

By: Carona

S.B. No. 849

A BILL TO BE ENTITLED

AN ACT

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.

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

SECTION 1. Section 1.002, Business Organizations Code, is amended by adding Subdivision (82-a) to read as follows:

(82-a) "Social purposes" means one or more purposes of a for-profit corporation that are specified in the corporation's certificate of formation and consist of promoting one or more positive impacts on society or the environment or of minimizing one or more adverse impacts of the corporation's activities on society or the environment. Those impacts may include:

(A) providing low-income or underserved individuals or communities with beneficial products or services;

(B) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) preserving the environment;

(D) improving human health;

(E) promoting the arts, sciences, or advancement of knowledge;

(F) increasing the flow of capital to entities with a social purpose; and

1 (G) conferring any particular benefit on society
2 or the environment.

3 SECTION 2. Section 3.007, Business Organizations Code, is
4 amended by adding Subsection (d) to read as follows:

5 (d) Notwithstanding Section 2.008, a for-profit corporation
6 may include one or more social purposes in addition to the purpose
7 or purposes required to be stated in the corporation's certificate
8 of formation by Section 3.005(a)(3). The corporation may also
9 include in the certificate of formation a provision that the board
10 of directors and officers of the corporation shall consider any
11 social purpose specified in the certificate of formation in
12 discharging the duties of directors or officers under this code or
13 otherwise.

14 SECTION 3. Subsection (a), Section 21.101, Business
15 Organizations Code, is amended to read as follows:

16 (a) The shareholders of a corporation may enter into an
17 agreement that:

18 (1) restricts the discretion or powers of the board of
19 directors;

20 (2) eliminates the board of directors and authorizes
21 the business and affairs of the corporation to be managed, wholly or
22 partly, by one or more of its shareholders or other persons;

23 (3) establishes the individuals who shall serve as
24 directors or officers of the corporation;

25 (4) determines the term of office, manner of selection
26 or removal, or terms or conditions of employment of a director,
27 officer, or other employee of the corporation, regardless of the

length of employment;

(5) governs the authorization or making of distributions whether in proportion to ownership of shares, subject to Section 21.303;

(6) determines the manner in which profits and losses will be apportioned;

(7) governs, in general or with regard to specific matters, the exercise or division of voting power by and between the shareholders, directors, or other persons, including use of disproportionate voting rights or director proxies;

(8) establishes the terms of an agreement for the transfer or use of property or for the provision of services between the corporation and another person, including a shareholder, director, officer, or employee of the corporation;

(9) authorizes arbitration or grants authority to a shareholder or other person to resolve any issue about which there is a deadlock among the directors, shareholders, or other persons authorized to manage the corporation;

(10) requires winding up and termination of the corporation at the request of one or more shareholders or on the occurrence of a specified event or contingency, in which case the winding up and termination of the corporation will proceed as if all of the shareholders had consented in writing to the winding up and termination as provided by Subchapter K; ~~[or]~~

(11) 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 actions, or the relationship among the shareholders, the directors, and the corporation; or

(12) otherwise governs the exercise of corporate powers, the management of the business and affairs of the corporation, or the relationship among the shareholders, the directors, and the corporation as if the corporation were a partnership or in a manner that would otherwise be appropriate only among partners and not contrary to public policy.

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

(b) In discharging the duties of director under this code or otherwise and in considering the best interests of the corporation, a director is entitled to ~~[may]~~ 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) In discharging the duties of a director under this code or otherwise, a director is entitled to consider any social purposes specified in the corporation's certificate of formation.

(d) Subject to direction by the board of directors of the corporation, in discharging the duties of an officer under this code or otherwise, an officer is entitled to consider:

(1) 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

1 continued independence of the corporation; and

2 (2) any social purposes specified in the corporation's
3 certificate of formation.

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

10 SECTION 5. This Act takes effect September 1, 2013.