

BILL ANALYSIS

Senate Research Center
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S.B. 847
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Business Organizations Code and the Business and Commerce Code govern laws relating to partnerships and limited liability companies (LLC). A number of issues relating to these laws have been identified that need to be resolved. Many of the changes in S.B. 847 are technical and conform Texas law to leading corporate jurisdictions, while others are more substantive and serve to provide clarity for recently litigated issues.

Series limited liability companies (series) are a relatively new type of LLC in Texas. Series operate as independent divisions within the LLC, shielded from liability by the LLC itself. Many issues relating to status of series and the power they possess are unresolved in law, leaving practitioners to litigate over these issues. S.B. 847 amends the Business Organizations Code to clarify those issues and state that a series is not an independent entity but has the ability to acquire and sell assets and exercise all of the powers and privileges as necessary to conduct its business purpose.

S.B. 847 clarifies that partnership agreements and agreements between LLCs can extend rights to third parties not privy to the agreement. While this principle is already implicit in the law, S.B. 847 makes it explicit in order to eliminate any confusion and to better protect third parties involved in the agreements. S.B. 847 simplifies the requirements for a restated certificate of formation in order to remove redundant information, requires limited partnerships to notify potential claimants when the entity is in the process of settling their affairs upon dissolution, and clarifies that the owners of partnerships and LLCs possess contractual freedom to eliminate or limit the liability of the entity's governing individuals.

S.B. 847 amends one section of the Business and Commerce Code by removing a subsection to clarify how a general partner's non-partnership related assets affect the determination of insolvency when a fraudulent transfer has occurred.

As proposed, S.B. 847 amends current law relating to business entities and associations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 3.059(d), Business Organizations Code, as follows:

- (d) Deletes text of existing Subdivision (2) requiring that a restated certificate of formation that makes new amendments to the certificate of formation being restated identify by reference or description each added, altered, or deleted provision. Makes nonsubstantive changes.

SECTION 2. Amends Section 11.052(a), Business Organizations Code, as follows:

- (a) Requires the domestic entity requiring winding up to:

- (1) Makes no changes to this subdivision;
- (2) if the domestic entity is not a general partnership send a written notice of the winding up to each known claimant against the domestic entity; and
- (3)-(4) Makes no changes to these subdivisions.

SECTION 3. Amends Section 7.001(d), Business Organizations Code, as follows:

(d) Authorizes the liability of a governing person to be limited or eliminated, rather than limited or restricted:

(1) in a general partnership by its partnership agreement to the same extent Subsections (b) (authorizing a certificate of formation or similar instrument to provide that a governing person is not liable, or is liable only to a certain extent, for certain acts and omissions) and (c) (providing that Subsection (b) does not authorize the elimination or limitation of liability under certain circumstances) permit the limitation or elimination of liability of a governing person of an organization to which those subsections apply and to the additional extent permitted under Chapter 152 (General Partnerships);

(2) in a limited partnership by its partnership agreement to the same extent Subsections (b) and (c) permit the limitation or elimination of liability of a governing person of an organization to which those subsections apply and to the additional extent permitted under Chapter 153 (Limited Partnerships) and, to the extent applicable to limited partnerships, Chapter 152; and

(3) in a limited liability company by its certificate of formation or company agreement to the same extent Subsections (b) and (c) permit the limitation or elimination of liability of a governing person of an organization to which those subsections apply and to the additional extent permitted under Section 101.401 (Expansion or Restriction of Duties and Liabilities).

SECTION 4. Amends Section 21.301(1), Business Organizations Code, to redefine "distribution limit."

SECTION 5. Amends Section 101.052, Business Organizations Code, by adding Subsection (e) to authorize that a company agreement provide rights to any person, including a person who is not a party to the company agreement, to the extent provided by the company agreement.

SECTION 6. Amends Section 101.605, Business Organizations Code, as follows:

Sec. 101.605. GENERAL POWERS OF SERIES. Provides that a series limited liability company (series) established under this subchapter has the power and capacity, in the series' own name, to:

- (1)-(2) Makes no changes to these subdivisions;
- (3) acquire, sell, and hold title to assets of the series, including real property, personal property, and intangible property;
- (4) Makes a nonsubstantive change; and
- (5) exercise any power or privilege as necessary or appropriate to the conduct, promotion, or attainment of the business, purposes, or activities of the series.

SECTION 7. Amends the heading to Section 101.609, Business Organizations Code, to read as follows:

Sec. 101.609. APPLICABILITY OF OTHER PROVISIONS OF CHAPTER OR TITLE 1; SYNONYMOUS TERMS.

SECTION 8. Amends Section 101.609, Business Organizations Code, by adding Subsection (c), as follows:

(c) Provides that, to the extent not inconsistent with this subchapter, a series and the governing persons and officers associated with the series have the powers and rights provided by Subchapters C (Governing Persons and Officers) and D (Recordkeeping of Filing Entities), Chapter 3 (Formation and Governance), and Subchapter F (Property Transfers and Dispositions), Chapter 10 (Mergers, Interest Exchanges, Conversions, and Sales of Assets). Defines for purposes of those provisions, and as the context requires, "entity," "domestic entity," "filing entity," "governing person," "governing authority," and "officer."

SECTION 9. Amends Subchapter M, Chapter 101, Business Organizations Code, by adding Section 101.622, as follows:

Sec. 101.622. SERIES NOT A SEPARATE DOMESTIC ENTITY OR ORGANIZATION. Provides that for purposes of this chapter and Title 1 (General Provisions), a series has the rights, powers, and duties provided by this subchapter to the series but is not a separate domestic entity or organization.

SECTION 10. Amends Subchapter B, Chapter 154, Business Organizations Code, by adding Section 154.104, as follows:

Sec. 154.104. RIGHTS OF THIRD PERSONS UNDER PARTNERSHIP AGREEMENT. Authorizes a partnership agreement to provide rights to any person, including a person who is not a party to the partnership agreement, to the extent provided by the partnership agreement.

SECTION 11. Repealer: Section 24.003(c) (relating to the determination of insolvency of a partnership), Business & Commerce Code.

SECTION 12. Effective date: September 1, 2013.