

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 215 Session of 2001

INTRODUCED BY GREENLEAF, COSTA, LEMMOND, M. WHITE, HOLL, KITCHEN, STOUT, THOMPSON, WOZNIAK AND O'PAKE, JANUARY 31, 2001

AS AMENDED ON SECOND CONSIDERATION, MARCH 12, 2001

AN ACT

1 Amending Titles 15 (Corporations and Unincorporated
2 Associations) and 54 (Names) of the Pennsylvania Consolidated
3 Statutes, relating to associations; making revisions,
4 corrections and additions; and making repeals.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the GAA
9 Amendments Act of (in preparing this act for printing in the
10 Laws of Pennsylvania, the Legislative Reference Bureau shall
11 insert here, in lieu of this statement, the calendar year of
12 enactment of this act).

13 Section 2. Amendment of Title 15.

14 As much of Title 15 as is hereinafter set forth is amended or
15 added to read:

16 § 102. Definitions.

17 Subject to additional or inconsistent definitions contained
18 in subsequent provisions of this title that are applicable to

1 specific provisions of this title, the following words and
2 phrases when used in this title shall have, unless the context
3 clearly indicates otherwise, the meanings given to them in this
4 section:

5 * * *

6 "Limited liability company." A domestic or foreign limited
7 liability company as defined in section 8903 (relating to
8 definitions and index of definitions).

9 "Profession." Includes the performance of any type of
10 personal service to the public that requires as a condition
11 precedent to the performance of the service the obtaining of a
12 license or admission to practice or other legal authorization
13 from the Supreme Court of Pennsylvania or a licensing board or
14 commission under the Bureau of Professional and Occupational
15 Affairs in the Department of State. Except as otherwise
16 expressly provided by law, this definition shall be applicable
17 to this title only and shall not affect the interpretation of
18 any other statute or any local zoning ordinance or other
19 official document heretofore or hereafter enacted or
20 promulgated.

21 "Professional services." Any type of services that may be
22 rendered by a member of a profession within the purview of his
23 profession.

24 * * *

25 § 134. Docketing statement.

26 (a) General rule.--The Department of State may, but shall
27 not be required to, prescribe by regulation one or more official
28 docketing statement forms designed to elicit from a person
29 effecting a filing under this title information that the
30 department has found to be necessary or desirable in connection

1 with the processing of a filing. [A docketing statement
2 submitted with the articles of incorporation or division of a
3 proposed domestic corporation for profit or not-for-profit, the
4 articles of domestication or application for a certificate of
5 authority of a foreign corporation for profit or not-for-profit
6 or the certificate of election of an electing partnership shall
7 set forth, inter alia, the kind or kinds of business in which
8 the association actually intends to engage in this Commonwealth
9 within one year of the submission of the docketing statement. A
10 docketing statement submitted with articles of incorporation,
11 consolidation or division of a domestic corporation not-for-
12 profit or an application for a certificate of authority of a
13 foreign corporation not-for-profit shall set forth with respect
14 to the new corporation or corporations resulting therefrom,
15 inter alia, the statute by or under which it was incorporated,
16 the date of incorporation, the names and residence addresses of
17 its chief executive officer, secretary and treasurer, regardless
18 of the names or titles by which they may be designated, the
19 address of its principal place of business and the amount, if
20 any, of its authorized and issued capital stock.] A form of
21 docketing statement prescribed under this subsection:

22 (1) Shall be published in the Pennsylvania Code.

23 (2) Shall not be integrated into a single document
24 covering the requirements of the filing and its related
25 docketing statement.

26 (3) May be required by the department in connection with
27 a filing only if notice of the requirement appears on the
28 official format for the filing prescribed under section
29 133(d) (relating to physical characteristics and copies of
30 documents).

1 (4) Shall not be required to be submitted on department-
2 furnished forms.

3 (5) Shall not constitute a document filed in, with or by
4 the department for the purposes of this title or any other
5 provision of law except 18 Pa.C.S. § 4904 (relating to
6 unsworn falsification to authorities).

7 (b) Transmission to Department of Revenue.--The department
8 shall note on the docketing statement the fact and date of the
9 filing [of articles of incorporation, consolidation, merger,
10 division, conversion or domestication or certificate of election
11 or issuance of the certificate of authority, as the case may be,
12 upon the docketing statement] to which the docketing statement
13 relates and shall transmit a copy of [it] the docketing
14 statement or the information contained therein to the Department
15 of Revenue. If a docketing statement is not required for a
16 particular filing, the Department of State may transmit a copy
17 of the filing or the information contained therein to the
18 Department of Revenue at no cost to the person effecting the
19 filing.

20 (c) Transmission to other agencies.--If the docketing
21 statement delivered to the Department of State sets forth any
22 kind of business in which a corporation, partnership or other
23 association may not engage without the approval of or a license
24 from any department, board or commission of the Commonwealth,
25 the Department of State shall, upon [the filing of articles of
26 incorporation, consolidation, division or domestication or
27 certificate of election or issuance of the certificate of
28 authority] processing the filing, promptly transmit a copy of
29 the docketing statement or the information contained therein to
30 each such department, board or commission.

1 § 138. Statement of correction.

2 * * *

3 (b) Effect of filing.--

4 * * *

5 (2) A filing under this section shall not have the
6 effect of causing original articles of incorporation of a
7 corporation or a similar type of document creating any other
8 form of association to be stricken from the records of the
9 department but the articles or other document may be
10 corrected under this section.

11 * * *

12 (d) Cross reference.--See section 135 (relating to
13 requirements to be met by filed documents).

14 § 139. Tax clearance of certain fundamental transactions.

15 [A] (a) General rule.--Except as provided in subsection (c),
16 a domestic association shall not file articles or a certificate
17 of merger or consolidation effecting a merger or consolidation
18 into a nonqualified foreign association or articles or a
19 certificate of dissolution or a statement of revival, a
20 qualified foreign association shall not file an application for
21 termination of authority or similar document in the Department
22 of State and a domestic association shall not file articles or a
23 certificate of division dividing solely into nonqualified
24 foreign associations unless the articles, certificate,
25 application or other document are accompanied by clearance
26 certificates from the Department of Revenue and the Office of
27 Employment Security of the Department of Labor and Industry,
28 evidencing the payment by the association of all taxes and
29 charges due the Commonwealth required by law.

30 (b) Tax clearance in judicial proceedings.--Until the

1 clearance certificates described in subsection (a) have been
2 filed with the court:

3 (1) The court shall not order the dissolution of a
4 domestic business corporation, nonprofit corporation or
5 business trust.

6 (2) The court shall not approve a final distribution of
7 the assets of a domestic general partnership, limited
8 partnership, electing partnership or limited liability
9 company if the court is supervising the winding up of the
10 association.

11 (c) Alternative provisions.--If clearance certificates are
12 filed with the court as required under subsection (b), it shall
13 not be necessary to file the clearance certificates with the
14 Department of State.

15 § 161. Domestication of certain alien associations.

16 * * *

17 (b) Statement of domestication.--The statement of
18 domestication shall be executed by the association and shall set
19 forth in the English language:

20 (1) The name of the association. If the name is in a
21 foreign language, it shall be set forth in Roman letters or
22 characters or Arabic or Roman numerals. If the name is one
23 that is rendered unavailable for use by a corporation by any
24 provision of section 1303(b) or (c) (relating to corporate
25 name), the association shall adopt a new name, in accordance
26 with any procedures for changing the name of the association
27 that are applicable prior to the domestication of the
28 association, and shall set forth the new name in the
29 statement.

30 (2) The name of the jurisdiction under the laws of which

1 and the date on which it was first formed, incorporated or
2 otherwise came into being.

3 (3) The name of the jurisdiction that constituted the
4 seat, siege social or principal place of business or control
5 administration of the association, or any equivalent under
6 applicable law, immediately prior to the filing of the
7 statement.

8 (4) A statement [that upon domestication the association
9 will be a domestic association under the laws of this
10 Commonwealth] of the type of domestic association that the
11 association will be upon domestication.

12 (5) A statement that the filing of the statement of
13 domestication and, if desired, the renunciation of the prior
14 domicile has been authorized (unless its charter or other
15 organic documents require a greater vote) by a majority in
16 interest of the shareholders, members or other proprietors of
17 the association.

18 (6) If the association will be a type of domestic
19 association that is created by a filing in the department,
20 such other provisions as are required to be included in an
21 initial filing to create that type of domestic association,
22 except that it shall not be necessary to set forth the name
23 of the person organizing the association.

24 (7) Any other provision that the association may choose
25 to insert unless this title prohibits the inclusion of such a
26 provision in a filing that creates the type of domestic
27 association that the association will be upon domestication.

28 (c) Execution.--The statement shall be signed on behalf of
29 the association by any authorized person.

30 (d) Effect of domestication.--Upon the filing of the

1 statement of domestication, the association shall be
2 domesticated in this Commonwealth and the association shall
3 thereafter be subject to any applicable provisions of this
4 title[, except Subpart B of Part II (relating to business
5 corporations),] and [to] any other provisions of law applicable
6 to associations existing under the laws of this Commonwealth. If
7 the association will be a type of domestic association that is
8 created by a filing in the department, the statement of
9 domestication shall constitute that filing. The domestication of
10 any association in this Commonwealth pursuant to this section
11 shall not be deemed to affect any obligations or liabilities of
12 the association incurred prior to its domestication.

13 (e) Exclusion.--An association that can be domesticated
14 under [section 4161 (relating to domestication) or 6161
15 (relating to domestication)] any of the following sections shall
16 not be domesticated under this section:

17 Section 4161 (relating to domestication).

18 Section 6161 (relating to domestication).

19 Section 8590 (relating to domestication).

20 Section 8982 (relating to domestication).

21 Section 9501(a)(1)(ii) (relating to application and
22 effect of chapter).

23 (f) Definition.--As used in this section, the term
24 "association," except as restricted by subsection (e), includes
25 any alien incorporated organization, private law corporation
26 (whether or not organized for business purposes), public law
27 corporation, partnership, proprietorship, joint venture,
28 foundation, trust, association or similar organization or entity
29 existing under the laws of any jurisdiction other than this
30 Commonwealth.

1 (g) Cross [reference] references.--See [section] sections
2 134 (relating to docketing statement) and 135 (relating to
3 requirements to be met by filed documents).

4 § 162. Contingent domestication of certain alien associations.

5 * * *

6 (c) Statement of consummation of domestication.--At any time
7 after the filing of a statement of contingent domestication, the
8 association may file in the department a statement of
9 consummation of domestication which shall be executed by the
10 association and shall set forth:

11 (1) The name of the association[. If the name is in a
12 foreign language, it shall be set forth in Roman letters or
13 characters or Arabic or Roman numerals.] as set forth in its
14 statement of contingent domestication.

15 * * *

16 (j) Cross [reference] references.--See [section] sections
17 134 (relating to docketing statement) and 135 (relating to
18 requirements to be met by filed documents).

19 § 1106. Uniform application of subpart.

20 * * *

21 (b) Exceptions.--

22 * * *

23 (3) Subsection (a) shall not adversely affect the rights
24 specifically provided for or saved in this subpart. See:

25 The provisions of section 1524(e) (relating to
26 transitional provision).

27 The provisions of section 1554(c) (relating to
28 transitional provision).

29 The cumulative voting rights set forth in section
30 1758(c)(2) (relating to cumulative voting).

1 The special voting requirements specified in section
2 1931(h) (relating to special requirements).

3 The [special voting requirements specified in section
4 1952(h) (relating to special requirements).] provisions
5 of section 1952(g) and (h) (relating to proposal and
6 adoption of plan of division).

7 The provisions of section 2301(d) (relating to
8 transitional provisions).

9 The provisions of section 2541(a)(2) and (3) and (c)
10 (relating to application and effect of subchapter).

11 The provisions of section 2543(b)(1) and (2)
12 (relating to exceptions generally).

13 The provisions of section 2551(b)(3)(i), (5) and (6)
14 (relating to exceptions).

15 The provisions of section 2553(b)(2) (relating to
16 exception).

17 * * *

18 § 1303. Corporate name.

19 * * *

20 (e) Remedies for violation of section.--The use of a name in
21 violation of this section shall not vitiate or otherwise affect
22 the corporate existence but any court having jurisdiction may
23 enjoin the corporation from using or continuing to use a name in
24 violation of this section, upon the application of:

25 (1) the Attorney General, acting on his own motion or at
26 the instance of any administrative department, board or
27 commission of this Commonwealth; or

28 (2) any person adversely affected.[];
29 may enjoin the corporation from using or continuing to use a
30 name in violation of this section.]

1 (f) Cross references.--See sections 135(e) (relating to
2 distinguishable names) and 1106(b)(2) (relating to uniform
3 application of subpart).

4 § 1304. Required name changes by senior corporations.

5 * * *

6 (b) Enforcement of undertaking to release name.--If a
7 corporation has used a name [which] that is not distinguishable
8 upon the records of the [department] Department of State from
9 the name of another corporation or other association as
10 permitted by section 1303(b)(1) (relating to duplicate use of
11 names) and the other corporation or other association continues
12 to use its name in this Commonwealth and does not change its
13 name, cease to do business, be wound up or withdraw as it
14 proposed to do in its consent or change its name as required by
15 subsection (a), any court having jurisdiction may enjoin the
16 other corporation or other association from continuing to use
17 its name or a name that is not distinguishable therefrom, upon
18 the application of:

19 (1) the Attorney General, acting on his own motion or at
20 the instance of any administrative department, board or
21 commission of this Commonwealth; or

22 (2) any person adversely affected[;
23 may enjoin the other corporation or other association from
24 continuing to use its name].

25 § 1311. Filing of statement of summary of record by certain
26 corporations.

27 (a) General rule.--Where any of the [valid] charter
28 documents of a business corporation are not on file in the
29 Department of State or there is an error in any such document as
30 transferred to the department pursuant to section 140 (relating

1 to custody and management of orphan corporate and business
2 records), and the corporation desires to file any document in
3 the department under any other provision of this subpart or the
4 corporation desires to secure from the department any
5 certificate to the effect that the corporation is a corporation
6 duly incorporated and existing under the laws of this
7 Commonwealth or a certified copy of the articles of the
8 corporation or the corporation desires to correct the text of
9 its charter documents as on file in the department, the
10 corporation shall file in the department a statement of summary
11 of record which shall be executed by the corporation and shall
12 set forth:

13 (1) The name of the corporation and, subject to section
14 109 (relating to name of commercial registered office
15 provider in lieu of registered address), the location,
16 including street and number, if any, of its registered
17 office.

18 (2) The statute by or under which the corporation was
19 incorporated.

20 (3) The name under which, the manner in which and the
21 date on which the corporation was originally incorporated,
22 including the date when and the place where the original
23 articles were recorded.

24 (4) The place or places, including volume and page
25 numbers or their equivalent, where the documents
26 [constituting the currently effective articles are] that are
27 not on file in the department or that require correction in
28 the records of the department were originally filed or
29 recorded, the date or dates of each filing or recording and
30 the correct text of the [currently effective articles.]

1 documents. The information specified in this paragraph may be
2 omitted in a statement of summary of record that is delivered
3 to the department contemporaneously with amended and restated
4 articles of the corporation filed under this subpart.

5 [(5) Each name by which the corporation was known, if
6 any, other than its original name and its current name, and
7 the date or dates on which each change of name of the
8 corporation became effective.

9 (6) In the case of any entity brought within the scope
10 of Chapter 29 (relating to professional corporations) by or
11 pursuant to section 2905 (relating to election of
12 professional associations to become professional
13 corporations), amended and restated articles of incorporation
14 which shall include all of the information required to be set
15 forth in restated articles of a professional corporation.

16 A corporation shall be required to make only one filing under
17 this subsection.]

18 (b) Validation of prior defects in incorporation.--Upon the
19 filing of a statement by a corporation under this section or the
20 transfer to the department of the records relating to a
21 corporation pursuant to section 140, the corporation [named in
22 the statement] shall be deemed to be a validly subsisting
23 corporation to the same extent as if it had been duly
24 incorporated and was existing under this subpart and the
25 department shall so certify regardless of any absence of or
26 defect in the prior proceedings relating to incorporation.

27 (c) Cross [reference] references.--See [section] sections
28 134 (relating to docketing statement), 135 (relating to
29 requirements to be met by filed documents) and 1106(b)(2)
30 (relating to uniform application of subpart).

1 § 1505. Persons bound by bylaws.

2 Except as otherwise provided by section 1713 (relating to
3 personal liability of directors) or any similar provision of
4 law, the bylaws of a business corporation shall operate only as
5 regulations among the shareholders, directors and officers of
6 the corporation and shall not affect contracts or other dealings
7 with other persons unless those persons have actual knowledge of
8 the bylaws.

9 § 1508. Corporate records; inspection by shareholders.

10 (a) Required records.--Every business corporation shall keep
11 complete and accurate books and records of account, minutes of
12 the proceedings of the incorporators, shareholders and directors
13 and a share register giving the names and addresses of all
14 shareholders and the number and class of shares held by each.
15 The share register shall be kept at [either] any of the
16 following locations:

17 (1) the registered office of the corporation in this
18 Commonwealth [or at its];

19 (2) the principal place of business of the corporation
20 wherever situated;

21 (3) any actual business office of the corporation; or
22 [at]

23 (4) the office of [its] the registrar or transfer agent
24 of the corporation. [Any books, minutes or other records may
25 be in written form or any other form capable of being
26 converted into written form within a reasonable time.]

27 (b) Right of inspection by a shareholder.--Every shareholder
28 shall, upon written verified demand stating the purpose thereof,
29 have a right to examine, in person or by agent or attorney,
30 during the usual hours for business for any proper purpose, the

1 share register, books and records of account, and records of the
2 proceedings of the incorporators, shareholders and directors and
3 to make copies or extracts therefrom. A proper purpose shall
4 mean a purpose reasonably related to the interest of the person
5 as a shareholder. In every instance where an attorney or other
6 agent is the person who seeks the right of inspection, the
7 demand shall be accompanied by a verified power of attorney or
8 other writing that authorizes the attorney or other agent to so
9 act on behalf of the shareholder. The demand shall be directed
10 to the corporation:

11 (1) at its registered office in this Commonwealth [or];

12 (2) at its principal place of business wherever
13 situated; or

14 (3) in care of the person in charge of an actual
15 business office of the corporation.

16 (c) Proceedings for the enforcement of inspection by a
17 shareholder.--If the corporation, or an officer or agent
18 thereof, refuses to permit an inspection sought by a shareholder
19 or attorney or other agent acting for the shareholder pursuant
20 to subsection (b) or does not reply to the demand within five
21 business days after the demand has been made, the shareholder
22 may apply to the court for an order to compel the inspection.
23 The court shall determine whether or not the person seeking
24 inspection is entitled to the inspection sought. The court may
25 summarily order the corporation to permit the shareholder to
26 inspect the share register and the other books and records of
27 the corporation and to make copies or extracts therefrom, or the
28 court may order the corporation to furnish to the shareholder a
29 list of its shareholders as of a specific date on condition that
30 the shareholder first pay to the corporation the reasonable cost

1 of obtaining and furnishing the list and on such other
2 conditions as the court deems appropriate. Where the shareholder
3 seeks to inspect the books and records of the corporation, other
4 than its share register or list of shareholders, he shall first
5 establish:

6 (1) That he has complied with the provisions of this
7 section respecting the form and manner of making demand for
8 inspection of the document.

9 (2) That the inspection he seeks is for a proper
10 purpose.

11 Where the shareholder seeks to inspect the share register or
12 list of shareholders of the corporation and he has complied with
13 the provisions of this section respecting the form and manner of
14 making demand for inspection of the documents, the burden of
15 proof shall be upon the corporation to establish that the
16 inspection he seeks is for an improper purpose. The court may,
17 in its discretion, prescribe any limitations or conditions with
18 reference to the inspection or award such other or further
19 relief as the court deems just and proper. The court may order
20 books, documents and records, pertinent extracts therefrom, or
21 duly authenticated copies thereof, to be brought into this
22 Commonwealth and kept in this Commonwealth upon such terms and
23 conditions as the order may prescribe.

24 (d) Certain provisions of articles ineffective.--This
25 section may not be relaxed by any provision of the articles.

26 (e) Cross [reference] references.--See [section] sections
27 107 (relating to form of records), 1512 (relating to
28 informational rights of a director) and 1763(c) (relating to
29 certification by nominee).

30 § 1512. Informational rights of a director.

1 (a) General rule.--To the extent reasonably related to the
2 performance of the duties of the director, including those
3 arising from service as a member of a committee of the board of
4 directors, a director of a business corporation is entitled:

5 (1) in person or by any attorney or other agent, at any
6 reasonable time, to inspect and copy corporate books, records
7 and documents and, in addition, to inspect, and receive
8 information regarding, the assets, liabilities and operations
9 of the corporation and any subsidiaries of the corporation
10 incorporated or otherwise organized or created under the laws
11 of this Commonwealth that are controlled directly or
12 indirectly by the corporation; and

13 (2) to demand that the corporation exercise whatever
14 rights it may have to obtain information regarding any other
15 subsidiaries of the corporation.

16 (b) Proceedings for enforcement of inspection by a
17 director.--If the corporation, or an officer or agent thereof,
18 refuses to permit an inspection or obtain or provide information
19 sought by a director or attorney or other agent acting for the
20 director pursuant to subsection (a) or does not reply to the
21 request within two business days after the request has been
22 made, the director may apply to the court for an order to compel
23 the inspection or the obtaining or providing of the information.
24 The court shall summarily order the corporation to permit the
25 requested inspection or to obtain the information unless the
26 corporation establishes that the information to be obtained by
27 the exercise of the right is not reasonably related to the
28 performance of the duties of the director or that the director
29 or the attorney or agent of the director is likely to use the
30 information in a manner that would violate the duty of the

1 director to the corporation. The order of the court may contain
2 provisions protecting the corporation from undue burden or
3 expense and prohibiting the director from using the information
4 in a manner that would violate the duty of the director to the
5 corporation.

6 (c) Cross references.--See sections 107 (relating to form of
7 records) and 1508 (relating to corporate records; inspection by
8 shareholders) and 42 Pa.C.S. § 2503(7) (relating to right of
9 participants to receive counsel fees).

10 § 1521. Authorized shares.

11 * * *

12 (b) Provisions specifically authorized.--

13 (1) Without limiting the authority contained in
14 subsection (a), a corporation, when so authorized in its
15 articles, may issue classes or series of shares:

16 (i) Subject to the right or obligation of the
17 corporation to redeem any of the shares for the
18 consideration, if any, fixed by or in the manner provided
19 by the articles for the redemption thereof. Unless
20 otherwise provided in the articles, any shares subject to
21 redemption shall be redeemable only pro rata or by lot or
22 by such other equitable method as may be selected by the
23 corporation. [An amendment of the articles to add or
24 amend a provision permitting the redemption of any shares
25 by a method that is not pro rata nor by lot nor otherwise
26 equitable may be effected only pursuant to section 1906
27 (relating to special treatment of holders of shares of
28 same class or series).]

29 (ii) Entitling the holders thereof to cumulative,
30 noncumulative or partially cumulative dividends.

1 (iii) Having preference over any other shares as to
2 dividends or assets or both.

3 (iv) Convertible into shares of any other class or
4 series, or into obligations of the corporation.

5 (2) Any of the terms of a class or series of shares may
6 be made dependent upon:

7 (i) Facts ascertainable outside of the articles if
8 the manner in which the facts will operate upon the terms
9 of the class or series is set forth in the articles. Such
10 facts may include, without limitation, actions or events
11 within the control of or determinations made by the
12 corporation or a representative of the corporation.

13 * * *

14 (d) Status and rights.--Shares of a business corporation
15 shall be deemed personal property. Except as otherwise provided
16 by the articles or, when so permitted by subsection (c), by one
17 or more bylaws adopted by the shareholders, each share shall be
18 in all respects equal to every other share. See section
19 1906(d)(4) (relating to special treatment of holders of shares
20 of same class or series).

21 § 1526. Liability of [subscribers and] shareholders.

22 [A subscriber to, or holder or owner of, shares of a business
23 corporation shall not be under any liability to the corporation
24 or any creditor thereof with respect to the shares other than
25 the personal obligation of a shareholder who has acquired his
26 shares by subscription to comply with the terms of the
27 subscription.] (a) General rule.--A shareholder of a business
28 corporation shall not be liable, solely by reason of being a
29 shareholder, under an order of a court or in any other manner
30 for a debt, obligation or liability of the corporation of any

1 kind or for the acts of any shareholder or representative of the
2 corporation.

3 (b) Professional relationship unaffected.--Subsection (a)
4 shall not afford the shareholders of a business corporation that
5 is not a professional corporation, but that provides
6 professional services, with greater immunity than is available
7 to the officers, shareholders, employees or agents of a business
8 corporation that is a professional corporation. See section 2925
9 (relating to professional relationship retained).

10 (c) Disciplinary jurisdiction unaffected.--A business
11 corporation providing professional services shall be subject to
12 the applicable rules and regulations adopted by, and all the
13 disciplinary powers of, the court, department, board, commission
14 or other government unit regulating the profession in which the
15 corporation is engaged. The court, department, board or other
16 government unit may require that a corporation include in its
17 articles provisions that conform to any rule or regulation
18 heretofore or hereafter promulgated for the purpose of enforcing
19 the ethics of a profession. This subpart shall not affect or
20 impair the disciplinary powers of the court, department, board,
21 commission or other government unit over licensed persons or any
22 law, rule or regulation pertaining to the standards for
23 professional conduct of licensed persons or to the professional
24 relationship between any licensed person rendering professional
25 services and the person receiving professional services.

26 § 1554. Financial reports to shareholders.

27 (a) General rule.--Except as otherwise provided in
28 subsection (d) or unless otherwise agreed between a business
29 corporation and a shareholder, every corporation shall furnish
30 to its shareholders annual financial statements, including at

1 least a balance sheet as of the end of each fiscal year and a
2 statement of income and expenses for the fiscal year. The
3 financial statements shall be prepared on the basis of generally
4 accepted accounting principles, if the corporation prepares
5 financial statements for the fiscal year on that basis for any
6 purpose, and may be consolidated statements of the corporation
7 and one or more of its subsidiaries. The financial statements
8 shall be mailed by the corporation to each of its shareholders
9 entitled thereto within 120 days after the close of each fiscal
10 year and, after the mailing and upon written request, shall be
11 mailed by the corporation to any shareholder or beneficial owner
12 entitled thereto to whom a copy of the most recent annual
13 financial statements has not previously been mailed. In lieu of
14 mailing the statements, the corporation may send them by
15 facsimile, e-mail or other electronic transmission to any
16 shareholder who has supplied the corporation with a facsimile
17 number or address for electronic transmissions for the purpose
18 of receiving financial statements from the corporation.

19 Statements that are audited or reviewed by a certified public
20 accountant or a public accountant shall be accompanied by the
21 report of the accountant; in other cases, each copy shall be
22 accompanied by a statement of the person in charge of the
23 financial records of the corporation:

24 (1) Stating his reasonable belief as to whether or not
25 the financial statements were prepared in accordance with
26 generally accepted accounting principles and, if not,
27 describing the basis of presentation.

28 (2) Describing any material respects in which the
29 financial statements were not prepared on a basis consistent
30 with those prepared for the previous year.

1 * * *

2 § 1571. Application and effect of subchapter.

3 (a) General rule.--Except as otherwise provided in
4 subsection (b), any shareholder (as defined in section 1572
5 (relating to definitions)) of a business corporation shall have
6 the right to dissent from, and to obtain payment of the fair
7 value of his shares in the event of, any corporate action, or to
8 otherwise obtain fair value for his shares, only where this part
9 expressly provides that a shareholder shall have the rights and
10 remedies provided in this subchapter. See:

11 Section 1906(c) (relating to dissenters rights upon
12 special treatment).

13 Section 1930 (relating to dissenters rights).

14 Section 1931(d) (relating to dissenters rights in share
15 exchanges).

16 Section 1932(c) (relating to dissenters rights in asset
17 transfers).

18 Section 1952(d) (relating to dissenters rights in
19 division).

20 Section 1962(c) (relating to dissenters rights in
21 conversion).

22 Section 2104(b) (relating to procedure).

23 Section 2324 (relating to corporation option where a
24 restriction on transfer of a security is held invalid).

25 Section 2325(b) (relating to minimum vote requirement).

26 Section 2704(c) (relating to dissenters rights upon
27 election).

28 Section 2705(d) (relating to dissenters rights upon
29 renewal of election).

30 Section 2904(b) (relating to procedure).

1 Section 2907(a) (relating to proceedings to terminate
2 breach of qualifying conditions).

3 Section 7104(b)(3) (relating to procedure).

4 (b) Exceptions.--

5 (1) Except as otherwise provided in paragraph (2), the
6 holders of the shares of any class or series of shares [that,
7 at] shall not have the right to dissent and obtain payment of
8 the fair value of the shares under this subchapter if, on the
9 record date fixed to determine the shareholders entitled to
10 notice of and to vote at the meeting at which a plan
11 specified in any of section 1930, 1931(d), 1932(c) or 1952(d)
12 is to be voted on, or on the date of the first public
13 announcement that such a plan has been approved by the
14 shareholders by consent without a meeting, the shares are
15 either:

16 (i) listed on a national securities exchange or
17 designated as a national market system security on an
18 interdealer quotation system by the National Association
19 of Securities Dealers, Inc.; or

20 (ii) held beneficially or of record by more than
21 2,000 [shareholders;
22 shall not have the right to obtain payment of the fair value
23 of any such shares under this subchapter.] persons.

24 (2) Paragraph (1) shall not apply to and dissenters
25 rights shall be available without regard to the exception
26 provided in that paragraph in the case of:

27 (i) [Shares converted by a plan if the shares are
28 not converted solely into shares of the acquiring,
29 surviving, new or other corporation or solely into such
30 shares and money in lieu of fractional shares.]

1 (Repealed.)

2 (ii) Shares of any preferred or special class or
3 series unless the articles, the plan or the terms of the
4 transaction entitle all shareholders of the class or
5 series to vote thereon and require for the adoption of
6 the plan or the effectuation of the transaction the
7 affirmative vote of a majority of the votes cast by all
8 shareholders of the class or series.

9 (iii) Shares entitled to dissenters rights under
10 section 1906(c) (relating to dissenters rights upon
11 special treatment).

12 (3) The shareholders of a corporation that acquires by
13 purchase, lease, exchange or other disposition all or
14 substantially all of the shares, property or assets of
15 another corporation by the issuance of shares, obligations or
16 otherwise, with or without assuming the liabilities of the
17 other corporation and with or without the intervention of
18 another corporation or other person, shall not be entitled to
19 the rights and remedies of dissenting shareholders provided
20 in this subchapter regardless of the fact, if it be the case,
21 that the acquisition was accomplished by the issuance of
22 voting shares of the corporation to be outstanding
23 immediately after the acquisition sufficient to elect a
24 majority or more of the directors of the corporation.

25 * * *

26 (g) Computation of beneficial ownership.--For purposes of
27 subsection (b)(1)(ii), shares that are held beneficially as
28 joint tenants, tenants by the entireties, tenants in common or
29 in trust by two or more persons, as fiduciaries or otherwise,
30 shall be deemed to be held beneficially by one person.

1 [(g)] (h) Cross references.--See sections 1105 (relating to
2 restriction on equitable relief), 1904 (relating to de facto
3 transaction doctrine abolished), 1763(c) (relating to
4 determination of shareholders of record) and 2512 (relating to
5 dissenters rights procedure).

6 § 1572. Definitions.

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

10 "Corporation." The issuer of the shares held or owned by the
11 dissenter before the corporate action or the successor by
12 merger, consolidation, division, conversion or otherwise of that
13 issuer. A plan of division may designate which one or more of
14 the resulting corporations is the successor corporation for the
15 purposes of this subchapter. The designated successor
16 corporation or corporations in a division shall have sole
17 responsibility for payments to dissenters and other liabilities
18 under this subchapter except as otherwise provided in the plan
19 of division.

20 "Dissenter." A shareholder [or beneficial owner] who is
21 entitled to and does assert dissenters rights under this
22 subchapter and who has performed every act required up to the
23 time involved for the assertion of those rights.

24 * * *

25 "Shareholder." A shareholder as defined in section 1103
26 (relating to definitions), or an ultimate beneficial owner of
27 shares, including without limitation a holder of depository
28 receipts, where the beneficial interest owned includes an
29 interest in the assets of the corporation upon dissolution.

30 § 1702. Manner of giving notice.

1 (a) General rule.--[Whenever written]

2 (1) Any notice [is] required to be given to any person
3 under the provisions of this subpart or by the articles or
4 bylaws of any business corporation[, it may] shall be given
5 to the person either personally or by sending a copy thereof
6 [by] :

7 (i) By first class or express mail, postage prepaid,
8 [or by telegram (with messenger service specified), telex
9 or TWX (with answerback received)] or courier service,
10 charges prepaid, [or by facsimile transmission,] to his
11 postal address [(or to his telex, TWX or facsimile
12 number)] appearing on the books of the corporation or, in
13 the case of directors, supplied by him to the corporation
14 for the purpose of notice. [If the notice is sent by
15 mail, telegraph or courier service, it shall be deemed to
16 have been given to the person entitled thereto when
17 deposited in the United States mail or with a telegraph
18 office or courier service for delivery to that person or,
19 in the case of telex or TWX, when dispatched.] Notice
20 pursuant to this subparagraph shall be deemed to have
21 been given to the person entitled thereto when deposited
22 in the United States mail or with a courier service for
23 delivery to that person.

24 (ii) By facsimile transmission, e-mail or other
25 electronic communication to his facsimile number or
26 address for e-mail or other electronic communications
27 supplied by him to the corporation for the purpose of
28 notice. Notice pursuant to this subparagraph shall be
29 deemed to have been given to the person entitled thereto
30 when sent.

1 (2) A notice of meeting shall specify the [place,] day
2 and hour and geographic location, if any, of the meeting and
3 any other information required by any other provision of this
4 subpart.

5 * * *

6 § 1704. Place and notice of meetings of shareholders.

7 (a) Place.--Meetings of shareholders may be held at such
8 [place] geographic location within or without this Commonwealth
9 as may be provided in or fixed pursuant to the bylaws. Unless
10 otherwise provided in or pursuant to the bylaws, all meetings of
11 the shareholders shall be held [in this Commonwealth at the
12 registered office of the corporation] at the executive office of
13 the corporation wherever situated. If a meeting of the
14 shareholders is held by means of the Internet or other
15 electronic communications technology in a fashion pursuant to
16 which the shareholders have the opportunity to read or hear the
17 proceedings substantially concurrently with their occurrence,
18 vote on matters submitted to the shareholders and pose questions
19 to the directors, the meeting need not be held at a particular
20 geographic location.

21 * * *

22 § 1708. Use of conference telephone [and similar equipment] or
23 other electronic technology.

24 (a) Incorporators and directors.--Except as otherwise
25 provided in the bylaws, one or more persons may participate in a
26 meeting of the incorporators[,] or the board of directors [or
27 the shareholders] of a business corporation by means of
28 conference telephone or [similar communications equipment] other
29 electronic technology by means of which all persons
30 participating in the meeting can hear each other. Participation

1 in a meeting pursuant to this section shall constitute presence
2 in person at the meeting.

3 (b) Shareholders.--Except as otherwise provided in the
4 bylaws, the presence or participation, including voting and
5 taking other action, at a meeting of shareholders, or the
6 expression of consent or dissent to corporate action, by a
7 shareholder by conference telephone or other electronic means,
8 including, without limitation, the Internet, shall constitute
9 the presence of, or vote or action by, or consent or dissent of
10 the shareholder for the purposes of this subpart.

11 § 1709. Conduct of shareholders meeting.

12 (a) Presiding officer.--There shall be a presiding officer
13 at every meeting of the shareholders. The presiding officer
14 shall be appointed in the manner provided in the bylaws or, in
15 the absence of such provision, by the board of directors. If the
16 bylaws are silent on the appointment of the presiding officer
17 and the board fails to designate a presiding officer, the
18 president shall be the presiding officer.

19 (b) Authority of the presiding officer.--Except as otherwise
20 provided in the bylaws, the presiding officer shall determine
21 the order of business and shall have the authority to establish
22 rules for the conduct of the meeting.

23 (c) Procedural standard.--Any action by the presiding
24 officer in adopting rules for, and in conducting, a meeting
25 shall be fair to the shareholders.

26 (d) Closing of the polls.--The presiding officer shall
27 announce at the meeting when the polls close for each matter
28 voted upon. If no announcement is made, the polls shall be
29 deemed to have closed upon the final adjournment of the meeting.
30 After the polls close, no ballots, proxies or votes, nor any

1 revocations or changes thereto, may be accepted.

2 § 1721. Board of directors.

3 (a) General rule.--Unless otherwise provided by statute or
4 in a bylaw adopted by the shareholders, all powers enumerated in
5 section 1502 (relating to general powers) and elsewhere in this
6 subpart or otherwise vested by law in a business corporation
7 shall be exercised by or under the authority of, and the
8 business and affairs of every business corporation shall be
9 managed under the direction of, a board of directors. If any
10 such provision is made in the bylaws, the powers and duties
11 conferred or imposed upon the board of directors by this subpart
12 shall be exercised or performed to such extent and by such
13 person or persons as shall be provided in the bylaws. Persons
14 upon whom the liabilities of directors are imposed by this
15 section shall to that extent be entitled to the rights and
16 immunities conferred by or pursuant to this part and other
17 provisions of law upon directors of a corporation.

18 (b) Cross reference.--See section 2527 (relating to
19 authority of board of directors).

20 § 1727. Quorum of and action by directors.

21 * * *

22 (b) Action by [written] consent.--Unless otherwise
23 restricted in the bylaws, any action required or permitted to be
24 taken at a meeting of the directors may be taken without a
25 meeting if, prior or subsequent to the action, a consent or
26 consents thereto by all of the directors in office is filed with
27 the secretary of the corporation.

28 § 1729. Voting rights of directors.

29 * * *

30 (c) Cross reference.--See section 2526 (relating to voting

1 rights of directors).

2 § 1731. Executive and other committees of the board.

3 (a) Establishment and powers.--Unless otherwise restricted
4 in the bylaws:

5 * * *

6 (2) Any committee, to the extent provided in the
7 resolution of the board of directors or in the bylaws, shall
8 have and may exercise all of the powers and authority of the
9 board of directors except that a committee shall not have any
10 power or authority as to the following:

11 (i) The submission to shareholders of any action
12 requiring approval of shareholders under this subpart.

13 (ii) The creation or filling of vacancies in the
14 board of directors.

15 (iii) The adoption, amendment or repeal of the
16 bylaws.

17 (iv) The amendment or repeal of any resolution of
18 the board that by its terms is amendable or repealable
19 only by the board.

20 (v) Action on matters committed by the bylaws or
21 resolution of the board of directors exclusively to
22 another committee of the board.

23 * * *

24 § 1745. Advancing expenses.

25 Expenses (including attorneys' fees) incurred in defending
26 any action or proceeding referred to in this subchapter may be
27 paid by a business corporation in advance of the final
28 disposition of the action or proceeding upon receipt of an
29 undertaking by or on behalf of the representative to repay the
30 amount if it is ultimately determined that he is not entitled to

1 be indemnified by the corporation as authorized in this
2 subchapter or otherwise. Except as otherwise provided in the
3 bylaws, advancement of expenses shall be authorized by the board
4 of directors. Sections 1728 (relating to interested directors or
5 officers; quorum) and 2538 (relating to approval of transactions
6 with interested shareholders) shall not be applicable to the
7 advancement of expenses under this section.

8 § 1748. Application to surviving or new corporations.

9 [For] (a) General rule.--Except as provided in subsection
10 (b), for the purposes of this subchapter, references to "the
11 corporation" include all constituent corporations absorbed in a
12 consolidation, merger or division, as well as the surviving or
13 new corporations surviving or resulting therefrom, so that any
14 person who is or was a representative of the constituent,
15 surviving or new corporation, or is or was serving at the
16 request of the constituent, surviving or new corporation as a
17 representative of another domestic or foreign corporation for
18 profit or not-for-profit, partnership, joint venture, trust or
19 other enterprise, shall stand in the same position under the
20 provisions of this subchapter with respect to the surviving or
21 new corporation as he would if he had served the surviving or
22 new corporation in the same capacity.

23 (b) Divisions.--Notwithstanding subsection (a), the
24 obligations of a dividing corporation to indemnify and advance
25 expenses to its representatives, whether arising under this
26 subchapter or otherwise, may be allocated in a division in the
27 same manner and with the same effect as any other liability of
28 the dividing corporation.

29 § 1756. Quorum.

30 (a) General rule.--A meeting of shareholders of a business

1 corporation duly called shall not be organized for the
2 transaction of business unless a quorum is present. Unless
3 otherwise provided in a bylaw adopted by the shareholders:

4 * * *

5 (4) If a proxy casts a vote on behalf of a shareholder
6 on any issue other than a procedural motion considered at a
7 meeting of shareholders, the shareholder shall be deemed to
8 be present during the entire meeting for purposes of
9 determining whether a quorum is present for consideration of
10 any other issue.

11 * * *

12 § 1758. Voting rights of shareholders.

13 * * *

14 (b) Procedures for election of directors.--[If the bylaws
15 provide a fair and reasonable procedure for the nomination of
16 candidates for any office, only candidates who have been duly
17 nominated in accordance therewith shall be eligible for
18 election.] Unless otherwise restricted in the bylaws, in
19 elections for directors, voting need not be by ballot unless
20 required by vote of the shareholders before the voting for
21 election of directors begins. The candidates for election as
22 directors receiving the highest number of votes from each class
23 or group of classes, if any, entitled to elect directors
24 separately up to the number of directors to be elected by the
25 class or group of classes shall be elected. If at any meeting of
26 shareholders, directors of more than one class are to be
27 elected, each class of directors shall be elected in a separate
28 election.

29 * * *

30 (e) Advance notice of nominations and other business.--If

1 the bylaws provide a fair and reasonable procedure for the
2 nomination of candidates for election as directors, only
3 candidates who have been duly nominated in accordance therewith
4 shall be eligible for election. If the bylaws impose a fair and
5 reasonable requirement of advance notice of proposals to be made
6 by a shareholder at the annual meeting of the shareholders, only
7 proposals for which advance notice has been properly given may
8 be acted upon at the meeting.

9 § 1759. Voting and other action by proxy.

10 * * *

11 (b) Execution and filing.--Every proxy shall be executed [in
12 writing] or authenticated by the shareholder or by his duly
13 authorized attorney-in-fact and filed with or transmitted to the
14 secretary of the corporation or its designated agent. A
15 shareholder or his duly authorized attorney-in-fact may execute
16 or authenticate a writing or transmit an electronic message
17 authorizing another person to act for him by proxy. A telegram,
18 telex, cablegram, datagram, e-mail, Internet communication or
19 [similar] other means of electronic transmission from a
20 shareholder or attorney-in-fact, or a photographic, facsimile or
21 similar reproduction of a writing executed by a shareholder or
22 attorney-in-fact:

23 (1) may be treated as properly executed or authenticated
24 for purposes of this subsection; and

25 (2) shall be so treated if it sets forth or utilizes a
26 confidential and unique identification number or other mark
27 furnished by the corporation to the shareholder for the
28 purposes of a particular meeting or transaction.

29 (c) Revocation.--A proxy, unless coupled with an interest,
30 shall be revocable at will, notwithstanding any other agreement

1 or any provision in the proxy to the contrary, but the
2 revocation of a proxy shall not be effective until [written]
3 notice thereof has been given to the secretary of the
4 corporation or its designated agent in writing or by electronic
5 transmission. An unrevoked proxy shall not be valid after three
6 years from the date of its execution, authentication or
7 transmission unless a longer time is expressly provided therein.
8 A proxy shall not be revoked by the death or incapacity of the
9 maker unless, before the vote is counted or the authority is
10 exercised, written notice of the death or incapacity is given to
11 the secretary of the corporation or its designated agent.

12 * * *

13 § 1766. Consent of shareholders in lieu of meeting.

14 * * *

15 (b) Partial [written] consent.--If the bylaws so provide,
16 any action required or permitted to be taken at a meeting of the
17 shareholders or of a class of shareholders may be taken without
18 a meeting upon the [written] consent of shareholders who would
19 have been entitled to cast the minimum number of votes that
20 would be necessary to authorize the action at a meeting at which
21 all shareholders entitled to vote thereon were present and
22 voting. The consents shall be filed with the secretary of the
23 corporation.

24 (c) Effectiveness of action by partial [written] consent.--
25 An action taken pursuant to subsection (b) shall not become
26 effective until after at least ten days' [written] notice of the
27 action has been given to each shareholder entitled to vote
28 thereon who has not consented thereto. This subsection may not
29 be relaxed by any provision of the articles.

30 * * *

1 § 1906. Special treatment of holders of shares of same class or
2 series.

3 (a) General rule.--Except as otherwise restricted in the
4 articles, [an amendment or] a plan may contain a provision
5 classifying the holders of shares of a class or series into one
6 or more separate groups by reference to any facts or
7 circumstances that are not manifestly unreasonable and providing
8 mandatory treatment for shares of the class or series held by
9 particular shareholders or groups of shareholders that differs
10 materially from the treatment accorded other shareholders or
11 groups of shareholders holding shares of the same class or
12 series (including a provision modifying or rescinding rights
13 previously created under this section) if:

14 (1) (i) such provision is specifically authorized by a
15 majority of the votes cast by all shareholders entitled
16 to vote on the [amendment or] plan, as well as by a
17 majority of the votes cast by any class or series of
18 shares any of the shares of which are so classified into
19 groups, whether or not such class or series would
20 otherwise be entitled to vote on the [amendment or] plan;
21 and

22 (ii) the provision voted on specifically enumerates
23 the type and extent of the special treatment authorized;
24 or

25 (2) under all the facts and circumstances, a court of
26 competent jurisdiction finds such special treatment is
27 undertaken in good faith, after reasonable deliberation and
28 is in the best interest of the corporation.

29 (b) Statutory voting rights upon special treatment.--Except
30 as provided in subsection (c), if [an amendment or] a plan

1 contains a provision for special treatment, each group of
2 holders of any outstanding shares of a class or series who are
3 to receive the same special treatment under the [amendment or]
4 plan shall be entitled to vote as a special class in respect to
5 the plan regardless of any limitations stated in the articles or
6 bylaws on the voting rights of any class or series.

7 (c) Dissenters rights upon special treatment.--If any
8 [amendment or] plan contains a provision for special treatment
9 without requiring for the adoption of the [amendment or] plan
10 the statutory class vote required by subsection (b), the holder
11 of any outstanding shares the statutory class voting rights of
12 which are so denied, who objects to the [amendment or] plan and
13 complies with Subchapter D of Chapter 15 (relating to dissenters
14 rights), shall be entitled to the rights and remedies of
15 dissenting shareholders provided in that subchapter.

16 (d) Exceptions.--This section shall not apply to:

17 (1) The creation or issuance of securities, contracts,
18 warrants or other instruments evidencing any shares, option
19 rights, securities having conversion or option rights or
20 obligations authorized by section 2513 (relating to disparate
21 treatment of certain persons).

22 (2) A provision of [an amendment or] a plan that offers
23 to all holders of shares of a class or series the same option
24 to elect certain treatment.

25 (3) [An amendment or] A plan that contains an express
26 provision that this section shall not apply or that fails to
27 contain an express provision that this section shall apply.
28 The shareholders of a corporation that proposes [an amendment
29 or] a plan to which this section is not applicable by reason
30 of this paragraph shall have the remedies contemplated by

1 section 1105 (relating to restriction on equitable relief).

2 (4) A provision of a plan that treats all of the holders
3 of a particular class or series of shares differently from
4 the holders of another class or series. A provision of a plan
5 that treats the holders of a class or series of shares
6 differently from the holders of another class or series of
7 shares shall not constitute a violation of section 1521(d)
8 (relating to authorized shares).

9 (e) Definition.--As used in this section, the term "plan"
10 includes:

11 (1) an amendment of the articles that effects a
12 reclassification of shares, whether or not the amendment is
13 accompanied by a separate plan of reclassification; and

14 (2) a resolution recommending that the corporation
15 dissolve voluntarily adopted under section 1972(a) (relating
16 to proposal of voluntary dissolution).

17 § 1912. Proposal of amendments.

18 * * *

19 (c) Terms of amendment.--The resolution or petition may set
20 forth the manner and basis of reclassifying the shares of the
21 corporation. Any of the terms of a plan of reclassification or
22 other action contained in an amendment may be made dependent
23 upon facts ascertainable outside of the amendment if the manner
24 in which the facts will operate upon the terms of the amendment
25 is set forth in the amendment. Such facts may include, without
26 limitation, actions or events within the control of or
27 determinations made by the corporation or a representative of
28 the corporation.

29 § 1914. Adoption of amendments.

30 * * *

1 (b) Statutory voting rights.--Except as provided in this
2 subpart, the holders of the outstanding shares of a class or
3 series of shares shall be entitled to vote as a class in respect
4 of a proposed amendment regardless of any limitations stated in
5 the articles or bylaws on the voting rights of any class or
6 series if [a proposed] the amendment would:

7 (1) authorize the board of directors to fix and
8 determine the relative rights and preferences, as between
9 series, of any preferred or special class;

10 (2) make any change in the preferences, limitations or
11 special rights (other than preemptive rights or the right to
12 vote cumulatively) of the shares of a class or series adverse
13 to the class or series;

14 (3) authorize a new class or series of shares having a
15 preference as to dividends or assets which is senior to the
16 shares of a class or series; [or]

17 (4) increase the number of authorized shares of any
18 class or series having a preference as to dividends or assets
19 which is senior in any respect to the shares of a class or
20 series; or

21 (5) make the outstanding shares of a class or series
22 redeemable by a method that is not pro rata, by lot or
23 otherwise equitable.

24 [then the holders of the outstanding shares of the class or
25 series shall be entitled to vote as a class in respect to the
26 amendment regardless of any limitations stated in the articles
27 or bylaws on the voting rights of any class or series.]

28 (c) Adoption by board of directors.--Unless otherwise
29 restricted in the articles, an amendment of articles shall not
30 require the approval of the shareholders of the corporation if:

- 1 (1) shares have not been issued;
- 2 (2) the amendment is restricted to [any] one or more of
- 3 the following:
- 4 (i) changing the corporate name;
- 5 (ii) providing for perpetual existence;
- 6 (iii) reflecting a reduction in authorized shares
- 7 effected by operation of section 1552(a) (relating to
- 8 power of corporation to acquire its own shares) and, if
- 9 appropriate, deleting all references to a class or series
- 10 of shares that is no longer outstanding; [or]
- 11 (iv) adding or deleting a provision authorized by
- 12 section 1528(f) (relating to uncertificated shares)[.];
- 13 or
- 14 (v) adding, changing or eliminating the par value of
- 15 any class or series of shares if the par value of that
- 16 class or series does not have any substantive effect
- 17 under the terms of that or any other class or series of
- 18 shares;
- 19 (3) (i) the corporation has only one class or series of
- 20 voting shares outstanding;
- 21 (ii) the corporation does not have any class or
- 22 series of shares outstanding that is:
- 23 (A) convertible into those voting shares;
- 24 (B) junior in any way to those voting shares; or
- 25 (C) entitled to participate on any basis in
- 26 distributions with those voting shares; and
- 27 (iii) the amendment is effective solely to
- 28 accomplish one of the following purposes with respect to
- 29 those voting shares:
- 30 [(i)] (A) in connection with effectuating a stock

1 dividend of voting shares on the voting shares, to
2 increase the number of authorized shares [to the extent
3 necessary to permit the board of directors to effectuate
4 a stock dividend in the shares of the corporation] of the
5 voting shares in the same proportion that the voting
6 shares to be distributed in the stock dividend increase
7 the issued voting shares; or

8 [(ii) effectuate a] (B) to split the voting shares
9 and, if desired, increase the number of authorized shares
10 of the voting shares or change the par value of [the
11 authorized] the voting shares, or both, in proportion
12 thereto;

13 (4) to the extent the amendment has not been approved by
14 the shareholders, it restates without change all of the
15 operative provisions of the articles as theretofore amended
16 or as amended thereby; or

17 (5) the amendment accomplishes any combination of
18 purposes specified in this subsection.

19 Whenever a provision of this subpart authorizes the board of
20 directors to take any action without the approval of the
21 shareholders and provides that a statement, certificate, plan or
22 other document relating to such action shall be filed in the
23 Department of State and shall operate as an amendment of the
24 articles, the board upon taking such action may, in lieu of
25 filing the statement, certificate, plan or other document, amend
26 the articles under this subsection without the approval of the
27 shareholders to reflect the taking of such action. An amendment
28 of articles under this subsection shall be deemed adopted by the
29 corporation when it has been adopted by the board of directors
30 pursuant to section 1912 (relating to proposal of amendments).

1 * * *

2 (f) Definition.--As used in this section, the term "voting
3 shares" has the meaning specified in section 2552 (relating to
4 definitions).

5 § 1922. Plan of merger or consolidation.

6 (a) Preparation of plan.--A plan of merger or consolidation,
7 as the case may be, shall be prepared, setting forth:

8 * * *

9 (5) Such other provisions as are deemed desirable.

10 [Any of the terms of the plan may be made dependent upon facts
11 ascertainable outside of the plan if the manner in which the
12 facts will operate upon the terms of the plan is set forth in
13 the plan.]

14 (b) Post-adoption amendment.--A plan of merger or
15 consolidation may contain a provision that the boards of
16 directors of the constituent corporations may amend the plan at
17 any time prior to its effective date, except that an amendment
18 made subsequent to the adoption of the plan by the shareholders
19 of any constituent domestic business corporation shall not
20 change:

21 (1) The amount or kind of shares, obligations, cash,
22 property or rights to be received in exchange for or on
23 conversion of all or any of the shares of the constituent
24 domestic business corporation adversely to the holders of
25 those shares.

26 (2) Any [term] provision of the articles of the
27 surviving or new corporation [to be effected by] as it is to
28 be in effect immediately following consummation of the merger
29 or consolidation, except provisions that may be amended
30 without the approval of the shareholders under section

1 1914(c)(2) (relating to adoption of amendments).

2 (3) Any of the other terms and conditions of the plan if
3 the change would adversely affect the holders of any shares
4 of the constituent domestic business corporation.

5 (c) Proposal.--[Every] Except where the approval of the
6 board of directors is unnecessary under this subchapter, every
7 merger or consolidation shall be proposed in the case of each
8 domestic business corporation by the adoption by the board of
9 directors of a resolution approving the plan of merger or
10 consolidation. Except where the approval of the shareholders is
11 unnecessary under this subchapter, the board of directors shall
12 direct that the plan be submitted to a vote of the shareholders
13 entitled to vote thereon at a regular or special meeting of the
14 shareholders.

15 * * *

16 (e) Reference to outside facts.--Any of the terms of a plan
17 of merger or consolidation may be made dependent upon facts
18 ascertainable outside of the plan if the manner in which the
19 facts will operate upon the terms of the plan is set forth in
20 the plan. Such facts may include, without limitation, actions or
21 events within the control of or determinations made by a party
22 to the plan or a representative of a party to the plan.

23 § 1923. Notice of meeting of shareholders.

24 (a) General rule.--Written notice of the meeting of
25 shareholders that will act on the proposed plan shall be given
26 to each shareholder of record, whether or not entitled to vote
27 thereon, of each domestic business corporation that is a party
28 to the merger or consolidation. There shall be included in, or
29 enclosed with, the notice a copy of the proposed plan or a
30 summary thereof and, if Subchapter D of Chapter 15 (relating to

1 dissenters rights) is applicable to the holders of shares of any
2 class or series, a copy of that subchapter and of section 1930
3 (relating to dissenters rights) shall be furnished to the
4 holders of shares of that class or series. If the surviving or
5 new corporation will be a nonregistered corporation, the notice
6 shall state that a copy of its bylaws, as they will be in effect
7 immediately following the merger or consolidation, will be
8 furnished to any shareholder on request and without cost.

9 * * *

10 § 1924. Adoption of plan.

11 * * *

12 (b) Adoption by board of directors.--

13 (1) Unless otherwise required by its bylaws, a plan of
14 merger or consolidation shall not require the approval of the
15 shareholders of a constituent domestic business corporation
16 if:

17 * * *

18 (ii) immediately prior to the adoption of the plan
19 and at all times thereafter prior to its effective date,
20 another corporation that is a party to the [merger or
21 consolidation] plan owns directly or indirectly 80% or
22 more of the outstanding shares of each class of the
23 constituent corporation; or

24 * * *

25 (3) If a merger or consolidation of a subsidiary
26 corporation with a parent corporation is effected pursuant to
27 paragraph (1)(ii), the plan of merger or consolidation shall
28 be deemed adopted by the subsidiary corporation when it has
29 been adopted by the board of the parent corporation and
30 neither approval of the plan by the board of directors of the

1 subsidiary corporation nor execution of articles of merger or
2 consolidation by the subsidiary corporation shall [not] be
3 necessary.

4 (4) (i) Unless other required by its bylaws, a plan of
5 merger or consolidation providing for the merger or
6 consolidation of a domestic business corporation
7 (referred to in this paragraph as the "constituent
8 corporation") with or into a single indirect wholly owned
9 subsidiary (referred to in this paragraph as the
10 "subsidiary corporation") of the constituent corporation
11 shall not require the approval of the shareholders of
12 either the constituent corporation or the subsidiary
13 corporation if all of the provisions of this paragraph
14 are satisfied.

15 (ii) A merger or consolidation under this paragraph
16 shall satisfy the following conditions:

17 (A) The constituent corporation and the
18 subsidiary corporation are the only parties to the
19 merger or consolidation, other than the resulting
20 corporation, if any, in a consolidation (the
21 corporation that survives or results from the merger
22 or consolidation is referred to in this paragraph as
23 the "resulting subsidiary").

24 (B) Each share or fraction of a share of the
25 capital stock of the constituent corporation
26 outstanding immediately prior to the effective time
27 of the merger or consolidation is converted in the
28 merger or consolidation into a share or equal
29 fraction of a share of capital stock of a holding
30 company having the same designations, rights, powers

1 and preferences and the qualifications, limitations
2 and restrictions as the share of stock of the
3 constituent corporation being converted in the merger
4 or consolidation.

5 (C) The holding company and the resulting
6 subsidiary are each domestic business corporations.

7 (D) Immediately following the effective time of
8 the merger or consolidation, the articles of
9 incorporation and bylaws of the holding company are
10 identical to the articles of incorporation and bylaws
11 of the constituent corporation immediately before the
12 effective time of the merger or consolidation, except
13 for changes that could be made without shareholder
14 approval under section 1914(c) (relating to adoption
15 by board of directors).

16 (E) Immediately following the effective time of
17 the merger or consolidation, the resulting subsidiary
18 is a direct or indirect wholly owned subsidiary of
19 the holding company.

20 (F) The directors of the constituent corporation
21 become or remain the directors of the holding company
22 upon the effective time of the merger or
23 consolidation.

24 (G) The board of directors of the constituent
25 corporation has made a good faith determination that
26 the shareholders of the constituent corporation will
27 not recognize gain or loss for United States Federal
28 Income Tax purposes.

29 (iii) As used in this paragraph only, the term
30 "holding company" means a corporation that, from its

1 incorporation until consummation of the merger or
2 consolidation governed by this paragraph, was at all
3 times a direct wholly owned subsidiary of the constituent
4 corporation and whose capital stock is issued in the
5 merger or consolidation.

6 (iv) If the holding company is a registered
7 corporation, the shares of the holding company issued in
8 connection with the merger or consolidation shall be
9 deemed to have been acquired at the time that the shares
10 of the constituent corporation converted in the merger or
11 consolidation were acquired.

12 (5) A plan of merger or consolidation adopted by the
13 board of directors under this subsection without the approval
14 of the shareholders shall not, by itself, create or impair
15 any rights or obligations on the part of any person under
16 section 2538 (relating to approval of transactions with
17 interested shareholders) or under Subchapters E (relating to
18 control transactions), F (relating to business combinations),
19 G (relating to control-share acquisitions), H (relating to
20 disgorgement by certain controlling shareholders following
21 attempts to acquire control), I (relating to severance
22 compensation for employees terminated following certain
23 control-share acquisitions) and J (relating to business
24 combination transactions - labor contracts) of Chapter 25,
25 nor shall it change the standard of care applicable to the
26 directors under Subchapter B of Chapter 17 (relating to
27 fiduciary duty).

28 * * *

29 § 1929. Effect of merger or consolidation.

30 * * *

1 (b) Property rights.--All the property, real, personal and
2 mixed, and franchises of each of the corporations parties to the
3 merger or consolidation, and all debts due on whatever account
4 to any of them, including subscriptions for shares and other
5 choses in action belonging to any of them, shall be deemed to be
6 [transferred to and] vested in and shall belong to the surviving
7 or new corporation, as the case may be, without further action,
8 and the title to any real estate, or any interest therein,
9 vested in any of the corporations shall not revert or be in any
10 way impaired by reason of the merger or consolidation. The
11 surviving or new corporation shall thenceforth be responsible
12 for all the liabilities of each of the corporations so merged or
13 consolidated. Liens upon the property of the merging or
14 consolidating corporations shall not be impaired by the merger
15 or consolidation and any claim existing or action or proceeding
16 pending by or against any of the corporations may be prosecuted
17 to judgment as if the merger or consolidation had not taken
18 place or the surviving or new corporation may be proceeded
19 against or substituted in its place.

20 (c) Taxes.--Any taxes, interest, penalties and public
21 accounts of the Commonwealth, claimed against any of the merging
22 or consolidating corporations [but not] that are settled,
23 assessed or determined prior to or after the merger or
24 consolidation, shall be [settled, assessed or determined
25 against] the liability of the surviving or new corporation and,
26 together with interest thereon, shall be a lien against the
27 franchises and property, both real and personal, of the
28 surviving or new corporation.

29 * * *

30 § 1930. Dissenters rights.

1 * * *

2 (b) Plans adopted by directors only.--Except as otherwise
3 provided pursuant to section 1571(c) (relating to grant of
4 optional dissenters rights), Subchapter D of Chapter 15 shall
5 not apply to any of the shares of a corporation that is a party
6 to a merger or consolidation pursuant to section 1924(b)(1)(i)
7 or (4) (relating to adoption by board of directors).

8 * * *

9 § 1931. Share exchanges.

10 (a) General rule.--All the outstanding shares of one or more
11 classes or series of a domestic business corporation, designated
12 in this section as the exchanging corporation, may, in the
13 manner provided in this section, be acquired by any person,
14 designated in this section as the acquiring person, through an
15 exchange of all the shares pursuant to a plan of exchange. The
16 plan of exchange may also provide for the conversion of any
17 other shares of the exchanging corporation into shares, other
18 securities or obligations of any person or cash, property or
19 rights. The procedure authorized by this section shall not be
20 deemed to limit the power of any person to acquire all or part
21 of the shares or other securities of any class or series of a
22 corporation through a voluntary exchange or otherwise by
23 agreement with the holders of the shares or other securities.

24 (b) Plan of exchange.--A plan of exchange shall be prepared,
25 setting forth:

26 (1) The terms and conditions of the exchange.

27 (2) The manner and basis of exchanging or converting the
28 shares of the exchanging corporation into shares or other
29 securities or obligations of the acquiring person, and, if
30 any of the shares of the exchanging corporation are not to be

1 exchanged or converted solely into shares or other securities
2 or obligations of the acquiring person, the shares or other
3 securities or obligations of any other person or cash,
4 property or rights that the holders of the shares of the
5 exchanging corporation are to receive in exchange for, or
6 upon conversion of, the shares and the surrender of any
7 certificates evidencing them, which securities or
8 obligations, if any, of any other person or cash, property
9 and rights may be in addition to or in lieu of the shares or
10 other securities or obligations of the acquiring person.

11 (3) Any changes desired to be made in the articles of
12 the exchanging corporation, which may include a restatement
13 of the articles.

14 (4) Any provisions desired providing special treatment
15 of shares held by any shareholder or group of shareholders as
16 authorized by, and subject to the provisions of, section 1906
17 (relating to special treatment of holders of shares of same
18 class or series). Notwithstanding subsection (a), a plan that
19 provides special treatment may affect less than all of the
20 outstanding shares of a class or series.

21 (5) Such other provisions as are deemed desirable.
22 [Any of the terms of the plan may be made dependent upon facts
23 ascertainable outside of the plan if the manner in which the
24 facts will operate upon the terms of the plan is set forth in
25 the plan.]

26 (c) Proposal and adoption.--The plan of exchange shall be
27 proposed and adopted and may be amended after its adoption and
28 terminated by the exchanging corporation in the manner provided
29 by this subchapter for the proposal, adoption, amendment and
30 termination of a plan of merger except section 1924(b) (relating

1 to adoption by board of directors). There shall be included in,
2 or enclosed with, the notice of the meeting of shareholders to
3 act on the plan a copy or a summary of the plan and, if
4 Subchapter D of Chapter 15 (relating to dissenters rights) is
5 applicable, a copy of the subchapter and of subsection (d). The
6 holders of any class of shares to be [acquired] exchanged or
7 converted pursuant to the plan of exchange shall be entitled to
8 vote as a class on the plan if they would have been entitled to
9 vote on a plan of merger that affects the class in substantially
10 the same manner as the plan of exchange.

11 (d) Dissenters rights in share exchanges.--Any holder of
12 shares that are to be [acquired] exchanged or converted pursuant
13 to a plan of exchange who objects to the plan and complies with
14 the provisions of Subchapter D of Chapter 15 shall be entitled
15 to the rights and remedies of dissenting shareholders therein
16 provided, if any. See section 1906(c) (relating to dissenter
17 rights upon special treatment).

18 (e) Articles of exchange.--Upon adoption of a plan of
19 exchange, as provided in this section, articles of exchange
20 shall be executed by the exchanging corporation and shall set
21 forth:

22 (1) The name and, subject to section 109 (relating to
23 name of commercial registered office provider in lieu of
24 registered address), the location of the registered office,
25 including street and number, if any, of the exchanging
26 corporation.

27 (2) If the plan is to be effective on a specified date,
28 the hour, if any, and the month, day and year of the
29 effective date.

30 (3) The manner in which the plan was adopted by the

1 exchanging corporation.

2 (4) Except as provided in section 1901 (relating to
3 omission of certain provisions from filed plans), the plan of
4 exchange.

5 The articles of exchange shall be filed in the Department of
6 State. See [section] sections 134 (relating to docketing
7 statement) and 135 (relating to requirements to be met by filed
8 documents.

9 * * *

10 (i) Reference to outside facts.--Any of the terms of a plan
11 of exchange may be made dependent upon facts ascertainable
12 outside of the plan if the manner in which the facts will
13 operate upon the terms of the plan is set forth in the plan.
14 Such facts may include, without limitation, actions or events
15 within the control of or determinations made by a party to the
16 plan or a representative of a party to the plan.

17 § 1932. Voluntary transfer of corporate assets.

18 * * *

19 (b) Shareholder approval required.--

20 (1) A sale, lease, exchange or other disposition of all,
21 or substantially all, the property and assets, with or
22 without the goodwill, of a business corporation, if not made
23 pursuant to subsection (a) or (d) or to section 1551
24 (relating to distributions to shareholders) or Subchapter D
25 (relating to division), may be made only pursuant to a plan
26 of asset transfer[.] in the manner provided in this
27 subsection. A corporation selling, leasing or otherwise
28 disposing of all, or substantially all, its property and
29 assets is referred to in this subsection and in subsection
30 (c) as the "transferring corporation."

1 (2) The property or assets of a direct or indirect
2 subsidiary corporation that is controlled by a parent
3 corporation shall also be deemed the property or assets of
4 the parent corporation for the purposes of this subsection
5 and of subsection (c). A merger or consolidation to which
6 such a subsidiary corporation is a party and in which a third
7 party acquires direct or indirect ownership of the property
8 or assets of the subsidiary corporation constitutes an "other
9 disposition" of the property or assets of the parent
10 corporation within the meaning of that term as used in this
11 section.

12 (3) The plan of asset transfer shall set forth the terms
13 and conditions of the sale, lease, exchange or other
14 disposition or may authorize the board of directors to fix
15 any or all of the terms and conditions, including the
16 consideration to be received by the corporation therefor. The
17 plan may provide for the distribution to the shareholders of
18 some or all of the consideration to be received by the
19 corporation, including provisions for special treatment of
20 shares held by any shareholder or group of shareholders as
21 authorized by, and subject to the provisions of, section 1906
22 (relating to special treatment of holders of shares of same
23 class or series). It shall not be necessary for the person
24 acquiring the property or assets of the transferring
25 corporation to be a party to the plan. Any of the terms of
26 the plan may be made dependent upon facts ascertainable
27 outside of the plan if the manner in which the facts will
28 operate upon the terms of the plan is set forth in the plan.
29 Such facts may include, without limitation, actions or events
30 within the control of or determinations made by the

1 corporation or a representative of the corporation.

2 (4) The plan of asset transfer shall be proposed and
3 adopted, and may be amended after its adoption and
4 terminated, by [a business] the transferring corporation in
5 the manner provided in this subchapter for the proposal,
6 adoption, amendment and termination of a plan of merger,
7 except section 1924(b) (relating to adoption by board of
8 directors). The procedures of this subchapter shall not be
9 applicable to the person acquiring the property or assets of
10 the transferring corporation. There shall be included in, or
11 enclosed with, the notice of the meeting of the shareholders
12 of the transferring corporation to act on the plan a copy or
13 a summary of the plan and, if Subchapter D of Chapter 15
14 (relating to dissenters rights) is applicable, a copy of the
15 subchapter and of subsection (c).

16 (5) In order to make effective the plan of asset
17 transfer so adopted, it shall not be necessary to file any
18 articles or other documents in the Department of State.

19 (c) Dissenters rights in asset transfers.--

20 (1) If a shareholder of a transferring corporation that
21 adopts a plan of asset transfer objects to the plan and
22 complies with Subchapter D of Chapter 15, the shareholder
23 shall be entitled to the rights and remedies of dissenting
24 shareholders therein provided, if any.

25 (2) Paragraph (1) shall not apply to a sale pursuant to
26 an order of court having jurisdiction in the premises or a
27 sale [for money on terms requiring] pursuant to a plan of
28 asset transfer that requires that all or substantially all of
29 the net proceeds of sale be distributed to the shareholders
30 in accordance with their respective interests within one year

1 after the date of sale or to a liquidating trust.

2 * * *

3 § 1952. Proposal and adoption of plan of division.

4 (a) Preparation of plan.--A plan of division shall be
5 prepared, setting forth:

6 (1) The terms and conditions of the division, including
7 the manner and basis of:

8 (i) The reclassification of the shares of the
9 surviving corporation, if there be one, and, if any of
10 the shares of the dividing corporation are not to be
11 converted solely into shares or other securities or
12 obligations of one or more of the resulting corporations,
13 the shares or other securities or obligations of any
14 other person, or cash, property or rights that the
15 holders of such shares are to receive in exchange for or
16 upon conversion of such shares, and the surrender of any
17 certificates evidencing them, which securities or
18 obligations, if any, of any other person or cash,
19 property or rights may be in addition to or in lieu of
20 shares or other securities or obligations of one or more
21 of the resulting corporations.

22 (ii) The disposition of the shares and other
23 securities or obligations, if any, of the new corporation
24 or corporations resulting from the division.

25 (2) A statement that the dividing corporation will, or
26 will not, survive the division.

27 (3) Any changes desired to be made in the articles of
28 the surviving corporation, if there be one, including a
29 restatement of the articles.

30 (4) The articles of incorporation required by subsection

1 (b).

2 (5) Any provisions desired providing special treatment
3 of shares held by any shareholder or group of shareholders as
4 authorized by, and subject to the provisions of, section 1906
5 (relating to special treatment of holders of shares of same
6 class or series).

7 (6) Such other provisions as are deemed desirable.

8 [Any of the terms of the plan may be made dependent upon facts
9 ascertainable outside of the plan if the manner in which the
10 facts will operate upon the terms of the plan is set forth in
11 the plan.]

12 * * *

13 (g) [Action by] Rights of holders of indebtedness.--[Unless
14 otherwise provided by an indenture or other contract by which
15 the dividing corporation is bound, a plan of division shall not
16 require the approval of the holders of any debt securities or
17 other obligations of the dividing corporation or of any
18 representative of the holders, if the transfer of assets
19 effected by the division, if effected by means of a sale, lease,
20 exchange or other disposition, and any related distribution,
21 would not require the approval of the holders or representatives
22 thereof.] If any debt securities, notes or similar evidences of
23 indebtedness for money borrowed, whether secured or unsecured,
24 indentures or other contracts were issued, incurred or executed
25 by the dividing corporation before (the Legislative Reference
26 Bureau shall insert here the effective date of the amendments of
27 this section) and have not been amended subsequent to that date,
28 the liability of the dividing corporation thereunder shall not
29 be affected by the division nor shall the rights of the obligees
30 thereunder be impaired by the division, and each of the

1 resulting corporations may be proceeded against or substituted
2 in place of the dividing corporation as joint and several
3 obligors on such liability, regardless of any provision of the
4 plan of division apportioning the liabilities of the dividing
5 corporation.

6 * * *

7 (i) Reference to outside facts.--Any of the terms of a plan
8 of division may be made dependent upon facts ascertainable
9 outside of the plan if the manner in which the facts will
10 operate upon the terms of the plan is set forth in the plan.
11 Such facts may include, without limitation, actions or events
12 within the control of or determinations made by the dividing
13 corporation or a representative of the dividing corporation.

14 § 1953. Division without shareholder approval.

15 (a) General rule.--Unless otherwise restricted by its bylaws
16 or required by section 1952(f) (relating to action by holders of
17 preferred or special shares), a plan of division that does not
18 alter the state of incorporation of a business corporation,
19 provide for special treatment nor amend in any respect the
20 provisions of its articles (except amendments which under
21 section 1914(c) (relating to adoption by board of directors) may
22 be made without shareholder action) shall not require the
23 approval of the shareholders of the corporation if:

24 (1) the dividing corporation has only one class of
25 shares outstanding and the shares and other securities, if
26 any, of each corporation resulting from the plan are
27 distributed pro rata to the shareholders of the dividing
28 corporation;

29 (2) the dividing corporation survives the division and
30 all the shares and other securities and obligations, if any,

1 of all new corporations resulting from the plan are owned
2 solely by the surviving corporation; or

3 (3) the [transfers] allocation of assets among the
4 resulting corporations effected by the division, if effected
5 by means of a sale, lease, exchange or other disposition,
6 would not require the approval of shareholders under section
7 1932(b) (relating to shareholder approval required).

8 (b) Limitation.--A plan of division adopted by the board of
9 directors under this section without the approval of the
10 shareholders shall not, by itself, create or impair any rights
11 or obligations on the part of any person under section 2538
12 (relating to approval of transactions with interested
13 shareholders) or under Subchapters E (relating to control
14 transactions), F (relating to business combinations), G
15 (relating to control-share acquisitions), H (relating to
16 disgorgement by certain controlling shareholders following
17 attempts to acquire control), I (relating to severance
18 compensation for employees terminated following certain control-
19 share acquisitions) and J (relating to business combination
20 transactions - labor contracts) of Chapter 25, nor shall it
21 change the standard of care applicable to the directors under
22 Subchapter B of Chapter 17 (relating to fiduciary duty).

23 § 1955. Filing of articles of division.

24 (a) General rule.--The articles of division, and the
25 certificates or statement, if any, required by section 139
26 (relating to tax clearance of certain fundamental transactions)
27 shall be filed in the Department of State.

28 (b) Cross [reference] references.--See [section] sections
29 134 (relating to docketing statement) and 135 (relating to
30 requirements to be met by filed documents).

1 § 1957. Effect of division.

2 * * *

3 (b) Property rights; allocations of assets and
4 liabilities.--

5 (1) (i) All the property, real, personal and mixed, and
6 franchises of the dividing corporation, and all debts due
7 on whatever account to it, including subscriptions for
8 shares and other choses in action belonging to it, shall
9 (except as otherwise provided in paragraph (2)), to the
10 extent [transfers] allocations of assets are contemplated
11 by the plan of division, be deemed without further action
12 to be [transferred] allocated to and vested in the
13 resulting corporations on such a manner and basis and
14 with such effect as is specified in the plan, or per
15 capita among the resulting corporations, as tenants in
16 common, if no specification is made in the plan, and the
17 title to any real estate, or interest therein, vested in
18 any of the corporations shall not revert or be in any way
19 impaired by reason of the division.

20 (ii) Upon the division becoming effective, the
21 resulting corporations shall each thenceforth be
22 responsible as separate and distinct corporations only
23 for such liabilities as each corporation may undertake or
24 incur in its own name but shall be liable for the
25 liabilities of the dividing corporation in the manner and
26 on the basis provided in subparagraphs (iv) and (v).

27 (iii) Liens upon the property of the dividing
28 corporation shall not be impaired by the division.

29 (iv) [One] To the extent allocations of liabilities
30 are contemplated by the plan of division, the liabilities

1 of the dividing corporation shall be deemed without
2 further action to be allocated to and become the
3 liabilities of the resulting corporations on such a
4 manner and basis and with such effect as is specified in
5 the plan; and one or more, but less than all, of the
6 resulting corporations shall be free of the liabilities
7 of the dividing corporation to the extent, if any,
8 specified in the plan, if in either case:

9 (A) no fraud [of corporate creditors, or of] on
10 minority shareholders or shareholders without voting
11 rights or violation of law shall be effected thereby,
12 and [if applicable provisions of law are complied
13 with.]

14 (B) the plan does not constitute a fraudulent
15 transfer under 12 Pa.C.S. Ch. 51 (relating to
16 fraudulent transfers).

17 (v) If the conditions in subparagraph (iv) for
18 freeing one or more of the resulting corporations from
19 the liabilities of the dividing corporation, or for
20 allocating some or all of the liabilities of the dividing
21 corporation, are not satisfied, the liabilities of the
22 dividing corporation as to which those conditions are not
23 satisfied shall not be affected by the division nor shall
24 the rights of creditors [thereof or of any person dealing
25 with the corporation] thereunder be impaired by the
26 division and any claim existing or action or proceeding
27 pending by or against the corporation with respect to
28 those liabilities may be prosecuted to judgment as if the
29 division had not taken place, or the resulting
30 corporations may be proceeded against or substituted in

1 [its] place of the dividing corporation as joint and
2 several obligors on [such liability] those liabilities,
3 regardless of any provision of the plan of division
4 apportioning the liabilities of the dividing corporation.

5 (vi) The conditions in subparagraph (iv) for freeing
6 one or more of the resulting corporations from the
7 liabilities of the dividing corporation and for
8 allocating some or all of the liabilities of the dividing
9 corporation shall be conclusively deemed to have been
10 satisfied if the plan of division has been approved by
11 the Department of Banking, the Insurance Department or
12 the Pennsylvania Public Utility Commission in a final
13 order issued after (the Legislative Reference Bureau
14 shall insert here the effective date of the amendments of
15 this section) that has become not subject to further
16 appeal.

17 (2) (i) The [transfer] allocation of any fee or
18 freehold interest or leasehold having a remaining term of
19 30 years or more in any tract or parcel of real property
20 situate in this Commonwealth owned by a dividing
21 corporation (including property owned by a foreign
22 business corporation dividing solely under the law of
23 another jurisdiction) to a new corporation resulting from
24 the division shall not be effective until one of the
25 following documents is filed in the office for the
26 recording of deeds of the county, or each of them, in
27 which the tract or parcel is situated:

28 (A) A deed, lease or other instrument of
29 confirmation describing the tract or parcel.

30 (B) A duly executed duplicate original copy of

1 the articles of division.

2 (C) A copy of the articles of division certified
3 by the Department of State.

4 (D) A declaration of acquisition setting forth
5 the value of real estate holdings in such county of
6 the corporation as an acquired company.

7 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
8 to transfer of vehicle by operation of law) shall not be
9 applicable to [a transfer] an allocation of ownership of
10 any motor vehicle, trailer or semitrailer [from a
11 dividing corporation] to a new corporation under this
12 section or under a similar law of any other jurisdiction
13 but any such [transfer] allocation shall be effective
14 only upon compliance with the requirements of 75 Pa.C.S.
15 § 1116 (relating to issuance of new certificate following
16 transfer).

17 (3) It shall not be necessary for a plan of division to
18 list each individual asset or liability of the dividing
19 corporation to be allocated to a new corporation so long as
20 those assets and liabilities are described in a reasonable
21 manner.

22 (4) Each new corporation shall hold any assets and
23 liabilities allocated to it as the successor to the dividing
24 corporation, and those assets and liabilities shall not be
25 deemed to have been assigned to the new corporation in any
26 manner, whether directly or indirectly or by operation of
27 law.

28 * * *

29 (h) Conflict of laws.--It is the intent of the General
30 Assembly that:

1 (1) The effect of a division of a domestic business
2 corporation shall be governed solely by the laws of this
3 Commonwealth and any other jurisdiction under the laws of
4 which any of the resulting corporations is incorporated.

5 (2) The effect of a division on the assets and
6 liabilities of the dividing corporation shall be governed
7 solely by the laws of this Commonwealth and any other
8 jurisdiction under the laws of which any of the resulting
9 corporations is incorporated.

10 (3) The validity of any allocations of assets or
11 liabilities by a plan of division of a domestic business
12 corporation, regardless of whether or not any of the new
13 corporations is a foreign business corporation, shall be
14 governed solely by the laws of this Commonwealth.

15 (4) In addition to the express provisions of this
16 subsection, this subchapter shall otherwise generally be
17 granted the protection of full faith and credit under the
18 Constitution of the United States.

19 § 1962. Proposal and adoption of plan of conversion.

20 (a) Preparation of plan.--A plan of conversion shall be
21 prepared, setting forth:

22 (1) The terms and conditions of the conversion.

23 (2) A restatement of the articles of the resulting
24 corporation, which articles shall comply with the
25 requirements of this part relating to nonprofit corporations.

26 (3) Any provisions desired providing special treatment
27 of shares held by any shareholder or group of shareholders as
28 authorized by, and subject to the provisions of, section 1906
29 (relating to special treatment of holders of shares of same
30 class or series).

1 (4) Such other provisions as are deemed desirable.
2 [Any of the terms of the plan may be made dependent upon facts
3 ascertainable outside of the plan if the manner in which the
4 facts will operate upon the terms of the plan is set forth in
5 the plan.]

6 * * *

7 (d) Reference to outside facts.--Any of the terms of a plan
8 of conversion may be made dependent upon facts ascertainable
9 outside of the plan if the manner in which the facts will
10 operate upon the terms of the plan is set forth in the plan.
11 Such facts may include, without limitation, actions or events
12 within the control of or determinations made by the corporation
13 or a representative of the corporation.

14 § 1972. Proposal of voluntary dissolution.

15 (a) General rule.--Any business corporation that has
16 commenced business may dissolve voluntarily in the manner
17 provided in this subchapter and wind up its affairs in the
18 manner provided in section 1975 (relating to predissolution
19 provision for liabilities) or Subchapter H (relating to
20 postdissolution provision for liabilities). Voluntary
21 dissolution shall be proposed by the adoption by the board of
22 directors of a resolution recommending that the corporation be
23 dissolved voluntarily. The resolution shall contain a statement
24 either that the dissolution shall proceed under section 1975 or
25 that the dissolution shall proceed under Subchapter H. The
26 resolution may set forth provisions for the distribution to
27 shareholders of any surplus remaining after paying or providing
28 for all liabilities of the corporation, including provisions for
29 special treatment of shares held by any shareholder or group of
30 shareholders as authorized by, and subject to the provisions of,

1 section 1906 (relating to special treatment of holders of shares
2 of same class or series).

3 (b) Submission to shareholders.--The board of directors
4 shall direct that the [question of] resolution recommending
5 dissolution be submitted to a vote of the shareholders of the
6 corporation entitled to vote thereon at a regular or special
7 meeting of the shareholders.

8 * * *

9 § 1973. Notice of meeting of shareholders.

10 (a) General rule.--Written notice of the meeting of
11 shareholders that will consider the [advisability of voluntarily
12 dissolving a] resolution recommending dissolution of the
13 business corporation shall be given to each shareholder of
14 record entitled to vote thereon and the purpose shall be
15 included in the notice of the meeting.

16 * * *

17 § 1975. Predissolution provision for liabilities.

18 (a) Powers of board.--The board of directors of a business
19 corporation that has elected to proceed under this section shall
20 have full power to wind up and settle the affairs of [a
21 business] the corporation in accordance with this section prior
22 to filing articles of dissolution in accordance with section
23 1977 (relating to articles of dissolution).

24 (b) Notice to creditors and taxing authorities.--After the
25 approval by the shareholders of the [proposal] resolution
26 recommending that the corporation dissolve voluntarily, the
27 corporation shall immediately cause notice of the winding up
28 proceedings to be officially published and to be mailed by
29 certified or registered mail to each known creditor and claimant
30 and to each municipal corporation in which [its registered

1 office or principal] it has a place of business in this
2 Commonwealth [is located].

3 (c) Winding up and distribution.--The corporation shall, as
4 speedily as possible, proceed to collect all sums due it,
5 convert into cash all corporate assets the conversion of which
6 into cash is required to discharge its liabilities and, out of
7 the assets of the corporation, discharge or make adequate
8 provision for the discharge of all liabilities of the
9 corporation, according to their respective priorities. Any
10 surplus remaining after paying or providing for all liabilities
11 of the corporation shall be distributed to the shareholders
12 according to their respective rights and preferences. See
13 section 1972(a) (relating to proposal of voluntary dissolution).
14 § 1976. Judicial supervision of proceedings.

15 A business corporation that has elected to proceed under
16 section 1975 (relating to predissolution provision for
17 liabilities), at any time during the winding up proceedings, may
18 apply to the court to have the proceedings continued under the
19 supervision of the court and thereafter the proceedings shall
20 continue under the supervision of the court as provided in
21 Subchapter G (relating to involuntary liquidation and
22 dissolution).

23 § 1977. Articles of dissolution.

24 (a) General rule.--Articles of dissolution and the
25 certificates or statement required by section 139 (relating to
26 tax clearance of certain fundamental transactions) shall be
27 filed in the Department of State when:

28 (1) all liabilities of the business corporation have
29 been discharged, or adequate provision has been made
30 therefor, in accordance with section 1975 (relating to

1 predissolution provision for liabilities), and all of the
2 remaining assets of the corporation have been distributed as
3 provided in section 1975 (or in case its assets are not
4 sufficient to discharge its liabilities, when all the assets
5 have been fairly and equitably applied, as far as they will
6 go, to the payment of such liabilities); or

7 (2) an election to proceed under Subchapter H (relating
8 to postdissolution provision for liabilities) has been made.

9 [See section 134 (relating to docketing statement).]

10 (b) Contents of articles.--The articles of dissolution shall
11 be executed by the corporation and shall set forth:

12 * * *

13 (5) A statement that:

14 (i) [that] all liabilities of the corporation have
15 been discharged or that adequate provision has been made
16 therefor; [or]

17 (ii) [that] the assets of the corporation are not
18 sufficient to discharge its liabilities, and that all the
19 assets of the corporation have been fairly and equitably
20 applied, as far as they will go, to the payment of such
21 liabilities[. An election by]; or

22 (iii) the corporation has elected to proceed under
23 Subchapter H [shall constitute the making of adequate
24 provision for the liabilities of the corporation,
25 including any judgment or decree that may be obtained
26 against the corporation in any pending action or
27 proceeding].

28 * * *

29 (7) [A] In the case of a corporation that has not
30 elected to proceed under Subchapter H, a statement that no

1 actions or proceedings are pending against the corporation in
2 any court, or that adequate provision has been made for the
3 satisfaction of any judgment or decree that may be obtained
4 against the corporation in each pending action or proceeding.

5 (8) [A] In the case of a corporation that has not
6 elected to proceed under Subchapter H, a statement that
7 notice of the winding-up proceedings of the corporation was
8 mailed by certified or registered mail to each known creditor
9 and claimant and to each municipal corporation in which the
10 [registered office or principal place of business of the]
11 corporation has a place of business in this Commonwealth [is
12 located].

13 * * *

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

17 § 1978. Winding up of corporation after dissolution.

18 * * *

19 (b) Standard of care of directors and officers.--The
20 dissolution of the corporation shall not subject its directors
21 or officers to standards of conduct different from those
22 prescribed by or pursuant to Chapter 17 (relating to officers,
23 directors and shareholders). Directors of a dissolved
24 corporation who have complied with section 1975 (relating to
25 predissolution provision for liabilities) or Subchapter H
26 (relating to postdissolution provision for liabilities) shall
27 not be personally liable to the creditors of the dissolved
28 corporation.

29 § 1979. Survival of remedies and rights after dissolution.

30 (a) General rule.--The dissolution of a business

1 corporation, either under this subchapter or under Subchapter G
2 (relating to involuntary liquidation and dissolution) or by
3 expiration of its period of duration or otherwise, shall not
4 eliminate nor impair any remedy available to or against the
5 corporation or its directors, officers or shareholders for any
6 right or claim existing, or liability incurred, prior to the
7 dissolution, if an action or proceeding thereon is brought on
8 behalf of:

9 (1) the corporation within the time otherwise limited by
10 law; or

11 (2) any other person before or within two years after
12 the date of the dissolution or within the time otherwise
13 limited by this subpart or other provision of law, whichever
14 is less. See sections 1987 (relating to proof of claims),
15 1993 (relating to acceptance or rejection of matured claims)
16 and 1994 (relating to disposition of unmatured claims).

17 [The actions or proceedings may be prosecuted against and
18 defended by the corporation in its corporate name.]

19 * * *

20 (e) Conduct of actions.--An action or proceeding may be
21 prosecuted against and defended by a dissolved corporation in
22 its corporate name.

23 § 1980. Dissolution by domestication.

24 Whenever a domestic business corporation has domesticated
25 itself under the laws of another jurisdiction by action similar
26 to that provided by section 4161 (relating to domestication) and
27 has authorized that action by the vote required by this
28 subchapter for the approval of a proposal that the corporation
29 dissolve voluntarily, the corporation may surrender its charter
30 under the laws of this Commonwealth by filing in the Department

1 of State articles of dissolution under this subchapter
2 containing the statement specified by section [1977(a)(1)]
3 1977(b)(1) through (4) (relating to [preparation of articles].]
4 articles of dissolution). If the corporation as domesticated in
5 the other jurisdiction qualifies to do business in this
6 Commonwealth either prior to or simultaneously with the filing
7 of the articles of dissolution under this section, the
8 corporation shall not be required to file with the articles of
9 dissolution the tax clearance certificates that would otherwise
10 be required by section 139 (relating to tax clearance of certain
11 fundamental transactions).

12 § 1989. Articles of involuntary dissolution.

13 (a) General rule.--In a proceeding under this subchapter,
14 the court shall enter an order dissolving the business
15 corporation when the costs and expenses of the proceeding and
16 all liabilities of the corporation have been discharged, and all
17 of its remaining assets have been distributed to its
18 shareholders or, in case its assets are not sufficient to
19 discharge such costs, expenses and liabilities, when all the
20 assets have been applied, as far as they will go, to the payment
21 of such costs, expenses and liabilities. See section 139(b)
22 (relating to tax clearance in judicial proceedings).

23 (b) Filing.--After entry of an order of dissolution, the
24 office of the clerk of the court of common pleas shall prepare
25 and execute articles of dissolution substantially in the form
26 provided by section 1977 (relating to articles of dissolution),
27 attach thereto a certified copy of the order and transmit the
28 articles and attached order to the Department of State. [A
29 certificate or statement provided for by section 139 (relating
30 to tax clearance of certain fundamental transactions) shall not

1 be required, and the] The department shall not charge a fee in
2 connection with the filing of articles of dissolution under this
3 section. See [section] sections 134 (relating to docketing
4 statement) and 135 (relating to requirements to be met by filed
5 documents).

6 * * *

7 § 1991.1. Authority of board of directors.

8 (a) General rule.--The board of directors of a business
9 corporation that has elected to proceed under this subchapter
10 shall have full power to wind up and settle the affairs of the
11 corporation in accordance with this subchapter both prior to and
12 after the filing of articles of dissolution in accordance with
13 section 1977 (relating to articles of dissolution).

14 (b) Winding up.--The corporation shall, as speedily as
15 possible, proceed to comply with the requirements of this
16 subchapter while simultaneously collecting all sums due it and
17 converting into cash all corporate assets, the conversion of
18 which into cash is required to make adequate provision for its
19 liabilities.

20 § 1992. Notice to claimants.

21 * * *

22 (c) Publication and service of notices.--

23 (1) The notices required by this section shall be
24 officially published at least once a week for two consecutive
25 weeks and, in the case of a corporation having \$10,000,000 or
26 more in total assets at the time of its dissolution, at least
27 once in all editions of a daily newspaper with a national
28 circulation.

29 (2) Concurrently with or preceding the publication, the
30 corporation or successor entity shall send a copy of the

1 notice by certified or registered mail, return receipt
2 requested, to each:

3 (i) known creditor or claimant;

4 (ii) holder of a claim described in subsection (b);

5 and

6 (iii) municipal corporation in which [the registered
7 office or principal] a place of business of the
8 corporation in this Commonwealth was located at the time
9 of filing the articles of dissolution in the department.

10 * * *

11 § 1997. Payments and distributions.

12 * * *

13 (b) Disposition.--The claims and liabilities shall be paid
14 in full and any provision for payment shall be made in full if
15 there are sufficient assets. If there are insufficient assets,
16 the claims and liabilities shall be paid or provided for in
17 order of their priority, and, among claims of equal priority,
18 ratably to the extent of funds legally available therefor. Any
19 remaining assets shall be distributed to the shareholders of the
20 corporation according to their respective rights and
21 preferences, except that the distribution shall not be made less
22 than 60 days after the last notice of rejection, if any, was
23 given under section 1993 (relating to acceptance or rejection of
24 matured claims). See section 1972(a) (relating to proposal of
25 voluntary dissolution).

26 * * *

27 [(d) Liability of directors.--Directors of a dissolved
28 corporation or governing persons of a successor entity that has
29 complied with this section shall not be personally liable to the
30 claimants of the dissolved corporation.]

1 § 2105. Termination of nonstock corporation status.

2 * * *

3 (c) Mutual insurance companies.--With respect to the
4 termination of the status of a mutual insurance company as a
5 nonstock corporation, see section 103 (relating to subordination
6 of title to regulatory laws) and [the act of December 10, 1970
7 (P.L.884, No.279), referred to as the Mutual Insurance Company
8 Conversion Law.] Article VIII-A of the act of May 17, 1921
9 (P.L.682, No.284), known as The Insurance Company Law of 1921.

10 § 2524. Consent of shareholders in lieu of meeting.

11 (a) General rule.--An action may be authorized by the
12 shareholders of a registered corporation without a meeting by
13 less than unanimous [written] consent only if permitted by its
14 articles.

15 (b) Effectiveness of action.--An action authorized by the
16 shareholders of a registered corporation without a meeting by
17 less than unanimous [written] consent may become effective
18 immediately upon its authorization, but prompt notice of the
19 action shall be given to those shareholders entitled to vote
20 thereon who have not consented.

21 § 2526. Voting rights of directors.

22 Every director of a registered corporation described in
23 section 2502(1) (relating to registered corporation status)
24 shall be entitled to one vote, except as otherwise provided in:

25 (1) the articles; or

26 (2) a bylaw adopted by the shareholders either:

27 (i) on or before (the Legislative Reference Bureau
28 shall insert here the effective date of this section); or

29 (ii) at a time when the corporation was not a
30 registered corporation described in section 2502(1).

1 § 2527. Authority of board of directors.

2 The authority, powers and functions of the board of directors
3 of a registered corporation described in section 2502(1)
4 (relating to registered corporation status) may not be varied,
5 and a committee of the board of such a corporation may not be
6 established, by a bylaw adopted by the shareholders, unless the
7 bylaw has been adopted:

8 (1) with the approval of the board of directors;

9 (2) on or before (the Legislative Reference Bureau shall
10 insert here the effective date of this section); or

11 (3) at a time when the corporation was not a registered
12 corporation described in section 2502(1).

13 § 2902. Definitions and index of definitions.

14 (a) Definitions.--The following words and phrases when used
15 in this chapter shall have the meanings given to them in this
16 section unless the context clearly indicates otherwise:

17 "Disqualified person." [A] The term "disqualified person" as
18 used in this chapter means a licensed person who for any reason
19 is or becomes legally disqualified (temporarily or permanently)
20 to render the same professional services that the particular
21 professional corporation of which he is an officer, director,
22 shareholder or employee is or was rendering.

23 ["Licensed person." Any natural person who is duly licensed
24 or admitted to practice his profession by a court, department,
25 board, commission or other agency of this Commonwealth or
26 another jurisdiction to render a professional service that is or
27 will be rendered by the professional corporation of which he is,
28 or intends to become, an officer, director, shareholder,
29 employee or agent.

30 "Profession." Includes the performance of any type of

1 personal service to the public that requires as a condition
2 precedent to the performance of the service the obtaining of a
3 license or admission to practice or other legal authorization,
4 including all personal services that prior to the enactment of
5 the act of July 9, 1970 (P.L.461, No.160), known as the
6 Professional Corporation Law, could not lawfully be rendered by
7 means of a corporation. By way of example, and without limiting
8 the generality of the foregoing, the term includes for the
9 purposes of this chapter personal services rendered as an
10 architect, chiropractor, dentist, funeral director, osteopath,
11 podiatrist, physician, professional engineer, veterinarian,
12 certified public accountant or surgeon and, except as otherwise
13 prescribed by general rules, an attorney at law. Except as
14 otherwise expressly provided by law, the definition specified in
15 this paragraph shall be applicable to this chapter only and
16 shall not affect the interpretation of any other statute or any
17 local zoning ordinance or other official document heretofore or
18 hereafter enacted or promulgated.

19 "Professional services." Any type of services that may be
20 rendered by the member of any profession within the purview of
21 his profession.]

22 (b) Index of other definitions.--Other definitions applying
23 to this chapter and the sections in which they appear are:

24 "Licensed person." Section 102 (relating to definitions).

25 "Profession." Section 102.

26 "Professional services." Section 102.

27 § 2904. Election of an existing business corporation to become
28 a professional corporation.

29 * * *

30 (b) Procedure.--The amendment shall be adopted in accordance

1 with the requirements of Subchapter B of Chapter 19 (relating to
2 amendment of articles) [except that the amendment must be
3 approved by the unanimous consent of all shareholders of the
4 corporation regardless of any limitations on voting rights
5 stated in the articles or bylaws]. If any shareholder of a
6 business corporation that proposes to amend its articles to
7 become a professional corporation objects to that amendment and
8 complies with the provisions of Subchapter D of Chapter 15
9 (relating to dissenters rights), the shareholder shall be
10 entitled to the rights and remedies of dissenting shareholders
11 therein provided, if any.

12 § 2922. Stated purposes.

13 * * *

14 (b) Additional powers.--A professional corporation may be [a
15 partner in or a shareholder] an equity owner of a partnership
16 [or], limited liability company, corporation or other
17 association engaged in the business of rendering the
18 professional service or services for which the professional
19 corporation was incorporated.

20 § 2923. Issuance and retention of shares.

21 (a) General rule.--Except as otherwise provided by a
22 statute, rule or regulation applicable to a particular
23 profession, all of the ultimate beneficial owners of shares in a
24 professional corporation [may be beneficially owned, directly or
25 indirectly, only by one or more] shall be licensed persons and
26 any issuance or transfer of shares in violation of this
27 restriction shall be void. A shareholder of a professional
28 corporation shall not enter into a voting trust, proxy or any
29 other arrangement vesting another person (other than [another
30 licensed] a person who is qualified to be a direct or indirect

1 shareholder of the same corporation) with the authority to
2 exercise the voting power of any or all of his shares, and any
3 such purported voting trust, proxy or other arrangement shall be
4 void.

5 (b) Ownership by estate.--Unless a lesser period of time is
6 provided in a bylaw [of the corporation] adopted by the
7 shareholders or in a written agreement among the shareholders of
8 the corporation, the estate of a deceased shareholder may
9 continue to hold shares of the professional corporation for a
10 reasonable period of administration of the estate, but the
11 personal representative of the estate shall not by reason of the
12 retention of shares be authorized to participate in any
13 decisions concerning the rendering of professional service.

14 * * *

15 § 3133. Notice of meetings of members of mutual insurance
16 companies.

17 (a) General rule.--Unless otherwise restricted in the
18 bylaws, persons authorized or required to give notice of an
19 annual meeting of members of a mutual insurance company for the
20 election of directors or of a meeting of members of a mutual
21 insurance company called for the purpose of considering [an]
22 amendment of the articles or bylaws, or both, of the corporation
23 may, in lieu of any written notice of meeting of members
24 required to be given by this subpart, give notice of such
25 meeting by causing notice of such meeting to be officially
26 published. Such notice shall be published each week for at
27 least:

28 (1) Three successive weeks, in the case of an annual
29 meeting.

30 (2) Four successive weeks, in the case of a meeting to

1 consider [an] amendment of the articles or bylaws, or both.

2 * * *

3 § 4123. Requirements for foreign corporation names.

4 * * *

5 (b) Exceptions.--

6 (1) The provisions of section 1303(b) (relating to
7 duplicate use of names) shall not prevent the issuance of a
8 certificate of authority to a foreign business corporation
9 setting forth a name that is [confusingly similar to] not
10 distinguishable upon the records of the department from the
11 name of any other domestic or foreign corporation for profit
12 or corporation not-for-profit, [or of any domestic or foreign
13 limited partnership that has filed a certificate or qualified
14 under Chapter 85 (relating to limited partnerships) or
15 corresponding provisions of prior law,] or of any corporation
16 or other association then registered under 54 Pa.C.S. Ch. 5
17 (relating to corporate and other association names) or to any
18 name reserved or registered as provided in this part, if the
19 foreign business corporation applying for a certificate of
20 authority files in the department [one of the following:

21 (i) A] a resolution of its board of directors
22 adopting a fictitious name for use in transacting
23 business in this Commonwealth, which fictitious name is
24 [not confusingly similar to] distinguishable upon the
25 records of the department from the name of the other
26 corporation or other association or [to] from any name
27 reserved or registered as provided in this part and that
28 is otherwise available for use by a domestic business
29 corporation.

30 [(ii) The written consent of the other corporation

1 or other association or holder of a reserved or
2 registered name to use the same or confusingly similar
3 name and one or more words are added to make the name
4 applied for distinguishable from the other name.]

5 * * *

6 § 4126. Amended certificate of authority.

7 (a) General rule.--After receiving a certificate of
8 authority, a qualified foreign business corporation may, subject
9 to the provisions of this subchapter, change [the name under
10 which it is authorized to transact business in this
11 Commonwealth] or correct any of the information set forth in its
12 application for a certificate of authority or previous filings
13 under this section by filing in the Department of State an
14 application for an amended certificate of authority. The
15 application shall be executed by the corporation and shall
16 state:

17 (1) The name under which the applicant corporation
18 currently holds a certificate of authority to do business in
19 this Commonwealth.

20 [(2) The name of the jurisdiction under the laws of
21 which the corporation is incorporated.

22 (3) The address, including street and number, if any, of
23 its principal office under the laws of the jurisdiction in
24 which it is incorporated.

25 (4)] (2) Subject to section 109 (relating to name of
26 commercial registered office provider in lieu of registered
27 address), the address, including street and number, if any,
28 of its registered office in this Commonwealth[, which may
29 constitute a change in the address of its registered office.

30 (5) The new name of the corporation and]

1 (3) The information to be changed or corrected.

2 (4) If the application reflects a change in the name of
3 the corporation, the application shall include a statement
4 that either:

5 (i) the change of name reflects a change effected in
6 the jurisdiction of incorporation; or

7 (ii) documents complying with section 4123(b)
8 (relating to exception; name) accompany the application.

9 (b) Issuance of amended certificate of authority.--Upon the
10 filing of the application, the applicant corporation shall be
11 deemed to hold an amended certificate of authority.

12 (c) Cross [reference] references.--See [section] sections
13 134 (relating to docketing statement) and 135 (relating to
14 requirements to be met by filed documents).

15 § 4146. Provisions applicable to all foreign corporations.

16 The following provisions of this subpart shall, except as
17 otherwise provided in this section, be applicable to every
18 foreign corporation for profit, whether or not required to
19 procure a certificate of authority under this chapter:

20 Section 1503 (relating to defense of ultra vires), as to
21 contracts and conveyances [made in] governed by the laws of
22 this Commonwealth and conveyances affecting real property
23 situated in this Commonwealth.

24 Section 1506 (relating to form of execution of
25 instruments), as to instruments or other documents [made or
26 to be performed in] governed by the laws of this Commonwealth
27 or affecting real property situated in this Commonwealth.

28 Section 1510 (relating to certain specifically authorized
29 debt terms), as to obligations (as defined in the section)
30 [executed or effected in] governed by the laws of this

1 Commonwealth or affecting real property situated in this
2 Commonwealth.

3 * * *

4 § 4161. Domestication.

5 * * *

6 (b) Articles of domestication.--The articles of
7 domestication shall be executed by the corporation and shall set
8 forth in the English language:

9 (1) The name of the corporation. If the name is in a
10 foreign language, it shall be set forth in Roman letters or
11 characters or Arabic or Roman numerals. If the name is one
12 that is rendered unavailable by any provision of section
13 1303(b) or (c) (relating to corporate name), the corporation
14 shall adopt, in accordance with any procedures for changing
15 the name of the corporation that are applicable prior to the
16 domestication of the corporation, and shall set forth in the
17 articles of domestication an available name.

18 * * *

19 (c) Cross [reference] references.--See [section] sections
20 134 (relating to docketing statement) and 135 (relating to
21 requirements to be met by filed documents).

22 § 4162. Effect of domestication.

23 (a) General rule.--As a domestic business corporation, the
24 domesticated corporation shall no longer be a foreign business
25 corporation for the purposes of this subpart and shall [have],
26 instead, be a domestic business corporation with all the powers
27 and privileges and [be subject to] all the duties and
28 limitations granted and imposed upon domestic business
29 corporations. [The property, franchises, debts, liens, estates,
30 taxes, penalties and public accounts due the Commonwealth shall

1 continue to be vested in and imposed upon the corporation to the
2 same extent as if it were the successor by merger of the
3 domesticating corporation with and into a domestic business
4 corporation under Subchapter C of Chapter 19 (relating to
5 merger, consolidation, share exchanges and sale of assets).] In
6 all other respects, the domesticated corporation shall be deemed
7 to be the same corporation as it was prior to the domestication
8 without any change in or effect on its existence. Without
9 limiting the generality of the previous sentence, the
10 domestication shall not be deemed to have affected in any way:

11 (1) the right and title of the corporation in and to its
12 assets, property, franchises, estates and choses in action;

13 (2) the liability of the corporation for its debts,
14 obligations, penalties and public accounts due the
15 Commonwealth;

16 (3) any liens or other encumbrances on the property or
17 assets of the corporation; or

18 (4) any contract, license or other agreement to which
19 the corporation is a party or under which it has any rights
20 or obligations.

21 (b) Reclassification of shares.--The shares of the
22 domesticated corporation shall be unaffected by the
23 domestication except to the extent, if any, reclassified in the
24 articles of domestication.

25 § 5303. Corporate name.

26 * * *

27 (b) Duplicate use of names.--The corporate name shall [not
28 be the same as or confusingly similar to] be distinguishable
29 upon the records of the Department of State from:

30 (1) The name of any other domestic corporation for

1 profit or not-for-profit which is either in existence or for
2 which articles of incorporation have been filed but have not
3 yet become effective, or of any foreign corporation for
4 profit or not-for-profit which is either authorized to do
5 business in this Commonwealth or for which an application for
6 a certificate of authority has been filed but which has not
7 yet become effective, [or of any domestic or foreign limited
8 partnership that has filed in the Department of State a
9 certificate or qualified under Chapter 85 (relating to
10 limited partnerships) or under corresponding provisions of
11 prior law,] or the name of any association registered at any
12 time under 54 Pa.C.S. Ch. 5 (relating to corporate and other
13 association names), unless[:

14 (i) where the name is the same or confusingly
15 similar,] the other association:

16 [(A)] (i) has stated that it is about to change
17 its name, or to cease to do business, or is being
18 wound up, or is a foreign association about to
19 withdraw from doing business in this Commonwealth,
20 and the statement and [the] a written consent [of the
21 other association] to the adoption of the name
22 executed by the other association is filed in the
23 Department of State;

24 [(B)] (ii) has filed with the Department of
25 Revenue a certificate of out of existence, or has
26 failed for a period of three successive years to file
27 with the Department of Revenue a report or return
28 required by law and the fact of such failure has been
29 certified by the Department of Revenue to the
30 Department of State;

1 [(C)] (iii) has abandoned its name under the
2 laws of its jurisdiction of incorporation, by
3 amendment, merger, consolidation, division,
4 expiration, dissolution or otherwise, without its
5 name being adopted by a successor in a merger,
6 consolidation, division or otherwise, and an official
7 record of that fact, certified as provided by 42
8 Pa.C.S. § 5328 (relating to proof of official
9 records), is presented by any person to the
10 department; or

11 [(D)] (iv) has had the registration of its name
12 under 54 Pa.C.S. Ch. 5 terminated and, if the
13 termination was effected by operation of 54 Pa.C.S. §
14 504 (relating to effect of failure to make decennial
15 filings), the application for the use of the name is
16 accompanied by a verified statement stating that at
17 least 30 days' written notice of intention to
18 appropriate the name was given to the delinquent
19 association at its [registered office] last known
20 place of business and that, after diligent search by
21 the affiant, the affiant believes the association to
22 be out of existence.]; or

23 (ii) where the name is confusingly similar, the
24 consent of the other association to the adoption of the
25 name is filed in the Department of State.

26 The consent of the association shall be evidenced by a
27 statement to that effect executed by the association.]

28 * * *

29 (e) Remedies for violation of section.--The use of a name in
30 violation of this section shall not vitiate or otherwise affect

1 the corporate existence but any court having jurisdiction may
2 enjoin the corporation from using or continuing to use a name in
3 violation of this section, upon the application of:

4 (1) the Attorney General, acting on his own motion or at
5 the instance of any administrative department, board or
6 commission of this Commonwealth; or

7 (2) any person adversely affected.];
8 may enjoin the corporation from using or continuing to use a
9 name in violation of this section.]

10 (f) Cross references.--See sections 135(e) (relating to
11 distinguishable names) and 5106(b)(2) (relating to limited
12 uniform application of subpart).

13 § 5304. Required name changes by senior corporations.

14 (a) Adoption of new name upon reactivation.--Where a
15 corporate name is made available on the basis that the
16 corporation or [nonprofit unincorporated] other association
17 [which] that formerly registered [such] the name has failed to
18 file with the Department of Revenue [or in the Department of
19 State] a report or a return required by law or where the
20 corporation or [nonprofit unincorporated] other association has
21 filed with the Department of Revenue a certificate of out of
22 existence, [such] the corporation or other association shall
23 cease to have by virtue of its prior registration any right to
24 the use of [such] the name[, and such]. The corporation or other
25 association, upon withdrawal of the certificate of out of
26 existence or upon the removal of its delinquency in the filing
27 of the required reports or returns, shall make inquiry with the
28 Department of State with regard to the availability of its
29 name[,] and, if [such] the name has been made available to
30 another domestic or foreign corporation for profit or not-for-

1 profit or other association by virtue of [the above] these
2 conditions, shall adopt a new name in accordance with law before
3 resuming its activities.

4 (b) Enforcement of undertaking to release name.--If a
5 corporation has used a name [the same as, or deceptively similar
6 to,] that is not distinguishable upon the records of the
7 Department of State from the name of another corporation or
8 [nonprofit unincorporated] other association as permitted by
9 section 5303(b)(1)[(i)] (relating to duplicate use of names) and
10 the other corporation or [nonprofit unincorporated] other
11 association continues to use its name in this Commonwealth and
12 does not change its name, cease to do business, be wound up, or
13 withdraw as it proposed to do in its consent or change its name
14 as required by subsection (a), any court [of competent] having
15 jurisdiction may enjoin the other corporation or other
16 association from continuing to use its name or a name that is
17 not distinguishable therefrom, upon the application of:

18 (1) the Attorney General, acting on his own motion or at
19 the instance of any administrative department, board or
20 commission of this Commonwealth[,]; or

21 (2) upon the application of any person adversely
22 affected[, may enjoin the other corporation or association
23 from continuing to use its name or a name deceptively similar
24 thereto].

25 § 5311. Filing of statement of summary of record by certain
26 corporations.

27 (a) General rule.--Where any of the [valid] charter
28 documents of a nonprofit corporation are not on file in the
29 Department of State or there is an error in any such document as
30 transferred to the department pursuant to section 140 (relating

1 to custody and management of orphan corporate and business
2 records), and the corporation desires to file any document in
3 the department under any other provision of this [article]
4 subpart or the corporation desires to secure from the department
5 any certificate to the effect that the corporation is a
6 corporation duly incorporated and existing under the laws of
7 this Commonwealth or a certified copy of the articles of the
8 corporation or the corporation desires to correct the text of
9 its charter documents as on file in the department, the
10 corporation shall file in the department a statement of summary
11 of record which shall be executed by the corporation and shall
12 set forth:

13 (1) The name of the corporation and, subject to section
14 109 (relating to name of commercial registered office
15 provides in lieu of registered address), the location,
16 including street and number, if any, of its registered
17 office.

18 (2) The statute by or under which the corporation was
19 incorporated.

20 (3) The name under which, the manner in which and the
21 date on which the corporation was originally incorporated,
22 including the date when and the place where the original
23 articles were recorded.

24 (4) The place or places, including volume and page
25 numbers or their equivalent, where the documents
26 [constituting the currently effective articles are] that are
27 not on file in the department or that require correction in
28 the records of the department were originally filed or
29 recorded, the date or dates of each [such] filing or
30 recording and the correct text of [such currently effective

1 articles] the documents. The information specified in this
2 paragraph may be omitted in a statement of summary of record
3 that is delivered to the department contemporaneously with
4 amended and restated articles of the corporation filed under
5 this subpart.

6 [(5) Each name by which the corporation was known, if
7 any, other than its original name and its current name, and
8 the date or dates on which each change of name of the
9 corporation became effective.

10 A corporation shall be required to make only one filing under
11 this subsection.]

12 (b) Validation of prior defects in incorporation.--Upon the
13 filing of a statement by a corporation under this section or the
14 transfer to the department of the records relating to a
15 corporation pursuant to section 140, the corporation [named in
16 the statement] shall be deemed to be a validly subsisting
17 corporation to the same extent as if it had been duly
18 incorporated and was existing under this subpart and the
19 department shall so certify regardless of any absence of or
20 defect in the prior proceedings relating to incorporation.

21 (c) Cross [reference] references.--See [section] sections
22 134 (relating to docketing statement), 135 (relating to
23 requirements to be met by filed documents) and 5106(b)(2)
24 (relating to uniform application of subpart).

25 § 5503. Defense of ultra vires.

26 (a) General rule.--[No] A limitation upon the business,
27 [purpose or] purposes[,] or powers of a nonprofit corporation,
28 expressed or implied in its articles or bylaws or implied by
29 law, shall not be asserted in order to defend any action at law
30 or in equity between the corporation and a third person, or

1 between a member and a third person, involving any contract to
2 which the corporation is a party or any right of property or any
3 alleged liability of [whatsoever] whatever nature[; but such],
4 but the limitation may be asserted:

5 (1) In an action by a member against the corporation to
6 enjoin the doing of unauthorized acts or the transaction or
7 continuation of unauthorized business. If the unauthorized
8 acts or business sought to be enjoined are being transacted
9 pursuant to any contract to which the corporation is a party,
10 the court may, if all of the parties to the contract are
11 parties to the action[,] and if it deems [such action] the
12 result to be equitable, set aside and enjoin the performance
13 of [such] the contract, and in so doing shall allow to the
14 corporation, or to the other parties to the contract, as the
15 case may be, such compensation as may be [equitable]
16 appropriate for the loss or damage sustained by any of them
17 from the action of the court in setting aside and enjoining
18 the performance of [such] the contract, but anticipated
19 profits to be derived from the performance of the contract
20 shall not be awarded by the court as a loss or damage
21 sustained.

22 (2) In any action by or in the right of the corporation
23 to procure a judgment in its favor against an incumbent or
24 former officer, director or member of an other body of the
25 corporation for loss or damage due to his unauthorized acts.

26 (3) In a proceeding by the Commonwealth under section
27 503 (relating to actions to revoke corporate franchises)[,]
28 or in a proceeding by the Commonwealth to enjoin the
29 corporation from the doing of unauthorized or unlawful
30 business.

1 (b) Conveyances of property by or to a corporation.--[No] A
2 conveyance or transfer by or to a nonprofit corporation of
3 property, real or personal, of any kind or description, shall
4 not be invalid or fail because in making [such] the conveyance
5 or transfer, or in acquiring the property, real or personal,
6 [the board of directors or other body or any of the officers]
7 any representative of the corporation acting within the scope of
8 the actual or apparent authority given to [them] him by the
9 [board of directors or other body, have] corporation has
10 exceeded any of the purposes or powers of the corporation.

11 (c) [Nonqualified foreign corporations.--The provisions of
12 this section shall extend to contracts and conveyances made by
13 nonqualified foreign corporations in this Commonwealth and to
14 conveyances by nonqualified foreign corporations of real
15 property situated in this Commonwealth.] Cross reference.--See
16 section 6146 (relating to provisions applicable to all foreign
17 corporations).

18 § 5505. Persons bound by bylaws.

19 Except as otherwise provided by section 5713 (relating to
20 personal liability of directors) or any similar provision of
21 law, bylaws of a nonprofit corporation shall operate only as
22 regulations among the members, directors, members of an other
23 body and officers of the corporation, and shall not affect
24 contracts or other dealings with other persons, unless those
25 persons have actual knowledge of the bylaws.

26 § 5506. Form of execution of instruments.

27 (a) General rule.--Any form of execution provided in the
28 articles or bylaws to the contrary notwithstanding, any note,
29 mortgage, evidence of indebtedness, contract[,] or other
30 [instrument in writing] document, or any assignment or

1 endorsement thereof, executed or entered into between any
2 nonprofit corporation and any other person, when signed by one
3 or more officers or agents having actual or apparent authority
4 to sign it, or by the president or vice-president and secretary
5 or assistant secretary or treasurer or assistant treasurer of
6 [such] the corporation, shall be held to have been properly
7 executed for and in behalf of the corporation.

8 (b) Seal unnecessary.--[Except as otherwise required by
9 statute, the] The affixation of the corporate seal shall not be
10 necessary to the valid execution, assignment or endorsement by a
11 corporation of any instrument [in writing] or other document.

12 (c) [Nonqualified foreign corporations.--The provisions of
13 this section shall extend to instruments in writing made or to
14 be performed in this Commonwealth by a nonqualified foreign
15 corporation and to instruments executed by nonqualified foreign
16 corporations affecting real property situated in this
17 Commonwealth.] Cross reference.--See section 6146 (relating to
18 provisions applicable to all foreign corporations).

19 § 5508. Corporate records; inspection by members.

20 (a) Required records.--Every nonprofit corporation shall
21 keep [an original or duplicate record] minutes of the
22 proceedings of the members [and], the directors[,] and [of] any
23 other body [exercising powers or performing duties which under
24 this article may be exercised or performed by such other body,
25 the original or a copy of its bylaws, including all amendments
26 thereto to date, certified by the secretary of the corporation],
27 and [an original or] a [duplicate] membership register, giving
28 the names [of the members, and showing their respective] and
29 addresses of all members and the class and other details of the
30 membership of each. [Every such] The corporation shall also keep

1 appropriate, complete and accurate books or records of account.
2 The records provided for in this subsection shall be kept at
3 [either] any of the following locations:

4 (1) the registered office of the corporation in this
5 Commonwealth [or at its];

6 (2) the principal place of business wherever
7 situated[.]; or

8 (3) any actual business office of the corporation.

9 (b) Right of inspection by a member.--Every member shall,
10 upon written verified demand [under oath] stating the purpose
11 thereof, have a right to examine, in person or by agent or
12 attorney, during the usual hours for business for any proper
13 purpose, the membership register, books and records of account,
14 and records of the proceedings of the members, directors and
15 [such] any other body, and to make copies or extracts therefrom.
16 A proper purpose shall mean a purpose reasonably related to the
17 interest of [such] the person as a member. In every instance
18 where an attorney or other agent [shall be] is the person who
19 seeks the right [to] of inspection, the demand [under oath]
20 shall be accompanied by a verified power of attorney or [such]
21 other writing [which] that authorizes the attorney or other
22 agent to so act on behalf of the member. The demand [under oath]
23 shall be directed to the corporation:

24 (1) at its registered office in this Commonwealth [or];

25 (2) at its principal place of business wherever
26 situated[.]; or

27 (3) in care of the person in charge of an actual
28 business office of the corporation.

29 (c) Proceedings for the enforcement of inspection by a
30 member.--If the corporation, or an officer or agent thereof,

1 refuses to permit an inspection sought by a member or attorney
2 or other agent acting for the member pursuant to subsection (b)
3 [of this section] or does not reply to the demand within five
4 business days after the demand has been made, the member may
5 apply to the court for an order to compel [such] the inspection.
6 The court shall determine whether or not the person seeking
7 inspection is entitled to the inspection sought. The court may
8 summarily order the corporation to permit the member to inspect
9 the membership register and the other books and records of the
10 corporation and to make copies or extracts therefrom; or the
11 court may order the corporation to furnish to the member a list
12 of its members as of a specific date on condition that the
13 member first pay to the corporation the reasonable cost of
14 obtaining and furnishing [such] the list and on such other
15 conditions as the court deems appropriate. Where the member
16 seeks to inspect the books and records of the corporation, other
17 than its membership register or list of members, he shall first
18 establish:

19 (1) that he has complied with the provisions of this
20 section respecting the form and manner of making demand for
21 inspection of such document; and

22 (2) that the inspection he seeks is for a proper
23 purpose.

24 Where the member seeks to inspect the membership register or
25 list of members of the corporation and he has complied with the
26 provisions of this section respecting the form and manner of
27 making demand for inspection of [such] the documents, the burden
28 of proof shall be upon the corporation to establish that the
29 inspection he seeks is for an improper purpose. The court may,
30 in its discretion, prescribe any limitations or conditions with

1 reference to the inspection, or award such other or further
2 relief as the court [may deem] deems just and proper. The court
3 may order books, documents and records, pertinent extracts
4 therefrom, or duly authenticated copies thereof, to be brought
5 [within] into this Commonwealth and kept in this Commonwealth
6 upon such terms and conditions as the order may prescribe.

7 (d) Cross references.--See sections 107 (relating to form of
8 records) and 5512 (relating to informational rights of a
9 director).

10 § 5510. [(Reserved).] Certain specifically authorized debt
11 terms.

12 (a) Interest rates.--A nonprofit corporation shall not plead
13 or set up usury, or the taking of more than the lawful rate of
14 interest, or the taking of any finance, service or default
15 charge in excess of any maximum rate therefor provided or
16 prescribed by law, as a defense to any action or proceeding
17 brought against it to recover damages on, or to enforce payment
18 of, or to enforce any other remedy on, any obligation executed
19 or effected by the corporation.

20 (b) Yield maintenance premiums.--A prepayment premium
21 determined by reference to the approximate spread between the
22 yield at issuance, or at the date of amendment of any of the
23 terms, of an obligation of a corporation and the yield at or
24 about such date of an interest rate index of independent
25 significance and contingent upon a change in the ownership of or
26 memberships in the corporation or a default by or other change
27 in the condition or prospects of the corporation or any
28 affiliate of the corporation shall be deemed liquidated damages
29 and shall not constitute a penalty.

30 (c) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection:

3 "Affiliate." An affiliate or associate as defined in section
4 2552 (relating to definitions).

5 "Obligation." Includes an installment sale contract.

6 (d) Cross reference.--See section 6146 (relating to
7 provisions applicable to all foreign corporations).

8 § 5512. Informational rights of a director.

9 (a) General rule.--To the extent reasonably related to the
10 performance of the duties of the director, including those
11 arising from service as a member of a committee of the board of
12 directors, a director of a nonprofit corporation is entitled:

13 (1) in person or by any attorney or other agent, at any
14 reasonable time, to inspect and copy corporate books, records
15 and documents and, in addition, to inspect, and receive
16 information regarding, the assets, liabilities and operations
17 of the corporation and any subsidiaries of the corporation
18 incorporated or otherwise organized or created under the laws
19 of this Commonwealth that are controlled directly or
20 indirectly by the corporation; and

21 (2) to demand that the corporation exercise whatever
22 rights it may have to obtain information regarding any other
23 subsidiaries of the corporation.

24 (b) Proceedings for the enforcement of inspection by a
25 director.--If the corporation, or an officer or agent thereof,
26 refuses to permit an inspection or obtain or provide information
27 sought by a director or attorney or other agent acting for the
28 director pursuant to subsection (a) or does not reply to the
29 request within two business days after the request has been
30 made, the director may apply to the court for an order to compel

1 the inspection or the obtaining or providing of the information.
2 The court shall summarily order the corporation to permit the
3 requested inspection or to obtain the information unless the
4 corporation establishes that the information to be obtained by
5 the exercise of the right is not reasonably related to the
6 performance of the duties of the director or that the director
7 or the attorney or agent of the director is likely to use the
8 information in a manner that would violate the duty of the
9 director to the corporation. The order of the court may contain
10 provisions protecting the corporation from undue burden or
11 expense and prohibiting the director from using the information
12 in a manner that would violate the duty of the director to the
13 corporation.

14 (c) Cross references.--See sections 107 (relating to form of
15 records), 5508 (relating to corporate records; inspection by
16 members) and 42 Pa.C.S. § 2503(7) (relating to right of
17 participants to receive counsel fees).

18 § 5552. Liabilities of members.

19 (a) General rule.--[The members of a nonprofit corporation
20 shall not be personally liable for the debts, liabilities or
21 obligations of the corporation.] A member of a nonprofit
22 corporation shall not be liable, solely by reason of being a
23 member, under an order of a court or in any other manner for a
24 debt, obligation or liability of the corporation of any kind or
25 for the acts of any member or representative of the corporation.

26 (b) Obligations of member to corporation.--A member shall be
27 liable to the corporation only to the extent of any unpaid
28 portion of the capital contributions, membership dues or
29 assessments which the corporation may have lawfully imposed upon
30 him, or for any other indebtedness owed by him to the

1 corporation. No action shall be brought by any creditor of the
2 corporation to reach and apply any such liability to any debt of
3 the corporation until after:

4 (1) final judgment [shall have] has been rendered
5 against the corporation in favor of the creditor and
6 execution thereon returned unsatisfied[, or the corporation
7 shall have been adjudged bankrupt, or];

8 (2) a case involving the corporation has been brought
9 under 11 U.S.C. Ch. 7 (relating to liquidation) and a
10 distribution has been made and the case closed or a notice of
11 no assets has been issued; or

12 (3) a receiver [shall have] has been appointed with
13 power to collect debts, and [which] the receiver, on demand
14 of a creditor to bring an action thereon, has refused to sue
15 for [such] the unpaid amount, or the corporation [shall have]
16 has been dissolved or ceased its activities leaving debts
17 unpaid.

18 [No such] (c) Action by a creditor.--An action by a creditor
19 under subsection (b) shall not be brought more than three years
20 after the happening of [any one of such events.] the first to
21 occur of the events listed in subsection (b)(1) through (3).

22 § 5709. Conduct of members meeting.

23 (a) Presiding officer.--There shall be a presiding officer
24 at every meeting of the members. The presiding officer shall be
25 appointed in the manner provided in the bylaws or, in the
26 absence of such provision, by the board of directors. If the
27 bylaws are silent on the appointment of the presiding officer
28 and the board fails to designate a presiding officer, the
29 president shall be the presiding officer.

30 (b) Authority of the presiding officer.--Except as otherwise

1 provided in the bylaws, the presiding officer shall determine
2 the order of business and shall have the authority to establish
3 rules for the conduct of the meeting.

4 (c) Procedural standard.--Any action by the presiding
5 officer in adopting rules for, and in conducting, a meeting
6 shall be fair to the members.

7 (d) Closing of the polls.--The presiding officer shall
8 announce at the meeting when the polls close for each matter
9 voted upon. If no announcement is made, the polls shall be
10 deemed to have closed upon the final adjournment of the meeting.
11 After the polls close, no ballots, proxies or votes, nor any
12 revocations or changes thereto, may be accepted.

13 § 5731. Executive and other committees of the board.

14 (a) Establishment and powers.--Unless otherwise restricted
15 in the bylaws:

16 (1) The board of directors may, by resolution adopted by
17 a majority of the directors in office, establish one or more
18 committees to consist of one or more directors of the
19 corporation.

20 (2) Any [such] committee, to the extent provided in the
21 resolution of the board of directors or in the bylaws, shall
22 have and may exercise all of the powers and authority of the
23 board of directors, except that [no such] a committee shall
24 not have any power or authority as to the following:

25 (i) The submission to members of any action
26 requiring approval of members under this [article]
27 subpart.

28 (ii) The creation or filling of vacancies in the
29 board of directors.

30 (iii) The adoption, amendment or repeal of the

1 bylaws.

2 (iv) The amendment or repeal of any resolution of
3 the board that by its terms is amendable or repealable
4 only by the board.

5 (v) Action on matters committed by the bylaws or a
6 resolution of the board of directors exclusively to
7 another committee of the board.

8 [(2)] (3) The board may designate one or more directors
9 as alternate members of any committee, who may replace any
10 absent or disqualified member at any meeting of the
11 committee. In the absence or disqualification of a member of
12 a committee, the member or members thereof present at any
13 meeting and not disqualified from voting, whether or not he
14 or they constitute a quorum, may unanimously appoint another
15 director to act at the meeting in the place of any [such]
16 absent or disqualified member.

17 (b) Term.--Each committee of the board shall serve at the
18 pleasure of the board.

19 § 5745. Advancing expenses.

20 Expenses (including attorneys' fees) incurred in defending
21 any action or proceeding referred to in this subchapter may be
22 paid by a nonprofit corporation in advance of the final
23 disposition of the action or proceeding upon receipt of an
24 undertaking by or on behalf of the representative to repay the
25 amount if it is ultimately determined that he is not entitled to
26 be indemnified by the corporation as authorized in this
27 subchapter or otherwise. Except as otherwise provided in the
28 bylaws, advancement of expenses shall be authorized by the board
29 of directors. Section 5728 (relating to interested members,
30 directors or officers; quorum) shall not be applicable to the

1 advancement of expenses under this section.

2 § 5748. Application to surviving or new corporations.

3 [For] (a) General rule.--Except as provided in subsection
4 (b), for the purposes of this subchapter, references to "the
5 corporation" include all constituent corporations absorbed in a
6 consolidation, merger or division, as well as the surviving or
7 new corporations surviving or resulting therefrom, so that any
8 person who is or was a representative of the constituent,
9 surviving or new corporation, or is or was serving at the
10 request of the constituent, surviving or new corporation as a
11 representative of another domestic or foreign corporation for
12 profit or not-for-profit, partnership, joint venture, trust or
13 other enterprise, shall stand in the same position under the
14 provisions of this subchapter with respect to the surviving or
15 new corporation as he would if he had served the surviving or
16 new corporation in the same capacity.

17 (b) Divisions.--Notwithstanding subsection (a), the
18 obligations of a dividing corporation to indemnify and advance
19 expenses of its representatives, whether arising under this
20 subchapter or otherwise, may be allocated in a division in the
21 same manner and with the same effect as any other liability of
22 the dividing corporation.

23 § 5758. Voting rights of members.

24 (a) General rule.--Unless otherwise provided in a bylaw
25 adopted by the members, every member of a nonprofit corporation
26 shall be entitled to one vote.

27 (b) Procedures.--The manner of voting on any matter,
28 including changes in the articles or bylaws, may be by ballot,
29 mail or any reasonable means provided in a bylaw adopted by the
30 members. If a bylaw adopted by the members provides a fair and

1 reasonable procedure for the nomination of candidates for any
2 office, only candidates who have been duly nominated in
3 accordance therewith shall be eligible for election. Unless
4 otherwise provided in such a bylaw, in elections for directors,
5 voting shall be by ballot, and the candidates receiving the
6 highest number of votes from each class or group of classes, if
7 any, of members entitled to elect directors separately up to the
8 number of directors to be elected by such class or group of
9 classes shall be elected. If at any meeting of members directors
10 of more than one class are to be elected, each class of
11 directors shall be elected in a separate election.

12 (c) Cumulative voting.--[The members of a nonprofit
13 corporation shall have the right to cumulate their votes for the
14 election of directors only if and to the extent a bylaw adopted
15 by the members so provides.] If a bylaw adopted by the members
16 so provides, in each election of directors of a nonprofit
17 corporation every member entitled to vote shall have the right
18 to multiply the number of votes to which he may be entitled by
19 the total number of directors to be elected in the same election
20 by the members or the class of members to which he belongs and
21 he may cast the whole number of his votes for one candidate or
22 he may distribute them among any two or more candidates.

23 (d) Sale of votes.--No member shall sell his vote or issue a
24 proxy for money or anything of value.

25 (e) Voting lists.--Upon request of a member, the books or
26 records of membership shall be produced at any regular or
27 special meeting of the corporation. If at any meeting the right
28 of a person to vote is challenged, the presiding officer shall
29 require [such] the books or records to be produced as evidence
30 of the right of the person challenged to vote, and all persons

1 who appear by [such] the books or records to be members entitled
2 to vote may vote. See section 6145 (relating to applicability of
3 certain safeguards to foreign corporations).

4 § 5782. Actions against directors, members of an other body and
5 officers.

6 (a) General rule.--Except as provided in subsection (b), in
7 any action or proceeding brought to enforce a secondary right on
8 the part of one or more members of a nonprofit corporation
9 against any present or former officer, director or member of an
10 other body of the corporation because the corporation refuses to
11 enforce rights that may properly be asserted by it, each
12 plaintiff must aver and it must be made to appear that each
13 plaintiff was a member of the corporation at the time of the
14 transaction of which he complains.

15 (b) Exception.--Any member who, except for the provisions of
16 subsection (a), would be entitled to maintain the action or
17 proceeding and who does not meet such requirements may,
18 nevertheless in the discretion of the court, be allowed to
19 maintain the action or proceeding on preliminary showing to the
20 court, by application and upon such verified statements and
21 depositions as may be required by the court, that there is a
22 strong prima facie case in favor of the claim asserted on behalf
23 of the corporation and that without the action serious injustice
24 will result.

25 (c) Security for costs.--In any action or proceeding
26 instituted or maintained by less than the smaller of 50 members
27 of any class or 5% of the members of any class of the
28 corporation, the corporation in whose right the action or
29 proceeding is brought shall be entitled at any stage of the
30 proceedings to require the plaintiffs to give security for the

1 reasonable expenses, including attorney fees, that may be
2 incurred by it in connection therewith or for which it may
3 become liable pursuant to section 5743 (relating to mandatory
4 indemnification), but only insofar as relates to actions by or
5 in the right of the corporation, to which security the
6 corporation shall have recourse in such amount as the court
7 determines upon the termination of the action or proceeding. The
8 amount of security may, from time to time, be increased or
9 decreased in the discretion of the court upon showing that the
10 security provided has or may become inadequate or excessive. The
11 security may be denied or limited in the discretion of the court
12 upon preliminary showing to the court, by application and upon
13 such verified statements and depositions as may be required by
14 the court, establishing prima facie that the requirement of full
15 or partial security would impose undue hardship on plaintiffs
16 and serious injustice would result.

17 (d) Cross reference.--See section 6146 (relating to
18 provisions applicable to all foreign corporations).

19 § 5903. Bankruptcy or insolvency proceedings.

20 (a) General rule.--[Whenever] Unless otherwise provided in
21 the bylaws, whenever a nonprofit corporation is insolvent or in
22 financial difficulty, the board of directors may, by resolution
23 and without the consent of the members, authorize and designate
24 the officers of the corporation to execute a deed of assignment
25 for the benefit of creditors, or file a voluntary petition in
26 bankruptcy, or file an answer consenting to the appointment of a
27 receiver upon a complaint in the nature of an equity action
28 filed by creditors or members, or, if insolvent, file an answer
29 to an involuntary petition in bankruptcy admitting the
30 insolvency of the corporation and its willingness to be adjudged

1 a debtor on that ground.

2 (b) Bankruptcy proceedings.--[A] If authorized pursuant to
3 subsection (a), a nonprofit corporation may participate in
4 proceedings under and in the manner provided by Title 11 of the
5 United States Code (relating to bankruptcy) notwithstanding any
6 contrary provision of its articles or bylaws or this subpart,
7 other than [section] sections 103 (relating to subordination of
8 title to regulatory laws) and 5107 (relating to subordination of
9 subpart to canon law). The corporation shall have full power and
10 authority to put into effect and carry out a plan of
11 reorganization or arrangement and the decrees and orders of the
12 court, or judge or referee relative thereto, and may take any
13 proceeding and do any act provided in the plan or arrangement or
14 directed by such decrees and orders, without further action by
15 its directors or members. Such power and authority may be
16 exercised, and such proceedings and acts may be taken, as may be
17 directed by such decrees or orders, by the trustees or receivers
18 of the corporation appointed in the bankruptcy proceedings, or a
19 majority thereof, or, if none be appointed and acting, by
20 designated officers of the corporation, or by a master or other
21 representative appointed by the court or judge or referee, with
22 the effect as if exercised and taken by unanimous action of the
23 directors and members of the corporation. Without limiting the
24 generality or effect of the foregoing, the corporation may:

25 * * *

26 § 5912. Proposal of amendments.

27 (a) General rule.--Every amendment [to] of the articles of a
28 nonprofit corporation shall be proposed [by]:

29 (1) by the adoption by the board of directors or other
30 body of a resolution setting forth the proposed amendment;

1 (2) unless otherwise provided in the articles, by
2 petition of members entitled to cast at least 10% of the
3 votes [which] that all members are entitled to cast thereon,
4 setting forth the proposed amendment, which petition shall be
5 directed to the board of directors and filed with the
6 secretary of the corporation; or

7 (3) by such other method as may be provided in the
8 bylaws.

9 [The] (b) Submission to members.--Except where the approval
10 of the members is unnecessary under this subchapter, the board
11 of directors or other body [or the petitioning members] shall
12 direct that the proposed amendment be submitted to a vote of the
13 members entitled to vote thereon at a regular or special meeting
14 of the members.

15 [[b)] (c) Form of amendment.--[The resolution or petition
16 shall contain the language of the proposed amendment to the
17 articles by providing that the articles shall be amended so as
18 to read as therein set forth in full, or that any provision
19 thereof be amended so as to read as therein set forth in full,
20 or that the matter stated in the resolution or petition be added
21 to or stricken from the articles. The resolution or petition may
22 set forth the manner and basis of reclassifying the shares of
23 the corporation.] The resolution or petition shall contain the
24 language of the proposed amendment of the articles:

25 (1) by setting forth the existing text of the articles
26 or the provision thereof that is proposed to be amended, with
27 brackets around language that is to be deleted and
28 underscoring under language that is to be added; or

29 (2) by providing that the articles shall be amended so
30 as to read as therein set forth in full, or that any

1 provision thereof be amended so as to read as therein set
2 forth in full, or that the matter stated in the resolution or
3 petition be added to or stricken from the articles.

4 (d) Terms of amendment.--The resolution or petition may set
5 forth the manner and basis of reclassifying the memberships in
6 or shares of the corporation. Any of the terms of a plan of
7 reclassification or other action contained in an amendment may
8 be made dependent upon facts ascertainable outside of the
9 amendment if the manner in which the facts will operate upon the
10 terms of the amendment is set forth in the amendment. Such facts
11 may include, without limitation, actions or events within the
12 control of or determinations made by the corporation or a
13 representative of the corporation.

14 § 5922. Plan of merger or consolidation.

15 (a) Preparation of plan.--A plan of merger or consolidation,
16 as the case may be, shall be prepared, setting forth:

17 (1) The terms and conditions of the merger or
18 consolidation.

19 [(2) The mode of carrying the merger or consolidation
20 into effect.

21 (3)] (2) If the surviving or new corporation is or is to
22 be a domestic nonprofit corporation:

23 (i) any changes desired to be made in the articles,
24 which may include a restatement of the articles in the
25 case of a merger; or

26 (ii) in the case of a consolidation, all of the
27 statements required by this [article] subpart to be set
28 forth in restated articles.

29 [(4)] (3) Such other [details and] provisions as are
30 deemed desirable.

1 (b) Post-adoption amendment.--A plan of merger or
2 consolidation may contain a provision that the boards of
3 directors or other bodies of the constituent corporations may
4 amend the plan at any time prior to its effective date, except
5 that an amendment made subsequent to the adoption of the plan by
6 the members of any constituent corporation shall not change:

7 (1) The term of memberships or the amount or kind of
8 securities, obligations, cash, property or rights to be
9 received in exchange for or on conversion of all or any of
10 the memberships in the constituent corporation.

11 (2) Any term of the articles of the surviving or new
12 corporation to be effected by the merger or consolidation.

13 (3) Any of the terms and conditions of the plan if the
14 change would adversely affect the members of the constituent
15 corporation.

16 [[b)] (c) Proposal.--Every merger or consolidation shall be
17 proposed in the case of each domestic nonprofit corporation
18 [by]:

19 (1) by the adoption by the board of directors or other
20 body of a resolution approving the plan of merger or
21 consolidation;

22 (2) unless otherwise provided in the articles, by
23 petition of members entitled to cast at least 10% of the
24 votes [which] that all members are entitled to cast thereon,
25 setting forth the proposed plan of merger or consolidation,
26 which petition shall be directed to the board of directors
27 and filed with the secretary of the corporation; or

28 (3) by such other method as may be provided in the
29 bylaws.

30 [The] (d) Submission to members.--Except where the

1 corporation has no members entitled to vote thereon, the board
2 of directors or other body [or the petitioning members] shall
3 direct that the plan be submitted to a vote of the members
4 entitled to vote thereon at a regular or special meeting of the
5 members.

6 (e) Party to plan or transaction.--A corporation,
7 partnership, business trust or other association that approves a
8 plan in its capacity as a member or creditor of a merging or
9 consolidating corporation, or that furnishes all or a part of
10 the consideration contemplated by a plan, does not thereby
11 become a party to the plan or the merger or consolidation for
12 the purposes of this subchapter.

13 (f) Reference to outside facts.--Any of the terms of a plan
14 of merger or consolidation may be made dependent upon facts
15 ascertainable outside of the plan if the manner in which the
16 facts will operate upon the terms of the plan is set forth in
17 the plan. Such facts may include, without limitation, actions or
18 events within the control of or determinations made by a party
19 to the plan or a representative of a party to the plan.

20 § 5923. Notice of meeting of members.

21 (a) General rule.--Written notice of the meeting of members
22 that will act on the proposed plan shall[, not less than ten
23 days before the meeting of members called for the purpose of
24 considering the proposed plan,] be given to each member of
25 record, whether or not entitled to vote thereon, of each
26 domestic nonprofit corporation that is a party to the merger or
27 consolidation. There shall be included in, or enclosed with,
28 [such] the notice a copy of the proposed plan or a summary
29 thereof. The notice shall state that a copy of the bylaws of the
30 surviving or new corporation will be furnished to any member on

1 request and without cost.

2 (b) Cross reference.--See Subchapter A of Chapter 57
3 (relating to notice and meetings generally).

4 § 5929. Effect of merger or consolidation.

5 (a) Single surviving or new corporation.--Upon the merger or
6 consolidation becoming effective, the several corporations
7 parties to the [plan of] merger or consolidation shall be a
8 single corporation which, in the case of a merger, shall be
9 [that] the corporation designated in the plan of merger as the
10 surviving corporation[,] and, in the case of a consolidation,
11 shall be the new corporation provided for in the plan of
12 consolidation. The separate existence of all corporations
13 parties to the [plan of] merger or consolidation shall cease,
14 except that of the surviving corporation, in the case of a
15 merger. The surviving or new corporation, as the case may be, if
16 it is a domestic nonprofit corporation, shall not thereby
17 acquire authority to engage in any business or exercise any
18 right [which] that a corporation may not be incorporated under
19 this [article] subpart to engage in or exercise.

20 (b) Property rights.--Except as otherwise provided by order,
21 if any, obtained pursuant to section [5547(b)] 5547(c) (relating
22 to nondiversion of certain property), all the property, real,
23 personal[,] and mixed, and franchises of each of the
24 corporations parties to the [plan of] merger or consolidation,
25 and all debts due on whatever account to any of them, including
26 subscriptions for membership and other choses in action
27 belonging to any of them, shall be [taken and] deemed to be
28 [transferred to and] vested in and shall belong to the surviving
29 or new corporation, as the case may be, without further [act or
30 deed] action, and the title to any real estate, or any interest

1 therein, vested in any of the corporations shall not revert or
2 be in any way impaired by reason of the merger or consolidation.
3 The surviving or new corporation shall thenceforth be
4 responsible for all the liabilities [and obligations] of each of
5 the corporations so merged or consolidated. [No liens] Liens
6 upon the property of the merging or consolidating corporations
7 shall not be impaired by [such] the merger or consolidation, and
8 any claim existing or action or proceeding pending by or against
9 any of [such] the corporations may be prosecuted to judgment as
10 if [such] the merger or consolidation had not taken place, or
11 the surviving or new corporation may be proceeded against or
12 substituted in its place. Any devise, gift or grant contained in
13 any will or other instrument, in trust or otherwise, made before
14 or after such merger or consolidation, to or for any of the
15 constituent corporations, shall inure to the surviving or new
16 corporation, as the case may be, subject to compliance with the
17 requirements of section 5550 (relating to devises, bequests and
18 gifts after certain fundamental changes).

19 (c) Taxes.--Any taxes, penalties and public accounts of the
20 Commonwealth, claimed against any of the merging or
21 consolidating corporations, but not settled, assessed or
22 determined prior to [such] the merger or consolidation, shall be
23 settled, assessed or determined against the surviving or new
24 corporation[,] and, together with interest thereon, shall be a
25 lien against the franchises and property, both real and
26 personal, of the surviving or new corporation.

27 (d) Articles of incorporation.--In the case of a merger, the
28 articles of incorporation of the surviving domestic nonprofit
29 corporation, if any, shall be deemed to be amended to the
30 extent, if any, that changes in its articles are stated in the

1 plan of merger[; and in]. In the case of a consolidation into a
2 domestic nonprofit corporation, the statements [which] that are
3 set forth in the plan of consolidation, or articles of
4 incorporation set forth therein, shall be deemed to be the
5 articles of incorporation of the new corporation.

6 § 5952. Proposal and adoption of plan of division.

7 (a) Preparation of plan.--A plan of division shall be
8 prepared, setting forth:

9 (1) The terms and conditions of the division, including
10 the manner and basis of:

11 (i) [the] The reclassification of the membership
12 interests or shares [or obligations] of the surviving
13 corporation, if there be one[; and].

14 (ii) [the] The disposition of the membership
15 interests or shares [and] or obligations, if any, of the
16 new corporation or corporations resulting from the
17 division.

18 [(2) The mode of carrying the division into effect.

19 (3)] (2) A statement that the dividing nonprofit
20 corporation will, or will not, survive the division.

21 [(4)] (3) Any changes desired to be made in the articles
22 of the surviving corporation, if there be one, including a
23 restatement of the articles.

24 [(5)] (4) The articles of incorporation required by
25 subsection (b) [of this section].

26 [(6)] (5) Such other [details and] provisions as are
27 deemed desirable.

28 (b) Articles of new corporations.--There shall be included
29 in or annexed to the plan of division:

30 (1) Articles of incorporation, which shall contain all

1 of the statements required by this [article] subpart to be
2 set forth in restated articles, for each of the new domestic
3 nonprofit corporations, if any, resulting from the division.

4 (2) Articles of incorporation, certificates of
5 incorporation[,] or other charter documents for each of the
6 new foreign nonprofit corporations [not-for-profit], if any,
7 resulting from the division.

8 (c) Proposal and adoption.--[The] Except as otherwise
9 provided in section 5953 (relating to division without member
10 approval), the plan of division shall be proposed and adopted,
11 and may be amended after its adoption and terminated, by a
12 domestic nonprofit corporation in the manner provided for the
13 proposal, adoption, amendment and termination of a plan of
14 merger in Subchapter C (relating to merger, consolidation and
15 sale of assets) or, if the dividing corporation is a foreign
16 nonprofit corporation [not-for-profit], in accordance with the
17 laws of the jurisdiction in which it is incorporated[.] and, in
18 the case of a foreign domiciliary corporation, the provisions of
19 this subpart to the extent provided by section 6145 (relating to
20 applicability of certain safeguards to foreign corporations).
21 There shall be included in or enclosed with the notice of the
22 meeting of members that will act on the plan a copy or summary
23 of the plan.

24 (d) Special requirements.--If any provision of the bylaws of
25 a dividing domestic nonprofit corporation adopted before January
26 1, 1972 shall require for the adoption of a plan of merger or
27 consolidation or a plan involving the sale, lease or exchange of
28 all or substantially all of the property and assets of the
29 corporation a specific number or percentage of votes of
30 directors, members, or members of an other body or other special

1 procedures, the plan of division shall not be adopted without
2 such number or percentage of votes or compliance with such other
3 special procedures.

4 (e) Financial status of resulting corporations.--Unless the
5 plan of division provides that the dividing corporation shall
6 survive the division and that all membership interests or shares
7 or obligations, if any, of all new corporations resulting from
8 the plan shall be owned solely by the surviving corporation, no
9 plan of division may be made effective at a time when the
10 dividing corporation is insolvent or when the division would
11 render any of the resulting corporations insolvent.

12 (f) Rights of holders of indebtedness.--If any debt
13 securities, notes or similar evidences of indebtedness for money
14 borrowed, whether secured or unsecured, indentures or other
15 contracts were issued, incurred or executed by the dividing
16 corporation before January 1, 1972, and have not been amended
17 subsequent to that date, the liability of the dividing
18 corporation thereunder shall not be affected by the division nor
19 shall the rights of the obligees thereunder be impaired by the
20 division, and each of the resulting corporations may be
21 proceeded against or substituted in place of the dividing
22 corporation as joint and several obligors on such liability,
23 regardless of any provision of the plan of division apportioning
24 the liabilities of the dividing corporation.

25 (g) Reference to outside facts.--Any of the terms of a plan
26 of division may be made dependent upon facts ascertainable
27 outside of the plan if the manner in which the facts will
28 operate upon the terms of the plan is set forth in the plan.
29 Such facts may include, without limitation, actions or events
30 within the control of or determinations made by the dividing

1 corporation or a representative of the dividing corporation.

2 § 5953. [(Reserved).] Division without member approval.

3 Unless otherwise required by its bylaws or by section 5952
4 (relating to proposal and adoption of plan of division), a plan
5 of division that does not alter the state of incorporation of a
6 nonprofit corporation nor amend in any respect the provisions of
7 its articles, except amendments that under section 5914(b)
8 (relating to adoption in absence of voting members) may be made
9 without member action, shall not require the approval of the
10 members of the corporation if the transfers of assets effected
11 by the division, if effected by means of a sale, lease, exchange
12 or other disposition, would not require the approval of members
13 under section 5930 (relating to voluntary transfer of corporate
14 assets).

15 § 5957. Effect of division.

16 (a) Multiple resulting corporations.--Upon the division
17 becoming effective, the dividing corporation shall be subdivided
18 into the distinct and independent resulting corporations named
19 in the plan of division and, if the dividing corporation is not
20 to survive the division, the existence of the dividing
21 corporation shall cease. The resulting corporations, if they are
22 domestic nonprofit corporations, shall not thereby acquire
23 authority to engage in any business or exercise any right
24 [which] that a corporation may not be incorporated under this
25 [article] subpart to engage in or exercise. Any resulting
26 foreign nonprofit corporation [which] that is stated in the
27 articles of division to be a qualified foreign nonprofit
28 corporation shall be a qualified foreign nonprofit corporation
29 under [this subpart] Article C (relating to foreign nonprofit
30 corporations), and the articles of division shall be deemed to

1 be the application for a certificate of authority and the
2 certificate of authority issued thereon of [such] the
3 corporation.

4 (b) Property rights; allocations of assets and
5 liabilities.--

6 (1) Except as otherwise provided by order, if any,
7 obtained pursuant to section [5547(b)] 5547(c) (relating to
8 nondiversion of certain property)[, all]:

9 (i) All the property, real, personal[,] and mixed,
10 and franchises of the dividing corporation, and all debts
11 due on whatever account to it, including subscriptions
12 for membership and other choses in action belonging to
13 it, shall, to the extent allocations of assets are
14 contemplated by the plan of division, be [taken and]
15 deemed without further [act or deed] action to be
16 [transferred] allocated to and vested in the resulting
17 corporations on such a manner and basis and with such
18 effect as is specified in the plan [of division], or per
19 capita among the resulting corporations, as tenants in
20 common, if no [such] specification is made in the plan[.
21 The], and the title to any real estate, or interest
22 therein, vested in any of the corporations shall not
23 revert or be in any way impaired by reason of the
24 division.

25 (ii) Upon the division becoming effective, the
26 resulting corporations shall each thenceforth be
27 responsible as separate and distinct corporations only
28 for such liabilities [and obligations] as each
29 corporation may undertake or incur in its own name, but
30 shall be liable [inter se] for the [debts and]

1 liabilities of the dividing corporation in the manner and
2 on the basis [specified in the plan of division. No
3 liens] provided in paragraphs (4) and (5).

4 (iii) Liens upon the property of the dividing
5 corporation shall not be impaired by the division.

6 [One] (iv) To the extent allocations of liabilities
7 are contemplated by the plan of division, the liabilities
8 of the dividing corporation shall be deemed without
9 further action to be allocated to and become the
10 liabilities of the resulting corporations on such a
11 manner and basis and with such effect as is specified in
12 the plan; and one or more, but less than all, of the
13 resulting corporations shall be free of [all] the
14 liabilities [and obligations] of the dividing corporation
15 to the extent, if any, specified in the plan, if in
16 either case:

17 (A) no fraud [of corporate creditors or] on
18 members without voting rights [and if no] or
19 violation of law shall be effected thereby[,]; and
20 [if applicable provisions of law are complied with.
21 Otherwise, the liability]

22 (B) the plan does not constitute a fraudulent
23 transfer under 12 Pa.C.S. Ch. 51 (relating to
24 fraudulent transfers).

25 (v) If the conditions in subparagraph (iv) for
26 freeing one or more of the resulting corporations from
27 the liabilities of the dividing corporation, or for
28 allocating some or all of the liabilities of the dividing
29 corporation, are not satisfied, the liabilities of the
30 dividing corporation[, or of its members, directors, or

1 officers,] as to which those conditions are not satisfied
2 shall not be affected by the division[,] nor shall the
3 rights of [the] creditors [thereof or of any person
4 dealing with such corporation] thereunder be impaired by
5 [such] the division[,] and[, except as otherwise provided
6 in this section,] any claim existing or action or
7 proceeding pending by or against [such] the corporation
8 with respect to those liabilities may be prosecuted to
9 judgment as if [such] the division had not taken place,
10 or the resulting corporations may be proceeded against or
11 substituted in [its] place of the dividing corporation as
12 joint and several obligors on [such liability] those
13 liabilities, regardless of any provision of the plan of
14 division apportioning the [debts and] liabilities of the
15 dividing corporation.

16 (2) It shall not be necessary for a plan of division to
17 list each individual asset or liability of the dividing
18 corporation to be allocated to a new corporation so long as
19 those assets and liabilities are described in a reasonable
20 manner.

21 (3) Each new corporation shall hold any assets and
22 liabilities allocated to it as the successor to the dividing
23 corporation, and those assets and liabilities shall not be
24 deemed to have been assigned to the new corporation in any
25 manner, whether directly or indirectly or by operation of
26 law.

27 (c) Taxes.--Any taxes, penalties and public accounts of the
28 Commonwealth, claimed against the dividing corporation, but not
29 settled, assessed or determined prior to [such] the division,
30 shall be settled, assessed or determined against any of the

1 resulting corporations[,] and, together with interest thereon,
2 shall be a lien against the franchises and property, both real
3 and personal, of all [such] the corporations. [The] Upon the
4 application of the dividing corporation, the Department of
5 Revenue [may, upon the application of the dividing corporation],
6 with the concurrence of the Office of Employment Security of the
7 Department of Labor and Industry, shall release one or more, but
8 less than all, of the resulting corporations from liability and
9 liens for all taxes, penalties and public accounts of the
10 dividing corporation due the Commonwealth [or any other taxing
11 authority] for periods prior to the effective date of the
12 division, if [the Department of Revenue is] those departments
13 are satisfied that the public revenues will be adequately
14 secured.

15 (d) Articles of surviving corporation.--The articles of
16 incorporation of the surviving corporation, if there be one,
17 shall be deemed to be amended to the extent, if any, that
18 changes in its articles are stated in the plan of division.

19 (e) Articles of new corporations.--The statements [which]
20 that are set forth in the plan of division with respect to each
21 new domestic nonprofit corporation and [which] that are required
22 or permitted to be set forth in restated articles of
23 incorporation of corporations incorporated under this [article]
24 subpart, or the articles of incorporation of each new
25 corporation set forth therein, shall be deemed to be the
26 articles of incorporation of each [such] new corporation.

27 (f) Directors and officers.--Unless otherwise provided in
28 the plan, the directors and officers of the dividing corporation
29 shall be the initial directors and officers of each of the
30 resulting corporations.

1 (g) Disposition of memberships.--Unless otherwise provided
2 in the plan, the memberships and other securities or
3 obligations, if any, of each new corporation resulting from the
4 division shall be distributable to:

5 (1) the surviving corporation, if the dividing
6 corporation survives the division; or

7 (2) the members of the dividing corporation pro rata, in
8 any other case.

9 (h) Conflict of laws.--It is the intent of the General
10 Assembly that:

11 (1) The effect of a division of a domestic business
12 corporation shall be governed solely by the laws of this
13 Commonwealth and any other jurisdiction under the laws of
14 which any of the resulting corporations is incorporated.

15 (2) The effect of a division on the assets and
16 liabilities of the dividing corporation shall be governed
17 solely by the laws of this Commonwealth and any other
18 jurisdiction under the laws of which any of the resulting
19 corporations is incorporated.

20 (3) The validity of any allocations of assets or
21 liabilities by a plan of division of a domestic business
22 corporation, regardless of whether or not any of the new
23 corporations is a foreign business corporation, shall be
24 governed solely by the laws of this Commonwealth.

25 (4) In addition to the express provisions of this
26 subsection, this subchapter shall otherwise generally be
27 granted the protection of full faith and credit under the
28 Constitution of the United States.

29 § 5975. Predissolution provision for liabilities.

30 (a) Powers of board.--The board of directors or other body

1 of a nonprofit corporation that has elected to proceed under
2 this section shall have full power to wind up and settle the
3 affairs of [a nonprofit] the corporation in accordance with this
4 section prior to filing articles of dissolution in accordance
5 with section 5977 (relating to articles of dissolution).

6 (b) Notice to creditors and taxing authorities.--After the
7 approval by the members or the board of directors or other body
8 pursuant to section 5974(b) (relating to adoption in absence of
9 voting members) that the corporation dissolve voluntarily, the
10 corporation shall immediately cause notice of the winding up
11 proceedings to be officially published and to be mailed by
12 certified or registered mail to each known creditor and claimant
13 and to each municipal corporation in which [its registered
14 office or principal] it has a place of business in this
15 Commonwealth [is located].

16 (c) Winding up and distribution.--The corporation shall, as
17 speedily as possible, proceed to collect all sums due it,
18 convert into cash all corporate assets the conversion of which
19 into cash is required to discharge its liabilities and, out of
20 the assets of the corporation, discharge or make adequate
21 provision for the discharge of all liabilities of the
22 corporation, according to their respective priorities. Except as
23 otherwise provided in a bylaw adopted by the members or in this
24 subpart or by any other provision of law, any surplus remaining
25 after paying or providing for all liabilities of the corporation
26 shall be distributed to the shareholders, if any, pro rata, or
27 if there be no shareholders, among the members per capita. See
28 section 1972(a) (relating to proposal of voluntary dissolution).
29 § 5976. Judicial supervision of proceedings.

30 (a) General rule.--A nonprofit corporation that has elected

1 to proceed under section 1975 (relating to predissolution
2 provision for liabilities), at any time during the winding up
3 proceedings, may apply to the court to have the proceedings
4 continued under the supervision of the court and thereafter the
5 proceedings shall continue under the supervision of the court as
6 provided in Subchapter G (relating to involuntary liquidation
7 and dissolution).

8 * * *

9 § 5977. Articles of dissolution.

10 * * *

11 (b) Contents of articles.--The articles of dissolution shall
12 be executed by the corporation and shall set forth:

13 * * *

14 (5) A statement that:

15 (i) [that] all liabilities of the corporation have
16 been discharged or that adequate provision has been made
17 therefor; [or]

18 (ii) [that] the assets of the corporation are not
19 sufficient to discharge its liabilities, and that all the
20 assets of the corporation have been fairly and equitably
21 applied, as far as they will go, to the payment of such
22 liabilities[. An election by]; or

23 (iii) the corporation has elected to proceed under
24 Subchapter H [shall constitute the making of adequate
25 provision for the liabilities of the corporation,
26 including any judgment or decree that may be obtained
27 against the corporation in any pending action or
28 proceeding].

29 * * *

30 (7) [A] In the case of a corporation that has not

1 elected to proceed under Subchapter H, a statement that no
2 actions or proceedings are pending against the corporation in
3 any court, or that adequate provision has been made for the
4 satisfaction of any judgment or decree that may be obtained
5 against the corporation in each pending action or proceeding.

6 (8) [A] In the case of a corporation that has not
7 elected to proceed under Subchapter H, a statement that
8 notice of the winding-up proceedings of the corporation was
9 mailed by certified or registered mail to each known creditor
10 and claimant and to each municipal corporation in which the
11 [registered office or principal place of business of the]
12 corporation has a place of business in this Commonwealth [is
13 located].

14 * * *

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

18 § 5989. Articles of involuntary dissolution.

19 (a) General rule.--In a proceeding under this subchapter,
20 the court shall enter an order dissolving the nonprofit
21 corporation when the order, if any, obtained pursuant to section
22 5547(b) (relating to nondiversion of certain property) has been
23 entered and when the costs and expenses of the proceeding, and
24 all liabilities of the corporation have been discharged, and all
25 of its remaining assets have been distributed to the persons
26 entitled thereto, or, in case its assets are not sufficient to
27 discharge such costs, expenses and liabilities, when all the
28 assets have been applied, as far as they will go, to the payment
29 of such costs, expenses and liabilities. See section 139(b)
30 (relating to tax clearance in judicial proceedings).

1 (b) Filing.--After entry of an order of dissolution, the
2 office of the clerk of the court of common pleas shall prepare
3 and execute articles of dissolution substantially in the form
4 provided by section 5977 (relating to articles of dissolution),
5 attach thereto a certified copy of the order and transmit the
6 articles and attached order to the Department of State. [A
7 certificate or statement provided for by section 139 (relating
8 to tax clearance of certain fundamental transactions) shall not
9 be required, and the] The department shall not charge a fee in
10 connection with the filing of articles of dissolution under this
11 section. See [section] sections 134 (relating to docketing
12 statement) and 135 (relating to requirements to be met by filed
13 documents).

14 * * *

15 § 5991.1. Authority of board of directors.

16 (a) General rule.--The board of directors or other body of a
17 nonprofit corporation that has elected to proceed under this
18 subchapter shall have full power to wind up and settle the
19 affairs of the corporation in accordance with this subchapter
20 both prior to and after the filing of articles of dissolution in
21 accordance with section 5977 (relating to articles of
22 dissolution).

23 (b) Winding up.--The corporation shall, as speedily as
24 possible, proceed to comply with the requirements of this
25 subchapter while simultaneously collecting all sums due it and
26 converting into cash all corporate assets, the conversion of
27 which into cash is required to make adequate provision for its
28 liabilities.

29 § 6126. Amended certificate of authority.

30 (a) General rule.--After receiving a certificate of

1 authority, a qualified foreign nonprofit corporation may,
2 subject to the provisions of this subchapter, change [the name
3 under which it is authorized to transact business in this
4 Commonwealth] or correct any of the information set forth in its
5 application for a certificate of authority or previous filings
6 under this section by filing in the Department of State an
7 application for an amended certificate of authority. The
8 application shall be executed by the corporation and shall
9 state:

10 (1) The name under which the applicant corporation
11 currently holds a certificate of authority to do business in
12 this Commonwealth.

13 [(2) The name of the jurisdiction under the laws of
14 which the corporation is incorporated.

15 (3) The address, including street and number, if any, of
16 its principal office under the laws of the jurisdiction in
17 which it is incorporated.

18 (4)] (2) Subject to section 109 (relating to name of
19 commercial registered office provider in lieu of registered
20 address), the address, including street and number, if any,
21 of its registered office in this Commonwealth. [which may
22 constitute a change in the address of its registered office.

23 (5) The new name of the corporation and]

24 (3) The information to be changed or corrected.

25 (4) If the application reflects a change in the name of
26 the corporation, the application shall include a statement
27 that either:

28 (i) the change of name reflects a change effected in
29 the jurisdiction of incorporation; or

30 (ii) documents complying with section 6123(b)

1 (relating to exceptions) accompany the application.

2 (b) Issuance of amended certificate of authority.--Upon the
3 filing of the application, the applicant corporation shall be
4 deemed to hold an amended certificate of authority.

5 (c) Cross reference.--See section 134 (relating to docketing
6 statement).

7 § 6146. Provisions applicable to all foreign corporations.

8 The following provisions of this subpart shall, except as
9 otherwise provided in this section, be applicable to every
10 foreign corporation not-for-profit, whether or not required to
11 procure a certificate of authority under this chapter:

12 Section 5503 (relating to defense of ultra vires), as to
13 contracts and conveyances governed by the laws of this
14 Commonwealth and conveyances affecting real property situated
15 in this Commonwealth.

16 Section 5506 (relating to form of execution of
17 instruments), as to instruments or other documents governed
18 by the laws of this Commonwealth or affecting real property
19 situated in this Commonwealth.

20 Section 5510 (relating to certain specifically authorized
21 debt terms), as to obligations (as defined in the section)
22 governed by the laws of this Commonwealth or affecting real
23 property situated in this Commonwealth.

24 Section 5782 (relating to actions against directors,
25 members of an other body and officers), as to any action or
26 proceeding brought in a court of this Commonwealth.

27 § 8105. Ownership of certain professional partnerships.

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

1 partnership that renders one or more restricted professional
2 services shall be licensed persons. As used in this section,
3 the term "restricted professional services" shall have the
4 meaning specified in section 8903 (relating to definitions and
5 index of definitions).

6 § 8201. Scope.

7 * * *

8 (e) Prohibited termination.--A registration under this
9 subchapter may not be terminated while the partnership is a
10 bankrupt as that term is defined in section 8903 (relating to
11 definitions and index of definitions). See section 8221(f)
12 (relating to annual registration).

13 (f) Alternative procedure.--In lieu of filing a statement of
14 registration as provided in subsection (a), a limited
15 partnership may register as a registered limited liability
16 partnership by including in its certificate of limited
17 partnership, either originally or by amendment, the statements
18 required by subsection (a)(3) and (4). To terminate its
19 registration, a limited partnership that uses the procedure
20 authorized by this subsection shall amend its certificate of
21 limited partnership to delete the statements required by this
22 subsection.

23 (g) Constructive notice.--Filing under this section shall
24 constitute constructive notice that the partnership is a
25 registered limited liability partnership and that the partners
26 are entitled to the protections from liability provided by this
27 subchapter.

28 [(e)] (h) Cross references.--See sections 134 (relating to
29 docketing statement) and 135 (relating to requirements to be met
30 by filed documents).

1 § 8202. Definitions.

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

5 * * *

6 "Partner." Includes a person who is or was a partner in a
7 registered limited liability partnership at any time while the
8 registration of the partnership under this subchapter is or was
9 in effect.

10 * * *

11 § 8204. Limitation on liability of partners.

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

22 (b) Exceptions.--

23 (1) [Subsection (a) shall not apply to any debt or
24 obligation with respect to which the partnership is not in
25 compliance with section 8206(a) (relating to insurance).]
26 (Repealed).

27 * * *

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

29 (i) the liability of the partnership itself for all
30 its debts and obligations; [or]

1 (ii) the availability of the entire assets of the
2 partnership to satisfy its debts and obligations; or
3 (iii) any obligation undertaken by a partner in
4 writing to individually indemnify another partner of the
5 partnership or to individually contribute toward a
6 liability of another partner.

7 * * *

8 § 8205. Liability of withdrawing partner.

9 * * *

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

12 * * *

13 (7) For any obligation undertaken by a partner in
14 writing to individually indemnify another partner of the
15 partnership or to individually contribute toward a liability
16 of another partner.

17 * * *

18 (e) Permissive filing.--Filing under this section is
19 permissive, and failure to make a filing under this section by a
20 partner entitled to do so shall not affect the right of that
21 partner to the limitation on liability provided by section 8204
22 (relating to limitation on liability of partners).

23 (f) Constructive notice.--Filing under this section shall
24 constitute constructive notice that the partner has withdrawn
25 from the partnership and is entitled to the protection from
26 liability provided by this section.

27 (g) Variation of section.--A written provision of the
28 partnership agreement may restrict or condition the application
29 of this section to some or all of the partners of the
30 partnership.

1 (h) Application of section.--A partner in a foreign
2 registered limited liability partnership, regardless of whether
3 or not it has registered to do business in this Commonwealth
4 under section 8211 (relating to foreign registered limited
5 liability partnerships), shall not be entitled to make a filing
6 under this section with regard to that partnership.

7 ~~[(e)]~~ (i) Cross references.--See sections 134 (relating to
8 docketing statement) and 135 (relating to requirements to be met
9 by filed documents).

10 § 8211. Foreign registered limited liability partnerships.

11 (a) Governing law.--Subject to the Constitution of
12 Pennsylvania:

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

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

20 (b) Registration to do business.--A foreign registered
21 limited liability partnership, regardless of whether or not it
22 is also a foreign limited partnership, shall be subject to
23 Subchapter K of Chapter 85 (relating to foreign limited
24 partnerships) as if it were a foreign limited partnership,
25 except that [the]:

26 (1) Its application for registration shall state that it
27 is a registered limited liability partnership.

28 (2) The name under which [the foreign registered limited
29 liability partnership] it registers and conducts business in
30 this Commonwealth shall comply with the requirements of

1 section 8203 (relating to name).

2 (3) Section 8582(a)(5) and (6) (relating to
3 registration) shall not be applicable to the application for
4 registration of a foreign limited liability partnership that
5 is not a foreign limited partnership.

6 (c) Exception.--The liability of the partners in a foreign
7 registered limited liability partnership shall be governed by
8 the laws of the jurisdiction under which it is organized, except
9 that the partners shall not be entitled to greater protection
10 from liability than is available to the partners in a domestic
11 registered limited liability partnership.

12 § 8221. Annual registration.

13 * * *

14 (e) [Annual fee to be lien] Failure to pay annual fee.--

15 (1) Failure to [pay the annual registration fee imposed]
16 file the certificate of annual registration required by this
17 section [shall not affect the existence or] for five
18 consecutive years shall result in the automatic termination
19 of the status of the registered limited liability partnership
20 as such[, but the]. In addition, any annual registration fee
21 that is not paid when due shall be a lien in the manner
22 provided in this subsection from the time the annual
23 registration fee is due and payable [upon]. If a certificate
24 of annual registration is not filed within 30 days after the
25 date on which it is due, the department shall assess a
26 penalty of \$500 against the partnership, which shall also be
27 a lien in the manner provided in this subsection. The
28 imposition of that penalty shall not be construed to relieve
29 the partnership from liability for any other penalty or
30 interest provided for under other applicable law.

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

11 (3) The annual registration fee shall bear simple
12 interest from the date that it becomes due and payable until
13 paid. The interest rate shall be that provided for in section
14 806 of the act of April 9, 1929 (P.L.343, No.176), known as
15 The Fiscal Code, with respect to unpaid taxes. The penalty
16 provided for in paragraph (1) shall not bear interest. The
17 payment of interest shall not relieve the registered limited
18 liability partnership from liability for any other penalty or
19 interest provided for under other applicable law.

20 (4) The lien created by this subsection shall attach to
21 all of the property and proceeds thereof of the registered
22 limited liability partnership in which a security interest
23 can be perfected in whole or in part by filing in the
24 department under 13 Pa.C.S. Div. 9 (relating to secured
25 transactions; sales of accounts, contract rights and chattel
26 paper), whether the property and proceeds are owned by the
27 partnership at the time the annual registration fee or any
28 penalty or interest becomes due and payable or whether the
29 property and proceeds are acquired thereafter. Except as
30 otherwise provided by statute, the lien created by this

1 subsection shall have priority over all other liens, security
2 interests or other charges, except liens for taxes or other
3 charges due the Commonwealth. The lien created by this
4 subsection shall be entered on the records of the department
5 and indexed in the same manner as a financing statement filed
6 under 13 Pa.C.S. Div. 9. At the time an annual registration
7 fee, penalty or interest that has resulted in the creation of
8 a lien under this subsection is paid, the department shall
9 terminate the lien with respect to that annual registration
10 fee, penalty or interest without requiring a separate filing
11 by the partnership for that purpose.

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

16 (6) Termination of the status of a registered limited
17 liability partnership as such, whether voluntarily or
18 involuntarily, shall not release it from the obligation to
19 pay any accrued fees, penalties and interest and shall not
20 release the lien created by this subsection.

21 (f) Exception for bankrupt partnerships.--A partnership that
22 would otherwise be required to pay the annual registration fee
23 set forth in subsection (b) shall not be required to pay that
24 fee with respect to any year during any part of which the
25 partnership is a bankrupt as defined in section 8903 (relating
26 to definitions and index of definitions). The partnership shall,
27 instead, indicate on its certificate of annual registration for
28 that year that it is exempt from payment of the annual
29 registration fee pursuant to this subsection. If the partnership
30 fails to file timely a certificate of annual registration, a

1 lien shall be entered on the records of the department pursuant
2 to subsection (e) which shall not be removed until the
3 partnership files a certificate of annual registration
4 indicating its entitlement to an exemption from payment of the
5 annual registration fee as provided in this subsection. See
6 section 8201(e) (relating to scope).

7 § 8359. Right to wind up affairs.

8 Unless otherwise agreed, the partners who have not wrongfully
9 dissolved the partnership, or the legal representative of the
10 last surviving partner, not bankrupt, has the right to wind up
11 the partnership affairs except that any partner, his legal
12 representative or his assignee, upon cause shown, may obtain
13 winding up by the court. See section 139(b) (relating to tax
14 clearance in judicial proceedings).

15 § 8503. Definitions and index of definitions.

16 (a) Definitions.--The following words and phrases when used
17 in this chapter shall have the meanings given to them in this
18 section unless the context clearly indicates otherwise:

19 "Certificate of limited partnership." The certificate
20 referred to in section 8511 (relating to certificate of limited
21 partnership) and the certificate as amended. The term includes
22 any other statements or certificates permitted or required to be
23 filed in the Department of State by sections 108 (relating to
24 change in location or status of registered office provided by
25 agent) and 138 (relating to statement of correction) or this
26 part. If an amendment of the certificate of limited partnership
27 or a certificate of merger or division made in the manner
28 permitted by this chapter restates the certificate in its
29 entirety or if there is a certificate of consolidation,
30 thenceforth the "certificate of limited partnership" shall not

1 include any prior documents and any certificate issued by the
2 department with respect thereto shall so state.

3 * * *

4 "Court." Subject to any inconsistent general rule prescribed
5 by the Supreme Court of Pennsylvania:

6 (1) the court of common pleas of the judicial district
7 embracing the county where the registered office of the
8 limited partnership is or is to be located; or

9 (2) where a limited partnership results from a merger,
10 consolidation, division or other transaction without
11 establishing a registered office in this Commonwealth or
12 withdraws as a foreign limited partnership, the court of
13 common pleas in which venue would have been laid immediately
14 prior to the transaction or withdrawal.

15 ["Department." The Department of State of the Commonwealth.]

16 * * *

17 "Partnership agreement." Any agreement, written or oral, of
18 the partners as to the affairs of a limited partnership and the
19 conduct of its business. [A written partnership agreement:

20 (1) May provide that a person shall be admitted as a
21 limited partner, or shall become an assignee of a partnership
22 interest or other rights or powers of a limited partner to
23 the extent assigned, and shall become bound by the
24 partnership agreement:

25 (i) if such person (or a representative authorized
26 by such person orally, in writing or by other action such
27 as payment for a partnership interest) executes the
28 partnership agreement or any other writing evidencing the
29 intent of such person to become a limited partner or
30 assignee; or

1 (ii) without such execution, if such person (or a
2 representative authorized by such person orally, in
3 writing or by other action such as payment for a
4 partnership interest) complies with the conditions for
5 becoming a limited partner or assignee as set forth in
6 the partnership agreement or any other writing and
7 requests (orally, in writing or by other action such as
8 payment for a partnership interest) that the records of
9 the limited partnership reflect such admission or
10 assignment.

11 (2) Shall not be unenforceable by reason of its not
12 having been signed by a person being admitted as a limited
13 partner or becoming an assignee as provided in paragraph (1)
14 or by reason of its having been signed by a representative as
15 provided in section 8514(b) (relating to attorney-in-fact).

16 (3) May provide that, whenever a provision of this
17 chapter requires the vote or consent of a specified number or
18 percentage of partners or of a class of partners for the
19 taking of any action, a higher number or percentage of votes
20 or consents shall be required for the action. Except as
21 otherwise provided in the partnership agreement, whenever the
22 partnership agreement requires for the taking of any action
23 by the partners or a class of partners a specific number or
24 percentage of votes or consents, the provision of the
25 partnership agreement setting forth that requirement shall
26 not be amended or repealed by any lesser number or percentage
27 of votes or consents of the partners or the class of
28 partners.]

29 * * *

30 "Relax." When used with respect to a provision of the

1 certificate of limited partnership or partnership agreement,
2 means to provide lesser rights for an affected representative or
3 partner.

4 (b) Index of definitions.--Other definitions applying to
5 this chapter and the sections in which they appear are:

6 "Act" or "action." Section 102.

7 "Department." Section 102.

8 "Licensed person." Section 102.

9 "Professional services." Section 102.

10 § 8510. Indemnification.

11 * * *

12 (b) When indemnification is not to be made.--Indemnification
13 pursuant to subsection (a) shall not be made in any case where
14 the act [or failure to act] giving rise to the claim for
15 indemnification is determined by a court to have constituted
16 willful misconduct or recklessness. The certificate of limited
17 partnership or partnership agreement may not provide for
18 indemnification in the case of willful misconduct or
19 recklessness.

20 * * *

21 (f) Mandatory indemnification.--Without regard to whether
22 indemnification or advancement of expenses is provided under
23 subsections (a) and (d), a limited partnership shall be subject
24 to section 8331(2) (relating to rules determining rights and
25 duties of partners).

26 SUBCHAPTER B

27 FORMATION[; CERTIFICATE OF LIMITED PARTNERSHIP]

28 § 8511. Certificate of limited partnership.

29 (a) General rule.--In order to form a limited partnership, a
30 certificate of limited partnership must be executed and filed in

1 the Department of State. The certificate shall set forth:

2 (1) The name of the limited partnership.

3 (2) Subject to section 109 (relating to name of
4 commercial registered office provider in lieu of registered
5 address), the address, including street and number, if any,
6 of its registered office.

7 (3) The name and business address of each general
8 partner.

9 (4) If a partner's interest in the limited partnership
10 is to be evidenced by a certificate of partnership interest,
11 a statement to that effect.

12 (5) Any other [matters the partners determine to include
13 therein. A provision included in the certificate of limited
14 partnership pursuant to this paragraph shall be deemed to be
15 a provision of the partnership agreement for purposes of any
16 provision of this chapter that refers to a rule as set forth
17 in the partnership agreement.] provision, whether or not
18 specifically authorized by or in contravention of this
19 chapter, that the partners elect to set out in the
20 certificate of limited partnership for the regulation of the
21 internal affairs of the limited partnership, except where a
22 provision of this chapter expressly provides that the
23 certificate of limited partnership shall not relax or
24 contravene any provision on a specified subject.

25 (b) Effective date of formation.--A limited partnership is
26 formed at the time of the filing of the certificate of limited
27 partnership in the department or at any later time specified in
28 the certificate of limited partnership if, in either case, there
29 has been substantial compliance with the requirements of this
30 section or the corresponding provisions of prior law.

1 (c) [Duties of recorders of deeds.--Each recorder of deeds
2 shall continue to keep open for public inspection the record of
3 limited partnership certificates recorded under the statutes
4 supplied by this chapter and by prior law the custody of which
5 has not been transferred to the department pursuant to section
6 140 (relating to custody and management of orphan corporate and
7 business records).] (Repealed).

8 (d) Transitional provision.--A limited partnership formed
9 under prior law shall not be required to set forth in its
10 certificate of limited partnership a registered office or the
11 business address of each general partner until such time as it
12 first amends its certificate of limited partnership under this
13 chapter.

14 (e) Effect of provisions.--A provision of the certificate of
15 limited partnership shall be deemed to be a provision of the
16 partnership agreement for purposes of any provision of this
17 chapter that refers to a rule as set forth in the partnership
18 agreement.

19 [(e)] (f) Cross references.--See sections 134 (relating to
20 docketing statement), 135 (relating to requirements to be met by
21 filed documents) and 8514 (relating to execution of
22 certificates).

23 § 8517. Notice.

24 The fact that a certificate of limited partnership is on file
25 in the Department of State is not notice of any fact other than:

26 (1) that the partnership is a limited partnership and
27 that all partners are limited partners except the persons
28 designated therein as general partners[, but it is not notice
29 of any other fact]; and

30 (2) if it is registered under Chapter 82 (relating to

1 registered limited liability partnerships), that it is also a
2 registered limited liability partnership.

3 § 8519. Filing of certificate of summary of record by limited
4 partnerships formed prior to 1976.

5 (a) General rule.--[Any limited partnership that was not
6 formed under this chapter, has never made any filing under this
7 section or corresponding provisions of prior law and] Where any
8 of the organic documents of a limited partnership are not on
9 file in the Department of State or there is an error in any such
10 document as transferred to the department pursuant to section
11 140 (relating to custody and management of orphan corporate and
12 business records), and the limited partnership desires to file
13 any document in the [Department of State] department under any
14 other provision of this chapter or [that desires] to secure from
15 the department a certified copy of the certificate of limited
16 partnership or to correct the text of its organic documents as
17 on file in the department, the limited partnership shall file in
18 the department a certificate of summary of record which shall
19 set forth:

20 (1) The name of the limited partnership.

21 (2) Subject to section 109 (relating to name of
22 commercial registered office provider in lieu of registered
23 address), the address, including street and number, if any,
24 of its registered office.

25 (3) The statute under which the limited partnership was
26 formed.

27 (4) The name under which, and the date on which, the
28 limited partnership was originally formed, including the date
29 when and the place where the original certificate was
30 recorded.

1 (5) The place or places, including the volume and page
2 numbers or their equivalent, where the documents
3 [constituting the currently effective certificate are] that
4 are not on file in the department or that require correction
5 in the records of the department where originally recorded,
6 the date or dates of each recording and the correct text of
7 the [currently effective certificate] documents. The
8 information specified in this paragraph may be omitted in a
9 certificate of summary of record that is delivered to the
10 department contemporaneously with an amended certificate
11 filed under this chapter that restates the certificate in its
12 entirety.

13 [(6) Each name by which the limited partnership was
14 known, if any, other than its original name and its current
15 name and the date or dates on which each change of name of
16 the partnership became effective.]

17 (b) Cross references.--See sections 134 (relating to
18 docketing statement), 135 (relating to requirements to be met by
19 filed documents) and 8514 (relating to execution of
20 certificates).

21 § 8520. Partnership agreement.

22 (a) Admission of limited partners.--A partnership agreement
23 may provide in writing that a person shall be admitted as a
24 limited partner, or shall become an assignee of a partnership
25 interest or other rights or powers of a limited partner to the
26 extent assigned, and shall become bound by the partnership
27 agreement:

28 (1) if such person (or a representative authorized by
29 such person orally, in writing or by other action such as
30 payment for a partnership interest) executes the partnership

1 agreement or any other writing evidencing the intent of such
2 person to become a limited partner or assignee; or

3 (2) without such execution, if such person (or a
4 representative authorized by such person orally, in writing
5 or by other action such as payment for a partnership
6 interest) complies with the conditions for becoming a limited
7 partner or assignee as set forth in the partnership agreement
8 or any other writing and requests (orally, in writing or by
9 other action such as payment for a partnership interest) that
10 the records of the limited partnership reflect such admission
11 or assignment.

12 (b) Signature by limited partners.--A written partnership
13 agreement shall not be unenforceable by reason of its not having
14 been signed by a person being admitted as a limited partner or
15 becoming an assignee as provided in subsection (a) or by reason
16 of its having been signed by a representative as provided in
17 section 8514(b) (relating to attorney-in-fact).

18 (c) Voting requirements.--A partnership agreement may
19 provide in writing that, whenever a provision of this chapter
20 requires the vote or consent of a specified number or percentage
21 of partners or of a class of partners for the taking of any
22 action, a higher number or percentage of votes or consents shall
23 be required for the action. Except as otherwise provided in the
24 partnership agreement, whenever the partnership agreement
25 requires for the taking of any action by the partners or a class
26 of partners a specific number or percentage of votes or
27 consents, the provision of the partnership agreement setting
28 forth that requirement shall not be amended or repealed by any
29 lesser number or percentage of votes or consents of the partners
30 or the class of partners.

1 (d) Freedom of contract.--A written partnership agreement
2 may contain any provision for the regulation of the internal
3 affairs of the limited partnership agreed to by the partners,
4 whether or not specifically authorized by or in contravention of
5 this chapter, except where this chapter:

6 (1) refers only to a rule as set forth in the
7 certificate of limited partnership; or

8 (2) expressly provides that the partnership agreement
9 shall not relax or contravene any provision on a specified
10 subject.

11 (e) Oral provisions.--A partnership agreement may provide in
12 writing that it cannot be amended or modified except in writing,
13 in which case an oral agreement, amendment or modification shall
14 not be enforceable.

15 (f) Cross reference.--See section 8511(a)(5) (relating to
16 certificate of limited partnership).

17 § 8523. Liability of limited partners to third parties.

18 (a) General rule.--A limited partner is not liable [for the
19 obligations of a limited partnership unless he is also a general
20 partner or, in addition to the exercise of his rights and powers
21 as a limited partner, he participates in the control of the
22 business. However, if the limited partner participates in the
23 control of the business, he is liable only to persons who
24 transact business with the limited partnership reasonably
25 believing, based upon the conduct of the limited partner, that
26 the limited partner is a general partner.], solely by reason of
27 being a limited partner, under an order of a court or in any
28 other manner, for a debt, obligation or liability of the limited
29 partnership of any kind or for the acts of any partner, agent or
30 employee of the limited partnership.

1 (b) [Activities compatible with limited partner status.--A
2 limited partner does not participate in the control of the
3 business within the meaning of subsection (a) solely by doing
4 one or more of the following:

5 (1) Being a contractor for, or an agent or employee of
6 the limited partnership or of a general partner, or being an
7 officer, director, trustee, partner or shareholder of a
8 general partner.

9 (2) Consulting with and advising a general partner with
10 respect to any matter, including, without limitation, the
11 business of the limited partnership.

12 (3) (i) Acting as surety for the limited partnership,
13 or guaranteeing, endorsing or assuming one or more
14 specific obligations of the limited partnership, or a
15 general partner.

16 (ii) Borrowing money from the limited partnership or
17 a general partner.

18 (iii) Lending money to the limited partnership or a
19 general partner.

20 (iv) Providing collateral for the limited
21 partnership or a general partner.

22 (4) Taking any action required or permitted by law to
23 bring, pursue or settle or otherwise terminate a derivative
24 action in the right of the limited partnership.

25 (5) Requesting or attending a meeting of partners.

26 (6) Acting or causing the taking or refraining from the
27 taking of any action, including, without limitation, by
28 proposing, approving, consenting or disapproving, by voting
29 or otherwise, with respect to one or more of the following
30 matters:

1 (i) The dissolution and winding up of the limited
2 partnership, or an election to continue the limited
3 partnership or the business of the limited partnership.

4 (ii) The sale, exchange, lease, mortgage, pledge or
5 other transfer of, or the grant of a security interest
6 in, any asset or assets of the limited partnership.

7 (iii) The incurrence, renewal, refinancing or
8 payment or other discharge of indebtedness by the limited
9 partnership.

10 (iv) A change in the nature of the business.

11 (v) The admission or removal of a general partner.

12 (vi) The admission or removal of a limited partner.

13 (vii) A transaction involving an actual or potential
14 conflict of interest between a general partner and the
15 limited partnership or the limited partners.

16 (viii) An amendment to the partnership agreement or
17 certificate of limited partnership.

18 (ix) The merger or consolidation of the limited
19 partnership.

20 (x) The indemnification of any partner or other
21 person.

22 (xi) Matters related to the business of the limited
23 partnership not otherwise enumerated in this subsection,
24 which the partnership agreement states in writing may be
25 subject to the approval or disapproval of limited
26 partners.

27 (7) Applying for dissolution of the partnership pursuant
28 to section 8572 (relating to judicial dissolution).

29 (8) Winding up the limited partnership pursuant to
30 section 8573 (relating to winding up).

1 (9) In the case of a registered investment company,
2 voting on one or more of the following matters:

3 (i) The approval or termination of investment
4 advisory or underwriting contracts.

5 (ii) The approval of auditors.

6 (iii) Any other matter that by reason of the
7 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §
8 80a-1 et seq.) the general partners consider to be a
9 proper matter for the vote of the holders of voting
10 securities or beneficial interests in the limited
11 partnership.

12 (10) Serving on a committee of the limited partnership
13 or the limited partners.

14 (11) Exercising any right or power permitted to limited
15 partners under this chapter and not specifically enumerated
16 in this subsection.

17 (12) Exercising any other right or power stated in the
18 partnership agreement.] (Repealed).

19 (c) [Enumeration nonexclusive.--The enumeration in
20 subsection (b) does not mean that the possession or exercise of
21 any other powers, or having or acting in other capacities, by a
22 limited partner constitutes participation by him in the control
23 of the business of the limited partnership.] (Repealed).

24 (d) Use of name of limited partner.--A limited partner does
25 not [participate in the control of the business within the
26 meaning of subsection (a)] become liable for the obligations of
27 a limited partnership by reason of the fact that all or any part
28 of the name of the limited partner is included in the name of
29 the limited partnership.

30 (e) [Effect of section.--This section does not create rights

1 or powers of limited partners. Such rights and powers may be
2 created only by the certificate of limited partnership,
3 partnership agreement or any other agreement or other provisions
4 of this chapter.] (Repealed).

5 * * *

6 § 8546. Approval of merger or consolidation.

7 (a) Preparation of plan of merger or consolidation.--A plan
8 of merger or consolidation, as the case may be, shall be
9 prepared, setting forth:

10 * * *

11 (3) The manner and basis of converting the partnership
12 interests of each limited partnership into partnership
13 interests, securities or obligations of the surviving or new
14 limited partnership, as the case may be, and, if any of the
15 partnership interests of any of the limited partnerships that
16 are parties to the [plan] merger or consolidation are not to
17 be converted solely into partnership interests, securities or
18 obligations of the surviving or new limited partnership, the
19 partnership interests, securities or obligations of any other
20 person or cash, property or rights that the holders of such
21 partnership interests are to receive in exchange for, or upon
22 conversion of, such partnership interests, and the surrender
23 of any certificates evidencing them, which securities or
24 obligations, if any, of any other person or cash, property or
25 rights may be in addition to or in lieu of the partnership
26 interests, securities or obligations of the surviving or new
27 limited partnership.

28 (4) Such other provisions as are deemed desirable.

29 [Any of the terms of the plan may be made dependent upon facts
30 ascertainable outside of the plan if the manner in which the

1 facts will operate upon the terms of the plan is set forth in
2 the plan.]

3 (b) Post-adoption amendment of plan of merger or
4 consolidation.--A plan of merger or consolidation may contain a
5 provision that the general partners of the constituent limited
6 partnerships may amend the plan at any time prior to its
7 effective date, except that an amendment made subsequent to any
8 adoption of the plan by the limited partners of any constituent
9 domestic limited partnership shall not change:

10 (1) The amount or kind of partnership interests,
11 obligations, cash, property or rights to be received in
12 exchange for or on conversion of all or any of the
13 partnership interests of the constituent domestic limited
14 partnership adversely to the holders of those partnership
15 interests.

16 (2) Any term of the certificate of limited partnership
17 or partnership agreement of the surviving or new limited
18 partnership [to be effected by] as it is to be in effect
19 immediately following consummation of the merger or
20 consolidation except provisions that may be amended without
21 the approval of the limited partners.

22 (3) Any of the other terms and conditions of the plan if
23 the change would adversely affect the holders of any
24 partnership interests of the constituent domestic limited
25 partnership.

26 * * *

27 (d) Party to plan.--[A limited partnership] An association
28 that approves a plan in its capacity as a partner or creditor of
29 a merging or consolidating limited partnership, or that
30 furnishes all or a part of the consideration contemplated by a

1 plan, does not thereby become a party to the [plan] merger or
2 consolidation for the purposes of this subchapter.

3 (e) Notice of meeting of limited partners.--Notwithstanding
4 any other provision of the partnership agreement, written notice
5 of the meeting of limited partners called for the purpose of
6 considering the proposed plan shall be given to each limited
7 partner of record, whether or not entitled to vote thereon, of
8 each domestic limited partnership that is a party to the [plan]
9 proposed merger or consolidation. There shall be included in, or
10 enclosed with, the notice a copy of the proposed plan or a
11 summary thereof. The provisions of this subsection may not be
12 relaxed by the certificate of limited partnership or partnership
13 agreement.

14 (f) Adoption of plan by limited partners.--The plan of
15 merger or consolidation shall be adopted upon receiving a
16 majority of the votes cast by all limited partners, if any,
17 entitled to vote thereon of each of the domestic limited
18 partnerships that is a party to the [plan] proposed merger or
19 consolidation and, if any class of limited partners is entitled
20 to vote thereon as a class, a majority of the votes cast in each
21 class vote. A proposed plan of merger or consolidation shall not
22 be deemed to have been adopted by the limited partnership unless
23 it has also been approved by the general partners, regardless of
24 the fact that the general partners have directed or suffered the
25 submission of the plan to the limited partners for action.

26 * * *

27 (h) Termination of plan.--Prior to the time when a merger or
28 consolidation becomes effective, the merger or consolidation may
29 be terminated pursuant to provisions therefor, if any, set forth
30 in the plan. If a certificate of merger or consolidation has

1 been filed in the department prior to the termination, a
2 certificate of termination executed by each limited partnership
3 that is a party to the [plan] merger or consolidation, unless
4 the plan permits termination by less than all of the limited
5 partnerships, in which case the certificate shall be executed on
6 behalf of the limited partnership exercising the right to
7 terminate, shall be filed in the department. The certificate of
8 termination shall set forth:

9 (1) A copy of the certificate of merger or consolidation
10 relating to the plan that is terminated.

11 (2) A statement that the plan has been terminated in
12 accordance with the provisions therefor set forth therein.

13 See sections 134 (relating to docketing statement), 135
14 (relating to requirements to be met by filed documents), 138
15 (relating to statement of correction) and 8514 (relating to
16 execution of certificates).

17 * * *

18 (j) Reference to outside facts.--Any of the terms of a plan
19 of merger or consolidation may be made dependent upon facts
20 ascertainable outside of the plan if the manner in which the
21 facts will operate upon the terms of the plan is set forth in
22 the plan. Such facts may include, without limitation, actions or
23 events within the control of or determinations made by a party
24 to the plan or a representative of a party to the plan.

25 § 8549. Effect of merger or consolidation.

26 * * *

27 (b) Property rights.--All the property, real, personal and
28 mixed, of each of the limited partnerships parties to the plan
29 of merger or consolidation, and all debts due on whatever
30 account to any of them, as well as all other things and causes

1 of action belonging to any of them, shall be deemed to be
2 [transferred to and] vested in and shall belong to the surviving
3 or new limited partnership, as the case may be, without further
4 action, and the title to any real estate, or any interest
5 therein, vested in any of the limited partnerships shall not
6 revert or be in any way impaired by reason of the merger or
7 consolidation. The surviving or new limited partnership shall
8 thenceforth be responsible for all the liabilities of each of
9 the limited partnerships so merged or consolidated. Liens upon
10 the property of the merging or consolidating limited
11 partnerships shall not be impaired by the merger or
12 consolidation, and any claim existing or action or proceeding
13 pending by or against any of the limited partnerships may be
14 prosecuted to judgment as if the merger or consolidation had not
15 taken place or the surviving or new limited partnership may be
16 proceeded against or substituted in its place.

17 (c) Taxes.--Any taxes, interest, penalties and public
18 accounts of the Commonwealth claimed against any of the merging
19 or consolidating limited partnerships [but not] that are
20 settled, assessed or determined prior to or after the merger or
21 consolidation shall be [settled, assessed or determined against]
22 the liability of the surviving or new limited partnership and,
23 together with interest thereon, shall be a lien against the
24 property, both real and personal, of the surviving or new
25 limited partnership.

26 * * *

27 § 8553. Voluntary withdrawal of limited partner.

28 (a) General rule.--A limited partner may withdraw from a
29 limited partnership only at the time or upon the happening of
30 events specified in writing in the partnership agreement. [If

1 the partnership agreement does not specify in writing the time
2 or the events upon the happening of which a limited partner may
3 withdraw or a definite time for the dissolution and winding up
4 of the limited partnership, a limited partner may withdraw upon
5 not less than six months' prior written notice to each general
6 partner at his address on the books of the limited partnership.]

7 (b) [Prohibition of withdrawal.--The partnership agreement
8 may provide that a limited partner may not withdraw from the
9 limited partnership or assign a partnership interest in the
10 limited partnership prior to the dissolution and winding up of
11 the limited partnership.] (Repealed).

12 (c) Transitional rule.--This section applies to all limited
13 partnerships formed on or after January 1, 2002. If the
14 partnership agreement of a limited partnership formed before
15 January 1, 2002, did not on December 31, 2001, specify in
16 writing the time or the events upon the happening of which a
17 limited partner could withdraw or a definite time for the
18 dissolution and winding up of the limited partnership, the
19 provisions of this section that were in effect prior to January
20 1, 2002, shall apply until such time, if any, as the partnership
21 agreement is amended in writing after January 1, 2002, to
22 specify:

23 (1) a time or the events upon the happening of which a
24 limited partner may withdraw;

25 (2) a definite time for the dissolution and winding up
26 of the limited partnership; or

27 (3) that this section as effective January 1, 2002,
28 shall apply to the limited partnership.

29 § 8557. [Limitations on distribution.] Distributions and
30 allocation of profits and losses.

1 [A partner may not receive a distribution from a limited
2 partnership to the extent that, after giving effect to the
3 distribution, all liabilities of the limited partnership, other
4 than liabilities to partners on account of their partnership
5 interests and liabilities as to which recourse of creditors is
6 limited to specified property of the limited partnership, exceed
7 the fair value of the partnership assets. The fair value of any
8 property that is subject to a liability as to which recourse of
9 creditors is so limited shall be included in the partnership
10 assets only to the extent that the fair value of the property
11 exceeds that liability.] A limited partnership may from time to
12 time make distributions and allocate the profits and losses of
13 its business to the partners upon the basis stipulated in the
14 partnership agreement or, if not stipulated in the partnership
15 agreement, per capita. The allocation of losses pursuant to this
16 section shall not affect the limitation on liability of limited
17 partners as provided in section 8523 (relating to liability of
18 limited partners to third parties).

19 § 8558. Liability upon return of contribution.

20 * * *

21 (c) Determination of return of contribution.--A partner
22 receives a return of his contribution to the extent that a
23 distribution to him reduces his share of the fair value of the
24 net assets of the limited partnership[, as determined under
25 section 8557 (relating to limitations on distribution),] below
26 the value (as stated or determined in the manner provided in the
27 partnership agreement, if stated or provided for therein) of his
28 contribution (to the extent it has been received by the limited
29 partnership) that has not been distributed to him, and otherwise
30 to the extent of the fair value of the distribution.

1 (d) Fair value of net assets.--For purposes of computing the
2 fair value of the net assets of the limited partnership under
3 subsection (c):

4 (1) liabilities of the limited partnership to partners
5 on account of their partnership interests and liabilities as
6 to which recourse of creditors is limited to specified
7 property of the limited partnership shall not be considered;
8 and

9 (2) the fair value of property that is subject to a
10 liability as to which recourse of creditors is so limited
11 shall be included in the partnership assets only to the
12 extent that the fair value of the property exceeds that
13 liability.

14 § 8571. Nonjudicial dissolution.

15 (a) General rule.--A limited partnership is dissolved and
16 its affairs shall be wound up upon the happening of the first to
17 occur of the following:

18 (1) At the time or upon the happening of events
19 specified in the certificate of limited partnership.

20 (2) At the time or upon the happening of events
21 specified in writing in the partnership agreement.

22 (3) Written consent of all partners.

23 (4) An event of withdrawal of a general partner unless
24 at the time there is at least one other general partner and
25 the written provisions of the partnership agreement permit
26 the business of the limited partnership to be carried on by
27 the remaining general partner and that partner does so. The
28 limited partnership is not dissolved and is not required to
29 be wound up by reason of any event of withdrawal if, within
30 180 days after the withdrawal, [all] a majority in interest,

1 or such greater number as shall be provided in writing in the
2 partnership agreement, of the partners agree in writing to
3 continue the business of the limited partnership or to the
4 appointment of one or more replacement general partners.

5 (5) Entry of an order of judicial dissolution under
6 section 8572 (relating to judicial dissolution).

7 * * *

8 (c) Dissolution by domestication.--Whenever a domestic
9 limited partnership has domesticated itself under the laws of
10 another jurisdiction by action similar to that provided by
11 section 8590 (relating to domestication) and has authorized that
12 action in the manner required by this subchapter for the
13 approval of a proposal that the partnership dissolve
14 voluntarily, the partnership may surrender its certificate of
15 limited partnership under the laws of this Commonwealth by
16 filing in the department a certificate of cancellation under
17 section 8513 (relating to cancellation of certificate). If the
18 partnership, as domesticated in the other jurisdiction,
19 registers to do business in this Commonwealth either prior to or
20 simultaneously with the filing of the certificate of
21 cancellation under this subsection, the partnership shall not be
22 required to file with the certificate of cancellation the tax
23 clearance certificates that would otherwise be required by
24 section 139 (relating to tax clearance of certain fundamental
25 transactions).

26 ~~[(c)]~~ (d) Cross [references] reference.--See [sections 8103
27 (relating to continuation of certain limited partnerships) and]
28 section 8512(b) (relating to events requiring amendment).

29 § 8573. Winding up.

30 Except as otherwise provided in the partnership agreement,

1 the general partners who have not wrongfully dissolved a limited
2 partnership or, if none, the limited partners, or a person
3 approved by the limited partners or, if there is more than one
4 class or group of limited partners, by each class or group of
5 limited partners, in either case by a majority in interest of
6 the limited partners in each class or group, may wind up the
7 affairs of the limited partnership, but the court may wind up
8 the affairs of the limited partnership upon application of any
9 partner, his legal representative or assignee, and in connection
10 therewith, may appoint a liquidating trustee. See section 139(b)
11 (relating to tax clearance in judicial proceedings).

12 § 8577. Proposal and adoption of plan of division.

13 * * *

14 (b) Reference to outside facts.--Any of the terms of the
15 plan may be made dependent upon facts ascertainable outside of
16 the plan if the manner in which the facts will operate upon the
17 terms of the plan is set forth in the plan. Such facts may
18 include, without limitation, actions or events within the
19 control of or determinations made by the dividing limited
20 partnership or a representative of the dividing limited
21 partnership.

22 * * *

23 (e) [Restrictions on certain distributions.--A plan of
24 division may not be made effective if the effect of the plan is
25 to make a distribution to the holders of any class or series of
26 partnership interests of the dividing limited partnership unless
27 the distribution is permitted by section 8557 (relating to
28 limitations on distribution.) (Repealed).

29 (f) [Action by] Rights of holders of indebtedness.--[Unless
30 otherwise provided by an indenture or other contract by which

1 the dividing limited partnership is bound, a plan of division
2 shall not require the approval of the holders of any debt
3 securities or other obligations of the dividing limited
4 partnership or of any representative of the holders if the
5 transfer of assets effected by the division, if effected by
6 means of a sale, lease, exchange or other disposition, and any
7 related distribution would not require the approval of the
8 holders or representatives thereof.] If any such debt
9 securities, notes, similar evidences of indebtedness, indentures
10 or other contracts were issued, incurred or executed by the
11 dividing limited partnership before (the Legislative Reference
12 Bureau shall insert here the effective date of the amendments of
13 this section) and have not been amended subsequent to that date,
14 the liability of the dividing limited partnership thereunder
15 shall not be affected by the division nor shall the rights of
16 the obligees thereunder be impaired by the division, and each of
17 the resulting limited partnerships may be proceeded against or
18 substituted in place of the dividing limited partnership as
19 joint and several obligors on such liability, regardless of any
20 provision of the plan of division apportioning the liabilities
21 of the dividing limited partnership.

22 * * *

23 § 8580. Effect of division.

24 * * *

25 (b) Property rights; allocations of assets and
26 liabilities.--

27 (1) (i) All the property, real, personal and mixed, of
28 the dividing limited partnership, and all debts due on
29 whatever account to it, including subscriptions for
30 partnership interests or other causes of action belonging

1 to it, shall, except as otherwise provided in paragraph
2 (2), to the extent [transfers] allocations of assets are
3 contemplated by the plan of division, be deemed without
4 further action to be [transferred] allocated to and
5 vested in the resulting limited partnerships on such a
6 manner and basis and with such effect as is specified in
7 the plan, or per capita among the resulting limited
8 partnerships, as tenants in common, if no specification
9 is made in the plan, and the title to any real estate or
10 interest therein vested in any of the limited
11 partnerships shall not revert or be in any way impaired
12 by reason of the division.

13 (ii) Upon the division becoming effective, the
14 resulting limited partnerships shall each thenceforth be
15 responsible as separate and distinct limited partnerships
16 only for such liabilities as each limited partnership may
17 undertake or incur in its own name but shall be liable
18 for the liabilities of the dividing limited partnership
19 in the manner and on the basis provided in subparagraphs
20 (iv) and (v).

21 (iii) Liens upon the property of the dividing
22 limited partnership shall not be impaired by the
23 division.

24 (iv) [One] To the extent allocations of liabilities
25 are contemplated by the plan of division, the liabilities
26 of the dividing limited partnership shall be deemed
27 without further action to be allocated to and become the
28 liabilities of the resulting limited partnerships on such
29 a manner and basis and with such effect as is specified
30 in the plan; and one or more but less than all of the

1 resulting limited partnerships shall be free of the
2 liabilities of the dividing limited partnership to the
3 extent, if any, specified in the plan [if no fraud of
4 creditors or partners or violation of law shall be
5 effected thereby and if all applicable provisions of law
6 are complied with.], if in either case:

7 (A) no fraud of partners or violation of law
8 shall be effected thereby; and

9 (B) the plan does not constitute a fraudulent
10 transfer under 12 Pa.C.S. Ch. 51 (relating to
11 fraudulent transfers).

12 (v) If the conditions in subparagraph (iv) for
13 freeing one or more of the resulting limited partnerships
14 from the liabilities of the dividing limited partnership,
15 or for allocating some or all of the liabilities of the
16 dividing limited partnership, are not satisfied, the
17 liabilities of the dividing limited partnership as to
18 which those conditions are not satisfied shall not be
19 affected by the division nor shall the rights of
20 creditors [thereof] thereunder or of any person dealing
21 with the limited partnership be impaired by the division,
22 and any claim existing or action or proceeding pending by
23 or against the limited partnership with respect to those
24 liabilities may be prosecuted to judgment as if the
25 division had not taken place, or the resulting limited
26 partnerships may be proceeded against or substituted in
27 [its] place of the dividing limited partnership as joint
28 and several obligors on [such liability] those
29 liabilities, regardless of any provision of the plan of
30 division apportioning the liabilities of the dividing

1 limited partnership.

2 (vi) The conditions in subparagraph (iv) for freeing
3 one or more of the resulting limited partnerships from
4 the liabilities of the dividing limited partnership and
5 for allocating some or all of the liabilities of the
6 dividing limited partnership shall be conclusively deemed
7 to have been satisfied if the plan of division has been
8 approved by the Pennsylvania Public Utility Commission in
9 a final order issued after (the Legislative Reference
10 Bureau shall insert here the effective date of the
11 amendments of this section) that has become not subject
12 to further appeal.

13 (2) (i) The [transfer] allocation of any fee or
14 freehold interest or leasehold having a remaining term of
15 30 years or more in any tract or parcel of real property
16 situate in this Commonwealth owned by a dividing limited
17 partnership (including property owned by a foreign
18 limited partnership dividing solely under the law of
19 another jurisdiction) to a new limited partnership
20 resulting from the division shall not be effective until
21 one of the following documents is filed in the office for
22 the recording of deeds of the county, or each of them, in
23 which the tract or parcel is situated:

24 (A) A deed, lease or other instrument of
25 confirmation describing the tract or parcel.

26 (B) A duly executed duplicate original copy of
27 the certificate of division.

28 (C) A copy of the certificate of division
29 certified by the Department of State.

30 (D) A declaration of acquisition setting forth

1 the value of real estate holdings in the county of
2 the limited partnership as an acquired company.

3 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
4 to transfer of vehicle by operation of law) shall not be
5 applicable to [a transfer] an allocation of ownership of
6 any motor vehicle, trailer or semitrailer [from a
7 dividing limited partnership] to a new limited
8 partnership under this section or under a similar law of
9 any other jurisdiction, but any such [transfer]
10 allocation shall be effective only upon compliance with
11 the requirements of 75 Pa.C.S. § 1116 (relating to
12 issuance of new certificate following transfer).

13 (3) It shall not be necessary for a plan of division to
14 list each individual asset or liability of the dividing
15 limited partnership to be allocated to a new limited
16 partnership so long as those assets and liabilities are
17 described in a reasonable and customary manner.

18 (4) Each new limited partnership shall hold any assets
19 and liabilities allocated to it as the successor to the
20 dividing limited partnership, and those assets and
21 liabilities shall not be deemed to have been assigned to the
22 new limited partnership in any manner, whether directly or
23 indirectly or by operation of law.

24 * * *

25 (g) Conflict of laws.--It is the intent of the General
26 Assembly that:

27 (1) The effect of a division of a domestic limited
28 partnership shall be governed solely by the laws of this
29 Commonwealth and any other jurisdiction under the laws of
30 which any of the resulting limited partnerships is organized.

1 (2) The effect of a division on the assets and
2 liabilities of the dividing limited partnership shall be
3 governed solely by the laws of this Commonwealth and any
4 other jurisdiction under the laws of which any of the
5 resulting limited partnerships is organized.

6 (3) The validity of any allocations of assets or
7 liabilities by a plan of division of a domestic limited
8 partnership, regardless of whether or not any of the new
9 limited partnerships is a foreign limited partnership, shall
10 be governed solely by the laws of this Commonwealth.

11 (4) In addition to the express provisions of this
12 subsection, this subchapter shall otherwise generally be
13 granted the protection of full faith and credit under the
14 Constitution of the United States.

15 § 8590. Domestication.

16 * * *

17 (b) Certificate of domestication.--The certificate of
18 domestication shall be executed by the limited partnership and
19 shall set forth in the English language:

20 (1) The name of the limited partnership. If the name is
21 in a foreign language, it shall be set forth in Roman letters
22 or characters or Arabic or Roman numerals. If the name is one
23 that is rendered unavailable for use by any provision of
24 section 8505 (relating to name), the limited partnership
25 shall adopt, in accordance with any procedures for changing
26 the name of the limited partnership that are applicable prior
27 to the domestication of the limited partnership, and shall
28 set forth in the certificate of domestication an available
29 name.

30 * * *

1 (c) Effect of domestication.--

2 (1) As a domestic limited partnership, the domesticated
3 limited partnership shall no longer be a foreign limited
4 partnership for the purposes of this chapter and shall [have]
5 instead be a domestic limited partnership with all the powers
6 and privileges and [be subject to] all the duties and
7 limitations granted and imposed upon domestic limited
8 partnerships. [The property, debts, liens, estates, taxes,
9 penalties and public accounts due the Commonwealth shall
10 continue to be vested in and imposed upon the limited
11 partnership to the same extent as if it were the successor by
12 merger of the domesticating limited partnership with and into
13 a domestic limited partnership under Subchapter F (relating
14 to merger and consolidation).] In all other respects, the
15 domesticated limited partnership shall be deemed to be the
16 same limited partnership as it was prior to the domestication
17 without any change in or effect on its existence. Without
18 limiting the generality of the previous sentence, the
19 domestication shall not be deemed to have dissolved the
20 limited partnership or to have affected in any way:

21 (i) the right and title of the limited partnership
22 in and to its assets, property, franchises, estates and
23 choses in action;

24 (ii) the liability of the limited partnership for
25 its debts, obligations, penalties and public accounts due
26 the Commonwealth;

27 (iii) any liens or other encumbrances on the
28 property or assets of the limited partnership; or

29 (iv) any contract, license or other agreement to
30 which the limited partnership is a party or under which

1 it has any rights or obligations.

2 (2) The partnership interests in the domesticated
3 limited partnership shall be unaffected by the domestication
4 except to the extent, if any, reclassified in the certificate
5 of domestication.

6 § 8903. Definitions and index of definitions.

7 (a) Definitions.--The following words and phrases when used
8 in this chapter shall have the meanings given to them in this
9 section unless the context clearly indicates otherwise:

10 * * *

11 ["Department." The Department of State of the Commonwealth.]

12 * * *

13 "Event of dissociation." An event that causes a person to
14 cease to be a member of a limited liability company. See
15 section [8971(a)(4)] 8971(4) (relating to dissolution).

16 * * *

17 ["Licensed person." A natural person who is duly licensed or
18 admitted to practice his profession by a court, department,
19 board, commission or other agency of this Commonwealth or
20 another jurisdiction to render a professional service that is or
21 will be rendered by the professional company of which he is or
22 intends to become a manager, member, employee or agent.]

23 "Limited liability company," "domestic limited liability
24 company" or "company." An association that is a limited
25 liability company organized and existing under this chapter.

26 * * *

27 "Operating agreement." Any [agreement of the members as to]
28 rules or procedures adopted for the regulation and governance of
29 the affairs of a limited liability company and the conduct of
30 its business. [The operating agreement need not be in writing

1 except where this chapter refers to a written provision of the
2 operating agreement. The operating agreement may contain any
3 provision for the regulation of the internal affairs of the
4 company agreed to by the members, whether or not specifically
5 authorized by or in contravention of this chapter, except where
6 this chapter:

7 (1) refers only to a rule as set forth in the
8 certificate of organization; or

9 (2) expressly provides that the operating agreement
10 shall not relax or contravene any provision on a specified
11 subject. See sections 8913(8) (relating to certificate of
12 organization) and 8915 (relating to modification by
13 agreement).]

14 * * *

15 ["Professional services." The term shall have the meaning
16 specified in section 2902 (relating to definitions).]

17 * * *

18 (b) Index of other definitions.--Other definitions applying
19 to this chapter and the sections in which they appear are:

20 "Act" or "action." Section 102.

21 "Department." Section 102.

22 "Licensed person." Section 102.

23 "Professional services." Section 102.

24 SUBCHAPTER B

25 ORGANIZATION[; CERTIFICATE OF ORGANIZATION]

26 § 8915. Modification by agreement.

27 The provisions of this chapter are intended to permit a
28 limited liability company to qualify for taxation as an entity
29 that is not an association taxable as a corporation under the
30 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1

1 et seq.). Notwithstanding the limitations in [the definition of
2 "operating agreement" in section 8903 (relating to definitions)
3 and the limitations in section] sections 8913(8) (relating to
4 certificate of organization) and 8916(b) (relating to operating
5 agreement), the certificate of organization and operating
6 agreement may effect any change in the form of organization of
7 the company, in addition to or in contravention of the
8 provisions of this chapter, that may be necessary to accomplish
9 that purpose.

10 § 8916. Operating agreement.

11 (a) General rule.--The operating agreement of a limited
12 liability company need not be in writing except where this
13 chapter refers to a written provision of the operating
14 agreement. If a written operating agreement provides that it
15 cannot be amended or modified except in writing, an oral
16 agreement, amendment or modification shall not be enforceable.

17 (b) Freedom of contract.--An operating agreement may contain
18 any provision for the regulation of the internal affairs of a
19 limited liability company adopted by the members, whether or not
20 specifically authorized by or in contravention of this chapter,
21 except where this chapter:

22 (1) refers only to a rule as set forth in the
23 certificate of organization; or

24 (2) expressly provides that the operating agreement
25 shall not relax or contravene any provision on a specified
26 subject.

27 (c) Cross references.--See sections 8913(8) (relating to
28 certificate of organization) and 8915 (relating to modification
29 by agreement).

30 § 8922. Liability of members [and managers].

1 (a) General rule.--[Neither] Except as provided in
2 subsection (e), the members of a limited liability company [nor
3 the managers of a company managed by one or more managers are]
4 shall not be liable, solely by reason of being a member [or a
5 manager], under an order of a court or in any other manner for a
6 debt, obligation or liability of the company of any kind or for
7 the acts [or omissions] of any [other] member, manager, agent or
8 employee of the company.

9 (b) Professional relationship unaffected.--Subsection (a)
10 shall not afford members [and managers] of a professional
11 company with greater immunity than is available to the officers,
12 shareholders, employees or agents of a professional corporation.
13 See section 2925 (relating to professional relationship
14 retained).

15 * * *

16 (d) Conflict of laws.--The personal liability of a member of
17 a company to any person or in any action or proceeding for the
18 debts, obligations or liabilities of the company or for the acts
19 [or omissions] of other members, managers, employees or agents
20 of the company shall be governed solely and exclusively by this
21 chapter and the laws of this Commonwealth. Whenever a conflict
22 arises between the laws of this Commonwealth and the laws of any
23 other state with regard to the liability of members of a company
24 organized and existing under this chapter for the debts,
25 obligations and liabilities of the company or for the acts [or
26 omissions] of the other members, managers, employees or agents
27 of the company, the laws of this Commonwealth shall govern in
28 determining such liability.

29 (e) Expansion of liability.--The certificate of organization
30 may provide that some or all of the members shall be liable for

1 some or all of the debts, obligations and liabilities of the
2 company to the extent and under the circumstances provided in
3 the certificate.

4 (f) Medical professional liability.--A professional company
5 shall be deemed to be a partnership for purposes of section 811
6 of the act of October 15, 1975 (P.L.390, No.111), known as the
7 Health Care Services Malpractice Act.

8 ~~[(e)]~~ (g) Cross reference.--See section 8904(b) (relating to
9 rules for cases not provided for in this chapter).

10 § 8924. Limited transferability of membership interest.

11 (a) General rule.--The interest of a member in a limited
12 liability company constitutes the personal estate of the member
13 and may be transferred or assigned as provided in writing in the
14 operating agreement. Unless otherwise provided in writing in
15 the operating agreement, if all of the other members of the
16 company other than the member proposing to dispose of his
17 interest do not approve of the proposed transfer or assignment
18 by unanimous vote or written consent, which approval may be
19 unreasonably withheld by any of the other members, the
20 transferee of the interest of the member shall have no right to
21 participate in the management of the business and affairs of the
22 company or to become a member. The transferee shall only be
23 entitled to receive the distributions and the return of
24 contributions to which that member would otherwise be entitled.

25 (b) Certificate of membership interest.--The certificate of
26 organization may provide that a member's interest in a company
27 may be evidenced by a certificate of membership interest issued
28 by the company [and]. If such provision is made for the issuance
29 of certificates of membership interest, the operating agreement
30 may [also] provide for the assignment or transfer of any

1 membership interest represented by such a certificate and make
2 other provisions with respect to such certificates. [See 13
3 Pa.C.S. § 8102 (relating to definitions and index of
4 definitions).]

5 § 8932. Distributions and allocation of profits and losses.

6 A limited liability company may from time to time [divide]
7 make distributions and allocate the profits and losses of its
8 business [and distribute the same] to [and allocate any losses
9 among] the members of the company upon the basis stipulated in
10 the operating agreement or, if not stipulated in the operating
11 agreement, per capita. The allocation of losses pursuant to this
12 section shall not affect the limitation on liability of members
13 as provided in section 8922 (relating to liability of members).

14 § 8942. Voting.

15 * * *

16 (c) Exception.--An amendment of the certificate of
17 organization that:

18 (1) restates without change all of the operative
19 provisions of the certificate of organization as theretofore
20 in effect;

21 (2) changes the name or registered office of the
22 company; or

23 (3) accomplishes any combination of the foregoing
24 purposes;

25 is not an amendment of the certificate of organization for the
26 purposes of subsection (b). Unless otherwise provided in writing
27 in the operating agreement, an amendment described in this
28 subsection may be made by the affirmative vote of a majority of
29 the managers or, in the case of a company that is not managed by
30 one or more managers, of a majority of the members.

1 * * *

2 § 8943. Duties of managers and members.

3 * * *

4 (b) Companies with managers.--If the certificate of
5 organization provides that the company shall be managed by one
6 or more managers:

7 (1) [Unless otherwise provided in writing in the
8 operating agreement, the provisions of Subchapter B of
9 Chapter 17 (relating to officers, directors and
10 shareholders)] Sections 1711 (relating to alternative
11 provisions) through 1717 (relating to limitation on standing)
12 shall be applicable to representatives of the company. A
13 written provision of the operating agreement may increase,
14 but not relax, the duties of representatives of the company
15 to its members under those sections. For purposes of applying
16 the provisions of those sections, references to the "articles
17 of incorporation," "bylaws," "directors" and "shareholders"
18 shall mean the certificate of organization, operating
19 agreement, managers and members, respectively.

20 (2) A member who is not a manager shall have no duties
21 to the company or to the other members solely by reason of
22 acting in his capacity as a member.

23 § 8944. [Classes of members.] Members.

24 (a) General rule.--A limited liability company may have one
25 or more members.

26 (b) Classes of members.--An operating agreement may provide
27 for:

28 (1) classes or groups of members having such relative
29 rights, powers and duties as the operating agreement may
30 provide;

1 (2) the future creation in the manner provided in the
2 operating agreement of additional classes or groups of
3 members having such relative rights, powers and duties as may
4 from time to time be established, including rights, powers
5 and duties senior to existing classes and groups of members;
6 and

7 (3) the taking of an action, including, without
8 limitation, amendment of the certificate of organization or
9 operating agreement or creation of a class or group of
10 interests in the limited liability company that was not
11 previously outstanding, without the vote or approval of any
12 member or class or group of members.

13 [(b)] (c) Class voting.--The operating agreement may grant
14 to all or certain identified members or a specified class or
15 group of members the right to vote (on a per capita or other
16 basis), separately or with all or any class or group of members,
17 upon any matter.

18 § 8945. Indemnification.

19 * * *

20 (f) Mandatory indemnification.--Without regard to whether
21 indemnification or advancement of expenses is provided under
22 subsections (a) and (d), a limited liability company shall be
23 subject to section 8331(2) (relating to rules determining rights
24 and duties of partners) and both the members and the managers,
25 if any, shall be deemed to be general partners for purposes of
26 applying that section.

27 § 8948. [Dissociation of member limited.] Limitation on
28 dissociation or assignment of membership interest.

29 Notwithstanding anything to the contrary set forth in this
30 part, an operating agreement may provide that a member may not

1 voluntarily dissociate from the limited liability company or
2 assign his membership interest prior to the dissolution and
3 winding-up of the company, and an attempt by a member to
4 dissociate voluntarily from the company or to assign his
5 membership interest in violation of the operating agreement
6 shall be ineffective.

7 § 8957. Approval of merger or consolidation.

8 * * *

9 (b) Reference to outside facts.--Any of the terms of the
10 plan may be made dependent upon facts ascertainable outside of
11 the plan if the manner in which the facts will operate upon the
12 terms of the plan is set forth in the plan. Such facts may
13 include, without limitation, actions or events within the
14 control of or determinations made by a party to the plan or a
15 representative of a party to the plan.

16 (c) [Postadoption] Post-adoption amendment of plan of merger
17 or consolidation.--A plan of merger or consolidation may contain
18 a provision that the managers, if any, of the constituent
19 companies may amend the plan at any time prior to its effective
20 date, except that an amendment made subsequent to any adoption
21 of the plan by the members of any constituent domestic company
22 shall not, without the approval of the members, change:

23 (1) The amount or kind of membership interests,
24 obligations, cash, property or rights to be received in
25 exchange for or on conversion of all or any of the membership
26 interests of the constituent domestic company adversely to
27 the holders of those membership interests.

28 (2) Any [term] provision of the certificate of
29 organization or operating agreement of the surviving or new
30 company [to be effected by] as it is to be in effect

1 immediately following consummation of the merger or
2 consolidation except provisions that may be amended without
3 the approval of the members.

4 (3) Any of the other terms and conditions of the plan if
5 the change would adversely affect the holders of any
6 membership interests of the constituent domestic company.

7 * * *

8 (e) Party to plan.--An association that approves a plan in
9 its capacity as a member or creditor of a merging or
10 consolidating company or that furnishes all or a part of the
11 consideration contemplated by a plan does not thereby become a
12 party to the [plan or the] merger or consolidation for the
13 purposes of this subchapter.

14 * * *

15 (i) Termination of plan.--Prior to the time when a merger or
16 consolidation becomes effective, the merger or consolidation may
17 be terminated pursuant to provisions therefor, if any, set forth
18 in the plan. If a certificate of merger or consolidation has
19 been filed in the department prior to the termination, a
20 certificate of termination executed by each company that is a
21 party to the merger or consolidation, unless the plan permits
22 termination by less than all of the companies, in which case the
23 certificate shall be executed on behalf of the company
24 exercising the right to terminate, shall be filed in the
25 department. The certificate of termination shall set forth:

26 (1) A copy of the certificate of merger or consolidation
27 relating to the plan that is terminated.

28 (2) A statement that the plan has been terminated in
29 accordance with the provisions therefor set forth therein.

30 See sections 134 (relating to docketing statement), 135

1 (relating to requirements to be met by filed documents), 138
2 (relating to statement of correction) and 8907 (relating to
3 execution of documents).

4 * * *

5 § 8959. Effect of merger or consolidation.

6 * * *

7 (b) Property rights.--All the property, real, personal and
8 mixed, of each of the companies parties to the merger or
9 consolidation and all debts due on whatever account to any of
10 them, as well as all other things and causes of action belonging
11 to any of them, shall be deemed to be [transferred to and]
12 vested in and shall belong to the surviving or new company, as
13 the case may be, without further action, and the title to any
14 real estate or any interest therein vested in any of the
15 companies shall not revert or be in any way impaired by reason
16 of the merger or consolidation. The surviving or new company
17 shall thenceforth be responsible for all the liabilities of each
18 of the companies so merged or consolidated. Liens upon the
19 property of the merging or consolidating companies shall not be
20 impaired by the merger or consolidation, and any claim existing
21 or action or proceeding pending by or against any of the
22 companies may be prosecuted to judgment as if the merger or
23 consolidation had not taken place or the surviving or new
24 company may be proceeded against or substituted in its place.

25 (c) Taxes.--Any taxes, interest, penalties and public
26 accounts of the Commonwealth claimed against any of the merging
27 or consolidating companies [but not] that are settled, assessed
28 or determined prior to or after the merger or consolidation
29 shall be [settled, assessed or determined against] the liability
30 of the surviving or new company and, together with interest

1 thereon, shall be a lien against the property, both real and
2 personal, of the surviving or new company.

3 * * *

4 § 8962. Proposal and adoption of plan of division.

5 * * *

6 (b) Reference to outside facts.--Any of the terms of the
7 plan may be made dependent upon facts ascertainable outside of
8 the plan if the manner in which the facts will operate upon the
9 terms of the plan is set forth in the plan. Such facts may
10 include, without limitation, actions or events within the
11 control of or determinations made by the dividing limited
12 liability company or a representative of the dividing limited
13 liability company.

14 * * *

15 (e) [Action by holders of indebtedness.--Unless otherwise
16 provided by an indenture or other contract by which the dividing
17 limited liability company is bound, a plan of division shall not
18 require the approval of the holders of any debt securities or
19 other obligations of the dividing company or of any
20 representative of the holders if the transfer of assets effected
21 by the division, if effected by means of a sale, lease, exchange
22 or other disposition, and any related distribution would not
23 require the approval of the holders or representatives thereof.]
24 (Repealed).

25 § 8965. Effect of division.

26 * * *

27 (b) Property rights; allocations of assets and
28 liabilities.--

29 (1) (i) All the property, real, personal and mixed, of
30 the dividing company and all debts due on whatever

1 account to it, including subscriptions for membership
2 interests and other causes of action belonging to it,
3 shall, except as otherwise provided in paragraph (2), to
4 the extent [transfers] allocations of assets are
5 contemplated by the plan of division, be deemed without
6 further action to be [transferred] allocated to and
7 vested in the resulting companies on such a manner and
8 basis and with such effect as is specified in the plan,
9 or per capita among the resulting companies as tenants in
10 common if no specification is made in the plan, and the
11 title to any real estate or interest therein vested in
12 any of the companies shall not revert or be in any way
13 impaired by reason of the division.

14 (ii) Upon the division becoming effective, the
15 resulting companies shall each thenceforth be responsible
16 as separate and distinct companies only for such
17 liabilities as each company may undertake or incur in its
18 own name but shall be liable for the liabilities of the
19 dividing company in the manner and on the basis provided
20 in subparagraphs (iv) and (v).

21 (iii) Liens upon the property of the dividing
22 company shall not be impaired by the division.

23 (iv) [One] To the extent allocations of liabilities
24 are contemplated by the plan of division, the liabilities
25 of the dividing company shall be deemed without further
26 action to be allocated to and become the liabilities of
27 the resulting companies on such a manner and basis and
28 with such effect as is specified in the plan; and one or
29 more, but less than all, of the resulting companies shall
30 be free of the liabilities of the dividing company to the

1 extent, if any, specified in the plan [if no fraud of
2 creditors or members or violation of law shall be
3 effected thereby and if all applicable provisions of law
4 are complied with.], if in either case:

5 (A) no fraud on members or violation of law
6 shall be effected thereby; and

7 (B) the plan does not constitute a fraudulent
8 transfer under 12 Pa.C.S. Ch. 51 (relating to
9 fraudulent transfers).

10 (v) If the conditions in subparagraph (iv) for
11 freeing one or more of the resulting companies from the
12 liabilities of the dividing company, or for allocating
13 some or all of the liabilities of the dividing company,
14 are not satisfied, the liabilities of the dividing
15 company as to which those conditions are not satisfied
16 shall not be affected by the division nor shall the
17 rights of creditors [thereof] thereunder or of any person
18 dealing with the company be impaired by the division, and
19 any claim existing or action or proceeding pending by or
20 against the company with respect to those liabilities may
21 be prosecuted to judgment as if the division had not
22 taken place, or the resulting companies may be proceeded
23 against or substituted in [its] place of the dividing
24 company as joint and several obligors on [such liability]
25 those liabilities, regardless of any provision of the
26 plan of division apportioning the liabilities of the
27 dividing company.

28 (vi) The conditions in subparagraph (iv) for freeing
29 one or more of the resulting companies from the
30 liabilities of the dividing company and for allocating

1 some or all of the liabilities of the dividing company
2 shall be conclusively deemed to have been satisfied if
3 the plan of division has been approved by the
4 Pennsylvania Public Utility Commission in a final order
5 issued after (the Legislative Reference Bureau shall
6 insert here the effective date of the amendments of this
7 section) that has become not subject to further appeal.

8 (2) (i) The [transfer] allocation of any fee or
9 freehold interest or leasehold having a remaining term of
10 30 years or more in any tract or parcel of real property
11 situate in this Commonwealth owned by a dividing company
12 (including property owned by a foreign limited liability
13 company dividing solely under the law of another
14 jurisdiction) to a new company resulting from the
15 division shall not be effective until one of the
16 following documents is filed in the office for the
17 recording of deeds of the county, or each of them, in
18 which the tract or parcel is situated:

19 (A) A deed, lease or other instrument of
20 confirmation describing the tract or parcel.

21 (B) A duly executed duplicate original copy of
22 the certificate of division.

23 (C) A copy of the certificate of division
24 certified by the Department of State.

25 (D) A declaration of acquisition setting forth
26 the value of real estate holdings in such county of
27 the company as an acquired company.

28 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
29 to transfer of vehicle by operation of law) shall not be
30 applicable to [a transfer] an allocation of ownership of

1 any motor vehicle, trailer or semitrailer [from a
2 dividing company] to a new company under this section or
3 under a similar law of any other jurisdiction but any
4 such [transfer] allocation shall be effective only upon
5 compliance with the requirements of 75 Pa.C.S. § 1116
6 (relating to issuance of new certificate following
7 transfer).

8 (3) It shall not be necessary for a plan of division to
9 list each individual asset or liability of the dividing
10 company to be allocated to a new company so long as those
11 assets and liabilities are described in a reasonable and
12 customary manner.

13 (4) Each new company shall hold any assets and
14 liabilities allocated to it as the successor to the dividing
15 company, and those assets and liabilities shall not be deemed
16 to have been assigned to the new company in any manner,
17 whether directly or indirectly or by operation of law.

18 * * *

19 (h) Conflict of laws.--It is the intent of the General
20 Assembly that:

21 (1) The effect of a division of a domestic limited
22 liability company shall be governed by the laws of this
23 Commonwealth and any other jurisdiction under the laws of
24 which any of the resulting companies is organized.

25 (2) The effect of a division on the assets and
26 liabilities of the dividing company shall be governed solely
27 by the laws of this Commonwealth and any other jurisdiction
28 under the laws of which any of the resulting companies is
29 organized.

30 (3) The validity of any allocation of assets or

1 liabilities by a plan of division of a domestic limited
2 liability company, regardless of whether or not any of the
3 new companies is a foreign limited liability company, shall
4 be governed solely by the laws of this Commonwealth.

5 (4) In addition to the express provisions of this
6 subsection, this subchapter shall otherwise generally be
7 granted the protection of full faith and credit under the
8 Constitution of the United States.

9 § 8971. Dissolution.

10 (a) General rule.--limited liability company is dissolved
11 and its affairs shall be wound up upon the happening of the
12 first to occur of the following events:

13 (1) At the time or upon the happening of events
14 specified in the certificate of organization.

15 (2) At the time or upon the happening of events
16 specified in writing in the operating agreement.

17 (3) [By] Except as otherwise provided in the operating
18 agreement, by the unanimous written agreement or consent of
19 all members.

20 (4) [Upon] Except as otherwise provided in writing in
21 the operating agreement, upon a member becoming a bankrupt or
22 executing an assignment for the benefit of creditors or the
23 death, retirement, insanity, resignation, expulsion or
24 dissolution of a member or the occurrence of any other event
25 that terminates the continued membership of a member in the
26 company unless the business of the company is continued by
27 the vote or consent of [all] a majority in interest, or such
28 greater number as shall be provided in writing in the
29 operating agreement, of the remaining members given within

30 [90] 180 days following such event [or under a right to do so

1 stated in the operating agreement].

2 (5) Entry of an order of judicial dissolution under
3 section 8972 (relating to judicial dissolution).

4 [(b) Cross reference.--See section 8103 (relating to
5 continuation of certain limited partnerships and limited
6 liability companies).]

7 (b) Perpetual existence.--The certificate of organization
8 may provide that the company shall have perpetual existence, in
9 which case subsection (a)(4) shall not be applicable to the
10 company.

11 § 8973. Winding up.

12 * * *

13 (b) Judicial supervision.--The court may wind up the affairs
14 of the company upon application of any member, his legal
15 representative or assignee and, in connection therewith, may
16 appoint a liquidating trustee. See section 139(b) (relating to
17 tax clearance in judicial proceedings).

18 § 8974. Distribution of assets upon dissolution.

19 (a) General rule.--In settling accounts after dissolution,
20 the liabilities of the limited liability company shall be
21 entitled to payment in the following order:

22 (1) Those to creditors, including members or managers
23 who are creditors, in the order of priority as provided by
24 law, in satisfaction of the liabilities of the company,
25 whether by payment or the making of reasonable provision for
26 payment thereof, other than liabilities for distributions to
27 members under section 8932 (relating to distributions and
28 allocation of profits and losses) or 8933 (relating to
29 distributions upon an event of dissociation).

30 (2) Unless otherwise provided in the operating

1 agreement, to members and former members in satisfaction of
2 liabilities for distributions under section 8932 or 8933.

3 (3) Unless otherwise provided in the operating
4 agreement, to members in respect of:

5 (i) Their contributions to capital.

6 (ii) Their share of the profits and other
7 compensation by way of income on their contributions.

8 * * *

9 § 8978. Dissolution by domestication.

10 Whenever a domestic limited liability company has
11 domesticated itself under the laws of another jurisdiction by
12 action similar to that provided by section 8982 (relating to
13 domestication) and has authorized that action by the vote
14 required by this subchapter for the approval of a proposal that
15 the company dissolve voluntarily, the company may surrender its
16 certificate of organization under the laws of this Commonwealth
17 by filing in the Department of State a certificate of
18 dissolution under section 8975 (relating to certificate of
19 dissolution). In lieu of the statements required by section
20 8975(a)(2) through (4), the certificate of dissolution shall set
21 forth a statement that the company has domesticated itself under
22 the laws of another jurisdiction. If the company, as
23 domesticated in the other jurisdiction, registers to do business
24 in this Commonwealth either prior to or simultaneously with the
25 filing of the certificate of dissolution under this section, the
26 company shall not be required to file with the certificate of
27 dissolution the tax clearance certificates that would otherwise
28 be required by section 139 (relating to tax clearance of certain
29 fundamental transactions).

30 § 8982. Domestication.

1 * * *

2 (b) Certificate of domestication.--The certificate of
3 domestication shall be executed by the company and shall set
4 forth in the English language:

5 (1) The name of the company. If the name is in a foreign
6 language, it shall be set forth in Roman letters or
7 characters or Arabic or Roman numerals. If the name is one
8 that is rendered unavailable for use by any provision of
9 section 8905 (relating to name), the company shall adopt, in
10 accordance with any procedures for changing the name of the
11 company that are applicable prior to the domestication of the
12 company, and shall set forth in the certificate of
13 domestication, an available name.

14 * * *

15 (c) Effect of domestication.--

16 (1) As a domestic limited liability company, the
17 domesticated company shall no longer be a foreign limited
18 liability company for the purposes of this chapter and shall
19 [have] instead be a domestic limited liability company with
20 all the powers and privileges and [be subject to] all the
21 duties and limitations granted and imposed upon domestic
22 limited liability companies. [The property, debts, liens,
23 estates, taxes, penalties and public accounts due the
24 Commonwealth shall continue to be vested in and imposed upon
25 the company to the same extent as if it were the successor by
26 merger of the domesticating company with and into a domestic
27 limited liability company under Subchapter G (relating to
28 mergers and consolidations).] In all other respects, the
29 domesticated limited liability company shall be deemed to be
30 the same limited liability company as it was prior to the

1 domestication without any change in or effect on its
2 existence. Without limiting the generality of the previous
3 sentence, the domestication shall not be deemed to have
4 dissolved the company or to have affected in any way:

5 (i) the right and title of the company in and to its
6 assets, property, franchises, estates and choses in
7 action;

8 (ii) the liability of the company for its debts,
9 obligations, penalties and public accounts due the
10 Commonwealth;

11 (iii) any liens or other encumbrances on the
12 property or assets of the company; or

13 (iv) any contract, license or other agreement to
14 which the company is a party or under which it has any
15 rights or obligations.

16 (2) The [shares of] membership interests in the
17 domesticated company shall be unaffected by the domestication
18 except to the extent, if any, reclassified in the certificate
19 of domestication.

20 § 8996. Restrictions.

21 * * *

22 (b) Ownership and governance of restricted professional
23 companies.--Except as otherwise provided by a statute, rule or
24 regulation applicable to a particular profession, all of the
25 [members] ultimate beneficial owners of membership interests in
26 and all of the managers, if any, of a restricted professional
27 company shall be licensed persons.

28 * * *

29 (d) Application.--For purposes of applying subsection (a):

30 * * *

1 ~~the member of such a company, as such, shall be deemed to~~
2 ~~be a sole proprietor; and~~

3 ~~(ii) shall not be subject to Article VI of the act~~
4 ~~of March 4, 1971 (P.L.6, No.2) known as the Tax Reform~~
5 ~~Code of 1971, or~~

6 ~~(2) during any period that it has more than one member,~~
7 ~~shall be deemed to be a limited partnership organized and~~
8 ~~existing under Chapter 85 (relating to limited partnerships),~~
9 ~~and a member of such a company, as such, shall be deemed a~~
10 ~~limited partner of a limited partnership.~~

11 ~~(b) Exception. A domestic or qualified foreign restricted~~
12 ~~professional company shall be subject to section 8925(a),~~
13 ~~instead of subsection (a), for the whole of any taxable year of~~
14 ~~the company during any part of which the company [has]:~~

15 ~~(1) has engaged in any business not permitted by section~~
16 ~~8996(a) (relating to purposes of restricted professional~~
17 ~~companies);~~

18 ~~(2) [had only one member; or] Repealed.~~

19 ~~(3) Has been a member of a limited liability company[.];~~
20 ~~or~~

21 ~~(4) is taxable as a corporation for Federal income tax~~
22 ~~purposes.~~

23 § 8998. Annual registration.

24 * * *

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

26 (1) Failure to [pay the annual registration fee imposed]
27 file the certificate of annual registration required by this
28 section shall not affect the existence or status of the
29 restricted professional company as such, but the annual
30 registration fee that would have been payable shall be a lien

1 in the manner provided in this subsection from the time the
2 annual registration fee is due and payable [upon]. If a
3 certificate of annual registration is not filed within 30
4 days after the date on which it is due, the department shall
5 assess a penalty of \$500 against the company, which shall
6 also be a lien in the manner provided in this subsection. The
7 imposition of that penalty shall not be construed to relieve
8 the company from liability for any other penalty or interest
9 provided for under other applicable law.

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

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

29 (4) The lien created by this subsection shall attach to
30 all of the property and proceeds thereof of the restricted

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

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

25 * * *

26 § 9502. Creation, status and termination of business trusts.

27 (a) Creation.--A business trust may be created in real or
28 personal property, or both, with power in the trustee [or a
29 majority of the trustees]:

30 (1) To receive title to, hold, buy, sell, exchange,

1 transfer and convey real and personal property for the use of
2 the business trust.

3 (2) To take, receive, invest or disburse the receipts,
4 earnings, rents, profits or returns from the trust estate.

5 (3) To carry on and conduct any lawful business
6 designated in the deed or other instrument of trust, and
7 generally to do any lawful act in relation to such trust
8 property that any individual owning the same absolutely might
9 do.

10 (4) To merge with another business trust or other
11 association, to divide or to engage in any other fundamental
12 or other transaction contemplated by the deed or other
13 instrument of trust.

14 (b) Term.--Except as otherwise provided in the instrument, a
15 business trust shall have perpetual existence.

16 (c) Separate entity.--A business trust is a separate legal
17 entity. Except as otherwise provided in the instrument, title to
18 real and personal property may be held in the name of the trust,
19 without in any manner diminishing the rights, powers and duties
20 of the trustees as provided in subsection (a).

21 (d) Termination.--Except as otherwise provided in the
22 instrument:

23 (1) The business trust may not be terminated, dissolved
24 or revoked by a beneficial owner or other person.

25 (2) The death, incapacity, dissolution, termination or
26 bankruptcy of a beneficial owner or a trustee shall not
27 result in the termination, dissolution or revocation of the
28 business trust.

29 (e) Contents of instrument.--The instrument may contain any
30 provision for the regulation of the internal affairs of the

1 business trust included in the instrument by the settlor, the
2 trustee or the beneficiaries in accordance with the applicable
3 procedures for the adoption or amendment of the instrument.

4 § 9503. Documentation of trust.

5 (a) General rule.--A business trust shall not be valid
6 unless created by deed of trust or other written instrument
7 subscribed by one or more individuals, associations or other
8 entities. The trustees of a business trust shall promptly cause
9 the instrument or any amendment thereof, except an amendment
10 solely effecting or reflecting the substitution of or other
11 change in the trustees, to be filed in the Department of State.
12 [The failure to effect the filing shall not affect the validity
13 of a business trust. A trustee who violates the requirements of
14 this subsection shall be liable for a civil penalty in the
15 amount of \$1,000 payable to the department.]

16 * * *

17 § 9505. [Succession of trustees.] Trustees.

18 (a) Succession of trustees.--An instrument may provide for
19 the succession of title to [the] any trust property not titled
20 in the name of the trust to a successor trustee, in case of the
21 death, resignation, removal or incapacity of any trustee. In the
22 case of any such succession, the title to [the] such trust
23 property shall at once vest in the succeeding trustee.

24 (b) Nature of service.--Service as the trustee of a business
25 trust by an association that is not a banking institution shall
26 not be deemed to constitute acting as a fiduciary for purposes
27 of the act of November 30, 1965 (P.L.847, No.356), known as the
28 Banking Code of 1965.

29 § 9506. Liability of trustees and beneficiaries.

30 (a) General rule.--[Liability to third parties for any act,

1 omission or obligation of a trustee of a business trust when
2 acting in such capacity shall extend to so much of the trust
3 estate as may be necessary to discharge such liability, but
4 personal liability shall not attach to the trustee or the
5 beneficiaries of the trust for any such act, omission or
6 liability.]

7 (1) Except as otherwise provided in the instrument, the
8 beneficiaries of a business trust shall be entitled to the
9 same limitation of personal liability as is extended to
10 shareholders in a domestic business corporation.

11 (2) Except as otherwise provided in the instrument, the
12 trustees of a trust, as such, shall not be personally liable
13 to any person for any act or obligation of the trust or any
14 other trustee.

15 (3) An obligation of a trust based upon a writing may be
16 limited to a specific fund or other identified pool or group
17 of assets of the trust.

18 * * *

19 (f) Permissible beneficiaries.--Except as otherwise provided
20 by a statute, rule or regulation applicable to a particular
21 profession, all of the [beneficiaries of] ultimate beneficial
22 owners of interests in a business trust that renders one or more
23 restricted professional services shall be licensed persons. As
24 used in this subsection, the term "restricted professional
25 services" shall have the meaning specified in section 8903
26 (relating to definitions and index of definitions).

27 * * *

28 (h) Medical professional liability.--A business trust shall
29 be deemed to be a professional corporation for purposes of
30 section 811 of the act of October 15, 1975 (P.L.390, No.111),

1 known as the Health Care Services Malpractice Act.

2 Section 3. Amendment of Title 54.

3 As much of Title 54 as is hereinafter set forth is amended or
4 added to read:

5 § 302. Definitions.

6 The following words and phrases when used in this chapter
7 shall have, unless the context clearly indicates otherwise, the
8 meanings given to them in this section:

9 "Business." Any commercial or professional activity.

10 "Entity." Any individual or any corporation, association,
11 partnership, joint-stock company, business trust, syndicate,
12 joint adventureship or other combination or group of persons,
13 regardless of whether it is organized or formed under the laws
14 of this Commonwealth or any other jurisdiction.

15 "Proper name." [The] When used with respect to an
16 association of a type listed in the following paragraphs, the
17 term means the name set forth in:

18 (1) the articles of incorporation, for a corporation;

19 (2) the statement of registration, for a limited
20 liability partnership;

21 (3) the certificate of limited partnership, for a
22 limited partnership;

23 (4) the statement of election, for an electing
24 partnership;

25 (5) the certificate of organization, for a limited
26 liability company;

27 (6) the articles of association, for a professional
28 association;

29 (7) the deed of trust or other trust instrument, if any,
30 that has been filed in the Department of State, for a

1 business trust; or

2 * * *

3 § 503. Decennial filings required.

4 * * *

5 (b) Exceptions.--Subsection (a) shall not apply to any of
6 the following:

7 (1) A corporation or other association [which] that
8 during the [preceding] ten years ending on December 31 of the
9 year in which a filing would otherwise be required under
10 subsection (a) has made any filing in the department pursuant
11 to a provision of this title or 15 Pa.C.S. (relating to
12 corporations and unincorporated associations), other than:

13 (i) a report required by subsection (a); or

14 (ii) a filing [required by] under:

15 (A) 15 Pa.C.S. § 1305 (relating to reservation
16 of corporate name);

17 (B) 15 Pa.C.S. § 5305 (relating to reservation
18 of corporate name);

19 (C) 15 Pa.C.S. § 8203(b) (relating to name);

20 (D) 15 Pa.C.S. § 8505(b) (relating to name); or

21 (E) 15 Pa.C.S. § 8905(b) (relating to name).

22 (2) A corporation whose name is registered pursuant to
23 section 501(a)(4) (relating to register established).

24 (3) A corporation [which] that has had officer
25 information forwarded to the department by the Department of
26 Revenue during the preceding ten years under 15 Pa.C.S. §
27 1110 (relating to annual report information).

28 [(b.1) Exemption.--An entity which made a filing after
29 December 31, 1989, and before January 1, 1991, pursuant to a
30 provision of this title or 15 Pa.C.S. (relating to corporations

1 and unincorporated associations) shall be exempt from the 2001
2 decennial filing. For purposes of this subsection, none of the
3 following shall be considered a filing:

4 (1) A filing under:

5 (i) 15 Pa.C.S. § 1305;

6 (ii) 15 Pa.C.S. § 5305;

7 (iii) 15 Pa.C.S. § 8203(b);

8 (iv) 15 Pa.C.S. § 8505(b); or

9 (v) 15 Pa.C.S. § 8905(b).

10 (2) A name registration under section 501(a)(4).

11 (3) Forwarding of information to the department by the
12 Department of Revenue under 15 Pa.C.S. § 1110.]

13 (c) Exemptions.--An association shall be exempt from the
14 2001 decennial filing if the association made a filing:

15 (1) After December 31, 1989 and before January 1, 1992,
16 pursuant to a provision of this title or 15 Pa.C.S. other
17 than a filing under:

18 (i) 15 Pa.C.S. § 1305;

19 (ii) 15 Pa.C.S. § 5305;

20 (iii) 15 Pa.C.S. § 8203(b);

21 (iv) 15 Pa.C.S. § 8505(b); or

22 (v) 15 Pa.C.S. § 8905(b).

23 (2) Under this section during the year 2000.

24 [(c) Cross reference] (d) Cross references.--See 15 Pa.C.S.
25 §§ 134 (relating to docketing statement) and 135 (relating to
26 requirements to be met by filed documents).

27 § 1314. Decennial filings required. * * *

28 (b) Requirement satisfied by other filings.--Subsection (a)
29 shall not apply to a registrant which during the [preceding] ten
30 years ending on December 31 of the year in which a filing would

1 otherwise be required under subsection (a) has made any filing
2 with the department under this chapter other than a report
3 required by subsection (a).

4 * * *

5 § 1515. Decennial filings required.

6 * * *

7 (b) Requirement satisfied by other filings.--Subsection (a)
8 shall not apply to a registrant which during the [preceding] ten
9 years ending on December 31 of the year in which a filing would
10 otherwise be required under subsection (a) has made any filing
11 with the department under this chapter other than a report
12 required by subsection (a).

13 * * *

14 Section 4. Repeals.

15 The following acts and parts of acts are repealed:

16 Section 32 of the act of June 1, 1889 (P.L.420, No.332),
17 entitled "A further supplement to an act entitled 'An act to
18 provide revenue by taxation,' approved the seventh day of June,
19 Anno Domini one thousand eight hundred and seventy-nine," to the
20 extent that it applies to the judicial dissolution of an
21 association under 15 Pa.C.S.

22 As much as reads ", and act as the attorney-in-fact and
23 authorized agent of such corporations for the service of process
24 thereon" in section 806 of the act of April 9, 1929 (P.L.177,
25 No.175), known as The Administrative Code of 1929.

26 Section 404(b) of the act of December 19, 1990 (P.L.834,
27 No.198), known as the GAA Amendments Act of 1990, insofar as it
28 applies to 15 Pa.C.S. §§ 1745 and 5745.

29 15 Pa.C.S. §§ 5543.1, 5546.1, 5764.1, 8103 and 8206.

30 Section 5. Effective date.

1 This act shall take effect in 60 days.