

1-1 By: Hancock S.B. No. 1859
 1-2 (In the Senate - Filed March 7, 2019; March 18, 2019, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 April 24, 2019, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 24, 2019,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Hancock	X			
1-9 Nichols	X			
1-10 Campbell	X			
1-11 Creighton	X			
1-12 Menéndez	X			
1-13 Paxton	X			
1-14 Schwertner	X			
1-15 Whitmire	X			
1-16 Zaffirini	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1859 By: Hancock

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

1-21 relating to business entities.
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-23 SECTION 1. Section 1.002, Business Organizations Code, is
 1-24 amended by amending Subdivisions (20-a) and (81) and adding
 1-25 Subdivision (20-b) to read as follows:
 1-26 (20-a) "Electronic data system" means an electronic
 1-27 network or database. The term includes a distributed electronic
 1-28 network or database, including one that employs blockchain or
 1-29 distributed ledger technology.
 1-30 (20-b) "Electronic transmission" means a form of
 1-31 communication, including communication by use of or participation
 1-32 in one or more electronic data systems, that:
 1-33 (A) does not directly involve the physical
 1-34 transmission of paper;
 1-35 (B) creates a record that may be retained,
 1-36 retrieved, and reviewed by the recipient; and
 1-37 (C) may be directly reproduced in paper form by
 1-38 the recipient through an automated process.
 1-39 (81) "Shareholder" or "holder of shares" means:
 1-40 (A) the person in whose name shares issued by a
 1-41 for-profit corporation, professional corporation, or real estate
 1-42 investment trust are registered in the share transfer records
 1-43 maintained by or on behalf of the for-profit corporation,
 1-44 professional corporation, or real estate investment trust; or
 1-45 (B) the beneficial owner of shares issued by a
 1-46 for-profit corporation, whose shares are held in a voting trust or
 1-47 by a nominee on the beneficial owner's behalf, to the extent of the
 1-48 rights granted by a nominee statement on file with the for-profit
 1-49 corporation in accordance with Sections 21.201(b) and (c).
 1-50 SECTION 2. Sections 3.151(a) and (b), Business
 1-51 Organizations Code, are amended to read as follows:
 1-52 (a) Each filing entity shall keep:
 1-53 (1) books and records of accounts;
 1-54 (2) minutes of the proceedings of the owners or
 1-55 members or governing authority of the filing entity and committees
 1-56 of the owners or members or governing authority of the filing
 1-57 entity;
 1-58 (3) ~~[at its registered office or principal place of~~
 1-59 ~~business, or at the office of its transfer agent or registrar,]~~ a
 1-60 current record of the name and mailing address of each owner or

2-1 member of the filing entity; and

2-2 (4) other books and records as required by the title of
2-3 this code governing the entity.

2-4 (b) The books, records, minutes, and ownership or
2-5 membership records of any filing entity [~~including those described~~
2-6 ~~in Subsection (a)(4),~~] may be:

2-7 (1) in written paper form; or

2-8 (2) maintained by or on behalf of the filing entity on,
2-9 or by means of, an information storage device or method or one or
2-10 more electronic data systems, provided that any books, records,
2-11 minutes, and ownership or membership records so maintained can be
2-12 [~~another form capable of being~~] converted into written paper form
2-13 within a reasonable time.

2-14 SECTION 3. Sections 3.205(a) and (c), Business
2-15 Organizations Code, are amended to read as follows:

2-16 (a) Except as provided by Subsection (c) and in accordance
2-17 with Chapter 8, Business & Commerce Code, after an issuance
2-18 [~~issuing~~] or transfer of [~~transferring~~] an uncertificated
2-19 ownership interest in a domestic entity, [~~a domestic entity shall~~
2-20 ~~notify~~] the owner of the ownership interest shall be notified in
2-21 writing or by electronic transmission of any information required
2-22 under this subchapter to be stated on a certificate representing
2-23 the ownership interest.

2-24 (c) The owner of an uncertificated ownership interest in a
2-25 [A] domestic entity is not required to be notified [~~send a notice~~]
2-26 under Subsection (a) if:

2-27 (1) the required information is included in the
2-28 governing documents of the entity; and

2-29 (2) the owner of the uncertificated ownership interest
2-30 is provided with a copy of the governing documents.

2-31 SECTION 4. Sections 4.052, 4.053, 4.054, 4.055, and 4.056,
2-32 Business Organizations Code, are amended to read as follows:

2-33 Sec. 4.052. DELAYED EFFECTIVENESS OF CERTAIN FILINGS.
2-34 (a) Except as provided by Section 4.058, a filing instrument may
2-35 take effect after the time the instrument would otherwise take
2-36 effect as provided by this code for the entity filing the
2-37 instrument.

2-38 (b) If the effectiveness of a filing instrument is to be
2-39 delayed as permitted by this section, the filing instrument may
2-40 take effect [~~and~~]:

2-41 (1) at a specified date;

2-42 (2) at a specified date and time; [~~or~~]

2-43 (3) [~~(2)~~] on the occurrence of a specified future
2-44 event or fact, including an act of any person; or

2-45 (4) after the occurrence of a future event or fact,
2-46 including the act of any person, at a specified date, at a specified
2-47 date and time, or after the passage of a specified period of time.

2-48 Sec. 4.053. CONDITIONS FOR DELAYED EFFECTIVENESS. (a) The
2-49 date, or the date and time, at which a filing instrument takes
2-50 effect is delayed if the instrument clearly and expressly states,
2-51 in addition to any other required statement or information:

2-52 (1) the specified date, or the specified [~~specific~~]
2-53 date and time, at which the instrument takes effect; or

2-54 (2) if the instrument takes effect on or after the
2-55 occurrence of a future event or fact that may occur:

2-56 (A) the [~~manner in which the~~] event or fact that
2-57 will cause the instrument to take effect; [~~and~~]

2-58 (B) when the filing instrument is to take effect
2-59 if the instrument is to take effect after the occurrence of a
2-60 specified future event or fact; and

2-61 (C) the date of the 90th day after the date the
2-62 instrument is signed.

2-63 (b) If the effectiveness of a filing instrument is to be
2-64 delayed as permitted by Section 4.052 [~~take effect on a specific~~
2-65 ~~date and time other than that provided by this code~~]:

2-66 (1) the effective date may not be later than the 90th
2-67 day after the date the instrument is signed; and

2-68 (2) the specified [~~specific~~] time at which the
2-69 instrument is to take effect may not be specified as "12:00 a.m." or

3-1 "12:00 p.m."

3-2 Sec. 4.054. DELAYED EFFECTIVENESS ON FUTURE EVENT OR FACT.
3-3 A filing instrument that is to take effect on or after the
3-4 occurrence of a future event or fact in accordance with Section
3-5 4.053(a)(2) [~~, other than the passage of time,~~] and for which the
3-6 statement required by Section 4.055 is filed within the prescribed
3-7 time[~~7~~] takes effect on:

3-8 (1) the date, or the date and time, at which the [~~last~~
3-9 ~~specified~~] event or fact occurs or is waived; or

3-10 (2) the specified date, the specified date and time,
3-11 or the passage of the specified period of time after the occurrence
3-12 or waiver of the event or fact [~~or the date and time at which a~~
3-13 ~~condition is satisfied or waived~~].

3-14 Sec. 4.055. STATEMENT OF EVENT OR FACT. An entity that
3-15 files a filing instrument that takes effect on or after the
3-16 occurrence of a future event or fact in accordance with Section
3-17 4.053(a)(2) [~~, other than the passage of time,~~] must sign and file as
3-18 provided by Subchapter A, not later than the 90th day after the date
3-19 the filing instrument is filed, a statement that:

3-20 (1) confirms that each event or fact on which the
3-21 effect of the instrument is conditioned has been satisfied or
3-22 waived; [~~and~~]

3-23 (2) states the date, or the date and time, on which the
3-24 condition was satisfied or waived; and

3-25 (3) if the filing instrument was to take effect after
3-26 the occurrence of a specified future event or fact, states the date,
3-27 or the date and time, at which the filing instrument took effect.

3-28 Sec. 4.056. FAILURE TO FILE STATEMENT. (a) If the [~~effect~~
3-29 ~~of a~~] filing instrument is to take effect on or after [~~conditioned~~
3-30 ~~on~~] the occurrence of a future event or fact in accordance with
3-31 Section 4.053(a)(2) [~~, other than the passage of time,~~] and the
3-32 statement required by Section 4.055 is not filed before the
3-33 expiration of the prescribed time, the filing instrument does not
3-34 take effect. This section does not preclude the filing of a
3-35 subsequent filing instrument required by this code to make the
3-36 action or transaction evidenced by the original filing instrument
3-37 effective.

3-38 (b) If the [~~effect of a~~] filing instrument is to take effect
3-39 on or after [~~conditioned on~~] the occurrence of a future event or
3-40 fact [~~, other than the passage of time,~~] and the specified event or
3-41 fact does not occur and is not waived, the parties to the filing
3-42 instrument must sign and file a certificate of abandonment as
3-43 provided by Section 4.057.

3-44 SECTION 5. Section 4.057(e), Business Organizations Code,
3-45 is amended to read as follows:

3-46 (e) If in the interim before a certificate of abandonment is
3-47 filed the name of an entity that is a party to the action or
3-48 transaction becomes indistinguishable from [~~the same as or~~
3-49 ~~deceptively similar to~~] the name of another entity already on file
3-50 or reserved or registered under this code, the filing officer may
3-51 not file the certificate of abandonment unless the entity by or for
3-52 whom the certificate is filed changes its name in the manner
3-53 provided by this code for that entity.

3-54 SECTION 6. Section 4.059, Business Organizations Code, is
3-55 amended to read as follows:

3-56 Sec. 4.059. ACKNOWLEDGMENT OF FILING WITH DELAYED
3-57 EFFECTIVENESS. (a) An acknowledgment of filing issued or other
3-58 action taken by the secretary of state affirming the filing of a
3-59 filing instrument that has a specific delayed effective date, or a
3-60 specific delayed effective date and time, must state the date, or
3-61 the date and time, at which the instrument takes effect.

3-62 (b) An acknowledgment of filing issued or other action taken
3-63 by the secretary of state affirming the filing of a filing
3-64 instrument the effectiveness [~~effect~~] of which is delayed until on
3-65 or after the occurrence of a future event or fact must [+
3-66

3-67 [~~(1) state that the effective date and time of the~~
3-68 ~~filing instrument is conditioned on the occurrence of a future~~
3-69 ~~event or fact as described in the filing instrument, or~~

3-69 [~~(2) otherwise~~] indicate that the effective date, or

4-1 the effective date and time, of the instrument is conditioned on the
4-2 occurrence of a future event or fact.

4-3 SECTION 7. Section 6.205(b), Business Organizations Code,
4-4 is amended to read as follows:

4-5 (b) Except as otherwise provided by an entity's governing
4-6 documents, an electronic transmission of a consent by an owner,
4-7 member, or governing person to the taking of an action by the entity
4-8 is considered a signed writing if the transmission contains or is
4-9 accompanied by information from which it can be determined:

4-10 (1) that the electronic transmission was transmitted
4-11 by or on behalf of the owner, member, or governing person; and

4-12 (2) the date on which the electronic transmission was
4-13 transmitted by or on behalf of the owner, member, or governing
4-14 person [transmitted the electronic transmission].

4-15 SECTION 8. Section 101.302(c), Business Organizations
4-16 Code, is amended to read as follows:

4-17 (c) The number of managers of a limited liability company
4-18 may be increased or decreased by amendment to, or as provided by,
4-19 the company agreement[~~, except that a decrease in the number of~~
4-20 ~~managers may not shorten the term of an incumbent manager].~~

4-21 SECTION 9. Section 101.501, Business Organizations Code, is
4-22 amended by adding Subsection (d) to read as follows:

4-23 (d) All books and records required to be maintained by a
4-24 limited liability company under this section may be maintained in
4-25 any form and manner permitted under Section 3.151(b).

4-26 SECTION 10. Section 101.503(a), Business Organizations
4-27 Code, is amended to read as follows:

4-28 (a) A limited liability company that refuses to allow a
4-29 member or an assignee of a membership interest to examine and copy,
4-30 on written request that complies with Section 101.502(a), records
4-31 or other information described by that section is liable to the
4-32 member or assignee for any cost or expense, including attorney's
4-33 fees, incurred in enforcing the member's or assignee's rights under
4-34 Section 101.502. The liability imposed on a limited liability
4-35 company under this subsection is in addition to any other damages or
4-36 remedy afforded to the member or assignee by law.

4-37 SECTION 11. Section 101.621, Business Organizations Code,
4-38 is amended to read as follows:

4-39 Sec. 101.621. WINDING UP BY COURT ORDER. A district court
4-40 in the county in which the registered office or principal place of
4-41 business in this state of a domestic limited liability company is
4-42 located, on application by or for a member associated with the
4-43 series, has jurisdiction to order the winding up and termination of
4-44 a series if the court determines that:

4-45 (1) it is not reasonably practicable to carry on the
4-46 business of the series in conformity with the company agreement;

4-47 (2) the economic purpose of the series is likely to be
4-48 unreasonably frustrated; or

4-49 (3) another member associated with the series has
4-50 engaged in conduct relating to the series' business that makes it
4-51 not reasonably practicable to carry on the business with that
4-52 member.

4-53 SECTION 12. Sections 152.306(b) and (c), Business
4-54 Organizations Code, are amended to read as follows:

4-55 (b) Except as provided by Subsection (c), a creditor may
4-56 proceed against ~~[one or more partners or]~~ the property of one or
4-57 more [the] partners to satisfy a judgment based on a claim against
4-58 the partnership only if a judgment:

4-59 (1) is ~~[also]~~ obtained against the partner; and

4-60 (2) based on the same claim:

4-61 (A) is obtained against the partnership;

4-62 (B) has not been reversed or vacated; and

4-63 (C) remains unsatisfied for 90 days after:

4-64 (i) the date on which the judgment is
4-65 entered; or

4-66 (ii) the date on which the stay expires, if
4-67 the judgment is contested by appropriate proceedings and execution
4-68 on the judgment is stayed.

4-69 (c) Subsection (b)(2) ~~[(b)]~~ does not prohibit a creditor

5-1 from proceeding directly against ~~[one or more partners or]~~ the
5-2 property of one or more ~~[the]~~ partners ~~[without first seeking~~
5-3 ~~satisfaction from partnership property]~~ if:

5-4 (1) the partnership is a debtor in bankruptcy;

5-5 (2) the creditor and the partner or partners whose
5-6 property is the subject of the proceeding brought by the creditor
5-7 ~~[partnership]~~ agreed that the creditor is not required to comply
5-8 with Subsection (b)(2) ~~[(b)]~~;

5-9 (3) a court orders otherwise, based on a finding that
5-10 partnership property subject to execution in the state is clearly
5-11 insufficient to satisfy the judgment or that compliance with
5-12 Subsection (b)(2) ~~[(b)]~~ is excessively burdensome; or

5-13 (4) liability is imposed on the partner by law or
5-14 contract independently of the person's status as a partner.

5-15 SECTION 13. Section 152.606, Business Organizations Code,
5-16 is amended to read as follows:

5-17 Sec. 152.606. INDEMNIFICATION OF WITHDRAWN PARTNER ~~[FOR~~
5-18 ~~CERTAIN LIABILITY]~~. ~~[(a)]~~ A partnership shall indemnify a
5-19 withdrawn partner whose interest is redeemed against all ~~[a]~~
5-20 partnership obligations, whether ~~[liability]~~ incurred before or
5-21 after the date of withdrawal, except for an obligation ~~[a~~
5-22 ~~liability:~~

5-23 ~~[(1) that is unknown to the partnership at the time; or~~

5-24 ~~[(2)] incurred by an act of the withdrawn partner~~
5-25 under Section 152.504.

5-26 ~~[(b) For purposes of this section, a liability is unknown to~~
5-27 ~~the partnership if it is not known to a partner other than the~~
5-28 ~~withdrawn partner.]~~

5-29 SECTION 14. Sections 153.551(b) and (c), Business
5-30 Organizations Code, are amended to read as follows:

5-31 (b) All books and records required to be maintained by a ~~[A]~~
5-32 limited partnership under this section may be maintained in any
5-33 form and manner permitted under Section 3.151(b) ~~[shall maintain~~
5-34 ~~its records in written form or in another form capable of being~~
5-35 ~~converted to written form in a reasonable time].~~

5-36 (c) A limited partnership shall keep in its registered
5-37 office in this state and make available to a partner on reasonable
5-38 request the street address of its principal office in the United
5-39 States in which the records required by this section are maintained
5-40 or made available.

5-41 SECTION 15. This Act takes effect September 1, 2019.

5-42 * * * * *