

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1398 Session of  
2015

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JUNE 24, 2015

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED, SEPTEMBER  
26, 2016

## AN ACT

1 Amending Titles 15 (Corporations and Unincorporated  
2 Associations) and 54 (Names) of the Pennsylvania Consolidated  
3 Statutes, modernizing the law on limited liability  
4 partnerships, general partnerships, limited partnerships and  
5 limited liability companies; and making conforming changes  
6 with respect to associations, corporations, unincorporated  
7 nonprofit associations and business trusts by doing the  
8 following:  
9     As to general provisions, making conforming changes by  
10 revising provisions on application of title, definitions,  
11 defense of usury, tax clearance of certain fundamental  
12 transactions and fee schedule.  
13     As to entities generally, making conforming changes by  
14 revising requirements for foreign association names.  
15     As to entity transactions, making conforming changes by  
16 revising provisions on regulatory conditions and required  
17 notices and approvals, nature of transactions, approval by  
18 limited partnership, effect of merger, statement of division  
19 and effectiveness, effect of division and effect of  
20 domestication.  
21     As to foreign associations, making conforming changes by  
22 revising provisions on governing law.  
23     As to corporations, making conforming changes by revising  
24 provisions on distributions by business corporations and by  
25 adding provisions on derivative actions and the use of

1 special litigation committees by business corporations and  
2 nonprofit corporations.

3 As to partnerships generally:

4 extensively revising provisions on:

5 interchangeability of partnership, limited  
6 liability company and corporate forms of  
7 organization; and

8 ownership of certain professional partnerships;

9 and

10 adding a provision on failure to observe formalities.

11 As to limited liability partnerships:

12 extensively revising provisions on:

13 scope;

14 definitions;

15 limitation on liability of partners;

16 extraterritorial application of subchapter;

17 foreign registered limited liability

18 partnerships; and

19 annual registration; and

20 adding provisions on:

21 distributions; and

22 dissolution.

23 As to general partnerships, repealing existing Chapter 83  
24 and replacing it with a new Chapter 84 relating to:

25 general provisions;

26 nature of partnership;

27 relations of partners to persons dealing with

28 partnership;

29 relations of partners to each other and to

30 partnership;

31 transferable interests and rights of transferees and

32 creditors;

33 dissociation;

34 dissociation as partner if business not wound up; and

35 dissolution and winding up.

36 As to limited partnerships, repealing existing Chapter 85  
37 and replacing it with a new Chapter 86 relating to:

38 general provisions;

39 formation and filings;

40 limited partners;

41 general partners;

42 contributions and distributions;

43 dissociation;

44 transferable interests and rights of transferees and

45 creditors;

46 dissolution and winding up; and

47 actions by partners.

48 As to limited liability companies:

49 repealing existing Subchapters A, B, C, D, E, F, I

50 and K of Chapter 89 and replacing them with a new Chapter

51 88 relating to:



1 (a) Defined terms.--Subject to additional or inconsistent  
2 definitions contained in subsequent provisions of this title  
3 that are applicable to specific provisions of this title, the  
4 following words and phrases when used in this title shall have,  
5 unless the context clearly indicates otherwise, the meanings  
6 given to them in this section:

7 \* \* \*

8 "Association." A corporation, for profit or not-for-profit,  
9 a partnership, a limited liability company, a business or  
10 statutory trust, an entity or two or more persons associated in  
11 a common enterprise or undertaking. The term does not include:

12 (1) a testamentary trust or an inter vivos trust as  
13 defined in 20 Pa.C.S. § 711(3) (relating to mandatory  
14 exercise of jurisdiction through orphans' court division in  
15 general);

16 (2) an association or relationship that:

17 (i) is not a person that has:

18 (A) a legal existence separate from any interest  
19 holder of the person; or

20 (B) the power to acquire an interest in real  
21 property in its own name; and

22 (ii) is not a partnership under the rules stated in  
23 section [8312 (relating to rules for determining the  
24 existence of partnership)] 8422(c) (relating to formation  
25 of partnership) or a similar provision of the laws of  
26 another jurisdiction;

27 (3) a decedent's estate; or

28 (4) a government or a governmental subdivision, agency  
29 or instrumentality.

30 \* \* \*

1 "Charitable purposes." The relief of poverty, the  
2 advancement and provision of education, including postsecondary  
3 education, the advancement of religion, the prevention and  
4 treatment of disease or injury, including mental retardation and  
5 mental disorders, governmental or municipal purposes and any  
6 other purpose the accomplishment of which is recognized as  
7 important and beneficial to the public.

8 \* \* \*

9 "Debtor in bankruptcy." A person that is the subject of:

10 (1) an order for relief under 11 U.S.C. (relating to  
11 bankruptcy) or a comparable order under a successor statute  
12 of general application; or

13 (2) a comparable order under Federal, State or foreign  
14 law governing insolvency.

15 \* \* \*

16 "General partnership." [A domestic or foreign partnership as  
17 defined in section 8311 (relating to partnership defined),  
18 whether or not it is a limited liability partnership or electing  
19 partnership.] Either of the following:

20 (1) A partnership as defined in section 8412 (relating  
21 to definitions).

22 (2) An association whose internal affairs are governed  
23 by the laws of a jurisdiction other than this Commonwealth  
24 which would be a partnership if its internal affairs were  
25 governed by the laws of this Commonwealth.

26 \* \* \*

27 "Limited liability company." [A domestic or foreign limited  
28 liability company as defined in section 8903 (relating to  
29 definitions and index of definitions).] Either of the following:

30 (1) A limited liability company as defined in section

1 8812 (relating to definitions).

2 (2) An association whose internal affairs are governed  
3 by the laws of a jurisdiction other than this Commonwealth  
4 which would be a limited liability company if its internal  
5 affairs were governed by the laws of this Commonwealth.

6 \* \* \*

7 "Limited partnership." [A domestic or foreign limited  
8 partnership as defined in section 8503 (relating to definitions  
9 and index of definitions), whether or not it is a limited  
10 liability limited partnership or electing partnership.] Either  
11 of the following:

12 (1) A limited partnership as defined in section 8612  
13 (relating to definitions).

14 (2) An association whose internal affairs are governed  
15 by the laws of a jurisdiction other than this Commonwealth  
16 which would be a limited partnership if its internal affairs  
17 were governed by the laws of this Commonwealth.

18 \* \* \*

19 Section 1.2. Title 15 is amended by adding a section to  
20 read:

21 § 114. Defense of usury.

22 A domestic association other than a business corporation  
23 shall be subject to section 1510 (relating to certain  
24 specifically authorized debt terms) with respect to obligations,  
25 as defined in that section, governed by the laws of this  
26 Commonwealth or affecting real property situated in this  
27 Commonwealth, to the same extent as if the domestic association  
28 were a domestic business corporation.

29 Section 2. Sections 139(a) and (c), 152, 153(a) (2) and (3),  
30 206, 314(a), (d) and (e), 315, 324(a) and (c) and 336(a) (2) of

1 Title 15 are amended to read:

2 § 139. Tax clearance of certain fundamental transactions.

3 (a) Requirement.--Except as provided in subsection (c) or  
4 (d), clearance certificates from the Department of Revenue and  
5 the Department of Labor and Industry, evidencing the payment by  
6 the association of all taxes and charges due the Commonwealth  
7 required by law, must be delivered to the department for filing  
8 when any of the following is delivered to the department for  
9 filing:

10 (1) Articles or a statement or certificate of merger  
11 merging a domestic association into a nonregistered foreign  
12 association.

13 (2) Articles or a statement or certificate of conversion  
14 or domestication effecting a conversion or domestication of a  
15 domestic association into a nonregistered foreign  
16 association.

17 (3) Articles [or] of dissolution, a certificate of  
18 dissolution or termination or a statement of revival of a  
19 domestic association.

20 (4) An application for termination of registration,  
21 statement of withdrawal or similar document by a registered  
22 foreign association.

23 (5) Articles or a statement or certificate of division  
24 dividing a domestic association solely into foreign  
25 associations.

26 \* \* \*

27 (c) [Alternative provisions.--If clearance certificates are  
28 filed with the court as required under subsection (b), it shall  
29 not be necessary to file the clearance certificates with the  
30 Department of State.] Exceptions.--It shall not be necessary to

1 file tax clearance certificates with the Department of State:

2 (1) If clearance certificates are filed with the court  
3 as required under subsection (b).

4 (2) With articles of dissolution under section 1971  
5 (relating to voluntary dissolution by shareholders or  
6 incorporators).

7 (3) With a certificate of dissolution under section  
8 8482(b)(2)(i) (relating to winding up and filing of  
9 certificates).

10 (4) With a certificate of termination under section  
11 8681.1 (relating to voluntary termination by partners).

12 (5) With a certificate of dissolution under section  
13 8872(b)(2)(i) (relating to winding up and filing of  
14 certificates).

15 (6) With a certificate of termination under section 8878  
16 (relating to voluntary termination by members or organizers).

17 \* \* \*

18 § 152. Definitions.

19 The following words and phrases when used in this subchapter  
20 shall have the meanings given to them in this section unless the  
21 context clearly indicates otherwise:

22 "Ancillary transaction." Includes:

23 (1) preclearance of document;

24 (2) amendment of articles, charter, certificate or other  
25 organic document, restatement of articles, charter,  
26 certificate or other organic document;

27 (3) dissolution, cancellation or termination of an  
28 association;

29 (4) withdrawal or transfer of registration by foreign  
30 association;

1 (5) [withdrawal by] dissociation as a partner;  
2 (5.1) statement or certificate of authority and denial  
3 or negation of authority;

4 (6) any transaction similar to any item listed in  
5 paragraphs (1) through [(5)] (5.1);

6 (6.1) withdrawal, abandonment or termination of a  
7 document which has been delivered to the department for  
8 filing but has not yet become effective; or

9 (7) delivery to the department for filing in, by or with  
10 the department or the Secretary of the Commonwealth of any  
11 articles, statements, proceedings, agreements or any similar  
12 papers affecting associations under the statutes of this  
13 Commonwealth for which a specific fee is not set forth in  
14 section 153 (relating to fee schedule) or other applicable  
15 statute.

16 § 153. Fee schedule.

17 (a) General rule.--The nonrefundable fees of the bureau,  
18 including fees for the public acts and transactions of the  
19 Secretary of the Commonwealth administered through the bureau,  
20 shall be as follows:

21 \* \* \*

22 (2) Foreign associations:

23 (i) Registration statement or similar  
24 qualifications to do business..... 250

25 (ii) Amendment of registration statement or  
26 similar change in qualification to do business.... 250

27 (iii) Domestication of alien association  
28 under section 161 (relating to domestication of  
29 certain alien associations)..... 250

30 [(iv) Statement of merger, division or

1	conversion or similar instrument reporting	
2	occurrence of merger, division or conversion not	
3	effected by a filing in the department.....	70]
4	(v) Additional fee for each [qualified]	
5	<u>registered</u> foreign association which is named in a	
6	statement of merger or similar instrument.....	40
7	(vi) Each ancillary transaction.....	70
8	(3) Partnerships and limited liability companies:	
9	(i) Certificate of limited partnership or	
10	certificate of organization of a limited liability	
11	company.....	125
12	(ii) Statement of registration of	
13	[registered] limited liability partnership <u>or</u>	
14	<u>limited liability limited partnership</u> or statement	
15	of election as an electing partnership.....	125
16	(iii) Each ancillary transaction.....	70

17 \* \* \*

18 § 206. Requirements for foreign association names.

19 (a) General rule.--The department shall not file a  
20 registration statement pursuant to section 412 (relating to  
21 foreign registration statement) for a foreign association that,  
22 except as provided under subsection (b), has a name that is  
23 rendered unavailable for use by a covered association [under  
24 section 202(a), (b) or (c)(1)(i), (iii), (iv) or (v) or (2)  
25 (relating to requirements for names generally)] by any provision  
26 of this subchapter.

27 (b) Exception.--The provisions of section 202(b) and (c)  
28 (relating to requirements for names generally) shall not prevent  
29 the filing of a registration statement of a foreign association  
30 [setting forth a name that is prohibited] whose name in its

1 jurisdiction of formation would be prohibited from use in this  
2 Commonwealth by section 202(b) and (c) if the foreign  
3 association [delivers to the department for filing a resolution  
4 of its governors adopting] adopts a name for use in registering  
5 to do business in this Commonwealth that is available for use by  
6 a covered association.

7 § 314. Regulatory conditions and required notices and  
8 approvals.

9 (a) Regulatory approvals.--If [laws] the law of this  
10 Commonwealth other than this chapter requires notice to or the  
11 approval of a governmental agency or officer of the Commonwealth  
12 in connection with the participation under an organic law that  
13 is not part of this title by a domestic or foreign association  
14 in a transaction which is a form of transaction authorized by  
15 this chapter, the notice must be given or the approval obtained  
16 by the association before it may participate in any form of  
17 transaction under this chapter.

18 \* \* \*

19 (d) Preservation of transfers.--[A] Subject to subsection  
20 (c) and section 5550 (relating to devises, bequests and gifts  
21 after certain fundamental changes), a bequest, devise, gift,  
22 grant or promise contained in a will or other instrument of  
23 donation, subscription or conveyance that is made to:

24 (1) a merging association that is not the surviving  
25 association and that takes effect or remains payable after  
26 the merger inures to the surviving association[.]; and

27 (2) a dividing association may be allocated in the  
28 division as if it were an asset of the dividing association  
29 and, if the bequest, devise, gift, grant or promise takes  
30 effect or remains payable after the division, vests as

1 provided in section 367(a)(4) (relating to effect of  
2 division).

3 (e) Trust obligations.--A trust obligation that would govern  
4 property:

5 (1) if transferred to a merging association that is not  
6 the surviving association applies to property that is  
7 transferred after a merger to the surviving association[.];  
8 and

9 (2) if transferred to a dividing association that is not  
10 a resulting association applies to property that is  
11 transferred after a division to a resulting association.

12 [(e)] (f) Cross reference.--See section 318 (relating to  
13 excluded entities and transactions).

14 § 315. Nature of transactions.

15 (a) General rule.--The fact that a sale or conversion of the  
16 interests in or assets of an association or a transaction under  
17 a particular subchapter produces a result that could be  
18 accomplished in any other manner permitted by a different  
19 subchapter or other law shall not be a basis for  
20 recharacterizing the sale, conversion or transaction as a  
21 different form of sale, conversion or transaction under any  
22 other subchapter or other law.

23 (b) Business purpose not required.--A transaction under this  
24 chapter does not require an independent business purpose in  
25 order for the transaction to be lawful.

26 § 324. Approval by limited partnership.

27 (a) Proposal of plan.--[A] Except as provided in the organic  
28 rules, a plan shall be proposed in the case of a domestic  
29 limited partnership by the adoption by a unanimous vote of the  
30 general partners of a resolution approving the plan. Except

1 where the approval of the limited partners is unnecessary under  
2 this chapter or the organic rules, the general partners shall  
3 submit the plan to a vote of the limited partners entitled to  
4 vote thereon at a regular or special meeting of the limited  
5 partners.

6 \* \* \*

7 (c) Required vote by limited partners.--[The] Except as  
8 provided in the organic rules:

9 (1) A plan shall be adopted upon receiving [a majority  
10 of the votes cast by all limited partners, if any, entitled  
11 to vote thereon] the affirmative vote or consent of limited  
12 partners owning the rights to receive a majority of the  
13 distributions as limited partners of each domestic limited  
14 partnership that is a party to the proposed transaction under  
15 the plan and, if any class of limited partners is entitled to  
16 vote thereon as a class, [a majority of the votes cast] the  
17 affirmative vote or consent of limited partners owning the  
18 rights to receive a majority of the distributions as limited  
19 partners in each class vote.

20 (2) A proposed plan [may] shall not be deemed to have  
21 been adopted by the limited partnership unless it has also  
22 been approved by the general partners, regardless of the fact  
23 that the general partners have directed or suffered the  
24 submission of the plan to the limited partners for action.

25 \* \* \*

26 § 336. Effect of merger.

27 (a) General rule.--When a merger under this subchapter  
28 becomes effective, all of the following apply:

29 \* \* \*

30 (2) [Each] The separate existence of each merging

1 association that is not the surviving association ceases [to  
2 exist].

3 \* \* \*

4 Section 2.1. Section 366(h) of Title 15, added October 22,  
5 2014 (P.L.2640, No.172), is amended and the section is amended  
6 by adding a subsection to read:

7 § 366. Statement of division; effectiveness.

8 \* \* \*

9 (h) Coordination of transactions.--A new association may be  
10 a party to another transaction under this chapter that takes  
11 effect simultaneously with the division. The new association  
12 shall be deemed to exist before the effectiveness of the other  
13 transaction, but solely for the purpose of being a party to the  
14 other transaction. The plan relating to the other transaction  
15 shall be deemed to have been approved by the new association if  
16 the plan is approved by the dividing association in connection  
17 with its approval of the plan of division. The statement that is  
18 delivered to the department for filing with respect to the other  
19 transaction shall state that it was approved by the new  
20 association under this subsection.

21 [(h)] (i) Cross references.--See sections 134 (relating to  
22 docketing statement) and 135 (relating to requirements to be met  
23 by filed documents).

24 Section 2.2. Sections 367(a)(2) and (6), 368(j) and 376(f)  
25 of Title 15 are amended to read:

26 § 367. Effect of division.

27 (a) General rule.--When a division becomes effective, all of  
28 the following apply:

29 \* \* \*

30 (2) If the dividing association is not to survive the

1 division, the separate existence of the dividing association  
2 ceases [to exist].

3 \* \* \*

4 (6) The liabilities of the dividing association are  
5 allocated between or among the resulting associations as  
6 provided in section 368 (relating to allocation of  
7 liabilities in division)[.] and the resulting associations to  
8 which liabilities are allocated are liable for those  
9 liabilities as successors to the dividing association, and  
10 not by transfer, whether directly, indirectly or by operation  
11 of law.

12 \* \* \*

13 § 368. Allocation of liabilities in division.

14 \* \* \*

15 (j) Taxes.--Any taxes, interest, penalties and public  
16 accounts of the Commonwealth claimed against the dividing  
17 association for periods prior to the effective date of the  
18 division that are settled, assessed or determined prior to or  
19 after the division shall be the liability of all of the  
20 resulting associations and, together with interest thereon,  
21 shall be a lien against the franchises and property of each  
22 resulting association. Upon the application of the dividing  
23 association, the Department of Revenue, with the concurrence of  
24 the Department of Labor and Industry, shall release one or more,  
25 but less than all, of the resulting associations from liability  
26 and liens for all taxes, interest, penalties and public accounts  
27 of the dividing association due the Commonwealth for periods  
28 prior to the effective date of the division if those departments  
29 are satisfied that the public revenues will be adequately  
30 secured.

1 § 376. Effect of domestication.

2 \* \* \*

3 [(f) Service of process.--When a domestication becomes  
4 effective, a foreign domesticated entity may be served with  
5 process in this Commonwealth for the collection and enforcement  
6 of any of its debts, obligations and other liabilities in  
7 accordance with applicable law.]

8 \* \* \*

9 Section 2.3. Section 402 of Title 15 is amended by adding a  
10 subsection to read:

11 § 402. Governing law.

12 \* \* \*

13 (g) Defense of usury.--A foreign association shall be  
14 subject to section 1510 (relating to certain specifically  
15 authorized debt terms) with respect to obligations, as defined  
16 in that section, governed by the laws of this Commonwealth or  
17 affecting real property situated in this Commonwealth, to the  
18 same extent as if the foreign association were a domestic  
19 business corporation.

20 Section 3. Sections 521, 522 and 523(a) and (b) of Title 15  
21 are amended to read:

22 § 521. Pensions and allowances.

23 A banking institution [or a savings association] may grant  
24 allowances or pensions to officers, directors and employees for  
25 faithful and long-continued services and, after the death of the  
26 officer, director or employee either while in the service of the  
27 corporation or after retirement, pensions or allowances may be  
28 granted or continued to their dependents. The allowances to  
29 dependents shall be reasonable in amount and paid only for a  
30 limited time and, unless part of an employee benefit plan or

1 employment contract in effect at the time of retirement or death  
2 of the officer, director or employee, shall not exceed in total  
3 the amount of the compensation paid to the officer, director or  
4 employee during the 12 months preceding retirement or death.

5 § 522. Indemnification of authorized representatives.

6 A banking institution [or a savings association] shall be  
7 governed by the provisions of Subchapter D of Chapter 17  
8 (relating to indemnification).

9 § 523. Actions by shareholders or members to enforce a  
10 secondary right.

11 (a) General rule.--In any action brought to enforce a  
12 secondary right on the part of one or more shareholders or  
13 members against any officer or director or former officer or  
14 director of a banking institution [or a savings association],  
15 because the corporation refuses to enforce rights which may  
16 properly be asserted by it, the plaintiff or plaintiffs must  
17 aver and it must be made to appear that the plaintiff or each  
18 plaintiff was a shareholder or was a member of the corporation  
19 at the time of the transaction of which he complains or that his  
20 stock or membership devolved upon him by operation of law from a  
21 person who was a shareholder or member at that time.

22 (b) Security for costs.--In any such action instituted or  
23 maintained by a holder or holders of less than 5% of the  
24 outstanding shares of any class of the corporation or voting  
25 trust certificates therefor, or by a member or members of a  
26 corporation organized without capital stock which has  
27 outstanding contracts or accounts with its members if the value  
28 of the contracts or accounts held or owned by the member or  
29 members instituting or maintaining the suit is less than 5% of  
30 the value of all the contracts or accounts outstanding, the

1 corporation in whose right the action is brought shall be  
2 entitled, at any stage of the proceedings, to require the  
3 plaintiff or plaintiffs to give security for the reasonable  
4 expenses, including attorneys' fees, which may be incurred by  
5 [it] the corporation in connection therewith [and] or for which  
6 it may become liable pursuant to section 522 (relating to  
7 indemnification of authorized representatives) (but only insofar  
8 as relates to mandatory indemnification in actions by or in the  
9 right of the corporation) to which security the corporation  
10 shall have recourse in such amount as the court having  
11 jurisdiction shall determine upon the termination of the action.  
12 The amount of the security may, from time to time, be increased  
13 or decreased in the discretion of the court having jurisdiction  
14 of the action upon showing that the security provided has or  
15 [may] is likely to become inadequate or excessive. The security  
16 may be denied or limited by the court if the court finds after  
17 an evidentiary hearing that undue hardship on plaintiffs and  
18 serious injustice would result.

19 \* \* \*

20 Section 4. Section 1551(b) of Title 15 is amended and the  
21 section is amended by adding a subsection to read:

22 § 1551. Distributions to shareholders.

23 \* \* \*

24 (b) Limitation.--A distribution, including a distribution  
25 under Subchapter F (relating to voluntary dissolution and  
26 winding up) or H (relating to postdissolution provision for  
27 liabilities) of Chapter 19, may not be made if, after giving  
28 effect thereto:

29 (1) the corporation would be unable to pay its debts as  
30 they become due in the usual course of its business; or

1 (2) the total assets of the corporation would be less  
2 than the sum of its total liabilities plus (unless otherwise  
3 provided in the articles) the amount that would be needed, if  
4 the corporation were to be dissolved at the time as of which  
5 the distribution is measured, to satisfy the preferential  
6 rights upon dissolution of shareholders whose preferential  
7 rights are superior to those receiving the distribution.

8 \* \* \*

9 (d.1) Distribution in winding up.--In measuring the effect  
10 of a distribution under Subchapter F or H of Chapter 19, the  
11 liabilities of a dissolved corporation do not include any  
12 liabilities for which adequate provision has been made or any  
13 claim that has been barred under those subchapters.

14 \* \* \*

15 Section 5. Sections 1781 and 1782 heading and (c) of Title  
16 15 are amended to read:

17 § 1781. [(Reserved).] Derivative action.

18 (a) General rule.--Subject to section 1782 (relating to  
19 eligible shareholder plaintiffs and security for costs) and  
20 subsection (b), a plaintiff may maintain a derivative action to  
21 enforce a right of a business corporation only if:

22 (1) the plaintiff first makes a demand on the  
23 corporation or the board of directors requesting that it  
24 cause the corporation to bring an action to enforce the  
25 right, and:

26 (i) if a special litigation committee is not  
27 appointed under section 1783 (relating to special  
28 litigation committee), the corporation does not bring the  
29 action within a reasonable time; or

30 (ii) if a special litigation committee is appointed

1 under section 1783, a determination is made:

2 (A) under section 1783(e)(1) that the  
3 corporation not object to the action; or

4 (B) under section 1783(e)(5)(i) that the  
5 plaintiff continue the action;

6 (2) demand is excused under subsection (b);

7 (3) the action is maintained for the limited purpose of  
8 seeking court review under section 1783(f); or

9 (4) the court has allowed the action to continue under  
10 the control of the plaintiff under section 1783(f)(3)(ii).

11 (b) Prior demand excused.--

12 (1) A demand under subsection (a)(1) is excused only if  
13 the plaintiff makes a specific showing that immediate and  
14 irreparable harm to the business corporation would otherwise  
15 result.

16 (2) If demand is excused under paragraph (1), demand  
17 shall be made promptly upon commencement of the action.

18 (c) Contents of demand.--A demand under this section must be  
19 in record form and give notice with reasonable specificity of  
20 the essential facts relied upon to support each of the claims  
21 made in the demand.

22 (d) Additional claims.--If a derivative action is commenced  
23 after a demand has been made under this section and includes a  
24 claim that was not fairly subsumed under the demand, a new  
25 demand must be made with respect to that claim. The new demand  
26 shall not relate back to the date of the original demand for  
27 purposes of subsection (e).

28 (e) Statute of limitations.--The making of a demand tolls  
29 any applicable statute of limitations with respect to a claim  
30 asserted in the demand until the earlier of the date:

1 (1) the plaintiff making the demand is notified either:

2 (i) that the board of directors has decided not to  
3 bring an action and not to appoint a special litigation  
4 committee; or

5 (ii) of a determination under section 1783(e) after  
6 the appointment of a special litigation committee under  
7 section 1783; or

8 (2) the plaintiff commences an action asserting the  
9 claim.

10 (f) Certain provisions of articles ineffective.--This  
11 section may not be relaxed by any provision of the articles.

12 § 1782. [Actions against directors and officers] Eligible  
13 shareholder plaintiffs and security for costs.

14 \* \* \*

15 (c) Security for costs.--In any action or proceeding  
16 instituted or maintained by holders or owners of less than 5% of  
17 the outstanding shares of any class of the corporation, unless  
18 the shares held or owned by the holders or owners have an  
19 aggregate fair market value in excess of \$200,000, the  
20 corporation in whose right the action or proceeding is brought  
21 shall be entitled at any stage of the proceedings to require the  
22 plaintiffs to give security for the reasonable expenses,  
23 including attorneys' fees, that may be incurred by [it] the  
24 corporation in connection therewith or for which it may become  
25 liable pursuant to section 1743 (relating to mandatory  
26 indemnification) (but only insofar as relates to actions by or  
27 in the right of the corporation) to which security the  
28 corporation shall have recourse in such amount as the court  
29 determines upon the termination of the action or proceeding. The  
30 amount of security may, from time to time, be increased or

1 decreased in the discretion of the court upon showing that the  
2 security provided has or [may] is likely to become inadequate or  
3 excessive. The security may be denied or limited [in the  
4 discretion of] by the court [upon preliminary showing to the  
5 court, by application and upon such verified statements and  
6 depositions as may be required by the court, establishing prima  
7 facie that the requirement of full or partial security would  
8 impose] if the court finds after an evidentiary hearing that  
9 undue hardship on plaintiffs and serious injustice would result.

10 \* \* \*

11 Section 6. Title 15 is amended by adding sections to read:

12 § 1783. Special litigation committee.

13 (a) General rule.--If a business corporation or the board of  
14 directors receives a demand to bring an action to enforce a  
15 right of the corporation, or if a derivative action is commenced  
16 before demand has been made on the corporation or the board, the  
17 board may appoint a special litigation committee to investigate  
18 the claims asserted in the demand or action and to determine on  
19 behalf of the corporation or recommend to the board whether  
20 pursuing any of the claims asserted is in the best interests of  
21 the corporation. The corporation shall send a notice in record  
22 form to the plaintiff promptly after the appointment of a  
23 committee under this section notifying the plaintiff that a  
24 committee has been appointed and identifying by name the members  
25 of the committee. A committee may not be appointed under this  
26 section if every shareholder of the corporation is also a  
27 director of the corporation.

28 (b) Discovery stay.--If the board of directors appoints a  
29 special litigation committee and an action is commenced before a  
30 determination has been made under subsection (e):

1           (1) On motion by the committee made in the name of the  
2 business corporation, the court shall stay discovery for the  
3 time reasonably necessary to permit the committee to complete  
4 its investigation, except for good cause shown.

5           (2) The time for the defendants to plead shall be tolled  
6 until the process provided for under subsection (f) has been  
7 completed.

8           (c) Composition of committee.--A special litigation  
9 committee shall be composed of two or more individuals who:

10           (1) are not interested in the claims asserted in the  
11 demand or action;

12           (2) are capable as a group of objective judgment in the  
13 circumstances; and

14           (3) may, but need not, be shareholders or directors.

15           (d) Appointment of committee.--A special litigation  
16 committee may be appointed:

17           (1) by a majority of the directors not named as actual  
18 or potential parties in the demand or action; or

19           (2) if all the directors are named as actual or  
20 potential parties in the demand or action, by a majority of  
21 the directors so named.

22           (e) Determination.--After appropriate investigation by a  
23 special litigation committee, the committee or the board of  
24 directors may determine that it is in the best interests of the  
25 business corporation that:

26           (1) an action based on some or all of the claims  
27 asserted in the demand not be brought by the corporation but  
28 that the corporation not object to an action being brought by  
29 the party that made the demand;

30           (2) an action based on some or all of the claims

1 asserted in the demand be brought by the corporation;

2 (3) some or all of the claims asserted in the demand be  
3 settled on terms approved by the committee;

4 (4) an action not be brought based on any of the claims  
5 asserted in the demand;

6 (5) an action already commenced continue under the  
7 control of:

8 (i) the plaintiff;

9 (ii) the corporation; or

10 (iii) the committee;

11 (6) some or all the claims asserted in an action already  
12 commenced be settled on terms approved by the committee; or

13 (7) an action already commenced be dismissed.

14 (f) Court review and action.--If a special litigation  
15 committee is appointed and a derivative action is commenced  
16 either before or after a determination is made under subsection  
17 (e):

18 (1) The business corporation shall file with the court  
19 after a determination is made under subsection (e) a  
20 statement of the determination and a report of the committee  
21 supporting the determination. The corporation shall serve  
22 each party with a copy of the determination and report. If  
23 the corporation moves to file the report under seal, the  
24 report shall be served on the parties subject to an  
25 appropriate stipulation agreed to by the parties or a  
26 protective order issued by the court.

27 (2) The corporation shall file with the court a motion,  
28 pleading or notice consistent with the determination under  
29 subsection (e).

30 (3) If the determination is one described in subsection

1 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall  
2 determine whether the members of the committee met the  
3 qualifications required under subsection (c) (1) and (2) and  
4 whether the committee conducted its investigation and made  
5 its recommendation in good faith, independently and with  
6 reasonable care. If the court finds that the members of the  
7 committee met the qualifications required under subsection  
8 (c) (1) and (2) and that the committee acted in good faith,  
9 independently and with reasonable care, the court shall  
10 enforce the determination of the committee. Otherwise, the  
11 court shall:

12 (i) dissolve any stay of discovery entered under  
13 subsection (b);

14 (ii) allow the action to continue under the control  
15 of the plaintiff; and

16 (iii) permit the defendants to file preliminary  
17 objections, other appropriate pleadings and motions.

18 (g) Certain provisions of articles ineffective.--The  
19 provisions of this section may not be varied by the articles.

20 § 1784. Proceeds and expenses.

21 (a) Proceeds.--Except as provided in subsection (b):

22 (1) any proceeds or other benefits of a derivative  
23 action, whether by judgment, compromise or settlement, belong  
24 to the business corporation and not to the plaintiff; and

25 (2) if the plaintiff or its counsel receives any  
26 proceeds, the proceeds shall be remitted immediately to the  
27 corporation.

28 (b) Expenses.--If a derivative action is successful in whole  
29 or in part, the court may award the plaintiff reasonable  
30 expenses, including reasonable attorney fees and costs, from the

1 recovery of the business corporation, but in no event shall the  
2 attorney fees awarded exceed a reasonable proportion of the  
3 value of the relief, including nonpecuniary relief, obtained by  
4 the plaintiff for the corporation.

5 (c) Certain provisions of articles ineffective.--This  
6 section may not be relaxed by any provision of the articles.

7 Section 6.1. Sections 1971(a) and 3301(d) of Title 15 are  
8 amended to read:

9 § 1971. Voluntary dissolution by shareholders or incorporators.

10 (a) General rule.--The shareholders or incorporators of a  
11 business corporation that has [not commenced business] never  
12 transacted business or held assets other than money received  
13 from subscriptions for shares may effect the dissolution of the  
14 corporation by filing articles of dissolution in the Department  
15 of State. The articles of dissolution shall be executed in the  
16 name of the corporation by a majority of the incorporators or a  
17 majority in interest of the shareholders and shall set forth:

18 (1) The name of the corporation and, subject to section  
19 109 (relating to name of commercial registered office  
20 provider in lieu of registered address), the address,  
21 including street and number, if any, of its registered  
22 office.

23 (2) The statute under which the corporation was  
24 incorporated and the date of incorporation.

25 (3) That the corporation has [not commenced business]  
26 never transacted business or held assets other than money  
27 received from subscriptions for shares.

28 (4) That the amount, if any, actually paid in on  
29 subscriptions for its shares, less any part thereof disbursed  
30 for necessary expenses, has been returned to those entitled

1 thereto.

2 (5) That all liabilities of the corporation have been  
3 discharged or that adequate provision has been made therefor.

4 (6) That a majority of the incorporators or a majority  
5 in interest of the shareholders elect that the corporation be  
6 dissolved.

7 \* \* \*

8 § 3301. Application and effect of chapter.

9 \* \* \*

10 (d) Organic [records] rules may not be inconsistent.--A  
11 provision of the articles or bylaws of a benefit corporation may  
12 not relax, be inconsistent with or supersede any provision of  
13 this chapter.

14 Section 6.2. The definitions of "benefit corporation,"

15 "BENEFIT DIRECTOR," "independent," "minimum status vote" and <--

16 "subsidiary" in section 3302 of Title 15 are amended to read:

17 § 3302. Definitions.

18 The following words and phrases when used in this chapter  
19 shall have the meanings given to them in this section unless the  
20 context clearly indicates otherwise:

21 "Benefit corporation." A business corporation that [has  
22 elected to become] is subject to this chapter [and whose status  
23 as a benefit corporation has not been terminated].

24 "BENEFIT DIRECTOR." [EITHER: <--

25 (1) THE] THE DIRECTOR DESIGNATED AS THE BENEFIT DIRECTOR  
26 OF A BENEFIT CORPORATION AS PROVIDED IN SECTION 3322

27 (RELATING TO BENEFIT DIRECTOR).; OR

28 (2) A PERSON WITH ONE OR MORE OF THE POWERS, DUTIES OR  
29 RIGHTS OF A BENEFIT DIRECTOR TO THE EXTENT PROVIDED IN THE  
30 BYLAWS UNDER SECTION 3322.]

1 \* \* \*

2 "Independent." When a person has no material relationship  
3 with a benefit corporation or any of its subsidiaries, other  
4 than the relationship of serving as the benefit director or  
5 benefit officer. A material relationship between an individual  
6 and a benefit corporation or any of its subsidiaries will be  
7 conclusively presumed to exist if:

8 (1) the person is or has been within the last three  
9 years an employee of the benefit corporation or any of its  
10 subsidiaries, other than as a benefit officer;

11 (2) an immediate family member of the person is or has  
12 been within the last three years an executive officer, other  
13 than a benefit officer, of the benefit corporation or any of  
14 its subsidiaries; or

15 (3) the person, or an association of which the person is  
16 a [director, officer or other manager] governor or officer  
17 or in which the person owns beneficially or of record 5% or  
18 more of the outstanding [equity] interests, owns beneficially  
19 or of record 5% or more of the outstanding shares of the  
20 benefit corporation. The percentage of ownership in an  
21 association shall be calculated as if all outstanding rights  
22 to acquire [equity] interests in the association had been  
23 exercised.

24 "Minimum status vote." As follows:

25 (1) In the case of a business corporation, in addition  
26 to any other required approval or vote, the satisfaction of  
27 the following conditions:

28 (i) The shareholders of every class or series must  
29 be entitled, as a class, to vote on the corporate action  
30 regardless of a limitation stated in the articles of

1 incorporation or bylaws on the voting rights of any class  
2 or series.

3 (ii) The corporate action must be approved by a vote  
4 of the shareholders of each class or series entitled to  
5 cast at least two-thirds of the votes that all  
6 shareholders of the class or series are entitled to cast  
7 on the action.

8 (2) In the case of a domestic association other than a  
9 business corporation, in addition to any other required  
10 approval, vote or consent, the satisfaction of the following  
11 conditions:

12 (i) The holders of every class or series of [equity]  
13 interest in the association that are entitled to receive  
14 a distribution of any kind from the association must be  
15 entitled as a class to vote on or consent to the action  
16 regardless of any otherwise applicable limitation on the  
17 voting or consent rights of any class or series.

18 (ii) The action must be approved by vote or consent  
19 of the holders described in subparagraph (i) entitled to  
20 cast at least two-thirds of the votes or consents that  
21 all of those holders are entitled to cast on the action.

22 \* \* \*

23 "Subsidiary." An association in which a person owns  
24 beneficially or of record 50% or more of the outstanding  
25 [equity] interests. The percentage of ownership in an  
26 association shall be calculated as if all outstanding rights to  
27 acquire [equity] interests in the association had been  
28 exercised.

29 \* \* \*

30 Section 7. Sections 3321(c), 3322(e), 3323(c), 3325(b),

<--

1 3331(A) (8) and 4146 of Title 15 are amended to read:

2 § 3321. Standard of conduct for directors.

3 \* \* \*

4 (c) Exoneration from personal liability.--

5 (1) A director shall not be personally liable, as such,  
6 for monetary damages for any action taken as a director [if  
7 the director performed the duties of his or her office in  
8 compliance with section 1712 and this section.] in the course  
9 of performing the duties specified in subsection (a) unless  
10 the action constitutes self-dealing, willful misconduct or a  
11 knowing violation of law.

12 (2) A director shall not be personally liable for  
13 monetary damages for failure of the benefit corporation to  
14 pursue or create general public benefit or a specific public  
15 benefit.

16 \* \* \*

17 § 3322. Benefit director.

18 \* \* \*

19 [(e) Alternative governance arrangements.--

20 (1) The bylaws of a benefit corporation must provide  
21 that the persons or shareholders who perform the duties of  
22 the board of directors include a person with the powers,  
23 duties, rights and immunities of a benefit director if any of  
24 the following apply:

25 (i) The bylaws of a benefit corporation provide that  
26 the powers and duties conferred or imposed upon the board  
27 of directors shall be exercised or performed by a person  
28 other than the directors under section 1721(a) (relating  
29 to board of directors).

30 (ii) The bylaws of a statutory close corporation

1 that is a benefit corporation provide that the business  
2 and affairs of the corporation shall be managed by or  
3 under the direction of the shareholders.

4 (2) A person that exercises one or more of the powers,  
5 duties or rights of a benefit director under this subsection:

6 (i) does not need to be independent of the benefit  
7 corporation;

8 (ii) shall have the immunities of a benefit  
9 director;

10 (iii) may share the powers, duties and rights of a  
11 benefit director with one or more other persons; and

12 (iv) shall not be subject to the procedures for  
13 election or removal of directors in Subchapter C of  
14 Chapter 17 unless:

15 (A) the person is also a director of the benefit  
16 corporation; or

17 (B) the bylaws make those procedures  
18 applicable.]

19 \* \* \*

20 § 3323. Standard of conduct for officers.

21 \* \* \*

22 (c) Exoneration from personal liability.--

23 (1) An officer shall not be personally liable, as such,  
24 for monetary damages for any action taken as an officer [if  
25 the officer performed the duties of the position in  
26 compliance with section 1712(c) and this section.] in the  
27 course of performing the duties specified in subsection (a)  
28 unless the action constitutes self-dealing, willful  
29 misconduct or a knowing violation of law.

30 (2) An officer shall not be personally liable for

1 monetary damages for failure of the benefit corporation to  
2 pursue or create general public benefit or a specific public  
3 benefit.

4 \* \* \*

5 § 3325. Right of action.

6 \* \* \*

7 (b) Parties with standing.--A benefit enforcement proceeding  
8 may be commenced or maintained only:

9 (1) directly by the benefit corporation; or

10 (2) derivatively by:

11 (i) a shareholder that owned at least 2% of the  
12 total number of shares of a class or series outstanding  
13 at the time of the act complained of;

14 (ii) a director;

15 (iii) a person or group of persons that owns  
16 beneficially or of record 5% or more of the [equity]  
17 interests in an association of which the benefit  
18 corporation is a subsidiary at the time of the act  
19 complained of; or

20 (iv) such other persons as may be specified in the  
21 articles or bylaws of the benefit corporation.

22 \* \* \*

23 § 3331. ANNUAL BENEFIT REPORT. <--

24 (A) CONTENTS.--A BENEFIT CORPORATION MUST DELIVER TO EACH  
25 SHAREHOLDER AN ANNUAL BENEFIT REPORT INCLUDING:

26 \* \* \*

27 [(8) IF THE BENEFIT CORPORATION HAS DISPENSED WITH, OR  
28 RESTRICTED THE DISCRETION OR POWERS OF, THE BOARD OF  
29 DIRECTORS, A DESCRIPTION OF:

30 (I) THE PERSONS THAT EXERCISE THE POWERS, DUTIES AND

1 RIGHTS AND WHO HAVE THE IMMUNITIES OF THE BOARD OF  
2 DIRECTORS; AND

3 (II) THE BENEFIT DIRECTOR, AS REQUIRED BY SECTION  
4 3322(E).]

5 \* \* \*

6 § 4146. Provisions applicable to all foreign corporations.

7 The following provisions of this subpart shall, except as  
8 otherwise provided in this section, be applicable to every  
9 foreign corporation for profit, whether or not required to  
10 [procure a certificate of authority under this chapter] register  
11 under Chapter 4 (relating to foreign associations):

12 Section 1503 (relating to defense of ultra vires), as to  
13 contracts and conveyances governed by the laws of this  
14 Commonwealth and conveyances affecting real property situated in  
15 this Commonwealth.

16 Section 1506 (relating to form of execution of instruments),  
17 as to instruments or other documents governed by the laws of  
18 this Commonwealth or affecting real property situated in this  
19 Commonwealth.

20 Section 1510 (relating to certain specifically authorized  
21 debt terms), as to obligations (as defined in the section)  
22 governed by the laws of this Commonwealth or affecting real  
23 property situated in this Commonwealth.

24 Section 1782 (relating to [actions against directors and  
25 officers] eligible shareholder plaintiffs and security for  
26 costs), as to any derivative action [or proceeding] brought in a  
27 court of this Commonwealth.

28 Subchapter F of Chapter 25 (relating to business  
29 combinations), to the extent provided in section 2551(c)  
30 (relating to continuing applicability).

1 Section 8. The definition of "charitable purposes" in  
2 section 5103(a) of Title 15 is amended to read:

3 § 5103. Definitions.

4 (a) General definitions.--Subject to additional definitions  
5 contained in subsequent provisions of this subpart that are  
6 applicable to specific provisions of this subpart, the following  
7 words and phrases when used in this subpart shall have the  
8 meanings given to them in this section unless the context  
9 clearly indicates otherwise:

10 \* \* \*

11 ["Charitable purposes." The relief of poverty, the  
12 advancement and provision of education, including postsecondary  
13 education, the advancement of religion, the prevention and  
14 treatment of disease or injury, including mental retardation and  
15 mental disorders, governmental or municipal purposes, and any  
16 other purpose the accomplishment of which is recognized as  
17 important and beneficial to the public.]

18 \* \* \*

19 Section 9. Title 15 is amended by adding a section to read:

20 § 5781. Derivative action.

21 (a) General rule.--Subject to section 5782 (relating to  
22 eligible member plaintiffs and security for costs) and  
23 subsection (b), a plaintiff may maintain a derivative action to  
24 enforce a right of a nonprofit corporation only if:

25 (1) the plaintiff first makes a demand on the  
26 corporation or the board of directors, requesting that it  
27 cause the corporation to bring an action to enforce the  
28 right, and:

29 (i) if a special litigation committee is not  
30 appointed under section 5783 (relating to special

1 litigation committee), the corporation does not bring the  
2 action within a reasonable time; or

3 (ii) if a special litigation committee is appointed  
4 under section 5783, a determination is made:

5 (A) under section 5783(e)(1) that the  
6 corporation not object to the action; or

7 (B) under section 5783(e)(5)(i) that the  
8 plaintiff continue the action;

9 (2) demand is excused under subsection (b);

10 (3) the action is maintained for the limited purpose of  
11 seeking court review under section 5783(f); or

12 (4) the court has allowed the action to continue under  
13 the control of the plaintiff under section 5783(f)(3)(ii).

14 (b) Prior demand excused.--

15 (1) A demand under subsection (a)(1) is excused only if  
16 the member makes a specific showing that immediate and  
17 irreparable harm to the nonprofit corporation would otherwise  
18 result.

19 (2) If demand is excused under paragraph (1), demand  
20 shall be made promptly after commencement of the action.

21 (c) Contents of demand.--A demand under this section must be  
22 in record form and give notice with reasonable specificity of  
23 the essential facts relied upon to support each of the claims  
24 made in the demand.

25 (d) Additional claims.--If a derivative action is commenced  
26 after a demand has been made under this section and includes a  
27 claim that was not fairly subsumed under the demand, a new  
28 demand must be made with respect to that claim. The new demand  
29 shall not relate back to the date of the original demand for  
30 purposes of subsection (e).

1 (e) Statute of limitations.--The making of a demand tolls  
2 any applicable statute of limitations with respect to a claim  
3 asserted in the demand until the earlier of the date:

4 (1) the plaintiff making the demand is notified either:

5 (i) that the board of directors has decided not to  
6 bring an action and not to appoint a special litigation  
7 committee; or

8 (ii) of a determination under section 5783(e) after  
9 the appointment of a special litigation committee under  
10 section 5783; or

11 (2) the plaintiff commences an action asserting the  
12 claim.

13 Section 10. Section 5782 heading and (c) of Title 15 ARE  
14 amended to read:

15 § 5782. [Actions against directors, members of an other body  
16 and officers] Eligible member plaintiffs and  
17 security for costs.

18 \* \* \*

19 (c) Security for costs.--In any action or proceeding  
20 instituted or maintained by less than the smaller of 50 members  
21 of any class or 5% of the members of any class of the  
22 corporation, the corporation in whose right the action or  
23 proceeding is brought shall be entitled at any stage of the  
24 proceedings to require the plaintiffs to give security for the  
25 reasonable expenses, including attorney fees, that may be  
26 incurred by [it] the corporation in connection therewith or for  
27 which it may become liable pursuant to section 5743 (relating to  
28 mandatory indemnification), but only insofar as relates to  
29 actions by or in the right of the corporation, to which security  
30 the corporation shall have recourse in such amount as the court

1 determines upon the termination of the action or proceeding. The  
2 amount of security may from time to time be increased or  
3 decreased in the discretion of the court upon showing that the  
4 security provided has or [may] is likely to become inadequate or  
5 excessive. The security may be denied or limited [in the  
6 discretion of] by the court [upon preliminary showing to the  
7 court, by application and upon such verified statements and  
8 depositions as may be required by the court, establishing prima  
9 facie that the requirement of full or partial security would  
10 impose] if the court finds after an evidentiary hearing that  
11 undue hardship on plaintiffs and serious injustice would result.

12 \* \* \*

13 Section 11. Title 15 is amended by adding sections to read:  
14 § 5783. Special litigation committee.

15 (a) General rule.--If a nonprofit corporation or the board  
16 of directors receives a demand to bring an action to enforce a  
17 right of the corporation, or if a derivative action is commenced  
18 before demand has been made on the corporation or the board, the  
19 board may appoint a special litigation committee to investigate  
20 the claims asserted in the demand or action and to determine on  
21 behalf of the corporation or recommend to the board whether  
22 pursuing any of the claims asserted is in the best interests of  
23 the corporation. The corporation shall send a notice in record  
24 form to the plaintiff promptly after the appointment of a  
25 committee under this section notifying the plaintiff that a  
26 committee has been appointed and identifying by name the members  
27 of the committee.

28 (b) Discovery stay.--If the board of directors appoints a  
29 special litigation committee and an action is commenced before a  
30 determination has been made under subsection (e):

1           (1) On motion by the committee made in the name of the  
2 nonprofit corporation, the court shall stay discovery for the  
3 time reasonably necessary to permit the committee to complete  
4 its investigation, except for good cause shown.

5           (2) The time for the defendants to plead shall be tolled  
6 until the process provided for under subsection (f) has been  
7 completed.

8           (c) Composition of committee.--A special litigation  
9 committee shall be composed of two or more individuals who:

10           (1) are not interested in the claims asserted in the  
11 demand or action;

12           (2) are capable as a group of objective judgment in the  
13 circumstances; and

14           (3) may, but need not, be members, directors or members  
15 of an other body.

16           (d) Appointment of committee.--A special litigation  
17 committee may be appointed:

18           (1) by a majority of the directors not named as actual  
19 or potential parties in the demand or action; or

20           (2) if all the directors are named as actual or  
21 potential parties in the demand or action, by a majority of:

22           (i) the members of an other body not named as  
23 parties in the proceeding if the other body has the  
24 authority to appoint a special litigation committee; or

25           (ii) the directors so named.

26           (e) Determination.--After appropriate investigation by a  
27 special litigation committee, the committee or the board of  
28 directors may determine that it is in the best interests of the  
29 nonprofit corporation that:

30           (1) an action based on some or all of the claims

1 asserted in the demand not be brought by the corporation but  
2 that the corporation not object to an action being brought by  
3 the party that made the demand;

4 (2) an action based on some or all of the claims  
5 asserted in the demand be brought by the corporation;

6 (3) some or all of the claims asserted in the demand be  
7 settled on terms approved by the committee;

8 (4) an action not be brought based on any of the claims  
9 asserted in the demand;

10 (5) an action already commenced continue under the  
11 control of:

12 (i) the plaintiff;

13 (ii) the corporation; or

14 (iii) the committee;

15 (6) some or all the claims asserted in an action already  
16 commenced be settled on terms approved by the committee; or

17 (7) an action already commenced be dismissed.

18 (f) Court review and action.--If a special litigation  
19 committee is appointed and a derivative action is commenced  
20 before or after a determination is made under subsection (e):

21 (1) The nonprofit corporation shall file with the court  
22 after a determination is made under subsection (e) a  
23 statement of the determination and a report supporting the  
24 determination. The corporation shall serve each party with a  
25 copy of the determination and report. If the corporation  
26 moves to file the report under seal, the report shall be  
27 served on the parties subject to an appropriate stipulation  
28 agreed to by the parties or a protective order issued by the  
29 court.

30 (2) The corporation shall file with the court a motion,

1 pleading or notice consistent with the determination under  
2 subsection (e).

3 (3) If the determination is one described in subsection  
4 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall  
5 determine whether the members of the committee met the  
6 qualifications required under subsection (c) (1) and (2) and  
7 whether the committee conducted its investigation and made  
8 its recommendation in good faith, independently and with  
9 reasonable care. If the court finds that the members of the  
10 committee met the qualifications required under subsection  
11 (c) (1) and (2) and that the committee acted in good faith,  
12 independently and with reasonable care, the court shall  
13 enforce the determination of the committee. Otherwise, the  
14 court shall:

15 (i) dissolve any stay of discovery entered under  
16 subsection (b);

17 (ii) allow the action to continue under the control  
18 of the plaintiff; and

19 (iii) permit the defendants to file preliminary  
20 objections, other appropriate pleadings and motions.

21 (g) Attorney General.--Nothing in this section limits the  
22 rights, powers and duties of the Attorney General under other  
23 applicable law with respect to a nonprofit corporation.

24 § 5784. Proceeds and expenses.

25 (a) Proceeds.--Except as provided in subsection (b):

26 (1) any proceeds or other benefits of a derivative  
27 action, whether by judgment, compromise or settlement, belong  
28 to the nonprofit corporation and not to the plaintiff; and

29 (2) if the plaintiff or its counsel receives any  
30 proceeds, the proceeds shall be remitted immediately to the

1       corporation.

2       (b) Expenses.--If a derivative action is successful in whole  
3 or in part, the court may award the plaintiff reasonable  
4 expenses, including reasonable attorney fees and costs, from the  
5 recovery of the nonprofit corporation, but in no event shall the  
6 attorney fees awarded exceed a reasonable proportion of the  
7 value of the relief, including nonpecuniary relief, obtained by  
8 the plaintiff for the corporation.

9       Section 12. Sections 6146, 8102 and 8105 of Title 15 are  
10 amended to read:

11       § 6146. Provisions applicable to all foreign corporations.

12       The following provisions of this subpart shall, except as  
13 otherwise provided in this section, be applicable to every  
14 foreign corporation not-for-profit, whether or not required to  
15 [procure a certificate of authority under this chapter] register  
16 under Chapter 4 (relating to foreign associations):

17       Section 5503 (relating to defense of ultra vires) as to  
18 contracts and conveyances governed by the laws of this  
19 Commonwealth and conveyances affecting real property situated in  
20 this Commonwealth.

21       Section 5506 (relating to form of execution of instruments)  
22 as to instruments or other documents governed by the laws of  
23 this Commonwealth or affecting real property situated in this  
24 Commonwealth.

25       Section 5510 (relating to certain specifically authorized  
26 debt terms) as to obligations (as defined in the section)  
27 governed by the laws of this Commonwealth or affecting real  
28 property situated in this Commonwealth.

29       Section 5782 (relating to [actions against directors, members  
30 of an other body and officers] eligible member plaintiffs and

1 security for costs) as to any derivative action [or proceeding]  
2 brought in a court of this Commonwealth.

3 § 8102. Interchangeability of partnership, limited liability  
4 company and corporate forms of organization.

5 (a) General rule.--Subject to any restrictions on a specific  
6 line of business made applicable by section 103 (relating to  
7 subordination of title to regulatory laws):

8 (1) Any business that may be conducted in a corporate  
9 form may also be conducted as a partnership or a limited  
10 liability company.

11 (2) A domestic or foreign partnership or limited  
12 liability company may exercise any right, power, franchise or  
13 privilege that a domestic or foreign corporation engaged in  
14 the same line of business might exercise under the laws of  
15 this Commonwealth, including powers conferred by section 1511  
16 (relating to additional powers of certain public utility  
17 corporations) or other provisions of law granting the right  
18 to a duly authorized corporation to take or occupy property  
19 and make compensation therefor.

20 (b) Exceptions.--Subsection (a) shall not:

21 (1) Affect any law relating to the taxation of  
22 partnerships, limited liability companies or corporations.

23 (2) [Apply to a banking institution, credit union,  
24 insurance corporation or savings association,] Authorize  
25 acting as a banking institution, credit union or insurer  
26 unless the laws relating thereto or this part expressly  
27 [contemplate] permit the conduct of the regulated business in  
28 partnership or limited liability company form. See [section  
29 8911 (relating to purposes).] sections 8620(b) (relating to  
30 characteristics of limited partnership) and 8818(b) (relating

1 to characteristics of limited liability company).

2 (3) Except as otherwise provided by law, permit a  
3 partnership to provide full limited liability for all of the  
4 investors therein or otherwise fail to preserve the intrinsic  
5 differences between the partnership and corporate forms.

6 § 8105. Ownership of certain professional partnerships and  
7 limited liability companies.

8 (a) General rule.--Except as otherwise provided by statute,  
9 rule or regulation applicable to a particular profession, all of  
10 the ultimate beneficial owners of the [partnership] interests in  
11 a [partnership that renders one or more restricted professional  
12 services shall] general partnership, limited partnership,  
13 electing partnership or limited liability company, and all of  
14 the governors of the entity, must be licensed persons[. As used  
15 in this section, the term "restricted professional services"  
16 shall have the meaning specified in section 8903 (relating to  
17 definitions and index of definitions).] in the profession the  
18 entity practices if the entity renders any of the following  
19 professional services:

20 (1) chiropractic;

21 (2) dentistry;

22 (3) law;

23 (4) medicine and surgery;

24 (5) optometry;

25 (6) osteopathic medicine and surgery;

26 (7) podiatric medicine;

27 (8) public accounting;

28 (9) psychology; or

29 (10) veterinary medicine.

30 (b) Transitional provision.--Subsection (a) shall not apply

1 to a person that holds only a transferable interest that was  
2 acquired before [the Legislative Reference Bureau shall insert  
3 here the effective date of this act].

4 Section 13. Title 15 is amended by adding a section to read:  
5 § 8106. Failure to observe formalities.

6 The failure of a limited liability partnership, limited  
7 partnership, limited liability limited partnership, electing  
8 partnership or limited liability company to observe formalities  
9 relating to the exercise of its powers or management of its  
10 activities and affairs is not a ground for imposing liability on  
11 a partner, member or manager of the entity for a debt,  
12 obligation or other liability of the entity.

13 Section 14. Chapter 82 heading of Title 15 is amended to  
14 read:

15 CHAPTER 82

16 [REGISTERED] LIMITED LIABILITY PARTNERSHIPS AND  
17 LIMITED LIABILITY LIMITED PARTNERSHIPS

18 Section 15. Chapter 82 Subchapter A heading of Title 15 is  
19 amended to read:

20 SUBCHAPTER A

21 DOMESTIC [REGISTERED]

22 LIMITED LIABILITY PARTNERSHIPS AND  
23 LIMITED LIABILITY LIMITED PARTNERSHIPS

24 Section 16. Section 8201 of Title 15 is amended to read:

25 § 8201. Scope.

26 (a) Application of subchapter.--This subchapter applies to a  
27 general or limited partnership whose internal affairs are  
28 governed by or that is formed under the laws of this  
29 Commonwealth and that registers under this section. Any  
30 partnership that desires to register under this subchapter or to

1 amend or terminate its registration shall [file in] deliver to  
2 the Department of State for filing a statement of registration,  
3 amendment or termination, as the case may be, which shall be  
4 signed by a general partner and shall set forth:

5 (1) The name of the partnership.

6 (2) Either:

7 (i) the address of the principal place of business  
8 of the partnership, in the case of a general partnership;  
9 or

10 (ii) subject to section 109 (relating to name of  
11 commercial registered office provider in lieu of  
12 registered address), the address, including street and  
13 number, if any, of the registered office of the  
14 partnership, in the case of a limited partnership.

15 (3) A statement that the partnership registers under  
16 this subchapter or that the registration of the partnership  
17 under this subchapter shall be amended or terminated, as the  
18 case may be. If the statement relates to an amendment, the  
19 amendment shall restate in full the statement of  
20 registration.

21 (4) A statement that:

22 (i) the registration, amendment or termination has  
23 been authorized by at least a majority in interest of the  
24 partners[.]; and

25 (ii) in the case of a termination, the termination  
26 has also been authorized by all of the general partners.

27 (b) Effect of filing.--Upon the filing of the statement of  
28 registration, amendment or termination in the department, the  
29 registration under this subchapter shall be effective, amended  
30 or terminated, as the case may be. The effectiveness, amendment

1 or termination of the registration of a partnership under this  
2 subchapter shall not be deemed to cause a dissolution of the  
3 partnership.

4 (c) Effect of registration.--As long as the registration  
5 under this subchapter is in effect, the partnership shall be  
6 governed by the provisions of this subchapter and, to the extent  
7 not inconsistent with this subchapter, Chapter [83] 84 (relating  
8 to general partnerships) [and, if a limited partnership, in  
9 addition, Chapter 85] or 86 (relating to limited partnerships).  
10 Without limiting the generality of the foregoing, a domestic or  
11 foreign [registered] limited liability partnership or limited  
12 liability limited partnership shall be treated the same as if it  
13 were not registered under this subchapter for purposes of:

14 (1) determining whether it is a permissible form of  
15 entity in which to conduct the practice of a profession; or

16 (2) the imposition by the Commonwealth or any political  
17 subdivision of any tax or license fee on or with respect to  
18 any income, property, privilege, transaction, subject or  
19 occupation.

20 (d) Continuation of registration.--If a [registered] limited  
21 liability partnership or limited liability limited partnership  
22 is dissolved and its business is continued without liquidation  
23 of the partnership affairs, the registration under this  
24 subchapter of the dissolved partnership shall continue to be  
25 applicable to the partnership continuing the business, and it  
26 shall not be necessary to make a new filing under this section  
27 until such time, if any, as the registration is to be amended or  
28 terminated.

29 (e) Prohibited termination.--A registration under this  
30 subchapter may not be terminated while the partnership is a

1 [bankrupt as that term is defined in section 8903 (relating to  
2 definitions and index of definitions)] debtor in bankruptcy. See  
3 section 8221(f) (relating to annual registration).

4 (f) Alternative procedure.--In lieu of filing a statement of  
5 registration as provided in subsection (a), a limited  
6 partnership may register as a [registered] limited liability  
7 limited partnership by including in its certificate of limited  
8 partnership, either originally or by amendment, the statements  
9 required by subsection (a) (3) and (4). To terminate its  
10 registration, a limited partnership that uses the procedure  
11 authorized by this subsection shall amend its certificate of  
12 limited partnership to delete the statements required by this  
13 subsection.

14 (g) Constructive notice.--[Filing] Registration under this  
15 section shall constitute constructive notice that the  
16 partnership is a [registered] limited liability partnership or  
17 limited liability limited partnership and that the partners are  
18 entitled to the protections from liability provided by this  
19 subchapter.

20 (h) Approval of termination.--In addition to any required  
21 approvals under the partnership agreement, the termination of a  
22 statement of registration must be approved by the affirmative  
23 vote or consent of all the general partners.

24 (i) Cross references.--See sections 134 (relating to  
25 docketing statement) and 135 (relating to requirements to be met  
26 by filed documents).

27 Section 17. The definitions of "foreign registered limited  
28 liability partnership," "partner" and "registered limited  
29 liability partnership" or "domestic registered limited liability  
30 partnership" in section 8202 are amended and the section is

1 amended by adding a definition to read:

2 § 8202. Definitions.

3 The following words and phrases when used in this chapter  
4 shall have the meanings given to them in this section unless the  
5 context clearly indicates otherwise:

6 "Distribution." A DIRECT OR INDIRECT transfer of money or <--  
7 other property ~~from~~ OR INCURRENCE OF INDEBTEDNESS BY a limited <--  
8 liability partnership to a person on account of a transferable  
9 interest or in a person's capacity as a partner. The term:

10 (1) includes:

11 (i) a redemption or other purchase by a partnership  
12 of a transferable interest; and

13 (ii) a transfer to a partner in return for the  
14 partner's relinquishment of any right to participate as a  
15 partner in the management or conduct of the partnership's  
16 business or to have access to records or other  
17 information concerning the partnership's business; and

18 (2) does not include:

19 (i) amounts constituting reasonable compensation for  
20 present or past service or payments made in the ordinary  
21 course of business under a bona fide retirement plan or  
22 other bona fide benefits program;

23 (ii) the making of, or payment or performance on, a  
24 guaranty or similar arrangement by a partnership for the  
25 benefit of any or all of its partners;

26 (iii) a direct or indirect allocation or transfer  
27 effected under Chapter 3 (relating to entity  
28 transactions) with the approval of the partners; or

29 (iv) a direct or indirect transfer of:

30 (A) a governance or transferable interest; or

1                   (B) options, rights or warrants to acquire a  
2                   governance or transferable interest.

3       ["Foreign registered limited liability partnership." A  
4 partnership that has registered under a law of any jurisdiction  
5 other than this Commonwealth similar to this subchapter, whether  
6 or not the partnership is required to register under section  
7 8211 (relating to foreign registered limited liability  
8 partnerships).]

9       "Partner." Includes a person who is or was a partner in a  
10 [registered] limited liability partnership or a general partner  
11 in a limited liability limited partnership at any time while the  
12 registration of the partnership under this subchapter is or was  
13 in effect.

14       ["Registered limited liability partnership" or "domestic  
15 registered limited liability partnership." A partnership as to  
16 which a registration under section 8201(a) (relating to scope)  
17 is in effect.]

18       Section 18. Section 8204 of Title 15 is amended to read:

19       § 8204. Limitation on liability of partners.

20       (a) General rule.--Except as provided in subsection (b), a  
21 partner in a [registered] limited liability partnership or  
22 limited liability limited partnership shall not be  
23 [individually] liable directly or indirectly, whether by way of  
24 indemnification, contribution or otherwise, [for debts and  
25 obligations] under an order of court or in any other manner for  
26 any debts, obligations or other liabilities of, or chargeable  
27 to, the partnership, whether sounding in contract or tort or  
28 otherwise, that arise [from any negligent or wrongful acts or  
29 misconduct committed by another partner or other representative  
30 of the partnership] while the registration of the partnership

1 under this subchapter is in effect.

2 (b) Exceptions.--

3 (2) Subsection (a) shall not affect the liability of a  
4 partner:

5 (i) Individually for any negligent or wrongful acts  
6 or misconduct committed by [him or by any person under  
7 his direct supervision and control] the partner.

8 (ii) For any debts [or], obligations or other  
9 liabilities of the partnership:

10 [(A) arising from any cause other than those  
11 specified in subsection (a); or]

12 (B) as to which the partner has agreed in  
13 [writing] record form to be liable[.]; or

14 (C) that:

15 (I) arose before [the Legislative Reference  
16 Bureau shall insert here the effective date of  
17 this clause]; and

18 (II) did not arise from any negligent or  
19 wrongful acts or misconduct committed by a  
20 partner or other representative of the  
21 partnership.

22 (iii) To the extent expressly undertaken in the  
23 partnership agreement or the certificate of limited  
24 partnership.

25 (3) Subsection (a) shall not affect in any way:

26 (i) the liability of the partnership itself for all  
27 its debts [and obligations], obligations and other  
28 liabilities;

29 (ii) the availability of the entire assets of the  
30 partnership to satisfy its debts [and obligations],

1           obligations and other liabilities; or

2           (iii) any obligation undertaken by a partner in  
3           [writing] record form to individually indemnify another  
4           partner of the partnership or to individually contribute  
5           toward a liability of another partner.

6           (c) Continuation of limited liability.--Neither the  
7           termination of the registration of a partnership under this  
8           subchapter nor the dissolution, winding up or termination of the  
9           partnership shall affect the limitation on the liability of a  
10          partner in the partnership under this section with respect to  
11          [negligent or wrongful acts or misconduct occurring] debts,  
12          obligations and other liabilities that arose while the  
13          registration under this subchapter was in effect.

14          (d) Proper parties.--A partner in a limited liability  
15          partnership or limited liability limited partnership is not a  
16          proper party to an action or proceeding by or against the  
17          partnership, the object of which is to recover damages or  
18          enforce debts, obligations or other liabilities for which the  
19          partner is not liable.

20          (e) Cross reference.--See section 103 (relating to  
21          subordination of title to regulatory laws).

22          Section 19. Section 8205 of Title 15 is repealed:

23          [§ 8205. Liability of withdrawing partner.

24          (a) General rule.--Except as provided in subsection (b), if  
25          the business of a registered limited liability partnership is  
26          continued without liquidation of the partnership affairs  
27          following the dissolution of the partnership as a result of the  
28          withdrawal for any reason of a partner, the withdrawing partner  
29          shall not be individually liable directly or indirectly, whether  
30          by way of indemnification, contribution or otherwise, for the

1 debts and obligations of either the dissolved partnership or any  
2 partnership continuing the business if a statement of withdrawal  
3 is filed as provided in this section.

4 (b) Exceptions.--Subsection (a) shall not affect the  
5 liability of a partner:

6 (1) Individually for any negligent or wrongful acts or  
7 misconduct committed by him or by any person under his direct  
8 supervision and control.

9 (2) For any debts or obligations of the partnership as  
10 to which the withdrawing partner has agreed in writing to be  
11 liable.

12 (3) To the partnership for damages if the partnership  
13 agreement prohibits the withdrawal of the partner or the  
14 withdrawal otherwise violates the partnership agreement.

15 (4) Under section 8334 (relating to partner accountable  
16 as fiduciary).

17 (5) To the extent a debt or obligation of the  
18 partnership has been expressly undertaken by the partner in  
19 the partnership agreement or the certificate of limited  
20 partnership.

21 (6) If the partnership subsequently dissolves within one  
22 year after the date of withdrawal of the partner and the  
23 business of the partnership is not continued following such  
24 subsequent dissolution. This paragraph shall not be  
25 applicable in the case of a withdrawal caused by:

26 (i) the death of the partner; or

27 (ii) the retirement of the partner pursuant to a  
28 retirement policy of the dissolved partnership that has  
29 been in effect prior to the retirement of the partner for  
30 the shorter of one year or the period that the

1 partnership has been in existence.

2 (7) For any obligation undertaken by a partner in  
3 writing to individually indemnify another partner of the  
4 partnership or to individually contribute toward a liability  
5 of another partner.

6 (c) Statement of withdrawal.--A statement of withdrawal  
7 shall be executed by the withdrawing partner or his personal  
8 representative and shall set forth:

9 (1) The name of the registered limited liability  
10 partnership.

11 (2) The name of the withdrawing partner.

12 (d) Filing and effectiveness.--The statement of withdrawal  
13 shall be filed in the Department of State and shall be effective  
14 upon filing. The withdrawing partner shall send a copy of the  
15 filed statement of withdrawal to the registered limited  
16 liability partnership.

17 (e) Permissive filing.--Filing under this section is  
18 permissive, and failure to make a filing under this section by a  
19 partner entitled to do so shall not affect the right of that  
20 partner to the limitation on liability provided by section 8204  
21 (relating to limitation on liability of partners).

22 (f) Constructive notice.--Filing under this section shall  
23 constitute constructive notice that the partner has withdrawn  
24 from the partnership and is entitled to the protection from  
25 liability provided by this section.

26 (g) Variation of section.--A written provision of the  
27 partnership agreement may restrict or condition the application  
28 of this section to some or all of the partners of the  
29 partnership.

30 (h) Application of section.--A partner in a foreign

1 registered limited liability partnership, regardless of whether  
2 or not it has registered to do business in this Commonwealth  
3 under section 8211 (relating to foreign registered limited  
4 liability partnerships), shall not be entitled to make a filing  
5 under this section with regard to that partnership.

6 (i) Cross references.--See sections 134 (relating to  
7 docketing statement) and 135 (relating to requirements to be met  
8 by filed documents).]

9 Section 20. Section 8207 of Title 15 is amended to read:

10 § 8207. Extraterritorial application of subchapter.

11 [(a) Legislative intent.--It is the intent of the General  
12 Assembly in enacting this subchapter that the legal existence of  
13 registered limited liability partnerships organized in this  
14 Commonwealth be recognized outside the boundaries of this  
15 Commonwealth and that, subject to any reasonable requirement of  
16 registration, a domestic registered limited liability  
17 partnership transacting business outside this Commonwealth be  
18 granted protection of full faith and credit under the  
19 Constitution of the United States.]

20 (b) Basis for determining liability of partners.--The  
21 liability of partners in a [registered] domestic limited  
22 liability partnership or domestic limited liability limited  
23 partnership shall at all times be determined under Chapters [83]  
24 84 (relating to general partnerships) and [85] 86 (relating to  
25 limited partnerships) as modified by the provisions of this  
26 subchapter.

27 (c) Conflict of laws.--The personal liability of a partner  
28 of a [registered] domestic limited liability partnership or  
29 domestic limited liability limited partnership to any person or  
30 in any action or proceeding for the debts, obligations or other

1 liabilities of the partnership or for the acts or omissions of  
2 other partners or representatives of the partnership shall be  
3 governed solely and exclusively by the laws of this  
4 Commonwealth. Whenever a conflict arises between the laws of  
5 this Commonwealth and the laws of any other state with regard to  
6 the liability of partners of a [registered] domestic limited  
7 liability partnership [registered under this subchapter] or  
8 domestic limited liability limited partnership for the debts,  
9 obligations and other liabilities of the partnership or for the  
10 acts or omissions of the other partners or representatives of  
11 the partnership, the laws of this Commonwealth shall govern in  
12 determining such liability.

13 Section 21. Subchapter B of Chapter 82 of Title 15 is  
14 repealed:

15 [SUBCHAPTER B  
16 FOREIGN REGISTERED  
17 LIMITED LIABILITY PARTNERSHIPS

18 § 8211. Foreign registered limited liability partnerships.

19 (a) Governing law.--Subject to the Constitution of  
20 Pennsylvania:

21 (1) The laws of the jurisdiction under which a foreign  
22 registered limited liability partnership is organized govern  
23 its organization and internal affairs and the liability of  
24 its partners except as provided in subsection (c).

25 (2) A foreign registered limited liability partnership  
26 may not be denied registration by reason of any difference  
27 between those laws and the laws of this Commonwealth.

28 (c) Exception.--The liability of the partners in a foreign  
29 registered limited liability partnership shall be governed by  
30 the laws of the jurisdiction under which it is organized, except

1 that the partners shall not be entitled to greater protection  
2 from liability than is available to the partners in a domestic  
3 registered limited liability partnership.]

4 Section 22. Section 8221 of Title 15 is amended to read:  
5 § 8221. Annual registration.

6 (a) General rule.--Every domestic [registered] limited  
7 liability partnership or limited liability limited partnership  
8 in existence on December 31 of any year and every foreign  
9 [registered] limited liability partnership or limited liability  
10 limited partnership that is registered to do business in this  
11 Commonwealth on December 31 of any year shall [file in] deliver  
12 to the Department of State for filing with respect to that year,  
13 and on or before April 15 of the following year, a certificate  
14 of annual registration on a form provided by the department,  
15 signed by a general partner and accompanied by the annual  
16 registration fee prescribed by subsection (b). The department  
17 shall not charge a fee other than the annual registration fee  
18 for filing the certificate of annual registration.

19 (b) Annual registration fee.--

20 (1) The annual registration fee to be paid when filing a  
21 certificate of annual registration shall be equal to a base  
22 fee of \$200 times the number of persons who were general  
23 partners of the partnership on December 31 of the year with  
24 respect to which the certificate of annual registration is  
25 being filed and who:

26 (i) in the case of a natural person, had his  
27 principal residence on that date in this Commonwealth; or

28 (ii) in the case of any other person, was  
29 incorporated or otherwise organized or existing on that  
30 date under the laws of this Commonwealth.

1           (2) The base fee of \$200 shall be increased on December  
2           31, 1997, and December 31 of every third year thereafter by  
3           the percentage increase in the Consumer Price Index for Urban  
4           Workers during the most recent three calendar years for which  
5           that index is available on the date of adjustment. Each  
6           adjustment under this paragraph shall be rounded up to the  
7           nearest \$10.

8           (c) Notice of annual registration.--Not later than February  
9           1 of each year, the department shall give notice to every  
10          partnership required to file a certificate of annual  
11          registration with respect to the preceding year of the  
12          requirement to file the certificate. The notice shall state the  
13          amount of the base fee payable under subsection (b)(1), as  
14          adjusted pursuant to subsection (b)(2), if applicable, and shall  
15          be accompanied by the form of certificate of annual registration  
16          to be filed. Failure by the department to give notice to any  
17          party, or failure by any party to receive notice, of the annual  
18          registration requirement shall not relieve the party of the  
19          obligation to file the certificate of annual registration.

20          (d) Credit to Corporation Bureau Restricted Account.--The  
21          annual registration fee shall not be deemed to be an amount  
22          received by the department under Subchapter C of Chapter 1 for  
23          purposes of section 155 (relating to disposition of funds),  
24          except that \$25 of the fee shall be credited to the Corporation  
25          Bureau Restricted Account.

26          (e) Failure to file or pay annual fee.--

27                 (1) Failure to file the certificate of annual  
28                 registration required by this section for five consecutive  
29                 years shall result in the automatic termination of:

30                         (i) the status of the [registered] limited liability

1 partnership [as such.] or limited liability limited  
2 partnership as such, if it is a domestic partnership; or  
3 (ii) the registration of the limited liability  
4 partnership or limited liability limited partnership, if  
5 it is a foreign partnership.

6 (1.1) [In addition, any] Any annual registration fee  
7 that is not paid when due shall be a lien in the manner  
8 provided in this subsection from the time the annual  
9 registration fee is due and payable. If a certificate of  
10 annual registration is not filed within 30 days after the  
11 date on which it is due, the department shall assess a  
12 penalty of \$500 against the partnership, which shall also be  
13 a lien in the manner provided in this subsection. The  
14 imposition of that penalty shall not be construed to relieve  
15 the partnership from liability for any other penalty or  
16 interest provided for under other applicable law.

17 (2) If the annual registration fee paid by a [registered  
18 limited liability] partnership is subsequently determined to  
19 be less than should have been paid because it was based on an  
20 incorrect number of general partners or was otherwise  
21 incorrectly computed, that fact shall not affect the  
22 existence [or status of the registered limited liability  
23 partnership as such], status or foreign registration of the  
24 partnership, but the amount of the additional annual  
25 registration fee that should have been paid shall be a lien  
26 in the manner provided in this subsection from the time the  
27 incorrect payment is discovered by the department.

28 (3) The annual registration fee shall bear simple  
29 interest from the date that it becomes due and payable until  
30 paid. The interest rate shall be that provided for in section

1 806 of the act of April 9, 1929 (P.L.343, No.176), known as  
2 The Fiscal Code, with respect to unpaid taxes. The penalty  
3 provided for in paragraph (1) shall not bear interest. The  
4 payment of interest shall not relieve the [registered limited  
5 liability] partnership from liability for any other penalty  
6 or interest provided for under other applicable law.

7 (4) The lien created by this subsection shall attach to  
8 all of the property and proceeds thereof of the [registered  
9 limited liability] partnership in which a security interest  
10 can be perfected in whole or in part by filing in the  
11 department under 13 Pa.C.S. Div. 9 (relating to secured  
12 transactions; sales of accounts, contract rights and chattel  
13 paper), whether the property and proceeds are owned by the  
14 partnership at the time the annual registration fee or any  
15 penalty or interest becomes due and payable or whether the  
16 property and proceeds are acquired thereafter. Except as  
17 otherwise provided by statute, the lien created by this  
18 subsection shall have priority over all other liens, security  
19 interests or other charges, except liens for taxes or other  
20 charges due the Commonwealth. The lien created by this  
21 subsection shall be entered on the records of the department  
22 and indexed in the same manner as a financing statement filed  
23 under 13 Pa.C.S. Div. 9. At the time an annual registration  
24 fee, penalty or interest that has resulted in the creation of  
25 a lien under this subsection is paid, the department shall  
26 terminate the lien with respect to that annual registration  
27 fee, penalty or interest without requiring a separate filing  
28 by the partnership for that purpose.

29 (5) If the annual registration fee paid by a [registered  
30 limited liability] partnership is subsequently determined to

1 be more than should have been paid for any reason, no refund  
2 of the additional fee shall be made.

3 (6) Termination of the status [of a registered limited  
4 liability partnership as such] or foreign registration of a  
5 partnership under this section, whether voluntarily or  
6 involuntarily, shall not release it from the obligation to  
7 pay any accrued fees, penalties and interest and shall not  
8 release the lien created by this subsection.

9 (f) Exception for bankrupt partnerships.--A partnership that  
10 would otherwise be required to pay the annual registration fee  
11 set forth in subsection (b) shall not be required to pay that  
12 fee with respect to any year during any part of which the  
13 partnership is a [bankrupt as defined in section 8903 (relating  
14 to definitions and index of definitions)] debtor in bankruptcy.  
15 The partnership shall, instead, indicate on its certificate of  
16 annual registration for that year that it is exempt from payment  
17 of the annual registration fee pursuant to this subsection. If  
18 the partnership fails to file timely a certificate of annual  
19 registration, a lien shall be entered on the records of the  
20 department pursuant to subsection (e) which shall not be removed  
21 until the partnership files a certificate of annual registration  
22 indicating its entitlement to an exemption from payment of the  
23 annual registration fee as provided in this subsection. See  
24 section 8201(e) (relating to scope).

25 Section 23. Chapter 82 of Title 15 is amended by adding  
26 subchapters to read:

27 SUBCHAPTER D

28 DISTRIBUTIONS

29 Sec.

30 8231. Limitations on distributions by limited liability

1 partnership.

2 8232. Liability for improper distributions by limited liability  
3 partnership.

4 § 8231. Limitations on distributions by limited liability  
5 partnership.

6 (a) General rule.--A domestic limited liability partnership  
7 may not make a distribution, including a distribution under  
8 section 8486 (relating to disposition of assets in winding up  
9 and required contributions), if after the distribution:

10 (1) the partnership would not be able to pay its debts  
11 as they become due in the ordinary course of the  
12 partnership's business; or

13 (2) the partnership's total assets would be less than  
14 the sum of its total liabilities plus the amount that would  
15 be needed, if the partnership were to be dissolved and wound  
16 up at the time of the distribution, to satisfy the  
17 preferential rights upon dissolution and winding up of  
18 partners and transferees whose preferential rights are  
19 superior to the rights of persons receiving the distribution.

20 (b) Valuation.--A domestic limited liability partnership may  
21 base a determination that a distribution is not prohibited under  
22 subsection (a) (2) on:

23 (1) the book values of the assets and liabilities of the  
24 partnership, as reflected on its books and records;

25 (2) a valuation that takes into consideration unrealized  
26 appreciation and depreciation or other changes in value of  
27 the assets and liabilities of the partnership;

28 (3) the current value of the assets and liabilities of  
29 the partnership, either valued separately or valued in  
30 segments or as an entirety as a going concern; or

1           (4) any other method that is reasonable in the  
2           circumstances.

3           (c) Excluded liabilities.--In determining whether a  
4           distribution is prohibited under subsection (a)(2), the  
5           partnership need not consider obligations and liabilities unless  
6           they are required to be reflected on a balance sheet, not  
7           including the notes to the balance sheet, prepared on the basis  
8           of generally accepted accounting principles, or other such  
9           accounting practices and principles as are used generally by the  
10           partnership in the maintenance of its books and records and as  
11           are reasonable in the circumstances.

12           (d) Measuring date of distribution.--Except as provided in  
13           subsection (e), the effect of a distribution under subsection  
14           (a) is measured:

15           (1) as of the date specified by the partnership when it  
16           authorizes the distribution if the distribution occurs within  
17           125 days of the earlier of the date so specified or the date  
18           of authorization; or

19           (2) as of the date of distribution in all other cases.

20           (e) Date of redemption.--In the case of a distribution as  
21           described in paragraph (1) of the definition of "distribution"  
22           in section 8202 (relating to definitions), the distribution is  
23           deemed to occur as of the earlier of the date money or other  
24           property is transferred or debt is incurred by the partnership,  
25           or the date the person entitled to the distribution ceases to  
26           own the interest or right being acquired by the partnership in  
27           return for the distribution.

28           (f) Status of distribution debt.--The indebtedness of a  
29           domestic limited liability partnership to a partner or  
30           transferee incurred by reason of a distribution made in

1 accordance with this section shall be at least on a parity with  
2 the partnership's indebtedness to its general, unsecured  
3 creditors, except to the extent subordinated by agreement.

4 (g) Certain subordinated debt.--The indebtedness of a  
5 domestic limited liability partnership, including indebtedness  
6 issued as a distribution, is not a liability for purposes of  
7 subsection (a) if the terms of the indebtedness provide that  
8 payment of principal and interest is made only if and to the  
9 extent that a payment of a distribution could then be made under  
10 this section. If the indebtedness is issued as a distribution,  
11 each payment of principal or interest is treated as a  
12 distribution, the effect of which is measured on the date the  
13 payment is made.

14 (h) Distributions in winding up.--In measuring the effect of  
15 a distribution under section 8486, the liabilities of a  
16 dissolved domestic limited liability partnership do not include  
17 any claim that has been barred under section 8241 (relating to  
18 known claims against dissolved limited liability partnership) or  
19 8242 (relating to other claims against dissolved limited  
20 liability partnership) or for which security has been provided  
21 under section 8243 (relating to court proceedings).

22 (i) Cross references.--See sections 8415(d)(1) (relating to  
23 contents of partnership agreement) and 8447 (relating to  
24 standards of conduct for partners).

25 § 8232. Liability for improper distributions by limited  
26 liability partnership.

27 (a) General rule.--If a partner of a limited liability  
28 partnership consents to a distribution made in violation of  
29 section 8231 (relating to limitations on distributions by  
30 limited liability partnership) and in consenting to the

1 distribution fails to comply with section 8447 (relating to  
2 standards of conduct for partners), the partner is personally  
3 liable to the partnership for the amount of the distribution  
4 which exceeds the amount that could have been distributed  
5 without the violation of section 8231.

6 (b) Recipients.--A person that receives a distribution  
7 knowing that the distribution violated section 8231 is  
8 personally liable to the limited liability partnership, but only  
9 to the extent that the distribution received by the person  
10 exceeded the amount that could have been properly paid under  
11 section 8231.

12 (c) Contribution.--A person against which an action is  
13 commenced because the person is liable under subsection (a) may:

14 (1) join any other person that is liable under  
15 subsection (a) and seek to enforce a right of contribution  
16 from the person; and

17 (2) join any person that received a distribution in  
18 violation of subsection (b) and seek to enforce a right of  
19 contribution from the person in the amount the person  
20 received in violation of subsection (b).

21 (d) Statute of repose.--An action under this section is  
22 barred unless commenced within two years after the distribution.

23 SUBCHAPTER E

24 DISSOLUTION

25 Sec.

26 8241. Known claims against dissolved limited liability  
27 partnership.

28 8242. Other claims against dissolved limited liability  
29 partnership.

30 8243. Court proceedings.

1 8244. Liability of partner when claim against partnership  
2 barred.

3 § 8241. Known claims against dissolved limited liability  
4 partnership.

5 (a) General rule.--Except as provided in subsection (d), a  
6 dissolved limited liability partnership may give notice of a  
7 known claim under subsection (b), which has the effect provided  
8 in subsection (c).

9 (b) Notice.--A dissolved limited liability partnership may  
10 notify in record form its known claimants of the dissolution.

11 The notice must:

12 (1) specify the information required to be included in a  
13 claim;

14 (2) state that a claim must be in writing and provide a  
15 mailing address to which the claim is to be sent;

16 (3) state the deadline for receipt of a claim, which may  
17 not be less than 120 days after the date the notice is  
18 received by the claimant;

19 (4) state that the claim will be barred if not received  
20 by the deadline; and

21 (5) unless the partnership has been throughout its  
22 existence a limited liability partnership, state that the  
23 barring of a claim against the partnership will also bar any  
24 corresponding claim against any partner or person dissociated  
25 as a partner which is based on section 8436 (relating to  
26 partner's liability).

27 (c) Claims barred.--A claim against a dissolved limited  
28 liability partnership is barred if the requirements of  
29 subsection (b) are met and:

30 (1) the claim is not received by the specified deadline;

1 or

2 (2) if the claim is timely received but rejected by the  
3 partnership:

4 (i) the partnership causes the claimant to receive a  
5 notice in record form stating that the claim is rejected  
6 and will be barred unless the claimant commences an  
7 action against the partnership to enforce the claim  
8 within 90 days after the claimant receives the notice;  
9 and

10 (ii) the claimant does not commence the required  
11 action within 90 days after the claimant receives the  
12 notice.

13 (d) Later arising claims.--This section shall not apply to a  
14 claim based on an event occurring after the date of dissolution  
15 or a liability that on that date is contingent.

16 § 8242. Other claims against dissolved limited liability  
17 partnership.

18 (a) Permissive notice.--A dissolved limited liability  
19 partnership may publish notice of its dissolution and request  
20 persons having claims against the partnership to present them in  
21 accordance with the notice.

22 (b) Notice procedure.--A notice under subsection (a) must:

23 (1) be officially published one time;

24 (2) describe the information required to be contained in  
25 a claim, state that the claim must be in writing and provide  
26 a mailing address to which the claim is to be sent;

27 (3) state that a claim against the partnership is barred  
28 unless an action to enforce the claim is commenced within two  
29 years after publication of the notice; and

30 (4) unless the partnership has been throughout its

1 existence a limited liability partnership, state that the  
2 barring of a claim against the partnership will also bar any  
3 corresponding claim against any partner or person dissociated  
4 as a partner which is based on section 8436 (relating to  
5 partner's liability).

6 (c) Claims barred.--If a dissolved limited liability  
7 partnership publishes a notice in accordance with subsection  
8 (b), the claim of each of the following claimants is barred  
9 unless the claimant commences an action to enforce the claim  
10 against the partnership within two years after the publication  
11 date of the notice:

12 (1) a claimant that did not receive notice in record  
13 form under section 8241 (relating to known claims against  
14 dissolved limited liability partnership);

15 (2) a claimant whose claim was timely sent to the  
16 partnership but not acted on; and

17 (3) a claimant whose claim is contingent at, or based on  
18 an event occurring after, the date of dissolution.

19 (d) Claims not barred.--A claim not barred under this  
20 section or section 8241 may be enforced:

21 (1) against a dissolved limited liability partnership,  
22 to the extent of its undistributed assets;

23 (2) except as provided in section 8243 (relating to  
24 court proceedings), if assets of the partnership have been  
25 distributed after dissolution, against a partner or  
26 transferee to the extent of that person's proportionate share  
27 of the claim or of the partnership's assets distributed to  
28 the partner or transferee after dissolution, whichever is  
29 less, except that a person's total liability for all claims  
30 under this paragraph may not exceed the total amount of

1 assets distributed to the person after dissolution; and

2 (3) against any person liable on the claim under  
3 sections 8436, 8473 (relating to liability of person  
4 dissociated as partner to other persons) and 8485 (relating  
5 to liability after dissolution).

6 § 8243. Court proceedings.

7 (a) Determination of security.--A dissolved limited  
8 liability partnership that has published a notice under section  
9 8242 (relating to other claims against dissolved limited  
10 liability partnership) may file an application with the court of  
11 common pleas embracing the county where the partnership's  
12 principal office is located or, if the principal office is not  
13 located in this Commonwealth, where its registered office is or  
14 was last located, for a determination of the amount and form of  
15 security to be provided for payment of claims that are  
16 reasonably expected to arise after the date of dissolution based  
17 on facts known to the partnership and:

18 (1) at the time of the application:

19 (i) are contingent; or

20 (ii) have not been made known to the partnership; or

21 (2) are based on an event occurring after the date of  
22 dissolution.

23 (b) When security not required.--Security is not required  
24 for any claim that is or is reasonably anticipated to be barred  
25 under section 8241 (relating to known claims against dissolved  
26 limited liability partnership).

27 (c) Notice.--Within 10 days after the filing of an  
28 application under subsection (a), the dissolved limited  
29 liability partnership shall give notice of the proceeding to  
30 each claimant holding a contingent claim known to the

1 partnership.

2 (d) Guardian ad litem.--In any proceeding under this  
3 section, the court may appoint a guardian ad litem to represent  
4 all claimants whose identities are unknown. The reasonable fees  
5 and expenses of the guardian, including all reasonable expert  
6 witness fees, must be paid by the dissolved limited liability  
7 partnership.

8 (e) Effect on contingent claims.--A dissolved limited  
9 liability partnership that provides security in the amount and  
10 form ordered by the court under subsection (a) satisfies the  
11 partnership's obligations with respect to claims that are  
12 contingent, have not been made known to the partnership or are  
13 based on an event occurring after the date of dissolution. The  
14 claims may not be enforced against a partner or transferee on  
15 account of assets received in liquidation.

16 § 8244. Liability of partner when claim against partnership  
17 barred.

18 If a claim against a dissolved limited liability partnership  
19 is barred under this subchapter, any corresponding claim under  
20 sections 8436 (relating to partner's liability), 8473 (relating  
21 to liability of person dissociated as partner to other person)  
22 and 8485 (relating to liability after dissolution) is also  
23 barred.

24 Section 24. Repeals are as follows:

25 (1) The General Assembly finds and declares as follows:

26 (i) Over the last 25 years, there have been  
27 significant changes in the business model for  
28 partnerships; and statutory law must be updated to deal  
29 with the new business model.

30 (ii) Statutory law on general partnerships has not



1 8415. Contents of partnership agreement.

2 8416. Application of partnership agreement.

3 8417. Amendment and effect of partnership agreement.

4 8418. Signing of filed documents.

5 8419. Liability of general partner or other person for false or  
6 missing information in filed document.

7 § 8411. Short title and application of chapter.

8 (a) Short title.--This chapter shall be known and may be  
9 cited as the Pennsylvania Uniform Partnership Act of 2016.

10 (b) Initial application.--Before April 1, 2017, this chapter  
11 governs only:

12 (1) a partnership formed on or after [the Legislative  
13 Reference Bureau shall insert here the effective date of this  
14 chapter]; and

15 (2) except as provided in subsection (d), a partnership  
16 formed before [the Legislative Reference Bureau shall insert  
17 here the effective date of this chapter] which elects, in the  
18 manner provided in its partnership agreement or by law for  
19 amending the partnership agreement, to be subject to this  
20 chapter.

21 (c) Full effective date.--Except as provided under  
22 subsection (d), on and after April 1, 2017, this chapter governs  
23 all partnerships.

24 (d) Liabilities to third parties.--With respect to a  
25 partnership that elects under subsection (b)(2) to be subject to  
26 this chapter, after the election takes effect the provisions of  
27 this chapter relating to the liability of the partnership's  
28 partners to third parties apply:

29 (1) before April 1, 2017, to:

30 (i) a third party that had not done business with

1 the partnership in the year before the election took  
2 effect; and

3 (ii) a third party that had done business with the  
4 partnership in the year before the election took effect  
5 only if the third party knows or has been notified of the  
6 election; and

7 (2) on and after April 1, 2017, to all third parties,  
8 except that those provisions remain inapplicable to any  
9 obligation incurred while those provisions were inapplicable  
10 under paragraph (1)(ii).

11 (e) Cross reference.--See section 8415(c)(5) (relating to  
12 contents of partnership agreement).

13 § 8412. Definitions.

14 (a) General definitions.--The following words and phrases  
15 when used in this chapter shall have the meanings given to them  
16 in this subsection unless the context clearly indicates  
17 otherwise:

18 "Business." Includes every trade, occupation and profession.

19 "Contribution." Property or a benefit described in section  
20 8443 (relating to form of contribution) which is provided by a  
21 person to a partnership to become a partner or in the person's  
22 capacity as a partner.

23 "Distribution." A transfer of money or other property from a  
24 partnership to a person on account of a transferable interest or  
25 in a person's capacity as a partner. The term:

26 (1) includes:

27 (i) a redemption or other purchase by a partnership  
28 of a transferable interest; and

29 (ii) a transfer to a partner in return for the  
30 partner's relinquishment of any right to participate as a

1 partner in the management or conduct of the partnership's  
2 business or have access to records or other information  
3 concerning the partnership's business; and

4 (2) does not include:

5 (i) amounts constituting reasonable compensation for  
6 present or past service or payments made in the ordinary  
7 course of business under a bona fide retirement plan or  
8 other bona fide benefits program;

9 (ii) the making of, or payment or performance on, a  
10 guaranty or similar arrangement by a partnership for the  
11 benefit of any or all of its partners;

12 (iii) a direct or indirect allocation or transfer  
13 effected under Chapter 3 (relating to entity  
14 transactions) with the approval of the partners; or

15 (iv) a direct or indirect transfer of:

16 (A) a governance or transferable interest; or

17 (B) options, rights or warrants to acquire a  
18 governance or transferable interest.

19 "Partner." A person that:

20 (1) has become a partner in a partnership under section  
21 8442 (relating to becoming partner) or was a partner in a  
22 partnership when the partnership became subject to this  
23 chapter under section 8411 (relating to short title and  
24 application of chapter); and

25 (2) has not dissociated as a partner under section 8461  
26 (relating to events causing dissociation).

27 "Partnership." An association of two or more persons to  
28 carry on as co-owners a business for profit formed under this  
29 chapter or that becomes subject to this chapter under Chapter 3  
30 (relating to entity transactions) or section 8411. The term

1 includes a limited liability partnership or an electing  
2 partnership that is not also a limited partnership.

3 "Partnership agreement." The agreement, whether or not  
4 referred to as a partnership agreement and whether oral,  
5 implied, in record form or in any combination thereof, of all  
6 the partners of a partnership concerning the matters described  
7 in section 8415(a) (relating to contents of partnership  
8 agreement). The term includes the agreement as amended or  
9 restated.

10 "Partnership at will." A partnership in which the partners  
11 have not agreed to remain partners until the expiration of a  
12 definite term or the completion of a particular undertaking.

13 "Transferable interest." The right, as initially owned by a  
14 person in the person's capacity as a partner, to receive  
15 distributions from a partnership, whether or not the person  
16 remains a partner or continues to own any part of the right. The  
17 term applies to any fraction of the interest, by whomever owned.

18 "Transferee." A person to which all or part of a  
19 transferable interest has been transferred, whether or not the  
20 transferor is a partner.

21 (b) Index of definitions.--The following is a nonexclusive  
22 list of definitions in section 102 (relating to definitions)  
23 that apply to this chapter:

24 "Act" or "action."

25 "Court."

26 "Debtor in bankruptcy."

27 "Department."

28 "Jurisdiction."

29 "Jurisdiction of formation."

30 "Obligation."

1 "Principal office."

2 "Professional services."

3 "Property."

4 "Record form."

5 "Sign."

6 "Transfer."

7 § 8413. Knowledge and notice.

8 (a) Knowledge.--A person knows a fact if the person:

9 (1) has actual knowledge of it; or

10 (2) is deemed to know it under subsection (d)(1) or law  
11 other than this chapter.

12 (b) Notice.--A person has notice of a fact if the person:

13 (1) has reason to know the fact from all the facts known  
14 to the person at the time in question; or

15 (2) is deemed to have notice of the fact under  
16 subsection (d)(2).

17 (c) Notification.--Except as provided under section 113(b)  
18 (relating to delivery of document), a person notifies another  
19 person of a fact by taking steps reasonably required to inform  
20 the other person in ordinary course, whether or not those steps  
21 cause the other person to know the fact.

22 (d) Constructive knowledge or notice.--A person not a  
23 partner is deemed:

24 (1) to know of a limitation on authority to transfer  
25 real property as provided in section 8433(g) (relating to  
26 certificate of partnership authority); and

27 (2) to have notice of:

28 (i) a person's dissociation as a partner 90 days  
29 after a certificate of dissociation under section 8474  
30 (relating to certificate of dissociation) becomes

1 effective;

2 (ii) the dissolution of the partnership 90 days  
3 after a certificate of dissolution under section 8482(b)  
4 (2)(i) (relating to winding up and filing of  
5 certificates) is effective;

6 (iii) the termination of the partnership 90 days  
7 after a certificate of termination under section 8482(b)  
8 (2)(vi) is effective; and

9 (iv) participation in a merger, interest exchange,  
10 conversion, division or domestication, 90 days after a  
11 statement of merger, interest exchange, conversion,  
12 division or domestication under Chapter 3 (relating to  
13 entity transactions) is effective.

14 (e) Effect of partner's knowledge or notice.--A partner's  
15 knowledge or notice of a fact relating to the partnership is  
16 effective immediately as knowledge of or notice to the  
17 partnership, except in the case of a fraud on the partnership  
18 committed by or with the consent of that partner.

19 § 8414. Governing law.

20 (a) General rule.--The internal affairs of a partnership and  
21 the liability of a partner as a partner for the debts,  
22 obligations or other liabilities of the partnership are governed  
23 by:

24 (1) in the case of a limited liability partnership, the  
25 laws of this Commonwealth; and

26 (2) in the case of a partnership that is not a limited  
27 liability partnership, the laws of:

28 (i) the jurisdiction chosen by a provision of the  
29 partnership agreement in record form; or

30 (ii) the jurisdiction in which the partnership has

1 its principal office if there is no choice of law under  
2 subparagraph (i).

3 (b) Enforceability of chosen law.--A choice of law under  
4 subsection (a) (2) (i) is enforceable even though:

5 (1) The chosen jurisdiction has no substantial  
6 relationship to the partners or the partnership and there is  
7 no other reasonable basis for the parties' choice.

8 (2) Application of the chosen law would be contrary to a  
9 fundamental policy of a jurisdiction that has a materially  
10 greater interest in the determination of the particular issue  
11 than does the jurisdiction whose law has been chosen.

12 (c) Cross reference.--See section 8415(c) (6) (relating to  
13 contents of partnership agreement).

14 § 8415. Contents of partnership agreement.

15 (a) Scope of partnership agreement.--Except as provided in  
16 subsections (c) and (d), the partnership agreement governs:

17 (1) relations among the partners as partners and between  
18 the partners and the partnership;

19 (2) the rights and duties under this title of a person  
20 in the capacity of a partner;

21 (3) the business of the partnership and the conduct of  
22 that business;

23 (4) the means and conditions for amending the  
24 partnership agreement; and

25 (5) the means and conditions for approving a transaction  
26 under Chapter 3 (relating to entity transactions).

27 (b) Title applies generally.--To the extent the partnership  
28 agreement does not provide for a matter described in subsection  
29 (a), this title governs the matter.

30 (c) Limitations.--A partnership agreement may not do any of

1 the following:

2 (1) Vary a provision of Chapter 1 (relating to general  
3 provisions) or Subchapter A of Chapter 2 (relating to names).

4 (2) Vary the right of a partner to approve a merger,  
5 interest exchange, conversion, division or domestication  
6 under section 333(a)(2) (relating to approval of merger),  
7 343(a)(2) (relating to approval of interest exchange), 353(a)  
8 (3) (relating to approval of conversion), 363(a)(2) (relating  
9 to approval of division) or 373(a)(2) (relating to approval  
10 of domestication).

11 (3) Vary the required contents of a plan of merger under  
12 section 332(a) (relating to plan of merger), plan of interest  
13 exchange under section 342(a) (relating to plan of interest  
14 exchange), plan of conversion under section 352(a) (relating  
15 to plan of conversion), plan of division under section 362(a)  
16 (relating to plan of division) or plan of domestication under  
17 section 372(a) (relating to plan of domestication).

18 (4) Vary a provision of Chapter 81 (relating to general  
19 provisions) or 82 (relating to limited liability partnerships  
20 and limited liability limited partnerships), except as  
21 provided in subsection (d).

22 (5) Vary the provisions of section 8411(b), (c) and (d)  
23 (relating to short title and application of chapter).

24 (6) Vary the law applicable under section 8414(a)(1)  
25 (relating to governing law).

26 (7) Vary any requirement, procedure or other provision  
27 of this title pertaining to:

28 (i) registered offices; or

29 (ii) the department, including provisions pertaining  
30 to documents authorized or required to be delivered to

1 the department for filing under this title.

2 (8) Vary the provisions of section 8437 (relating to  
3 actions by and against partnership and partners).

4 (9) Unreasonably restrict the duties and rights under  
5 section 8446 (relating to rights to information), except as  
6 provided in subsection (d).

7 (10) Eliminate the duty of loyalty provided for under  
8 section 8447(b)(1)(i) or (ii) or (2) (relating to standards  
9 of conduct for partners) or the duty of care, except as  
10 provided in subsection (d).

11 (11) Vary the contractual obligation of good faith and  
12 fair dealing under section 8447(d), except as provided under  
13 subsection (d).

14 (12) Unreasonably restrict the right of a person to  
15 maintain an action under section 8448(b) (relating to actions  
16 by partnership and partners).

17 (13) Provide indemnification or exoneration in violation  
18 of the limitations in sections 8441(m) (relating to partner's  
19 rights and duties) and 8447(i).

20 (14) Vary the power of a person to dissociate as a  
21 partner under section 8462(a) (relating to power to  
22 dissociate as partner and wrongful dissociation), except to  
23 require that the notice under section 8461(1) (relating to  
24 events causing dissociation) be in record form.

25 (15) Vary the causes of dissolution specified in section  
26 8481(a)(4) or (5) (relating to events causing dissolution).

27 (16) Vary the requirement to wind up the partnership's  
28 business as specified in section 8482(a), (b)(1) and (d)  
29 (relating to winding up and filing of certificates).

30 (17) Except as provided in section 8417(b) (relating to

1 amendment and effect of partnership agreement), restrict the  
2 rights under this title of a person other than a partner.

3 (d) Permitted terms.--Subject to subsection (c)(13), the  
4 following rules apply:

5 (1) The partnership agreement may:

6 (i) specify the method by which a specific act or  
7 transaction that would otherwise violate the duty of  
8 loyalty may be authorized or ratified by one or more  
9 disinterested and independent persons after full  
10 disclosure of all material facts;

11 (ii) alter the prohibition in section 8231(a)(2)  
12 (relating to limitations on distributions by limited  
13 liability partnership) so that the prohibition requires  
14 only that the partnership's total assets not be less than  
15 the sum of its total liabilities; and

16 (iii) impose reasonable restrictions on the  
17 availability and use of information obtained under  
18 section 8446 and may define appropriate remedies,  
19 including liquidated damages, for a breach of any  
20 reasonable restriction on use.

21 (2) To the extent the partnership agreement expressly  
22 relieves a partner of a responsibility that the partner would  
23 otherwise have under this title and imposes the  
24 responsibility on one or more other partners, the agreement  
25 also may eliminate or limit any fiduciary duty of the partner  
26 relieved of the responsibility which would have pertained to  
27 the responsibility.

28 (3) If not manifestly unreasonable, the partnership  
29 agreement may:

30 (i) alter the aspects of the duty of loyalty stated

1 in section 8447(b)(1)(i) or (ii) or (2);

2 (ii) prescribe the standards by which the  
3 performance of the contractual obligation of good faith  
4 and fair dealing under section 8447(d) is to be measured;

5 (iii) identify specific types or categories of  
6 activities that do not violate the duty of loyalty;

7 (iv) alter the duty of care; and

8 (v) alter or eliminate any other fiduciary duty.

9 (e) Determination of manifest unreasonableness.--The court  
10 shall decide as a matter of law whether a term of a partnership  
11 agreement is manifestly unreasonable under subsection (d)(3).

12 The court:

13 (1) shall make its determination as of the time the  
14 challenged term became part of the partnership agreement and  
15 by considering only circumstances existing at that time; and

16 (2) may invalidate the term only if, in light of the  
17 purposes and business of the partnership, it is readily  
18 apparent that:

19 (i) the objective of the term is unreasonable; or

20 (ii) the term is an unreasonable means to achieve  
21 the term's objective.

22 § 8416. Application of partnership agreement.

23 (a) Partnership bound.--A partnership is bound by and may  
24 enforce the partnership agreement, whether or not the  
25 partnership has itself manifested assent to the agreement.

26 (b) Deemed assent.--A person that becomes a partner is  
27 deemed to assent to the partnership agreement.

28 (c) Preformation agreement.--Two or more persons intending  
29 to become the initial partners of a partnership may make an  
30 agreement providing that upon the formation of the partnership

1 the agreement will become the partnership agreement.

2 (d) Cross reference.--See section 8422(a) (relating to  
3 formation of partnership).

4 § 8417. Amendment and effect of partnership agreement.

5 (a) Approval of amendments.--A partnership agreement may  
6 specify that its amendment requires the approval of a person  
7 that is not a party to the agreement or the satisfaction of a  
8 condition. An amendment is ineffective if its adoption does not  
9 include the required approval or satisfy the specified  
10 condition. See section 8441(j) (relating to partner's rights and  
11 duties).

12 (b) Obligations to nonpartners.--The obligations of a  
13 partnership and its partners to a person in the person's  
14 capacity as a transferee or person dissociated as a partner are  
15 governed by the partnership agreement. Except as provided in  
16 section 8445(d) (relating to sharing of and right to  
17 distribution before dissolution) or in a court order issued  
18 under section 8454(b) (2) (relating to charging order) to  
19 effectuate a charging order, an amendment to the partnership  
20 agreement made after a person becomes a transferee or is  
21 dissociated as a partner:

22 (1) is effective with regard to any debt, obligation or  
23 other liability of the partnership or its partners to the  
24 person in the person's capacity as a transferee or person  
25 dissociated as a partner; and

26 (2) is not effective to the extent the amendment:

27 (i) imposes a new debt, obligation or other  
28 liability on the transferee or person dissociated as a  
29 partner; or

30 (ii) prejudices the rights under section 8471

1 (relating to purchase of interest of person dissociated  
2 as partner) of a person that dissociated as a partner  
3 before the amendment was made.

4 (c) Provisions in filed documents.--If a document delivered  
5 by a partnership to the department for filing becomes effective  
6 and contains a provision that would be ineffective under section  
7 8415(c) or (d) (3) (relating to contents of partnership  
8 agreement) if contained in the partnership agreement, the  
9 provision is ineffective in the document.

10 (d) Conflicts with partnership agreement.--Subject to  
11 subsection (c), if a document delivered by a partnership to the  
12 department for filing becomes effective and conflicts with a  
13 provision of the partnership agreement:

14 (1) the agreement prevails as to partners, persons  
15 dissociated as partners and transferees; and

16 (2) the document prevails as to other persons to the  
17 extent they reasonably rely on the document.

18 (e) Prohibition of oral amendments.--If a provision of a  
19 partnership agreement in record form provides that the  
20 partnership agreement cannot be amended, modified or rescinded  
21 except in record form, an oral agreement, amendment,  
22 modification or rescission shall not be enforceable.

23 § 8418. Signing of filed documents.

24 (a) Required signatures.--Except as provided in this title,  
25 a document delivered to the department for filing under this  
26 title relating to a partnership must be signed as follows:

27 (1) Except as provided under paragraphs (2) and (3), a  
28 document signed on behalf of a partnership must be signed by  
29 a person authorized by the partnership.

30 (2) A document filed on behalf of a dissolved

1 partnership that has no partner must be signed by the person  
2 winding up the partnership's business under section 8482(c)  
3 (relating to winding up and filing of certificates) or a  
4 person appointed under section 8482(d) to wind up the  
5 business.

6 (3) A certificate of denial by a person under section  
7 8434 (relating to certificate of denial) must be signed by  
8 that person.

9 (4) Any other document delivered on behalf of a person  
10 to the department for filing must be signed by that person.

11 (b) Cross reference.--See section 142 (relating to effect of  
12 signing filings).

13 § 8419. Liability of general partner or other person for false  
14 or missing information in filed document.

15 (a) General rule.--If a document delivered to the department  
16 for filing under this title and filed by the department contains  
17 a materially false statement or fails to state a material fact  
18 required to be stated, a person that suffers loss by reasonable  
19 reliance on the statement or failure to state a material fact  
20 may recover damages for the loss from:

21 (1) a person that signed the document or caused another  
22 to sign it on the person's behalf and knew there was false or  
23 missing information in the document at the time it was  
24 signed; and

25 (2) subject to subsection (b), a partner if:

26 (i) the document was delivered for filing on behalf  
27 of the partnership; and

28 (ii) the partner knew or had notice there was false  
29 or missing information for a reasonably sufficient time  
30 before the document was relied upon so that, before the

1 reliance, the partner reasonably could have:

2 (A) filed a petition under section 144 (relating  
3 to signing and filing pursuant to judicial order); or

4 (B) delivered to the department for filing a  
5 statement of correction under section 138 (relating  
6 to statement of correction) or a statement of  
7 abandonment under section 141 (relating to  
8 abandonment of filing before effectiveness).

9 (b) Partner relieved of responsibility.--To the extent the  
10 partnership agreement expressly relieves a partner of  
11 responsibility for maintaining the accuracy of information  
12 contained in records delivered on behalf of the partnership to  
13 the department for filing under this title and imposes that  
14 responsibility on one or more other partners, the liability  
15 stated in subsection (a) (2) applies to those other partners and  
16 not to the partner that the partnership agreement relieves of  
17 the responsibility.

18 (c) Cross reference.--See section 143 (relating to liability  
19 for inaccurate information in filing).

20 SUBCHAPTER B

21 NATURE OF PARTNERSHIP

22 Sec.

23 8421. Partnership as entity.

24 8422. Formation of partnership.

25 8423. Partnership property.

26 8424. When property is partnership property.

27 § 8421. Partnership as entity.

28 (a) General rule.--A partnership is an entity distinct from  
29 its partners.

30 (b) Limited liability partnership.--A partnership is the

1 same entity regardless of whether the partnership has a  
2 statement of registration in effect under section 8201 (relating  
3 to scope).

4 § 8422. Formation of partnership.

5 (a) General rule.--Except as provided in subsection (b), the  
6 association of two or more persons to carry on as co-owners a  
7 business for profit forms a partnership, whether or not the  
8 persons intend to form a partnership.

9 (b) Excluded associations.--An association formed under a  
10 statute other than this chapter, a predecessor statute or a  
11 comparable statute of another jurisdiction is not a partnership  
12 under this chapter.

13 (c) Rules for determining formation of partnership.--In  
14 determining whether a partnership is formed, the following rules  
15 apply:

16 (1) Joint tenancy, tenancy in common, tenancy by the  
17 entireties, joint property, common property or part ownership  
18 does not by itself establish a partnership, even if the co-  
19 owners share profits made by the use of the property.

20 (2) The sharing of gross returns does not by itself  
21 establish a partnership, even if the persons sharing them  
22 have a joint or common right or interest in property from  
23 which the returns are derived.

24 (3) A person who receives a share of the profits of a  
25 business is presumed to be a partner in the business, unless  
26 the profits were received in payment:

27 (i) of a debt by installments or otherwise;

28 (ii) for services as an independent contractor or of  
29 wages or other compensation to an employee;

30 (iii) of rent;

1           (iv) of an annuity or other retirement or health  
2           benefit to a deceased or retired partner or a  
3           beneficiary, representative or designee of a deceased or  
4           retired partner;

5           (v) of interest or other charge on a loan, even if  
6           the amount of payment varies with the profits of the  
7           business, including a direct or indirect present or  
8           future ownership of the collateral, rights to income,  
9           proceeds or increase in value derived from the  
10           collateral; or

11           (vi) for the sale of the goodwill of a business or  
12           other property by installments or otherwise.

13       (d) Cross reference.--See section 8416(c) (relating to  
14       application of partnership agreement).

15       § 8423. Partnership property.

16       Property owned by a partnership is partnership property and  
17       is not owned by the partners individually.

18       § 8424. When property is partnership property.

19       (a) General rule.--Property is owned by a partnership and  
20       not by the partners individually if the property is acquired in  
21       the name of:

22           (1) the partnership by a transfer to:

23               (i) the partnership in its name; or

24               (ii) one or more partners in their capacity as  
25               partners in the partnership, if the name of the  
26               partnership is indicated in the instrument transferring  
27               title to the property; or

28           (2) one or more partners with an indication in the  
29           instrument transferring title to the property of the person's  
30           capacity as a partner or of the existence of a partnership

1 but without an indication of the name of the partnership.

2 (b) Property purchased with partnership assets.--Property is  
3 presumed to be partnership property if purchased with  
4 partnership assets, even if not acquired in the name of the  
5 partnership or of one or more partners with an indication in the  
6 instrument transferring title to the property of the person's  
7 capacity as a partner or of the existence of a partnership.

8 (c) Property acquired in name of partner.--Property acquired  
9 in the name of one or more of the partners is presumed to be  
10 separate property owned by the individual partner or partners,  
11 even if used for partnership purposes, if the property is  
12 acquired without:

13 (1) an indication in the instrument transferring title  
14 to the property of the person's capacity as a partner or of  
15 the existence of a partnership; and

16 (2) use of partnership assets.

17 SUBCHAPTER C

18 RELATIONS OF PARTNERS TO PERSONS

19 DEALING WITH PARTNERSHIP

20 Sec.

21 8431. Partner agent of partnership.

22 8432. Transfer of partnership property.

23 8433. Certificate of partnership authority.

24 8434. Certificate of denial.

25 8435. Partnership liable for partner's actionable conduct.

26 8436. Partner's liability.

27 8437. Actions by and against partnership and partners.

28 8438. Liability of purported partner.

29 § 8431. Partner agent of partnership.

30 Subject to the effect of a certificate of partnership

1 authority under section 8433 (relating to certificate of  
2 partnership authority), the following rules apply:

3 (1) Each partner is an agent of the partnership for the  
4 purpose of its business. An act of a partner, including the  
5 signing of an instrument in the partnership name, for  
6 apparently carrying on in the ordinary course the partnership  
7 business or business of the kind carried on by the  
8 partnership binds the partnership, unless the partner did not  
9 have authority to act for the partnership in the particular  
10 matter and the person with which the partner was dealing knew  
11 or had notice that the partner lacked authority.

12 (2) An act of a partner which is not apparently for  
13 carrying on in the ordinary course the partnership's business  
14 or business of the kind carried on by the partnership binds  
15 the partnership only if the partner had actual authority to  
16 take the action.

17 § 8432. Transfer of partnership property.

18 (a) General rule.--Partnership property may be transferred  
19 as follows:

20 (1) Subject to the effect of a certificate of  
21 partnership authority under section 8433 (relating to  
22 certificate of partnership authority), partnership property  
23 held in the name of the partnership may be transferred by an  
24 instrument of transfer signed by a partner in the partnership  
25 name.

26 (2) Partnership property held in the name of one or more  
27 partners with an indication in the instrument transferring  
28 the property to them of their capacity as partners or of the  
29 existence of a partnership, but without an indication of the  
30 name of the partnership, may be transferred by an instrument

1 of transfer signed by the persons in whose name the property  
2 is held.

3 (3) Partnership property held in the name of one or more  
4 persons other than the partnership, without an indication in  
5 the instrument transferring the property to them of their  
6 capacity as partners or of the existence of a partnership,  
7 may be transferred by an instrument of transfer signed by the  
8 persons in whose name the property is held.

9 (b) Recovery of property by partnership.--A partnership may  
10 recover partnership property from a transferee only if it proves  
11 that the signing of the instrument of initial transfer did not  
12 bind the partnership under section 8431 (relating to partner  
13 agent of partnership) and:

14 (1) as to a subsequent transferee who gave value for  
15 property transferred under subsection (a) (1) or (2), proves  
16 that the subsequent transferee knew or had notice that the  
17 person who signed the instrument of initial transfer lacked  
18 authority to bind the partnership; or

19 (2) as to a transferee who gave value for property  
20 transferred under subsection (a) (3), proves that the  
21 transferee knew or had notice that the property was  
22 partnership property and that the person who signed the  
23 instrument of initial transfer lacked authority to bind the  
24 partnership.

25 (c) Subsequent transferees.--A partnership may not recover  
26 partnership property from a subsequent transferee if the  
27 partnership would not have been entitled to recover the property  
28 under subsection (b) from any earlier transferee of the  
29 property.

30 (d) Sole partner.--If one person holds all the interests in

1 a partnership, all the partnership property vests in that  
2 person. The person may sign a document in the name of the  
3 partnership to evidence vesting of the property in that person  
4 and may file or record the document.

5 § 8433. Certificate of partnership authority.

6 (a) General rule.--A partnership may deliver to the  
7 department for filing a certificate of partnership authority.

8 The certificate:

9 (1) must include the name of the partnership and:

10 (i) if the partnership is not a registered foreign  
11 limited liability partnership, the street and mailing  
12 addresses of its principal office; or

13 (ii) if the partnership is a registered foreign  
14 limited liability partnership, subject to section 109  
15 (relating to name of commercial registered office  
16 provider in lieu of registered address), the address,  
17 including street and number, if any, of its registered  
18 office;

19 (2) with respect to any position that exists in or with  
20 respect to the partnership, may state the authority, or  
21 limitations on the authority, of all persons holding the  
22 position to:

23 (i) sign an instrument transferring real property  
24 held in the name of the partnership; or

25 (ii) enter into other transactions on behalf of, or  
26 otherwise act for or bind, the partnership; and

27 (3) may state the authority, or limitations on the  
28 authority, of a specific person to:

29 (i) sign an instrument transferring real property  
30 held in the name of the partnership; or

1           (ii) enter into other transactions on behalf of, or  
2           otherwise act for or bind, the partnership.

3           (b) Amendment or cancellation.--To amend or cancel a  
4           certificate of authority filed by the department, a partnership  
5           must deliver to the department for filing an amendment or  
6           cancellation stating:

7           (1) the name of the partnership;

8           (2) if the partnership is not a registered foreign  
9           limited liability partnership, the street and mailing  
10           addresses of the partnership's principal office;

11           (3) if the partnership is a registered foreign limited  
12           liability partnership, subject to section 109, the address,  
13           including street and number, if any, of its registered  
14           office;

15           (4) the date the certificate being affected became  
16           effective; and

17           (5) the contents of the amendment or a statement that  
18           the certificate is canceled.

19           (c) Effect of certificate.--A certificate of authority:

20           (1) affects only the power of a person to bind a  
21           partnership to persons that are not partners; and

22           (2) is not binding on the department for purposes of the  
23           administration of this title or any other provision of law.

24           (d) Effect of limitation on authority.--Subject to  
25           subsection (c) and section 8413(d)(1) (relating to knowledge and  
26           notice), and except as provided in subsections (f), (g) and (h),  
27           a limitation on the authority of a person or a position  
28           contained in an effective certificate of authority is not by  
29           itself evidence of any person's knowledge or notice of the  
30           limitation.

1 (e) Authority not relating to real property.--A grant of  
2 authority not pertaining to transfers of real property and  
3 contained in an effective certificate of authority is conclusive  
4 in favor of a person that gives value in reliance on the grant,  
5 unless when the person gives value:

6 (1) the person has knowledge to the contrary;

7 (2) the certificate has been canceled or restrictively  
8 amended under subsection (b); or

9 (3) a limitation on the grant is contained in another  
10 certificate of authority that became effective after the  
11 certificate containing the grant became effective.

12 (f) Authority relating to real property.--An effective  
13 certificate of authority that grants authority to transfer real  
14 property held in the name of the partnership, a certified copy  
15 of which certificate is recorded in the office of the recorder  
16 of deeds for the county in which the real property is located,  
17 is conclusive in favor of a person that gives value in reliance  
18 on the grant without knowledge to the contrary, except to the  
19 extent that when the person gives value:

20 (1) the certificate has been canceled or restrictively  
21 amended under subsection (b), and a certified copy of the  
22 cancellation or restrictive amendment has been recorded in  
23 the office of the recorder of deeds for the county in which  
24 the real property is located; or

25 (2) a limitation on the grant is contained in another  
26 certificate of authority that became effective after the  
27 certificate containing the grant became effective and a  
28 certified copy of the later-effective certificate is recorded  
29 in the office of the recorder of deeds for the county in  
30 which the real property is located.

1 (g) Constructive knowledge of limitation.--Subject to  
2 subsection (c), if a certified copy of an effective certificate  
3 containing a limitation on the authority to transfer real  
4 property held in the name of a partnership is recorded in the  
5 office of the recorder of deeds for the county in which real  
6 property is located, all persons are deemed to know of the  
7 limitation.

8 (h) Effect of certificate of dissolution.--Subject to  
9 subsection (i), an effective certificate of dissolution is a  
10 cancellation of any filed certificate of authority for the  
11 purposes of subsection (f) and is a limitation on authority for  
12 purposes of subsection (g).

13 (i) Post-dissolution certificate of authority.--After a  
14 certificate of dissolution becomes effective, a partnership may  
15 deliver to the department for filing and, if appropriate, may  
16 record a certificate of authority that is designated as a post-  
17 dissolution certificate of authority. The certificate operates  
18 as provided in subsections (f) and (g).

19 (j) Cancellation by operation of law.--Unless canceled  
20 earlier, an effective certificate of authority is canceled by  
21 operation of law five years after the date on which the  
22 certificate, or its most recent amendment, becomes effective.  
23 The cancellation is effective without recording under subsection  
24 (f) or (g).

25 (k) Effect of certificate of denial.--An effective  
26 certificate of denial under section 8434 (relating to  
27 certificate of denial):

28 (1) operates as a restrictive amendment under this  
29 section and a certified copy may be recorded as provided in  
30 subsection (f)(1) by the partnership or the person that

1 delivered the certificate of denial to the department for  
2 filing; and

3 (2) affects only the authority of a person to bind a  
4 partnership with respect to persons that are not partners.

5 (1) Foreign partnerships.--A foreign partnership, regardless  
6 of whether it is registered to do business in this Commonwealth,  
7 may deliver a certificate of authority to the department for  
8 filing and may record a copy as provided in this section in the  
9 same manner and with the same effect as if it were a domestic  
10 partnership.

11 (m) Cross references.--See:

12 Section 134 (relating to docketing statement).

13 Section 135 (relating to requirements to be met by filed  
14 documents).

15 Section 136(c) (relating to processing of documents by  
16 Department of State).

17 Section 8418 (relating to signing of filed documents).

18 Section 8482 (relating to winding up and filing of  
19 certificates).

20 § 8434. Certificate of denial.

21 (a) General rule.--A person named in a filed certificate of  
22 authority granting that person authority may deliver to the  
23 department for filing a certificate of denial that:

24 (1) provides the name of the partnership and:

25 (i) if the partnership is not a registered foreign  
26 limited liability partnership, the street and mailing  
27 addresses of its principal office; or

28 (ii) if the partnership is a registered foreign  
29 limited liability partnership, subject to section 109  
30 (relating to name of commercial registered office

1 provider in lieu of registered address), the address,  
2 including street and number, if any, of its registered  
3 office;

4 (2) states the caption of the certificate of authority  
5 to which the certificate of denial pertains; and

6 (3) denies the grant of authority.

7 (b) Cross references.--See:

8 Section 134 (relating to docketing statement).

9 Section 135 (relating to requirements to be met by filed  
10 documents).

11 Section 136(c) (relating to processing of documents by  
12 Department of State).

13 Section 8418 (relating to signing of filed documents).

14 § 8435. Partnership liable for partner's actionable conduct.

15 (a) General rule.--A partnership is liable for loss or  
16 injury caused to a person, or for a penalty incurred, as a  
17 result of a wrongful act or other actionable conduct, of a  
18 partner acting in the ordinary course of business of the  
19 partnership or with the actual or apparent authority of the  
20 partnership.

21 (b) Misapplication of property.--If, in the course of the  
22 partnership's business or while acting with actual or apparent  
23 authority of the partnership, a partner receives or causes the  
24 partnership to receive money or property of a person not a  
25 partner and the money or property is misapplied by a partner,  
26 the partnership is liable for the loss.

27 § 8436. Partner's liability.

28 (a) General rule.--Except as provided in subsection (b) or  
29 section 8204 (relating to limitation on liability of partners),  
30 all partners are jointly and severally liable for all debts,

1 obligations and other liabilities of the partnership unless  
2 otherwise agreed by the claimant or provided by law.

3 (b) Preexisting liabilities.--A person that becomes a  
4 partner is not personally liable for a debt, obligation or other  
5 liability of the partnership incurred before the person became a  
6 partner.

7 § 8437. Actions by and against partnership and partners.

8 (a) Partnership as party.--A partnership may sue and be sued  
9 in the name of the partnership.

10 (b) Partner as party.--To the extent not inconsistent with  
11 section 8436 (relating to partner's liability), a partner may be  
12 joined in an action against the partnership or named in a  
13 separate action.

14 (c) Judgment against partnership only.--A judgment against a  
15 partnership:

16 (1) is not by itself a judgment against a partner; and

17 (2) except as provided in subsection (d), may not be  
18 satisfied from a partner's assets.

19 (d) Judgment against partnership and partner.--If there is a  
20 judgment against a partnership and a partner on the same claim,  
21 the judgment creditor may levy execution against the assets of  
22 the partner if both of the following apply:

23 (1) The partner is personally liable for the claim under  
24 section 8436.

25 (2) One of the following subparagraphs applies:

26 (i) A writ of execution on the judgment against the  
27 partnership has been returned unsatisfied in whole or in  
28 part.

29 (ii) The partnership is a debtor in bankruptcy.

30 (iii) The partner has agreed that the creditor need

1 not exhaust partnership assets.

2 (iv) A court grants permission to levy execution  
3 based on a finding that:

4 (A) partnership assets subject to execution are  
5 clearly insufficient to satisfy the judgment;

6 (B) exhaustion of partnership assets is  
7 excessively burdensome; or

8 (C) the grant of permission is an appropriate  
9 exercise of the court's equitable powers.

10 (v) Liability is imposed on the partner by law or  
11 contract independent of the existence of the partnership.

12 (e) Liability for representations.--This section also  
13 applies to any debt, liability or other obligation of a  
14 partnership which results from a representation by a partner or  
15 purported partner under section 8438 (relating to liability of  
16 purported partner).

17 (f) Cross reference.--See section 8415(c)(8) (relating to  
18 contents of partnership agreement).

19 § 8438. Liability of purported partner.

20 (a) General rule.--If a person, by words or conduct,  
21 purports to be a partner, or consents to being represented by  
22 another as a partner, in a partnership or with one or more  
23 persons not partners, the purported partner is liable to a  
24 person to whom the representation is made, if that person,  
25 relying on the representation, enters into a transaction with  
26 the actual or purported partnership. If the representation,  
27 either by the purported partner or by a person with the  
28 purported partner's consent, is made in a public manner, the  
29 purported partner is liable to a person who relies upon the  
30 purported partnership even if the purported partner is not aware

1 of being held out as a partner to the claimant. If partnership  
2 liability results, the purported partner is liable with respect  
3 to that liability as if the purported partner were a partner. If  
4 no partnership liability results, the purported partner is  
5 jointly and severally liable, with any other person consenting  
6 to the representation, with respect to that liability.

7 (b) Authority of purported partner.--If a person is  
8 represented in the manner described in subsection (a) to be a  
9 partner in an existing partnership, or with one or more persons  
10 not partners, the purported partner is an agent of persons  
11 consenting to the representation to bind them to the same extent  
12 and in the same manner as if the purported partner were a  
13 partner with respect to persons who enter into transactions in  
14 reliance upon the representation. If all the partners of the  
15 existing partnership consent to the representation, a  
16 partnership act or obligation results. If fewer than all the  
17 partners of the existing partnership consent to the  
18 representation, the person acting and the partners consenting to  
19 the representation are jointly and severally liable.

20 (c) Effect of certificate of partnership authority.--A  
21 person is not liable as a partner merely because the person is  
22 named by another as a partner in a certificate of partnership  
23 authority.

24 (d) No effect of failure to disclaim authority.--A person  
25 does not continue to be liable as a partner merely because of a  
26 failure to file a certificate of dissociation or to amend a  
27 certificate of partnership authority to indicate the person's  
28 dissociation as a partner.

29 (e) Nonliability of persons not partners.--Except as  
30 provided in subsections (a) and (b), persons who are not

1 partners as to each other are not liable as partners to other  
2 persons.

3 SUBCHAPTER D

4 RELATIONS OF PARTNERS TO EACH OTHER

5 AND TO PARTNERSHIP

6 Sec.

7 8441. Partner's rights and duties.

8 8442. Becoming a partner.

9 8443. Form of contribution.

10 8444. Liability for contribution.

11 8445. Sharing of and right to distribution before dissolution.

12 8446. Rights to information.

13 8447. Standards of conduct for partners.

14 8448. Actions by partnership and partners.

15 8449. Continuation of partnership beyond definite term or  
16 particular undertaking.

17 § 8441. Partner's rights and duties.

18 (a) Distributions and losses.--Each partner is entitled to  
19 share in distributions as provided in section 8445 (relating to  
20 sharing of and right to distribution before dissolution).

21 (b) Reimbursement.--A partnership shall reimburse a partner  
22 for:

23 (1) Any payment made by the partner in the course of  
24 the partner's activities on behalf of the partnership, if the  
25 partner complied with this section and section 8447 (relating  
26 to standards of conduct for partners) in making the payment.

27 (2) An advance to the partnership beyond the amount of  
28 capital the partner agreed to contribute.

29 (c) Indemnification.--A partnership shall indemnify and hold  
30 harmless a person with respect to any claim or demand against

1 the person and any debt, obligation or other liability incurred  
2 by the person by reason of the person's former or present  
3 capacity as partner, if the claim, demand, debt, obligation or  
4 other liability does not arise from the person's breach of this  
5 section or section 8232 (relating to liability for improper  
6 distributions by limited liability partnership) or 8447.

7 (d) Advances.--In the ordinary course of its business, a  
8 partnership may advance reasonable expenses, including attorney <--  
9 fees and costs, incurred by a person in connection with a claim  
10 or demand against the person by reason of the person's former or  
11 present capacity as a partner, if the person promises to repay  
12 the partnership if the person ultimately is determined not to be  
13 entitled to be indemnified under subsection (c).

14 (e) Insurance.--A partnership may purchase and maintain  
15 insurance on behalf of a partner against liability asserted  
16 against or incurred by the partner in that capacity or arising  
17 from that status even if, under subsection (m), the partnership  
18 agreement could not eliminate or limit the person's liability to  
19 the partnership for the conduct giving rise to the liability.

20 (f) Loan to partnership.--A payment or advance made by a  
21 partner which gives rise to a partnership obligation under  
22 subsection (b) constitutes a loan to the partnership which  
23 accrues interest from the date of the payment or advance.

24 (g) Management rights.--Each partner has equal rights in the  
25 management and conduct of the partnership's business.

26 (h) Rights to property.--A partner may use or possess  
27 partnership property only on behalf of the partnership.

28 (i) Compensation for services.--A partner is not entitled to  
29 remuneration for services performed for the partnership, except  
30 for reasonable compensation for services rendered in winding up

1 the business of the partnership.

2 (j) Required approvals by partners.--A difference arising as  
3 to a matter in the ordinary course of business of a partnership  
4 may be decided by a majority of the partners. An act outside the  
5 ordinary course of business of a partnership and an amendment to  
6 the partnership agreement may be undertaken only with the  
7 affirmative vote or consent of all the partners.

8 (k) Nonexclusivity.--The rights provided by subsections (b),  
9 (c), (d) and (e) shall not be deemed exclusive of any other  
10 rights to which a person seeking reimbursement, indemnification,  
11 advancement of expenses or insurance may be entitled under the  
12 partnership agreement, vote of partners, contract or otherwise,  
13 both as to action in his official capacity and as to action in  
14 another capacity while holding that position. Section 8447(f)  
15 shall be applicable to a vote, contract or other action under  
16 this subsection. A partnership may create a fund of any nature,  
17 which may, but need not be, under the control of a trustee, or  
18 otherwise secure or insure in any manner its indemnification  
19 obligations, whether arising under this section or otherwise.

20 (l) Grounds.--Indemnification under subsection (k) may be  
21 granted for any action taken and may be made whether or not the  
22 partnership would have the power to indemnify the person under  
23 any other provision of law except as provided in this section  
24 and whether or not the indemnified liability arises or arose  
25 from any threatened, pending or completed action by or in the  
26 right of the partnership. Indemnification under subsection (k)  
27 is declared to be consistent with the public policy of this  
28 Commonwealth.

29 (m) Limitation.--Indemnification under this section shall  
30 not be made in any case where the act giving rise to the claim

1 for indemnification is determined by a court to constitute  
2 recklessness, willful misconduct or a knowing violation of law.  
3 § 8442. Becoming a partner.

4 (a) Upon formation.--Upon formation of a partnership, a  
5 person becomes a partner under section 8422(a) (relating to  
6 formation of partnership).

7 (b) After formation.--After formation of a partnership, a  
8 person becomes a partner:

9 (1) as provided in the partnership agreement;

10 (2) as a result of a transaction effective under Chapter  
11 3 (relating to entity transactions); or

12 (3) with the affirmative vote or consent of all the  
13 partners.

14 (c) Noneconomic partners.--A person may become a partner  
15 without:

16 (1) acquiring a transferable interest; or

17 (2) making or being obligated to make a contribution to  
18 the partnership.

19 (d) Nature of interest.--The interest of a partner in a  
20 partnership is personal property.

21 § 8443. Form of contribution.

22 A contribution may consist of:

23 (1) property transferred to, services performed for or  
24 another benefit provided to the partnership;

25 (2) an agreement to transfer property to, perform  
26 services for or provide another benefit to the partnership;  
27 or

28 (3) any combination of items listed in paragraphs (1)  
29 and (2).

30 § 8444. Liability for contribution.

1 (a) Obligation not excused.--A person's obligation to make a  
2 contribution to a partnership is not excused by the person's  
3 death, disability, termination or other inability to perform  
4 personally.

5 (b) Substitute payment.--If a person does not fulfill an  
6 obligation to make a contribution other than money, the person  
7 is obligated, at the option of the partnership, to contribute  
8 money equal to the value, as stated in the records of the  
9 partnership, of the part of the contribution which has not been  
10 made.

11 (c) Compromise of obligation.--The obligation of a person to  
12 make a contribution may be compromised only by the affirmative  
13 vote or consent of all the partners. If a creditor of a limited  
14 liability partnership extends credit or otherwise acts in  
15 reliance on an obligation described under subsection (a) without  
16 knowledge or notice of a compromise under this subsection, the  
17 creditor may enforce the obligation.

18 § 8445. Sharing of and right to distribution before  
19 dissolution.

20 (a) Distributions before dissolution.--Any distribution made  
21 by a partnership before its dissolution and winding up shall be  
22 in equal shares among partners and persons dissociated as  
23 partners whose interests in the partnership have not been  
24 purchased under section 8471 (relating to purchase of interest  
25 of person dissociated as partner), except as provided in section  
26 8453(b) (relating to transfer of transferable interest) or to  
27 the extent necessary to comply with a charging order in effect  
28 under section 8454 (relating to charging order).

29 (b) No right to distribution.--Subject to section 8471, a  
30 person has a right to a distribution before the dissolution and

1 winding up of a partnership only if the partnership decides to  
2 make an interim distribution.

3 (c) Form of distribution.--A person does not have a right to  
4 demand or receive a distribution from a partnership in any form  
5 other than money. Except as provided in section 8486 (relating  
6 to disposition of assets in winding up and required  
7 contributions), a partnership may distribute an asset in kind  
8 only if each part of the asset is fungible with each other part  
9 and each person receives a percentage of the asset equal in  
10 value to the person's share of distributions.

11 (d) Status as creditor.--If a partner or transferee becomes  
12 entitled to receive a distribution, the partner or transferee  
13 has the status of, and is entitled to all remedies available to,  
14 a creditor of the partnership with respect to the distribution.  
15 The partnership's obligation to make a distribution is subject  
16 to offset for any amount owed to the partnership by the partner  
17 or a person dissociated as partner on whose account the  
18 distribution is made.

19 § 8446. Rights to information.

20 (a) Location of records.--A partnership shall keep its books  
21 and records, if any, at its principal office.

22 (b) Right to inspection.--On reasonable notice, a partner  
23 may inspect and copy during regular business hours, at a  
24 reasonable location specified by the partnership, any record  
25 maintained by the partnership regarding the partnership's  
26 business, financial condition and other circumstances.

27 (c) Material information.--The partnership shall furnish to  
28 each partner, without demand, any information concerning the  
29 partnership's business, financial condition and other  
30 circumstances which the partnership knows and is material to the

1 proper exercise of the partner's rights and duties under the  
2 partnership agreement or this title, except to the extent the  
3 partnership can establish that it reasonably believes the member  
4 already knows the information.

5 (d) Duty of partners.--The duty to furnish information under  
6 subsection (c) also applies to each partner to the extent the  
7 partner knows any of the information described in subsection  
8 (c).

9 (e) Rights after dissociation.--Subject to subsection (j),  
10 within 10 days after receipt by a partnership of a demand made  
11 in record form, a person dissociated as a partner may have  
12 access to information to which the person was entitled while a  
13 partner if:

14 (1) the information pertains to the period during which  
15 the person was a partner;

16 (2) the person seeks the information in good faith; and

17 (3) the information is material to the person's rights  
18 and duties under the partnership agreement or this title.

19 (f) Partnership response to demand.--Within 10 days after  
20 receiving a demand under subsection (e), the partnership shall,  
21 in record form, inform the person that made the demand of:

22 (1) the information that the partnership will provide in  
23 response to the demand and when and where the partnership  
24 will provide the information; and

25 (2) the partnership's reasons for declining, if the  
26 partnership declines to provide any demanded information.

27 (g) Costs of copying.--A partnership may charge a person  
28 that makes a demand under this section the reasonable costs of  
29 copying.

30 (h) Exercise of rights.--A partner or person dissociated as

1 a partner may exercise the rights under this section through an  
2 agent or, in the case of an incapacitated person, a guardian.  
3 Any restriction or condition imposed by the partnership  
4 agreement or under subsection (j) applies both to the agent or  
5 guardian and to the partner or person dissociated as a partner.

6 (i) No rights of transferee.--Subject to section 8455  
7 (relating to power of personal representative of deceased  
8 partner), the rights under this section do not extend to a  
9 person as transferee.

10 (j) Reasonable restrictions permitted.--In addition to any  
11 restriction or condition stated in its partnership agreement, a  
12 partnership, as a matter within the ordinary course of its  
13 business, may impose reasonable restrictions and conditions on  
14 access to and use of information to be furnished under this  
15 section, including designating information confidential and  
16 imposing nondisclosure and safeguarding obligations on the  
17 recipient. In a dispute concerning the reasonableness of a  
18 restriction under this subsection, the partnership has the  
19 burden of proving reasonableness.

20 (k) Cross reference.--See section 8415 (relating to contents  
21 of partnership agreement).

22 § 8447. Standards of conduct for partners.

23 (a) General rule.--A partner owes to the partnership and the  
24 other partners the duties of loyalty and care stated in  
25 subsections (b) and (c).

26 (b) Duty of loyalty.--The fiduciary duty of loyalty of a  
27 partner includes the duties:

28 (1) to account to the partnership and hold as trustee  
29 for it any property, profit or benefit derived by the  
30 partner:

1           (i) in the conduct or winding up of the  
2           partnership's business;

3           (ii) from a use by the partner of the partnership's  
4           property; or

5           (iii) from the appropriation of a partnership  
6           opportunity;

7           (2) to refrain from dealing with the partnership in the  
8           conduct or winding up of the partnership business as or on  
9           behalf of a person having an interest adverse to the  
10          partnership; and

11          (3) to refrain from competing with the partnership in  
12          the conduct of the partnership's business before the  
13          dissolution of the partnership.

14          (c) Duty of care.--The duty of care of a partner in the  
15          conduct or winding up of the partnership business is to refrain  
16          from engaging in gross negligence, recklessness, willful  
17          misconduct or a knowing violation of law.

18          (d) Good faith and fair dealing.--A partner shall discharge  
19          the duties and obligations under this title or under the  
20          partnership agreement and exercise any rights consistent with  
21          the contractual obligation of good faith and fair dealing.

22          (e) Self-serving conduct.--A partner does not violate a duty  
23          or obligation under this title or under the partnership  
24          agreement solely because the partner's conduct furthers the  
25          partner's own interest.

26          (f) Authorization or ratification.--All the partners may  
27          authorize or ratify, after disclosure of all material facts, a  
28          specific act or transaction that otherwise would violate the  
29          duty of loyalty of a partner.

30          (g) Fairness as a defense.--It is a defense to a claim under

1 subsection (b) (2) and any comparable claim in equity or at  
2 common law that the transaction was fair to the partnership at  
3 the time it was authorized or ratified under subsection (f).

4 (h) Rights and obligations in approved transaction.--If a  
5 partner enters into a transaction with the partnership which  
6 otherwise would be prohibited under subsection (b) (2), but the  
7 transaction is authorized or ratified as provided under  
8 subsection (f) or the partnership agreement, the partner's  
9 rights and obligations arising from the transaction are the same  
10 as those of a person that is not a partner.

11 (i) Exoneration.--The partnership agreement may provide that  
12 a partner shall not be personally liable for monetary damages to  
13 the partnership or the other partners for a breach of subsection  
14 (c), except that a partner may not be exonerated for an act that  
15 constitutes recklessness, willful misconduct or a knowing  
16 violation of law.

17 (j) Cross reference.--See section 8415 (relating to contents  
18 of partnership agreement).

19 § 8448. Actions by partnership and partners.

20 (a) Action by partnership.--A partnership may maintain an  
21 action against a partner for either of the following that causes  
22 or threatens harm to the partnership:

23 (1) a breach of the partnership agreement; or

24 (2) the violation of a duty to the partnership.

25 (b) Action by partner.--A partner may maintain an action  
26 against the partnership or another partner, with or without an  
27 accounting as to partnership business, to enforce the partner's  
28 rights and protect the partner's interests, including rights and  
29 interests under the partnership agreement or this title or  
30 arising independently of the partnership relationship.

1 (c) Claims not revived.--A right to an accounting on  
2 dissolution and winding up does not revive a claim barred by  
3 law.

4 (d) Cross reference.--See section 8415(c)(12) (relating to  
5 contents of partnership agreement).  
6 § 8449. Continuation of partnership beyond definite term or  
7 particular undertaking.

8 (a) Effect of continuation.--If a partnership for a definite  
9 term or particular undertaking is continued, without an express  
10 agreement, after the expiration of the term or completion of the  
11 undertaking, the rights and duties of the partners remain the  
12 same as they were at the expiration or completion, so far as is  
13 consistent with a partnership at will.

14 (b) Presumed agreement to continue partnership.--If the  
15 partners, or those partners who habitually acted in the business  
16 during the term or undertaking, continue the business without  
17 any settlement or liquidation of the partnership, they are  
18 presumed to have agreed that the partnership will continue.

19 SUBCHAPTER E

20 TRANSFERABLE INTERESTS AND RIGHTS

21 OF TRANSFEREES AND CREDITORS

22 Sec.

23 8451. Partner not co-owner of partnership property.

24 8452. Nature of transferable interest.

25 8453. Transfer of transferable interest.

26 8454. Charging order.

27 8455. Power of personal representative of deceased partner.

28 § 8451. Partner not co-owner of partnership property.

29 A partner is not a co-owner of partnership property and has  
30 no interest in partnership property which can be transferred,

1 either voluntarily or involuntarily.

2 § 8452. Nature of transferable interest.

3 (a) Personal property.--A transferable interest is personal  
4 property.

5 (b) Only right that may be transferred.--A person may not  
6 transfer to a person not a partner any rights in a partnership  
7 other than a transferable interest.

8 § 8453. Transfer of transferable interest.

9 (a) General rule.--A transfer, in whole or in part, of a  
10 transferable interest:

11 (1) is permissible;

12 (2) does not by itself cause the dissociation of the  
13 transferor as a partner or a dissolution and winding up of  
14 the partnership's business; and

15 (3) subject to section 8455 (relating to power of  
16 personal representative of deceased partner), does not  
17 entitle the transferee to:

18 (i) participate in the management or conduct of the  
19 partnership's business; or

20 (ii) except as provided in subsection (c), have  
21 access to records or other information concerning the  
22 partnership's business.

23 (b) Rights of transferee.--A transferee has the right to:

24 (1) receive, in accordance with the terms of the  
25 transfer:

26 (i) distributions to which the transferor would  
27 otherwise be entitled; and

28 (ii) allocations of income, gain, loss, deduction or  
29 credit or similar item which would otherwise be made to  
30 the transferor; and

1       (2) seek under section 8481(a)(5) (relating to events  
2       causing dissolution) a judicial determination that it is  
3       equitable to wind up the partnership business.

4       (c) Right to account on dissolution.--In a dissolution and  
5       winding up of a partnership, a transferee is entitled to an  
6       account of the partnership's transactions only from the date of  
7       dissolution.

8       (d) Recognition of transferee's rights.--A partnership need  
9       not give effect to a transferee's rights under this section  
10       until the partnership knows or has notice of the transfer.

11       (e) Transfer restrictions.--A transfer of a transferable  
12       interest in violation of a restriction on transfer contained in  
13       the partnership agreement is ineffective if the intended  
14       transferee has knowledge or notice of the restriction at the  
15       time of transfer.

16       (f) Rights retained by transferor.--Except as provided in  
17       section 8461(4)(ii) (relating to events causing dissociation),  
18       if a partner transfers a transferable interest, the transferor  
19       retains the rights of a partner other than the transferable  
20       interest transferred and retains all the duties and obligations  
21       of a partner.

22       § 8454. Charging order.

23       (a) General rule.--On application by a judgment creditor of  
24       a partner or transferee, a court may enter a charging order  
25       against the transferable interest of the judgment debtor for the  
26       unsatisfied amount of the judgment. A charging order constitutes  
27       a lien on a judgment debtor's transferable interest and requires  
28       the partnership to pay over to the person to which the charging  
29       order was issued any distribution that otherwise would be paid  
30       to the judgment debtor.

1 (b) Available relief.--To the extent necessary to effectuate  
2 the collection of distributions pursuant to a charging order in  
3 effect under subsection (a), the court may:

4 (1) appoint a receiver of the distributions subject to  
5 the charging order, with the power to make all inquiries the  
6 judgment debtor might have made; and

7 (2) make all other orders necessary to give effect to  
8 the charging order.

9 (c) Foreclosure.--Upon a showing that distributions under a  
10 charging order will not pay the judgment debt within a  
11 reasonable time, the court may foreclose the lien and order the  
12 sale of the transferable interest. The purchaser at the  
13 foreclosure sale obtains only the transferable interest, does  
14 not thereby become a partner and is subject to section 8453  
15 (relating to transfer of transferable interest).

16 (d) Satisfaction of judgment.--At any time before  
17 foreclosure under subsection (c), the partner or transferee  
18 whose transferable interest is subject to a charging order under  
19 subsection (a) may extinguish the charging order by satisfying  
20 the judgment and filing a certified copy of the satisfaction  
21 with the court that issued the charging order.

22 (e) Purchase of rights.--At any time before foreclosure  
23 under subsection (c), a partnership or one or more partners  
24 whose transferable interests are not subject to the charging  
25 order may pay to the judgment creditor the full amount due under  
26 the judgment and thereby succeed to the rights of the judgment  
27 creditor, including the charging order.

28 (f) Exemption laws preserved.--This chapter shall not  
29 deprive any partner or transferee of the benefit of any  
30 exemption law applicable to the transferable interest of the

1 partner or transferee.

2 (g) Exclusive remedy.--This section provides the exclusive  
3 remedy by which a person seeking, in the capacity of a judgment  
4 creditor, to enforce a judgment against a partner or transferee  
5 may satisfy the judgment from the judgment debtor's transferable  
6 interest.

7 § 8455. Power of personal representative of deceased partner.

8 If a partner dies, the deceased partner's personal  
9 representative may exercise:

10 (1) the rights of a transferee provided in section  
11 8453(c) (relating to transfer of transferable interest); and

12 (2) for purposes of settling the estate, the rights the  
13 deceased partner had under section 8446 (relating to rights  
14 to information).

15 SUBCHAPTER F

16 DISSOCIATION

17 Sec.

18 8461. Events causing dissociation.

19 8462. Power to dissociate as partner and wrongful dissociation.

20 8463. Effects of dissociation.

21 § 8461. Events causing dissociation.

22 A person is dissociated as a partner when any of the  
23 following occurs:

24 (1) The partnership knows or has notice of the person's  
25 express will to withdraw as a partner, except that, if the  
26 person has specified a withdrawal date later than the date  
27 the partnership knew or had notice, on that later date.

28 (2) An event stated in the partnership agreement as  
29 causing the person's dissociation occurs.

30 (3) The person is expelled as a partner pursuant to the

1 partnership agreement.

2 (4) The person is expelled as a partner by the  
3 affirmative vote or consent of all the other partners if:

4 (i) it is unlawful to carry on the partnership  
5 business with the person as a partner;

6 (ii) there has been a transfer of all of the  
7 person's transferable interest in the partnership, other  
8 than:

9 (A) a transfer for security purposes; or

10 (B) a charging order in effect under section  
11 8454 (relating to charging order) which has not been  
12 foreclosed;

13 (iii) the person is an association and:

14 (A) the partnership notifies the person that the  
15 person will be expelled as a partner because:

16 (I) the person has filed a certificate of  
17 dissolution or the equivalent;

18 (II) the person has been administratively  
19 dissolved;

20 (III) the person's charter or the equivalent  
21 has been revoked; or

22 (IV) the person's right to conduct business  
23 has been suspended by the person's jurisdiction  
24 of formation; and

25 (B) within 90 days after the notification:

26 (I) the certificate of dissolution or the  
27 equivalent has not been withdrawn, rescinded or  
28 revoked;

29 (II) the person has not been reinstated;

30 (III) the person's charter or the equivalent

1                   has not been reinstated; or  
2                   (IV) the person's right to conduct business  
3                   has not been reinstated; or

4                   (iv) the person is an unincorporated association  
5                   that has been dissolved and whose activities and affairs  
6                   are being wound up.

7                   (5) On application by the partnership or another  
8                   partner, the person is expelled as a partner by judicial  
9                   order because the person:

10                   (i) has engaged or is engaging in wrongful conduct  
11                   that has affected adversely and materially, or will  
12                   affect adversely and materially, the partnership's  
13                   business;

14                   (ii) has committed willfully or persistently, or is  
15                   committing willfully or persistently, a material breach  
16                   of the partnership agreement or a duty or obligation  
17                   under section 8447 (relating to standards of conduct for  
18                   partners); or

19                   (iii) has engaged or is engaging in conduct relating  
20                   to the partnership's business which makes it not  
21                   reasonably practicable to carry on the business with the  
22                   person as a partner.

23                   (6) The person:

24                   (i) becomes a debtor in bankruptcy;

25                   (ii) makes an assignment for the benefit of  
26                   creditors; or

27                   (iii) seeks, consents to or acquiesces in the  
28                   appointment of a trustee, receiver or liquidator of the  
29                   person or of all or substantially all the person's  
30                   property.

1           (7) In the case of an individual:

2           (i) the individual dies;

3           (ii) a guardian for the individual is appointed; or

4           (iii) a court orders that the individual has

5           otherwise become incapable of performing the individual's

6           duties as a partner under this title or the partnership

7           agreement.

8           (8) In the case of a person that is a testamentary or

9           inter vivos trust or is acting as a partner by virtue of

10          being a trustee of such a trust, the trust's entire

11          transferable interest in the partnership is distributed.

12          (9) In the case of a person that is an estate or is

13          acting as a partner by virtue of being a personal

14          representative of an estate, the estate's entire transferable

15          interest in the partnership is distributed.

16          (10) In the case of a person that is not an individual,

17          the existence of the person terminates.

18          (11) The partnership participates in a merger under

19          Chapter 3 (relating to entity transactions) and:

20          (i) the partnership is not the surviving entity; or

21          (ii) otherwise as a result of the merger, the person

22          ceases to be a partner.

23          (12) The partnership participates in an interest

24          exchange under Chapter 3 and, as a result of the interest

25          exchange, the person ceases to be a partner.

26          (13) The partnership participates in a conversion under

27          Chapter 3.

28          (14) The partnership participates in a division under

29          Chapter 3 and:

30          (i) the partnership is not a resulting association;

1           or  
2           (ii) as a result of the division, the person ceases  
3           to be a partner.

4           (15) The partnership participates in a domestication  
5           under Chapter 3 and, as a result of the domestication, the  
6           person ceases to be a partner.

7           (16) The partnership dissolves and completes winding up.  
8    § 8462. Power to dissociate as partner and wrongful  
9           dissociation.

10          (a) Power to dissociate.--A person has the power to  
11          dissociate as a partner at any time, rightfully or wrongfully,  
12          by withdrawing as a partner by express will under section  
13          8461(1) (relating to events causing dissociation).

14          (b) Wrongful dissociation.--A person's dissociation as a  
15          partner is wrongful only if the dissociation:

16                  (1) is in breach of an express provision of the  
17                  partnership agreement; or

18                  (2) in the case of a partnership for a definite term or  
19                  particular undertaking, occurs before the expiration of the  
20                  term or the completion of the undertaking and:

21                          (i) the person withdraws as a partner by express  
22                          will, unless the withdrawal follows within 90 days after  
23                          another person's dissociation by death or otherwise under  
24                          section 8461(6), (7), (8), (9) or (10) or wrongful  
25                          dissociation under this subsection;

26                          (ii) the person is expelled as a partner by judicial  
27                          order under section 8461(5);

28                          (iii) the person is dissociated under section  
29                          8461(6); or

30                          (iv) in the case of a person that is not a trust

1 other than a business or statutory trust, an estate or an  
2 individual, the person is expelled or otherwise  
3 dissociated because it willfully dissolved or terminated.

4 (c) Damages for wrongful dissociation.--A person that  
5 wrongfully dissociates as a partner is liable to the partnership  
6 and to the other partners for damages caused by the  
7 dissociation. The liability is in addition to any debt,  
8 obligation or other liability of the partner to the partnership  
9 or the other partners.

10 (d) Cross reference.--See section 8415(c)(14) (relating to  
11 contents of partnership agreement).

12 § 8463. Effects of dissociation.

13 (a) Effects on partnership.--If a person's dissociation  
14 results in a dissolution and winding up of the partnership  
15 business, Subchapter H (relating to dissolution and winding up)  
16 applies; otherwise, Subchapter G (relating to dissociation as  
17 partner if business not wound up) applies.

18 (b) Effects on person dissociated as partner.--If a person  
19 is dissociated as a partner:

20 (1) The person's right to participate in the management  
21 and conduct of the partnership's business terminates, except  
22 as provided under section 8482(c) (relating to winding up and  
23 filing of certificates).

24 (2) The person's duties and obligations under section  
25 8447 (relating to standards of conduct for partners) end with  
26 regard to matters arising and events occurring after the  
27 person's dissociation, except to the extent the partner  
28 participates in winding up the partnership's business under  
29 section 8482.

30 (3) Any transferable interest owned by the person in the

1 person's capacity as a general partner immediately before  
2 dissociation that is not subsequently purchased from the  
3 person or canceled or exchanged in a transaction under  
4 Chapter 3 (relating to entity transactions) is owned by the  
5 person solely as a transferee.

6 (c) Existing obligations not discharged.--A person's  
7 dissociation does not of itself discharge the person from any  
8 debt, obligation or other liability to the partnership or the  
9 other partners which the person incurred while a partner.

10 SUBCHAPTER G

11 DISSOCIATION AS PARTNER

12 IF BUSINESS NOT WOUND UP

13 Sec.

14 8471. Purchase of interest of person dissociated as partner.

15 8472. Power to bind and liability of person dissociated as  
16 partner.

17 8473. Liability of person dissociated as partner to other  
18 persons.

19 8474. Certificate of dissociation.

20 8475. Continued use of partnership name.

21 § 8471. Purchase of interest of person dissociated as partner.

22 (a) Right to buyout.--If a person is dissociated as a  
23 partner without the dissociation resulting in a dissolution and  
24 winding up of the partnership business under section 8481  
25 (relating to events causing dissolution), the partnership shall  
26 cause the person's interest in the partnership to be purchased  
27 for a buyout price determined under subsection (b).

28 (b) Buyout price.--The buyout price of the interest of a  
29 person dissociated as a partner is the amount that would have  
30 been distributable to the person under section 8486(b) (relating

1 to disposition of assets in winding up and required  
2 contributions) if, on the date of dissociation, the assets of  
3 the partnership were sold and the partnership were wound up,  
4 with the sale price equal to the greater of:

5 (1) the liquidation value; or

6 (2) the value based on a sale of the entire business as  
7 a going concern without the person.

8 (c) Interest and offsets.--Interest accrues on the buyout  
9 price from the date of dissociation to the date of payment,  
10 except that damages for wrongful dissociation under section  
11 8462(b) (relating to power to dissociate as partner and wrongful  
12 dissociation) and all other amounts owing, whether or not  
13 presently due, from the person dissociated as a partner to the  
14 partnership must be offset against the buyout price.

15 (d) Indemnification.--A partnership shall defend, indemnify  
16 and hold harmless a person dissociated as a partner whose  
17 interest is being purchased against all partnership liabilities,  
18 whether incurred before or after the dissociation, except  
19 liabilities incurred by an act of the person under section 8472  
20 (relating to power to bind and liability of person dissociated  
21 as partner).

22 (e) Payment of partnership's estimate.--If an agreement for  
23 the purchase of the interest of a person dissociated as a  
24 partner is not reached within 120 days after a demand in record  
25 form for payment, the partnership shall pay, or cause to be  
26 paid, in money to the person the amount the partnership  
27 estimates to be the buyout price and accrued interest, reduced  
28 by any offsets and accrued interest under subsection (c).

29 (f) Buyout of deferred payment.--If a deferred payment is  
30 authorized under subsection (h), the partnership may tender an

1 offer in record form to pay the amount it estimates to be the  
2 buyout price and accrued interest, reduced by any offsets under  
3 subsection (c), stating the time of payment, the amount and type  
4 of security for payment and the other terms and conditions of  
5 the obligation.

6 (g) Information accompanying payment.--The payment or tender  
7 required by subsection (e) or (f) must be accompanied by the  
8 following:

9 (1) a statement of partnership assets and liabilities as  
10 of the date of dissociation;

11 (2) the latest available partnership balance sheet and  
12 income statement, if any;

13 (3) an explanation of how the estimated amount of the  
14 payment was calculated; and

15 (4) notice in record form that the payment is in full  
16 satisfaction of the obligation to purchase unless, within 120  
17 days after the notice, the person dissociated as a partner  
18 commences an action to determine the buyout price, any  
19 offsets under subsection (c) or other terms of the obligation  
20 to purchase.

21 (h) Deferred payment on wrongful dissociation.--A person  
22 that wrongfully dissociates as a partner before the expiration  
23 of a definite term or the completion of a particular undertaking  
24 is not entitled to payment of any part of the buyout price until  
25 the expiration of the term or completion of the undertaking,  
26 unless the person establishes to the satisfaction of the court  
27 that earlier payment will not cause undue hardship to the  
28 business of the partnership. A deferred payment must be  
29 adequately secured and bear interest.

30 (i) Right to bring action.--A person dissociated as a

1 partner may maintain an action against the partnership, under  
2 section 8448(b) (relating to actions by partnership and  
3 partners), to determine the buyout price of that person's  
4 interest, any offsets under subsection (c) or other terms of the  
5 obligation to purchase. The action must be commenced within 120  
6 days after the partnership has tendered payment or an offer to  
7 pay or within one year after demand in record form for payment  
8 if no payment or offer to pay is tendered. The court shall  
9 determine the buyout price of the person's interest, any offset  
10 due under subsection (c), and accrued interest, and enter  
11 judgment for any additional payment or refund. If deferred  
12 payment is authorized under subsection (h), the court shall also  
13 determine the security for payment and other terms of the  
14 obligation to purchase. The court may assess reasonable attorney  
15 fees and the fees and expenses of appraisers or other experts  
16 for a party to the action, in amounts the court finds equitable,  
17 against a party that the court finds acted arbitrarily,  
18 vexatiously or not in good faith. The finding may be based on  
19 the partnership's failure to tender payment or an offer to pay  
20 or to comply with subsection (g).

21 § 8472. Power to bind and liability of person dissociated as  
22 partner.

23 (a) When partnership bound.--After a person is dissociated  
24 as a partner without the dissociation resulting in a dissolution  
25 and winding up of the partnership business and before the  
26 partnership is merged or divided out of existence, converted or  
27 domesticated under Chapter 3 (relating to entity transaction),  
28 or dissolved, the partnership is bound by an act of the person  
29 only if:

30 (1) the act would have bound the partnership under

1 section 8431 (relating to partner agent of partnership)  
2 before dissociation; and

3 (2) at the time the other party enters into the  
4 transaction:

5 (i) less than two years have passed since the  
6 dissociation; and

7 (ii) the other party does not know or have notice of  
8 the dissociation and reasonably believes that the person  
9 is a partner.

10 (b) Liability of person dissociated as partner.--If a  
11 partnership is bound under subsection (a), the person  
12 dissociated as a partner which caused the partnership to be  
13 bound is liable:

14 (1) to the partnership for any damage caused to the  
15 partnership arising from the obligation incurred under  
16 subsection (a); and

17 (2) if a partner or another person dissociated as a  
18 partner is liable for the obligation, to the partner or other  
19 person for any damage caused to the partner or other person  
20 arising from the liability.

21 § 8473. Liability of person dissociated as partner to other  
22 persons.

23 (a) General rule.--Except as provided in subsection (b), a  
24 person dissociated as a partner is not liable for a partnership  
25 obligation incurred after dissociation.

26 (b) Exception.--A person that is dissociated as a partner is  
27 liable on a transaction entered into by the partnership after  
28 the dissociation only if:

29 (1) a partner would be liable on the transaction; and

30 (2) at the time the other party enters into the

1 transaction:

2 (i) less than two years have passed since the  
3 dissociation; and

4 (ii) the other party does not have knowledge or  
5 notice of the dissociation and reasonably believes that  
6 the person is a partner.

7 (c) Constructive release by creditor.--A person dissociated  
8 as a partner is released from liability for a debt, obligation  
9 or other liability of the partnership if the partnership's  
10 creditor, with knowledge or notice of the person's dissociation  
11 but without the person's consent, agrees to a material  
12 alteration in the nature or time of payment of the debt,  
13 obligation or other liability. The release from liability under  
14 this subsection applies whether the liability arises directly or  
15 indirectly, by way of contribution or otherwise, but only if the  
16 liability arises solely by reason of having been a partner.  
17 § 8474. Certificate of dissociation.

18 (a) Right to file certificate.--A person dissociated as a  
19 partner or the partnership may deliver to the department for  
20 filing a certificate of dissociation stating:

21 (1) the name of the partnership;

22 (2) if the partnership is a limited liability  
23 partnership, subject to section 109 (relating to name of  
24 commercial registered office provider in lieu of registered  
25 address), the address, including street and number, if any,  
26 of its registered office; and

27 (3) the name of the person and that the person has  
28 dissociated from the partnership.

29 (b) Effect of certificate.--A certificate of dissociation is  
30 a limitation on the authority of a person dissociated as a

1 partner for the purposes of section 8433 (relating to  
2 certificate of partnership authority).

3 (c) Cross references.--See:

4 Section 134 (relating to docketing statement).

5 Section 135 (relating to requirements to be met by filed  
6 documents).

7 Section 136(c) (relating to processing of documents by  
8 Department of State).

9 Section 8413(d)(2) (relating to knowledge and notice).

10 Section 8418 (relating to signing of filed documents).

11 § 8475. Continued use of partnership name.

12 Continued use of a partnership name, or the name of a person  
13 dissociated as a partner as part of the partnership name, by  
14 partners continuing the business does not of itself make the  
15 person dissociated as a partner liable for an obligation of the  
16 partners or the partnership continuing the business.

17 SUBCHAPTER H

18 DISSOLUTION AND WINDING UP

19 Sec.

20 8481. Events causing dissolution.

21 8482. Winding up and filing of certificates.

22 8483. (Reserved).

23 8484. Power to bind partnership after dissolution.

24 8485. Liability after dissolution.

25 8486. Disposition of assets in winding up and required  
26 contributions.

27 § 8481. Events causing dissolution.

28 (a) General rule.--A partnership is dissolved, and its  
29 business shall be wound up, upon the occurrence of any of the  
30 following:

1       (1) In a partnership at will, the partnership knows or  
2 has notice of a person's express will to withdraw as a  
3 partner, other than a partner that has dissociated under  
4 section 8461(2), (3), (4), (5), (6), (7), (8), (9) or (10)  
5 (relating to events causing dissociation), except that, if  
6 the person has specified a withdrawal date later than the  
7 date the partnership knew or had notice, on the later date.

8       (2) In a partnership for a definite term or particular  
9 undertaking:

10           (i) within 90 days after a person's dissociation by  
11 death or otherwise under section 8461(6), (7), (8), (9)  
12 or (10) or wrongful dissociation under section 8462(b)  
13 (relating to power to dissociate as partner and wrongful  
14 dissociation), the affirmative vote or consent of at  
15 least half of the remaining partners to wind up the  
16 partnership business, for which purpose a person's  
17 rightful dissociation under section 8462(b)(2)(i)  
18 constitutes that partner's consent to wind up the  
19 partnership business;

20           (ii) the affirmative vote or consent of all the  
21 partners to wind up the partnership business; or

22           (iii) the expiration of the term or the completion  
23 of the undertaking.

24       (3) An event or circumstance that the partnership  
25 agreement states causes dissolution.

26       (4) On application by a partner, the entry by the court  
27 of an order dissolving the partnership on the grounds that:

28           (i) the conduct of all or substantially all the  
29 partnership's business is unlawful;

30           (ii) the economic purpose of the partnership is

1 likely to be unreasonably frustrated;

2 (iii) another partner has engaged in conduct  
3 relating to the partnership business which makes it not  
4 reasonably practicable to carry on the business in  
5 partnership with that partner; or

6 (iv) it is otherwise not reasonably practicable to  
7 carry on the partnership business in conformity with the  
8 partnership agreement.

9 (5) On application by a transferee, the entry by the  
10 court of an order dissolving the partnership on the grounds  
11 that it is equitable to wind up the partnership business:

12 (i) after the expiration of the term or completion  
13 of the undertaking, if the partnership was for a definite  
14 term or particular undertaking at the time of the  
15 transfer or entry of the charging order that gave rise to  
16 the transfer; or

17 (ii) at any time, if the partnership was a  
18 partnership at will at the time of the transfer or entry  
19 of the charging order that gave rise to the transfer.

20 (6) The passage of 90 consecutive days during which the  
21 partnership does not have at least two partners.

22 (b) Cross reference.--See section 8415(c)(15) (relating to  
23 contents of partnership agreement).

24 § 8482. Winding up and filing of certificates.

25 (a) General rule.--A dissolved partnership shall wind up its  
26 business and the partnership continues after dissolution only  
27 for the purpose of winding up.

28 (b) Conduct of winding up.--In winding up its business, the  
29 partnership:

30 (1) shall discharge the partnership's debts, obligations

1 and other liabilities, settle and close the partnership's  
2 business, and marshal and distribute the assets of the  
3 partnership; and

4 (2) may:

5 (i) deliver to the department for filing a  
6 certificate of dissolution stating:

7 (A) the name of the partnership;

8 (B) if the partnership is a limited liability  
9 partnership, subject to section 109 (relating to name  
10 of commercial registered office provider in lieu of  
11 registered address), the address, including street  
12 and number, if any, of its registered office; and

13 (C) that the partnership is dissolved;

14 (ii) preserve the partnership business and property  
15 as a going concern for a reasonable time;

16 (iii) prosecute and defend actions and proceedings,  
17 whether civil, criminal or administrative;

18 (iv) transfer the partnership's property;

19 (v) settle disputes by mediation or arbitration;

20 (vi) deliver to the department for filing the  
21 certificates, if any, required by section 139 (relating  
22 to tax clearance of certain fundamental transactions) and  
23 a certificate of termination stating:

24 (A) the name of the partnership;

25 (B) if the partnership is a limited liability  
26 partnership, subject to section 109, the address,  
27 including street and number, if any, of its  
28 registered office; and

29 (C) that the partnership is terminated; and

30 (vii) perform other acts necessary or appropriate to

1 the winding up.

2 (c) Participation after dissociation.--A person whose  
3 dissociation as a partner resulted in dissolution may  
4 participate in winding up as if still a partner, unless the  
5 dissociation was wrongful.

6 (d) Conduct of winding up when no partner.--If a dissolved  
7 partnership does not have a partner and no person has the right  
8 to participate in winding up under subsection (c), the personal  
9 representative or guardian of the last person to have been a  
10 partner may wind up the partnership's business. If the personal  
11 representative or guardian does not exercise that right, a  
12 person to wind up the partnership's business may be appointed by  
13 the affirmative vote or consent of transferees owning a majority  
14 of the rights to receive distributions at the time the consent  
15 is to be effective. A person appointed under this subsection has  
16 the powers of a partner under section 8484 (relating to power to  
17 bind partnership after dissolution) but is not liable for the  
18 debts, obligations and other liabilities of the partnership  
19 solely by reason of having or exercising those powers or  
20 otherwise acting to wind up the partnership's business.

21 (e) Judicial supervision.--On the application of any partner  
22 or person entitled under subsection (c) to participate in  
23 winding up, a court may order judicial supervision of the  
24 winding up of a dissolved partnership, including the appointment  
25 of a person to wind up the partnership's business, if:

26 (1) the partnership does not have a partner and within a  
27 reasonable time following the dissolution no person has been  
28 appointed under subsection (d); or

29 (2) the applicant establishes other good cause.

30 (f) Cross references.--See:

1           Section 134 (relating to docketing statement).

2           Section 135 (relating to requirements to be met by filed  
3 documents).

4           Section 136(c) (relating to processing of documents by  
5 Department of State).

6           Section 8415(c)(16) (relating to contents of partnership  
7 agreement).

8           Section 8418 (relating to signing of filed documents).

9 § 8483. (Reserved).

10 § 8484. Power to bind partnership after dissolution.

11       (a) Power of partner.--A partnership is bound by a partner's  
12 act after dissolution which:

13           (1) is appropriate for winding up the partnership  
14 business; or

15           (2) would have bound the partnership under section 8431  
16 (relating to partner agent of partnership) before dissolution  
17 if, at the time the other party enters into the transaction,  
18 the other party does not know or have notice of the  
19 dissolution.

20       (b) Power of person dissociated as partner.--A person  
21 dissociated as a partner binds a partnership through an act  
22 occurring after dissolution if:

23           (1) at the time the other party enters into the  
24 transaction:

25           (i) less than two years have passed since the  
26 dissociation; and

27           (ii) the other party does not know or have notice of  
28 the dissociation and reasonably believes that the person  
29 is a partner; and

30           (2) the act:

1           (i) is appropriate for winding up the partnership's  
2           business; or

3           (ii) would have bound the partnership under section  
4           8431 before dissolution and the other party does not know  
5           or have notice of the dissolution at the time the other  
6           party enters into the transaction.

7 § 8485. Liability after dissolution.

8       (a) Liability of partner.--If a partner having knowledge of  
9       the dissolution causes a partnership to incur an obligation  
10       under section 8484(a) (2) (relating to power to bind partnership  
11       after dissolution) by an act that is not appropriate for winding  
12       up the partnership business, the partner is liable:

13           (1) to the partnership for any damage caused to the  
14           partnership arising from the obligation; and

15           (2) if another partner or person dissociated as a  
16           partner is liable for the obligation, to that other partner  
17           or person for any damage caused to that other partner or  
18           person arising from the liability.

19       (b) Liability of person dissociated as partner.--Except as  
20       provided under subsection (c), if a person dissociated as a  
21       partner causes a partnership to incur an obligation under  
22       section 8484(b), the person is liable:

23           (1) to the partnership for any damage caused to the  
24           partnership arising from the obligation; and

25           (2) if a partner or another person dissociated as a  
26           partner is liable for the obligation, to the partner or other  
27           person for any damage caused to the partner or other person  
28           arising from the obligation.

29       (c) Exception in winding up.--A person dissociated as a  
30       partner is not liable under subsection (b) if:

1 (1) section 8482(c) (relating to winding up and filing  
2 of certificates) permits the person to participate in winding  
3 up; and

4 (2) the act that causes the partnership to be bound  
5 under section 8484(b) is appropriate for winding up the  
6 partnership's business.

7 § 8486. Disposition of assets in winding up and required  
8 contributions.

9 (a) Creditors.--In winding up its business, a partnership  
10 shall apply its assets, including the contributions required by  
11 this section, to discharge the partnership's obligations to  
12 creditors, including partners that are creditors.

13 (b) Surplus.--After a partnership complies with subsection  
14 (a), any surplus shall be distributed in the following order,  
15 subject to any charging order in effect under section 8454  
16 (relating to charging order):

17 (1) to each owner of a transferable interest that  
18 reflects contributions made and not previously returned, an  
19 amount equal to the value of the unreturned contributions;  
20 and

21 (2) among owners of transferable interests in proportion  
22 to their respective rights to share in distributions  
23 immediately before the dissolution of the partnership.

24 (c) Insufficient assets.--If a partnership's assets are  
25 insufficient to satisfy all its obligations under subsection  
26 (a), with respect to each unsatisfied obligation incurred when  
27 the partnership was not a limited liability partnership, the  
28 following rules apply:

29 (1) Each person that was a partner when the obligation  
30 was incurred and that has not been released from the

1 obligation under section 8473(c) (relating to liability of  
2 person dissociated as partner to other persons) shall  
3 contribute to the partnership for the purpose of enabling the  
4 partnership to satisfy the obligation. The contribution due  
5 from each of those persons is in proportion to the right to  
6 receive distributions when the obligation was incurred.

7 (2) If a person does not contribute the full amount  
8 required under paragraph (1) with respect to an unsatisfied  
9 obligation of the partnership, the other persons required to  
10 contribute under paragraph (1) on account of the obligation  
11 shall contribute the additional amount necessary to discharge  
12 the obligation. The additional contribution due from each of  
13 those other persons is in proportion to the right to receive  
14 distributions when the obligation was incurred.

15 (3) If a person does not make the additional  
16 contribution required under paragraph (2), further additional  
17 contributions are determined and due in the same manner as  
18 provided in that paragraph.

19 (d) Recovery of additional contributions.--A person that  
20 makes an additional contribution under subsection (c)(2) or (3)  
21 may recover from any person whose failure to contribute under  
22 subsection (c)(1) or (2) necessitated the additional  
23 contribution. A person may not recover under this subsection  
24 more than the amount additionally contributed. A person's  
25 liability under this subsection shall not exceed the amount the  
26 person failed to contribute.

27 (e) Distributions when surplus insufficient.--If a  
28 partnership does not have sufficient surplus to comply with  
29 subsection (b)(1), the following shall apply:

30 (1) If the partnership has been a limited liability

1 partnership at any time during its existence, any surplus  
2 must be distributed among the owners of transferable  
3 interests in proportion to the value of the respective  
4 unreturned contributions.

5 (2) If the partnership has never been a limited  
6 liability partnership, the partners and any person whose  
7 dissociation resulted in dissolution shall contribute to the  
8 partnership funds sufficient to cause the insufficiency under  
9 subsection (b) (1) to be allocated consistently with section  
10 8441(a) (relating to partner's rights and duties).

11 (f) Form of payment.--All distributions made under  
12 subsections (b) and (c) must be paid in money.

13 Section 26. Repeals are as follows:

14 (1) The General Assembly finds and declares as follows:

15 (i) Over the last 25 years, there have been  
16 significant changes in the business model for  
17 partnerships; and statutory law must be updated to deal  
18 with the new business model.

19 (ii) Existing statutory law on limited partnerships  
20 was enacted in 1988. Discrete amendments were enacted in  
21 1990, 1992, 1994, 1996 and 2001. A more comprehensive  
22 legislative approach was taken in sections 48 through 53  
23 of the act of October 22, 2014 (P.L.2640, No.172), known  
24 as the Associations Transactions Act.

25 (iii) Section 20 of this act adds a new chapter on  
26 limited partnerships. The new chapter, continuing the  
27 approach under the Associations Transactions Act,  
28 extensively revises existing statutory law to the degree  
29 that identification of individual changes or reproduction  
30 of voluminous text to be eliminated would inhibit rather

1 than enhance serious legal analysis.

2 (iv) The repeal under paragraph (2) is necessary to  
3 carry out this paragraph.

4 (2) Chapter 85 of Title 15 is repealed.

5 Section 27. Title 15 is amended by adding a chapter to read:

6 CHAPTER 86

7 LIMITED PARTNERSHIPS

8 Subchapter

9 A. General Provisions

10 B. Formation and Filings

11 C. Limited Partners

12 D. General Partners

13 E. Contributions and Distributions

14 F. Dissociation

15 G. Transferable Interests and Rights of Transferees and  
16 Creditors

17 H. Dissolution and Winding Up

18 I. Actions by Partners

19 SUBCHAPTER A

20 GENERAL PROVISIONS

21 Sec.

22 8611. Short title and application of chapter.

23 8612. Definitions.

24 8613. Knowledge and notice.

25 8614. Governing law.

26 8615. Contents of partnership agreement.

27 8616. Application of partnership agreement.

28 8617. Amendment and effect of partnership agreement.

29 8618. Required information.

30 8619. Dual capacity.

1 8620. Characteristics of limited partnership.

2 § 8611. Short title and application of chapter.

3 (a) Short title.--This chapter may be cited as the  
4 Pennsylvania Uniform Limited Partnership Act of 2016.

5 (b) Initial application.--Before April 1, 2017, this chapter  
6 governs only:

7 (1) a limited partnership formed on or after [the  
8 Legislative Reference Bureau shall insert here the effective  
9 date of this chapter]; and

10 (2) except as provided under subsections (c) and (d), a  
11 limited partnership formed before [the Legislative Reference  
12 Bureau shall insert here the effective date of this chapter]  
13 which elects, in the manner provided in its partnership  
14 agreement or by law for amending the partnership agreement,  
15 to be subject to this chapter.

16 (c) Full effective date.--Except as provided in subsections  
17 (d) and (e), on and after April 1, 2017, this chapter governs  
18 all limited partnerships.

19 (d) Transitional provisions.--With respect to a limited  
20 partnership formed before [the Legislative Reference Bureau  
21 shall insert here the effective date of this chapter], the  
22 following rules apply except as the partners otherwise elect in  
23 the manner provided in the partnership agreement or by law for  
24 amending the partnership agreement:

25 (1) Section 8620(c) (relating to characteristics of  
26 limited partnership) does not apply and the limited  
27 partnership has whatever duration it had under the law  
28 applicable immediately before [the Legislative Reference  
29 Bureau shall insert here the effective date of this chapter].

30 (2) Sections 8661 (relating to dissociation as limited

1 partner) and 8662 (relating to effects of dissociation as  
2 limited partner) do not apply and a limited partner has the  
3 same right and power to dissociate from the limited  
4 partnership, with the same consequences, as existed  
5 immediately before [the Legislative Reference Bureau shall  
6 insert here the effective date of this chapter].

7 (3) Section 8663(a)(4) (relating to dissociation as  
8 general partner) shall not apply.

9 (4) Section 8663(a)(5) shall not apply and the court has  
10 the same power to expel a general partner as the court had  
11 immediately before [the Legislative Reference Bureau shall  
12 insert here the effective date of this chapter].

13 (5) Section 8681(a)(3) (relating to events causing  
14 dissolution) shall not apply and the connection between a  
15 person's dissociation as a general partner and the  
16 dissolution of the limited partnership is the same as existed  
17 immediately before [the Legislative Reference Bureau shall  
18 insert here the effective date of this chapter].

19 (e) Liabilities to third parties.--With respect to a limited  
20 partnership that elects under subsection (b)(2) to be subject to  
21 this chapter, after the election takes effect, the provisions of  
22 this chapter relating to the liability of the limited  
23 partnership's general partners to third parties apply:

24 (1) before April 1, 2017, to:

25 (i) a third party that had not done business with  
26 the limited partnership in the year before the election  
27 took effect; and

28 (ii) a third party that had done business with the  
29 limited partnership in the year before the election took  
30 effect only if the third party knows or has been notified

1 of the election; and  
2 (2) on and after April 1, 2017, to all third parties,  
3 except that those provisions remain inapplicable to any  
4 obligation incurred while those provisions were inapplicable  
5 under paragraph (1)(ii).

6 (f) Cross reference.--See section 8615 (relating to contents  
7 of partnership agreement).

8 § 8612. Definitions.

9 (a) General definitions.--The following words and phrases  
10 when used in this chapter shall have the meanings given to them  
11 in this section unless the context clearly indicates otherwise:

12 "Certificate of limited partnership." The certificate  
13 required by section 8621 (relating to formation of limited  
14 partnership and certificate of limited partnership). The term  
15 includes the certificate as amended or restated.

16 "Contribution." Property or a benefit described in section  
17 8651 (relating to form of contribution) which is provided by a  
18 person to a limited partnership to become a partner or in the  
19 person's capacity as a partner.

20 "Distribution." A DIRECT OR INDIRECT transfer of money or <--  
21 other property ~~from~~ OR INCURRENCE OF INDEBTEDNESS BY a limited <--  
22 partnership to a person on account of a transferable interest or  
23 in the person's capacity as a partner. The term:

24 (1) Includes:

25 (i) a redemption or other purchase by a limited  
26 partnership of a transferable interest; and

27 (ii) a transfer to a partner in return for the  
28 partner's relinquishment of any right to participate as a  
29 partner in the management or conduct of the partnership's  
30 activities and affairs or to have access to records or

1 other information concerning the partnership's activities  
2 and affairs.

3 (2) Does not include:

4 (i) amounts constituting reasonable compensation for  
5 present or past service or payments made in the ordinary  
6 course of business under a bona fide retirement plan or  
7 other bona fide benefits program;

8 (ii) the making of, or payment or performance on, a  
9 guaranty or similar arrangement by a partnership for the  
10 benefit of any or all of its partners;

11 (iii) a direct or indirect allocation or transfer  
12 effected under Chapter 3 (relating to entity  
13 transactions) with the approval of the members; or

14 (iv) a direct or indirect transfer of:

15 (A) a governance or transferable interest; or

16 (B) options, rights or warrants to acquire a  
17 governance or transferable interest.

18 "General partner." A person that:

19 (1) has become a general partner under section 8641  
20 (relating to becoming a general partner) or was a general  
21 partner in a partnership when the partnership became subject  
22 to this chapter under section 8611 (relating to short title  
23 and application of chapter); and

24 (2) has not dissociated as a general partner under  
25 section 8663 (relating to dissociation as general partner).

26 "Limited partner." A person that:

27 (1) has become a limited partner under section 8631  
28 (relating to becoming a limited partner) or was a limited  
29 partner in a limited partnership when the partnership became  
30 subject to this chapter under section 8611; and

1           (2) has not dissociated as a limited partner under  
2           section 8661 (relating to dissociation as limited partner).  
3           "Limited partnership." An association formed under this  
4           chapter or which becomes subject to this chapter under Chapter 3  
5           or section 8611. The term includes a limited liability limited  
6           partnership or an electing partnership that is also a limited  
7           partnership.

8           "Partner." A limited partner or general partner.

9           "Partnership agreement." The agreement, whether or not  
10          referred to as a partnership agreement and whether oral,  
11          implied, in record form or in any combination thereof, of all  
12          the partners of a limited partnership concerning the matters  
13          described under section 8615(a) (relating to contents of  
14          partnership agreement). The term includes the agreement as  
15          amended or restated.

16          "Required information." The information that a limited  
17          partnership is required to maintain under section 8618 (relating  
18          to required information).

19          "Transferable interest." The right, as initially owned by a  
20          person in the person's capacity as a partner, to receive  
21          distributions from a limited partnership, whether or not the  
22          person remains a partner or continues to own any part of the  
23          right. The term applies to any fraction of the interest, by  
24          whomever owned.

25          "Transferee." A person to which all or part of a  
26          transferable interest has been transferred, whether or not the  
27          transferor is a partner. The term includes a person that owns a  
28          transferable interest under section 8662(a)(3) (relating to  
29          effects of dissociation as limited partner) or 8665(a)(4)  
30          (relating to effects of dissociation as general partner).

1 (b) Index of definitions.--Following is a nonexclusive list  
2 of definitions in section 102 (relating to definitions) that  
3 apply to this chapter:

4 "Act" or "action."

5 "Court."

6 "Debtor in bankruptcy."

7 "Department."

8 "Jurisdiction."

9 "Jurisdiction of formation."

10 "Obligation."

11 "Professional services."

12 "Property."

13 "Record form."

14 "Sign."

15 "Transfer."

16 § 8613. Knowledge and notice.

17 (a) Knowledge.--A person knows a fact if the person:

18 (1) has actual knowledge of it; or

19 (2) is deemed to know it under law other than this  
20 chapter.

21 (b) Notice.--A person has notice of a fact if the person:

22 (1) has reason to know the fact from all the facts known  
23 to the person at the time in question; or

24 (2) is deemed to have notice of the fact under  
25 subsection (c) or (d).

26 (c) Effect of certificate.--A certificate of limited

27 partnership on file in the department is notice that the

28 partnership is a limited partnership and the persons designated

29 in the certificate as general partners are general partners.

30 Except as provided under subsection (d) and section 8201(g)

1 (relating to scope), the certificate is not notice of any other  
2 fact.

3 (d) Constructive notice.--A person not a partner is deemed  
4 to have notice of:

5 (1) another person's dissociation as a general partner  
6 90 days after an amendment to the certificate of limited  
7 partnership which states that the other person has  
8 dissociated becomes effective or 90 days after a certificate  
9 of dissociation pertaining to the other person becomes  
10 effective, whichever occurs first;

11 (2) a limited partnership's:

12 (i) dissolution 90 days after an amendment to the  
13 certificate of limited partnership stating that the  
14 limited partnership is dissolved is effective;

15 (ii) termination 90 days after a certificate of  
16 termination under section 8682(e) (relating to winding up  
17 and filing of certificates) is effective; and

18 (iii) participation in a merger, interest exchange,  
19 conversion, division or domestication, 90 days after a  
20 statement of merger, interest exchange, conversion,  
21 division or domestication under Chapter 3 (relating to  
22 entity transactions) is effective.

23 (e) Notification.--Except as provided in section 113(b)  
24 (relating to delivery of document), a person notifies another  
25 person of a fact by taking steps reasonably required to inform  
26 the other person in ordinary course, whether or not those steps  
27 cause the other person to know the fact.

28 (f) Effect of partner's knowledge or notice.--A general  
29 partner's knowledge or notice of a fact relating to the limited  
30 partnership is effective immediately as knowledge of or notice

1 to the partnership, except in the case of a fraud on the  
2 partnership committed by or with the consent of the general  
3 partner. A limited partner's knowledge or notice of a fact  
4 relating to the partnership is not effective as knowledge of or  
5 notice to the partnership.

6 § 8614. Governing law.

7 (a) General rule.--The laws of this Commonwealth govern:

8 (1) the internal affairs of a limited partnership; and

9 (2) the liability of a partner as partner for the debts,  
10 obligations or other liabilities of a limited partnership.

11 (b) Cross reference.--See section 8615(c)(6) (relating to  
12 contents of partnership agreement).

13 § 8615. Contents of partnership agreement.

14 (a) Scope of partnership agreement.--Except as provided  
15 under subsections (c) and (d), the partnership agreement  
16 governs:

17 (1) relations among the partners as partners and between  
18 the partners and the limited partnership;

19 (2) the rights and duties under this title of a person  
20 in the capacity of a partner;

21 (3) the activities and affairs of the partnership and  
22 the conduct of those activities and affairs;

23 (4) the means and conditions for amending the  
24 partnership agreement; and

25 (5) the means and conditions for approving a transaction  
26 under Chapter 3 (relating to entity transactions).

27 (b) Title applies generally.--To the extent the partnership  
28 agreement does not provide for a matter described in subsection  
29 (a), this title governs the matter.

30 (c) Limitations.--A partnership agreement may not do any of

1 the following:

2 (1) Vary a provision of Chapter 1 (relating to general  
3 provisions) or Subchapter A of Chapter 2 (relating to names).

4 (2) Vary the right of a partner to approve a merger,  
5 interest exchange, conversion, division or domestication  
6 under section 333(a)(2) (relating to approval of merger),  
7 343(a)(2) (relating to approval of interest exchange), 353(a)  
8 (3) (relating to approval of conversion), 363(a)(2) (relating  
9 to approval of division) or 373(a)(2) (relating to approval  
10 of domestication).

11 (3) Vary the required contents of a plan of merger under  
12 section 332(a) (relating to plan of merger), plan of interest  
13 exchange under section 342(a) (relating to plan of interest  
14 exchange), plan of conversion under section 352(a) (relating  
15 to plan of conversion), plan of division under section 362(a)  
16 (relating to plan of division) or plan of domestication under  
17 section 372(a) (relating to plan of domestication).

18 (4) Vary a provision of Chapter 81 (relating to general  
19 provisions) or 82 (relating to limited liability partnerships  
20 and limited liability limited partnerships).

21 (5) Vary the provisions of section 8611(b), (c), (d) and  
22 (e) (relating to short title and application of chapter).

23 (6) Vary the law applicable under section 8614 (relating  
24 to governing law).

25 (7) Vary any requirement, procedure or other provision  
26 of this title pertaining to:

27 (i) registered offices; or

28 (ii) the department, including provisions pertaining  
29 to documents authorized or required to be delivered to  
30 the department for filing under this title.

1       (8) Vary a limited partnership's capacity under section  
2 8620(d) (relating to characteristics of limited partnership)  
3 to sue and be sued in its own name.

4       (9) Vary a provision of section 8620(e).

5       (10) Eliminate the duty of loyalty provided for in  
6 section 8649(b)(1)(i) or (ii) or (2) (relating to standards  
7 of conduct for general partners) or the duty of care, except  
8 as provided in subsection (d).

9       (11) Vary the contractual obligation of good faith and  
10 fair dealing under sections 8635(a) (relating to limited  
11 duties of limited partners) and 8649(d), except as provided  
12 in subsection (d).

13       (12) Provide indemnification or exoneration in violation  
14 of the limitations in sections 8648(g) (relating to  
15 reimbursement, indemnification, advancement and insurance)  
16 and 8649(i).

17       (13) Vary the information required under section 8618  
18 (relating to required information) or unreasonably restrict  
19 the duties and rights under section 8634 (relating to limited  
20 partner rights to information) or 8647 (relating to general  
21 partner rights to information), except as provided under  
22 subsection (d).

23       (14) Vary the power of a person to dissociate as a  
24 general partner under section 8664(a) (relating to power to  
25 dissociate as general partner and wrongful dissociation),  
26 except to require that the notice under section 8663(a)(1)  
27 (relating to dissociation as general partner) be in record  
28 form.

29       (15) Vary the causes of dissolution specified in section  
30 8681(a)(6) (relating to events causing dissolution).

1       (16) Vary the requirements to wind up the partnership's  
2 activities and affairs specified in section 8682(a), (b)(1),  
3 (d) and (e) (relating to winding up and filing of  
4 certificates).

5       (17) Unreasonably restrict the right of a partner to  
6 maintain an action under Subchapter I (relating to actions by  
7 partners).

8       (18) Vary the provisions of section 8694 (relating to  
9 special litigation committee), except that the partnership  
10 agreement may provide that the partnership may not have a  
11 special litigation committee.

12       (19) Except as provided in section 8617(b) (relating to  
13 amendment and effect of partnership agreement), restrict the  
14 rights under this title of a person other than a partner.

15       (d) Rules.--Subject to subsection (c)(12), the following  
16 rules apply:

17       (1) The partnership agreement may:

18       (i) specify the method by which a specific act or  
19 transaction that would otherwise violate the duty of  
20 loyalty may be authorized or ratified by one or more  
21 disinterested and independent persons after full  
22 disclosure of all material facts;

23       (ii) alter the prohibition in section 8654(a)(2)  
24 (relating to limitations on distributions) so that the  
25 prohibition requires only that the partnership's total  
26 assets not be less than the sum of its total liabilities;  
27 and

28       (iii) impose reasonable restrictions on the  
29 availability and use of information obtained under  
30 section 8618, 8634 or 8647 and may define appropriate

1 remedies, including liquidated damages, for a breach of  
2 any reasonable restriction on use.

3 (2) To the extent the partnership agreement expressly  
4 relieves a partner of a responsibility that the partner would  
5 otherwise have under this title and imposes the  
6 responsibility on one or more other partners, the agreement  
7 also may eliminate or limit any fiduciary duty of the partner  
8 relieved of the responsibility which would have pertained to  
9 the responsibility.

10 (3) If not manifestly unreasonable, the partnership  
11 agreement may:

12 (i) alter the aspects of the duty of loyalty stated  
13 in section 8649(b)(1)(i) or (ii) or (2);

14 (ii) identify specific types or categories of  
15 activities that do not violate the duty of loyalty;

16 (iii) alter the duty of care;

17 (iv) alter or eliminate any other fiduciary duty;

18 and

19 (v) prescribe the standards by which the performance  
20 of the contractual obligation of good faith and fair  
21 dealing is to be measured.

22 (e) Determination of manifest unreasonableness.--A court  
23 shall decide as a matter of law whether a term of a partnership  
24 agreement is manifestly unreasonable under subsection (d)(3).

25 The court:

26 (1) shall make its determination as of the time the  
27 challenged term became part of the partnership agreement and  
28 by considering only circumstances existing at that time; and

29 (2) may invalidate the term only if, in light of the  
30 purposes, activities and affairs of the limited partnership,

1 it is readily apparent that:

2 (i) the objective of the term is unreasonable; or

3 (ii) the term is an unreasonable means to achieve  
4 the term's objective.

5 § 8616. Application of partnership agreement.

6 (a) Partnership bound.--A limited partnership is bound by  
7 and may enforce the partnership agreement, whether or not the  
8 partnership has itself manifested assent to the agreement.

9 (b) Deemed assent.--A person that becomes a partner is  
10 deemed to assent to the partnership agreement.

11 (c) Preformation agreement.--Two or more persons intending  
12 to become the initial partners of a limited partnership may make  
13 an agreement providing that upon the formation of the  
14 partnership the agreement will become the partnership agreement.

15 (d) Cross reference.--See section 8621 (relating to  
16 formation of limited partnership and certificate of limited  
17 partnership).

18 § 8617. Amendment and effect of partnership agreement.

19 (a) Approval of amendments.--A partnership agreement may  
20 specify that its amendment requires the approval of a person  
21 that is not a party to the agreement or the satisfaction of a  
22 condition. An amendment is ineffective if its adoption does not  
23 include the required approval or satisfy the specified  
24 condition.

25 (b) Obligations to nonpartners.--The obligations of a  
26 limited partnership and its partners to a person in the person's  
27 capacity as a transferee or person dissociated as a partner are  
28 governed by the partnership agreement. Except as provided in  
29 section 8653(d) (relating to sharing of and right to  
30 distributions before dissolution) or in a court order issued

1 under section 8673(b)(2) (relating to charging order) to  
2 effectuate a charging order, an amendment to the partnership  
3 agreement made after a person becomes a transferee or is  
4 dissociated as a partner:

5 (1) is effective with regard to any debt, obligation or  
6 other liability of the partnership or its partners to the  
7 person in the person's capacity as a transferee or person  
8 dissociated as a partner; and

9 (2) is not effective to the extent the amendment imposes  
10 a new debt, obligation or other liability on the transferee  
11 or person dissociated as a partner.

12 (c) Provisions in filed documents.--If a document delivered  
13 by a limited partnership to the department for filing becomes  
14 effective and contains a provision that would be ineffective  
15 under section 8615(c) or (d)(3) (relating to contents of  
16 partnership agreement) if contained in the partnership  
17 agreement, the provision is ineffective in the document.

18 (d) Conflicts with partnership agreement.--Subject to  
19 subsection (c):

20 (1) If a provision of the certificate of limited  
21 partnership conflicts with a provision of the partnership  
22 agreement, the provision of the certificate prevails.

23 (2) If a document other than its certificate of limited  
24 partnership that has been delivered by a limited partnership  
25 to the department for filing becomes effective and conflicts  
26 with a provision of the partnership agreement:

27 (i) the agreement prevails as to partners, persons  
28 dissociated as partners and transferees; and

29 (ii) the document prevails as to other persons to  
30 the extent they reasonably rely on the document.

1 (e) Prohibition of oral amendments.--If a provision of a  
2 partnership agreement in record form provides that the  
3 partnership agreement cannot be amended, modified or rescinded  
4 except in record form, an oral agreement, amendment,  
5 modification or rescission shall not be enforceable.

6 (f) Voting requirements.--A partnership agreement may  
7 provide in record form that, whenever a provision of this title  
8 requires the vote or consent of a specified number or percentage  
9 of partners or of a class of partners for the taking of any  
10 action, a higher number or percentage of votes or consents shall  
11 be required for the action. Except as otherwise provided in the  
12 partnership agreement, whenever the partnership agreement  
13 requires for the taking of any action by the partners or a class  
14 of partners a specific number or percentage of votes or  
15 consents, the provision of the partnership agreement setting  
16 forth that requirement shall not be amended or repealed by any  
17 lesser number or percentage of votes or consents of the partners  
18 or the class of partners.

19 § 8618. Required information.

20 (a) General rule.--A limited partnership shall maintain at  
21 its principal office the following information:

22 (1) A current list showing the full name and last known  
23 street and mailing address of each partner, separately  
24 identifying the general partners, in alphabetical order, and  
25 the limited partners, in alphabetical order.

26 (2) A copy of the initial certificate of limited  
27 partnership and all amendments to and restatements of the  
28 certificate, together with signed copies of any powers of  
29 attorney under which any certificate, amendment or  
30 restatement has been signed.

1       (3) A copy of any filed certificate or statement of  
2 merger, interest exchange, conversion, division or  
3 domestication.

4       (4) A copy of the partnership's Federal, State and local  
5 income tax returns and reports, if any, for the three most  
6 recent years.

7       (5) A copy of any provisions of the partnership  
8 agreement in record form and any amendment made in record  
9 form to any partnership agreement.

10       (6) A copy of any financial statement of the partnership  
11 for the three most recent years.

12       (7) A copy of any record made by the partnership during  
13 the past three years of any consent given by or vote taken of  
14 any partner under this title or the partnership agreement.

15       (8) Unless contained in a provision of the partnership  
16 agreement in record form, a record stating:

17           (i) a description and statement of the agreed value  
18 of contributions other than money made and agreed to be  
19 made by each partner;

20           (ii) the times at which, or events on the happening  
21 of which, any additional contributions agreed to be made  
22 by each partner are to be made;

23           (iii) for any person that is both a general partner  
24 and a limited partner, a specification of what  
25 transferable interest the person owns in each capacity;  
26 and

27           (iv) any events upon the happening of which the  
28 partnership is to be dissolved and its activities and  
29 affairs wound up.

30       (b) Cross reference.--See section 8615 (relating to contents

1 of partnership agreement).

2 § 8619. Dual capacity.

3 A person may be both a general partner and a limited  
4 partner. A person that is both a general and limited partner has  
5 the rights, powers, duties and obligations provided by this  
6 title and the partnership agreement in each of those  
7 capacities. When the person acts as a general partner, the  
8 person is subject to the obligations, duties and restrictions  
9 under this title and the partnership agreement for general  
10 partners. When the person acts as a limited partner, the person  
11 is subject to the obligations, duties and restrictions under  
12 this title and the partnership agreement for limited partners.

13 § 8620. Characteristics of limited partnership.

14 (a) Separate entity.--A limited partnership is an entity  
15 distinct from its partners. A limited partnership is the same  
16 entity regardless of whether:

17 (1) its certificate of limited partnership states that  
18 the limited partnership is a limited liability limited  
19 partnership; or

20 (2) it has a statement of registration in effect under  
21 section 8201 (relating to scope).

22 (b) Purpose.--A limited partnership may have any lawful  
23 purpose, other than acting as a banking institution, credit  
24 union or insurer, regardless of whether the purpose is for  
25 profit. See section 8102 (relating to interchangeability of  
26 partnership, limited liability company and corporate forms of  
27 organization).

28 (c) Duration.--A limited partnership has perpetual duration.

29 (d) Powers.--A limited partnership has the capacity to sue  
30 and be sued in its own name and the power to do all things

1 necessary or convenient to carry on its activities and affairs.

2 (e) Restrictions on nonprofit limited partnerships.--If a  
3 limited partnership has a purpose that is not for profit:

4 (1) Its purpose must be stated in the certificate of  
5 limited partnership.

6 (2) The partnership shall not distribute any part of its  
7 income or profits to its partners, but it may pay  
8 compensation in a reasonable amount to those persons for  
9 services rendered.

10 (3) The partnership may confer benefits on partners or  
11 nonpartners in conformity with its purposes, may repay  
12 capital contributions and may redeem evidences of  
13 indebtedness, except when the partnership is currently  
14 insolvent or would thereby be made insolvent or rendered  
15 unable to carry on its purposes, or when the fair value of  
16 the assets of the partnership remaining after the conferring  
17 of benefits, payment or redemption would be insufficient to  
18 meet its liabilities. The partnership may make distributions  
19 of money or property to partners upon dissolution or final  
20 liquidation as permitted by this chapter.

21 (4) If the partnership is organized for a charitable  
22 purpose, it may take, receive and hold real and personal  
23 property as may be given, devised to, or otherwise vested in  
24 the partnership, in trust, for the purpose or purposes set  
25 forth in its certificate of limited partnership. The general  
26 partners shall, as trustees of the property, be held to the  
27 same degree of responsibility and accountability as other  
28 trustees, unless:

29 (i) a lesser degree or a particular degree of  
30 responsibility and accountability is prescribed in the

1 trust instrument; or

2 (ii) the general partners are under the control of  
3 the limited partners or third persons who retain the  
4 right to direct, and do direct, the actions of the  
5 general partners as to the use of the trust property from  
6 time to time.

7 (5) Property of the partnership committed to charitable  
8 purposes shall not, by any proceeding under Chapter 3  
9 (relating to entity transactions) or otherwise, be diverted  
10 from the objects to which it was donated, granted or devised,  
11 unless and until the partnership obtains from the court an  
12 order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying  
13 the disposition of the property.

14 (f) Cross references.--See sections 8611(d) (relating to  
15 short title and application of chapter) and 8615 (relating to  
16 contents of partnership agreement).

17 SUBCHAPTER B

18 FORMATION AND FILINGS

19 Sec.

20 8621. Formation of limited partnership and certificate of  
21 limited partnership.

22 8622. Amendment or restatement of certificate of limited  
23 partnership.

24 8623. Signing of filed documents.

25 8624. Liability of general partner for false or missing  
26 information in filed document.

27 8625. Registered office.

28 § 8621. Formation of limited partnership and certificate of  
29 limited partnership.

30 (a) Formation.--To form a limited partnership, a person must

1 deliver a certificate of limited partnership to the department  
2 for filing.

3 (b) Required contents of certificate.--A certificate of  
4 limited partnership must state:

5 (1) the name of the limited partnership, which must  
6 comply with Subchapter A of Chapter 2 (relating to names);

7 (2) subject to section 109 (relating to name of  
8 commercial registered office provider in lieu of registered  
9 address), the address, including street and number, if any,  
10 of the partnership's registered office; and

11 (3) the name and address of each general partner.

12 (c) Optional contents of certificate.--A certificate of  
13 limited partnership may contain statements as to matters other  
14 than those required under subsection (b), but may not vary or  
15 otherwise affect the provisions specified in section 8615(c) and  
16 (d) (relating to contents of partnership agreement) in a manner  
17 inconsistent with that section.

18 (d) Time of formation.--A limited partnership is formed  
19 when:

20 (1) the certificate of limited partnership becomes  
21 effective;

22 (2) at least two persons have become partners;

23 (3) at least one person has become a general partner;  
24 and

25 (4) at least one person has become a limited partner.

26 (e) Cross references.--See:

27 Section 134 (relating to docketing statement).

28 Section 135 (relating to requirements to be met by filed  
29 documents).

30 Section 136(c) (relating to processing of documents by

1 Department of State).

2 Section 8620 (relating to characteristics of limited  
3 partnership).

4 Section 8623 (relating to signing of filed documents).

5 § 8622. Amendment or restatement of certificate of limited  
6 partnership.

7 (a) General rule.--A certificate of limited partnership may  
8 be amended or restated at any time.

9 (b) Required contents of certificate of amendment.--To amend  
10 its certificate of limited partnership, a limited partnership  
11 must deliver to the department for filing a certificate of  
12 amendment that states:

13 (1) the name of the partnership;

14 (2) the date of filing of its initial certificate;

15 (3) subject to section 109 (relating to name of  
16 commercial registered office provider in lieu of registered  
17 address), the address, including street and number, if any,  
18 of its registered office; and

19 (4) the amendment.

20 (c) Restatement.--To restate its certificate of limited  
21 partnership, a limited partnership must deliver to the  
22 department for filing a certificate of amendment that:

23 (1) is designated as a restatement; and

24 (2) includes a statement that the restated certificate  
25 supersedes the original certificate and all amendments.

26 (d) Required amendments.--A limited partnership shall  
27 promptly deliver to the department for filing an amendment to  
28 its certificate of limited partnership to reflect:

29 (1) the admission of a new general partner;

30 (2) the dissociation of a person as a general partner;

1 or

2 (3) the appointment of a person to wind up the  
3 partnership's activities and affairs under section 8682(c) or  
4 (d) (relating to winding up and filing of certificates).

5 (e) Obligation to correct.--If a general partner knows that  
6 any information in a filed certificate of limited partnership is  
7 inaccurate, the general partner shall promptly:

8 (1) cause the certificate to be amended; or

9 (2) if appropriate, deliver to the department for  
10 filing:

11 (i) a certificate of change of registered office  
12 under section 8625 (relating to registered office);

13 (ii) a statement of correction under section 138  
14 (relating to statement of correction); or

15 (iii) a statement of abandonment under section 141  
16 (relating to abandonment of filing before effectiveness).

17 (f) Amendment of voting provisions.--Except as provided in  
18 the certificate of limited partnership, whenever the certificate  
19 requires for the taking of any action by the partners or a class  
20 of partners a specific number or percentage of votes or  
21 consents, the provision of the certificate setting forth that  
22 requirement shall not be amended or repealed by any lesser  
23 number or percentage of votes or consents of the partners or of  
24 the class of partners.

25 (g) Cross references.--See:

26 Section 134 (relating to docketing statement).

27 Section 135 (relating to requirements to be met by filed  
28 documents).

29 Section 136(c) (relating to processing of documents by  
30 Department of State).

1           Section 8623 (relating to signing of filed documents).

2   § 8623. Signing of filed documents.

3       (a) Required signatures.--Except as provided in this title,  
4 a document delivered to the department for filing under this  
5 title relating to a limited partnership must be signed as  
6 follows:

7           (1) An initial certificate of limited partnership must  
8 be signed by all general partners listed in the certificate.

9           (2) An amendment to the certificate of limited  
10 partnership deleting a statement that the limited partnership  
11 is a limited liability limited partnership must be signed by  
12 all general partners listed in the certificate.

13           (3) An amendment to the certificate of limited  
14 partnership designating as general partner a person admitted  
15 under section 8681(a)(3)(ii) (relating to events causing  
16 dissolution) following the dissociation of a limited  
17 partnership's last general partner must be signed by that  
18 person.

19           (4) An amendment to the certificate of limited  
20 partnership required by section 8682(c) (relating to winding  
21 up and filing of certificates) following the appointment of a  
22 person to wind up the dissolved limited partnership's  
23 activities and affairs must be signed by that person.

24           (5) Any other amendment to the certificate of limited  
25 partnership must be signed by:

26           (i) at least one general partner listed in the  
27 certificate;

28           (ii) each person designated in the amendment as a  
29 new general partner; and

30           (iii) each person that the amendment indicates has

1           dissociated as a general partner, unless:

2                   (A) the person is deceased or a guardian has  
3                   been appointed for the person and the amendment so  
4                   states; or

5                   (B) the person has previously delivered to the  
6                   department for filing a certificate of dissociation.

7           (6) A restated certificate of limited partnership must  
8           be signed by at least one general partner listed in the  
9           certificate, and, to the extent the restated certificate  
10           effects a change under any other paragraph of this  
11           subsection, the certificate must be signed in a manner that  
12           satisfies that paragraph.

13           (7) A certificate of termination must be signed by all  
14           general partners listed in the certificate of limited  
15           partnership or, if the certificate of a dissolved limited  
16           partnership lists no general partners, by the person  
17           appointed under section 8682(c) or (d) to wind up the  
18           dissolved limited partnership's activities and affairs.

19           (8) Any other document delivered by a limited  
20           partnership to the department for filing must be signed by at  
21           least one general partner listed in the certificate of  
22           limited partnership.

23           (9) A statement by a person under section 8665(a)(3)  
24           (relating to effects of dissociation as general partner)  
25           stating that the person has dissociated as a general partner  
26           must be signed by that person.

27           (10) A certificate of negation by a person under section  
28           8636 (relating to person erroneously believing self to be  
29           limited partner) must be signed by that person.

30           (11) Any other document delivered on behalf of a person

1 to the department for filing must be signed by that person.

2 (b) Cross reference.--See section 142 (relating to effect of  
3 signing filings).

4 § 8624. Liability of general partner for false or missing  
5 information in filed document.

6 (a) General rule.--If a document delivered to the department  
7 for filing under this title and filed by the department contains  
8 a materially false statement or fails to state a material fact  
9 required to be stated, a person that suffers loss by reasonable  
10 reliance on the statement or failure to state a material fact  
11 may recover damages for the loss from a general partner if:

12 (1) the document was delivered for filing on behalf of  
13 the limited partnership; and

14 (2) the general partner knew or had notice there was  
15 false or missing information in the document for a reasonably  
16 sufficient time before the document was relied upon so that,  
17 before the reliance, the general partner reasonably could  
18 have:

19 (i) effected an amendment under section 8622  
20 (relating to amendment or restatement of certificate of  
21 limited partnership);

22 (ii) filed a petition under section 144 (relating to  
23 signing and filing pursuant to judicial order); or

24 (iii) delivered to the department for filing:

25 (A) a certificate of change of registered office  
26 under section 8625 (relating to registered office);

27 (B) a statement of correction under section 138  
28 (relating to statement of correction); or

29 (C) a statement of abandonment under section 141  
30 (relating to abandonment of filing before

1 effectiveness).

2 (b) Cross references.--See sections 142 (relating to effect  
3 of signing filings) and 143 (relating to liability for  
4 inaccurate information in filing).

5 § 8625. Registered office.

6 (a) General rule.--Every limited partnership shall have and  
7 continuously maintain in this Commonwealth a registered office  
8 which may, but need not, be the same as its place of business.

9 (b) Change of registered office.--After formation, a change  
10 in the location of the registered office may be effected at any  
11 time by the limited partnership. Before the change becomes  
12 effective, the limited partnership shall amend its certificate  
13 of limited partnership under the provisions of this chapter to  
14 reflect the change in location, or shall deliver to the  
15 department for filing a certificate of change of registered  
16 office setting forth:

17 (1) The name of the limited partnership.

18 (2) The address, including street and number, if any, of  
19 its then registered office.

20 (3) The address, including street and number, if any, to  
21 which the registered office is to be changed.

22 (c) Alternative procedure.--A limited partnership may  
23 satisfy the requirements of this chapter concerning the  
24 maintenance of a registered office in this Commonwealth by  
25 setting forth in any document filed by the department under any  
26 provision of this title that permits or requires the statement  
27 of the address of its then registered office, in lieu of that  
28 address, the statement authorized by section 109(a) (relating to  
29 name of commercial registered office provider in lieu of  
30 registered address).

1 (d) Cross references.--See:

2 Section 108 (relating to change in location or status of  
3 registered office provided by agent).

4 Section 134 (relating to docketing statement).

5 Section 135 (relating to requirements to be met by filed  
6 documents).

7 Section 136(c) (relating to processing of documents by  
8 Department of State).

9 Section 8615(c)(6) (relating to contents of partnership  
10 agreement).

11 Section 8623 (relating to signing of filed documents).

12 SUBCHAPTER C

13 LIMITED PARTNERS

14 Sec.

15 8631. Becoming a limited partner.

16 8632. No agency power of limited partner as limited partner.

17 8633. No liability as limited partner for limited partnership  
18 obligations.

19 8634. Limited partner rights to information.

20 8635. Limited duties of limited partners.

21 8636. Person erroneously believing self to be limited partner.

22 § 8631. Becoming a limited partner.

23 (a) Upon formation.--Upon formation of a limited  
24 partnership, a person becomes a limited partner as agreed among  
25 the persons that are to be the initial partners.

26 (b) After formation.--After formation, a person becomes a  
27 limited partner:

28 (1) as provided in the partnership agreement;

29 (2) as the result of a transaction effective under

30 Chapter 3 (relating to entity transactions);

1 (3) with the affirmative vote or consent of all the  
2 partners; or

3 (4) as provided in section 8681(a)(4) or (5) (relating  
4 to events causing dissolution).

5 (c) Noneconomic limited partners.--A person may become a  
6 limited partner without:

7 (1) acquiring a transferable interest; or

8 (2) making or being obligated to make a contribution to  
9 the limited partnership.

10 (d) Nature of interest.--The interest of a limited partner  
11 in a limited partnership is personal property.

12 § 8632. No agency power of limited partner as limited partner.

13 (a) General rule.--A limited partner is not an agent of a  
14 limited partnership solely by reason of being a limited partner.

15 (b) Creation of partnership liability.--A person's status as  
16 a limited partner does not prevent or restrict law other than  
17 this chapter from imposing liability on a limited partnership  
18 because of the person's conduct.

19 § 8633. No liability as limited partner for limited partnership  
20 obligations.

21 A debt, obligation or other liability of a limited  
22 partnership is not the debt, obligation or other liability of a  
23 limited partner. A limited partner is not personally liable,  
24 directly or indirectly, by way of contribution or otherwise, for  
25 a debt, obligation or other liability of the partnership solely  
26 by reason of being or acting as a limited partner, even if the  
27 limited partner participates in the management and control of  
28 the partnership. This subsection applies regardless of the  
29 dissolution, winding up or termination of the partnership.

30 § 8634. Limited partner rights to information.

1 (a) Right to required information.--Within 10 days after  
2 receipt by a limited partnership of a demand made in record  
3 form, a limited partner may inspect and copy required  
4 information during regular business hours in the partnership's  
5 principal office. The limited partner need not have any  
6 particular purpose for seeking the information.

7 (b) Right to other information.--During regular business  
8 hours and at a reasonable location specified by the limited  
9 partnership, a limited partner may inspect and copy information,  
10 other than the required information, regarding the activities,  
11 affairs, financial condition and other circumstances of the  
12 partnership if:

13 (1) the limited partner seeks the information for a  
14 purpose reasonably related to the partner's interest as a  
15 limited partner;

16 (2) the limited partner makes a demand in record form  
17 received by the partnership, describing with reasonable  
18 particularity the information sought and the purpose for  
19 seeking the information; and

20 (3) the information sought is directly connected to the  
21 limited partner's purpose.

22 (c) Rights of person dissociated as limited partner.--  
23 Subject to subsection (h), on demand made in record form  
24 received by a limited partnership, a person dissociated as a  
25 limited partner may have access to information to which the  
26 person was entitled while a limited partner if:

27 (1) the information pertains to the period during which  
28 the person was a limited partner;

29 (2) in seeking the information the person complies with  
30 section 8635(a) (relating to limited duties of limited

1 partners) as if still a limited partner; and

2 (3) the person satisfies the requirements imposed on a  
3 limited partner by subsection (b).

4 (d) Required response to demand.--Within 10 days after  
5 receiving a demand under subsection (b) or (c), the limited  
6 partnership shall inform in record form the person that made the  
7 demand of:

8 (1) what information the partnership will provide in  
9 response to the demand and when and where the partnership  
10 will provide the information; and

11 (2) the partnership's reasons for declining, if the  
12 partnership declines to provide any demanded information.

13 (e) Copying costs.--A limited partnership may charge a  
14 person that makes a demand under this section the reasonable  
15 costs of copying.

16 (f) Rights of agent or guardian.--A limited partner or  
17 person dissociated as a limited partner may exercise the rights  
18 under this section through an agent or, in the case of an  
19 individual under legal disability, a guardian. Any restriction  
20 or condition imposed by the partnership agreement or under  
21 subsection (h) applies both to the agent or guardian and to the  
22 limited partner or person dissociated as a limited partner.

23 (g) No rights of transferee.--Subject to section 8674  
24 (relating to power of personal representative of deceased  
25 partner), the rights under this section do not extend to a  
26 person as transferee.

27 (h) Limitations on access.--In addition to any restriction  
28 or condition stated in its partnership agreement, a limited  
29 partnership, as a matter within the ordinary course of its  
30 activities and affairs, may impose reasonable restrictions and

1 conditions on access to and use of information to be furnished  
2 under this section, including designating information  
3 confidential and imposing nondisclosure and safeguarding  
4 obligations on the recipient. In a dispute concerning the  
5 reasonableness of a restriction under this subsection, the  
6 partnership has the burden of proving reasonableness.

7 (i) Cross reference.--See section 8615 (relating to contents  
8 of partnership agreement).

9 § 8635. Limited duties of limited partners.

10 (a) Good faith and fair dealing.--A limited partner shall  
11 discharge any duties to the limited partnership and the other  
12 partners under the partnership agreement and exercise any rights  
13 under this title or the partnership agreement consistently with  
14 the contractual obligation of good faith and fair dealing.

15 (b) No other duties.--Except as provided under subsection  
16 (a), a limited partner does not have any duty to the limited  
17 partnership or to any other partner solely by reason of acting  
18 as a limited partner.

19 (c) Transactions with limited partnership.--If a limited  
20 partner enters into a transaction with a limited partnership,  
21 the limited partner's rights and obligations arising from the  
22 transaction are the same as those of a person that is not a  
23 partner.

24 (d) Cross reference.--See section 8615(c)(11) (relating to  
25 contents of partnership agreement).

26 § 8636. Person erroneously believing self to be limited  
27 partner.

28 (a) Right to correct.--Except as provided in subsection (b),  
29 a person that makes an investment in a business enterprise and  
30 erroneously but in good faith believes that the person has

1 become a limited partner in the enterprise is not liable for the  
2 enterprise's obligations by reason of making the investment,  
3 receiving distributions from the enterprise or exercising any  
4 rights of or appropriate to a limited partner, if, on  
5 ascertaining the mistake, the person:

6 (1) causes an appropriate certificate of limited  
7 partnership, amendment or statement of correction to be  
8 signed and delivered to the department for filing;

9 (2) if a certificate of limited partnership is on file  
10 in the department, withdraws from future participation as an  
11 owner in the enterprise by delivering to the department for  
12 filing a certificate of negation under this section stating:

13 (i) the name of the limited partnership;

14 (ii) subject to section 109 (relating to name of  
15 commercial registered office provider in lieu of  
16 registered address), the address, including street and  
17 number, if any, of the partnership's registered office;

18 (iii) the name of the person delivering the  
19 certificate to the department for filing; and

20 (iv) that the person is not a general partner; or

21 (3) files a certificate of denial under section 8434  
22 (relating to certificate of denial) as if the enterprise were  
23 a general partnership.

24 (b) Liability before correction.--A person that makes an  
25 investment described in subsection (a) is liable to the same  
26 extent as a general partner to any third party that enters into  
27 a transaction with the enterprise, believing in good faith that  
28 the person is a general partner, before the department files a  
29 certificate of negation, certificate of limited partnership,  
30 amendment or statement of correction to show that the person is

1 not a general partner.

2 (c) Right to withdraw.--If a person makes a diligent effort  
3 in good faith to comply with subsection (a)(1) and is unable to  
4 cause the appropriate certificate of limited partnership,  
5 amendment or statement of correction to be signed and delivered  
6 to the department for filing, the person has the right to  
7 withdraw from the enterprise under subsection (a)(2) even if the  
8 withdrawal would otherwise breach an agreement with others that  
9 are or have agreed to become co-owners of the enterprise.

10 (d) Cross references.--See:

11 Section 134 (relating to docketing statement).

12 Section 135 (relating to requirements to be met by filed  
13 documents).

14 Section 136(c) (relating to processing of documents by  
15 Department of State).

16 Section 8623 (relating to signing of filed documents).

17 SUBCHAPTER D

18 GENERAL PARTNERS

19 Sec.

20 8641. Becoming a general partner.

21 8642. General partner agent of limited partnership.

22 8643. Limited partnership liable for general partner's  
23 actionable conduct.

24 8644. General partner's liability.

25 8645. Actions by and against partnership and partners.

26 8646. Management rights.

27 8647. General partner rights to information.

28 8648. Reimbursement, indemnification, advancement and  
29 insurance.

30 8649. Standards of conduct for general partners.

1 § 8641. Becoming a general partner.

2 (a) Admission on formation.--On formation of a limited  
3 partnership, a person becomes a general partner as agreed among  
4 the persons that are to be the initial partners.

5 (b) Admission after formation.--After formation of a limited  
6 partnership, a person becomes a general partner:

7 (1) as provided in the partnership agreement;

8 (2) as the result of a transaction effective under  
9 Chapter 3 (relating to entity transactions);

10 (3) with the affirmative vote or consent of all the  
11 partners; or

12 (4) under section 8681(a)(3)(ii) or (5) (relating to  
13 events causing dissolution) following the dissociation of a  
14 limited partnership's last general partner.

15 (c) Noneconomic general partners.--A person may become a  
16 general partner without:

17 (1) acquiring a transferable interest; or

18 (2) making or being obligated to make a contribution to  
19 the partnership.

20 (d) Nature of interest.--The interest of a general partner  
21 in a limited partnership is personal property.

22 § 8642. General partner agent of limited partnership.

23 (a) General rule.--Each general partner is an agent of the  
24 limited partnership for the purposes of its activities and  
25 affairs. An act of a general partner, including the signing of a  
26 document in record form in the partnership's name, for  
27 apparently carrying on in the ordinary course the partnership's  
28 activities and affairs, or activities and affairs of the kind  
29 carried on by the partnership, binds the partnership, unless the  
30 general partner did not have authority to act for the

1 partnership in the particular matter and the person with which  
2 the general partner was dealing knew or had notice that the  
3 general partner lacked authority.

4 (b) Act outside of ordinary course.--An act of a general  
5 partner which is not apparently for carrying on in the ordinary  
6 course the limited partnership's activities and affairs, or  
7 activities and affairs of the kind carried on by the  
8 partnership, binds the partnership only if the partner had  
9 actual authority to take the action.

10 § 8643. Limited partnership liable for general partner's  
11 actionable conduct.

12 (a) General rule.--A limited partnership is liable for loss  
13 or injury caused to a person or for a penalty incurred as a  
14 result of a wrongful act, or other actionable conduct, of a  
15 general partner acting in the ordinary course of activities and  
16 affairs of the partnership or with the actual or apparent  
17 authority of the partnership.

18 (b) Misapplication of property.--If, in the course of a  
19 limited partnership's activities and affairs or while acting  
20 with actual or apparent authority of the partnership, a general  
21 partner receives or causes the partnership to receive money or  
22 property of a person not a partner, and the money or property is  
23 misapplied by a general partner, the partnership is liable for  
24 the loss.

25 § 8644. General partner's liability.

26 (a) General rule.--Except as provided under subsection (b)  
27 or section 8204 (relating to limitation on liability of  
28 partners), all general partners are liable jointly and severally  
29 for all debts, obligations and other liabilities of the limited  
30 partnership unless otherwise agreed by the claimant or provided

1 by law.

2 (b) Preexisting obligations.--A person that becomes a  
3 general partner is not personally liable for a debt, obligation  
4 or other liability of the limited partnership incurred before  
5 the person became a general partner.

6 § 8645. Actions by and against partnership and partners.

7 (a) General partner as party.--To the extent not  
8 inconsistent with section 8644 (relating to general partner's  
9 liability), a general partner may be joined in an action against  
10 the limited partnership or named in a separate action.

11 (b) Judgment against partnership only.--A judgment against a  
12 partnership:

13 (1) is not by itself a judgment against a partner; and

14 (2) except as set forth in subsection (c), may not be  
15 satisfied from a partner's assets.

16 (c) Judgment against partnership and partner.--If there is a  
17 judgment against a partnership and a partner on the same claim,  
18 the judgment creditor may levy execution against the assets of  
19 the partner if both of the following paragraphs apply:

20 (1) The partner is personally liable for the claim under  
21 section 8644.

22 (2) One of the following subparagraphs applies:

23 (i) A writ of execution on the judgment against the  
24 partnership has been returned unsatisfied in whole or in  
25 part.

26 (ii) The partnership is a debtor in bankruptcy.

27 (iii) The partner has agreed that the creditor need  
28 not exhaust partnership assets.

29 (iv) A court grants permission to levy execution  
30 based on a finding that:

1           (A) partnership assets subject to execution are  
2           clearly insufficient to satisfy the judgment;

3           (B) exhaustion of partnership assets is  
4           excessively burdensome; or

5           (C) the grant of permission is an appropriate  
6           exercise of the court's equitable powers.

7           (v) Liability is imposed on the partner by law or  
8           contract independent of the existence of the partnership.

9   § 8646. Management rights.

10   (a) General rule.--Each general partner has equal rights in  
11   the management and conduct of the limited partnership's  
12   activities and affairs. Except as provided in this title, any  
13   matter relating to the activities and affairs of the partnership  
14   is decided exclusively by the general partner or, if there is  
15   more than one general partner, by a majority of the general  
16   partners.

17   (b) Actions requiring unanimous approval.--The affirmative  
18   vote or consent of all the partners is required to:

19           (1) amend the partnership agreement; and

20           (2) amend the certificate of limited partnership to  
21   delete a statement that the limited partnership is a limited  
22   liability limited partnership.

23   (c) Reimbursement of advance.--A limited partnership shall  
24   reimburse a general partner for an advance to the partnership  
25   beyond the amount of capital the general partner agreed to  
26   contribute.

27   (d) Status of advance.--A payment or advance made by a  
28   general partner which gives rise to an obligation of the limited  
29   partnership under subsection (c) or section 8648(a) (relating to  
30   reimbursement, indemnification, advancement and insurance)

1 constitutes a loan to the partnership which accrues interest  
2 from the date of the payment or advance.

3 (e) No right to remuneration.--A general partner is not  
4 entitled to remuneration for services performed for the limited  
5 partnership.

6 (f) Sale of assets.--A sale, lease, exchange or other  
7 disposition of all, or substantially all, the property and  
8 assets of a limited partnership that is not made in the usual  
9 and regular course of the ~~business~~ ACTIVITIES AND AFFAIRS of the <--  
10 partnership must be approved by:

11 (1) all the general partners; and

12 (2) limited partners owning the rights to receive a  
13 majority of the distributions as limited partners.

14 (g) Cross reference.--See section 324 (relating to approval  
15 by limited partnership).

16 § 8647. General partner rights to information.

17 (a) Right to required information.--A general partner may  
18 inspect and copy required information during regular business  
19 hours in the limited partnership's principal office.

20 (b) Right to other information.--On reasonable notice, a  
21 general partner may inspect and copy during regular business  
22 hours, at a reasonable location specified by the limited  
23 partnership, any other records maintained by the partnership in  
24 addition to the required information regarding the partnership's  
25 activities, affairs, financial condition and other  
26 circumstances.

27 (c) Obligation of limited partnership.--A limited  
28 partnership shall furnish to each general partner, without  
29 demand, any information concerning the partnership's activities,  
30 affairs, financial condition and other circumstances which the

1 partnership knows and is material to the proper exercise of the  
2 general partner's rights and duties under the partnership  
3 agreement or this title, except to the extent the partnership  
4 can establish that it reasonably believes the general partner  
5 already knows the information.

6 (d) Obligation of general partner.--The duty to furnish  
7 information under subsection (c) also applies to each general  
8 partner to the extent the general partner knows any of the  
9 information described in subsection (b).

10 (e) Rights of person dissociated as general partner.--  
11 Subject to subsection (j), within 10 days after receipt by a  
12 limited partnership of a demand made in record form, a person  
13 dissociated as a general partner may have access to the  
14 information and records described under subsections (a) and (b)  
15 at the locations specified under subsections (a) and (b) if:

16 (1) the information or record pertains to the period  
17 during which the person was a general partner;

18 (2) in seeking the information or record the person  
19 complies with section 8649(d) (relating to standards of  
20 conduct for general partners) as if still a general partner;  
21 and

22 (3) all of the following apply:

23 (i) the person seeks the information for a purpose  
24 reasonably related to the partner's interest as a former  
25 general partner;

26 (ii) the person makes a demand in record form  
27 received by the partnership, describing with reasonable  
28 particularity the information sought and the purpose for  
29 seeking the information; and

30 (iii) the information sought is directly connected

1 to the person's purpose.

2 (f) Required response to demand.--Within 10 days after  
3 receiving a demand under subsection (e), the limited partnership  
4 shall, in record form, inform the person that made the demand  
5 of:

6 (1) what information the partnership will provide in  
7 response to the demand and when and where the partnership  
8 will provide the information; and

9 (2) the partnership's reasons for declining, if the  
10 partnership declines to provide any demanded information.

11 (g) Copying costs.--A limited partnership may charge a  
12 person that makes a demand under this section the reasonable  
13 costs of copying.

14 (h) Rights of agent or guardian.--A general partner or  
15 person dissociated as a general partner may exercise the rights  
16 under this section through an agent or, in the case of an  
17 individual under legal disability, a guardian. Any restriction  
18 or condition imposed by the partnership agreement or under  
19 subsection (j) applies both to the agent or guardian and to the  
20 general partner or person dissociated as a general partner.

21 (i) No rights of transferee.--The rights under this section  
22 do not extend to a person as transferee, except that if:

23 (1) a general partner dies, section 8674 (relating to  
24 power of personal representative of deceased partner)  
25 applies; and

26 (2) an individual dissociates as a general partner under  
27 section 8663(a)(7)(ii) or (iii) (relating to dissociation as  
28 general partner), the personal representative of the  
29 individual may exercise the rights under subsection (d) of a  
30 person dissociated as a general partner.

1 (j) Limitations on access.--In addition to any restriction  
2 or condition stated in its partnership agreement, a limited  
3 partnership, as a matter within the ordinary course of its  
4 activities and affairs, may impose reasonable restrictions and  
5 conditions on access to and use of information to be furnished  
6 under this section, including designating information  
7 confidential and imposing nondisclosure and safeguarding  
8 obligations on the recipient. In a dispute concerning the  
9 reasonableness of a restriction under this subsection, the  
10 partnership has the burden of proving reasonableness.

11 (k) Cross reference.--See section 8615 (relating to contents  
12 of partnership agreement).

13 § 8648. Reimbursement, indemnification, advancement and  
14 insurance.

15 (a) Reimbursement.--A limited partnership shall reimburse a  
16 general partner for any payment made by the general partner in  
17 the course of the general partner's activities on behalf of the  
18 partnership, if the general partner complied with sections 8646  
19 (relating to management rights), 8649 (relating to standards of  
20 conduct for general partners) and 8654 (relating to limitations  
21 on distributions) in making the payment.

22 (b) Indemnification.--A limited partnership shall indemnify  
23 and hold harmless a person with respect to any claim or demand  
24 against the person and any debt, obligation or other liability  
25 incurred by the person by reason of the person's former or  
26 present capacity as a general partner, if the claim, demand,  
27 debt, obligation or other liability does not arise from the  
28 person's breach of section 8646, 8649 or 8654.

29 (c) Advancement.--In the ordinary course of its activities  
30 and affairs, a limited partnership may advance reasonable

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1 expenses, including attorney fees and costs, incurred by a  
2 person in connection with a claim or demand against the person  
3 by reason of the person's former or present capacity as a  
4 general partner, if the person promises to repay the partnership  
5 if the person ultimately is determined not to be entitled to be  
6 indemnified.

7 (d) Insurance.--A limited partnership may purchase and  
8 maintain insurance on behalf of a general partner against  
9 liability asserted against or incurred by the general partner in  
10 that capacity or arising from that status even if, under  
11 subsection (g), the partnership agreement could not eliminate or  
12 limit the person's liability to the partnership for the conduct  
13 giving rise to the liability.

14 (e) Non-exclusivity.--The rights provided under subsections  
15 (a), (b), (c) and (d) shall not be deemed exclusive of any other  
16 rights to which a person seeking reimbursement, indemnification,  
17 advancement of expenses or insurance may be entitled under the  
18 partnership agreement, vote of partners, contract or otherwise,  
19 both as to action in his official capacity and as to action in  
20 another capacity while holding that position. Section 8649(f)  
21 shall be applicable to a vote, contract or other action under  
22 this subsection. A limited partnership may create a fund of any  
23 nature, which may, but need not be, under the control of a  
24 trustee, or otherwise secure or insure in any manner its  
25 indemnification obligations, whether arising under this section  
26 or otherwise.

27 (f) Grounds.--Indemnification under subsection (e) may be  
28 granted for any action taken and may be made whether or not the  
29 limited partnership would have the power to indemnify the person  
30 under any other provision of law except as provided in this

1 section and whether or not the indemnified liability arises or  
2 arose from any threatened, pending or completed action by or in  
3 the right of the partnership. Indemnification under subsection  
4 (e) is declared to be consistent with the public policy of the  
5 Commonwealth.

6 (g) Limitation.--Indemnification under this section shall  
7 not be made in any case where the act giving rise to the claim  
8 for indemnification is determined by a court to constitute  
9 recklessness, willful misconduct or a knowing violation of law.  
10 § 8649. Standards of conduct for general partners.

11 (a) General rule.--A general partner owes to the limited  
12 partnership and, subject to section 8691 (relating to direct  
13 action by partner), the other partners the duties of loyalty and  
14 care stated in subsections (b) and (c).

15 (b) Duty of loyalty.--The fiduciary duty of loyalty of a  
16 general partner includes the duties:

17 (1) to account to the limited partnership and hold as  
18 trustee for it any property, profit or benefit derived by the  
19 general partner:

20 (i) in the conduct or winding up of the  
21 partnership's activities and affairs;

22 (ii) from a use by the general partner of the  
23 partnership's property; or

24 (iii) from the appropriation of a partnership  
25 opportunity;

26 (2) to refrain from dealing with the partnership in the  
27 conduct or winding up of the partnership's activities and  
28 affairs as or on behalf of a person having an interest  
29 adverse to the partnership; and

30 (3) to refrain from competing with the partnership in

1 the conduct or winding up of the partnership's activities and  
2 affairs.

3 (c) Duty of care.--The duty of care of a general partner in  
4 the conduct or winding up of the limited partnership's  
5 activities and affairs is to refrain from engaging in grossly  
6 negligent or reckless conduct, willful or intentional misconduct  
7 or knowing violation of law.

8 (d) Good faith and fair dealing.--A general partner shall  
9 discharge the duties and obligations under this title or under  
10 the partnership agreement and exercise any rights consistent  
11 with the contractual obligation of good faith and fair dealing.

12 (e) Self-serving conduct.--A general partner does not  
13 violate a duty or obligation under this title or under the  
14 partnership agreement solely because the general partner's  
15 conduct furthers the general partner's own interest.

16 (f) Authorization or ratification.--All the partners of a  
17 limited partnership may authorize or ratify, after full  
18 disclosure of all material facts, a specific act or transaction  
19 that otherwise would violate the duty of loyalty of a general  
20 partner.

21 (g) Fairness as a defense.--It is a defense to a claim under  
22 subsection (b) (2) and any comparable claim in equity or at  
23 common law that the transaction was fair to the limited  
24 partnership at the time it is authorized or ratified under  
25 subsection (f).

26 (h) Rights and obligations in approved transactions.--If a  
27 general partner enters into a transaction with the limited  
28 partnership which otherwise would be prohibited by subsection  
29 (b) (2) and the transaction is authorized or ratified as provided  
30 in subsection (f) or the partnership agreement, the general

1 partner's rights and obligations arising from the transaction  
2 are the same as those of a person that is not a general partner.

3 (i) Exoneration.--The partnership agreement may provide that  
4 a general partner shall not be personally liable for monetary  
5 damages to the partnership or the other partner for a breach of  
6 subsection (c), except that a general partner may not be  
7 exonerated for an act that constitutes recklessness, willful  
8 misconduct or a knowing violation of law.

9 (j) Cross reference.--See section 8615 (relating to contents  
10 of partnership agreement).

#### 11 SUBCHAPTER E

#### 12 CONTRIBUTIONS AND DISTRIBUTIONS

13 Sec.

14 8651. Form of contribution.

15 8652. Liability for contribution.

16 8653. Sharing of and right to distributions before dissolution.

17 8654. Limitations on distributions.

18 8655. Liability for improper distributions.

19 § 8651. Form of contribution.

20 A contribution may consist of:

21 (1) property transferred to, services performed for or  
22 another benefit provided to the limited partnership;

23 (2) an agreement to transfer property to, perform  
24 services for or provide another benefit to the partnership;

25 or

26 (3) any combination of items listed in paragraphs (1)  
27 and (2).

28 § 8652. Liability for contribution.

29 (a) Obligation not excused.--A person's obligation to make a  
30 contribution to a limited partnership is not excused by the

1 person's death, disability, termination or other inability to  
2 perform personally.

3 (b) Substitute payment.--If a person does not fulfill an  
4 obligation to make a contribution other than money, the person  
5 is obligated at the option of the limited partnership to  
6 contribute money equal to the value, as stated in the required  
7 information, of the part of the contribution which has not been  
8 made.

9 (c) Compromise of obligation.--The obligation of a person to  
10 make a contribution may be compromised only by the affirmative  
11 vote or consent of all the partners. If a creditor of a limited  
12 partnership extends credit or otherwise acts in reliance on an  
13 obligation described in subsection (a) without knowledge or  
14 notice of a compromise under this subsection, the creditor may  
15 enforce the obligation.

16 § 8653. Sharing of and right to distributions before  
17 dissolution.

18 (a) General rule.--Any distribution made by a limited  
19 partnership before its dissolution and winding up must be shared  
20 among the partners and persons dissociated as partners on the  
21 basis of the value, as stated in the required information when  
22 the limited partnership decides to make the distribution, of the  
23 contributions the limited partnership has received from each  
24 partner, except as provided in section 8672(b) (relating to  
25 transfer of transferable interest) or to the extent necessary to  
26 comply with a charging order in effect under section 8673  
27 (relating to charging order).

28 (b) No entitlement to distribution.--A person has a right to  
29 a distribution before the dissolution and winding up of a  
30 limited partnership only if the partnership decides to make an

1 interim distribution. A person's dissociation does not entitle  
2 the person to a distribution.

3 (c) Distribution in kind.--A person does not have a right to  
4 demand or receive a distribution from a limited partnership in  
5 any form other than money. Except as provided under section  
6 8690(f) (relating to disposition of assets in winding up and  
7 required contributions), a partnership may distribute an asset  
8 in kind only if each part of the asset is fungible with each  
9 other part and each person receives a percentage of the asset  
10 equal in value to the person's share of distributions.

11 (d) Status as creditor.--If a partner or transferee becomes  
12 entitled to receive a distribution, the partner or transferee  
13 has the status of, and is entitled to all remedies available to,  
14 a creditor of the limited partnership with respect to the  
15 distribution, except that the partnership's obligation to make a  
16 distribution is subject to offset for any amount owed to the  
17 partnership by the partner or a person dissociated as a partner  
18 on whose account the distribution is made.

19 § 8654. Limitations on distributions.

20 (a) General rule.--A limited partnership may not make a  
21 distribution, including a distribution under section 8690  
22 (relating to disposition of assets in winding up and required  
23 contributions), if after the distribution:

24 (1) the partnership would not be able to pay its debts  
25 as they become due in the ordinary course of the  
26 partnership's activities and affairs; or

27 (2) the partnership's total assets would be less than  
28 the sum of its total liabilities plus the amount that would  
29 be needed, if the partnership were to be dissolved and wound  
30 up at the time of the distribution, to satisfy the

1 preferential rights upon dissolution and winding up of  
2 partners and transferees whose preferential rights are  
3 superior to the rights of persons receiving the distribution.

4 (b) Valuation.--A limited partnership may base a  
5 determination that a distribution is not prohibited under  
6 subsection (a) (2) on:

7 (1) the book values of the assets and liabilities of the  
8 partnership, as reflected on its books and records;

9 (2) a valuation that takes into consideration unrealized  
10 appreciation and depreciation or other changes in value of  
11 the assets and liabilities of the partnership;

12 (3) the current value of the assets and liabilities of  
13 the partnership, either valued separately or valued in  
14 segments or as an entirety as a going concern; or

15 (4) any other method that is reasonable in the  
16 circumstances.

17 (c) Excluded liabilities.--In determining whether a  
18 distribution is prohibited by subsection (a) (2), the limited  
19 partnership need not consider obligations and liabilities unless  
20 they are required to be reflected on a balance sheet, not  
21 including the notes to the balance sheet, prepared on the basis  
22 of generally accepted accounting principles or other such  
23 accounting practices and principles as are used generally by the  
24 partnership in the maintenance of its books and records and as  
25 are reasonable in the circumstances.

26 (d) Measuring date of distribution.--Except as provided in  
27 subsection (e), the effect of a distribution under subsection  
28 (a) is measured:

29 (1) as of the date specified by the limited partnership  
30 when it authorizes the distribution if the distribution

1 occurs within 125 days of the earlier of the date so  
2 specified or the date of authorization; or

3 (2) as of the date of distribution in all other cases.

4 (e) Date of redemption.--In the case of a distribution  
5 described in paragraph (1) of the definition of "distribution"  
6 in section 8612 (relating to definitions), the distribution is  
7 deemed to occur as of the earlier of the date money or other  
8 property is transferred or debt is incurred by the limited  
9 partnership or the date the person entitled to the distribution  
10 ceases to own the interest or right being acquired by the  
11 partnership in return for the distribution.

12 (f) Status of distribution debt.--The indebtedness of a  
13 limited partnership to a partner or transferee incurred by  
14 reason of a distribution made in accordance with this section  
15 shall be at least on a parity with the partnership's  
16 indebtedness to its general, unsecured creditors, except to the  
17 extent subordinated by agreement.

18 (g) Certain subordinated debt.--The indebtedness of a  
19 limited partnership, including indebtedness issued as a  
20 distribution, is not a liability for purposes of subsection (a)  
21 if the terms of the indebtedness provide that payment of  
22 principal and interest is made only if and to the extent that  
23 payment of a distribution could then be made under this  
24 section. If the indebtedness is issued as a distribution, each  
25 payment of principal or interest is treated as a distribution,  
26 the effect of which is measured on the date the payment is made.

27 (h) Distributions in winding up.--In measuring the effect of  
28 a distribution under section 8690, the liabilities of a  
29 dissolved limited partnership do not include any claim that has  
30 been barred under section 8686 (relating to known claims against

1 dissolved limited partnership) or 8687 (relating to other claims  
2 against dissolved limited partnership), or for which security  
3 has been provided under section 8688 (relating to court  
4 proceedings).

5 (i) Cross references.--See sections 8615(d)(1)(ii) (relating  
6 to contents of partnership agreement) and 8649 (relating to  
7 standards of conduct for general partners).

8 § 8655. Liability for improper distributions.

9 (a) General rule.--If a general partner consents to a  
10 distribution made in violation of section 8654 (relating to  
11 limitations on distributions) and in consenting to the  
12 distribution fails to comply with section 8649 (relating to  
13 standards of conduct for general partners), the general partner  
14 is personally liable to the limited partnership for the amount  
15 of the distribution which exceeds the amount that could have  
16 been distributed without the violation of section 8654.

17 (b) Recipients.--A person that receives a distribution  
18 knowing that the distribution violated section 8654 is  
19 personally liable to the limited partnership but only to the  
20 extent that the distribution received by the person exceeded the  
21 amount that could have been properly paid under section 8654.

22 (c) Contribution.--A general partner against which an action  
23 is commenced because the general partner is liable under  
24 subsection (a) may:

25 (1) join any other person that is liable under  
26 subsection (a) or otherwise seek to enforce a right of  
27 contribution from the person; and

28 (2) join any person that received a distribution in  
29 violation of subsection (b) or otherwise seek to enforce a  
30 right of contribution from the person in the amount the

1 person received in violation of subsection (b).  
2 (d) Statute of repose.--An action under this section is  
3 barred unless commenced within two years after the distribution.

4 SUBCHAPTER F

5 DISSOCIATION

6 Sec.

7 8661. Dissociation as limited partner.

8 8662. Effects of dissociation as limited partner.

9 8663. Dissociation as general partner.

10 8664. Power to dissociate as general partner and wrongful  
11 dissociation.

12 8665. Effects of dissociation as general partner.

13 8666. Power to bind and liability of person dissociated as  
14 general partner.

15 8667. Liability of person dissociated as general partner to  
16 other persons.

17 § 8661. Dissociation as limited partner.

18 (a) No right to dissociate.--A person does not have a right  
19 to dissociate as a limited partner before the completion of the  
20 winding up of the limited partnership.

21 (b) Events causing dissociation.--A person is dissociated as  
22 a limited partner when any of the following apply:

23 (1) The limited partnership knows or has notice of the  
24 person's express will to withdraw as a limited partner  
25 rightfully or wrongfully, except that, if the person has  
26 specified a withdrawal date later than the date the  
27 partnership knew or had notice, on that later date.

28 (2) An event stated in the partnership agreement as  
29 causing the person's dissociation as a limited partner  
30 occurs.

1           (3) The person is expelled as a limited partner pursuant  
2 to the partnership agreement.

3           (4) The person is expelled as a limited partner by the  
4 affirmative vote or consent of all the other partners if:

5                 (i) it is unlawful to carry on the partnership's  
6 activities and affairs with the person as a limited  
7 partner;

8                 (ii) there has been a transfer of all the person's  
9 transferable interest in the partnership, other than:

10                     (A) a transfer for security purposes; or

11                     (B) a charging order in effect under section  
12 8673 (relating to charging order) which has not been  
13 foreclosed;

14                 (iii) the person is an entity and:

15                     (A) the partnership notifies the person that it  
16 will be expelled as a limited partner because:

17                             (I) the person has filed a certificate of  
18 dissolution or the equivalent;

19                             (II) the person has been administratively  
20 dissolved;

21                             (III) the person's charter or the equivalent  
22 has been revoked; or

23                             (IV) the person's right to conduct business  
24 has been suspended by the person's jurisdiction  
25 of formation; and

26                     (B) within 90 days after the notification:

27                             (I) the certificate of dissolution or the  
28 equivalent has not been withdrawn, rescinded or  
29 revoked;

30                             (II) the person has not been reinstated;

1                   (III) the person's charter or the equivalent  
2                   has not been reinstated; or

3                   (IV) the person's right to conduct business  
4                   has not been reinstated; or

5                   (iv) the person is an unincorporated entity that has  
6                   been dissolved and whose activities and affairs are being  
7                   wound up.

8                   (5) On application by the partnership or a partner in a  
9                   direct action under section 8691 (relating to direct action  
10                   by partner), the person is expelled as a limited partner by  
11                   judicial order because the person:

12                   (i) has engaged or is engaging in wrongful conduct  
13                   that has affected adversely and materially, or will  
14                   affect adversely and materially, the partnership's  
15                   activities and affairs;

16                   (ii) has committed willfully or persistently, or is  
17                   committing willfully or persistently, a material breach  
18                   of the partnership agreement or the contractual  
19                   obligation of good faith and fair dealing under section  
20                   8635(a) (relating to limited duties of limited partners);  
21                   or

22                   (iii) has engaged or is engaging in conduct relating  
23                   to the partnership's activities and affairs which makes  
24                   it not reasonably practicable to carry on the activities  
25                   and affairs with the person as a limited partner.

26                   (6) In the case of an individual, the individual dies.

27                   (7) In the case of a person that is a testamentary or  
28                   inter vivos trust or is acting as a limited partner by virtue  
29                   of being a trustee of such a trust, the trust's entire  
30                   transferable interest in the limited partnership is

1 distributed.

2 (8) In the case of a person that is an estate or is  
3 acting as a limited partner by virtue of being a personal  
4 representative of an estate, the estate's entire transferable  
5 interest in the limited partnership is distributed.

6 (9) In the case of a person that is not an individual,  
7 the existence of the person terminates.

8 (10) The partnership participates in a merger under  
9 Chapter 3 (relating to entity transactions) and:

10 (i) the partnership is not the surviving entity; or

11 (ii) otherwise as a result of the merger, the person  
12 ceases to be a limited partner.

13 (11) The partnership participates in an interest  
14 exchange under Chapter 3 and, as a result of the interest  
15 exchange, the person ceases to be a limited partner.

16 (12) The partnership participates in a conversion under  
17 Chapter 3.

18 (13) The partnership participates in a division under  
19 Chapter 3 and:

20 (i) the partnership is not a resulting association;

21 or

22 (ii) as a result of the division, the person ceases  
23 to be a partner.

24 (14) The partnership participates in a domestication  
25 under Chapter 3 and, as a result of the domestication, the  
26 person ceases to be a limited partner.

27 (15) The partnership dissolves and completes winding up.

28 (c) Cross reference.--See section 8611(d) (relating to short  
29 title and application of chapter).

30 § 8662. Effects of dissociation as limited partner.

1 (a) General rule.--If a person is dissociated as a limited  
2 partner:

3 (1) subject to section 8674 (relating to power of  
4 personal representative of deceased partner), the person does  
5 not have further rights as a limited partner;

6 (2) the person's contractual obligation of good faith  
7 and fair dealing as a limited partner under section 8635(a)  
8 (relating to limited duties of limited partners) ends with  
9 regard to matters arising and events occurring after the  
10 person's dissociation except as provided in section 8634(c)  
11 (relating to limited partner rights to information); and

12 (3) subject to section 8674 and Chapter 3 (relating to  
13 entity transactions), any transferable interest owned by the  
14 person in the person's capacity as a limited partner  
15 immediately before dissociation is owned by the person solely  
16 as a transferee.

17 (b) Existing obligations not discharged.--A person's  
18 dissociation as a limited partner does not of itself discharge  
19 the person from any debt, obligation or other liability to the  
20 limited partnership or the other partners which the person  
21 incurred while a limited partner.

22 (c) Cross reference.--See section 8611(d) (relating to short  
23 title and application of chapter).

24 § 8663. Dissociation as general partner.

25 (a) General rule.--A person is dissociated as a general  
26 partner when any of the following occurs:

27 (1) The limited partnership knows or has notice of the  
28 person's express will to withdraw as a general partner  
29 rightfully or wrongfully, except that, if the person has  
30 specified a withdrawal date later than the date the

1 partnership knew or had notice, on that later date.

2 (2) An event stated in the partnership agreement as  
3 causing the person's dissociation as a general partner  
4 occurs.

5 (3) The person is expelled as a general partner pursuant  
6 to the partnership agreement.

7 (4) The person is expelled as a general partner by the  
8 affirmative vote or consent of all the other partners if:

9 (i) it is unlawful to carry on the partnership's  
10 activities and affairs with the person as a general  
11 partner;

12 (ii) there has been a transfer of all the person's  
13 transferable interest in the partnership, other than:

14 (A) a transfer for security purposes; or

15 (B) a charging order in effect under section  
16 8673 (relating to charging order) which has not been  
17 foreclosed;

18 (iii) the person is an entity and:

19 (A) the partnership notifies the person that it  
20 will be expelled as a general partner because:

21 (I) the person has filed a certificate of  
22 dissolution or the equivalent;

23 (II) the person has been administratively  
24 dissolved;

25 (III) the person's charter or the equivalent  
26 has been revoked; or

27 (IV) the person's right to conduct business  
28 has been suspended by the person's jurisdiction  
29 of formation; and

30 (B) within 90 days after the notification:

1                   (I) the certificate of dissolution or the  
2                   equivalent has not been withdrawn, rescinded or  
3                   revoked;

4                   (II) the person has not been reinstated;

5                   (III) the person's charter or the equivalent  
6                   has not been reinstated; or

7                   (IV) the person's right to conduct business  
8                   has not been reinstated; or

9                   (iv) the person is an unincorporated entity that has  
10                  been dissolved and whose activities and affairs are being  
11                  wound up.

12                  (5) On application by the partnership or a partner in a  
13                  direct action under section 8691 (relating to direct action  
14                  by partner), the person is expelled as a general partner by  
15                  judicial order because the person:

16                  (i) has engaged or is engaging in wrongful conduct  
17                  that has affected adversely and materially, or will  
18                  affect adversely and materially, the partnership's  
19                  activities and affairs;

20                  (ii) has committed willfully or persistently, or is  
21                  committing willfully or persistently, a material breach  
22                  of the partnership agreement or a duty or obligation  
23                  under section 8649 (relating to standards of conduct for  
24                  general partners); or

25                  (iii) has engaged or is engaging in conduct relating  
26                  to the partnership's activities and affairs which makes  
27                  it not reasonably practicable to carry on the activities  
28                  and affairs of the partnership with the person as a  
29                  general partner.

30                  (6) The person:

1           (i) becomes a debtor in bankruptcy;

2           (ii) executes an assignment for the benefit of  
3 creditors; or

4           (iii) seeks, consents to or acquiesces in the  
5 appointment of a trustee, receiver or liquidator of the  
6 person or of all or substantially all the person's  
7 property.

8       (7) In the case of an individual:

9           (i) the individual dies;

10          (ii) a guardian for the individual is appointed; or

11          (iii) a court orders that the individual has  
12 otherwise become incapable of performing the individual's  
13 duties as a general partner under this title or the  
14 partnership agreement.

15       (8) In the case of a person that is a testamentary or  
16 inter vivos trust or is acting as a general partner by virtue  
17 of being a trustee of the trust, the trust's entire  
18 transferable interest in the limited partnership is  
19 distributed.

20       (9) In the case of a person that is an estate or is  
21 acting as a general partner by virtue of being a personal  
22 representative of an estate, the estate's entire transferable  
23 interest in the limited partnership is distributed.

24       (10) In the case of a person that is not an individual,  
25 the existence of the person terminates.

26       (11) The partnership participates in a merger under  
27 Chapter 3 (relating to entity transactions) and:

28           (i) the partnership is not the surviving entity; or

29           (ii) otherwise as a result of the merger, the person  
30 ceases to be a general partner.

1           (12) The partnership participates in an interest  
2 exchange under Chapter 3 and, as a result of the interest  
3 exchange, the person ceases to be a general partner.

4           (13) The partnership participates in a conversion under  
5 Chapter 3.

6           (14) The partnership participates in a division under  
7 Chapter 3 and:

8                 (i) the partnership is not a resulting association;

9                 or

10                (ii) as a result of the division, the person ceases  
11 to be a partner.

12           (15) The partnership participates in a domestication  
13 under Chapter 3 and, as a result of the domestication, the  
14 person ceases to be a general partner.

15           (16) The partnership dissolves and completes winding up.

16           (b) Cross reference.--See section 8611(d) (relating to short  
17 title and application of chapter).

18 § 8664. Power to dissociate as general partner and wrongful  
19 dissociation.

20           (a) Power to dissociate.--A person has the power to  
21 dissociate as a general partner at any time, rightfully or  
22 wrongfully, by withdrawing as a general partner by express will  
23 under section 8663(a) (1) (relating to dissociation as general  
24 partner).

25           (b) Wrongful dissociation.--A person's dissociation as a  
26 general partner is wrongful only if the dissociation:

27                 (1) is in breach of an express provision of the  
28 partnership agreement; or

29                 (2) occurs before the completion of the winding up of  
30 the limited partnership, and:

1           (i) the person withdraws as a general partner by  
2 express will;

3           (ii) the person is expelled as a general partner by  
4 judicial order under section 8663(a)(5);

5           (iii) the person is dissociated as a general partner  
6 under section 8663(a)(6); or

7           (iv) the person is expelled or otherwise dissociated  
8 as a general partner because its existence terminated,  
9 except that this subparagraph does not apply to a person  
10 that is:

11                   (A) a trust that is not a business or statutory  
12 trust;

13                   (B) an estate; or

14                   (C) an individual.

15       (c) Damages for wrongful dissociation.--A person that  
16 wrongfully dissociates as a general partner is liable to the  
17 limited partnership and, subject to section 8691 (relating to  
18 direct action by partner), to the other partners for damages  
19 caused by the dissociation. The liability is in addition to any  
20 debt, obligation or other liability of the general partner to  
21 the partnership or the other partners.

22       (d) Cross reference.--See section 8615 (relating to contents  
23 of partnership agreement).

24 § 8665. Effects of dissociation as general partner.

25       (a) General rule.--If a person is dissociated as a general  
26 partner:

27                   (1) The person's right to participate as a general  
28 partner in the management and conduct of the limited  
29 partnership's activities and affairs terminates.

30                   (2) The person's duties and obligations as a general

1 partner under section 8649 (relating to standards of conduct  
2 for general partners) end with regard to matters arising and  
3 events occurring after the person's dissociation except as  
4 provided in section 8647(e) (2) (relating to general partner  
5 rights to information).

6 (3) The person may deliver to the department for filing  
7 a certificate of dissociation stating:

8 (i) the name of the partnership;

9 (ii) subject to section 109 (relating to name of  
10 commercial registered office provider in lieu of  
11 registered address), the address, including street and  
12 number, if any, of the registered office of the  
13 partnership; and

14 (iii) the name of the person and that the person has  
15 dissociated as a general partner.

16 (4) At the request of the limited partnership, the  
17 person shall sign an amendment to the certificate of limited  
18 partnership which states that the person has dissociated as a  
19 general partner.

20 (5) Subject to section 8674 (relating to power of  
21 personal representative of deceased partner) and Chapter 3  
22 (relating to entity transactions), any transferable interest  
23 owned by the person in the person's capacity as a general  
24 partner immediately before dissociation is owned by the  
25 person solely as a transferee.

26 (b) Existing obligations not discharged.--A person's  
27 dissociation as a general partner does not of itself discharge  
28 the person from any debt, obligation or other liability to the  
29 limited partnership or the other partners which the person  
30 incurred while a general partner.

1 (c) Cross references.--See:

2 Section 134 (relating to docketing statement).

3 Section 135 (relating to requirements to be met by filed  
4 documents).

5 Section 136(c) (relating to processing of documents by  
6 Department of State).

7 Section 8623 (relating to signing of filed documents).

8 § 8666. Power to bind and liability of person dissociated as  
9 general partner.

10 (a) Power to bind.--After a person is dissociated as a  
11 general partner and before the limited partnership is merged or  
12 divided out of existence, converted or domesticated under  
13 Chapter 3 (relating to entity transactions) or dissolved, the  
14 partnership is bound by an act of the person only if:

15 (1) the act would have bound the partnership under  
16 section 8642 (relating to general partner agent of limited  
17 partnership) before the dissociation; and

18 (2) at the time the other party enters into the  
19 transaction:

20 (i) less than two years have passed since the  
21 dissociation; and

22 (ii) the other party does not know or have notice of  
23 the dissociation and reasonably believes that the person  
24 is a general partner.

25 (b) Liability.--If a limited partnership is bound under  
26 subsection (a), the person dissociated as a general partner  
27 which caused the partnership to be bound is liable:

28 (1) to the partnership for any damage caused to the  
29 partnership arising from the obligation incurred under  
30 subsection (a); and

1       (2) if a general partner or another person dissociated  
2       as a general partner is liable for the obligation, to the  
3       general partner or other person for any damage caused to the  
4       general partner or other person arising from the liability.  
5       § 8667. Liability of person dissociated as general partner to  
6       other persons.

7       (a) General rule.--A person's dissociation as a general  
8       partner does not of itself discharge the person's liability as a  
9       general partner for a debt, obligation or other liability of the  
10       limited partnership incurred before dissociation. Except as  
11       provided in subsections (b) and (c), the person is not liable  
12       for a partnership obligation incurred after dissociation.

13       (b) Obligations incurred after dissolution.--A person whose  
14       dissociation as a general partner results in a dissolution and  
15       winding up of the limited partnership's activities and affairs  
16       is liable on an obligation incurred by the partnership under  
17       section 8685 (relating to general partner liability after  
18       dissolution) to the same extent as a general partner under  
19       section 8644 (relating to general partner's liability).

20       (c) When partnership not dissolved.--A person that is  
21       dissociated as a general partner without the dissociation  
22       resulting in a dissolution and winding up of the limited  
23       partnership's activities and affairs is liable on a transaction  
24       entered into by the partnership after the dissociation only if a  
25       general partner would be liable on the transaction, but at the  
26       time the other party enters into the transaction:

27               (1) less than two years have passed since the  
28               dissociation; and

29               (2) the other party does not have knowledge or notice of  
30               the dissociation and reasonably believes that the person is a

1 general partner.

2 (d) Constructive release by creditor.--A person dissociated  
3 as a general partner is released from liability for a debt,  
4 obligation or other liability of the limited partnership if the  
5 partnership's creditor, with knowledge or notice of the person's  
6 dissociation as a general partner and without the person's  
7 consent, agrees to a material alteration in the nature or time  
8 of payment of the debt, obligation or other liability. The  
9 release from liability under this subsection applies whether the  
10 liability arises directly or indirectly, by way of contribution  
11 or otherwise, but only if the liability arises solely by reason  
12 of having been a general partner.

13 SUBCHAPTER G

14 TRANSFERABLE INTERESTS AND RIGHTS

15 OF TRANSFEREES AND CREDITORS

16 Sec.

17 8671. Nature of transferable interest.

18 8672. Transfer of transferable interest.

19 8673. Charging order.

20 8674. Power of personal representative of deceased partner.

21 § 8671. Nature of transferable interest.

22 (a) Personal property.--A transferable interest is personal  
23 property.

24 (b) Only right that may be transferred.--A person may not  
25 transfer to a person not a partner any rights in a limited  
26 partnership other than a transferable interest.

27 § 8672. Transfer of transferable interest.

28 (a) General rule.--A transfer, in whole or in part, of a  
29 transferable interest:

30 (1) is permissible;

1       (2) does not by itself cause the dissociation of the  
2 transferor as a partner or a dissolution and winding up of  
3 the limited partnership's activities and affairs; and

4       (3) subject to section 8674 (relating to power of  
5 personal representative of deceased partner), does not  
6 entitle the transferee to:

7           (i) participate in the management or conduct of the  
8 partnership's activities and affairs; or

9           (ii) except as provided under subsection (c), have  
10 access to required information, records or other  
11 information concerning the partnership's activities and  
12 affairs.

13       (b) Right to distributions.--A transferee has the right to  
14 receive, in accordance with the transfer, distributions to which  
15 the transferor would otherwise be entitled.

16       (c) Right to account on dissolution.--In a dissolution and  
17 winding up of a limited partnership, a transferee is entitled to  
18 an account of the partnership's transactions only from the date  
19 of dissolution.

20       (d) Certificate of interest.--A transferable interest may be  
21 evidenced by a certificate of the interest issued by a limited  
22 partnership in record form, and, subject to this section, the  
23 interest represented by the certificate may be transferred by a  
24 transfer of the certificate.

25       (e) Recognition of transferee's rights.--A limited  
26 partnership need not give effect to a transferee's rights under  
27 this section until the partnership knows or has notice of the  
28 transfer.

29       (f) Transfer restrictions.--A transfer of a transferable  
30 interest in violation of a restriction on transfer contained in

1 the partnership agreement is ineffective if the intended  
2 transferee has knowledge or notice of the restriction at the  
3 time of transfer.

4 (g) Rights retained by transferor.--Except as provided under  
5 sections 8661(b)(4)(ii) (relating to dissociation as limited  
6 partner) and 8663(a)(4)(ii) (relating to dissociation as general  
7 partner), if a general or limited partner transfers a  
8 transferable interest, the transferor retains the rights of a  
9 general or limited partner other than the transferable interest  
10 transferred and retains all the duties and obligations of a  
11 general or limited partner.

12 § 8673. Charging order.

13 (a) General rule.--On application by a judgment creditor of  
14 a partner or transferee, a court may enter a charging order  
15 against the transferable interest of the judgment debtor for the  
16 unsatisfied amount of the judgment. A charging order constitutes  
17 a lien on a judgment debtor's transferable interest and requires  
18 the limited partnership to pay over to the person to which the  
19 charging order was issued any distribution that otherwise would  
20 be paid to the judgment debtor.

21 (b) Available relief.--To the extent necessary to effectuate  
22 the collection of distributions pursuant to a charging order in  
23 effect under subsection (a), the court may:

24 (1) appoint a receiver of the distributions subject to  
25 the charging order, with the power to make all inquiries the  
26 judgment debtor might have made; and

27 (2) make all other orders necessary to give effect to  
28 the charging order.

29 (c) Foreclosure.--Upon a showing that distributions under a  
30 charging order will not pay the judgment debt within a

1 reasonable time, the court may foreclose the lien and order the  
2 sale of the transferable interest. The purchaser at the  
3 foreclosure sale obtains only the transferable interest, does  
4 not thereby become a partner and is subject to section 8672  
5 (relating to transfer of transferable interest).

6 (d) Satisfaction of judgment.--At any time before  
7 foreclosure under subsection (c), the partner or transferee  
8 whose transferable interest is subject to a charging order under  
9 subsection (a) may extinguish the charging order by satisfying  
10 the judgment and filing a certified copy of the satisfaction  
11 with the court that issued the charging order.

12 (e) Purchase of rights.--At any time before foreclosure  
13 under subsection (c), a limited partnership or one or more  
14 partners whose transferable interests are not subject to the  
15 charging order may pay to the judgment creditor the full amount  
16 due under the judgment and thereby succeed to the rights of the  
17 judgment creditor, including the charging order.

18 (f) Exemption laws preserved.--This chapter shall not  
19 deprive any partner or transferee of the benefit of any  
20 exemption law applicable to the transferable interest of the  
21 partner or transferee.

22 (g) Exclusive remedy.--This section provides the exclusive  
23 remedy by which a person seeking, in the capacity of a judgment  
24 creditor, to enforce a judgment against a partner or transferee  
25 may satisfy the judgment from the judgment debtor's transferable  
26 interest.

27 § 8674. Power of personal representative of deceased partner.

28 If a partner dies, the personal representative of the  
29 deceased partner may exercise:

30 (1) the rights of a transferee provided in section

1 8672(c) (relating to transfer of transferable interest); and  
2 (2) for the purposes of settling the estate, the rights  
3 of a current limited partner under section 8634 (relating to  
4 limited partner rights to information).

5 SUBCHAPTER H

6 DISSOLUTION AND WINDING UP

7 Sec.

8 8681. Events causing dissolution.

9 8681.1. Voluntary termination by partners.

10 8682. Winding up and filing of certificates.

11 8683. (Reserved).

12 8684. Power to bind partnership after dissolution.

13 8685. General partner liability after dissolution.

14 8686. Known claims against dissolved limited partnership.

15 8687. Other claims against dissolved limited partnership.

16 8688. Court proceedings.

17 8689. General partner liability when claim against limited  
18 partnership barred.

19 8690. Disposition of assets in winding up and required  
20 contributions.

21 § 8681. Events causing dissolution.

22 (a) General rule.--A limited partnership is dissolved, and  
23 its activities and affairs must be wound up, upon the occurrence  
24 of any of the following:

25 (1) an event or circumstance that the partnership  
26 agreement states causes dissolution;

27 (2) the affirmative vote or consent of:

28 (i) all general partners; and

29 (ii) limited partners owning the rights to receive a  
30 majority of the distributions as limited partners at the

1 time the vote or consent is to be effective;

2 (3) after the dissociation of a person as a general  
3 partner:

4 (i) if the partnership has at least one remaining  
5 general partner, the affirmative vote or consent to  
6 dissolve the partnership within 90 days after the  
7 dissociation by partners owning a majority of the rights  
8 to receive distributions as partners at the time the vote  
9 or consent is to be effective; or

10 (ii) if the partnership does not have a remaining  
11 general partner, the passage of 180 days after the  
12 dissociation, unless before the end of the period:

13 (A) consent to continue the activities and  
14 affairs of the partnership and admit at least one  
15 general partner is given by limited partners owning a  
16 majority of the rights to receive distributions as  
17 limited partners at the time the consent is to be  
18 effective; and

19 (B) at least one person is admitted as a general  
20 partner in accordance with the consent;

21 (4) the passage of 180 consecutive days after the  
22 dissociation of the partnership's last limited partner,  
23 unless before the end of the period the partnership admits at  
24 least one limited partner;

25 (5) the passage of 180 consecutive days during which the  
26 partnership has only one partner, unless before the end of  
27 the period:

28 (i) the partnership admits at least one person as a  
29 partner;

30 (ii) if the previously sole remaining partner is

1 only a general partner, the partnership admits a person  
2 as a limited partner; and

3 (iii) if the previously sole remaining partner is  
4 only a limited partner, the partnership admits a person  
5 as a general partner; or

6 (6) on application by a partner, the entry by the court  
7 of an order dissolving the partnership on the grounds that:

8 (i) the conduct of all or substantially all the  
9 partnership's activities and affairs is unlawful;

10 (ii) it is not reasonably practicable to carry on  
11 the partnership's activities and affairs in conformity  
12 with the certificate of limited partnership and  
13 partnership agreement; or

14 (iii) the general partners have acted, are acting or  
15 will act in a manner that is illegal or fraudulent.

16 (b) Multiple deadlines.--If an event occurs that imposes a  
17 deadline on a limited partnership under subsection (a) and  
18 before the partnership has met the requirements of the deadline,  
19 another event occurs that imposes a different deadline on the  
20 partnership under subsection (a):

21 (1) the occurrence of the second event does not affect  
22 the deadline caused by the first event; and

23 (2) the partnership's meeting of the requirements of the  
24 first deadline does not extend the second deadline.

25 (c) Cross references.--See sections 8611(d) (relating to  
26 short title and application of chapter) and 8615(c) (15)  
27 (relating to contents of partnership agreement).

28 § 8681.1. Voluntary termination by partners.

29 (a) General rule.--The general partners of a limited  
30 partnership that has never transacted business or held assets

1 other than money received as capital contributions may effect  
2 the termination of the partnership by delivering to the  
3 department for filing a certificate of termination stating:

4 (1) the name of the partnership;

5 (2) subject to section 109 (relating to name of  
6 commercial registered office provider in lieu of registered  
7 address), the address, including street and number, if any,  
8 of the registered office of the partnership;

9 (3) that the partnership has never transacted business  
10 or held assets other than money received as capital  
11 contributions;

12 (4) that the amounts, if any, actually paid in as  
13 contributions, less any part disbursed for necessary  
14 expenses, have been returned to those entitled to the return  
15 of the amounts;

16 (5) that all liabilities of the partnership have been  
17 discharged or that adequate provision has been made for those  
18 liabilities; and

19 (6) that a majority of the general partners elect that  
20 the partnership be terminated.

21 (b) Effect.--Upon the filing of the certificate of  
22 termination, the existence of the limited partnership shall  
23 cease.

24 (c) Cross references.--See:

25 Section 134 (relating to docketing statement).

26 Section 135 (relating to requirements to be met by filed  
27 documents).

28 Section 136(c) (relating to processing of documents by  
29 Department of State).

30 Section 8623 (relating to signing of filed documents).

1 § 8682. Winding up and filing of certificates.

2 (a) General rule.--A dissolved limited partnership shall  
3 wind up its activities and affairs and the partnership continues  
4 after dissolution only for the purpose of winding up.

5 (b) Conduct of winding up.--In winding up its activities and  
6 affairs, the limited partnership:

7 (1) shall discharge the partnership's debts, obligations  
8 and other liabilities, settle and close the partnership's  
9 activities and affairs, and marshal and distribute the assets  
10 of the partnership; and

11 (2) may:

12 (i) amend its certificate of limited partnership to  
13 state that the partnership is dissolved;

14 (ii) preserve the partnership activities, affairs  
15 and property as a going concern for a reasonable time;

16 (iii) prosecute, defend and settle actions and  
17 proceedings, whether civil, criminal or administrative;

18 (iv) transfer the partnership's property;

19 (v) participate in, agree to participate in and  
20 settle disputes by mediation, arbitration or alternative  
21 dispute resolution proceedings; and

22 (vi) perform other acts necessary or appropriate to  
23 the winding up.

24 (c) Conduct of winding up when no general partner.--If a  
25 dissolved limited partnership does not have a general partner, a  
26 person to wind up the dissolved partnership's activities and  
27 affairs may be appointed by the affirmative vote or consent of  
28 limited partners owning the rights to receive a majority of the  
29 distributions as limited partners at the time the vote or  
30 consent is to be effective. A person appointed under this

1 subsection:

2 (1) has the powers of a general partner under section  
3 8684 (relating to power to bind partnership after  
4 dissolution) but is not liable for the debts, obligations and  
5 other liabilities of the partnership solely by reason of  
6 having or exercising those powers or otherwise acting to wind  
7 up the dissolved partnership's activities and affairs; and

8 (2) shall deliver promptly to the department for filing  
9 an amendment to the partnership's certificate of limited  
10 partnership stating:

11 (i) that the partnership does not have a general  
12 partner;

13 (ii) the name and address of the person; and

14 (iii) that the person has been appointed under this  
15 subsection to wind up the partnership.

16 (d) Judicial supervision.--On the application of a partner  
17 or person entitled under subsection (c) to participate in  
18 winding up, the court may order judicial supervision of the  
19 winding up of a dissolved limited partnership, including the  
20 appointment of a person to wind up the partnership's activities  
21 and affairs, if:

22 (1) the partnership does not have a general partner and  
23 within a reasonable time following the dissolution no person  
24 has been appointed under subsection (c); or

25 (2) the applicant establishes other good cause.

26 (e) Certificate of termination.--When all debts, obligations  
27 and other liabilities of the limited partnership have been paid  
28 and discharged or adequate provision has been made therefor and  
29 all of the remaining property and assets of the partnership have  
30 been distributed to the partners, a certificate of termination

1 shall be delivered to the department for filing along with the  
2 certificates required by section 139 (relating to tax clearance  
3 of certain fundamental transactions). The certificate of  
4 termination shall set forth:

5 (1) The name of the limited partnership.

6 (2) Subject to section 109 (relating to name of  
7 commercial registered office provider in lieu of registered  
8 address), the address, including street and number, if any,  
9 of the registered office of the partnership.

10 (3) That all debts, obligations and other liabilities of  
11 the partnership have been paid and discharged or that  
12 adequate provision has been made therefor.

13 (4) That all the remaining property and assets of the  
14 partnership have been distributed among its partners in  
15 accordance with their respective rights and interests.

16 (5) That there are no actions pending against the  
17 partnership in any court or that adequate provision has been  
18 made for the satisfaction of any judgment that may be entered  
19 against it in any pending action.

20 (6) That the partnership is terminated.

21 (f) Cross references.--See:

22 Section 134 (relating to docketing statement).

23 Section 135 (relating to requirements to be met by filed  
24 documents).

25 Section 136(c) (relating to processing of documents by  
26 Department of State).

27 Section 8615(c)(16) (relating to contents of partnership  
28 agreement).

29 Section 8623 (relating to signing of filed documents).

30 § 8683. (Reserved).

1 § 8684. Power to bind partnership after dissolution.

2 (a) Power of general partner.--A limited partnership is  
3 bound by a general partner's act after dissolution which:

4 (1) is appropriate for winding up the partnership's  
5 activities and affairs; or

6 (2) would have bound the partnership under section 8642  
7 (relating to general partner agent of limited partnership)  
8 before dissolution if, at the time the other party enters  
9 into the transaction, the other party does not know or have  
10 notice of the dissolution.

11 (b) Power of person dissociated as general partner.--A  
12 person dissociated as a general partner binds a limited  
13 partnership through an act occurring after dissolution if:

14 (1) at the time the other party enters into the  
15 transaction:

16 (i) less than two years have passed since the  
17 dissociation; and

18 (ii) the other party does not know or have notice of  
19 the dissociation and reasonably believes that the person  
20 is a general partner; and

21 (2) the act:

22 (i) is appropriate for winding up the partnership's  
23 activities and affairs; or

24 (ii) would have bound the partnership under section  
25 8642 before dissolution and at the time the other party  
26 enters into the transaction, the other party does not  
27 know or have notice of the dissolution.

28 § 8685. General partner liability after dissolution.

29 (a) Liability of general partner.--If a general partner  
30 having knowledge of the dissolution causes a limited partnership

1 to incur an obligation under section 8684(a) (relating to power  
2 to bind partnership after dissolution) by an act that is not  
3 appropriate for winding up the partnership's activities and  
4 affairs, the general partner is liable:

5 (1) to the partnership for any damage caused to the  
6 partnership arising from the obligation; and

7 (2) if another general partner or a person dissociated  
8 as a general partner is liable for the obligation, to that  
9 other general partner or person for any damage caused to that  
10 other general partner or person arising from the liability.

11 (b) Liability of person dissociated as general partner.--If  
12 a person dissociated as a general partner causes a limited  
13 partnership to incur an obligation under section 8684(b), the  
14 person is liable:

15 (1) to the partnership for any damage caused to the  
16 partnership arising from the obligation; and

17 (2) if a general partner or another person dissociated  
18 as a general partner is liable for the obligation, to the  
19 general partner or other person for any damage caused to the  
20 general partner or other person arising from the obligation.

21 § 8686. Known claims against dissolved limited partnership.

22 (a) General rule.--Except as provided under subsection (d),  
23 a dissolved limited partnership may give notice of a known claim  
24 under subsection (b), which has the effect provided in  
25 subsection (c).

26 (b) Required notice.--A dissolved limited partnership may  
27 notify in record form its known claimants of the dissolution.

28 The notice must:

29 (1) specify the information required to be included in a  
30 claim;

1       (2) state that a claim must be in writing and provide a  
2 mailing address to which the claim is to be sent;

3       (3) state the deadline for receipt of a claim, which may  
4 not be less than 120 days after the date the notice is  
5 received by the claimant;

6       (4) state that the claim will be barred if not received  
7 by the deadline; and

8       (5) unless the partnership has been throughout its  
9 existence a limited liability limited partnership, state that  
10 the barring of a claim against the partnership will also bar  
11 any corresponding claim against any general partner or person  
12 dissociated as a general partner which is based on section  
13 8644 (relating to general partner's liability).

14       (c) Claims barred.--A claim against a dissolved limited  
15 partnership is barred if the requirements of subsection (b) are  
16 met and:

17       (1) the claim is not received by the specified deadline;  
18 or

19       (2) if the claim is timely received but rejected by the  
20 partnership:

21       (i) the partnership causes the claimant to receive a  
22 notice in record form stating that the claim is rejected  
23 and will be barred unless the claimant commences an  
24 action against the partnership to enforce the claim  
25 within 90 days after the claimant receives the notice;  
26 and

27       (ii) the claimant fails to commence the required  
28 action no later than 90 days after the claimant receives  
29 the notice.

30       (d) Later arising claims.--This section shall not apply to a

1 claim based on an event occurring after the date of dissolution  
2 or a liability that on that date is contingent.

3 § 8687. Other claims against dissolved limited partnership.

4 (a) Permissive notice.--A dissolved limited partnership may  
5 publish notice of its dissolution and request persons having  
6 claims against the partnership to present them in accordance  
7 with the notice.

8 (b) Notice procedure.--A notice under subsection (a) must:

9 (1) be officially published one time;

10 (2) describe the information required to be contained in  
11 a claim, state that the claim must be in writing and provide  
12 a mailing address to which the claim is to be sent;

13 (3) state that a claim against the partnership is barred  
14 unless an action to enforce the claim is commenced within two  
15 years after publication of the notice; and

16 (4) unless the partnership has been throughout its  
17 existence a limited liability limited partnership, state that  
18 the barring of a claim against the partnership will also bar  
19 any corresponding claim against any general partner or person  
20 dissociated as a general partner which is based on section  
21 8644 (relating to general partner's liability).

22 (c) Claims barred.--If a dissolved limited partnership  
23 publishes a notice in accordance with subsection (b), the claim  
24 of each of the following claimants is barred unless the claimant  
25 commences an action to enforce the claim against the partnership  
26 within two years after the publication date of the notice:

27 (1) a claimant that did not receive notice in record  
28 form under section 8686 (relating to known claims against  
29 dissolved limited partnership);

30 (2) a claimant whose claim was timely sent to the

1 partnership but not acted on; and

2 (3) a claimant whose claim is contingent at, or based on  
3 an event occurring after, the date of dissolution.

4 (d) Claims not barred.--A claim not barred under this  
5 section or section 8686 may be enforced:

6 (1) against the dissolved limited partnership, to the  
7 extent of its undistributed assets;

8 (2) except as provided under section 8688 (relating to  
9 court proceedings), if assets of the partnership have been  
10 distributed after dissolution, against a partner or  
11 transferee to the extent of that person's proportionate share  
12 of the claim or of the partnership's assets distributed to  
13 the partner or transferee after dissolution, whichever is  
14 less, except that a person's total liability for all claims  
15 under this paragraph may not exceed the total amount of  
16 assets distributed to the person after dissolution; and

17 (3) against any person liable on the claim under  
18 sections 8644 and 8667 (relating to liability of person  
19 dissociated as general partner to other persons).

20 § 8688. Court proceedings.

21 (a) Determination of security.--A dissolved limited  
22 partnership that has officially published a notice under section  
23 8687 (relating to other claims against dissolved limited  
24 partnership) may file an application with the court of common  
25 pleas embracing the county where the partnership's principal  
26 office is located or, if the principal office is not located in  
27 this Commonwealth, where its registered office is or was last  
28 located, for a determination of the amount and form of security  
29 to be provided for payment of claims that are reasonably  
30 expected to arise after the date of dissolution based on facts

1 known to the partnership and:

2 (1) at the time of the application:

3 (i) are contingent; or

4 (ii) have not been made known to the partnership; or

5 (2) are based on an event occurring after the date of  
6 dissolution.

7 (b) When security not required.--Security is not required  
8 for any claim that is or is reasonably anticipated to be barred  
9 under section 8687.

10 (c) Notice.--Within 10 days after the filing of an  
11 application under subsection (a), the dissolved limited  
12 partnership shall give notice of the proceeding to each claimant  
13 holding a contingent claim known to the partnership.

14 (d) Guardian ad litem.--In a proceeding brought under this  
15 section, the court may appoint a guardian ad litem to represent  
16 all claimants whose identities are unknown. The reasonable fees  
17 and expenses of the guardian, including all reasonable expert  
18 witness fees, must be paid by the dissolved limited partnership.

19 (e) Effect on contingent claims.--A dissolved limited  
20 partnership that provides security in the amount and form  
21 ordered by the court under subsection (a) satisfies the  
22 partnership's obligations with respect to claims that are  
23 contingent, have not been made known to the partnership or are  
24 based on an event occurring after the date of dissolution. The  
25 claims may not be enforced against a partner or transferee on  
26 account of assets received in liquidation.

27 § 8689. General partner liability when claim against limited  
28 partnership barred.

29 If a claim against a dissolved limited partnership is barred  
30 under section 8686 (relating to known claims against dissolved

1 limited partnership), 8687 (relating to other claims against  
2 dissolved limited partnership) or 8688 (relating to court  
3 proceedings), any corresponding claim under section 8644  
4 (relating to general partner's liability) or 8667 (relating to  
5 liability of person dissociated as general partner to other  
6 persons) is also barred.

7 § 8690. Disposition of assets in winding up and required  
8 contributions.

9 (a) Creditors.--In winding up its activities and affairs, a  
10 limited partnership shall apply its assets, including the  
11 contributions required by this section, to discharge the  
12 partnership's obligations to creditors, including partners that  
13 are creditors.

14 (b) Surplus.--After a limited partnership complies with  
15 subsection (a), any surplus shall be distributed in the  
16 following order, subject to any charging order in effect under  
17 section 8673 (relating to charging order):

18 (1) to each owner of a transferable interest that  
19 reflects contributions made and not previously returned, an  
20 amount equal to the value of the unreturned contributions;  
21 and

22 (2) among owners of transferable interests in proportion  
23 to their respective rights to share in distributions  
24 immediately before the dissolution of the partnership.

25 (c) Insufficient assets.--If a limited partnership's assets  
26 are insufficient to satisfy all of its obligations under  
27 subsection (a), with respect to each unsatisfied obligation  
28 incurred when the partnership was not a limited liability  
29 limited partnership, the following rules apply:

30 (1) Each person that was a general partner when the

1 obligation was incurred and that has not been released from  
2 the obligation under section 8667 (relating to liability of  
3 person dissociated as general partner to other persons) shall  
4 contribute to the partnership for the purpose of enabling the  
5 partnership to satisfy the obligation. The contribution due  
6 from each of those persons is in proportion to the right to  
7 receive distributions in the capacity of a general partner in  
8 effect for each of those persons when the obligation was  
9 incurred.

10 (2) If a person does not contribute the full amount  
11 required under paragraph (1) with respect to an unsatisfied  
12 obligation of the partnership, the other persons required to  
13 contribute by paragraph (1) on account of the obligation  
14 shall contribute the additional amount necessary to discharge  
15 the obligation. The additional contribution due from each of  
16 those other persons is in proportion to the right to receive  
17 distributions in the capacity of a general partner in effect  
18 for each of those other persons when the obligation was  
19 incurred.

20 (3) If a person does not make the additional  
21 contribution required by paragraph (2), further additional  
22 contributions are determined and due in the same manner as  
23 provided in that paragraph.

24 (d) Recovery of additional contributions.--A person that  
25 makes an additional contribution under subsection (c)(2) or (3)  
26 may recover from any person whose failure to contribute under  
27 subsection (c)(1) or (2) necessitated the additional  
28 contribution. A person may not recover under this subsection  
29 more than the amount additionally contributed. A person's  
30 liability under this subsection may not exceed the amount the

1 person failed to contribute.

2 (e) Distribution when surplus insufficient.--If a limited  
3 partnership does not have sufficient surplus to comply with  
4 subsection (b) (1), any surplus must be distributed among the  
5 owners of transferable interests in proportion to the value of  
6 the respective unreturned contributions.

7 (f) Form of payment.--All distributions made under  
8 subsections (b) and (c) must be paid in money.

9 SUBCHAPTER I

10 ACTIONS BY PARTNERS

11 Sec.

12 8691. Direct action by partner.

13 8692. Derivative action.

14 8693. Security for costs.

15 8694. Special litigation committee.

16 8695. Proceeds and expenses.

17 § 8691. Direct action by partner.

18 (a) General rule.--Subject to subsection (b), a partner may  
19 maintain a direct action against another partner or the limited  
20 partnership, with or without an accounting as to the  
21 partnership's activities and affairs, to enforce the partner's  
22 rights and protect the partner's interests, including rights and  
23 interests under the partnership agreement or this title or  
24 arising independently of the partnership relationship.

25 (b) Required injury.--A partner maintaining a direct action  
26 under this section must plead and prove an actual or threatened  
27 injury that is not solely the result of an injury suffered or  
28 threatened to be suffered by the limited partnership.

29 (c) Claims not revived.--A right to an accounting on a  
30 dissolution and winding up does not revive a claim barred by

1 law.

2 (d) Cross reference.--See section 8615(c)(17) (relating to  
3 contents of partnership agreement).

4 § 8692. Derivative action.

5 (a) General rule.--Subject to subsection (b), a partner may  
6 maintain a derivative action to enforce a right of a limited  
7 partnership only if:

8 (1) the partner first makes a demand on the general  
9 partners requesting that they cause the partnership to bring  
10 an action to enforce the right, and:

11 (i) if a special litigation committee is not  
12 appointed under section 8694 (relating to special  
13 litigation committee), the partnership does not bring the  
14 action within a reasonable time; or

15 (ii) if a special litigation committee is appointed  
16 under section 8694, a determination is made:

17 (A) under section 8694(e)(1) that the  
18 partnership not object to the action; or

19 (B) under section 8694(e)(5)(i) that the  
20 plaintiff continue the action;

21 (2) demand is excused under subsection (b);

22 (3) the action is maintained for the limited purpose of  
23 seeking court review under section 8694(f); or

24 (4) the court has allowed the action to continue under  
25 the control of the plaintiff under section 8694(f)(3)(ii).

26 (b) Prior demand excused.--

27 (1) A demand under subsection (a)(1) is excused only if  
28 the partner makes a specific showing that immediate and  
29 irreparable harm to the limited partnership would otherwise  
30 result.

1           (2) If demand is excused under paragraph (1), demand  
2           shall be made promptly after commencement of the action.

3           (c) Contents of demand.--A demand under this section must be  
4           in record form and give notice with reasonable specificity of  
5           the essential facts relied upon to support each of the claims  
6           made in the demand.

7           (d) Additional claims.--If a derivative action is commenced  
8           after a demand has been made under this section and includes a  
9           claim that was not fairly subsumed under the demand, a new  
10           demand must be made with respect to that claim. The new demand  
11           shall not relate back to the date of the original demand for  
12           purposes of subsection (e).

13           (e) Statute of limitations.--The making of a demand tolls  
14           any applicable statute of limitations with respect to a claim  
15           asserted in the demand until the earlier of the date:

16                 (1) the partner making the demand is notified either:

17                     (i) that the general partners have decided not to  
18                     bring an action and not to appoint a special litigation  
19                     committee; or

20                     (ii) of a determination under section 8694(e) after  
21                     the appointment of a special litigation committee under  
22                     section 8694; or

23                 (2) the plaintiff commences an action asserting the  
24                 claim.

25           (f) Cross reference.--See section 8615(c)(17) (relating to  
26           contents of partnership agreement).

27           § 8693. Security for costs.

28           In any action or proceeding instituted or maintained by  
29           partners holding transferable interests entitled to receive less  
30           than 5% of any distribution by a limited partnership, unless the

1 transferable interests held by the partners have an aggregate  
2 fair market value in excess of \$200,000, the partnership in  
3 whose right the action or proceeding is brought shall be  
4 entitled at any stage of the proceedings to require the  
5 plaintiffs to give security for the reasonable expenses,  
6 including attorneys' fees, that may be incurred by the  
7 partnership in connection therewith or for which it may become  
8 liable pursuant to section 8468(b) (relating to reimbursement,  
9 indemnification, advancement and insurance) to which security  
10 the partnership shall have recourse in such amount as the court  
11 determines upon the termination of the action or proceeding. The  
12 amount of security may, from time to time, be increased or  
13 decreased in the discretion of the court upon showing that the  
14 security provided has or is likely to become inadequate or  
15 excessive. The security may be denied or limited by the court if  
16 the court finds after an evidentiary hearing that undue hardship  
17 on plaintiffs and serious injustice would result.

18 § 8694. Special litigation committee.

19 (a) General rule.--If a limited partnership or the general  
20 partners receive a demand to bring an action to enforce a right  
21 of the partnership, or if a derivative action is commenced  
22 before demand has been made on the partnership or the general  
23 partners, the general partners may appoint a special litigation  
24 committee to investigate the claims asserted in the demand or  
25 action and to determine on behalf of the limited partnership or  
26 recommend to the general partners whether pursuing any of the  
27 claims asserted is in the best interests of the partnership. The  
28 partnership shall send a notice in record form to the plaintiff  
29 promptly after the appointment of the committee under this  
30 section notifying the plaintiff that a committee has been

1 appointed and identifying by name the members of the committee.

2 (b) Discovery stay.--If the general partners appoint a  
3 special litigation committee and an action is commenced before a  
4 determination has been made under subsection (e):

5 (1) On motion by the committee made in the name of the  
6 partnership, the court shall stay discovery for the time  
7 reasonably necessary to permit the committee to make its  
8 investigation, except for good cause shown.

9 (2) The time for the defendants to plead shall be tolled  
10 until the process provided for under subsection (f) has been  
11 completed.

12 (c) Composition of committee.--A special litigation  
13 committee shall be composed of two or more individuals who:

14 (1) are not interested in the claims asserted in the  
15 demand or action;

16 (2) are capable as a group of objective judgment in the  
17 circumstances; and

18 (3) may, but need not, be general or limited partners.

19 (d) Appointment of committee.--A special litigation  
20 committee may be appointed:

21 (1) by a majority of the general partners not named as  
22 actual or potential parties in the demand or action; or

23 (2) if all general partners are named as actual or  
24 potential parties in the demand or action, by a majority of  
25 the general partners so named.

26 (e) Determination.--After appropriate investigation by a  
27 special litigation committee, the committee or the general  
28 partners may determine that it is in the best interests of the  
29 limited partnership that:

30 (1) an action based on some or all of the claims

1 asserted in the demand not be brought by the partnership but  
2 that the partnership not object to an action being brought by  
3 the party that made the demand;

4 (2) an action based on some or all of the claims  
5 asserted in the demand be brought by the partnership;

6 (3) some or all of the claims asserted in the demand be  
7 settled on terms approved by the committee;

8 (4) an action not be brought based on any of the claims  
9 asserted in the demand;

10 (5) an action already commenced continue under the  
11 control of:

12 (i) the plaintiff;

13 (ii) the limited partnership; or

14 (iii) the committee;

15 (6) some or all of the claims asserted in an action  
16 already commenced be settled on terms approved by the  
17 committee; or

18 (7) an action already commenced be dismissed.

19 (f) Court review and action.--If a special litigation  
20 committee is appointed and an action is commenced before a  
21 determination is made under subsection (e):

22 (1) The limited partnership shall file with the court  
23 after a determination is made under subsection (e) a  
24 statement of the determination and a report of the committee.  
25 The partnership shall serve each party with a copy of the  
26 determination and report. If the partnership moves to file  
27 the report under seal, the report shall be served on the  
28 parties subject to an appropriate stipulation agreed to by  
29 the parties or a protective order issued by the court.

30 (2) The partnership shall file with the court a motion,

1 pleading or notice consistent with the determination under  
2 subsection (e).

3 (3) If the determination is one described in subsection  
4 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall  
5 determine whether the members of the committee met the  
6 qualifications required under subsection (c) (1) and (2) and  
7 whether the committee conducted its investigation and made  
8 its recommendation in good faith, independently and with  
9 reasonable care. If the court finds that the members of the  
10 committee met the qualifications required under subsection  
11 (c) (1) and (2) and that the committee acted in good faith,  
12 independently and with reasonable care, the court shall  
13 enforce the determination of the committee. Otherwise, the  
14 court shall:

15 (i) dissolve any stay of discovery entered under  
16 subsection (b);

17 (ii) allow the action to continue under the control  
18 of the plaintiff; and

19 (iii) permit the defendants to file preliminary  
20 objections and other appropriate motions and pleadings.

21 (g) Attorney General.--Nothing in this section shall limit  
22 the rights, powers and duties of the Attorney General under  
23 other applicable law with respect to a limited partnership  
24 organized for a charitable purpose.

25 (h) Cross reference.--See section 8615(c) (18) (relating to  
26 contents of partnership agreement).

27 § 8695. Proceeds and expenses.

28 (a) Proceeds.--Except as provided in subsection (b):

29 (1) any proceeds or other benefits of a derivative  
30 action, whether by judgment, compromise or settlement, belong

1 to the limited partnership and not to the plaintiff; and

2 (2) if the plaintiff or its counsel receives any  
3 proceeds, the proceeds shall be remitted immediately to the  
4 partnership.

5 (b) Expenses.--If a derivative action is successful in whole  
6 or in part, the court may award the plaintiff reasonable  
7 expenses, including reasonable attorney fees and costs, from the  
8 recovery of the limited partnership, but in no event shall the  
9 attorney fees awarded exceed a reasonable proportion of the  
10 value of the relief, including nonpecuniary relief, obtained by  
11 the plaintiff for the limited partnership.

12 (c) Cross reference.--See section 8615(c)(7) (relating to  
13 contents of partnership agreement).

14 Section 28. Sections 8701, 8702 and 8705 of Title 15 are  
15 amended to read:

16 § 8701. Scope and definition.

17 (a) Application of chapter.--This chapter applies to a  
18 general or limited partnership formed under the laws of this  
19 Commonwealth that elects to be governed by this chapter. Any  
20 partnership that desires to elect to be governed by this  
21 chapter, or to amend or terminate the election, shall [file in]  
22 deliver to the Department of State for filing a statement of  
23 election, amendment or termination, as the case may be, which  
24 shall be signed by a general partner and shall set forth:

25 (1) The name of the partnership.

26 (2) The location of the principal place of business.

27 (3) The name of each general partner of the partnership  
28 as of the date of the statement.

29 (4) A statement that the partnership elects to be  
30 governed by this chapter or that the election to be governed

1 by this chapter shall be amended or terminated, as the case  
2 may be.

3 (5) If the election is to be made or terminated, a  
4 statement that the election or termination has been  
5 authorized by at least a majority in interest of the  
6 partners.

7 (a.1) Effective date and time.--Subject to section 136(c)  
8 (relating to processing of documents by Department of State),  
9 [Upon] upon the filing of the statement of election, amendment  
10 or termination in the department, the election to be governed by  
11 this chapter shall be effective, amended or terminated, as the  
12 case may be.

13 (b) Effect of election.--As long as an election under  
14 subsection (a) is in effect, the partnership shall be governed  
15 by the provisions of this chapter and, to the extent not  
16 inconsistent with this chapter, Chapter [83] 84 (relating to  
17 general partnerships) [and] or, if a limited partnership,  
18 Chapter [85] 86 (relating to limited partnerships).

19 (c) Definition.--As used in this chapter, the term "electing  
20 partnership" means a partnership as to which an election under  
21 subsection (a) is in effect.

22 (d) Cross [reference.--See section] references.--See  
23 sections 134 (relating to docketing statement) and 135 (relating  
24 to requirements to be met by filed documents).

25 § 8702. Centralized management.

26 The business and affairs of every electing partnership shall  
27 be managed by one-third or less, but not less than one, of the  
28 partners selected for that purpose in the manner provided by any  
29 agreement between the partners, and no other partner shall have  
30 a right to participate in the management of the partnership. A

1 partner of an electing partnership shall be an agent of the  
2 partnership only to the extent that an employee of the  
3 partnership would be under like circumstances. In making such a  
4 determination, the court may consider among other things whether  
5 a person dealing with the partnership has knowledge, as defined  
6 in section [8303(a) (relating to knowledge)] 8413(a) (relating  
7 to knowledge and notice), that this section is applicable to the  
8 partnership.

9 § 8705. Limited liability in certain cases.

10 (a) General rule.--The liability of a partner of an electing  
11 partnership for the debts and obligations of the partnership  
12 shall be satisfied out of partnership assets alone if[:

13 (1)] the debt or obligation arises from a transaction or  
14 occurrence in which the person dealing with the partnership  
15 has notice, as defined in section [8303(b) (relating to  
16 notice)] 8413(b) (relating to knowledge and notice), that  
17 this section is applicable to the partnership.]; or

18 (2) the fact that this section is applicable to the  
19 partnership has been advertised in the manner provided by  
20 section 8357(a)(2)(ii) (relating to power of partner to bind  
21 partnership to third persons).]

22 (b) Exceptions.--Subsection (a) does not apply:

23 (1) Unless otherwise agreed by the obligee, to a debt or  
24 obligation arising prior to the time a partnership becomes an  
25 electing partnership [and complies with subsection (a)(1) or  
26 (2)].

27 (2) To a transaction or occurrence involving the  
28 furnishing or sale of any goods or services by the  
29 partnership.

30 (c) Professional relationship unaffected.--Subsection (a)

1 shall not afford the partners of an electing partnership  
2 providing professional services with greater immunity than is  
3 available to the officers, shareholders, employees or agents of  
4 a professional corporation. See section 2925 (relating to  
5 professional relationship retained).

6 Section 29. Title 15 is amended by adding a chapter to read:

7 CHAPTER 88

8 LIMITED LIABILITY COMPANIES

9 Subchapter

10 A. General Provisions

11 B. Formation and Filings

12 C. Relations of Members and Managers to Persons Dealing with  
13 Limited Liability Company

14 D. Relations of Members to Each Other and to Limited  
15 Liability Company

16 E. Transferable Interests and Rights of Transferees and  
17 Creditors

18 F. Dissociation

19 G. Dissolution and Winding Up

20 H. Actions by Members

21 I. Benefit Companies

22 SUBCHAPTER A

23 GENERAL PROVISIONS

24 Sec.

25 8811. Short title and application of chapter.

26 8812. Definitions.

27 8813. Knowledge and notice.

28 8814. Governing law.

29 8815. Contents of operating agreement.

30 8816. Application of operating agreement.

1 8817. Amendment and effect of operating agreement.

2 8818. Characteristics of limited liability company.

3 8819. Powers.

4 § 8811. Short title and application of chapter.

5 (a) Short title.--This chapter may be cited as the  
6 Pennsylvania Uniform Limited Liability Company Act of 2016.

7 (b) Initial application.--Before April 1, 2017, this chapter  
8 governs only:

9 (1) a limited liability company formed on or after [the  
10 Legislative Reference Bureau shall insert here the effective  
11 date of this chapter]; and

12 (2) except as provided in subsection (c), a limited  
13 liability company formed before [the Legislative Reference  
14 Bureau shall insert here the effective date of this chapter]  
15 which elects, in the manner provided in its operating  
16 agreement or by law for amending the operating agreement, to  
17 be subject to this chapter.

18 (c) Full effective date.--Except as provided in subsection  
19 (d), on and after April 1, 2017, this chapter governs all  
20 limited liability companies.

21 (d) Certificates of membership interest.--For purposes of  
22 applying this chapter to a limited liability company formed  
23 before [the Legislative Reference Bureau shall insert here the  
24 effective date of this chapter], language in the company's  
25 certificate of organization authorizing the issuance of  
26 certificates of membership interest operates as if that language  
27 were in the operating agreement.

28 (e) Cross reference.--See section 8815(c)(5) (relating to  
29 contents of operating agreement).

30 § 8812. Definitions.

1 (a) General definitions.--The following words and phrases  
2 when used in this chapter shall have the meanings given to them  
3 in this section unless the context clearly indicates otherwise:

4 "Certificate of organization." The certificate required by  
5 section 8821 (relating to formation of limited liability company  
6 and certificate of organization). The term includes the  
7 certificate as amended or restated.

8 "Contribution." Property or a benefit described under  
9 section 8842 (relating to form of contribution) which is  
10 provided by a person to a limited liability company to become a  
11 member or in the capacity of a person as a member.

12 "Distribution." A direct or indirect transfer of money or  
13 other property ~~from~~ OR INCURRENCE OF INDEBTEDNESS BY a limited <--  
14 liability company to a person on account of a transferable  
15 interest or in the person's capacity as a member. The term:

16 (1) includes:

17 (i) a redemption or other purchase by a limited  
18 liability company of a transferable interest; and

19 (ii) a transfer to a member in return for the  
20 member's relinquishment of any right to participate as a  
21 member in the management or conduct of the company's  
22 activities and affairs or to have access to records or  
23 other information concerning the company's activities and  
24 affairs; and

25 (2) does not include:

26 (i) amounts constituting reasonable compensation for  
27 present or past service or payments made in the ordinary  
28 course of business under a bona fide retirement plan or  
29 other bona fide benefits program;

30 (ii) the making of, or payment or performance on, a

1 guaranty or similar arrangement by a company for the  
2 benefit of any or all of its members;

3 (iii) a direct or indirect allocation or transfer  
4 effected under Chapter 3 (relating to entity  
5 transactions) with the approval of the members; or

6 (iv) a direct or indirect transfer of:

7 (A) a governance or transferable interest; or

8 (B) options, rights or warrants to acquire a  
9 governance or transferable interest.

10 "Limited liability company." An association formed under  
11 this chapter or which becomes subject to this chapter under  
12 Chapter 3 or section 8811 (relating to short title and  
13 application of chapter).

14 "Manager." A person that under the operating agreement of a  
15 manager-managed limited liability company is responsible, alone  
16 or in concert with others, for performing the management  
17 functions stated under section 8847(c) (relating to management  
18 of limited liability company).

19 "Manager-managed limited liability company." A limited  
20 liability company that qualifies as such under section 8847(a).

21 "Member." A person that:

22 (1) has become a member of a limited liability company  
23 under section 8841 (relating to becoming a member) or was a  
24 member in a company when the company became subject to this  
25 chapter under section 8811(b); and

26 (2) has not dissociated as a member under section 8861  
27 (relating to events causing dissociation).

28 "Member-managed limited liability company." A limited  
29 liability company that is not a manager-managed limited  
30 liability company.

1 "Operating agreement." The agreement, whether or not  
2 referred to as an operating agreement and whether oral, implied,  
3 in record form or in any combination thereof, of all the members  
4 of a limited liability company, including a sole member,  
5 concerning matters described in section 8815(a) (relating to  
6 contents of operating agreement). The term includes the  
7 agreement as amended or restated.

8 "Organizer." A person that acts under section 8821 to form a  
9 limited liability company.

10 "Professional company." A limited liability company that  
11 renders one or more professional services.

12 "Transferable interest." The right, as initially owned by a  
13 person in the person's capacity as a member, to receive  
14 distributions from a limited liability company, whether or not  
15 the person remains a member or continues to own any part of the  
16 right. The term applies to any fraction of the interest, by  
17 whomever owned.

18 "Transferee." A person to which all or part of a  
19 transferable interest has been transferred, whether or not the  
20 transferor is a member. The term includes a person that owns a  
21 transferable interest under section 8863(a)(3) (relating to  
22 effect of dissociation).

23 (b) Index of other definitions.--Following is a nonexclusive  
24 list of definitions in section 102 (relating to definitions)  
25 that apply to this chapter:

26 "Act" or "action."

27 "Debtor in bankruptcy."

28 "Department."

29 "Jurisdiction of formation."

30 "Principal office."

1 "Professional services."

2 "Property."

3 "Record form."

4 "Sign."

5 "Transfer."

6 § 8813. Knowledge and notice.

7 (a) Knowledge.--A person knows a fact if the person:

8 (1) has actual knowledge of it; or

9 (2) is deemed to know it under subsection (d) or law

10 other than this chapter.

11 (b) Notice.--A person has notice of a fact if the person has

12 reason to know the fact from all the facts known to the person

13 at the time in question.

14 (c) Constructive notice.--A person not a member or manager

15 is deemed to have notice of:

16 (1) the dissolution of a limited liability company 90

17 days after a certificate of dissolution under section 8872(b)

18 (2)(i) (relating to winding up and filing of certificates) is

19 effective;

20 (2) the termination of a company 90 days after a

21 certificate of termination under section 8872(f) is

22 effective; and

23 (3) the participation of a company in a merger, interest

24 exchange, conversion, division or domestication, 90 days

25 after a statement of merger, interest exchange, conversion,

26 division or domestication under Chapter 3 (relating to entity

27 transactions) becomes effective.

28 (d) Notification.--Except as provided under section 113(b)

29 (relating to delivery of document), a person notifies another

30 person of a fact by taking steps reasonably required to inform

1 the other person in ordinary course, whether or not those steps  
2 cause the other person to know the fact.

3 (e) Transfer of real property.--A person not a member or  
4 manager is deemed to know of a limitation on authority to  
5 transfer real property as provided under section 8832(g)  
6 (relating to certificate of authority).

7 (f) Effect of manager's knowledge or notice.--If the  
8 certificate of organization of a limited liability company  
9 provides that it is manager-managed, a manager's knowledge or  
10 notice of a fact relating to the company is effective  
11 immediately as knowledge of or notice to the company, except in  
12 the case of a fraud on the company committed by or with the  
13 consent of the manager.

14 § 8814. Governing law.

15 (a) General rule.--The law of this Commonwealth governs:

16 (1) the internal affairs of a limited liability company;  
17 and

18 (2) the liability of a member as member and of a manager  
19 as manager for the debts, obligations or other liabilities of  
20 a limited liability company.

21 (b) Cross reference.--See section 8815(c)(6) (relating to  
22 contents of operating agreement).

23 § 8815. Contents of operating agreement.

24 (a) Scope of operating agreement.--Except as provided under  
25 subsections (c) and (d), the operating agreement governs:

26 (1) relations among the members as members and between  
27 the members and the limited liability company;

28 (2) the rights and duties under this title of a person  
29 in the capacity of a member or manager;

30 (3) the activities and affairs of the company and the

1 conduct of those activities and affairs;

2 (4) the means and conditions for amending the operating  
3 agreement; and

4 (5) the means and conditions for approving a transaction  
5 under Chapter 3 (relating to entity transactions).

6 (b) Title applies generally.--To the extent the operating  
7 agreement does not provide for a matter described in subsection  
8 (a), this title governs the matter.

9 (c) Limitations.--An operating agreement may not do any of  
10 the following:

11 (1) Vary a provision of Chapter 1 (relating to general  
12 provisions) or Subchapter A of Chapter 2 (relating to names).

13 (2) Vary the right of a member to approve a merger,  
14 interest exchange, conversion, division or domestication  
15 under section 333(a)(2) (relating to approval of merger),  
16 343(a)(2) (relating to approval of interest exchange), 353(a)  
17 (3) (relating to approval of conversion), 363(a)(2) (relating  
18 to approval of division) or 373(a)(2) (relating to approval  
19 of domestication).

20 (3) Vary the required contents of a plan of merger under  
21 section 332(a) (relating to plan of merger), plan of interest  
22 exchange under section 342(a) (relating to plan of interest  
23 exchange), plan of conversion under section 352(a) (relating  
24 to plan of conversion), plan of division under section 362(a)  
25 (relating to plan of division) or plan of domestication under  
26 section 372(a) (relating to plan of domestication).

27 (4) Vary a provision of Chapter 81 (relating to general  
28 provisions).

29 (5) Vary the provisions of section 8811(b), (c) and (d)  
30 (relating to short title and application of chapter).

1       (6) Vary the law applicable under section 8814 (relating  
2 to governing law).

3       (7) Vary a provision of section 8818(d) (relating to  
4 characteristics of limited liability company).

5       (8) Vary a provision of section 8819 (relating to  
6 powers).

7       (9) Vary any requirement, procedure or other provision  
8 of this title pertaining to:

9           (i) registered offices; or  
10           (ii) the department, including provisions pertaining  
11 to documents authorized or required to be delivered to  
12 the department for filing under this title.

13       (10) Provide indemnification or exoneration in violation  
14 of the limitations in sections 8848(g) (relating to  
15 reimbursement, indemnification, advancement and insurance),  
16 8849.1(j) (relating to standards of conduct for members) and  
17 8849.2(h) (relating to standards of conduct for managers).

18       (11) Eliminate the duty of loyalty provided for in  
19 section 8849.1(b) (1) (i) or (ii) or (2) or the duty of care of  
20 a member in a member-managed company, except as provided in  
21 subsection (d).

22       (12) Eliminate the duty of loyalty provided for in  
23 section 8849.2(b) (1) (i) or (ii) or (2) or the duty of care of  
24 a manager, except as provided in subsection (d).

25       (13) Vary the contractual obligation of good faith and  
26 fair dealing under section 8849.1(d) or 8849.2(d), except as  
27 provided in subsection (d).

28       (14) Restrict the duties and rights under section 8850  
29 (relating to rights to information), except as provided in  
30 subsection (d).

1       (15) Vary the causes of dissolution specified in section  
2 8871(a)(4) (relating to events causing dissolution).

3       (16) Vary the requirements to wind up the company's  
4 activities and affairs specified in section 8872(a), (b)(1),  
5 (e) and (f) (relating to winding up and filing of  
6 certificates).

7       (17) Unreasonably restrict the right of a member to  
8 maintain an action under Subchapter H (relating to actions by  
9 members).

10       (18) Vary the provisions of section 8884 (relating to  
11 special litigation committee), except that the operating  
12 agreement may provide that the company may not have a special  
13 litigation committee.

14       (19) Vary a provision of Subchapter I (relating to  
15 benefit companies).

16       (20) Except as provided in section 8817(b) (relating to  
17 amendment and effect of operating agreement), restrict the  
18 rights under this title of a person other than a member or  
19 manager.

20       (d) Permitted terms.--Subject to subsection (c)(10), the  
21 following rules apply:

22       (1) The operating agreement may:

23           (i) specify the method by which a specific act or  
24 transaction that would otherwise violate the duty of  
25 loyalty may be authorized or ratified by one or more  
26 disinterested and independent persons after full  
27 disclosure of all material facts;

28           (ii) alter the prohibition stated in section 8845(a)  
29 (2) (relating to limitations on distributions) so that  
30 the prohibition requires only that the company's total

1 assets not be less than the sum of its total liabilities;

2 and

3 (iii) impose reasonable restrictions on the  
4 availability and use of information obtained under  
5 section 8850 and may define appropriate remedies,  
6 including liquidated damages, for a breach of any  
7 reasonable restriction on use.

8 (2) To the extent the operating agreement of a member-  
9 managed limited liability company expressly relieves a member  
10 of a responsibility that the member would otherwise have  
11 under this title and imposes the responsibility on one or  
12 more other members, the operating agreement also may  
13 eliminate or limit any fiduciary duty of the member relieved  
14 of the responsibility that would have pertained to the  
15 responsibility.

16 (3) If not manifestly unreasonable, the operating  
17 agreement may:

18 (i) alter the aspects of the duty of loyalty stated  
19 under section 8849.1(b)(1)(i) or (ii) or (2) or 8849.2(b)  
20 (1)(i) or (ii) or (2);

21 (ii) prescribe the standards, if not manifestly  
22 unreasonable, by which the performance of the contractual  
23 obligation of good faith and fair dealing under section  
24 8849.1(d) or 8849.2(d) is to be measured;

25 (iii) identify specific types or categories of  
26 activities that do not violate the duty of loyalty;

27 (iv) alter the duty of care; and

28 (v) alter or eliminate any other fiduciary duty.

29 (e) Determination of manifest unreasonableness.--The court  
30 shall decide as a matter of law whether a term of an operating

1 agreement is manifestly unreasonable under subsection (d)(3).

2 The court:

3 (1) shall make its determination as of the time the  
4 challenged term became part of the operating agreement and by  
5 considering only circumstances existing at that time; and

6 (2) may invalidate the term only if, in light of the  
7 purposes, activities and affairs of the limited liability  
8 company, it is readily apparent that:

9 (i) the objective of the term is unreasonable; or

10 (ii) the term is an unreasonable means to achieve  
11 the term's objective.

12 § 8816. Application of operating agreement.

13 (a) Company bound.--A limited liability company is bound by  
14 and may enforce the operating agreement, whether or not the  
15 company has itself manifested assent to the agreement.

16 (b) Deemed assent.--A person that becomes a member of a  
17 limited liability company is deemed to assent to the operating  
18 agreement.

19 (c) Preformation agreement.--Two or more persons intending  
20 to become the initial members of a limited liability company may  
21 make an agreement providing that upon the formation of the  
22 company the agreement will become the operating agreement. One  
23 person intending to become the initial member of a limited  
24 liability company may assent to terms providing that upon the  
25 formation of the company the terms will become the operating  
26 agreement.

27 § 8817. Amendment and effect of operating agreement.

28 (a) Approval of amendments.--An operating agreement may  
29 specify that its amendment requires the approval of a person  
30 that is not a party to the agreement or the satisfaction of a

1 condition. An amendment is ineffective if its adoption does not  
2 include the required approval or satisfy the specified  
3 condition. See section 8847(b) (6) and (c) (3) (iii) (relating to  
4 management of limited liability company).

5 (b) Obligations to nonmembers.--The obligations of a limited  
6 liability company and its members to a person in the person's  
7 capacity as a transferee or a person dissociated as a member are  
8 governed by the operating agreement. Except as provided in  
9 section 8844(d) (relating to sharing of and right to  
10 distributions before dissolution) or in a court order issued  
11 under section 8853(b) (2) (relating to charging order) to  
12 effectuate a charging order, an amendment to the operating  
13 agreement made after a person becomes a transferee or is  
14 dissociated as a member:

15 (1) is effective with regard to any debt, obligation or  
16 other liability of the limited liability company or its  
17 members to the person in the person's capacity as a  
18 transferee or person dissociated as a member; and

19 (2) is not effective to the extent the amendment imposes  
20 a new debt, obligation or other liability on the transferee  
21 or person dissociated as a member.

22 (c) Provisions in filed documents.--If a document delivered  
23 by a limited liability company to the department for filing  
24 contains a provision that would be ineffective under section  
25 8815(c) or (d) (3) (relating to contents of operating agreement)  
26 if contained in the operating agreement, the provision is  
27 ineffective in the document.

28 (d) Conflicts with operating agreement.--Subject to  
29 subsection (c):

30 (1) If a provision of the certificate of organization

1 conflicts with a provision of the operating agreement, the  
2 provision of the certificate prevails.

3 (2) If a document other than its certificate of  
4 organization has been delivered by the company to the  
5 department for filing and conflicts with a provision of the  
6 operating agreement:

7 (i) the operating agreement prevails as to members,  
8 dissociated members, transferees and managers; and

9 (ii) the document prevails as to other persons to  
10 the extent they reasonably rely on the document.

11 (e) Prohibition of oral amendments.--If a provision of an  
12 operating agreement in record form provides that the operating  
13 agreement cannot be amended, modified or rescinded except in  
14 record form, an oral agreement, amendment, modification or  
15 rescission shall not be enforceable.

16 § 8818. Characteristics of limited liability company.

17 (a) Separate entity.--A limited liability company is an  
18 entity distinct from its member or members.

19 (b) Purpose.--A limited liability company may have any  
20 lawful purpose other than acting as an insurer, regardless of  
21 whether the purpose is for profit. Nothing under this section  
22 shall prohibit the organization of an insurance agency licensed  
23 in this Commonwealth as a limited liability company. See section  
24 8102 (relating to interchangeability of partnership, limited  
25 liability company and corporate forms of organization).

26 (c) Duration.--A limited liability company has perpetual  
27 duration.

28 (d) Restrictions on nonprofit companies.--If a limited  
29 liability company has a purpose that is not for profit:

30 (1) Its purpose must be stated in the certificate of

1 organization.

2 (2) The company shall not distribute any part of its  
3 income or profits to its members, managers or officers,  
4 except that it may pay compensation in a reasonable amount to  
5 those persons for services rendered.

6 (3) The company may confer benefits on members or  
7 nonmembers in conformity with its purposes, may repay capital  
8 contributions and may redeem evidences of indebtedness,  
9 except when the company is currently insolvent or would  
10 thereby be made insolvent or rendered unable to carry on its  
11 purposes, or when the fair value of the assets of the company  
12 remaining after the conferring of benefits, payment or  
13 redemption would be insufficient to meet its liabilities. The  
14 company may make distributions of money or property to  
15 members upon dissolution or final liquidation as permitted by  
16 this chapter.

17 (4) If the company is organized for a charitable  
18 purpose, it may take, receive and hold real and personal  
19 property as may be given, devised to or otherwise vested in  
20 the company, in trust, for the purpose or purposes set forth  
21 in its certificate of organization. The members, if it is  
22 member-managed, or the managers, if it is manager-managed,  
23 shall, as trustees of the property, be held to the same  
24 degree of responsibility and accountability as other  
25 trustees, unless:

26 (i) a lesser degree or a particular degree of  
27 responsibility and accountability is prescribed in the  
28 trust instrument;

29 (ii) if the company is member-managed, the members  
30 remain under the control of third persons who retain the

1 right to direct, and do direct, the actions of the  
2 members as to the use of the trust property from time to  
3 time; or

4 (iii) if the company is manager-managed, the  
5 managers remain under the control of the members or third  
6 persons who retain the right to direct, and do direct,  
7 the actions of the managers as to the use of the trust  
8 property from time to time.

9 (5) Property of the company committed to charitable  
10 purposes shall not, by any proceeding under Chapter 3  
11 (relating to entity transactions) or otherwise, be diverted  
12 from the objects to which it was donated, granted or devised,  
13 unless and until the company obtains from the court an order  
14 under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the  
15 disposition of the property.

16 (e) Cross reference.--See section 8815(c)(7) (relating to  
17 contents of operating agreement).

18 § 8819. Powers.

19 (a) General rule.--A limited liability company has the power  
20 to do all things necessary or convenient to carry on its  
21 activities and affairs.

22 (b) Capacity to sue and be sued.--A limited liability  
23 company has the capacity to sue and be sued in its own name.

24 (c) Certain specifically authorized debt terms.--A limited  
25 liability company shall be subject to section 1510 (relating to  
26 certain specifically authorized debt terms) to the same extent  
27 as if it were a business corporation.

28 (d) Cross references.--See sections 8102 (relating to  
29 interchangeability of partnership, limited liability company and  
30 corporate forms of organization) and 8815(c)(8) (relating to

1 contents of operating agreement).

2 SUBCHAPTER B

3 FORMATION AND FILINGS

4 Sec.

5 8821. Formation of limited liability company and certificate of  
6 organization.

7 8822. Amendment or restatement of certificate of organization.

8 8823. Signing of filed documents.

9 8824. Liability of member, manager or other person for false or  
10 missing information in filed document.

11 8825. Registered office.

12 § 8821. Formation of limited liability company and certificate  
13 of organization.

14 (a) Formation.--One or more persons may act as organizers to  
15 form a limited liability company by delivering to the department  
16 for filing a certificate of organization.

17 (b) Required contents of certificate.--A certificate of  
18 organization must state:

19 (1) the name of the limited liability company, which  
20 must comply with Subchapter A of Chapter 2 (relating to  
21 names); and

22 (2) subject to section 109 (relating to name of  
23 commercial registered office provider in lieu of registered  
24 address), the address, including street and number, if any,  
25 of the company's registered office.

26 (c) Optional contents of certificate.--A certificate of  
27 organization may contain statements as to matters other than  
28 those required by subsection (b), but may not vary or otherwise  
29 affect the provisions specified under section 8815(c) and (d)  
30 (relating to contents of operating agreement) in a manner

1 inconsistent with that section.

2 (d) Substitute certificate of authority.--A statement in a  
3 certificate of organization with respect to a matter described  
4 in section 8832(a) (2) or (3) (relating to certificate of  
5 authority) is effective as a certificate of authority and the  
6 statement is subject to the provisions of section 8832 in the  
7 same manner as a certificate of authority.

8 (e) Effect of certificate of organization.--A provision of  
9 the certificate of organization shall be deemed to be a  
10 provision of the operating agreement for purposes of any  
11 provision of this title that refers to a rule as set forth in  
12 the operating agreement.

13 (f) Time of formation.--A limited liability company is  
14 formed when its certificate of organization becomes effective.

15 (g) Cross references.--See:

16 Section 134 (relating to docketing statement).

17 Section 135 (relating to requirements to be met by filed  
18 documents).

19 Section 136(c) (relating to processing of documents by  
20 Department of State).

21 Section 8818(d) (1) (relating to characteristics of  
22 limited liability company).

23 Section 8823 (relating to signing of filed documents).

24 § 8822. Amendment or restatement of certificate of  
25 organization.

26 (a) General rule.--A certificate of organization may be  
27 amended or restated at any time.

28 (b) Required contents of certificate of amendment.--To amend  
29 its certificate of organization, a limited liability company  
30 must deliver to the department for filing a certificate of

1 amendment that states:

2 (1) the name of the company;

3 (2) the date of filing of its initial certificate of  
4 organization;

5 (3) subject to section 109 (relating to name of  
6 commercial registered office provider in lieu of registered  
7 address), the address, including street and number, if any,  
8 of its registered office; and

9 (4) the amendment.

10 (c) Restatement.--To restate its certificate of  
11 organization, a limited liability company must deliver to the  
12 department for filing a certificate of amendment that:

13 (1) is designated as a restatement; and

14 (2) includes a statement that the restated certificate  
15 supersedes the original certificate and all previous  
16 amendments.

17 (d) Obligation to correct.--If a member of a member-managed  
18 limited liability company, or a manager of a manager-managed  
19 limited liability company, knows that any information in a filed  
20 certificate of organization is inaccurate, the member or manager  
21 shall promptly:

22 (1) cause the certificate to be amended; or

23 (2) if appropriate, deliver to the department for filing  
24 a statement of correction under section 138 (relating to  
25 statement of correction) or a statement of abandonment under  
26 section 141 (relating to abandonment of filing before  
27 effectiveness).

28 (e) Cross references.--See:

29 Section 134 (relating to docketing statement).

30 Section 135 (relating to requirements to be met by filed

1 documents).

2 Section 136(c) (relating to processing of documents by  
3 Department of State).

4 Section 8823 (relating to signing of filed documents).

5 § 8823. Signing of filed documents.

6 (a) Required signatures.--Except as provided in this title,  
7 a document delivered to the department for filing under this  
8 title relating to a limited liability company must be signed as  
9 follows:

10 (1) Except as provided in paragraphs (2) and (3), a  
11 document signed on behalf of a limited liability company must  
12 be signed by a person authorized by the company.

13 (2) A company's initial certificate of organization must  
14 be signed by each organizer.

15 (3) A document delivered on behalf of a dissolved  
16 company that has no member must be signed by the person  
17 winding up the company's activities and affairs under section  
18 8872(c) (relating to winding up and filing of certificates)  
19 or a person appointed under section 8872(d) to wind up the  
20 activities and affairs.

21 (4) A certificate of denial by a person under section  
22 8833 (relating to certificate of denial) must be signed by  
23 that person.

24 (5) Any other document delivered on behalf of a person  
25 to the department for filing must be signed by that person.

26 (b) Cross reference.--See section 142 (relating to effect of  
27 signing filings).

28 § 8824. Liability of member, manager or other person for false  
29 or missing information in filed document.

30 (a) General rule.--If a document delivered to the department

1 for filing under this title and filed by the department contains  
2 a materially false statement or fails to state a material fact  
3 required to be stated, a person that suffers loss by reasonable  
4 reliance on the statement or failure to state a material fact  
5 may recover damages for the loss from:

6 (1) a person that signed the document or caused another  
7 to sign it on the person's behalf and knew there was false or  
8 missing information in the document at the time it was  
9 signed; and

10 (2) subject to subsection (b), a member of a member-  
11 managed limited liability company or a manager of a manager-  
12 managed limited liability company if:

13 (i) the document was delivered for filing on behalf  
14 of the company; and

15 (ii) the member or manager knew or had notice there  
16 was false or missing information for a reasonably  
17 sufficient time before the document was relied upon so  
18 that, before the reliance, the member or manager  
19 reasonably could have:

20 (A) effected an amendment under section 8822  
21 (relating to amendment or restatement of certificate  
22 of organization);

23 (B) filed a petition under section 144 (relating  
24 to signing and filing pursuant to judicial order); or

25 (C) delivered to the department for filing a  
26 statement of correction under section 138 (relating  
27 to statement of correction) or a statement of  
28 withdrawal under section 141 (relating to abandonment  
29 of filing before effectiveness).

30 (b) Substitute responsibility.--To the extent the operating

1 agreement of a member-managed limited liability company  
2 expressly relieves a member of responsibility for maintaining  
3 the accuracy of information contained in documents delivered on  
4 behalf of the company to the department for filing under this  
5 chapter and imposes that responsibility on one or more other  
6 members, the liability stated under subsection (a)(2) applies to  
7 those other members and not to the member that the operating  
8 agreement relieves of the responsibility.

9 § 8825. Registered office.

10 (a) General rule.--Every limited liability company shall  
11 have and continuously maintain in this Commonwealth a registered  
12 office which may, but need not, be the same as its place of  
13 business.

14 (b) Change of registered office.--After organization, a  
15 change in the location of the registered office may be effected  
16 at any time by the company. Before the change becomes effective,  
17 the company shall amend its certificate of organization under  
18 the provisions of this chapter to reflect the change in location  
19 or shall file with the department a certificate of change of  
20 registered office setting forth:

21 (1) The name of the company.

22 (2) The address, including street and number, if any, of  
23 its then registered office.

24 (3) The address, including street and number, if any, to  
25 which the registered office is to be changed.

26 (c) Alternative procedure.--A limited liability company may  
27 satisfy the requirements of this chapter concerning the  
28 maintenance of a registered office in this Commonwealth by  
29 setting forth in any document filed in the department under any  
30 provision of this chapter that permits or requires the statement

1 of the address of its then registered office, in lieu of that  
2 address, the statement authorized under section 109(a) (relating  
3 to name of commercial registered office provider in lieu of  
4 registered address).

5 (d) Cross references.--See:

6 Section 108 (relating to change in location or status of  
7 registered office provided by agent).

8 Section 134 (relating to docketing statement).

9 Section 135 (relating to requirements to be met by filed  
10 documents).

11 Section 136(c) (relating to processing of documents by  
12 Department of State).

13 Section 8815(c) (7) (relating to contents of operating  
14 agreement).

15 Section 8823 (relating to signing of filed documents).

16 SUBCHAPTER C

17 RELATIONS OF MEMBERS AND MANAGERS

18 TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

19 Sec.

20 8831. Status of member or manager as agent.

21 8832. Certificate of authority.

22 8833. Certificate of denial.

23 8834. Liability of members and managers.

24 8835. Taxation of limited liability companies.

25 § 8831. Status of member or manager as agent.

26 (a) No agency power of member as member.--A member is not an  
27 agent of a limited liability company solely by reason of being a  
28 member.

29 (b) Agency power of manager.--If the certificate of  
30 organization states that the company is manager-managed, the act

1 of a manager for apparently carrying on in the usual way the  
2 business of the company binds the company unless the manager so  
3 acting has in fact no authority to act for the company in the  
4 particular matter and the person with whom the manager is  
5 dealing has knowledge of the fact that the manager does not have  
6 that authority.

7 (c) Liability of company under other law.--A person's status  
8 as a member or manager does not prevent or restrict law other  
9 than this chapter from imposing liability on a limited liability  
10 company because of the person's conduct.

11 § 8832. Certificate of authority.

12 (a) General rule.--A limited liability company may deliver  
13 to the department for filing a certificate of authority signed  
14 by the company. The certificate:

15 (1) must include the name of the company and, subject to  
16 section 109 (relating to name of commercial registered office  
17 provider in lieu of registered address), the address,  
18 including street and number, if any, of its registered  
19 office;

20 (2) with respect to any position that exists in or with  
21 respect to the company, may state the authority, or  
22 limitations on the authority, of all persons holding the  
23 position to:

24 (i) transfer real property held in the name of the  
25 company, including signing an instrument of transfer; or

26 (ii) enter into other transactions on behalf of, or  
27 otherwise act for or bind, the company; and

28 (3) may state the authority, or limitations on the  
29 authority, of a specific person to:

30 (i) transfer real property held in the name of the

1 company, including signing an instrument of transfer; or  
2 (ii) enter into other transactions on behalf of, or  
3 otherwise act for or bind, the company.

4 (b) Amendment or cancellation.--To amend or cancel a  
5 certificate of authority filed by the department, a limited  
6 liability company must deliver to the department for filing an  
7 amendment or cancellation that states:

8 (1) the name of the company;

9 (2) subject to section 109, the address, including  
10 street and number, if any, of the company's registered  
11 office;

12 (3) the date the certificate being affected became  
13 effective; and

14 (4) the contents of the amendment or a statement that  
15 the certificate is canceled.

16 (c) Effect.--A certificate of authority:

17 (1) supersedes any inconsistent provision of the  
18 certificate of organization in effect at the time the  
19 certificate of authority becomes effective;

20 (2) affects only the power of a person to bind a limited  
21 liability company with respect to persons that are not  
22 members; and

23 (3) is not binding on the department for purposes of the  
24 administration of this title or any other provision of law.

25 (d) Certificate not evidence of knowledge or notice.--Except  
26 as provided in subsections (e), (f), (g) and (h), a limitation  
27 on the authority of a person or a position contained in an  
28 effective certificate of authority is not by itself evidence of  
29 knowledge or notice of the limitation by any person.

30 (e) Authority not pertaining to real property.--A grant of

1 authority not pertaining to transfers of real property and  
2 contained in an effective certificate of authority is conclusive  
3 in favor of a person that gives value in reliance on the grant,  
4 except to the extent that when the person gives value:

5 (1) the person has knowledge to the contrary;

6 (2) the certificate has been canceled or restrictively  
7 amended under subsection (b); or

8 (3) a limitation on the grant is contained in another  
9 certificate of authority that became effective after the  
10 certificate containing the grant became effective.

11 (f) Authority to transfer real property.--An effective  
12 certificate of authority or certificate of organization that  
13 grants authority to transfer real property held in the name of a  
14 limited liability company, a certified copy of which certificate  
15 is recorded in the office of the recorder of deeds for the  
16 county in which the property is located, is conclusive in favor  
17 of a person that gives value in reliance on the grant without  
18 knowledge to the contrary, except to the extent that when the  
19 person gives value:

20 (1) the certificate has been canceled or restrictively  
21 amended under subsection (b), and a certified copy of the  
22 cancellation or restrictive amendment has been recorded in  
23 the office of the recorder of deeds; or

24 (2) a limitation on the grant is contained in another  
25 certificate of authority that became effective after the  
26 certificate containing the grant became effective, and a  
27 certified copy of the later-effective certificate is recorded  
28 in the office of the recorder of deeds.

29 (g) Effect of recorded certificate.--If a certified copy of  
30 an effective certificate containing a limitation on the

1 authority to transfer real property held in the name of a  
2 limited liability company is recorded in the office of the  
3 recorder of deeds for the county in which the real property is  
4 located, all persons are deemed to know of the limitation.

5 (h) Effect of dissolution or termination of company.--An  
6 effective certificate of dissolution does not cancel a filed  
7 certificate of authority for the purposes of subsection (f) and  
8 is a limitation on authority for the purposes of subsection  
9 (g). An effective certificate of termination cancels a filed  
10 certificate of authority.

11 (i) Automatic cancellation.--Unless earlier canceled, an  
12 effective certificate of authority that names an individual as  
13 having authority is canceled by operation of law five years  
14 after the date on which the certificate, or its most recent  
15 amendment, becomes effective. The cancellation operates without  
16 need for any recording under subsection (f) or (g).

17 (j) Effect of certificate of denial.--An effective  
18 certificate of denial:

19 (1) operates as a restrictive amendment under this  
20 section and a certified copy may be recorded as provided in  
21 subsection (f)(1) by the limited liability company or the  
22 person that delivered the certificate of denial to the  
23 department for filing;

24 (2) affects only the authority of a person to bind the  
25 company with respect to persons that are not members; and

26 (3) supersedes any inconsistent provision of the  
27 certificate of organization in effect at the time the  
28 certificate of denial becomes effective.

29 (k) Foreign companies.--A foreign limited liability company  
30 may deliver a certificate of authority to the department for

1 filing and may record a copy as provided in this section in the  
2 same manner and with the same effect as if it were a domestic  
3 company and regardless of whether the foreign company is  
4 registered to do business in this Commonwealth under Chapter 4  
5 (relating to foreign associations).

6 (1) Cross references.--See:

7 Section 134 (relating to docketing statement).

8 Section 135 (relating to requirements to be met by filed  
9 documents).

10 Section 136(c) (relating to processing of documents by  
11 Department of State).

12 Section 8823 (relating to signing of filed documents).

13 § 8833. Certificate of denial.

14 (a) General rule.--A person named in a filed certificate of  
15 authority granting that person authority may deliver to the  
16 department for filing a certificate of denial that:

17 (1) states:

18 (i) the name of the limited liability company;

19 (ii) subject to section 109 (relating to name of  
20 commercial registered office provider in lieu of

21 registered address), the address, including street and  
22 number, if any, of the registered office of the company;

23 and

24 (iii) the date the certificate of authority to which  
25 the certificate of denial pertains was filed; and

26 (2) denies the grant of authority.

27 (b) Cross references.--See:

28 Section 134 (relating to docketing statement).

29 Section 135 (relating to requirements to be met by filed  
30 documents).

1           Section 136(c) (relating to processing of documents by  
2           Department of State).

3           Section 8823 (relating to signing of filed documents).

4           Section 8832(j) (relating to certificate of authority).

5   § 8834. Liability of members and managers.

6       (a) General rule.--A debt, obligation or other liability of  
7       a limited liability company is solely the debt, obligation or  
8       other liability of the company. A member or manager is not  
9       personally liable, directly or indirectly, by way of  
10       contribution or otherwise, for a debt, obligation or other  
11       liability of the company solely by reason of being or acting as  
12       a member or manager. This subsection applies regardless of:

13           (1) whether the company has a single member or multiple  
14           members; and

15           (2) the dissolution, winding up or termination of the  
16           company.

17       (b) Professional relationship unaffected.--Subsection (a)  
18       shall not afford members of a professional company with greater  
19       immunity than is available to the officers, shareholders,  
20       employees or agents of a professional corporation. See section  
21       2925 (relating to professional relationship retained).

22       (c) Disciplinary jurisdiction unaffected.--A professional  
23       company shall be subject to the applicable rules and regulations  
24       adopted by, and all the disciplinary powers of, the court,  
25       department, board, commission or other government unit  
26       regulating the profession in which the company is engaged. The  
27       court, department, board or other government unit may require  
28       that a company include in its certificate of organization or  
29       operating agreement provisions that conform to any rule or  
30       regulation promulgated before, on or after the effective date of

1 this section for the purpose of enforcing the ethics of a  
2 profession. This chapter shall not affect or impair the  
3 disciplinary powers of the court, department, board, commission  
4 or other government unit over licensed persons or any law, rule  
5 or regulation pertaining to the standards for professional  
6 conduct of licensed persons or to the professional relationship  
7 between any licensed person rendering professional services and  
8 the person receiving professional services.

9 (d) Rendering professional services.--

10 (1) Except as provided by a statute, rule or regulation  
11 applicable to a particular profession, a professional company  
12 may lawfully render professional services only through  
13 licensed persons. The company may employ persons not so  
14 licensed except that those persons shall not render any  
15 professional services rendered or to be rendered by it.

16 (2) Paragraph (1) shall not be interpreted to preclude  
17 the use of clerks, secretaries, nurses, administrators,  
18 bookkeepers, technicians and other assistants or  
19 paraprofessionals who are not usually and ordinarily  
20 considered by law, custom and practice to be rendering the  
21 professional service or services for which the professional  
22 company was organized nor to preclude the use of any other  
23 person who performs all of the person's employment under the  
24 direct supervision and control of a licensed person. A person  
25 shall not under the guise of employment render professional  
26 services unless duly licensed or admitted to practice as  
27 required by law.

28 (3) Notwithstanding any other provision of law, a  
29 professional company may charge for the professional services  
30 rendered by it, may collect those charges and may compensate

1 those who render the professional services.

2 (e) Medical professional liability.--A professional company  
3 shall be deemed to be a partnership for purposes of section 744  
4 of the act of March 20, 2002 (P.L.154, No.13), known as the  
5 Medical Care Availability and Reduction of Error (Mcare) Act.

6 (f) Cross reference.--See section 8105 (relating to  
7 ownership of certain professional partnerships).

8 § 8835. Taxation of limited liability companies.

9 (a) General rule.--For the purposes of the imposition by the  
10 Commonwealth of any tax or license fee on or with respect to any  
11 income, property, privilege, transaction, subject or occupation,  
12 other than the corporate net income tax, capital stock and  
13 foreign franchise tax and personal income tax, a domestic or  
14 foreign limited liability company shall be deemed to be a  
15 corporation organized and existing under Part II (relating to  
16 corporations), and a member of the company, as such, shall be  
17 deemed to be a shareholder of a corporation.

18 (b) Financial institutions.--For purposes of the bank shares  
19 tax and the mutual thrift institutions tax, a bank, bank and  
20 trust company, trust company, savings bank, building and loan  
21 association, savings and loan association or savings institution  
22 that is a domestic or foreign limited liability company shall be  
23 considered an "institution" as defined by Article VII or Article  
24 XV of the Tax Reform Code of 1971.

25 (c) Political subdivisions.--Nothing in this section shall  
26 impair or preempt the ability of a political subdivision to  
27 levy, assess or collect any applicable taxes or license fees  
28 authorized under the act of December 31, 1965 (P.L.1257,  
29 No.511), known as The Local Tax Enabling Act, on any limited  
30 liability company.



1 need not be, one of the persons.

2 (c) Powers and authority of organizer.--Until a limited  
3 liability company has its first member, the organizer is deemed  
4 to be a manager of the company.

5 (d) Admission after formation.--After formation of a limited  
6 liability company, a person becomes a member:

7 (1) by action of the organizer if the company does not  
8 have any members;

9 (2) as provided in the operating agreement;

10 (3) as the result of a transaction effective under  
11 Chapter 3 (relating to entity transactions);

12 (4) with the affirmative vote or consent of all the  
13 members; or

14 (5) as provided in section 8871(a)(3) (relating to  
15 events causing dissolution).

16 (e) Noneconomic members.--A person may become a member  
17 without:

18 (1) acquiring a transferable interest; or

19 (2) making or being obligated to make a contribution to  
20 the limited liability company.

21 (f) Nature of interest.--The interest of a member in a  
22 limited liability company is personal property.

23 § 8842. Form of contribution.

24 A contribution may consist of:

25 (1) property transferred to, services performed for or  
26 another benefit provided to the limited liability company;

27 (2) an agreement to transfer property to, perform  
28 services for or provide another benefit to the company; or

29 (3) any combination of items listed in paragraphs (1)  
30 and (2).

1 § 8843. Liability for contributions.

2 (a) Obligation not excused.--A person's obligation to make a  
3 contribution to a limited liability company is not excused by  
4 the person's death, disability, termination or other inability  
5 to perform personally.

6 (b) Substitute payment.--If a person does not fulfill an  
7 obligation to make a contribution other than money, the person  
8 is obligated at the option of the limited liability company to  
9 contribute money equal to the value, as stated in the records of  
10 the company, of the part of the contribution which has not been  
11 made.

12 (c) Compromise of obligation.--The obligation of a person to  
13 make a contribution may be compromised only by the affirmative  
14 vote or consent of all the members. If a creditor of a limited  
15 liability company extends credit or otherwise acts in reliance  
16 on an obligation described under subsection (a) without  
17 knowledge or notice of a compromise under this subsection, the  
18 creditor may enforce the obligation.

19 § 8844. Sharing of and right to distributions before  
20 dissolution.

21 (a) General rule.--Any distribution made by a limited  
22 liability company before its dissolution and winding up shall be  
23 in equal shares among members and persons dissociated as  
24 members, except as provided in section 8852(b) (relating to  
25 transfer of transferable interest) or to the extent necessary to  
26 comply with a charging order in effect under section 8853  
27 (relating to charging order).

28 (b) No entitlement to distribution.--Except as provided  
29 under subsection (e), a person has a right to a distribution  
30 before the dissolution and winding up of a limited liability

1 company only if the company decides to make an interim  
2 distribution.

3 (c) Distribution in kind.--A person does not have a right to  
4 demand or receive a distribution from a limited liability  
5 company in any form other than money. Except as provided in  
6 section 8877(d) (relating to disposition of assets in winding  
7 up), a limited liability company may distribute an asset in kind  
8 only if each part of the asset is fungible with each other part  
9 and each person receives a percentage of the asset equal in  
10 value to the person's share of distributions.

11 (d) Status as creditor.--If a member or transferee becomes  
12 entitled to receive a distribution, the member or transferee has  
13 the status of, and is entitled to all remedies available to, a  
14 creditor of the limited liability company with respect to the  
15 distribution, except that the company's obligation to make a  
16 distribution is subject to offset for any amount owed to the  
17 company by the member or transferee on whose account the  
18 distribution is made.

19 (e) Distribution upon an event of dissociation.--Upon the  
20 effectiveness of a transaction under Chapter 3 (relating to  
21 entity transactions) or an amendment of the certificate of  
22 organization or operating agreement that results in either case  
23 in an event of dissociation but does not result in the  
24 dissolution of the limited liability company, the dissociating  
25 member may elect in record form to receive in lieu of the  
26 property that the person would be entitled to receive pursuant  
27 to the terms of the transaction or amendment:

28 (1) any distribution to which the member is entitled  
29 under the operating agreement on the terms provided in the  
30 operating agreement; and

1           (2) within a reasonable time after dissociation, the  
2           fair value of the interest of the member in the company as of  
3           the date of dissociation based upon the right of the member  
4           to share in distributions from the company.

5 § 8845. Limitations on distributions.

6           (a) General rule.--A limited liability company may not make  
7           a distribution, including a distribution under section 8877  
8           (relating to disposition of assets in winding up), if after the  
9           distribution:

10           (1) the company would not be able to pay its debts as  
11           they become due in the ordinary course of the company's  
12           activities and affairs; or

13           (2) the company's total assets would be less than the  
14           sum of its total liabilities plus the amount that would be  
15           needed, if the company were to be dissolved and wound up at  
16           the time of the distribution, to satisfy the preferential  
17           rights upon dissolution and winding up of members and  
18           transferees whose preferential rights are superior to the  
19           rights of persons receiving the distribution.

20           (b) Valuation.--A limited liability company may base a  
21           determination that a distribution is not prohibited under  
22           subsection (a) (2) on:

23           (1) the book values of the assets and liabilities of the  
24           company, as reflected on its books and records;

25           (2) a valuation that takes into consideration unrealized  
26           appreciation and depreciation or other changes in value of  
27           the assets and liabilities of the company;

28           (3) the current value of the assets and liabilities of  
29           the company, either valued separately or valued in segments  
30           or as an entirety as a going concern; or

1           (4) any other method that is reasonable in the  
2           circumstances.

3           (c) Excluded liabilities.--In determining whether a  
4           distribution is prohibited under subsection (a)(2), the company  
5           need not consider obligations and liabilities unless they are  
6           required to be reflected on a balance sheet, not including the  
7           notes to the balance sheet, prepared on the basis of generally  
8           accepted accounting principles, or such other accounting  
9           practices and principles as are used generally by the company in  
10           the maintenance of its books and records and as are reasonable  
11           in the circumstances.

12           (d) Measuring date of distribution.--Except as provided in  
13           subsection (e), the effect of a distribution under subsection  
14           (a) is measured:

15           (1) as of the date specified by the company when it  
16           authorizes the distribution if the distribution occurs within  
17           125 days of the earlier of the date so specified or the date  
18           of authorization; or

19           (2) as of the date of distribution in all other cases.

20           (e) Date of redemption.--In the case of a distribution  
21           described under paragraph (1) of the definition of  
22           "distribution" in section 8812 (relating to definitions), the  
23           distribution is deemed to occur as of the earlier of the date  
24           money or other property is transferred or debt is incurred by  
25           the company or the date the person entitled to the distribution  
26           ceases to own the interest or right being acquired by the  
27           company in return for the distribution.

28           (f) Status of distribution debt.--The indebtedness of a  
29           limited liability company to a member or transferee incurred by  
30           reason of a distribution made in accordance with this section

1 shall be at least on a parity with the company's indebtedness to  
2 its general, unsecured creditors, except to the extent  
3 subordinated by agreement.

4 (g) Certain subordinated debt.--The indebtedness of a  
5 limited liability company, including indebtedness issued as a  
6 distribution, is not a liability for purposes of subsection (a)  
7 if the terms of the indebtedness provide that payment of  
8 principal and interest is made only if and to the extent that  
9 payment of a distribution could then be made under this  
10 section. If the indebtedness is issued as a distribution, each  
11 payment of principal or interest is treated as a distribution,  
12 the effect of which is measured on the date the payment is made.

13 (h) Distributions in winding up.--In measuring the effect of  
14 a distribution under section 8877, the liabilities of a  
15 dissolved limited liability company do not include any claim  
16 that has been barred under section 8874 (relating to known  
17 claims against dissolved limited liability company) or 8875  
18 (relating to other claims against dissolved limited liability  
19 company), or for which security has been provided under section  
20 8876 (relating to court proceedings).

21 (i) Cross references.--See:

22 Section 8815(d)(1)(ii) (relating to contents of operating  
23 agreement).

24 Section 8849.1 (relating to standards of conduct for  
25 members).

26 Section 8849.2 (relating to standards of conduct for  
27 managers).

28 § 8846. Liability for improper distributions.

29 (a) General rule.--Except as provided in subsection (b), if  
30 a member of a member-managed limited liability company or

1 manager of a manager-managed limited liability company consents  
2 to a distribution made in violation of section 8845 (relating to  
3 limitations on distributions) and in consenting to the  
4 distribution fails to comply with section 8849.1 (relating to  
5 standards of conduct for members) or 8849.2 (relating to  
6 standards of conduct for managers), the member or manager is  
7 personally liable to the company for the amount of the  
8 distribution which exceeds the amount that could have been  
9 distributed without the violation of section 8845.

10 (b) Members without authority.--To the extent the operating  
11 agreement of a member-managed limited liability company relieves  
12 a member of the authority and responsibility to consent to  
13 distributions and imposes that authority and responsibility on  
14 one or more other members, the liability stated in subsection  
15 (a) applies to the other members and not the member that the  
16 operating agreement relieves of authority and responsibility.

17 (c) Recipients.--A person that receives a distribution  
18 knowing that the distribution violated section 8845 is  
19 personally liable to the limited liability company but only to  
20 the extent that the distribution received by the person exceeded  
21 the amount that could have been properly paid under section  
22 8845.

23 (d) Contribution.--A person against which an action is  
24 commenced because the person is liable under subsection (a) may:

25 (1) join any other person that is liable under  
26 subsection (a) or otherwise seek to enforce a right of  
27 contribution from the person; and

28 (2) join any person that is liable under subsection (c)  
29 or otherwise seek to enforce a right of contribution from the  
30 person in the amount the person is liable for under

1 subsection (c).

2 (e) Statute of repose.--An action under this section is  
3 barred unless commenced within two years after the distribution.  
4 § 8847. Management of limited liability company.

5 (a) Determination of management of company.--A limited  
6 liability company is a member-managed limited liability company  
7 unless the operating agreement:

8 (1) expressly provides that:

9 (i) the company is or will be manager-managed;

10 (ii) the company is or will be managed by managers;

11 or

12 (iii) management of the company is or will be vested  
13 in managers; or

14 (2) includes words of similar import.

15 (b) Member-managed company.--In a member-managed limited  
16 liability company, the following rules apply:

17 (1) Except as expressly provided in this title, the  
18 management and conduct of the company are vested in the  
19 members.

20 (2) Each member has equal rights in the management and  
21 conduct of the company's activities and affairs.

22 (3) A difference arising among members as to a matter in  
23 the ordinary course of the activities and affairs of the  
24 company may be decided by a majority of the members.

25 (4) Except as provided under section 325 (relating to  
26 approval by limited liability company) with respect to a  
27 transaction under Chapter 3 (relating to entity  
28 transactions), an act outside the ordinary course of the  
29 activities and affairs of the company may be undertaken only  
30 with the affirmative vote or consent of all members.

1       (5) Except as provided under section 8822(d) (relating  
2 to amendment or restatement of certificate of organization),  
3 the certificate of organization may be amended only with the  
4 affirmative vote or consent of all members.

5       (6) The operating agreement may be amended only with the  
6 affirmative vote or consent of all members.

7       (c) Manager-managed company.--In a manager-managed limited  
8 liability company, the following rules apply:

9           (1) Except as expressly provided in this title, any  
10 matter relating to the activities and affairs of the company  
11 is decided exclusively by the manager, or, if there is more  
12 than one manager, by a majority of the managers.

13          (2) Each manager has equal rights in the management and  
14 conduct of the company's activities and affairs.

15          (3) The affirmative vote or consent of all members is  
16 required:

17           (i) except as provided under section 325 with  
18 respect to a transaction under Chapter 3, to undertake  
19 any act outside the ordinary course of the company's  
20 activities and affairs;

21           (ii) except as provided under section 8822(d), to  
22 amend the certificate of organization; or

23           (iii) to amend the operating agreement.

24          (4) A manager may be chosen at any time by the  
25 affirmative vote or consent of a majority of the members and  
26 remains a manager until a successor has been chosen, unless  
27 the manager at an earlier time resigns, is removed or dies,  
28 or, in the case of a manager that is not an individual,  
29 terminates. A manager may be removed at any time by the  
30 affirmative vote or consent of a majority of the members

1 without notice or cause.

2 (5) A person need not be a member to be a manager,  
3 except that the dissociation of a member that is also a  
4 manager removes the person as a manager. If a person that is  
5 both a manager and a member ceases to be a manager, that  
6 cessation does not by itself dissociate the person as a  
7 member.

8 (6) A person's ceasing to be a manager does not  
9 discharge any debt, obligation or other liability to the  
10 limited liability company or members which the person  
11 incurred while a manager.

12 (d) Action by consent or proxy.--An action requiring the  
13 vote or consent of members under this title may be taken without  
14 a meeting and a member may appoint a proxy or other agent to  
15 vote, consent or otherwise act for the member by signing an  
16 appointing document in record form, personally or by the  
17 member's agent.

18 (e) Effect of dissolution.--The dissolution of a limited  
19 liability company does not affect the applicability of this  
20 section, except that a person that wrongfully causes dissolution  
21 of the company loses the right to participate in management as a  
22 member and a manager.

23 (f) Reimbursement of advances.--A limited liability company  
24 shall reimburse a member for an advance to the company beyond  
25 the amount of capital the member agreed to contribute.

26 (g) Interest on advance.--A payment or advance made by a  
27 member which gives rise to an obligation of the limited  
28 liability company under subsection (f) or section 8848(a)  
29 (relating to reimbursement, indemnification, advancement and  
30 insurance) constitutes a loan to the company which accrues

1 interest from the date of the payment or advance.

2 (h) No remuneration for services.--A member is not entitled  
3 to remuneration for services performed for a member-managed  
4 limited liability company, except for reasonable compensation  
5 for services rendered in winding up the activities of the  
6 company.

7 (i) Increased vote requirements.--Whenever the certificate  
8 of organization or operating agreement requires for the taking  
9 of any action by the members or a class of members a specific  
10 number or percentage of votes or consents, the provision of the  
11 certificate or agreement setting forth that requirement shall  
12 not be amended or repealed by any lesser number or percentage of  
13 votes or consents of the members or the class of members. This  
14 subsection does not apply to a provision setting forth the right  
15 of members to act by unanimous consent in lieu of a meeting.

16 (j) Exception.--None of the following shall be considered an  
17 amendment of the certificate of organization for purposes of the  
18 voting rules in subsections (b) (6) and (c) (3) (iii):

19 (1) a restatement of all the operative provisions of the  
20 certificate of organization without change;

21 (2) a change in the name or registered office of the  
22 limited liability company; or

23 (3) any combination of the foregoing purposes.

24 (k) Approval of minor amendments.--Unless otherwise provided  
25 in record form in the operating agreement, an amendment  
26 described in subsection (j) may be made by the affirmative vote  
27 or consent of a majority of the managers or, in the case of a  
28 member-managed limited liability company, of a majority of the  
29 members.

30 § 8848. Reimbursement, indemnification, advancement and

1           insurance.

2       (a) Reimbursement.--A limited liability company shall  
3 reimburse a member of a member-managed company or manager of a  
4 manager-managed company for any payment made by the member or in  
5 the course of the member's or manager's activities on behalf of  
6 the company, if the member or manager complied with the  
7 applicable provisions of sections 8847 (relating to management  
8 of limited liability company), 8849.1 (relating to standards of  
9 conduct for members) and 8849.2 (relating to standards of  
10 conduct for managers) in making the payment.

11       (b) Indemnification.--A limited liability company shall  
12 indemnify and hold harmless a person with respect to any claim  
13 or demand against the person and any debt, obligation or other  
14 liability incurred by the person by reason of the person's  
15 former or present capacity as a member or manager, if the claim,  
16 demand, debt, obligation or other liability does not arise from  
17 the person's breach of section 8845 (relating to limitations on  
18 distributions), 8847, 8849.1 or 8849.2.

19       (c) Advancement.--In the ordinary course of its activities  
20 and affairs, a limited liability company may advance reasonable <--  
21 expenses, including attorney fees and costs, incurred by a  
22 person in connection with a claim or demand against the person  
23 by reason of the person's former or present capacity as a member  
24 or manager, if the person promises to repay the company if the  
25 person ultimately is determined not to be entitled to be  
26 indemnified.

27       (d) Insurance.--A limited liability company may purchase and  
28 maintain insurance on behalf of a member or manager of the  
29 company against liability asserted against or incurred by the  
30 member or manager in that capacity or arising from that status

1 even if, under subsection (g), the operating agreement could not  
2 provide indemnification against the liability or eliminate or  
3 limit the person's liability to the company for the conduct  
4 giving rise to the liability.

5 (e) Nonexclusivity.--The rights provided by subsections (a),  
6 (b), (c) and (d) shall not be deemed exclusive of any other  
7 rights to which a person seeking reimbursement, indemnification,  
8 advancement of expenses or insurance may be entitled under the  
9 operating agreement, vote of members or disinterested managers,  
10 contract or otherwise, both as to action in his official  
11 capacity and as to action in another capacity while holding that  
12 position. Sections 8849.1(f) and 8849.2(e) shall be applicable  
13 to a vote, contract or other action under this subsection. A  
14 limited liability company may create a fund of any nature, which  
15 may, but need not be, under the control of a trustee, or  
16 otherwise secure or insure in any manner its indemnification  
17 obligations, whether arising under this section or otherwise.

18 (f) Grounds.--Indemnification under subsection (e) may be  
19 granted for any action taken and may be made whether or not the  
20 limited liability company would have the power to indemnify the  
21 person under any other provision of law except as provided in  
22 this section and whether or not the indemnified liability arises  
23 or arose from any threatened, pending or completed action by or  
24 in the right of the company. Indemnification under subsection  
25 (e) is declared to be consistent with the public policy of the  
26 Commonwealth.

27 (g) Limitation.--Indemnification under this section shall  
28 not be made in any case where the act giving rise to the claim  
29 for indemnification is determined by a court to constitute  
30 recklessness, willful misconduct or a knowing violation of law.

1 § 8849. (Reserved).

2 § 8849.1. Standards of conduct for members.

3 (a) General rule.--A member of a member-managed limited  
4 liability company owes to the company and, subject to section  
5 8881(b) (relating to direct action by member), the other members  
6 the duties of loyalty and care stated under subsections (b) and  
7 (c).

8 (b) Duty of loyalty.--The fiduciary duty of loyalty of a  
9 member in a member-managed limited liability company includes  
10 the duties:

11 (1) to account to the company and to hold as trustee for  
12 it any property, profit or benefit derived by the member:

13 (i) in the conduct or winding up of the company's  
14 activities and affairs;

15 (ii) from a use by the member of the company's  
16 property; or

17 (iii) from the appropriation of a company  
18 opportunity;

19 (2) to refrain from dealing with the company in the  
20 conduct or winding up of the company's activities and affairs  
21 as or on behalf of a person having an interest adverse to the  
22 company; and

23 (3) to refrain from competing with the company in the  
24 conduct of the company's activities and affairs before the  
25 dissolution of the company.

26 (c) Duty of care.--The duty of care of a member-  
27 managed limited liability company in the conduct or winding up  
28 of the company's activities and affairs is to refrain from  
29 engaging in gross negligence, recklessness, willful misconduct  
30 or knowing violation of law.

1 (d) Good faith and fair dealing.--A member shall discharge  
2 the duties and obligations under this title or under the  
3 operating agreement and exercise any rights consistent with the  
4 contractual obligation of good faith and fair dealing.

5 (e) Self-serving conduct.--A member does not violate a duty  
6 or obligation under this title or under the operating agreement  
7 solely because the member's conduct furthers the member's own  
8 interest.

9 (f) Authorization or ratification.--All the members of a  
10 member-managed limited liability company may authorize or  
11 ratify, after disclosure of all material facts, a specific act  
12 or transaction that otherwise would violate the duty of loyalty  
13 of a member.

14 (g) Fairness as a defense.--It is a defense to a claim under  
15 subsection (b) (2) and any comparable claim in equity or at  
16 common law that the transaction was fair to the limited  
17 liability company at the time it is authorized or ratified under  
18 subsection (f).

19 (h) Rights and obligations in approved transaction.--If a  
20 member enters into a transaction with the limited liability  
21 company which otherwise would be prohibited under subsection (b)  
22 (2), and the transaction is authorized or ratified as provided  
23 under subsection (f) or the operating agreement, the member's  
24 rights and obligations arising from the transaction are the same  
25 as those of a person that is not a member.

26 (i) Duties of members in manager-managed company.--Subject  
27 to subsection (d), a member does not have any duty to a manager-  
28 managed limited liability company or to any other member of the  
29 company solely by reason of being or acting as a member.

30 (j) Exoneration.--The operating agreement may provide that a

1 member in a member-managed limited liability company shall not  
2 be personally liable for monetary damages to the company or the  
3 other members for a breach of subsection (c), except that a  
4 member may not be exonerated for an act that constitutes  
5 recklessness, willful misconduct or a knowing violation of law.

6 (k) Cross reference.--See section 8815 (relating to contents  
7 of operating agreement).

8 § 8849.2. Standards of conduct for managers.

9 (a) General rule.--A manager of a manager-managed limited  
10 liability company owes to the company and, subject to section  
11 8881(b) (relating to direct action by member), the members the  
12 duties of loyalty and care stated under subsections (b) and (c).

13 (b) Duty of loyalty.--The fiduciary duty of loyalty of a  
14 manager in a manager-managed limited liability company includes  
15 the duties:

16 (1) to account to the company and to hold as trustee for  
17 it any property, profit or benefit derived by the manager:

18 (i) in the conduct or winding up of the company's  
19 activities and affairs;

20 (ii) from a use by the manager of the company's  
21 property; or

22 (iii) from the appropriation of a company  
23 opportunity;

24 (2) to refrain from dealing with the company in the  
25 conduct or winding up of the company's activities and affairs  
26 as or on behalf of a person having an interest adverse to the  
27 company; and

28 (3) to refrain from competing with the company in the  
29 conduct of the company's activities and affairs until  
30 completion of the winding up of the company.

1 (c) Duty of care.--The duty of care of a manager of a  
2 manager-managed limited liability company in the conduct or  
3 winding up of the company's activities and affairs is to refrain  
4 from engaging in gross negligence, recklessness, willful  
5 misconduct or knowing violation of law.

6 (d) Good faith and fair dealing.--A manager of a manager-  
7 managed limited liability company shall discharge the duties and  
8 obligations under this title or under the operating agreement  
9 and exercise any rights consistently with the contractual  
10 obligation of good faith and fair dealing.

11 (e) Ratification of breach of duty of loyalty.--All the  
12 members, or a majority of disinterested managers, of a manager-  
13 managed limited liability company may authorize or ratify, after  
14 disclosure of all material facts, a specific act or transaction  
15 by a manager that otherwise would violate the duty of loyalty.

16 (f) Fairness as a defense.--It is a defense to a claim under  
17 subsection (b) (2) and any comparable claim in equity or at  
18 common law that the transaction was fair to the limited  
19 liability company.

20 (g) Manager's rights in approved transaction.--If a manager  
21 enters into a transaction with the limited liability company  
22 which otherwise would be prohibited by subsection (b) (2), and  
23 the transaction is approved or ratified as provided by  
24 subsection (e) or the operating agreement, the manager's rights  
25 and obligations arising from the transaction are the same as  
26 those of a person that is not a manager.

27 (h) Exoneration.--The operating agreement may provide that a  
28 manager in a manager-managed limited liability company shall not  
29 be personally liable for monetary damages to the company or the  
30 members for a breach of subsection (c), except that a manager

1 may not be exonerated for an act that constitutes recklessness,  
2 willful misconduct or a knowing violation of law.

3 (i) Cross reference.--See section 8815 (relating to contents  
4 of operating agreement).

5 § 8850. Rights to information.

6 (a) In member-managed company.--In a member-managed limited  
7 liability company, the following rules apply:

8 (1) On reasonable notice, a member may inspect and copy  
9 during regular business hours, at a reasonable location  
10 specified by the company, any record maintained by the  
11 company regarding the company's activities, affairs,  
12 financial condition and other circumstances.

13 (2) The company shall furnish to each member, without  
14 demand, any information concerning the company's activities,  
15 affairs, financial condition and other circumstances which  
16 the company knows and is material to the proper exercise of  
17 the member's rights and duties under the operating agreement  
18 or this title, except to the extent the company can establish  
19 that it reasonably believes the member already knows the  
20 information.

21 (3) The duty to furnish information under paragraph (2)  
22 also applies to each member to the extent the member knows  
23 any of the information described in paragraph (2).

24 (b) In manager-managed company.--In a manager-managed  
25 limited liability company, the following rules apply:

26 (1) The informational rights stated in subsection (a)  
27 and the duty stated in subsection (a)(3) apply to the  
28 managers and not the members.

29 (2) During regular business hours and at a reasonable  
30 location specified by the company, a member may inspect and

1 copy full information regarding the activities, affairs,  
2 financial condition and other circumstances of the company as  
3 is just and reasonable if:

4 (i) the member seeks the information for a purpose  
5 reasonably related to the member's interest as a member;

6 (ii) the member makes a demand in record form  
7 received by the company, describing with reasonable  
8 particularity the information sought and the purpose for  
9 seeking the information; and

10 (iii) the information sought is directly connected  
11 to the member's purpose.

12 (3) Within 10 days after receiving a demand under  
13 paragraph (2)(ii), the company shall, in record form, inform  
14 the member that made the demand of:

15 (i) the information that the company will provide in  
16 response to the demand and when and where the company  
17 will provide the information; and

18 (ii) the company's reasons for declining, if the  
19 company declines to provide any demanded information.

20 (c) Rights of person dissociated as member.--Subject to  
21 subsection (h), within 10 days after receipt by a limited  
22 liability company of a demand made in record form, a person  
23 dissociated as a member may have access to information to which  
24 the person was entitled while a member if:

25 (1) the information pertains to the period during which  
26 the person was a member;

27 (2) the person seeks the information in good faith; and

28 (3) the person satisfies the requirements imposed on a  
29 member under subsection (b) (2).

30 (d) Response of company.--A limited liability company shall

1 respond to a demand made under subsection (c) in the manner  
2 provided in subsection (b) (3).

3 (e) Copying costs.--A limited liability company may charge a  
4 person that makes a demand under this section the reasonable  
5 costs of copying.

6 (f) Rights of agent or guardian.--A member or person  
7 dissociated as a member may exercise rights under this section  
8 through an agent or, in the case of an individual under legal  
9 disability, a guardian. Any restriction or condition imposed by  
10 the operating agreement or under subsection (h) applies both to  
11 the agent or guardian and the member or person dissociated as a  
12 member.

13 (g) No rights of transferee.--Subject to section 8854  
14 (relating to power of personal representative of deceased  
15 member), the rights under this section do not extend to a person  
16 as transferee.

17 (h) Limitations on access.--In addition to any restriction  
18 or condition stated in the operating agreement, a limited  
19 liability company, as a matter within the ordinary course of its  
20 activities and affairs, may impose reasonable restrictions and  
21 conditions on access to and use of information to be furnished  
22 under this section, including designating information  
23 confidential and imposing nondisclosure and safeguarding  
24 obligations on the recipient. In a dispute concerning the  
25 reasonableness of a restriction under this subsection, the  
26 company has the burden of proving reasonableness.

27 (i) Cross reference.--See section 8815 (relating to contents  
28 of operating agreement).

29 SUBCHAPTER E

30 TRANSFERABLE INTERESTS AND RIGHTS

1 OF TRANSFEREES AND CREDITORS

2 Sec.

3 8851. Nature of transferable interest.

4 8852. Transfer of transferable interest.

5 8853. Charging order.

6 8854. Power of personal representative of deceased member.

7 § 8851. Nature of transferable interest.

8 (a) Personal property.--A transferable interest is personal  
9 property.

10 (b) Only right that may be transferred.--A person may not  
11 transfer to a person not a member any rights in a limited  
12 liability company other than a transferable interest.

13 § 8852. Transfer of transferable interest.

14 (a) General rule.--Subject to section 8853(f) (relating to  
15 charging order), a transfer, in whole or in part, of a  
16 transferable interest:

17 (1) is permissible;

18 (2) does not by itself cause the dissociation of the  
19 transferor as a member or a dissolution and winding up of the  
20 limited liability company's activities and affairs; and

21 (3) subject to section 8854 (relating to power of  
22 personal representative of deceased member), does not entitle  
23 the transferee to:

24 (i) participate in the management or conduct of the  
25 company's activities and affairs; or

26 (ii) except as provided in subsection (c), have  
27 access to records or other information concerning the  
28 company's activities and affairs.

29 (b) Right to distributions.--A transferee has the right to  
30 receive, in accordance with the transfer, distributions to which

1 the transferor would otherwise be entitled.

2 (c) Right to account on dissolution.--In a dissolution and  
3 winding up of a limited liability company, a transferee is  
4 entitled to an account of the company's transactions only from  
5 the date of dissolution.

6 (d) Certificate of interest.--A transferable interest may be  
7 evidenced by a certificate of the interest issued by the limited  
8 liability company in record form and, subject to this section,  
9 the interest represented by the certificate may be transferred  
10 by a transfer of the certificate.

11 (e) Recognition of transferee's rights.--A limited liability  
12 company need not give effect to a transferee's rights under this  
13 section until the company knows or has notice of the transfer.

14 (f) Transfer restrictions.--A transfer of a transferable  
15 interest in violation of a restriction on transfer contained in  
16 the operating agreement is ineffective if the intended  
17 transferee has knowledge or notice of the restriction at the  
18 time of transfer.

19 (g) Rights retained by transferor.--Except as provided in  
20 section 8861(5)(ii) (relating to events causing dissociation),  
21 if a member transfers a transferable interest, the transferor  
22 retains the rights of a member other than the transferable  
23 interest transferred and retains all the duties and obligations  
24 of a member.

25 § 8853. Charging order.

26 (a) General rule.--On application by a judgment creditor of  
27 a member or transferee, a court may enter a charging order  
28 against the transferable interest of the judgment debtor for the  
29 unsatisfied amount of the judgment. Except as provided in  
30 subsection (f), a charging order constitutes a lien on a

1 judgment debtor's transferable interest and requires the limited  
2 liability company to pay over to the person to which the  
3 charging order was issued any distribution that otherwise would  
4 be paid to the judgment debtor.

5 (b) Available relief.--To the extent necessary to effectuate  
6 the collection of distributions pursuant to a charging order in  
7 effect under subsection (a), the court may:

8 (1) appoint a receiver of the distributions subject to  
9 the charging order, with the power to make all inquiries the  
10 judgment debtor might have made; and

11 (2) make all other orders necessary to give effect to  
12 the charging order.

13 (c) Foreclosure.--Upon a showing that distributions under a  
14 charging order will not pay the judgment debt within a  
15 reasonable time, the court may foreclose the lien and order the  
16 sale of the transferable interest. Except as provided in  
17 subsection (f), the purchaser at the foreclosure sale only  
18 obtains the transferable interest, does not thereby become a  
19 member, and is subject to section 8852 (relating to transfer of  
20 transferable interest).

21 (d) Satisfaction of judgment.--At any time before  
22 foreclosure under subsection (c), the member or transferee whose  
23 transferable interest is subject to a charging order under  
24 subsection (a) may extinguish the charging order by satisfying  
25 the judgment and filing a certified copy of the satisfaction  
26 with the court that issued the charging order.

27 (e) Purchase of rights.--At any time before foreclosure  
28 under subsection (c), a limited liability company or one or more  
29 members whose transferable interests are not subject to the  
30 charging order may pay to the judgment creditor the full amount

1 due under the judgment and thereby succeed to the rights of the  
2 judgment creditor, including the charging order.

3 (f) Foreclosure against sole member.--If a court orders  
4 foreclosure of a charging order lien against the sole member of  
5 a limited liability company:

6 (1) the court shall confirm the sale;

7 (2) the purchaser at the sale obtains the member's  
8 entire interest, not only the member's transferable interest;

9 (3) the purchaser thereby becomes a member; and

10 (4) the person whose interest was subject to the  
11 foreclosed charging order is dissociated as a member.

12 (g) Exemption laws preserved.--This chapter shall not  
13 deprive any member or transferee of the benefit of any exemption  
14 laws applicable to the transferable interest of the member or  
15 transferee.

16 (h) Exclusive remedy.--This section provides the exclusive  
17 remedy by which a person seeking to enforce a judgment against a  
18 member or transferee may, in the capacity of judgment creditor,  
19 satisfy the judgment from the judgment debtor's transferable  
20 interest.

21 § 8854. Power of personal representative of deceased member.

22 If a member dies, the deceased member's personal  
23 representative may exercise:

24 (1) the rights of a transferee provided in section  
25 8852(c) (relating to transfer of transferable interest); and

26 (2) for the purposes of settling the estate, the rights  
27 the deceased member had under section 8850 (relating to  
28 rights to information).

29 SUBCHAPTER F

30 DISSOCIATION

1 Sec.

2 8861. Events causing dissociation.

3 8862. Power to dissociate and wrongful dissociation.

4 8863. Effects of dissociation.

5 § 8861. Events causing dissociation.

6 A person is dissociated as a member when any of the following  
7 occurs:

8 (1) The limited liability company knows or has notice of  
9 the person's express will to withdraw as a member, except  
10 that, if the person specified a withdrawal date later than  
11 the date the company knew or had notice, on that later date.

12 (2) An event stated in the operating agreement as  
13 causing the person's dissociation occurs.

14 (3) The person's entire interest is transferred in a  
15 foreclosure sale under section 8853(f) (relating to charging  
16 order).

17 (4) The person is expelled as a member pursuant to the  
18 operating agreement.

19 (5) The person is expelled as a member by the  
20 affirmative vote or consent of all the other members if:

21 (i) it is unlawful to carry on the company's  
22 activities and affairs with the person as a member;

23 (ii) there has been a transfer of all the person's  
24 transferable interest in the company, other than:

25 (A) a transfer for security purposes; or

26 (B) a charging order in effect under section  
27 8853 which has not been foreclosed;

28 (iii) the person is an entity and:

29 (A) the company notifies the person that it will  
30 be expelled as a member because:

1           (I) the person has filed a certificate of  
2           dissolution or the equivalent;

3           (II) the person has been administratively  
4           dissolved;

5           (III) the person's charter or its equivalent  
6           has been revoked; or

7           (IV) the person's right to conduct business  
8           has been suspended by the person's jurisdiction  
9           of formation; and

10          (B) within 90 days after the notification:

11           (I) the certificate of dissolution or the  
12           equivalent has not been withdrawn, rescinded or  
13           revoked;

14           (II) the person has not been reinstated;

15           (III) the person's charter or the equivalent  
16           has not been reinstated; or

17           (IV) the person's right to conduct business  
18           has not been reinstated; or

19          (iv) the person is an unincorporated entity that has  
20          been dissolved and whose activities and affairs are being  
21          wound up.

22          (6) On application by the company or a member in a  
23          direct action under section 8881 (relating to direct action  
24          by member), the person is expelled as a member by judicial  
25          order because the person:

26           (i) has engaged or is engaging in wrongful conduct  
27           that has affected adversely and materially, or will  
28           affect adversely and materially, the company's activities  
29           and affairs;

30           (ii) has committed willfully or persistently, or is

1 committing willfully or persistently, a material breach  
2 of the operating agreement or a duty or obligation under  
3 section 8849.1 (relating to standards of conduct for  
4 members); or

5 (iii) has engaged or is engaging in conduct relating  
6 to the company's activities and affairs which makes it  
7 not reasonably practicable to carry on the activities and  
8 affairs with the person as a member.

9 (7) In the case of an individual:

10 (i) the individual dies; or

11 (ii) in a member-managed limited liability company:

12 (A) a guardian for the individual is appointed;

13 or

14 (B) a court orders that the individual has  
15 otherwise become incapable of performing the  
16 individual's duties as a member under this title or  
17 the operating agreement.

18 (8) In a member-managed limited liability company, the  
19 person:

20 (i) becomes a debtor in bankruptcy;

21 (ii) executes an assignment for the benefit of  
22 creditors; or

23 (iii) seeks, consents to or acquiesces in the  
24 appointment of a trustee, receiver or liquidator of the  
25 person or of all or substantially all the person's  
26 property.

27 (9) In the case of a person that is a testamentary or  
28 inter vivos trust or is acting as a member by virtue of being  
29 a trustee of such a trust, the trust's entire transferable  
30 interest in the company is distributed.

1       (10) In the case of a person that is an estate or is  
2 acting as a member by virtue of being a personal  
3 representative of an estate, the estate's entire transferable  
4 interest in the company is distributed.

5       (11) In the case of a person that is not an individual,  
6 the existence of the person terminates.

7       (12) The company participates in a merger under Chapter  
8 3 (relating to entity transactions) and:

9           (i) the company is not the surviving entity; or

10          (ii) otherwise as a result of the merger, the person  
11 ceases to be a member.

12       (13) The company participates in an interest exchange  
13 under Chapter 3 and, as a result of the interest exchange,  
14 the person ceases to be a member.

15       (14) The company participates in a conversion under  
16 Chapter 3.

17       (15) The company participates in a division under  
18 Chapter 3 and:

19           (i) the company is not a resulting association; or

20          (ii) as a result of the division, the person ceases  
21 to be a member.

22       (16) The company participates in a domestication under  
23 Chapter 3 and, as a result of the domestication, the person  
24 ceases to be a member.

25       (17) The company dissolves and completes winding up.

26 § 8862. Power to dissociate and wrongful dissociation.

27       (a) Power to dissociate.--A person has the power to  
28 dissociate as a member at any time, rightfully or wrongfully, by  
29 withdrawing as a member by express will under section 8861(1)  
30 (relating to events causing dissociation).

1 (b) Wrongful dissociation.--A person's dissociation as a  
2 member is wrongful only if the dissociation:

3 (1) is in breach of an express provision of the  
4 operating agreement; or

5 (2) occurs before the completion of the winding up of  
6 the limited liability company and:

7 (i) the person withdraws as a member by express  
8 will;

9 (ii) the person is expelled as a member by judicial  
10 order under section 8861(6);

11 (iii) the person is dissociated under section  
12 8861(8); or

13 (iv) the person is expelled or otherwise dissociated  
14 as a member because it willfully dissolved or terminated,  
15 except that this subparagraph does not apply to a person  
16 that is:

17 (A) a trust that is not a business or statutory  
18 trust;

19 (B) an estate; or

20 (C) an individual.

21 (c) Damages for wrongful dissociation.--A person that  
22 wrongfully dissociates as a member is liable to the limited  
23 liability company and, subject to section 8881 (relating to  
24 direct action by member), to the other members for damages  
25 caused by the dissociation. The liability is in addition to any  
26 debt, obligation or other liability of the member to the company  
27 or the other members.

28 § 8863. Effects of dissociation.

29 (a) General rule.--If a person is dissociated as a member:

30 (1) the person's rights as a member terminate;

1       (2) if the company is member-managed, the person's  
2 duties and obligations under section 8849.1 (relating to  
3 standards of conduct for members) as a member end with regard  
4 to matters arising and events occurring after the person's  
5 dissociation; and

6       (3) subject to sections 8844(e) (relating to sharing of  
7 and right to distributions before dissolution) and 8854  
8 (relating to power of personal representative of deceased  
9 member) and Chapter 3 (relating to entity transactions), any  
10 transferable interest owned by the person in the person's  
11 capacity as a member immediately before dissociation as a  
12 member is owned by the person solely as a transferee.

13       (b) Existing obligations not discharged.--A person's  
14 dissociation as a member does not of itself discharge the person  
15 from any debt, obligation or other liability to the company or  
16 the other members which the person incurred while a member.

#### 17                               SUBCHAPTER G

#### 18                               DISSOLUTION AND WINDING UP

19 Sec.

20 8871. Events causing dissolution.

21 8872. Winding up and filing of certificates.

22 8873. (Reserved).

23 8874. Known claims against dissolved limited liability company.

24 8875. Other claims against dissolved limited liability company.

25 8876. Court proceedings.

26 8877. Disposition of assets in winding up.

27 8878. Voluntary termination by members or organizers.

28 § 8871. Events causing dissolution.

29       (a) General rule.--A limited liability company is dissolved,  
30 and its activities and affairs shall be wound up, upon the

1 occurrence of any of the following:

2 (1) An event or circumstance that the operating  
3 agreement states causes dissolution.

4 (2) The consent of all the members.

5 (3) The passage of 180 consecutive days after the  
6 company ceases to have any members unless before the end of  
7 the period:

8 (i) consent to admit at least one specified person  
9 as a member is given by transferees owning the rights to  
10 receive a majority of distributions as transferees at the  
11 time the consent is to be effective; and

12 (ii) at least one person becomes a member in  
13 accordance with the consent.

14 (4) On application by a member, the entry by the court  
15 of an order dissolving the company on the grounds that:

16 (i) the conduct of all or substantially all the  
17 company's activities and affairs is unlawful;

18 (ii) it is not reasonably practicable to carry on  
19 the company's activities and affairs in conformity with  
20 the certificate of organization and the operating  
21 agreement; or

22 (iii) the managers or those members in control of  
23 the company:

24 (A) have acted, are acting, or will act in a  
25 manner that is illegal or fraudulent; or

26 (B) have acted or are acting in a manner that is  
27 oppressive and was, is or will be directly harmful to  
28 the applicant.

29 (b) Other remedies.--In a proceeding brought under  
30 subsection (a) (4) (iii) (B), the court may order a remedy other

1 than dissolution.

2 (c) Cross reference.--See section 8815(c)(15) (relating to  
3 contents of operating agreement).

4 § 8872. Winding up and filing of certificates.

5 (a) General rule.--A dissolved limited liability company  
6 shall wind up its activities and affairs and the company  
7 continues after dissolution only for the purpose of winding up.

8 (b) Conduct of winding up.--In winding up its activities and  
9 affairs, a limited liability company:

10 (1) shall discharge the company's debts, obligations and  
11 other liabilities, settle and close the company's activities  
12 and affairs, and marshal and distribute the assets of the  
13 company; and

14 (2) may:

15 (i) deliver to the department for filing a  
16 certificate of dissolution stating:

17 (A) the name of the company;

18 (B) subject to section 109 (relating to name of  
19 commercial registered office provider in lieu of  
20 registered address), the address, including street  
21 and number, if any, of the registered office of the  
22 company; and

23 (C) that the company is dissolved;

24 (ii) preserve the company's activities, affairs and  
25 property as a going concern for a reasonable time;

26 (iii) prosecute and defend actions and proceedings,  
27 whether civil, criminal or administrative;

28 (iv) transfer the company's property;

29 (v) settle disputes by mediation or arbitration; and

30 (vi) perform other acts necessary or appropriate to

1 the winding up.

2 (c) Conduct of winding up when no members.--If a dissolved  
3 limited liability company has no members, the personal  
4 representative, guardian or other person authorized to act on  
5 behalf of the last person to have been a member may wind up the  
6 activities and affairs of the company. If the person does so,  
7 the person has the powers of a sole manager under section  
8 8847(c) (relating to management of limited liability company)  
9 and is deemed to be a manager for the purposes of section  
10 8834(a) (relating to liability of members and managers).

11 (d) Action by transferees.--If the personal representative,  
12 guardian or other person authorized to act under subsection (c)  
13 declines or fails to wind up the company's activities and  
14 affairs, a person may be appointed to do so by the consent of  
15 transferees owning a majority of the rights to receive  
16 distributions as transferees at the time the consent is to be  
17 effective. A person appointed under this subsection:

18 (1) has the powers of a sole manager under section  
19 8847(c) and is deemed to be a manager for the purposes of  
20 section 8834(a); and

21 (2) shall promptly deliver to the department for filing  
22 an amendment to the company's certificate of organization  
23 stating:

24 (i) that the company has no members;

25 (ii) the name and street and mailing addresses of  
26 the person; and

27 (iii) that the person has been appointed under this  
28 subsection to wind up the company.

29 (e) Judicial supervision.--The court may order judicial  
30 supervision of the winding up of a dissolved limited liability

1 company, including the appointment of a person to wind up the  
2 company's activities and affairs:

3 (1) on the application of a member, if the applicant  
4 establishes good cause;

5 (2) on the application of a transferee, if:

6 (i) the company does not have any members;

7 (ii) the legal representative of the last person to  
8 have been a member declines or fails to wind up the  
9 company's activities; and

10 (iii) within a reasonable time following the  
11 dissolution a person has not been appointed under  
12 subsection (c); or

13 (3) in connection with a proceeding under section  
14 8871(a)(4) (relating to events causing dissolution).

15 (f) Certificate of termination.--When all debts, obligations  
16 and other liabilities of the limited liability company have been  
17 paid and discharged or adequate provision has been made therefor  
18 and all of the remaining property and assets of the company have  
19 been distributed to the members, a certificate of termination  
20 shall be delivered to the department for filing along with the  
21 certificates required by section 139 (relating to tax clearance  
22 of certain fundamental transactions). The certificate of  
23 termination shall set forth:

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

25 (2) Subject to section 109 (relating to name of  
26 commercial registered office provider in lieu of registered  
27 address), the address, including street and number, if any,  
28 of the registered office of the company.

29 (3) That all debts, obligations and other liabilities of  
30 the company have been paid and discharged or that adequate

1 provision has been made therefor.

2 (4) That all the remaining property and assets of the  
3 company have been distributed among its members in accordance  
4 with their respective rights and interests.

5 (5) That there are no actions pending against the  
6 company in any court or that adequate provision has been made  
7 for the satisfaction of any judgment that may be entered  
8 against it in any pending action.

9 (6) That the company is terminated.

10 (g) Cross references.--See:

11 Section 134 (relating to docketing statement).

12 Section 135 (requirements to be met by filed documents).

13 Section 136(c) (relating to processing of documents by  
14 Department of State).

15 Section 8815(c)(16) (relating to contents of operating  
16 agreement).

17 Section 8823 (relating to signing of filed documents).

18 § 8873. (Reserved).

19 § 8874. Known claims against dissolved limited liability  
20 company.

21 (a) General rule.--Except as provided in subsection (d), a  
22 dissolved limited liability company may give notice of a known  
23 claim under subsection (b), which has the effect provided in  
24 subsection (c).

25 (b) Required notice.--A dissolved limited liability company  
26 may notify in record form its known claimants of the  
27 dissolution. The notice must:

28 (1) specify the information required to be included in a  
29 claim;

30 (2) state that a claim must be in writing and provide a

1 mailing address to which the claim is to be sent;

2 (3) state the deadline for receipt of a claim, which may  
3 not be less than 120 days after the date the notice is  
4 received by the claimant; and

5 (4) state that the claim will be barred if not received  
6 by the deadline.

7 (c) Claims barred.--A claim against a dissolved limited  
8 liability company is barred if the requirements of subsection  
9 (b) are met and:

10 (1) the claim is not received by the specified deadline;

11 or

12 (2) if the claim is timely received but rejected by the  
13 company:

14 (i) the company causes the claimant to receive a  
15 notice in record form stating that the claim is rejected  
16 and will be barred unless the claimant commences an  
17 action against the company to enforce the claim within 90  
18 days after the claimant receives the notice; and

19 (ii) the claimant does not commence the required  
20 action within 90 days after the complainant receives the  
21 notice.

22 (d) Later arising claims.--This section shall not apply to a  
23 claim based on an event occurring after the effective date of  
24 dissolution or a liability that on that date is contingent.

25 § 8875. Other claims against dissolved limited liability  
26 company.

27 (a) Permissive notice.--A dissolved limited liability  
28 company may publish notice of its dissolution and request  
29 persons having claims against the company to present them in  
30 accordance with the notice.

1 (b) Notice procedure.--A notice under subsection (a) must:

2 (1) be officially published one time;

3 (2) describe the information required to be contained in  
4 a claim, state that the claim must be in writing and provide  
5 a mailing address to which the claim is to be sent; and

6 (3) state that a claim against the limited liability  
7 company is barred unless an action to enforce the claim is  
8 commenced within two years after publication of the notice.

9 (c) Claims barred.--If a dissolved limited liability company  
10 publishes a notice in accordance with subsection (b), the claim  
11 of each of the following claimants is barred unless the claimant  
12 commences an action to enforce the claim against the company  
13 within two years after the publication date of the notice:

14 (1) a claimant that did not receive notice in record  
15 form under section 8874 (relating to known claims against  
16 dissolved limited liability company);

17 (2) a claimant whose claim was timely sent to the  
18 company but not acted on; and

19 (3) a claimant whose claim is contingent at, or based on  
20 an event occurring after, the effective date of dissolution.

21 (d) Claims not barred.--A claim not barred under this  
22 section or section 8874 may be enforced:

23 (1) against a dissolved limited liability company, to  
24 the extent of its undistributed assets; and

25 (2) except as provided in section 8876 (relating to  
26 court proceedings), if assets of the company have been  
27 distributed after dissolution, against a member or transferee  
28 to the extent of that person's proportionate share of the  
29 claim or of the company's assets distributed to the member or  
30 transferee after dissolution, whichever is less, except that

1 a person's total liability for all claims under this  
2 paragraph may not exceed the total amount of assets  
3 distributed to the person after dissolution.

4 § 8876. Court proceedings.

5 (a) Determination of security.--A dissolved limited  
6 liability company that has officially published a notice under  
7 section 8875 (relating to other claims against dissolved limited  
8 liability company) may file an application with the court for a  
9 determination of the amount and form of security to be provided  
10 for payment of claims that are reasonably expected to arise  
11 after the date of dissolution based on facts known to the  
12 company and:

13 (1) at the time of application:

14 (i) are contingent; or

15 (ii) have not been made known to the company; or

16 (2) are based on an event occurring after the effective  
17 date of dissolution.

18 (b) When security not required.--Security is not required  
19 for any claim that is or is reasonably anticipated to be barred  
20 under section 8875(c).

21 (c) Notice.--Within 10 days after the filing of an  
22 application under subsection (a), the dissolved limited  
23 liability company shall give notice of the proceeding to each  
24 claimant holding a contingent claim known to the company.

25 (d) Guardian ad litem.--In any proceeding under this  
26 section, the court may appoint a guardian ad litem to represent  
27 all claimants whose identities are unknown. The reasonable fees  
28 and expenses of the guardian, including all reasonable expert  
29 witness fees, must be paid by the dissolved limited liability  
30 company.

1 (e) Effect on contingent claims.--A dissolved limited  
2 liability company that provides security in the amount and form  
3 ordered by the court under subsection (a) satisfies the  
4 company's obligations with respect to claims that are  
5 contingent, have not been made known to the company or are based  
6 on an event occurring after the effective date of dissolution.  
7 The claims may not be enforced against a member or transferee  
8 that received assets in liquidation.

9 § 8877. Disposition of assets in winding up.

10 (a) Creditors.--In winding up its activities and affairs, a  
11 limited liability company shall apply its assets to discharge  
12 its obligations to creditors, including members that are  
13 creditors.

14 (b) Surplus.--After a limited liability company complies  
15 with subsection (a), any surplus shall be distributed in the  
16 following order, subject to any charging order in effect under  
17 section 8853 (relating to charging order):

18 (1) to each owner of a transferable interest that  
19 reflects contributions made and not previously returned, an  
20 amount equal to the value of the unreturned contributions;  
21 and

22 (2) among owners of transferable interests in proportion  
23 to their respective rights to share in distributions  
24 immediately before the dissolution of the company.

25 (c) Insufficient assets.--If a limited liability company  
26 does not have sufficient surplus to comply with subsection (b)  
27 (1), any surplus must be distributed among the owners of  
28 transferable interests in proportion to the value of the  
29 respective unreturned contributions.

30 (d) Form of payment.--All distributions made under

1 subsections (b) and (c) must be paid in money.

2 § 8878. Voluntary termination by members or organizers.

3 (a) General rule.--The members or organizers of a limited  
4 liability company that has never transacted business or held  
5 assets other than money received as capital contributions may  
6 effect the termination of the company by delivering to the  
7 department for filing a certificate of termination signed by an  
8 organizer or a member and stating:

9 (1) the name of the company;

10 (2) subject to section 109 (relating to name of  
11 commercial registered office provider in lieu of registered  
12 address), the address, including street and number, if any,  
13 of the registered office of the company;

14 (3) that the company has never transacted business or  
15 held assets other than money received as capital  
16 contributions;

17 (4) that the amounts, if any, actually paid in as  
18 capital contributions, less any part disbursed for necessary  
19 expenses, have been returned to those entitled to the return  
20 of the amounts;

21 (5) that all liabilities of the company have been  
22 discharged or that adequate provision has been made for those  
23 liabilities; and

24 (6) that a majority of the organizers or a majority in  
25 interest of the members elect that the company be terminated.

26 (b) Effect.--Upon the filing of the certificate of  
27 termination, the existence of the limited liability company  
28 shall cease.

29 (c) Cross references.--See:

30 Section 134 (relating to docketing statement).

1 Section 135 (relating to requirements to be met by filed  
2 documents).

3 Section 136(c) (relating to processing of documents by  
4 Department of State).

5 SUBCHAPTER H

6 ACTIONS BY MEMBERS

7 Sec.

8 8881. Direct action by member.

9 8882. Derivative action.

10 8883. Security for costs.

11 8884. Special litigation committee.

12 8885. Proceeds and expenses.

13 § 8881. Direct action by member.

14 (a) General rule.--Subject to subsection (b), a member may  
15 maintain a direct action against another member, a manager or  
16 the limited liability company to enforce the member's rights and  
17 protect the member's interests, including rights and interests  
18 under the operating agreement or this title or arising  
19 independently of the membership relationship.

20 (b) Required injury.--A member maintaining a direct action  
21 under this section must plead and prove an actual or threatened  
22 injury that is not solely the result of an injury suffered or  
23 threatened to be suffered by the limited liability company.

24 (c) Cross reference.--See section 8815(c)(17) (relating to  
25 contents of operating agreement).

26 § 8882. Derivative action.

27 (a) General rule.--Subject to subsection (b), a member or  
28 manager may maintain a derivative action to enforce a right of a  
29 limited liability company only if:

30 (1) the plaintiff first makes a demand on the other

1 members in a member-managed limited liability company, or the  
2 managers of a manager-managed limited liability company,  
3 requesting that they cause the company to bring an action to  
4 enforce the right and:

5 (i) if a special litigation committee is not  
6 appointed under section 8884 (relating to special  
7 litigation committee), the company does not bring the  
8 action within a reasonable time; or

9 (ii) if a special litigation committee is appointed  
10 under section 8884, a determination is made:

11 (A) under section 8884(e)(1) that the company  
12 not object to the action; or

13 (B) under section 8884(e)(5)(i) that the  
14 plaintiff continue the action;

15 (2) demand is excused under subsection (b);

16 (3) the action is maintained for the limited purpose of  
17 seeking court review under section 8884(f); or

18 (4) the court has allowed the action to continue  
19 under the control of the plaintiff under section 8884(f)

20 (3)(ii).

21 (b) Prior demand excused.--

22 (1) A demand under subsection (a)(1) is excused only if  
23 the plaintiff makes a specific showing that irreparable harm  
24 to the limited liability company would otherwise result.

25 (2) If demand is excused under paragraph (1), demand  
26 should be made promptly after commencement of the action.

27 (c) Contents of demand.--A demand under this section must be  
28 in record form and give notice with reasonable specificity of  
29 the essential facts relied upon to support each of the claims  
30 made in the demand.

1 (d) Additional claims.--If a derivative action is commenced  
2 after a demand has been made under this section and includes a  
3 claim that was not fairly subsumed under the demand, a new  
4 demand must be made with respect to that claim. The new demand  
5 shall not relate back to the date of the original demand for  
6 purposes of subsection (e).

7 (e) Statute of limitations.--The making of a demand tolls  
8 any applicable statute of limitations with respect to a claim  
9 asserted in the demand until the earlier of the date:

10 (1) the plaintiff making the demand is notified either:

11 (i) that the managers or members have decided not to  
12 bring an action and not to appoint a special litigation  
13 committee; or

14 (ii) of a determination under section 8884(e) after  
15 the appointment of a special litigation committee under  
16 section 8884; or

17 (2) the plaintiff commences an action asserting the  
18 claim.

19 (f) Cross reference.--See section 8815(c)(17) (relating to  
20 contents of operating agreement).

21 § 8883. Security for costs.

22 In any action or proceeding instituted or maintained by  
23 members holding transferable interests entitled to receive less  
24 than 5% of any distribution by a limited liability company,  
25 unless the transferable interests held by the members have an  
26 aggregate fair market value in excess of \$200,000, the company  
27 in whose right the action or proceeding is brought shall be  
28 entitled at any stage of the proceedings to require the  
29 plaintiffs to give security for the reasonable expenses,  
30 including attorney fees, that may be incurred by the company in

1 connection therewith or for which it may become liable pursuant  
2 to section 8848(b) (relating to reimbursement, indemnification,  
3 advancement and insurance) to which security the company shall  
4 have recourse in such amount as the court determines upon the  
5 termination of the action or proceeding. The amount of security  
6 may, from time to time, be increased or decreased in the  
7 discretion of the court upon showing that the security provided  
8 has or may become inadequate or excessive. The security may be  
9 denied or limited by the court if the court finds after an  
10 evidentiary hearing that undue hardship on plaintiffs and  
11 serious injustice would result.

12 § 8884. Special litigation committee.

13 (a) General rule.--If a limited liability company or its  
14 members or managers receive a demand to bring an action to  
15 enforce a right of the company, or if a derivative action is  
16 commenced before demand has been made on the company or its  
17 members or managers, the members in a member-managed limited  
18 liability company, or the managers in a manager-managed limited  
19 liability company, may appoint a special litigation committee to  
20 investigate the claims asserted in the demand or action and to  
21 determine on behalf of the company or recommend to the managers  
22 or members whether pursuing any of the claims asserted is in the  
23 best interests of the company. The company shall send a notice  
24 in record form to the plaintiff promptly after the appointment  
25 of a committee under this section notifying the plaintiff that a  
26 committee has been appointed and identifying by name the members  
27 of the committee. A committee may not be appointed under this  
28 section if:

29 (1) every member of the company is also a manager of the  
30 company; or

1           (2) the company is member-managed and every member is  
2           actively involved in the management of the company.

3           (b) Discovery stay.--If the members or managers appoint a  
4           special litigation committee and an action is commenced before a  
5           determination has been made under subsection (e):

6           (1) On motion by the committee made in the name of the  
7           limited liability company, the court shall stay discovery for  
8           the time reasonably necessary to permit the committee to make  
9           its investigation, except for good cause shown.

10           (2) The time for the defendants to plead shall be tolled  
11           until the process provided for under subsection (f) has been  
12           completed.

13           (c) Composition of committee.--A special litigation  
14           committee shall be composed of two or more individuals who:

15           (1) are not interested in the claims asserted in the  
16           demand;

17           (2) are capable as a group of objective judgment in the  
18           circumstances; and

19           (3) may, but need not, be members or managers.

20           (d) Appointment of committee.--A special litigation  
21           committee may be appointed:

22           (1) in a member-managed limited liability company:

23           (i) by a majority of the members not named as actual  
24           or potential parties in the demand or action; and

25           (ii) if all members are named as actual or potential  
26           parties in the demand or action, by a majority of the  
27           members so named; or

28           (2) in a manager-managed limited liability company:

29           (i) by a majority of the managers not named as  
30           actual or potential parties in the demand or action; and

1           (ii) if all managers are named as actual or  
2           potential parties in the demand or action, by a majority  
3           of the managers so named.

4           (e) Determination.--After appropriate investigation by a  
5           special litigation committee, the committee or the managers or  
6           members may determine that it is in the best interests of the  
7           limited liability company that:

8           (1) an action based on some or all of the claims  
9           asserted in the demand not be brought by the company but that  
10           the company not object to an action being brought by the  
11           party that made the demand:

12           (2) an action based on some or all of the claims  
13           asserted in the demand be brought by the company;

14           (3) some or all of the claims asserted in the demand be  
15           settled on terms approved by the committee;

16           (4) an action not be brought based on any of the claims  
17           asserted in the demand;

18           (5) an action already commenced continue under the  
19           control of:

20           (i) the plaintiff;

21           (ii) the company; or

22           (iii) the committee;

23           (6) some or all of the claims asserted in an action  
24           already commenced be settled on terms approved by the  
25           committee; or

26           (7) an action already commenced be dismissed.

27           (f) Court review and action.--If a special litigation  
28           committee is appointed and a derivative action is commenced  
29           either before or after a determination is made under subsection  
30           (e):

1       (1) The limited liability company shall file with the  
2 court after a determination is made under subsection (e) a  
3 statement of the determination and a report of the committee.  
4 The company shall serve each party with a copy of the  
5 determination and report. If the company moves to file the  
6 report under seal, the report shall be served on the parties  
7 subject to an appropriate stipulation agreed to by the  
8 parties or a protective order issued by the court.

9       (2) The company shall file with the court a motion,  
10 pleading or notice consistent with the determination under  
11 subsection (e).

12       (3) If the determination is one described in subsection  
13 (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall  
14 determine whether the members of the committee met the  
15 qualifications required under subsection (c)(1) and (2) and  
16 whether the committee conducted its investigation and made  
17 its recommendation in good faith, independently and with  
18 reasonable care. If the court finds that the members of the  
19 committee met the qualifications required under subsection  
20 (c)(1) and (2) and that the committee acted in good faith,  
21 independently and with reasonable care, the court shall  
22 enforce the determination of the committee. Otherwise, the  
23 court shall:

24       (i) dissolve any stay of discovery entered under  
25 subsection (b);

26       (ii) allow the action to continue under the control  
27 of the plaintiff; and

28       (iii) permit the defendants to file preliminary  
29 objections and other appropriate motions and pleadings.

30       (g) Attorney General.--Nothing in this section shall limit

1 the rights, powers and duties of the Attorney General under  
2 other applicable law with respect to a limited liability company  
3 organized for a charitable purpose.

4 (h) Cross reference.--See section 8815(c)(18) (relating to  
5 contents of operating agreement).

6 § 8885. Proceeds and expenses.

7 (a) Proceeds.--Except as provided in subsection (b):

8 (1) any proceeds or other benefits of a derivative  
9 action, whether by judgment, compromise or settlement, belong  
10 to the limited liability company and not to the plaintiff;  
11 and

12 (2) if the plaintiff or its counsel receives any  
13 proceeds, the proceeds shall be remitted immediately to the  
14 company.

15 (b) Expenses.--If a derivative action is successful in whole  
16 or in part, the court may award the plaintiff reasonable  
17 expenses, including reasonable attorney fees and costs, from the  
18 recovery of the limited liability company, but in no event shall  
19 the attorney fees awarded exceed a reasonable proportion of the  
20 value of the relief, including nonpecuniary relief, obtained by  
21 the plaintiff for the company.

22 (c) Cross reference.--See section 8815(c)(13) (relating to  
23 contents of operating agreement).

24 SUBCHAPTER I

25 BENEFIT COMPANIES

26 Sec.

27 8891. Application and effect of subchapter.

28 8892. Definitions.

29 8893. Benefit company status.

30 8894. Purposes.

1 8895. Standard of conduct for members.

2 8896. Standard of conduct for managers and officers.

3 8897. Right of action.

4 8898. Annual benefit report.

5 § 8891. Application and effect of subchapter.

6 (a) General rule.--This subchapter shall apply to all  
7 benefit companies.

8 (b) Limited application of subchapter.--The existence of a  
9 provision of this subchapter shall not of itself create any  
10 implication that a contrary or different rule of law is or would  
11 be applicable to a limited liability company that is not a  
12 benefit company. This subchapter shall not affect any statute or  
13 rule of law that is or would be applicable to a limited  
14 liability company that is not a benefit company.

15 (c) Laws applicable to benefit companies.--Except as  
16 otherwise provided in this subchapter, the provisions of Part I  
17 (relating to preliminary provisions) and this chapter shall  
18 apply generally to benefit companies. The provisions of this  
19 subchapter shall control over inconsistent provisions of this  
20 title.

21 (d) Organic rules may not be inconsistent.--See section  
22 8815(c)(19) (relating to contents of operating agreement).

23 § 8892. Definitions.

24 The following words and phrases when used in this subchapter  
25 shall have the meanings given to them in this section unless the  
26 context clearly indicates otherwise:

27 "Benefit company." A limited liability company that is  
28 subject to this subchapter.

29 "Benefit enforcement proceeding." A claim or action for:

30 (1) failure to pursue or create the general public

1 benefit purpose of the benefit company or any specific public  
2 benefit purpose set forth in its certificate of organization;  
3 or

4 (2) violation of any obligation, duty or standard of  
5 conduct under this subchapter.

6 "General public benefit." A material positive impact on  
7 society and the environment, taken as a whole and assessed  
8 against a third-party standard, from the business and operations  
9 of a benefit company.

10 "Independent." When a person has no material relationship  
11 with a benefit company or any of its subsidiaries. A material  
12 relationship between an individual and a benefit company or any  
13 of its subsidiaries will be conclusively presumed to exist if:

14 (1) the person is or has been within the last three  
15 years an employee of the benefit company or any of its  
16 subsidiaries;

17 (2) an immediate family member of the person is or has  
18 been within the last three years an executive officer of the  
19 benefit company or any of its subsidiaries; or

20 (3) the person, or an association of which the person is  
21 a governor or officer or in which the person owns  
22 beneficially or of record 5% or more of the outstanding  
23 interests, owns beneficially or of record 5% or more of the  
24 outstanding interests of the benefit company. The percentage  
25 of ownership in an association shall be calculated as if all  
26 outstanding rights to acquire interests in the association  
27 had been exercised.

28 "Minimum status vote." As follows:

29 (1) In the case of a limited liability company, in  
30 addition to any other required approval or vote, the

1 satisfaction of the following conditions:

2 (i) The members of every class or series must be  
3 entitled, as a class, to vote on the action regardless of  
4 a limitation stated in the certificate of organization or  
5 operating agreement on the voting rights of any class or  
6 series.

7 (ii) The action must be approved by a vote of the  
8 members of each class or series entitled to cast at least  
9 two-thirds of the votes that all members of the class or  
10 series are entitled to cast on the action.

11 (2) In the case of a domestic association other than a  
12 limited liability company, in addition to any other required  
13 approval, vote or consent, the satisfaction of the following  
14 conditions:

15 (i) The holders of every class or series of interest  
16 in the association that are entitled to receive a  
17 distribution of any kind from the association must be  
18 entitled as a class to vote on or consent to the action  
19 regardless of any otherwise applicable limitation on the  
20 voting or consent rights of any class or series.

21 (ii) The action must be approved by vote or consent  
22 of the holders described in subparagraph (i) entitled to  
23 cast at least two-thirds of the votes or consents that  
24 all of those holders are entitled to cast on the action.

25 "Specific public benefit." The term shall have the meaning  
26 specified in section 3302 (relating to definitions).

27 "Subsidiary." The term shall have the meaning specified in  
28 section 3302.

29 "Third-party standard." A standard for defining, reporting  
30 and assessing overall social and environmental performance which

1 is:

2 (1) Comprehensive in that it assesses the effect of the  
3 business and its operations upon the interests listed in  
4 section 8895(a)(1)(ii), (iii), (iv) and (v) (relating to  
5 standard of conduct for members).

6 (2) Developed by an organization that is independent of  
7 the benefit company and satisfies the following requirements:

8 (i) Not more than one-third of the members of the  
9 governing body of the organization are representatives of  
10 any of the following:

11 (A) An association of businesses operating in a  
12 specific industry the performance of whose members is  
13 measured by the standard.

14 (B) Businesses from a specific industry or an  
15 association of businesses in that industry.

16 (C) Businesses whose performance is assessed  
17 against the standard.

18 (ii) The organization is not materially financed by  
19 an association or business described in subparagraph (i).

20 (3) Credible because the standard is developed by a  
21 person that both:

22 (i) Has access to necessary expertise to assess  
23 overall social and environmental performance.

24 (ii) Uses a balanced multistakeholder approach,  
25 including a public comment period of at least 30 days to  
26 develop the standard.

27 (4) Transparent because the following information is  
28 publicly available:

29 (i) About the standard:

30 (A) The criteria considered when measuring the

1 overall social and environmental performance of a  
2 business.

3 (B) The relative weightings, if any, of those  
4 criteria.

5 (ii) About the development and revision of the  
6 standard:

7 (A) The identity of the directors, officers,  
8 material owners and the governing body of the  
9 organization that developed and controls revisions to  
10 the standard.

11 (B) The process by which revisions to the  
12 standard and changes to the membership of the  
13 governing body are made.

14 (C) An accounting of the sources of financial  
15 support for the organization, with sufficient detail  
16 to disclose any relationships that could reasonably  
17 be considered to present a potential conflict of  
18 interest.

19 § 8893. Benefit company status.

20 (a) Formation of benefit company.--A benefit company shall  
21 be formed in accordance with section 8821 (relating to formation  
22 of limited liability company and certificate of organization)  
23 except that its certificate of organization shall also state  
24 that it is a benefit company.

25 (b) Election of benefit company status.--An existing limited  
26 liability company may elect to become a benefit company by  
27 amending its certificate of organization so that it contains, in  
28 addition to the requirements of section 8821, a statement that  
29 the company is a benefit company. The amendment shall not be  
30 effective unless it is adopted by at least the minimum status

1 vote.

2 (c) Election of status in a fundamental transaction.--If an  
3 association that is not a benefit company is a party to a merger  
4 or division or is the exchanging association in an interest  
5 exchange, and the surviving, new or any resulting association in  
6 the merger, division or interest exchange is to be a benefit  
7 company, then the plan of merger, division or interest exchange  
8 shall not be effective unless it is adopted by the association  
9 by at least the minimum status vote.

10 (d) Termination of benefit company status.--A benefit  
11 company may terminate its status as a benefit company and cease  
12 to be subject to this subchapter by amending its certificate of  
13 organization to delete the provision required by subsection (a)  
14 or (b) to be stated in the certificate of organization of a  
15 benefit company. The amendment shall not be effective unless it  
16 is adopted by at least the minimum status vote.

17 (e) Termination of status in a fundamental transaction.--If  
18 a plan would have the effect of terminating the status of a  
19 limited liability company as a benefit company, the plan shall  
20 not be effective unless it is adopted by at least the minimum  
21 status vote. Any sale, lease, exchange or other disposition of  
22 all or substantially all of the assets of a benefit company,  
23 unless the transaction is in the usual and regular course of  
24 business, shall not be effective unless the transaction is  
25 approved by at least the minimum status vote.

26 § 8894. Purposes.

27 (a) General public benefit purpose.--A benefit company shall  
28 have a purpose of creating general public benefit. This purpose  
29 is in addition to its purpose under section 8818(b) (relating to  
30 characteristics of limited liability company).

1 (b) Optional specific public benefit purpose.--The  
2 certificate of organization of a benefit company may identify  
3 one or more specific public benefits that it is the purpose of  
4 the benefit company to create in addition to its purposes under  
5 subsection (a) and section 8818(b). The identification of a  
6 specific public benefit does not limit the obligation of a  
7 benefit company to create general public benefit.

8 (c) Effect of purposes.--The creation of general and  
9 specific public benefit as provided in subsections (a) and (b)  
10 is in the best interests of the benefit company.

11 (d) Amendment.--A benefit company may amend its certificate  
12 of organization to add, amend or delete the identification of a  
13 specific public benefit that it is the purpose of the benefit  
14 company to create. The amendment shall not be effective unless  
15 it is adopted by at least the minimum status vote.

16 (e) Professional companies.--A professional company that is  
17 a benefit company does not violate a restriction on its  
18 permissible purposes or activities by having the purpose to  
19 create general public benefit or a specific public benefit.  
20 § 8895. Standard of conduct for members.

21 (a) Consideration of interests.--The members of a member-  
22 managed limited liability company that is a benefit company,  
23 when discharging their duties under this title or under the  
24 operating agreement:

25 (1) shall consider the effects of any action upon:

26 (i) the members of the benefit company;

27 (ii) the employees and work force of the benefit  
28 company and its subsidiaries and suppliers;

29 (iii) the interests of customers as beneficiaries of  
30 the general or specific public benefit purposes of the

1 benefit company;

2 (iv) community and societal considerations,  
3 including those of any community in which offices or  
4 facilities of the benefit company or its subsidiaries or  
5 suppliers are located;

6 (v) the local and global environment;

7 (vi) the short-term and long-term interests of the  
8 benefit company, including benefits that may accrue to  
9 the benefit company from its long-term plans and the  
10 possibility that these interests may be best served by  
11 the continued independence of the benefit company; and

12 (vii) the ability of the benefit company to  
13 accomplish its general public benefit purpose and any  
14 specific public benefit purpose; and

15 (2) may consider any other pertinent factors or the  
16 interests of any other group that they deem appropriate; but

17 (3) shall not be required to give priority to the  
18 interests of any person or group referred to in paragraph (1)  
19 or (2) over the interests of any other person or group unless  
20 the benefit company has stated in its certificate of  
21 organization its intention to give priority to certain  
22 interests related to its accomplishment of its general public  
23 benefit purpose or of a specific public benefit purpose  
24 identified in the certificate.

25 (b) Coordination with other provisions of law.--The  
26 consideration of interests and factors in the manner required  
27 under subsection (a) shall not constitute a violation of section  
28 8849.1 (relating to standards of conduct for members).

29 (c) Exoneration from personal liability.--

30 (1) A member shall not be personally liable for monetary

1 damages for any action taken as a member of a member-managed  
2 limited liability company in the course of performing the  
3 duties specified in subsection (a) unless the action  
4 constitutes self-dealing, willful misconduct or a knowing  
5 violation of law.

6 (2) A member shall not be personally liable for monetary  
7 damages for failure of the benefit company to pursue or  
8 create general public benefit or a specific public benefit.

9 (d) Limitation on standing.--A member of a member-managed  
10 limited liability company that is a benefit company does not  
11 have a duty to a person that is a beneficiary of the general  
12 public benefit purpose or a specific public benefit purpose of  
13 the benefit company arising from the status of the person as a  
14 beneficiary.

15 § 8896. Standard of conduct for managers and officers.

16 (a) Managers.--Each manager of a manager-managed limited  
17 liability company that is a benefit company shall consider the  
18 interests and factors described in section 8895(a) (relating to  
19 standard of conduct for members) when discharging his or her  
20 duties under this title and under the operating agreement.

21 (b) Officers.--If a benefit company has a person serving in  
22 the capacity of an officer, the person shall consider the  
23 interests and factors described in section 8895(a) when  
24 discharging the person's duties under this title and under the  
25 operating agreement if:

26 (1) the officer has discretion to act with respect to a  
27 matter; and

28 (2) it reasonably appears to the officer that the matter  
29 may have a material effect on the creation by the benefit  
30 company of general public benefit or a specific public

1 benefit identified in the certificate of organization of the  
2 benefit company.

3 (c) Coordination with other provisions of law.--The  
4 consideration of interests and factors by a manager in the  
5 manner described in subsection (a) shall not constitute a  
6 violation of section 8849.2 (relating to standards of conduct  
7 for managers).

8 (d) Exoneration from personal liability.--

9 (1) A manager or officer shall not be personally liable,  
10 as such, for monetary damages for any action taken as a  
11 manager or officer in the course of performing the duties  
12 specified in subsection (a) or (b) unless the action  
13 constitutes self-dealing, willful misconduct or a knowing  
14 violation of law.

15 (2) A manager or officer shall not be personally liable  
16 for monetary damages for failure of the benefit company to  
17 pursue or create general public benefit or a specific public  
18 benefit.

19 (e) Limitation on standing.--A manager or officer does not  
20 have a duty to a person that is a beneficiary of the general  
21 public benefit purpose or a specific public benefit purpose of a  
22 benefit company arising from the status of the person as a  
23 beneficiary.

24 § 8897. Right of action.

25 (a) Limitations.--

26 (1) Except in a benefit enforcement proceeding, no  
27 person may bring an action or assert a claim against a  
28 benefit company or its members, managers or officers with  
29 respect to:

30 (i) failure to pursue or create general public

1 benefit or a specific public benefit set forth in its  
2 certificate of organization; or

3 (ii) violation of a duty or standard of conduct  
4 under this ~~chapter~~ SUBCHAPTER. <--

5 (2) A benefit company shall not be liable for monetary  
6 damages under this ~~chapter~~ SUBCHAPTER for any failure of the <--  
7 benefit company to pursue or create general public benefit or  
8 a specific public benefit.

9 (b) Parties with standing.--A benefit enforcement proceeding  
10 may be commenced or maintained only:

11 (1) directly by the benefit company; or

12 (2) derivatively by:

13 (i) a member that owned at least 2% of the total  
14 number of interests of a class or series outstanding at  
15 the time of the act complained of;

16 (ii) a manager of a manager-managed limited  
17 liability company;

18 (iii) a person or group of persons that owns  
19 beneficially or of record 5% or more of the interests in  
20 an association of which the benefit company is a  
21 subsidiary at the time of the act complained of; or

22 (iv) such other persons as may be specified in the  
23 certificate of organization or operating agreement of the  
24 benefit company.

25 (c) Cross reference.--The provisions of Subchapter H  
26 (relating to actions by members) shall apply to derivative  
27 actions under this section.

28 § 8898. Annual benefit report.

29 (a) Contents.--A benefit company must deliver to each member  
30 an annual benefit report, including:

1           (1) A narrative description of:

2           (i) the ways in which the benefit company pursued  
3 general public benefit during the year and the extent to  
4 which general public benefit was created;

5           (ii) the ways in which the benefit company pursued  
6 any specific public benefit that the certificate of  
7 organization states is the purpose of the benefit company  
8 to create and the extent to which that specific public  
9 benefit was created;

10           (iii) any circumstances that have hindered the  
11 creation by the benefit company of general or specific  
12 public benefit; and

13           (iv) the process and rationale for selecting or  
14 changing the third-party standard used to prepare the  
15 benefit report.

16           (2) An assessment of the overall social and  
17 environmental performance of the benefit company against a  
18 third-party standard applied consistently with any  
19 application of that standard in prior benefit reports or  
20 accompanied by an explanation of the reasons for any  
21 inconsistent application. The assessment does not need to be  
22 audited or certified by a third-party standards provider.

23           (3) A statement of any connection between the  
24 organization that established the third-party standard, or  
25 its directors, officers or any holder of 5% or more of the  
26 governance interests in the organization, and the benefit  
27 company or its members, managers or officers or any holder of  
28 5% or more of the outstanding interests in the benefit  
29 company, including any financial or governance relationship  
30 which might materially affect the credibility of the use of

1 the third-party standard.

2 (b) Timing of report.--A benefit company shall annually send  
3 a benefit report to each member either:

4 (1) within 120 days following the end of the fiscal year  
5 of the benefit company; or

6 (2) at the same time that the benefit company delivers  
7 any other annual report to its members.

8 (c) Internet website posting.--A benefit company must post  
9 all of its benefit reports on the public portion of its Internet  
10 website, if any, except that any financial or proprietary  
11 information included in the benefit report may be omitted from  
12 the benefit report as posted.

13 (d) Availability of copies.--If a benefit company does not  
14 have an Internet website, the benefit company shall provide a  
15 copy of its most recent benefit report, without charge, to any  
16 person that requests a copy, but any financial or proprietary  
17 information included in the benefit report may be omitted from  
18 the copy of the benefit report provided.

19 (e) Filing of report.--Concurrently with the delivery of the  
20 benefit report to members pursuant to subsection (b), the  
21 benefit company must deliver a copy of the benefit report to the  
22 department for filing, except that any financial or proprietary  
23 information included in the benefit report may be omitted from  
24 the benefit report as filed under this section. The department  
25 shall charge a fee of \$70 for filing a benefit report.

26 Section 30. Repeals are as follows:

27 (1) The General Assembly finds and declares as follows:

28 (i) The limited liability company has been evolving  
29 as a legal entity over the last 25 years, and statutory  
30 law must be updated to deal with the evolving entity.

1           (ii) Existing statutory law on limited liability  
2 companies was enacted in 1994. Discrete amendments were  
3 enacted in 1997, 1998, 2006, 2013 and 2014; and  
4 significant amendments were made by section 2 of the act  
5 of June 22, 2001 (P.L.418, No.34), known as the GAA  
6 Amendments Act of 2001. A more comprehensive legislative  
7 approach was taken in sections 54 and 55 of the act of  
8 October 22, 2014 (P.L.2640, No.172), known as the  
9 Associations Transactions Act.

10           (iii) Section 22 of this act adds a new chapter on  
11 limited liability companies. The new chapter continues  
12 the approach under the GAA Amendments Act of 2001 and the  
13 Associations Transactions Act and extensively revises  
14 existing statutory law to the degree that identification  
15 of individual changes or reproduction of voluminous text  
16 to be eliminated would inhibit rather than enhance  
17 serious legal analysis.

18           (iv) The repeal under paragraph (2) is necessary to  
19 carry out this paragraph.

20           (2) Subchapters A, B, C, D, E, F, I and K of Chapter 89  
21 of Title 15 are repealed.

22           Section 31. Sections 8995(c), (d) and (e), 8997, 8998(g) and  
23 9115 of Title 15 are amended to read:

24 § 8995. Application and effect of subchapter.

25 \* \* \*

26           (c) Laws applicable to restricted professional companies.--  
27 Except as otherwise provided in this subchapter, [this chapter]  
28 Chapter 88 (relating to limited liability companies) shall be  
29 generally applicable to all restricted professional companies.  
30 The specific provisions of this subchapter shall control over

1 the general provisions of [this chapter] Chapter 88.

2 (d) Election of restricted professional company status.--At  
3 the time an existing limited liability company that has  
4 previously conducted a business not involving the rendering of a  
5 restricted professional service begins to render one or more  
6 restricted professional services, the company shall amend its  
7 certificate of organization to include [the statement required  
8 by section 8913(7) (relating to certificate of organization)] a  
9 statement that it is a restricted professional company. For  
10 purposes of sections [8925] 8835 (relating to taxation of  
11 limited liability companies) and 8997, the company shall be  
12 deemed to have become a restricted professional company on the  
13 first day of the taxable year of the company following the  
14 taxable year in which the amendment of its certificate of  
15 organization required by this subsection is filed.

16 (e) Termination of restricted professional company status.--  
17 Except as provided in this subsection, the status of a  
18 restricted professional company as such shall terminate, and the  
19 company shall cease to be subject to this subchapter, at such  
20 time as it ceases to render any restricted professional  
21 services. Upon ceasing to render any restricted professional  
22 services, the company shall amend its certificate of  
23 organization to delete the statement required by [section  
24 8913(7)] subsection (d). For purposes of sections [8925] 8835  
25 and 8997, the company shall be deemed to have ceased being a  
26 restricted professional company on the first day of the taxable  
27 year of the company following the taxable year in which it  
28 ceased to render any restricted professional services.

29 § 8997. Taxation of restricted professional companies.

30 (a) General rule.--Except as provided in subsection (b) [and

1 in section 8925(b) (relating to taxation of limited liability  
2 companies)], for the purposes of the imposition by the  
3 Commonwealth or any political subdivision of any tax or license  
4 fee on or with respect to any income, property, privilege,  
5 transaction, subject or occupation, a domestic or [qualified] <--  
6 REGISTERED foreign restricted professional company shall be  
7 deemed to be a limited partnership organized and existing under  
8 Chapter [85] 86 (relating to limited partnerships), and a member  
9 of such a company, as such, shall be deemed a limited partner of  
10 a limited partnership.

11 (b) Exception.--A domestic or qualified foreign restricted  
12 professional company shall be subject to section [8925(a)]  
13 8835(a), instead of subsection (a), for the whole of any taxable  
14 year of the company during any part of which the company has:

15 (1) engaged in any business not permitted by section  
16 8996(a) (relating to purposes of restricted professional  
17 companies);

18 (3) been a member of a limited liability company.

19 § 8998. Annual registration.

20 \* \* \*

21 (g) Cross [references.--See section 8907 (relating to  
22 execution of documents) and] reference.--See 18 Pa.C.S. § 4904  
23 (relating to unsworn falsification to authorities).

24 § 9115. Ownership and transfer of property.

25 (a) General rule.--A nonprofit association may acquire, hold  
26 or transfer, in its name, an interest in property.

27 (b) Testamentary and fiduciary dispositions.--A nonprofit  
28 association may be a beneficiary of a trust or contract, a  
29 legatee or a devisee.

30 (c) Authority to take and hold trust property.--Every

1 nonprofit association organized for a charitable purpose or  
2 purposes may take, receive and hold real and personal property  
3 as may be given, devised to or otherwise vested in the nonprofit  
4 association, in trust, for the purpose or purposes set forth in  
5 its governing principles. The managers of the nonprofit  
6 association shall, as trustees of the property, be held to the  
7 same degree of responsibility and accountability as other  
8 trustees, unless a lesser degree or a particular degree of  
9 responsibility and accountability is prescribed in the trust  
10 instrument, or unless the managers remain under the control of  
11 the members of the nonprofit association or third persons who  
12 retain the right to direct, and do direct, the actions of the  
13 managers as to the use of the trust property from time to time.

14 (d) Nondiversion of certain property.--Property of a  
15 nonprofit association committed to charitable purposes shall  
16 not, by any proceeding under Chapter 3 (relating to entity  
17 transactions) or otherwise, be diverted from the objects to  
18 which it was donated, granted or devised, unless and until the  
19 nonprofit association obtains from the court an order under 20  
20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition  
21 of the property.

22 Section 32. Section 9302 of Title 15, amended October 22,  
23 2014 (P.L.2640, No.172), is amended to read:

24 § 9302. Application of chapter.

25 (a) General rule.--This chapter shall apply to and the word  
26 "association" in this chapter shall mean a professional  
27 association organized under the act of August 7, 1961 (P.L.941,  
28 No.416), known as the Professional Association Act, which has  
29 not:

30 (1) Reorganized as an electing partnership under Chapter

1 87 (relating to electing partnerships).

2 (2) Elected to become a professional corporation in the  
3 manner provided by section 2905 (relating to election of  
4 professional associations to become professional  
5 corporations).

6 (3) Converted to a limited liability company under  
7 Subchapter E of Chapter 3 (relating to conversion).

8 (b) No new associations.--An association may not be  
9 originally organized under this chapter.

10 Section 33. Sections 9501 and 9506 of Title 15 are amended  
11 to read:

12 § 9501. Application and effect of chapter.

13 (a) General rule.--

14 (1) Unless the context clearly indicates otherwise, this  
15 chapter shall apply to and the words "business trust" in this  
16 chapter shall mean an association organized as a trust:

17 (i) [Hereafter established under the laws of this  
18 Commonwealth.] Whose deed of trust or other organic  
19 document has been filed in the department and is in  
20 effect under this chapter.

21 (ii) Whose deed of trust or other organic document  
22 states, by amendment or otherwise, that the trust exists  
23 subject to the provisions of this chapter, in the case of  
24 a business trust heretofore established under the laws of  
25 this Commonwealth or heretofore or hereafter established  
26 under the laws of any other jurisdiction.

27 (2) The words "business trust" in this chapter shall not  
28 include:

29 (i) A trust contemplated by section 1768 (relating  
30 to voting trusts and other agreements among shareholders)

1 or any similar provision of law.

2 (ii) A trust for creditors.

3 (iii) A mortgage, deed of trust or other indenture  
4 or similar instrument or agreement under which debt  
5 securities are outstanding or to be issued.

6 (iv) A trust for the benefit of one or more  
7 investors with respect to a lease of real or personal  
8 property, unless the instrument creating the trust is  
9 filed under this chapter.

10 (b) No franchise.--This chapter shall not confer on a  
11 business trust the power to engage in any activity that may be  
12 undertaken only in corporate form.

13 (c) Effect on taxation.--This chapter is enacted to codify  
14 and clarify certain common law principles applicable to business  
15 trusts and is not intended to affect the liability of any  
16 business trust to any tax. A trust that is subject to this  
17 chapter shall not be deemed to be organized or created by or  
18 under this or any other statute or to have the benefit of any  
19 state franchise for the purpose of existing law relating to  
20 taxation.

21 (d) Multistate application.--It is the intent of the General  
22 Assembly in enacting this chapter that the legal existence of  
23 business trusts organized in this Commonwealth be recognized  
24 outside the boundaries of this Commonwealth and that, subject to  
25 any reasonable requirement of registration, a domestic business  
26 trust transacting business outside this Commonwealth be granted  
27 protection of full faith and credit under the Constitution of  
28 the United States.

29 § 9506. Liability of trustees and beneficiaries.

30 (a) General rule.--

1           (1) Except as otherwise provided in the instrument, the  
2 beneficiaries of a business trust shall be entitled to the  
3 same limitation of personal liability as is extended to  
4 shareholders in a domestic business corporation.

5           (2) Except as otherwise provided in the instrument, the  
6 trustees of a trust, as such, shall not be personally liable  
7 to any person for any act or obligation of the trust or any  
8 other trustee.

9           (3) An obligation of a trust based upon a writing may be  
10 limited to a specific fund or other identified pool or group  
11 of assets of the trust.

12       (b) Standards and immunities.--Except as otherwise provided  
13 in the instrument governing the trust, the provisions of  
14 Subchapters B (relating to fiduciary duty) and D (relating to  
15 indemnification) of Chapter 17 shall be applicable to  
16 representatives of a business trust.

17       (c) Certain specifically authorized debt terms.--A business  
18 trust shall be subject to section 1510 (relating to certain  
19 specifically authorized debt terms) to the same extent as if it  
20 were a business corporation.

21       (d) Professional relationship unaffected.--Subsection (a)  
22 shall not afford trustees or beneficiaries of a business trust  
23 providing professional services with greater immunity than is  
24 available to the officers, shareholders, employees or agents of  
25 a professional corporation. See section 2925 (relating to  
26 professional relationship retained).

27       (e) Disciplinary jurisdiction unaffected.--A business trust  
28 providing professional services shall be subject to the  
29 applicable rules and regulations adopted by, and all the  
30 disciplinary powers of, the court, department, board, commission

1 or other government unit regulating the profession in which the  
2 business trust is engaged. The court, department, board or other  
3 government unit may require that a business trust include in its  
4 instrument provisions that conform to any rule or regulation  
5 heretofore or hereafter promulgated for the purpose of enforcing  
6 the ethics of a profession. This chapter shall not affect or  
7 impair the disciplinary powers of the court, department, board,  
8 commission or other government unit over licensed persons or any  
9 law, rule or regulation pertaining to the standards for  
10 professional conduct of licensed persons or to the professional  
11 relationship between any licensed person rendering professional  
12 services and the person receiving professional services.

13 (f) Permissible beneficiaries.--Except as otherwise provided  
14 by a statute, rule or regulation applicable to a particular  
15 profession, all of the ultimate beneficial owners of interests  
16 in a business trust that renders one or more restricted  
17 professional services shall be licensed persons[. As used in  
18 this subsection, the term "restricted professional services"  
19 shall have the meaning specified in section 8903 (relating to  
20 definitions and index of definitions).] in the profession the  
21 trust practices if the trust renders any of the following  
22 professional services: chiropractic, dentistry, law, medicine  
23 and surgery, optometry, osteopathic medicine and surgery,  
24 podiatric medicine, public accounting, psychology or veterinary  
25 medicine.

26 (g) Conflict of laws.--The personal liability of a trustee  
27 or beneficiary of a business trust to any person or in any  
28 action or proceeding for the debts, obligations or liabilities  
29 of the trust or for the acts or omissions of other trustees,  
30 beneficiaries, employees or agents of the trust shall be

1 governed solely and exclusively by this chapter and the laws of  
2 this Commonwealth. Whenever a conflict arises between the laws  
3 of this Commonwealth and the laws of any other state with  
4 respect to the liability of trustees or beneficiaries of a trust  
5 organized and existing under this chapter for the debts,  
6 obligations and liabilities of the trust or for the acts or  
7 omissions of the other trustees, beneficiaries, employees or  
8 agents of the trust, the laws of this Commonwealth shall govern  
9 in determining such liability.

10 (h) Medical professional liability.--A business trust shall  
11 be deemed to be a professional corporation for purposes of  
12 section [811 of the act of October 15, 1975 (P.L.390, No.111),  
13 known as the Health Care Services Malpractice Act.] 744 of the  
14 act of March 20, 2002 (P.L.154, No.13), known as the Medical  
15 Care Availability and Reduction of Error (Mcare) Act.

16 (i) Failure to observe formalities.--The failure of a  
17 business trust to observe formalities relating to the exercise  
18 of its powers or management of its activities and affairs is not  
19 a ground for imposing liability on a beneficiary or trustee of  
20 the trust for a debt, obligation or other liability of the  
21 trust.

22 Section 34. ~~Section~~ SECTIONS 501(a) (6) and (8) AND 502(D) of <--  
23 Title 54, amended October 22, 2014 (P.L.2640, No.172), are  
24 amended to read:

25 § 501. Register established.

26 (a) General rule.--A register is established by this chapter  
27 which shall consist of such of the following names as are not  
28 deleted therefrom by operation of section 504 (relating to  
29 effect of failure to make filings) or 506 (relating to voluntary  
30 termination of registration by corporations and other

1 associations):

2 \* \* \*

3 (6) In the case of a limited partnership or limited  
4 liability company subject to 15 Pa.C.S. Ch. [85] 86 (relating  
5 to limited partnerships) or [89] 88 (relating to limited  
6 liability companies), the name of the partnership or company  
7 as set forth in the certificate of limited partnership,  
8 certificate of organization or statement of registration as a  
9 [registered] foreign association.

10 (8) In the case of a [registered] limited liability  
11 partnership subject to 15 Pa.C.S. Ch. 82 (relating to  
12 [registered] limited liability partnerships and limited  
13 liability limited partnerships) that is not also a limited  
14 partnership, the name of the partnership as set forth in the  
15 statement of registration as a [registered] foreign  
16 association.

17 \* \* \*

18 § 502. CERTAIN ADDITIONS TO REGISTER. <--

19 \* \* \*

20 (D) ANNUAL RENEWAL.--A PERSON WHO HAS IN EFFECT A  
21 REGISTRATION OF A [CORPORATE] NAME MAY RENEW THE REGISTRATION  
22 FROM YEAR TO YEAR BY ANNUALLY FILING AN APPLICATION FOR RENEWAL  
23 SETTING FORTH THE FACTS REQUIRED TO BE SET FORTH IN AN ORIGINAL  
24 APPLICATION FOR REGISTRATION. A RENEWAL APPLICATION MAY BE FILED  
25 BETWEEN OCTOBER 1 AND DECEMBER 31 IN EACH YEAR AND SHALL EXTEND  
26 THE REGISTRATION FOR THE FOLLOWING CALENDAR YEAR.

27 \* \* \*

28 Section 35. This act shall take effect in 90 days.