



# SENATE OF PENNSYLVANIA BILL SUMMARY

## House Bill 1398 Printer's No. 2860

Prime Sponsor: Representative A. Harris  
Committee: Judiciary

---

### **SYNOPSIS:**

This bill amends Title 15 (Corporations and Unincorporated Associations) and Title 54 (Names) to replace the law governing limited liability partnerships, general partnerships, limited partnerships, and limited liability companies, as well as to make conforming changes regarding the names of business associations.

### **SUMMARY:**

#### *General Partnerships and Limited Liability Partnerships*

This bill replaces the 1914 version of the Uniform Partnership Act ("UPA") and replaces it with a new UPA, which does the following:

- Amends the definition of "general partnership" to clarify that is an "entity" and not an aggregation of individuals, thereby making it easier to transfer property to and from partnerships. This change eliminates the automatic dissolution rules that apply when a partner disassociates.
- Clarifies that the agreement among partners governs the partnership and that the rules of the UPA are generally the default rules.
- Permits the partnership to file a "certificate of authority" with the Department of State to give third parties notice of the authority of a partner to conduct business on the partnership's behalf.
- Provides that a partner has duties of loyalty and care to address suits by partners for breach of fiduciary responsibilities.

#### *Limited Liability Partnerships*

- Provides the general partners of an LLP with the same liability protection as shareholders of a corporation and members of a limited liability company.
- Adds distribution tests to address the ability of creditors to recoup improper distributions in light of the partners' liability shield.
- Provides for the satisfaction of creditors upon liquidation (which happens with corporations).

### *Limited Partnerships*

- De-links limited partnership law from general partnership law to create a stand-alone source of law and eliminate confusion.
- Removes the right of a limited partner to dissociate from the partnership before the termination of the partnership, except as permitted by the partnership agreement or the new UPA.
- Changes the current written consent requirements for dissolution from the consent of all partners to the consent of all the general partners of the limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is effective.

### *Limited Liability Companies*

- Clarifies that the operating agreement governs the rights and obligations of members of the LLC. The operating agreement may not eliminate the duty of loyalty or the duty of care, but the agreement may specify conduct and transactions that do not violate the duty of loyalty, as long as the conduct and transactions are not unreasonable.
- Allows a transfer of any right of distributions that a member of the LLC has under the operating agreement. The operating agreement may impose restrictions on a right to transfer.
- Specifies that a transferable interest is personal property, and restricts the interests of a creditor of a member to the member's transferable interest.
- Provides a judgment creditor with a "charging order" as the only method of executing against a member's transferable interest. A purchase in a foreclosure sale does not make the purchaser a member.
- Eliminates the "statutory apparent authority" in current law by providing that a member is not an agent of the LLC solely by reason of being a member.
- Modernizes provisions relating to derivative litigation and authorizes special litigation committees. A derivative action is a lawsuit filed by a corporation, partnership, or nonprofit shareholder against the directors, management, or other shareholders of the entity for a failure of management. Special litigation committees are made up of two or more individuals who are not interested in the lawsuit, and need not be shareholders or directors. The committee investigates claims and determines the next steps to be taken.

### *Miscellaneous*

- Clarifies that an LLP or LLC must file a certificate of termination when it terminates existence.
- Clarifies that property is owned by the partnership and not by individual partners.
- Adds a Subchapter dealing with "Benefit Companies" to allow for their creation.

- Clarifies the procedure used to dissolve an entity that has not commenced business.
- Retains language dealing with “Restricted Professional Companies,” which are LLCs used by physicians, attorneys, and accountants to organize their professional practices.

**AMENDMENT:**

Amendment A09644 makes technical changes, adds a definition of “benefit director,” adds a provision requiring benefit corporations to deliver an annual report to each shareholder, and adds a provision relating to the registration of entity names with the Department of State.

**EFFECTIVE DATE:**

This bill is effective in 90 days.

**BILL HISTORY:**

Passed the House on March 14, 2016 by a vote of 188-0.

Prepared by: Cawley 9/22/2016