is collecting or compromising
 2-36 indebtedness owed by or to the corporation; or

2-37 (c) is paying dissenting shareholders
 2-38 entitled to payment for their shares under this code; or

2-39 (ii) is made by a consuming assets
 2-40 corporation and is not the purchase or redemption of its own shares
 2-41 [by a consuming assets corporation]; or

2-42 (B) the surplus of the corporation for a
 2-43 distribution not described by Paragraph (A).

2-44 SECTION 5. Section 101.052, Business Organizations Code, is
 2-45 amended by adding Subsection (e) to read as follows:

2-46 (e) A company agreement may provide rights to any person,
 2-47 including a person who is not a party to the company agreement, to
 2-48 the extent provided by the company agreement.

2-49 SECTION 6. Section 101.605, Business Organizations Code, is
 2-50 amended to read as follows:

2-51 Sec. 101.605. GENERAL POWERS OF SERIES. A series
 2-52 established under this subchapter has the power and capacity, in
 2-53 the series' own name, to:

2-54 (1) sue and be sued;

2-55 (2) contract;

2-56 (3) acquire, sell, and hold title to assets of the
 2-57 series, including real property, personal property, and intangible
 2-58 property; ~~and~~

2-59 (4) grant liens and security interests in assets of
 2-60 the series; and

2-61 (5) exercise any power or privilege as necessary or
 2-62 appropriate to the conduct, promotion, or attainment of the
 2-63 business, purposes, or activities of the series.

2-64 SECTION 7. The heading to Section 101.609, Business
 2-65 Organizations Code, is amended to read as follows:

2-66 Sec. 101.609. APPLICABILITY OF OTHER PROVISIONS OF CHAPTER
 2-67 OR TITLE 1; SYNONYMOUS TERMS.

2-68 SECTION 8. Section 101.609, Business Organizations Code, is
 2-69 amended by adding Subsection (c) to read as follows:

3-1 (c) To the extent not inconsistent with this subchapter, a
3-2 series and the governing persons and officers associated with the
3-3 series have the powers and rights provided by Subchapters C and D,
3-4 Chapter 3, and Subchapter F, Chapter 10. For purposes of those
3-5 provisions, and as the context requires:

3-6 (1) a reference to "entity," "domestic entity," or
3-7 "filing entity" includes the "series";

3-8 (2) a reference to "governing person" includes
3-9 "governing person associated with the series";

3-10 (3) a reference to "governing authority" includes
3-11 "governing authority associated with the series"; and

3-12 (4) a reference to "officer" includes "officer
3-13 associated with the series."

3-14 SECTION 9. Subchapter M, Chapter 101, Business
3-15 Organizations Code, is amended by adding Section 101.622 to read as
3-16 follows:

3-17 Sec. 101.622. SERIES NOT A SEPARATE DOMESTIC ENTITY OR
3-18 ORGANIZATION. For purposes of this chapter and Title 1, a series
3-19 has the rights, powers, and duties provided by this subchapter to
3-20 the series but is not a separate domestic entity or organization.

3-21 SECTION 10. Subchapter B, Chapter 154, Business
3-22 Organizations Code, is amended by adding Section 154.104 to read as
3-23 follows:

3-24 Sec. 154.104. RIGHTS OF THIRD PERSONS UNDER PARTNERSHIP
3-25 AGREEMENT. A partnership agreement may provide rights to any
3-26 person, including a person who is not a party to the partnership
3-27 agreement, to the extent provided by the partnership agreement.

3-28 SECTION 11. Subsection (c), Section 24.003, Business &
3-29 Commerce Code, is repealed.

3-30 SECTION 12. This Act takes effect September 1, 2013.

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