

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1398 Session of 2015

INTRODUCED BY A. HARRIS, THOMAS, MACKENZIE, STAATS, MILLARD, LONGIETTI, GIBBONS, ROZZI, MCGINNIS, GREINER, BARBIN, COHEN, MILNE, MARSICO, PETRI, DeLISSIO, DAVIDSON, JAMES, PEIFER, DAY, GROVE, FARRY, ELLIS, BENNINGHOFF, P. COSTA, F. KELLER, R. BROWN, D. PARKER, KORTZ, EVERETT, SCHEMEL AND MICCARELLI, JUNE 24, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, FEBRUARY 10, 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
26 special litigation committees by business corporations and

<--

1 nonprofit corporations.

2 As to partnerships generally:

3 extensively revising provisions on:

4 interchangeability of partnership, limited

5 liability company and corporate forms of

6 organization; and

7 ownership of certain professional partnerships;

8 and

9 adding a provision on failure to observe formalities.

10 As to limited liability partnerships:

11 extensively revising provisions on:

12 scope;

13 definitions;

14 limitation on liability of partners;

15 extraterritorial application of subchapter;

16 foreign registered limited liability

17 partnerships; and

18 annual registration; and

19 adding provisions on:

20 distributions; and

21 dissolution.

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

24 general provisions;

25 nature of partnership;

26 relations of partners to persons dealing with

27 partnership;

28 relations of partners to each other and to

29 partnership;

30 transferable interests and rights of transferees and

31 creditors;

32 dissociation;

33 dissociation as partner if business not wound up; and

34 dissolution and winding up.

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

37 general provisions;

38 formation and filings;

39 limited partners;

40 general partners;

41 contributions and distributions;

42 dissociation;

43 transferable interests and rights of transferees and

44 creditors;

45 dissolution and winding up; and

46 actions by partners.

47 ~~As to limited liability companies, repealing existing~~ <--
48 ~~Chapter 89 and replacing it with a new Chapter 88 relating~~
49 ~~to:~~

50 ~~general provisions;~~

51 ~~formation and filings;~~

~~relations of members and managers to persons dealing
with limited liability company;
relations of members to each other and to limited-
liability company;
transferable interests and rights of transferees and
creditors;
dissociation;
dissolution and winding up; and
actions by members.~~

AS TO LIMITED LIABILITY COMPANIES: <--

REPEALING EXISTING SUBCHAPTERS A, B, C, D, E, F, I
AND K OF CHAPTER 89 AND REPLACING THEM WITH A NEW CHAPTER
88 RELATING TO:

GENERAL PROVISIONS;

FORMATION AND FILINGS;

RELATIONS OF MEMBERS AND MANAGERS TO PERSONS
DEALING WITH LIMITED LIABILITY COMPANY;

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED
LIABILITY COMPANY;

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES
AND CREDITORS;

DISSOCIATION;

DISSOLUTION AND WINDING UP; AND

ACTIONS BY MEMBERS;

AND

REVISING PROVISIONS ON RESTRICTED PROFESSIONAL
COMPANIES.

As to unincorporated nonprofit associations, making
conforming amendments by revising provisions on ownership and
transfer of property.

As to business trusts, making conforming changes by
revising provisions on application and effect of chapter and
liability of trustees and beneficiaries.

As to names, revising provisions on register established.

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

Section 1. Section 101(c) of Title 15 of the Pennsylvania
Consolidated Statutes is amended to read:

§ 101. Short title and application of title.

* * *

(c) References to prior statutes.--A reference in the
[articles or bylaws or other organic documents] organic rules of
an association to any provision of law supplied or repealed by
this title shall be deemed to be a reference to the superseding

1 provision of this title.

2 Section 1.1. The definitions of "association," "general
3 partnership," "limited liability company" and "limited
4 partnership" in section 102(a) of Title 15, amended October 22,
5 2014 (P.L.2640, No.172), are amended and the section is amended
6 by adding definitions to read:

7 § 102. Definitions.

8 (a) Defined terms.--Subject to additional or inconsistent
9 definitions contained in subsequent provisions of this title
10 that are applicable to specific provisions of this title, the
11 following words and phrases when used in this title shall have,
12 unless the context clearly indicates otherwise, the meanings
13 given to them in this section:

14 * * *

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

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

23 (2) an association or relationship that:

24 (i) is not a person that has:

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

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

29 (ii) is not a partnership under the rules stated in
30 section [8312 (relating to rules for determining the

1 existence of partnership)] 8422(c) (relating to formation
2 of partnership) or a similar provision of the laws of
3 another jurisdiction;

4 (3) a decedent's estate; or

5 (4) a government or a governmental subdivision, agency
6 or instrumentality.

7 * * *

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

15 * * *

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

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

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

22 * * *

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

27 (1) A partnership as defined in section 8412 (relating
28 to definitions).

29 (2) An association whose internal affairs are governed
30 by the laws of a jurisdiction other than this Commonwealth

1 which would be a partnership if its internal affairs were
2 governed by the laws of this Commonwealth.

3 * * *

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

7 (1) A limited liability company as defined in section
8 8812 (relating to definitions).

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

13 * * *

14 "Limited partnership." [A domestic or foreign limited
15 partnership as defined in section 8503 (relating to definitions
16 and index of definitions), whether or not it is a limited
17 liability limited partnership or electing partnership.] Either
18 of the following:

19 (1) A limited partnership as defined in section 8612
20 (relating to definitions).

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

25 * * *

26 Section 1.2. Title 15 is amended by adding a section to
27 read:

28 § 114. Defense of usury.

29 A domestic association other than a business corporation
30 shall be subject to section 1510 (relating to certain

1 specifically authorized debt terms) with respect to obligations,
2 as defined in that section, governed by the laws of this
3 Commonwealth or affecting real property situated in this
4 Commonwealth, to the same extent as if the domestic association
5 were a domestic business corporation.

6 Section 2. Sections 139(a) and (c), 152, 153(a)(2) and (3),
7 206, 314(a), (d) and (e), 315, 324(a) and (c) and 336(a)(2) of
8 Title 15, ~~amended or added October 22, 2014 (P.L.2640, No.172),~~ <--
9 are amended to read:

10 § 139. Tax clearance of certain fundamental transactions.

11 (a) Requirement.--Except as provided in subsection (c) or
12 (d), clearance certificates from the Department of Revenue and
13 the Department of Labor and Industry, evidencing the payment by
14 the association of all taxes and charges due the Commonwealth
15 required by law, must be delivered to the department for filing
16 when any of the following is delivered to the department for
17 filing:

18 (1) Articles or a statement or certificate of merger
19 merging a domestic association into a nonregistered foreign
20 association.

21 (2) Articles or a statement or certificate of conversion
22 or domestication effecting a conversion or domestication of a
23 domestic association into a nonregistered foreign
24 association.

25 (3) Articles [or] of dissolution, a certificate of
26 dissolution or termination or a statement of revival of a
27 domestic association.

28 (4) An application for termination of registration,
29 statement of withdrawal or similar document by a registered
30 foreign association.

1 (5) Articles or a statement or certificate of division
2 dividing a domestic association solely into foreign
3 associations.

4 * * *

5 (c) [Alternative provisions.--If clearance certificates are
6 filed with the court as required under subsection (b), it shall
7 not be necessary to file the clearance certificates with the
8 Department of State.] Exceptions.--It shall not be necessary to
9 file tax clearance certificates with the Department of State:

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

12 (2) With articles of dissolution under section 1971
13 (relating to voluntary dissolution by shareholders or
14 incorporators).

15 (3) With a certificate of dissolution under section
16 8482(b)(2)(i) (relating to winding up and filing of ~~optional~~ <--
17 certificates).

18 (4) With a certificate of termination under section
19 8681.1 (relating to voluntary termination by partners).

20 (5) With a certificate of dissolution under section
21 8872(b)(2)(i) (relating to winding up and filing of ~~optional~~ <--
22 certificates).

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

25 * * *

26 § 152. Definitions.

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

30 "Ancillary transaction." Includes:

- 1 (1) preclearance of document;
- 2 (2) amendment of articles, charter, certificate or other
3 organic document, restatement of articles, charter,
4 certificate or other organic document;
- 5 (3) dissolution, cancellation or termination of an
6 association;
- 7 (4) withdrawal or transfer of registration by foreign
8 association;
- 9 (5) [withdrawal by] dissociation as a partner;
10 (5.1) statement or certificate of authority and denial
11 or negation of authority;
- 12 (6) any transaction similar to any item listed in
13 paragraphs (1) through [(5)] (5.1);
- 14 (6.1) withdrawal, abandonment or termination of a
15 document which has been delivered to the department for
16 filing but has not yet become effective; or
- 17 (7) delivery to the department for filing in, by or with
18 the department or the Secretary of the Commonwealth of any
19 articles, statements, proceedings, agreements or any similar
20 papers affecting associations under the statutes of this
21 Commonwealth for which a specific fee is not set forth in
22 section 153 (relating to fee schedule) or other applicable
23 statute.

24 § 153. Fee schedule.

25 (a) General rule.--The nonrefundable fees of the bureau,
26 including fees for the public acts and transactions of the
27 Secretary of the Commonwealth administered through the bureau,
28 shall be as follows:

29 * * *

30 (2) Foreign associations:

1	(i) Registration statement or similar	
2	qualifications to do business.....	250
3	(ii) Amendment of registration statement or	
4	similar change in qualification to do business....	250
5	(iii) Domestication of alien association	
6	under section 161 (relating to domestication of	
7	certain alien associations).....	250
8	[(iv) Statement of merger, division or	
9	conversion or similar instrument reporting	
10	occurrence of merger, division or conversion not	
11	effected by a filing in the department.....	70]
12	(v) Additional fee for each [qualified]	
13	<u>registered</u> foreign association which is named in a	
14	statement of merger or similar instrument.....	40
15	(vi) Each ancillary transaction.....	70
16	(3) Partnerships and limited liability companies:	
17	(i) Certificate of limited partnership or	
18	certificate of organization of a limited liability	
19	company.....	125
20	(ii) Statement of registration of	
21	[registered] limited liability partnership <u>or</u>	
22	<u>limited liability limited partnership</u> or statement	
23	of election as an electing partnership.....	125
24	(iii) Each ancillary transaction.....	70
25	* * *	

26 § 206. Requirements for foreign association names.

27 (a) General rule.--The department shall not file a

28 registration statement pursuant to section 412 (relating to

29 foreign registration statement) for a foreign association that,

30 except as provided under subsection (b), has a name that is

1 rendered unavailable for use by a covered association [under
2 section 202(a), (b) or (c)(1)(i), (iii), (iv) or (v) or (2)
3 (relating to requirements for names generally)] by any provision
4 of this subchapter.

5 (b) Exception.--The provisions of section 202(b) and (c)
6 (relating to requirements for names generally) shall not prevent
7 the filing of a registration statement of a foreign association
8 [setting forth a name that is prohibited] whose name in its
9 jurisdiction of formation would be prohibited from use in this
10 Commonwealth by section 202(b) and (c) if the foreign
11 association [delivers to the department for filing a resolution
12 of its governors adopting] adopts a name for use in registering
13 to do business in this Commonwealth that is available for use by
14 a covered association.

15 § 314. Regulatory conditions and required notices and
16 approvals.

17 (a) Regulatory approvals.--If [laws] the law of this
18 Commonwealth other than this chapter requires notice to or the
19 approval of a governmental agency or officer of the Commonwealth
20 in connection with the participation under an organic law that
21 is not part of this title by a domestic or foreign association
22 in a transaction which is a form of transaction authorized by
23 this chapter, the notice must be given or the approval obtained
24 by the association before it may participate in any form of
25 transaction under this chapter.

26 * * *

27 (d) Preservation of transfers.--[A] Subject to subsection
28 (c) and section 5550 (relating to devises, bequests and gifts
29 after certain fundamental changes), a bequest, devise, gift,
30 grant or promise contained in a will or other instrument of

1 donation, subscription or conveyance that is made to:

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

5 (2) a dividing association may be allocated in the
6 division as if it were an asset of the dividing association
7 and, if the bequest, devise, gift, grant or promise takes
8 effect or remains payable after the division, vests as
9 provided in section 367(a)(4) (relating to effect of
10 division).

11 (e) Trust obligations.--A trust obligation that would govern
12 property:

13 (1) if transferred to a merging association that is not
14 the surviving association applies to property that is
15 transferred after a merger to the surviving association[.];
16 and

17 (2) if transferred to a dividing association that is not
18 a resulting association applies to property that is
19 transferred after a division to a resulting association.

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

22 § 315. Nature of transactions.

23 (a) General rule.--The fact that a sale or conversion of the
24 interests in or assets of an association or a transaction under
25 a particular subchapter produces a result that could be
26 accomplished in any other manner permitted by a different
27 subchapter or other law shall not be a basis for
28 recharacterizing the sale, conversion or transaction as a
29 different form of sale, conversion or transaction under any
30 other subchapter or other law.

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

4 § 324. Approval by limited partnership.

5 (a) Proposal of plan.--[A] Except as provided in the organic
6 rules, a plan shall be proposed in the case of a domestic
7 limited partnership by the adoption by a unanimous vote of the
8 general partners of a resolution approving the plan. Except
9 where the approval of the limited partners is unnecessary under
10 this chapter or the organic rules, the general partners shall
11 submit the plan to a vote of the limited partners entitled to
12 vote thereon at a regular or special meeting of the limited
13 partners.

14 * * *

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

17 (1) A plan shall be adopted upon receiving [a majority
18 of the votes cast by all limited partners, if any, entitled
19 to vote thereon] the affirmative vote or consent of limited
20 partners owning the rights to receive a majority of the
21 distributions as limited partners of each domestic limited
22 partnership that is a party to the proposed transaction under
23 the plan and, if any class of limited partners is entitled to
24 vote thereon as a class, [a majority of the votes cast] the
25 affirmative vote or consent of limited partners owning the
26 rights to receive a majority of the distributions as limited
27 partners in each class vote.

28 (2) A proposed plan [may] shall not be deemed to have
29 been adopted by the limited partnership unless it has also
30 been approved by the general partners, regardless of the fact

1 that the general partners have directed or suffered the
2 submission of the plan to the limited partners for action.

3 * * *

4 § 336. Effect of merger.

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

7 * * *

8 (2) [Each] The separate existence of each merging
9 association that is not the surviving association ceases [to
10 exist].

11 * * *

12 Section 2.1. Section 366(h) of Title 15, added October 22,
13 2014 (P.L.2640, No.172), is amended and the section is amended
14 by adding a subsection to read:

15 § 366. Statement of division; effectiveness.

16 * * *

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

29 [(h)] (i) Cross references.--See sections 134 (relating to
30 docketing statement) and 135 (relating to requirements to be met

1 by filed documents).

2 Section 2.2. Sections 367(a)(2) and (6), 368(J) and 376(f) <--
3 of Title 15, ~~added October 22, 2014 (P.L.2640, No.172)~~, are <--
4 amended to read:

5 § 367. Effect of division.

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

8 * * *

9 (2) If the dividing association is not to survive the
10 division, the separate existence of the dividing association
11 ceases [to exist].

12 * * *

13 (6) The liabilities of the dividing association are
14 allocated between or among the resulting associations as
15 provided in section 368 (relating to allocation of
16 liabilities in division) [.] and the resulting associations to
17 which liabilities are allocated are liable for those
18 liabilities as successors to the dividing association, and
19 not by transfer, whether directly, indirectly or by operation
20 of law.

21 * * *

22 § 368. ALLOCATION OF LIABILITIES IN DIVISION. <--

23 * * *

24 (J) TAXES.--ANY TAXES, INTEREST, PENALTIES AND PUBLIC
25 ACCOUNTS OF THE COMMONWEALTH CLAIMED AGAINST THE DIVIDING
26 ASSOCIATION FOR PERIODS PRIOR TO THE EFFECTIVE DATE OF THE
27 DIVISION THAT ARE SETTLED, ASSESSED OR DETERMINED PRIOR TO OR
28 AFTER THE DIVISION SHALL BE THE LIABILITY OF ALL OF THE
29 RESULTING ASSOCIATIONS AND, TOGETHER WITH INTEREST THEREON,
30 SHALL BE A LIEN AGAINST THE FRANCHISES AND PROPERTY OF EACH

1 RESULTING ASSOCIATION. UPON THE APPLICATION OF THE DIVIDING
2 ASSOCIATION, THE DEPARTMENT OF REVENUE, WITH THE CONCURRENCE OF
3 THE DEPARTMENT OF LABOR AND INDUSTRY, SHALL RELEASE ONE OR MORE,
4 BUT LESS THAN ALL, OF THE RESULTING ASSOCIATIONS FROM LIABILITY
5 AND LIENS FOR ALL TAXES, INTEREST, PENALTIES AND PUBLIC ACCOUNTS
6 OF THE DIVIDING ASSOCIATION DUE THE COMMONWEALTH FOR PERIODS
7 PRIOR TO THE EFFECTIVE DATE OF THE DIVISION IF THOSE DEPARTMENTS
8 ARE SATISFIED THAT THE PUBLIC REVENUES WILL BE ADEQUATELY
9 SECURED.

10 § 376. Effect of domestication.

11 * * *

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

17 * * *

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

20 § 402. Governing law.

21 * * *

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

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

1 § 521. Pensions and allowances.

2 A banking institution [or a savings association] may grant
3 allowances or pensions to officers, directors and employees for
4 faithful and long-continued services and, after the death of the
5 officer, director or employee either while in the service of the
6 corporation or after retirement, pensions or allowances may be
7 granted or continued to their dependents. The allowances to
8 dependents shall be reasonable in amount and paid only for a
9 limited time and, unless part of an employee benefit plan or
10 employment contract in effect at the time of retirement or death
11 of the officer, director or employee, shall not exceed in total
12 the amount of the compensation paid to the officer, director or
13 employee during the 12 months preceding retirement or death.

14 § 522. Indemnification of authorized representatives.

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

18 § 523. Actions by shareholders or members to enforce a
19 secondary right.

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

1 (b) Security for costs.--In any such action instituted or
2 maintained by a holder or holders of less than 5% of the
3 outstanding shares of any class of the corporation or voting
4 trust certificates therefor, or by a member or members of a
5 corporation organized without capital stock which has
6 outstanding contracts or accounts with its members if the value
7 of the contracts or accounts held or owned by the member or
8 members instituting or maintaining the suit is less than 5% of
9 the value of all the contracts or accounts outstanding, the
10 corporation in whose right the action is brought shall be
11 entitled, at any stage of the proceedings, to require the
12 plaintiff or plaintiffs to give security for the reasonable
13 expenses, including attorneys' fees, which may be incurred by
14 [it] the corporation in connection therewith [and] or for which
15 it may become liable pursuant to section 522 (relating to
16 indemnification of authorized representatives) (but only insofar
17 as relates to mandatory indemnification in actions by or in the
18 right of the corporation) to which security the corporation
19 shall have recourse in such amount as the court having
20 jurisdiction shall determine upon the termination of the action.
21 The amount of the security may, from time to time, be increased
22 or decreased in the discretion of the court having jurisdiction
23 of the action upon showing that the security provided has or
24 [may] is likely to become inadequate or excessive. The security
25 may be denied or limited by the court if the court finds after
26 an evidentiary hearing that undue hardship on plaintiffs and
27 serious injustice would result.

28 * * *

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

1 § 1551. Distributions to shareholders.

2 * * *

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

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

10 (2) the total assets of the corporation would be less
11 than the sum of its total liabilities plus (unless otherwise
12 provided in the articles) the amount that would be needed, if
13 the corporation were to be dissolved at the time as of which
14 the distribution is measured, to satisfy the preferential
15 rights upon dissolution of shareholders whose preferential
16 rights are superior to those receiving the distribution.

17 * * *

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

23 * * *

24 Section 5. Sections 1781 and 1782 heading and (c) of Title
25 15 are amended to read:

26 § 1781. [(Reserved).] Derivative action.

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

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

5 (i) if a special litigation committee is not
6 appointed under section 1783 (relating to special
7 litigation committee), the corporation does not bring the
8 action within a reasonable time; or

9 (ii) if a special litigation committee is appointed
10 under section 1783, a determination is made:

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

13 (B) under section 1783(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 1783(f); or

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

20 (b) Prior demand excused.--

21 (1) A demand under subsection (a) (1) is excused only if
22 the plaintiff makes a specific showing that immediate and
23 irreparable harm to the business corporation would otherwise
24 result.

25 (2) If demand is excused under paragraph (1), demand
26 shall be made promptly upon 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 board of directors has decided not to
12 bring an action and not to appoint a special litigation
13 committee; or

14 (ii) of a determination under section 1783(e) after
15 the appointment of a special litigation committee under
16 section 1783; or

17 (2) the plaintiff commences an action asserting the
18 claim.

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

21 § 1782. [Actions against directors and officers] Eligible
22 shareholder plaintiffs and security for costs.

23 * * *

24 (c) Security for costs.--In any action or proceeding
25 instituted or maintained by holders or owners of less than 5% of
26 the outstanding shares of any class of the corporation, unless
27 the shares held or owned by the holders or owners have an
28 aggregate fair market value in excess of \$200,000, the
29 corporation in whose right the action or proceeding is brought
30 shall be entitled at any stage of the proceedings to require the

1 plaintiffs to give security for the reasonable expenses,
2 including attorneys' fees, that may be incurred by [it] the
3 corporation in connection therewith or for which it may become
4 liable pursuant to section 1743 (relating to mandatory
5 indemnification) (but only insofar as relates to actions by or
6 in the right of the corporation) to which security the
7 corporation shall have recourse in such amount as the court
8 determines upon the termination of the action or proceeding. The
9 amount of security may, from time to time, be increased or
10 decreased in the discretion of the court upon showing that the
11 security provided has or [may] is likely to become inadequate or
12 excessive. The security may be denied or limited [in the
13 discretion of] by the court [upon preliminary showing to the
14 court, by application and upon such verified statements and
15 depositions as may be required by the court, establishing prima
16 facie that the requirement of full or partial security would
17 impose] if the court finds after an evidentiary hearing that
18 undue hardship on plaintiffs and serious injustice would result.

19 * * *

20 Section 6. Title 15 is amended by adding sections to read:
21 § 1783. Special litigation committee.

22 (a) General rule.--If a business corporation or the board of
23 directors receives a demand to bring an action to enforce a
24 right of the corporation, or if a derivative action is commenced
25 before demand has been made on the corporation or the board, the
26 board may appoint a special litigation committee to investigate
27 the claims asserted in the demand or action and to determine on
28 behalf of the corporation or recommend to the board whether
29 pursuing any of the claims asserted is in the best interests of
30 the corporation. The corporation shall send a notice in record

1 form to the plaintiff promptly after the appointment of a
2 committee under this section notifying the plaintiff that a
3 committee has been appointed and identifying by name the members
4 of the committee. A committee may not be appointed under this
5 section if every shareholder of the corporation is also a
6 director of the corporation.

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

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

14 (2) The time for the defendants to plead shall be tolled
15 until the process provided for under subsection (f) has been
16 completed.

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

19 (1) are not interested in the claims asserted in the
20 demand or action;

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

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

24 (d) Appointment of committee.--A special litigation
25 committee may be appointed:

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

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

1 (e) Determination.--After appropriate investigation by a
2 special litigation committee, the committee or the board of
3 directors may determine that it is in the best interests of the
4 business corporation that:

5 (1) an action based on some or all of the claims
6 asserted in the demand not be brought by the corporation but
7 that the corporation not object to an action being brought by
8 the party that made the demand;

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

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

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

15 (5) an action already commenced continue under the
16 control of:

17 (i) the plaintiff;

18 (ii) the corporation; or

19 (iii) the committee;

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

22 (7) an action already commenced be dismissed.

23 (f) Court review and action.--If a special litigation
24 committee is appointed and a derivative action is commenced
25 either before or after a determination is made under subsection
26 (e):

27 (1) The business corporation shall file with the court
28 after a determination is made under subsection (e) a
29 statement of the determination and a report of the committee
30 supporting the determination. The corporation shall serve

1 each party with a copy of the determination and report. If
2 the corporation moves to file the report under seal, the
3 report shall be served on the parties subject to an
4 appropriate stipulation agreed to by the parties or a
5 protective order issued by the court.

6 (2) The corporation shall file with the court a motion,
7 pleading or notice consistent with the determination under
8 subsection (e).

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

21 (i) dissolve any stay of discovery entered under
22 subsection (b);

23 (ii) allow the action to continue under the control
24 of the plaintiff; and

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

27 (g) Certain provisions of articles ineffective.--The
28 provisions of this section may not be varied by the articles.
29 § 1784. Proceeds and expenses.

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

1 (1) any proceeds or other benefits of a derivative
2 action, whether by judgment, compromise or settlement, belong
3 to the business corporation and not to the plaintiff; and
4 (2) if the plaintiff or its counsel receives any
5 proceeds, the proceeds shall be remitted immediately to the
6 corporation.

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

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

16 ~~Section 7. Section 4146 of Title 15 is amended to read:~~ <--

17 SECTION 6.1. SECTIONS 1971(A) AND 3301(D) OF TITLE 15 ARE <--

18 AMENDED TO READ:

19 § 1971. VOLUNTARY DISSOLUTION BY SHAREHOLDERS OR INCORPORATORS.

20 (A) GENERAL RULE.--THE SHAREHOLDERS OR INCORPORATORS OF A
21 BUSINESS CORPORATION THAT HAS [NOT COMMENCED BUSINESS] NEVER
22 TRANSACTIONED BUSINESS OR HELD ASSETS OTHER THAN MONEY RECEIVED
23 FROM SUBSCRIPTIONS FOR SHARES MAY EFFECT THE DISSOLUTION OF THE
24 CORPORATION BY FILING ARTICLES OF DISSOLUTION IN THE DEPARTMENT
25 OF STATE. THE ARTICLES OF DISSOLUTION SHALL BE EXECUTED IN THE
26 NAME OF THE CORPORATION BY A MAJORITY OF THE INCORPORATORS OR A
27 MAJORITY IN INTEREST OF THE SHAREHOLDERS AND SHALL SET FORTH:

28 (1) THE NAME OF THE CORPORATION AND, SUBJECT TO SECTION
29 109 (RELATING TO NAME OF COMMERCIAL REGISTERED OFFICE
30 PROVIDER IN LIEU OF REGISTERED ADDRESS), THE ADDRESS,

1 INCLUDING STREET AND NUMBER, IF ANY, OF ITS REGISTERED
2 OFFICE.

3 (2) THE STATUTE UNDER WHICH THE CORPORATION WAS
4 INCORPORATED AND THE DATE OF INCORPORATION.

5 (3) THAT THE CORPORATION HAS [NOT COMMENCED BUSINESS]
6 NEVER TRANSACTED BUSINESS OR HELD ASSETS OTHER THAN MONEY
7 RECEIVED FROM SUBSCRIPTIONS FOR SHARES.

8 (4) THAT THE AMOUNT, IF ANY, ACTUALLY PAID IN ON
9 SUBSCRIPTIONS FOR ITS SHARES, LESS ANY PART THEREOF DISBURSED
10 FOR NECESSARY EXPENSES, HAS BEEN RETURNED TO THOSE ENTITLED
11 THERETO.

12 (5) THAT ALL LIABILITIES OF THE CORPORATION HAVE BEEN
13 DISCHARGED OR THAT ADEQUATE PROVISION HAS BEEN MADE THEREFOR.

14 (6) THAT A MAJORITY OF THE INCORPORATORS OR A MAJORITY
15 IN INTEREST OF THE SHAREHOLDERS ELECT THAT THE CORPORATION BE
16 DISSOLVED.

17 * * *

18 § 3301. APPLICATION AND EFFECT OF CHAPTER.

19 * * *

20 (D) ORGANIC [RECORDS] RULES MAY NOT BE INCONSISTENT.--A
21 PROVISION OF THE ARTICLES OR BYLAWS OF A BENEFIT CORPORATION MAY
22 NOT RELAX, BE INCONSISTENT WITH OR SUPERSEDE ANY PROVISION OF
23 THIS CHAPTER.

24 SECTION 6.2. THE DEFINITIONS OF "BENEFIT CORPORATION,"
25 "INDEPENDENT," "MINIMUM STATUS VOTE" AND "SUBSIDIARY" IN SECTION
26 3302 OF TITLE 15 ARE AMENDED TO READ:

27 § 3302. DEFINITIONS.

28 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
29 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
30 CONTEXT CLEARLY INDICATES OTHERWISE:

1 "BENEFIT CORPORATION." A BUSINESS CORPORATION THAT [HAS
2 ELECTED TO BECOME] IS SUBJECT TO THIS CHAPTER [AND WHOSE STATUS
3 AS A BENEFIT CORPORATION HAS NOT BEEN TERMINATED].

4 * * *

5 "INDEPENDENT." WHEN A PERSON HAS NO MATERIAL RELATIONSHIP
6 WITH A BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES, OTHER
7 THAN THE RELATIONSHIP OF SERVING AS THE BENEFIT DIRECTOR OR
8 BENEFIT OFFICER. A MATERIAL RELATIONSHIP BETWEEN AN INDIVIDUAL
9 AND A BENEFIT CORPORATION OR ANY OF ITS SUBSIDIARIES WILL BE
10 CONCLUSIVELY PRESUMED TO EXIST IF:

11 (1) THE PERSON IS OR HAS BEEN WITHIN THE LAST THREE
12 YEARS AN EMPLOYEE OF THE BENEFIT CORPORATION OR ANY OF ITS
13 SUBSIDIARIES, OTHER THAN AS A BENEFIT OFFICER;

14 (2) AN IMMEDIATE FAMILY MEMBER OF THE PERSON IS OR HAS
15 BEEN WITHIN THE LAST THREE YEARS AN EXECUTIVE OFFICER, OTHER
16 THAN A BENEFIT OFFICER, OF THE BENEFIT CORPORATION OR ANY OF
17 ITS SUBSIDIARIES; OR

18 (3) THE PERSON, OR AN ASSOCIATION OF WHICH THE PERSON IS
19 A [DIRECTOR, OFFICER OR OTHER MANAGER] GOVERNOR OR OFFICER
20 OR IN WHICH THE PERSON OWNS BENEFICIALLY OR OF RECORD 5% OR
21 MORE OF THE OUTSTANDING [EQUITY] INTERESTS, OWNS BENEFICIALLY
22 OR OF RECORD 5% OR MORE OF THE OUTSTANDING SHARES OF THE
23 BENEFIT CORPORATION. THE PERCENTAGE OF OWNERSHIP IN AN
24 ASSOCIATION SHALL BE CALCULATED AS IF ALL OUTSTANDING RIGHTS
25 TO ACQUIRE [EQUITY] INTERESTS IN THE ASSOCIATION HAD BEEN
26 EXERCISED.

27 "MINIMUM STATUS VOTE." AS FOLLOWS:

28 (1) IN THE CASE OF A BUSINESS CORPORATION, IN ADDITION
29 TO ANY OTHER REQUIRED APPROVAL OR VOTE, THE SATISFACTION OF
30 THE FOLLOWING CONDITIONS:

1 (I) THE SHAREHOLDERS OF EVERY CLASS OR SERIES MUST
2 BE ENTITLED, AS A CLASS, TO VOTE ON THE CORPORATE ACTION
3 REGARDLESS OF A LIMITATION STATED IN THE ARTICLES OF
4 INCORPORATION OR BYLAWS ON THE VOTING RIGHTS OF ANY CLASS
5 OR SERIES.

6 (II) THE CORPORATE ACTION MUST BE APPROVED BY A VOTE
7 OF THE SHAREHOLDERS OF EACH CLASS OR SERIES ENTITLED TO
8 CAST AT LEAST TWO-THIRDS OF THE VOTES THAT ALL
9 SHAREHOLDERS OF THE CLASS OR SERIES ARE ENTITLED TO CAST
10 ON THE ACTION.

11 (2) IN THE CASE OF A DOMESTIC ASSOCIATION OTHER THAN A
12 BUSINESS CORPORATION, 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 [EQUITY]
16 INTEREST IN THE ASSOCIATION THAT ARE ENTITLED TO RECEIVE
17 A 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 * * *

26 "SUBSIDIARY." AN ASSOCIATION IN WHICH A PERSON OWNS
27 BENEFICIALLY OR OF RECORD 50% OR MORE OF THE OUTSTANDING
28 [EQUITY] INTERESTS. THE PERCENTAGE OF OWNERSHIP IN AN
29 ASSOCIATION SHALL BE CALCULATED AS IF ALL OUTSTANDING RIGHTS TO
30 ACQUIRE [EQUITY] INTERESTS IN THE ASSOCIATION HAD BEEN

1 EXERCISED.

2 * * *

3 SECTION 7. SECTIONS 3321(C), 3322(E), 3323(C), 3325(B) AND
4 4146 OF TITLE 15 ARE AMENDED TO READ:

5 § 3321. STANDARD OF CONDUCT FOR DIRECTORS.

6 * * *

7 (C) EXONERATION FROM PERSONAL LIABILITY.--

8 (1) A DIRECTOR SHALL NOT BE PERSONALLY LIABLE, AS SUCH,
9 FOR MONETARY DAMAGES FOR ANY ACTION TAKEN AS A DIRECTOR [IF
10 THE DIRECTOR PERFORMED THE DUTIES OF HIS OR HER OFFICE IN
11 COMPLIANCE WITH SECTION 1712 AND THIS SECTION.] IN THE COURSE
12 OF PERFORMING THE DUTIES SPECIFIED IN SUBSECTION (A) UNLESS
13 THE ACTION CONSTITUTES SELF-DEALING, WILLFUL MISCONDUCT OR A
14 KNOWING VIOLATION OF LAW.

15 (2) A DIRECTOR SHALL NOT BE PERSONALLY LIABLE FOR
16 MONETARY DAMAGES FOR FAILURE OF THE BENEFIT CORPORATION TO
17 PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC
18 BENEFIT.

19 * * *

20 § 3322. BENEFIT DIRECTOR.

21 * * *

22 [(E) ALTERNATIVE GOVERNANCE ARRANGEMENTS.--

23 (1) THE BYLAWS OF A BENEFIT CORPORATION MUST PROVIDE
24 THAT THE PERSONS OR SHAREHOLDERS WHO PERFORM THE DUTIES OF
25 THE BOARD OF DIRECTORS INCLUDE A PERSON WITH THE POWERS,
26 DUTIES, RIGHTS AND IMMUNITIES OF A BENEFIT DIRECTOR IF ANY OF
27 THE FOLLOWING APPLY:

28 (I) THE BYLAWS OF A BENEFIT CORPORATION PROVIDE THAT
29 THE POWERS AND DUTIES CONFERRED OR IMPOSED UPON THE BOARD
30 OF DIRECTORS SHALL BE EXERCISED OR PERFORMED BY A PERSON

1 OTHER THAN THE DIRECTORS UNDER SECTION 1721(A) (RELATING
2 TO BOARD OF DIRECTORS).

3 (II) THE BYLAWS OF A STATUTORY CLOSE CORPORATION
4 THAT IS A BENEFIT CORPORATION PROVIDE THAT THE BUSINESS
5 AND AFFAIRS OF THE CORPORATION SHALL BE MANAGED BY OR
6 UNDER THE DIRECTION OF THE SHAREHOLDERS.

7 (2) A PERSON THAT EXERCISES ONE OR MORE OF THE POWERS,
8 DUTIES OR RIGHTS OF A BENEFIT DIRECTOR UNDER THIS SUBSECTION:

9 (I) DOES NOT NEED TO BE INDEPENDENT OF THE BENEFIT
10 CORPORATION;

11 (II) SHALL HAVE THE IMMUNITIES OF A BENEFIT
12 DIRECTOR;

13 (III) MAY SHARE THE POWERS, DUTIES AND RIGHTS OF A
14 BENEFIT DIRECTOR WITH ONE OR MORE OTHER PERSONS; AND

15 (IV) SHALL NOT BE SUBJECT TO THE PROCEDURES FOR
16 ELECTION OR REMOVAL OF DIRECTORS IN SUBCHAPTER C OF
17 CHAPTER 17 UNLESS:

18 (A) THE PERSON IS ALSO A DIRECTOR OF THE BENEFIT
19 CORPORATION; OR

20 (B) THE BYLAWS MAKE THOSE PROCEDURES
21 APPLICABLE.]

22 * * *

23 § 3323. STANDARD OF CONDUCT FOR OFFICERS.

24 * * *

25 (C) EXONERATION FROM PERSONAL LIABILITY.--

26 (1) AN OFFICER SHALL NOT BE PERSONALLY LIABLE, AS SUCH,
27 FOR MONETARY DAMAGES FOR ANY ACTION TAKEN AS AN OFFICER [IF
28 THE OFFICER PERFORMED THE DUTIES OF THE POSITION IN
29 COMPLIANCE WITH SECTION 1712(C) AND THIS SECTION.] IN THE
30 COURSE OF PERFORMING THE DUTIES SPECIFIED IN SUBSECTION (A)

1 UNLESS THE ACTION CONSTITUTES SELF-DEALING, WILLFUL
2 MISCONDUCT OR A KNOWING VIOLATION OF LAW.

3 (2) AN OFFICER SHALL NOT BE PERSONALLY LIABLE FOR
4 MONETARY DAMAGES FOR FAILURE OF THE BENEFIT CORPORATION TO
5 PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC
6 BENEFIT.

7 * * *

8 § 3325. RIGHT OF ACTION.

9 * * *

10 (B) PARTIES WITH STANDING.--A BENEFIT ENFORCEMENT PROCEEDING
11 MAY BE COMMENCED OR MAINTAINED ONLY:

12 (1) DIRECTLY BY THE BENEFIT CORPORATION; OR

13 (2) DERIVATIVELY BY:

14 (I) A SHAREHOLDER THAT OWNED AT LEAST 2% OF THE
15 TOTAL NUMBER OF SHARES OF A CLASS OR SERIES OUTSTANDING
16 AT THE TIME OF THE ACT COMPLAINED OF;

17 (II) A DIRECTOR;

18 (III) A PERSON OR GROUP OF PERSONS THAT OWNS
19 BENEFICIALLY OR OF RECORD 5% OR MORE OF THE [EQUITY]
20 INTERESTS IN AN ASSOCIATION OF WHICH THE BENEFIT
21 CORPORATION IS A SUBSIDIARY AT THE TIME OF THE ACT
22 COMPLAINED OF; OR

23 (IV) SUCH OTHER PERSONS AS MAY BE SPECIFIED IN THE
24 ARTICLES OR BYLAWS OF THE BENEFIT CORPORATION.

25 * * *

26 § 4146. Provisions applicable to all foreign corporations.

27 The following provisions of this subpart shall, except as
28 otherwise provided in this section, be applicable to every
29 foreign corporation for profit, whether or not required to
30 [procure a certificate of authority under this chapter] register

1 under Chapter 4 (relating to foreign associations):

2 Section 1503 (relating to defense of ultra vires), as to
3 contracts and conveyances governed by the laws of this
4 Commonwealth and conveyances affecting real property situated in
5 this Commonwealth.

6 Section 1506 (relating to form of execution of instruments),
7 as to instruments or other documents governed by the laws of
8 this Commonwealth or affecting real property situated in this
9 Commonwealth.

10 Section 1510 (relating to certain specifically authorized
11 debt terms), as to obligations (as defined in the section)
12 governed by the laws of this Commonwealth or affecting real
13 property situated in this Commonwealth.

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

18 Subchapter F of Chapter 25 (relating to business
19 combinations), to the extent provided in section 2551(c)
20 (relating to continuing applicability).

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

23 § 5103. Definitions.

24 (a) General definitions.--Subject to additional definitions
25 contained in subsequent provisions of this subpart that are
26 applicable to specific provisions of this subpart, the following
27 words and phrases when used in this subpart shall have the
28 meanings given to them in this section unless the context
29 clearly indicates otherwise:

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 Section 9. Title 15 is amended by adding a section to read:
10 § 5781. Derivative action.

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

15 (1) the plaintiff first makes a demand on the
16 corporation or the board of directors, requesting that it
17 cause the corporation to bring an action to enforce the
18 right, and:

19 (i) if a special litigation committee is not
20 appointed under section 5783 (relating to special
21 litigation committee), the corporation does not bring the
22 action within a reasonable time; or

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

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

27 (B) under section 5783(e) (5) (i) that the
28 plaintiff continue the action;

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

30 (3) the action is maintained for the limited purpose of

1 seeking court review under section 5783(f); or

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

4 (b) Prior demand excused.--

5 (1) A demand under subsection (a)(1) is excused only if
6 the member makes a specific showing that immediate and
7 irreparable harm to the nonprofit corporation would otherwise
8 result.

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

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

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

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

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

25 (i) that the board of directors has decided not to
26 bring an action and not to appoint a special litigation
27 committee; or

28 (ii) of a determination under section 5783(e) after
29 the appointment of a special litigation committee under
30 section 5783; or

1 (2) the plaintiff commences an action asserting the
2 claim.

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

5 § 5782. [Actions against directors, members of an other body
6 and officers] Eligible member plaintiffs and
7 security for costs.

8 * * *

9 (c) Security for costs.--In any action or proceeding
10 instituted or maintained by less than the smaller of 50 members
11 of any class or 5% of the members of any class of the
12 corporation, the corporation in whose right the action or
13 proceeding is brought shall be entitled at any stage of the
14 proceedings to require the plaintiffs to give security for the
15 reasonable expenses, including attorney fees, that may be
16 incurred by [it] the corporation in connection therewith or for
17 which it may become liable pursuant to section 5743 (relating to
18 mandatory indemnification), but only insofar as relates to
19 actions by or in the right of the corporation, to which security
20 the corporation shall have recourse in such amount as the court
21 determines upon the termination of the action or proceeding. The
22 amount of security may from time to time be increased or
23 decreased in the discretion of the court upon showing that the
24 security provided has or [may] is likely to become inadequate or
25 excessive. The security may be denied or limited [in the
26 discretion of] by the court [upon preliminary showing to the
27 court, by application and upon such verified statements and
28 depositions as may be required by the court, establishing prima
29 facie that the requirement of full or partial security would
30 impose] if the court finds after an evidentiary hearing that

1 undue hardship on plaintiffs and serious injustice would result.

2 * * *

3 Section 11. Title 15 is amended by adding sections to read:
4 § 5783. Special litigation committee.

5 (a) General rule.--If a nonprofit corporation or the board
6 of directors receives a demand to bring an action to enforce a
7 right of the corporation, or if a derivative action is commenced
8 before demand has been made on the corporation or the board, the
9 board may appoint a special litigation committee to investigate
10 the claims asserted in the demand or action and to determine on
11 behalf of the corporation or recommend to the board whether
12 pursuing any of the claims asserted is in the best interests of
13 the corporation. The corporation shall send a notice in record
14 form to the plaintiff promptly after the appointment of a
15 committee under this section notifying the plaintiff that a
16 committee has been appointed and identifying by name the members
17 of the committee.

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

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

25 (2) The time for the defendants to plead shall be tolled
26 until the process provided for under subsection (f) has been
27 completed.

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

30 (1) are not interested in the claims asserted in the

1 demand or action;

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

4 (3) may, but need not, be members, directors or members
5 of another AN OTHER body. <--

6 (d) Appointment of committee.--A special litigation
7 committee may be appointed:

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

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

12 (i) the members of another AN OTHER body not named <--
13 as parties in the proceeding if the other body has the
14 authority to appoint a special litigation committee; or

15 (ii) the directors so named.

16 (e) Determination.--After appropriate investigation by a
17 special litigation committee, the committee or the board of
18 directors may determine that it is in the best interests of the
19 nonprofit corporation that:

20 (1) an action based on some or all of the claims
21 asserted in the demand not be brought by the corporation but
22 that the corporation not object to an action being brought by
23 the party that made the demand;

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

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

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

30 (5) an action already commenced continue under the

1 control of:

2 (i) the plaintiff;

3 (ii) the corporation; or

4 (iii) the committee;

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

7 (7) an action already commenced be dismissed.

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

11 (1) The nonprofit corporation shall file with the court
12 after a determination is made under subsection (e) a
13 statement of the determination and a report supporting the
14 determination. The corporation shall serve each party with a
15 copy of the determination and report. If the corporation
16 moves to file the report under seal, the report shall be
17 served on the parties subject to an appropriate stipulation
18 agreed to by the parties or a protective order issued by the
19 court.

20 (2) The corporation shall file with the court a motion,
21 pleading or notice consistent with the determination under
22 subsection (e).

23 (3) If the determination is one described in subsection
24 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall
25 determine whether the members of the committee met the
26 qualifications required under subsection (c) (1) and (2) and
27 whether the committee conducted its investigation and made
28 its recommendation in good faith, independently and with
29 reasonable care. If the court finds that the members of the
30 committee met the qualifications required under subsection

1 (c) (1) and (2) and that the committee acted in good faith,
2 independently and with reasonable care, the court shall
3 enforce the determination of the committee. Otherwise, the
4 court shall:

5 (i) dissolve any stay of discovery entered under
6 subsection (b);

7 (ii) allow the action to continue under the control
8 of the plaintiff; and

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

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

14 § 5784. Proceeds and expenses.

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

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

19 (2) if the plaintiff or its counsel receives any
20 proceeds, the proceeds shall be remitted IMMEDIATELY to the <--
21 corporation.

22 (b) Expenses.--If a derivative action is successful in whole
23 or in part, the court may award the plaintiff reasonable
24 expenses, including reasonable attorney fees and costs, from the
25 recovery of the nonprofit corporation, but in no event shall the
26 attorney fees awarded exceed a reasonable proportion of the
27 value of the relief, including nonpecuniary relief, obtained by
28 the plaintiff for the corporation.

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

1 § 6146. Provisions applicable to all foreign corporations.

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

7 Section 5503 (relating to defense of ultra vires) as to
8 contracts and conveyances governed by the laws of this
9 Commonwealth and conveyances affecting real property situated in
10 this Commonwealth.

11 Section 5506 (relating to form of execution of instruments)
12 as to instruments or other documents governed by the laws of
13 this Commonwealth or affecting real property situated in this
14 Commonwealth.

15 Section 5510 (relating to certain specifically authorized
16 debt terms) as to obligations (as defined in the section)
17 governed by the laws of this Commonwealth or affecting real
18 property situated in this Commonwealth.

19 Section 5782 (relating to [actions against directors, members
20 of an other body and officers] eligible member plaintiffs and
21 security for costs) as to any derivative action [or proceeding]
22 brought in a court of this Commonwealth.

23 § 8102. Interchangeability of partnership, limited liability
24 company and corporate forms of organization.

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

28 (1) Any business that may be conducted in a corporate
29 form may also be conducted as a partnership or a limited
30 liability company.

1 (2) A domestic or foreign partnership or limited
2 liability company may exercise any right, power, franchise or
3 privilege that a domestic or foreign corporation engaged in
4 the same line of business might exercise under the laws of
5 this Commonwealth, including powers conferred by section 1511
6 (relating to additional powers of certain public utility
7 corporations) or other provisions of law granting the right
8 to a duly authorized corporation to take or occupy property
9 and make compensation therefor.

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

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

13 (2) [Apply to a banking institution, credit union,
14 insurance corporation or savings association,] Authorize
15 acting as a banking institution, credit union or insurer
16 unless the laws relating thereto or this part expressly
17 [contemplate] permit the conduct of the regulated business in
18 partnership or limited liability company form. See [section
19 8911 (relating to purposes).] sections 8620(b) (relating to
20 characteristics of limited partnership) and 8818(b) (relating
21 to characteristics of limited liability company).

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

26 § 8105. Ownership of certain professional partnerships and
27 limited liability companies.

28 (a) General rule.--Except as otherwise provided by statute,
29 rule or regulation applicable to a particular profession, all of
30 the ultimate beneficial owners of the [partnership] interests in

1 a [partnership that renders one or more restricted professional
2 services shall] general partnership, limited partnership,
3 electing partnership or limited liability company, and all of
4 the governors of the entity, must be licensed persons[. As used
5 in this section, the term "restricted professional services"
6 shall have the meaning specified in section 8903 (relating to
7 definitions and index of definitions).] in the profession the
8 entity practices if the entity renders any of the following
9 professional services:

- 10 (1) chiropractic;
11 (2) dentistry;
12 (3) law;
13 (4) medicine and surgery;
14 (5) optometry;
15 (6) osteopathic medicine and surgery;
16 (7) podiatric medicine;
17 (8) public accounting;
18 (9) psychology; or
19 (10) veterinary medicine.

20 (b) Transitional provision.--Subsection (a) shall not apply
21 to a person that holds only a transferable interest that was
22 acquired before [the Legislative Reference Bureau shall insert
23 here the effective date of this act].

24 Section 13. Title 15 is amended by adding a section to read:
25 § 8106. Failure to observe formalities.

26 The failure of a limited liability partnership, limited
27 partnership, limited liability limited partnership, electing
28 partnership or limited liability company to observe formalities
29 relating to the exercise of its powers or management of its
30 activities and affairs is not a ground for imposing liability on

1 a partner, member or manager of the entity for a debt,
2 obligation or other liability of the entity.

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

5 CHAPTER 82
6 [REGISTERED] LIMITED LIABILITY PARTNERSHIPS AND
7 LIMITED LIABILITY LIMITED PARTNERSHIPS

8 Section 15. Chapter 82 Subchapter A heading of Title 15 is
9 amended to read:

10 SUBCHAPTER A
11 DOMESTIC [REGISTERED]
12 LIMITED LIABILITY PARTNERSHIPS AND
13 LIMITED LIABILITY LIMITED PARTNERSHIPS

14 Section 16. Section 8201 of Title 15 is amended to read:
15 § 8201. Scope.

16 (a) Application of subchapter.--This subchapter applies to a
17 general or limited partnership whose internal affairs are
18 governed by or that is formed under the laws of this
19 Commonwealth and that registers under this section. Any
20 partnership that desires to register under this subchapter or to
21 amend or terminate its registration shall [file in] deliver to
22 the Department of State for filing a statement of registration,
23 amendment or termination, as the case may be, which shall be
24 signed by a general partner and shall set forth:

25 (1) The name of the partnership.

26 (2) Either:

27 (i) the address of the principal place of business
28 of the partnership, in the case of a general partnership;
29 or

30 (ii) subject to section 109 (relating to name of

1 commercial registered office provider in lieu of
2 registered address), the address, including street and
3 number, if any, of the registered office of the
4 partnership, in the case of a limited partnership.

5 (3) A statement that the partnership registers under
6 this subchapter or that the registration of the partnership
7 under this subchapter shall be amended or terminated, as the
8 case may be. If the statement relates to an amendment, the
9 amendment shall restate in full the statement of
10 registration.

11 (4) A statement that:

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

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

17 (b) Effect of filing.--Upon the filing of the statement of
18 registration, amendment or termination in the department, the
19 registration under this subchapter shall be effective, amended
20 or terminated, as the case may be. The effectiveness, amendment
21 or termination of the registration of a partnership under this
22 subchapter shall not be deemed to cause a dissolution of the
23 partnership.

24 (c) Effect of registration.--As long as the registration
25 under this subchapter is in effect, the partnership shall be
26 governed by the provisions of this subchapter and, to the extent
27 not inconsistent with this subchapter, Chapter [83] 84 (relating
28 to general partnerships) [and, if a limited partnership, in
29 addition, Chapter 85] or 86 (relating to limited partnerships).
30 Without limiting the generality of the foregoing, a domestic or

1 foreign [registered] limited liability partnership or limited
2 liability limited partnership shall be treated the same as if it
3 were not registered under this subchapter for purposes of:

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

6 (2) the imposition by the Commonwealth or any political
7 subdivision of any tax or license fee on or with respect to
8 any income, property, privilege, transaction, subject or
9 occupation.

10 (d) Continuation of registration.--If a [registered] limited
11 liability partnership or limited liability limited partnership
12 is dissolved and its business is continued without liquidation
13 of the partnership affairs, the registration under this
14 subchapter of the dissolved partnership shall continue to be
15 applicable to the partnership continuing the business, and it
16 shall not be necessary to make a new filing under this section
17 until such time, if any, as the registration is to be amended or
18 terminated.

19 (e) Prohibited termination.--A registration under this
20 subchapter may not be terminated while the partnership is a
21 [bankrupt as that term is defined in section 8903 (relating to
22 definitions and index of definitions)] debtor in bankruptcy. See
23 section 8221(f) (relating to annual registration).

24 (f) Alternative procedure.--In lieu of filing a statement of
25 registration as provided in subsection (a), a limited
26 partnership may register as a [registered] limited liability
27 limited partnership by including in its certificate of limited
28 partnership, either originally or by amendment, the statements
29 required by subsection (a) (3) and (4). To terminate its
30 registration, a limited partnership that uses the procedure

1 authorized by this subsection shall amend its certificate of
2 limited partnership to delete the statements required by this
3 subsection.

4 (g) Constructive notice.--[Filing] Registration under this
5 section shall constitute constructive notice that the
6 partnership is a [registered] limited liability partnership or
7 limited liability limited partnership and that the partners are
8 entitled to the protections from liability provided by this
9 subchapter.

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

14 (i) Cross references.--See sections 134 (relating to
15 docketing statement) and 135 (relating to requirements to be met
16 by filed documents).

17 Section 17. The definitions of "foreign registered limited
18 liability partnership," "partner" and "registered limited
19 liability partnership" or "domestic registered limited liability
20 partnership" in section 8202 are amended and the section is
21 amended by adding a definition to read:

22 § 8202. Definitions.

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

26 "Distribution." A transfer of money or other property from a
27 limited liability partnership to a person on account of a
28 transferable interest or in a person's capacity as a partner.

29 The term:

30 (1) includes:

1 (i) a redemption or other purchase by a partnership
2 of a transferable interest; and

3 (ii) a transfer to a partner in return for the
4 partner's relinquishment of any right to participate as a
5 partner in the management or conduct of the partnership's
6 business or to have access to records or other
7 information concerning the partnership's business; and

8 (2) does not include:

9 (i) amounts constituting reasonable compensation for
10 present or past service or payments made in the ordinary
11 course of business under a bona fide retirement plan or
12 other bona fide benefits program;

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

16 (iii) a direct or indirect allocation or transfer
17 effected under Chapter 3 (relating to entity
18 transactions) with the approval of the partners; or

19 (iv) a direct or indirect transfer of:

20 (A) a governance or transferable interest; or

21 (B) options, rights or warrants to acquire a
22 governance or transferable interest.

23 ["Foreign registered limited liability partnership." A
24 partnership that has registered under a law of any jurisdiction
25 other than this Commonwealth similar to this subchapter, whether
26 or not the partnership is required to register under section
27 8211 (relating to foreign registered limited liability
28 partnerships).]

29 "Partner." Includes a person who is or was a partner in a
30 [registered] limited liability partnership or a general partner

1 in a limited liability limited partnership at any time while the
2 registration of the partnership under this subchapter is or was
3 in effect.

4 ["Registered limited liability partnership" or "domestic
5 registered limited liability partnership." A partnership as to
6 which a registration under section 8201(a) (relating to scope)
7 is in effect.]

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

9 § 8204. Limitation on liability of partners.

10 (a) General rule.--Except as provided in subsection (b), a
11 partner in a [registered] limited liability partnership or
12 limited liability limited partnership shall not be
13 [individually] liable directly or indirectly, whether by way of
14 indemnification, contribution, ~~assessment~~ or otherwise, [for <--
15 debts and obligations] under an order of court or in any other
16 manner for any debts, obligations or other liabilities of, or
17 chargeable to, the partnership, whether sounding in contract or
18 tort or otherwise, that arise [from any negligent or wrongful
19 acts or misconduct committed by another partner or other
20 representative of the partnership] while the registration of the
21 partnership under this subchapter is in effect.

22 (b) Exceptions.--

23 (2) Subsection (a) shall not affect the liability of a
24 partner:

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

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

30 [(A) arising from any cause other than those

1 specified in subsection (a); or]

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

4 (C) that:

5 (I) arose before [the Legislative Reference
6 Bureau shall insert here the effective date of
7 this clause]; and

8 (II) did not arise from any negligent or
9 wrongful acts or misconduct committed by a
10 partner or other representative of the
11 partnership.

12 (iii) To the extent expressly undertaken in the
13 partnership agreement or the certificate of limited
14 partnership.

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

16 (i) the liability of the partnership itself for all
17 its debts [and obligations], obligations and other
18 liabilities;

19 (ii) the availability of the entire assets of the
20 partnership to satisfy its debts [and obligations],
21 obligations and other liabilities; or

22 (iii) any obligation undertaken by a partner in
23 [writing] record form to individually indemnify another
24 partner of the partnership or to individually contribute
25 toward a liability of another partner.

26 (c) Continuation of limited liability.--Neither the
27 termination of the registration of a partnership under this
28 subchapter nor the dissolution, winding up or termination of the
29 partnership shall affect the limitation on the liability of a
30 partner in the partnership under this section with respect to

1 [negligent or wrongful acts or misconduct occurring] debts,
2 obligations and other liabilities that arose while the
3 registration under this subchapter was in effect.

4 (d) Proper parties.--A partner in a limited liability
5 partnership or limited liability limited partnership is not a
6 proper party to an action or proceeding by or against the
7 partnership, the object of which is to recover damages or
8 enforce debts, obligations or other liabilities for which the
9 partner is not liable.

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

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

13 [§ 8205. Liability of withdrawing partner.

14 (a) General rule.--Except as provided in subsection (b), if
15 the business of a registered limited liability partnership is
16 continued without liquidation of the partnership affairs
17 following the dissolution of the partnership as a result of the
18 withdrawal for any reason of a partner, the withdrawing partner
19 shall not be individually liable directly or indirectly, whether
20 by way of indemnification, contribution or otherwise, for the
21 debts and obligations of either the dissolved partnership or any
22 partnership continuing the business if a statement of withdrawal
23 is filed as provided in this section.

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

26 (1) Individually for any negligent or wrongful acts or
27 misconduct committed by him or by any person under his direct
28 supervision and control.

29 (2) For any debts or obligations of the partnership as
30 to which the withdrawing partner has agreed in writing to be

1 liable.

2 (3) To the partnership for damages if the partnership
3 agreement prohibits the withdrawal of the partner or the
4 withdrawal otherwise violates the partnership agreement.

5 (4) Under section 8334 (relating to partner accountable
6 as fiduciary).

7 (5) To the extent a debt or obligation of the
8 partnership has been expressly undertaken by the partner in
9 the partnership agreement or the certificate of limited
10 partnership.

11 (6) If the partnership subsequently dissolves within one
12 year after the date of withdrawal of the partner and the
13 business of the partnership is not continued following such
14 subsequent dissolution. This paragraph shall not be
15 applicable in the case of a withdrawal caused by:

16 (i) the death of the partner; or

17 (ii) the retirement of the partner pursuant to a
18 retirement policy of the dissolved partnership that has
19 been in effect prior to the retirement of the partner for
20 the shorter of one year or the period that the
21 partnership has been in existence.

22 (7) For any obligation undertaken by a partner in
23 writing to individually indemnify another partner of the
24 partnership or to individually contribute toward a liability
25 of another partner.

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

29 (1) The name of the registered limited liability
30 partnership.

1 (2) The name of the withdrawing partner.

2 (d) Filing and effectiveness.--The statement of withdrawal
3 shall be filed in the Department of State and shall be effective
4 upon filing. The withdrawing partner shall send a copy of the
5 filed statement of withdrawal to the registered limited
6 liability partnership.

7 (e) Permissive filing.--Filing under this section is
8 permissive, and failure to make a filing under this section by a
9 partner entitled to do so shall not affect the right of that
10 partner to the limitation on liability provided by section 8204
11 (relating to limitation on liability of partners).

12 (f) Constructive notice.--Filing under this section shall
13 constitute constructive notice that the partner has withdrawn
14 from the partnership and is entitled to the protection from
15 liability provided by this section.

16 (g) Variation of section.--A written provision of the
17 partnership agreement may restrict or condition the application
18 of this section to some or all of the partners of the
19 partnership.

20 (h) Application of section.--A partner in a foreign
21 registered limited liability partnership, regardless of whether
22 or not it has registered to do business in this Commonwealth
23 under section 8211 (relating to foreign registered limited
24 liability partnerships), shall not be entitled to make a filing
25 under this section with regard to that partnership.

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

29 Section 20. Section 8207 of Title 15 is amended to read:
30 § 8207. Extraterritorial application of subchapter.

1 [(a) Legislative intent.--It is the intent of the General
2 Assembly in enacting this subchapter that the legal existence of
3 registered limited liability partnerships organized in this
4 Commonwealth be recognized outside the boundaries of this
5 Commonwealth and that, subject to any reasonable requirement of
6 registration, a domestic registered limited liability
7 partnership transacting business outside this Commonwealth be
8 granted protection of full faith and credit under the
9 Constitution of the United States.]

10 (b) Basis for determining liability of partners.--The
11 liability of partners in a [registered] domestic limited
12 liability partnership or domestic limited liability limited
13 partnership shall at all times be determined under Chapters [83]
14 84 (relating to general partnerships) and [85] 86 (relating to
15 limited partnerships) as modified by the provisions of this
16 subchapter.

17 (c) Conflict of laws.--The personal liability of a partner
18 of a [registered] domestic limited liability partnership or
19 domestic limited liability limited partnership to any person or
20 in any action or proceeding for the debts, obligations or other
21 liabilities of the partnership or for the acts or omissions of
22 other partners or representatives of the partnership shall be
23 governed solely and exclusively by the laws of this
24 Commonwealth. Whenever a conflict arises between the laws of
25 this Commonwealth and the laws of any other state with regard to
26 the liability of partners of a [registered] domestic limited
27 liability partnership [registered under this subchapter] or
28 domestic limited liability limited partnership for the debts,
29 obligations and other liabilities of the partnership or for the
30 acts or omissions of the other partners or representatives of

1 the partnership, the laws of this Commonwealth shall govern in
2 determining such liability.

3 Section 21. Subchapter B of Chapter 82 of Title 15 is
4 repealed:

5 [SUBCHAPTER B
6 FOREIGN REGISTERED
7 LIMITED LIABILITY PARTNERSHIPS

8 § 8211. Foreign registered limited liability partnerships.

9 (a) Governing law.--Subject to the Constitution of
10 Pennsylvania:

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

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

18 (c) Exception.--The liability of the partners in a foreign
19 registered limited liability partnership shall be governed by
20 the laws of the jurisdiction under which it is organized, except
21 that the partners shall not be entitled to greater protection
22 from liability than is available to the partners in a domestic
23 registered limited liability partnership.]

24 Section 22. Section 8221 of Title 15 is amended to read:

25 § 8221. Annual registration.

26 (a) General rule.--Every domestic [registered] limited
27 liability partnership or limited liability limited partnership
28 in existence on December 31 of any year and every foreign
29 [registered] limited liability partnership or limited liability
30 limited partnership that is registered to do business in this

1 Commonwealth on December 31 of any year shall [file in] deliver
2 to the Department of State for filing with respect to that year,
3 and on or before April 15 of the following year, a certificate
4 of annual registration on a form provided by the department,
5 signed by a general partner and accompanied by the annual
6 registration fee prescribed by subsection (b). The department
7 shall not charge a fee other than the annual registration fee
8 for filing the certificate of annual registration.

9 (b) Annual registration fee.--

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

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

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

21 (2) The base fee of \$200 shall be increased on December
22 31, 1997, and December 31 of every third year thereafter by
23 the percentage increase in the Consumer Price Index for Urban
24 Workers during the most recent three calendar years for which
25 that index is available on the date of adjustment. Each
26 adjustment under this paragraph shall be rounded up to the
27 nearest \$10.

28 (c) Notice of annual registration.--Not later than February
29 1 of each year, the department shall give notice to every
30 partnership required to file a certificate of annual

1 registration with respect to the preceding year of the
2 requirement to file the certificate. The notice shall state the
3 amount of the base fee payable under subsection (b)(1), as
4 adjusted pursuant to subsection (b)(2), if applicable, and shall
5 be accompanied by the form of certificate of annual registration
6 to be filed. Failure by the department to give notice to any
7 party, or failure by any party to receive notice, of the annual
8 registration requirement shall not relieve the party of the
9 obligation to file the certificate of annual registration.

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

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

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

20 (i) the status of the [registered] limited liability
21 partnership [as such.] or limited liability limited
22 partnership as such, if it is a domestic partnership; or

23 (ii) the registration of the limited liability
24 partnership or limited liability limited partnership, if
25 it is a foreign partnership.

26 (1.1) [In addition, any] Any annual registration fee
27 that is not paid when due shall be a lien in the manner
28 provided in this subsection from the time the annual
29 registration fee is due and payable. If a certificate of
30 annual registration is not filed within 30 days after the

1 date on which it is due, the department shall assess a
2 penalty of \$500 against the partnership, which shall also be
3 a lien in the manner provided in this subsection. The
4 imposition of that penalty shall not be construed to relieve
5 the partnership from liability for any other penalty or
6 interest provided for under other applicable 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], status or foreign registration of the
14 partnership, but the amount of the additional annual
15 registration fee that should have been paid shall be a lien
16 in the manner provided in this subsection from the time the
17 incorrect payment is discovered by the department.

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

27 (4) The lien created by this subsection shall attach to
28 all of the property and proceeds thereof of the [registered
29 limited liability] partnership in which a security interest
30 can be perfected in whole or in part by filing in the

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

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

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

29 (f) Exception for bankrupt partnerships.--A partnership that
30 would otherwise be required to pay the annual registration fee

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

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

17 SUBCHAPTER D

18 DISTRIBUTIONS

19 Sec.

20 8231. Limitations on distributions by limited liability
21 partnership.

22 8232. Liability for improper distributions by limited liability
23 partnership.

24 § 8231. Limitations on distributions by limited liability
25 partnership.

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

30 (1) the partnership would not be able to pay its debts

1 as they become due in the ordinary course of the
2 partnership's business; or

3 (2) the partnership's total assets would be less than
4 the sum of its total liabilities plus the amount that would
5 be needed, if the partnership were to be dissolved and wound
6 up at the time of the distribution, to satisfy the
7 preferential rights upon dissolution and winding up of
8 partners and transferees whose preferential rights are
9 superior to the rights of persons receiving the distribution.

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

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

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

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

21 (4) any other method that is reasonable in the
22 circumstances.

23 (c) Excluded liabilities.--In determining whether a
24 distribution is prohibited under subsection (a) (2), the
25 partnership need not consider obligations and liabilities unless
26 they are required to be reflected on a balance sheet, not
27 including the notes to the balance sheet, prepared on the basis
28 of generally accepted accounting principles, or other such
29 accounting practices and principles as are used generally by the
30 partnership in the maintenance of its books and records and as

1 are reasonable in the circumstances.

2 (d) Measuring date of distribution.--Except as provided in
3 subsection (e), the effect of a distribution under subsection
4 (a) is measured:

5 (1) as of the date specified by the partnership when it
6 authorizes the distribution if the distribution occurs within
7 125 days of the earlier of the date so specified or the date
8 of authorization; or

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

10 (e) Date of redemption.--In the case of a distribution as
11 described in paragraph (1) of the definition of "distribution"
12 in section 8202 (relating to definitions), the distribution is
13 deemed to occur as of the earlier of the date money or other
14 property is transferred or debt is incurred by the partnership,
15 or the date the person entitled to the distribution ceases to
16 own the interest or right being acquired by the partnership in
17 return for the distribution.

18 (f) Status of distribution debt.--The indebtedness of a
19 domestic limited liability partnership to a partner or
20 transferee incurred by reason of a distribution made in
21 accordance with this section shall be at least on a parity with
22 the partnership's indebtedness to its general, unsecured
23 creditors, except to the extent subordinated by agreement.

24 (g) Certain subordinated debt.--The indebtedness of a
25 domestic limited liability partnership, including indebtedness
26 issued as a distribution, is not a liability for purposes of
27 subsection (a) if the terms of the indebtedness provide that
28 payment of principal and interest is made only if and to the
29 extent that a payment of a distribution could then be made under
30 this section. If the indebtedness is issued as a distribution,

1 each payment of principal or interest is treated as a
2 distribution, the effect of which is measured on the date the
3 payment is made.

4 (h) Distributions in winding up.--In measuring the effect of
5 a distribution under section 8486, the liabilities of a
6 dissolved domestic limited liability partnership do not include
7 any claim that has been barred under section 8241 (relating to
8 known claims against dissolved limited liability partnership) or
9 8242 (relating to other claims against dissolved limited
10 liability partnership) or for which security has been provided
11 under section 8243 (relating to court proceedings).

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

15 § 8232. Liability for improper distributions by limited
16 liability partnership.

17 (a) General rule.--If a partner of a limited liability
18 partnership consents to a distribution made in violation of
19 section 8231 (relating to limitations on distributions by
20 limited liability partnership) and in consenting to the
21 distribution fails to comply with section 8447 (relating to
22 standards of conduct for partners), the partner is personally
23 liable to the partnership for the amount of the distribution
24 which exceeds the amount that could have been distributed
25 without the violation of section 8231.

26 (b) Recipients.--A person that receives a distribution
27 knowing that the distribution violated section 8231 is
28 personally liable to the limited liability partnership, but only
29 to the extent that the distribution received by the person
30 exceeded the amount that could have been properly paid under

1 section 8231.

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

4 (1) join any other person that is liable under
5 subsection (a) and seek to enforce a right of contribution
6 from the person; and

7 (2) join any person that received a distribution in
8 violation of subsection (b) and seek to enforce a right of
9 contribution from the person in the amount the person
10 received in violation of subsection (b).

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

13 SUBCHAPTER E

14 DISSOLUTION

15 Sec.

16 8241. Known claims against dissolved limited liability
17 partnership.

18 8242. Other claims against dissolved limited liability
19 partnership.

20 8243. Court proceedings.

21 8244. Liability of partner when claim against partnership
22 barred.

23 § 8241. Known claims against dissolved limited liability
24 partnership.

25 (a) General rule.--Except as provided in subsection (d), a
26 dissolved limited liability partnership may give notice of a
27 known claim under subsection (b), which has the effect provided
28 in subsection (c).

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

1 The notice must:

2 (1) specify the information required to be included in a
3 claim;

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

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

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

11 (5) unless the partnership has been throughout its
12 existence a limited liability partnership, state that the
13 barring of a claim against the partnership will also bar any
14 corresponding claim against any partner or person dissociated
15 as a partner which is based on section 8436 (relating to
16 partner's liability).

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

20 (1) the claim is not received by the specified deadline;
21 or

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

24 (i) the partnership causes the claimant to receive a
25 notice in record form stating that the claim is rejected
26 and will be barred unless the claimant commences an
27 action against the partnership to enforce the claim
28 within 90 days after the claimant receives the notice;
29 and

30 (ii) the claimant does not commence the required

1 action within 90 days after the claimant receives the
2 notice.

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

6 § 8242. Other claims against dissolved limited liability
7 partnership.

8 (a) Permissive notice.--A dissolved limited liability
9 partnership may publish notice of its dissolution and request
10 persons having claims against the partnership to present them in
11 accordance with the notice.

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

13 (1) be officially published one time;

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

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

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

26 (c) Claims barred.--If a dissolved limited liability
27 partnership publishes a notice in accordance with subsection
28 (b), the claim of each of the following claimants is barred
29 unless the claimant commences an action to enforce the claim
30 against the partnership within two years after the publication

1 date of the notice:

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

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

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

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

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

13 (2) except as provided in section 8243 (relating to
14 court proceedings), if assets of the partnership have been
15 distributed after dissolution, against a partner or
16 transferee to the extent of that person's proportionate share
17 of the claim or of the partnership's assets distributed to
18 the partner or transferee after dissolution, whichever is
19 less, except that a person's total liability for all claims
20 under this paragraph may not exceed the total amount of
21 assets distributed to the person after dissolution; and

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

26 § 8243. Court proceedings.

27 (a) Determination of security.--A dissolved limited
28 liability partnership that has published a notice under section
29 8242 (relating to other claims against dissolved limited
30 liability partnership) may file an application with the court of

1 common pleas embracing the county where the partnership's
2 principal office is located or, if the principal office is not
3 located in this Commonwealth, where its registered office is or
4 was last located, for a determination of the amount and form of
5 security to be provided for payment of claims that are
6 reasonably expected to arise after the date of dissolution based
7 on facts known to the partnership and:

8 (1) at the time of the application:

9 (i) are contingent; or

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

11 (2) are based on an event occurring after the date of
12 dissolution.

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

17 (c) Notice.--Within 10 days after the filing of an
18 application under subsection (a), the dissolved limited
19 liability partnership shall give notice of the proceeding to
20 each claimant holding a contingent claim known to the
21 partnership.

22 (d) Guardian ad litem.--In any proceeding under this
23 section, the court may appoint a guardian ad litem to represent
24 all claimants whose identities are unknown. The reasonable fees
25 and expenses of the guardian, including all reasonable expert
26 witness fees, must be paid by the dissolved limited liability
27 partnership.

28 (e) Effect on contingent claims.--A dissolved limited
29 liability partnership that provides security in the amount and
30 form ordered by the court under subsection (a) satisfies the

1 partnership's obligations with respect to claims that are
2 contingent, have not been made known to the partnership or are
3 based on an event occurring after the date of dissolution. The
4 claims may not be enforced against a partner or transferee on
5 account of assets received in liquidation.

6 § 8244. Liability of partner when claim against partnership
7 barred.

8 If a claim against a dissolved limited liability partnership
9 is barred under this subchapter, any corresponding claim under
10 sections 8436 (relating to partner's liability), 8473 (relating
11 to liability of person dissociated as partner to other person)
12 and 8485 (relating to liability after dissolution) is also
13 barred.

14 Section 24. Repeals are as follows:

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

16 (i) Over the last 25 years, there have been
17 significant changes in the business model for
18 partnerships; and statutory law must be updated to deal
19 with the new business model.

20 (ii) Statutory law on general partnerships has not
21 been addressed by the General Assembly since 1988.

22 (iii) Section 18 of this act adds a new chapter on
23 general partnerships. The new chapter extensively revises
24 existing statutory law to the degree that identification
25 of individual changes or reproduction of voluminous text
26 to be eliminated would inhibit rather than enhance
27 serious legal analysis.

28 (iv) The repeal under paragraph (2) is necessary to
29 carry out this paragraph.

30 (2) Chapter 83 of Title 15 is repealed.

1 Section 25. Title 15 is amended by adding a chapter to read:

2 CHAPTER 84

3 GENERAL PARTNERSHIPS

4 Subchapter

5 A. General Provisions

6 B. Nature of Partnership

7 C. Relations of Partners to Persons Dealing with Partnership

8 D. Relations of Partners to Each Other and to Partnership

9 E. Transferable Interests and Rights of Transferees and

10 Creditors

11 F. Dissociation

12 G. Dissociation as Partner if Business Not Wound Up

13 H. Dissolution and Winding Up

14 SUBCHAPTER A

15 GENERAL PROVISIONS

16 Sec.

17 8411. Short title and application of chapter.

18 8412. Definitions.

19 8413. Knowledge and notice.

20 8414. Governing law.

21 8415. Contents of partnership agreement.

22 8416. Application of partnership agreement.

23 8417. Amendment and effect of partnership agreement.

24 8418. Signing of filed documents.

25 8419. Liability of general partner or other person for false or

26 missing information in filed document.

27 § 8411. Short title and application of chapter.

28 (a) Short title.--This chapter shall be known and may be

29 cited as the Pennsylvania Uniform Partnership Act of 2015 2016. <--

30 (b) Initial application.--Before July 1, 2016 APRIL 1, 2017, <--

1 this chapter governs only:

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

5 (2) except as provided in subsection (d), a partnership
6 formed before [the Legislative Reference Bureau shall insert
7 here the effective date of this chapter] which elects, in the
8 manner provided in its partnership agreement or by law for
9 amending the partnership agreement, to be subject to this
10 chapter.

11 (c) Full effective date.--Except as provided under
12 subsection (d), on and after ~~July 1, 2016~~ APRIL 1, 2017, this <--
13 chapter governs all partnerships.

14 (d) Liabilities to third parties.--With respect to a
15 partnership that elects under subsection (b) (2) to be subject to
16 this chapter, after the election takes effect the provisions of
17 this chapter relating to the liability of the partnership's
18 partners to third parties apply:

19 (1) before ~~July 1, 2016~~ APRIL 1, 2017, to: <--

20 (i) a third party that had not done business with
21 the partnership in the year before the election took
22 effect; and

23 (ii) a third party that had done business with the
24 partnership in the year before the election took effect
25 only if the third party knows or has been notified of the
26 election; and

27 (2) on and after ~~July 1, 2016~~ APRIL 1, 2017, to all <--
28 third parties, except that those provisions remain
29 inapplicable to any obligation incurred while those
30 provisions were inapplicable under paragraph (1) (ii).

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

3 § 8412. Definitions.

4 (a) General definitions.--The following words and phrases
5 when used in this chapter shall have the meanings given to them
6 in this subsection unless the context clearly indicates
7 otherwise:

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

9 "Contribution." Property or a benefit described in section
10 8443 (relating to form of contribution) which is provided by a
11 person to a partnership to become a partner or in the person's
12 capacity as a partner.

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

16 (1) includes:

17 (i) a redemption or other purchase by a partnership
18 of a transferable interest; and

19 (ii) a transfer to a partner in return for the
20 partner's relinquishment of any right to participate as a
21 partner in the management or conduct of the partnership's
22 business or have access to records or other information
23 concerning the partnership's business; and

24 (2) does not include:

25 (i) amounts constituting reasonable compensation for
26 present or past service or payments made in the ordinary
27 course of business under a bona fide retirement plan or
28 other bona fide benefits program;

29 (ii) the making of, or payment or performance on, a
30 guaranty or similar arrangement by a partnership for the

1 benefit of any or all of its partners;

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

5 (iv) a direct or indirect transfer of:

6 (A) a governance or transferable interest; or

7 (B) options, rights or warrants to acquire a
8 governance or transferable interest.

9 "Partner." A person that:

10 (1) has become a partner in a partnership under section
11 8442 (relating to becoming partner) or was a partner in a
12 partnership when the partnership became subject to this
13 chapter under section 8411 (relating to short title and
14 application of chapter); and

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

17 "Partnership." An association of two or more persons to
18 carry on as co-owners a business for profit formed under this
19 chapter or that becomes subject to this chapter under Chapter 3
20 (relating to entity transactions) or section 8411. The term
21 includes a limited liability partnership or an electing
22 partnership that is not also a limited partnership.

23 "Partnership agreement." The agreement, whether or not
24 referred to as a partnership agreement and whether oral,
25 implied, in record form or in any combination thereof, of all
26 the partners of a partnership concerning the matters described
27 in section 8415(a) (relating to contents of partnership
28 agreement). The term includes the agreement as amended or
29 restated.

30 "Partnership at will." A partnership in which the partners

1 have not agreed to remain partners until the expiration of a
2 definite term or the completion of a particular undertaking.

3 "Transferable interest." The right, as initially owned by a
4 person in the person's capacity as a partner, to receive
5 distributions from a partnership, whether or not the person
6 remains a partner or continues to own any part of the right. The
7 term applies to any fraction of the interest, by whomever owned.

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

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

14 "Act" or "action."

15 "Court."

16 "Debtor in bankruptcy."

17 "Department."

18 "Jurisdiction."

19 "Jurisdiction of formation."

20 "Obligation."

21 "Principal office."

22 "Professional services."

23 "Property."

24 "Record form."

25 "Sign."

26 "Transfer."

27 § 8413. Knowledge and notice.

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

29 (1) has actual knowledge of it; or

30 (2) is deemed to know it under subsection (d)(1) or law

1 other than this chapter.

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

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

5 (2) is deemed to have notice of the fact under
6 subsection (d)(2).

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

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

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

17 (2) to have notice of:

18 (i) a person's dissociation as a partner 90 days
19 after a certificate of dissociation under section 8474
20 (relating to certificate of dissociation) becomes
21 effective;

22 (ii) the dissolution of the partnership 90 days
23 after a certificate of dissolution under section 8482(b)
24 (2)(i) (relating to winding up and filing of ~~optional~~ <--
25 certificates) is effective;

26 (iii) the termination of the partnership 90 days
27 after a certificate of termination under section 8482(b)
28 (2)(vi) is effective; and

29 (iv) participation in a merger, interest exchange,
30 conversion, division or domestication, 90 days after a

1 statement of merger, interest exchange, conversion,
2 division or domestication under Chapter 3 (relating to
3 entity transactions) is effective.

4 (e) Effect of partner's knowledge or notice.--A partner's
5 knowledge or notice of a fact relating to the partnership is
6 effective immediately as knowledge of or notice to the
7 partnership, except in the case of a fraud on the partnership
8 committed by or with the consent of that partner.

9 § 8414. Governing law.

10 (a) General rule.--The internal affairs of a partnership and
11 the liability of a partner as a partner for the debts,
12 obligations or other liabilities of the partnership are governed
13 by:

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

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

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

20 (ii) the jurisdiction in which the partnership has
21 its principal office if there is no choice of law under
22 subparagraph (i).

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

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

28 (2) Application of the chosen law would be contrary to a
29 fundamental policy of a jurisdiction that has a materially
30 greater interest in the determination of the particular issue

1 than does the jurisdiction whose law has been chosen.

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

4 § 8415. Contents of partnership agreement.

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

7 (1) relations among the partners as partners and between
8 the partners and the partnership;

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

11 (3) the business of the partnership and the conduct of
12 that business;

13 (4) the means and conditions for amending the
14 partnership agreement; and

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

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

20 (c) Limitations.--A partnership agreement may not do any of
21 the following:

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

24 (2) Vary the right of a partner to approve a merger,
25 interest exchange, conversion, division or domestication
26 under section 333(a)(2) (relating to approval of merger),
27 343(a)(2) (relating to approval of interest exchange), 353(a)

28 (3) (relating to approval of conversion), 363(a)(2) (relating
29 to approval of division) or 373(a)(2) (relating to approval
30 of domestication).

1 (3) Vary the required contents of a plan of merger under
2 section 332(a) (relating to plan of merger), plan of interest
3 exchange under section 342(a) (relating to plan of interest
4 exchange), plan of conversion under section 352(a) (relating
5 to plan of conversion), plan of division under section 362(a)
6 (relating to plan of division) or plan of domestication under
7 section 372(a) (relating to plan of domestication).

8 (4) Vary a provision of Chapter 81 (relating to general
9 provisions) or 82 (relating to limited liability partnerships
10 and limited liability limited partnerships), except as
11 provided in subsection (d).

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

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

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

18 (i) registered offices; or

19 (ii) the department, including provisions pertaining
20 to documents authorized or required to be delivered to
21 the department for filing under this title.

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

24 (9) Unreasonably restrict the duties and rights under
25 section 8446 (relating to rights to information), except as
26 provided in subsection (d).

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

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

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

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

10 (14) Vary the power of a person to dissociate as a
11 partner under section 8462(a) (relating to power to
12 dissociate as partner and wrongful dissociation), except to
13 require that the notice under section 8461(1) (relating to
14 events causing dissociation) be in record form.

15 (15) Vary the causes of dissolution specified in section
16 8481(a) (4) or (5) (relating to events causing dissolution).

17 (16) Vary the requirement to wind up the partnership's
18 business as specified in section 8482(a), (b) (1) and (d)
19 (relating to winding up and filing of ~~optional~~ certificates). <--

20 (17) Except as provided in section 8417(b) (relating to
21 amendment and effect of partnership agreement), restrict the
22 rights under this title of a person other than a partner.

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

25 (1) The partnership agreement may:

26 (i) specify the method by which a specific act or
27 transaction that would otherwise violate the duty of
28 loyalty may be authorized or ratified by one or more
29 disinterested and independent persons after full
30 disclosure of all material facts;

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

6 (iii) impose reasonable restrictions on the
7 availability and use of information obtained under
8 section 8446 and may define appropriate remedies,
9 including liquidated damages, for a breach of any
10 reasonable restriction on use.

11 (2) To the extent the partnership agreement expressly
12 relieves a partner of a responsibility that the partner would
13 otherwise have under this title and imposes the
14 responsibility on one or more other partners, the agreement
15 also may eliminate or limit any fiduciary duty of the partner
16 relieved of the responsibility which would have pertained to
17 the responsibility.

18 (3) If not manifestly unreasonable, the partnership
19 agreement may:

20 (i) alter the aspects of the duty of loyalty stated
21 in section 8447(b)(1)(i) or (ii) or (2);

22 (ii) prescribe the standards by which the
23 performance of the contractual obligation of good faith
24 and fair dealing under section 8447(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 a partnership

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 partnership agreement and
5 by considering only circumstances existing at that time; and

6 (2) may invalidate the term only if, in light of the
7 purposes and business of the partnership, it is readily
8 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 § 8416. Application of partnership agreement.

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

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

18 (c) Preformation agreement.--Two or more persons intending
19 to become the initial partners of a partnership may make an
20 agreement providing that upon the formation of the partnership
21 the agreement will become the partnership agreement.

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

24 § 8417. Amendment and effect of partnership agreement.

25 (a) Approval of amendments.--A partnership agreement may
26 specify that its amendment requires the approval of a person
27 that is not a party to the agreement or the satisfaction of a
28 condition. An amendment is ineffective if its adoption does not
29 include the required approval or satisfy the specified
30 condition. See section 8441(j) (relating to partner's rights and

1 duties).

2 (b) Obligations to nonpartners.--The obligations of a
3 partnership and its partners to a person in the person's
4 capacity as a transferee or person dissociated as a partner are
5 governed by the partnership agreement. Except as provided in
6 section 8445(d) (relating to sharing of and right to
7 distribution before dissolution) or in a court order issued
8 under section 8454(b) (2) (relating to charging order) to
9 effectuate a charging order, an amendment to the partnership
10 agreement made after a person becomes a transferee or is
11 dissociated as a partner:

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

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

17 (i) imposes a new debt, obligation or other
18 liability on the transferee or person dissociated as a
19 partner; or

20 (ii) prejudices the rights under section 8471
21 (relating to purchase of interest of person dissociated
22 as partner) of a person that dissociated as a partner
23 before the amendment was made.

24 (c) Provisions in filed documents.--If a document delivered
25 by a partnership to the department for filing becomes effective
26 and contains a provision that would be ineffective under section
27 8415(c) or (d) (3) (relating to contents of partnership
28 agreement) if contained in the partnership agreement, the
29 provision is ineffective in the document.

30 (d) Conflicts with partnership agreement.--Subject to

1 subsection (c), if a document delivered by a partnership to the
2 department for filing becomes effective and conflicts with a
3 provision of the partnership agreement:

4 (1) the agreement prevails as to partners, persons
5 dissociated as partners and transferees; and

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

8 (e) Prohibition of oral amendments.--If a provision of a
9 partnership agreement in record form provides that the
10 partnership agreement cannot be amended, modified or rescinded
11 except in record form, an oral agreement, amendment,
12 modification or rescission shall not be enforceable.

13 § 8418. Signing of filed documents.

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

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

20 (2) A document filed on behalf of a dissolved
21 partnership that has no partner must be signed by the person
22 winding up the partnership's business under section 8482(c)
23 (relating to winding up and filing of ~~optional~~ certificates) <--
24 or a person appointed under section 8482(d) to wind up the
25 business.

26 (3) A certificate of denial by a person under section
27 8434 (relating to certificate of denial) must be signed by
28 that person.

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

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

3 § 8419. Liability of general partner or other person for false
4 or missing information in filed document.

5 (a) General rule.--If a document delivered to the department
6 for filing under this title and filed by the department contains
7 a materially false statement or fails to state a material fact
8 required to be stated, a person that suffers loss by reasonable
9 reliance on the statement or failure to state a material fact
10 may recover damages for the loss from:

11 (1) a person that signed the document or caused another
12 to sign it on the person's behalf and knew there was false or
13 missing information in the document at the time it was
14 signed; and

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

16 (i) the document was delivered for filing on behalf
17 of the partnership; and

18 (ii) the partner knew or had notice there was false
19 or missing information for a reasonably sufficient time
20 before the document was relied upon so that, before the
21 reliance, the partner reasonably could have:

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

24 (B) delivered to the department for filing a
25 statement of correction under section 138 (relating
26 to statement of correction) or a statement of
27 abandonment under section 141 (relating to
28 abandonment of filing before effectiveness).

29 (b) Partner relieved of responsibility.--To the extent the
30 partnership agreement expressly relieves a partner of

1 responsibility for maintaining the accuracy of information
2 contained in records delivered on behalf of the partnership to
3 the department for filing under this title and imposes that
4 responsibility on one or more other partners, the liability
5 stated in subsection (a)(2) applies to those other partners and
6 not to the partner that the partnership agreement relieves of
7 the responsibility.

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

10 SUBCHAPTER B

11 NATURE OF PARTNERSHIP

12 Sec.

13 8421. Partnership as entity.

14 8422. Formation of partnership.

15 8423. Partnership property.

16 8424. When property is partnership property.

17 § 8421. Partnership as entity.

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

20 (b) Limited liability partnership.--A partnership is the
21 same entity regardless of whether the partnership has a
22 statement of registration in effect under section 8201 (relating
23 to scope).

24 § 8422. Formation of partnership.

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

29 (b) Excluded associations.--An association formed under a
30 statute other than this chapter, a predecessor statute or a

1 comparable statute of another jurisdiction is not a partnership
2 under this chapter.

3 (c) Rules for determining formation of partnership.--In
4 determining whether a partnership is formed, the following rules
5 apply:

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

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

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

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

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

20 (iii) of rent;

21 (iv) of an annuity or other retirement or health
22 benefit to a deceased or retired partner or a
23 beneficiary, representative or designee of a deceased or
24 retired partner;

25 (v) of interest or other charge on a loan, even if
26 the amount of payment varies with the profits of the
27 business, including a direct or indirect present or
28 future ownership of the collateral, rights to income,
29 proceeds or increase in value derived from the
30 collateral; or

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

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

5 ~~§ 8423. Partnership property.~~

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6 ~~Property acquired by a partnership is property of the~~
7 ~~partnership and not of the partners individually.~~

8 ~~§ 8424. When property is partnership property.~~

9 ~~(a) General rule. Property is partnership property if~~
10 ~~acquired in the name of:~~

11 ~~(1) the partnership; or~~

12 ~~(2) one or more partners with an indication in the~~
13 ~~instrument transferring title to the property of the person's~~
14 ~~capacity as a partner or of the existence of a partnership~~
15 ~~but without an indication of the name of the partnership.~~

16 ~~(b) Property acquired in name of partnership. Property is~~
17 ~~acquired in the name of the partnership by a transfer to:~~

18 ~~(1) the partnership in its name; or~~

19 ~~(2) one or more partners in their capacity as partners~~
20 ~~in the partnership, if the name of the partnership is~~
21 ~~indicated in the instrument transferring title to the~~
22 ~~property.~~

23 ~~(c) Property purchased with partnership assets. Property is~~
24 ~~presumed to be partnership property if purchased with~~
25 ~~partnership assets, even if not acquired in the name of the~~
26 ~~partnership or of one or more partners with an indication in the~~
27 ~~instrument transferring title to the property of the person's~~
28 ~~capacity as a partner or of the existence of a partnership.~~

29 ~~(d) Property acquired in name of partner. Property acquired~~
30 ~~in the name of one or more of the partners, without an~~

~~1 indication in the instrument transferring title to the property
2 of the person's capacity as a partner or of the existence of a
3 partnership and without use of partnership assets, is presumed
4 to be separate property, even if used for partnership purposes.~~

5 § 8423. PARTNERSHIP PROPERTY.

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6 PROPERTY OWNED BY A PARTNERSHIP IS PARTNERSHIP PROPERTY AND
7 IS NOT OWNED BY THE PARTNERS INDIVIDUALLY.

8 § 8424. WHEN PROPERTY IS PARTNERSHIP PROPERTY.

9 (A) GENERAL RULE.--PROPERTY IS OWNED BY A PARTNERSHIP AND
10 NOT BY THE PARTNERS INDIVIDUALLY IF THE PROPERTY IS ACQUIRED IN
11 THE NAME OF:

12 (1) THE PARTNERSHIP BY A TRANSFER TO:

13 (I) THE PARTNERSHIP IN ITS NAME; OR

14 (II) ONE OR MORE PARTNERS IN THEIR CAPACITY AS
15 PARTNERS IN THE PARTNERSHIP, IF THE NAME OF THE
16 PARTNERSHIP IS INDICATED IN THE INSTRUMENT TRANSFERRING
17 TITLE TO THE PROPERTY; OR

18 (2) ONE OR MORE PARTNERS WITH AN INDICATION IN THE
19 INSTRUMENT TRANSFERRING TITLE TO THE PROPERTY OF THE PERSON'S
20 CAPACITY AS A PARTNER OR OF THE EXISTENCE OF A PARTNERSHIP
21 BUT WITHOUT AN INDICATION OF THE NAME OF THE PARTNERSHIP.

22 (B) PROPERTY PURCHASED WITH PARTNERSHIP ASSETS.--PROPERTY IS
23 PRESUMED TO BE PARTNERSHIP PROPERTY IF PURCHASED WITH
24 PARTNERSHIP ASSETS, EVEN IF NOT ACQUIRED IN THE NAME OF THE
25 PARTNERSHIP OR OF ONE OR MORE PARTNERS WITH AN INDICATION IN THE
26 INSTRUMENT TRANSFERRING TITLE TO THE PROPERTY OF THE PERSON'S
27 CAPACITY AS A PARTNER OR OF THE EXISTENCE OF A PARTNERSHIP.

28 (C) PROPERTY ACQUIRED IN NAME OF PARTNER.--PROPERTY ACQUIRED
29 IN THE NAME OF ONE OR MORE OF THE PARTNERS IS PRESUMED TO BE
30 SEPARATE PROPERTY OWNED BY THE INDIVIDUAL PARTNER OR PARTNERS,

1 EVEN IF USED FOR PARTNERSHIP PURPOSES, IF THE PROPERTY IS
2 ACQUIRED WITHOUT:

3 (1) AN INDICATION IN THE INSTRUMENT TRANSFERRING TITLE
4 TO THE PROPERTY OF THE PERSON'S CAPACITY AS A PARTNER OR OF
5 THE EXISTENCE OF A PARTNERSHIP; AND

6 (2) USE OF PARTNERSHIP ASSETS.

7 SUBCHAPTER C

8 RELATIONS OF PARTNERS TO PERSONS

9 DEALING WITH PARTNERSHIP

10 Sec.

11 8431. Partner agent of partnership.

12 8432. Transfer of partnership property.

13 8433. Certificate of partnership authority.

14 8434. Certificate of denial.

15 8435. Partnership liable for partner's actionable conduct.

16 8436. Partner's liability.

17 8437. Actions by and against partnership and partners.

18 8438. Liability of purported partner.

19 § 8431. Partner agent of partnership.

20 Subject to the effect of a certificate of partnership
21 authority under section 8433 (relating to certificate of
22 partnership authority), the following rules apply:

23 (1) Each partner is an agent of the partnership for the
24 purpose of its business. An act of a partner, including the
25 signing of an instrument in the partnership name, for
26 apparently carrying on in the ordinary course the partnership
27 business or business of the kind carried on by the
28 partnership binds the partnership, unless the partner did not
29 have authority to act for the partnership in the particular
30 matter and the person with which the partner was dealing knew

1 or had notice that the partner lacked authority.

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

7 § 8432. Transfer of partnership property.

8 (a) General rule.--Partnership property may be transferred
9 as follows:

10 (1) Subject to the effect of a certificate of
11 partnership authority under section 8433 (relating to
12 certificate of partnership authority), partnership property
13 held in the name of the partnership may be transferred by an
14 instrument of transfer signed by a partner in the partnership
15 name.

16 (2) Partnership property held in the name of one or more
17 partners with an indication in the instrument transferring
18 the property to them of their capacity as partners or of the
19 existence of a partnership, but without an indication of the
20 name of the partnership, may be transferred by an instrument
21 of transfer signed by the persons in whose name the property
22 is held.

23 (3) Partnership property held in the name of one or more
24 persons other than the partnership, without an indication in
25 the instrument transferring the property to them of their
26 capacity as partners or of the existence of a partnership,
27 may be transferred by an instrument of transfer signed by the
28 persons in whose name the property is held.

29 (b) Recovery of property by partnership.--A partnership may
30 recover partnership property from a transferee only if it proves

1 that the signing of the instrument of initial transfer did not
2 bind the partnership under section 8431 (relating to partner
3 agent of partnership) and:

4 (1) as to a subsequent transferee who gave value for
5 property transferred under subsection (a)(1) or (2), proves
6 that the subsequent transferee knew or had notice that the
7 person who signed the instrument of initial transfer lacked
8 authority to bind the partnership; or

9 (2) as to a transferee who gave value for property
10 transferred under subsection (a)(3), proves that the
11 transferee knew or had notice that the property was
12 partnership property and that the person who signed the
13 instrument of initial transfer lacked authority to bind the
14 partnership.

15 (c) Subsequent transferees.--A partnership may not recover
16 partnership property from a subsequent transferee if the
17 partnership would not have been entitled to recover the property
18 under subsection (b) from any earlier transferee of the
19 property.

20 (d) Sole partner.--If one person holds all the interests in
21 a partnership, all the partnership property vests in that
22 person. The person may sign a document in the name of the
23 partnership to evidence vesting of the property in that person
24 and may file or record the document.

25 § 8433. Certificate of partnership authority.

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

28 The certificate:

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

30 (i) if the partnership is not a registered foreign

1 limited liability partnership, the street and mailing
2 addresses of its principal office; or

3 (ii) if the partnership is a registered foreign
4 limited liability partnership, subject to section 109
5 (relating to name of commercial registered office
6 provider in lieu of registered address), the address,
7 including street and number, if any, of its registered
8 office;

9 (2) with respect to any position that exists in or with
10 respect to the partnership, may state the authority, or
11 limitations on the authority, of all persons holding the
12 position to:

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

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

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

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

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

23 (b) Amendment or cancellation.--To amend or cancel a
24 certificate of authority filed by the department, a partnership
25 must deliver to the department for filing an amendment or
26 cancellation stating:

27 (1) the name of the partnership;

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

1 (3) if the partnership is a registered foreign limited
2 liability partnership, subject to section 109, the address,
3 including street and number, if any, of its registered
4 office;

5 (4) the date the certificate being affected became
6 effective; and

7 (5) the contents of the amendment or a statement that
8 the certificate is canceled.

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

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

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

14 (d) Effect of limitation on authority.--Subject to
15 subsection (c) and section 8413(d) (1) (relating to knowledge and
16 notice), and except as provided in subsections (f), (g) and (h),
17 a limitation on the authority of a person or a position
18 contained in an effective certificate of authority is not by
19 itself evidence of any person's knowledge or notice of the
20 limitation.

21 (e) Authority not relating to real property.--A grant of
22 authority not pertaining to transfers of real property and
23 contained in an effective certificate of authority is conclusive
24 in favor of a person that gives value in reliance on the grant,
25 unless when the person gives value:

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

27 (2) the certificate has been canceled or restrictively
28 amended under subsection (b); or

29 (3) a limitation on the grant is contained in another
30 certificate of authority that became effective after the

1 certificate containing the grant became effective.

2 (f) Authority relating to real property.--An effective
3 certificate of authority that grants authority to transfer real
4 property held in the name of the partnership, a certified copy
5 of which certificate is recorded in the office of the recorder
6 of deeds for the county in which the real property is located,
7 is conclusive in favor of a person that gives value in reliance
8 on the grant without knowledge to the contrary, except to the
9 extent that when the person gives value:

10 (1) the certificate has been canceled or restrictively
11 amended under subsection (b), and a certified copy of the
12 cancellation or restrictive amendment has been recorded in
13 the office of the recorder of deeds for the county in which
14 the real property is located; or

15 (2) a limitation on the grant is contained in another
16 certificate of authority that became effective after the
17 certificate containing the grant became effective and a
18 certified copy of the later-effective certificate is recorded
19 in the office of the recorder of deeds for the county in
20 which the real property is located.

21 (g) Constructive knowledge of limitation.--Subject to
22 subsection (c), if a certified copy of an effective certificate
23 containing a limitation on the authority to transfer real
24 property held in the name of a partnership is recorded in the
25 office of the recorder of deeds for the county in which real
26 property is located, all persons are deemed to know of the
27 limitation.

28 (h) Effect of certificate of dissolution.--Subject to
29 subsection (i), an effective certificate of dissolution is a
30 cancellation of any filed certificate of authority for the

1 purposes of subsection (f) and is a limitation on authority for
2 purposes of subsection (g).

3 (i) Post-dissolution certificate of authority.--After a
4 certificate of dissolution becomes effective, a partnership may
5 deliver to the department for filing and, if appropriate, may
6 record a certificate of authority that is designated as a post-
7 dissolution certificate of authority. The certificate operates
8 as provided in subsections (f) and (g).

9 (j) Cancellation by operation of law.--Unless canceled
10 earlier, an effective certificate of authority is canceled by
11 operation of law five years after the date on which the
12 certificate, or its most recent amendment, becomes effective.
13 The cancellation is effective without recording under subsection
14 (f) or (g).

15 (k) Effect of certificate of denial.--An effective
16 certificate of denial under section 8434 (relating to
17 certificate of denial):

18 (1) operates as a restrictive amendment under this
19 section and a certified copy may be recorded as provided in
20 subsection (f)(1) by the partnership or the person that
21 delivered the certificate of denial to the department for
22 filing; and

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

25 (l) Foreign partnerships.--A foreign partnership, regardless
26 of whether it is registered to do business in this Commonwealth,
27 may deliver a certificate of authority to the department for
28 filing and may record a copy as provided in this section in the
29 same manner and with the same effect as if it were a domestic
30 partnership.

1 (m) 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 8418 (relating to signing of filed documents).

8 Section 8482 (relating to winding up and filing of
9 ~~optional~~ certificates).

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10 § 8434. Certificate of denial.

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

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

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

18 (ii) if the partnership is a registered foreign
19 limited liability partnership, subject to section 109
20 (relating to name of commercial registered office
21 provider in lieu of registered address), the address,
22 including street and number, if any, of its registered
23 office;

24 (2) states the caption of the certificate of authority
25 to which the certificate of denial pertains; and

26 (3) 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 8418 (relating to signing of filed documents).

4 § 8435. Partnership liable for partner's actionable conduct.

5 (a) General rule.--A partnership is liable for loss or
6 injury caused to a person, or for a penalty incurred, as a
7 result of a wrongful act or other actionable conduct, of a
8 partner acting in the ordinary course of business of the
9 partnership or with the actual or apparent authority of the
10 partnership.

11 (b) Misapplication of property.--If, in the course of the
12 partnership's business or while acting with actual or apparent
13 authority of the partnership, a partner receives or causes the
14 partnership to receive money or property of a person not a
15 partner and the money or property is misapplied by a partner,
16 the partnership is liable for the loss.

17 § 8436. Partner's liability.

18 (a) General rule.--Except as provided in subsection (b) or
19 section 8204 (relating to limitation on liability of partners),
20 all partners are jointly and severally liable for all debts,
21 obligations and other liabilities of the partnership unless
22 otherwise agreed by the claimant or provided by law.

23 (b) Preexisting liabilities.--A person that becomes a
24 partner is not personally liable for a debt, obligation or other
25 liability of the partnership incurred before the person became a
26 partner.

27 § 8437. Actions by and against partnership and partners.

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

30 (b) Partner as party.--To the extent not inconsistent with

1 section 8436 (relating to partner's liability), a partner may be
2 joined in an action against the partnership or named in a
3 separate action.

4 (c) Judgment against partnership only.--A judgment against a
5 partnership:

6 (1) is not by itself a judgment against a partner; and
7 (2) except as provided in subsection (d), may not be
8 satisfied from a partner's assets.

9 (d) Judgment against partnership and partner.--If there is a
10 judgment against a partnership and a partner on the same claim,
11 the judgment creditor may levy execution against the assets of
12 the partner if both of the following apply:

13 (1) The partner is personally liable for the claim under
14 section 8436.

15 (2) One of the following subparagraphs applies:

16 (i) A writ of execution on the judgment against the
17 partnership has been returned unsatisfied in whole or in
18 part.

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

20 (iii) The partner has agreed that the creditor need
21 not exhaust partnership assets.

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

24 (A) partnership assets subject to execution are
25 clearly insufficient to satisfy the judgment;

26 (B) exhaustion of partnership assets is
27 excessively burdensome; or

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

30 (v) Liability is imposed on the partner by law or

1 contract independent of the existence of the partnership.

2 (e) Liability for representations.--This section also
3 applies to any debt, liability or other obligation of a
4 partnership which results from a representation by a partner or
5 purported partner under section 8438 (relating to liability of
6 purported partner).

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

9 § 8438. Liability of purported partner.

10 (a) General rule.--If a person, by words or conduct,
11 purports to be a partner, or consents to being represented by
12 another as a partner, in a partnership or with one or more
13 persons not partners, the purported partner is liable to a
14 person to whom the representation is made, if that person,
15 relying on the representation, enters into a transaction with
16 the actual or purported partnership. If the representation,
17 either by the purported partner or by a person with the
18 purported partner's consent, is made in a public manner, the
19 purported partner is liable to a person who relies upon the
20 purported partnership even if the purported partner is not aware
21 of being held out as a partner to the claimant. If partnership
22 liability results, the purported partner is liable with respect
23 to that liability as if the purported partner were a partner. If
24 no partnership liability results, the purported partner is
25 jointly and severally liable, with any other person consenting
26 to the representation, with respect to that liability.

27 (b) Authority of purported partner.--If a person is
28 represented in the manner described in subsection (a) to be a
29 partner in an existing partnership, or with one or more persons
30 not partners, the purported partner is an agent of persons

1 consenting to the representation to bind them to the same extent
2 and in the same manner as if the purported partner were a
3 partner with respect to persons who enter into transactions in
4 reliance upon the representation. If all the partners of the
5 existing partnership consent to the representation, a
6 partnership act or obligation results. If fewer than all the
7 partners of the existing partnership consent to the
8 representation, the person acting and the partners consenting to
9 the representation are jointly and severally liable.

10 (c) Effect of certificate of partnership authority.--A
11 person is not liable as a partner merely because the person is
12 named by another as a partner in a certificate of partnership
13 authority.

14 (d) No effect of failure to disclaim authority.--A person
15 does not continue to be liable as a partner merely because of a
16 failure to file a certificate of dissociation or to amend a
17 certificate of partnership authority to indicate the person's
18 dissociation as a partner.

19 (e) Nonliability of persons not partners.--Except as
20 provided in subsections (a) and (b), persons who are not
21 partners as to each other are not liable as partners to other
22 persons.

23 SUBCHAPTER D

24 RELATIONS OF PARTNERS TO EACH OTHER

25 AND TO PARTNERSHIP

26 Sec.

27 8441. Partner's rights and duties.

28 8442. Becoming a partner.

29 8443. Form of contribution.

30 8444. Liability for contribution.

1 8445. Sharing of and right to distribution before dissolution.

2 8446. Rights to information.

3 8447. Standards of conduct for partners.

4 8448. Actions by partnership and partners.

5 8449. Continuation of partnership beyond definite term or
6 particular undertaking.

7 § 8441. Partner's rights and duties.

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

11 (b) Reimbursement.--A partnership shall reimburse a partner
12 for:

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

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

19 (c) Indemnification.--A partnership shall indemnify and hold
20 harmless a person with respect to any claim or demand against
21 the person and any debt, obligation or other liability incurred
22 by the person by reason of the person's former or present
23 capacity as partner, if the claim, demand, debt, obligation or
24 other liability does not arise from the person's breach of this
25 section or section 8232 (relating to liability for improper
26 distributions by limited liability partnership) or 8447.

27 (d) Advances.--In the ordinary course of its business, a
28 partnership may advance reasonable expenses, including attorney
29 fees and costs, incurred by a person in connection with a claim
30 or demand against the person by reason of the person's former or

1 present capacity as a partner, if the person promises to repay
2 the partnership if the person ultimately is determined not to be
3 entitled to be indemnified under subsection (c).

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

10 (f) Loan to partnership.--A payment or advance made by a
11 partner which gives rise to a partnership obligation under
12 subsection (b) constitutes a loan to the partnership which
13 accrues interest from the date of the payment or advance.

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

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

18 (i) Compensation for services.--A partner is not entitled to
19 remuneration for services performed for the partnership, except
20 for reasonable compensation for services rendered in winding up
21 the business of the partnership.

22 (j) Required approvals by partners.--A difference arising as
23 to a matter in the ordinary course of business of a partnership
24 may be decided by a majority of the partners. An act outside the
25 ordinary course of business of a partnership and an amendment to
26 the partnership agreement may be undertaken only with the
27 affirmative vote or consent of all the partners.

28 (k) Nonexclusivity.--The rights provided by subsections (b),
29 (c), (d) and (e) shall not be deemed exclusive of any other
30 rights to which a person seeking reimbursement, indemnification, <--

1 advancement of expenses or insurance may be entitled under the
2 partnership agreement, vote of partners, contract or otherwise,
3 both as to action in his official capacity and as to action in
4 another capacity while holding that position. Section 8447(f)
5 shall be applicable to a vote, contract or other action under
6 this subsection. A partnership may create a fund of any nature,
7 which may, but need not be, under the control of a trustee, or
8 otherwise secure or insure in any manner its indemnification
9 obligations, whether arising under this section or otherwise.

10 (l) Grounds.--Indemnification under subsection (k) may be
11 granted for any action taken and may be made whether or not the
12 partnership would have the power to indemnify the person under
13 any other provision of law except as provided in this section
14 and whether or not the indemnified liability arises or arose
15 from any threatened, pending or completed action by or in the
16 right of the partnership. Indemnification under subsection (k)
17 is declared to be consistent with the public policy of this
18 Commonwealth.

19 (m) Limitation.--Indemnification under this section shall
20 not be made in any case where the act giving rise to the claim
21 for indemnification is determined by a court to constitute
22 recklessness, willful misconduct or a knowing violation of law.

23 § 8442. Becoming a partner.

24 (a) Upon formation.--Upon formation of a partnership, a
25 person becomes a partner under section 8422(a) (relating to
26 formation of partnership).

27 (b) After formation.--After formation of a partnership, a
28 person becomes a partner:

29 (1) as provided in the partnership agreement;

30 (2) as a result of a transaction effective under Chapter

1 3 (relating to entity transactions); or

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

4 (c) Noneconomic partners.--A person may become a partner
5 without:

6 (1) acquiring a transferable interest; or

7 (2) making or being obligated to make a contribution to
8 the partnership.

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

11 § 8443. Form of contribution.

12 A contribution may consist of:

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

15 (2) an agreement to transfer property to, perform
16 services for or provide another benefit to the partnership;
17 or

18 (3) any combination of items listed in paragraphs (1)
19 and (2).

20 § 8444. Liability for contribution.

21 (a) Obligation not excused.--A person's obligation to make a
22 contribution to a partnership is not excused by the person's
23 death, disability, termination or other inability to perform
24 personally.

25 (b) Substitute payment.--If a person does not fulfill an
26 obligation to make a contribution other than money, the person
27 is obligated, at the option of the partnership, to contribute
28 money equal to the value, as stated in the records of the
29 partnership, of the part of the contribution which has not been
30 made.

1 (c) Compromise of obligation.--The obligation of a person to
2 make a contribution may be compromised only by the affirmative
3 vote or consent of all the partners. If a creditor of a limited
4 liability partnership extends credit or otherwise acts in
5 reliance on an obligation described under subsection (a) without
6 knowledge or notice of a compromise under this subsection, the
7 creditor may enforce the obligation.

8 § 8445. Sharing of and right to distribution before
9 dissolution.

10 (a) Distributions before dissolution.--Any distribution made
11 by a partnership before its dissolution and winding up shall be
12 in equal shares among partners and persons dissociated as
13 partners whose interests in the partnership have not been
14 purchased under section 8471 (relating to purchase of interest
15 of person dissociated as partner), except as provided in section
16 8453(b) (relating to transfer of transferable interest) or to
17 the extent necessary to comply with a charging order in effect
18 under section 8454 (relating to charging order).

19 (b) No right to distribution.--Subject to section 8471, a
20 person has a right to a distribution before the dissolution and
21 winding up of a partnership only if the partnership decides to
22 make an interim distribution.

23 (c) Form of distribution.--A person does not have a right to
24 demand or receive a distribution from a partnership in any form
25 other than money. Except as provided in section 8486 (relating
26 to disposition of assets in winding up and required
27 contributions), a partnership may distribute an asset in kind
28 only if each part of the asset is fungible with each other part
29 and each person receives a percentage of the asset equal in
30 value to the person's share of distributions.

1 (d) Status as creditor.--If a partner or transferee becomes
2 entitled to receive a distribution, the partner or transferee
3 has the status of, and is entitled to all remedies available to,
4 a creditor of the partnership with respect to the distribution.
5 The partnership's obligation to make a distribution is subject
6 to offset for any amount owed to the partnership by the partner
7 or a person dissociated as partner on whose account the
8 distribution is made.

9 § 8446. Rights to information.

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

12 (b) Right to inspection.--On reasonable notice, a partner
13 may inspect and copy during regular business hours, at a
14 reasonable location specified by the partnership, any record
15 maintained by the partnership regarding the partnership's
16 business, financial condition and other circumstances.

17 (c) Material information.--The partnership shall furnish to
18 each partner, without demand, any information concerning the
19 partnership's business, financial condition and other
20 circumstances which the partnership knows and is material to the
21 proper exercise of the partner's rights and duties under the
22 partnership agreement or this title, except to the extent the
23 partnership can establish that it reasonably believes the member
24 already knows the information.

25 (d) Duty of partners.--The duty to furnish information under
26 subsection (c) also applies to each partner to the extent the
27 partner knows any of the information described in subsection
28 (c).

29 (e) Rights after dissociation.--Subject to subsection (j),
30 within 10 days after receipt by a partnership of a demand made

1 in record form, a person dissociated as a partner may have
2 access to information to which the person was entitled while a
3 partner if:

4 (1) the information pertains to the period during which
5 the person was a partner;

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

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

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

12 (1) the information that the partnership will provide in
13 response to the demand and when and where the partnership
14 will provide the information; and

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

17 (g) Costs of copying.--A partnership may charge a person
18 that makes a demand under this section the reasonable costs of
19 copying.

20 (h) Exercise of rights.--A partner or person dissociated as
21 a partner may exercise the rights under this section through an
22 agent or, in the case of an incapacitated person, a guardian.

23 Any restriction or condition imposed by the partnership
24 agreement or under subsection (j) applies both to the agent or
25 guardian and to the partner or person dissociated as a partner.

26 (i) No rights of transferee.--Subject to section 8455
27 (relating to power of personal representative of deceased
28 partner), the rights under this section do not extend to a
29 person as transferee.

30 (j) Reasonable restrictions permitted.--In addition to any

1 restriction or condition stated in its partnership agreement, a
2 partnership, as a matter within the ordinary course of its
3 business, may impose reasonable restrictions and conditions on
4 access to and use of information to be furnished under this
5 section, including designating information confidential and
6 imposing nondisclosure and safeguarding obligations on the
7 recipient. In a dispute concerning the reasonableness of a
8 restriction under this subsection, the partnership has the
9 burden of proving reasonableness.

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

12 § 8447. Standards of conduct for partners.

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

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

18 (1) to account to the partnership and hold as trustee
19 for it any property, profit or benefit derived by the
20 partner:

21 (i) in the conduct or winding up of the
22 partnership's business;

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

25 (iii) from the appropriation of a partnership
26 opportunity;

27 (2) to refrain from dealing with the partnership in the
28 conduct or winding up of the partnership business as or on
29 behalf of a person having an interest adverse to the
30 partnership; and

1 (3) to refrain from competing with the partnership in
2 the conduct of the partnership's business before the
3 dissolution of the partnership.

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

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

12 (e) Self-serving conduct.--A partner does not violate a duty
13 or obligation under this title or under the partnership
14 agreement solely because the partner's conduct furthers the
15 partner's own interest.

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

20 (g) Fairness as a defense.--It is a defense to a claim under
21 subsection (b) (2) and any comparable claim in equity or at
22 common law that the transaction was fair to the partnership at
23 the time it was authorized or ratified under subsection (f).

24 (h) Rights and obligations in approved transaction.--If a
25 partner enters into a transaction with the partnership which
26 otherwise would be prohibited under subsection (b) (2), but the
27 transaction is authorized or ratified as provided under
28 subsection (f) or the partnership agreement, the partner's
29 rights and obligations arising from the transaction are the same
30 as those of a person that is not a partner.

1 (i) Exoneration.--The partnership agreement may provide that
2 a partner shall not be personally liable for monetary damages to
3 the partnership or the other partners for a breach of subsection
4 (c), except that a partner may not be exonerated for an act that
5 constitutes recklessness, willful misconduct or a knowing
6 violation of law.

7 (j) Cross reference.--See section 8415 (relating to contents
8 of partnership agreement).

9 § 8448. Actions by partnership and partners.

10 (a) Action by partnership.--A partnership may maintain an
11 action against a partner for either of the following that causes
12 or threatens harm to the partnership:

13 (1) a breach of the partnership agreement; or

14 (2) the violation of a duty to the partnership.

15 (b) Action by partner.--A partner may maintain an action
16 against the partnership or another partner, with or without an
17 accounting as to partnership business, to enforce the partner's
18 rights and protect the partner's interests, including rights and
19 interests under the partnership agreement or this title or
20 arising independently of the partnership relationship.

21 (c) Claims not revived.--A right to an accounting on
22 dissolution and winding up does not revive a claim barred by
23 law.

24 (d) Cross reference.--See section 8415(c)(12) (relating to
25 contents of partnership agreement).

26 § 8449. Continuation of partnership beyond definite term or
27 particular undertaking.

28 (a) Effect of continuation.--If a partnership for a definite
29 term or particular undertaking is continued, without an express
30 agreement, after the expiration of the term or completion of the

1 undertaking, the rights and duties of the partners remain the
2 same as they were at the expiration or completion, so far as is
3 consistent with a partnership at will.

4 (b) Presumed agreement to continue partnership.--If the
5 partners, or those partners who habitually acted in the business
6 during the term or undertaking, continue the business without
7 any settlement or liquidation of the partnership, they are
8 presumed to have agreed that the partnership will continue.

9 SUBCHAPTER E

10 TRANSFERABLE INTERESTS AND RIGHTS

11 OF TRANSFEREES AND CREDITORS

12 Sec.

13 8451. Partner not co-owner of partnership property.

14 8452. Nature of transferable interest.

15 8453. Transfer of transferable interest.

16 8454. Charging order.

17 8455. Power of personal representative of deceased partner.

18 § 8451. Partner not co-owner of partnership property.

19 A partner is not a co-owner of partnership property and has
20 no interest in partnership property which can be transferred,
21 either voluntarily or involuntarily.

22 § 8452. Nature of transferable interest.

23 (a) Personal property.--A transferable interest is personal
24 property.

25 (b) Only right that may be transferred.--A person may not
26 transfer to a person not a partner any rights in a partnership
27 other than a transferable interest.

28 § 8453. Transfer of transferable interest.

29 (a) General rule.--A transfer, in whole or in part, of a
30 transferable interest:

1 (1) is permissible;

2 (2) does not by itself cause the dissociation of the
3 transferor as a partner or a dissolution and winding up of
4 the partnership's business; and

5 (3) subject to section 8455 (relating to power of
6 personal representative of deceased partner), does not
7 entitle the transferee to:

8 (i) participate in the management or conduct of the
9 partnership's business; or

10 (ii) except as provided in subsection (c), have
11 access to records or other information concerning the
12 partnership's business.

13 (b) Rights of transferee.--A transferee has the right to:

14 (1) receive, in accordance with the terms of the
15 transfer:

16 (i) distributions to which the transferor would
17 otherwise be entitled; and

18 (ii) allocations of income, gain, loss, deduction or
19 credit or similar item which would otherwise be made to
20 the transferor; and

21 (2) seek under section 8481(a)(5) (relating to events
22 causing dissolution) a judicial determination that it is
23 equitable to wind up the partnership business.

24 (c) Right to account on dissolution.--In a dissolution and
25 winding up of a partnership, a transferee is entitled to an
26 account of the partnership's transactions only from the date of
27 dissolution.

28 (d) Recognition of transferee's rights.--A partnership need
29 not give effect to a transferee's rights under this section
30 until the partnership knows or has notice of the transfer.

1 (e) Transfer restrictions.--A transfer of a transferable
2 interest in violation of a restriction on transfer contained in
3 the partnership agreement is ineffective if the intended
4 transferee has knowledge or notice of the restriction at the
5 time of transfer.

6 (f) Rights retained by transferor.--Except as provided in
7 section 8461(4)(ii) (relating to events causing dissociation),
8 if a partner transfers a transferable interest, the transferor
9 retains the rights of a partner other than the transferable
10 interest transferred and retains all the duties and obligations
11 of a partner.

12 § 8454. 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 partnership to pay over to the person to which the charging
19 order was issued any distribution that otherwise would be paid
20 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 8453
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 partnership or one or more partners
14 whose transferable interests are not subject to the charging
15 order may pay to the judgment creditor the full amount due under
16 the judgment and thereby succeed to the rights of the judgment
17 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 § 8455. Power of personal representative of deceased partner.

28 If a partner dies, the deceased partner's personal
29 representative may exercise:

30 (1) the rights of a transferee provided in section

1 8453(c) (relating to transfer of transferable interest); and
2 (2) for purposes of settling the estate, the rights the
3 deceased partner had under section 8446 (relating to rights
4 to information).

5 SUBCHAPTER F

6 DISSOCIATION

7 Sec.

8 8461. Events causing dissociation.

9 8462. Power to dissociate as partner and wrongful dissociation.

10 8463. Effects of dissociation.

11 § 8461. Events causing dissociation.

12 A person is dissociated as a partner when any of the
13 following occurs:

14 (1) The partnership knows or has notice of the person's
15 express will to withdraw as a partner, except that, if the
16 person has specified a withdrawal date later than the date
17 the partnership knew or had notice, on that later date.

18 (2) An event stated in the partnership agreement as
19 causing the person's dissociation occurs.

20 (3) The person is expelled as a partner pursuant to the
21 partnership agreement.

22 (4) The person is expelled as a partner by the
23 affirmative vote or consent of all the other partners if:

24 (i) it is unlawful to carry on the partnership
25 business with the person as a partner;

26 (ii) there has been a transfer of all of the
27 person's transferable interest in the partnership, other
28 than:

29 (A) a transfer for security purposes; or

30 (B) a charging order in effect under section

1 8454 (relating to charging order) which has not been
2 foreclosed;

3 (iii) the person is an association and:

4 (A) the partnership notifies the person that the
5 person will be expelled as a partner because:

6 (I) the person has filed a certificate of
7 dissolution or the equivalent;

8 (II) the person has been administratively
9 dissolved;

10 (III) the person's charter or the equivalent
11 has been revoked; or

12 (IV) the person's right to conduct business
13 has been suspended by the person's jurisdiction
14 of formation; and

15 (B) within 90 days after the notification:

16 (I) the certificate of dissolution or the
17 equivalent has not been withdrawn, rescinded or
18 revoked;

19 (II) the person has not been reinstated;

20 (III) the person's charter or the equivalent
21 has not been reinstated; or

22 (IV) the person's right to conduct business
23 has not been reinstated; or

24 (iv) the person is an unincorporated association
25 that has been dissolved and whose activities and affairs
26 are being wound up.

27 (5) On application by the partnership or another
28 partner, the person is expelled as a partner by judicial
29 order because the person:

30 (i) has engaged or is engaging in wrongful conduct

1 that has affected adversely and materially, or will
2 affect adversely and materially, the partnership's
3 business;

4 (ii) has committed willfully or persistently, or is
5 committing willfully or persistently, a material breach
6 of the partnership agreement or a duty or obligation
7 under section 8447 (relating to standards of conduct for
8 partners); or

9 (iii) has engaged or is engaging in conduct relating
10 to the partnership's business which makes it not
11 reasonably practicable to carry on the business with the
12 person as a partner.

13 (6) The person:

14 (i) becomes a debtor in bankruptcy;

15 (ii) makes an assignment for the benefit of
16 creditors; or

17 (iii) seeks, consents to or acquiesces in the
18 appointment of a trustee, receiver or liquidator of the
19 person or of all or substantially all the person's
20 property.

21 (7) In the case of an individual:

22 (i) the individual dies;

23 (ii) a guardian for the individual is appointed; or

24 (iii) a court orders that the individual has
25 otherwise become incapable of performing the individual's
26 duties as a partner under this title or the partnership
27 agreement.

28 (8) In the case of a person that is a testamentary or
29 inter vivos trust or is acting as a partner by virtue of
30 being a trustee of such a trust, the trust's entire

1 transferable interest in the partnership is distributed.

2 (9) In the case of a person that is an estate or is
3 acting as a partner by virtue of being a personal
4 representative of an estate, the estate's entire transferable
5 interest in the partnership is distributed.

6 (10) In the case of a person that is not an individual,
7 the existence of the person terminates.

8 (11) 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 partner.

13 (12) 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 partner.

16 (13) The partnership participates in a conversion under
17 Chapter 3.

18 (14) 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 (15) The partnership participates in a domestication
25 under Chapter 3 and, as a result of the domestication, the
26 person ceases to be a partner.

27 (16) The partnership dissolves and completes winding up.

28 § 8462. Power to dissociate as partner and wrongful

29 dissociation.

30 (a) Power to dissociate.--A person has the power to

1 dissociate as a partner at any time, rightfully or wrongfully,
2 by withdrawing as a partner by express will under section
3 8461(1) (relating to events causing dissociation).

4 (b) Wrongful dissociation.--A person's dissociation as a
5 partner is wrongful only if the dissociation:

6 (1) is in breach of an express provision of the
7 partnership agreement; or

8 (2) in the case of a partnership for a definite term or
9 particular undertaking, occurs before the expiration of the
10 term or the completion of the undertaking and:

11 (i) the person withdraws as a partner by express
12 will, unless the withdrawal follows within 90 days after
13 another person's dissociation by death or otherwise under
14 section 8461(6), (7), (8), (9) or (10) or wrongful
15 dissociation under this subsection;

16 (ii) the person is expelled as a partner by judicial
17 order under section 8461(5);

18 (iii) the person is dissociated under section
19 8461(6); or

20 (iv) in the case of a person that is not a trust
21 other than a business or statutory trust, an estate or an
22 individual, the person is expelled or otherwise
23 dissociated because it willfully dissolved or terminated.

24 (c) Damages for wrongful dissociation.--A person that
25 wrongfully dissociates as a partner is liable to the partnership
26 and to the other partners for damages caused by the
27 dissociation. The liability is in addition to any debt,
28 obligation or other liability of the partner to the partnership
29 or the other partners.

30 (d) Cross reference.--See section 8415(c)(14) (relating to

1 contents of partnership agreement).

2 § 8463. Effects of dissociation.

3 (a) Effects on partnership.--If a person's dissociation
4 results in a dissolution and winding up of the partnership
5 business, Subchapter H (relating to dissolution and winding up)
6 applies; otherwise, Subchapter G (relating to dissociation as
7 partner if business not wound up) applies.

8 (b) Effects on person dissociated as partner.--If a person
9 is dissociated as a partner:

10 (1) The person's right to participate in the management
11 and conduct of the partnership's business terminates, except
12 as provided under section 8482(c) (relating to winding up and
13 filing of ~~optional~~ certificates). <--

14 (2) The person's duties and obligations under section
15 8447 (relating to standards of conduct for partners) end with
16 regard to matters arising and events occurring after the
17 person's dissociation, except to the extent the partner
18 participates in winding up the partnership's business under
19 section 8482.

20 (3) Any transferable interest owned by the person in the
21 person's capacity as a general partner immediately before
22 dissociation that is not subsequently purchased from the
23 person or canceled or exchanged in a transaction under
24 Chapter 3 (relating to entity transactions) is owned by the
25 person solely as a transferee.

26 (c) Existing obligations not discharged.--A person's
27 dissociation does not of itself discharge the person from any
28 debt, obligation or other liability to the partnership or the
29 other partners which the person incurred while a partner.

30 SUBCHAPTER G

DISSOCIATION AS PARTNER
IF BUSINESS NOT WOUND UP

Sec.

8471. Purchase of interest of person dissociated as partner.

8472. Power to bind and liability of person dissociated as partner.

8473. Liability of person dissociated as partner to other persons.

8474. Certificate of dissociation.

8475. Continued use of partnership name.

§ 8471. Purchase of interest of person dissociated as partner.

(a) Right to buyout.--If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership business under section 8481 (relating to events causing dissolution), the partnership shall cause the person's interest in the partnership to be purchased for a buyout price determined under subsection (b).

(b) Buyout price.--The buyout price of the interest of a person dissociated as a partner is the amount that would have been distributable to the person under section 8486(b) (relating to disposition of assets in winding up and required contributions) if, on the date of dissociation, the assets of the partnership were sold and the partnership were wound up, with the sale price equal to the greater of:

(1) the liquidation value; or

(2) the value based on a sale of the entire business as a going concern without the person.

(c) Interest and offsets.--Interest accrues on the buyout price from the date of dissociation to the date of payment, except that damages for wrongful dissociation under section

1 8462(b) (relating to power to dissociate as partner and wrongful
2 dissociation) and all other amounts owing, whether or not
3 presently due, from the person dissociated as a partner to the
4 partnership must be offset against the buyout price.

5 (d) Indemnification.--A partnership shall defend, indemnify
6 and hold harmless a person dissociated as a partner whose
7 interest is being purchased against all partnership liabilities,
8 whether incurred before or after the dissociation, except
9 liabilities incurred by an act of the person under section 8472
10 (relating to power to bind and liability of person dissociated
11 as partner).

12 (e) Payment of partnership's estimate.--If an agreement for
13 the purchase of the interest of a person dissociated as a
14 partner is not reached within 120 days after a demand in record
15 form for payment, the partnership shall pay, or cause to be
16 paid, in money to the person the amount the partnership
17 estimates to be the buyout price and accrued interest, reduced
18 by any offsets and accrued interest under subsection (c).

19 (f) Buyout of deferred payment.--If a deferred payment is
20 authorized under subsection (h), the partnership may tender an
21 offer in record form to pay the amount it estimates to be the
22 buyout price and accrued interest, reduced by any offsets under
23 subsection (c), stating the time of payment, the amount and type
24 of security for payment and the other terms and conditions of
25 the obligation.

26 (g) Information accompanying payment.--The payment or tender
27 required by subsection (e) or (f) must be accompanied by the
28 following:

29 (1) a statement of partnership assets and liabilities as
30 of the date of dissociation;

1 (2) the latest available partnership balance sheet and
2 income statement, if any;

3 (3) an explanation of how the estimated amount of the
4 payment was calculated; and

5 (4) notice in record form that the payment is in full
6 satisfaction of the obligation to purchase unless, within 120
7 days after the notice, the person dissociated as a partner
8 commences an action to determine the buyout price, any
9 offsets under subsection (c) or other terms of the obligation
10 to purchase.

11 (h) Deferred payment on wrongful dissociation.--A person
12 that wrongfully dissociates as a partner before the expiration
13 of a definite term or the completion of a particular undertaking
14 is not entitled to payment of any part of the buyout price until
15 the expiration of the term or completion of the undertaking,
16 unless the person establishes to the satisfaction of the court
17 that earlier payment will not cause undue hardship to the
18 business of the partnership. A deferred payment must be
19 adequately secured and bear interest.

20 (i) Right to bring action.--A person dissociated as a
21 partner may maintain an action against the partnership, under
22 section 8448(b) (relating to actions by partnership and
23 partners), to determine the buyout price of that person's
24 interest, any offsets under subsection (c) or other terms of the
25 obligation to purchase. The action must be commenced within 120
26 days after the partnership has tendered payment or an offer to
27 pay or within one year after demand in record form for payment
28 if no payment or offer to pay is tendered. The court shall
29 determine the buyout price of the person's interest, any offset
30 due under subsection (c), and accrued interest, and enter

1 judgment for any additional payment or refund. If deferred
2 payment is authorized under subsection (h), the court shall also
3 determine the security for payment and other terms of the
4 obligation to purchase. The court may assess reasonable attorney
5 fees and the fees and expenses of appraisers or other experts
6 for a party to the action, in amounts the court finds equitable,
7 against a party that the court finds acted arbitrarily,
8 vexatiously or not in good faith. The finding may be based on
9 the partnership's failure to tender payment or an offer to pay
10 or to comply with subsection (g).

11 § 8472. Power to bind and liability of person dissociated as
12 partner.

13 (a) When partnership bound.--After a person is dissociated
14 as a partner without the dissociation resulting in a dissolution
15 and winding up of the partnership business and before the
16 partnership is merged or divided out of existence, converted or
17 domesticated under Chapter 3 (relating to entity transaction),
18 or dissolved, the partnership is bound by an act of the person
19 only if:

20 (1) the act would have bound the partnership under
21 section 8431 (relating to partner agent of partnership)
22 before dissociation; and

23 (2) 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.

30 (b) Liability of person dissociated as partner.--If a

1 partnership is bound under subsection (a), the person
2 dissociated as a partner which caused the partnership to be
3 bound is liable:

4 (1) to the partnership for any damage caused to the
5 partnership arising from the obligation incurred under
6 subsection (a); and

7 (2) if a partner or another person dissociated as a
8 partner is liable for the obligation, to the partner or other
9 person for any damage caused to the partner or other person
10 arising from the liability.

11 § 8473. Liability of person dissociated as partner to other
12 persons.

13 (a) General rule.--Except as provided in subsection (b), a
14 person dissociated as a partner is not liable for a partnership
15 obligation incurred after dissociation.

16 (b) Exception.--A person that is dissociated as a partner is
17 liable on a transaction entered into by the partnership after
18 the dissociation only if:

19 (1) a partner would be liable on the transaction; and

20 (2) at the time the other party enters into the
21 transaction:

22 (i) less than two years have passed since the
23 dissociation; and

24 (ii) the other party does not have knowledge or
25 notice of the dissociation and reasonably believes that
26 the person is a partner.

27 (c) Constructive release by creditor.--A person dissociated
28 as a partner is released from liability for a debt, obligation
29 or other liability of the partnership if the partnership's
30 creditor, with knowledge or notice of the person's dissociation

1 but without the person's consent, agrees to a material
2 alteration in the nature or time of payment of the debt,
3 obligation or other liability. The release from liability under
4 this subsection applies whether the liability arises directly or
5 indirectly, by way of contribution or otherwise, but only if the
6 liability arises solely by reason of having been a partner.
7 § 8474. Certificate of dissociation.

8 (a) Right to file certificate.--A person dissociated as a
9 partner or the partnership may deliver to the department for
10 filing a certificate of dissociation stating:

11 (1) the name of the partnership;

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

17 (3) the name of the person and that the person has
18 dissociated from the partnership.

19 (b) Effect of certificate.--A certificate of dissociation is
20 a limitation on the authority of a person dissociated as a
21 partner for the purposes of section 8433 (relating to
22 certificate of partnership authority).

23 (c) Cross references.--See:

24 Section 134 (relating to docketing statement).

25 Section 135 (relating to requirements to be met by filed
26 documents).

27 Section 136(c) (relating to processing of documents by
28 Department of State).

29 Section 8413(d)(2) (relating to knowledge and notice).

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

1 § 8475. Continued use of partnership name.

2 Continued use of a partnership name, or the name of a person
3 dissociated as a partner as part of the partnership name, by
4 partners continuing the business does not of itself make the
5 person dissociated as a partner liable for an obligation of the
6 partners or the partnership continuing the business.

7 SUBCHAPTER H

8 DISSOLUTION AND WINDING UP

9 Sec.

10 8481. Events causing dissolution.

11 8482. Winding up and filing of ~~optional~~ certificates.

<--

12 8483. (Reserved).

13 8484. Power to bind partnership after dissolution.

14 8485. Liability after dissolution.

15 8486. Disposition of assets in winding up and required
16 contributions.

17 § 8481. Events causing dissolution.

18 (a) General rule.--A partnership is dissolved, and its
19 business shall be wound up, upon the occurrence of any of the
20 following:

21 (1) In a partnership at will, the partnership knows or
22 has notice of a person's express will to withdraw as a
23 partner, other than a partner that has dissociated under
24 section 8461(2), (3), (4), (5), (6), (7), (8), (9) or (10)
25 (relating to events causing dissociation), except that, if
26 the person has specified a withdrawal date later than the
27 date the partnership knew or had notice, on the later date.

28 (2) In a partnership for a definite term or particular
29 undertaking:

30 (i) within 90 days after a person's dissociation by

1 death or otherwise under section 8461(6), (7), (8), (9)
2 or (10) or wrongful dissociation under section 8462(b)
3 (relating to power to dissociate as partner and wrongful
4 dissociation), the affirmative vote or consent of at
5 least half of the remaining partners to wind up the
6 partnership business, for which purpose a person's
7 rightful dissociation under section 8462(b)(2)(i)
8 constitutes that partner's consent to wind up the
9 partnership business;

10 (ii) the affirmative vote or consent of all the
11 partners to wind up the partnership business; or

12 (iii) the expiration of the term or the completion
13 of the undertaking.

14 (3) An event or circumstance that the partnership
15 agreement states causes dissolution.

16 (4) On application by a partner, the entry by the court
17 of an order dissolving the partnership on the grounds that:

18 (i) the conduct of all or substantially all the
19 partnership's business is unlawful;

20 (ii) the economic purpose of the partnership is
21 likely to be unreasonably frustrated;

22 (iii) another partner has engaged in conduct
23 relating to the partnership business which makes it not
24 reasonably practicable to carry on the business in
25 partnership with that partner; or

26 (iv) it is otherwise not reasonably practicable to
27 carry on the partnership business in conformity with the
28 partnership agreement.

29 (5) On application by a transferee, the entry by the
30 court of an order dissolving the partnership on the grounds

1 that it is equitable to wind up the partnership business:

2 (i) after the expiration of the term or completion
3 of the undertaking, if the partnership was for a definite
4 term or particular undertaking at the time of the
5 transfer or entry of the charging order that gave rise to
6 the transfer; or

7 (ii) at any time, if the partnership was a
8 partnership at will at the time of the transfer or entry
9 of the charging order that gave rise to the transfer.

10 (6) The passage of 90 consecutive days during which the
11 partnership does not have at least two partners.

12 (b) Cross reference.--See section 8415(c)(15) (relating to
13 contents of partnership agreement).

14 § 8482. Winding up and filing of ~~optional~~ certificates. <--

15 (a) General rule.--A dissolved partnership shall wind up its
16 business and the partnership continues after dissolution only
17 for the purpose of winding up.

18 (b) Conduct of winding up.--In winding up its business, the
19 partnership:

20 (1) shall discharge the partnership's debts, obligations
21 and other liabilities, settle and close the partnership's
22 business, and marshal and distribute the assets of the
23 partnership; and

24 (2) may:

25 (i) deliver to the department for filing a
26 certificate of dissolution stating:

27 (A) the name of the partnership;

28 (B) if the partnership is a limited liability
29 partnership, subject to section 109 (relating to name
30 of commercial registered office provider in lieu of

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

3 (C) that the partnership is dissolved;

4 (ii) preserve the partnership business and property
5 as a going concern for a reasonable time;

6 (iii) prosecute and defend actions and proceedings,
7 whether civil, criminal or administrative;

8 (iv) transfer the partnership's property;

9 (v) settle disputes by mediation or arbitration;

10 (vi) deliver to the department for filing the
11 certificates, if any, required by section 139 (relating
12 to tax clearance of certain fundamental transactions) and
13 a certificate of termination stating:

14 (A) the name of the partnership;

15 (B) if the partnership is a limited liability
16 partnership, subject to section 109, the address,
17 including street and number, if any, of its
18 registered office; and

19 (C) that the partnership is terminated; and

20 (vii) perform other acts necessary or appropriate to
21 the winding up.

22 (c) Participation after dissociation.--A person whose
23 dissociation as a partner resulted in dissolution may
24 participate in winding up as if still a partner, unless the
25 dissociation was wrongful.

26 (d) Conduct of winding up when no partner.--If a dissolved
27 partnership does not have a partner and no person has the right
28 to participate in winding up under subsection (c), the personal
29 representative or guardian of the last person to have been a
30 partner may wind up the partnership's business. If the personal

1 representative or guardian does not exercise that right, a
2 person to wind up the partnership's business may be appointed by
3 the affirmative vote or consent of transferees owning a majority
4 of the rights to receive distributions at the time the consent
5 is to be effective. A person appointed under this subsection has
6 the powers of a partner under section 8484 (relating to power to
7 bind partnership after dissolution) but is not liable for the
8 debts, obligations and other liabilities of the partnership
9 solely by reason of having or exercising those powers or
10 otherwise acting to wind up the partnership's business.

11 (e) Judicial supervision.--On the application of any partner
12 or person entitled under subsection (c) to participate in
13 winding up, a court may order judicial supervision of the
14 winding up of a dissolved partnership, including the appointment
15 of a person to wind up the partnership's business, if:

16 (1) the partnership does not have a partner and within a
17 reasonable time following the dissolution no person has been
18 appointed under subsection (d); or

19 (2) the applicant establishes other good cause.

20 (f) Cross references.--See:

21 Section 134 (relating to docketing statement).

22 Section 135 (relating to requirements to be met by filed
23 documents).

24 Section 136(c) (relating to processing of documents by
25 Department of State).

26 Section 8415(c)(16) (relating to contents of partnership
27 agreement).

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

29 § 8483. (Reserved).

30 § 8484. Power to bind partnership after dissolution.

1 (a) Power of partner.--A partnership is bound by a partner's
2 act after dissolution which:

3 (1) is appropriate for winding up the partnership
4 business; or

5 (2) would have bound the partnership under section 8431
6 (relating to partner agent of partnership) before dissolution
7 if, at the time the other party enters into the transaction,
8 the other party does not know or have notice of the
9 dissolution.

10 (b) Power of person dissociated as partner.--A person
11 dissociated as a partner binds a partnership through an act
12 occurring after dissolution if:

13 (1) at the time the other party enters into the
14 transaction:

15 (i) less than two years have passed since the
16 dissociation; and

17 (ii) the other party does not know or have notice of
18 the dissociation and reasonably believes that the person
19 is a partner; and

20 (2) the act:

21 (i) is appropriate for winding up the partnership's
22 business; or

23 (ii) would have bound the partnership under section
24 8431 before dissolution and the other party does not know
25 or have notice of the dissolution at the time the other
26 party enters into the transaction.

27 § 8485. Liability after dissolution.

28 (a) Liability of partner.--If a partner having knowledge of
29 the dissolution causes a partnership to incur an obligation
30 under section 8484(a)(2) (relating to power to bind partnership

1 after dissolution) by an act that is not appropriate for winding
2 up the partnership business, the partner is liable:

3 (1) to the partnership for any damage caused to the
4 partnership arising from the obligation; and

5 (2) if another partner or person dissociated as a
6 partner is liable for the obligation, to that other partner
7 or person for any damage caused to that other partner or
8 person arising from the liability.

9 (b) Liability of person dissociated as partner.--Except as
10 provided under subsection (c), if a person dissociated as a
11 partner causes a partnership to incur an obligation under
12 section 8484(b), the person is liable:

13 (1) to the partnership for any damage caused to the
14 partnership arising from the obligation; and

15 (2) if a partner or another person dissociated as a
16 partner is liable for the obligation, to the partner or other
17 person for any damage caused to the partner or other person
18 arising from the obligation.

19 (c) Exception in winding up.--A person dissociated as a
20 partner is not liable under subsection (b) if:

21 (1) section 8482(c) (relating to winding up and filing
22 of ~~optional~~ certificates) permits the person to participate <--
23 in winding up; and

24 (2) the act that causes the partnership to be bound
25 under section 8484(b) is appropriate for winding up the
26 partnership's business.

27 § 8486. Disposition of assets in winding up and required
28 contributions.

29 (a) Creditors.--In winding up its business, a partnership
30 shall apply its assets, including the contributions required by

1 this section, to discharge the partnership's obligations to
2 creditors, including partners that are creditors.

3 (b) Surplus.--After a partnership complies with subsection
4 (a), any surplus shall be distributed in the following order,
5 subject to any charging order in effect under section 8454
6 (relating to charging order):

7 (1) to each owner of a transferable interest that
8 reflects contributions made and not previously returned, an
9 amount equal to the value of the unreturned contributions;
10 and

11 (2) among owners of transferable interests in proportion
12 to their respective rights to share in distributions
13 immediately before the dissolution of the partnership.

14 (c) Insufficient assets.--If a partnership's assets are
15 insufficient to satisfy all its obligations under subsection
16 (a), with respect to each unsatisfied obligation incurred when
17 the partnership was not a limited liability partnership, the
18 following rules apply:

19 (1) Each person that was a partner when the obligation
20 was incurred and that has not been released from the
21 obligation under section 8473(c) (relating to liability of
22 person dissociated as partner to other persons) shall
23 contribute to the partnership for the purpose of enabling the
24 partnership to satisfy the obligation. The contribution due
25 from each of those persons is in proportion to the right to
26 receive distributions when the obligation was incurred.

27 (2) If a person does not contribute the full amount
28 required under paragraph (1) with respect to an unsatisfied
29 obligation of the partnership, the other persons required to
30 contribute under paragraph (1) on account of the obligation

1 shall contribute the additional amount necessary to discharge
2 the obligation. The additional contribution due from each of
3 those other persons is in proportion to the right to receive
4 distributions when the obligation was incurred.

5 (3) If a person does not make the additional
6 contribution required under paragraph (2), further additional
7 contributions are determined and due in the same manner as
8 provided in that paragraph.

9 (d) Recovery of additional contributions.--A person that
10 makes an additional contribution under subsection (c)(2) or (3)
11 may recover from any person whose failure to contribute under
12 subsection (c)(1) or (2) necessitated the additional
13 contribution. A person may not recover under this subsection
14 more than the amount additionally contributed. A person's
15 liability under this subsection shall not exceed the amount the
16 person failed to contribute.

17 (e) Distributions when surplus insufficient.--If a
18 partnership does not have sufficient surplus to comply with
19 subsection (b)(1), the following shall apply:

20 (1) If the partnership has been a limited liability
21 partnership at any time during its existence, any surplus
22 must be distributed among the owners of transferable
23 interests in proportion to the value of the respective
24 unreturned contributions.

25 (2) If the partnership has never been a limited
26 liability partnership, the partners and any person whose
27 dissociation resulted in dissolution shall contribute to the
28 partnership funds sufficient to cause the insufficiency under
29 subsection (b)(1) to be allocated consistently with section
30 8441(a) (relating to partner's rights and duties).

1 (f) Form of payment.--All distributions made under
2 subsections (b) and (c) must be paid in money.

3 Section 26. Repeals are as follows:

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

5 (i) Over the last 25 years, there have been
6 significant changes in the business model for
7 partnerships; and statutory law must be updated to deal
8 with the new business model.

9 (ii) Existing statutory law on limited partnerships
10 was enacted in 1988. Discrete amendments were enacted in
11 1990, 1992, 1994, 1996 and 2001. A more comprehensive
12 legislative approach was taken in sections 48 through 53
13 of the act of October 22, 2014 (P.L.2640, No.172), known
14 as the Associations Transactions Act.

15 (iii) Section 20 of this act adds a new chapter on
16 limited partnerships. The new chapter, continuing the
17 approach under the Associations Transactions Act,
18 extensively revises existing statutory law to the degree
19 that identification of individual changes or reproduction
20 of voluminous text to be eliminated would inhibit rather
21 than enhance serious legal analysis.

22 (iv) The repeal under paragraph (2) is necessary to
23 carry out this paragraph.

24 (2) Chapter 85 of Title 15 is repealed.

25 Section 27. Title 15 is amended by adding a chapter to read:

26 CHAPTER 86

27 LIMITED PARTNERSHIPS

28 Subchapter

29 A. General Provisions

30 B. Formation and Filings

- 1 C. Limited Partners
- 2 D. General Partners
- 3 E. Contributions and Distributions
- 4 F. Dissociation
- 5 G. Transferable Interests and Rights of Transferees and
- 6 Creditors
- 7 H. Dissolution and Winding Up
- 8 I. Actions by Partners

9 SUBCHAPTER A

10 GENERAL PROVISIONS

11 Sec.

12 8611. Short title and application of chapter.

13 8612. Definitions.

14 8613. Knowledge and notice.

15 8614. Governing law.

16 8615. Contents of partnership agreement.

17 8616. Application of partnership agreement.

18 8617. Amendment and effect of partnership agreement.

19 8618. Required information.

20 8619. Dual capacity.

21 8620. Characteristics of limited partnership.

22 § 8611. Short title and application of chapter.

23 (a) Short title.--This chapter may be cited as the
24 Pennsylvania Uniform Limited Partnership Act of 2015 2016. <--

25 (b) Initial application.--Before ~~July 1, 2016~~ APRIL 1, 2017, <--
26 this chapter governs only:

27 (1) a limited partnership formed on or after [the
28 Legislative Reference Bureau shall insert here the effective
29 date of this chapter]; and

30 (2) except as provided under subsections (c) and (d), a

1 limited partnership formed before [the Legislative Reference
2 Bureau shall insert here the effective date of this chapter]
3 which elects, in the manner provided in its partnership
4 agreement or by law for amending the partnership agreement,
5 to be subject to this chapter.

6 (c) Full effective date.--Except as provided in subsections
7 (d) and (e), on and after ~~July 1, 2016~~ APRIL 1, 2017, this <--
8 chapter governs all limited partnerships.

9 (d) Transitional provisions.--With respect to a limited
10 partnership formed before [the Legislative Reference Bureau
11 shall insert here the effective date of this chapter], the
12 following rules apply except as the partners otherwise elect in
13 the manner provided in the partnership agreement or by law for
14 amending the partnership agreement:

15 (1) Section 8620(c) (relating to characteristics of
16 limited partnership) does not apply and the limited
17 partnership has whatever duration it had under the law
18 applicable immediately before [the Legislative Reference
19 Bureau shall insert here the effective date of this chapter].

20 (2) Sections 8661 (relating to dissociation as limited
21 partner) and 8662 (relating to effects of dissociation as
22 limited partner) do not apply and a limited partner has the
23 same right and power to dissociate from the limited
24 partnership, with the same consequences, as existed
25 immediately before [the Legislative Reference Bureau shall
26 insert here the effective date of this chapter].

27 (3) Section 8663(a)(4) (relating to dissociation as
28 general partner) shall not apply.

29 (4) Section 8663(a)(5) shall not apply and the court has
30 the same power to expel a general partner as the court had

1 immediately before [the Legislative Reference Bureau shall
2 insert here the effective date of this chapter].

3 (5) Section 8681(a)(3) (relating to events causing
4 dissolution) shall not apply and the connection between a
5 person's dissociation as a general partner and the
6 dissolution of the limited partnership is the same as existed
7 immediately before [the Legislative Reference Bureau shall
8 insert here the effective date of this chapter].

9 (e) Liabilities to third parties.--With respect to a limited
10 partnership that elects under subsection (b)(2) to be subject to
11 this chapter, after the election takes effect, the provisions of
12 this chapter relating to the liability of the limited
13 partnership's general partners to third parties apply:

14 (1) before ~~July 1, 2016~~ APRIL 1, 2017, to: <--

15 (i) a third party that had not done business with
16 the limited partnership in the year before the election
17 took effect; and

18 (ii) a third party that had done business with the
19 limited partnership in the year before the election took
20 effect only if the third party knows or has been notified
21 of the election; and

22 (2) on and after ~~July 1, 2016~~ APRIL 1, 2017, to all <--
23 third parties, except that those provisions remain
24 inapplicable to any obligation incurred while those
25 provisions were inapplicable under paragraph (1)(ii).

26 (f) Cross reference.--See section 8615 (relating to contents
27 of partnership agreement).

28 § 8612. Definitions.

29 (a) General definitions.--The following words and phrases
30 when used in this chapter shall have the meanings given to them

1 in this section unless the context clearly indicates otherwise:

2 "Certificate of limited partnership." The certificate
3 required by section 8621 (relating to formation of limited
4 partnership and certificate of limited partnership). The term
5 includes the certificate as amended or restated.

6 "Contribution." Property or a benefit described in section
7 8651 (relating to form of contribution) which is provided by a
8 person to a limited partnership to become a partner or in the
9 person's capacity as a partner.

10 "Distribution." A transfer of money or other property from a
11 limited partnership to a person on account of a transferable
12 interest or in the person's capacity as a partner. The term:

13 (1) Includes:

14 (i) a redemption or other purchase by a limited
15 partnership of a transferable interest; and

16 (ii) a transfer to a partner in return for the
17 partner's relinquishment of any right to participate as a
18 partner in the management or conduct of the partnership's
19 activities and affairs or to have access to records or
20 other information concerning the partnership's activities
21 and affairs.

22 (2) Does not include:

23 (i) amounts constituting reasonable compensation for
24 present or past service or payments made in the ordinary
25 course of business under a bona fide retirement plan or
26 other bona fide benefits program;

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

30 (iii) a direct or indirect allocation or transfer

1 effected under Chapter 3 (relating to entity
2 transactions) with the approval of the members; or

3 (iv) a direct or indirect transfer of:

4 (A) a governance or transferable interest; or

5 (B) options, rights or warrants to acquire a
6 governance or transferable interest.

7 "General partner." A person that:

8 (1) has become a general partner under section 8641
9 (relating to becoming a general partner) or was a general
10 partner in a partnership when the partnership became subject
11 to this chapter under section 8611 (relating to short title
12 and application of chapter); and

13 (2) has not dissociated as a general partner under
14 section 8663 (relating to dissociation as general partner).

15 "Limited partner." A person that:

16 (1) has become a limited partner under section 8631
17 (relating to becoming a limited partner) or was a limited
18 partner in a limited partnership when the partnership became
19 subject to this chapter under section 8611; and

20 (2) has not dissociated as a limited partner under
21 section 8661 (relating to dissociation as limited partner).

22 "Limited partnership." An association formed under this
23 chapter or which becomes subject to this chapter under Chapter 3
24 or section 8611. The term includes a limited liability limited
25 partnership or an electing partnership that is also a limited
26 partnership.

27 "Partner." A limited partner or general partner.

28 "Partnership agreement." The agreement, whether or not
29 referred to as a partnership agreement and whether oral,
30 implied, in record form or in any combination thereof, of all

1 the partners of a limited partnership concerning the matters
2 described under section 8615(a) (relating to contents of
3 partnership agreement). The term includes the agreement as
4 amended or restated.

5 "Required information." The information that a limited
6 partnership is required to maintain under section 8618 (relating
7 to required information).

8 "Transferable interest." The right, as initially owned by a
9 person in the person's capacity as a partner, to receive
10 distributions from a limited partnership, whether or not the
11 person remains a partner or continues to own any part of the
12 right. The term applies to any fraction of the interest, by
13 whomever owned.

14 "Transferee." A person to which all or part of a
15 transferable interest has been transferred, whether or not the
16 transferor is a partner. The term includes a person that owns a
17 transferable interest under section 8662(a)(3) (relating to
18 effects of dissociation as limited partner) or 8665(a)(4)
19 (relating to effects of dissociation as general partner).

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

23 "Act" or "action."

24 "Court."

25 "Debtor in bankruptcy."

26 "Department."

27 "Jurisdiction."

28 "Jurisdiction of formation."

29 "Obligation."

30 "Professional services."

1 "Property."

2 "Record form."

3 "Sign."

4 "Transfer."

5 § 8613. Knowledge and notice.

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

7 (1) has actual knowledge of it; or

8 (2) is deemed to know it under law other than this
9 chapter.

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

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

13 (2) is deemed to have notice of the fact under
14 subsection (c) or (d).

15 (c) Effect of certificate.--A certificate of limited

16 partnership on file in the department is notice that the
17 partnership is a limited partnership and the persons designated
18 in the certificate as general partners are general partners.

19 Except as provided under subsection (d) and section 8201(g)
20 (relating to scope), the certificate is not notice of any other
21 fact.

22 (d) Constructive notice.--A person not a partner is deemed
23 to have notice of:

24 (1) another person's dissociation as a general partner
25 90 days after an amendment to the certificate of limited
26 partnership which states that the other person has
27 dissociated becomes effective or 90 days after a certificate
28 of dissociation pertaining to the other person becomes
29 effective, whichever occurs first;

30 (2) a limited partnership's:

1 (i) dissolution 90 days after an amendment to the
2 certificate of limited partnership stating that the
3 limited partnership is dissolved is effective;

4 (ii) termination 90 days after a certificate of
5 termination under section ~~8682(b)(2)(vi)~~ 8682(E) <--
6 (relating to winding up and filing of ~~optional~~ <--
7 certificates) is effective; and

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

13 (e) Notification.--Except as provided in section 113(b)
14 (relating to delivery of document), a person notifies another
15 person of a fact by taking steps reasonably required to inform
16 the other person in ordinary course, whether or not those steps
17 cause the other person to know the fact.

18 (f) Effect of partner's knowledge or notice.--A general
19 partner's knowledge or notice of a fact relating to the limited
20 partnership is effective immediately as knowledge of or notice
21 to the partnership, except in the case of a fraud on the
22 partnership committed by or with the consent of the general
23 partner. A limited partner's knowledge or notice of a fact
24 relating to the partnership is not effective as knowledge of or
25 notice to the partnership.

26 § 8614. Governing law.

27 (a) General rule.--The laws of this Commonwealth govern:

28 (1) the internal affairs of a limited partnership; and

29 (2) the liability of a partner as partner for the debts,
30 obligations or other liabilities of a limited partnership.

1 (b) Cross reference.--See section 8615(c)(6) (relating to
2 contents of partnership agreement).

3 § 8615. Contents of partnership agreement.

4 (a) Scope of partnership agreement.--Except as provided
5 under subsections (c) and (d), the partnership agreement
6 governs:

7 (1) relations among the partners as partners and between
8 the partners and the limited partnership;

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

11 (3) the activities and affairs of the partnership and
12 the conduct of those activities and affairs;

13 (4) the means and conditions for amending the
14 partnership agreement; and

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

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

20 (c) Limitations.--A partnership agreement may not do any of
21 the following:

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

24 (2) Vary the right of a partner to approve a merger,
25 interest exchange, conversion, division or domestication
26 under section 333(a)(2) (relating to approval of merger),
27 343(a)(2) (relating to approval of interest exchange), 353(a)

28 (3) (relating to approval of conversion), 363(a)(2) (relating
29 to approval of division) or 373(a)(2) (relating to approval
30 of domestication).

1 (3) Vary the required contents of a plan of merger under
2 section 332(a) (relating to plan of merger), plan of interest
3 exchange under section 342(a) (relating to plan of interest
4 exchange), plan of conversion under section 352(a) (relating
5 to plan of conversion), plan of division under section 362(a)
6 (relating to plan of division) or plan of domestication under
7 section 372(a) (relating to plan of domestication).

8 (4) Vary a provision of Chapter 81 (relating to general
9 provisions) or 82 (relating to limited liability partnerships
10 and limited liability limited partnerships).

11 (5) Vary the provisions of section 8611(b), (c), (d) and
12 (e) (relating to short title and application of chapter).

13 (6) Vary the law applicable under section 8614 (relating
14 to governing law).

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

17 (i) registered offices; or

18 (ii) the department, including provisions pertaining
19 to documents authorized or required to be delivered to
20 the department for filing under this title.

21 (8) Vary a limited partnership's capacity under section
22 8620(d) (relating to characteristics of limited partnership)
23 to sue and be sued in its own name.

24 (9) Vary a provision of section 8620(e).

25 (10) Eliminate the duty of loyalty provided for in
26 section 8649(b)(1)(i) or (ii) or (2) (relating to standards
27 of conduct for general partners) or the duty of care, except
28 as provided in subsection (d).

29 (11) Vary the contractual obligation of good faith and
30 fair dealing under sections 8635(a) (relating to limited

1 duties of limited partners) and 8649(d), except as provided
2 in subsection (d).

3 (12) Provide indemnification or exoneration in violation
4 of the limitations in sections 8648(g) (relating to
5 reimbursement, indemnification, advancement and insurance)
6 and 8649(i) to a person from liability for an action that has <--
7 been determined by a court to constitute recklessness,
8 willful misconduct or a knowing violation of law.

9 (13) Vary the information required under section 8618
10 (relating to required information) or unreasonably restrict
11 the duties and rights under section 8634 (relating to limited
12 partner rights to information) or 8647 (relating to general
13 partner rights to information), except as provided under
14 subsection (d).

15 (14) Vary the power of a person to dissociate as a
16 general partner under section 8664(a) (relating to power to
17 dissociate as general partner and wrongful dissociation),
18 except to require that the notice under section 8663(a)(1)
19 (relating to dissociation as general partner) be in record
20 form.

21 (15) Vary the causes of dissolution specified in section
22 8681(a)(6) (relating to events causing dissolution).

23 (16) Vary the ~~requirement~~ REQUIREMENTS to wind up the <--
24 partnership's activities and affairs as specified in section <--
25 8682(a), (b)(1) and ~~(d)~~, (D) AND (E) (relating to winding up <--
26 and filing of ~~optional~~ certificates). <--

27 (17) Unreasonably restrict the right of a partner to
28 maintain an action under Subchapter I (relating to actions by
29 partners).

30 (18) Vary the provisions of section 8694 (relating to

1 special litigation committee), except that the partnership
2 agreement may provide that the partnership may not have a
3 special litigation committee.

4 (19) Except as provided in section 8617(b) (relating to
5 amendment and effect of partnership agreement), restrict the
6 rights under this title of a person other than a partner.

7 (d) Rules.--Subject to subsection (c)(12), the following
8 rules apply:

9 (1) The partnership agreement may:

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

15 (ii) alter the prohibition in section 8654(a)(2)
16 (relating to limitations on distributions) so that the
17 prohibition requires only that the partnership's total
18 assets not be less than the sum of its total liabilities;

19 and

20 (iii) impose reasonable restrictions on the
21 availability and use of information obtained under
22 section 8618, 8634 or 8647 and may define appropriate
23 remedies, including liquidated damages, for a breach of
24 any reasonable restriction on use.

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

1 the responsibility.

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

4 (i) alter the aspects of the duty of loyalty stated
5 in section 8649(b)(1)(i) or (ii) or (2);

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

8 (iii) alter the duty of care;

9 (iv) alter or eliminate any other fiduciary duty;

10 and

11 (v) prescribe the standards by which the performance
12 of the contractual obligation of good faith and fair
13 dealing is to be measured.

14 (e) Determination of manifest unreasonableness.--A court
15 shall decide as a matter of law whether a term of a partnership
16 agreement is manifestly unreasonable under subsection (d)(3).

17 The court:

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

21 (2) may invalidate the term only if, in light of the
22 purposes, activities and affairs of the limited partnership,
23 it is readily apparent that:

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

25 (ii) the term is an unreasonable means to achieve
26 the term's objective.

27 § 8616. Application of partnership agreement.

28 (a) Partnership bound.--A limited partnership is bound by
29 and may enforce the partnership agreement, whether or not the
30 partnership has itself manifested assent to the agreement.

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

3 (c) Preformation agreement.--Two or more persons intending
4 to become the initial partners of a limited partnership may make
5 an agreement providing that upon the formation of the
6 partnership the agreement will become the partnership agreement.

7 (d) Cross reference.--See section 8621 (relating to
8 formation of limited partnership and certificate of limited
9 partnership).

10 § 8617. Amendment and effect of partnership agreement.

11 (a) Approval of amendments.--A partnership agreement may
12 specify that its amendment requires the approval of a person
13 that is not a party to the agreement or the satisfaction of a
14 condition. An amendment is ineffective if its adoption does not
15 include the required approval or satisfy the specified
16 condition.

17 (b) Obligations to nonpartners.--The obligations of a
18 limited partnership and its partners to a person in the person's
19 capacity as a transferee or person dissociated as a partner are
20 governed by the partnership agreement. Except as provided in
21 section 8653(d) (relating to sharing of and right to
22 distributions before dissolution) or in a court order issued
23 under section 8673(b) (2) (relating to charging order) to
24 effectuate a charging order, an amendment to the partnership
25 agreement made after a person becomes a transferee or is
26 dissociated as a partner:

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

1 (2) is not effective to the extent the amendment imposes
2 a new debt, obligation or other liability on the transferee
3 or person dissociated as a partner.

4 (c) Provisions in filed documents.--If a document delivered
5 by a limited partnership to the department for filing becomes
6 effective and contains a provision that would be ineffective
7 under section 8615(c) or (d)(3) (relating to contents of
8 partnership agreement) if contained in the partnership
9 agreement, the provision is ineffective in the document.

10 (d) Conflicts with partnership agreement.--Subject to
11 subsection (c):

12 (1) If a provision of the certificate of limited
13 partnership conflicts with a provision of the partnership
14 agreement, the provision of the certificate prevails.

15 (2) If a document other than its certificate of limited
16 partnership that has been delivered by a limited partnership
17 to the department for filing becomes effective and conflicts
18 with a provision of the partnership agreement:

19 (i) the agreement prevails as to partners, persons
20 dissociated as partners and transferees; and

21 (ii) the document prevails as to other persons to
22 the extent they reasonably rely on the document.

23 (e) Prohibition of oral amendments.--If a provision of a
24 partnership agreement in record form provides that the
25 partnership agreement cannot be amended, modified or rescinded
26 except in record form, an oral agreement, amendment,
27 modification or rescission shall not be enforceable.

28 (f) Voting requirements.--A partnership agreement may
29 provide in ~~writing~~ RECORD FORM that, whenever a provision of <--
30 this title requires the vote or consent of a specified number or

1 percentage of partners or of a class of partners for the taking
2 of any action, a higher number or percentage of votes or
3 consents shall be required for the action. Except as otherwise
4 provided in the partnership agreement, whenever the partnership
5 agreement requires for the taking of any action by the partners
6 or a class of partners a specific number or percentage of votes
7 or consents, the provision of the partnership agreement setting
8 forth that requirement shall not be amended or repealed by any
9 lesser number or percentage of votes or consents of the partners
10 or the class of partners.

11 § 8618. Required information.

12 (a) General rule.--A limited partnership shall maintain at
13 its principal office the following information:

14 (1) A current list showing the full name and last known
15 street and mailing address of each partner, separately
16 identifying the general partners, in alphabetical order, and
17 the limited partners, in alphabetical order.

18 (2) A copy of the initial certificate of limited
19 partnership and all amendments to and restatements of the
20 certificate, together with signed copies of any powers of
21 attorney under which any certificate, amendment or
22 restatement has been signed.

23 (3) A copy of any filed certificate or statement of
24 merger, interest exchange, conversion, division or
25 domestication.

26 (4) A copy of the partnership's Federal, State and local
27 income tax returns and reports, if any, for the three most
28 recent years.

29 (5) A copy of any provisions of the partnership
30 agreement in record form and any amendment made in record

1 form to any partnership agreement.

2 (6) A copy of any financial statement of the partnership
3 for the three most recent years.

4 (7) A copy of any record made by the partnership during
5 the past three years of any consent given by or vote taken of
6 any partner under this title or the partnership agreement.

7 (8) Unless contained in a provision of the partnership
8 agreement in record form, a record stating:

9 (i) a description and statement of the agreed value
10 of contributions other than money made and agreed to be
11 made by each partner;

12 (ii) the times at which, or events on the happening
13 of which, any additional contributions agreed to be made
14 by each partner are to be made;

15 (iii) for any person that is both a general partner
16 and a limited partner, a specification of what
17 transferable interest the person owns in each capacity;
18 and

19 (iv) any events upon the happening of which the
20 partnership is to be dissolved and its activities and
21 affairs wound up.

22 (b) Cross reference.--See section 8615 (relating to contents
23 of partnership agreement).

24 § 8619. Dual capacity.

25 A person may be both a general partner and a limited
26 partner. A person that is both a general and limited partner has
27 the rights, powers, duties and obligations provided by this
28 title and the partnership agreement in each of those
29 capacities. When the person acts as a general partner, the
30 person is subject to the obligations, duties and restrictions

1 under this title and the partnership agreement for general
2 partners. When the person acts as a limited partner, the person
3 is subject to the obligations, duties and restrictions under
4 this title and the partnership agreement for limited partners.
5 § 8620. Characteristics of limited partnership.

6 (a) Separate entity.--A limited partnership is an entity
7 distinct from its partners. A limited partnership is the same
8 entity regardless of whether:

9 (1) its certificate of limited partnership states that
10 the limited partnership is a limited liability limited
11 partnership; or

12 (2) it has a statement of registration in effect under
13 section 8201 (relating to scope).

14 (b) Purpose.--A limited partnership may have any lawful
15 purpose, other than acting as a banking institution, credit
16 union or insurer, regardless of whether the purpose is for
17 profit. See section 8102 (relating to interchangeability of
18 partnership, limited liability company and corporate forms of
19 organization).

20 (c) Duration.--A limited partnership has perpetual duration.

21 (d) Powers.--A limited partnership has the capacity to sue
22 and be sued in its own name and the power to do all things
23 necessary or convenient to carry on its activities and affairs.

24 (e) Restrictions on nonprofit limited partnerships.--If a
25 limited partnership has a purpose that is not for profit:

26 (1) Its purpose must be stated in the certificate of
27 limited partnership.

28 (2) The partnership shall not distribute any part of its
29 income or profits to its partners, but it may pay
30 compensation in a reasonable amount to those persons for

1 services rendered.

2 (3) The partnership may confer benefits on partners or
3 nonpartners in conformity with its purposes, may repay
4 capital contributions and may redeem evidences of
5 indebtedness, except when the partnership is currently
6 insolvent or would thereby be made insolvent or rendered
7 unable to carry on its purposes, or when the fair value of
8 the assets of the partnership remaining after the conferring
9 of benefits, payment or redemption would be insufficient to
10 meet its liabilities. The partnership may make distributions
11 of money or property to partners upon dissolution or final
12 liquidation as permitted by this chapter.

13 (4) If the partnership is organized for a charitable
14 purpose, it may take, receive and hold real and personal
15 property as may be given, devised to, or otherwise vested in
16 the partnership, in trust, for the purpose or purposes set
17 forth in its certificate of limited partnership. The general
18 partners shall, as trustees of the property, be held to the
19 same degree of responsibility and accountability as other
20 trustees, unless:

21 (i) a lesser degree or a particular degree of
22 responsibility and accountability is prescribed in the
23 trust instrument; or

24 (ii) the general partners are under the control of
25 the limited partners or third persons who retain the
26 right to direct, and do direct, the actions of the
27 general partners as to the use of the trust property from
28 time to time.

29 (5) Property of the partnership committed to charitable
30 purposes shall not, by any proceeding under Chapter 3

1 (relating to entity transactions) or otherwise, be diverted
2 from the objects to which it was donated, granted or devised,
3 unless and until the partnership obtains from the court an
4 order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying
5 the disposition of the property.

6 (f) Cross references.--See sections 8611(d) (relating to
7 short title and application of chapter) and 8615 (relating to
8 contents of partnership agreement).

9 SUBCHAPTER B

10 FORMATION AND FILINGS

11 Sec.

12 8621. Formation of limited partnership and certificate of
13 limited partnership.

14 8622. Amendment or restatement of certificate of limited
15 partnership.

16 8623. Signing of filed documents.

17 8624. Liability of general partner for false or missing
18 information in filed document.

19 8625. Registered office.

20 § 8621. Formation of limited partnership and certificate of
21 limited partnership.

22 (a) Formation.--To form a limited partnership, a person must
23 deliver a certificate of limited partnership to the department
24 for filing.

25 (b) Required contents of certificate.--A certificate of
26 limited partnership must state:

27 (1) the name of the limited partnership, which must
28 comply with Subchapter A of Chapter 2 (relating to names);

29 (2) subject to section 109 (relating to name of
30 commercial registered office provider in lieu of registered

1 address), the address, including street and number, if any,
2 of the partnership's registered office; and

3 (3) the name and address of each general partner.

4 (c) Optional contents of certificate.--A certificate of
5 limited partnership may contain statements as to matters other
6 than those required under subsection (b), but may not vary or
7 otherwise affect the provisions specified in section 8615(c) and
8 (d) (relating to contents of partnership agreement) in a manner
9 inconsistent with that section.

10 (d) Time of formation.--A limited partnership is formed
11 when:

12 (1) the certificate of limited partnership becomes
13 effective;

14 (2) at least two persons have become partners;

15 (3) at least one person has become a general partner;

16 and

17 (4) at least one person has become a limited partner.

18 (e) Cross references.--See:

19 Section 134 (relating to docketing statement).

20 Section 135 (relating to requirements to be met by filed
21 documents).

22 Section 136(c) (relating to processing of documents by
23 Department of State).

24 Section 8620 (relating to characteristics of limited
25 partnership).

26 Section 8623 (relating to signing of filed documents).

27 § 8622. Amendment or restatement of certificate of limited
28 partnership.

29 (a) General rule.--A certificate of limited partnership may
30 be amended or restated at any time.

1 (b) Required contents of certificate of amendment.--To amend
2 its certificate of limited partnership, a limited partnership
3 must deliver to the department for filing a certificate of
4 amendment that states:

- 5 (1) the name of the partnership;
6 (2) the date of filing of its initial certificate;
7 (3) 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 its registered office; and
11 (4) the amendment.

12 (c) Restatement.--To restate its certificate of limited
13 partnership, a limited partnership must deliver to the
14 department for filing a certificate of amendment that:

- 15 (1) is designated as a restatement; and
16 (2) includes a statement that the restated certificate
17 supersedes the original certificate and all amendments.

18 (d) Required amendments.--A limited partnership shall
19 promptly deliver to the department for filing an amendment to
20 its certificate of limited partnership to reflect:

- 21 (1) the admission of a new general partner;
22 (2) the dissociation of a person as a general partner;

23 or

24 (3) the appointment of a person to wind up the
25 partnership's activities and affairs under section 8682(c) or

26 (d) (relating to winding up and filing of ~~optional~~
27 certificates).

<--

28 (e) Obligation to correct.--If a general partner knows that
29 any information in a filed certificate of limited partnership is
30 inaccurate, the general partner shall promptly:

1 (1) cause the certificate to be amended; or
2 (2) if appropriate, deliver to the department for
3 filing:

4 (i) a certificate of change of registered office
5 under section 8625 (relating to registered office);

6 (ii) a statement of correction under section 138
7 (relating to statement of correction); or

8 (iii) a statement of abandonment under section 141
9 (relating to abandonment of filing before effectiveness).

10 (f) Amendment of voting provisions.--Except as provided in
11 the certificate of limited partnership, whenever the certificate
12 requires for the taking of any action by the partners or a class
13 of partners a specific number or percentage of votes or
14 consents, the provision of the certificate setting forth that
15 requirement shall not be amended or repealed by any lesser
16 number or percentage of votes or consents of the partners or of
17 the class of partners.

18 (g) Cross references.--See:

19 Section 134 (relating to docketing statement).

20 Section 135 (relating to requirements to be met by filed
21 documents).

22 Section 136(c) (relating to processing of documents by
23 Department of State).

24 Section 8623 (relating to signing of filed documents).

25 § 8623. Signing of filed documents.

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

30 (1) An initial certificate of limited partnership must

1 be signed by all general partners listed in the certificate.

2 (2) An amendment to the certificate of limited
3 partnership deleting a statement that the limited partnership
4 is a limited liability limited partnership must be signed by
5 all general partners listed in the certificate.

6 (3) An amendment to the certificate of limited
7 partnership designating as general partner a person admitted
8 under section 8681(a)(3)(ii) (relating to events causing
9 dissolution) following the dissociation of a limited
10 partnership's last general partner must be signed by that
11 person.

12 (4) An amendment to the certificate of limited
13 partnership required by section 8682(c) (relating to winding
14 up and filing of ~~optional~~ certificates) following the <--
15 appointment of a person to wind up the dissolved limited
16 partnership's activities and affairs must be signed by that
17 person.

18 (5) Any other amendment to the certificate of limited
19 partnership must be signed by:

20 (i) at least one general partner listed in the
21 certificate;

22 (ii) each person designated in the amendment as a
23 new general partner; and

24 (iii) each person that the amendment indicates has
25 dissociated as a general partner, unless:

26 (A) the person is deceased or a guardian has
27 been appointed for the person and the amendment so
28 states; or

29 (B) the person has previously delivered to the
30 department for filing a certificate of dissociation.

1 (6) A restated certificate of limited partnership must
2 be signed by at least one general partner listed in the
3 certificate, and, to the extent the restated certificate
4 effects a change under any other paragraph of this
5 subsection, the certificate must be signed in a manner that
6 satisfies that paragraph.

7 (7) A certificate of termination must be signed by all
8 general partners listed in the certificate of limited
9 partnership or, if the certificate of a dissolved limited
10 partnership lists no general partners, by the person
11 appointed under section 8682(c) or (d) to wind up the
12 dissolved limited partnership's activities and affairs.

13 (8) Any other document delivered by a limited
14 partnership to the department for filing must be signed by at
15 least one general partner listed in the certificate of
16 limited partnership.

17 (9) A statement by a person under section 8665(a)(3)
18 (relating to effects of dissociation as general partner)
19 stating that the person has dissociated as a general partner
20 must be signed by that person.

21 (10) A certificate of negation by a person under section
22 8636 (relating to person erroneously believing self to be
23 limited partner) must be signed by that person.

24 (11) 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 § 8624. Liability of general partner for false or missing
29 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 a general partner if:

6 (1) the document was delivered for filing on behalf of
7 the limited partnership; and

8 (2) the general partner knew or had notice there was
9 false or missing information in the document for a reasonably
10 sufficient time before the document was relied upon so that,
11 before the reliance, the general partner reasonably could
12 have:

13 (i) effected an amendment under section 8622
14 (relating to amendment or restatement of certificate of
15 limited partnership);

16 (ii) filed a petition under section 144 (relating to
17 signing and filing pursuant to judicial order); or

18 (iii) delivered to the department for filing:

19 (A) a certificate of change of registered office
20 under section 8625 (relating to registered office);

21 (B) a statement of correction under section 138
22 (relating to statement of correction); or

23 (C) a statement of abandonment under section 141
24 (relating to abandonment of filing before
25 effectiveness).

26 (b) Cross references.--See sections 142 (relating to effect
27 of signing filings) and 143 (relating to liability for
28 inaccurate information in filing).

29 § 8625. Registered office.

30 (a) General rule.--Every limited partnership shall have and

1 continuously maintain in this Commonwealth a registered office
2 which may, but need not, be the same as its place of business.

3 (b) Change of registered office.--After formation, a change
4 in the location of the registered office may be effected at any
5 time by the limited partnership. Before the change becomes
6 effective, the limited partnership shall amend its certificate
7 of limited partnership under the provisions of this chapter to
8 reflect the change in location, or shall deliver to the
9 department for filing a certificate of change of registered
10 office setting forth:

11 (1) The name of the limited partnership.

12 (2) The address, including street and number, if any, of
13 its then registered office.

14 (3) The address, including street and number, if any, to
15 which the registered office is to be changed.

16 (c) Alternative procedure.--A limited partnership may
17 satisfy the requirements of this chapter concerning the
18 maintenance of a registered office in this Commonwealth by
19 setting forth in any document filed by the department under any
20 provision of this title that permits or requires the statement
21 of the address of its then registered office, in lieu of that
22 address, the statement authorized by section 109(a) (relating to
23 name of commercial registered office provider in lieu of
24 registered address).

25 (d) Cross references.--See:

26 Section 108 (relating to change in location or status of
27 registered office provided by agent).

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 8615(c)(6) (relating to contents of partnership
4 agreement).

5 Section 8623 (relating to signing of filed documents).

6 SUBCHAPTER C

7 LIMITED PARTNERS

8 Sec.

9 8631. Becoming a limited partner.

10 8632. No agency power of limited partner as limited partner.

11 8633. No liability as limited partner for limited partnership
12 obligations.

13 8634. Limited partner rights to information.

14 8635. Limited duties of limited partners.

15 8636. Person erroneously believing self to be limited partner.

16 § 8631. Becoming a limited partner.

17 (a) Upon formation.--Upon formation of a limited
18 partnership, a person becomes a limited partner as agreed among
19 the persons that are to be the initial partners.

20 (b) After formation.--After formation, a person becomes a
21 limited partner:

22 (1) as provided in the partnership agreement;

23 (2) as the result of a transaction effective under
24 Chapter 3 (relating to entity transactions);

25 (3) with the affirmative vote or consent of all the
26 partners; or

27 (4) as provided in section 8681(a)(4) or (5) (relating
28 to events causing dissolution).

29 (c) Noneconomic limited partners.--A person may become a
30 limited partner without:

1 (1) acquiring a transferable interest; or
2 (2) making or being obligated to make a contribution to
3 the limited partnership.

4 (d) Nature of interest.--The interest of a limited partner
5 in a limited partnership is personal property.

6 § 8632. No agency power of limited partner as limited partner.

7 (a) General rule.--A limited partner is not an agent of a
8 limited partnership solely by reason of being a limited partner.

9 (b) Creation of partnership liability.--A person's status as
10 a limited partner does not prevent or restrict law other than
11 this chapter from imposing liability on a limited partnership
12 because of the person's conduct.

13 § 8633. No liability as limited partner for limited partnership
14 obligations.

15 A debt, obligation or other liability of a limited
16 partnership is not the debt, obligation or other liability of a
17 limited partner. A limited partner is not personally liable,
18 directly or indirectly, by way of contribution or otherwise, for
19 a debt, obligation or other liability of the partnership solely
20 by reason of being or acting as a limited partner, even if the
21 limited partner participates in the management and control of
22 the partnership. This subsection applies regardless of the
23 dissolution, winding up or termination of the partnership.

24 § 8634. Limited partner rights to information.

25 (a) Right to required information.--Within 10 days after
26 receipt by a limited partnership of a demand made in record
27 form, a limited partner may inspect and copy required
28 information during regular business hours in the partnership's
29 principal office. The limited partner need not have any
30 particular purpose for seeking the information.

1 (b) Right to other information.--During regular business
2 hours and at a reasonable location specified by the limited
3 partnership, a limited partner may inspect and copy information,
4 other than the required information, regarding the activities,
5 affairs, financial condition and other circumstances of the
6 partnership if:

7 (1) the limited partner seeks the information for a
8 purpose reasonably related to the partner's interest as a
9 limited partner;

10 (2) the limited partner makes a demand in record form
11 received by the partnership, describing with reasonable
12 particularity the information sought and the purpose for
13 seeking the information; and

14 (3) the information sought is directly connected to the
15 limited partner's purpose.

16 (c) Rights of person dissociated as limited partner.--
17 Subject to subsection (h), on demand made in record form
18 received by a limited partnership, a person dissociated as a
19 limited partner may have access to information to which the
20 person was entitled while a limited partner if:

21 (1) the information pertains to the period during which
22 the person was a limited partner;

23 (2) in seeking the information the person complies with
24 section 8635(a) (relating to limited duties of limited
25 partners) as if still a limited partner; and

26 (3) the person satisfies the requirements imposed on a
27 limited partner by subsection (b).

28 (d) Required response to demand.--Within 10 days after
29 receiving a demand under subsection (b) or (c), the limited
30 partnership shall inform in record form the person that made the

1 demand of:

2 (1) what information the partnership will provide in
3 response to the demand and when and where the partnership
4 will provide the information; and

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

7 (e) Copying costs.--A limited partnership may charge a
8 person that makes a demand under this section the reasonable
9 costs of copying, limited to the costs of labor and materials. <--

10 (f) Rights of agent or guardian.--A limited partner or
11 person dissociated as a limited partner may exercise the rights
12 under this section through an agent or, in the case of an
13 individual under legal disability, a guardian. Any restriction
14 or condition imposed by the partnership agreement or under
15 subsection (h) applies both to the agent or guardian and to the
16 limited partner or person dissociated as a limited partner.

17 (g) No rights of transferee.--Subject to section 8674
18 (relating to power of personal representative of deceased
19 partner), the rights under this section do not extend to a
20 person as transferee.

21 (h) Limitations on access.--In addition to any restriction
22 or condition stated in its partnership agreement, a limited
23 partnership, as a matter within the ordinary course of its
24 activities and affairs, may impose reasonable restrictions and
25 conditions on access to and use of information to be furnished
26 under this section, including designating information
27 confidential and imposing nondisclosure and safeguarding
28 obligations on the recipient. In a dispute concerning the
29 reasonableness of a restriction under this subsection, the
30 partnership has the burden of proving reasonableness.

1 (i) Cross reference.--See section 8615 (relating to contents
2 of partnership agreement).

3 § 8635. Limited duties of limited partners.

4 (a) Good faith and fair dealing.--A limited partner shall
5 discharge any duties to the limited partnership and the other
6 partners under the partnership agreement and exercise any rights
7 under this title or the partnership agreement consistently with
8 the contractual obligation of good faith and fair dealing.

9 (b) No other duties.--Except as provided under subsection
10 (a), a limited partner does not have any duty to the limited
11 partnership or to any other partner solely by reason of acting
12 as a limited partner.

13 (c) Transactions with limited partnership.--If a limited
14 partner enters into a transaction with a limited partnership,
15 the limited partner's rights and obligations arising from the
16 transaction are the same as those of a person that is not a
17 partner.

18 (d) Cross reference.--See section 8615(c)(11) (relating to
19 contents of partnership agreement).

20 § 8636. Person erroneously believing self to be limited
21 partner.

22 (a) Right to correct.--Except as provided in subsection (b),
23 a person that makes an investment in a business enterprise and
24 erroneously but in good faith believes that the person has
25 become a limited partner in the enterprise is not liable for the
26 enterprise's obligations by reason of making the investment,
27 receiving distributions from the enterprise or exercising any
28 rights of or appropriate to a limited partner, if, on
29 ascertaining the mistake, the person:

30 (1) causes an appropriate certificate of limited

1 partnership, amendment or statement of correction to be
2 signed and delivered to the department for filing;

3 (2) if a certificate of limited partnership is on file
4 in the department, withdraws from future participation as an
5 owner in the enterprise by delivering to the department for
6 filing a certificate of negation under this section stating:

7 (i) the name of the limited partnership;

8 (ii) subject to section 109 (relating to name of
9 commercial registered office provider in lieu of
10 registered address), the address, including street and
11 number, if any, of the partnership's registered office;

12 (iii) the name of the person delivering the
13 certificate to the department for filing; and

14 (iv) that the person is not a general partner; or

15 (3) files a certificate of denial under section 8434
16 (relating to certificate of denial) as if the enterprise were
17 a general partnership.

18 (b) Liability before correction.--A person that makes an
19 investment described in subsection (a) is liable to the same
20 extent as a general partner to any third party that enters into
21 a transaction with the enterprise, believing in good faith that
22 the person is a general partner, before the department files a
23 certificate of negation, certificate of limited partnership,
24 amendment or statement of correction to show that the person is
25 not a general partner.

26 (c) Right to withdraw.--If a person makes a diligent effort
27 in good faith to comply with subsection (a)(1) and is unable to
28 cause the appropriate certificate of limited partnership,
29 amendment or statement of correction to be signed and delivered
30 to the department for filing, the person has the right to

1 withdraw from the enterprise under subsection (a)(2) even if the
2 withdrawal would otherwise breach an agreement with others that
3 are or have agreed to become co-owners of the enterprise.

4 (d) Cross references.--See:

5 Section 134 (relating to docketing statement).

6 Section 135 (relating to requirements to be met by filed
7 documents).

8 Section 136(c) (relating to processing of documents by
9 Department of State).

10 Section 8623 (relating to signing of filed documents).

11 SUBCHAPTER D

12 GENERAL PARTNERS

13 Sec.

14 8641. Becoming a general partner.

15 8642. General partner agent of limited partnership.

16 8643. Limited partnership liable for general partner's
17 actionable conduct.

18 8644. General partner's liability.

19 8645. Actions by and against partnership and partners.

20 8646. Management rights.

21 8647. General partner rights to information.

22 8648. Reimbursement, indemnification, advancement and
23 insurance.

24 8649. Standards of conduct for general partners.

25 § 8641. Becoming a general partner.

26 (a) Admission on formation.--On formation of a limited
27 partnership, a person becomes a general partner as agreed among
28 the persons that are to be the initial partners.

29 (b) Admission after formation.--After formation of a limited
30 partnership, a person becomes a general partner:

- 1 (1) as provided in the partnership agreement;
2 (2) as the result of a transaction effective under
3 Chapter 3 (relating to entity transactions);
4 (3) with the affirmative vote or consent of all the
5 partners; or
6 (4) under section 8681(a)(3)(ii) or (5) (relating to
7 events causing dissolution) following the dissociation of a
8 limited partnership's last general partner.

9 (c) Noneconomic general partners.--A person may become a
10 general partner without:

- 11 (1) acquiring a transferable interest; or
12 (2) making or being obligated to make a contribution to
13 the partnership.

14 (d) Nature of interest.--The interest of a general partner
15 in a limited partnership is personal property.

16 § 8642. General partner agent of limited partnership.

17 (a) General rule.--Each general partner is an agent of the
18 limited partnership for the purposes of its activities and
19 affairs. An act of a general partner, including the signing of a
20 document in record form in the partnership's name, for
21 apparently carrying on in the ordinary course the partnership's
22 activities and affairs, or activities and affairs of the kind
23 carried on by the partnership, binds the partnership, unless the
24 general partner did not have authority to act for the
25 partnership in the particular matter and the person with which
26 the general partner was dealing knew or had notice that the
27 general partner lacked authority.

28 (b) Act outside of ordinary course.--An act of a general
29 partner which is not apparently for carrying on in the ordinary
30 course the limited partnership's activities and affairs, or

1 activities and affairs of the kind carried on by the
2 partnership, binds the partnership only if the partner had
3 actual authority to take the action.

4 § 8643. Limited partnership liable for general partner's
5 actionable conduct.

6 (a) General rule.--A limited partnership is liable for loss
7 or injury caused to a person or for a penalty incurred as a
8 result of a wrongful act, or other actionable conduct, of a
9 general partner acting in the ordinary course of activities and
10 affairs of the partnership or with the actual or apparent
11 authority of the partnership.

12 (b) Misapplication of property.--If, in the course of a
13 limited partnership's activities and affairs or while acting
14 with actual or apparent authority of the partnership, a general
15 partner receives or causes the partnership to receive money or
16 property of a person not a partner, and the money or property is
17 misapplied by a general partner, the partnership is liable for
18 the loss.

19 § 8644. General partner's liability.

20 (a) General rule.--Except as provided under subsection (b)
21 or section 8204 (relating to limitation on liability of
22 partners), all general partners are liable jointly and severally
23 for all debts, obligations and other liabilities of the limited
24 partnership unless otherwise agreed by the claimant or provided
25 by law.

26 (b) Preexisting obligations.--A person that becomes a
27 general partner is not personally liable for a debt, obligation
28 or other liability of the limited partnership incurred before
29 the person became a general partner.

30 § 8645. Actions by and against partnership and partners.

1 (a) General partner as party.--To the extent not
2 inconsistent with section 8644 (relating to general partner's
3 liability), a general partner may be joined in an action against
4 the limited partnership or named in a separate action.

5 (b) Judgment against partnership only.--A judgment against a
6 partnership:

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

8 (2) except as set forth in subsection (c), may not be
9 satisfied from a partner's assets.

10 (c) Judgment against partnership and partner.--If there is a
11 judgment against a partnership and a partner on the same claim,
12 the judgment creditor may levy execution against the assets of
13 the partner if both of the following paragraphs apply:

14 (1) The partner is personally liable for the claim under
15 section 8644.

16 (2) One of the following subparagraphs applies:

17 (i) A writ of execution on the judgment against the
18 partnership has been returned unsatisfied in whole or in
19 part.

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

21 (iii) The partner has agreed that the creditor need
22 not exhaust partnership assets.

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

25 (A) partnership assets subject to execution are
26 clearly insufficient to satisfy the judgment;

27 (B) exhaustion of partnership assets is
28 excessively burdensome; or

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

1 (v) Liability is imposed on the partner by law or
2 contract independent of the existence of the partnership.
3 § 8646. Management rights.

4 (a) General rule.--Each general partner has equal rights in
5 the management and conduct of the limited partnership's
6 activities and affairs. Except as provided in this title, any
7 matter relating to the activities and affairs of the partnership
8 is decided exclusively by the general partner or, if there is
9 more than one general partner, by a majority of the general
10 partners.

11 (b) Actions requiring unanimous approval.--The affirmative
12 vote or consent of all the partners is required to:

13 (1) amend the partnership agreement; and

14 (2) amend the certificate of limited partnership to
15 delete a statement that the limited partnership is a limited
16 liability limited partnership.

17 (c) Reimbursement of advance.--A limited partnership shall
18 reimburse a general partner for an advance to the partnership
19 beyond the amount of capital the general partner agreed to
20 contribute.

21 (d) Status of advance.--A payment or advance made by a
22 general partner which gives rise to an obligation of the limited
23 partnership under subsection (c) or section 8648(a) (relating to
24 reimbursement, indemnification, advancement and insurance)
25 constitutes a loan to the partnership which accrues interest
26 from the date of the payment or advance.

27 (e) No right to remuneration.--A general partner is not
28 entitled to remuneration for services performed for the limited
29 partnership.

30 (f) Sale of assets.--A sale, lease, exchange or other

1 disposition of all, or substantially all, the property and
2 assets of a limited partnership that is not made in the usual
3 and regular course of the business of the partnership must be
4 approved by:

5 (1) all the general partners; and

6 (2) limited partners owning the rights to receive a
7 majority of the distributions as limited partners.

8 (g) Cross reference.--See section 324 (relating to approval
9 by limited partnership).

10 § 8647. General partner rights to information.

11 (a) Right to required information.--A general partner may
12 inspect and copy required information during regular business
13 hours in the limited partnership's principal office.

14 (b) Right to other information.--On reasonable notice, a
15 general partner may inspect and copy during regular business
16 hours, at a reasonable location specified by the limited
17 partnership, any other records maintained by the partnership in
18 addition to the required information regarding the partnership's
19 activities, affairs, financial condition and other
20 circumstances.

21 (c) Obligation of limited partnership.--A limited
22 partnership shall furnish to each general partner, without
23 demand, any information concerning the partnership's activities,
24 affairs, financial condition and other circumstances which the
25 partnership knows and is material to the proper exercise of the
26 general partner's rights and duties under the partnership
27 agreement or this title, except to the extent the partnership
28 can establish that it reasonably believes the general partner
29 already knows the information.

30 (d) Obligation of general partner.--The duty to furnish

1 information under subsection (c) also applies to each general
2 partner to the extent the general partner knows any of the
3 information described in subsection (b).

4 (e) Rights of person dissociated as general partner.--
5 Subject to subsection (j), within 10 days after receipt by a
6 limited partnership of a demand made in record form, a person
7 dissociated as a general partner may have access to the
8 information and records described under subsections (a) and (b)
9 at the locations specified under subsections (a) and (b) if:

10 (1) the information or record pertains to the period
11 during which the person was a general partner;

12 (2) in seeking the information or record the person
13 complies with section 8649(d) (relating to standards of
14 conduct for general partners) as if still a general partner;
15 and

16 (3) all of the following apply:

17 (i) the person seeks the information for a purpose
18 reasonably related to the partner's interest as a former
19 general partner;

20 (ii) the person makes a demand in record form
21 received by the partnership, describing with reasonable
22 particularity the information sought and the purpose for
23 seeking the information; and

24 (iii) the information sought is directly connected
25 to the person's purpose.

26 (f) Required response to demand.--Within 10 days after
27 receiving a demand under subsection (e), the limited partnership
28 shall, in record form, inform the person that made the demand
29 of:

30 (1) what information the partnership will provide in

1 response to the demand and when and where the partnership
2 will provide the information; and

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

5 (g) Copying costs.--A limited partnership may charge a
6 person that makes a demand under this section the reasonable
7 costs of copying.

8 (h) Rights of agent or guardian.--A general partner or
9 person dissociated as a general partner may exercise the rights
10 under this section through an agent or, in the case of an
11 individual under legal disability, a guardian. Any restriction
12 or condition imposed by the partnership agreement or under
13 subsection (j) applies both to the agent or guardian and to the
14 general partner or person dissociated as a general partner.

15 (i) No rights of transferee.--The rights under this section
16 do not extend to a person as transferee, except that if:

17 (1) a general partner dies, section 8674 (relating to
18 power of personal representative of deceased partner)
19 applies; and

20 (2) an individual dissociates as a general partner under
21 section 8663(a)(7)(ii) or (iii) (relating to dissociation as
22 general partner), the personal representative of the
23 individual may exercise the rights under subsection (d) of a
24 person dissociated as a general partner.

25 (j) Limitations on access.--In addition to any restriction
26 or condition stated in its partnership agreement, a limited
27 partnership, as a matter within the ordinary course of its
28 activities and affairs, may impose reasonable restrictions and
29 conditions on access to and use of information to be furnished
30 under this section, including designating information

1 confidential and imposing nondisclosure and safeguarding
2 obligations on the recipient. In a dispute concerning the
3 reasonableness of a restriction under this subsection, the
4 partnership has the burden of proving reasonableness.

5 (k) Cross reference.--See section 8615 (relating to contents
6 of partnership agreement).

7 § 8648. Reimbursement, indemnification, advancement and
8 insurance.

9 (a) Reimbursement.--A limited partnership shall reimburse a
10 general partner for any payment made by the general partner in
11 the course of the general partner's activities on behalf of the
12 partnership, if the general partner complied with sections 8646
13 (relating to management rights), 8649 (relating to standards of
14 conduct for general partners) and 8654 (relating to limitations
15 on distributions) in making the payment.

16 (b) Indemnification.--A limited partnership shall indemnify
17 and hold harmless a person with respect to any claim or demand
18 against the person and any debt, obligation or other liability
19 incurred by the person by reason of the person's former or
20 present capacity as a general partner, if the claim, demand,
21 debt, obligation or other liability does not arise from the
22 person's breach of section 8646, 8649 or 8654.

23 (c) Advancement.--In the ordinary course of its activities
24 and affairs, a limited partnership may advance reasonable
25 expenses, including attorney fees and costs, incurred by a
26 person in connection with a claim or demand against the person
27 by reason of the person's former or present capacity as a
28 general partner, if the person promises to repay the partnership
29 if the person ultimately is determined not to be entitled to be
30 indemnified.

1 (d) Insurance.--A limited partnership may purchase and
2 maintain insurance on behalf of a general partner against
3 liability asserted against or incurred by the general partner in
4 that capacity or arising from that status even if, under
5 subsection (g), the partnership agreement could not eliminate or
6 limit the person's liability to the partnership for the conduct
7 giving rise to the liability.

8 (e) Non-exclusivity.--The rights provided under subsections
9 (a), (b), (c) and (d) 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 8649(f)
15 shall be applicable to a vote, contract or other action under
16 this subsection. A limited partnership may create a fund of any
17 nature, which may, but need not be, under the control of a
18 trustee, or otherwise secure or insure in any manner its
19 indemnification obligations, whether arising under this section
20 or otherwise.

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

30 (g) Limitation.--Indemnification under this section shall

1 not be made in any case where the act giving rise to the claim
2 for indemnification is determined by a court to constitute
3 recklessness, willful misconduct or a knowing violation of law.
4 § 8649. Standards of conduct for general partners.

5 (a) General rule.--A general partner owes to the limited
6 partnership and, subject to section 8691 (relating to direct
7 action by partner), the other partners the duties of loyalty and
8 care stated in subsections (b) and (c).

9 (b) Duty of loyalty.--The fiduciary duty of loyalty of a
10 general partner includes the duties:

11 (1) to account to the limited partnership and hold as
12 trustee for it any property, profit or benefit derived by the
13 general partner:

14 (i) in the conduct or winding up of the
15 partnership's activities and affairs;

16 (ii) from a use by the general partner of the
17 partnership's property; or

18 (iii) from the appropriation of a partnership
19 opportunity;

20 (2) to refrain from dealing with the partnership in the
21 conduct or winding up of the partnership's activities and
22 affairs as or on behalf of a person having an interest
23 adverse to the partnership; and

24 (3) to refrain from competing with the partnership in
25 the conduct or winding up of the partnership's activities and
26 affairs.

27 (c) Duty of care.--The duty of care of a general partner in
28 the conduct or winding up of the limited partnership's
29 activities and affairs is to refrain from engaging in grossly
30 negligent or reckless conduct, willful or intentional misconduct

1 or knowing violation of law.

2 (d) Good faith and fair dealing.--A general partner shall
3 discharge the duties and obligations under this title or under
4 the partnership agreement and exercise any rights consistent
5 with the contractual obligation of good faith and fair dealing.

6 (e) Self-serving conduct.--A general partner does not
7 violate a duty or obligation under this title or under the
8 partnership agreement solely because the general partner's
9 conduct furthers the general partner's own interest.

10 (f) Authorization or ratification.--All the partners of a
11 limited partnership may authorize or ratify, after full
12 disclosure of all material facts, a specific act or transaction
13 that otherwise would violate the duty of loyalty of a general
14 partner.

15 (g) Fairness as a defense.--It is a defense to a claim under
16 subsection (b) (2) and any comparable claim in equity or at
17 common law that the transaction was fair to the limited
18 partnership at the time it is authorized or ratified under
19 subsection (f).

20 (h) Rights and obligations in approved transactions.--If a
21 general partner enters into a transaction with the limited
22 partnership which otherwise would be prohibited by subsection
23 (b) (2) and the transaction is authorized or ratified as provided
24 in subsection (f) or the partnership agreement, the general
25 partner's rights and obligations arising from the transaction
26 are the same as those of a person that is not a general partner.

27 (i) Exoneration.--The partnership agreement may provide that
28 a general partner shall not be personally liable for monetary
29 damages to the partnership or the other partner for a breach of
30 subsection (c), except that a general partner may not be

1 exonerated for an act that constitutes recklessness, willful
2 misconduct or a knowing violation of law.

3 (j) Cross reference.--See section 8615 (relating to contents
4 of partnership agreement).

5 SUBCHAPTER E

6 CONTRIBUTIONS AND DISTRIBUTIONS

7 Sec.

8 8651. Form of contribution.

9 8652. Liability for contribution.

10 8653. Sharing of and right to distributions before dissolution.

11 8654. Limitations on distributions.

12 8655. Liability for improper distributions.

13 § 8651. Form of contribution.

14 A contribution may consist of:

15 (1) property transferred to, services performed for or
16 another benefit provided to the limited partnership;

17 (2) an agreement to transfer property to, perform
18 services for or provide another benefit to the partnership;

19 or

20 (3) any combination of items listed in paragraphs (1)
21 and (2).

22 § 8652. Liability for contribution.

23 (a) Obligation not excused.--A person's obligation to make a
24 contribution to a limited partnership is not excused by the
25 person's death, disability, termination or other inability to
26 perform personally.

27 (b) Substitute payment.--If a person does not fulfill an
28 obligation to make a contribution other than money, the person
29 is obligated at the option of the limited partnership to
30 contribute money equal to the value, as stated in the required

1 information, of the part of the contribution which has not been
2 made.

3 (c) Compromise of obligation.--The obligation of a person to
4 make a contribution may be compromised only by the affirmative
5 vote or consent of all the partners. If a creditor of a limited
6 partnership extends credit or otherwise acts in reliance on an
7 obligation described in subsection (a) without knowledge or
8 notice of a compromise under this subsection, the creditor may
9 enforce the obligation.

10 § 8653. Sharing of and right to distributions before
11 dissolution.

12 (a) General rule.--Any distribution made by a limited
13 partnership before its dissolution and winding up must be shared
14 among the partners and persons dissociated as partners on the
15 basis of the value, as stated in the required information when
16 the limited partnership decides to make the distribution, of the
17 contributions the limited partnership has received from each
18 partner, except as provided in section 8672(b) (relating to
19 transfer of transferable interest) or to the extent necessary to
20 comply with a charging order in effect under section 8673
21 (relating to charging order).

22 (b) No entitlement to distribution.--A person has a right to
23 a distribution before the dissolution and winding up of a
24 limited partnership only if the partnership decides to make an
25 interim distribution. A person's dissociation does not entitle
26 the person to a distribution.

27 (c) Distribution in kind.--A person does not have a right to
28 demand or receive a distribution from a limited partnership in
29 any form other than money. Except as provided under section
30 8690(f) (relating to disposition of assets in winding up and

1 required contributions), a partnership may distribute an asset
2 in kind only if each part of the asset is fungible with each
3 other part and each person receives a percentage of the asset
4 equal in value to the person's share of distributions.

5 (d) Status as creditor.--If a partner or transferee becomes
6 entitled to receive a distribution, the partner or transferee
7 has the status of, and is entitled to all remedies available to,
8 a creditor of the limited partnership with respect to the
9 distribution, except that the partnership's obligation to make a
10 distribution is subject to offset for any amount owed to the
11 partnership by the partner or a person dissociated as a partner
12 on whose account the distribution is made.

13 § 8654. Limitations on distributions.

14 (a) General rule.--A limited partnership may not make a
15 distribution, including a distribution under section 8690
16 (relating to disposition of assets in winding up and required
17 contributions), if after the distribution:

18 (1) the partnership would not be able to pay its debts
19 as they become due in the ordinary course of the
20 partnership's activities and affairs; or

21 (2) the partnership's total assets would be less than
22 the sum of its total liabilities plus the amount that would
23 be needed, if the partnership were to be dissolved and wound
24 up at the time of the distribution, to satisfy the
25 preferential rights upon dissolution and winding up of
26 partners and transferees whose preferential rights are
27 superior to the rights of persons receiving the distribution.

28 (b) Valuation.--A limited partnership may base a
29 determination that a distribution is not prohibited under
30 subsection (a) (2) on:

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

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

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

9 (4) any other method that is reasonable in the
10 circumstances.

11 (c) Excluded liabilities.--In determining whether a
12 distribution is prohibited by subsection (a)(2), the limited
13 partnership need not consider obligations and liabilities unless
14 they are required to be reflected on a balance sheet, not
15 including the notes to the balance sheet, prepared on the basis
16 of generally accepted accounting principles or other such
17 accounting practices and principles as are used generally by the
18 partnership in the maintenance of its books and records and as
19 are reasonable in the circumstances.

20 (d) Measuring date of distribution.--Except as provided in
21 subsection (e), the effect of a distribution under subsection
22 (a) is measured:

23 (1) as of the date specified by the limited partnership
24 when it authorizes the distribution if the distribution
25 occurs within 125 days of the earlier of the date so
26 specified or the date of authorization; or

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

28 (e) Date of redemption.--In the case of a distribution
29 described in paragraph (1) of the definition of "distribution"
30 in section 8612 (relating to definitions), the distribution is

1 deemed to occur as of the earlier of the date money or other
2 property is transferred or debt is incurred by the limited
3 partnership or the date the person entitled to the distribution
4 ceases to own the interest or right being acquired by the
5 partnership in return for the distribution.

6 (f) Status of distribution debt.--The indebtedness of a
7 limited partnership to a partner or transferee incurred by
8 reason of a distribution made in accordance with this section
9 shall be at least on a parity with the partnership's
10 indebtedness to its general, unsecured creditors, except to the
11 extent subordinated by agreement.

12 (g) Certain subordinated debt.--The indebtedness of a
13 limited partnership, including indebtedness issued as a
14 distribution, is not a liability for purposes of subsection (a)
15 if the terms of the indebtedness provide that payment of
16 principal and interest is made only if and to the extent that
17 payment of a distribution could then be made under this
18 section. If the indebtedness is issued as a distribution, each
19 payment of principal or interest is treated as a distribution,
20 the effect of which is measured on the date the payment is made.

21 (h) Distributions in winding up.--In measuring the effect of
22 a distribution under section 8690, the liabilities of a
23 dissolved limited partnership do not include any claim that has
24 been barred under section 8686 (relating to known claims against
25 dissolved limited partnership) or 8687 (relating to other claims
26 against dissolved limited partnership), or for which security
27 has been provided under section 8688 (relating to court
28 proceedings).

29 (i) Cross references.--See sections 8615(d)(1)(ii) (relating
30 to contents of partnership agreement) and 8649 (relating to

1 standards of conduct for general partners).

2 § 8655. Liability for improper distributions.

3 (a) General rule.--If a general partner consents to a
4 distribution made in violation of section 8654 (relating to
5 limitations on distributions) and in consenting to the
6 distribution fails to comply with section 8649 (relating to
7 standards of conduct for general partners), the general partner
8 is personally liable to the limited partnership for the amount
9 of the distribution which exceeds the amount that could have
10 been distributed without the violation of section 8654.

11 (b) Recipients.--A person that receives a distribution
12 knowing that the distribution violated section 8654 is
13 personally liable to the limited partnership but only to the
14 extent that the distribution received by the person exceeded the
15 amount that could have been properly paid under section 8654.

16 (c) Contribution.--A general partner against which an action
17 is commenced because the general partner is liable under
18 subsection (a) may:

19 (1) join any other person that is liable under
20 subsection (a) or otherwise seek to enforce a right of
21 contribution from the person; and

22 (2) join any person that received a distribution in
23 violation of subsection (b) or otherwise seek to enforce a
24 right of contribution from the person in the amount the
25 person received in violation of subsection (b).

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

28 SUBCHAPTER F

29 DISSOCIATION

30 Sec.

1 8661. Dissociation as limited partner.

2 8662. Effects of dissociation as limited partner.

3 8663. Dissociation as general partner.

4 8664. Power to dissociate as general partner and wrongful
5 dissociation.

6 8665. Effects of dissociation as general partner.

7 8666. Power to bind and liability of person dissociated as
8 general partner.

9 8667. Liability of person dissociated as general partner to
10 other persons.

11 § 8661. Dissociation as limited partner.

12 (a) No right to dissociate.--A person does not have a right
13 to dissociate as a limited partner before the completion of the
14 winding up of the limited partnership.

15 (b) Events causing dissociation.--A person is dissociated as
16 a limited partner when any of the following apply:

17 (1) The limited partnership knows or has notice of the
18 person's express will to withdraw as a limited partner
19 rightfully or wrongfully, except that, if the person has
20 specified a withdrawal date later than the date the
21 partnership knew or had notice, on that later date.

22 (2) An event stated in the partnership agreement as
23 causing the person's dissociation as a limited partner
24 occurs.

25 (3) The person is expelled as a limited partner pursuant
26 to the partnership agreement.

27 (4) The person is expelled as a limited partner by the
28 affirmative vote or consent of all the other partners if:

29 (i) it is unlawful to carry on the partnership's
30 activities and affairs with the person as a limited

1 partner;

2 (ii) there has been a transfer of all the person's
3 transferable interest in the partnership, other than:

4 (A) a transfer for security purposes; or

5 (B) a charging order in effect under section
6 8673 (relating to charging order) which has not been
7 foreclosed;

8 (iii) the person is an entity and:

9 (A) the partnership notifies the person that it
10 will be expelled as a limited partner because:

11 (I) the person has filed a certificate of
12 dissolution or the equivalent;

13 (II) the person has been administratively
14 dissolved;

15 (III) the person's charter or the equivalent
16 has been revoked; or

17 (IV) the person's right to conduct business
18 has been suspended by the person's jurisdiction
19 of formation; and

20 (B) within 90 days after the notification:

21 (I) the certificate of dissolution or the
22 equivalent has not been withdrawn, rescinded or
23 revoked;

24 (II) the person has not been reinstated;

25 (III) the person's charter or the equivalent
26 has not been reinstated; or

27 (IV) the person's right to conduct business
28 has not been reinstated; or

29 (iv) the person is an unincorporated entity that has
30 been dissolved and whose activities and affairs are being

1 wound up.

2 (5) On application by the partnership or a partner in a
3 direct action under section 8691 (relating to direct action
4 by partner), the person is expelled as a limited partner by
5 judicial order because the person:

6 (i) has engaged or is engaging in wrongful conduct
7 that has affected adversely and materially, or will
8 affect adversely and materially, the partnership's
9 activities and affairs;

10 (ii) has committed willfully or persistently, or is
11 committing willfully or persistently, a material breach
12 of the partnership agreement or the contractual
13 obligation of good faith and fair dealing under section
14 8635(a) (relating to limited duties of limited partners);
15 or

16 (iii) has engaged or is engaging in conduct relating
17 to the partnership's activities and affairs which makes
18 it not reasonably practicable to carry on the activities
19 and affairs with the person as a limited partner.

20 (6) In the case of an individual, the individual dies.

21 (7) In the case of a person that is a testamentary or
22 inter vivos trust or is acting as a limited partner by virtue
23 of being a trustee of such a trust, the trust's entire
24 transferable interest in the limited partnership is
25 distributed.

26 (8) In the case of a person that is an estate or is
27 acting as a limited partner by virtue of being a personal
28 representative of an estate, the estate's entire transferable
29 interest in the limited partnership is distributed.

30 (9) In the case of a person that is not an individual,

1 the existence of the person terminates.

2 (10) The partnership participates in a merger under
3 Chapter 3 (relating to entity transactions) and:

4 (i) the partnership is not the surviving entity; or

5 (ii) otherwise as a result of the merger, the person
6 ceases to be a limited partner.

7 (11) The partnership participates in an interest
8 exchange under Chapter 3 and, as a result of the interest
9 exchange, the person ceases to be a limited partner.

10 (12) The partnership participates in a conversion under
11 Chapter 3.

12 (13) The partnership participates in a division under
13 Chapter 3 and:

14 (i) the partnership is not a resulting association;

15 or

16 (ii) as a result of the division, the person ceases
17 to be a partner.

18 (14) The partnership participates in a domestication
19 under Chapter 3 and, as a result of the domestication, the
20 person ceases to be a limited partner.

21 (15) The partnership dissolves and completes winding up.

22 (c) Cross reference.--See section 8611(d) (relating to short
23 title and application of chapter).

24 § 8662. Effects of dissociation as limited partner.

25 (a) General rule.--If a person is dissociated as a limited
26 partner:

27 (1) subject to section 8674 (relating to power of
28 personal representative of deceased partner), the person does
29 not have further rights as a limited partner;

30 (2) the person's contractual obligation of good faith

1 and fair dealing as a limited partner under section 8635(a)
2 (relating to limited duties of limited partners) ends with
3 regard to matters arising and events occurring after the
4 person's dissociation except as provided in section 8634(c)
5 (relating to limited partner rights to information); and

6 (3) subject to section 8674 and Chapter 3 (relating to
7 entity transactions), any transferable interest owned by the
8 person in the person's capacity as a limited partner
9 immediately before dissociation is owned by the person solely
10 as a transferee.

11 (b) Existing obligations not discharged.--A person's
12 dissociation as a limited partner does not of itself discharge
13 the person from any debt, obligation or other liability to the
14 limited partnership or the other partners which the person
15 incurred while a limited partner.

16 (c) Cross reference.--See section 8611(d) (relating to short
17 title and application of chapter).

18 § 8663. Dissociation as general partner.

19 (a) General rule.--A person is dissociated as a general
20 partner when any of the following occurs:

21 (1) The limited partnership knows or has notice of the
22 person's express will to withdraw as a general partner
23 rightfully or wrongfully, except that, if the person has
24 specified a withdrawal date later than the date the
25 partnership knew or had notice, on that later date.

26 (2) An event stated in the partnership agreement as
27 causing the person's dissociation as a general partner
28 occurs.

29 (3) The person is expelled as a general partner pursuant
30 to the partnership agreement.

1 (4) The person is expelled as a general partner by the
2 affirmative vote or consent of all the other partners if:

3 (i) it is unlawful to carry on the partnership's
4 activities and affairs with the person as a general
5 partner;

6 (ii) there has been a transfer of all the person's
7 transferable interest in the partnership, other than:

8 (A) a transfer for security purposes; or

9 (B) a charging order in effect under section
10 8673 (relating to charging order) which has not been
11 foreclosed;

12 (iii) the person is an entity and:

13 (A) the partnership notifies the person that it
14 will be expelled as a general partner because:

15 (I) the person has filed a certificate of
16 dissolution or the equivalent;

17 (II) the person has been administratively
18 dissolved;

19 (III) the person's charter or the equivalent
20 has been revoked; or

21 (IV) the person's right to conduct business
22 has been suspended by the person's jurisdiction
23 of formation; and

24 (B) within 90 days after the notification:

25 (I) the certificate of dissolution or the
26 equivalent has not been withdrawn, rescinded or
27 revoked;

28 (II) the person has not been reinstated;

29 (III) the person's charter or the equivalent
30 has not been reinstated; or

1 (IV) the person's right to conduct business
2 has not been reinstated; or
3 (iv) the person is an unincorporated entity that has
4 been dissolved and whose activities and affairs are being
5 wound up.
6 (5) On application by the partnership or a partner in a
7 direct action under section 8691 (relating to direct action
8 by partner), the person is expelled as a general partner by
9 judicial 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 activities and affairs;
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 8649 (relating to standards of conduct for
18 general partners); or
19 (iii) has engaged or is engaging in conduct relating
20 to the partnership's activities and affairs which makes
21 it not reasonably practicable to carry on the activities
22 and affairs of the partnership with the person as a
23 general partner.
24 (6) The person:
25 (i) becomes a debtor in bankruptcy;
26 (ii) executes an assignment for the benefit of
27 creditors; or
28 (iii) seeks, consents to or acquiesces in the
29 appointment of a trustee, receiver or liquidator of the
30 person or of all or substantially all the person's

1 property.

2 (7) In the case of an individual:

3 (i) the individual dies;

4 (ii) a guardian for the individual is appointed; or

5 (iii) a court orders that the individual has
6 otherwise become incapable of performing the individual's
7 duties as a general partner under this title or the
8 partnership agreement.

9 (8) In the case of a person that is a testamentary or
10 inter vivos trust or is acting as a general partner by virtue
11 of being a trustee of the trust, the trust's entire
12 transferable interest in the limited partnership is
13 distributed.

14 (9) In the case of a person that is an estate or is
15 acting as a general partner by virtue of being a personal
16 representative of an estate, the estate's entire transferable
17 interest in the limited partnership is distributed.

18 (10) In the case of a person that is not an individual,
19 the existence of the person terminates.

20 (11) The partnership participates in a merger under
21 Chapter 3 (relating to entity transactions) and:

22 (i) the partnership is not the surviving entity; or

23 (ii) otherwise as a result of the merger, the person
24 ceases to be a general partner.

25 (12) The partnership participates in an interest
26 exchange under Chapter 3 and, as a result of the interest
27 exchange, the person ceases to be a general partner.

28 (13) The partnership participates in a conversion under
29 Chapter 3.

30 (14) The partnership participates in a division under

1 Chapter 3 and:

2 (i) the partnership is not a resulting association;
3 or

4 (ii) as a result of the division, the person ceases
5 to be a partner.

6 (15) The partnership participates in a domestication
7 under Chapter 3 and, as a result of the domestication, the
8 person ceases to be a general partner.

9 (16) The partnership dissolves and completes winding up.

10 (b) Cross reference.--See section 8611(d) (relating to short
11 title and application of chapter).

12 § 8664. Power to dissociate as general partner and wrongful
13 dissociation.

14 (a) Power to dissociate.--A person has the power to
15 dissociate as a general partner at any time, rightfully or
16 wrongfully, by withdrawing as a general partner by express will
17 under section ~~8663(1)~~ 8663(A) (1) (relating to dissociation as <--
18 general partner).

19 (b) Wrongful dissociation.--A person's dissociation as a
20 general partner is wrongful only if the dissociation:

21 (1) is in breach of an express provision of the
22 partnership agreement; or

23 (2) occurs before the completion of the winding up of
24 the limited partnership, and:

25 (i) the person withdraws as a general partner by
26 express will;

27 (ii) the person is expelled as a general partner by
28 judicial order under section ~~8663(5)~~ 8663(A) (5); <--

29 (iii) the person is dissociated as a general partner
30 under section ~~8663(6)~~ 8663(A) (6); or <--

1 (iv) the person is expelled or otherwise dissociated
2 as a general partner because its existence terminated,
3 except that this subparagraph does not apply to a person
4 that is:

5 (A) a trust that is not a business or statutory
6 trust;

7 (B) an estate; or

8 (C) an individual.

9 (c) Damages for wrongful dissociation.--A person that
10 wrongfully dissociates as a general partner is liable to the
11 limited partnership and, subject to section 8691 (relating to
12 direct action by partner), to the other partners for damages
13 caused by the dissociation. The liability is in addition to any
14 debt, obligation or other liability of the general partner to
15 the partnership or the other partners.

16 (d) Cross reference.--See section 8615 (relating to contents
17 of partnership agreement).

18 § 8665. Effects of dissociation as general partner.

19 (a) General rule.--If a person is dissociated as a general
20 partner:

21 (1) The person's right to participate as a general
22 partner in the management and conduct of the limited
23 partnership's activities and affairs terminates.

24 (2) The person's duties and obligations as a general
25 partner under section 8649 (relating to standards of conduct
26 for general partners) end with regard to matters arising and
27 events occurring after the person's dissociation except as
28 provided in section 8647(e)(2) (relating to general partner
29 rights to information).

30 (3) The person may deliver to the department for filing

1 a certificate of dissociation stating:

2 (i) the name of the partnership;

3 (ii) subject to section 109 (relating to name of
4 commercial registered office provider in lieu of
5 registered address), the address, including street and
6 number, if any, of the registered office of the
7 partnership; and

8 (iii) the name of the person and that the person has
9 dissociated as a general partner.

10 (4) At the request of the limited partnership, the
11 person shall sign an amendment to the certificate of limited
12 partnership which states that the person has dissociated as a
13 general partner.

14 (5) Subject to section 8674 (relating to power of
15 personal representative of deceased partner) and Chapter 3
16 (relating to entity transactions), any transferable interest
17 owned by the person in the person's capacity as a general
18 partner immediately before dissociation is owned by the
19 person solely as a transferee.

20 (b) Existing obligations not discharged.--A person's
21 dissociation as a general partner does not of itself discharge
22 the person from any debt, obligation or other liability to the
23 limited partnership or the other partners which the person
24 incurred while a general partner.

25 (c) 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 § 8666. Power to bind and liability of person dissociated as
3 general partner.

4 (a) Power to bind.--After a person is dissociated as a
5 general partner and before the limited partnership is merged or
6 divided out of existence, converted or domesticated under
7 Chapter 3 (relating to entity transactions) or dissolved, the
8 partnership is bound by an act of the person only if:

9 (1) the act would have bound the partnership under
10 section 8642 (relating to general partner agent of limited
11 partnership) before the dissociation; and

12 (2) at the time the other party enters into the
13 transaction:

14 (i) less than two years have passed since the
15 dissociation; and

16 (ii) the other party does not know or have notice of
17 the dissociation and reasonably believes that the person
18 is a general partner.

19 (b) Liability.--If a limited partnership is bound under
20 subsection (a), the person dissociated as a general partner
21 which caused the partnership to be bound is liable:

22 (1) to the partnership for any damage caused to the
23 partnership arising from the obligation incurred under
24 subsection (a); and

25 (2) if a general partner or another person dissociated
26 as a general partner is liable for the obligation, to the
27 general partner or other person for any damage caused to the
28 general partner or other person arising from the liability.

29 § 8667. Liability of person dissociated as general partner to
30 other persons.

1 (a) General rule.--A person's dissociation as a general
2 partner does not of itself discharge the person's liability as a
3 general partner for a debt, obligation or other liability of the
4 limited partnership incurred before dissociation. Except as
5 provided in subsections (b) and (c), the person is not liable
6 for a partnership obligation incurred after dissociation.

7 (b) Obligations incurred after dissolution.--A person whose
8 dissociation as a general partner results in a dissolution and
9 winding up of the limited partnership's activities and affairs
10 is liable on an obligation incurred by the partnership under
11 section 8685 (relating to general partner liability after
12 dissolution) to the same extent as a general partner under
13 section 8644 (relating to general partner's liability).

14 (c) When partnership not dissolved.--A person that is
15 dissociated as a general partner without the dissociation
16 resulting in a dissolution and winding up of the limited
17 partnership's activities and affairs is liable on a transaction
18 entered into by the partnership after the dissociation only if a
19 general partner would be liable on the transaction, but at the
20 time the other party enters into the transaction:

21 (1) less than two years have passed since the
22 dissociation; and

23 (2) the other party does not have knowledge or notice of
24 the dissociation and reasonably believes that the person is a
25 general partner.

26 (d) Constructive release by creditor.--A person dissociated
27 as a general partner is released from liability for a debt,
28 obligation or other liability of the limited partnership if the
29 partnership's creditor, with knowledge or notice of the person's
30 dissociation as a general partner and without the person's

1 consent, agrees to a material alteration in the nature or time
2 of payment of the debt, obligation or other liability. The
3 release from liability under this subsection applies whether the
4 liability arises directly or indirectly, by way of contribution
5 or otherwise, but only if the liability arises solely by reason
6 of having been a general partner.

7 SUBCHAPTER G

8 TRANSFERABLE INTERESTS AND RIGHTS

9 OF TRANSFEREES AND CREDITORS

10 Sec.

11 8671. Nature of transferable interest.

12 8672. Transfer of transferable interest.

13 8673. Charging order.

14 8674. Power of personal representative of deceased partner.

15 § 8671. Nature of transferable interest.

16 (a) Personal property.--A transferable interest is personal
17 property.

18 (b) Only right that may be transferred.--A person may not
19 transfer to a person not a partner any rights in a limited
20 partnership other than a transferable interest.

21 § 8672. Transfer of transferable interest.

22 (a) General rule.--A transfer, in whole or in part, of a
23 transferable interest:

24 (1) is permissible;

25 (2) does not by itself cause the dissociation of the
26 transferor as a partner or a dissolution and winding up of
27 the limited partnership's activities and affairs; and

28 (3) subject to section 8674 (relating to power of
29 personal representative of deceased partner), does not
30 entitle the transferee to:

1 (i) participate in the management or conduct of the
2 partnership's activities and affairs; or

3 (ii) except as provided under subsection (c), have
4 access to required information, records or other
5 information concerning the partnership's activities and
6 affairs.

7 (b) Right to distributions.--A transferee has the right to
8 receive, in accordance with the transfer, distributions to which
9 the transferor would otherwise be entitled.

10 (c) Right to account on dissolution.--In a dissolution and
11 winding up of a limited partnership, a transferee is entitled to
12 an account of the partnership's transactions only from the date
13 of dissolution.

14 (d) Certificate of interest.--A transferable interest may be
15 evidenced by a certificate of the interest issued by a limited
16 partnership in record form, and, subject to this section, the
17 interest represented by the certificate may be transferred by a
18 transfer of the certificate.

19 (e) Recognition of transferee's rights.--A limited
20 partnership need not give effect to a transferee's rights under
21 this section until the partnership knows or has notice of the
22 transfer.

23 (f) Transfer restrictions.--A transfer of a transferable
24 interest in violation of a restriction on transfer contained in
25 the partnership agreement is ineffective if the intended
26 transferee has knowledge or notice of the restriction at the
27 time of transfer.

28 (g) Rights retained by transferor.--Except as provided under
29 sections 8661(b)(4)(ii) (relating to dissociation as limited
30 partner) and 8663(a)(4)(ii) (relating to dissociation as general

1 partner), if a general or limited partner transfers a
2 transferable interest, the transferor retains the rights of a
3 general or limited partner other than the transferable interest
4 transferred and retains all the duties and obligations of a
5 general or limited partner.

6 § 8673. Charging order.

7 (a) General rule.--On application by a judgment creditor of
8 a partner or transferee, a court may enter a charging order
9 against the transferable interest of the judgment debtor for the
10 unsatisfied amount of the judgment. A charging order constitutes
11 a lien on a judgment debtor's transferable interest and requires
12 the limited partnership to pay over to the person to which the
13 charging order was issued any distribution that otherwise would
14 be paid to the judgment debtor.

15 (b) Available relief.--To the extent necessary to effectuate
16 the collection of distributions pursuant to a charging order in
17 effect under subsection (a), the court may:

18 (1) appoint a receiver of the distributions subject to
19 the charging order, with the power to make all inquiries the
20 judgment debtor might have made; and

21 (2) make all other orders necessary to give effect to
22 the charging order.

23 (c) Foreclosure.--Upon a showing that distributions under a
24 charging order will not pay the judgment debt within a
25 reasonable time, the court may foreclose the lien and order the
26 sale of the transferable interest. The purchaser at the
27 foreclosure sale obtains only the transferable interest, does
28 not thereby become a partner and is subject to section 8672
29 (relating to transfer of transferable interest).

30 (d) Satisfaction of judgment.--At any time before

1 foreclosure under subsection (c), the partner or transferee
2 whose transferable interest is subject to a charging order under
3 subsection (a) may extinguish the charging order by satisfying
4 the judgment and filing a certified copy of the satisfaction
5 with the court that issued the charging order.

6 (e) Purchase of rights.--At any time before foreclosure
7 under subsection (c), a limited partnership or one or more
8 partners whose transferable interests are not subject to the
9 charging order may pay to the judgment creditor the full amount
10 due under the judgment and thereby succeed to the rights of the
11 judgment creditor, including the charging order.

12 (f) Exemption laws preserved.--This chapter shall not
13 deprive any partner or transferee of the benefit of any
14 exemption law applicable to the transferable interest of the
15 partner or transferee.

16 (g) Exclusive remedy.--This section provides the exclusive
17 remedy by which a person seeking, in the capacity of a judgment
18 creditor, to enforce a judgment against a partner or transferee
19 may satisfy the judgment from the judgment debtor's transferable
20 interest.

21 § 8674. Power of personal representative of deceased partner.

22 If a partner dies, the personal representative of the
23 deceased partner may exercise:

24 (1) the rights of a transferee provided in section
25 8672(c) (relating to transfer of transferable interest); and

26 (2) for the purposes of settling the estate, the rights
27 of a current limited partner under section 8634 (relating to
28 limited partner rights to information).

29 SUBCHAPTER H

30 DISSOLUTION AND WINDING UP

1 Sec.

2 8681. Events causing dissolution.

3 8681.1. Voluntary termination by partners.

4 8682. Winding up and filing of ~~optional~~ certificates.

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5 8683. (Reserved).

6 8684. Power to bind partnership after dissolution.

7 8685. General partner liability after dissolution.

8 8686. Known claims against dissolved limited partnership.

9 8687. Other claims against dissolved limited partnership.

10 8688. Court proceedings.

11 8689. General partner liability when claim against limited
12 partnership barred.

13 8690. Disposition of assets in winding up and required
14 contributions.

15 § 8681. Events causing dissolution.

16 (a) General rule.--A limited partnership is dissolved, and
17 its activities and affairs must be wound up, upon the occurrence
18 of any of the following:

19 (1) an event or circumstance that the partnership
20 agreement states causes dissolution;

21 (2) the affirmative vote or consent of:

22 (i) all general partners; and

23 (ii) limited partners owning the rights to receive a
24 majority of the distributions as limited partners at the
25 time the vote or consent is to be effective;

26 (3) after the dissociation of a person as a general
27 partner:

28 (i) if the partnership has at least one remaining
29 general partner, the affirmative vote or consent to
30 dissolve the partnership within 90 days after the

1 dissociation by partners owning a majority of the rights
2 to receive distributions as partners at the time the vote
3 or consent is to be effective; or

4 (ii) if the partnership does not have a remaining
5 general partner, the passage of 180 days after the
6 dissociation, unless before the end of the period:

7 (A) consent to continue the activities and
8 affairs of the partnership and admit at least one
9 general partner is given by limited partners owning a
10 majority of the rights to receive distributions as
11 limited partners at the time the consent is to be
12 effective; and

13 (B) at least one person is admitted as a general
14 partner in accordance with the consent;

15 (4) the passage of 180 consecutive days after the
16 dissociation of the partnership's last limited partner,
17 unless before the end of the period the partnership admits at
18 least one limited partner;

19 (5) the passage of 180 consecutive days during which the
20 partnership has only one partner, unless before the end of
21 the period:

22 (i) the partnership admits at least one person as a
23 partner;

24 (ii) if the previously sole remaining partner is
25 only a general partner, the partnership admits a person
26 as a limited partner; and

27 (iii) if the previously sole remaining partner is
28 only a limited partner, the partnership admits a person
29 as a general partner; or

30 (6) on application by a partner, the entry by the court

1 of an order dissolving the partnership on the grounds that:

2 (i) the conduct of all or substantially all the
3 partnership's activities and affairs is unlawful;

4 (ii) it is not reasonably practicable to carry on
5 the partnership's activities and affairs in conformity
6 with the certificate of limited partnership and
7 partnership agreement; or

8 (iii) the general partners have acted, are acting or
9 will act in a manner that is illegal or fraudulent.

10 (b) Multiple deadlines.--If an event occurs that imposes a
11 deadline on a limited partnership under subsection (a) and
12 before the partnership has met the requirements of the deadline,
13 another event occurs that imposes a different deadline on the
14 partnership under subsection (a):

15 (1) the occurrence of the second event does not affect
16 the deadline caused by the first event; and

17 (2) the partnership's meeting of the requirements of the
18 first deadline does not extend the second deadline.

19 (c) Cross references.--See sections 8611(d) (relating to
20 short title and application of chapter) and 8615(c) (15)
21 (relating to contents of partnership agreement).

22 § 8681.1. Voluntary termination by partners.

23 (a) General rule.--The general partners of a limited
24 partnership that has ~~not commenced business~~ NEVER TRANSACTED <--
25 BUSINESS OR HELD ASSETS OTHER THAN MONEY RECEIVED AS CAPITAL
26 CONTRIBUTIONS may effect the termination of the partnership by
27 delivering to the department for filing a certificate of
28 termination stating:

29 (1) the name of the partnership;

30 (2) subject to section 109 (relating to name of

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

4 (3) that the partnership has ~~not commenced business~~ <--
5 NEVER TRANSACTED BUSINESS OR HELD ASSETS OTHER THAN MONEY <--
6 RECEIVED AS CAPITAL CONTRIBUTIONS;

7 (4) that the amounts, if any, actually paid in as
8 contributions, less any part disbursed for necessary
9 expenses, have been returned to those entitled to the return
10 of the amounts;

11 (5) that all liabilities of the partnership have been
12 discharged or that adequate provision has been made for those
13 liabilities; and

14 (6) that a majority of the general partners elect that
15 the partnership be terminated.

16 (b) Effect.--Upon the filing of the certificate of
17 termination, the existence of the limited partnership shall
18 cease.

19 (c) Cross references.--See:

20 Section 134 (relating to docketing statement).

21 Section 135 (relating to requirements to be met by filed
22 documents).

23 Section 136(c) (relating to processing of documents by
24 Department of State).

25 Section 8623 (relating to signing of filed documents).

26 § 8682. Winding up and filing of ~~optional~~ certificates. <--

27 (a) General rule.--A dissolved limited partnership shall
28 wind up its activities and affairs and the partnership continues
29 after dissolution only for the purpose of winding up.

30 (b) Conduct of winding up.--In winding up its activities and

1 affairs, the limited partnership:

2 (1) shall discharge the partnership's debts, obligations
3 and other liabilities, settle and close the partnership's
4 activities and affairs, and marshal and distribute the assets
5 of the partnership; and

6 (2) may:

7 (i) amend its certificate of limited partnership to
8 state that the partnership is dissolved;

9 (ii) preserve the partnership activities, affairs
10 and property as a going concern for a reasonable time;

11 (iii) prosecute, defend and settle actions and
12 proceedings, whether civil, criminal or administrative;

13 (iv) transfer the partnership's property;

14 (v) participate in, agree to participate in and
15 settle disputes by mediation, arbitration or alternative
16 dispute resolution proceedings; AND <--

17 ~~(vi) deliver to the department for filing the~~ <--
18 ~~certificates, if any, required by section 139 (relating~~
19 ~~to tax clearance of certain fundamental transactions) and~~
20 ~~a certificate of termination stating:~~

21 ~~(A) the name of the partnership;~~

22 ~~(B) subject to section 109 (relating to name of~~
23 ~~commercial registered office provider in lieu of~~
24 ~~registered address), the address, including street~~
25 ~~and number, if any, of its registered office; and~~

26 ~~(C) that the partnership is terminated; and~~

27 ~~(vii) (VI) perform other acts necessary or~~ <--
28 appropriate to the winding up.

29 (c) Conduct of winding up when no general partner.--If a
30 dissolved limited partnership does not have a general partner, a

1 person to wind up the dissolved partnership's activities and
2 affairs may be appointed by the affirmative vote or consent of
3 limited partners owning the rights to receive a majority of the
4 distributions as limited partners at the time the vote or
5 consent is to be effective. A person appointed under this
6 subsection:

7 (1) has the powers of a general partner under section
8 8684 (relating to power to bind partnership after
9 dissolution) but is not liable for the debts, obligations and
10 other liabilities of the partnership solely by reason of
11 having or exercising those powers or otherwise acting to wind
12 up the dissolved partnership's activities and affairs; and

13 (2) shall deliver promptly to the department for filing
14 an amendment to the partnership's certificate of limited
15 partnership stating:

16 (i) that the partnership does not have a general
17 partner;

18 (ii) the name and address of the person; and

19 (iii) that the person has been appointed under this
20 subsection to wind up the partnership.

21 (d) Judicial supervision.--On the application of a partner
22 or person entitled under subsection (c) to participate in
23 winding up, the court may order judicial supervision of the
24 winding up of a dissolved limited partnership, including the
25 appointment of a person to wind up the partnership's activities
26 and affairs, if:

27 (1) the partnership does not have a general partner and
28 within a reasonable time following the dissolution no person
29 has been appointed under subsection (c); or

30 (2) the applicant establishes other good cause.

1 (E) CERTIFICATE OF TERMINATION.--WHEN ALL DEBTS, OBLIGATIONS <--
2 AND OTHER LIABILITIES OF THE LIMITED PARTNERSHIP HAVE BEEN PAID
3 AND DISCHARGED OR ADEQUATE PROVISION HAS BEEN MADE THEREFOR AND
4 ALL OF THE REMAINING PROPERTY AND ASSETS OF THE PARTNERSHIP HAVE
5 BEEN DISTRIBUTED TO THE PARTNERS, A CERTIFICATE OF TERMINATION
6 SHALL BE DELIVERED TO THE DEPARTMENT FOR FILING ALONG WITH THE
7 CERTIFICATES REQUIRED BY SECTION 139 (RELATING TO TAX CLEARANCE
8 OF CERTAIN FUNDAMENTAL TRANSACTIONS). THE CERTIFICATE OF
9 TERMINATION SHALL SET FORTH:

10 (1) THE NAME OF THE LIMITED PARTNERSHIP.

11 (2) SUBJECT TO SECTION 109 (RELATING TO NAME OF
12 COMMERCIAL REGISTERED OFFICE PROVIDER IN LIEU OF REGISTERED
13 ADDRESS), THE ADDRESS, INCLUDING STREET AND NUMBER, IF ANY,
14 OF THE REGISTERED OFFICE OF THE PARTNERSHIP.

15 (3) THAT ALL DEBTS, OBLIGATIONS AND OTHER LIABILITIES OF
16 THE PARTNERSHIP HAVE BEEN PAID AND DISCHARGED OR THAT
17 ADEQUATE PROVISION HAS BEEN MADE THEREFOR.

18 (4) THAT ALL THE REMAINING PROPERTY AND ASSETS OF THE
19 PARTNERSHIP HAVE BEEN DISTRIBUTED AMONG ITS PARTNERS IN
20 ACCORDANCE WITH THEIR RESPECTIVE RIGHTS AND INTERESTS.

21 (5) THAT THERE ARE NO ACTIONS PENDING AGAINST THE
22 PARTNERSHIP IN ANY COURT OR THAT ADEQUATE PROVISION HAS BEEN
23 MADE FOR THE SATISFACTION OF ANY JUDGMENT THAT MAY BE ENTERED
24 AGAINST IT IN ANY PENDING ACTION.

25 (6) THAT THE PARTNERSHIP IS TERMINATED.

26 ~~(e)~~ (F) 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 8615(c)(16) (relating to contents of partnership
3 agreement).

4 Section 8623 (relating to signing of filed documents).

5 § 8683. (Reserved).

6 § 8684. Power to bind partnership after dissolution.

7 (a) Power of general partner.--A limited partnership is
8 bound by a general partner's act after dissolution which:

9 (1) is appropriate for winding up the partnership's
10 activities and affairs; or

11 (2) would have bound the partnership under section 8642
12 (relating to general partner agent of limited partnership)
13 before dissolution if, at the time the other party enters
14 into the transaction, the other party does not know or have
15 notice of the dissolution.

16 (b) Power of person dissociated as general partner.--A
17 person dissociated as a general partner binds a limited
18 partnership through an act occurring after dissolution if:

19 (1) at the time the other party enters into the
20 transaction:

21 (i) less than two years have passed since the
22 dissociation; and

23 (ii) the other party does not know or have notice of
24 the dissociation and reasonably believes that the person
25 is a general partner; and

26 (2) the act:

27 (i) is appropriate for winding up the partnership's
28 activities and affairs; or

29 (ii) would have bound the partnership under section
30 8642 before dissolution and at the time the other party

1 enters into the transaction, the other party does not
2 know or have notice of the dissolution.

3 § 8685. General partner liability after dissolution.

4 (a) Liability of general partner.--If a general partner
5 having knowledge of the dissolution causes a limited partnership
6 to incur an obligation under section 8684(a) (relating to power
7 to bind partnership after dissolution) by an act that is not
8 appropriate for winding up the partnership's activities and
9 affairs, the general partner is liable:

10 (1) to the partnership for any damage caused to the
11 partnership arising from the obligation; and

12 (2) if another general partner or a person dissociated
13 as a general partner is liable for the obligation, to that
14 other general partner or person for any damage caused to that
15 other general partner or person arising from the liability.

16 (b) Liability of person dissociated as general partner.--If
17 a person dissociated as a general partner causes a limited
18 partnership to incur an obligation under section 8684(b), the
19 person is liable:

20 (1) to the partnership for any damage caused to the
21 partnership arising from the obligation; and

22 (2) if a general partner or another person dissociated
23 as a general partner is liable for the obligation, to the
24 general partner or other person for any damage caused to the
25 general partner or other person arising from the obligation.

26 § 8686. Known claims against dissolved limited partnership.

27 (a) General rule.--Except as provided under subsection (d),
28 a dissolved limited partnership may give notice of a known claim
29 under subsection (b), which has the effect provided in
30 subsection (c).

1 (b) Required notice.--A dissolved limited partnership may
2 notify in record form its known claimants of the dissolution.

3 The notice must:

4 (1) specify the information required to be included in a
5 claim;

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

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

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

13 (5) unless the partnership has been throughout its
14 existence a limited liability limited partnership, state that
15 the barring of a claim against the partnership will also bar
16 any corresponding claim against any general partner or person
17 dissociated as a general partner which is based on section
18 8644 (relating to general partner's liability).

19 (c) Claims barred.--A claim against a dissolved limited
20 partnership is barred if the requirements of subsection (b) are
21 met and:

22 (1) the claim is not received by the specified deadline;
23 or

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

26 (i) the partnership causes the claimant to receive a
27 notice in record form stating that the claim is rejected
28 and will be barred unless the claimant commences an
29 action against the partnership to enforce the claim
30 within 90 days after the claimant receives the notice;

1 and

2 (ii) the claimant fails to commence the required
3 action no later than 90 days after the claimant receives
4 the notice.

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

8 § 8687. Other claims against dissolved limited partnership.

9 (a) Permissive notice.--A dissolved limited partnership may
10 publish notice of its dissolution and request persons having
11 claims against the partnership to present them in accordance
12 with the notice.

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

14 (1) be officially published one time;

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

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

21 (4) unless the partnership has been throughout its
22 existence a limited liability limited partnership, state that
23 the barring of a claim against the partnership will also bar
24 any corresponding claim against any general partner or person
25 dissociated as a general partner which is based on section
26 8644 (relating to general partner's liability).

27 (c) Claims barred.--If a dissolved limited partnership
28 publishes a notice in accordance with subsection (b), the claim
29 of each of the following claimants is barred unless the claimant
30 commences an action to enforce the claim against the partnership

1 within two years after the publication date of the notice:

2 (1) a claimant that did not receive notice in record
3 form under section 8686 (relating to known claims against
4 dissolved limited partnership);

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

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

9 (d) Claims not barred.--A claim not barred under this
10 section or section 8686 may be enforced:

11 (1) against the dissolved limited partnership, to the
12 extent of its undistributed assets;

13 (2) except as provided under section 8688 (relating to
14 court proceedings), if assets of the partnership have been
15 distributed after dissolution, against a partner or
16 transferee to the extent of that person's proportionate share
17 of the claim or of the partnership's assets distributed to
18 the partner or transferee after dissolution, whichever is
19 less, except that a person's total liability for all claims
20 under this paragraph may not exceed the total amount of
21 assets distributed to the person after dissolution; and

22 (3) against any person liable on the claim under
23 sections 8644 and 8667 (relating to liability of person
24 dissociated as general partner to other persons).

25 § 8688. Court proceedings.

26 (a) Determination of security.--A dissolved limited
27 partnership that has officially published a notice under section
28 8687 (relating to other claims against dissolved limited
29 partnership) may file an application with the court of common
30 pleas embracing the county where the partnership's principal

1 office is located or, if the principal office is not located in
2 this Commonwealth, where its registered office is or was last
3 located, for a determination of the amount and form of security
4 to be provided for payment of claims that are reasonably
5 expected to arise after the date of dissolution based on facts
6 known to the partnership and:

7 (1) at the time of the application:

8 (i) are contingent; or

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

10 (2) are based on an event occurring after the date of
11 dissolution.

12 (b) When security not required.--Security is not required
13 for any claim that is or is reasonably anticipated to be barred
14 under section 8687.

15 (c) Notice.--Within 10 days after the filing of an
16 application under subsection (a), the dissolved limited
17 partnership shall give notice of the proceeding to each claimant
18 holding a contingent claim known to the partnership.

19 (d) Guardian ad litem.--In a proceeding brought under this
20 section, the court may appoint a guardian ad litem to represent
21 all claimants whose identities are unknown. The reasonable fees
22 and expenses of the guardian, including all reasonable expert
23 witness fees, must be paid by the dissolved limited partnership.

24 (e) Effect on contingent claims.--A dissolved limited
25 partnership that provides security in the amount and form
26 ordered by the court under subsection (a) satisfies the
27 partnership's obligations with respect to claims that are
28 contingent, have not been made known to the partnership or are
29 based on an event occurring after the date of dissolution. The
30 claims may not be enforced against a partner or transferee on

1 account of assets received in liquidation.

2 § 8689. General partner liability when claim against limited
3 partnership barred.

4 If a claim against a dissolved limited partnership is barred
5 under section 8686 (relating to known claims against dissolved
6 limited partnership), 8687 (relating to other claims against
7 dissolved limited partnership) or 8688 (relating to court
8 proceedings), any corresponding claim under section 8644
9 (relating to general partner's liability) or 8667 (relating to
10 liability of person dissociated as general partner to other
11 persons) is also barred.

12 § 8690. Disposition of assets in winding up and required
13 contributions.

14 (a) Creditors.--In winding up its activities and affairs, a
15 limited partnership shall apply its assets, including the
16 contributions required by this section, to discharge the
17 partnership's obligations to creditors, including partners that
18 are creditors.

19 (b) Surplus.--After a limited partnership complies with
20 subsection (a), any surplus shall be distributed in the
21 following order, subject to any charging order in effect under
22 section 8673 (relating to charging order):

23 (1) to each owner of a transferable interest that
24 reflects contributions made and not previously returned, an
25 amount equal to the value of the unreturned contributions;
26 and

27 (2) among owners of transferable interests in proportion
28 to their respective rights to share in distributions
29 immediately before the dissolution of the partnership.

30 (c) Insufficient assets.--If a limited partnership's assets

1 are insufficient to satisfy all of its obligations under
2 subsection (a), with respect to each unsatisfied obligation
3 incurred when the partnership was not a limited liability
4 limited partnership, the following rules apply:

5 (1) Each person that was a general partner when the
6 obligation was incurred and that has not been released from
7 the obligation under section 8667 (relating to liability of
8 person dissociated as general partner to other persons) shall
9 contribute to the partnership for the purpose of enabling the
10 partnership to satisfy the obligation. The contribution due
11 from each of those persons is in proportion to the right to
12 receive distributions in the capacity of a general partner in
13 effect for each of those persons when the obligation was
14 incurred.

15 (2) If a person does not contribute the full amount
16 required under paragraph (1) with respect to an unsatisfied
17 obligation of the partnership, the other persons required to
18 contribute by paragraph (1) on account of the obligation
19 shall contribute the additional amount necessary to discharge
20 the obligation. The additional contribution due from each of
21 those other persons is in proportion to the right to receive
22 distributions in the capacity of a general partner in effect
23 for each of those other persons when the obligation was
24 incurred.

25 (3) If a person does not make the additional
26 contribution required by paragraph (2), further additional
27 contributions are determined and due in the same manner as
28 provided in that paragraph.

29 (d) Recovery of additional contributions.--A person that
30 makes an additional contribution under subsection (c) (2) or (3)

1 may recover from any person whose failure to contribute under
2 subsection (c) (1) or (2) necessitated the additional
3 contribution. A person may not recover under this subsection
4 more than the amount additionally contributed. A person's
5 liability under this subsection may not exceed the amount the
6 person failed to contribute.

7 (e) Distribution when surplus insufficient.--If a limited
8 partnership does not have sufficient surplus to comply with
9 subsection (b) (1), any surplus must be distributed among the
10 owners of transferable interests in proportion to the value of
11 the respective unreturned contributions.

12 (f) Form of payment.--All distributions made under
13 subsections (b) and (c) must be paid in money.

14 SUBCHAPTER I

15 ACTIONS BY PARTNERS

16 Sec.

17 8691. Direct action by partner.

18 8692. Derivative action.

19 8693. Security for costs.

20 8694. Special litigation committee.

21 8695. Proceeds and expenses.

22 § 8691. Direct action by partner.

23 (a) General rule.--Subject to subsection (b), a partner may
24 maintain a direct action against another partner or the limited
25 partnership, with or without an accounting as to the
26 partnership's activities and affairs, to enforce the partner's
27 rights and protect the partner's interests, including rights and
28 interests under the partnership agreement or this title or
29 arising independently of the partnership relationship.

30 (b) Required injury.--A partner maintaining a direct action

1 under this section must plead and prove an actual or threatened
2 injury that is not solely the result of an injury suffered or
3 threatened to be suffered by the limited partnership.

4 (c) Claims not revived.--A right to an accounting on a
5 dissolution and winding up does not revive a claim barred by
6 law.

7 (d) Cross reference.--See section 8615(c)(17) (relating to
8 contents of partnership agreement).

9 § 8692. Derivative action.

10 (a) General rule.--Subject to subsection (b), a partner may
11 maintain a derivative action to enforce a right of a limited
12 partnership only if:

13 (1) the partner first makes a demand on the general
14 partners requesting that they cause the partnership to bring
15 an action to enforce the right, and:

16 (i) if a special litigation committee is not
17 appointed under section 8694 (relating to special
18 litigation committee), the partnership does not bring the
19 action within a reasonable time; or

20 (ii) if a special litigation committee is appointed
21 under section 8694, a determination is made:

22 (A) under section 8694(e)(1) that the
23 partnership not object to the action; or

24 (B) under section 8694(e)(5)(i) that the
25 plaintiff continue the action;

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

27 (3) the action is maintained for the limited purpose of
28 seeking court review under section 8694(f); or

29 (4) the court has allowed the action to continue under
30 the control of the plaintiff under section 8694(f)(3)(ii).

1 (b) Prior demand excused.--

2 (1) A demand under subsection (a) (1) is excused only if
3 the partner makes a specific showing that immediate and
4 irreparable harm to the limited partnership would otherwise
5 result.

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

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

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

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

21 (1) the partner making the demand is notified either:

22 (i) that the general partners have decided not to
23 bring an action and not to appoint a special litigation
24 committee; or

25 (ii) of a determination under section 8694(e) after
26 the appointment of a special litigation committee under
27 section 8694; or

28 (2) the plaintiff commences an action asserting the
29 claim.

30 (f) Cross reference.--See section 8615(c) (17) (relating to

1 contents of partnership agreement).

2 § 8693. Security for costs.

3 In any action or proceeding instituted or maintained by
4 partners holding transferable interests entitled to receive less
5 than 5% of any distribution by a limited partnership, unless the
6 transferable interests held by the partners have an aggregate
7 fair market value in excess of \$200,000, the partnership in
8 whose right the action or proceeding is brought shall be
9 entitled at any stage of the proceedings to require the
10 plaintiffs to give security for the reasonable expenses,
11 including attorneys' fees, that may be incurred by the
12 partnership in connection therewith or for which it may become
13 liable pursuant to section 8468(b) (relating to reimbursement,
14 indemnification, advancement and insurance) to which security
15 the partnership shall have recourse in such amount as the court
16 determines upon the termination of the action or proceeding. The
17 amount of security may, from time to time, be increased or
18 decreased in the discretion of the court upon showing that the
19 security provided has or is likely to become inadequate or
20 excessive. The security may be denied or limited by the court if
21 the court finds after an evidentiary hearing that undue hardship
22 on plaintiffs and serious injustice would result.

23 § 8694. Special litigation committee.

24 (a) General rule.--If a limited partnership or the general
25 partners receive a demand to bring an action to enforce a right
26 of the partnership, or if a derivative action is commenced
27 before demand has been made on the partnership or the general
28 partners, the general partners may appoint a special litigation
29 committee to investigate the claims asserted in the demand or
30 action and to determine on behalf of the limited partnership or

1 recommend to the general partners whether pursuing any of the
2 claims asserted is in the best interests of the partnership. The
3 partnership shall send a notice in record form to the plaintiff
4 promptly after the appointment of the committee under this
5 section notifying the plaintiff that a committee has been
6 appointed and identifying by name the members of the committee.

7 (b) Discovery stay.--If the general partners appoint a
8 special litigation committee and an action is commenced before a
9 determination has been made under subsection (e):

10 (1) On motion by the committee made in the name of the
11 partnership, the court shall stay discovery for the time <--
12 reasonably necessary to permit the committee to make its
13 investigation, except for good cause shown.

14 (2) The time for the defendants to plead shall be tolled
15 until the process provided for under subsection (f) has been
16 completed.

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

19 (1) are not interested in the claims asserted in the
20 demand or action;

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

23 (3) may, but need not, be general or limited partners.

24 (d) Appointment of committee.--A special litigation
25 committee may be appointed:

26 (1) by a majority of the general partners not named as
27 actual or potential parties in the demand or action; or

28 (2) if all general partners are named as actual or
29 potential parties in the demand or action, by a majority of
30 the general partners so named.

1 (e) Determination.--After appropriate investigation by a
2 special litigation committee, the committee or the general
3 partners may determine that it is in the best interests of the
4 limited partnership that:

5 (1) an action based on some or all of the claims
6 asserted in the demand not be brought by the partnership but
7 that the partnership not object to an action being brought by
8 the party that made the demand;

9 (2) an action based on some or all of the claims
10 asserted in the demand be brought by the partnership;

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

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

15 (5) an action already commenced continue under the
16 control of:

17 (i) the plaintiff;

18 (ii) the limited partnership; or

19 (iii) the committee;

20 (6) some or all of the claims asserted in an action
21 already commenced be settled on terms approved by the
22 committee; or

23 (7) an action already commenced be dismissed.

24 (f) Court review and action.--If a special litigation
25 committee is appointed and an action is commenced before a
26 determination is made under subsection (e):

27 (1) The limited partnership shall file with the court
28 after a determination is made under subsection (e) a
29 statement of the determination and a report of the committee.
30 The partnership shall serve each party with a copy of the

1 determination and report. If the partnership moves to file
2 the report under seal, the report shall be served on the
3 parties subject to an appropriate stipulation agreed to by
4 the parties or a protective order issued by the court.

5 (2) The partnership shall file with the court a motion,
6 pleading or notice consistent with the determination under
7 subsection (e).

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

20 (i) dissolve any stay of discovery entered under
21 subsection (b);

22 (ii) allow the action to continue under the control
23 of the plaintiff; and

24 (iii) permit the defendants to file preliminary
25 objections and other appropriate motions and pleadings.

26 (g) Attorney General.--Nothing in this section shall limit
27 the rights, powers and duties of the Attorney General under
28 other applicable law with respect to a limited partnership
29 organized for a charitable purpose.

30 (h) Cross reference.--See section 8615(c) (18) (relating to

1 contents of partnership agreement).

2 § 8695. Proceeds and expenses.

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

4 (1) any proceeds or other benefits of a derivative
5 action, whether by judgment, compromise or settlement, belong
6 to the limited partnership and not to the plaintiff; and

7 (2) if the plaintiff or its counsel receives any
8 proceeds, the proceeds shall be remitted immediately to the
9 partnership.

10 (b) Expenses.--If a derivative action is successful in whole
11 or in part, the court may award the plaintiff reasonable
12 expenses, including reasonable attorney fees and costs, from the
13 recovery of the limited partnership, but in no event shall the
14 attorney fees awarded exceed a reasonable proportion of the
15 value of the relief, including nonpecuniary relief, obtained by
16 the plaintiff for the limited partnership.

17 (c) Cross reference.--See section 8615(c)(7) (relating to
18 contents of partnership agreement).

19 Section 28. Sections 8701, 8702 and 8705 of Title 15 are
20 amended to read:

21 § 8701. Scope and definition.

22 (a) Application of chapter.--This chapter applies to a
23 general or limited partnership formed under the laws of this
24 Commonwealth that elects to be governed by this chapter. Any
25 partnership that desires to elect to be governed by this
26 chapter, or to amend or terminate the election, shall [file in]
27 deliver to the Department of State for filing a statement of
28 election, amendment or termination, as the case may be, which
29 shall be signed by a general partner and shall set forth:

30 (1) The name of the partnership.

1 (2) The location of the principal place of business.

2 (3) The name of each general partner of the partnership
3 as of the date of the statement.

4 (4) A statement that the partnership elects to be
5 governed by this chapter or that the election to be governed
6 by this chapter shall be amended or terminated, as the case
7 may be.

8 (5) If the election is to be made or terminated, a
9 statement that the election or termination has been
10 authorized by at least a majority in interest of the
11 partners.

12 (a.1) Effective date and time.--Subject to section 136(c)
13 (relating to processing of documents by Department of State),
14 [Upon] upon the filing of the statement of election, amendment
15 or termination in the department, the election to be governed by
16 this chapter shall be effective, amended or terminated, as the
17 case may be.

18 (b) Effect of election.--As long as an election under
19 subsection (a) is in effect, the partnership shall be governed
20 by the provisions of this chapter and, to the extent not
21 inconsistent with this chapter, Chapter [83] 84 (relating to
22 general partnerships) [and] or, if a limited partnership,
23 Chapter [85] 86 (relating to limited partnerships).

24 (c) Definition.--As used in this chapter, the term "electing
25 partnership" means a partnership as to which an election under
26 subsection (a) is in effect.

27 (d) Cross [reference.--See section] references.--See
28 sections 134 (relating to docketing statement) and 135 (relating
29 to requirements to be met by filed documents).

30 § 8702. Centralized management.

1 The business and affairs of every electing partnership shall
2 be managed by one-third or less, but not less than one, of the
3 partners selected for that purpose in the manner provided by any
4 agreement between the partners, and no other partner shall have
5 a right to participate in the management of the partnership. A
6 partner of an electing partnership shall be an agent of the
7 partnership only to the extent that an employee of the
8 partnership would be under like circumstances. In making such a
9 determination, the court may consider among other things whether
10 a person dealing with the partnership has knowledge, as defined
11 in section [8303(a) (relating to knowledge)] 8413(a) (relating
12 to knowledge and notice), that this section is applicable to the
13 partnership.

14 § 8705. Limited liability in certain cases.

15 (a) General rule.--The liability of a partner of an electing
16 partnership for the debts and obligations of the partnership
17 shall be satisfied out of partnership assets alone if[:

18 (1)] the debt or obligation arises from a transaction or
19 occurrence in which the person dealing with the partnership
20 has notice, as defined in section [8303(b) (relating to
21 notice)] 8413(b) (relating to knowledge and notice), that
22 this section is applicable to the partnership.[: or

23 (2) the fact that this section is applicable to the
24 partnership has been advertised in the manner provided by
25 section 8357(a)(2)(ii) (relating to power of partner to bind
26 partnership to third persons).]

27 (b) Exceptions.--Subsection (a) does not apply:

28 (1) Unless otherwise agreed by the obligee, to a debt or
29 obligation arising prior to the time a partnership becomes an
30 electing partnership [and complies with subsection (a)(1) or

1 (2)].

2 (2) To a transaction or occurrence involving the
3 furnishing or sale of any goods or services by the
4 partnership.

5 (c) Professional relationship unaffected.--Subsection (a)
6 shall not afford the partners of an electing partnership
7 providing professional services with greater immunity than is
8 available to the officers, shareholders, employees or agents of
9 a professional corporation. See section 2925 (relating to
10 professional relationship retained).

11 Section ~~29~~ Title 29. TITLE 15 is amended by adding a <--
12 chapter to read:

13 CHAPTER 88

14 LIMITED LIABILITY COMPANIES

15 Subchapter

16 A. General Provisions

17 B. Formation and Filings

18 C. Relations of Members and Managers to Persons Dealing with
19 Limited Liability Company

20 D. Relations of Members to Each Other and to Limited
21 Liability Company

22 E. Transferable Interests and Rights of Transferees and
23 Creditors

24 F. Dissociation

25 G. Dissolution and Winding Up

26 H. Actions by Members

27 I. BENEFIT COMPANIES <--

28 SUBCHAPTER A

29 GENERAL PROVISIONS

30 Sec.

1 8811. Short title and application of chapter.

2 8812. Definitions.

3 8813. Knowledge and notice.

4 8814. Governing law.

5 8815. Contents of operating agreement.

6 8816. Application of operating agreement.

7 8817. Amendment and effect of operating agreement.

8 8818. Characteristics of limited liability company.

9 8819. Powers.

10 § 8811. Short title and application of chapter.

11 (a) Short title.--This chapter may be cited as the
12 Pennsylvania Uniform Limited Liability Company Act of ~~2015~~ 2016. <--

13 (b) Initial application.--Before ~~July 1, 2016~~ APRIL 1, 2017, <--
14 this chapter governs only:

15 (1) a limited liability company formed on or after [the
16 Legislative Reference Bureau shall insert here the effective
17 date of this chapter]; and

18 (2) except as provided in subsection (c), a limited
19 liability company formed before [the Legislative Reference
20 Bureau shall insert here the effective date of this chapter]
21 which elects, in the manner provided in its operating
22 agreement or by law for amending the operating agreement, to
23 be subject to this chapter.

24 (c) Full effective date.--Except as provided in subsection

25 (d), on and after ~~July 1, 2016~~ APRIL 1, 2017, this chapter <--
26 governs all limited liability companies.

27 (d) Certificates of membership interest.--For purposes of
28 applying this chapter to a limited liability company formed
29 before [the Legislative Reference Bureau shall insert here the
30 effective date of this chapter], language in the company's

1 certificate of organization authorizing the issuance of
2 certificates of membership interest operates as if that language
3 were in the operating agreement.

4 (e) Cross reference.--See section 8815(c)(5) (relating to
5 contents of operating agreement).

6 § 8812. Definitions.

7 (a) General definitions.--The following words and phrases
8 when used in this chapter shall have the meanings given to them
9 in this section unless the context clearly indicates otherwise:

10 "Certificate of organization." The certificate required by
11 section 8821 (relating to formation of limited liability company
12 and certificate of organization). The term includes the
13 certificate as amended or restated.

14 "Contribution." Property or a benefit described under
15 section 8842 (relating to form of contribution) which is
16 provided by a person to a limited liability company to become a
17 member or in the capacity of a person as a member.

18 "Distribution." A direct or indirect transfer of money or
19 other property from a limited liability company to a person on
20 account of a transferable interest or in the person's capacity
21 as a member. The term:

22 (1) includes:

23 (i) a redemption or other purchase by a limited
24 liability company of a transferable interest; and

25 (ii) a transfer to a member in return for the
26 member's relinquishment of any right to participate as a
27 member in the management or conduct of the company's
28 activities and affairs or to have access to records or
29 other information concerning the company's activities and
30 affairs; and

1 (2) does not include:

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

6 (ii) the making of, or payment or performance on, a
7 guaranty or similar arrangement by a company for the
8 benefit of any or all of its members;

9 (iii) a direct or indirect allocation or transfer
10 effected under Chapter 3 (relating to entity
11 transactions) with the approval of the members; or

12 (iv) a direct or indirect transfer of:

13 (A) a governance or transferable interest; or

14 (B) options, rights or warrants to acquire a
15 governance or transferable interest.

16 "Limited liability company." An association formed under
17 this chapter or which becomes subject to this chapter under
18 Chapter 3 or section 8811 (relating to short title and
19 application of chapter).

20 "Manager." A person that under the operating agreement of a
21 manager-managed limited liability company is responsible, alone
22 or in concert with others, for performing the management
23 functions stated under section 8847(c) (relating to management
24 of limited liability company).

25 "Manager-managed limited liability company." A limited
26 liability company that qualifies as such under section 8847(a).

27 "Member." A person that:

28 (1) has become a member of a limited liability company
29 under section 8841 (relating to becoming a member) or was a
30 member in a company when the company became subject to this

1 chapter under section 8811(b); and

2 (2) has not dissociated as a member under section 8861
3 (relating to events causing dissociation).

4 "Member-managed limited liability company." A limited
5 liability company that is not a manager-managed limited
6 liability company.

7 "Operating agreement." The agreement, whether or not
8 referred to as an operating agreement and whether oral, implied,
9 in record form or in any combination thereof, of all the members
10 of a limited liability company, including a sole member,
11 concerning matters described in section 8815(a) (relating to
12 contents of operating agreement). The term includes the
13 agreement as amended or restated.

14 "Organizer." A person that acts under section 8821 to form a
15 limited liability company.

16 "Professional company." A limited liability company that
17 renders one or more professional services.

18 "Transferable interest." The right, as initially owned by a
19 person in the person's capacity as a member, to receive
20 distributions from a limited liability company, whether or not
21 the person remains a member or continues to own any part of the
22 right. The term applies to any fraction of the interest, by
23 whomever owned.

24 "Transferee." A person to which all or part of a
25 transferable interest has been transferred, whether or not the
26 transferor is a member. The term includes a person that owns a
27 transferable interest under section 8863(a)(3) (relating to
28 effect of dissociation).

29 (b) Index of other definitions.--Following is a nonexclusive
30 list of definitions in section 102 (relating to definitions)

1 that apply to this chapter:

2 "Act" or "action."

3 "Debtor in bankruptcy."

4 "Department."

5 "Jurisdiction of formation."

6 "Principal office."

7 "Professional services."

8 "Property."

9 "Record form."

10 "Sign."

11 "Transfer."

12 § 8813. Knowledge and notice.

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

14 (1) has actual knowledge of it; or

15 (2) is deemed to know it under subsection (d) or law

16 other than this chapter.

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

18 reason to know the fact from all the facts known to the person

19 at the time in question.

20 (c) Constructive notice.--A person not a member or manager

21 is deemed to have notice of:

22 (1) the dissolution of a limited liability company 90

23 days after a certificate of dissolution under section 8872(b)

24 (2)(i) (relating to winding up and filing of ~~optional-~~ <--

25 certificates) is effective;

26 (2) the termination of a company 90 days after a

27 certificate of termination under section ~~8872(b)(2)(vi)-~~ <--

28 8872(F) is effective; and <--

29 (3) the participation of a company in a merger, interest

30 exchange, conversion, division or domestication, 90 days

1 after a statement of merger, interest exchange, conversion,
2 division or domestication under Chapter 3 (relating to entity
3 transactions) becomes effective.

4 (d) Notification.--Except as provided under section 113(b)
5 (relating to delivery of document), a person notifies another
6 person of a fact by taking steps reasonably required to inform
7 the other person in ordinary course, whether or not those steps
8 cause the other person to know the fact.

9 (e) Transfer of real property.--A person not a member or
10 manager is deemed to know of a limitation on authority to
11 transfer real property as provided under section 8832(g)
12 (relating to certificate of authority).

13 (f) Effect of manager's knowledge or notice.--If the
14 certificate of organization of a limited liability company
15 provides that it is manager-managed, a manager's knowledge or
16 notice of a fact relating to the company is effective
17 immediately as knowledge of or notice to the company, except in
18 the case of a fraud on the company committed by or with the
19 consent of the manager.

20 § 8814. Governing law.

21 (a) General rule.--The law of this Commonwealth governs:

- 22 (1) the internal affairs of a limited liability company;
23 and
24 (2) the liability of a member as member and of a manager
25 as manager for the debts, obligations or other liabilities of
26 a limited liability company.

27 (b) Cross reference.--See section 8815(c)(6) (relating to
28 contents of operating agreement).

29 § 8815. Contents of operating agreement.

30 (a) Scope of operating agreement.--Except as provided under

1 subsections (c) and (d), the operating agreement governs:

2 (1) relations among the members as members and between
3 the members and the limited liability company;

4 (2) the rights and duties under this title of a person
5 in the capacity of a member or manager;

6 (3) the activities and affairs of the company and the
7 conduct of those activities and affairs;

8 (4) the means and conditions for amending the operating
9 agreement; and

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

12 (b) Title applies generally.--To the extent the operating
13 agreement does not provide for a matter described in subsection
14 (a), this title governs the matter.

15 (c) Limitations.--An operating agreement may not do any of
16 the following:

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

19 (2) Vary the right of a member to approve a merger,
20 interest exchange, conversion, division or domestication
21 under section 333(a)(2) (relating to approval of merger),
22 343(a)(2) (relating to approval of interest exchange), 353(a)
23 (3) (relating to approval of conversion), 363(a)(2) (relating
24 to approval of division) or 373(a)(2) (relating to approval
25 of domestication).

26 (3) Vary the required contents of a plan of merger under
27 section 332(a) (relating to plan of merger), plan of interest
28 exchange under section 342(a) (relating to plan of interest
29 exchange), plan of conversion under section 352(a) (relating
30 to plan of conversion), plan of division under section 362(a)

1 (relating to plan of division) or plan of domestication under
2 section 372(a) (relating to plan of domestication).

3 (4) Vary a provision of Chapter 81 (relating to general
4 provisions).

5 (5) Vary the provisions of section 8811(b), (c) and (d)
6 (relating to short title and application of chapter).

7 (6) Vary the law applicable under section 8814 (relating
8 to governing law).

9 (7) Vary a provision of section 8818(d) (relating to
10 characteristics of limited liability company).

11 (8) Vary a provision of section 8819 (relating to
12 powers).

13 (9) Vary any requirement, procedure or other provision
14 of this title pertaining to:

15 (i) registered offices; or

16 (ii) the department, including provisions pertaining
17 to documents authorized or required to be delivered to
18 the department for filing under this title.

19 (10) Provide indemnification or exoneration in violation
20 of the limitations in sections 8848(g) (relating to
21 reimbursement, indemnification, advancement and insurance),
22 8849.1(j) (relating to standards of conduct for members) and
23 8849.2(h) (relating to standards of conduct for managers).

24 (11) Eliminate the duty of loyalty provided for in
25 section 8849.1(b) (1) (i) or (ii) or (2) ~~(relating to standards~~<--
26 ~~of conduct for members)~~ or the duty of care of a member in a
27 member-managed company, except as provided in subsection (d).

28 (12) Eliminate the duty of loyalty provided for in
29 section 8849.2(b) (1) (i) or (ii) or (2) ~~(relating to standards~~<--
30 ~~of conduct for managers)~~ or the duty of care of a manager,

1 except as provided in subsection (d).

2 (13) Vary the contractual obligation of good faith and
3 fair dealing under section 8849.1(d) or 8849.2(d), except as
4 provided in subsection (d).

5 (14) Restrict the duties and rights under section 8850
6 (relating to rights to information), except as provided in
7 subsection (d).

8 (15) Vary the causes of dissolution specified in section
9 8871(a)(4) (relating to events causing dissolution).

10 (16) Vary the ~~requirement~~ REQUIREMENTS to wind up the <--
11 company's activities and affairs as specified in section <--
12 8872(a), (b)(1), and (e) AND (F) (relating to winding up and <--
13 filing of ~~optional~~ certificates). <--

14 (17) Unreasonably restrict the right of a member to
15 maintain an action under Subchapter H (relating to actions by
16 members).

17 (18) Vary the provisions of section 8884 (relating to
18 special litigation committee), except that the operating
19 agreement may provide that the company may not have a special
20 litigation committee.

21 (19) VARY A PROVISION OF SUBCHAPTER I (RELATING TO <--
22 BENEFIT COMPANIES).

23 ~~(19)~~ (20) Except as provided in section 8817(b) <--
24 (relating to amendment and effect of operating agreement),
25 restrict the rights under this title of a person other than a
26 member or manager.

27 (d) Permitted terms.--Subject to subsection (c)(10), the
28 following rules apply:

29 (1) The operating agreement may:

30 (i) specify the method by which a specific act or

1 transaction that would otherwise violate the duty of
2 loyalty may be authorized or ratified by one or more
3 disinterested and independent persons after full
4 disclosure of all material facts;

5 (ii) alter the prohibition stated in section 8845(a)
6 (2) (relating to limitations on distributions) so that
7 the prohibition requires only that the company's total
8 assets not be less than the sum of its total liabilities;
9 and

10 (iii) impose reasonable restrictions on the
11 availability and use of information obtained under
12 section 8850 and may define appropriate remedies,
13 including liquidated damages, for a breach of any
14 reasonable restriction on use.

15 (2) To the extent the operating agreement of a member-
16 managed limited liability company expressly relieves a member
17 of a responsibility that the member would otherwise have
18 under this title and imposes the responsibility on one or
19 more other members, the operating agreement also may
20 eliminate or limit any fiduciary duty of the member relieved
21 of the responsibility that would have pertained to the
22 responsibility.

23 (3) If not manifestly unreasonable, the operating
24 agreement may:

25 (i) alter the aspects of the duty of loyalty stated
26 under section 8849.1(b) (1) (i) or (ii) or (2) or 8849.2(b)
27 (1) (i) or (ii) or (2);

28 (ii) prescribe the standards, if not manifestly
29 unreasonable, by which the performance of the contractual
30 obligation of good faith and fair dealing under section

1 8849.1(d) or 8849.2(d) is to be measured;
2 (iii) identify specific types or categories of
3 activities that do not violate the duty of loyalty;
4 (iv) alter the duty of care; and
5 (v) alter or eliminate any other fiduciary duty.

6 (e) Determination of manifest unreasonableness.--The court
7 shall decide as a matter of law whether a term of an operating
8 agreement is manifestly unreasonable under subsection (d)(3).

9 The court:

10 (1) shall make its determination as of the time the
11 challenged term became part of the operating agreement and by
12 considering only circumstances existing at that time; and

13 (2) may invalidate the term only if, in light of the
14 purposes, activities and affairs of the limited liability
15 company, it is readily apparent that:

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

17 (ii) the term is an unreasonable means to achieve
18 the term's objective.

19 § 8816. Application of operating agreement.

20 (a) Company bound.--A limited liability company is bound by
21 and may enforce the operating agreement, whether or not the
22 company has itself manifested assent to the agreement.

23 (b) Deemed assent.--A person that becomes a member of a
24 limited liability company is deemed to assent to the operating
25 agreement.

26 (c) Preformation agreement.--Two or more persons intending
27 to become the initial members of a limited liability company may
28 make an agreement providing that upon the formation of the
29 company the agreement will become the operating agreement. One
30 person intending to become the initial member of a limited

1 liability company may assent to terms providing that upon the
2 formation of the company the terms will become the operating
3 agreement.

4 § 8817. Amendment and effect of operating agreement.

5 (a) Approval of amendments.--An operating 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 8847(b)(6) and (c)(3)(iii) (relating to
11 management of limited liability company).

12 (b) Obligations to nonmembers.--The obligations of a limited
13 liability company and its members to a person in the person's
14 capacity as a transferee or a person dissociated as a member are
15 governed by the operating agreement. Except as provided in
16 section 8844(d) (relating to sharing of and right to
17 distributions before dissolution) or in a court order issued
18 under section 8853(b)(2) (relating to charging order) to
19 effectuate a charging order, an amendment to the operating
20 agreement made after a person becomes a transferee or is
21 dissociated as a member:

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

26 (2) is not effective to the extent the amendment imposes
27 a new debt, obligation or other liability on the transferee
28 or person dissociated as a member.

29 (c) Provisions in filed documents.--If a document delivered
30 by a limited liability company to the department for filing

1 contains a provision that would be ineffective under section
2 8815(c) or (d)(3) (relating to contents of operating agreement)
3 if contained in the operating agreement, the provision is
4 ineffective in the document.

5 (d) Conflicts with operating agreement.--Subject to
6 subsection (c):

7 (1) If a provision of the certificate of organization
8 conflicts with a provision of the operating agreement, the
9 provision of the certificate prevails.

10 (2) If a document other than its certificate of
11 organization has been delivered by the company to the
12 department for filing and conflicts with a provision of the
13 operating agreement:

14 (i) the operating agreement prevails as to members,
15 dissociated members, transferees and managers; and

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

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

23 § 8818. Characteristics of limited liability company.

24 (a) Separate entity.--A limited liability company is an
25 entity distinct from its member or members.

26 (b) Purpose.--A limited liability company may have any
27 lawful purpose other than acting as an insurer, regardless of
28 whether the purpose is for profit. Nothing under this section
29 shall prohibit the organization of an insurance agency licensed
30 in this Commonwealth as a limited liability company. See section

1 8102 (relating to interchangeability of partnership, limited
2 liability company and corporate forms of organization).

3 (c) Duration.--A limited liability company has perpetual
4 duration.

5 (d) Restrictions on nonprofit companies.--If a limited
6 liability company has a purpose that is not for profit:

7 (1) Its purpose must be stated in the certificate of
8 organization.

9 (2) The company shall not distribute any part of its
10 income or profits to its members, managers or officers,
11 except that it may pay compensation in a reasonable amount to
12 those persons for services rendered.

13 (3) The company may confer benefits on members or
14 nonmembers in conformity with its purposes, may repay capital
15 contributions and may redeem evidences of indebtedness,
16 except when the company is currently insolvent or would
17 thereby be made insolvent or rendered unable to carry on its
18 purposes, or when the fair value of the assets of the company
19 remaining after the conferring of benefits, payment or
20 redemption would be insufficient to meet its liabilities. The
21 company may make distributions of money or property to
22 members upon dissolution or final liquidation as permitted by
23 this chapter.

24 (4) If the company is organized for a charitable
25 purpose, it may take, receive and hold real and personal
26 property as may be given, devised to or otherwise vested in
27 the company, in trust, for the purpose or purposes set forth
28 in its certificate of organization. The members, if it is
29 member-managed, or the managers, if it is manager-managed,
30 shall, as trustees of the property, be held to the same

1 degree of responsibility and accountability as other
2 trustees, unless:

3 (i) a lesser degree or a particular degree of
4 responsibility and accountability is prescribed in the
5 trust instrument;

6 (ii) if the company is member-managed, the members
7 remain under the control of third persons who retain the
8 right to direct, and do direct, the actions of the
9 members as to the use of the trust property from time to
10 time; or

11 (iii) if the company is manager-managed, the
12 managers remain under the control of the members or third
13 persons who retain the right to direct, and do direct,
14 the actions of the managers as to the use of the trust
15 property from time to time.

16 (5) Property of the company committed to charitable
17 purposes shall not, by any proceeding under Chapter 3
18 (relating to entity transactions) or otherwise, be diverted
19 from the objects to which it was donated, granted or devised,
20 unless and until the company obtains from the court an order
21 under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the
22 disposition of the property.

23 (e) Cross reference.--See section 8815(c)(7) (relating to
24 contents of operating agreement).

25 § 8819. Powers.

26 (a) General rule.--A limited liability company has the power
27 to do all things necessary or convenient to carry on its
28 activities and affairs.

29 (b) Capacity to sue and be sued.--A limited liability
30 company has the capacity to sue and be sued in its own name.

1 (c) Certain specifically authorized debt terms.--A limited
2 liability company shall be subject to section 1510 (relating to
3 certain specifically authorized debt terms) to the same extent
4 as if it were a business corporation.

5 (d) Cross references.--See sections 8102 (relating to
6 interchangeability of partnership, limited liability company and
7 corporate forms of organization) and 8815(c)(8) (relating to
8 contents of operating agreement).

9 SUBCHAPTER B

10 FORMATION AND FILINGS

11 Sec.

12 8821. Formation of limited liability company and certificate of
13 organization.

14 8822. Amendment or restatement of certificate of organization.

15 8823. Signing of filed documents.

16 8824. Liability of member, manager or other person for false or
17 missing information in filed document.

18 8825. Registered office.

19 § 8821. Formation of limited liability company and certificate
20 of organization.

21 (a) Formation.--One or more persons may act as organizers to
22 form a limited liability company by delivering to the department
23 for filing a certificate of organization.

24 (b) Required contents of certificate.--A certificate of
25 organization must state:

26 (1) the name of the limited liability company, which
27 must comply with Subchapter A of Chapter 2 (relating to
28 names); and

29 (2) subject to section 109 (relating to name of
30 commercial registered office provider in lieu of registered

1 address), the address, including street and number, if any,
2 of the company's registered office.

3 (c) Optional contents of certificate.--A certificate of
4 organization may contain statements as to matters other than
5 those required by subsection (b), but may not vary or otherwise
6 affect the provisions specified under section 8815(c) and (d)
7 (relating to contents of operating agreement) in a manner
8 inconsistent with that section.

9 (d) Substitute certificate of authority.--A statement in a
10 certificate of organization with respect to a matter described
11 in section 8832(a) (2) or (3) (relating to certificate of
12 authority) is effective as a certificate of authority and the
13 statement is subject to the provisions of section 8832 in the
14 same manner as a certificate of authority.

15 (e) Effect of certificate of organization.--A provision of
16 the certificate of organization shall be deemed to be a
17 provision of the operating agreement for purposes of any
18 provision of this title that refers to a rule as set forth in
19 the operating agreement.

20 (f) Time of formation.--A limited liability company is
21 formed when its certificate of organization becomes effective.

22 (g) Cross references.--See:

23 Section 134 (relating to docketing statement).

24 Section 135 (relating to requirements to be met by filed
25 documents).

26 Section 136(c) (relating to processing of documents by
27 Department of State).

28 Section 8818(d) (1) (relating to characteristics of
29 limited liability company).

30 Section 8823 (relating to signing of filed documents).

1 § 8822. Amendment or restatement of certificate of
2 organization.

3 (a) General rule.--A certificate of organization may be
4 amended or restated at any time.

5 (b) Required contents of certificate of amendment.--To amend
6 its certificate of organization, a limited liability company
7 must deliver to the department for filing a certificate of
8 amendment that states:

9 (1) the name of the company;

10 (2) the date of filing of its initial certificate of
11 organization;

12 (3) subject to section 109 (relating to name of
13 commercial registered office provider in lieu of registered
14 address), the address, including street and number, if any,
15 of its registered office; and

16 (4) the amendment.

17 (c) Restatement.--To restate its certificate of
18 organization, a limited liability company must deliver to the
19 department for filing a certificate of amendment that:

20 (1) is designated as a restatement; and

21 (2) includes a statement that the restated certificate
22 supersedes the original certificate and all previous
23 amendments.

24 (d) Obligation to correct.--If a member of a member-managed
25 limited liability company, or a manager of a manager-managed
26 limited liability company, knows that any information in a filed
27 certificate of organization is inaccurate, the member or manager
28 shall promptly:

29 (1) cause the certificate to be amended; or

30 (2) if appropriate, deliver to the department for filing

1 a statement of correction under section 138 (relating to
2 statement of correction) or a statement of abandonment under
3 section 141 (relating to abandonment of filing before
4 effectiveness).

5 (e) Cross references.--See:

6 Section 134 (relating to docketing statement).

7 Section 135 (relating to requirements to be met by filed
8 documents).

9 Section 136(c) (relating to processing of documents by
10 Department of State).

11 Section 8823 (relating to signing of filed documents).

12 § 8823. Signing of filed documents.

13 (a) Required signatures.--Except as provided in this title,
14 a document delivered to the department for filing under this
15 title relating to a limited liability company must be signed as
16 follows:

17 (1) Except as provided in paragraphs (2) and (3), a
18 document signed on behalf of a limited liability company must
19 be signed by a person authorized by the company.

20 (2) A company's initial certificate of organization must
21 be signed by each organizer.

22 (3) A document delivered on behalf of a dissolved
23 company that has no member must be signed by the person
24 winding up the company's activities and affairs under section
25 8872(c) (relating to winding up and filing of ~~optional~~ <--
26 certificates) or a person appointed under section 8872(d) to
27 wind up the activities and affairs.

28 (4) A certificate of denial by a person under section
29 8833 (relating to certificate of denial) must be signed by
30 that person.

1 (5) Any other document delivered on behalf of a person
2 to the department for filing must be signed by that person.

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

5 § 8824. Liability of member, manager or other person for false
6 or missing information in filed document.

7 (a) General rule.--If a document delivered to the department
8 for filing under this title and filed by the department contains
9 a materially false statement or fails to state a material fact
10 required to be stated, a person that suffers loss by reasonable
11 reliance on the statement or failure to state a material fact
12 may recover damages for the loss from:

13 (1) a person that signed the document or caused another
14 to sign it on the person's behalf and knew there was false or
15 missing information in the document at the time it was
16 signed; and

17 (2) subject to subsection (b), a member of a member-
18 managed limited liability company or a manager of a manager-
19 managed limited liability company if:

20 (i) the document was delivered for filing on behalf
21 of the company; and

22 (ii) the member or manager knew or had notice there
23 was false or missing information for a reasonably
24 sufficient time before the document was relied upon so
25 that, before the reliance, the member or manager
26 reasonably could have:

27 (A) effected an amendment under section 8822
28 (relating to amendment or restatement of certificate
29 of organization);

30 (B) filed a petition under section 144 (relating

1 to signing and filing pursuant to judicial order); or
2 (C) delivered to the department for filing a
3 statement of correction under section 138 (relating
4 to statement of correction) or a statement of
5 withdrawal under section 141 (relating to abandonment
6 of filing before effectiveness).

7 (b) Substitute responsibility.--To the extent the operating
8 agreement of a member-managed limited liability company
9 expressly relieves a member of responsibility for maintaining
10 the accuracy of information contained in documents delivered on
11 behalf of the company to the department for filing under this
12 chapter and imposes that responsibility on one or more other
13 members, the liability stated under subsection (a)(2) applies to
14 those other members and not to the member that the operating
15 agreement relieves of the responsibility.

16 § 8825. Registered office.

17 (a) General rule.--Every limited liability company shall
18 have and continuously maintain in this Commonwealth a registered
19 office which may, but need not, be the same as its place of
20 business.

21 (b) Change of registered office.--After organization, a
22 change in the location of the registered office may be effected
23 at any time by the company. Before the change becomes effective,
24 the company shall amend its certificate of organization under
25 the provisions of this chapter to reflect the change in location
26 or shall file with the department a certificate of change of
27 registered office setting forth:

28 (1) The name of the company.

29 (2) The address, including street and number, if any, of
30 its then registered office.

1 (3) The address, including street and number, if any, to
2 which the registered office is to be changed.

3 (c) Alternative procedure.--A limited liability company may
4 satisfy the requirements of this chapter concerning the
5 maintenance of a registered office in this Commonwealth by
6 setting forth in any document filed in the department under any
7 provision of this chapter that permits or requires the statement
8 of the address of its then registered office, in lieu of that
9 address, the statement authorized under section 109(a) (relating
10 to name of commercial registered office provider in lieu of
11 registered address).

12 (d) Cross references.--See:

13 Section 108 (relating to change in location or status of
14 registered office provided by agent).

15 Section 134 (relating to docketing statement).

16 Section 135 (relating to requirements to be met by filed
17 documents).

18 Section 136(c) (relating to processing of documents by
19 Department of State).

20 Section 8815(c)(7) (relating to contents of operating
21 agreement).

22 Section 8823 (relating to signing of filed documents).

23 SUBCHAPTER C

24 RELATIONS OF MEMBERS AND MANAGERS

25 TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

26 Sec.

27 8831. Status of member or manager as agent.

28 8832. Certificate of authority.

29 8833. Certificate of denial.

30 8834. Liability of members and managers.

1 8835. Taxation of limited liability companies.

2 § 8831. Status of member or manager as agent.

3 (a) No agency power of member as member.--A member is not an
4 agent of a limited liability company solely by reason of being a
5 member.

6 (b) Agency power of manager.--If the certificate of
7 organization states that the company is manager-managed, the act
8 of a manager for apparently carrying on in the usual way the
9 business of the company binds the company unless the manager so
10 acting has in fact no authority to act for the company in the
11 particular matter and the person with whom the manager is
12 dealing has knowledge of the fact that the manager does not have
13 that authority.

14 (c) Liability of company under other law.--A person's status
15 as a member or manager does not prevent or restrict law other
16 than this chapter from imposing liability on a limited liability
17 company because of the person's conduct.

18 § 8832. Certificate of authority.

19 (a) General rule.--A limited liability company may deliver
20 to the department for filing a certificate of authority signed
21 by the company. The certificate:

22 (1) must include the name of the company and, subject to
23 section 109 (relating to name of commercial registered office
24 provider in lieu of registered address), the address,
25 including street and number, if any, of its registered
26 office;

27 (2) with respect to any position that exists in or with
28 respect to the company, may state the authority, or
29 limitations on the authority, of all persons holding the
30 position to:

1 (i) transfer real property held in the name of the
2 company, including signing an instrument of transfer; or

3 (ii) enter into other transactions on behalf of, or
4 otherwise act for or bind, the company; and

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

7 (i) transfer real property held in the name of the
8 company, including signing an instrument of transfer; or

9 (ii) enter into other transactions on behalf of, or
10 otherwise act for or bind, the company.

11 (b) Amendment or cancellation.--To amend or cancel a
12 certificate of authority filed by the department, a limited
13 liability company must deliver to the department for filing an
14 amendment or cancellation that states:

15 (1) the name of the company;

16 (2) subject to section 109, the address, including
17 street and number, if any, of the company's registered
18 office;

19 (3) the date the certificate being affected became
20 effective; and

21 (4) the contents of the amendment or a statement that
22 the certificate is canceled.

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

24 (1) supersedes any inconsistent provision of the
25 certificate of organization in effect at the time the
26 certificate of authority becomes effective;

27 (2) affects only the power of a person to bind a limited
28 liability company with respect to persons that are not
29 members; and

30 (3) is not binding on the department for purposes of the

1 administration of this title or any other provision of law.

2 (d) Certificate not evidence of knowledge or notice.--Except
3 as provided in subsections (e), (f), (g) and (h), a limitation
4 on the authority of a person or a position contained in an
5 effective certificate of authority is not by itself evidence of
6 knowledge or notice of the limitation by any person.

7 (e) Authority not pertaining to real property.--A grant of
8 authority not pertaining to transfers of real property and
9 contained in an effective certificate of authority is conclusive
10 in favor of a person that gives value in reliance on the grant,
11 except to the extent that when the person gives value:

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

13 (2) the certificate has been canceled or restrictively
14 amended under subsection (b); or

15 (3) a limitation on the grant is contained in another
16 certificate of authority that became effective after the
17 certificate containing the grant became effective.

18 (f) Authority to transfer real property.--An effective
19 certificate of authority or certificate of organization that
20 grants authority to transfer real property held in the name of a
21 limited liability company, a certified copy of which certificate
22 is recorded in the office of the recorder of deeds for the
23 county in which the property is located, is conclusive in favor
24 of a person that gives value in reliance on the grant without
25 knowledge to the contrary, except to the extent that when the
26 person gives value:

27 (1) the certificate has been canceled or restrictively
28 amended under subsection (b), and a certified copy of the
29 cancellation or restrictive amendment has been recorded in
30 the office of the recorder of deeds; or

1 (2) a limitation on the grant is contained in another
2 certificate of authority that became effective after the
3 certificate containing the grant became effective, and a
4 certified copy of the later-effective certificate is recorded
5 in the office of the recorder of deeds.

6 (g) Effect of recorded certificate.--If a certified copy of
7 an effective certificate containing a limitation on the
8 authority to transfer real property held in the name of a
9 limited liability company is recorded in the office of the
10 recorder of deeds for the county in which the real property is
11 located, all persons are deemed to know of the limitation.

12 (h) Effect of dissolution or termination of company.--An
13 effective certificate of dissolution does not cancel a filed
14 certificate of authority for the purposes of subsection (f) and
15 is a limitation on authority for the purposes of subsection
16 (g). An effective certificate of termination cancels a filed
17 certificate of authority.

18 (i) Automatic cancellation.--Unless earlier canceled, an
19 effective certificate of authority that names an individual as
20 having authority is canceled by operation of law five years
21 after the date on which the certificate, or its most recent
22 amendment, becomes effective. The cancellation operates without
23 need for any recording under subsection (f) or (g).

24 (j) Effect of certificate of denial.--An effective
25 certificate of denial:

26 (1) operates as a restrictive amendment under this
27 section and a certified copy may be recorded as provided in
28 subsection (f)(1) by the limited liability company or the
29 person that delivered the certificate of denial to the
30 department for filing;

1 (2) affects only the authority of a person to bind the
2 company with respect to persons that are not members; and
3 (3) supersedes any inconsistent provision of the
4 certificate of organization in effect at the time the
5 certificate of denial becomes effective.

6 (k) Foreign companies.--A foreign limited liability company
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 company and regardless of whether the foreign company is
11 registered to do business in this Commonwealth under Chapter 4
12 (relating to foreign associations).

13 (l) Cross references.--See:

14 Section 134 (relating to docketing statement).

15 Section 135 (relating to requirements to be met by filed
16 documents).

17 Section 136(c) (relating to processing of documents by
18 Department of State).

19 Section 8823 (relating to signing of filed documents).

20 § 8833. 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) states:

25 (i) the name of the limited liability company;

26 (ii) subject to section 109 (relating to name of
27 commercial registered office provider in lieu of

28 registered address), the address, including street and

29 number, if any, of the registered office of the company;

30 and

1 (iii) the date the certificate of authority to which
2 the certificate of denial pertains was filed; and
3 (2) denies the grant of authority.

4 (b) Cross references.--See:

5 Section 134 (relating to docketing statement).

6 Section 135 (relating to requirements to be met by filed
7 documents).

8 Section 136(c) (relating to processing of documents by
9 Department of State).

10 Section 8823 (relating to signing of filed documents).

11 Section 8832(j) (relating to certificate of authority).

12 § 8834. Liability of members and managers.

13 (a) General rule.--A debt, obligation or other liability of
14 a limited liability company is solely the debt, obligation or
15 other liability of the company. A member or manager is not
16 personally liable, directly or indirectly, by way of
17 contribution or otherwise, for a debt, obligation or other
18 liability of the company solely by reason of being or acting as
19 a member or manager. This subsection applies regardless of:

20 (1) whether the company has a single member or multiple
21 members; and

22 (2) the dissolution, winding up or termination of the
23 company.

24 (b) Professional relationship unaffected.--Subsection (a)
25 shall not afford members of a professional company with greater
26 immunity than is available to the officers, shareholders,
27 employees or agents of a professional corporation. See section
28 2925 (relating to professional relationship retained).

29 (c) Disciplinary jurisdiction unaffected.--A professional
30 company shall be subject to the applicable rules and regulations

1 adopted by, and all the disciplinary powers of, the court,
2 department, board, commission or other government unit
3 regulating the profession in which the company is engaged. The
4 court, department, board or other government unit may require
5 that a company include in its certificate of organization or
6 operating agreement provisions that conform to any rule or
7 regulation promulgated before, on or after the effective date of
8 this section for the purpose of enforcing the ethics of a
9 profession. This chapter shall not affect or impair the
10 disciplinary powers of the court, department, board, commission
11 or other government unit over licensed persons or any law, rule
12 or regulation pertaining to the standards for professional
13 conduct of licensed persons or to the professional relationship
14 between any licensed person rendering professional services and
15 the person receiving professional services.

16 (d) Rendering professional services.--

17 (1) Except as provided by a statute, rule or regulation
18 applicable to a particular profession, a professional company
19 may lawfully render professional services only through
20 licensed persons. The company may employ persons not so
21 licensed except that those persons shall not render any
22 professional services rendered or to be rendered by it.

23 (2) Paragraph (1) shall not be interpreted to preclude
24 the use of clerks, secretaries, nurses, administrators,
25 bookkeepers, technicians and other assistants or
26 paraprofessionals who are not usually and ordinarily
27 considered by law, custom and practice to be rendering the
28 professional service or services for which the professional
29 company was organized nor to preclude the use of any other
30 person who performs all of the person's employment under the

1 direct supervision and control of a licensed person. A person
2 shall not under the guise of employment render professional
3 services unless duly licensed or admitted to practice as
4 required by law.

5 (3) Notwithstanding any other provision of law, a
6 professional company may charge for the professional services
7 rendered by it, may collect those charges and may compensate
8 those who render the professional services.

9 (e) Medical professional liability.--A professional company
10 shall be deemed to be a partnership for purposes of section 744
11 of the act of March 20, 2002 (P.L.154, No.13), known as the
12 Medical Care Availability and Reduction of Error (Mcare) Act.

13 (f) Cross reference.--See section 8105 (relating to
14 ownership of certain professional partnerships).
15 § 8835. Taxation of limited liability companies.

16 (a) General rule.--For the purposes of the imposition by the
17 Commonwealth of any tax or license fee on or with respect to any
18 income, property, privilege, transaction, subject or occupation,
19 other than the corporate net income tax, capital stock and
20 foreign franchise tax and personal income tax, a domestic or
21 foreign limited liability company shall be deemed to be a
22 corporation organized and existing under Part II (relating to
23 corporations), and a member of the company, as such, shall be
24 deemed to be a shareholder of a corporation.

25 (b) Financial institutions.--For purposes of the bank shares
26 tax and the mutual thrift institutions tax, a bank, bank and
27 trust company, trust company, savings bank, building and loan
28 association, savings and loan association or savings institution
29 that is a domestic or foreign limited liability company shall be
30 considered an "institution" as defined by Article VII or Article

1 XV of the Tax Reform Code of 1971.

2 (c) Political subdivisions.--Nothing in this section shall
3 impair or preempt the ability of a political subdivision to
4 levy, assess or collect any applicable taxes or license fees
5 authorized under the act of December 31, 1965 (P.L.1257,
6 No.511), known as The Local Tax Enabling Act, on any limited
7 liability company.

8 SUBCHAPTER D

9 RELATIONS OF MEMBERS TO EACH OTHER

10 AND TO LIMITED LIABILITY COMPANY

11 Sec.

12 8841. Becoming a member.

13 8842. Form of contribution.

14 8843. Liability for contributions.

15 8844. Sharing of and right to distributions before dissolution.

16 8845. Limitations on distributions.

17 8846. Liability for improper distributions.

18 8847. Management of limited liability company.

19 8848. Reimbursement, indemnification, advancement and
20 insurance.

21 8849. (Reserved).

22 8849.1. Standards of conduct for members.

23 8849.2. Standards of conduct for managers.

24 8850. Rights to information.

25 § 8841. Becoming a member.

26 (a) Single initial member.--If a limited liability company
27 is initially to have only one member, the person becomes a
28 member as agreed by that person and the organizer of the
29 company. That person and the organizer may be, but need not be,
30 different persons. If the initial member and the organizer are

1 different persons, the organizer acts on behalf of the initial
2 member.

3 (b) Multiple initial members.--If a limited liability
4 company is initially to have more than one member, those persons
5 become members as agreed by those persons and the organizer
6 before the formation of the company. The organizer acts on
7 behalf of the persons in forming the company and may be, but
8 need not be, one of the persons.

9 (c) Powers and authority of organizer.--Until a limited
10 liability company has its first member, the organizer is deemed
11 to be a manager of the company.

12 (d) Admission after formation.--After formation of a limited
13 liability company, a person becomes a member:

14 (1) by action of the organizer if the company does not
15 have any members;

16 (2) as provided in the operating agreement;

17 (3) as the result of a transaction effective under
18 Chapter 3 (relating to entity transactions);

19 (4) with the affirmative vote or consent of all the
20 members; or

21 (5) as provided in section 8871(a)(3) (relating to
22 events causing dissolution).

23 (e) Noneconomic members.--A person may become a member
24 without:

25 (1) acquiring a transferable interest; or

26 (2) making or being obligated to make a contribution to
27 the limited liability company.

28 (f) Nature of interest.--The interest of a member in a
29 limited liability company is personal property.

30 § 8842. Form of contribution.

1 A contribution may consist of:

2 (1) property transferred to, services performed for or
3 another benefit provided to the limited liability company;

4 (2) an agreement to transfer property to, perform
5 services for or provide another benefit to the company; or

6 (3) any combination of items listed in paragraphs (1)
7 and (2).

8 § 8843. Liability for contributions.

9 (a) Obligation not excused.--A person's obligation to make a
10 contribution to a limited liability company is not excused by
11 the person's death, disability, termination or other inability
12 to perform personally.

13 (b) Substitute payment.--If a person does not fulfill an
14 obligation to make a contribution other than money, the person
15 is obligated at the option of the limited liability company to
16 contribute money equal to the value, as stated in the records of
17 the company, of the part of the contribution which has not been
18 made.

19 (c) Compromise of obligation.--The obligation of a person to
20 make a contribution may be compromised only by the affirmative
21 vote or consent of all the members. If a creditor of a limited
22 liability company extends credit or otherwise acts in reliance
23 on an obligation described under subsection (a) without
24 knowledge or notice of a compromise under this subsection, the
25 creditor may enforce the obligation.

26 § 8844. Sharing of and right to distributions before
27 dissolution.

28 (a) General rule.--Any distribution made by a limited
29 liability company before its dissolution and winding up shall be
30 in equal shares among members and persons dissociated as

1 members, except as provided in section 8852(b) (relating to
2 transfer of transferable interest) or to the extent necessary to
3 comply with a charging order in effect under section 8853
4 (relating to charging order).

5 (b) No entitlement to distribution.--Except as provided
6 under subsection (e), a person has a right to a distribution
7 before the dissolution and winding up of a limited liability
8 company only if the company decides to make an interim
9 distribution.

10 (c) Distribution in kind.--A person does not have a right to
11 demand or receive a distribution from a limited liability
12 company in any form other than money. Except as provided in
13 section 8877(d) (relating to disposition of assets in winding
14 up), a limited liability company may distribute an asset in kind
15 only if each part of the asset is fungible with each other part
16 and each person receives a percentage of the asset equal in
17 value to the person's share of distributions.

18 (d) Status as creditor.--If a member or transferee becomes
19 entitled to receive a distribution, the member or transferee has
20 the status of, and is entitled to all remedies available to, a
21 creditor of the limited liability company with respect to the
22 distribution, except that the company's obligation to make a
23 distribution is subject to offset for any amount owed to the
24 company by the member or transferee on whose account the
25 distribution is made.

26 (e) Distribution upon an event of dissociation.--Upon the
27 effectiveness of a transaction under Chapter 3 (relating to
28 entity transactions) or an amendment of the certificate of
29 organization or operating agreement that results in either case
30 in an event of dissociation but does not result in the

1 dissolution of the limited liability company, the dissociating
2 member may elect in record form to receive in lieu of the
3 property that the person would be entitled to receive pursuant
4 to the terms of the transaction or amendment:

5 (1) any distribution to which the member is entitled
6 under the operating agreement on the terms provided in the
7 operating agreement; and

8 (2) within a reasonable time after dissociation, the
9 fair value of the interest of the member in the company as of
10 the date of dissociation based upon the right of the member
11 to share in distributions from the company.

12 § 8845. Limitations on distributions.

13 (a) General rule.--A limited liability company may not make
14 a distribution, including a distribution under section 8877
15 (relating to disposition of assets in winding up), if after the
16 distribution:

17 (1) the company would not be able to pay its debts as
18 they become due in the ordinary course of the company's
19 activities and affairs; or

20 (2) the company's total assets would be less than the
21 sum of its total liabilities plus the amount that would be
22 needed, if the company were to be dissolved and wound up at
23 the time of the distribution, to satisfy the preferential
24 rights upon dissolution and winding up of members and
25 transferees whose preferential rights are superior to the
26 rights of persons receiving the distribution.

27 (b) Valuation.--A limited liability company may base a
28 determination that a distribution is not prohibited under
29 subsection (a) (2) on:

30 (1) the book values of the assets and liabilities of the

1 company, as reflected on its books and records;

2 (2) a valuation that takes into consideration unrealized
3 appreciation and depreciation or other changes in value of
4 the assets and liabilities of the company;

5 (3) the current value of the assets and liabilities of
6 the company, either valued separately or valued in segments
7 or as an entirety as a going concern; or

8 (4) any other method that is reasonable in the
9 circumstances.

10 (c) Excluded liabilities.--In determining whether a
11 distribution is prohibited under subsection (a) (2), the company
12 need not consider obligations and liabilities unless they are
13 required to be reflected on a balance sheet, not including the
14 notes to the balance sheet, prepared on the basis of generally
15 accepted accounting principles, or such other accounting
16 practices and principles as are used generally by the company in
17 the maintenance of its books and records and as are reasonable
18 in the circumstances.

19 (d) Measuring date of distribution.--Except as provided in
20 subsection (e), the effect of a distribution under subsection
21 (a) is measured:

22 (1) as of the date specified by the company when it
23 authorizes the distribution if the distribution occurs within
24 125 days of the earlier of the date so specified or the date
25 of authorization; or

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

27 (e) Date of redemption.--In the case of a distribution
28 described under paragraph (1) of the definition of
29 "distribution" in section 8812 (relating to definitions), the
30 distribution is deemed to occur as of the earlier of the date

1 money or other property is transferred or debt is incurred by
2 the company or the date the person entitled to the distribution
3 ceases to own the interest or right being acquired by the
4 company in return for the distribution.

5 (f) Status of distribution debt.--The indebtedness of a
6 limited liability company to a member or transferee incurred by
7 reason of a distribution made in accordance with this section
8 shall be at least on a parity with the company's indebtedness to
9 its general, unsecured creditors, except to the extent
10 subordinated by agreement.

11 (g) Certain subordinated debt.--The indebtedness of a
12 limited liability company, including indebtedness issued as a
13 distribution, is not a liability for purposes of subsection (a)
14 if the terms of the indebtedness provide that payment of
15 principal and interest is made only if and to the extent that
16 payment of a distribution could then be made under this
17 section. If the indebtedness is issued as a distribution, each
18 payment of principal or interest is treated as a distribution,
19 the effect of which is measured on the date the payment is made.

20 (h) Distributions in winding up.--In measuring the effect of
21 a distribution under section 8877, the liabilities of a
22 dissolved limited liability company do not include any claim
23 that has been barred under section 8874 (relating to known
24 claims against dissolved limited liability company) or 8875
25 (relating to other claims against dissolved limited liability
26 company), or for which security has been provided under section
27 8876 (relating to court proceedings).

28 (i) Cross references.--See:

29 Section 8815(d)(1)(ii) (relating to contents of operating
30 agreement).

1 Section 8849.1 (relating to standards of conduct for
2 members).

3 Section 8849.2 (relating to standards of conduct for
4 managers).

5 § 8846. Liability for improper distributions.

6 (a) General rule.--Except as provided in subsection (b), if
7 a member of a member-managed limited liability company or
8 manager of a manager-managed limited liability company consents
9 to a distribution made in violation of section 8845 (relating to
10 limitations on distributions) and in consenting to the
11 distribution fails to comply with section 8849.1 (relating to
12 standards of conduct for members) or 8849.2 (relating to
13 standards of conduct for managers), the member or manager is
14 personally liable to the company for the amount of the
15 distribution which exceeds the amount that could have been
16 distributed without the violation of section 8845.

17 (b) Members without authority.--To the extent the operating
18 agreement of a member-managed limited liability company relieves
19 a member of the authority and responsibility to consent to
20 distributions and imposes that authority and responsibility on
21 one or more other members, the liability stated in subsection
22 (a) applies to the other members and not the member that the
23 operating agreement relieves of authority and responsibility.

24 (c) Recipients.--A person that receives a distribution
25 knowing that the distribution violated section 8845 is
26 personally liable to the limited liability company but only to
27 the extent that the distribution received by the person exceeded
28 the amount that could have been properly paid under section
29 8845.

30 (d) Contribution.--A person against which an action is

1 commenced because the person is liable under subsection (a) may:

2 (1) join any other person that is liable under
3 subsection (a) or otherwise seek to enforce a right of
4 contribution from the person; and

5 (2) join any person that is liable under subsection (c)
6 or otherwise seek to enforce a right of contribution from the
7 person in the amount the person is liable for under
8 subsection (c).

9 (e) Statute of repose.--An action under this section is
10 barred unless commenced within two years after the distribution.

11 § 8847. Management of limited liability company.

12 (a) Determination of management of company.--A limited
13 liability company is a member-managed limited liability company
14 unless the operating agreement:

15 (1) expressly provides that:

16 (i) the company is or will be manager-managed;

17 (ii) the company is or will be managed by managers;

18 or

19 (iii) management of the company is or will be vested
20 in managers; or

21 (2) includes words of similar import.

22 (b) Member-managed company.--In a member-managed limited
23 liability company, the following rules apply:

24 (1) Except as expressly provided in this title, the
25 management and conduct of the company are vested in the
26 members.

27 (2) Each member has equal rights in the management and
28 conduct of the company's activities and affairs.

29 (3) A difference arising among members as to a matter in
30 the ordinary course of the activities and affairs of the

1 company may be decided by a majority of the members.

2 (4) Except as provided under section 325 (relating to
3 approval by limited liability company) with respect to a
4 transaction under Chapter 3 (relating to entity
5 transactions), an act outside the ordinary course of the
6 activities and affairs of the company may be undertaken only
7 with the affirmative vote or consent of all members.

8 (5) Except as provided under section 8822(d) (relating
9 to amendment or restatement of certificate of organization),
10 the certificate of organization may be amended only with the
11 affirmative vote or consent of all members.

12 (6) The operating agreement may be amended only with the
13 affirmative vote or consent of all members.

14 (c) Manager-managed company.--In a manager-managed limited
15 liability company, the following rules apply:

16 (1) Except as expressly provided in this title, any
17 matter relating to the activities and affairs of the company
18 is decided exclusively by the manager, or, if there is more
19 than one manager, by a majority of the managers.

20 (2) Each manager has equal rights in the management and
21 conduct of the company's activities and affairs.

22 (3) The affirmative vote or consent of all members is
23 required:

24 (i) except as provided under section 325 with
25 respect to a transaction under Chapter 3, to undertake
26 any act outside the ordinary course of the company's
27 activities and affairs;

28 (ii) except as provided under section 8822(d), to
29 amend the certificate of organization; or

30 (iii) to amend the operating agreement.

1 (4) A manager may be chosen at any time by the
2 affirmative vote or consent of a majority of the members and
3 remains a manager until a successor has been chosen, unless
4 the manager at an earlier time resigns, is removed or dies,
5 or, in the case of a manager that is not an individual,
6 terminates. A manager may be removed at any time by the
7 affirmative vote or consent of a majority of the members
8 without notice or cause.

9 (5) A person need not be a member to be a manager,
10 except that the dissociation of a member that is also a
11 manager removes the person as a manager. If a person that is
12 both a manager and a member ceases to be a manager, that
13 cessation does not by itself dissociate the person as a
14 member.

15 (6) A person's ceasing to be a manager does not
16 discharge any debt, obligation or other liability to the
17 limited liability company or members which the person
18 incurred while a manager.

19 (d) Action by consent or proxy.--An action requiring the
20 vote or consent of members under this title may be taken without
21 a meeting and a member may appoint a proxy or other agent to
22 vote, consent or otherwise act for the member by signing an
23 appointing document in record form, personally or by the
24 member's agent.

25 (e) Effect of dissolution.--The dissolution of a limited
26 liability company does not affect the applicability of this
27 section, except that a person that wrongfully causes dissolution
28 of the company loses the right to participate in management as a
29 member and a manager.

30 (f) Reimbursement of advances.--A limited liability company

1 shall reimburse a member for an advance to the company beyond
2 the amount of capital the member agreed to contribute.

3 (g) Interest on advance.--A payment or advance made by a
4 member which gives rise to an obligation of the limited
5 liability company under subsection (f) or section 8848(a)
6 (relating to reimbursement, indemnification, advancement and
7 insurance) constitutes a loan to the company which accrues
8 interest from the date of the payment or advance.

9 (h) No remuneration for services.--A member is not entitled
10 to remuneration for services performed for a member-managed
11 limited liability company, except for reasonable compensation
12 for services rendered in winding up the activities of the
13 company.

14 (i) Increased vote requirements.--Whenever the certificate
15 of organization or operating agreement requires for the taking
16 of any action by the members or a class of members a specific
17 number or percentage of votes or consents, the provision of the
18 certificate or agreement setting forth that requirement shall
19 not be amended or repealed by any lesser number or percentage of
20 votes or consents of the members or the class of members. This
21 subsection does not apply to a provision setting forth the right
22 of members to act by unanimous consent in lieu of a meeting.

23 (j) Exception.--None of the following shall be considered an
24 amendment of the certificate of organization for purposes of the
25 voting rules in subsections (b) (6) and (c) (3) (iii):

26 (1) a restatement of all the operative provisions of the
27 certificate of organization without change;

28 (2) a change in the name or registered office of the
29 limited liability company; or

30 (3) any combination of the foregoing purposes.

1 (k) Approval of minor amendments.--Unless otherwise provided
2 in record form in the operating agreement, an amendment
3 described in subsection (j) may be made by the affirmative vote
4 or consent of a majority of the managers or, in the case of a
5 member-managed limited liability company, of a majority of the
6 members.

7 § 8848. Reimbursement, indemnification, advancement and
8 insurance.

9 (a) Reimbursement.--A limited liability company shall
10 reimburse a member of a member-managed company or manager of a
11 manager-managed company for any payment made by the member or in
12 the course of the member's or manager's activities on behalf of
13 the company, if the member or manager complied with the
14 applicable provisions of sections 8847 (relating to management
15 of limited liability company), 8849.1 (relating to standards of
16 conduct for members) and 8849.2 (relating to standards of
17 conduct for managers) in making the payment.

18 (b) Indemnification.--A limited liability company shall
19 indemnify and hold harmless a person with respect to any claim
20 or demand against the person and any debt, obligation or other
21 liability incurred by the person by reason of the person's
22 former or present capacity as a member or manager, if the claim,
23 demand, debt, obligation or other liability does not arise from
24 the person's breach of section 8845 (relating to limitations on
25 distributions), 8847, 8849.1 or 8849.2.

26 (c) Advancement.--In the ordinary course of its activities
27 and affairs, a limited liability company may advance reasonable
28 expenses, including attorney fees and costs, incurred by a
29 person in connection with a claim or demand against the person
30 by reason of the person's former or present capacity as a member

1 or manager, if the person promises to repay the company if the
2 person ultimately is determined not to be entitled to be
3 indemnified.

4 (d) Insurance.--A limited liability company may purchase and
5 maintain insurance on behalf of a member or manager of the
6 company against liability asserted against or incurred by the
7 member or manager in that capacity or arising from that status
8 even if, under subsection (g), the operating agreement could not
9 provide indemnification against the liability or eliminate or
10 limit the person's liability to the company for the conduct
11 giving rise to the liability.

12 (e) Nonexclusivity.--The rights provided by subsections (a),
13 (b), (c) and (d) shall not be deemed exclusive of any other
14 rights to which a person seeking reimbursement, indemnification,
15 advancement of expenses or insurance may be entitled under the
16 operating agreement, vote of members or disinterested managers,
17 contract or otherwise, both as to action in his official
18 capacity and as to action in another capacity while holding that
19 position. Sections 8849.1(f) and 8849.2(e) shall be applicable
20 to a vote, contract or other action under this subsection. A
21 limited liability company may create a fund of any nature, which
22 may, but need not be, under the control of a trustee, or
23 otherwise secure or insure in any manner its indemnification
24 obligations, whether arising under this section or otherwise.

25 (f) Grounds.--Indemnification under subsection (e) may be
26 granted for any action taken and may be made whether or not the
27 limited liability company would have the power to indemnify the
28 person under any other provision of law except as provided in
29 this section and whether or not the indemnified liability arises
30 or arose from any threatened, pending or completed action by or

1 in the right of the company. Indemnification under subsection
2 (e) is declared to be consistent with the public policy of the
3 Commonwealth.

4 (g) Limitation.--Indemnification under this section shall
5 not be made in any case where the act giving rise to the claim
6 for indemnification is determined by a court to constitute
7 recklessness, willful misconduct or a knowing violation of law.
8 § 8849. (Reserved).

9 § 8849.1. Standards of conduct for members.

10 (a) General rule.--A member of a member-managed limited
11 liability company owes to the company and, subject to section
12 8881(b) (relating to direct action by member), the other members
13 the duties of loyalty and care stated under subsections (b) and
14 (c).

15 (b) Duty of loyalty.--The fiduciary duty of loyalty of a
16 member in a member-managed limited liability company includes
17 the duties:

18 (1) to account to the company and to hold as trustee for
19 it any property, profit or benefit derived by the member:

20 (i) in the conduct or winding up of the company's
21 activities and affairs;

22 (ii) from a use by the member of the company's
23 property; or

24 (iii) from the appropriation of a company
25 opportunity;

26 (2) to refrain from dealing with the company in the
27 conduct or winding up of the company's activities and affairs
28 as or on behalf of a person having an interest adverse to the
29 company; and

30 (3) to refrain from competing with the company in the

1 conduct of the company's activities and affairs before the
2 dissolution of the company.

3 (c) Duty of care.--The duty of care of a member of a member-
4 managed limited liability company in the conduct or winding up
5 of the company's activities and affairs is to refrain from
6 engaging in gross negligence, recklessness, willful misconduct
7 or knowing violation of law.

8 (d) Good faith and fair dealing.--A member shall discharge
9 the duties and obligations under this title or under the
10 operating agreement and exercise any rights consistent with the
11 contractual obligation of good faith and fair dealing.

12 (e) Self-serving conduct.--A member does not violate a duty
13 or obligation under this title or under the operating agreement
14 solely because the member's conduct furthers the member's own
15 interest.

16 (f) Authorization or ratification.--All the members of a
17 member-managed limited liability company may authorize or
18 ratify, after disclosure of all material facts, a specific act
19 or transaction that otherwise would violate the duty of loyalty
20 of a member.

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 liability company at the time it is authorized or ratified under
25 subsection (f).

26 (h) Rights and obligations in approved transaction.--If a
27 member enters into a transaction with the limited liability
28 company which otherwise would be prohibited under subsection (b)
29 (2), and the transaction is authorized or ratified as provided
30 under subsection (f) or the operating agreement, the member's

1 rights and obligations arising from the transaction are the same
2 as those of a person that is not a member.

3 (i) Duties of members in manager-managed company.--Subject
4 to subsection (d), a member does not have any duty to a manager-
5 managed limited liability company or to any other member of the
6 company solely by reason of being or acting as a member.

7 (j) Exoneration.--The operating agreement may provide that a
8 member in a member-managed limited liability company shall not
9 be personally liable for monetary damages to the company or the
10 other members for a breach of subsection (c), except that a
11 member may not be exonerated for an act that constitutes
12 recklessness, willful misconduct or a knowing violation of law.

13 (k) Cross reference.--See section 8815 (relating to contents
14 of operating agreement).

15 § 8849.2. Standards of conduct for managers.

16 (a) General rule.--A manager of a manager-managed limited
17 liability company owes to the company and, subject to section
18 8881(b) (relating to direct action by member), the members the
19 duties of loyalty and care stated under subsections (b) and (c).

20 (b) Duty of loyalty.--The fiduciary duty of loyalty of a
21 manager in a manager-managed limited liability company includes
22 the duties:

23 (1) to account to the company and to hold as trustee for
24 it any property, profit or benefit derived by the manager:

25 (i) in the conduct or winding up of the company's
26 activities and affairs;

27 (ii) from a use by the manager of the company's
28 property; or

29 (iii) from the appropriation of a company
30 opportunity;

1 (2) to refrain from dealing with the company in the
2 conduct or winding up of the company's activities and affairs
3 as or on behalf of a person having an interest adverse to the
4 company; and

5 (3) to refrain from competing with the company in the
6 conduct of the company's activities and affairs until
7 completion of the winding up of the company.

8 (c) Duty of care.--The duty of care of a manager of a
9 manager-managed limited liability company in the conduct or
10 winding up of the company's activities and affairs is to refrain
11 from engaging in gross negligence, recklessness, willful
12 misconduct or knowing violation of law.

13 (d) Good faith and fair dealing.--A manager of a manager-
14 managed limited liability company shall discharge the duties and
15 obligations under this title or under the operating agreement
16 and exercise any rights consistently with the contractual
17 obligation of good faith and fair dealing.

18 (e) Ratification of breach of duty of loyalty.--All the
19 members, or a majority of disinterested managers, of a manager-
20 managed limited liability company may authorize or ratify, after
21 disclosure of all material facts, a specific act or transaction
22 by a manager that otherwise would violate the duty of loyalty.

23 (f) Fairness as a defense.--It is a defense to a claim under
24 subsection (b) (2) and any comparable claim in equity or at
25 common law that the transaction was fair to the limited
26 liability company.

27 (g) Manager's rights in approved transaction.--If a manager
28 enters into a transaction with the limited liability company
29 which otherwise would be prohibited by subsection (b) (2), and
30 the transaction is approved or ratified as provided by

1 subsection (e) or the operating agreement, the manager's rights
2 and obligations arising from the transaction are the same as
3 those of a person that is not a manager.

4 (h) Exoneration.--The operating agreement may provide that a
5 manager in a manager-managed limited liability company shall not
6 be personally liable for monetary damages to the company or the
7 members for a breach of subsection (c), except that a manager
8 may not be exonerated for an act that constitutes recklessness,
9 willful misconduct or a knowing violation of law.

10 (i) Cross reference.--See section 8815 (relating to contents
11 of operating agreement).

12 § 8850. Rights to information.

13 (a) In member-managed company.--In a member-managed limited
14 liability company, the following rules apply:

15 (1) On reasonable notice, a member may inspect and copy
16 during regular business hours, at a reasonable location
17 specified by the company, any record maintained by the
18 company regarding the company's activities, affairs,
19 financial condition and other circumstances.

20 (2) The company shall furnish to each member, without
21 demand, any information concerning the company's activities,
22 affairs, financial condition and other circumstances which
23 the company knows and is material to the proper exercise of
24 the member's rights and duties under the operating agreement
25 or this title, except to the extent the company can establish
26 that it reasonably believes the member already knows the
27 information.

28 (3) The duty to furnish information under paragraph (2)
29 also applies to each member to the extent the member knows
30 any of the information described in paragraph (2).

1 (b) In manager-managed company.--In a manager-managed
2 limited liability company, the following rules apply:

3 (1) The informational rights stated in subsection (a)
4 and the duty stated in subsection (a)(3) apply to the
5 managers and not the members.

6 (2) During regular business hours and at a reasonable
7 location specified by the company, a member may inspect and
8 copy full information regarding the activities, affairs,
9 financial condition and other circumstances of the company as
10 is just and reasonable if:

11 (i) the member seeks the information for a purpose
12 reasonably related to the member's interest as a member;

13 (ii) the member makes a demand in record form
14 received by the company, describing with reasonable
15 particularity the information sought and the purpose for
16 seeking the information; and

17 (iii) the information sought is directly connected
18 to the member's purpose.

19 (3) Within 10 days after receiving a demand under
20 paragraph (2)(ii), the company shall, in record form, inform
21 the member that made the demand of:

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

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

27 (c) Rights of person dissociated as member.--Subject to
28 subsection (h), within 10 days after receipt by a limited
29 liability company of a demand made in record form, a person
30 dissociated as a member may have access to information to which

1 the person was entitled while a member if:

2 (1) the information pertains to the period during which
3 the person was a member;

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

5 (3) the person satisfies the requirements imposed on a
6 member under subsection (b) (2).

7 (d) Response of company.--A limited liability company shall
8 respond to a demand made under subsection (c) in the manner
9 provided in subsection (b) (3).

10 (e) Copying costs.--A limited liability company may charge a
11 person that makes a demand under this section the reasonable
12 costs of copying, ~~limited to the costs of labor and material.~~ <--

13 (f) Rights of agent or guardian.--A member or person
14 dissociated as a member may exercise rights under this section
15 through an agent or, in the case of an individual under legal
16 disability, a guardian. Any restriction or condition imposed by
17 the operating agreement or under subsection (h) applies both to
18 the agent or guardian and the member or person dissociated as a
19 member.

20 (g) No rights of transferee.--Subject to section 8854
21 (relating to power of personal representative of deceased
22 member), the rights under this section do not extend to a person
23 as transferee.

24 (h) Limitations on access.--In addition to any restriction
25 or condition stated in the operating agreement, a limited
26 liability company, as a matter within the ordinary course of its
27 activities and affairs, may impose reasonable restrictions and
28 conditions on access to and use of information to be furnished
29 under this section, including designating information
30 confidential and imposing nondisclosure and safeguarding

1 obligations on the recipient. In a dispute concerning the
2 reasonableness of a restriction under this subsection, the
3 company has the burden of proving reasonableness.

4 (i) Cross reference.--See section 8815 (relating to contents
5 of operating agreement).

6 SUBCHAPTER E

7 TRANSFERABLE INTERESTS AND RIGHTS

8 OF TRANSFEREES AND CREDITORS

9 Sec.

10 8851. Nature of transferable interest.

11 8852. Transfer of transferable interest.

12 8853. Charging order.

13 8854. Power of personal representative of deceased member.

14 § 8851. Nature of transferable interest.

15 (a) Personal property.--A transferable interest is personal
16 property.

17 (b) Only right that may be transferred.--A person may not
18 transfer to a person not a member any rights in a limited
19 liability company other than a transferable interest.

20 § 8852. Transfer of transferable interest.

21 (a) General rule.--Subject to section 8853(f) (relating to
22 charging order), a transfer, in whole or in part, of a
23 transferable interest:

24 (1) is permissible;

25 (2) does not by itself cause the dissociation of the
26 transferor as a member or a dissolution and winding up of the
27 limited liability company's activities and affairs; and

28 (3) subject to section 8854 (relating to power of
29 personal representative of deceased member), does not entitle
30 the transferee to:

1 (i) participate in the management or conduct of the
2 company's activities and affairs; or
3 (ii) except as provided in subsection (c), have
4 access to records or other information concerning the
5 company's activities and affairs.

6 (b) Right to distributions.--A transferee has the right to
7 receive, in accordance with the transfer, distributions to which
8 the transferor would otherwise be entitled.

9 (c) Right to account on dissolution.--In a dissolution and
10 winding up of a limited liability company, a transferee is
11 entitled to an account of the company's transactions only from
12 the date of dissolution.

13 (d) Certificate of interest.--A transferable interest may be
14 evidenced by a certificate of the interest issued by the limited
15 liability company in record form and, subject to this section,
16 the interest represented by the certificate may be transferred
17 by a transfer of the certificate.

18 (e) Recognition of transferee's rights.--A limited liability
19 company need not give effect to a transferee's rights under this
20 section until the company knows or has notice of the transfer.

21 (f) Transfer restrictions.--A transfer of a transferable
22 interest in violation of a restriction on transfer contained in
23 the operating agreement is ineffective if the intended
24 transferee has knowledge or notice of the restriction at the
25 time of transfer.

26 (g) Rights retained by transferor.--Except as provided in
27 section 8861(5)(ii) (relating to events causing dissociation),
28 if a member transfers a transferable interest, the transferor
29 retains the rights of a member other than the transferable
30 interest transferred and retains all the duties and obligations

1 of a member.

2 § 8853. Charging order.

3 (a) General rule.--On application by a judgment creditor of
4 a member or transferee, a court may enter a charging order
5 against the transferable interest of the judgment debtor for the
6 unsatisfied amount of the judgment. Except as provided in
7 subsection (f), a charging order constitutes a lien on a
8 judgment debtor's transferable interest and requires the limited
9 liability company to pay over to the person to which the
10 charging order was issued any distribution that otherwise would
11 be paid to the judgment debtor.

12 (b) Available relief.--To the extent necessary to effectuate
13 the collection of distributions pursuant to a charging order in
14 effect under subsection (a), the court may:

15 (1) appoint a receiver of the distributions subject to
16 the charging order, with the power to make all inquiries the
17 judgment debtor might have made; and

18 (2) make all other orders necessary to give effect to
19 the charging order.

20 (c) Foreclosure.--Upon a showing that distributions under a
21 charging order will not pay the judgment debt within a
22 reasonable time, the court may foreclose the lien and order the
23 sale of the transferable interest. Except as provided in
24 subsection (f), the purchaser at the foreclosure sale only
25 obtains the transferable interest, does not thereby become a
26 member, and is subject to section 8852 (relating to transfer of
27 transferable interest).

28 (d) Satisfaction of judgment.--At any time before
29 foreclosure under subsection (c), the member or transferee whose
30 transferable interest is subject to a charging order under

1 subsection (a) may extinguish the charging order by satisfying
2 the judgment and filing a certified copy of the satisfaction
3 with the court that issued the charging order.

4 (e) Purchase of rights.--At any time before foreclosure
5 under subsection (c), a limited liability company or one or more
6 members whose transferable interests are not subject to the
7 charging order may pay to the judgment creditor the full amount
8 due under the judgment and thereby succeed to the rights of the
9 judgment creditor, including the charging order.

10 (f) Foreclosure against sole member.--If a court orders
11 foreclosure of a charging order lien against the sole member of
12 a limited liability company:

13 (1) the court shall confirm the sale;

14 (2) the purchaser at the sale obtains the member's
15 entire interest, not only the member's transferable interest;

16 (3) the purchaser thereby becomes a member; and

17 (4) the person whose interest was subject to the
18 foreclosed charging order is dissociated as a member.

19 (g) Exemption laws preserved.--This chapter shall not
20 deprive any member or transferee of the benefit of any exemption
21 laws applicable to the transferable interest of the member or
22 transferee.

23 (h) Exclusive remedy.--This section provides the exclusive
24 remedy by which a person seeking to enforce a judgment against a
25 member or transferee may, in the capacity of judgment creditor,
26 satisfy the judgment from the judgment debtor's transferable
27 interest.

28 § 8854. Power of personal representative of deceased member.

29 If a member dies, the deceased member's personal
30 representative may exercise:

1 (1) the rights of a transferee provided in section
2 8852(c) (relating to transfer of transferable interest); and
3 (2) for the purposes of settling the estate, the rights
4 the deceased member had under section 8850 (relating to
5 rights to information).

6 SUBCHAPTER F

7 DISSOCIATION

8 Sec.

9 8861. Events causing dissociation.

10 8862. Power to dissociate and wrongful dissociation.

11 8863. Effects of dissociation.

12 § 8861. Events causing dissociation.

13 A person is dissociated as a member when any of the following
14 occurs:

15 (1) The limited liability company knows or has notice of
16 the person's express will to withdraw as a member, except
17 that, if the person specified a withdrawal date later than
18 the date the company knew or had notice, on that later date.

19 (2) An event stated in the operating agreement as
20 causing the person's dissociation occurs.

21 (3) The person's entire interest is transferred in a
22 foreclosure sale under section 8853(f) (relating to charging
23 order).

24 (4) The person is expelled as a member pursuant to the
25 operating agreement.

26 (5) The person is expelled as a member by the
27 affirmative vote or consent of all the other members if:

28 (i) it is unlawful to carry on the company's
29 activities and affairs with the person as a member;

30 (ii) there has been a transfer of all the person's

1 transferable interest in the company, other than:

2 (A) a transfer for security purposes; or

3 (B) a charging order in effect under section

4 8853 which has not been foreclosed;

5 (iii) the person is an entity and:

6 (A) the company notifies the person that it will
7 be expelled as a member because:

8 (I) the person has filed a certificate of
9 dissolution or the equivalent;

10 (II) the person has been administratively
11 dissolved;

12 (III) the person's charter or its equivalent
13 has been revoked; or

14 (IV) the person's right to conduct business
15 has been suspended by the person's jurisdiction
16 of formation; and

17 (B) within 90 days after the notification:

18 (I) the certificate of dissolution or the
19 equivalent has not been withdrawn, rescinded or
20 revoked;

21 (II) the person has not been reinstated;

22 (III) the person's charter or the equivalent
23 has not been reinstated; or

24 (IV) the person's right to conduct business
25 has not been reinstated; or

26 (iv) the person is an unincorporated entity that has
27 been dissolved and whose activities and affairs are being
28 wound up.

29 (6) On application by the company or a member in a
30 direct action under section 8881 (relating to direct action

1 by member), the person is expelled as a member by judicial
2 order because the person:

3 (i) has engaged or is engaging in wrongful conduct
4 that has affected adversely and materially, or will
5 affect adversely and materially, the company's activities
6 and affairs;

7 (ii) has committed willfully or persistently, or is
8 committing willfully ~~and~~ OR persistently, a material <--
9 breach of the operating agreement or a duty or obligation
10 under section 8849.1 (relating to standards of conduct
11 for members); or

12 (iii) has engaged or is engaging in conduct relating
13 to the company's activities and affairs which makes it
14 not reasonably practicable to carry on the activities and
15 affairs with the person as a member.

16 (7) In the case of an individual:

17 (i) the individual dies; or

18 (ii) in a member-managed limited liability company:

19 (A) a guardian for the individual is appointed;

20 or

21 (B) a court orders that the individual has
22 otherwise become incapable of performing the
23 individual's duties as a member under this title or
24 the operating agreement.

25 (8) In a member-managed limited liability company, the
26 person:

27 (i) becomes a debtor in bankruptcy;

28 (ii) executes an assignment for the benefit of
29 creditors; or

30 (iii) seeks, consents to or acquiesces in the

1 appointment of a trustee, receiver or liquidator of the
2 person or of all or substantially all the person's
3 property.

4 (9) In the case of a person that is a testamentary or
5 inter vivos trust or is acting as a member by virtue of being
6 a trustee of such a trust, the trust's entire transferable
7 interest in the company is distributed.

8 (10) In the case of a person that is an estate or is
9 acting as a member by virtue of being a personal
10 representative of an estate, the estate's entire transferable
11 interest in the company is distributed.

12 (11) In the case of a person that is not an individual,
13 the existence of the person terminates.

14 (12) The company participates in a merger under Chapter
15 3 (relating to entity transactions) and:

16 (i) the company is not the surviving entity; or

17 (ii) otherwise as a result of the merger, the person
18 ceases to be a member.

19 (13) The company participates in an interest exchange
20 under Chapter 3 and, as a result of the interest exchange,
21 the person ceases to be a member.

22 (14) The company participates in a conversion under
23 Chapter 3.

24 (15) The company participates in a division under
25 Chapter 3 and:

26 (i) the company is not a resulting association; or

27 (ii) as a result of the division, the person ceases
28 to be a member.

29 (16) The company participates in a domestication under
30 Chapter 3 and, as a result of the domestication, the person

1 ceases to be a member.

2 (17) The company dissolves and completes winding up.

3 § 8862. Power to dissociate and wrongful dissociation.

4 (a) Power to dissociate.--A person has the power to
5 dissociate as a member at any time, rightfully or wrongfully, by
6 withdrawing as a member by express will under section 8861(1)
7 (relating to events causing dissociation).

8 (b) Wrongful dissociation.--A person's dissociation as a
9 member is wrongful only if the dissociation:

10 (1) is in breach of an express provision of the
11 operating agreement; or

12 (2) occurs before the completion of the winding up of
13 the limited liability company and:

14 (i) the person withdraws as a member by express
15 will;

16 (ii) the person is expelled as a member by judicial
17 order under section 8861(6);

18 (iii) the person is dissociated under section
19 8861(8); or

20 (iv) the person is expelled or otherwise dissociated
21 as a member because it willfully dissolved or terminated,
22 except that this subparagraph does not apply to a person
23 that is:

24 (A) a trust that is not a business or statutory
25 trust;

26 (B) an estate; or

27 (C) an individual.

28 (c) Damages for wrongful dissociation.--A person that
29 wrongfully dissociates as a member is liable to the limited
30 liability company and, subject to section 8881 (relating to

1 direct action by member), to the other members for damages
2 caused by the dissociation. The liability is in addition to any
3 debt, obligation or other liability of the member to the company
4 or the other members.

5 § 8863. Effects of dissociation.

6 (a) General rule.--If a person is dissociated as a member:

7 (1) the person's rights as a member terminate;

8 (2) if the company is member-managed, the person's
9 duties and obligations under section 8849.1 (relating to
10 standards of conduct for members) as a member end with regard
11 to matters arising and events occurring after the person's
12 dissociation; and

13 (3) subject to sections 8844(e) (relating to sharing of
14 and right to distributions before dissolution) and 8854
15 (relating to power of personal representative of deceased
16 member) and Chapter 3 (relating to entity transactions), any
17 transferable interest owned by the person in the person's
18 capacity as a member immediately before dissociation as a
19 member is owned by the person solely as a transferee.

20 (b) Existing obligations not discharged.--A person's
21 dissociation as a member does not of itself discharge the person
22 from any debt, obligation or other liability to the company or
23 the other members which the person incurred while a member.

24 SUBCHAPTER G

25 DISSOLUTION AND WINDING UP

26 Sec.

27 8871. Events causing dissolution.

28 8872. Winding up and filing of ~~optional~~ certificates.

<--

29 8873. (Reserved).

30 8874. Known claims against dissolved limited liability company.

1 8875. Other claims against dissolved limited liability company.

2 8876. Court proceedings.

3 8877. Disposition of assets in winding up.

4 8878. Voluntary termination by members or organizers.

5 § 8871. Events causing dissolution.

6 (a) General rule.--A limited liability company is dissolved,
7 and its activities and affairs shall be wound up, upon the
8 occurrence of any of the following:

9 (1) An event or circumstance that the operating
10 agreement states causes dissolution.

11 (2) The consent of all the members.

12 (3) The passage of 180 consecutive days after the
13 company ceases to have any members unless before the end of
14 the period:

15 (i) consent to admit at least one specified person
16 as a member is given by transferees owning the rights to
17 receive a majority of distributions as transferees at the
18 time the consent is to be effective; and

19 (ii) at least one person becomes a member in
20 accordance with the consent.

21 (4) On application by a member, the entry by the court
22 of an order dissolving the company on the grounds that:

23 (i) the conduct of all or substantially all the
24 company's activities and affairs is unlawful;

25 (ii) it is not reasonably practicable to carry on
26 the company's activities and affairs in conformity with
27 the certificate of organization and the operating
28 agreement; or

29 (iii) the managers or those members in control of
30 the company:

1 (ii) preserve the company's activities, affairs and
2 property as a going concern for a reasonable time;

3 (iii) prosecute and defend actions and proceedings,
4 whether civil, criminal or administrative;

5 (iv) transfer the company's property;

6 (v) settle disputes by mediation or arbitration; and

7 ~~(vi) deliver to the department for filing the~~ <--
8 ~~certificates required by section 139 (relating to tax~~
9 ~~clearance of certain fundamental transactions) and a~~
10 ~~certificate of termination stating:~~

11 ~~(A) the name of the company;~~

12 ~~(B) subject to section 109, the address,~~
13 ~~including street and number, if any, of the~~
14 ~~registered office of the company;~~

15 ~~(C) that all debts, obligations and liabilities~~
16 ~~of the company have been paid and discharged or that~~
17 ~~adequate provision has been made therefor;~~

18 ~~(D) that all the remaining property and assets~~
19 ~~of the company have been distributed among its~~
20 ~~members in accordance with their respective rights~~
21 ~~and interests;~~

22 ~~(E) that there are no actions pending against~~
23 ~~the company in any court or that adequate provision~~
24 ~~has been made for the satisfaction of any judgment~~
25 ~~that may be entered against it in any pending action;~~

26 ~~and~~

27 ~~(F) that the company is terminated; and~~

28 ~~(vii) (VI) perform other acts necessary or~~ <--
29 ~~appropriate to the winding up.~~

30 (c) Conduct of winding up when no members.--If a dissolved

1 limited liability company has no members, the personal
2 representative, guardian or other person authorized to act on
3 behalf of the last person to have been a member may wind up the
4 activities and affairs of the company. If the person does so,
5 the person has the powers of a sole manager under section
6 8847(c) (relating to management of limited liability company)
7 and is deemed to be a manager for the purposes of section
8 8834(a) (relating to liability of members and managers).

9 (d) Action by transferees.--If the personal representative,
10 guardian or other person authorized to act under subsection (c)
11 declines or fails to wind up the company's activities and
12 affairs, a person may be appointed to do so by the consent of
13 transferees owning a majority of the rights to receive
14 distributions as transferees at the time the consent is to be
15 effective. A person appointed under this subsection:

16 (1) has the powers of a sole manager under section
17 8847(c) and is deemed to be a manager for the purposes of
18 section 8834(a); and

19 (2) shall promptly deliver to the department for filing
20 an amendment to the company's certificate of organization
21 stating:

22 (i) that the company has no members;

23 (ii) the name and street and mailing addresses of
24 the person; and

25 (iii) that the person has been appointed under this
26 subsection to wind up the company.

27 (e) Judicial supervision.--The court may order judicial
28 supervision of the winding up of a dissolved limited liability
29 company, including the appointment of a person to wind up the
30 company's activities and affairs:

1 (1) on the application of a member, if the applicant
2 establishes good cause;

3 (2) on the application of a transferee, if:

4 (i) the company does not have any members;

5 (ii) the legal representative of the last person to
6 have been a member declines or fails to wind up the
7 company's activities; and

8 (iii) within a reasonable time following the
9 dissolution a person has not been appointed under
10 subsection (c); or

11 (3) in connection with a proceeding under section
12 8871(a)(4) (relating to events causing dissolution).

13 (F) CERTIFICATE OF TERMINATION.--WHEN ALL DEBTS, OBLIGATIONS <--
14 AND OTHER LIABILITIES OF THE LIMITED LIABILITY COMPANY HAVE BEEN
15 PAID AND DISCHARGED OR ADEQUATE PROVISION HAS BEEN MADE THEREFOR
16 AND ALL OF THE REMAINING PROPERTY AND ASSETS OF THE COMPANY HAVE
17 BEEN DISTRIBUTED TO THE MEMBERS, A CERTIFICATE OF TERMINATION
18 SHALL BE DELIVERED TO THE DEPARTMENT FOR FILING ALONG WITH THE
19 CERTIFICATES REQUIRED BY SECTION 139 (RELATING TO TAX CLEARANCE
20 OF CERTAIN FUNDAMENTAL TRANSACTIONS). THE CERTIFICATE OF
21 TERMINATION SHALL SET FORTH:

22 (1) THE NAME OF THE LIMITED LIABILITY COMPANY.

23 (2) 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 THE REGISTERED OFFICE OF THE COMPANY.

27 (3) THAT ALL DEBTS, OBLIGATIONS AND OTHER LIABILITIES OF
28 THE COMPANY HAVE BEEN PAID AND DISCHARGED OR THAT ADEQUATE
29 PROVISION HAS BEEN MADE THEREFOR.

30 (4) THAT ALL THE REMAINING PROPERTY AND ASSETS OF THE

1 COMPANY HAVE BEEN DISTRIBUTED AMONG ITS MEMBERS IN ACCORDANCE
2 WITH THEIR RESPECTIVE RIGHTS AND INTERESTS.

3 (5) THAT THERE ARE NO ACTIONS PENDING AGAINST THE
4 COMPANY IN ANY COURT OR THAT ADEQUATE PROVISION HAS BEEN MADE
5 FOR THE SATISFACTION OF ANY JUDGMENT THAT MAY BE ENTERED
6 AGAINST IT IN ANY PENDING ACTION.

7 (6) THAT THE COMPANY IS TERMINATED.

8 ~~(f)~~ (G) Cross references.--See:

<--

9 Section 134 (relating to docketing statement).

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

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

13 Section 8815(c)(16) (relating to contents of operating
14 agreement).

15 Section 8823 (relating to signing of filed documents).

16 § 8873. (Reserved).

17 § 8874. Known claims against dissolved limited liability
18 company.

19 (a) General rule.--Except as provided in subsection (d), a
20 dissolved limited liability company may give notice of a known
21 claim under subsection (b), which has the effect provided in
22 subsection (c).

23 (b) Required notice.--A dissolved limited liability company
24 may notify in record form its known claimants of the
25 dissolution. The notice must:

26 (1) specify the information required to be included in a
27 claim;

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

30 (3) state the deadline for receipt of a claim, which may

1 not be less than 120 days after the date the notice is
2 received by the claimant; and

3 (4) state that the claim will be barred if not received
4 by the deadline.

5 (c) Claims barred.--A claim against a dissolved limited
6 liability company is barred if the requirements of subsection
7 (b) are met and:

8 (1) the claim is not received by the specified deadline;
9 or

10 (2) if the claim is timely received but rejected by the
11 company:

12 (i) the company causes the claimant to receive a
13 notice in record form stating that the claim is rejected
14 and will be barred unless the claimant commences an
15 action against the company to enforce the claim within 90
16 days after the claimant receives the notice; and

17 (ii) the claimant does not commence the required
18 action within 90 days after the complainant receives the
19 notice.

20 (d) Later arising claims.--This section shall not apply to a
21 claim based on an event occurring after the effective date of
22 dissolution or a liability that on that date is contingent.
23 § 8875. Other claims against dissolved limited liability
24 company.

25 (a) Permissive notice.--A dissolved limited liability
26 company may publish notice of its dissolution and request
27 persons having claims against the company to present them in
28 accordance with the notice.

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

30 (1) be officially published one time;

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

4 (3) state that a claim against the limited liability
5 company is barred unless an action to enforce the claim is
6 commenced within two years after publication of the notice.

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

12 (1) a claimant that did not receive notice in record
13 form under section 8874 (relating to known claims against
14 dissolved limited liability company);

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

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

19 (d) Claims not barred.--A claim not barred under this
20 section or section 8874 may be enforced:

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

23 (2) except as provided in section 8876 (relating to
24 court proceedings), if assets of the company have been
25 distributed after dissolution, against a member or transferee
26 to the extent of that person's proportionate share of the
27 claim or of the company's assets distributed to the member or
28 transferee after dissolution, whichever is less, except that
29 a person's total liability for all claims under this
30 paragraph may not exceed the total amount of assets

1 distributed to the person after dissolution.

2 § 8876. Court proceedings.

3 (a) Determination of security.--A dissolved limited
4 liability company that has officially published a notice under
5 section 8875 (relating to other claims against dissolved limited
6 liability company) may file an application with the court for a
7 determination of the amount and form of security to be provided
8 for payment of claims that are reasonably expected to arise
9 after the date of dissolution based on facts known to the
10 company and:

11 (1) at the time of application:

12 (i) are contingent; or

13 (ii) have not been made known to the company; or

14 (2) are based on an event occurring after the effective
15 date of dissolution.

16 (b) When security not required.--Security is not required
17 for any claim that is or is reasonably anticipated to be barred
18 under section 8875(c).

19 (c) Notice.--Within 10 days after the filing of an
20 application under subsection (a), the dissolved limited
21 liability company shall give notice of the proceeding to each
22 claimant holding a contingent claim known to the company.

23 (d) Guardian ad litem.--In any proceeding under this
24 section, the court may appoint a guardian ad litem to represent
25 all claimants whose identities are unknown. The reasonable fees
26 and expenses of the guardian, including all reasonable expert
27 witness fees, must be paid by the dissolved limited liability
28 company.

29 (e) Effect on contingent claims.--A dissolved limited
30 liability company that provides security in the amount and form

1 ordered by the court under subsection (a) satisfies the
2 company's obligations with respect to claims that are
3 contingent, have not been made known to the company or are based
4 on an event occurring after the effective date of dissolution.
5 The claims may not be enforced against a member or transferee
6 that received assets in liquidation.
7 § 8877. Disposition of assets in winding up.

8 (a) Creditors.--In winding up its activities and affairs, a
9 limited liability company shall apply its assets to discharge
10 its obligations to creditors, including members that are
11 creditors.

12 (b) Surplus.--After a limited liability company complies
13 with subsection (a), any surplus shall be distributed in the
14 following order, subject to any charging order in effect under
15 section 8853 (relating to charging order):

16 (1) to each owner of a transferable interest that
17 reflects contributions made and not previously returned, an
18 amount equal to the value of the unreturned contributions;
19 and

20 (2) among owners of transferable interests in proportion
21 to their respective rights to share in distributions
22 immediately before the dissolution of the company.

23 (c) Insufficient assets.--If a limited liability company
24 does not have sufficient surplus to comply with subsection (b)
25 (1), any surplus must be distributed among the owners of
26 transferable interests in proportion to the value of the
27 respective unreturned contributions.

28 (d) Form of payment.--All distributions made under
29 subsections (b) and (c) must be paid in money.

30 § 8878. Voluntary termination by members or organizers.

1 (a) General rule.--The members or organizers of a limited
2 liability company that has ~~not commenced business~~ NEVER <--
3 TRANSACTIONED BUSINESS OR HELD ASSETS OTHER THAN MONEY RECEIVED AS
4 CAPITAL CONTRIBUTIONS may effect the termination of the company
5 by delivering to the department for filing a certificate of
6 termination signed by an organizer or a member and stating:
7 (1) the name of the company;
8 (2) subject to section 109 (relating to name of
9 commercial registered office provider in lieu of registered
10 address), the address, including street and number, if any,
11 of the registered office of the company;
12 (3) that the company has ~~not commenced business~~ NEVER <--
13 TRANSACTIONED BUSINESS OR HELD ASSETS OTHER THAN MONEY RECEIVED
14 AS CAPITAL CONTRIBUTIONS;
15 (4) that the amounts, if any, actually paid in as
16 capital contributions, less any part disbursed for necessary
17 expenses, have been returned to those entitled to the return
18 of the amounts;
19 (5) that all liabilities of the company have been
20 discharged or that adequate provision has been made for those
21 liabilities; and
22 (6) that a majority of the organizers or a majority in
23 interest of the members elect that the company be terminated.
24 (b) Effect.--Upon the filing of the certificate of
25 termination, the existence of the limited liability company
26 shall cease.
27 (c) 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 SUBCHAPTER H

4 ACTIONS BY MEMBERS

5 Sec.

6 8881. Direct action by member.

7 8882. Derivative action.

8 8883. Security for costs.

9 8884. Special litigation committee.

10 8885. Proceeds and expenses.

11 § 8881. Direct action by member.

12 (a) General rule.--Subject to subsection (b), a member may
13 maintain a direct action against another member, a manager or
14 the limited liability company to enforce the member's rights and
15 protect the member's interests, including rights and interests
16 under the operating agreement or this title or arising
17 independently of the membership relationship.

18 (b) Required injury.--A member maintaining a direct action
19 under this section must plead and prove an actual or threatened
20 injury that is not solely the result of an injury suffered or
21 threatened to be suffered by the limited liability company.

22 (c) Cross reference.--See section 8815(c)(17) (relating to
23 contents of operating agreement).

24 § 8882. Derivative action.

25 (a) General rule.--Subject to subsection (b), a member or
26 manager may maintain a derivative action to enforce a right of a
27 limited liability company only if:

28 (1) the plaintiff first makes a demand on the other
29 members in a member-managed limited liability company, or the
30 managers of a manager-managed limited liability company,

1 requesting that they cause the company to bring an action to
2 enforce the right, unless demand is excused under subsection <--
3 (b) and:

4 (i) if a special litigation committee is not
5 appointed under section 8884 (relating to special
6 litigation committee), the company does not bring the
7 action within a reasonable time; or

8 (ii) if a special litigation committee is appointed
9 under section 8884, a determination is made:

10 (A) under section 8884(e) (1) that the company
11 not object to the action; or

12 (B) under section 8884(e) (5) (i) that the
13 plaintiff continue the action;

14 (2) demand is excuse under subsection (b);

15 (3) the action is maintained for the limited purpose of
16 seeking court review under section 8884(f); or

17 (4) the court has allowed the action to continue
18 under the control of the plaintiff under section 8884(f)

19 (3)(ii).

20 (b) Prior demand excused.--

21 (1) A demand under subsection (a) (1) is excused only if
22 the plaintiff makes a specific showing that irreparable harm
23 to the limited liability company would otherwise result.

24 (2) If demand is excused under paragraph (1), demand
25 should be made promptly after commencement of the action.

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

30 (d) Additional claims.--If a derivative action is commenced

1 after a demand has been made under this section and includes a
2 claim that was not fairly subsumed under the demand, a new
3 demand must be made with respect to that claim. The new demand
4 shall not relate back to the date of the original demand for
5 purposes of subsection (e).

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

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

10 (i) that the managers or members have decided not to
11 bring an action and not to appoint a special litigation
12 committee; or

13 (ii) of a determination under section 8884(e) after
14 the appointment of a special litigation committee under
15 section 8884; or

16 (2) the plaintiff commences an action asserting the
17 claim.

18 (f) Cross reference.--See section 8815(c)(17) (relating to
19 contents of operating agreement).

20 § 8883. Security for costs.

21 In any action or proceeding instituted or maintained by
22 members holding transferable interests entitled to receive less
23 than 5% of any distribution by a limited liability company,
24 unless the transferable interests held by the members have an
25 aggregate fair market value in excess of \$200,000, the company
26 in whose right the action or proceeding is brought shall be
27 entitled at any stage of the proceedings to require the
28 plaintiffs to give security for the reasonable expenses,
29 including attorney fees, that may be incurred by the company in
30 connection therewith or for which it may become liable pursuant

1 to section 8848(b) (relating to reimbursement, indemnification,
2 advancement and insurance) to which security the company shall
3 have recourse in such amount as the court determines upon the
4 termination of the action or proceeding. The amount of security
5 may, from time to time, be increased or decreased in the
6 discretion of the court upon showing that the security provided
7 has or may become inadequate or excessive. The security may be
8 denied or limited by the court if the court finds after an
9 evidentiary hearing that undue hardship on plaintiffs and
10 serious injustice would result.

11 § 8884. Special litigation committee.

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

28 (1) every member of the company is also a manager of the
29 company; or

30 (2) the company is member-managed and every member is

1 actively involved in the management of the company.

2 (b) Discovery stay.--If the members or managers 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 limited liability company, the court shall stay discovery for
7 the time reasonably necessary to permit the committee to make
8 its 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;

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

18 (3) may, but need not, be members or managers.

19 (d) Appointment of committee.--A special litigation
20 committee may be appointed:

21 (1) in a member-managed limited liability company:

22 (i) by a majority of the members not named as actual
23 or potential parties in the demand or action; and

24 (ii) if all members are named as actual or potential
25 parties in the demand or action, by a majority of the
26 members so named; or

27 (2) in a manager-managed limited liability company:

28 (i) by a majority of the managers not named as
29 actual or potential parties in the demand or action; and

30 (ii) if all managers are named as actual or

1 potential parties in the demand or action, by a majority
2 of the managers so named.

3 (e) Determination.--After appropriate investigation by a
4 special litigation committee, the committee or the managers or
5 members may determine that it is in the best interests of the
6 limited liability company that:

7 (1) an action based on some or all of the claims
8 asserted in the demand not be brought by the company but that
9 the company not object to an action being brought by the
10 party that made the demand:

11 (2) an action based on some or all of the claims
12 asserted in the demand be brought by the company;

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

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

17 (5) an action already commenced continue under the
18 control of:

19 (i) the plaintiff;

20 (ii) the company; or

21 (iii) the committee;

22 (6) some or all of the claims asserted in an action
23 already commenced be settled on terms approved by the
24 committee; or

25 (7) an action already commenced be dismissed.

26 (f) Court review and action.--If a special litigation
27 committee is appointed and a derivative action is commenced
28 either before or after a determination is made under subsection
29 (e):

30 (1) The limited liability company shall file with the

1 court after a determination is made under subsection (e) a
2 statement of the determination and a report of the committee.
3 The company shall serve each party with a copy of the
4 determination and report. If the company moves to file the
5 report under seal, the report shall be served on the parties
6 subject to an appropriate stipulation agreed to by the
7 parties or a protective order issued by the court.

8 (2) The company shall file with the court a motion,
9 pleading or notice consistent with the determination under
10 subsection (e).

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

23 (i) dissolve any stay of discovery entered under
24 subsection (b);

25 (ii) allow the action to continue under the control
26 of the plaintiff; and

27 (iii) permit the defendants to file preliminary
28 objections and other appropriate motions and pleadings.

29 (g) Attorney General.--Nothing in this section shall limit
30 the rights, powers and duties of the Attorney General under

1 other applicable law with respect to a limited liability company
2 organized for a charitable purpose.

3 (h) Cross reference.--See section 8815(c)(18) (relating to
4 contents of operating agreement).

5 § 8885. Proceeds and expenses.

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

7 (1) any proceeds or other benefits of a derivative
8 action, whether by judgment, compromise or settlement, belong
9 to the limited liability company and not to the plaintiff;
10 and

11 (2) if the plaintiff or its counsel receives any
12 proceeds, the proceeds shall be remitted immediately to the
13 company.

14 (b) Expenses.--If a derivative action is successful in whole
15 or in part, the court may award the plaintiff reasonable
16 expenses, including reasonable attorney fees and costs, from the
17 recovery of the limited liability company, but in no event shall
18 the attorney fees awarded exceed a reasonable proportion of the
19 value of the relief, including nonpecuniary relief, obtained by
20 the plaintiff for the company.

21 (c) Cross reference.--See section 8815(c)(13) (relating to
22 contents of operating agreement).

23 SUBCHAPTER I

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24 BENEFIT COMPANIES

25 SEC.

26 8891. APPLICATION AND EFFECT OF SUBCHAPTER.

27 8892. DEFINITIONS.

28 8893. BENEFIT COMPANY STATUS.

29 8894. PURPOSES.

30 8895. STANDARD OF CONDUCT FOR MEMBERS.

1 8896. STANDARD OF CONDUCT FOR MANAGERS AND OFFICERS.

2 8897. RIGHT OF ACTION.

3 8898. ANNUAL BENEFIT REPORT.

4 § 8891. APPLICATION AND EFFECT OF SUBCHAPTER.

5 (A) GENERAL RULE.--THIS SUBCHAPTER SHALL APPLY TO ALL
6 BENEFIT COMPANIES.

7 (B) LIMITED APPLICATION OF SUBCHAPTER.--THE EXISTENCE OF A
8 PROVISION OF THIS SUBCHAPTER SHALL NOT OF ITSELF CREATE ANY
9 IMPLICATION THAT A CONTRARY OR DIFFERENT RULE OF LAW IS OR WOULD
10 BE APPLICABLE TO A LIMITED LIABILITY COMPANY THAT IS NOT A
11 BENEFIT COMPANY. THIS SUBCHAPTER SHALL NOT AFFECT ANY STATUTE OR
12 RULE OF LAW THAT IS OR WOULD BE APPLICABLE TO A LIMITED
13 LIABILITY COMPANY THAT IS NOT A BENEFIT COMPANY.

14 (C) LAWS APPLICABLE TO BENEFIT COMPANIES.--EXCEPT AS
15 OTHERWISE PROVIDED IN THIS SUBCHAPTER, THE PROVISIONS OF PART I
16 (RELATING TO PRELIMINARY PROVISIONS) AND THIS CHAPTER SHALL
17 APPLY GENERALLY TO BENEFIT COMPANIES. THE PROVISIONS OF THIS
18 SUBCHAPTER SHALL CONTROL OVER INCONSISTENT PROVISIONS OF THIS
19 TITLE.

20 (D) ORGANIC RULES MAY NOT BE INCONSISTENT.--SEE SECTION
21 8815(C)(19) (RELATING TO CONTENTS OF OPERATING AGREEMENT).

22 § 8892. DEFINITIONS.

23 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
24 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
25 CONTEXT CLEARLY INDICATES OTHERWISE:

26 "BENEFIT COMPANY." A LIMITED LIABILITY COMPANY THAT IS
27 SUBJECT TO THIS SUBCHAPTER.

28 "BENEFIT ENFORCEMENT PROCEEDING." A CLAIM OR ACTION FOR:

29 (1) FAILURE TO PURSUE OR CREATE THE GENERAL PUBLIC
30 BENEFIT PURPOSE OF THE BENEFIT COMPANY OR ANY SPECIFIC PUBLIC

1 BENEFIT PURPOSE SET FORTH IN ITS CERTIFICATE OF ORGANIZATION;

2 OR

3 (2) VIOLATION OF ANY OBLIGATION, DUTY OR STANDARD OF
4 CONDUCT UNDER THIS SUBCHAPTER.

5 "GENERAL PUBLIC BENEFIT." A MATERIAL POSITIVE IMPACT ON
6 SOCIETY AND THE ENVIRONMENT, TAKEN AS A WHOLE AND ASSESSED
7 AGAINST A THIRD-PARTY STANDARD, FROM THE BUSINESS AND OPERATIONS
8 OF A BENEFIT COMPANY.

9 "INDEPENDENT." WHEN A PERSON HAS NO MATERIAL RELATIONSHIP
10 WITH A BENEFIT COMPANY OR ANY OF ITS SUBSIDIARIES. A MATERIAL
11 RELATIONSHIP BETWEEN AN INDIVIDUAL AND A BENEFIT COMPANY OR ANY
12 OF ITS SUBSIDIARIES WILL BE CONCLUSIVELY PRESUMED TO EXIST IF:

13 (1) THE PERSON IS OR HAS BEEN WITHIN THE LAST THREE
14 YEARS AN EMPLOYEE OF THE BENEFIT COMPANY OR ANY OF ITS
15 SUBSIDIARIES;

16 (2) AN IMMEDIATE FAMILY MEMBER OF THE PERSON IS OR HAS
17 BEEN WITHIN THE LAST THREE YEARS AN EXECUTIVE OFFICER OF THE
18 BENEFIT COMPANY OR ANY OF ITS SUBSIDIARIES; OR

19 (3) THE PERSON, OR AN ASSOCIATION OF WHICH THE PERSON IS
20 A GOVERNOR OR OFFICER OR IN WHICH THE PERSON OWNS
21 BENEFICIALLY OR OF RECORD 5% OR MORE OF THE OUTSTANDING
22 INTERESTS, OWNS BENEFICIALLY OR OF RECORD 5% OR MORE OF THE
23 OUTSTANDING INTERESTS OF THE BENEFIT COMPANY. THE PERCENTAGE
24 OF OWNERSHIP IN AN ASSOCIATION SHALL BE CALCULATED AS IF ALL
25 OUTSTANDING RIGHTS TO ACQUIRE INTERESTS IN THE ASSOCIATION
26 HAD BEEN EXERCISED.

27 "MINIMUM STATUS VOTE." AS FOLLOWS:

28 (1) IN THE CASE OF A LIMITED LIABILITY COMPANY, IN
29 ADDITION TO ANY OTHER REQUIRED APPROVAL OR VOTE, THE
30 SATISFACTION OF THE FOLLOWING CONDITIONS:

1 (I) THE MEMBERS OF EVERY CLASS OR SERIES MUST BE
2 ENTITLED, AS A CLASS, TO VOTE ON THE ACTION REGARDLESS OF
3 A LIMITATION STATED IN THE CERTIFICATE OF ORGANIZATION OR
4 OPERATING AGREEMENT ON THE VOTING RIGHTS OF ANY CLASS OR
5 SERIES.

6 (II) THE ACTION MUST BE APPROVED BY A VOTE OF THE
7 MEMBERS OF EACH CLASS OR SERIES ENTITLED TO CAST AT LEAST
8 TWO-THIRDS OF THE VOTES THAT ALL MEMBERS OF THE CLASS OR
9 SERIES ARE ENTITLED TO CAST ON THE ACTION.

10 (2) IN THE CASE OF A DOMESTIC ASSOCIATION OTHER THAN A
11 LIMITED LIABILITY COMPANY, IN ADDITION TO ANY OTHER REQUIRED
12 APPROVAL, VOTE OR CONSENT, THE SATISFACTION OF THE FOLLOWING
13 CONDITIONS:

14 (I) THE HOLDERS OF EVERY CLASS OR SERIES OF INTEREST
15 IN THE ASSOCIATION THAT ARE ENTITLED TO RECEIVE A
16 DISTRIBUTION OF ANY KIND FROM THE ASSOCIATION MUST BE
17 ENTITLED AS A CLASS TO VOTE ON OR CONSENT TO THE ACTION
18 REGARDLESS OF ANY OTHERWISE APPLICABLE LIMITATION ON THE
19 VOTING OR CONSENT RIGHTS OF ANY CLASS OR SERIES.

20 (II) THE ACTION MUST BE APPROVED BY VOTE OR CONSENT
21 OF THE HOLDERS DESCRIBED IN SUBPARAGRAPH (I) ENTITLED TO
22 CAST AT LEAST TWO-THIRDS OF THE VOTES OR CONSENTS THAT
23 ALL OF THOSE HOLDERS ARE ENTITLED TO CAST ON THE ACTION.

24 "SPECIFIC PUBLIC BENEFIT." THE TERM SHALL HAVE THE MEANING
25 SPECIFIED IN SECTION 3302 (RELATING TO DEFINITIONS).

26 "SUBSIDIARY." THE TERM SHALL HAVE THE MEANING SPECIFIED IN
27 SECTION 3302.

28 "THIRD-PARTY STANDARD." A STANDARD FOR DEFINING, REPORTING
29 AND ASSESSING OVERALL SOCIAL AND ENVIRONMENTAL PERFORMANCE WHICH
30 IS:

1 (1) COMPREHENSIVE IN THAT IT ASSESSES THE EFFECT OF THE
2 BUSINESS AND ITS OPERATIONS UPON THE INTERESTS LISTED IN
3 SECTION 8895 (A) (1) (II), (III), (IV) AND (V) (RELATING TO
4 STANDARD OF CONDUCT FOR MEMBERS).

5 (2) DEVELOPED BY AN ORGANIZATION THAT IS INDEPENDENT OF
6 THE BENEFIT COMPANY AND SATISFIES THE FOLLOWING REQUIREMENTS:

7 (I) NOT MORE THAN ONE-THIRD OF THE MEMBERS OF THE
8 GOVERNING BODY OF THE ORGANIZATION ARE REPRESENTATIVES OF
9 ANY OF THE FOLLOWING:

10 (A) AN ASSOCIATION OF BUSINESSES OPERATING IN A
11 SPECIFIC INDUSTRY THE PERFORMANCE OF WHOSE MEMBERS IS
12 MEASURED BY THE STANDARD.

13 (B) BUSINESSES FROM A SPECIFIC INDUSTRY OR AN
14 ASSOCIATION OF BUSINESSES IN THAT INDUSTRY.

15 (C) BUSINESSES WHOSE PERFORMANCE IS ASSESSED
16 AGAINST THE STANDARD.

17 (II) THE ORGANIZATION IS NOT MATERIALLY FINANCED BY
18 AN ASSOCIATION OR BUSINESS DESCRIBED IN SUBPARAGRAPH (I).

19 (3) CREDIBLE BECAUSE THE STANDARD IS DEVELOPED BY A
20 PERSON THAT BOTH:

21 (I) HAS ACCESS TO NECESSARY EXPERTISE TO ASSESS
22 OVERALL SOCIAL AND ENVIRONMENTAL PERFORMANCE.

23 (II) USES A BALANCED MULTISTAKEHOLDER APPROACH,
24 INCLUDING A PUBLIC COMMENT PERIOD OF AT LEAST 30 DAYS TO
25 DEVELOP THE STANDARD.

26 (4) TRANSPARENT BECAUSE THE FOLLOWING INFORMATION IS
27 PUBLICLY AVAILABLE:

28 (I) ABOUT THE STANDARD:

29 (A) THE CRITERIA CONSIDERED WHEN MEASURING THE
30 OVERALL SOCIAL AND ENVIRONMENTAL PERFORMANCE OF A

1 BUSINESS.

2 (B) THE RELATIVE WEIGHTINGS, IF ANY, OF THOSE
3 CRITERIA.

4 (II) ABOUT THE DEVELOPMENT AND REVISION OF THE
5 STANDARD:

6 (A) THE IDENTITY OF THE DIRECTORS, OFFICERS,
7 MATERIAL OWNERS AND THE GOVERNING BODY OF THE
8 ORGANIZATION THAT DEVELOPED AND CONTROLS REVISIONS TO
9 THE STANDARD.

10 (B) THE PROCESS BY WHICH REVISIONS TO THE
11 STANDARD AND CHANGES TO THE MEMBERSHIP OF THE
12 GOVERNING BODY ARE MADE.

13 (C) AN ACCOUNTING OF THE SOURCES OF FINANCIAL
14 SUPPORT FOR THE ORGANIZATION, WITH SUFFICIENT DETAIL
15 TO DISCLOSE ANY RELATIONSHIPS THAT COULD REASONABLY
16 BE CONSIDERED TO PRESENT A POTENTIAL CONFLICT OF
17 INTEREST.

18 § 8893. BENEFIT COMPANY STATUS.

19 (A) FORMATION OF BENEFIT COMPANY.--A BENEFIT COMPANY SHALL
20 BE FORMED IN ACCORDANCE WITH SECTION 8821 (RELATING TO FORMATION
21 OF LIMITED LIABILITY COMPANY AND CERTIFICATE OF ORGANIZATION)
22 EXCEPT THAT ITS CERTIFICATE OF ORGANIZATION SHALL ALSO STATE
23 THAT IT IS A BENEFIT COMPANY.

24 (B) ELECTION OF BENEFIT COMPANY STATUS.--AN EXISTING LIMITED
25 LIABILITY COMPANY MAY ELECT TO BECOME A BENEFIT COMPANY BY
26 AMENDING ITS CERTIFICATE OF ORGANIZATION SO THAT IT CONTAINS, IN
27 ADDITION TO THE REQUIREMENTS OF SECTION 8821, A STATEMENT THAT
28 THE COMPANY IS A BENEFIT COMPANY. THE AMENDMENT SHALL NOT BE
29 EFFECTIVE UNLESS IT IS ADOPTED BY AT LEAST THE MINIMUM STATUS
30 VOTE.

1 (C) ELECTION OF STATUS IN A FUNDAMENTAL TRANSACTION.--IF AN
2 ASSOCIATION THAT IS NOT A BENEFIT COMPANY IS A PARTY TO A MERGER
3 OR DIVISION OR IS THE EXCHANGING ASSOCIATION IN AN INTEREST
4 EXCHANGE, AND THE SURVIVING, NEW OR ANY RESULTING ASSOCIATION IN
5 THE MERGER, DIVISION OR INTEREST EXCHANGE IS TO BE A BENEFIT
6 COMPANY, THEN THE PLAN OF MERGER, DIVISION OR INTEREST EXCHANGE
7 SHALL NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY THE ASSOCIATION
8 BY AT LEAST THE MINIMUM STATUS VOTE.

9 (D) TERMINATION OF BENEFIT COMPANY STATUS.--A BENEFIT
10 COMPANY MAY TERMINATE ITS STATUS AS A BENEFIT COMPANY AND CEASE
11 TO BE SUBJECT TO THIS SUBCHAPTER BY AMENDING ITS CERTIFICATE OF
12 ORGANIZATION TO DELETE THE PROVISION REQUIRED BY SUBSECTION (A)
13 OR (B) TO BE STATED IN THE CERTIFICATE OF ORGANIZATION OF A
14 BENEFIT COMPANY. THE AMENDMENT SHALL NOT BE EFFECTIVE UNLESS IT
15 IS ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE.

16 (E) TERMINATION OF STATUS IN A FUNDAMENTAL TRANSACTION.--IF
17 A PLAN WOULD HAVE THE EFFECT OF TERMINATING THE STATUS OF A
18 LIMITED LIABILITY COMPANY AS A BENEFIT COMPANY, THE PLAN SHALL
19 NOT BE EFFECTIVE UNLESS IT IS ADOPTED BY AT LEAST THE MINIMUM
20 STATUS VOTE. ANY SALE, LEASE, EXCHANGE OR OTHER DISPOSITION OF
21 ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF A BENEFIT COMPANY,
22 UNLESS THE TRANSACTION IS IN THE USUAL AND REGULAR COURSE OF
23 BUSINESS, SHALL NOT BE EFFECTIVE UNLESS THE TRANSACTION IS
24 APPROVED BY AT LEAST THE MINIMUM STATUS VOTE.

25 § 8894. PURPOSES.

26 (A) GENERAL PUBLIC BENEFIT PURPOSE.--A BENEFIT COMPANY SHALL
27 HAVE A PURPOSE OF CREATING GENERAL PUBLIC BENEFIT. THIS PURPOSE
28 IS IN ADDITION TO ITS PURPOSE UNDER SECTION 8818(B) (RELATING TO
29 CHARACTERISTICS OF LIMITED LIABILITY COMPANY).

30 (B) OPTIONAL SPECIFIC PUBLIC BENEFIT PURPOSE.--THE

1 CERTIFICATE OF ORGANIZATION OF A BENEFIT COMPANY MAY IDENTIFY
2 ONE OR MORE SPECIFIC PUBLIC BENEFITS THAT IT IS THE PURPOSE OF
3 THE BENEFIT COMPANY TO CREATE IN ADDITION TO ITS PURPOSES UNDER
4 SUBSECTION (A) AND SECTION 8818(B). THE IDENTIFICATION OF A
5 SPECIFIC PUBLIC BENEFIT DOES NOT LIMIT THE OBLIGATION OF A
6 BENEFIT COMPANY TO CREATE GENERAL PUBLIC BENEFIT.

7 (C) EFFECT OF PURPOSES.--THE CREATION OF GENERAL AND
8 SPECIFIC PUBLIC BENEFIT AS PROVIDED IN SUBSECTIONS (A) AND (B)
9 IS IN THE BEST INTERESTS OF THE BENEFIT COMPANY.

10 (D) AMENDMENT.--A BENEFIT COMPANY MAY AMEND ITS CERTIFICATE
11 OF ORGANIZATION TO ADD, AMEND OR DELETE THE IDENTIFICATION OF A
12 SPECIFIC PUBLIC BENEFIT THAT IT IS THE PURPOSE OF THE BENEFIT
13 COMPANY TO CREATE. THE AMENDMENT SHALL NOT BE EFFECTIVE UNLESS
14 IT IS ADOPTED BY AT LEAST THE MINIMUM STATUS VOTE.

15 (E) PROFESSIONAL COMPANIES.--A PROFESSIONAL COMPANY THAT IS
16 A BENEFIT COMPANY DOES NOT VIOLATE A RESTRICTION ON ITS
17 PERMISSIBLE PURPOSES OR ACTIVITIES BY HAVING THE PURPOSE TO
18 CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.
19 § 8895. STANDARD OF CONDUCT FOR MEMBERS.

20 (A) CONSIDERATION OF INTERESTS.--THE MEMBERS OF A MEMBER-
21 MANAGED LIMITED LIABILITY COMPANY THAT IS A BENEFIT COMPANY,
22 WHEN DISCHARGING THEIR DUTIES UNDER THIS TITLE OR UNDER THE
23 OPERATING AGREEMENT:

24 (1) SHALL CONSIDER THE EFFECTS OF ANY ACTION UPON:

25 (I) THE MEMBERS OF THE BENEFIT COMPANY;

26 (II) THE EMPLOYEES AND WORK FORCE OF THE BENEFIT
27 COMPANY AND ITS SUBSIDIARIES AND SUPPLIERS;

28 (III) THE INTERESTS OF CUSTOMERS AS BENEFICIARIES OF
29 THE GENERAL OR SPECIFIC PUBLIC BENEFIT PURPOSES OF THE
30 BENEFIT COMPANY;

1 (IV) COMMUNITY AND SOCIETAL CONSIDERATIONS,
2 INCLUDING THOSE OF ANY COMMUNITY IN WHICH OFFICES OR
3 FACILITIES OF THE BENEFIT COMPANY OR ITS SUBSIDIARIES OR
4 SUPPLIERS ARE LOCATED;

5 (V) THE LOCAL AND GLOBAL ENVIRONMENT;

6 (VI) THE SHORT-TERM AND LONG-TERM INTERESTS OF THE
7 BENEFIT COMPANY, INCLUDING BENEFITS THAT MAY ACCRUE TO
8 THE BENEFIT COMPANY FROM ITS LONG-TERM PLANS AND THE
9 POSSIBILITY THAT THESE INTERESTS MAY BE BEST SERVED BY
10 THE CONTINUED INDEPENDENCE OF THE BENEFIT COMPANY; AND

11 (VII) THE ABILITY OF THE BENEFIT COMPANY TO
12 ACCOMPLISH ITS GENERAL PUBLIC BENEFIT PURPOSE AND ANY
13 SPECIFIC PUBLIC BENEFIT PURPOSE; AND

14 (2) MAY CONSIDER ANY OTHER PERTINENT FACTORS OR THE
15 INTERESTS OF ANY OTHER GROUP THAT THEY DEEM APPROPRIATE; BUT

16 (3) SHALL NOT BE REQUIRED TO GIVE PRIORITY TO THE
17 INTERESTS OF ANY PERSON OR GROUP REFERRED TO IN PARAGRAPH (1)
18 OR (2) OVER THE INTERESTS OF ANY OTHER PERSON OR GROUP UNLESS
19 THE BENEFIT COMPANY HAS STATED IN ITS CERTIFICATE OF
20 ORGANIZATION ITS INTENTION TO GIVE PRIORITY TO CERTAIN
21 INTERESTS RELATED TO ITS ACCOMPLISHMENT OF ITS GENERAL PUBLIC
22 BENEFIT PURPOSE OR OF A SPECIFIC PUBLIC BENEFIT PURPOSE
23 IDENTIFIED IN THE CERTIFICATE.

24 (B) COORDINATION WITH OTHER PROVISIONS OF LAW.--THE
25 CONSIDERATION OF INTERESTS AND FACTORS IN THE MANNER REQUIRED
26 UNDER SUBSECTION (A) SHALL NOT CONSTITUTE A VIOLATION OF SECTION
27 8849.1 (RELATING TO STANDARDS OF CONDUCT FOR MEMBERS).

28 (C) EXONERATION FROM PERSONAL LIABILITY.--

29 (1) A MEMBER SHALL NOT BE PERSONALLY LIABLE FOR MONETARY
30 DAMAGES FOR ANY ACTION TAKEN AS A MEMBER OF A MEMBER-MANAGED

1 LIMITED LIABILITY COMPANY IN THE COURSE OF PERFORMING THE
2 DUTIES SPECIFIED IN SUBSECTION (A) UNLESS THE ACTION
3 CONSTITUTES SELF-DEALING, WILLFUL MISCONDUCT OR A KNOWING
4 VIOLATION OF LAW.

5 (2) A MEMBER SHALL NOT BE PERSONALLY LIABLE FOR MONETARY
6 DAMAGES FOR FAILURE OF THE BENEFIT COMPANY TO PURSUE OR
7 CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC BENEFIT.

8 (D) LIMITATION ON STANDING.--A MEMBER OF A MEMBER-MANAGED
9 LIMITED LIABILITY COMPANY THAT IS A BENEFIT COMPANY DOES NOT
10 HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY OF THE GENERAL
11 PUBLIC BENEFIT PURPOSE OR A SPECIFIC PUBLIC BENEFIT PURPOSE OF
12 THE BENEFIT COMPANY ARISING FROM THE STATUS OF THE PERSON AS A
13 BENEFICIARY.

14 § 8896. STANDARD OF CONDUCT FOR MANAGERS AND OFFICERS.

15 (A) MANAGERS.--EACH MANAGER OF A MANAGER-MANAGED LIMITED
16 LIABILITY COMPANY THAT IS A BENEFIT COMPANY SHALL CONSIDER THE
17 INTERESTS AND FACTORS DESCRIBED IN SECTION 8895(A) (RELATING TO
18 STANDARD OF CONDUCT FOR MEMBERS) WHEN DISCHARGING HIS OR HER
19 DUTIES UNDER THIS TITLE AND UNDER THE OPERATING AGREEMENT.

20 (B) OFFICERS.--IF A BENEFIT COMPANY HAS A PERSON SERVING IN
21 THE CAPACITY OF AN OFFICER, THE PERSON SHALL CONSIDER THE
22 INTERESTS AND FACTORS DESCRIBED IN SECTION 8895(A) WHEN
23 DISCHARGING THE PERSON'S DUTIES UNDER THIS TITLE AND UNDER THE
24 OPERATING AGREEMENT IF:

25 (1) THE OFFICER HAS DISCRETION TO ACT WITH RESPECT TO A
26 MATTER; AND

27 (2) IT REASONABLY APPEARS TO THE OFFICER THAT THE MATTER
28 MAY HAVE A MATERIAL EFFECT ON THE CREATION BY THE BENEFIT
29 COMPANY OF GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC
30 BENEFIT IDENTIFIED IN THE CERTIFICATE OF ORGANIZATION OF THE

1 BENEFIT COMPANY.

2 (C) COORDINATION WITH OTHER PROVISIONS OF LAW.--THE
3 CONSIDERATION OF INTERESTS AND FACTORS BY A MANAGER IN THE
4 MANNER DESCRIBED IN SUBSECTION (A) SHALL NOT CONSTITUTE A
5 VIOLATION OF SECTION 8849.2 (RELATING TO STANDARDS OF CONDUCT
6 FOR MANAGERS).

7 (D) EXONERATION FROM PERSONAL LIABILITY.--

8 (1) A MANAGER OR OFFICER SHALL NOT BE PERSONALLY LIABLE,
9 AS SUCH, FOR MONETARY DAMAGES FOR ANY ACTION TAKEN AS A
10 MANAGER OR OFFICER IN THE COURSE OF PERFORMING THE DUTIES
11 SPECIFIED IN SUBSECTION (A) OR (B) UNLESS THE ACTION
12 CONSTITUTES SELF-DEALING, WILLFUL MISCONDUCT OR A KNOWING
13 VIOLATION OF LAW.

14 (2) A MANAGER OR OFFICER SHALL NOT BE PERSONALLY LIABLE
15 FOR MONETARY DAMAGES FOR FAILURE OF THE BENEFIT COMPANY TO
16 PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A SPECIFIC PUBLIC
17 BENEFIT.

18 (E) LIMITATION ON STANDING.--A MANAGER OR OFFICER DOES NOT
19 HAVE A DUTY TO A PERSON THAT IS A BENEFICIARY OF THE GENERAL
20 PUBLIC BENEFIT PURPOSE OR A SPECIFIC PUBLIC BENEFIT PURPOSE OF A
21 BENEFIT COMPANY ARISING FROM THE STATUS OF THE PERSON AS A
22 BENEFICIARY.

23 § 8897. RIGHT OF ACTION.

24 (A) LIMITATIONS.--

25 (1) EXCEPT IN A BENEFIT ENFORCEMENT PROCEEDING, NO
26 PERSON MAY BRING AN ACTION OR ASSERT A CLAIM AGAINST A
27 BENEFIT COMPANY OR ITS MEMBERS, MANAGERS OR OFFICERS WITH
28 RESPECT TO:

29 (I) FAILURE TO PURSUE OR CREATE GENERAL PUBLIC
30 BENEFIT OR A SPECIFIC PUBLIC BENEFIT SET FORTH IN ITS

1 CERTIFICATE OF ORGANIZATION; OR

2 (II) VIOLATION OF A DUTY OR STANDARD OF CONDUCT
3 UNDER THIS CHAPTER.

4 (2) A BENEFIT COMPANY SHALL NOT BE LIABLE FOR MONETARY
5 DAMAGES UNDER THIS CHAPTER FOR ANY FAILURE OF THE BENEFIT
6 COMPANY TO PURSUE OR CREATE GENERAL PUBLIC BENEFIT OR A
7 SPECIFIC PUBLIC BENEFIT.

8 (B) PARTIES WITH STANDING.--A BENEFIT ENFORCEMENT PROCEEDING
9 MAY BE COMMENCED OR MAINTAINED ONLY:

10 (1) DIRECTLY BY THE BENEFIT COMPANY; OR

11 (2) DERIVATIVELY BY:

12 (I) A MEMBER THAT OWNED AT LEAST 2% OF THE TOTAL
13 NUMBER OF INTERESTS OF A CLASS OR SERIES OUTSTANDING AT
14 THE TIME OF THE ACT COMPLAINED OF;

15 (II) A MANAGER OF A MANAGER-MANAGED LIMITED
16 LIABILITY COMPANY;

17 (III) A PERSON OR GROUP OF PERSONS THAT OWNS
18 BENEFICIALLY OR OF RECORD 5% OR MORE OF THE INTERESTS IN
19 AN ASSOCIATION OF WHICH THE BENEFIT COMPANY IS A
20 SUBSIDIARY AT THE TIME OF THE ACT COMPLAINED OF; OR

21 (IV) SUCH OTHER PERSONS AS MAY BE SPECIFIED IN THE
22 CERTIFICATE OF ORGANIZATION OR OPERATING AGREEMENT OF THE
23 BENEFIT COMPANY.

24 (C) CROSS REFERENCE.--THE PROVISIONS OF SUBCHAPTER H
25 (RELATING TO ACTIONS BY MEMBERS) SHALL APPLY TO DERIVATIVE
26 ACTIONS UNDER THIS SECTION.

27 § 8898. ANNUAL BENEFIT REPORT.

28 (A) CONTENTS.--A BENEFIT COMPANY MUST DELIVER TO EACH MEMBER
29 AN ANNUAL BENEFIT REPORT, INCLUDING:

30 (1) A NARRATIVE DESCRIPTION OF:

1 (I) THE WAYS IN WHICH THE BENEFIT COMPANY PURSUED
2 GENERAL PUBLIC BENEFIT DURING THE YEAR AND THE EXTENT TO
3 WHICH GENERAL PUBLIC BENEFIT WAS CREATED;

4 (II) THE WAYS IN WHICH THE BENEFIT COMPANY PURSUED
5 ANY SPECIFIC PUBLIC BENEFIT THAT THE CERTIFICATE OF
6 ORGANIZATION STATES IS THE PURPOSE OF THE BENEFIT COMPANY
7 TO CREATE AND THE EXTENT TO WHICH THAT SPECIFIC PUBLIC
8 BENEFIT WAS CREATED;

9 (III) ANY CIRCUMSTANCES THAT HAVE HINDERED THE
10 CREATION BY THE BENEFIT COMPANY OF GENERAL OR SPECIFIC
11 PUBLIC BENEFIT; AND

12 (IV) THE PROCESS AND RATIONALE FOR SELECTING OR
13 CHANGING THE THIRD-PARTY STANDARD USED TO PREPARE THE
14 BENEFIT REPORT.

15 (2) AN ASSESSMENT OF THE OVERALL SOCIAL AND
16 ENVIRONMENTAL PERFORMANCE OF THE BENEFIT COMPANY AGAINST A
17 THIRD-PARTY STANDARD APPLIED CONSISTENTLY WITH ANY
18 APPLICATION OF THAT STANDARD IN PRIOR BENEFIT REPORTS OR
19 ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR ANY
20 INCONSISTENT APPLICATION. THE ASSESSMENT DOES NOT NEED TO BE
21 AUDITED OR CERTIFIED BY A THIRD-PARTY STANDARDS PROVIDER.

22 (3) A STATEMENT OF ANY CONNECTION BETWEEN THE
23 ORGANIZATION THAT ESTABLISHED THE THIRD-PARTY STANDARD, OR
24 ITS DIRECTORS, OFFICERS OR ANY HOLDER OF 5% OR MORE OF THE
25 GOVERNANCE INTERESTS IN THE ORGANIZATION, AND THE BENEFIT
26 COMPANY OR ITS MEMBERS, MANAGERS OR OFFICERS OR ANY HOLDER OF
27 5% OR MORE OF THE OUTSTANDING INTERESTS IN THE BENEFIT
28 COMPANY, INCLUDING ANY FINANCIAL OR GOVERNANCE RELATIONSHIP
29 WHICH MIGHT MATERIALLY AFFECT THE CREDIBILITY OF THE USE OF
30 THE THIRD-PARTY STANDARD.

1 (B) TIMING OF REPORT.--A BENEFIT COMPANY SHALL ANNUALLY SEND
2 A BENEFIT REPORT TO EACH MEMBER EITHER:

3 (1) WITHIN 120 DAYS FOLLOWING THE END OF THE FISCAL YEAR
4 OF THE BENEFIT COMPANY; OR

5 (2) AT THE SAME TIME THAT THE BENEFIT COMPANY DELIVERS
6 ANY OTHER ANNUAL REPORT TO ITS MEMBERS.

7 (C) INTERNET WEBSITE POSTING.--A BENEFIT COMPANY MUST POST
8 ALL OF ITS BENEFIT REPORTS ON THE PUBLIC PORTION OF ITS INTERNET
9 WEBSITE, IF ANY, EXCEPT THAT ANY FINANCIAL OR PROPRIETARY
10 INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED FROM
11 THE BENEFIT REPORT AS POSTED.

12 (D) AVAILABILITY OF COPIES.--IF A BENEFIT COMPANY DOES NOT
13 HAVE AN INTERNET WEBSITE, THE BENEFIT COMPANY SHALL PROVIDE A
14 COPY OF ITS MOST RECENT BENEFIT REPORT, WITHOUT CHARGE, TO ANY
15 PERSON THAT REQUESTS A COPY, BUT ANY FINANCIAL OR PROPRIETARY
16 INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED FROM
17 THE COPY OF THE BENEFIT REPORT PROVIDED.

18 (E) FILING OF REPORT.--CONCURRENTLY WITH THE DELIVERY OF THE
19 BENEFIT REPORT TO MEMBERS PURSUANT TO SUBSECTION (B), THE
20 BENEFIT COMPANY MUST DELIVER A COPY OF THE BENEFIT REPORT TO THE
21 DEPARTMENT FOR FILING, EXCEPT THAT ANY FINANCIAL OR PROPRIETARY
22 INFORMATION INCLUDED IN THE BENEFIT REPORT MAY BE OMITTED FROM
23 THE BENEFIT REPORT AS FILED UNDER THIS SECTION. THE DEPARTMENT
24 SHALL CHARGE A FEE OF \$70 FOR FILING A BENEFIT REPORT.

25 Section 30. Repeals are as follows:

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

27 (i) The limited liability company has been evolving
28 as a legal entity over the last 25 years, and statutory
29 law must be updated to deal with the evolving entity.

30 (ii) Existing statutory law on limited liability

1 companies was enacted in 1994. Discrete amendments were
2 enacted in 1997, 1998, 2006, 2013 and 2014; and
3 significant amendments were made by section 2 of the act
4 of June 22, 2001 (P.L.418, No.34), known as the GAA
5 Amendments Act of 2001. A more comprehensive legislative
6 approach was taken in sections 54 and 55 of the act of
7 October 22, 2014 (P.L.2640, No.172), known as the
8 Associations Transactions Act.

9 (iii) Section 22 of this act adds a new chapter on
10 limited liability companies. The new chapter continues
11 the approach under the GAA Amendments Act of 2001 and the
12 Associations Transactions Act and extensively revises
13 existing statutory law to the degree that identification
14 of individual changes or reproduction of voluminous text
15 to be eliminated would inhibit rather than enhance
16 serious legal analysis.

17 (iv) The repeal under paragraph (2) is necessary to
18 carry out this paragraph.

19 (2) SUBCHAPTERS A, B, C, D, E, F, I AND K OF Chapter 89 <--
20 of Title 15 ~~is~~ ARE repealed. <--

21 Section 31. ~~Section~~ SECTIONS 8995(C), (D) AND (E), 8997, <--
22 8998(G) AND 9115 of Title 15 are amended to read:

23 § 8995. APPLICATION AND EFFECT OF SUBCHAPTER. <--

24 * * *

25 (C) LAWS APPLICABLE TO RESTRICTED PROFESSIONAL COMPANIES.--
26 EXCEPT AS OTHERWISE PROVIDED IN THIS SUBCHAPTER, [THIS CHAPTER]
27 CHAPTER 88 (RELATING TO LIMITED LIABILITY COMPANIES) SHALL BE
28 GENERALLY APPLICABLE TO ALL RESTRICTED PROFESSIONAL COMPANIES.
29 THE SPECIFIC PROVISIONS OF THIS SUBCHAPTER SHALL CONTROL OVER
30 THE GENERAL PROVISIONS OF [THIS CHAPTER] CHAPTER 88.

1 (D) ELECTION OF RESTRICTED PROFESSIONAL COMPANY STATUS.--AT
2 THE TIME AN EXISTING LIMITED LIABILITY COMPANY THAT HAS
3 PREVIOUSLY CONDUCTED A BUSINESS NOT INVOLVING THE RENDERING OF A
4 RESTRICTED PROFESSIONAL SERVICE BEGINS TO RENDER ONE OR MORE
5 RESTRICTED PROFESSIONAL SERVICES, THE COMPANY SHALL AMEND ITS
6 CERTIFICATE OF ORGANIZATION TO INCLUDE [THE STATEMENT REQUIRED
7 BY SECTION 8913(7) (RELATING TO CERTIFICATE OF ORGANIZATION)] A
8 STATEMENT THAT IT IS A RESTRICTED PROFESSIONAL COMPANY. FOR
9 PURPOSES OF SECTIONS [8925] 8835 (RELATING TO TAXATION OF
10 LIMITED LIABILITY COMPANIES) AND 8997, THE COMPANY SHALL BE
11 DEEMED TO HAVE BECOME A RESTRICTED PROFESSIONAL COMPANY ON THE
12 FIRST DAY OF THE TAXABLE YEAR OF THE COMPANY FOLLOWING THE
13 TAXABLE YEAR IN WHICH THE AMENDMENT OF ITS CERTIFICATE OF
14 ORGANIZATION REQUIRED BY THIS SUBSECTION IS FILED.

15 (E) TERMINATION OF RESTRICTED PROFESSIONAL COMPANY STATUS.--
16 EXCEPT AS PROVIDED IN THIS SUBSECTION, THE STATUS OF A
17 RESTRICTED PROFESSIONAL COMPANY AS SUCH SHALL TERMINATE, AND THE
18 COMPANY SHALL CEASE TO BE SUBJECT TO THIS SUBCHAPTER, AT SUCH
19 TIME AS IT CEASES TO RENDER ANY RESTRICTED PROFESSIONAL
20 SERVICES. UPON CEASING TO RENDER ANY RESTRICTED PROFESSIONAL
21 SERVICES, THE COMPANY SHALL AMEND ITS CERTIFICATE OF
22 ORGANIZATION TO DELETE THE STATEMENT REQUIRED BY [SECTION
23 8913(7)] SUBSECTION (D). FOR PURPOSES OF SECTIONS [8925] 8835
24 AND 8997, THE COMPANY SHALL BE DEEMED TO HAVE CEASED BEING A
25 RESTRICTED PROFESSIONAL COMPANY ON THE FIRST DAY OF THE TAXABLE
26 YEAR OF THE COMPANY FOLLOWING THE TAXABLE YEAR IN WHICH IT
27 CEASED TO RENDER ANY RESTRICTED PROFESSIONAL SERVICES.

28 § 8997. TAXATION OF RESTRICTED PROFESSIONAL COMPANIES.

29 (A) GENERAL RULE.--EXCEPT AS PROVIDED IN SUBSECTION (B) [AND
30 IN SECTION 8925(B) (RELATING TO TAXATION OF LIMITED LIABILITY

1 COMPANIES)], FOR THE PURPOSES OF THE IMPOSITION BY THE
2 COMMONWEALTH OR ANY POLITICAL SUBDIVISION OF ANY TAX OR LICENSE
3 FEE ON OR WITH RESPECT TO ANY INCOME, PROPERTY, PRIVILEGE,
4 TRANSACTION, SUBJECT OR OCCUPATION, A DOMESTIC OR QUALIFIED
5 FOREIGN RESTRICTED PROFESSIONAL COMPANY SHALL BE DEEMED TO BE A
6 LIMITED PARTNERSHIP ORGANIZED AND EXISTING UNDER CHAPTER [85] 86
7 (RELATING TO LIMITED PARTNERSHIPS), AND A MEMBER OF SUCH A
8 COMPANY, AS SUCH, SHALL BE DEEMED A LIMITED PARTNER OF A LIMITED
9 PARTNERSHIP.

10 (B) EXCEPTION.--A DOMESTIC OR QUALIFIED FOREIGN RESTRICTED
11 PROFESSIONAL COMPANY SHALL BE SUBJECT TO SECTION [8925(A)]
12 8835(A), INSTEAD OF SUBSECTION (A), FOR THE WHOLE OF ANY TAXABLE
13 YEAR OF THE COMPANY DURING ANY PART OF WHICH THE COMPANY HAS:

14 (1) ENGAGED IN ANY BUSINESS NOT PERMITTED BY SECTION
15 8996(A) (RELATING TO PURPOSES OF RESTRICTED PROFESSIONAL
16 COMPANIES);

17 (3) BEEN A MEMBER OF A LIMITED LIABILITY COMPANY.
18 § 8998. ANNUAL REGISTRATION.

19 * * *

20 (G) CROSS [REFERENCES.--SEE SECTION 8907 (RELATING TO
21 EXECUTION OF DOCUMENTS) AND] REFERENCE.--SEE 18 PA.C.S. § 4904
22 (RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES).

23 § 9115. Ownership and transfer of property.

24 (a) General rule.--A nonprofit association may acquire, hold
25 or transfer, in its name, an interest in property.

26 (b) Testamentary and fiduciary dispositions.--A nonprofit
27 association may be a beneficiary of a trust or contract, a
28 legatee or a devisee.

29 (c) Authority to take and hold trust property.--Every
30 nonprofit association organized for a charitable purpose or

1 purposes may take, receive and hold real and personal property
2 as may be given, devised to or otherwise vested in the nonprofit
3 association, in trust, for the purpose or purposes set forth in
4 its governing principles. The managers of the nonprofit
5 association shall, as trustees of the property, be held to the
6 same degree of responsibility and accountability as other
7 trustees, unless a lesser degree or a particular degree of
8 responsibility and accountability is prescribed in the trust
9 instrument, or unless the managers remain under the control of
10 the members of the nonprofit association or third persons who
11 retain the right to direct, and do direct, the actions of the
12 managers as to the use of the trust property from time to time.

13 (d) Nondiversion of certain property.--Property of a
14 nonprofit association committed to charitable purposes shall
15 not, by any proceeding under Chapter 3 (relating to entity
16 transactions) or otherwise, be diverted from the objects to
17 which it was donated, granted or devised, unless and until the
18 nonprofit association obtains from the court an order under 20
19 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition
20 of the property.

21 Section 32. Section 9302 of Title 15, amended October 22,
22 2014 (P.L.2640, No.172), is amended to read:

23 § 9302. Application of chapter.

24 (a) General rule.--This chapter shall apply to and the word
25 "association" in this chapter shall mean a professional
26 association organized under the act of August 7, 1961 (P.L.941,
27 No.416), known as the Professional Association Act, which has
28 not:

29 (1) Reorganized as an electing partnership under Chapter
30 87 (relating to electing partnerships).

1 (2) Elected to become a professional corporation in the
2 manner provided by section 2905 (relating to election of
3 professional associations to become professional
4 corporations).

5 (3) Converted to a limited liability company under
6 Subchapter E of Chapter 3 (relating to conversion).

7 (b) No new associations.--An association may not be
8 originally organized under this chapter.

9 Section 33. Sections 9501 and 9506 of Title 15 are amended
10 to read:

11 § 9501. Application and effect of chapter.

12 (a) General rule.--

13 (1) Unless the context clearly indicates otherwise, this
14 chapter shall apply to and the words "business trust" in this
15 chapter shall mean an association organized as a trust:

16 (i) [Hereafter established under the laws of this
17 Commonwealth.] Whose deed of trust or other organic
18 document has been filed in the department and is in
19 effect under this chapter.

20 (ii) Whose deed of trust or other organic document
21 states, by amendment or otherwise, that the trust exists
22 subject to the provisions of this chapter, in the case of
23 a business trust heretofore established under the laws of
24 this Commonwealth or heretofore or hereafter established
25 under the laws of any other jurisdiction.

26 (2) The words "business trust" in this chapter shall not
27 include:

28 (i) A trust contemplated by section 1768 (relating
29 to voting trusts and other agreements among shareholders)
30 or any similar provision of law.

1 (ii) A trust for creditors.

2 (iii) A mortgage, deed of trust or other indenture
3 or similar instrument or agreement under which debt
4 securities are outstanding or to be issued.

5 (iv) A trust for the benefit of one or more
6 investors with respect to a lease of real or personal
7 property, unless the instrument creating the trust is
8 filed under this chapter.

9 (b) No franchise.--This chapter shall not confer on a
10 business trust the power to engage in any activity that may be
11 undertaken only in corporate form.

12 (c) Effect on taxation.--This chapter is enacted to codify
13 and clarify certain common law principles applicable to business
14 trusts and is not intended to affect the liability of any
15 business trust to any tax. A trust that is subject to this
16 chapter shall not be deemed to be organized or created by or
17 under this or any other statute or to have the benefit of any
18 state franchise for the purpose of existing law relating to
19 taxation.

20 (d) Multistate application.--It is the intent of the General
21 Assembly in enacting this chapter that the legal existence of
22 business trusts organized in this Commonwealth be recognized
23 outside the boundaries of this Commonwealth and that, subject to
24 any reasonable requirement of registration, a domestic business
25 trust transacting business outside this Commonwealth be granted
26 protection of full faith and credit under the Constitution of
27 the United States.

28 § 9506. Liability of trustees and beneficiaries.

29 (a) General rule.--

30 (1) Except as otherwise provided in the instrument, the

1 beneficiaries of a business trust shall be entitled to the
2 same limitation of personal liability as is extended to
3 shareholders in a domestic business corporation.

4 (2) Except as otherwise provided in the instrument, the
5 trustees of a trust, as such, shall not be personally liable
6 to any person for any act or obligation of the trust or any
7 other trustee.

8 (3) An obligation of a trust based upon a writing may be
9 limited to a specific fund or other identified pool or group
10 of assets of the trust.

11 (b) Standards and immunities.--Except as otherwise provided
12 in the instrument governing the trust, the provisions of
13 Subchapters B (relating to fiduciary duty) and D (relating to
14 indemnification) of Chapter 17 shall be applicable to
15 representatives of a business trust.

16 (c) Certain specifically authorized debt terms.--A business
17 trust shall be subject to section 1510 (relating to certain
18 specifically authorized debt terms) to the same extent as if it
19 were a business corporation.

20 (d) Professional relationship unaffected.--Subsection (a)
21 shall not afford trustees or beneficiaries of a business trust
22 providing professional services with greater immunity than is
23 available to the officers, shareholders, employees or agents of
24 a professional corporation. See section 2925 (relating to
25 professional relationship retained).

26 (e) Disciplinary jurisdiction unaffected.--A business trust
27 providing professional services shall be subject to the
28 applicable rules and regulations adopted by, and all the
29 disciplinary powers of, the court, department, board, commission
30 or other government unit regulating the profession in which the

1 business trust is engaged. The court, department, board or other
2 government unit may require that a business trust include in its
3 instrument provisions that conform to any rule or regulation
4 heretofore or hereafter promulgated for the purpose of enforcing
5 the ethics of a profession. This chapter shall not affect or
6 impair the disciplinary powers of the court, department, board,
7 commission or other government unit over licensed persons or any
8 law, rule or regulation pertaining to the standards for
9 professional conduct of licensed persons or to the professional
10 relationship between any licensed person rendering professional
11 services and the person receiving professional services.

12 (f) Permissible beneficiaries.--Except as otherwise provided
13 by a statute, rule or regulation applicable to a particular
14 profession, all of the ultimate beneficial owners of interests
15 in a business trust that renders one or more restricted
16 professional services shall be licensed persons[. As used in
17 this subsection, the term "restricted professional services"
18 shall have the meaning specified in section 8903 (relating to
19 definitions and index of definitions).] in the profession the
20 trust practices if the trust renders any of the following
21 professional services: chiropractic, dentistry, law, medicine
22 and surgery, optometry, osteopathic medicine and surgery,
23 podiatric medicine, public accounting, psychology or veterinary
24 medicine.

25 (g) Conflict of laws.--The personal liability of a trustee
26 or beneficiary of a business trust to any person or in any
27 action or proceeding for the debts, obligations or liabilities
28 of the trust or for the acts or omissions of other trustees,
29 beneficiaries, employees or agents of the trust shall be
30 governed solely and exclusively by this chapter and the laws of

1 this Commonwealth. Whenever a conflict arises between the laws
2 of this Commonwealth and the laws of any other state with
3 respect to the liability of trustees or beneficiaries of a trust
4 organized and existing under this chapter for the debts,
5 obligations and liabilities of the trust or for the acts or
6 omissions of the other trustees, beneficiaries, employees or
7 agents of the trust, the laws of this Commonwealth shall govern
8 in determining such liability.

9 (h) Medical professional liability.--A business trust shall
10 be deemed to be a professional corporation for purposes of
11 section [811 of the act of October 15, 1975 (P.L.390, No.111),
12 known as the Health Care Services Malpractice Act.] 744 of the
13 act of March 20, 2002 (P.L.154, No.13), known as the Medical
14 Care Availability and Reduction of Error (Mcare) Act.

15 (i) Failure to observe formalities.--The failure of a
16 business trust to observe formalities relating to the exercise
17 of its powers or management of its activities and affairs is not
18 a ground for imposing liability on a beneficiary or trustee of
19 the trust for a debt, obligation or other liability of the
20 trust.

21 Section 34. Section 501(a)(6) and (8) of Title 54, amended
22 October 22, 2014 (P.L.2640, No.172), are amended to read:

23 § 501. Register established.

24 (a) General rule.--A register is established by this chapter
25 which shall consist of such of the following names as are not
26 deleted therefrom by operation of section 504 (relating to
27 effect of failure to make filings) or 506 (relating to voluntary
28 termination of registration by corporations and other
29 associations):

30 * * *

1 (6) In the case of a limited partnership or limited
2 liability company subject to 15 Pa.C.S. Ch. [85] 86 (relating
3 to limited partnerships) or [89] 88 (relating to limited
4 liability companies), the name of the partnership or company
5 as set forth in the certificate of limited partnership,
6 certificate of organization or statement of registration as a
7 [registered] foreign association.

8 (8) In the case of a [registered] limited liability
9 partnership subject to 15 Pa.C.S. Ch. 82 (relating to
10 [registered] limited liability partnerships and limited
11 liability limited partnerships) that is not also a limited
12 partnership, the name of the partnership as set forth in the
13 statement of registration as a [registered] foreign
14 association.

15 * * *

16 Section 35. This act shall take effect in 90 days.