

1-1 By: Hancock S.B. No. 1517  
1-2 (In the Senate - Filed March 8, 2017; March 20, 2017, read  
1-3 first time and referred to Committee on Business & Commerce;  
1-4 April 10, 2017, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; April 10, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
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 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to partnerships, limited liability companies, and other  
1-20 domestic and foreign entities and to series of limited liability  
1-21 companies and foreign entities.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 1.002(69-b), Business Organizations  
1-24 Code, is amended to read as follows:

1-25 (69-b) "Person" means an individual or a corporation,  
1-26 partnership, limited liability company, business trust, trust,  
1-27 association, or other organization, estate, government or  
1-28 governmental subdivision or agency, or other legal entity, or a  
1-29 series of a domestic limited liability company or foreign entity.

1-30 SECTION 2. Section 5.053(b), Business Organizations Code,  
1-31 is amended to read as follows:

1-32 (b) Subsection (a) does not apply if the other entity or the  
1-33 person for whom the name is reserved or registered, as appropriate,  
1-34 provides to the secretary of state a notarized written statement of  
1-35 the entity's or person's consent to the use of the similar name.  
1-36 Sections 4.007 and 4.008 apply to a written consent to the use of a  
1-37 similar name under this subsection to the same extent those  
1-38 sections apply to filing instruments.

1-39 SECTION 3. The heading to Subchapter F, Chapter 5, Business  
1-40 Organizations Code, is amended to read as follows:

1-41 SUBCHAPTER F. SERVICE OF PROCESS ON ENTITY

1-42 SECTION 4. Chapter 5, Business Organizations Code, is  
1-43 amended by adding Subchapter F-1 to read as follows:

1-44 SUBCHAPTER F-1. SERVICE OF PROCESS ON SERIES OF LIMITED LIABILITY  
1-45 COMPANY OR FOREIGN ENTITY

1-46 Sec. 5.301. APPLICABILITY OF SUBCHAPTER. This subchapter  
1-47 applies to service of process, notice, or demand on a series of a  
1-48 domestic limited liability company or a series of a foreign entity.

1-49 Sec. 5.302. AGENT FOR SERIES. (a) The registered agent  
1-50 designated and maintained by a domestic limited liability company  
1-51 or foreign entity under Subchapter E is an agent of each series of  
1-52 the company or entity for the purpose of service of process, notice,  
1-53 or demand required or permitted by law to be served on a particular  
1-54 series of the company or entity.

1-55 (b) A process, notice, or demand required or permitted by  
1-56 law to be served on a series of a domestic limited liability company  
1-57 or foreign entity that is served on the company's or entity's  
1-58 registered agent must include:

1-59 (1) the name of the company or entity; and

1-60 (2) the name of the series on which the process,  
1-61 notice, or demand is required or permitted to be served.

2-1 Sec. 5.303. DUTIES OF REGISTERED AGENT. (a) For purposes  
2-2 of Section 5.206, on service or receipt of process, notice, or  
2-3 demand that complies with the requirements of Section 5.302(b), the  
2-4 only duties of the registered agent are to:

2-5 (1) receive or accept, and forward to the represented  
2-6 domestic limited liability company or foreign entity at the address  
2-7 most recently provided to the registered agent by the represented  
2-8 company or entity, the process, notice, or demand that is served on  
2-9 or received by the registered agent under Section 5.302(b); or

2-10 (2) otherwise notify the represented company or entity  
2-11 at the address described by Subdivision (1) regarding the process,  
2-12 notice, or demand that is served on or received by the registered  
2-13 agent under Section 5.302(b).

2-14 (b) The registered agent is not required to send a copy of  
2-15 the process, notice, or demand directly to the series of the  
2-16 represented domestic limited liability company or foreign entity.

2-17 Sec. 5.304. SERVICE ON SECRETARY OF STATE. (a) The  
2-18 secretary of state is an agent of a series of a domestic limited  
2-19 liability company or foreign entity for purposes of service of  
2-20 process, notice, or demand on the series of the company or entity if  
2-21 the secretary of state is the agent of the company or entity  
2-22 pursuant to Section 5.251.

2-23 (b) The duplicate copies of a process, notice, or demand  
2-24 that are delivered to the secretary of state pursuant to Section  
2-25 5.252(a) as agent for a series of a domestic limited liability  
2-26 company or foreign entity must include:

2-27 (1) the name of the company or entity; and

2-28 (2) the name of the series of the company or entity on  
2-29 which the process, notice, or demand is to be served.

2-30 (c) For purposes of Section 5.253, after service on the  
2-31 secretary of state in compliance with the requirements of  
2-32 Subsection (b), the secretary of state shall send to the domestic  
2-33 limited liability company or foreign entity named in the process,  
2-34 notice, or demand one of the copies of the process, notice, or  
2-35 demand as provided in Section 5.253.

2-36 (d) The secretary of state is not required to send a copy of  
2-37 the process, notice, or demand directly to the series of the named  
2-38 domestic limited liability company or foreign entity.

2-39 Sec. 5.305. SERVICE ON GOVERNING PERSONS. (a) Each  
2-40 governing person of a series of a domestic limited liability  
2-41 company as described by Section 101.608 is an agent of the series  
2-42 for the purpose of service of process, notice, or demand required or  
2-43 permitted by law to be served on the series.

2-44 (b) Each governing person of a series of a foreign entity is  
2-45 an agent of the series for the purpose of service of process,  
2-46 notice, or demand required or permitted by law to be served on the  
2-47 series.

2-48 Sec. 5.306. SERVICE OF PROCESS BY POLITICAL SUBDIVISION.

2-49 (a) For purposes of Section 5.257, a process, notice, or demand  
2-50 may be served on a series of a domestic limited liability company by  
2-51 delivery of the process, notice, or demand to any governing person  
2-52 of the series as described by Section 101.608.

2-53 (b) For purposes of Section 5.257, a process, notice, or  
2-54 demand may be served on a series of a foreign entity by delivery of  
2-55 the process, notice, or demand to any governing person of the  
2-56 series.

2-57 (c) If the governing persons of a series of a domestic  
2-58 limited liability company or foreign entity are unknown or cannot  
2-59 be found, service on the series of the company or entity may be made  
2-60 in the same manner as service is made on unknown shareholders under  
2-61 law.

2-62 (d) Notwithstanding any disability or reinstatement of a  
2-63 domestic limited liability company or foreign entity, service of  
2-64 process under this section is sufficient for a judgment against a  
2-65 series of the company or entity or a judgment in rem against any  
2-66 property to which a series of the company or entity holds title.

2-67 SECTION 5. Section 9.105, Business Organizations Code, is  
2-68 amended to read as follows:

2-69 Sec. 9.105. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED

3-1 NAME. If the secretary of state determines that a foreign filing  
 3-2 entity's name or the name under which it is registered to transact  
 3-3 business in this state is the same as, deceptively similar to, or  
 3-4 similar to a name of a filing entity or foreign filing entity as  
 3-5 provided by or reserved or registered under this code, the  
 3-6 secretary of state may not accept for filing the certificate of  
 3-7 reinstatement unless the foreign filing entity amends its  
 3-8 registration to change its name or obtains written consent for the  
 3-9 use of the similar name. Sections 4.007 and 4.008 apply to a  
 3-10 written consent for the use of a similar name under this section to  
 3-11 the same extent those sections apply to filing instruments.

3-12 SECTION 6. Section 11.203, Business Organizations Code, is  
 3-13 amended to read as follows:

3-14 Sec. 11.203. USE OF NAME SIMILAR TO PREVIOUSLY REGISTERED  
 3-15 NAME. If the secretary of state determines that a filing entity's  
 3-16 name contained in a certificate of reinstatement filed under  
 3-17 Section 11.202 is the same as, deceptively similar to, or similar to  
 3-18 a name of a filing entity or foreign entity on file as provided by or  
 3-19 reserved or registered under this code, the secretary of state may  
 3-20 not accept for filing the certificate of reinstatement unless the  
 3-21 filing entity contemporaneously amends its certificate of  
 3-22 formation to change its name or obtains written consent for the use  
 3-23 of the similar name. Sections 4.007 and 4.008 apply to a written  
 3-24 consent for the use of a similar name under this section to the same  
 3-25 extent those sections apply to filing instruments.

3-26 SECTION 7. Section 11.314, Business Organizations Code, is  
 3-27 amended to read as follows:

3-28 Sec. 11.314. INVOLUNTARY WINDING UP AND TERMINATION OF  
 3-29 PARTNERSHIP OR LIMITED LIABILITY COMPANY. A district court in the  
 3-30 county in which the registered office or principal place of  
 3-31 business in this state of a domestic partnership or limited  
 3-32 liability company is located has jurisdiction to order the winding  
 3-33 up and termination of the domestic partnership or limited liability  
 3-34 company on application by an owner of [+  
 3-35

3-36 liability company if the court determines that:

3-37 (1) ~~[(A)]~~ the economic purpose of the entity  
 3-38 ~~[partnership]~~ is likely to be unreasonably frustrated; ~~[or]~~

3-39 (2) ~~[(B)]~~ another owner ~~[partner]~~ has engaged in  
 3-40 conduct relating to the entity's ~~[partnership's]~~ business that  
 3-41 makes it not reasonably practicable to carry on the business ~~[in~~  
 3-42 ~~partnership]~~ with that owner ~~[partner]~~; or

3-43 (3) ~~[(2) an owner of the partnership or limited~~  
 3-44 ~~liability company if the court determines that]~~ it is not  
 3-45 reasonably practicable to carry on the entity's business in  
 3-46 conformity with its governing documents.

3-47 SECTION 8. Section 101.052, Business Organizations Code, is  
 3-48 amended by adding Subsection (f) to read as follows:

3-49 (f) A company agreement is enforceable by or against the  
 3-50 limited liability company, regardless of whether the company has  
 3-51 signed or otherwise expressly adopted the agreement.

3-52 SECTION 9. Section 101.054(a), Business Organizations  
 3-53 Code, is amended to read as follows:

3-54 (a) Except as provided by this section, the following  
 3-55 provisions may not be waived or modified in the company agreement of  
 3-56 a limited liability company:

3-57 (1) this section;

3-58 (2) Section 101.101, 101.151, 101.206, 101.501,  
 3-59 101.602(b), or 101.613;

3-60 (3) Chapter 1, if the provision is used to interpret a  
 3-61 provision or define a word or phrase contained in a section listed  
 3-62 in this subsection;

3-63 (4) Chapter 2, except that Section 2.104(c)(2),  
 3-64 2.104(c)(3), or 2.113 may be waived or modified in the company  
 3-65 agreement;

3-66 (5) Chapter 3, except that Subchapters C and E may be  
 3-67 waived or modified in the company agreement; or

3-68 (6) Chapter 4, 5, ~~[7,]~~ 10, 11, or 12, other than  
 3-69 Section 11.056.

4-1 SECTION 10. Section 101.305, Business Organizations Code,  
4-2 is amended to read as follows:

4-3 Sec. 101.305. MANAGER VACANCY. (a) Subject to Section  
4-4 101.306(b), a vacancy in the position of a manager of a limited  
4-5 liability company may be filled by:

4-6 (1) the affirmative vote of the majority of the  
4-7 remaining managers of the company, without regard to whether the  
4-8 remaining managers constitute a quorum; or

4-9 (2) the members [~~if the vacancy is a result of an~~  
4-10 ~~increase in the number of managers, an election~~] at a [~~an annual or~~  
4-11 ~~special~~] meeting of the company's members called for that purpose.

4-12 (b) A person elected to fill a vacancy in the position of a  
4-13 manager serves for the unexpired term, if any, of the person's  
4-14 predecessor.

4-15 SECTION 11. Subchapter K, Chapter 101, Business  
4-16 Organizations Code, is amended by adding Section 101.503 to read as  
4-17 follows:

4-18 Sec. 101.503. PENALTY FOR REFUSAL TO PERMIT EXAMINATION OF  
4-19 CERTAIN RECORDS. (a) A limited liability company that refuses to  
4-20 allow a member to examine and copy, on written request that complies  
4-21 with Section 101.502(a), records or other information described by  
4-22 that section is liable to the member for any cost or expense,  
4-23 including attorney's fees, incurred in enforcing the member's  
4-24 rights under Section 101.502. The liability imposed on a limited  
4-25 liability company under this subsection is in addition to any other  
4-26 damages or remedy afforded to the member by law.

4-27 (b) It is a defense to an action brought under this section  
4-28 that the person suing:

4-29 (1) has improperly used information obtained through a  
4-30 prior examination of the records or other information of the  
4-31 limited liability company or any other limited liability company,  
4-32 under Section 101.502; or

4-33 (2) was not acting in good faith or for a proper  
4-34 purpose in making the person's request for examination.

4-35 SECTION 12. Section 101.602, Business Organizations Code,  
4-36 is amended by adding Subsection (c) to read as follows:

4-37 (c) Subsection (a) or any provision contained in a limited  
4-38 liability company agreement or certificate of formation pursuant to  
4-39 Subsection (a) does not restrict:

4-40 (1) a particular series or a limited liability company  
4-41 on behalf of a particular series from expressly agreeing in the  
4-42 company agreement or other written agreement that any or all of the  
4-43 debts, liabilities, obligations, and expenses incurred, contracted  
4-44 for, or otherwise existing with respect to the company generally or  
4-45 any other series of the company shall be enforceable against the  
4-46 assets of that particular series; or

4-47 (2) a limited liability company from expressly  
4-48 agreeing in the company agreement or other written agreement that  
4-49 any or all of the debts, liabilities, obligations, and expenses  
4-50 incurred, contracted for, or otherwise existing with respect to a  
4-51 particular series shall be enforceable against the assets of the  
4-52 company generally.

4-53 SECTION 13. Section 101.605, Business Organizations Code,  
4-54 is amended to read as follows:

4-55 Sec. 101.605. GENERAL POWERS OF SERIES. A series  
4-56 established under this subchapter has the power and capacity, in  
4-57 the series' own name, to:

4-58 (1) sue and be sued;

4-59 (2) contract;

4-60 (3) acquire, sell, and hold title to assets of the  
4-61 series, including real property, personal property, and intangible  
4-62 property;

4-63 (4) grant liens and security interests in assets of  
4-64 the series;

4-65 (5) be a promoter, organizer, partner, owner, member,  
4-66 associate, or manager of an organization; and

4-67 (6) [~~(5)~~] exercise any power or privilege as necessary  
4-68 or appropriate to the conduct, promotion, or attainment of the  
4-69 business, purposes, or activities of the series.

5-1 SECTION 14. Sections 152.212(b) and (c), Business  
5-2 Organizations Code, are amended to read as follows:

5-3 (b) A partnership shall keep or make available its books and  
5-4 records, if any, at its chief executive office.

5-5 (c) A partnership shall make available or provide access to  
5-6 its books and records to a partner or an agent or attorney of a  
5-7 partner.

5-8 SECTION 15. Subchapter L, Chapter 153, Business  
5-9 Organizations Code, is amended by adding Section 153.5521 to read  
5-10 as follows:

5-11 Sec. 153.5521. PENALTY FOR REFUSAL TO PERMIT EXAMINATION OF  
5-12 CERTAIN RECORDS. (a) A limited partnership that refuses to allow  
5-13 a partner or assignee of a partnership interest to examine and copy,  
5-14 on written request that complies with Section 153.552(a), records  
5-15 or other information described by that section is liable to the  
5-16 partner or assignee for any cost or expense, including attorney's  
5-17 fees, incurred in enforcing the partner's or assignee's rights  
5-18 under Section 153.552. The liability imposed on a limited  
5-19 partnership under this subsection is in addition to any other  
5-20 damages or remedy afforded to the partner or assignee by law.

5-21 (b) It is a defense to an action brought under this section  
5-22 that the person suing:

5-23 (1) has improperly used information obtained through a  
5-24 prior examination of the records or other information of the  
5-25 limited partnership or any other limited partnership under Section  
5-26 153.552; or

5-27 (2) was not acting in good faith or for a proper  
5-28 purpose in making the person's request for examination.

5-29 SECTION 16. Section 154.101(a), Business Organizations  
5-30 Code, is amended to read as follows:

5-31 (a) A [~~written~~] partnership agreement may establish or  
5-32 provide for the future creation of additional classes or groups of  
5-33 one or more partners that have certain express relative rights,  
5-34 powers, and duties, including voting rights. The future creation  
5-35 of additional classes or groups may be expressed in the partnership  
5-36 agreement or at the time of creation of the class or group.

5-37 SECTION 17. Section 154.102, Business Organizations Code,  
5-38 is amended to read as follows:

5-39 Sec. 154.102. PROVISIONS RELATING TO VOTING. A [~~written~~]  
5-40 partnership agreement that grants or provides for granting a right  
5-41 to vote to a partner may contain a provision relating to:

5-42 (1) giving notice of the time, place, or purpose of a  
5-43 meeting at which a matter is to be voted on by the partners;

5-44 (2) waiver of notice;

5-45 (3) action by consent without a meeting;

5-46 (4) the establishment of a record date;

5-47 (5) quorum requirements;

5-48 (6) voting in person or by proxy; or

5-49 (7) other matters relating to the exercise of the  
5-50 right to vote.

5-51 SECTION 18. Subchapter B, Chapter 154, Business  
5-52 Organizations Code, is amended by adding Section 154.105 to read as  
5-53 follows:

5-54 Sec. 154.105. PARTNERSHIP BOUND BY PARTNERSHIP AGREEMENT.  
5-55 A partnership agreement is enforceable by or against the  
5-56 partnership, regardless of whether the partnership has signed or  
5-57 otherwise expressly adopted the agreement.

5-58 SECTION 19. Section 154.103, Business Organizations Code,  
5-59 is repealed.

5-60 SECTION 20. This Act takes effect September 1, 2017.

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