

BILL ANALYSIS

S.B. 859
By: Eltife
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties have expressed concern that current law may not reflect best practices with regard to partnerships and limited liability partnerships. The parties contend that certain provisions of law need to be updated and clarified. S.B. 859 seeks to address these concerns.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 859 amends the Business Organizations Code to specify that an application for registration of a limited liability partnership accepted by the secretary of state is considered to be an effective registration and conclusive evidence of the satisfaction of all conditions precedent to an effective registration. The bill repeals a statutory provision authorizing an effective registration to be renewed before its expiration date and changes the period the registration is effective from being effective until the first anniversary of the date of registration or a later effective date, unless the application is withdrawn or revoked at an earlier time or renewed, to being effective until it is withdrawn or terminated. The bill establishes that the registration of a limited liability partnership, except in a proceeding by the state to terminate the registration of a limited liability partnership, continues in effect so long as there has been substantial compliance with statutory provisions relating to the registration generally and with annual reporting requirements established by the bill's provisions. The bill makes these provisions effective January 1, 2016.

S.B. 859 requires a limited liability partnership that has an effective registration, not later than June 1 of each year following the calendar year in which the application for registration as a limited liability partnership takes effect, to file with the secretary of state a report that contains the name of the partnership and 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. The bill requires the secretary of state, not later than March 31 of each year, to provide to each limited liability partnership that had an effective registration as of December 31 of the preceding year a written notice stating that the annual report and applicable filing fee are due on June 1 of that year and the registration of the partnership will be terminated unless the report is filed and the filing fee is paid on or before the date prescribed. The bill requires the secretary of state to impose a fee for filing the annual report in an amount equal to \$200 for each partner on the date of filing the report, or in the case of any past due annual report, \$200 for the number of partners as of May 31 of the year that the report was due. The bill establishes that the registration of a limited liability partnership that fails to file an

annual report or pay the required filing fee not later than May 31 of the calendar year following the year on which the report or fee is due is automatically terminated. The bill specifies that the termination of registration affects only the partnership's status as a limited liability partnership and is not an event requiring a winding up and termination of the partnership. The bill authorizes a partnership whose registration was terminated for failure to file the annual report or pay the filing fee to apply to the secretary of state for reinstatement of limited liability partnership status not later than the third anniversary of the effective date of the termination and sets out provisions relating to the reinstatement process. The bill makes these provisions effective January 1, 2016.

S.B. 859 establishes that a power of attorney is irrevocable for all purposes if the power of attorney is coupled with an interest sufficient in law to support an irrevocable power and the power of attorney states that it is irrevocable. The bill establishes that the irrevocable power of attorney, unless otherwise provided in the power of attorney, is not affected by the subsequent death, disability, incapacity, winding up, dissolution, termination of existence, or bankruptcy of, or any other event concerning, the principal. The bill limits the applicability of these provisions to a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a limited liability company; a power of attorney granted by a person as a member of or assignee of or a person seeking to become a member of or assignee of a membership interest in a limited liability company; a power of attorney with respect to matters relating to the organization, internal affairs, or termination of a partnership; or a power of attorney granted by a person as a partner of or a transferee or assignee of or a person seeking to become a partner of or a transferee or assignee of a partnership interest in a partnership. The bill establishes that a power of attorney granted to a limited liability company, a member of the company, or any of their respective officers, directors, managers, members, partners, trustees, employees, or agents or that a power of attorney granted to a partnership, a partner of the partnership, or any of the partnership's respective officers, directors, managers, members, partners, trustees, employees, or agents is conclusively presumed to be coupled with an interest sufficient in law to support an irrevocable power.

S.B. 859 excludes the term "majority-in-interest," as defined in statutory provisions relating to supplemental provisions for domestic general partnerships, from a provision prohibiting a partnership agreement or the partners from waiving or modifying certain general provisions of the Business Organizations Code. The bill creates an exception to the requirement that a general partner file a certificate of amendment reflecting a change in the address of the registered office or a change in the name or address of the registered agent of the limited partnership if the registered agent of a filing entity or foreign filing entity files the required statement of such change in accordance with statutory provisions related to the filing.

S.B. 859 repeals a statutory provision limiting the applicability of statutory provisions relating to meetings of and voting by limited liability companies to the governing authority of a limited liability company, the members of a limited liability company if the members do not constitute the governing authority of the company, and a committee of the governing authority of a limited liability company.

S.B. 859 repeals the following provisions of the Business Organizations Code:

- Section 101.351
- Section 152.802(g)

EFFECTIVE DATE

Except as otherwise provided, September 1, 2015.