

By: Eltife
(Oliveira, Villalba)

S.B. No. 859

A BILL TO BE ENTITLED

AN ACT

relating to partnerships and limited liability companies.

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

SECTION 1. Effective January 1, 2016, Section 4.158, Business Organizations Code, is amended to read as follows:

Sec. 4.158. FILING FEES: GENERAL PARTNERSHIPS. For a filing by or for a general partnership, the secretary of state shall impose the following fees:

(1) for filing a limited liability partnership application, \$200 for each partner;

(2) for filing a limited liability partnership annual report [~~renewal application~~], \$200 for each partner on the date of filing of 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 [~~renewal~~];

(3) for filing an application for registration by a foreign limited liability partnership, \$200 for each partner in this state, except that the maximum fee may not exceed \$750;

(4) for filing a renewal of registration by a foreign limited liability partnership, \$200 for each partner in this state, except that the maximum fee may not exceed \$750;

(5) for filing a certificate of amendment for a domestic limited liability partnership, \$10, plus \$200 for each partner added by the amendment;

1 (6) for filing a certificate of amendment for a
2 foreign limited liability partnership, \$10, plus \$200 for each
3 partner in this state added by amendment not to exceed \$750; and

4 (7) for filing any other filing instrument, the filing
5 fee imposed for a similar instrument under Section 4.155.

6 SECTION 2. Subchapter B, Chapter 101, Business
7 Organizations Code, is amended by adding Section 101.055 to read as
8 follows:

9 Sec. 101.055. IRREVOCABLE POWER OF ATTORNEY. (a) This
10 section applies only to:

11 (1) a power of attorney with respect to matters
12 relating to the organization, internal affairs, or termination of a
13 limited liability company; or

14 (2) a power of attorney granted by:

15 (A) a person as a member of or assignee of a
16 membership interest in a limited liability company; or

17 (B) a person seeking to become a member of or
18 assignee of a membership interest in a limited liability company.

19 (b) A power of attorney is irrevocable for all purposes if
20 the power of attorney:

21 (1) is coupled with an interest sufficient in law to
22 support an irrevocable power; and

23 (2) states that it is irrevocable.

24 (c) Unless otherwise provided in the power of attorney, an
25 irrevocable power of attorney created under this section is not
26 affected by the subsequent death, disability, incapacity, winding
27 up, dissolution, termination of existence, or bankruptcy of, or any

1 other event concerning, the principal.

2 (d) A power of attorney granted to the limited liability
3 company, a member of the company, or any of their respective
4 officers, directors, managers, members, partners, trustees,
5 employees, or agents is conclusively presumed to be coupled with an
6 interest sufficient in law to support an irrevocable power.

7 SECTION 3. Section 152.002(b), Business Organizations
8 Code, is amended to read as follows:

9 (b) A partnership agreement or the partners may not:

10 (1) unreasonably restrict a partner's right of access
11 to books and records under Section 152.212;

12 (2) eliminate the duty of loyalty under Section
13 152.205, except that the partners by agreement may identify
14 specific types of activities or categories of activities that do
15 not violate the duty of loyalty if the types or categories are not
16 manifestly unreasonable;

17 (3) eliminate the duty of care under Section 152.206,
18 except that the partners by agreement may determine the standards
19 by which the performance of the obligation is to be measured if the
20 standards are not manifestly unreasonable;

21 (4) eliminate the obligation of good faith under
22 Section 152.204(b), except that the partners by agreement may
23 determine the standards by which the performance of the obligation
24 is to be measured if the standards are not manifestly unreasonable;

25 (5) vary the power to withdraw as a partner under
26 Section 152.501(b)(1), (7), or (8), except for the requirement that
27 notice be in writing;

1 (6) vary the right to expel a partner by a court in an
2 event specified by Section 152.501(b)(5);

3 (7) restrict rights of a third party under this
4 chapter or the other partnership provisions, except for a
5 limitation on an individual partner's liability in a limited
6 liability partnership as provided by this chapter;

7 (8) select a governing law not permitted under
8 Sections 1.103 and 1.002(43)(C); or

9 (9) except as provided in Subsections (c) and (d),
10 waive or modify the following provisions of Title 1:

11 (A) Chapter 1, if the provision is used to
12 interpret a provision or to define a word or phrase contained in a
13 section listed in this subsection;

14 (B) Chapter 2, other than Sections 2.104(c)(2),
15 2.104(c)(3), and 2.113;

16 (C) Chapter 3, other than Subchapters C and E of
17 that chapter; or

18 (D) Chapters 4, 5, 10, 11, and 12, other than
19 Sections 11.057(a), (b), (c)(1), (c)(3), ~~and~~ (d), and (f).

20 SECTION 4. Effective January 1, 2016, Section 152.802,
21 Business Organizations Code, is amended by amending Subsections
22 (a), (c), (e), (f), and (h) and adding Subsections (c-1) and (k) to
23 read as follows:

24 (a) In addition to complying with Section 152.803, a
25 partnership, to become a limited liability partnership, must file
26 an application for registration with the secretary of state in
27 accordance with Chapter 4 and this section. The application must:

- 1 (1) set out:
- 2 (A) the name of the partnership;
- 3 (B) the federal taxpayer identification number
- 4 of the partnership;
- 5 (C) the street address of the partnership's
- 6 principal office in this state or outside of this state, as
- 7 applicable; and
- 8 (D) the number of partners at the date of
- 9 application; and
- 10 (2) contain a brief statement of the partnership's
- 11 business.

12 (c) A partnership is registered as a limited liability

13 partnership by the secretary of state on:

- 14 (1) the date on which a completed [~~initial or renewal~~]
- 15 application is filed in accordance with Chapter 4; or
- 16 (2) a later date specified in the application.

17 (c-1) An application for registration of a limited

18 liability partnership accepted by the secretary of state is an

19 effective registration and is conclusive evidence of the

20 satisfaction of all conditions precedent to an effective

21 registration.

22 (e) The registration of a limited liability partnership is

23 effective until it is withdrawn or terminated [~~the first~~

24 ~~anniversary of the date of registration or a later effective date,~~

25 ~~unless the application is:~~

- 26 [~~(1) withdrawn or revoked at an earlier time; or~~
- 27 [~~(2) renewed in accordance with Subsection (g)~~].

1 (f) A registration may be withdrawn by filing a withdrawal
2 notice with the secretary of state in accordance with Chapter 4. A
3 certificate from the comptroller stating that all taxes
4 administered by the comptroller under Title 2, Tax Code, have been
5 paid must be filed with the notice of withdrawal. A withdrawal
6 notice terminates the status of the partnership as a limited
7 liability partnership from the date on which the notice is filed or
8 a later date specified in the notice~~[, but not later than the~~
9 ~~expiration date under Subsection (e)]~~. A withdrawal notice must:

10 (1) contain:

11 (A) the name of the partnership;

12 (B) the federal taxpayer identification number
13 of the partnership;

14 (C) the date of registration of the partnership's
15 ~~[last]~~ application under this subchapter; and

16 (D) the current street address of the
17 partnership's principal office in this state and outside this
18 state, if applicable; and

19 (2) be signed by:

20 (A) a majority-in-interest of the partners; or

21 (B) one or more partners authorized by a
22 majority-in-interest of the partners.

23 (h) The secretary of state may remove from its active
24 records the registration of a limited liability partnership the
25 registration of which has ~~[+~~

26 ~~[-1-]~~ been withdrawn or terminated ~~[revoked, or~~

27 ~~[-2- expired and not been renewed]~~.

1 (k) Except in a proceeding by the state to terminate the
2 registration of a limited liability partnership, the registration
3 of a limited liability partnership continues in effect so long as
4 there has been substantial compliance with the registration
5 provisions of this section and substantial compliance with the
6 annual reporting requirements of Section 152.806.

7 SECTION 5. Effective January 1, 2016, Subchapter J, Chapter
8 152, Business Organizations Code, is amended by adding Section
9 152.806 to read as follows:

10 Sec. 152.806. ANNUAL REPORT. (a) Not later than June 1 of
11 each year following the calendar year in which the application for
12 registration as a limited liability partnership takes effect, a
13 limited liability partnership that has an effective registration
14 shall file with the secretary of state, in accordance with Chapter
15 4, a report that contains:

16 (1) the name of the partnership; and

17 (2) the number of partners of the partnership as of the
18 date of filing of the report or, in the case of any past due annual
19 reports, the number of partners as of May 31 of each year that a
20 report was due.

21 (b) Not later than March 31 of each year, the secretary of
22 state shall provide to each limited liability partnership that had
23 an effective registration as of December 31 of the preceding year a
24 written notice stating that:

25 (1) the annual report and applicable filing fee are
26 due on June 1 of that year; and

27 (2) the registration of the partnership shall be

1 terminated unless the report is filed and the filing fee is paid on
2 or before the date prescribed by Subsection (c).

3 (c) The registration of a limited liability partnership
4 that fails to file an annual report or pay the required filing fee
5 not later than May 31 of the calendar year following the year in
6 which the report or fee is due is automatically terminated.

7 (d) A termination of registration under Subsection (c)
8 affects only the partnership's status as a limited liability
9 partnership and is not an event requiring a winding up and
10 termination of the partnership under Chapter 11.

11 (e) A partnership whose registration as a limited liability
12 partnership is terminated under Subsection (c) may apply to the
13 secretary of state for reinstatement of limited liability
14 partnership status not later than the third anniversary of the
15 effective date of the termination. The application must be filed in
16 accordance with Chapter 4 and contain:

- 17 (1) the name of the partnership;
18 (2) the effective date of the termination; and
19 (3) a statement that the circumstances giving rise to
20 the termination will be corrected by filing an annual report and
21 paying the filing fee for each year that an annual report was not
22 filed, including the annual report and filing fee due that year.

23 (f) An application for reinstatement must be accompanied by
24 a tax clearance letter from the comptroller stating that the
25 limited liability partnership has satisfied all of its franchise
26 tax liabilities under Chapter 171, Tax Code.

27 (g) All annual reports and fees to be filed and paid as

1 required by this section must be filed and paid concurrently with
2 the filing of an application for reinstatement of limited liability
3 partnership status.

4 (h) A reinstatement under Subsection (e) that is approved by
5 the secretary of state relates back to the effective date of the
6 termination and takes effect as of that date, and the partnership's
7 status as a limited liability partnership continues in effect as if
8 the termination of its registration had never occurred.

9 SECTION 6. Section 153.051(a), Business Organizations
10 Code, is amended to read as follows:

11 (a) A general partner shall file a certificate of amendment
12 reflecting the occurrence of one or more of the following events not
13 later than the 30th day after the date on which the event occurred:

- 14 (1) the admission of a new general partner;
15 (2) the withdrawal of a general partner;
16 (3) a change in the name of the limited partnership; or
17 (4) except as provided by Sections ~~[Section]~~ 5.202 and
18 5.203, a change in:

- 19 (A) the address of the registered office; or
20 (B) the name or address of the registered agent
21 of the limited partnership.

22 SECTION 7. Subchapter C, Chapter 154, Business
23 Organizations Code, is amended by adding Section 154.204 to read as
24 follows:

25 Sec. 154.204. IRREVOCABLE POWER OF ATTORNEY. (a) This
26 section applies only to:

- 27 (1) a power of attorney with respect to matters

1 relating to the organization, internal affairs, or termination of a
2 partnership; or

3 (2) a power of attorney granted by:

4 (A) a person as a partner of or a transferee or
5 assignee of a partnership interest in a partnership; or

6 (B) a person seeking to become a partner of or a
7 transferee or assignee of a partnership interest in a partnership.

8 (b) A power of attorney is irrevocable for all purposes if
9 the power of attorney:

10 (1) is coupled with an interest sufficient in law to
11 support an irrevocable power; and

12 (2) states that it is irrevocable.

13 (c) Unless otherwise provided in the power of attorney, an
14 irrevocable power of attorney created under this section is not
15 affected by the subsequent death, disability, incapacity, winding
16 up, dissolution, termination of existence, or bankruptcy of, or any
17 other event concerning, the principal.

18 (d) A power of attorney granted to the partnership, a
19 partner of the partnership, or any of their respective officers,
20 directors, managers, members, partners, trustees, employees, or
21 agents is conclusively presumed to be coupled with an interest
22 sufficient in law to support an irrevocable power.

23 SECTION 8. Effective January 1, 2016, Section 402.001(c),
24 Business Organizations Code, is amended to read as follows:

25 (c) Notwithstanding Subsections (a) and (b), after the
26 effective date of this code, Sections 152.802 and 152.803, instead
27 of prior law, govern a [~~renewal of registration or other~~] filing

1 with the secretary of state made on behalf of a domestic limited
2 liability partnership registered under prior law.

3 SECTION 9. Section [101.351](#), Business Organizations Code, is
4 repealed.

5 SECTION 10. Effective January 1, 2016, Section [152.802\(g\)](#),
6 Business Organizations Code, is repealed.

7 SECTION 11. Except as otherwise provided by this Act, this
8 Act takes effect September 1, 2015.