

1-1 By: Carona S.B. No. 849
1-2 (In the Senate - Filed February 26, 2013; March 5, 2013,
1-3 read 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

1-8	Yea	Nay	Absent	PNV
1-9	Carona	X		
1-10	Taylor	X		
1-11	Eltife	X		
1-12	Estes		X	
1-13	Hancock	X		
1-14	Lucio	X		
1-15	Van de Putte	X		
1-16	Watson	X		
1-17	Whitmire	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 849 By: Carona

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

1-21 relating to social purposes of a for-profit corporation and the
1-22 consideration of social purposes and other interests by officers
1-23 and directors of a for-profit corporation.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 1.002, Business Organizations Code, is
1-26 amended by adding Subdivision (82-a) to read as follows:

1-27 (82-a) "Social purposes" means one or more purposes of
1-28 a for-profit corporation that are specified in the corporation's
1-29 certificate of formation and consist of promoting one or more
1-30 positive impacts on society or the environment or of minimizing one
1-31 or more adverse impacts of the corporation's activities on society
1-32 or the environment. Those impacts may include:

1-33 (A) providing low-income or underserved
1-34 individuals or communities with beneficial products or services;

1-35 (B) promoting economic opportunity for
1-36 individuals or communities beyond the creation of jobs in the
1-37 normal course of business;

1-38 (C) preserving the environment;

1-39 (D) improving human health;

1-40 (E) promoting the arts, sciences, or advancement
1-41 of knowledge;

1-42 (F) increasing the flow of capital to entities
1-43 with a social purpose; and

1-44 (G) conferring any particular benefit on society
1-45 or the environment.

1-46 SECTION 2. Section 3.007, Business Organizations Code, is
1-47 amended by adding Subsection (d) to read as follows:

1-48 (d) Notwithstanding Section 2.008, a for-profit corporation
1-49 may include one or more social purposes in addition to the purpose
1-50 or purposes required to be stated in the corporation's certificate
1-51 of formation by Section 3.005(a)(3). The corporation may also
1-52 include in the certificate of formation a provision that the board
1-53 of directors and officers of the corporation shall consider any
1-54 social purpose specified in the certificate of formation in
1-55 discharging the duties of directors or officers under this code or
1-56 otherwise.

1-57 SECTION 3. Subsection (a), Section 21.101, Business
1-58 Organizations Code, is amended to read as follows:

1-59 (a) The shareholders of a corporation may enter into an
1-60 agreement that:

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

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

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

(4) determines the term of office, manner of selection or removal, or terms or conditions of employment of a director, 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 continued independence of the corporation; and

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

(e) Nothing in this section prohibits or limits a director or officer of a corporation that does not have a social purpose

3-1 specified as a purpose in the corporation's certificate of
3-2 formation from considering, approving, or taking an action that
3-3 promotes or has the effect of promoting a social, charitable, or
3-4 environmental purpose.

3-5 SECTION 5. This Act takes effect September 1, 2013.

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