

Staying relevant

Pennsylvania adopts comprehensive laws governing limited liability companies

On Nov. 21, 2016, Pennsylvania Governor Tom Wolf signed Act 2016-170 into law, enacting sweeping reforms to the state's statutory law pertaining to limited liability partnerships, general partnerships, limited partnerships and limited liability companies. The changes to the law as it relates to LLCs should be of particular interest to many business owners throughout the Commonwealth, as the LLC is the most popular corporate form, and the most suitable for many businesses.

"Generally speaking, the effect of the law is to streamline and harmonize Pennsylvania corporate law as it applies to different types of entities, thus eliminating some of the confusion that had previously existed among the different statutory sections that had previously governed entities in Pennsylvania," says John M. Hickey, an attorney with Semanoff Ormsby Greenberg & Torchia LLC.

Smart Business spoke with Hickey about what this law change could mean for businesses.

When do the changes become effective as they pertain to LLCs?

The act is fully effective against all LLCs on April 1, 2017. Prior to that date, the law applies to:

- LLCs formed on or after Feb. 21, 2017.
- LLCs that elect to have the law apply sooner.

Why is the LLC designation desirable for most business owners?

In three words: protection with simplicity. The LLC affords its members the same protections of the corporate form without the added baggage of corporate formalities and corporate double taxation. Consider that one of the primary reasons business owners

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incorporate is to protect themselves from personal liability, and the LLC does just that — LLCs offer the same protection from personal liability that a corporation offers. Also of importance is the tax structure of the LLC. An LLC is considered a 'pass through entity,' which means that the members of an LLC are only subject to a single layer of taxation, much like any individual paying personal income tax. Further, an LLC is inherently flexible. It can either be managed by its members, or managed by a manager appointed by the members. There is no need for any periodic meeting of the members.

In a corporation, shareholders are subject to 'double taxation' — once when the corporation receives revenue, and again when that revenue is distributed to the shareholders. Further, corporations must hold meetings of the shareholders and periodically elect directors to carry out the functions of the corporation.

What are some of the changes made by the act to the law governing LLCs in Pennsylvania?

By adopting the act, Pennsylvania becomes one of the first states to have adopted the latest version of the Uniform Limited Liability Company Act. These uniform acts are developed by scholars and professionals as model acts for states to adopt and employ,

and are meant to encourage consistency and quality in the law between states. The effect of the act is essentially two-fold, in that it both clarifies existing principles of law and establishes new rules applicable to LLCs and their members. With regard to an LLC, the act sets forth specifics on formation and governance, duties owed by members and managers to each other and persons dealing with the LLC, authority and liability of members, the treatment of interests in the LLC, and dissolution. Another big change includes a clarification regarding the duties owed between members of an LLC in the context of a member-managed LLC. Now, members owe one another a fiduciary duty, duty of care, and a duty of good faith and fair dealing.

What is the expected impact of the act?

The act should make Pennsylvania a more favorable place to be incorporated. The law benefits from consistency and clarity, as it is ambiguity and inconsistency that give life to litigation. Remember that, in the world of law, the LLC is still a relatively new creation. Before the act, it was not always clear that certain aspects of corporation law would apply to LLCs, despite the fact that numerous court decisions have held that wherever possible, the governing law should be consistent between an LLC and a corporation. ●