
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 1157 Session of
1997

INTRODUCED BY WENGER, HART, GREENLEAF, MADIGAN, SALVATORE,
LEMMOND, O'PAKE, STOUT, RHOADES, WOZNIAK AND THOMPSON,
OCTOBER 14, 1997

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 29, 1998

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

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

6 * * *

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

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

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

25 * * *

26 § 134. Docketing statement.

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

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

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

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

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

documents).

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

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

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

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

1 each such department, board or commission.

2 § 135. Requirements to be met by filed documents.

3 * * *

4 (e) Distinguishable names.--A name shall not be considered
5 distinguishable upon the records of the department from another
6 name for purposes of this title and Title 54 (relating to names)
7 solely because the names differ from each other in any or all of
8 the following respects:

9 (1) the use of punctuation marks;

10 (2) the use of the definite or indefinite article; or

11 (3) the use of any of the following terms to designate

12 the status of an association: "corporation," "company,"

13 "incorporated," "limited," "association," "fund,"

14 "syndicate," "limited partnership," "limited liability

15 company," "trust" or "business trust" or abbreviations of any

16 of the foregoing terms or words or abbreviations of like

17 import in languages other than English.

18 § 138. Statement of correction.

19 * * *

20 (b) Effect of filing.--

21 * * *

22 (2) A filing under this section shall not have the
23 effect of causing original articles of incorporation of a
24 corporation or a similar type of document creating any other
25 form of association to be stricken from the records of the
26 department but the articles or other document may be
27 corrected under this section.

28 * * *

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

§ 139. Tax clearance of certain fundamental transactions.

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

(b) Tax clearance in judicial proceedings.--Until the clearance certificates described in subsection (a) have been filed with the court:

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

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

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

1 Department of State.

2 § 153. FEE SCHEDULE. <—

3 (A) GENERAL RULE.--THE FEES OF THE CORPORATION BUREAU OF THE
4 DEPARTMENT OF STATE, INCLUDING FEES FOR THE PUBLIC ACTS AND
5 TRANSACTIONS OF THE SECRETARY OF THE COMMONWEALTH ADMINISTERED
6 THROUGH THE BUREAU, AND OF COUNTY FILING OFFICERS UNDER TITLE 13
7 (RELATING TO COMMERCIAL CODE), SHALL BE AS FOLLOWS:

8 * * *

9 (7) TRADEMARKS, EMBLEMS, UNION LABELS,

10 DESCRIPTION OF BOTTLES AND LIKE MATTERS:

11 [(I) REGISTRATION..... 52

12 (II) EACH ANCILLARY TRANSACTION..... 52]

13 (I) TRADEMARK REGISTRATION..... 25

14 (II) EACH ANCILLARY TRADEMARK

15 TRANSACTION..... 25

16 (III) ANY OTHER REGISTRATION UNDER

17 THIS PARAGRAPH..... 52

18 (IV) ANY OTHER ANCILLARY TRANSACTION

19 UNDER THIS PARAGRAPH..... 52

20 * * *

21 § 161. Domestication of certain alien associations.

22 * * *

23 (b) Statement of domestication.--The statement of
24 domestication shall be executed by the association and shall set
25 forth in the English language:

26 (1) The name of the association. If the name is in a
27 foreign language, it shall be set forth in Roman letters or
28 characters or Arabic or Roman numerals. If the name is one
29 that is rendered unavailable for use by a corporation by any
30 provision of section 1303(b) or (c) (relating to corporate

1 name), the association shall adopt a new name, in accordance
2 with any procedures for changing the name of the association
3 that are applicable prior to the domestication of the
4 association, and shall set forth the new name in the
5 statement.

6 (2) The name of the jurisdiction under the laws of which
7 and the date on which it was first formed, incorporated or
8 otherwise came into being.

9 (3) The name of the jurisdiction that constituted the
10 seat, siege social or principal place of business or control
11 administration of the association, or any equivalent under
12 applicable law, immediately prior to the filing of the
13 statement.

14 (4) A statement [that upon domestication the association
15 will be a domestic association under the laws of this
16 Commonwealth] of the type of domestic association that the
17 association will be upon domestication.

18 (5) A statement that the filing of the statement of
19 domestication and, if desired, the renunciation of the prior
20 domicile has been authorized (unless its charter or other
21 organic documents require a greater vote) by a majority in
22 interest of the shareholders, members or other proprietors of
23 the association.

24 (6) If the association will be a type of domestic
25 association that is created by a filing in the department,
26 such other provisions as are required to be included in an
27 initial filing to create that type of domestic association,
28 except that it shall not be necessary to set forth the name
29 of the person organizing the association.

30 (7) Any other provision that the association may choose

1 to insert unless this title prohibits the inclusion of such a
2 provision in a filing that creates the type of domestic
3 association that the association will be upon domestication.

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

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

19 (e) Exclusion.--An association that can be domesticated
20 under [section 4161 (relating to domestication) or 6161
21 (relating to domestication)] any of the following sections shall
22 not be domesticated under this section:

23 Section 4161 (relating to domestication).

24 Section 6161 (relating to domestication).

25 Section 8590 (relating to domestication).

26 Section 8982 (relating to domestication).

27 Section 9501(a)(1)(ii) (relating to application and
28 effect of chapter).

29 (f) Definition.--As used in this section, the term
30 "association," except as restricted by subsection (e), includes

1 any alien incorporated organization, private law corporation
2 (whether or not organized for business purposes), public law
3 corporation, partnership, proprietorship, joint venture,
4 foundation, trust, association or similar organization or entity
5 existing under the laws of any jurisdiction other than this
6 Commonwealth.

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

10 § 162. Contingent domestication of certain alien associations.

11 * * *

12 (c) Statement of consummation of domestication.--At any time
13 after the filing of a statement of contingent domestication, the
14 association may file in the department a statement of
15 consummation of domestication which shall be executed by the
16 association and shall set forth:

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

21 * * *

22 (j) Cross [reference] references.--See [section] sections
23 134 (relating to docketing statement) and 135 (relating to
24 requirements to be met by filed documents).

25 § 524. CERTAIN ACQUISITIONS AND PROPOSED ACQUISITIONS INVOLVING <—

26 BANKS, BANK AND TRUST COMPANIES, TRUST COMPANIES,
27 NATIONAL BANKS AND BANK HOLDING COMPANIES.

28 (A) SCOPE.--THIS SECTION APPLIES TO ALL INSTITUTIONS AND
29 HOLDING COMPANIES AS DEFINED IN SUBSECTION (M).

30 (B) REQUIREMENT OF PRIOR APPROVAL.--EXCEPT AS PROVIDED IN

SUBSECTION (I), IT SHALL BE UNLAWFUL, WITHOUT THE PRIOR WRITTEN
APPROVAL OF THE DEPARTMENT UNDER THIS SECTION, FOR ANY PERSON:

(1) TO ACQUIRE, OR TO MAKE A PROPOSAL TO ACQUIRE, VOTING
SHARES OF AN INSTITUTION OR VOTING SHARES OF A HOLDING
COMPANY IF THE AGGREGATE NUMBER OF VOTING SHARES HELD AFTER
SUCH ACQUISITION WOULD TOTAL MORE THAN 5% OF THE OUTSTANDING
VOTING SHARES OF ANY CLASS OF SUCH INSTITUTION OR HOLDING
COMPANY; OR

(2) TO ENTER INTO AN ACQUISITION TRANSACTION WITH AN
INSTITUTION OR WITH A HOLDING COMPANY;

WHETHER OR NOT ANY PRIOR ACQUISITION HAD BEEN APPROVED BY THE
DEPARTMENT UNDER THIS SECTION.

(C) APPLICATION FOR APPROVAL.--IF THE APPROVAL OF THE
DEPARTMENT IS REQUIRED UNDER SUBSECTION (B), A PERSON WHO
INTENDS TO ACQUIRE, OR TO MAKE A PROPOSAL TO ACQUIRE, VOTING
SHARES OF, OR TO ENTER INTO AN ACQUISITION TRANSACTION WITH, AN
INSTITUTION OR A HOLDING COMPANY SHALL:

(1) FILE AN APPLICATION FOR APPROVAL IN SUCH FORM AS THE
DEPARTMENT MAY PRESCRIBE;

(2) DELIVER TO THE DEPARTMENT FROM TIME TO TIME SUCH
OTHER INFORMATION AS THE DEPARTMENT MAY REQUIRE WITH SUCH
CERTIFICATION OF FINANCIAL INFORMATION AND SUCH VERIFICATION
BY OATH OR AFFIRMATION OF OTHER DATA AS THE DEPARTMENT MAY
SPECIFY;

(3) PAY SUCH INVESTIGATION FEE AS THE DEPARTMENT MAY
SPECIFY; AND

(4) EXCEPT IN THE CASE OF AN APPLICANT WHICH IS A
DOMESTIC CORPORATION OR A FOREIGN CORPORATION QUALIFIED TO DO
BUSINESS IN PENNSYLVANIA, DELIVER TO THE DEPARTMENT A WRITTEN
CONSENT TO SERVICE OF PROCESS IN ANY ACTION OR SUIT ARISING

1 OUT OF OR IN CONNECTION WITH THE PROPOSED ACQUISITION THROUGH
2 SERVICE OF PROCESS ON THE SECRETARY OF BANKING.

3 (D) INVESTIGATION BY DEPARTMENT.--UPON RECEIPT OF AN
4 APPLICATION FOR APPROVAL AND OTHER ITEMS REQUIRED UNDER
5 SUBSECTION (C) THE DEPARTMENT SHALL CONDUCT AN INVESTIGATION TO
6 DETERMINE WHETHER THE APPLICANT HAS DEMONSTRATED BY A
7 PREPONDERANCE OF THE EVIDENCE THAT:

8 (1) THE ACQUISITION OF VOTING SHARES OR ACQUISITION
9 TRANSACTION, ITS PURPOSES AND PROBABLE EFFECTS WOULD BE
10 CONSISTENT WITH THE PURPOSES SET FORTH IN SECTION 103(A) OF
11 THE BANKING CODE;

12 (2) THE APPLICANT, OR ITS DIRECTORS AND OFFICERS IN THE
13 CASE OF A CORPORATION, AND ANY PROPOSED NEW OFFICERS OR
14 DIRECTORS OF THE INSTITUTION INVOLVED WOULD SATISFY THE TEST
15 FOR INCORPORATORS, DIRECTORS AND OFFICERS OF A NEW
16 INSTITUTION UNDER SECTION 1007(A) OF THE BANKING CODE;

17 (3) THE PROPOSED ACQUISITION OF VOTING SHARES OR
18 ACQUISITION TRANSACTION WOULD NOT BE PREJUDICIAL TO THE
19 INTERESTS OF THE DEPOSITORS, CREDITORS, BENEFICIARIES OF
20 FIDUCIARY ACCOUNTS OR SHAREHOLDERS OF THE INSTITUTION OR
21 HOLDING COMPANY INVOLVED;

22 (4) THE PROPOSED ACQUISITION OF VOTING SHARES OR
23 ACQUISITION TRANSACTION IS IN THE BEST INTERESTS OF THE
24 INSTITUTION AND, IF APPLICABLE, THE HOLDING COMPANY OF SUCH
25 INSTITUTION;

26 (5) COMPETITION AMONG INSTITUTIONS WILL NOT BE ADVERSELY
27 AFFECTED AND PUBLIC CONVENIENCE AND ADVANTAGE WILL BE
28 PROMOTED; AND

29 (6) THE APPLICANT HAS NOT BEEN PROTECTED BY THE
30 DEPARTMENT FROM AN ACQUISITION TRANSACTION. THE DEPARTMENT

1 SHALL NOT APPROVE AN ACQUISITION TRANSACTION APPLICATION
2 WHICH IS SUBMITTED BY AN APPLICANT WHICH HAS ITSELF BEEN THE
3 TARGET OF A POTENTIAL ACQUISITION TRANSACTION AND BEEN
4 PROTECTED FROM THE ACQUISITION BY THE DEPARTMENT.

5 IN MAKING THE DETERMINATION UNDER PARAGRAPHS (4) AND (5), THE
6 DEPARTMENT SHALL NOT APPROVE AN ACQUISITION OF VOTING SHARES OR
7 ACQUISITION TRANSACTION UNLESS THE ACQUISITION OF VOTING SHARES
8 OR ACQUISITION TRANSACTION IS CONSISTENT WITH THE CONVENIENCE
9 AND NEEDS OF THE CUSTOMERS AND COMMUNITIES SERVED BY THE
10 INSTITUTION AFTER TAKING INTO ACCOUNT, AMONG OTHER THINGS, THE
11 RELATIVE RATINGS UNDER THE COMMUNITY REINVESTMENT ACT OF 1977
12 (91 STAT. 1111, 12 U.S.C. § 2901 ET SEQ.), OF THE INSTITUTION
13 AND THE APPLICANT, PROSPECTIVE BRANCH CLOSINGS AND PROSPECTIVE
14 JOB LOSSES. IN MAKING THE DETERMINATION UNDER PARAGRAPHS (4) AND
15 (5), THE DEPARTMENT SHALL CONSIDER, TO THE EXTENT IT DEEMS
16 APPROPRIATE, ALL RELEVANT FACTORS, INCLUDING WITHOUT LIMITATION
17 THE MATTERS SET FORTH IN SECTION 1715(A)(1), (2) AND (3)
18 (RELATING TO EXERCISE OF POWERS GENERALLY), AND WHETHER THE
19 APPLICANT HAS DEMONSTRATED THAT THE ACQUISITION OF VOTING SHARES
20 OR ACQUISITION TRANSACTION WILL RESULT IN NET NEW BENEFITS.

21 (E) INFORMATION FURNISHED TO SUBJECT INSTITUTION OR HOLDING
22 COMPANY.--AS PART OF ITS INVESTIGATION, THE DEPARTMENT SHALL
23 TRANSMIT TO THE INSTITUTION OR THE HOLDING COMPANY WHOSE VOTING
24 SHARES ARE PROPOSED TO BE ACQUIRED OR WHICH IS THE SUBJECT OF
25 SUCH ACQUISITION TRANSACTION A COPY OF THE APPLICATION AND ALL
26 OTHER INFORMATION RECEIVED FROM THE APPLICANT, EXCEPT SUCH
27 INFORMATION WHICH THE DEPARTMENT DETERMINES SHOULD BE KEPT
28 CONFIDENTIAL, FOR THE PURPOSE OF RECEIVING SUCH COMMENTS THEREON
29 AS SUCH INSTITUTION OR HOLDING COMPANY SHALL TRANSMIT TO THE
30 DEPARTMENT UPON ITS REQUEST.

1 (F) ACTION BY DEPARTMENT.--WITHIN 60 DAYS AFTER RECEIPT OF
2 AN APPLICATION UNDER SUBSECTION (C) OR WITHIN A LONGER PERIOD
3 NOT IN EXCESS OF 30 DAYS AFTER RECEIPT FROM THE APPLICANT OF
4 ADDITIONAL INFORMATION REQUIRED BY THE DEPARTMENT, THE
5 DEPARTMENT SHALL APPROVE OR DISAPPROVE THE PROPOSED ACQUISITION
6 OF VOTING SHARES OR ACQUISITION TRANSACTION AND GIVE WRITTEN
7 NOTICE OF ITS DECISION TO THE APPLICANT AND THE INSTITUTION OR
8 HOLDING COMPANY WHOSE VOTING SHARES ARE PROPOSED TO BE ACQUIRED
9 OR THAT IS THE SUBJECT OF THE ACQUISITION TRANSACTION. IF THE
10 DEPARTMENT APPROVES A PROPOSED ACQUISITION OF VOTING SHARES
11 WHICH MAY RESULT IN A CHANGE OF CONTROL OR OWNERSHIP CHANGE OF
12 SUCH INSTITUTION OR HOLDING COMPANY OR AN ACQUISITION
13 TRANSACTION, IT MAY IMPOSE CONDITIONS TO BE OBSERVED AFTER SUCH
14 ACQUISITION OF VOTING SHARES OR ACQUISITION TRANSACTION, WITH
15 RESPECT TO TRANSACTIONS BETWEEN THE INSTITUTION INVOLVED AND THE
16 APPLICANT OR AFFILIATE OF THE APPLICANT, WITH RESPECT TO
17 DIVIDENDS OR DISTRIBUTIONS BY SUCH INSTITUTIONS, WITH RESPECT TO
18 EMPLOYEE RELATIONS, WITH RESPECT TO REIMBURSEMENT FOR ANY LOSS
19 OCCASIONED BY SUCH OWNERSHIP CHANGE OR WITH RESPECT TO SUCH
20 OTHER MATTERS AS THE DEPARTMENT MAY DEEM ADVISABLE ON THE BASIS
21 OF THE PURPOSES SET FORTH IN SECTION 103(A) OF THE BANKING CODE.
22 IN MAKING THE DETERMINATION UNDER SUBSECTION (D)(5), THE
23 DEPARTMENT SHALL CONSULT WITH THE ATTORNEY GENERAL. THE DECISION
24 OF THE DEPARTMENT SHALL BE SUBJECT TO REVIEW BY THE COMMONWEALTH
25 COURT IN THE MANNER PROVIDED BY LAW.

26 (G) PROHIBITION OF MISLEADING STATEMENTS.--IT SHALL BE
27 UNLAWFUL FOR ANY PERSON DIRECTLY OR INDIRECTLY TO MAKE ANY
28 UNTRUE STATEMENT OF A MATERIAL FACT OR TO OMIT TO STATE A
29 MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN
30 LIGHT OF THE CIRCUMSTANCES IN WHICH THEY WERE MADE, NOT

1 MISLEADING IN CONNECTION WITH:

2 (1) ANY ACQUISITION OF, OR PROPOSAL TO ACQUIRE, VOTING
3 SHARES THAT REQUIRES APPROVAL UNDER THIS SECTION;

4 (2) AN ACQUISITION TRANSACTION THAT REQUIRES APPROVAL
5 UNDER THIS SECTION; OR

6 (3) ANY APPLICATION OR SUBMISSION OF INFORMATION TO THE
7 DEPARTMENT UNDER SUBSECTION (C).

8 (H) REGULATION BY DEPARTMENT.--THE ENFORCEMENT AND
9 IMPLEMENTATION OF THIS SECTION SHALL BE SUBJECT TO REGULATION BY
10 THE DEPARTMENT.

11 (I) EXEMPTIONS.--NO APPROVAL UNDER THIS SECTION SHALL BE
12 REQUIRED FOR AN ACQUISITION OF OR PROPOSAL TO ACQUIRE VOTING
13 SHARES OR FOR AN ACQUISITION TRANSACTION IN THE CASE OF EITHER:

14 (1) AN ACQUISITION OR PROPOSAL TO ACQUIRE VOTING SHARES
15 BY THE ISSUER THEREOF OR AN ACQUISITION OR PROPOSAL TO
16 ACQUIRE VOTING SHARES OF AN INSTITUTION BY ITS HOLDING
17 COMPANY, OR AN ACQUISITION TRANSACTION BETWEEN AN INSTITUTION
18 AND ITS HOLDING COMPANY OR ANY OTHER ENTITY WHICH IS
19 CONTROLLED BY SUCH HOLDING COMPANY;

20 (2) A TRANSACTION BY A BROKER-DEALER WHO DOES NO MORE
21 THAN PERFORM THE CUSTOMARY BROKER'S FUNCTION IN TRANSACTIONS
22 ON A STOCK EXCHANGE OR IN THE OVER-THE-COUNTER MARKET, WHO
23 RECEIVES NO MORE THAN THE CUSTOMARY BROKER'S COMMISSION AND
24 WHO DOES NOT SOLICIT OR ARRANGE FOR THE SOLICITATION OF
25 ORDERS;

26 (3) AN ACQUISITION OR PROPOSAL TO ACQUIRE VOTING SHARES
27 OF, OR AN ACQUISITION TRANSACTION WITH, AN INSTITUTION OR
28 HOLDING COMPANY BY ANY PERSON WHICH HAS BEEN APPROVED BY A
29 MAJORITY OF THE BOARD OF DIRECTORS OF THE INSTITUTION OR
30 HOLDING COMPANY, UNLESS AT THE TIME THE INSTITUTION OR

1 HOLDING COMPANY APPROVES THE ACQUISITION OF VOTING SHARES OR
2 ACQUISITION TRANSACTION, 25% OR MORE OF THE INSTITUTION'S OR
3 HOLDING COMPANY'S BOARD IS COMPOSED OF NOMINEES, AGENTS,
4 AFFILIATES OF OR ANY OTHER PERSONS ACTING IN CONCERT WITH THE
5 PERSON OR ENTITY SEEKING TO ACQUIRE VOTING SHARES OF, OR
6 ENTER INTO AN ACQUISITION TRANSACTION WITH, THE INSTITUTION
7 OR HOLDING COMPANY;

8 (4) AN ACQUISITION OR PROPOSAL TO ACQUIRE VOTING SHARES
9 OF AN INSTITUTION OR HOLDING COMPANY BY ANY PERSON IF THE
10 AGGREGATE NUMBER OF SHARES HELD BY SUCH PERSON AFTER SUCH
11 ACQUISITION WOULD TOTAL LESS THAN 10% IN VOTING POWER OF THE
12 OUTSTANDING SHARES OF SUCH INSTITUTION OR HOLDING COMPANY
13 ENTITLED TO VOTE GENERALLY IN THE ELECTION OF DIRECTORS AND
14 SUCH PERSON IS NOT REQUIRED TO OBTAIN THE APPROVAL OF THE
15 FEDERAL RESERVE BOARD UNDER THE BANK HOLDING COMPANY ACT OF
16 1956 (70 STAT. 133, 12 U.S.C. § 1841 ET SEQ.) IN CONNECTION
17 WITH SUCH ACQUISITION; OR

18 (5) A TRANSACTION OF A TYPE EXEMPTED BY REGULATION OF
19 THE DEPARTMENT IN LIGHT OF THE PURPOSES SET FORTH IN SECTION
20 103(A) OF THE BANKING CODE.

21 (J) CRIMINAL PENALTY FOR VIOLATION.--ANY PERSON WHO ACQUIRES
22 OR PROPOSES TO ACQUIRE VOTING SHARES OF AN INSTITUTION OR OF A
23 HOLDING COMPANY OR WHO ENGAGES IN AN ACQUISITION TRANSACTION IN
24 VIOLATION OF THIS SECTION OR WHO VIOLATES SUBSECTION (G) SHALL
25 BE GUILTY OF A MISDEMEANOR AND SHALL UPON CONVICTION THEREOF BE
26 SUBJECT, IN THE CASE OF AN INDIVIDUAL, TO IMPRISONMENT FOR A
27 PERIOD NOT EXCEEDING FIVE YEARS OR A FINE NOT EXCEEDING \$5,000,
28 OR BOTH, AND, IN THE CASE OF ANY OTHER PERSON, TO A FINE NOT
29 EXCEEDING \$50,000.

30 (K) CIVIL LIABILITY PENALTY FOR VIOLATION.--ANY PERSON WHO

1 VIOLATES ANY PROVISION OF THIS SECTION SHALL BE LIABLE TO ANY
2 INSTITUTION OR HOLDING COMPANY OR SHAREHOLDER THEREOF DAMAGED
3 THEREBY AND, IN THE DISCRETION OF THE COURT, FOR PUNITIVE
4 DAMAGES. THE PROVISIONS OF THIS SECTION SHALL BE ENFORCEABLE IN
5 ANY ACTION OR SUIT INSTITUTED BY THE DEPARTMENT OR BY ANY SUCH
6 INSTITUTION, HOLDING COMPANY OR SHAREHOLDER TO ENJOIN OR
7 RESTRAIN ANY VIOLATION OR THREATENED VIOLATION OF THIS SECTION.

8 (L) SEVERABILITY.--THE PROVISIONS OF THIS SECTION SHALL BE
9 SEVERABLE. IF ANY PROVISION OF THIS SECTION OR THE APPLICATION
10 THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE
11 REMAINDER OF THIS SECTION, AND THE APPLICATION OF SUCH PROVISION
12 TO OTHER PERSONS OR CIRCUMSTANCES, SHALL NOT BE AFFECTED
13 THEREBY, UNLESS THE COURT FINDS THAT THE VALID PROVISIONS OF
14 THIS SECTION ARE SO ESSENTIALLY AND INSEPARABLY CONNECTED WITH,
15 AND SO DEPEND UPON, THE VOID PROVISION OR APPLICATION, THAT IT
16 CANNOT BE PRESUMED THE GENERAL ASSEMBLY WOULD HAVE ENACTED THE
17 REMAINING VALID PROVISIONS WITHOUT THE VOID ONE; OR UNLESS THE
18 COURT FINDS THAT THE REMAINING VALID PROVISIONS, STANDING ALONE,
19 ARE INCOMPLETE AND ARE INCAPABLE OF BEING EXECUTED IN ACCORDANCE
20 WITH THE LEGISLATIVE INTENT.

21 (M) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
22 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
23 SUBSECTION:

24 "ACQUIRE." OBTAINING LEGAL OR BENEFICIAL OWNERSHIP OF VOTING
25 SHARES, WHETHER OBTAINED DIRECTLY OR INDIRECTLY, THROUGH AN
26 INTERMEDIARY OR OTHERWISE; BENEFICIAL OWNERSHIP BY A PERSON
27 SHALL BE DEEMED TO INCLUDE OWNERSHIP BY ANOTHER PERSON WHICH
28 CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH SUCH
29 PERSON AND TO INCLUDE OWNERSHIP BY A SPOUSE OR MEMBER OF THE
30 FAMILY OF SUCH PERSON; THE ACQUISITION OF OPTIONS, WARRANTS AND

1 RIGHTS TO SUBSCRIBE FOR, OR TO PURCHASE, VOTING SHARES AND THE
2 ACQUISITION OF RIGHTS TO OBTAIN VOTING SHARES THROUGH CONVERSION
3 OR EXCHANGE SHALL BE DEEMED AN ACQUISITION OF SUCH VOTING
4 SHARES.

5 "ACQUISITION TRANSACTION." A MERGER, SALE OF ASSETS OR OTHER
6 SIMILAR TRANSACTION INVOLVING AN INSTITUTION OR A HOLDING
7 COMPANY FOLLOWING WHICH:

8 (1) PERSONS WHO ARE DIRECTORS OF SUCH INSTITUTION OR
9 HOLDING COMPANY IMMEDIATELY PRIOR TO THE CONSUMMATION OF SUCH
10 TRANSACTION SHALL NOT CONSTITUTE AT LEAST ONE-HALF OF THE
11 DIRECTORS OF THE SURVIVING, SUCCESSOR OR TRANSFEREE
12 INSTITUTION OR HOLDING COMPANY IMMEDIATELY FOLLOWING THE
13 CONSUMMATION OF SUCH TRANSACTION; OR

14 (2) HOLDERS OF VOTING SHARES OF SUCH INSTITUTION OR
15 HOLDING COMPANY IMMEDIATELY PRIOR TO THE CONSUMMATION OF SUCH
16 TRANSACTION SHALL NOT BE HOLDERS OF AT LEAST ONE-HALF OF THE
17 VOTING SHARES OF THE SURVIVING, SUCCESSOR OR TRANSFEREE
18 INSTITUTION OR HOLDING COMPANY IMMEDIATELY FOLLOWING THE
19 CONSUMMATION OF SUCH TRANSACTION.

20 "BANKING CODE." THE ACT OF NOVEMBER 30, 1965 (P.L.847,
21 NO.356), KNOWN AS THE BANKING CODE OF 1965.

22 "DEPARTMENT." THE DEPARTMENT OF BANKING OF THE COMMONWEALTH.

23 "HOLDING COMPANY." A CORPORATION THAT HAS THE POWER TO
24 ELECT, DIRECTLY OR INDIRECTLY, A MAJORITY OF THE BOARD OF
25 DIRECTORS OF AN INSTITUTION.

26 "INSTITUTION." A BANK, BANK AND TRUST COMPANY, NATIONAL BANK
27 OR STOCK SAVINGS BANK HAVING ITS MAIN OFFICE IN PENNSYLVANIA AND
28 HAVING DEPOSITS IN EXCESS OF \$10,000,000,000 AS OF DECEMBER 31,
29 1997.

30 "NET NEW BENEFITS." INITIAL CAPITAL INVESTMENTS, JOB

1 CREATION PLANS, CONSUMER AND BUSINESS SERVICES, COMMITMENTS TO
2 MAINTAIN AND OPEN BRANCH OFFICES WITHIN A BANKING INSTITUTION'S
3 DELINEATED LOCAL COMMUNITY AND SUCH OTHER MATTERS AS THE
4 DEPARTMENT MAY DEEM NECESSARY OR ADVISABLE.

5 "OWNERSHIP CHANGE." THE SAME MEANING AS IN SECTION 382 OF
6 THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C.
7 § 1 ET SEQ.).

8 "PROPOSAL TO ACQUIRE." ANY OFFER OR ATTEMPT TO BUY OR
9 SOLICITATION OF AN OFFER TO SELL OR OTHER ATTEMPT OR OFFER TO
10 ACQUIRE BY ANY MEANS, DIRECTLY OR INDIRECTLY, THROUGH AN
11 INTERMEDIARY OR OTHERWISE.

12 "VOTING SHARES." SHARES OF AN INSTITUTION OR HOLDING COMPANY
13 ENTITLED TO VOTE GENERALLY IN THE ELECTION OF DIRECTORS.

14 § 1303. Corporate name.

15 * * *

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

19 (1) The name of any other domestic corporation for
20 profit or not-for-profit which is either in existence or for
21 which articles of incorporation have been filed but have not
22 yet become effective, or of any foreign corporation for
23 profit or not-for-profit which is either authorized to do
24 business in this Commonwealth or for which an application for
25 a certificate of authority has been filed but has not yet
26 become effective, [or of any domestic or foreign limited
27 partnership that has filed in the Department of State a
28 certificate or qualified under Chapter 85 (relating to
29 limited partnerships) or under corresponding provisions of
30 prior law,] or the name of any association registered at any

1 time under 54 Pa.C.S. Ch. 5 (relating to corporate and other
2 association names), unless[: (i) where the name is the same
3 or confusingly similar,] the other association:

4 [(A)] (i) has stated that it is about to change
5 its name, or to cease to do business, or is being
6 wound up, or is a foreign association about to
7 withdraw from doing business in this Commonwealth,
8 and the statement and [the] a written consent [of the
9 other association] to the adoption of the name
10 executed by the other association is filed in the
11 Department of State;

12 [(B)] (ii) has filed with the Department of
13 Revenue a certificate of out of existence, or has
14 failed for a period of three successive years to file
15 with the Department of Revenue a report or return
16 required by law and the fact of such failure has been
17 certified by the Department of Revenue to the
18 Department of State;

19 [(C)] (iii) has abandoned its name under the
20 laws of its jurisdiction of incorporation, by
21 amendment, merger, consolidation, division,
22 expiration, dissolution or otherwise, without its
23 name being adopted by a successor in a merger,
24 consolidation, division or otherwise, and an official
25 record of that fact, certified as provided by 42
26 Pa.C.S. § 5328 (relating to proof of official
27 records), is presented by any person to the
28 department; or

29 [(D)] (iv) has had the registration of its name
30 under 54 Pa.C.S. Ch. 5 terminated and, if the

1 termination was effected by operation of 54 Pa.C.S. §
2 504 (relating to effect of failure to make decennial
3 filings), the application for the use of the name is
4 accompanied by a verified statement stating that at
5 least 30 days' written notice of intention to
6 appropriate the name was given to the delinquent
7 association at its [registered office] last known
8 place of business and that, after diligent search by
9 the affiant, the affiant believes the association to
10 be out of existence.]; or

11 (ii) where the name is confusingly similar, the
12 consent of the other association to the adoption of the
13 name is filed in the Department of State.

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

16 * * *

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

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

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

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

1 § 1304. Required name changes by senior corporations.

2 * * *

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

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

19 (2) any person adversely affected. [;
20 may enjoin the other corporation or other association from
21 continuing to use its name or a confusingly similar name.]

22 § 1311. Filing of statement of summary of record by certain
23 corporations.

24 (a) General rule.--Where any of the [valid] charter
25 documents of a business corporation are not on file in the
26 Department of State or there is an error in any such document as
27 transferred to the department pursuant to section 140 (relating
28 to custody and management of orphan corporate and business
29 records), and the corporation desires to file any document in
30 the department under any other provision of this subpart or the

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

10 (1) The name of the corporation and, subject to section
11 109 (relating to name of commercial registered office
12 provider in lieu of registered address), the location,
13 including street and number, if any, of its registered
14 office.

15 (2) The statute by or under which the corporation was
16 incorporated.

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

21 (4) The place or places, including volume and page
22 numbers or their equivalent, where the documents
23 [constituting the currently effective articles are] that are
24 not on file in the department or that require correction in
25 the records of the department were originally filed or
26 recorded, the date or dates of each filing or recording and
27 the correct text of the [currently effective articles.]
28 documents. The information specified in this paragraph may be
29 omitted in a statement of summary of record that is delivered
30 to the department contemporaneously with amended and restated

1 articles of the corporation filed under this subpart.

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

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

13 A corporation shall be required to make only one filing under
14 this subsection.]

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

24 (c) Cross [reference] references.--See [section] sections
25 134 (relating to docketing statement), 135 (relating to
26 requirements to be met by filed documents) and 1106(b)(2)
27 (relating to uniform application of subpart).

28 § 1504. Adoption, amendment and contents of bylaws.

29 * * *

30 (d) Amendment of voting provisions.--

(1) Unless otherwise provided in a bylaw adopted by the shareholders, whenever [the bylaws require] a bylaw adopted by the shareholders requires for the taking of any action by the shareholders or a class of shareholders a specific number or percentage of votes, the provision of the bylaws setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes of the shareholders or of the class of shareholders or only by action of the board of directors.

(2) Paragraph (1) shall not apply to a bylaw setting forth the right of shareholders to act by unanimous written consent as provided in section 1766(a) (relating to unanimous consent).

§ 1505. Persons bound by bylaws.

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

§ 1508. Corporate records; inspection by shareholders.

(a) Required records.--Every business corporation shall keep complete and accurate books and records of account, minutes of the proceedings of the incorporators, shareholders and directors and a share register giving the names and addresses of all shareholders and the number and class of shares held by each.

The share register shall be kept at [either] any of the following locations:

(1) the registered office of the corporation in this

1 Commonwealth [or at its];

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

4 (3) any actual business office of the corporation; or
5 [at]

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

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

1 thereof, refuses to permit an inspection sought by a shareholder
2 or attorney or other agent acting for the shareholder pursuant
3 to subsection (b) or does not reply to the demand within five
4 business days after the demand has been made, the shareholder
5 may apply to the court for an order to compel 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 shareholder to
9 inspect the share register and the other books and records of
10 the corporation and to make copies or extracts therefrom, or the
11 court may order the corporation to furnish to the shareholder a
12 list of its shareholders as of a specific date on condition that
13 the shareholder first pay to the corporation the reasonable cost
14 of obtaining and furnishing the list and on such other
15 conditions as the court deems appropriate. Where the shareholder
16 seeks to inspect the books and records of the corporation, other
17 than its share register or list of shareholders, 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 the document.

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

24 Where the shareholder seeks to inspect the share register or
25 list of shareholders of the corporation and he has complied with
26 the provisions of this section respecting the form and manner of
27 making demand for inspection of the documents, the burden of
28 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

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

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

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

§ 1512. Informational rights of a director.

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

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

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

(b) Proceedings for enforcement of inspection by a director.--If the corporation, or an officer or agent thereof,

refuses to permit an inspection or obtain or provide information sought by a director or attorney or other agent acting for the director pursuant to subsection (a) or does not reply to the request within two business days after the request has been made, the director may apply to the court for an order to compel the inspection or the obtaining or providing of the information. The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that the information to be obtained by the exercise of the right is not reasonably related to the performance of the duties of the director or that the director or the attorney or agent of the director is likely to use the information in a manner that would violate the duty of the director to the corporation. The order of the court may contain provisions protecting the corporation from undue burden or expense and prohibiting the director from using the information in a manner that would violate the duty of the director to the corporation.

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

§ 1521. Authorized shares.

* * *

(b) Provisions specifically authorized.--

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

(i) Subject to the right or obligation of the corporation to redeem any of the shares for the

1 consideration, if any, fixed by or in the manner provided
2 by the articles for the redemption thereof. Unless
3 otherwise provided in the articles, any shares subject to
4 redemption shall be redeemable only pro rata or by lot or
5 by such other equitable method as may be selected by the
6 corporation. [An amendment of the articles to add or
7 amend a provision permitting the redemption of any shares
8 by a method that is not pro rata nor by lot nor otherwise
9 equitable may be effected only pursuant to section 1906
10 (relating to special treatment of holders of shares of
11 same class or series).]

12 (ii) Entitling the holders thereof to cumulative,
13 noncumulative or partially cumulative dividends.

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

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

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

20 (i) Facts ascertainable outside of the articles if
21 the manner in which the facts will operate upon the terms
22 of the class or series is set forth in the articles. Such
23 facts may include, without limitation, actions or events
24 within the control of or determinations made by the
25 corporation or a representative of the corporation.

26 * * *

27 (d) Status and rights.--Shares of a business corporation
28 shall be deemed personal property. Except as otherwise provided
29 by the articles or, when so permitted by subsection (c), by one
30 or more bylaws adopted by the shareholders, each share shall be

1 in all respects equal to every other share. See section
2 1906(d)(4) (relating to special treatment of holders of shares
3 of same class or series).

4 § 1526. Liability of [subscribers and] shareholders.

5 [A subscriber to, or holder or owner of, shares of a business
6 corporation shall not be under any liability to the corporation
7 or any creditor thereof with respect to the shares other than
8 the personal obligation of a shareholder who has acquired his
9 shares by subscription to comply with the terms of the
10 subscription.] (a) General rule.--A shareholder of a business
11 corporation shall not be liable, solely by reason of being a
12 shareholder, under an order of a court or in any other manner
13 for a debt, obligation or liability of the corporation of any
14 kind or for the acts of any shareholder or representative of the
15 corporation.

16 (b) Professional relationship unaffected.--Subsection (a)
17 shall not afford the shareholders of a business corporation that
18 is not a professional corporation, but that provides
19 professional services, with greater immunity than is available
20 to the officers, shareholders, employees or agents of a business
21 corporation that is a professional corporation. See section 2925
22 (relating to professional relationship retained).

23 (c) Disciplinary jurisdiction unaffected.--A business
24 corporation providing professional services shall be subject to
25 the applicable rules and regulations adopted by, and all the
26 disciplinary powers of, the court, department, board, commission
27 or other government unit regulating the profession in which the
28 corporation is engaged. The court, department, board or other
29 government unit may require that a corporation include in its
30 articles provisions that conform to any rule or regulation

heretofore or hereafter promulgated for the purpose of enforcing the ethics of a profession. This subpart shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.

§ 1571. Application and effect of subchapter.

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

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

Section 1930 (relating to dissenters rights).

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

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

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

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

Section 2104(b) (relating to procedure).

Section 2324 (relating to corporation option where a

1 restriction on transfer of a security is held invalid).

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

3 Section 2704(c) (relating to dissenters rights upon
4 election).

5 Section 2705(d) (relating to dissenters rights upon
6 renewal of election).

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

8 Section 2907(a) (relating to proceedings to terminate
9 breach of qualifying conditions).

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

11 (b) Exceptions.--

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

23 (i) listed on a national securities exchange or
24 designated as a national market system security on an
25 interdealer quotation system by the National Association
26 of Securities Dealers, Inc.; or

27 (ii) held beneficially or of record by more than
28 2,000 [shareholders;
29 shall not have the right to obtain payment of the fair value
30 of any such shares under this subchapter.] persons.

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

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

8 (Repealed.)

9 (ii) Shares of any preferred or special class or
10 series unless the articles, the plan or the terms of the
11 transaction entitle all shareholders of the class or
12 series to vote thereon and require for the adoption of
13 the plan or the effectuation of the transaction the
14 affirmative vote of a majority of the votes cast by all
15 shareholders of the class or series.

16 (iii) Shares entitled to dissenters rights under
17 section 1906(c) (relating to dissenters rights upon
18 special treatment).

19 (3) The shareholders of a corporation that acquires by
20 purchase, lease, exchange or other disposition all or
21 substantially all of the shares, property or assets of
22 another corporation by the issuance of shares, obligations or
23 otherwise, with or without assuming the liabilities of the
24 other corporation and with or without the intervention of
25 another corporation or other person, shall not be entitled to
26 the rights and remedies of dissenting shareholders provided
27 in this subchapter regardless of the fact, if it be the case,
28 that the acquisition was accomplished by the issuance of
29 voting shares of the corporation to be outstanding
30 immediately after the acquisition sufficient to elect a

majority or more of the directors of the corporation.

* * *

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

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

§ 1572. Definitions.

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

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

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

1 * * *

2 "Shareholder." A shareholder as defined in section 1103
3 (relating to definitions), or an ultimate beneficial owner of
4 shares, including without limitation a holder of depository
5 receipts, where the beneficial interest owned includes an
6 interest in the assets of the corporation upon dissolution.

7 § 1704. Place and notice of meetings of shareholders.

8 (a) Place.--Meetings of shareholders may be held at such
9 place within or without this Commonwealth as may be provided in
10 or fixed pursuant to the bylaws. Unless otherwise provided in or
11 pursuant to the bylaws, all meetings of the shareholders shall
12 be held [in this Commonwealth at the registered office of the
13 corporation] at the executive office of the corporation wherever
14 situated.

15 * * *

16 § 1709. Conduct of shareholders meeting.

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

24 (b) Authority of the presiding officer.--Except as otherwise
25 provided in the bylaws, the presiding officer shall determine
26 the order of business and shall have the authority to establish
27 rules for the conduct of the meeting.

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

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

7 § 1729. Voting rights of directors.

8 (a) General rule.--Unless otherwise provided in a bylaw
9 adopted by the shareholders, every director of a business
10 corporation shall be entitled to one vote. Without limiting the
11 generality of the foregoing, a bylaw adopted by the shareholders
12 may provide that a class or other defined group of directors
13 shall have multiple or fractional voting rights, or no right to
14 vote, either generally or under specified circumstances.

15 (b) [Multiple and fractional voting] Application of
16 procedural requirements.--Any requirement of this subpart for
17 the presence of or vote or other action by a specified
18 percentage of directors shall be satisfied by the presence of or
19 vote or other action by directors entitled to cast the specified
20 percentage of the votes that all voting directors in office are
21 entitled to cast.

22 § 1731. Executive and other committees of the board.

23 (a) Establishment and powers.--Unless otherwise restricted
24 in the bylaws:

25 * * *

26 (2) Any committee, to the extent provided in the
27 resolution of the board of directors or in the bylaws, shall
28 have and may exercise all of the powers and authority of the
29 board of directors except that a committee shall not have any
30 power or authority as to the following:

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

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

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

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

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

* * *

§ 1745. Advancing expenses.

Expenses (including attorneys' fees) incurred in defending any action or proceeding referred to in this subchapter may be paid by a business corporation in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the representative to repay the amount if it is ultimately determined that he is not entitled to be indemnified by the corporation as authorized in this subchapter or otherwise. Except as otherwise provided in the bylaws, advancement of expenses shall be authorized by the board of directors. Sections 1728 (relating to interested directors or officers; quorum) and 2538 (relating to approval of transactions with interested shareholders) shall not be applicable to the advancement of expenses under this section.

§ 1748. Application to surviving or new corporations.

[For] (a) General rule.--Except as provided in subsection (b), for the purposes of this subchapter, references to "the

1 corporation" include all constituent corporations absorbed in a
2 consolidation, merger or division, as well as the surviving or
3 new corporations surviving or resulting therefrom, so that any
4 person who is or was a representative of the constituent,
5 surviving or new corporation, or is or was serving at the
6 request of the constituent, surviving or new corporation as a
7 representative of another domestic or foreign corporation for
8 profit or not-for-profit, partnership, joint venture, trust or
9 other enterprise, shall stand in the same position under the
10 provisions of this subchapter with respect to the surviving or
11 new corporation as he would if he had served the surviving or
12 new corporation in the same capacity.

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

19 § 1756. Quorum.

20 (a) General rule.--A meeting of shareholders of a business
21 corporation duly called shall not be organized for the
22 transaction of business unless a quorum is present. Unless
23 otherwise provided in a bylaw adopted by the shareholders:

24 * * *

25 (4) If a proxy casts a vote on behalf of a shareholder
26 on any issue considered at a meeting of shareholders, the
27 shareholder shall be deemed to be present during the entire
28 meeting for purposes of determining whether a quorum is
29 present for consideration of any other issue.

30 * * *

1 § 1758. Voting rights of shareholders.

2 * * *

3 (b) Procedures for election of directors.--[If the bylaws
4 provide a fair and reasonable procedure for the nomination of
5 candidates for any office, only candidates who have been duly
6 nominated in accordance therewith shall be eligible for
7 election.] Unless otherwise restricted in the bylaws, in
8 elections for directors, voting need not be by ballot unless
9 required by vote of the shareholders before the voting for
10 election of directors begins. The candidates for election as
11 directors receiving the highest number of votes from each class
12 or group of classes, if any, entitled to elect directors
13 separately up to the number of directors to be elected by the
14 class or group of classes shall be elected. If at any meeting of
15 shareholders, directors of more than one class are to be
16 elected, each class of directors shall be elected in a separate
17 election.

18 * * *

19 (e) Advance notice of nominations and other business.--If
20 the bylaws provide a fair and reasonable procedure for the
21 nomination of candidates for election as directors, only
22 candidates who have been duly nominated in accordance therewith
23 shall be eligible for election. If the bylaws impose a fair and
24 reasonable requirement of advance notice of proposals to be made
25 by a shareholder at the annual meeting of the shareholders, only
26 proposals for which advance notice has been properly given may
27 be acted upon at the meeting.

28 § 1759. Voting and other action by proxy.

29 * * *

30 (b) Execution and filing.--Every proxy shall be executed [in

1 writing] or authenticated by the shareholder or by his duly
2 authorized attorney-in-fact and filed with or transmitted to the
3 secretary of the corporation or its designated agent. A
4 shareholder or his duly authorized attorney-in-fact may execute
5 or authenticate a writing or transmit an electronic message
6 authorizing another person to act for him by proxy. A telegram,
7 telex, cablegram, datagram or [similar] other means of
8 electronic transmission from a shareholder or attorney-in-fact,
9 or a photographic, facsimile or similar reproduction of a
10 writing executed by a shareholder or attorney-in-fact:

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

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

17 (c) Revocation.--A proxy, unless coupled with an interest,
18 shall be revocable at will, notwithstanding any other agreement
19 or any provision in the proxy to the contrary, but the
20 revocation of a proxy shall not be effective until [written]
21 notice thereof has been given to the secretary of the
22 corporation or its designated agent in writing or by electronic
23 transmission. An unrevoked proxy shall not be valid after three
24 years from the date of its execution, authentication or
25 transmission unless a longer time is expressly provided therein.
26 A proxy shall not be revoked by the death or incapacity of the
27 maker unless, before the vote is counted or the authority is
28 exercised, written notice of the death or incapacity is given to
29 the secretary of the corporation or its designated agent.

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. The notice shall
5 state that a copy of the bylaws of the surviving or new
6 corporation will be furnished to any shareholder on request and
7 without cost.

8 * * *

9 § 1924. Adoption of plan.

10 * * *

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

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

16 * * *

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

23 * * *

24 (3) If a merger or consolidation of a subsidiary
25 corporation with a parent corporation is effected pursuant to
26 paragraph (1)(ii), the plan of merger or consolidation shall
27 be deemed adopted by the subsidiary corporation when it has
28 been adopted by the board of the parent corporation and
29 neither approval of the plan by the board of directors of the
30 subsidiary corporation nor execution of articles of merger or

1 consolidation by the subsidiary corporation shall [not] be
2 necessary.

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

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

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

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

1 and restrictions as the share of stock of the
2 constituent corporation being converted in the merger
3 or consolidation.

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

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

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

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

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

28 (iii) As used in this paragraph only, the term
29 "holding company" means a corporation that, from its
30 incorporation until consummation of the merger or

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

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

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

27 * * *

28 § 1929. Effect of merger or consolidation.

29 * * *

30 (b) Property rights.--All the property, real, personal and

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

19 * * *

20 § 1930. Dissenters rights.

21 * * *

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

28 * * *

29 § 1931. Share exchanges.

30 (a) General rule.--All the outstanding shares of one or more

1 classes or series of a domestic business corporation, designated
2 in this section as the exchanging corporation, may, in the
3 manner provided in this section, be acquired by any person,
4 designated in this section as the acquiring person, through an
5 exchange of all the shares pursuant to a plan of exchange. The
6 plan of exchange may also provide for the conversion of any
7 other shares of the exchanging corporation into shares, other
8 securities or obligations of any person or cash, property or
9 rights. The procedure authorized by this section shall not be
10 deemed to limit the power of any person to acquire all or part
11 of the shares or other securities of any class or series of a
12 corporation through a voluntary exchange or otherwise by
13 agreement with the holders of the shares or other securities.

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

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

17 (2) The manner and basis of exchanging or converting the
18 shares of the exchanging corporation into shares or other
19 securities or obligations of the acquiring person, and, if
20 any of the shares of the exchanging corporation are not to be
21 exchanged or converted solely into shares or other securities
22 or obligations of the acquiring person, the shares or other
23 securities or obligations of any other person or cash,
24 property or rights that the holders of the shares of the
25 exchanging corporation are to receive in exchange for, or
26 upon conversion of, the shares and the surrender of any
27 certificates evidencing them, which securities or
28 obligations, if any, of any other person or cash, property
29 and rights may be in addition to or in lieu of the shares or
30 other securities or obligations of the acquiring person.

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

4 (4) Any provisions desired providing special treatment
5 of shares held by any shareholder or group of shareholders as
6 authorized by, and subject to the provisions of, section 1906
7 (relating to special treatment of holders of shares of same
8 class or series). Notwithstanding subsection (a), a plan that
9 provides special treatment may affect less than all of the
10 outstanding shares of a class or series.

11 (5) Such other provisions as are deemed desirable.
12 [Any of the terms of the plan may be made dependent upon facts
13 ascertainable outside of the plan if the manner in which the
14 facts will operate upon the terms of the plan is set forth in
15 the plan.]

16 (c) Proposal and adoption.--The plan of exchange shall be
17 proposed and adopted and may be amended after its adoption and
18 terminated by the exchanging corporation in the manner provided
19 by this subchapter for the proposal, adoption, amendment and
20 termination of a plan of merger except section 1924(b) (relating
21 to adoption by board of directors). There shall be included in,
22 or enclosed with, the notice of the meeting of shareholders to
23 act on the plan a copy or a summary of the plan and, if
24 Subchapter D of Chapter 15 (relating to dissenters rights) is
25 applicable, a copy of the subchapter and of subsection (d). The
26 holders of any class of shares to be [acquired] exchanged or
27 converted pursuant to the plan of exchange shall be entitled to
28 vote as a class on the plan if they would have been entitled to
29 vote on a plan of merger that affects the class in substantially
30 the same manner as the plan of exchange.

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

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

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

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

(3) The manner in which the plan was adopted by the exchanging corporation.

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

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

* * *

(i) Reference to outside facts.--Any of the terms of a plan

1 of exchange may be made dependent upon facts ascertainable
2 outside of the plan if the manner in which the facts will
3 operate upon the terms of the plan is set forth in the plan.
4 Such facts may include, without limitation, actions or events
5 within the control of or determinations made by a party to the
6 plan or a representative of a party to the plan.

7 § 1932. Voluntary transfer of corporate assets.

8 * * *

9 (b) Shareholder approval required.--

10 (1) A sale, lease, exchange or other disposition of all,
11 or substantially all, the property and assets, with or
12 without the goodwill, of a business corporation, if not made
13 pursuant to subsection (a) or (d) or to section 1551
14 (relating to distributions to shareholders) or Subchapter D
15 (relating to division), may be made only pursuant to a plan
16 of asset transfer[.] in the manner provided in this
17 subsection. A corporation selling, leasing or otherwise
18 disposing of all, or substantially all, its property and
19 assets is referred to in this subsection and in subsection
20 (c) as the "transferring corporation."

21 (2) The property or assets of a direct or indirect
22 subsidiary corporation that is controlled by a parent
23 corporation shall also be deemed the property or assets of
24 the parent corporation for the purposes of this subsection
25 and of subsection (c). A merger or consolidation to which
26 such a subsidiary corporation is a party and in which a third
27 party acquires direct or indirect ownership of the property
28 or assets of the subsidiary corporation constitutes an "other
29 disposition" of the property or assets of the parent
30 corporation within the meaning of that term as used in this

1 section.

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

22 (4) The plan of asset transfer shall be proposed and
23 adopted, and may be amended after its adoption and
24 terminated, by [a business] the transferring corporation in
25 the manner provided in this subchapter for the proposal,
26 adoption, amendment and termination of a plan of merger,
27 except section 1924(b) (relating to adoption by board of
28 directors). The procedures of this subchapter shall not be
29 applicable to the person acquiring the property or assets of
30 the transferring corporation. There shall be included in, or

1 enclosed with, the notice of the meeting of the shareholders
2 of the transferring corporation to act on the plan a copy or
3 a summary of the plan and, if Subchapter D of Chapter 15
4 (relating to dissenters rights) is applicable, a copy of the
5 subchapter and of subsection (c).

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

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

10 (1) If a shareholder of a transferring corporation that
11 adopts a plan of asset transfer objects to the plan and
12 complies with Subchapter D of Chapter 15, the shareholder
13 shall be entitled to the rights and remedies of dissenting
14 shareholders therein provided, if any.

15 (2) Paragraph (1) shall not apply to a sale pursuant to
16 an order of court having jurisdiction in the premises or a
17 sale [for money on terms requiring] pursuant to a plan of
18 asset transfer that requires that all or substantially all of
19 the net proceeds of sale be distributed to the shareholders
20 in accordance with their respective interests within one year
21 after the date of sale or to a liquidating trust.

22 * * *

23 § 1952. Proposal and adoption of plan of division.

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

26 (1) The terms and conditions of the division, including
27 the manner and basis of:

28 (i) The reclassification of the shares of the
29 surviving corporation, if there be one, and, if any of
30 the shares of the dividing corporation are not to be

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

12 (ii) The disposition of the shares and other
13 securities or obligations, if any, of the new corporation
14 or corporations resulting from the division.

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

17 (3) Any changes desired to be made in the articles of
18 the surviving corporation, if there be one, including a
19 restatement of the articles.

20 (4) The articles of incorporation required by subsection
21 (b).

22 (5) Any provisions desired providing special treatment
23 of shares held by any shareholder or group of shareholders as
24 authorized by, and subject to the provisions of, section 1906
25 (relating to special treatment of holders of shares of same
26 class or series).

27 (6) Such other provisions as are deemed desirable.
28 [Any of the terms of the plan may be made dependent upon facts
29 ascertainable outside of the plan if the manner in which the
30 facts will operate upon the terms of the plan is set forth in

1 the plan.]

2 * * *

3 (g) [Action by] Rights of holders of indebtedness.--[Unless
4 otherwise provided by an indenture or other contract by which
5 the dividing corporation is bound, a plan of division shall not
6 require the approval of the holders of any debt securities or
7 other obligations of the dividing corporation or of any
8 representative of the holders, if the transfer of assets
9 effected by the division, if effected by means of a sale, lease,
10 exchange or other disposition, and any related distribution,
11 would not require the approval of the holders or representatives
12 thereof.] If any debt securities, notes or similar evidences of
13 indebtedness for money borrowed, whether secured or unsecured,
14 indentures or other contracts were issued, incurred or executed
15 by the dividing corporation before (the Legislative Reference
16 Bureau shall insert here the effective date of the amendments of
17 this section) and have not been amended subsequent to that date,
18 the liability of the dividing corporation thereunder shall not
19 be affected by the division nor shall the rights of the obligees
20 thereunder be impaired by the division, and each of the
21 resulting corporations may be proceeded against or substituted
22 in place of the dividing corporation as joint and several
23 obligors on such liability, regardless of any provision of the
24 plan of division apportioning the liabilities of the dividing
25 corporations.

26 * * *

27 (i) Reference to outside facts.--Any of the terms of a plan
28 of division may be made dependent upon facts ascertainable
29 outside of the plan if the manner in which the facts will
30 operate upon the terms of the plan is set forth in the plan.

Such facts may include, without limitation, actions or events within the control of or determinations made by the dividing corporation or a representative of the dividing corporation.

§ 1953. Division without shareholder approval.

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

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

(2) the dividing corporation survives the division and all the shares and other securities and obligations, if any, of all new corporations resulting from the plan are owned solely by the surviving corporation; or

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

(b) Limitation.--A plan of division adopted by the board of directors under this section without the approval of the shareholders shall not, by itself, create or impair any rights

1 or obligations on the part of any person under section 2538
2 (relating to approval of transactions with interested
3 shareholders) or under Subchapters E (relating to control
4 transactions), F (relating to business combinations), G
5 (relating to control-share acquisitions), H (relating to
6 disgorgement by certain controlling shareholders following
7 attempts to acquire control), I (relating to severance
8 compensation for employees terminated following certain control-
9 share acquisitions) and J (relating to business combination
10 transactions - labor contracts) of Chapter 25, nor shall it
11 change the standard of care applicable to the directors under
12 Subchapter B of Chapter 17 (relating to fiduciary duty).

13 § 1955. Filing of articles of division.

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

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

21 § 1957. Effect of division.

22 * * *

23 (b) Property rights; allocations of assets and
24 liabilities.--

25 (1) (i) All the property, real, personal and mixed, and
26 franchises of the dividing corporation, and all debts due
27 on whatever account to it, including subscriptions for
28 shares and other choses in action belonging to it, shall
29 (except as otherwise provided in paragraph (2)), to the
30 extent [transfers] allocations of assets are contemplated

1 by the plan of division, be deemed without further action
2 to be [transferred] allocated to and vested in the
3 resulting corporations on such a manner and basis and
4 with such effect as is specified in the plan, or per
5 capita among the resulting corporations, as tenants in
6 common, if no specification is made in the plan, and the
7 title to any real estate, or interest therein, vested in
8 any of the corporations shall not revert or be in any way
9 impaired by reason of the division.

10 (ii) Upon the division becoming effective, the
11 resulting corporations shall each thenceforth be
12 responsible as separate and distinct corporations only
13 for such liabilities as each corporation may undertake or
14 incur in its own name but shall be liable for the
15 liabilities of the dividing corporation in the manner and
16 on the basis provided in subparagraphs (iv) and (v).

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

19 (iv) [One] To the extent allocations of liabilities
20 are contemplated by the plan of division, the liabilities
21 of the dividing corporation shall be deemed without
22 further action to be allocated to and become the
23 liabilities of the resulting corporations on such a
24 manner and basis and with such effect as is specified in
25 the plan; and one or more, but less than all, of the
26 resulting corporations shall be free of the liabilities
27 of the dividing corporation to the extent, if any,
28 specified in the plan, if in either case:

29 (A) no fraud [of corporate creditors, or of] on
30 minority shareholders or shareholders without voting

1 rights or violation of law shall be effected thereby,
2 and [if applicable provisions of law are complied
3 with.]

4 (B) the plan does not constitute a fraudulent
5 transfer under 12 Pa.C.S. Ch. 51 (relating to
6 fraudulent transfers).

7 (v) If the conditions in subparagraph (iv) for
8 freeing one or more of the resulting corporations from
9 the liabilities of the dividing corporation, or for
10 allocating some or all of the liabilities of the dividing
11 corporation, are not satisfied, the liabilities of the
12 dividing corporation as to which those conditions are not
13 satisfied shall not be affected by the division nor shall
14 the rights of creditors [thereof or of any person dealing
15 with the corporation] thereunder be impaired by the
16 division and any claim existing or action or proceeding
17 pending by or against the corporation with respect to
18 those liabilities may be prosecuted to judgment as if the
19 division had not taken place, or the resulting
20 corporations may be proceeded against or substituted in
21 [its] place of the dividing corporation as joint and
22 several obligors on [such liability] those liabilities,
23 regardless of any provision of the plan of division
24 apportioning the liabilities of the dividing corporation.

25 (vi) The conditions in subparagraph (iv) for freeing
26 one or more of the resulting corporations from the
27 liabilities of the dividing corporation and for
28 allocating some or all of the liabilities of the dividing
29 corporation shall be conclusively deemed to have been
30 satisfied if the plan of division has been approved by

1 the Department of Banking, the Insurance Department or
2 the Pennsylvania Public Utility Commission in a final
3 order issued after (the Legislative Reference Bureau
4 shall insert here the effective date of the amendments of
5 this section) that has become not subject to further
6 appeal.

7 (2) (i) The [transfer] allocation of any fee or
8 freehold interest or leasehold having a remaining term of
9 30 years or more in any tract or parcel of real property
10 situate in this Commonwealth owned by a dividing
11 corporation (including property owned by a foreign
12 business corporation dividing solely under the law of
13 another jurisdiction) to a new corporation resulting from
14 the division shall not be effective until one of the
15 following documents is filed in the office for the
16 recording of deeds of the county, or each of them, in
17 which the tract or parcel is situated:

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

20 (B) A duly executed duplicate original copy of
21 the articles of division.

22 (C) A copy of the articles of division certified
23 by the Department of State.

24 (D) A declaration of acquisition setting forth
25 the value of real estate holdings in such county of
26 the corporation as an acquired company.

27 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
28 to transfer of vehicle by operation of law) shall not be
29 applicable to [a transfer] an allocation of ownership of
30 any motor vehicle, trailer or semitrailer [from a

dividing corporation] to a new corporation under this section or under a similar law of any other jurisdiction but any such [transfer] allocation shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

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

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

* * *

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

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

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

(3) The validity of any allocations of assets or

1 liabilities by a plan of division of a domestic business
2 corporation, regardless of whether or not any of the new
3 corporations is a foreign business corporation, shall be
4 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 § 1962. Proposal and adoption of plan of conversion.

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

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

13 (2) A restatement of the articles of the resulting
14 corporation, which articles shall comply with the
15 requirements of this part relating to nonprofit corporations.

16 (3) Any provisions desired providing special treatment
17 of shares held by any shareholder or group of shareholders as
18 authorized by, and subject to the provisions of, section 1906
19 (relating to special treatment of holders of shares of same
20 class or series).

21 (4) 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 * * *

27 (d) Reference to outside facts.--Any of the terms of a plan
28 of conversion may be made dependent upon facts ascertainable
29 outside of the plan if the manner in which the facts will
30 operate upon the terms of the plan is set forth in the plan.

1 Such facts may include, without limitation, actions or events
2 within the control of or determinations made by the corporation
3 or a representative of the corporation.

4 § 1972. Proposal of voluntary dissolution.

5 (a) General rule.--Any business corporation that has
6 commenced business may dissolve voluntarily in the manner
7 provided in this subchapter and wind up its affairs in the
8 manner provided in section 1975 (relating to predissolution
9 provision for liabilities) or Subchapter H (relating to
10 postdissolution provision for liabilities). Voluntary
11 dissolution shall be proposed by the adoption by the board of
12 directors of a resolution recommending that the corporation be
13 dissolved voluntarily. The resolution shall contain a statement
14 either that the dissolution shall proceed under section 1975 or
15 that the dissolution shall proceed under Subchapter H. The
16 resolution may set forth provisions for the distribution to
17 shareholders of any surplus remaining after paying or providing
18 for all liabilities of the corporation, including provisions for
19 special treatment of shares held by any shareholder or group of
20 shareholders as authorized by, and subject to the provisions of,
21 section 1906 (relating to special treatment of holders of shares
22 of same class or series).

23 (b) Submission to shareholders.--The board of directors
24 shall direct that the [question of] resolution recommending
25 dissolution be submitted to a vote of the shareholders of the
26 corporation entitled to vote thereon at a regular or special
27 meeting of the shareholders.

28 * * *

29 § 1973. Notice of meeting of shareholders.

30 (a) General rule.--Written notice of the meeting of

1 shareholders that will consider the [advisability of voluntarily
2 dissolving a] resolution recommending dissolution of the
3 business corporation shall be given to each shareholder of
4 record entitled to vote thereon and the purpose shall be
5 included in the notice of the meeting.

6 * * *

7 § 1975. Predissolution provision for liabilities.

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

14 (b) Notice to creditors and taxing authorities.--After the
15 approval by the shareholders of the [proposal] resolution
16 recommending that the corporation dissolve voluntarily, the
17 corporation shall immediately cause notice of the winding up
18 proceedings to be officially published and to be mailed by
19 certified or registered mail to each known creditor and claimant
20 and to each municipal corporation in which [its registered
21 office or principal] it has a place of business in this
22 Commonwealth [is located].

23 (c) Winding up and distribution.--The corporation shall, as
24 speedily as possible, proceed to collect all sums due it,
25 convert into cash all corporate assets the conversion of which
26 into cash is required to discharge its liabilities and, out of
27 the assets of the corporation, discharge or make adequate
28 provision for the discharge of all liabilities of the
29 corporation, according to their respective priorities. Any
30 surplus remaining after paying or providing for all liabilities

1 of the corporation shall be distributed to the shareholders
2 according to their respective rights and preferences. See
3 section 1972(a) (relating to proposal of voluntary dissolution).
4 § 1976. Judicial supervision of proceedings.

5 A business corporation that has elected to proceed under
6 section 1975 (relating to predissolution provision for
7 liabilities), at any time during the winding up proceedings, may
8 apply to the court to have the proceedings continued under the
9 supervision of the court and thereafter the proceedings shall
10 continue under the supervision of the court as provided in
11 Subchapter G (relating to involuntary liquidation and
12 dissolution).

13 § 1977. Articles of dissolution.

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

18 (1) all liabilities of the business corporation have
19 been discharged, or adequate provision has been made
20 therefor, in accordance with section 1975 (relating to
21 predissolution provision for liabilities), and all of the
22 remaining assets of the corporation have been distributed as
23 provided in section 1975 (or in case its assets are not
24 sufficient to discharge its liabilities, when all the assets
25 have been fairly and equitably applied, as far as they will
26 go, to the payment of such liabilities); or

27 (2) an election to proceed under Subchapter H (relating
28 to postdissolution provision for liabilities) has been made.
29 [See section 134 (relating to docketing statement).]

30 (b) Contents of articles.--The articles of dissolution shall

1 be executed by the corporation and shall set forth:

2 * * *

3 (5) A statement that:

4 (i) [that] all liabilities of the corporation have
5 been discharged or that adequate provision has been made
6 therefor; [or]

7 (ii) [that] the assets of the corporation are not
8 sufficient to discharge its liabilities, and that all the
9 assets of the corporation have been fairly and equitably
10 applied, as far as they will go, to the payment of such
11 liabilities[. An election by]; or

12 (iii) the corporation has elected to proceed under
13 Subchapter H [shall constitute the making of adequate
14 provision for the liabilities of the corporation,
15 including any judgment or decree that may be obtained
16 against the corporation in any pending action or
17 proceeding].

18 * * *

19 (7) [A] In the case of a corporation that has not
20 elected to proceed under Subchapter H, a statement that no
21 actions or proceedings are pending against the corporation in
22 any court, or that adequate provision has been made for the
23 satisfaction of any judgment or decree that may be obtained
24 against the corporation in each pending action or proceeding.

25 (8) [A] In the case of a corporation that has not
26 elected to proceed under Subchapter H, a statement that
27 notice of the winding-up proceedings of the corporation was
28 mailed by certified or registered mail to each known creditor
29 and claimant and to each municipal corporation in which the
30 [registered office or principal place of business of the]

1 corporation has a place of business in this Commonwealth [is
2 located].

3 * * *

4 (d) Cross references.--See sections 134 (relating to
5 docketing statement) and 135 (relating to requirements to be met
6 by filed documents).

7 § 1978. Winding up of corporation after dissolution.

8 * * *

9 (b) Standard of care of directors and officers.--The
10 dissolution of the corporation shall not subject its directors
11 or officers to standards of conduct different from those
12 prescribed by or pursuant to Chapter 17 (relating to officers,
13 directors and shareholders). Directors of a dissolved
14 corporation who have complied with section 1975 (relating to
15 predissolution provision for liabilities) or Subchapter H
16 (relating to postdissolution provision for liabilities) shall
17 not be personally liable to the creditors of the dissolved
18 corporation.

19 § 1979. Survival of remedies and rights after dissolution.

20 (a) General rule.--The dissolution of a business
21 corporation, either under this subchapter or under Subchapter G
22 (relating to involuntary liquidation and dissolution) or by
23 expiration of its period of duration or otherwise, shall not
24 eliminate nor impair any remedy available to or against the
25 corporation or its directors, officers or shareholders for any
26 right or claim existing, or liability incurred, prior to the
27 dissolution, if an action or proceeding thereon is brought on
28 behalf of:

29 (1) the corporation within the time otherwise limited by
30 law; or

1 (2) any other person before or within two years after
2 the date of the dissolution or within the time otherwise
3 limited by this subpart or other provision of law, whichever
4 is less. See sections 1987 (relating to proof of claims),
5 1993 (relating to acceptance or rejection of matured claims)
6 and 1994 (relating to disposition of unmatured claims).

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

9 * * *

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

13 § 1980. Dissolution by domestication.

14 Whenever a domestic business corporation has domesticated
15 itself under the laws of another jurisdiction by action similar
16 to that provided by section 4161 (relating to domestication) and
17 has authorized that action by the vote required by this
18 subchapter for the approval of a proposal that the corporation
19 dissolve voluntarily, the corporation may surrender its charter
20 under the laws of this Commonwealth by filing in the Department
21 of State articles of dissolution under this subchapter
22 containing the statement specified by section [1977(a)(1)]
23 1977(b)(1) through (4) (relating to [preparation of articles].]
24 articles of dissolution). If the corporation as domesticated in
25 the other jurisdiction qualifies to do business in this
26 Commonwealth either prior to or simultaneously with the filing
27 of the articles of dissolution under this section, the
28 corporation shall not be required to file with the articles of
29 dissolution the tax clearance certificates that would otherwise
30 be required by section 139 (relating to tax clearance of certain

1 fundamental transactions).

2 § 1989. Articles of involuntary dissolution.

3 (a) General rule.--In a proceeding under this subchapter,
4 the court shall enter an order dissolving the business
5 corporation when the costs and expenses of the proceeding and
6 all liabilities of the corporation have been discharged, and all
7 of its remaining assets have been distributed to its
8 shareholders or, in case its assets are not sufficient to
9 discharge such costs, expenses and liabilities, when all the
10 assets have been applied, as far as they will go, to the payment
11 of such costs, expenses and liabilities. See section 139(b)
12 (relating to tax clearance in judicial proceedings).

13 (b) Filing.--After entry of an order of dissolution, the
14 office of the clerk of the court of common pleas shall prepare
15 and execute articles of dissolution substantially in the form
16 provided by section 1977 (relating to articles of dissolution),
17 attach thereto a certified copy of the order and transmit the
18 articles and attached order to the Department of State. [A
19 certificate or statement provided for by section 139 (relating
20 to tax clearance of certain fundamental transactions) shall not
21 be required, and the] The department shall not charge a fee in
22 connection with the filing of articles of dissolution under this
23 section. See [section] sections 134 (relating to docketing
24 statement) and 135 (relating to requirements to be met by filed
25 documents).

26 * * *

27 § 1991.1. Authority of board of directors.

28 (a) General rule.--The board of directors of a business
29 corporation that has elected to proceed under this subchapter
30 shall have full power to wind up and settle the affairs of the

1 corporation in accordance with this subchapter both prior to and
2 after the filing of articles of dissolution in accordance with
3 section 1977 (relating to articles of dissolution).

4 (b) Winding up.--The corporation shall, as speedily as
5 possible, proceed to comply with the requirements of this
6 subchapter while simultaneously collecting all sums due it and
7 converting into cash all corporate assets, the conversion of
8 which into cash is required to make adequate provision for its
9 liabilities.

10 § 1992. Notice to claimants.

11 * * *

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

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

19 (2) Concurrently with or preceding the publication, the
20 corporation or successor entity shall send a copy of the
21 notice by certified or registered mail, return receipt
22 requested, to each:

23 (i) known creditor or claimant;

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

25 and

26 (iii) municipal corporation in which [the registered
27 office or principal] a place of business of the
28 corporation in this Commonwealth was located at the time
29 of filing the articles of dissolution in the department.

30 * * *

1 § 1997. Payments and distributions.

2 * * *

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

16 * * *

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

21 § 2524. CONSENT OF SHAREHOLDERS IN LIEU OF MEETING.

<—

22 (A) GENERAL RULE.--AN ACTION MAY BE AUTHORIZED BY THE
23 SHAREHOLDERS OF A REGISTERED CORPORATION WITHOUT A MEETING BY
24 LESS THAN UNANIMOUS WRITTEN CONSENT ONLY IF ALL OF THE FOLLOWING
25 PARAGRAPHS APPLY:

26 (1) THE ACTION IS PERMITTED BY ITS ARTICLES.

27 (2) ANY OF THE FOLLOWING SUBPARAGRAPHS APPLY:

28 (I) THE ACTION HAS BEEN APPROVED BY THE BOARD OF
29 DIRECTORS.

30 (II) THERE IS NOT, AT THE TIME THE ACTION IS PENDING

1 FOR AUTHORIZATION BY THE SHAREHOLDERS, A "CONTROLLING
2 PERSON OR GROUP," AS DEFINED IN SECTION 2573 (RELATING TO
3 DEFINITIONS), THAT IS POTENTIALLY SUBJECT TO PROFIT
4 RECOVERY UNDER SECTION 2575 (RELATING TO OWNERSHIP BY
5 CORPORATION OF PROFITS RESULTING FROM CERTAIN
6 TRANSACTIONS), REGARDLESS OF WHETHER THAT CONTROLLING
7 PERSON OR GROUP, AT THAT TIME, OWNS ANY EQUITY SECURITY
8 OF THE CORPORATION.

9 (III) THE ACTION WAS EFFECTIVE PRIOR TO SEPTEMBER
10 29, 1998.

11 THIS PARAGRAPH SHALL EXPIRE 12 MONTHS FROM THE DATE THIS
12 PARAGRAPH TAKES EFFECT.

13 * * *

14 § 2902. Definitions and index of definitions.

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

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

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

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

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

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

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

26 "Profession." Section 102.

27 "Professional services." Section 102.

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

30 * * *

(b) Procedure.--The amendment shall be adopted in accordance with the requirements of Subchapter B of Chapter 19 (relating to amendment of articles) [except that the amendment must be approved by the unanimous consent of all shareholders of the corporation regardless of any limitations on voting rights stated in the articles or bylaws]. If any shareholder of a business corporation that proposes to amend its articles to become a professional corporation objects to that amendment and complies with the provisions of Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided, if any.

§ 2922. Stated purposes.

* * *

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

§ 2923. Issuance and retention of shares.

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

1 licensed] a person who is qualified to be a direct or indirect
2 shareholder of the same corporation) with the authority to
3 exercise the voting power of any or all of his shares, and any
4 such purported voting trust, proxy or other arrangement shall be
5 void.

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

15 * * *

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

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

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

(2) Four successive weeks, in the case of a meeting to consider [an] amendment of the articles or bylaws, or both.

* * *

§ 4123. Requirements for foreign corporation names.

* * *

(b) Exceptions.--

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

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

1 [(ii) The written consent of the other corporation
2 or other association or holder of a reserved or
3 registered name to use the same or confusingly similar
4 name and one or more words are added to make the name
5 applied for distinguishable from the other name.]

6 * * *

7 § 4126. Amended certificate of authority.

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

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

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

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

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

1 (5) The new name of the corporation and]
2 (3) The information to be changed or corrected.
3 (4) If the application reflects a change in the name of
4 the corporation, the application shall include a statement
5 that either:

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

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

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

13 (c) Cross reference.--See section 134 (relating to docketing
14 statement).

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

Commonwealth or affecting real property situated in this
Commonwealth.

* * *

§ 4161. Domestication.

* * *

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

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

* * *

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

§ 4162. Effect of domestication.

(a) General rule.--As a domestic business corporation, the
domesticated corporation shall no longer be a foreign business
corporation for the purposes of this subpart and shall [have],
instead, be a domestic business corporation with all the powers
and privileges and [be subject to] all the duties and
limitations granted and imposed upon domestic business
corporations. [The property, franchises, debts, liens, estates,
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 § 5545. Income from corporate activities.

19 (a) General rule.--A nonprofit corporation whose lawful
20 activities involve among other things the charging of fees or
21 prices for its services or products, shall have the right to
22 receive [such] that income and, in so doing, may make [an
23 incidental] a profit. All [such incidental] profits shall be
24 applied to the maintenance and operation of the lawful
25 activities of the corporation, or any of its subordinate units
26 or of any not-for-profit association to which it is subordinate,
27 and [in no case] shall otherwise not be divided or distributed
28 in any manner whatsoever among the members, directors, members
29 of an other body or officers of the corporation. [As used in
30 this section the terms fees or prices do not include rates of

1 contribution, fees or dues levied under an insurance certificate
2 issued by a fraternal benefit society, so long as the
3 distribution of profits arising from said fees or prices is
4 limited to the purposes set forth in this section and section
5 5551 (relating to dividends prohibited; compensation and certain
6 payments authorized).]

7 (b) Cross references.--See sections 5511 (relating to
8 establishment of subordinate units) and 5551(relating to
9 dividends prohibited; compensation and certain payments
10 authorized).

11 § 5546. Purchase, sale[, mortgage] and lease of [real]
12 property.

13 [Except for an industrial development corporation whose
14 articles or bylaws otherwise provide, no purchase of real
15 property shall be made by a nonprofit corporation and no
16 corporation shall sell, mortgage, lease away or otherwise
17 dispose of its real property, unless authorized by the vote of
18 two-thirds of the members in office of the board of directors or
19 other body, except that if there are 21 or more directors or
20 members of such other body, the vote of a majority of the
21 members in office shall be sufficient. No application to or
22 confirmation of any court shall be required and, unless
23 otherwise restricted in the bylaws, no vote or consent of the
24 members shall be required to make effective such action by the
25 board or other body. If the real property is subject to a trust
26 the conveyance away shall be free of trust and the trust shall
27 be impinged upon the proceeds of such conveyance.] Except as
28 otherwise provided in this subpart and unless otherwise provided
29 in the bylaws, no application to or confirmation of any court
30 shall be required for the purchase by or the sale, lease or

1 other disposition of the real or personal property, or any part
2 thereof, of a nonprofit corporation, and, unless otherwise
3 restricted in section 5930 (relating to voluntary transfer of
4 corporate assets) or in the bylaws, no vote or consent of the
5 members shall be required to make effective such action by the
6 board or other body. If the property is subject to a trust, the
7 conveyance away shall be free of trust, and the trust shall be
8 impinged upon the proceeds of the conveyance.

9 § 5547. Authority to take and hold trust property.

10 (a) General rule.--Every nonprofit corporation incorporated
11 for a charitable purpose or purposes may take, receive and hold
12 such real and personal property as may be given, devised to[,]
13 or otherwise vested in [such] the corporation, in trust or
14 otherwise, for the purpose or purposes set forth in its
15 articles.

16 (b) Standard of conduct.--The board of directors or other
17 body of the corporation shall, as trustees of [such] trust
18 property, be held to the same degree of responsibility and
19 accountability as if not incorporated, unless:

20 (1) a less degree or a particular degree of
21 responsibility and accountability is prescribed in the trust
22 instrument, or [unless]

23 (2) the board of directors or such other body remain
24 under the control of the members of the corporation or third
25 persons who retain the right to direct, and do direct, the
26 actions of the board or other body as to the use of the trust
27 property from time to time.

28 [(b)] (c) Nondiversion of certain property.--[Property
29 committed to charitable purposes] Trust property shall not, by
30 any proceeding under Chapter 59 (relating to fundamental

1 changes) or otherwise, be diverted from the objects to which it
2 was donated, granted or devised, unless and until the [board of
3 directors or other body] corporation obtains from the court an
4 order under 20 Pa.C.S. Ch. 61 (relating to estates) specifying
5 the disposition of the property.

6 § 5551. Dividends prohibited; compensation and certain payments
7 authorized.

8 (a) General rule.--[A] Except as provided in section 5545
9 (relating to income from corporate activities), a nonprofit
10 corporation shall not pay dividends or distribute any part of
11 its net income or profits to its members, directors, members of
12 an other body or officers. [Nothing herein contained shall
13 prohibit a fraternal benefit society operating under the
14 insurance laws of Pennsylvania from paying dividends or refunds
15 by whatever name known pursuant to the terms of its insurance
16 contracts.] A contribution by a corporation to a not-for-profit
17 association made on or after February 13, 1973, shall not be
18 deemed a dividend or distribution for purposes of this subpart.

19 (b) Reasonable compensation for services.--A [nonprofit]
20 corporation may pay compensation in a reasonable amount to
21 members, directors, members of an other body or officers for
22 services rendered.

23 (c) Certain payments authorized.--A [nonprofit] corporation
24 may confer monetary or other benefits upon members or nonmembers
25 in conformity with its purposes, may repay capital
26 contributions, and may redeem its [subvention certificates or
27 evidences of indebtedness] subventions or obligations, as
28 authorized by this [article, except when the corporation is
29 currently insolvent or would thereby be made insolvent or
30 rendered unable to carry on its corporate purposes, or when the

1 fair value of the assets of the corporation remaining after such
2 conferring of benefits, payment or redemption would be
3 insufficient to meet its liabilities.] subpart unless, after
4 giving effect thereto, the corporation would be unable to pay
5 its debts as they become due in the usual course of its
6 business. A [nonprofit] corporation may make distributions of
7 cash or property to members upon dissolution or final
8 liquidation as permitted by this article.

9 § 5552. Liabilities of members.

10 (a) General rule.--[The members of a nonprofit corporation
11 shall not be personally liable for the debts, liabilities or
12 obligations of the corporation.] A member of a nonprofit
13 corporation shall not be liable, solely by reason of being a
14 member, under an order of a court or in any other manner for a
15 debt, obligation or liability of the corporation of any kind or
16 for the acts of any member or representative of the corporation.

17 (b) Obligations of member to corporation.--A member shall be
18 liable to the corporation only to the extent of any unpaid
19 portion of the capital contributions, membership dues or
20 assessments which the corporation may have lawfully imposed upon
21 him, or for any other indebtedness owed by him to the
22 corporation. No action shall be brought by any creditor of the
23 corporation to reach and apply any such liability to any debt of
24 the corporation until after:

25 (1) final judgment [shall have] has been rendered
26 against the corporation in favor of the creditor and
27 execution thereon returned unsatisfied[, or the corporation
28 shall have been adjudged bankrupt, or];

29 (2) a case involving the corporation has been brought
30 under 11 U.S.C. Ch. 7 (relating to liquidation) and a

1 distribution has been made and the case closed or a notice of
2 no assets has been issued; or

3 (3) a receiver [shall have] has been appointed with
4 power to collect debts, and [which] the receiver, on demand
5 of a creditor to bring an action thereon, has refused to sue
6 for [such] the unpaid amount, or the corporation [shall have]
7 has been dissolved or ceased its activities leaving debts
8 unpaid.

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

13 § 5709. Conduct of members meeting.

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

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

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

28 (d) Closing of the polls.--The presiding officer shall
29 announce at the meeting when the polls close for each matter
30 voted upon. If no announcement is made, the polls shall be

1 deemed to have closed upon the final adjournment of the meeting.
2 After the polls close, no ballots, proxies or votes, nor any
3 revocations or changes thereto, may be accepted.

4 § 5729. Voting rights of directors.

5 (a) General rule.--Unless otherwise provided in a bylaw
6 adopted by the members, every director of a nonprofit
7 corporation shall be entitled to one vote. Without limiting the
8 generality of the foregoing, a bylaw adopted by the members may
9 provide that a class or other defined group of directors shall
10 have multiple or fractional voting rights, or no right to vote,
11 either generally or under specified circumstances.

12 (b) [Multiple and fractional voting.--The requirement of
13 this article] Application of procedural requirements.--Any
14 requirement of this subpart for the presence of or vote or other
15 action by a specified percentage of directors shall be satisfied
16 by the presence of or vote or other action by directors entitled
17 to cast [such] the specified percentage of the votes [which all]
18 that all voting directors in office are entitled to cast.

19 § 5731. Executive and other committees of the board.

20 (a) Establishment and powers.--Unless otherwise restricted
21 in the bylaws:

22 (1) The board of directors may, by resolution adopted by
23 a majority of the directors in office, establish one or more
24 committees to consist of one or more directors of the
25 corporation.

26 (2) Any [such] committee, to the extent provided in the
27 resolution of the board of directors or in the bylaws, shall
28 have and may exercise all of the powers and authority of the
29 board of directors, except that [no such] a committee shall
30 not have any power or authority as to the following:

1 (i) The submission to members of any action
2 requiring approval of members under this [article]
3 subpart.

4 (ii) The creation or filling of vacancies in the
5 board of directors.

6 (iii) The adoption, amendment or repeal of the
7 bylaws.

8 (iv) The amendment or repeal of any resolution of
9 the board that by its terms is amendable or repealable
10 only by the board.

11 (v) Action on matters committed by the bylaws or a
12 resolution of the board of directors exclusively to
13 another committee of the board.

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

23 (b) Term.--Each committee of the board shall serve at the
24 pleasure of the board.

25 § 5745. Advancing expenses.

26 Expenses (including attorneys' fees) incurred in defending
27 any action or proceeding referred to in this subchapter may be
28 paid by a nonprofit corporation in advance of the final
29 disposition of the action or proceeding upon receipt of an
30 undertaking by or on behalf of the representative to repay the

1 amount if it is ultimately determined that he is not entitled to
2 be indemnified by the corporation as authorized in this
3 subchapter or otherwise. Except as otherwise provided in the
4 bylaws, advancement of expenses shall be authorized by the board
5 of directors. Section 5728 (relating to interested members,
6 directors or officers; quorum) shall not be applicable to the
7 advancement of expenses under this section.

8 § 5748. 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 of 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 § 5758. Voting rights of members.

30 (a) General rule.--Unless otherwise provided in a bylaw

1 adopted by the members, every member of a nonprofit corporation
2 shall be entitled to one vote.

3 (b) Procedures.--The manner of voting on any matter,
4 including changes in the articles or bylaws, may be by ballot,
5 mail or any reasonable means provided in a bylaw adopted by the
6 members. If a bylaw adopted by the members provides a fair and
7 reasonable procedure for the nomination of candidates for any
8 office, only candidates who have been duly nominated in
9 accordance therewith shall be eligible for election. Unless
10 otherwise provided in such a bylaw, in elections for directors,
11 voting shall be by ballot, and the candidates receiving the
12 highest number of votes from each class or group of classes, if
13 any, of members entitled to elect directors separately up to the
14 number of directors to be elected by such class or group of
15 classes shall be elected. If at any meeting of members directors
16 of more than one class are to be elected, each class of
17 directors shall be elected in a separate election.

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

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

(e) Voting lists.--Upon request of a member, the books or records of membership shall be produced at any regular or special meeting of the corporation. If at any meeting the right of a person to vote is challenged, the presiding officer shall require [such] the books or records to be produced as evidence of the right of the person challenged to vote, and all persons who appear by [such] the books or records to be members entitled to vote may vote. See section 6145 (relating to applicability of certain safeguards to foreign corporations).

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

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

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

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

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

25 § 5903. Bankruptcy or insolvency proceedings.

26 (a) General rule.--[Whenever] Unless otherwise provided in
27 the bylaws, whenever a nonprofit corporation is insolvent or in
28 financial difficulty, the board of directors may, by resolution
29 and without the consent of the members, authorize and designate
30 the officers of the corporation to execute a deed of assignment

1 for the benefit of creditors, or file a voluntary petition in
2 bankruptcy, or file an answer consenting to the appointment of a
3 receiver upon a complaint in the nature of an equity action
4 filed by creditors or members, or, if insolvent, file an answer
5 to an involuntary petition in bankruptcy admitting the
6 insolvency of the corporation and its willingness to be adjudged
7 a debtor on that ground.

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

1 * * *

2 § 5912. Proposal of amendments.

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

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

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

13 (3) by such other method as may be provided in the
14 bylaws.

15 [The] (b) Submission to members.--Except where the approval
16 of the members is unnecessary under this subchapter, the board
17 of directors or other body [or the petitioning members] shall
18 direct that the proposed amendment be submitted to a vote of the
19 members entitled to vote thereon at a regular or special meeting
20 of the members.

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

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

5 (2) by providing that the articles shall be amended so
6 as to read as therein set forth in full, or that any
7 provision thereof be amended so as to read as therein set
8 forth in full, or that the matter stated in the resolution or
9 petition be added to or stricken from the articles.

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

20 § 5922. Plan of merger or consolidation.

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

23 (1) The terms and conditions of the merger or
24 consolidation.

25 [(2) The mode of carrying the merger or consolidation
26 into effect.

27 (3)] (2) If the surviving or new corporation is or is to
28 be a domestic nonprofit corporation:

29 (i) any changes desired to be made in the articles,
30 which may include a restatement of the articles in the

case of a merger; or

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

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

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

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

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

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

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

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

(2) unless otherwise provided in the articles, by petition of members entitled to cast at least 10% of the votes [which] that all members are entitled to cast thereon,

1 setting forth the proposed plan of merger or consolidation,
2 which petition shall be directed to the board of directors
3 and filed with the secretary of the corporation; or

4 (3) by such other method as may be provided in the
5 bylaws.

6 [The] (d) Submission to members.--Except where the
7 corporation has no members entitled to vote thereon, the board
8 of directors or other body [or the petitioning members] shall
9 direct that the plan be submitted to a vote of the members
10 entitled to vote thereon at a regular or special meeting of the
11 members.

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

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

26 § 5923. Notice of meeting of members.

27 (a) General rule.--Written notice of the meeting of members
28 that will act on the proposed plan shall[, not less than ten
29 days before the meeting of members called for the purpose of
30 considering the proposed plan,] be given to each member of

1 record, whether or not entitled to vote thereon, of each
2 domestic nonprofit corporation that is a party to the merger or
3 consolidation. There shall be included in, or enclosed with,
4 [such] the notice a copy of the proposed plan or a summary
5 thereof. The notice shall state that a copy of the bylaws of the
6 surviving or new corporation will be furnished to any member on
7 request and without cost.

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

10 § 5929. Effect of merger or consolidation.

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

26 (b) Property rights.--Except as otherwise provided by order,
27 if any, obtained pursuant to section [5547(b)] 5547(c) (relating
28 to nondiversion of certain property), all the property, real,
29 personal[,] and mixed, and franchises of each of the
30 corporations parties to the [plan of] merger or consolidation,

1 and all debts due on whatever account to any of them, including
2 subscriptions for membership and other choses in action
3 belonging to any of them, shall be [taken and] deemed to be
4 [transferred to and] vested in and shall belong to the surviving
5 or new corporation, as the case may be, without further [act or
6 deed] action, and the title to any real estate, or any interest
7 therein, vested in any of the corporations shall not revert or
8 be in any way impaired by reason of the merger or consolidation.
9 The surviving or new corporation shall thenceforth be
10 responsible for all the liabilities [and obligations] of each of
11 the corporations so merged or consolidated. [No liens] Liens
12 upon the property of the merging or consolidating corporations
13 shall not be impaired by [such] the merger or consolidation, and
14 any claim existing or action or proceeding pending by or against
15 any of [such] the corporations may be prosecuted to judgment as
16 if [such] the merger or consolidation had not taken place, or
17 the surviving or new corporation may be proceeded against or
18 substituted in its place. Any devise, gift or grant contained in
19 any will or other instrument, in trust or otherwise, made before
20 or after such merger or consolidation, to or for any of the
21 constituent corporations, shall inure to the surviving or new
22 corporation, as the case may be, subject to compliance with the
23 requirements of section 5550 (relating to devises, bequests and
24 gifts after certain fundamental changes).

25 (c) Taxes.--Any taxes, penalties and public accounts of the
26 Commonwealth, claimed against any of the merging or
27 consolidating corporations, but not settled, assessed or
28 determined prior to [such] the merger or consolidation, shall be
29 settled, assessed or determined against the surviving or new
30 corporation[,] and, together with interest thereon, shall be a

lien against the franchises and property, both real and personal, of the surviving or new corporation.

(d) Articles of incorporation.--In the case of a merger, the articles of incorporation of the surviving domestic nonprofit corporation, if any, shall be deemed to be amended to the extent, if any, that changes in its articles are stated in the plan of merger[; and in]. In the case of a consolidation into a domestic nonprofit corporation, the statements [which] that are set forth in the plan of consolidation, or articles of incorporation set forth therein, shall be deemed to be the articles of incorporation of the new corporation.

§ 5952. Proposal and adoption of plan of division.

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

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

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

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

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

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

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

[(5)] (4) The articles of incorporation required by

subsection (b) [of this section].

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

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

(1) Articles of incorporation, which shall contain all of the statements required by this [article] subpart to be set forth in restated articles, for each of the new domestic nonprofit corporations, if any, resulting from the division.

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

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

(d) Special requirements.--If any provision of the bylaws of

1 a dividing domestic nonprofit corporation adopted before January
2 1, 1972 shall require for the adoption of a plan of merger or
3 consolidation or a plan involving the sale, lease or exchange of
4 all or substantially all of the property and assets of the
5 corporation a specific number or percentage of votes of
6 directors, members, or members of an other body or other special
7 procedures, the plan of division shall not be adopted without
8 such number or percentage of votes or compliance with such other
9 special procedures.

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

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

1 (g) Reference to outside facts.--Any of the terms of a plan
2 of division may be made dependent upon facts ascertainable
3 outside of the plan if the manner in which the facts will
4 operate upon the terms of the plan is set forth in the plan.
5 Such facts may include, without limitation, actions or events
6 within the control of or determinations made by the dividing
7 corporation or a representative of the dividing corporation.

8 § 5953. [(Reserved).] Division without member approval.

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

21 § 5957. Effect of division.

22 (a) Multiple resulting corporations.--Upon the division
23 becoming effective, the dividing corporation shall be subdivided
24 into the distinct and independent resulting corporations named
25 in the plan of division and, if the dividing corporation is not
26 to survive the division, the existence of the dividing
27 corporation shall cease. The resulting corporations, if they are
28 domestic nonprofit corporations, shall not thereby acquire
29 authority to engage in any business or exercise any right
30 [which] that a corporation may not be incorporated under this

[article] subpart to engage in or exercise. Any resulting foreign nonprofit corporation [which] that is stated in the articles of division to be a qualified foreign nonprofit corporation shall be a qualified foreign nonprofit corporation under [this subpart] Article C (relating to foreign nonprofit corporations), and the articles of division shall be deemed to be the application for a certificate of authority and the certificate of authority issued thereon of [such] the corporation.

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

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

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

1 (ii) Upon the division becoming effective, the
2 resulting corporations shall each thenceforth be
3 responsible as separate and distinct corporations only
4 for such liabilities [and obligations] as each
5 corporation may undertake or incur in its own name, but
6 shall be liable [inter se] for the [debts and]
7 liabilities of the dividing corporation in the manner and
8 on the basis [specified in the plan of division. No
9 liens] provided in paragraphs (4) and (5).

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

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

23 (A) no fraud [of corporate creditors or] on
24 members without voting rights [and if no] or
25 violation of law shall be effected thereby[,]; and
26 [if applicable provisions of law are complied with.
27 Otherwise, the liability]

28 (B) the plan does not constitute a fraudulent
29 transfer under 12 Pa.C.S. Ch. 51 (relating to
30 fraudulent transfers).

1 (v) If the conditions in subparagraph (iv) for
2 freeing one or more of the resulting corporations from
3 the liabilities of the dividing corporation, or for
4 allocating some or all of the liabilities of the dividing
5 corporation, are not satisfied, the liabilities of the
6
7 officers,] as to which those conditions are not satisfied
8 shall not be affected by the division[,] nor shall the
9 rights of [the] creditors [thereof or of any person
10 dealing with such corporation] thereunder be impaired by
11 [such] the division[,] and[, except as otherwise provided

22 (2) It shall not be necessary for a plan of division to
23 list each individual asset or liability of the dividing
24 corporation to be allocated to a new corporation so long as
25 those assets and liabilities are described in a reasonable
26 manner.

27 (3) Each new corporation shall hold any assets and
28 liabilities allocated to it as the successor to the dividing
29 corporation, and those assets and liabilities shall not be
30 deemed to have been assigned to the new corporation in any

1 manner, whether directly or indirectly or by operation of
2 law.

3 (c) Taxes.--Any taxes, penalties and public accounts of the
4 Commonwealth, claimed against the dividing corporation, but not
5 settled, assessed or determined prior to [such] the division,
6 shall be settled, assessed or determined against any of the
7 resulting corporations[, and, together with interest thereon,
8 shall be a lien against the franchises and property, both real
9 and personal, of all [such] the corporations. [The] Upon the
10 application of the dividing corporation, the Department of
11 Revenue [may, upon the application of the dividing corporation],
12 with the concurrence of the Office of Employment Security of the
13 Department of Labor and Industry, shall release one or more, but
14 less than all, of the resulting corporations from liability and
15 liens for all taxes, penalties and public accounts of the
16 dividing corporation due the Commonwealth [or any other taxing
17 authority] for periods prior to the effective date of the
18 division, if [the Department of Revenue is] those departments
19 are satisfied that the public revenues will be adequately
20 secured.

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

25 (e) Articles of new corporations.--The statements [which]
26 that are set forth in the plan of division with respect to each
27 new domestic nonprofit corporation and [which] that are required
28 or permitted to be set forth in restated articles of
29 incorporation of corporations incorporated under this [article]
30 subpart, or the articles of incorporation of each new

corporation set forth therein, shall be deemed to be the articles of incorporation of each [such] new corporation.

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

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

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

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

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

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

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

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

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

5 § 5961. Conversion authorized.

6 (a) General rule.--Any nonprofit corporation may, in the
7 manner provided in this subchapter, be converted into a business
8 corporation, [hereinafter] designated in this subchapter as the
9 resulting corporation.

10 (b) Exceptions.--

11 (1) This subchapter shall not authorize any conversion
12 involving:

13 [(i) A cooperative corporation.

14 (ii)] (i) Beneficial, benevolent, fraternal or
15 fraternal benefit societies having a lodge system and a
16 representative form of government, or transacting any
17 type of insurance whatsoever.

18 [(iii)] (ii) Any corporation [which] that by the
19 laws of this Commonwealth is subject to the supervision
20 of the Department of Banking, the Insurance Department or
21 the Pennsylvania Public Utility Commission, unless the
22 agency expressly approves the transaction in writing.

23 (2) [Paragraph (1) of this subsection] Subsection (a)
24 shall not be construed as repealing any statute [which] that
25 provides a procedure for the conversion of a nonprofit
26 corporation into an insurance corporation.

27 § 5962. Proposal and adoption of plan of conversion.

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

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

1 [(2) The mode of carrying the conversion into effect.

2 (3)] (2) A restatement of the articles of the resulting
3 corporation, which articles shall comply with the
4 requirements of [Subpart B of Part II (relating to business
5 corporations)] this part relating to business corporations.

6 [(4)] (3) Such other [details and] provisions as are
7 deemed desirable.

8 (b) Proposal and adoption.--The plan of conversion shall be
9 proposed and adopted, and may be amended after its adoption and
10 terminated, by the nonprofit corporation in the manner provided
11 for the proposal, adoption, amendment and termination of a plan
12 of merger in Subchapter C (relating to merger, consolidation and
13 sale of assets). There shall be included in or enclosed with the
14 notice of meeting of members of the nonprofit corporation that
15 will act upon the plan a copy or a summary of the plan.

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

23 § 5964. Filing of articles of conversion.

24 (a) General rule.--The articles of conversion shall be filed
25 in the Department of State.

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

29 § 5965. Effective date of conversion.

30 Upon the filing of articles of conversion in the Department

1 of State[,] or upon the effective date specified in the plan of
2 conversion, whichever is later, the conversion shall become
3 effective.

4 § 5966. Effect of conversion.

5 Upon the conversion becoming effective, the converting
6 nonprofit corporation shall be deemed to be a business
7 corporation subject to the provisions of this part relating to
8 business corporations for all purposes, shall cease to be a
9 nonprofit corporation[,] and may thereafter operate for a
10 purpose or purposes resulting in pecuniary profit, incidental or
11 otherwise, to its members or shareholders. [The] Unless the
12 shares of the corporation are to be uncertificated, the
13 corporation shall issue share certificates to each shareholder
14 entitled thereto. The corporation shall remain liable for all
15 existing obligations, public [and] or private, and taxes due the
16 Commonwealth or any other taxing authority for periods prior to
17 the effective date of the conversion, and, as [such] a business
18 corporation, it shall continue to be entitled to all assets
19 theretofore pertaining to it as a nonprofit corporation except
20 as otherwise provided by order, if any, obtained pursuant to
21 section 5547(b) (relating to nondiversion of certain property).

22 § 5975. Predissolution provision for liabilities.

23 (a) Powers of board.--The board of directors or other body
24 of a nonprofit corporation that has elected to proceed under
25 this section shall have full power to wind up and settle the
26 affairs of [a nonprofit] the corporation in accordance with this
27 section prior to filing articles of dissolution in accordance
28 with section 5977 (relating to articles of dissolution).

29 (b) Notice to creditors and taxing authorities.--After the
30 approval by the members or the board of directors or other body

1 pursuant to section 5974(b) (relating to adoption in absence of
2 voting members) that the corporation dissolve voluntarily, the
3 corporation shall immediately cause notice of the winding up
4 proceedings to be officially published and to be mailed by
5 certified or registered mail to each known creditor and claimant
6 and to each municipal corporation in which [its registered
7 office or principal] it has a place of business in this
8 Commonwealth [is located].

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

23 (a) General rule.--A nonprofit corporation that has elected
24 to proceed under section 1975 (relating to predissolution
25 provision for liabilities), at any time during the winding up
26 proceedings, may apply to the court to have the proceedings
27 continued under the supervision of the court and thereafter the
28 proceedings shall continue under the supervision of the court as
29 provided in Subchapter G (relating to involuntary liquidation
30 and dissolution).

1 * * *

2 § 5977. Articles of dissolution.

3 * * *

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

6 * * *

7 (5) A statement that:

8 (i) [that] all liabilities of the corporation have
9 been discharged or that adequate provision has been made
10 therefor; [or]

11 (ii) [that] the assets of the corporation are not
12 sufficient to discharge its liabilities, and that all the
13 assets of the corporation have been fairly and equitably
14 applied, as far as they will go, to the payment of such
15 liabilities[. An election by]; or

16 (iii) the corporation has elected to proceed under
17 Subchapter H [shall constitute the making of adequate
18 provision for the liabilities of the corporation,
19 including any judgment or decree that may be obtained
20 against the corporation in any pending action or
21 proceeding].

22 * * *

23 (7) [A] In the case of a corporation that has not
24 elected to proceed under Subchapter H, a statement that no
25 actions or proceedings are pending against the corporation in
26 any court, or that adequate provision has been made for the
27 satisfaction of any judgment or decree that may be obtained
28 against the corporation in each pending action or proceeding.

29 (8) [A] In the case of a corporation that has not
30 elected to proceed under Subchapter H, a statement that

1 notice of the winding-up proceedings of the corporation was
2 mailed by certified or registered mail to each known creditor
3 and claimant and to each municipal corporation in which the
4 [registered office or principal place of business of the]
5 corporation has a place of business in this Commonwealth [is
6 located].

7 * * *

8 (d) Cross references.--See sections 134 (relating to
9 docketing statement) and 135 (relating to requirements to be met
10 by filed documents).

11 § 5989. Articles of involuntary dissolution.

12 (a) General rule.--In a proceeding under this subchapter,
13 the court shall enter an order dissolving the nonprofit
14 corporation when the order, if any, obtained pursuant to section
15 5547(b) (relating to nondiversion of certain property) has been
16 entered and when the costs and expenses of the proceeding, and
17 all liabilities of the corporation have been discharged, and all
18 of its remaining assets have been distributed to the persons
19 entitled thereto, or, in case its assets are not sufficient to
20 discharge such costs, expenses and liabilities, when all the
21 assets have been applied, as far as they will go, to the payment
22 of such costs, expenses and liabilities. See section 139(b)
23 (relating to tax clearance in judicial proceedings).

24 (b) Filing.--After entry of an order of dissolution, the
25 office of the clerk of the court of common pleas shall prepare
26 and execute articles of dissolution substantially in the form
27 provided by section 5977 (relating to articles of dissolution),
28 attach thereto a certified copy of the order and transmit the
29 articles and attached order to the Department of State. [A
30 certificate or statement provided for by section 139 (relating

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

7 * * *

8 § 5991.1. Authority of board of directors.

9 (a) General rule.--The board of directors or other body of a
10 nonprofit corporation that has elected to proceed under this
11 subchapter shall have full power to wind up and settle the
12 affairs of the corporation in accordance with this subchapter
13 both prior to and after the filing of articles of dissolution in
14 accordance with section 5977 (relating to articles of
15 dissolution).

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

22 § 6126. Amended certificate of authority.

23 (a) General rule.--After receiving a certificate of
24 authority, a qualified foreign nonprofit corporation may,
25 subject to the provisions of this subchapter, change [the name
26 under which it is authorized to transact business in this
27 Commonwealth] or correct any of the information set forth in its
28 application for a certificate of authority or previous filings
29 under this section by filing in the Department of State an
30 application for an amended certificate of authority. The

1 application shall be executed by the corporation and shall
2 state:

3 (1) The name under which the applicant corporation
4 currently holds a certificate of authority to do business in
5 this Commonwealth.

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

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

11 (4)] (2) Subject to section 109 (relating to name of
12 commercial registered office provider in lieu of registered
13 address), the address, including street and number, if any,
14 of its registered office in this Commonwealth. [which may
15 constitute a change in the address of its registered office.

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

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

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

21 (i) the change of name reflects a change effected in
22 the jurisdiction of incorporation; or

23 (ii) documents complying with section 6123(b)
24 (relating to exceptions) accompany the application.

25 (b) Issuance of amended certificate of authority.--Upon the
26 filing of the application, the applicant corporation shall be
27 deemed to hold an amended certificate of authority.

28 (c) Cross reference.--See section 134 (relating to docketing
29 statement).

30 § 6146. Provisions applicable to all foreign corporations.

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

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

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

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

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

20 § 8105. Ownership of certain professional partnerships.

21 Except as otherwise provided by statute, rule or regulation
22 applicable to a particular profession, all of the [partners in]
23 ultimate beneficial owners of the partnership interests in a
24 partnership that renders one or more restricted professional
25 services shall be licensed persons. As used in this section,
26 the term "restricted professional services" shall have the
27 meaning specified in section 8903 (relating to definitions and
28 index of definitions).

29 § 8201. Scope.

30 * * *

1 (e) Prohibited termination.--A registration under this
2 subchapter may not be terminated while the partnership is a
3 bankrupt as that term is defined in section 8903 (relating to
4 definitions and index of definitions). See section 8221(f)
5 (relating to annual registration).

6 (f) Alternative procedure.--In lieu of filing a statement of
7 registration as provided in subsection (a), a limited
8 partnership may register as a registered limited liability
9 partnership by including in its certificate of limited
10 partnership, either originally or by amendment, the statements
11 required by subsection (a)(3) and (4). To terminate its
12 registration, a limited partnership that uses the procedure
13 authorized by this subsection shall amend its certificate of
14 limited partnership to delete the statements required by this
15 subsection.

16 (g) Constructive notice.--Filing under this section shall
17 constitute constructive notice that the partnership is a
18 registered limited liability partnership and that the partners
19 are entitled to the protections from liability provided by this
20 subchapter.

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

24 § 8202. Definitions.

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

28 * * *

29 "Partner." Includes a person who is or was a partner in a
30 registered limited liability partnership at any time while the

1 registration of the partnership under this subchapter is or was
2 in effect.

3 * * *

4 § 8204. Limitation on liability of partners.

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

15 (b) Exceptions.--

16 (1) [Subsection (a) shall not apply to any debt or
17 obligation with respect to which the partnership is not in
18 compliance with section 8206(a) (relating to insurance).]
19 (Repealed).

20 * * *

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

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

24 (ii) the availability of the entire assets of the
25 partnership to satisfy its debts and obligations; or

26 (iii) any obligation undertaken by a partner in
27 writing to individually indemnify another partner of the
28 partnership or to individually contribute toward a
29 liability of another partner.

30 * * *

1 § 8205. Liability of withdrawing partner.

2 * * *

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

5 * * *

6 (7) For any obligation undertaken by a partner in
7 writing to individually indemnify another partner of the
8 partnership or to individually contribute toward a liability
9 of another partner.

10 * * *

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

16 (f) Constructive notice.--Filing under this section shall
17 constitute constructive notice that the partner has withdrawn
18 from the partnership and is entitled to the protection from
19 liability provided by this section.

20 (g) Variation of section.--A written provision of the
21 partnership agreement may restrict or condition the application
22 of this section to some or all of the partners of the
23 partnership.

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

30 ~~[(e)]~~ (i) Cross references.--See sections 134 (relating to

1 docketing statement) and 135 (relating to requirements to be met
2 by filed documents).

3 § 8211. Foreign registered limited liability partnerships.

4 (a) Governing law.--Subject to the Constitution of
5 Pennsylvania:

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

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

13 (b) Registration to do business.--A foreign registered
14 limited liability partnership, regardless of whether or not it
15 is also a foreign limited partnership, shall be subject to
16 Subchapter K of Chapter 85 (relating to foreign limited
17 partnerships) as if it were a foreign limited partnership,
18 except that [the]:

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

21 (2) The name under which [the foreign registered limited
22 liability partnership] it registers and conducts business in
23 this Commonwealth shall comply with the requirements of
24 section 8203 (relating to name).

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

29 (c) Exception.--The liability of the partners in a foreign
30 registered limited liability partnership shall be governed by

1 the laws of the jurisdiction under which it is organized, except
2 that the partners shall not be entitled to greater protection
3 from liability than is available to the partners in a domestic
4 registered limited liability partnership.

5 § 8221. Annual registration.

6 * * *

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

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

24 (2) If the annual registration fee paid by a registered
25 limited liability partnership is subsequently determined to
26 be less than should have been paid because it was based on an
27 incorrect number of general partners or was otherwise
28 incorrectly computed, that fact shall not affect the
29 existence or status of the registered limited liability
30 partnership as such, but the amount of the additional annual

1 registration fee that should have been paid shall be a lien
2 in the manner provided in this subsection from the time the
3 incorrect payment is discovered by the department.

4 (3) The annual registration fee shall bear simple
5 interest from the date that it becomes due and payable until
6 paid. The interest rate shall be that provided for in section
7 806 of the act of April 9, 1929 (P.L.343, No.176), known as
8 The Fiscal Code, with respect to unpaid taxes. The penalty
9 provided for in paragraph (1) shall not bear interest. The
10 payment of interest shall not relieve the registered limited
11 liability partnership from liability for any other penalty or
12 interest provided for under other applicable law.

13 (4) The lien created by this subsection shall attach to
14 all of the property and proceeds thereof of the registered
15 limited liability partnership in which a security interest
16 can be perfected in whole or in part by filing in the
17 department under 13 Pa.C.S. Div. 9 (relating to secured
18 transactions; sales of accounts, contract rights and chattel
19 paper), whether the property and proceeds are owned by the
20 partnership at the time the annual registration fee or any
21 penalty or interest becomes due and payable or whether the
22 property and proceeds are acquired thereafter. Except as
23 otherwise provided by statute, the lien created by this
24 subsection shall have priority over all other liens, security
25 interests or other charges, except liens for taxes or other
26 charges due the Commonwealth. The lien created by this
27 subsection shall be entered on the records of the department
28 and indexed in the same manner as a financing statement filed
29 under 13 Pa.C.S. Div. 9. At the time an annual registration
30 fee, penalty or interest that has resulted in the creation of

1 a lien under this subsection is paid, the department shall
2 terminate the lien with respect to that annual registration
3 fee, penalty or interest without requiring a separate filing
4 by the partnership for that purpose.

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

9 (6) Termination of the status of a registered limited
10 liability partnership as such, whether voluntarily or
11 involuntarily, shall not release it from the obligation to
12 pay any accrued fees, penalties and interest and shall not
13 release the lien created by this subsection.

14 (f) Exception for bankrupt partnerships.--A partnership that
15 would otherwise be required to pay the annual registration fee
16 set forth in subsection (b) shall not be required to pay that
17 fee with respect to any year during any part of which the
18 partnership is a bankrupt as defined in section 8903 (relating
19 to definitions and index of definitions). The partnership shall,
20 instead, indicate on its certificate of annual registration for
21 that year that it is exempt from payment of the annual
22 registration fee pursuant to this subsection. If the partnership
23 fails to file timely a certificate of annual registration, a
24 lien shall be entered on the records of the department pursuant
25 to subsection (e) which shall not be removed until the
26 partnership files a certificate of annual registration
27 indicating its entitlement to an exemption from payment of the
28 annual registration fee as provided in this subsection. See
29 section 8201(e) (relating to scope).

30 § 8359. Right to wind up affairs.

1 Unless otherwise agreed, the partners who have not wrongfully
2 dissolved the partnership, or the legal representative of the
3 last surviving partner, not bankrupt, has the right to wind up
4 the partnership affairs except that any partner, his legal
5 representative or his assignee, upon cause shown, may obtain
6 winding up by the court. See section 139(b) (relating to tax
7 clearance in judicial proceedings).

8 § 8503. Definitions and index of definitions.

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

12 "Certificate of limited partnership." The certificate
13 referred to in section 8511 (relating to certificate of limited
14 partnership) and the certificate as amended. The term includes
15 any other statements or certificates permitted or required to be
16 filed in the Department of State by sections 108 (relating to
17 change in location or status of registered office provided by
18 agent) and 138 (relating to statement of correction) or this
19 part. If an amendment of the certificate of limited partnership
20 or a certificate of merger or division made in the manner
21 permitted by this chapter restates the certificate in its
22 entirety or if there is a certificate of consolidation,
23 thenceforth the "certificate of limited partnership" shall not
24 include any prior documents and any certificate issued by the
25 department with respect thereto shall so state.

26 * * *

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

29 (1) the court of common pleas of the judicial district
30 embracing the county where the registered office of the

1 limited partnership is or is to be located; or

2 (2) where a limited partnership results from a merger,
3 consolidation, division or other transaction without
4 establishing a registered office in this Commonwealth or
5 withdraws as a foreign limited partnership, the court of
6 common pleas in which venue would have been laid immediately
7 prior to the transaction or withdrawal.

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

9 * * *

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

13 (1) May provide that a person shall be admitted as a
14 limited partner, or shall become an assignee of a partnership
15 interest or other rights or powers of a limited partner to
16 the extent assigned, and shall become bound by the
17 partnership agreement:

18 (i) if such person (or a representative authorized
19 by such person orally, in writing or by other action such
20 as payment for a partnership interest) executes the
21 partnership agreement or any other writing evidencing the
22 intent of such person to become a limited partner or
23 assignee; or

24 (ii) without such execution, if such person (or a
25 representative authorized by such person orally, in
26 writing or by other action such as payment for a
27 partnership interest) complies with the conditions for
28 becoming a limited partner or assignee as set forth in
29 the partnership agreement or any other writing and
30 requests (orally, in writing or by other action such as

1 payment for a partnership interest) that the records of
2 the limited partnership reflect such admission or
3 assignment.

4 (2) Shall not be unenforceable by reason of its not
5 having been signed by a person being admitted as a limited
6 partner or becoming an assignee as provided in paragraph (1)
7 or by reason of its having been signed by a representative as
8 provided in section 8514(b) (relating to attorney-in-fact).

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

22 * * *

23 "Relax." When used with respect to a provision of the
24 certificate of limited partnership or partnership agreement,
25 means to provide lesser rights for an affected representative or
26 partner.

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

29 "Act" or "action." Section 102.

30 "Department." Section 102.

1 "Licensed person." Section 102.

2 "Professional services." Section 102.

3 § 8510. Indemnification.

4 * * *

5 (b) When indemnification is not to be made.--Indemnification
6 pursuant to subsection (a) shall not be made in any case where
7 the act [or failure to act] giving rise to the claim for
8 indemnification is determined by a court to have constituted
9 willful misconduct or recklessness. The certificate of limited
10 partnership or partnership agreement may not provide for
11 indemnification in the case of willful misconduct or
12 recklessness.

13 * * *

14 (f) Mandatory indemnification.--Without regard to whether
15 indemnification or advancement of expenses is provided under
16 subsections (a) and (d), a limited partnership shall be subject
17 to section 8331(2) (relating to rules determining rights and
18 duties of partners).

19 SUBCHAPTER B

20 FORMATION[; CERTIFICATE OF LIMITED PARTNERSHIP]

21 § 8511. Certificate of limited partnership.

22 (a) General rule.--In order to form a limited partnership, a
23 certificate of limited partnership must be executed and filed in
24 the Department of State. The certificate shall set forth:

25 (1) The name of the limited partnership.

26 (2) Subject to section 109 (relating to name of
27 commercial registered office provider in lieu of registered
28 address), the address, including street and number, if any,
29 of its registered office.

30 (3) The name and business address of each general

1 partner.

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

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

18 (b) Effective date of formation.--A limited partnership is
19 formed at the time of the filing of the certificate of limited
20 partnership in the department or at any later time specified in
21 the certificate of limited partnership if, in either case, there
22 has been substantial compliance with the requirements of this
23 section or the corresponding provisions of prior law.

24 (c) [Duties of recorders of deeds.--Each recorder of deeds
25 shall continue to keep open for public inspection the record of
26 limited partnership certificates recorded under the statutes
27 supplied by this chapter and by prior law the custody of which
28 has not been transferred to the department pursuant to section
29 140 (relating to custody and management of orphan corporate and
30 business records).] (Repealed).

1 (d) Transitional provision.--A limited partnership formed
2 under prior law shall not be required to set forth in its
3 certificate of limited partnership a registered office or the
4 business address of each general partner until such time as it
5 first amends its certificate of limited partnership under this
6 chapter.

7 (e) Effect of provisions.--A provision of the certificate of
8 limited partnership shall be deemed to be a provision of the
9 partnership agreement for purposes of any provision of this
10 chapter that refers to a rule as set forth in the partnership
11 agreement.

12 [(e)] (f) Cross references.--See sections 134 (relating to
13 docketing statement), 135 (relating to requirements to be met by
14 filed documents) and 8514 (relating to execution of
15 certificates).

16 § 8517. Notice.

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

19 (1) that the partnership is a limited partnership and
20 that all partners are limited partners except the persons
21 designated therein as general partners[, but it is not notice
22 of any other fact]; and

23 (2) if it is registered under Chapter 82 (relating to
24 registered limited liability partnerships), that it is also a
25 registered limited liability partnership.

26 § 8519. Filing of certificate of summary of record by limited
27 partnerships formed prior to 1976.

28 (a) General rule.--[Any limited partnership that was not
29 formed under this chapter, has never made any filing under this
30 section or corresponding provisions of prior law and] Where any

1 of the organic documents of a limited partnership are not on
2 file in the Department of State or there is an error in any such
3 document as transferred to the department pursuant to section
4 140 (relating to custody and management of orphan corporate and
5 business records), and the limited partnership desires to file
6 any document in the [Department of State] department under any
7 other provision of this chapter or [that desires] to secure from
8 the department a certified copy of the certificate of limited
9 partnership or to correct the text of its organic documents as
10 on file in the department, the limited partnership shall file in
11 the department a certificate of summary of record which shall
12 set forth:

13 (1) The name of the limited partnership.

14 (2) Subject to section 109 (relating to name of
15 commercial registered office provider in lieu of registered
16 address), the address, including street and number, if any,
17 of its registered office.

18 (3) The statute under which the limited partnership was
19 formed.

20 (4) The name under which, and the date on which, the
21 limited partnership was originally formed, including the date
22 when and the place where the original certificate was
23 recorded.

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

1 information specified in this paragraph may be omitted in a
2 certificate of summary of record that is delivered to the
3 department contemporaneously with an amended certificate
4 filed under this chapter that restates the certificate in its
5 entirety.

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

10 (b) Cross references.--See sections 134 (relating to
11 docketing statement), 135 (relating to requirements to be met by
12 filed documents) and 8514 (relating to execution of
13 certificates).

14 § 8520. Partnership agreement.

15 (a) Admission of limited partners.--A partnership agreement
16 may provide in writing that a person shall be admitted as a
17 limited partner, or shall become an assignee of a partnership
18 interest or other rights or powers of a limited partner to the
19 extent assigned, and shall become bound by the partnership
20 agreement:

21 (1) if such person (or a representative authorized by
22 such person orally, in writing or by other action such as
23 payment for a partnership interest) executes the partnership
24 agreement or any other writing evidencing the intent of such
25 person to become a limited partner or assignee; or

26 (2) without such execution, if such person (or a
27 representative authorized by such person orally, in writing
28 or by other action such as payment for a partnership
29 interest) complies with the conditions for becoming a limited
30 partner or assignee as set forth in the partnership agreement

1 or any other writing and requests (orally, in writing or by
2 other action such as payment for a partnership interest) that
3 the records of the limited partnership reflect such admission
4 or assignment.

5 (b) Signature by limited partners.--A written partnership
6 agreement shall not be unenforceable by reason of its not having
7 been signed by a person being admitted as a limited partner or
8 becoming an assignee as provided in subsection (a) or by reason
9 of its having been signed by a representative as provided in
10 section 8514(b) (relating to attorney-in-fact).

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

24 (d) Freedom of contract.--A written partnership agreement
25 may contain any provision for the regulation of the internal
26 affairs of the limited partnership agreed to by the partners,
27 whether or not specifically authorized by or in contravention of
28 this chapter, except where this chapter:

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

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

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

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

10 § 8523. Liability of limited partners to third parties.

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

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

28 (1) Being a contractor for, or an agent or employee of
29 the limited partnership or of a general partner, or being an
30 officer, director, trustee, partner or shareholder of a

1 general partner.

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

5 (3) (i) Acting as surety for the limited partnership,
6 or guaranteeing, endorsing or assuming one or more
7 specific obligations of the limited partnership, or a
8 general partner.

9 (ii) Borrowing money from the limited partnership or
10 a general partner.

11 (iii) Lending money to the limited partnership or a
12 general partner.

13 (iv) Providing collateral for the limited
14 partnership or a general partner.

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

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

19 (6) Acting or causing the taking or refraining from the
20 taking of any action, including, without limitation, by
21 proposing, approving, consenting or disapproving, by voting
22 or otherwise, with respect to one or more of the following
23 matters:

24 (i) The dissolution and winding up of the limited
25 partnership, or an election to continue the limited
26 partnership or the business of the limited partnership.

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

30 (iii) The incurrence, renewal, refinancing or

1 payment or other discharge of indebtedness by the limited
2 partnership.

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

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

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

6 (vii) A transaction involving an actual or potential
7 conflict of interest between a general partner and the
8 limited partnership or the limited partners.

9 (viii) An amendment to the partnership agreement or
10 certificate of limited partnership.

11 (ix) The merger or consolidation of the limited
12 partnership.

13 (x) The indemnification of any partner or other
14 person.

15 (xi) Matters related to the business of the limited
16 partnership not otherwise enumerated in this subsection,
17 which the partnership agreement states in writing may be
18 subject to the approval or disapproval of limited
19 partners.

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

22 (8) Winding up the limited partnership pursuant to
23 section 8573 (relating to winding up).

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

26 (i) The approval or termination of investment
27 advisory or underwriting contracts.

28 (ii) The approval of auditors.

29 (iii) Any other matter that by reason of the

30 Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. §

1 80a-1 et seq.) the general partners consider to be a
2 proper matter for the vote of the holders of voting
3 securities or beneficial interests in the limited
4 partnership.

5 (10) Serving on a committee of the limited partnership
6 or the limited partners.

7 (11) Exercising any right or power permitted to limited
8 partners under this chapter and not specifically enumerated
9 in this subsection.

10 (12) Exercising any other right or power stated in the
11 partnership agreement.] (Repealed).

12 (c) [Enumeration nonexclusive.--The enumeration in
13 subsection (b) does not mean that the possession or exercise of
14 any other powers, or having or acting in other capacities, by a
15 limited partner constitutes participation by him in the control
16 of the business of the limited partnership.] (Repealed).

17 (d) Use of name of limited partner.--A limited partner does
18 not [participate in the control of the business within the
19 meaning of subsection (a)] become liable for the obligations of
20 a limited partnership by reason of the fact that all or any part
21 of the name of the limited partner is included in the name of
22 the limited partnership.

23 (e) [Effect of section.--This section does not create rights
24 or powers of limited partners. Such rights and powers may be
25 created only by the certificate of limited partnership,
26 partnership agreement or any other agreement or other provisions
27 of this chapter.] (Repealed).

28 * * *

29 § 8546. Approval of merger or consolidation.

30 (a) Preparation of plan of merger or consolidation.--A plan

1 of merger or consolidation, as the case may be, shall be
2 prepared, setting forth:

3 * * *

4 (3) The manner and basis of converting the partnership
5 interests of each limited partnership into partnership
6 interests, securities or obligations of the surviving or new
7 limited partnership, as the case may be, and, if any of the
8 partnership interests of any of the limited partnerships that
9 are parties to the [plan] merger or consolidation are not to
10 be converted solely into partnership interests, securities or
11 obligations of the surviving or new limited partnership, the
12 partnership interests, securities or obligations of any other
13 person or cash, property or rights that the holders of such
14 partnership interests are to receive in exchange for, or upon
15 conversion of, such partnership interests, and the surrender
16 of any certificates evidencing them, which securities or
17 obligations, if any, of any other person or cash, property or
18 rights may be in addition to or in lieu of the partnership
19 interests, securities or obligations of the surviving or new
20 limited partnership.

21 (4) 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 (b) Post-adoption amendment of plan of merger or
27 consolidation.--A plan of merger or consolidation may contain a
28 provision that the general partners of the constituent limited
29 partnerships may amend the plan at any time prior to its
30 effective date, except that an amendment made subsequent to any

1 adoption of the plan by the limited partners of any constituent
2 domestic limited partnership shall not change:

3 (1) The amount or kind of partnership interests,
4 obligations, cash, property or rights to be received in
5 exchange for or on conversion of all or any of the
6 partnership interests of the constituent domestic limited
7 partnership adversely to the holders of those partnership
8 interests.

9 (2) Any term of the certificate of limited partnership
10 or partnership agreement of the surviving or new limited
11 partnership [to be effected by] as it is to be in effect
12 immediately following consummation of the merger or
13 consolidation except provisions that may be amended without
14 the approval of the limited partners.

15 (3) Any of the other terms and conditions of the plan if
16 the change would adversely affect the holders of any
17 partnership interests of the constituent domestic limited
18 partnership.

19 * * *

20 (d) Party to plan.--[A limited partnership] An association
21 that approves a plan in its capacity as a partner or creditor of
22 a merging or consolidating limited partnership, or that
23 furnishes all or a part of the consideration contemplated by a
24 plan, does not thereby become a party to the [plan] merger or
25 consolidation for the purposes of this subchapter.

26 (e) Notice of meeting of limited partners.--Notwithstanding
27 any other provision of the partnership agreement, written notice
28 of the meeting of limited partners called for the purpose of
29 considering the proposed plan shall be given to each limited
30 partner of record, whether or not entitled to vote thereon, of

1 each domestic limited partnership that is a party to the [plan]
2 proposed merger or consolidation. There shall be included in, or
3 enclosed with, the notice a copy of the proposed plan or a
4 summary thereof. The provisions of this subsection may not be
5 relaxed by the certificate of limited partnership or partnership
6 agreement.

7 (f) Adoption of plan by limited partners.--The plan of
8 merger or consolidation shall be adopted upon receiving a
9 majority of the votes cast by all limited partners, if any,
10 entitled to vote thereon of each of the domestic limited
11 partnerships that is a party to the [plan] proposed merger or
12 consolidation and, if any class of limited partners is entitled
13 to vote thereon as a class, a majority of the votes cast in each
14 class vote. A proposed plan of merger or consolidation shall not
15 be deemed to have been adopted by the limited partnership unless
16 it has also been approved by the general partners, regardless of
17 the fact that the general partners have directed or suffered the
18 submission of the plan to the limited partners for action.

19 * * *

20 (h) Termination of plan.--Prior to the time when a merger or
21 consolidation becomes effective, the merger or consolidation may
22 be terminated pursuant to provisions therefor, if any, set forth
23 in the plan. If a certificate of merger or consolidation has
24 been filed in the department prior to the termination, a
25 certificate of termination executed by each limited partnership
26 that is a party to the [plan] merger or consolidation, unless
27 the plan permits termination by less than all of the limited
28 partnerships, in which case the certificate shall be executed on
29 behalf of the limited partnership exercising the right to
30 terminate, shall be filed in the department. The certificate of

1 termination shall set forth:

2 (1) A copy of the certificate of merger or consolidation
3 relating to the plan that is terminated.

4 (2) A statement that the plan has been terminated in
5 accordance with the provisions therefor set forth therein.

6 See sections 134 (relating to docketing statement), 135
7 (relating to requirements to be met by filed documents), 138
8 (relating to statement of correction) and 8514 (relating to
9 execution of certificates).

10 * * *

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

18 § 8553. Voluntary withdrawal of limited partner.

19 (a) General rule.--A limited partner may withdraw from a
20 limited partnership only at the time or upon the happening of
21 events specified in writing in the partnership agreement. [If
22 the partnership agreement does not specify in writing the time
23 or the events upon the happening of which a limited partner may
24 withdraw or a definite time for the dissolution and winding up
25 of the limited partnership, a limited partner may withdraw upon
26 not less than six months' prior written notice to each general
27 partner at his address on the books of the limited partnership.]

28 (b) [Prohibition of withdrawal.--The partnership agreement
29 may provide that a limited partner may not withdraw from the
30 limited partnership or assign a partnership interest in the

1 limited partnership prior to the dissolution and winding up of
2 the limited partnership.] (Repealed).

3 (c) Transitional rule.--This section applies to all limited
4 partnerships formed on or after January 1, 1999. If the
5 partnership agreement of a limited partnership formed before
6 January 1, 1999, did not on December 31, 1998, specify in
7 writing the time or the events upon the happening of which a
8 limited partner could withdraw or a definite time for the
9 dissolution and winding up of the limited partnership, the
10 provisions of this section that were in effect prior to January
11 1, 1999, shall apply until such time, if any, as the partnership
12 agreement is amended in writing after January 1, 1999, to
13 specify:

14 (1) a time or the events upon the happening of which a
15 limited partner may withdraw;

16 (2) a definite time for the dissolution and winding up
17 of the limited partnership; or

18 (3) that this section as effective January 1, 1999,
19 shall apply to the limited partnership.

20 § 8557. [Limitations on distribution.] Distributions and
21 allocation of profits and losses.

22 [A partner may not receive a distribution from a limited
23 partnership to the extent that, after giving effect to the
24 distribution, all liabilities of the limited partnership, other
25 than liabilities to partners on account of their partnership
26 interests and liabilities as to which recourse of creditors is
27 limited to specified property of the limited partnership, exceed
28 the fair value of the partnership assets. The fair value of any
29 property that is subject to a liability as to which recourse of
30 creditors is so limited shall be included in the partnership

assets only to the extent that the fair value of the property exceeds that liability.] A limited partnership may from time to time make distributions and allocate the profits and losses of its business to the partners upon the basis stipulated in the partnership agreement or, if not stipulated in the partnership agreement, per capita. The allocation of losses pursuant to this section shall not affect the limitation on liability of limited partners as provided in section 8523 (relating to liability of limited partners to third parties).

§ 8558. Liability upon return of contribution.

* * *

(c) Determination of return of contribution.--A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership[, as determined under section 8557 (relating to limitations on distribution),] below the value (as stated or determined in the manner provided in the partnership agreement, if stated or provided for therein) of his contribution (to the extent it has been received by the limited partnership) that has not been distributed to him, and otherwise to the extent of the fair value of the distribution.

(d) Fair value of net assets.--For purposes of computing the fair value of the net assets of the limited partnership under subsection (c):

(1) liabilities of the limited partnership to partners on account of their partnership interests and liabilities as to which recourse of creditors is limited to specified property of the limited partnership shall not be considered; and

(2) the fair value of property that is subject to a

liability as to which recourse of creditors is so limited shall be included in the partnership assets only to the extent that the fair value of the property exceeds that liability.

§ 8571. Nonjudicial dissolution.

(a) General rule.--A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time or upon the happening of events specified in the certificate of limited partnership.

(2) At the time or upon the happening of events specified in writing in the partnership agreement.

(3) Written consent of all partners.

(4) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so. The limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within 180 days after the withdrawal, [all] a majority in interest, or such greater number as shall be provided in writing in the partnership agreement, of the partners agree in writing to continue the business of the limited partnership or to the appointment of one or more replacement general partners.

(5) Entry of an order of judicial dissolution under section 8572 (relating to judicial dissolution).

* * *

(c) Dissolution by domestication.--Whenever a domestic limited partnership has domesticated itself under the laws of

1 another jurisdiction by action similar to that provided by
2 section 8590 (relating to domestication) and has authorized that
3 action in the manner required by this subchapter for the
4 approval of a proposal that the partnership dissolve
5 voluntarily, the partnership may surrender its certificate of
6 limited partnership under the laws of this Commonwealth by
7 filing in the department a certificate of cancellation under
8 section 8513 (relating to cancellation of certificate). If the
9 partnership, as domesticated in the other jurisdiction,
10 registers to do business in this Commonwealth either prior to or
11 simultaneously with the filing of the certificate of
12 cancellation under this subsection, the partnership shall not be
13 required to file with the certificate of cancellation the tax
14 clearance certificates that would otherwise be required by
15 section 139 (relating to tax clearance of certain fundamental
16 transactions).

17 ~~[(c)]~~ (d) Cross [references] reference.--See [sections 8103
18 (relating to continuation of certain limited partnerships) and]
19 section 8512(b) (relating to events requiring amendment).
20 § 8573. Winding up.

21 Except as otherwise provided in the partnership agreement,
22 the general partners who have not wrongfully dissolved a limited
23 partnership or, if none, the limited partners, or a person
24 approved by the limited partners or, if there is more than one
25 class or group of limited partners, by each class or group of
26 limited partners, in either case by a majority in interest of
27 the limited partners in each class or group, may wind up the
28 affairs of the limited partnership, but the court may wind up
29 the affairs of the limited partnership upon application of any
30 partner, his legal representative or assignee, and in connection

1 therewith, may appoint a liquidating trustee. See section 139(b)
2 (relating to tax clearance in judicial proceedings).

3 § 8577. Proposal and adoption of plan of division.

4 * * *

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

13 * * *

14 (e) [Restrictions on certain distributions.--A plan of
15 division may not be made effective if the effect of the plan is
16 to make a distribution to the holders of any class or series of
17 partnership interests of the dividing limited partnership unless
18 the distribution is permitted by section 8557 (relating to
19 limitations on distribution.) (Repealed).

20 (f) [Action by] Rights of holders of indebtedness.--[Unless
21 otherwise provided by an indenture or other contract by which
22 the dividing limited partnership is bound, a plan of division
23 shall not require the approval of the holders of any debt
24 securities or other obligations of the dividing limited
25 partnership or of any representative of the holders if the
26 transfer of assets effected by the division, if effected by
27 means of a sale, lease, exchange or other disposition, and any
28 related distribution would not require the approval of the
29 holders or representatives thereof.] If any such debt
30 securities, notes, similar evidences of indebtedness, indentures

1 or other contracts were issued, incurred or executed by the
2 dividing limited partnership before (the Legislative Reference
3 Bureau shall insert here the effective date of the amendments of
4 this section) and have not been amended subsequent to that date,
5 the liability of the dividing limited partnership thereunder
6 shall not be affected by the division nor shall the rights of
7 the obligees thereunder be impaired by the division, and each of
8 the resulting limited partnerships may be proceeded against or
9 substituted in place of the dividing limited partnership as
10 joint and several obligors on such liability, regardless of any
11 provision of the plan of division apportioning the liabilities
12 of the dividing limited partnership.

13 * * *

14 § 8580. Effect of division.

15 * * *

16 (b) Property rights; allocations of assets and
17 liabilities.--

18 (1) (i) All the property, real, personal and mixed, of
19 the dividing limited partnership, and all debts due on
20 whatever account to it, including subscriptions for
21 partnership interests or other causes of action belonging
22 to it, shall, except as otherwise provided in paragraph
23 (2), to the extent [transfers] allocations of assets are
24 contemplated by the plan of division, be deemed without
25 further action to be [transferred] allocated to and
26 vested in the resulting limited partnerships on such a
27 manner and basis and with such effect as is specified in
28 the plan, or per capita among the resulting limited
29 partnerships, as tenants in common, if no specification
30 is made in the plan, and the title to any real estate or

1 interest therein vested in any of the limited
2 partnerships shall not revert or be in any way impaired
3 by reason of the division.

4 (ii) Upon the division becoming effective, the
5 resulting limited partnerships shall each thenceforth be
6 responsible as separate and distinct limited partnerships
7 only for such liabilities as each limited partnership may
8 undertake or incur in its own name but shall be liable
9 for the liabilities of the dividing limited partnership
10 in the manner and on the basis provided in subparagraphs
11 (iv) and (v).

12 (iii) Liens upon the property of the dividing
13 limited partnership shall not be impaired by the
14 division.

15 (iv) [One] To the extent allocations of liabilities
16 are contemplated by the plan of division, the liabilities
17 of the dividing limited partnership shall be deemed
18 without further action to be allocated to and become the
19 liabilities of the resulting limited partnerships on such
20 a manner and basis and with such effect as is specified
21 in the plan; and one or more but less than all of the
22 resulting limited partnerships shall be free of the
23 liabilities of the dividing limited partnership to the
24 extent, if any, specified in the plan [if no fraud of
25 creditors or partners or violation of law shall be
26 effected thereby and if all applicable provisions of law
27 are complied with.], if in either case:

28 (A) no fraud of partners or violation of law
29 shall be effected thereby; and

30 (B) the plan does not constitute a fraudulent

1 transfer under 12 Pa.C.S. Ch. 51 (relating to
2 fraudulent transfers).

3 (v) If the conditions in subparagraph (iv) for
4 freeing one or more of the resulting limited partnerships
5 from the liabilities of the dividing limited partnership,
6 or for allocating some or all of the liabilities of the
7 dividing limited partnership, are not satisfied, the
8 liabilities of the dividing limited partnership as to
9 which those conditions are not satisfied shall not be
10 affected by the division nor shall the rights of
11 creditors [thereof] thereunder or of any person dealing
12 with the limited partnership be impaired by the division,
13 and any claim existing or action or proceeding pending by
14 or against the limited partnership with respect to those
15 liabilities may be prosecuted to judgment as if the
16 division had not taken place, or the resulting limited
17 partnerships may be proceeded against or substituted in
18 [its] place of the dividing limited partnership as joint
19 and several obligors on [such liability] those
20 liabilities, regardless of any provision of the plan of
21 division apportioning the liabilities of the dividing
22 limited partnership.

23 (vi) The conditions in subparagraph (iv) for freeing
24 one or more of the resulting limited partnerships from
25 the liabilities of the dividing limited partnership and
26 for allocating some or all of the liabilities of the
27 dividing limited partnership shall be conclusively deemed
28 to have been satisfied if the plan of division has been
29 approved by the Pennsylvania Public Utility Commission in
30 a final order issued after (the Legislative Reference

1 Bureau shall insert here the effective date of the
2 amendments of this section) that has become not subject
3 to further appeal.

4 (2) (i) The [transfer] allocation of any fee or
5 freehold interest or leasehold having a remaining term of
6 30 years or more in any tract or parcel of real property
7 situate in this Commonwealth owned by a dividing limited
8 partnership (including property owned by a foreign
9 limited partnership dividing solely under the law of
10 another jurisdiction) to a new limited partnership
11 resulting from the division shall not be effective until
12 one of the following documents is filed in the office for
13 the recording of deeds of the county, or each of them, in
14 which the tract or parcel is situated:

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

17 (B) A duly executed duplicate original copy of
18 the certificate of division.

19 (C) A copy of the certificate of division
20 certified by the Department of State.

21 (D) A declaration of acquisition setting forth
22 the value of real estate holdings in the county of
23 the limited partnership as an acquired company.

24 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
25 to transfer of vehicle by operation of law) shall not be
26 applicable to [a transfer] an allocation of ownership of
27 any motor vehicle, trailer or semitrailer [from a
28 dividing limited partnership] to a new limited
29 partnership under this section or under a similar law of
30 any other jurisdiction, but any such [transfer]

allocation shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

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

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

* * *

(g) Conflict of laws.--It is the intent of the General Assembly that:

(1) The effect of a division of a domestic limited partnership shall be governed solely by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting limited partnerships is organized.

(2) The effect of a division on the assets and liabilities of the dividing limited partnership shall be governed solely by the laws of this Commonwealth and any other jurisdiction under the laws of which any of the resulting limited partnerships is organized.

(3) The validity of any allocations of assets or liabilities by a plan of division of a domestic limited partnership, regardless of whether or not any of the new limited partnerships is a foreign limited partnership, shall

1 be governed solely by the laws of this Commonwealth.

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

6 § 8590. Domestication.

7 * * *

8 (b) Certificate of domestication.--The certificate of
9 domestication shall be executed by the limited partnership and
10 shall set forth in the English language:

11 (1) The name of the limited partnership. If the name is
12 in a foreign language, it shall be set forth in Roman letters
13 or characters or Arabic or Roman numerals. If the name is one
14 that is rendered unavailable for use by any provision of
15 section 8505 (relating to name), the limited partnership
16 shall adopt, in accordance with any procedures for changing
17 the name of the limited partnership that are applicable prior
18 to the domestication of the limited partnership, and shall
19 set forth in the certificate of domestication an available
20 name.

21 * * *

22 (c) Effect of domestication.--

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

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

12 (i) the right and title of the limited partnership
13 in and to its assets, property, franchises, estates and
14 choses in action;

15 (ii) the liability of the limited partnership for
16 its debts, obligations, penalties and public accounts due
17 the Commonwealth;

18 (iii) any liens or other encumbrances on the
19 property or assets of the limited partnership; or

20 (iv) any contract, license or other agreement to
21 which the limited partnership is a party or under which
22 it has any rights or obligations.

23 (2) The partnership interests in the domesticated
24 limited partnership shall be unaffected by the domestication
25 except to the extent, if any, reclassified in the certificate
26 of domestication.

27 § 8903. Definitions and index of definitions.

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

1 * * *

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

3 * * *

4 "Event of dissociation." An event that causes a person to
5 cease to be a member of a limited liability company. See
6 section [8971(a)(4)] 8971(4) (relating to dissolution).

7 * * *

8 ["Licensed person." A natural person who is duly licensed or
9 admitted to practice his profession by a court, department,
10 board, commission or other agency of this Commonwealth or
11 another jurisdiction to render a professional service that is or
12 will be rendered by the professional company of which he is or
13 intends to become a manager, member, employee or agent.]

14 "Limited liability company," "domestic limited liability
15 company" or "company." An association that is a limited
16 liability company organized and existing under this chapter.

17 * * *

18 "Operating agreement." Any [agreement of the members as to]
19 rules or procedures adopted for the regulation and governance of
20 the affairs of a limited liability company and the conduct of
21 its business. [The operating agreement need not be in writing
22 except where this chapter refers to a written provision of the
23 operating agreement. The operating agreement may contain any
24 provision for the regulation of the internal affairs of the
25 company agreed to by the members, whether or not specifically
26 authorized by or in contravention of this chapter, except where
27 this chapter:

28 (1) refers only to a rule as set forth in the
29 certificate of organization; or

30 (2) expressly provides that the operating agreement

1 shall not relax or contravene any provision on a specified
2 subject. See sections 8913(8) (relating to certificate of
3 organization) and 8915 (relating to modification by
4 agreement).]

5 * * *

6 ["Professional services." The term shall have the meaning
7 specified in section 2902 (relating to definitions).]

8 * * *

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

11 "Act" or "action." Section 102.

12 "Department." Section 102.

13 "Licensed person." Section 102.

14 "Professional services." Section 102.

15 SUBCHAPTER B

16 ORGANIZATION[; CERTIFICATE OF ORGANIZATION]

17 § 8915. Modification by agreement.

18 The provisions of this chapter are intended to permit a
19 limited liability company to qualify for taxation as an entity
20 that is not an association taxable as a corporation under the
21 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1
22 et seq.). Notwithstanding the limitations in [the definition of
23 "operating agreement" in section 8903 (relating to definitions)
24 and the limitations in section] sections 8913(8) (relating to
25 certificate of organization) and 8916(b) (relating to operating
26 agreement), the certificate of organization and operating
27 agreement may effect any change in the form of organization of
28 the company, in addition to or in contravention of the
29 provisions of this chapter, that may be necessary to accomplish
30 that purpose.

1 § 8916. Operating agreement.

2 (a) General rule.--The operating agreement of a limited
3 liability company need not be in writing except where this
4 chapter refers to a written provision of the operating
5 agreement. If a written operating agreement provides that it
6 cannot be amended or modified except in writing, an oral
7 agreement, amendment or modification shall not be enforceable.

8 (b) Freedom of contract.--An operating agreement may contain
9 any provision for the regulation of the internal affairs of a
10 limited liability company adopted by the members, whether or not
11 specifically authorized by or in contravention of this chapter,
12 except where this chapter:

13 (1) refers only to a rule as set forth in the
14 certificate of organization; or

15 (2) expressly provides that the operating agreement
16 shall not relax or contravene any provision on a specified
17 subject.

18 (c) Cross references.--See sections 8913(8) (relating to
19 certificate of organization) and 8915 (relating to modification
20 by agreement).

21 § 8922. Liability of members [and managers].

22 (a) General rule.--[Neither] Except as provided in
23 subsection (e), the members of a limited liability company [nor
24 the managers of a company managed by one or more managers are]
25 shall not be liable, solely by reason of being a member [or a
26 manager], under an order of a court or in any other manner for a
27 debt, obligation or liability of the company of any kind or for
28 the acts [or omissions] of any [other] member, manager, agent or
29 employee of the company.

30 (b) Professional relationship unaffected.--Subsection (a)

1 shall not afford members [and managers] of a professional
2 company with greater immunity than is available to the officers,
3 shareholders, employees or agents of a professional corporation.
4 See section 2925 (relating to professional relationship
5 retained).

6 * * *

7 (d) Conflict of laws.--The personal liability of a member of
8 a company to any person or in any action or proceeding for the
9 debts, obligations or liabilities of the company or for the acts
10 [or omissions] of other members, managers, employees or agents
11 of the company shall be governed solely and exclusively by this
12 chapter and the laws of this Commonwealth. Whenever a conflict
13 arises between the laws of this Commonwealth and the laws of any
14 other state with regard to the liability of members of a company
15 organized and existing under this chapter for the debts,
16 obligations and liabilities of the company or for the acts [or
17 omissions] of the other members, managers, employees or agents
18 of the company, the laws of this Commonwealth shall govern in
19 determining such liability.

20 (e) Expansion of liability.--The certificate of organization
21 may provide that some or all of the members shall be liable for
22 some or all of the debts, obligations and liabilities of the
23 company to the extent and under the circumstances provided in
24 the certificate.

25 (f) Medical professional liability.--A professional company
26 shall be deemed to be a partnership for purposes of section 811
27 of the act of October 15, 1975 (P.L.390, No.111), known as the
28 Health Care Services Malpractice Act.

29 [(e)] (g) Cross reference.--See section 8904(b) (relating to
30 rules for cases not provided for in this chapter).

1 § 8924. Limited transferability of membership interest.

2 (a) General rule.--The interest of a member in a limited
3 liability company constitutes the personal estate of the member
4 and may be transferred or assigned as provided in writing in the
5 operating agreement. Unless otherwise provided in writing in
6 the operating agreement, if all of the other members of the
7 company other than the member proposing to dispose of his
8 interest do not approve of the proposed transfer or assignment
9 by unanimous vote or written consent, which approval may be
10 unreasonably withheld by any of the other members, the
11 transferee of the interest of the member shall have no right to
12 participate in the management of the business and affairs of the
13 company or to become a member. The transferee shall only be
14 entitled to receive the distributions and the return of
15 contributions to which that member would otherwise be entitled.

16 (b) Certificate of membership interest.--The certificate of
17 organization may provide that a member's interest in a company
18 may be evidenced by a certificate of membership interest issued
19 by the company [and]. If such provision is made for the issuance
20 of certificates of membership interest, the operating agreement
21 may [also] provide for the assignment or transfer of any
22 membership interest represented by such a certificate and make
23 other provisions with respect to such certificates. [See 13
24 Pa.C.S. § 8102 (relating to definitions and index of
25 definitions).]

26 § 8932. Distributions and allocation of profits and losses.

27 A limited liability company may from time to time [divide]
28 make distributions and allocate the profits and losses of its
29 business [and distribute the same] to [and allocate any losses
30 among] the members of the company upon the basis stipulated in

1 the operating agreement or, if not stipulated in the operating
2 agreement, per capita. The allocation of losses pursuant to this
3 section shall not affect the limitation on liability of members
4 as provided in section 8922 (relating to liability of members).

5 § 8942. Voting.

6 * * *

7 (c) Exception.--An amendment of the certificate of
8 organization that:

9 (1) restates without change all of the operative
10 provisions of the certificate of organization as theretofore
11 in effect;

12 (2) changes the name or registered office of the
13 company; or

14 (3) accomplishes any combination of the foregoing
15 purposes;

16 is not an amendment of the certificate of organization for the
17 purposes of subsection (b). Unless otherwise provided in writing
18 in the operating agreement, an amendment described in this
19 subsection may be made by the affirmative vote of a majority of
20 the managers or, in the case of a company that is not managed by
21 one or more managers, of a majority of the members.

22 * * *

23 § 8943. Duties of managers and members.

24 * * *

25 (b) Companies with managers.--If the certificate of
26 organization provides that the company shall be managed by one
27 or more managers:

28 (1) [Unless otherwise provided in writing in the
29 operating agreement, the provisions of Subchapter B of
30 Chapter 17 (relating to officers, directors and

shareholders)] Sections 1711 (relating to alternative provisions) through 1717 (relating to limitation on standing) shall be applicable to representatives of the company. A written provision of the operating agreement may increase, but not relax, the duties of representatives of the company to its members under those sections. For purposes of applying the provisions of those sections, references to the "articles of incorporation," "bylaws," "directors" and "shareholders" shall mean the certificate of organization, operating agreement, managers and members, respectively.

(2) A member who is not a manager shall have no duties to the company or to the other members solely by reason of acting in his capacity as a member.

§ 8944. [Classes of members.] Members.

(a) General rule.--A limited liability company may have one or more members.

(b) Classes of members.--An operating agreement may provide for:

(1) classes or groups of members having such relative rights, powers and duties as the operating agreement may provide;

(2) the future creation in the manner provided in the operating agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members; and

(3) the taking of an action, including, without limitation, amendment of the certificate of organization or operating agreement or creation of a class or group of

interests in the limited liability company that was not previously outstanding, without the vote or approval of any member or class or group of members.

~~[(b)]~~ (c) Class voting.--The operating agreement may grant to all or certain identified members or a specified class or group of members the right to vote (on a per capita or other basis), separately or with all or any class or group of members, upon any matter.

§ 8945. Indemnification.

* * *

(f) Mandatory indemnification.--Without regard to whether indemnification or advancement of expenses is provided under subsections (a) and (d), a limited liability company shall be subject to section 8331(2) (relating to rules determining rights and duties of partners) and both the members and the managers, if any, shall be deemed to be general partners for purposes of applying that section.

§ 8948. [Dissociation of member limited.] Limitation on dissociation or assignment of membership interest.

Notwithstanding anything to the contrary set forth in this part, an operating agreement may provide that a member may not voluntarily dissociate from the limited liability company or assign his membership interest prior to the dissolution and winding-up of the company, and an attempt by a member to dissociate voluntarily from the company or to assign his membership interest in violation of the operating agreement shall be ineffective.

§ 8957. Approval of merger or consolidation.

* * *

(b) Reference to outside facts.--Any of the terms of the

1 plan may be made dependent upon facts ascertainable outside of
2 the plan if the manner in which the facts will operate upon the
3 terms of the plan is set forth in the plan. Such facts may
4 include, without limitation, actions or events within the
5 control of or determinations made by a party to the plan or a
6 representative of a party to the plan.

7 (c) [Postadoption] Post-adoption amendment of plan of merger
8 or consolidation.--A plan of merger or consolidation may contain
9 a provision that the managers, if any, of the constituent
10 companies may amend the plan at any time prior to its effective
11 date, except that an amendment made subsequent to any adoption
12 of the plan by the members of any constituent domestic company
13 shall not, without the approval of the members, change:

14 (1) The amount or kind of membership interests,
15 obligations, cash, property or rights to be received in
16 exchange for or on conversion of all or any of the membership
17 interests of the constituent domestic company adversely to
18 the holders of those membership interests.

19 (2) Any [term] provision of the certificate of
20 organization or operating agreement of the surviving or new
21 company [to be effected by] as it is to be in effect
22 immediately following consummation of the merger or
23 consolidation except provisions that may be amended without
24 the approval of the members.

25 (3) Any of the other terms and conditions of the plan if
26 the change would adversely affect the holders of any
27 membership interests of the constituent domestic company.

28 * * *

29 (e) Party to plan.--An association that approves a plan in
30 its capacity as a member or creditor of a merging or

1 consolidating company or that furnishes all or a part of the
2 consideration contemplated by a plan does not thereby become a
3 party to the [plan or the] merger or consolidation for the
4 purposes of this subchapter.

5 * * *

6 (i) Termination of plan.--Prior to the time when a merger or
7 consolidation becomes effective, the merger or consolidation may
8 be terminated pursuant to provisions therefor, if any, set forth
9 in the plan. If a certificate of merger or consolidation has
10 been filed in the department prior to the termination, a
11 certificate of termination executed by each company that is a
12 party to the merger or consolidation, unless the plan permits
13 termination by less than all of the companies, in which case the
14 certificate shall be executed on behalf of the company
15 exercising the right to terminate, shall be filed in the
16 department. The certificate of termination shall set forth:

17 (1) A copy of the certificate of merger or consolidation
18 relating to the plan that is terminated.

19 (2) A statement that the plan has been terminated in
20 accordance with the provisions therefor set forth therein.

21 See sections 134 (relating to docketing statement), 135
22 (relating to requirements to be met by filed documents), 138
23 (relating to statement of correction) and 8907 (relating to
24 execution of documents).

25 * * *

26 § 8962. Proposal and adoption of plan of division.

27 * * *

28 (b) Reference to outside facts.--Any of the terms of the
29 plan may be made dependent upon facts ascertainable outside of
30 the plan if the manner in which the facts will operate upon the

1 terms of the plan is set forth in the plan. Such facts may
2 include, without limitation, actions or events within the
3 control of or determinations made by the dividing limited
4 liability company or a representative of the dividing limited
5 liability company.

6 * * *

7 (e) [Action by holders of indebtedness.--Unless otherwise
8 provided by an indenture or other contract by which the dividing
9 limited liability company is bound, a plan of division shall not
10 require the approval of the holders of any debt securities or
11 other obligations of the dividing company or of any
12 representative of the holders if the transfer of assets effected
13 by the division, if effected by means of a sale, lease, exchange
14 or other disposition, and any related distribution would not
15 require the approval of the holders or representatives thereof.]
16 (Repealed).

17 § 8965. Effect of division.

18 * * *

19 (b) Property rights; allocations of assets and
20 liabilities.--

21 (1) (i) All the property, real, personal and mixed, of
22 the dividing company and all debts due on whatever
23 account to it, including subscriptions for membership
24 interests and other causes of action belonging to it,
25 shall, except as otherwise provided in paragraph (2), to
26 the extent [transfers] allocations of assets are
27 contemplated by the plan of division, be deemed without
28 further action to be [transferred] allocated to and
29 vested in the resulting companies on such a manner and
30 basis and with such effect as is specified in the plan,

1 or per capita among the resulting companies as tenants in
2 common if no specification is made in the plan, and the
3 title to any real estate or interest therein vested in
4 any of the companies shall not revert or be in any way
5 impaired by reason of the division.

6 (ii) Upon the division becoming effective, the
7 resulting companies shall each thenceforth be responsible
8 as separate and distinct companies only for such
9 liabilities as each company may undertake or incur in its
10 own name but shall be liable for the liabilities of the
11 dividing company in the manner and on the basis provided
12 in subparagraphs (iv) and (v).

13 (iii) Liens upon the property of the dividing
14 company shall not be impaired by the division.

15 (iv) [One] To the extent allocations of liabilities
16 are contemplated by the plan of division, the liabilities
17 of the dividing company shall be deemed without further
18 action to be allocated to and become the liabilities of
19 the resulting companies on such a manner and basis and
20 with such effect as is specified in the plan; and one or
21 more, but less than all, of the resulting companies shall
22 be free of the liabilities of the dividing company to the
23 extent, if any, specified in the plan [if no fraud of
24 creditors or members or violation of law shall be
25 effected thereby and if all applicable provisions of law
26 are complied with.], if in either case:

27 (A) no fraud on members or violation of law
28 shall be effected thereby; and

29 (B) the plan does not constitute a fraudulent
30 transfer under 12 Pa.C.S. Ch. 51 (relating to

1 fraudulent transfers).

2 (v) If the conditions in subparagraph (iv) for
3 freeing one or more of the resulting companies from the
4 liabilities of the dividing company, or for allocating
5 some or all of the liabilities of the dividing company,
6 are not satisfied, the liabilities of the dividing
7 company as to which those conditions are not satisfied
8 shall not be affected by the division nor shall the
9 rights of creditors [thereof] thereunder or of any person
10 dealing with the company be impaired by the division, and
11 any claim existing or action or proceeding pending by or
12 against the company with respect to those liabilities may
13 be prosecuted to judgment as if the division had not
14 taken place, or the resulting companies may be proceeded
15 against or substituted in [its] place of the dividing
16 company as joint and several obligors on [such liability]
17 those liabilities, regardless of any provision of the
18 plan of division apportioning the liabilities of the
19 dividing company.

20 (vi) The conditions in subparagraph (iv) for freeing
21 one or more of the resulting companies from the
22 liabilities of the dividing company and for allocating
23 some or all of the liabilities of the dividing company
24 shall be conclusively deemed to have been satisfied if
25 the plan of division has been approved by the
26 Pennsylvania Public Utility Commission in a final order
27 issued after (the Legislative Reference Bureau shall
28 insert here the effective date of the amendments of this
29 section) that has become not subject to further appeal.

30 (2) (i) The [transfer] allocation of any fee or

1 freehold interest or leasehold having a remaining term of
2 30 years or more in any tract or parcel of real property
3 situate in this Commonwealth owned by a dividing company
4 (including property owned by a foreign limited liability
5 company dividing solely under the law of another
6 jurisdiction) to a new company resulting from the
7 division shall not be effective until one of the
8 following documents is filed in the office for the
9 recording of deeds of the county, or each of them, in
10 which the tract or parcel is situated:

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

13 (B) A duly executed duplicate original copy of
14 the certificate of division.

15 (C) A copy of the certificate of division
16 certified by the Department of State.

17 (D) A declaration of acquisition setting forth
18 the value of real estate holdings in such county of
19 the company as an acquired company.

20 (ii) The provisions of 75 Pa.C.S. § 1114 (relating
21 to transfer of vehicle by operation of law) shall not be
22 applicable to [a transfer] an allocation of ownership of
23 any motor vehicle, trailer or semitrailer [from a
24 dividing company] to a new company under this section or
25 under a similar law of any other jurisdiction but any
26 such [transfer] allocation shall be effective only upon
27 compliance with the requirements of 75 Pa.C.S. § 1116
28 (relating to issuance of new certificate following
29 transfer).

30 (3) It shall not be necessary for a plan of division to

1 list each individual asset or liability of the dividing
2 company to be allocated to a new company so long as those
3 assets and liabilities are described in a reasonable and
4 customary manner.

5 (4) Each new company shall hold any assets and
6 liabilities allocated to it as the successor to the dividing
7 company, and those assets and liabilities shall not be deemed
8 to have been assigned to the new company in any manner,
9 whether directly or indirectly or by operation of law.

10 * * *

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

13 (1) The effect of a division of a domestic limited
14 liability company shall be governed by the laws of this
15 Commonwealth and any other jurisdiction under the laws of
16 which any of the resulting companies is organized.

17 (2) The effect of a division on the assets and
18 liabilities of the dividing company shall be governed solely
19 by the laws of this Commonwealth and any other jurisdiction
20 under the laws of which any of the resulting companies is
21 organized.

22 (3) The validity of any allocation of assets or
23 liabilities by a plan of division of a domestic limited
24 liability company, regardless of whether or not any of the
25 new companies is a foreign limited liability company, shall
26 be governed solely by the laws of this Commonwealth.

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

1 § 8971. Dissolution.

2 [(a) General rule.--]A limited liability company is
3 dissolved and its affairs shall be wound up upon the happening
4 of the first to occur of the following events:

5 (1) At the time or upon the happening of events
6 specified in the certificate of organization.

7 (2) At the time or upon the happening of events
8 specified in writing in the operating agreement.

9 (3) By the unanimous written agreement or consent of all
10 members.

11 (4) [Upon] Except as otherwise provided in writing in
12 the operating agreement, upon a member becoming a bankrupt or
13 executing an assignment for the benefit of creditors or the
14 death, retirement, insanity, resignation, expulsion or
15 dissolution of a member or the occurrence of any other event
16 that terminates the continued membership of a member in the
17 company unless the business of the company is continued by
18 the vote or consent of [all] a majority in interest, or such
19 greater number as shall be provided in writing in the
20 operating agreement, of the remaining members given within
21 [90] 180 days following such event [or under a right to do so
22 stated in the operating agreement].

23 (5) Entry of an order of judicial dissolution under
24 section 8972 (relating to judicial dissolution).

25 [(b) Cross reference.--See section 8103 (relating to
26 continuation of certain limited partnerships and limited
27 liability companies).]

28 § 8973. Winding up.

29 * * *

30 (b) Judicial supervision.--The court may wind up the affairs

1 of the company upon application of any member, his legal
2 representative or assignee and, in connection therewith, may
3 appoint a liquidating trustee. See section 139(b) (relating to
4 tax clearance in judicial proceedings).

5 § 8974. Distribution of assets upon dissolution.

6 (a) General rule.--In settling accounts after dissolution,
7 the liabilities of the limited liability company shall be
8 entitled to payment in the following order:

9 (1) Those to creditors, including members or managers
10 who are creditors, in the order of priority as provided by
11 law, in satisfaction of the liabilities of the company,
12 whether by payment or the making of reasonable provision for
13 payment thereof, other than liabilities for distributions to
14 members under section 8932 (relating to distributions and
15 allocation of profits and losses) or 8933 (relating to
16 distributions upon an event of dissociation).

17 (2) Unless otherwise provided in the operating
18 agreement, to members and former members in satisfaction of
19 liabilities for distributions under section 8932 or 8933.

20 (3) Unless otherwise provided in the operating
21 agreement, to members in respect of:

22 (i) Their contributions to capital.

23 (ii) Their share of the profits and other
24 compensation by way of income on their contributions.

25 * * *

26 § 8978. Dissolution by domestication.

27 Whenever a domestic limited liability company has
28 domesticated itself under the laws of another jurisdiction by
29 action similar to that provided by section 8982 (relating to
30 domestication) and has authorized that action by the vote

1 required by this subchapter for the approval of a proposal that
2 the company dissolve voluntarily, the company may surrender its
3 certificate of organization under the laws of this Commonwealth
4 by filing in the Department of State a certificate of
5 dissolution under section 8975 (relating to certificate of
6 dissolution). In lieu of the statements required by section
7 8975(a)(2) through (4), the certificate of dissolution shall set
8 forth a statement that the company has domesticated itself under
9 the laws of another jurisdiction. If the company, as
10 domesticated in the other jurisdiction, registers to do business
11 in this Commonwealth either prior to or simultaneously with the
12 filing of the certificate of dissolution under this section, the
13 company shall not be required to file with the certificate of
14 dissolution the tax clearance certificates that would otherwise
15 be required by section 139 (relating to tax clearance of certain
16 fundamental transactions).

17 § 8982. Domestication.

18 * * *

19 (b) Certificate of domestication.--The certificate of
20 domestication shall be executed by the company and shall set
21 forth in the English language:

22 (1) The name of the company. If the name is in a foreign
23 language, it shall be set forth in Roman letters or
24 characters or Arabic or Roman numerals. If the name is one
25 that is rendered unavailable for use by any provision of
26 section 8905 (relating to name), the company shall adopt, in
27 accordance with any procedures for changing the name of the
28 company that are applicable prior to the domestication of the
29 company, and shall set forth in the certificate of
30 domestication, an available name.

1 * * *

2 (c) Effect of domestication.--

3 (1) As a domestic limited liability company, the
4 domesticated company shall no longer be a foreign limited
5 liability company for the purposes of this chapter and shall
6 [have] instead be a domestic limited liability company with
7 all the powers and privileges and [be subject to] all the
8 duties and limitations granted and imposed upon domestic
9 limited liability companies. [The property, debts, liens,
10 estates, taxes, penalties and public accounts due the
11 Commonwealth shall continue to be vested in and imposed upon
12 the company to the same extent as if it were the successor by
13 merger of the domesticating company with and into a domestic
14 limited liability company under Subchapter G (relating to
15 mergers and consolidations).] In all other respects, the
16 domesticated limited liability company shall be deemed to be
17 the same limited liability company as it was prior to the
18 domestication without any change in or affect on its
19 existence. Without limiting the generality of the previous
20 sentence, the domestication shall not be deemed to have
21 dissolved the company or to have affected in any way:

22 (i) the right and title of the company in and to its
23 assets, property, franchises, estates and choses in
24 action;

25 (ii) the liability of the company for its debts,
26 obligations, penalties and public accounts due the
27 Commonwealth;

28 (iii) any liens or other encumbrances on the
29 property or assets of the company; or

30 (iv) any contract, license or other agreement to

1 which the company is a party or under which it has any
2 rights or obligations.

3 (2) The [shares of] membership interests in the
4 domesticated company shall be unaffected by the domestication
5 except to the extent, if any, reclassified in the certificate
6 of domestication.

7 § 8996. Restrictions.

8 * * *

9 (b) Ownership and governance of restricted professional
10 companies.--Except as otherwise provided by a statute, rule or
11 regulation applicable to a particular profession, all of the
12 [members] ultimate beneficial owners of membership interests in
13 and all of the managers, if any, of a restricted professional
14 company shall be licensed persons.

15 * * *

16 (d) Application.--For purposes of applying subsection (a):

17 * * *

18 (3) The practice of the restricted professional service
19 of law shall be deemed to include:

20 (i) serving as an attorney-in-fact, guardian,
21 custodian, executor, personal representative, trustee or
22 fiduciary;

23 (ii) serving as a director or trustee of a
24 corporation for profit or not-for-profit, manager of a
25 limited liability company or a similar position with any
26 other form of association;

27 (iii) testifying, teaching, lecturing or writing
28 about any topic related to the law;

29 (iv) serving as a master, receiver, arbitrator or
30 similar official;

1 (v) providing actuarial, insurance, investment,
2 estate and trust administration, tax return preparation,
3 financial and other similar services and advice;

4 (vi) conducting intellectual property and other real
5 and personal property title searches and providing other
6 title insurance agency services; and

7 (vii) engaging in any activity incidental to any of
8 the foregoing.

9 § 8998. Annual registration.

10 * * *

11 (f) Annual fee to be lien.--

12 (1) Failure to [pay the annual registration fee imposed]
13 file the certificate of annual registration required by this
14 section shall not affect the existence or status of the
15 restricted professional company as such, but the annual
16 registration fee that would have been payable shall be a lien
17 in the manner provided in this subsection from the time the
18 annual registration fee is due and payable [upon]. If a
19 certificate of annual registration is not filed within 30
20 days after the date on which it is due, the department shall
21 assess a penalty of \$500 against the company, which shall
22 also be a lien in the manner provided in this subsection. The
23 imposition of that penalty shall not be construed to relieve
24 the company from liability for any other penalty or interest
25 provided for under other applicable law.

26 (2) If the annual registration fee paid by a restricted
27 professional company is subsequently determined to be less
28 than should have been paid because it was based on an
29 incorrect number of members or was otherwise incorrectly
30 computed, that fact shall not affect the existence or status

1 of the restricted professional company as such, but the
2 amount of the additional annual registration fee that should
3 have been paid shall be a lien in the manner provided in this
4 subsection from the time the incorrect payment is discovered
5 by the department.

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

15 (4) The lien created by this subsection shall attach to
16 all of the property and proceeds thereof of the restricted
17 professional company in which a security interest can be
18 perfected, in whole or in part, by filing in the department
19 under 13 Pa.C.S. Div. 9 (relating to secured transactions;
20 sales of accounts, contract rights and chattel paper),
21 whether the property and proceeds are owned by the company at
22 the time the annual registration fee or any penalty or
23 interest becomes due and payable or whether the property and
24 proceeds are acquired thereafter. Except as otherwise
25 provided by statute, the lien created by this subsection
26 shall have priority over all other liens, security interests
27 or other charges, except liens for taxes or other charges due
28 the Commonwealth. The lien created by this subsection shall
29 be entered on the records of the department and indexed in
30 the same manner as a financing statement filed under 13

Pa.C.S. Div. 9. At the time an annual registration fee,
penalty or interest that has resulted in the creation of
[the] a lien under this subsection is paid, the department
shall terminate the lien with respect to that annual
registration fee, penalty or interest without requiring a
separate filing by the company for that purpose.

(5) If the annual registration fee paid by a restricted
professional company is subsequently determined to be more
than should have been paid for any reason, no refund of the
additional fee shall be made.

* * *

§ 9502. Creation, status and termination of business trusts.

(a) Creation.--A business trust may be created in real or
personal property, or both, with power in the trustee [or a
majority of the trustees]:

(1) To receive title to, hold, buy, sell, exchange,
transfer and convey real and personal property for the use of
the business trust.

(2) To take, receive, invest or disburse the receipts,
earnings, rents, profits or returns from the trust estate.

(3) To carry on and conduct any lawful business
designated in the deed or other instrument of trust, and
generally to do any lawful act in relation to such trust
property that any individual owning the same absolutely might
do.

(4) To merge with another business trust or other
association, to divide or to engage in any other fundamental
or other transaction contemplated by the deed or other
instrument of trust.

(b) Term.--Except as otherwise provided in the instrument, a

1 business trust shall have perpetual existence.

2 (c) Separate entity.--A business trust is a separate legal
3 entity. Except as otherwise provided in the instrument, title to
4 real and personal property may be held in the name of the trust,
5 without in any manner diminishing the rights, powers and duties
6 of the trustees as provided in subsection (a).

7 (d) Termination.--Except as otherwise provided in the
8 instrument:

9 (1) The business trust may not be terminated, dissolved
10 or revoked by a beneficial owner or other person.

11 (2) The death, incapacity, dissolution, termination or
12 bankruptcy of a beneficial owner or a trustee shall not
13 result in the termination, dissolution or revocation of the
14 business trust.

15 (e) Contents of instrument.--The instrument may contain any
16 provision for the regulation of the internal affairs of the
17 business trust included in the instrument by the settlor, the
18 trustee or the beneficiaries in accordance with the applicable
19 procedures for the adoption or amendment of the instrument.

20 § 9503. Documentation of trust.

21 (a) General rule.--A business trust shall not be valid
22 unless created by deed of trust or other written instrument
23 subscribed by one or more individuals, associations or other
24 entities. The trustees of a business trust shall promptly cause
25 the instrument or any amendment thereof, except an amendment
26 solely effecting or reflecting the substitution of or other
27 change in the trustees, to be filed in the Department of State.
28 [The failure to effect the filing shall not affect the validity
29 of a business trust. A trustee who violates the requirements of
30 this subsection shall be liable for a civil penalty in the

1 amount of \$1,000 payable to the department.]

2 * * *

3 § 9505. [Succession of trustees.] Trustees.

4 (a) Succession of trustees.--An instrument may provide for
5 the succession of title to [the] any trust property not titled
6 in the name of the trust to a successor trustee, in case of the
7 death, resignation, removal or incapacity of any trustee. In the
8 case of any such succession, the title to [the] such trust
9 property shall at once vest in the succeeding trustee.

10 (b) Nature of service.--Service as the trustee of a business
11 trust by an association that is not a banking institution shall
12 not be deemed to constitute acting as a fiduciary for purposes
13 of the act of November 30, 1965 (P.L.847, No.356), known as the
14 Banking Code of 1965.

15 § 9506. Liability of trustees and beneficiaries.

16 (a) General rule.--[Liability to third parties for any act,
17 omission or obligation of a trustee of a business trust when
18 acting in such capacity shall extend to so much of the trust
19 estate as may be necessary to discharge such liability, but
20 personal liability shall not attach to the trustee or the
21 beneficiaries of the trust for any such act, omission or
22 liability.]

23 (1) Except as otherwise provided in the instrument, the
24 beneficiaries of a business trust shall be entitled to the
25 same limitation of personal liability as is extended to
26 shareholders in a domestic business corporation.

27 (2) Except as otherwise provided in the instrument, the
28 trustees of a trust, when acting in that capacity, shall not
29 be personally liable to any person other than the trust or a
30 beneficiary for any act or obligation of the trust or any

1 trustee.

2 (3) An obligation of a trust based upon a writing may be
3 limited to a specific fund or other identified pool or group
4 of assets of the trust.

5 * * *

6 (f) Permissible beneficiaries.--Except as otherwise provided
7 by a statute, rule or regulation applicable to a particular
8 profession, all of the [beneficiaries of] ultimate beneficial
9 owners of interests in a business trust that renders one or more
10 restricted professional services shall be licensed persons. As
11 used in this subsection, the term "restricted professional
12 services" shall have the meaning specified in section 8903
13 (relating to definitions and index of definitions).

14 * * *

15 (h) Medical professional liability.--A business trust shall
16 be deemed to be a professional corporation for purposes of
17 section 811 of the act of October 15, 1975 (P.L.390, No.111),
18 known as the Health Care Services Malpractice Act.

19 Section 3. Amendment of Title 54.

20 As much of Title 54 as is hereinafter set forth is amended or
21 added to read:

22 § 302. Definitions.

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

26 "Business." Any commercial or professional activity.

27 "Entity." Any individual[,] or any corporation, association,
28 partnership, joint-stock company, business trust, syndicate,
29 joint adventureship or other combination or group of persons,
30 regardless of whether it is organized or formed under the laws

1 of this Commonwealth or any other jurisdiction.

2 "Fictitious name." Any assumed or fictitious name, style or
3 designation other than the proper name of the entity using such
4 name. The term includes [the], without limitation, any name [of
5 any association,] assumed by any general partnership, [business
6 trust,] syndicate, joint adventureship or similar combination or
7 group of persons.

8 "Proper name." When used with respect to an entity of a type
9 listed in the following paragraphs, the term means the name set
10 forth in:

11 (1) the articles of incorporation, if it is a
12 corporation;

13 (2) the statement of registration, if it is a limited
14 liability partnership;

15 (3) the certificate of limited partnership, if it is a
16 limited partnership;

17 (4) the statement of election, if it is an electing
18 partnership;

19 (5) the certificate of organization, if it is a limited
20 liability company;

21 (6) the articles of association, if it is a professional
22 association;

23 (7) the deed of trust or other instrument, if it is a
24 business trust; or

25 (8) a publicly filed document of a type listed in any of
26 the foregoing paragraphs even though the document is referred
27 to by a different title under the laws of any other
28 jurisdiction.

29 § 303. Scope of chapter.

30 * * *

1 (b) Mandatory registration.--

2 * * *

3 (2) Paragraph (1) shall not apply to any:

4 (i) Nonprofit or professional activities.

5 (ii) Activities [which] that are expressly or
6 impliedly prohibited by law from being carried on under a
7 fictitious name.

8 (iii) [Limited partnership which is registered in
9 the department pursuant to 15 Pa.C.S. Ch. 85 (relating to
10 limited partnerships) or under corresponding provisions
11 of prior law. The preceding sentence shall not apply to
12 any entity which includes the limited partnership as a
13 participant unless the entity is itself such a limited
14 partnership.] (Repealed).

15 (iv) Unincorporated nonprofit association.

16 (v) [Electing partnership existing under 15 Pa.C.S.
17 Ch. 87 (relating to electing partnerships).] (Repealed).

18 (vi) [Limited liability company which is registered
19 in the department pursuant to 15 Pa.C.S. Ch. 89 (relating
20 to limited liability companies).] (Repealed).

21 (vii) [Registered limited liability partnership
22 which is registered in the department pursuant to 15
23 Pa.C.S. Ch. 82 (relating to registered limited liability
24 partnerships).] (Repealed).

25 (viii) [Business trust which is registered in the
26 department pursuant to 15 Pa.C.S. Ch. 95 (relating to
27 business trusts).] (Repealed).

28 * * *

29 § 311. Registration.

30 * * *

(e) Duplicate use of names.--The fictitious name shall not be the same as or confusingly similar to:

(1) The name of any domestic corporation, or any foreign corporation authorized to do business in this Commonwealth, or the name of any corporation or other association registered at any time under Chapter 5 (relating to corporate and other association names) unless such name is available or is made available for use under the provisions or procedures of 15 Pa.C.S. § [5303(b)(1)(i) or (ii)] 5303(b)(1) (relating to duplicate use of names) or the equivalent.

(2) [The name of any limited partnership organized under 15 Pa.C.S. Ch. 85 (relating to limited partnerships).]
(Repealed).

(3) The name of any administrative department, board or commission or other agency of this Commonwealth.

(4) A name the exclusive right to which is at the time reserved by any other person whatsoever in the manner provided by statute.

* * *

§ 502. Certain additions to register.

* * *

(c) Limitation on names which may be registered.--
Notwithstanding subsections (a) and (b), no new name shall be registered or deemed to be registered under this section [which is the same as or confusingly similar to] that is not distinguishable upon the records of the department from any other name then registered or deemed to be registered under this chapter, without the consent of the senior registrant.

* * *

Section 4. Repeals.

1 The following acts and parts of acts are repealed:

2 Section 32 of the act of June 1, 1889 (P.L.420, No.332),
3 entitled "A further supplement to an act entitled 'An act to
4 provide revenue by taxation,' approved the seventh day of June,
5 Anno Domini one thousand eight hundred and seventy-nine," to the
6 extent that it applies to the judicial dissolution of an
7 association under 15 Pa.C.S.

8 As much as reads ", and act as the attorney-in-fact and
9 authorized agent of such corporations for the service of process
10 thereon" in section 806 of the act of April 9, 1929 (P.L.177,
11 No.175), known as The Administrative Code of 1929.

12 Section 404(b) of the act of December 19, 1990 (P.L.834,
13 No.198), known as the GAA Amendments Act of 1990, insofar as it
14 applies to 15 Pa.C.S. §§ 1745 and 5745.

15 15 Pa.C.S. §§ 5543.1, 5546.1, 5764.1, 8103 and 8206.
16 Section 5. Effective date.

17 ~~This act shall take effect in 60 days.~~

<—

18 THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

<—

19 (1) THE ADDITION OF 15 PA.C.S. § 524 SHALL TAKE EFFECT
20 IMMEDIATELY.

21 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

22 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
23 DAYS.