

No. 1981-77

AN ACT

HB 949

Amending Title 59 (Partnerships) of the Pennsylvania Consolidated Statutes, further providing for the government and regulation of certain partnerships and their relationships with third parties, adding provisions relating to foreign limited partnerships and making a conforming amendment to Title 42 as to foreign partnerships and other entities.

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

Section 1. Chapter 5 of Title 59, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended by adding a subchapter to read:

SUBCHAPTER E
FOREIGN LIMITED PARTNERSHIPS

Sec.

- 561. Foreign limited partnership defined.
- 562. Governing law.
- 563. Registration.
- 564. Effect of filing.
- 565. Name.
- 566. Changes and amendments.
- 567. Cancellation of registration.
- 568. Transaction of business without registration.
- 569. Action by Attorney General.

§ 561. Foreign limited partnership defined.

A foreign limited partnership is a limited partnership formed under the laws of any jurisdiction other than this Commonwealth.

§ 562. Governing law.

Subject to the Constitution of Pennsylvania and public policy of this Commonwealth:

(1) The laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners.

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

§ 563. Registration.

Before transacting business in this Commonwealth, a foreign limited partnership shall register with the Department of State. In order to register, a foreign limited partnership shall submit to the Department of State an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this Commonwealth.

(2) The jurisdiction and date of its formation.

(3) The general character of the business it proposes to transact in this Commonwealth, which shall not be one which a domestic limited partnership may not lawfully do in this Commonwealth.

(4) The address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited partnership.

(5) If the certificate of limited partnership filed in the jurisdiction of organization of the foreign limited partnership is not required to include the names and business addresses of the partners, a list of the names and business addresses of all partners.

§ 564. Effect of filing.

Upon the filing of the application for registration as a foreign limited partnership, the partnership shall be authorized to transact business in this Commonwealth.

§ 565. Name.

A foreign limited partnership may register with the Department of State under any name (whether or not it is the name under which it is registered in its jurisdiction of organization) that could be used by a domestic limited partnership.

§ 566. Changes and amendments.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the Department of State a certificate, signed by a general partner, correcting the statement.

§ 567. Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the Department of State a certificate of cancellation signed by a general partner.

§ 568. Transaction of business without registration.

(a) Maintenance of actions prohibited.—A foreign limited partnership transacting business in this Commonwealth may not maintain any action in any court of this Commonwealth until it has registered in this Commonwealth.

(b) Contracts and defense of actions.—The failure of a foreign limited partnership to register in this Commonwealth does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action in any court of this Commonwealth.

(c) Liability of limited partner.—A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership having transacted business in this Commonwealth without registration.

§ 569. Action by Attorney General.

The Attorney General may bring an action to restrain a foreign limited partnership from transacting business in this Commonwealth in violation of this subchapter.

Section 2. Title 59 is amended by adding a chapter to read:

CHAPTER 7
ELECTING PARTNERSHIPS

Sec.

701. Scope and definition.

702. Centralized management.

703. Continuity of life.

704. Free transferability of interests.

705. Limited liability in certain cases.

706. One person both a partner and employee.

707. Modification by agreement.

§ 701. Scope and definition.

(a) Application of chapter.—This chapter applies to a general or limited partnership formed under the laws of this Commonwealth which elects to be governed by this chapter. Any partnership which desires to elect to be governed by this chapter, or to amend or terminate such election, shall file in the Department of State a certificate of election, amendment or termination, as the case may be, which shall be signed by a general partner and shall set forth:

(1) The name of the partnership.

(2) The location of the principal place of business.

(3) The names of each member of the partnership as of the date of the certificate.

(4) A statement that the partnership elects to be governed by this chapter, or that the election to be governed by this chapter shall be amended or terminated, as the case may be.

(5) If the election is to be made or terminated, a statement that the election or termination has been authorized by at least a majority in interest of the partners.

Upon the filing of the certificate of election, amendment or termination in the department the election to be governed by this chapter shall be effective, amended or terminated, as the case may be.

(b) Effect of election.—As long as an election under subsection (a) is in effect, the partnership shall be governed by the provisions of this chapter and, to the extent not inconsistent with this chapter, Chapter 3 (relating to general partnerships) and, if a limited partnership, Chapter 5 (relating to limited partnerships).

(c) Definition.—As used in this chapter “electing partnership” means a partnership as to which an election under subsection (a) is in effect.

§ 702. Centralized management.

The business and affairs of every electing partnership shall be managed by one-third or less, but not less than one, partners selected for that purpose in the manner provided by any agreement between the partners, and no other partner shall have a right to participate in the management of the partnership. A partner of an electing partnership shall be an agent of the partnership only to the extent that an employee of the partnership would be under like circumstances. In making such a determination the court may consider among other things whether a person dealing with the partnership has knowledge, as defined in section 303(a) (relating to knowledge), that this section is applicable to the partnership.

§ 703. Continuity of life.

An electing partnership shall not be dissolved by the death, dissolution, insanity, retirement, resignation or expulsion of a partner or by the bankruptcy of a partner or the partnership. Changes in the composition of the partnership shall be evidenced by the prompt filing of a certificate of amendment under section 701(a) (relating to application of chapter). If fewer than two partners who are not bankrupt or insane remain, the court shall appoint a custodian of the partnership property for the purpose of continuing its business or, upon cause shown, winding up its affairs.

§ 704. Free transferability of interests.

The agreement between the partners of an electing partnership may provide that the property rights of a partner in the partnership shall be evidenced by shares of one or more classes or series. In that event the transfer of all of such shares by a partner shall operate to terminate his membership in the partnership, and the transfer of any such share by a partner shall operate to make the transferee a member of the partnership without the consent of any other partner. The transfer of certificates and the shares represented thereby may be regulated by the agreement between the partners, if such agreement is not inconsistent with Division 8 of Title 13 (relating to investment securities).

§ 705. Limited liability in certain cases.

(a) General rule.—The liability of a partner of an electing partnership for the debts and obligations of the partnership shall be satisfied out of partnership assets alone if:

(1) the debt or obligation arises from a transaction or occurrence in which the person dealing with the partnership has notice, as defined in section 303(b) (relating to notice), that this section is applicable to the partnership; or

(2) the fact that this section is applicable to the partnership has been advertised in the manner provided by section 357(a)(2)(ii) (relating to power of partner to bind partnership to third persons).

(b) Exception.—Subsection (a) shall not apply to a transaction or occurrence involving the furnishing or sale of any goods or services by the partnership.

§ 706. One person both a partner and employee.

(a) General rule.—A person may be a partner in and an employee of the same electing partnership at the same time.

(b) Effect.—A person who is a partner and also, at the same time, an employee shall in his capacity as an employee have such rights and duties with respect to the employing partnership as may be agreed between employer and employee generally.

§ 707. Modification by agreement.

(a) General rule.—The provisions of this chapter are intended to permit an electing partnership to qualify for taxation as an association under the United States Internal Revenue Code and to permit partners of an electing partnership to be employed by, and compensated as employees of, such an association. The agreement between the partners of an electing partnership may effect any change in the form of organization authorized by this chapter which may be necessary to accomplish such purposes but only to the extent necessary to accomplish such purposes.

(b) Exception.—No provision adopted under subsection (a) shall modify section 705 (relating to limited liability in certain cases).

Section 3. Section 5301 of Title 42 is amended to read:

§ 5301. Persons.

(a) General rule.—The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person, or his personal representative in the case of an individual, and to enable such tribunals to render personal orders against such person or representative:

(1) Individuals.—

(i) Presence in this Commonwealth at the time when process is served.

(ii) Domicile in this Commonwealth at the time when process is served.

(iii) Consent, to the extent authorized by the consent.

(2) Corporations.—

(i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.

(ii) Consent, to the extent authorized by the consent.

(iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

(3) Partnerships, limited partnerships, partnership associations, professional associations, unincorporated associations and similar entities.—

(i) Formation under *or qualification as a foreign entity under* the laws of this Commonwealth.

(ii) Consent, to the extent authorized by the consent.

(iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

(b) Scope of jurisdiction.—When jurisdiction over a person is based upon this section any cause of action may be asserted against him, whether or not arising from acts enumerated in this section. Discontinuance of the acts enumerated in subsection (a)(2)(i) and (iii) and (3)(i) and (iii) shall not affect jurisdiction with respect to any act, transaction or omission occurring during the period such status existed.

Section 4. Filing under Subchapter E of Chapter 5 of Title 59 (relating to foreign limited partnerships) shall be sufficient notice to the public so as to not require the limited partnership to file under the act of May 24, 1945 (P.L.967, No.380), referred to as the Fictitious Name Act or under any other act relating to registration of fictitious names.

Section 5. Filing under Chapter 7 of Title 59 (relating to electing partnerships) shall be sufficient notice to the public so as not to require the electing partnership to file under the act of May 24, 1945 (P.L.967, No.380), referred to as the Fictitious Name Act or under any other act relating to registration of fictitious names.

Section 6. Notwithstanding any other provision of law a partnership as to which an election under Chapter 7 of Title 59 (relating to electing partnerships) is in effect shall be deemed to be a corporation organized and existing under the act of May 5, 1933 (P.L.364, No.106), known as the "Business Corporation Law," for the purposes of the imposition by the Commonwealth or any political subdivision of any tax or license fee on or with respect to any property, privilege, transaction, subject or occupation.

Section 7. A partner who is a member of a partnership as to which an election under Chapter 7 of Title 59 (relating to electing partnerships) is in effect shall have the same right to hold securities in and through the name of the partnership as such partner would have if the electing partnership were not a separate legal entity as provided by 59 Pa.C.S. § 703 (relating to continuity of life). All acts and parts of acts which prohibit two or more individuals who are authorized to be direct owners of specified types of securities from holding such securities indirectly are hereby repealed insofar as relates to indirect holding through one or more wholly-owned partnerships as to which an election under Chapter 7 of Title 59 is in effect or other partnerships which are directly or indirectly wholly-owned by such individuals.

Section 8. All acts and parts of acts inconsistent with this act are hereby repealed insofar as inconsistent with this act.

Section 9. This act shall take effect immediately, except sections 1 and 3, which shall take effect in 60 days.

APPROVED—The 10th day of July, A. D. 1981.

DICK THORNBURGH