

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2705 Session of
1992

INTRODUCED BY HANNA, KRUSZEWSKI, MELIO, FAJT, NICKOL, F. TAYLOR,
KREBS, COY, COLAIZZO, NOYE, CARONE, STEELMAN, SERAFINI AND
THOMAS, MAY 11, 1992

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, MAY 11, 1992

AN ACT

1 Amending Title 15 (Corporations and Unincorporated Associations)
2 of the Pennsylvania Consolidated Statutes, providing for
3 limited liability companies.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 1103 of Title 15 of the Pennsylvania
7 Consolidated Statutes is amended by adding a definition to read:
8 § 1103. Definitions.

9 Subject to additional definitions contained in subsequent
10 provisions of this subpart that are applicable to specific
11 provisions of this subpart, the following words and phrases when
12 used in this subpart shall have the meanings given to them in
13 this section unless the context clearly indicates otherwise:

14 * * *

15 "Limited liability company." A business corporation that has
16 elected to become subject to Chapter 33 (relating to limited
17 liability companies).

18 * * *

1 Section 2. Title 15 is amended by adding a chapter to read:

2 CHAPTER 33

3 LIMITED LIABILITY COMPANIES

4 Subchapter

5 A. Preliminary Provisions

6 B. Management and Financial Matters

7 C. Rights and Responsibilities of Members and Managers

8 D. Dissolution

9 E. Taxation

10 SUBCHAPTER A

11 PRELIMINARY PROVISIONS

12 Sec.

13 3301. Application and effect of chapter.

14 3302. Formation of limited liability companies.

15 3303. Company name.

16 3304. Election of existing business corporation to become
17 limited liability company.

18 3305. Contributions to capital.

19 § 3301. Application and effect of chapter.

20 (a) General rule.--This chapter shall be applicable to a
21 business corporation, other than a management corporation or a
22 professional corporation, that elects to become a limited
23 liability company in the manner provided by this chapter.

24 (b) Application of business corporation law generally.--The
25 existence of a provision of this chapter shall not of itself
26 create any implication that a contrary or different rule of law
27 is or would be applicable to a business corporation that is not
28 a limited liability company. This chapter shall not affect any
29 statute or rule of law that is or would be applicable to a
30 business corporation that is not a limited liability company.

1 (c) Laws applicable to limited liability companies.--Except
2 as otherwise provided in this chapter, this subpart shall be
3 generally applicable to all limited liability companies. The
4 specific provisions of this chapter shall control over the
5 general provisions of this subpart. Except as otherwise provided
6 in this article, a limited liability company may be
7 simultaneously subject to this chapter and one or more other
8 chapters of this article.

9 § 3302. Formation of limited liability companies.

10 A limited liability company shall be formed in accordance
11 with Article B (relating to domestic business corporations
12 generally), except that its articles shall contain a heading
13 stating the name of the corporation and that it is a limited
14 liability company.

15 § 3303. Company name.

16 (a) Designation as limited liability company.--The words
17 "limited liability company" or the abbreviation "L.L.C." shall
18 be the last words in the name of a limited liability company
19 formed under this chapter.

20 (b) Liability imposed for omission of designation.--Omission
21 of the words "limited liability company" or the abbreviation
22 "L.L.C." in the use of the name of a limited liability company
23 shall subject a person who causes the omission, or who knowingly
24 acquiesces in it, to liability for any indebtedness or damage
25 occasioned by the omission.

26 § 3304. Election of existing business corporation to become
27 limited liability company.

28 (a) General rule.--A business corporation may become a
29 limited liability company under this chapter by filing articles
30 of amendment which shall contain, in addition to the

1 requirements of section 1915 (relating to articles of
2 amendment):

3 (1) A heading stating the name of the corporation and
4 that it is a limited liability company.

5 (2) A statement that it elects to become a limited
6 liability company.

7 (b) Procedure.--An election to become subject to this
8 chapter shall be proposed by a resolution adopted by the board
9 of directors and shall be adopted in accordance with the
10 requirements of Subchapter B of Chapter 19 (relating to
11 amendment of articles). If an effective date is not stated in
12 the articles of amendment, this chapter shall become applicable
13 to the corporation on the date the articles of amendment are
14 filed in the department.

15 (c) Dissenters rights upon election.--If any shareholder of
16 a corporation that adopts an election under this chapter to
17 become a limited liability company objects to that action and
18 complies with the provisions of Subchapter D of Chapter 15
19 (relating to dissenters rights), the dissenting shareholder
20 shall be entitled to the rights and remedies of dissenting
21 shareholders therein provided.

22 (d) Cross reference.--See section 134 (relating to docketing
23 statement).

24 § 3305. Contributions to capital.

25 (a) General rule.--The contributions to capital by a member
26 of a limited liability company may consist of cash or other
27 property.

28 (b) Services not considered contribution.--Services received
29 by or performed for a limited liability company shall not
30 constitute capital contributions.

1 SUBCHAPTER B

2 MANAGEMENT AND FINANCIAL MATTERS

3 Sec.

4 3311. Management of limited liability company.

5 3312. Bylaws.

6 3313. Debts and liabilities.

7 3314. Limited liability company property.

8 3315. Distribution of property.

9 § 3311. Management of limited liability company.

10 (a) Management by members.--The management of the limited
11 liability company, unless otherwise provided in the articles of
12 incorporation, shall be vested in its members in proportion to
13 their contributions to the capital of the limited liability
14 company, as adjusted from time to time to properly reflect any
15 additional contributions or withdrawals by the members.

16 (b) Elected managers.--The articles of incorporation may
17 provide for the management of the limited liability company by a
18 manager or managers who shall be elected annually by the members
19 in the manner prescribed by and provided in the bylaws of the
20 limited liability company. The manager or managers shall also
21 hold the offices and have the responsibilities accorded to them
22 by the members as set forth in the articles of incorporation.

23 § 3312. Bylaws.

24 The power to adopt, alter, amend or repeal the bylaws of a
25 limited liability company shall be vested in the members of the
26 company, unless vested in the manager or managers of the company
27 by the articles of incorporation. Bylaws adopted by the members
28 or by the manager may be repealed or altered. New bylaws may be
29 adopted by the members, and the members may prescribe in bylaws
30 made by them that the bylaws may not be altered, amended or

1 repealed by the manager. The bylaws may contain any provisions
2 for the regulation and management of the affairs of the limited
3 liability company not inconsistent with law or the articles of
4 incorporation.

5 § 3313. Debts and liabilities.

6 Except as otherwise provided in this chapter or the articles
7 of incorporation, no debt shall be contracted nor liability
8 incurred by or on behalf of a limited liability company, except
9 by the following:

10 (1) One or more of its managers, if management of the
11 limited liability company has been vested by the members in a
12 manager or managers.

13 (2) Any member, if management of the limited liability
14 company is retained by the members.

15 § 3314. Limited liability company property.

16 (a) General rule.--Real or personal property owned or
17 purchased by a limited liability company shall be held, owned
18 and conveyed in the name of the limited liability company.

19 (b) Execution of documents.--Instruments and documents
20 providing for the acquisition, mortgage or disposition of
21 property of the limited liability company shall be valid and
22 binding upon the company if they are executed by one or more
23 managers of a limited liability company having a manager or
24 managers or if they are executed by one or more members of a
25 limited liability company in which management has been retained
26 in the members.

27 § 3315. Distribution of property.

28 (a) General rule.--A limited liability company may, from
29 time to time, distribute its property to the members of the
30 limited liability company upon the basis stipulated in the

1 bylaws.

2 (b) Limitation.--A distribution of property shall not be
3 made if, after a distribution, the liabilities of the limited
4 liability company would exceed its assets. For purposes of this
5 section, liabilities to members on account of their capital
6 contributions shall not be considered liabilities of a limited
7 liability company.

8 (c) Status of dividend.--A distribution of the property of a
9 limited liability company shall be considered a dividend under
10 section 316 of the Internal Revenue Code of 1986 (Public Law 99-
11 514, 26 U.S.C. § 1 et seq.).

12 SUBCHAPTER C

13 RIGHTS AND RESPONSIBILITIES

14 OF MEMBERS AND MANAGERS

15 Sec.

16 3321. Nature of interest of member in limited liability
17 company.

18 3322. Withdrawal or reduction of members' contributions to
19 capital.

20 3323. Transferability of member's interest.

21 3324. Liability of member to limited liability company.

22 3325. Liability of members and managers.

23 3326. Unauthorized assumption of powers.

24 3327. Parties to actions by or against limited liability
25 company.

26 § 3321. Nature of interest of member in limited liability
27 company.

28 The interest of a member in a limited liability company is
29 personal property.

30 § 3322. Withdrawal or reduction of members' contributions to

1 capital.

2 (a) General rule.--A member shall not receive out of limited
3 liability company property any part of his contribution to
4 capital until:

5 (1) All liabilities of the limited liability company,
6 except liabilities to members on account of their
7 contributions to capital, have been paid or sufficient
8 property of the company remains to pay them.

9 (2) The consent of all members is obtained, unless the
10 return of the contribution to capital may be rightfully
11 demanded as provided in this chapter.

12 (3) The articles of incorporation are canceled or are
13 amended to provide for the withdrawal reduction.

14 (b) Demand for return of contribution.--Subject to the
15 provisions of subsection (a), a member may rightfully demand the
16 return of his contribution upon the occurrence of any of the
17 following:

18 (1) On the dissolution of the limited liability company.

19 (2) When the date an event specified in the articles of
20 incorporation for the return of the contribution has arrived.

21 (3) After the member has given all other members of the
22 limited liability company six months' prior notice in
23 writing, if no time is specified in the articles of
24 incorporation, for dissolution of the limited liability
25 company.

26 (c) Cash in return for contribution.--In the absence of a
27 statement in the articles of incorporation to the contrary or
28 the consent of all members of the limited liability company, a
29 member, irrespective of the nature of his contribution, has only
30 the right to demand and receive cash in return for his

1 contribution to capital.

2 (d) Dissolution.--A member of a limited liability company
3 may have the limited liability company dissolved and its affairs
4 wound up when either of the following occurs:

5 (1) The member rightfully, but unsuccessfully, has
6 demanded the return of his contribution.

7 (2) The other liabilities of the limited liability
8 company have not been paid, or the limited liability company
9 property is insufficient for their payment, and the member
10 otherwise would be entitled to the return of his
11 contribution.

12 § 3323. Transferability of member's interest.

13 (a) General rule.--The interest of a member in a limited
14 liability company may be transferred or assigned as provided in
15 the bylaws.

16 (b) Rights of transferee.--If all of the other members of
17 the limited liability company, other than the member proposing
18 to dispose of his interest, do not approve of the proposed
19 transfer or assignment by unanimous written consent, the
20 transferee of the interest of the member shall have no right to
21 participate in the management of the business and affairs of the
22 limited liability company or to become a member. The transferee
23 shall be entitled to receive only the share of profits or other
24 compensation by way of income and the return of contributions to
25 which the transferor member otherwise would be entitled.

26 § 3324. Liability of member to limited liability company.

27 (a) General rule.--A member of a limited liability company
28 is liable to the company for both of the following:

29 (1) The difference between the amount of his
30 contributions to capital which have been actually made and

1 the amount which is stated in the articles of incorporation
2 having been made.

3 (2) Any unpaid contribution to capital which he agreed
4 in the articles of incorporation to make in the future at the
5 time and on the conditions stated in the articles of
6 incorporation.

7 (b) Member as trustee.--A member holds as trustee for the
8 limited liability company the following property:

9 (1) Specific property which is declared in the articles
10 of incorporation as having been contributed by the member,
11 where the property was not contributed or where the property
12 was wrongfully or erroneously returned.

13 (2) Money or other property wrongfully paid or conveyed
14 to the member on account of his contribution.

15 (c) Waiver or compromise of liabilities.--The liabilities of
16 a member may be waived or compromised only by the consent of all
17 members, but a waiver or compromise shall not affect the right
18 of a creditor of the limited liability company, who extended
19 credit or whose claim arose after the filing and before a
20 cancellation or amendment of the articles of incorporation, to
21 enforce such liabilities.

22 (d) Liability to certain creditors.--When a contributor has
23 rightfully received the return in whole or in part of his
24 contribution, the contributor is nevertheless liable to the
25 limited liability company for any sum, not in excess of the
26 return with interest, necessary to discharge its liability to
27 all creditors of the limited liability company who extended
28 credit or whose claims arose before the return of the
29 contribution.

30 § 3325. Liability of members and managers.

1 Neither the members of a limited liability company nor the
2 managers of a limited liability company managed by a manager or
3 managers are liable under a judgment, decree or order of a
4 court, or in any other manner, for a debt, obligation or
5 liability of the limited liability company.

6 § 3326. Unauthorized assumption of powers.

7 Persons who assume to act as a limited liability company
8 without authority to do so shall be jointly and severally liable
9 for all debts and liabilities.

10 § 3327. Parties to actions by or against limited liability
11 company.

12 A member of a limited liability company is not a proper party
13 to an action by or against a limited liability company, except
14 when the action is brought to enforce a member's right against
15 or liability to the limited liability company.

16 SUBCHAPTER D

17 DISSOLUTION

18 Sec.

19 3331. Dissolution upon occurrence of certain events.

20 3332. Statement of intent to dissolve.

21 3333. Distribution of assets upon dissolution.

22 3334. Articles of dissolution.

23 3335. Involuntary dissolution.

24 § 3331. Dissolution upon occurrence of certain events.

25 (a) General rule.--A limited liability company organized
26 under this chapter shall be dissolved upon the occurrence of any
27 of the following events:

28 (1) When the period fixed for the duration of the
29 limited liability company expires.

30 (2) By the unanimous written agreement of all members.

1 (3) Upon the death, retirement, resignation, expulsion,
2 bankruptcy or dissolution of a member or upon the occurrence
3 of any other event which terminates the continued membership
4 of a member in the limited liability company, unless the
5 business of the limited liability company is continued by the
6 consent of all the remaining members or under a right to
7 continue provided for in the articles of incorporation.

8 (b) Filing of statement of intent to dissolve.--As soon as
9 possible following the occurrence of any of the events listed in
10 subsection (a), the limited liability company shall execute and
11 file with the department a statement of intent to dissolve in
12 the form prescribed by the department.

13 § 3332. Statement of intent to dissolve.

14 (a) Effect of filing of statement of intent to dissolve.--
15 Upon the filing of a statement of intent to dissolve, the
16 limited liability company shall cease to carry on its business,
17 except insofar as may be necessary for the winding up of its
18 business, but its separate existence shall continue until
19 articles of dissolution are filed with the department.

20 (b) Notice to creditors and claimants.--Within 20 days after
21 the filing of a statement of intent to dissolve, the limited
22 liability company shall immediately cause notice of the filing
23 to be mailed to each creditor of and claimant against the
24 limited liability company.

25 (c) Winding up.--Upon filing the statement of intent to
26 dissolve, the limited liability company shall:

27 (1) Proceed to collect its assets.

28 (2) Convey and dispose of such of its properties as are
29 not to be distributed in kind to its members.

30 (3) Pay, satisfy or discharge its liabilities and

obligations or make adequate provisions for the payment or discharge of its liabilities and obligations.

(4) Do all other acts required to liquidate its business and affairs.

(d) Distribution to members.--After paying or discharging all its obligations or making adequate provision for payment or discharge of its obligations, the limited liability company may distribute the remainder of its assets, either in cash or in kind, among its members according to their respective rights and interests.

§ 3333. Distribution of assets upon dissolution.

(a) Discharge of liabilities.--In settling accounts upon dissolution, the liabilities of the limited liability company shall be discharged in the following order:

(1) Liabilities to creditors, in the order of priority as provided by law, except liabilities to members of the limited liability company on account of their contributions.

(2) Liabilities to members of the limited liability company in respect of their shares of the profits and other compensation by way of income on their contributions.

(3) Liabilities to members of the limited liability company in respect of their contributions to capital.

(b) Distribution to members.--Subject to any provision in the bylaws, members shall share in the limited liability company assets in respect to their claims for capital and in respect to their claims for profits or for compensation by way of income on their contributions, respectively, in proportion to the respective amounts of the claims.

§ 3334. Articles of dissolution.

(a) Contents.--When all debts, liabilities and obligations

1 of the limited liability company have been paid or discharged,
2 or adequate provision has been made for payment or discharge,
3 and all of the remaining property and assets of the limited
4 liability company have been distributed to the members, articles
5 of dissolution shall be executed and filed with the department.
6 The articles of dissolution shall set forth the following:

7 (1) The name of the limited liability company.

8 (2) The fact that a statement of intent to dissolve the
9 limited liability company has filed and the date on which the
10 statement was filed.

11 (3) The fact that all debts, obligations and liabilities
12 have been paid or discharged or that adequate provision has
13 been made for payment on discharge.

14 (4) The fact that all the remaining property and assets
15 have been distributed among its members in accordance with
16 their respective rights and interests.

17 (5) The fact that there are no suits pending against the
18 limited liability company in any court or that adequate
19 provision has been made for the satisfaction of any judgment,
20 order or decree which may be entered against it in any
21 pending suit.

22 (b) Tax clearance statement.--The limited liability company
23 shall file the certificate required by section 139 (relating to
24 tax clearance of certain fundamental transactions) with the
25 department at the same time it files the articles of
26 dissolution.

27 (c) Postdissolution claims.--Postdissolution claims against
28 a limited liability company shall be made under Subchapter H of
29 Chapter 19 (relating to postdissolution claims).

30 § 3335. Involuntary dissolution.

1 A limited liability company may be dissolved involuntarily by
2 the court when it is established that the limited liability
3 company has done any of the following:

4 (1) Procured its articles of incorporation through
5 fraud.

6 (2) Exceeded the authority conferred upon it by law.

7 (3) Committed a violation of any provision of law
8 whereby it has forfeited its charter.

9 (4) Carried on, conducted or transacted its business in
10 a persistently fraudulent or illegal manner.

11 (5) By the abuse of its powers contrary to the public
12 policy of the Commonwealth, become liable to be dissolved.

13 SUBCHAPTER E

14 TAXATION

15 Sec.

16 3341. Tax on income of limited liability company.

17 § 3341. Tax on income of limited liability company.

18 The income of a limited liability company organized pursuant
19 to this chapter shall be subject to tax provisions in Article IV
20 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
21 Reform Code of 1971.

22 Section 3. This act shall take effect in 60 days.