

1-1 By: Eltife S.B. No. 859  
 1-2 (In the Senate - Filed March 2, 2015; March 4, 2015, read  
 1-3 first time and referred to Committee on Business and Commerce;  
 1-4 March 23, 2015, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 7, Nays 0; March 23, 2015,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
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	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 859 By: Seliger

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

1-21 relating to partnerships and limited liability companies.  
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-23 SECTION 1. Effective January 1, 2016, Section 4.158,  
 1-24 Business Organizations Code, is amended to read as follows:  
 1-25 Sec. 4.158. FILING FEES: GENERAL PARTNERSHIPS. For a  
 1-26 filing by or for a general partnership, the secretary of state shall  
 1-27 impose the following fees:  
 1-28 (1) for filing a limited liability partnership  
 1-29 application, \$200 for each partner;  
 1-30 (2) for filing a limited liability partnership annual  
 1-31 report [~~renewal application~~], \$200 for each partner on the date of  
 1-32 filing of the report or, in the case of any past due annual report,  
 1-33 \$200 for the number of partners as of May 31 of the year that the  
 1-34 report was due [~~renewal~~];  
 1-35 (3) for filing an application for registration by a  
 1-36 foreign limited liability partnership, \$200 for each partner in  
 1-37 this state, except that the maximum fee may not exceed \$750;  
 1-38 (4) for filing a renewal of registration by a foreign  
 1-39 limited liability partnership, \$200 for each partner in this state,  
 1-40 except that the maximum fee may not exceed \$750;  
 1-41 (5) for filing a certificate of amendment for a  
 1-42 domestic limited liability partnership, \$10, plus \$200 for each  
 1-43 partner added by the amendment;  
 1-44 (6) for filing a certificate of amendment for a  
 1-45 foreign limited liability partnership, \$10, plus \$200 for each  
 1-46 partner in this state added by amendment not to exceed \$750; and  
 1-47 (7) for filing any other filing instrument, the filing  
 1-48 fee imposed for a similar instrument under Section 4.155.  
 1-49 SECTION 2. Subchapter B, Chapter 101, Business  
 1-50 Organizations Code, is amended by adding Section 101.055 to read as  
 1-51 follows:  
 1-52 Sec. 101.055. IRREVOCABLE POWER OF ATTORNEY. (a) This  
 1-53 section applies only to:  
 1-54 (1) a power of attorney with respect to matters  
 1-55 relating to the organization, internal affairs, or termination of a  
 1-56 limited liability company; or  
 1-57 (2) a power of attorney granted by:  
 1-58 (A) a person as a member of or assignee of a  
 1-59 membership interest in a limited liability company; or  
 1-60 (B) a person seeking to become a member of or

2-1 assignee of a membership interest in a limited liability company.  
 2-2 (b) A power of attorney is irrevocable for all purposes if  
 2-3 the power of attorney:  
 2-4 (1) is coupled with an interest sufficient in law to  
 2-5 support an irrevocable power; and  
 2-6 (2) states that it is irrevocable.  
 2-7 (c) Unless otherwise provided in the power of attorney, an  
 2-8 irrevocable power of attorney created under this section is not  
 2-9 affected by the subsequent death, disability, incapacity, winding  
 2-10 up, dissolution, termination of existence, or bankruptcy of, or any  
 2-11 other event concerning, the principal.  
 2-12 (d) A power of attorney granted to the limited liability  
 2-13 company, a member of the company, or any of their respective  
 2-14 officers, directors, managers, members, partners, trustees,  
 2-15 employees, or agents is conclusively presumed to be coupled with an  
 2-16 interest sufficient in law to support an irrevocable power.  
 2-17 SECTION 3. Section 152.002(b), Business Organizations  
 2-18 Code, is amended to read as follows:  
 2-19 (b) A partnership agreement or the partners may not:  
 2-20 (1) unreasonably restrict a partner's right of access  
 2-21 to books and records under Section 152.212;  
 2-22 (2) eliminate the duty of loyalty under Section  
 2-23 152.205, except that the partners by agreement may identify  
 2-24 specific types of activities or categories of activities that do  
 2-25 not violate the duty of loyalty if the types or categories are not  
 2-26 manifestly unreasonable;  
 2-27 (3) eliminate the duty of care under Section 152.206,  
 2-28 except that the partners by agreement may determine the standards  
 2-29 by which the performance of the obligation is to be measured if the  
 2-30 standards are not manifestly unreasonable;  
 2-31 (4) eliminate the obligation of good faith under  
 2-32 Section 152.204(b), except that the partners by agreement may  
 2-33 determine the standards by which the performance of the obligation  
 2-34 is to be measured if the standards are not manifestly unreasonable;  
 2-35 (5) vary the power to withdraw as a partner under  
 2-36 Section 152.501(b)(1), (7), or (8), except for the requirement that  
 2-37 notice be in writing;  
 2-38 (6) vary the right to expel a partner by a court in an  
 2-39 event specified by Section 152.501(b)(5);  
 2-40 (7) restrict rights of a third party under this  
 2-41 chapter or the other partnership provisions, except for a  
 2-42 limitation on an individual partner's liability in a limited  
 2-43 liability partnership as provided by this chapter;  
 2-44 (8) select a governing law not permitted under  
 2-45 Sections 1.103 and 1.002(43)(C); or  
 2-46 (9) except as provided in Subsections (c) and (d),  
 2-47 waive or modify the following provisions of Title 1:  
 2-48 (A) Chapter 1, if the provision is used to  
 2-49 interpret a provision or to define a word or phrase contained in a  
 2-50 section listed in this subsection;  
 2-51 (B) Chapter 2, other than Sections 2.104(c)(2),  
 2-52 2.104(c)(3), and 2.113;  
 2-53 (C) Chapter 3, other than Subchapters C and E of  
 2-54 that chapter; or  
 2-55 (D) Chapters 4, 5, 10, 11, and 12, other than  
 2-56 Sections 11.057(a), (b), (c)(1), (c)(3), ~~and~~ (d), and (f).  
 2-57 SECTION 4. Effective January 1, 2016, Section 152.802,  
 2-58 Business Organizations Code, is amended by amending Subsections  
 2-59 (a), (c), (e), (f), and (h) and adding Subsections (c-1) and (k) to  
 2-60 read as follows:  
 2-61 (a) In addition to complying with Section 152.803, a  
 2-62 partnership, to become a limited liability partnership, must file  
 2-63 an application for registration with the secretary of state in  
 2-64 accordance with Chapter 4 and this section. The application must:  
 2-65 (1) set out:  
 2-66 (A) the name of the partnership;  
 2-67 (B) the federal taxpayer identification number  
 2-68 of the partnership;  
 2-69 (C) the street address of the partnership's

3-1 principal office in this state or outside of this state, as  
 3-2 applicable; and  
 3-3 (D) the number of partners at the date of  
 3-4 application; and

3-5 (2) contain a brief statement of the partnership's  
 3-6 business.

3-7 (c) A partnership is registered as a limited liability  
 3-8 partnership by the secretary of state on:

3-9 (1) the date on which a completed [~~initial or renewal~~]  
 3-10 application is filed in accordance with Chapter 4; or

3-11 (2) a later date specified in the application.

3-12 (c-1) An application for registration of a limited  
 3-13 liability partnership accepted by the secretary of state is an  
 3-14 effective registration and is conclusive evidence of the  
 3-15 satisfaction of all conditions precedent to an effective  
 3-16 registration.

3-17 (e) The registration of a limited liability partnership is  
 3-18 effective until it is withdrawn or terminated [~~the first~~  
 3-19 ~~anniversary of the date of registration or a later effective date,~~  
 3-20 ~~unless the application is:~~

3-21 [~~(1) withdrawn or revoked at an earlier time; or~~

3-22 [~~(2) renewed in accordance with Subsection (g)].~~

3-23 (f) A registration may be withdrawn by filing a withdrawal  
 3-24 notice with the secretary of state in accordance with Chapter 4. A  
 3-25 certificate from the comptroller stating that all taxes  
 3-26 administered by the comptroller under Title 2, Tax Code, have been  
 3-27 paid must be filed with the notice of withdrawal. A withdrawal  
 3-28 notice terminates the status of the partnership as a limited  
 3-29 liability partnership from the date on which the notice is filed or  
 3-30 a later date specified in the notice[, ~~but not later than the~~  
 3-31 ~~expiration date under Subsection (e)]. A withdrawal notice must:~~

3-32 (1) contain:

3-33 (A) the name of the partnership;

3-34 (B) the federal taxpayer identification number  
 3-35 of the partnership;

3-36 (C) the date of registration of the partnership's  
 3-37 [~~last~~] application under this subchapter; and

3-38 (D) the current street address of the  
 3-39 partnership's principal office in this state and outside this  
 3-40 state, if applicable; and

3-41 (2) be signed by:

3-42 (A) a majority-in-interest of the partners; or

3-43 (B) one or more partners authorized by a  
 3-44 majority-in-interest of the partners.

3-45 (h) The secretary of state may remove from its active  
 3-46 records the registration of a limited liability partnership the  
 3-47 registration of which has [~~+~~

3-48 [~~(1)~~] been withdrawn or terminated [~~revoked, or~~

3-49 [~~(2) expired and not been renewed~~].

3-50 (k) Except in a proceeding by the state to terminate the  
 3-51 registration of a limited liability partnership, the registration  
 3-52 of a limited liability partnership continues in effect so long as  
 3-53 there has been substantial compliance with the registration  
 3-54 provisions of this section and substantial compliance with the  
 3-55 annual reporting requirements of Section 152.806.

3-56 SECTION 5. Effective January 1, 2016, Subchapter J, Chapter  
 3-57 152, Business Organizations Code, is amended by adding Section  
 3-58 152.806 to read as follows:

3-59 Sec. 152.806. ANNUAL REPORT. (a) Not later than June 1 of  
 3-60 each year following the calendar year in which the application for  
 3-61 registration as a limited liability partnership takes effect, a  
 3-62 limited liability partnership that has an effective registration  
 3-63 shall file with the secretary of state, in accordance with Chapter  
 3-64 4, a report that contains:

3-65 (1) the name of the partnership; and

3-66 (2) the number of partners of the partnership as of the  
 3-67 date of filing of the report or, in the case of any past due annual  
 3-68 reports, the number of partners as of May 31 of each year that a  
 3-69 report was due.

4-1 (b) Not later than March 31 of each year, the secretary of  
 4-2 state shall provide to each limited liability partnership that had  
 4-3 an effective registration as of December 31 of the preceding year a  
 4-4 written notice stating that:

4-5 (1) the annual report and applicable filing fee are  
 4-6 due on June 1 of that year; and

4-7 (2) the registration of the partnership shall be  
 4-8 terminated unless the report is filed and the filing fee is paid on  
 4-9 or before the date prescribed by Subsection (c).

4-10 (c) The registration of a limited liability partnership  
 4-11 that fails to file an annual report or pay the required filing fee  
 4-12 not later than May 31 of the calendar year following the year in  
 4-13 which the report or fee is due is automatically terminated.

4-14 (d) A termination of registration under Subsection (c)  
 4-15 affects only the partnership's status as a limited liability  
 4-16 partnership and is not an event requiring a winding up and  
 4-17 termination of the partnership under Chapter 11.

4-18 (e) A partnership whose registration as a limited liability  
 4-19 partnership is terminated under Subsection (c) may apply to the  
 4-20 secretary of state for reinstatement of limited liability  
 4-21 partnership status not later than the third anniversary of the  
 4-22 effective date of the termination. The application must be filed in  
 4-23 accordance with Chapter 4 and contain:

4-24 (1) the name of the partnership;

4-25 (2) the effective date of the termination; and

4-26 (3) a statement that the circumstances giving rise to  
 4-27 the termination will be corrected by filing an annual report and  
 4-28 paying the filing fee for each year that an annual report was not  
 4-29 filed, including the annual report and filing fee due that year.

4-30 (f) An application for reinstatement must be accompanied by  
 4-31 a tax clearance letter from the comptroller stating that the  
 4-32 limited liability partnership has satisfied all of its franchise  
 4-33 tax liabilities under Chapter 171, Tax Code.

4-34 (g) All annual reports and fees to be filed and paid as  
 4-35 required by this section must be filed and paid concurrently with  
 4-36 the filing of an application for reinstatement of limited liability  
 4-37 partnership status.

4-38 (h) A reinstatement under Subsection (e) that is approved by  
 4-39 the secretary of state relates back to the effective date of the  
 4-40 termination and takes effect as of that date, and the partnership's  
 4-41 status as a limited liability partnership continues in effect as if  
 4-42 the termination of its registration had never occurred.

4-43 SECTION 6. Section 153.051(a), Business Organizations  
 4-44 Code, is amended to read as follows:

4-45 (a) A general partner shall file a certificate of amendment  
 4-46 reflecting the occurrence of one or more of the following events not  
 4-47 later than the 30th day after the date on which the event occurred:

4-48 (1) the admission of a new general partner;

4-49 (2) the withdrawal of a general partner;

4-50 (3) a change in the name of the limited partnership; or

4-51 (4) except as provided by Sections [Section] 5.202 and  
 4-52 5.203, a change in:

4-53 (A) the address of the registered office; or

4-54 (B) the name or address of the registered agent  
 4-55 of the limited partnership.

4-56 SECTION 7. Subchapter C, Chapter 154, Business  
 4-57 Organizations Code, is amended by adding Section 154.204 to read as  
 4-58 follows:

4-59 Sec. 154.204. IRREVOCABLE POWER OF ATTORNEY. (a) This  
 4-60 section applies only to:

4-61 (1) a power of attorney with respect to matters  
 4-62 relating to the organization, internal affairs, or termination of a  
 4-63 partnership; or

4-64 (2) a power of attorney granted by:

4-65 (A) a person as a partner of or a transferee or  
 4-66 assignee of a partnership interest in a partnership; or

4-67 (B) a person seeking to become a partner of or a  
 4-68 transferee or assignee of a partnership interest in a partnership.

4-69 (b) A power of attorney is irrevocable for all purposes if

5-1 the power of attorney:

5-2 (1) is coupled with an interest sufficient in law to  
5-3 support an irrevocable power; and

5-4 (2) states that it is irrevocable.

5-5 (c) Unless otherwise provided in the power of attorney, an  
5-6 irrevocable power of attorney created under this section is not  
5-7 affected by the subsequent death, disability, incapacity, winding  
5-8 up, dissolution, termination of existence, or bankruptcy of, or any  
5-9 other event concerning, the principal.

5-10 (d) A power of attorney granted to the partnership, a  
5-11 partner of the partnership, or any of their respective officers,  
5-12 directors, managers, members, partners, trustees, employees, or  
5-13 agents is conclusively presumed to be coupled with an interest  
5-14 sufficient in law to support an irrevocable power.

5-15 SECTION 8. Effective January 1, 2016, Section 402.001(c),  
5-16 Business Organizations Code, is amended to read as follows:

5-17 (c) Notwithstanding Subsections (a) and (b), after the  
5-18 effective date of this code, Sections 152.802 and 152.803, instead  
5-19 of prior law, govern a [~~renewal of registration or other~~] filing  
5-20 with the secretary of state made on behalf of a domestic limited  
5-21 liability partnership registered under prior law.

5-22 SECTION 9. Section 101.351, Business Organizations Code, is  
5-23 repealed.

5-24 SECTION 10. Effective January 1, 2016, Section 152.802(g),  
5-25 Business Organizations Code, is repealed.

5-26 SECTION 11. Except as otherwise provided by this Act, this  
5-27 Act takes effect September 1, 2015.

5-28 \* \* \* \* \*