

# House Bill 2057 (P.N. 2364)

## House Commerce Committee

### November 10, 2021

William H. Clark, Jr.

Chair and Reporter, PBA Title 15 Committee

Senior Counsel, Faegre Drinker Biddle & Reath LLP



# Overview of Title 15

## Chapters 1 – 4

- 1: Department of State filings
- 2: entities generally (names, ratification)
- 3: entity transactions (mergers, etc.)
- 4: registration of foreign entities

## Chapters 5 – 95

- 5: banking institutions, credit unions, fraternal benefit societies
- 11 – 19: Business Corporation Law
- 21 – 33: special types of business corporations
- 51 – 59: Nonprofit Corporation Law
- 82 – 95: unincorporated entity laws

# Recent Revisions of Title 15

- 2013: revision of the Nonprofit Corporation Law and enactment of the Uniform Unincorporated Nonprofit Association Law (Chapter 91)
- 2014: enactment of the Entity Transactions Law (Chapter 3) and Chapters 2 and 4
- 2016: enactment of revisions to the Pennsylvania laws on unincorporated entities, including enactment of:
  - Pennsylvania Uniform Partnership Act of 2016 (Chapter 84)
  - Pennsylvania Uniform Limited Partnership Act of 2016 (Chapter 86)
  - Pennsylvania Uniform Limited Liability Company Act of 2016 (Chapter 88)

# Overview of Title 15

## Chapters 1 – 4

- 1: Department of State filings
- 2: entities generally (names, ratification)
- 3: entity transactions (mergers, etc.)
- 4: registration of foreign entities

## Chapters 5 – 95

- 5: banking institutions, credit unions, fraternal benefit societies
- 11 – 19: Business Corporation Law
- 21 – 33: special types of business corporations
- 51 – 59: Nonprofit Corporation Law
- 82 – 95: unincorporated entity laws

# Nature of Corporation Law

- Corporation law is concerned principally with the internal governance of corporations and the relationship between management and the owners.
- Corporation law does not involve, for example:
  - employee issues, such as wages, benefits, and collective bargaining,
  - tort liability, including for defective products and environmental damage,
  - criminal law.

# Sources of Corporation Law

- Delaware General Corporation Law
- American Bar Association, Model Business Corporation Act (2016)
- American Law Institute, Principles of Corporate Governance (1994)
- Uniform Law Commission, Uniform Business Organizations Code (2013)

# Uniform Business Organizations Code

- **Every state, except Pennsylvania,** requires every entity created under its laws to file an annual (or in a few states biennial) report.
  - The report confirms to the state that the entity is still active.
  - Being active protects the name of the entity from being used by another entity.
- **Pennsylvania** has a similar, but less effective, system.
  - Every ten years, an entity that has not made some other filing with the Corporation Bureau must file a decennial report. That filing protects the entity's right to its name for another ten years.
  - An entity desiring to use the name of another entity may also seek a certificate from the Department of Revenue stating the entity with the right to the name as failed to file a required tax return.

- H.B. 2057 proposes to adopt the annual report provisions in the Uniform Business Organizations Code.
- Every entity created under Pennsylvania law, and every entity created under another state's law that is registered to do business in Pennsylvania, will be required to file an annual report.
  - If a **Pennsylvania entity does not file** an annual report within six months after it is due, the entity will be **administratively dissolved**. While the entity is administratively dissolved, its name may be taken by another entity.
  - If a **foreign entity similarly fails to file**, the registration of the entity will be **administratively terminated**. Until the foreign entity re-registers, its name may be taken by another entity.

- Every Pennsylvania entity that is registered to do business in another state, is already subject to an annual report. Nonetheless, the annual report system will require adjustment by some Pennsylvania business. The following special provisions are made to ease the transition to annual reports:
  - The **effective date** for the start of the annual report requirement is **delayed for one year**. (§ 146(h))
  - The Department of State is required to deliver **notice to each entity** required to file an annual report for the **first five years** after the annual report requirement takes effect. (§ 146(g))
  - The Department of State is **prohibited from administratively dissolving** a delinquent entity until **three years** after the annual report requirement takes effect. (§ 381(b)) The department is similarly **prohibited for three years from terminating** the registration of a foreign entity.
- The annual report filing fee is waived for nonprofit entities.

# Delaware and Model Act Provisions

- Both Delaware and the Model Act have adopted a procedure to **ratify defective entity actions**.
- What may be ratified are entity actions that either:
  1. were not properly authorized, or
  2. cannot be determined to have been properly authorized.
- If the records relating to the entity that are publicly available in the Corporation Bureau are incorrect, a filing is required to correct them following ratification.
- Ratification must always be approved by the directors or other management persons, and must also be approved by the owners of the entity when that is necessary to protect their interests.

# EMERGENCY

- Hurricane Katrina, Superstorm Sandy, Covid-19, and other natural disasters (such as California wildfires, etc.) have focused attention on responding to emergencies.
  - We have learned that emergencies come from unexpected directions, but that society also is resilient.
- Provisions giving corporations the authority to respond to emergencies appeared in the law in the 1950s when the fear was nuclear war.

# EMERGENCY

- The causes of an emergency now include an **epidemic** or **pandemic**.
- The test for the existence of an emergency is the **inability to assemble a quorum of the board of directors**.
- When an emergency exists:
  - shareholder meetings may be postponed,
  - payment of declared dividends may be delayed,
  - corporate actions in the ordinary course of business cannot be challenged as unauthorized.

# ALI Principles of Corporate Governance

- The Pennsylvania Supreme Court endorsed the ALI Principles in an opinion that confirmed the application of the business judgment rule in Pennsylvania.
- H.B. 2057 adds an **express statement of the business judgment rule**.
- The business judgment rule was initially developed by the courts as a way to keep them from becoming embroiled in business decisions. The underlying theory is that **directors are expected to take risks and should not be penalized if a decision goes wrong**.
- The courts will not second-guess a decision as long as:
  1. the directors act on an informed basis and in good faith,
  2. the decision does not involve self-dealing, and
  3. there is a rational or plausible basis for the decision.

# Thank You!

Fredrick Cabell, Jr.  
Director of Legislative Affairs  
Pennsylvania Bar Association  
100 South Street  
P.O. Box 186  
Harrisburg, PA 17108-0186  
(717) 238-6715 (ext. 2232)  
[fred.cabell@pabar.org](mailto:fred.cabell@pabar.org)

William H. Clark, Jr.  
Senior Counsel  
Faegre Drinker Biddle & Reath LLP  
One Logan Square  
Philadelphia, PA 19103  
(215) 313-4655  
[williamhclarkjr@gmail.com](mailto:williamhclarkjr@gmail.com)

