

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

## No. 2251

Session of  
2005

INTRODUCED BY T. STEVENSON, BARRAR, BOYD, CALTAGIRONE, CAPPELLI, CAUSER, CREIGHTON, GEIST, GOODMAN, HERSHEY, KAUFFMAN, KILLION, LEH, MARKOSEK, MARSICO, McILHATTAN, MUSTIO, O'NEILL, PETRI, REICHLEY, ROHRER, ROSS, SCHRODER, R. STEVENSON, E. Z. TAYLOR, THOMAS, TURZAI, WILT, YOUNGBLOOD, BENNINGHOFF, FRANKEL AND ADOLPH, NOVEMBER 21, 2005

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 18, 2006

## AN ACT

1 Amending Title 15 (Corporations and Unincorporated Associations)  
2 of the Pennsylvania Consolidated Statutes, FURTHER PROVIDING <—  
3 FOR REMOVAL OF DIRECTORS IN BUSINESS CORPORATIONS; repealing  
4 annual registration requirements for registered limited  
5 liability partnerships and limited liability companies; and  
6 making an editorial change.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 ~~Section 1. Sections 8201(c), 8221 and 8998 of Title 15 of~~ <—  
10 ~~the Pennsylvania Consolidated Statutes are amended to read:~~

11 SECTION 1. SECTION 1726(A)(1) OF TITLE 15 OF THE <—  
12 PENNSYLVANIA CONSOLIDATED STATUTES, AMENDED FEBRUARY 10, 2006  
13 (P.L.21, NO.6), IS AMENDED TO READ:

14 § 1726. REMOVAL OF DIRECTORS.

15 (A) REMOVAL BY THE SHAREHOLDERS.--

16 (1) UNLESS OTHERWISE PROVIDED IN A BYLAW ADOPTED BY THE  
17 SHAREHOLDERS, THE ENTIRE BOARD OF DIRECTORS, OR A CLASS OF

1 THE BOARD WHERE THE BOARD IS CLASSIFIED WITH RESPECT TO THE  
2 POWER TO SELECT DIRECTORS, OR ANY INDIVIDUAL DIRECTOR OF A  
3 BUSINESS CORPORATION MAY BE REMOVED FROM OFFICE WITHOUT  
4 ASSIGNING ANY CAUSE BY THE VOTE OF SHAREHOLDERS, OR OF THE  
5 HOLDERS OF A CLASS OR SERIES OF SHARES, ENTITLED TO ELECT  
6 DIRECTORS, OR THE CLASS OF DIRECTORS. IN CASE THE BOARD OR A  
7 CLASS OF THE BOARD OR ANY ONE OR MORE DIRECTORS ARE SO  
8 REMOVED, NEW DIRECTORS MAY BE ELECTED AT THE SAME MEETING.  
9 NOTWITHSTANDING THE FIRST SENTENCE OF THIS PARAGRAPH, UNLESS  
10 OTHERWISE PROVIDED IN THE ARTICLES [BY A SPECIFIC AND  
11 UNAMBIGUOUS STATEMENT THAT DIRECTORS MAY BE REMOVED FROM  
12 OFFICE WITHOUT ASSIGNING ANY CAUSE, THE ENTIRE BOARD OF  
13 DIRECTORS], OR ANY CLASS OF THE BOARD, OR ANY INDIVIDUAL  
14 DIRECTOR OF A CORPORATION HAVING A BOARD CLASSIFIED AS  
15 PERMITTED BY SECTION 1724(B) (RELATING TO CLASSIFIED BOARD OF  
16 DIRECTORS), MAY BE REMOVED FROM OFFICE BY VOTE OF THE  
17 SHAREHOLDERS ENTITLED TO VOTE THEREON ONLY FOR CAUSE, IF SUCH  
18 CLASSIFICATION HAS BEEN EFFECTED [IN THE ARTICLES OR] BY A  
19 BYLAW ADOPTED BY THE SHAREHOLDERS.

20 \* \* \*

21 SECTION 2. SECTIONS 8201(E), 8221 AND 8998 OF TITLE 15 ARE  
22 AMENDED TO READ:

23 § 8201. Scope.

24 \* \* \*

25 (e) Prohibited termination.--A registration under this  
26 subchapter may not be terminated while the partnership is a  
27 bankrupt as that term is defined in section 8903 (relating to  
28 definitions and index of definitions). [See section 8221(f)  
29 (relating to annual registration).]

30 \* \* \*

1    [§ 8221.    Annual registration.

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

14        (b)    Annual registration fee.--

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

21                (i)    in the case of a natural person, had his  
22    principal residence on that date in this Commonwealth; or  
23                (ii)    in the case of any other person, was  
24    incorporated or otherwise organized or existing on that  
25    date under the laws of this Commonwealth.

26            (2)    The base fee of \$200 shall be increased on December  
27    31, 1997, and December 31 of every third year thereafter by  
28    the percentage increase in the Consumer Price Index for Urban  
29    Workers during the most recent three calendar years for which  
30    that index is available on the date of adjustment. Each

adjustment under this paragraph shall be rounded up to the nearest \$10.

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

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

(e) Failure to pay annual fee.--

(1) Failure to file the certificate of annual registration required by this section for five consecutive years shall result in the automatic termination of the status of the registered limited liability partnership as such. In addition, any annual registration fee that is not paid when due shall be a lien in the manner provided in this subsection from the time the annual registration fee is due and payable. If a certificate of annual registration is not filed within 30 days after the date on which it is due, the department

1 shall assess a penalty of \$500 against the partnership, which  
2 shall also be a lien in the manner provided in this  
3 subsection. The imposition of that penalty shall not be  
4 construed to relieve the partnership from liability for any  
5 other penalty or interest provided for under other applicable  
6 law.

7 (2) If the annual registration fee paid by a registered  
8 limited liability partnership is subsequently determined to  
9 be less than should have been paid because it was based on an  
10 incorrect number of general partners or was otherwise  
11 incorrectly computed, that fact shall not affect the  
12 existence or status of the registered limited liability  
13 partnership as such, but the amount of the additional annual  
14 registration fee that should have been paid shall be a lien  
15 in the manner provided in this subsection from the time the  
16 incorrect payment is discovered by the department.

17 (3) The annual registration fee shall bear simple  
18 interest from the date that it becomes due and payable until  
19 paid. The interest rate shall be that provided for in section  
20 806 of the act of April 9, 1929 (P.L.343, No.176), known as  
21 The Fiscal Code, with respect to unpaid taxes. The penalty  
22 provided for in paragraph (1) shall not bear interest. The  
23 payment of interest shall not relieve the registered limited  
24 liability partnership from liability for any other penalty or  
25 interest provided for under other applicable law.

26 (4) The lien created by this subsection shall attach to  
27 all of the property and proceeds thereof of the registered  
28 limited liability partnership in which a security interest  
29 can be perfected in whole or in part by filing in the  
30 department under 13 Pa.C.S. Div. 9 (relating to secured

1 transactions; sales of accounts, contract rights and chattel  
2 paper), whether the property and proceeds are owned by the  
3 partnership at the time the annual registration fee or any  
4 penalty or interest becomes due and payable or whether the  
5 property and proceeds are acquired thereafter. Except as  
6 otherwise provided by statute, the lien created by this  
7 subsection shall have priority over all other liens, security  
8 interests or other charges, except liens for taxes or other  
9 charges due the Commonwealth. The lien created by this  
10 subsection shall be entered on the records of the department  
11 and indexed in the same manner as a financing statement filed  
12 under 13 Pa.C.S. Div. 9. At the time an annual registration  
13 fee, penalty or interest that has resulted in the creation of  
14 a lien under this subsection is paid, the department shall  
15 terminate the lien with respect to that annual registration  
16 fee, penalty or interest without requiring a separate filing  
17 by the partnership for that purpose.

18 (5) If the annual registration fee paid by a registered  
19 limited liability partnership is subsequently determined to  
20 be more than should have been paid for any reason, no refund  
21 of the additional fee shall be made.

22 (6) Termination of the status of a registered limited  
23 liability partnership as such, whether voluntarily or  
24 involuntarily, shall not release it from the obligation to  
25 pay any accrued fees, penalties and interest and shall not  
26 release the lien created by this subsection.

27 (f) Exception for bankrupt partnerships.--A partnership that  
28 would otherwise be required to pay the annual registration fee  
29 set forth in subsection (b) shall not be required to pay that  
30 fee with respect to any year during any part of which the

1 partnership is a bankrupt as defined in section 8903 (relating  
2 to definitions and index of definitions). The partnership shall,  
3 instead, indicate on its certificate of annual registration for  
4 that year that it is exempt from payment of the annual  
5 registration fee pursuant to this subsection. If the partnership  
6 fails to file timely a certificate of annual registration, a  
7 lien shall be entered on the records of the department pursuant  
8 to subsection (e) which shall not be removed until the  
9 partnership files a certificate of annual registration  
10 indicating its entitlement to an exemption from payment of the  
11 annual registration fee as provided in this subsection. See  
12 section 8201(e) (relating to scope).

13 § 8998. Annual registration.

14 (a) General rule.--Every domestic restricted professional  
15 company in existence on December 31 of any year and every  
16 qualified foreign restricted professional company that is  
17 registered to do business in this Commonwealth on December 31 of  
18 any year shall file in the Department of State with respect to  
19 that year, and on or before April 15 of the following year, a  
20 certificate of annual registration on a form provided by the  
21 department, executed by the company and accompanied by the  
22 annual registration fee prescribed by subsection (b). The  
23 department shall not charge a fee other than the annual  
24 registration fee for filing the certificate of annual  
25 registration. The certificate of annual registration shall  
26 include a statement by the company as to whether or not it  
27 engaged in any business not permitted by section 8996(a)  
28 (relating to purposes of restricted professional companies)  
29 during the year with respect to which the certificate is being  
30 filed.

(b) Annual registration fee.--

(1) The annual registration fee to be paid when filing a certificate of annual registration shall be equal to a base fee of \$300 times the number of persons who:

(i) were members of the company on December 31 of the year with respect to which the certificate of annual registration is being filed;

(ii) were licensed persons; and

(iii) had their principal residence at the time in this Commonwealth.

(2) The base fee of \$300 shall be increased on December 31, 1997, and December 31 of every third year thereafter by the percentage increase in the Consumer Price Index for Urban Workers during the most recent three calendar years for which that index is available on the date of adjustment. Each adjustment under this paragraph shall be rounded up to the nearest \$10.

(c) Notice of annual registration.--Not later than February 1 of each year, the department shall give notice to every restricted professional company required to file a certificate of annual registration with respect to the preceding year of the requirement to file the certificate. The notice shall state the amount of the base fee payable under subsection (b)(1), as adjusted pursuant to subsection (b)(2), if applicable, and shall be accompanied by the form of certificate to be filed. Failure by the department to give notice to any party or failure by any party to receive notice of the annual registration requirement shall not relieve the party of the obligation to file the certificate.

(d) Credit to Corporation Bureau Restricted Account.--The

1 annual registration fee shall not be deemed to be an amount  
2 received by the department under Subchapter C of Chapter 1  
3 (relating to Corporation Bureau and UCC fees) for purposes of  
4 section 155 (relating to disposition of funds), except that \$25  
5 of the fee shall be credited to the Corporation Bureau  
6 Restricted Account.

7 (e) Functions of Department of State.--The department shall  
8 send to the Department of Revenue a copy of any certificate that  
9 discloses the conduct of any business not permitted by section  
10 8996(a).

11 (f) Annual fee to be lien.--

12 (1) Failure to file the certificate of annual  
13 registration required by this section shall not affect the  
14 existence or status of the restricted professional company as  
15 such, but the annual registration fee that would have been  
16 payable shall be a lien in the manner provided in this  
17 subsection from the time the annual registration fee is due  
18 and payable. If a certificate of annual registration is not  
19 filed within 30 days after the date on which it is due, the  
20 department shall assess a penalty of \$500 against the  
21 company, which shall also be a lien in the manner provided in  
22 this subsection. The imposition of that penalty shall not be  
23 construed to relieve the company from liability for any other  
24 penalty or interest provided for under other applicable law.

25 (2) If the annual registration fee paid by a restricted  
26 professional company is subsequently determined to be less  
27 than should have been paid because it was based on an  
28 incorrect number of members or was otherwise incorrectly  
29 computed, that fact shall not affect the existence or status  
30 of the restricted professional company as such, but the

1 amount of the additional annual registration fee that should  
2 have been paid shall be a lien in the manner provided in this  
3 subsection from the time the incorrect payment is discovered  
4 by the department.

5 (3) The annual registration fee shall bear simple  
6 interest from the date that it becomes due and payable until  
7 paid. The interest rate shall be that provided for in section  
8 806 of the act of April 9, 1929 (P.L.343, No.176), known as  
9 The Fiscal Code, with respect to unpaid taxes. The penalty  
10 provided for in paragraph (1) shall not bear interest. The  
11 payment of interest shall not relieve the restricted  
12 professional company from liability for any other penalty or  
13 interest provided for under other applicable law.

14 (4) The lien created by this subsection shall attach to  
15 all of the property and proceeds thereof of the restricted  
16 professional company in which a security interest can be  
17 perfected, in whole or in part, by filing in the department  
18 under 13 Pa.C.S. Div. 9 (relating to secured transactions;  
19 sales of accounts, contract rights and chattel paper),  
20 whether the property and proceeds are owned by the company at  
21 the time the annual registration fee or any penalty or  
22 interest becomes due and payable or whether the property and  
23 proceeds are acquired thereafter. Except as otherwise  
24 provided by statute, the lien created by this subsection  
25 shall have priority over all other liens, security interests  
26 or other charges, except liens for taxes or other charges due  
27 the Commonwealth. The lien created by this subsection shall  
28 be entered on the records of the department and indexed in  
29 the same manner as a financing statement filed under 13  
30 Pa.C.S. Div. 9. At the time an annual registration fee,

1 penalty or interest that has resulted in the creation of a  
2 lien under this subsection is paid, the department shall  
3 terminate the lien with respect to that annual registration  
4 fee, penalty or interest without requiring a separate filing  
5 by the company for that purpose.

6 (5) If the annual registration fee paid by a restricted  
7 professional company is subsequently determined to be more  
8 than should have been paid for any reason, no refund of the  
9 additional fee shall be made.

10 (g) Cross references.--See section 8907 (relating to  
11 execution of documents) and 18 Pa.C.S. § 4904 (relating to  
12 unsworn falsification to authorities).]

13 ~~Section 2. This act shall take effect immediately.~~ <—

14 SECTION 3. THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <—

15 (1) THE AMENDMENT OF 15 PA.C.S. § 1726(A)(1) SHALL TAKE  
16 EFFECT IN 60 DAYS.

17 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT  
18 IMMEDIATELY.