

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 570 Session of
1997

INTRODUCED BY GREENLEAF, HART, AFFLERBACH, HOLL, MUSTO,
SALVATORE, SCHWARTZ, TOMLINSON AND WENGER, FEBRUARY 28, 1997

REFERRED TO JUDICIARY, FEBRUARY 28, 1997

AN ACT

1 Providing for a Commerce Court; and making conforming and
2 related amendments to existing law.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Commerce
7 Court Act.

8 Section 2. Amendments to Title 12.

9 Title 12 of the Pennsylvania Consolidated Statutes is amended
10 by adding provisions to read:

11 CHAPTER 3

12 ENFORCEMENT OF MERCANTILE CONTRACTS

13 Sec.

14 301. Choice of law.

15 302. Choice of forum.

16 303. Choice of jurisdiction or venue.

17 § 301. Choice of law.

18 (a) General rule.--Except as provided in 13 Pa.C.S. §

1 1105(b) (relating to territorial application of title; power of
2 parties to choose applicable law), the parties to any contract,
3 agreement or undertaking, contingent or otherwise, may agree in
4 writing that the law of this Commonwealth shall govern their
5 rights, remedies, liabilities, powers and duties, in whole or in
6 part, in all matters arising under the contract, agreement or
7 undertaking that are within the jurisdiction of the Commerce
8 Court pursuant to 42 Pa.C.S. § 832 (relating to original
9 jurisdiction), whether or not such contract, agreement or
10 undertaking otherwise bears a reasonable relation to this
11 Commonwealth.

12 (b) Other rights unaffected.--Nothing contained in this
13 section shall be construed to limit or deny the enforcement of
14 any provisions respecting choice of law in any other contract,
15 agreement or undertaking.

16 § 302. Choice of forum.

17 (a) General rule.--Any person may maintain an action or
18 proceeding against a qualified person in the Commerce Court
19 where the action or proceeding relates to a matter that is
20 within the jurisdiction of the court under 42 Pa.C.S. § 832
21 (relating to original jurisdiction) and arises under any
22 contract, agreement or undertaking, contingent or otherwise,
23 that contains a provision whereby such qualified person agrees
24 to submit to the jurisdiction of the courts of the Commonwealth.

25 (b) Other rights unaffected.--Nothing contained in this
26 section shall be construed to limit or deny the enforcement of
27 any provisions respecting choice of forum in any other contract,
28 agreement or undertaking.

29 (c) Definition.--As used in this section, the term
30 "qualified person" means:

1 (1) a foreign or alien person, nonresident person or
2 foreign state;

3 (2) a banking institution, credit union, insurance
4 corporation, public utility corporation, registered
5 corporation or savings association, as those terms are
6 defined in 15 Pa.C.S. § 1103 (relating to definitions);

7 (3) a foreign corporation for profit that, if organized
8 under the laws of this Commonwealth, would be one of the
9 types of corporations described in paragraph (2); or

10 (4) an association as defined in 15 Pa.C.S. § 102
11 (relating to definitions), whether domestic or foreign, all
12 of the outstanding shares or other equitable interests of
13 which are owned by one or more persons described in
14 paragraphs (1) through (3).

15 (d) Cross reference.--See 42 Pa.C.S. Ch. 53 (relating to
16 bases of jurisdiction and interstate and international
17 procedure).

18 § 303. Choice of jurisdiction or venue.

19 (a) General rule.--A written agreement by a qualified person
20 fixing the court having jurisdiction, as between courts of
21 concurrent jurisdiction, or the place of trial in a matter
22 within the jurisdiction of the Commerce Court pursuant to 42
23 Pa.C.S. § 832 (relating to original jurisdiction), made before
24 an action is commenced, shall be enforced against the person
25 upon an application, motion or praecipe for removal or transfer
26 to another court of concurrent jurisdiction or for change of
27 place of trial.

28 (b) Other rights unaffected.--Nothing contained in this
29 section shall be construed to limit or deny the enforcement of
30 any provisions respecting jurisdiction of courts or place of

1 trial in any other contract, agreement or undertaking.

2 (c) Definition.--As used in this section, the term
3 "qualified person" means:

4 (1) a foreign or alien person, nonresident person or
5 foreign state;

6 (2) a banking institution, credit union, insurance
7 corporation, public utility corporation, registered
8 corporation or savings association, as those terms are
9 defined in 15 Pa.C.S. § 1103 (relating to definitions);

10 (3) a foreign corporation for profit that, if organized
11 under the laws of this Commonwealth, would be one of the
12 types of corporations described in paragraph (2); or

13 (4) an association as defined in 15 Pa.C.S. § 102
14 (relating to definitions), whether domestic or foreign, all
15 of the outstanding shares or other equitable interests of
16 which are owned by one or more persons described in
17 paragraphs (1) through (3).

18 Section 3. Amendments to Title 15.

19 The following provisions of Title 15 are amended to read:

20 § 102. Definitions.

21 Subject to additional or inconsistent definitions contained
22 in subsequent provisions of this title that are applicable to
23 specific provisions of this title, the following words and
24 phrases when used in this title shall have, unless the context
25 clearly indicates otherwise, the meanings given to them in this
26 section:

27 * * *

28 "Court." Subject to 42 Pa.C.S. § 833 (relating to concurrent
29 and exclusive jurisdiction) and, with respect to paragraphs (1)
30 and (2), any inconsistent general rule prescribed by the Supreme

1 Court of Pennsylvania:

2 (1) the court of common pleas of the judicial district
3 embracing the county where the registered office of the
4 corporation or other association is or is to be located; [or]

5 (2) where an association results from a merger,
6 consolidation, division or other transaction without
7 establishing a registered office in this Commonwealth or
8 withdraws as a foreign corporation or association, the court
9 of common pleas in which venue would have been laid
10 immediately prior to the transaction or withdrawal; or

11 (3) the Commerce Court of Pennsylvania.

12 * * *

13 § 1103. Definitions.

14 Subject to additional definitions contained in subsequent
15 provisions of this subpart that are applicable to specific
16 provisions of this subpart, the following words and phrases when
17 used in this subpart shall have the meanings given to them in
18 this section unless the context clearly indicates otherwise:

19 * * *

20 "Court." Subject to 42 Pa.C.S. § 833 (relating to concurrent
21 and exclusive jurisdiction) and, with respect to paragraphs (1)
22 and (2), any inconsistent general rule prescribed by the Supreme
23 Court of Pennsylvania:

24 (1) the court of common pleas of the judicial district
25 embracing the county where the registered office of the
26 corporation is or is to be located; [or]

27 (2) where a corporation results from a merger,
28 consolidation, division or other transaction without
29 establishing a registered office in this Commonwealth or
30 withdraws as a foreign corporation, the court of common pleas

1 in which venue would have been laid immediately prior to the
2 transaction or withdrawal; or
3 (3) the Commerce Court of Pennsylvania.

4 * * *

5 § 5103. Definitions.

6 Subject to additional definitions contained in subsequent
7 provisions of this subpart that are applicable to specific
8 provisions of this subpart, the following words and phrases when
9 used in this subpart shall have the meanings given to them in
10 this section unless the context clearly indicates otherwise:

11 * * *

12 "Court." Subject to 42 Pa.C.S. § 833 (relating to concurrent
13 and exclusive jurisdiction) and, with respect to paragraphs (1)
14 and (2), any inconsistent general rule prescribed by the Supreme
15 Court of Pennsylvania:

16 (1) the court of common pleas of the judicial district
17 embracing the county where the registered office of the
18 corporation is or is to be located; [or]

19 (2) where a corporation results from a merger,
20 consolidation, division or other transaction without
21 establishing a registered office in this Commonwealth or
22 withdraws as a foreign corporation, the court of common pleas
23 in which venue would have been laid immediately prior to the
24 transaction or withdrawal; or

25 (3) the Commerce Court of Pennsylvania.

26 * * *

27 § 7702. Definitions.

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

1 * * *

2 "Court." Subject to 42 Pa.C.S. § 833 (relating to concurrent
3 and exclusive jurisdiction) and, with respect to paragraph (1),
4 any inconsistent general rule prescribed by the Supreme Court of
5 Pennsylvania:

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

9 (2) the Commerce Court of Pennsylvania.

10 * * *

11 § 7714. Records.

12 * * *

13 (c) Remedy to compel inspection.--

14 (1) If the corporation refuses to permit an inspection
15 sought by a member under subsection (b) or does not reply to
16 the demand within five business days after the demand has
17 been made, the member may apply to the court [of common pleas
18 of the county in which the registered office of the
19 corporation is located] for an order to compel inspection.
20 The court [of common pleas] has exclusive original
21 jurisdiction to determine whether or not the person seeking
22 inspection is entitled to the inspection sought. The court
23 may summarily order the corporation to permit the member to
24 inspect the material and to make copies or extracts. The
25 court may order the corporation to furnish to the member a
26 list of its members as of a specific date on condition that
27 the member first pay to the corporation the reasonable cost
28 of obtaining and furnishing the list and on other conditions
29 as the court deems appropriate.

30 * * *

1 § 8503. Definitions.

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

5 * * *

6 "Court." Subject to 42 Pa.C.S. § 833 (relating to concurrent
7 and exclusive jurisdiction) and, with respect to paragraphs (1)
8 and (2), any inconsistent general rule prescribed by the Supreme
9 Court of Pennsylvania:

10 (1) the court of common pleas of the judicial district
11 embracing the county where the registered office of the
12 limited partnership is or is to be located; [or]

13 (2) where a limited partnership results from a merger,
14 consolidation or other transaction without establishing a
15 registered office in this Commonwealth or withdraws as a
16 foreign limited partnership, the court of common pleas in
17 which venue would have been laid immediately prior to the
18 transaction or withdrawal; or

19 (3) the Commerce Court of Pennsylvania.

20 * * *

21 § 8903. Definitions.

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

25 * * *

26 "Court." Subject to 42 Pa.C.S. § 833 (relating to concurrent
27 and exclusive jurisdiction) and, with respect to paragraphs (1)
28 and (2), any inconsistent general rule prescribed by the Supreme
29 Court of Pennsylvania:

30 (1) the court of common pleas of the judicial district

embracing the county where the registered office of the
limited liability company is or is to be located; [or]
(2) where a company results from a merger,
consolidation, division or other transaction without
establishing a registered office in this Commonwealth or
withdraws as a foreign limited liability company, the court
of common pleas in which venue would have been laid
immediately prior to the transaction or withdrawal[.]; or
(3) the Commerce Court of Pennsylvania.

* * *

Section 4. Amendments to Title 42.

The following provisions of Title 42 are added or amended to
read:

§ 102. Definitions.

Subject to additional definitions contained in subsequent
provisions of this title which are applicable to specific
provisions of this title, the following words and phrases when
used in this title shall have, unless the context clearly
indicates otherwise, the meanings given to them in this section:

* * *

"Appellate court." Includes the Supreme Court, the Superior
Court [and], the Commonwealth Court[.] and the appellate
division of the Commerce Court.

"Appellate division." The appellate division of the Commerce
Court created by section 581 (relating to appellate division of
the Commerce Court).

* * *

"Commerce Court." The court created by section 811 (relating
to Commerce Court).

"Commerce Court rule." A rule or order promulgated by the

1 Commerce Court.

2 * * *

3 "Statewide judges." Judges of the Supreme Court, Superior
4 Court, Commonwealth Court and Commerce Court.

5 * * *

6 § 301. Unified judicial system.

7 The judicial power of the Commonwealth shall be vested in a
8 unified judicial system consisting of the:

9 (1) Supreme Court.

10 (2) Superior Court.

11 (3) Commonwealth Court.

12 (4) Commerce Court.

13 [(4)] (5) Courts of common pleas.

14 [(5)] (6) Community courts.

15 [(6)] (7) Philadelphia Municipal Court.

16 [(7)] (8) Pittsburgh Magistrates Court.

17 [(8)] (9) Traffic Court of Philadelphia.

18 [(9)] (10) District justices.

19 All courts and district justices and their jurisdiction shall be
20 in this unified judicial system.

21 SUBCHAPTER D

22 APPELLATE DIVISION OF THE

23 COMMERCE COURT OF PENNSYLVANIA

24 Sec.

25 581. Appellate division of the Commerce Court.

26 582. Powers of appellate division.

27 583. Seat of appellate division.

28 § 581. Appellate division of the Commerce Court.

29 (a) General rule.--There shall be an appellate division of
30 the Commerce Court which shall consist of the president judge

1 and the other judges in regular active service.

2 (b) Panels and en banc.--When reviewing orders of the
3 Commerce Court, the appellate division shall sit in panels, and
4 no member of the appellate division shall participate as a
5 member of a panel in the judicial review of any order or other
6 action in which the person participated as a matter of original
7 jurisdiction. A decision of a panel may be reviewed by the
8 division en banc.

9 § 582. Powers of appellate division.

10 The appellate division of the Commerce Court shall have all
11 powers necessary or appropriate in aid of its jurisdiction which
12 are agreeable to the usages and principles of law.

13 § 583. Seat of appellate division.

14 The regular sessions of the appellate division of the
15 Commerce Court shall be held in the Cities of Harrisburg,
16 Philadelphia and Pittsburgh and elsewhere as prescribed by
17 Commerce Court rule.

18 § 705. Transfers [between] among intermediate appellate courts.

19 The Superior Court [and], the Commonwealth Court and the
20 appellate division of the Commerce Court shall have power
21 pursuant to general rules, on their own motion or upon
22 [petition] application of any party, to transfer any appeal to
23 [the other] another appellate court or division (subject to the
24 restrictions of section 835 (relating to restrictions on
25 jurisdiction)) for consideration and decision with any matter
26 pending in such other court or division involving the same or
27 related questions of fact, law or discretion.

28 § 707. Lien of judgments for money.

29 Any judgment or other order of the Supreme Court, the
30 Superior Court [or], the Commonwealth Court or the appellate

1 division of the Commerce Court for the payment of money shall
2 not be a lien upon real property in any county until it is
3 entered of record in the office of the clerk of the court of
4 common pleas of the county where the property is situated, or in
5 the office of the clerk of the branch of the court of common
6 pleas embracing such county, in the same manner as a judgment
7 transferred from the court of common pleas of another county.

8 § 722. Direct appeals from courts of common pleas.

9 (a) General rule.--The Supreme Court shall have exclusive
10 jurisdiction of appeals from final orders of the courts of
11 common pleas in the following classes of cases:

12 (1) Matters prescribed by general rule.

13 (2) The right to public office.

14 (3) Matters where the qualifications, tenure or right to
15 serve, or the manner of service, of any member of the
16 judiciary is drawn in question.

17 (4) Automatic review of sentences as provided by 42
18 Pa.C.S. §§ 9546(d) (relating to relief and order) and 9711(h)
19 (relating to review of death sentence).

20 (5) Supersession of a district attorney by an Attorney
21 General or by a court or where the matter relates to the
22 convening, supervision, administration, operation or
23 discharge of an investigating grand jury or otherwise
24 directly affects such a grand jury or any investigation
25 conducted by it.

26 (6) Matters where the right or power of the Commonwealth
27 or any political subdivision to create or issue indebtedness
28 is drawn in direct question.

29 (7) Matters where the court of common pleas has held
30 invalid as repugnant to the Constitution, treaties or laws of

1 the United States, or to the Constitution of this
2 Commonwealth, any treaty or law of the United States or any
3 provision of the Constitution of, or of any statute of, this
4 Commonwealth, or any provision of any home rule charter.

5 (8) Matters where the right to practice law is drawn in
6 direct question.

7 (b) Exception.--The Supreme Court shall not have
8 jurisdiction under paragraph (a)(7) of such classes of appeals
9 from the courts of common pleas as are by section 783 (relating
10 to appeals from courts of common pleas) within the exclusive
11 jurisdiction of the appellate division of the Commerce Court.

12 § 724. Allowance of appeals from [Superior and Commonwealth
13 Courts] intermediate appellate courts.

14 (a) General rule.--Except as provided by section 9781(f)
15 (relating to limitation on additional appellate review), final
16 orders of the Superior Court and final orders of the
17 Commonwealth Court not appealable under section 723 (relating to
18 appeals from Commonwealth Court) may be reviewed by the Supreme
19 Court upon allowance of appeal by any two justices of the
20 Supreme Court upon petition of any party to the matter.

21 (b) Commerce Court appeals.--Final orders of the appellate
22 division of the Commerce Court may be reviewed by the Supreme
23 Court upon allowance of appeal by any two justices of the
24 Supreme Court upon petition of any party to the matter if the
25 petition is granted within 90 days after it is filed.

26 (c) Scope of review.--If the petition shall be granted, the
27 Supreme Court shall have jurisdiction to review the order in the
28 manner provided by section 5105(d)(1) (relating to scope of
29 appeal).

30 [(b)] (d) Improvident appeals.--If an appeal is

1 improvidently taken to the Supreme Court under section 723 in a
2 case where the proper mode of review is by petition for
3 allowance of appeal under this section, this alone shall not be
4 a ground for dismissal, but the papers whereon the appeal was
5 taken shall be regarded and acted on as a petition for allowance
6 of appeal and as if duly filed at the time the appeal was taken.
7 § 742. Appeals from courts of common pleas.

8 The Superior Court shall have exclusive appellate
9 jurisdiction of all appeals from final orders of the courts of
10 common pleas, regardless of the nature of the controversy or the
11 amount involved, except such classes of appeals as are by any
12 provision of this chapter within the exclusive jurisdiction of
13 the Supreme Court [or], the Commonwealth Court or the appellate
14 division of the Commerce Court.

15 § 761. Original jurisdiction.

16 (a) General rule.--The Commonwealth Court shall have
17 original jurisdiction of all civil actions or proceedings:

18 (1) Against the Commonwealth government, including any
19 officer thereof, acting in his official capacity, except:

20 (i) actions or proceedings in the nature of
21 applications for a writ of habeas corpus or post-
22 conviction relief not ancillary to proceedings within the
23 appellate jurisdiction of the court;

24 (ii) eminent domain proceedings;

25 (iii) actions or proceedings conducted pursuant to
26 Chapter 85 (relating to matters affecting government
27 units);

28 (iv) actions or proceedings conducted pursuant to
29 the act of May 20, 1937 (P.L.728, No.193), referred to as
30 the Board of Claims Act; [and]

1 (v) actions or proceedings in the nature of trespass
2 as to which the Commonwealth government formerly enjoyed
3 sovereign or other immunity and actions or proceedings in
4 the nature of assumpsit relating to such actions or
5 proceedings in the nature of trespass[.]; and

6 (vi) such matters as are by Subchapter C of Chapter
7 8 (relating to jurisdiction of the Commerce Court) within
8 the jurisdiction of the Commerce Court.

9 (2) By the Commonwealth government, including any
10 officer thereof, acting in his official capacity, except:

11 (i) eminent domain proceedings[.]; and

12 (ii) such matters as are by section 832(a)(1)
13 (relating to original jurisdiction) within the
14 jurisdiction of the Commerce Court.

15 (3) [Arising under Article V of the act of May 17, 1921
16 (P.L.789, No.285), known as "The Insurance Department Act of
17 1921."] (Repealed.)

18 (4) Original jurisdiction of which is vested in the
19 Commonwealth Court by any unrepealed statute [hereafter]
20 enacted after April 28, 1978.

21 (b) Concurrent and exclusive jurisdiction.--The jurisdiction
22 of the Commonwealth Court under subsection (a) shall be
23 exclusive except as provided in section 721 (relating to
24 original jurisdiction) and except with respect to actions or
25 proceedings by the Commonwealth government, including any
26 officer thereof, acting in his official capacity, where the
27 jurisdiction of the court shall be concurrent with the Commerce
28 Court and the several courts of common pleas.

29 * * *

30 § 762. Appeals from courts of common pleas.

1 (a) General rule.--Except as provided in subsection (b), the
2 Commonwealth Court shall have exclusive jurisdiction of appeals
3 from final orders of the courts of common pleas in the following
4 cases:

5 * * *

6 (5) [Certain private corporation matters.--

7 (i) All actions or proceedings relating to
8 corporations not-for-profit arising under Title 15
9 (relating to corporations and unincorporated
10 associations) or where is drawn in question the
11 application, interpretation or enforcement of any
12 provision of the Constitution, treaties or laws of the
13 United States, or the Constitution of Pennsylvania or any
14 statute, regulating in any such case the corporate
15 affairs of any corporation not-for-profit subject to
16 Title 15 or the affairs of the members, security holders,
17 directors, officers, employees or agents thereof, as
18 such.

19 (ii) All actions or proceedings otherwise involving
20 the corporate affairs of any corporation not-for-profit
21 subject to Title 15 or the affairs of the members,
22 security holders, directors, officers, or employees or
23 agents thereof, as such.] (Repealed.)

24 (6) Eminent domain.--All eminent domain proceedings or
25 where is drawn in question the power or right of the
26 acquiring agency to appropriate the condemned property or to
27 use it for the purpose condemned or otherwise.

28 (7) Immunity waiver matters.--Matters conducted pursuant
29 to Subchapter C of Chapter 85 (relating to actions against
30 local parties).

(b) Exception.--The Commonwealth Court shall not have jurisdiction of such classes of appeals from courts of common pleas as are by [section]:

(1) Section 722 (relating to direct appeals from courts of common pleas) within the exclusive jurisdiction of the Supreme Court.

(2) Section 783 (relating to appeals from courts of common pleas) within the exclusive jurisdiction of the appellate division of the Commerce Court.

§ 763. Direct appeals from government agencies.

* * *

(c) Exceptions.--The Commonwealth Court shall not have jurisdiction of such classes of appeals from government agencies as are:

(1) By section 725 (relating to direct appeals from constitutional and judicial agencies) within the exclusive jurisdiction of the Supreme Court.

(2) By section 832(c) (relating to government agency matters) within the exclusive jurisdiction of the Commerce Court.

[(2)] (3) By section 933 (relating to appeals from government agencies) within the exclusive jurisdiction of the courts of common pleas.

SUBCHAPTER E

JURISDICTION OF APPELLATE DIVISION OF

THE COMMERCE COURT

Sec.

781. Original jurisdiction.

782. Appeals from Commerce Court original hearing matters.

783. Appeals from courts of common pleas.

1 784. Answer of certified questions of law.

2 785. Certification of questions of law.

3 § 781. Original jurisdiction.

4 The appellate division of the Commerce Court shall have no
5 original jurisdiction, except:

6 (1) in cases of mandamus and prohibition to:

7 (i) the judges of the Commerce Court when exercising
8 the original jurisdiction of the Commerce Court; or

9 (ii) courts of inferior jurisdiction where such
10 relief is ancillary to matters within the appellate
11 jurisdiction of the division; and

12 (2) that the division, or any member thereof, shall have
13 full power and authority when and as often as there may be
14 occasion to issue writs of habeas corpus under like
15 conditions returnable to the said court.

16 § 782. Appeals from Commerce Court original hearing matters.

17 The appellate division of the Commerce Court shall have
18 exclusive appellate jurisdiction of all appeals from final
19 orders of the Commerce Court entered by a single member thereof,
20 regardless of the nature of the controversy or the amount
21 involved.

22 § 783. Appeals from courts of common pleas.

23 (a) General rule.--Except as provided in subsection (b), the
24 appellate division of the Commerce Court shall have exclusive
25 jurisdiction of appeals from final orders of the courts of
26 common pleas in the following cases:

27 (1) Any civil action or proceeding:

28 (i) Described in section 832(a) (relating to
29 original jurisdiction), original jurisdiction of which is
30 exercised by the courts of common pleas either originally

1 or upon review of a determination of the minor judiciary.

2 (ii) Arising under Subchapter A (relating to
3 statutory arbitration) or B (relating to common law
4 arbitration) of Chapter 73 in any case otherwise within
5 the appellate jurisdiction of the appellate division in
6 the absence of arbitration.

7 (2) Any criminal contempt proceeding arising with
8 respect to any matter within the appellate jurisdiction of
9 the court under paragraph (1).

10 (b) Exception.--The appellate division of the Commerce Court
11 shall not have jurisdiction of such classes of appeals from
12 courts of common pleas as are by section 722 (relating to direct
13 appeals from courts of common pleas) within the exclusive
14 jurisdiction of the Supreme Court.

15 (c) Definition.--As used in this section, the term "minor
16 judiciary" includes the Philadelphia Municipal Court.

17 § 784. Answer of certified questions of law.

18 (a) General rule.--The appellate division of the Commerce
19 Court may answer questions of law certified to it by a United
20 States appellate court or the highest appellate court or the
21 intermediate appellate court of any other state or jurisdiction,
22 when requested by the certifying court if there are involved in
23 any matter pending before the certifying court, questions of law
24 of the Commonwealth within the jurisdiction of the appellate
25 division which may be determinative of the matter in the
26 certifying court and as to which it appears to the certifying
27 court there is no controlling precedent in the decisions of the
28 appellate division.

29 (b) Contents of certification order.--A certification order
30 shall set forth:

1 (1) The questions of law to be answered.

2 (2) A statement of all facts relevant to the questions
3 certified and showing fully the nature of the controversy in
4 which the question arose.

5 (c) Preparation of certification order.--The certification
6 order shall be prepared by the certifying court, signed by the
7 judge presiding over the matter and forwarded to the appellate
8 division of the Commerce Court by the clerk of the certifying
9 court under its official seal. The appellate division may
10 require the original or copies of all or of any portion of the
11 record before the certifying court to be filed with the
12 certification order if, in the opinion of the appellate
13 division, the record or portion thereof may be necessary in
14 answering the questions.

15 (d) Costs of certification.--Fees and costs shall be the
16 same as in appeals docketed before the appellate division and
17 shall be equally divided between the parties unless otherwise
18 ordered by the certifying court in its order of certification.

19 (e) Briefs and argument.--Proceedings in the appellate
20 division under this section shall be governed by Commerce Court
21 rules, which may provide specifically for the answering and
22 certification of questions of law under this section.

23 (f) Opinion.--The written opinion of the appellate division
24 stating the law governing the questions certified shall be sent
25 by the clerk under the seal of the appellate division of the
26 Commerce Court to the certifying court and to the parties. An
27 order adopting a written opinion shall be subject to appeal
28 under section 724(b) (relating to Commerce Court appeals).

29 § 785. Certification of questions of law.

30 (a) General rule.--The appellate division of the Commerce

1 Court, on its own motion or on the application of any party, may
2 order certification of questions of law to a United States
3 appellate court or to the highest appellate court or the
4 intermediate appellate court of any other state or jurisdiction,
5 when it appears to the appellate division that:

6 (1) there are involved in any matter pending before the
7 appellate division questions of law of the receiving
8 jurisdiction which may be determinative of the matter in the
9 appellate division; and

10 (2) there is no controlling precedent in the decisions
11 of the appellate courts of the receiving jurisdiction.

12 (b) Law of case.--The certification order may contain an
13 undertaking on behalf of the Pennsylvania unified judicial
14 system that the answer to the certified question shall be deemed
15 the law of the case for the purposes of all further proceedings
16 in the courts of this Commonwealth.

17 (c) Procedure.--The procedures for certification from this
18 Commonwealth to the receiving jurisdiction shall be as provided
19 by the laws of the receiving jurisdiction.

20 ARTICLE C

21 COMMERCE COURT AND

22 COURTS OF COMMON PLEAS

23 CHAPTER 8

24 ORGANIZATION AND JURISDICTION OF THE

25 COMMERCE COURT OF PENNSYLVANIA

26 Subchapter

27 A. (Reserved)

28 B. Organization of the Commerce Court

29 C. Jurisdiction of the Commerce Court

30 D. Transitional Provisions

1 SUBCHAPTER A

2 (Reserved)

3 SUBCHAPTER B

4 ORGANIZATION OF THE COMMERCE COURT

5 Sec.

6 811. Commerce Court.

7 812. Powers of Commerce Court.

8 813. Seat of court.

9 814. Lien of judgments for money.

10 § 811. Commerce Court.

11 There shall be a Commerce Court of Pennsylvania which shall
12 consist of six judges.

13 § 812. Powers of Commerce Court.

14 The Commerce Court shall have power to issue, under its
15 judicial seal, every lawful writ and process necessary or
16 suitable for the exercise of its jurisdiction and for the
17 enforcement of any order which it may make, including such writs
18 and process to or to be served or enforced by system and related
19 personnel as the courts of common pleas are authorized by law or
20 usage to issue. The court shall also have all powers of a court
21 of record possessed by the courts of common pleas.

22 § 813. Seat of court.

23 (a) Central filing.--The Commerce Court shall maintain
24 offices for the receipt of filings at one or more locations
25 within this Commonwealth as may be prescribed by Commerce Court
26 rule.

27 (b) Regular sessions.--The regular sessions of the Commerce
28 Court shall be held in:

29 (1) the Cities of Harrisburg, Philadelphia and
30 Pittsburgh, and such other cities in this Commonwealth where

1 the United States Bankruptcy Courts are required to hold
2 court; and

3 (2) such other judicial districts of this Commonwealth
4 as:

5 (i) have under section 911 (relating to courts of
6 common pleas) an authorized complement of six or more
7 judges of the court of common pleas; and

8 (ii) make available to the Commerce Court on a
9 scheduled basis suitable courtrooms and related physical
10 facilities.

11 (c) Other sessions.--Within the limits of available
12 appropriations, special sessions of the Commerce Court may be
13 held at such other places from time to time within this
14 Commonwealth as may be necessary for the convenience of parties
15 or witnesses.

16 (d) Reimbursement.--When regular or other sessions of the
17 Commerce Court are held in facilities provided by counties under
18 this section, reimbursement for actual and reasonable expenses
19 shall be made to the counties from the Commerce Court Fund.

20 § 814. Lien of judgments for money.

21 Any judgment or other order of the Commerce Court for the
22 payment of money shall not be a lien upon real property in any
23 county until it is entered of record in the office of the clerk
24 of the court of common pleas of the county in which the property
25 is situated, or in the office of the clerk of the branch of the
26 court of common pleas embracing such county, in the same manner
27 as a judgment transferred from the court of common pleas of
28 another county.

29 SUBCHAPTER C

30 JURISDICTION OF THE COMMERCE COURT

1 Sec.

2 831. Definitions.

3 832. Original jurisdiction.

4 833. Concurrent and exclusive jurisdiction.

5 834. Transfers between Commerce Court and other courts.

6 835. Restrictions on jurisdiction.

7 836. Waiver of objection to jurisdiction.

8 837. Limitation on issue preclusion and admissibility of
9 prior judgment.

10 § 831. Definitions.

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

14 "Association." A corporation, partnership, limited liability
15 company, business trust, joint venture, unincorporated
16 association, other than a labor organization, or two or more
17 natural or legal persons otherwise associated in a common
18 undertaking, whether or not for profit. The term does not
19 include a testamentary or inter vivos trust as defined in 20
20 Pa.C.S. § 711(2) and (3) (relating to mandatory exercise of
21 jurisdiction through orphans' court division in general), a
22 government unit or any agency or instrumentality thereof, or a
23 combination of government units, agencies or instrumentalities.

24 "Association person." A shareholder, member, partner,
25 associate, or owner of an equity interest in, or director,
26 member of the governing body or of an other body, incorporator,
27 promoter, trustee, beneficiary, officer or assistant officer of,
28 an association, as such.

29 "Charitable purposes." The relief of poverty, the
30 advancement of education, the advancement of religion, the

1 promotion of health, governmental or municipal purposes and
2 other purposes the accomplishment of which is beneficial to the
3 community.

4 "Consumer or personal claim." A claim relating to goods or
5 services used or bought for use primarily for personal, family
6 or household purposes. The term includes a claim by an owner-
7 occupier or tenant of residential real or personal property,
8 including vehicles or vessels, as such, and a claim involving a
9 noncommercial or personal loan, credit or payment. The term does
10 not include a claim as an owner or investor in an enterprise or
11 a claim arising out of services to an enterprise by an
12 individual as a director, executive officer or manager of such
13 enterprise.

14 "Director." Includes a manager, as defined in the applicable
15 organic law, of a limited liability company.

16 "Enterprise." An association or a sole proprietorship.

17 "Executive officer." When used with reference to an
18 enterprise, the chief executive officer, chief operating
19 officer, principal financial officer, principal accounting
20 officer, any vice president of the enterprise in charge of a
21 principal business unit, division or function, such as sales,
22 administration or finance, any other officer who performs a
23 significant policymaking function or any other person who
24 performs similar policymaking functions for the enterprise. In
25 addition, when the enterprise is a limited partnership, officers
26 or employees of a general partner who perform significant
27 policymaking functions for the limited partnership are deemed
28 executive officers of the limited partnership. When the
29 enterprise is a trust, officers or employees of a trustee who
30 perform significant policymaking functions for the trust are

1 deemed executive officers of the trust.

2 "Law." Any constitutional, statutory or regulatory provision
3 or any principle of common or court-developed law of any
4 jurisdiction in or outside of this Commonwealth applicable to
5 the claim or proceeding in question.

6 "Manager." A person, not an executive officer, who is in
7 charge of a principal business unit, division or function, such
8 as a production manager or sales manager, or another person,
9 such as a research scientist or inventor, who makes or is
10 expected to make a significant contribution to the business of
11 the enterprise.

12 "Mercantile activity or matter." An activity or matter
13 partaking of an industrial, commercial, wholesale or other
14 business character. The term includes, without limitation, the
15 practice of a profession. The term does not include any matter
16 where a consumer, as such, who is a natural person, other than
17 in the capacity of a sole proprietor, is an indispensable party.

18 "Minor judiciary." Includes the Philadelphia Municipal
19 Court.

20 "Miscellaneous corporation law." Includes:

21 Title 17 (relating to credit unions).

22 The act of December 1, 1959 (P.L.1647, No.606), known as the
23 Business Development Credit Corporation Law.

24 The act of November 30, 1965 (P.L.847, No.356), known as the
25 Banking Code of 1965.

26 The act of December 14, 1967 (P.L.746, No.345), known as the
27 Savings Association Code of 1967.

28 The act of December 14, 1992 (P.L.835, No.134), known as the
29 Fraternal Benefit Societies Code.

30 "Organic law." Includes:

1 (1) All of Title 15 (relating to corporations and
2 unincorporated associations).

3 (2) Those provisions of a miscellaneous corporation law
4 that do not constitute regulatory law.

5 (3) Any other provision of law that does not constitute
6 regulatory law and that:

7 (i) governs the corporate, internal or organic
8 affairs of any association; or

9 (ii) is applicable to the management of the business
10 or affairs of an association or the rights, powers or
11 duties of an association person, as such.

12 (4) 13 Pa.C.S. Div. 8 (relating to investment
13 securities).

14 (5) The act of March 3, 1976 (P.L.42, No.19), known as
15 the Takeover Disclosure Law.

16 "Regulatory law." Any provision of law that provides for
17 regulation of the operations or business of a business unit of
18 an association or of an association as a whole by a government
19 unit having jurisdiction over the operations or business.

20 § 832. Original jurisdiction.

21 (a) General rule.--Subject to section 835 (relating to
22 restrictions on jurisdiction), the Commerce Court shall have
23 original jurisdiction of all civil actions or proceedings:

24 (1) By the Commonwealth government for the
25 rehabilitation, conservation, conversion or other
26 delinquency, reorganization or liquidation proceeding of any
27 banking institution, credit union, fraternal benefit society,
28 insurance corporation or savings association as defined in 15
29 Pa.C.S. §§ 1103 (relating to definitions) and 5103 (relating
30 to definitions) or similar enterprise.

1 (2) Relating to or involving an association arising
2 under its applicable organic law; or where is drawn in
3 question the application, interpretation or enforcement of
4 any organic law in relation to any association or any
5 association person, as such. The court shall have
6 jurisdiction under this paragraph over the administration or
7 enforcement of any trust involving any property of an
8 association committed to charitable purposes, which under
9 prior law would have been heard and determined in the
10 orphans' court division of a court of common pleas.

11 (3) Relating to or involving the issuance, sale,
12 transfer or enforcement of any:

13 (i) equity or other security of an enterprise; or

14 (ii) chattel paper or instrument, as those terms are
15 defined in 13 Pa.C.S. § 9105 (relating to definitions and
16 index of definitions), of an enterprise.

17 (4) Relating to or involving a transaction, relationship
18 or agreement between or among two or more enterprises.

19 (5) Relating to or involving an agreement by an owner or
20 controlling person not to compete with an enterprise made in
21 connection with a sale or transfer of control of an
22 enterprise.

23 (6) Relating to or involving competition between
24 enterprises, including a claim relating to or involving
25 antitrust, intentional interference with contractual
26 relations, trade disparagement, unfair trade practices or an
27 agreement not to compete, or relating to or involving a
28 matter similar to any of the foregoing.

29 (7) Relating to or involving the provision or
30 termination of services to an enterprise, or an agreement not

1 to compete with an enterprise, by an association person,
2 executive officer or manager.

3 (8) Relating to or involving a claim to title to, a lien
4 on or the right to the use of intellectual property,
5 including a claim relating to or involving a patent, trade
6 secret, trademark, trade name, service mark or any matter
7 similar to any of the foregoing, or where is drawn in
8 question the application, interpretation or enforcement of
9 any provision of Title 54 (relating to names) other than 54
10 Pa.C.S. Ch. 7 (relating to judicial change of name) or 17
11 (relating to newspapers) or any right or agreement relating
12 to any of the foregoing.

13 (9) Arising as a private action under any act of
14 Congress pursuant to which any Federal agency regulates the
15 issuance, sale or transfer of any security, commodity or
16 other trading, energy, foods, drugs and devices,
17 telecommunication or transportation or other mercantile
18 matters.

19 (10) Relating to or involving a trust, mortgage or other
20 indenture or similar instrument or agreement described in 15
21 Pa.C.S. § 9501(a)(2) (relating to application and effect of
22 chapter).

23 (11) Arising under the act of December 5, 1972
24 (P.L.1280, No.284), known as the Pennsylvania Securities Act
25 of 1972.

26 (12) Arising under Subchapter A (relating to statutory
27 arbitration) or B (relating to common law arbitration) of
28 Chapter 73 in any case otherwise within the jurisdiction of
29 the court under this subsection in the absence of
30 arbitration.

1 (b) Complementary jurisdictional grounds.--The
2 jurisdictional grounds specified in subsection (a) are
3 complementary and not mutually exclusive. The court shall have
4 jurisdiction over any matter that satisfies the conditions of
5 any one of the grounds specified in subsection (a), without
6 regard to whether the matter satisfies the conditions or
7 limitations applicable to a different ground. For purposes of
8 section 833 (relating to concurrent and exclusive jurisdiction),
9 a matter that is described in subsection (a)(1) or (2) and also
10 in one or more other paragraphs of subsection (a), shall be
11 deemed to arise under subsection (a)(1) or (2) only.

12 (c) Government agency matters.--The Commerce Court shall
13 have original jurisdiction of actions or proceedings against,
14 and appeals from, the Department of State or any officer of this
15 Commonwealth, acting in his official capacity as a filing
16 officer, under Titles 13 (relating to commercial code), 15
17 (relating to corporations and unincorporated associations), 17
18 (relating to credit unions) and 54, and any other law relating
19 to the official filing of organic documents and related papers
20 of corporations and other associations, except to the extent
21 that such statutes constitute regulatory law.

22 (d) Ancillary matters.--Except as provided by section 835(a)
23 (relating to restrictions on jurisdiction), the Commerce Court
24 may exercise concurrent ancillary jurisdiction over a claim or
25 other matter that is related to a claim or other matter
26 otherwise within its exclusive original jurisdiction.

27 § 833. Concurrent and exclusive jurisdiction.

28 (a) Supervision of regulated associations.--Except as
29 provided in section 721 (relating to original jurisdiction), the
30 jurisdiction of the Commerce Court under section 832(a)(1)

1 (relating to original jurisdiction) shall be exclusive.

2 (b) Internal affairs of associations and mercantile
3 matters.--Except as provided in subsection (c) and section 721,
4 the jurisdiction of the Commerce Court under section 832(a)(2)
5 through (12) and under section 832(c) shall be:

6 (1) exclusive of the courts of common pleas for the
7 first (Philadelphia County), fifth (Allegheny County) and
8 twelfth (Dauphin County) judicial districts; and

9 (2) concurrent with the courts of common pleas for all
10 other judicial districts.

11 (c) Removal.--Except as provided in 12 Pa.C.S. § 303
12 (relating to choice of jurisdiction or venue), a defendant shall
13 have the right to remove a matter pending in the Commerce Court
14 under subsection (b)(2) to an appropriate court of common pleas
15 within the time and in the manner prescribed by Commerce Court
16 rule, but there shall be no right of removal of a matter
17 described in subsection (b)(2) from a court of common pleas to
18 the Commerce Court.

19 (d) Agreement.--A written agreement by a party fixing the
20 Commerce Court as the court having jurisdiction over an action
21 made before the action is commenced shall not be enforceable
22 except as provided in 12 Pa.C.S. § 303.

23 § 834. Transfers between Commerce Court and other courts.

24 Except as provided by section 835 (relating to restrictions
25 on jurisdiction), the Commerce Court or other court of original
26 judicial jurisdiction shall have power pursuant to general
27 rules, on its own motion or upon application of any party, to
28 transfer a matter to another court of coordinate jurisdiction
29 for consideration and decision with any matter pending in such
30 other court involving the same or related questions of fact, law

1 or discretion.

2 § 835. Restrictions on jurisdiction.

3 (a) General rule.--The Commerce Court shall have no
4 jurisdiction, by transfer or otherwise, over the following:

5 (1) A civil matter where a consumer, as such, other than
6 in the capacity of an enterprise, is an indispensable party
7 or otherwise involving a consumer or personal claim. This
8 exception shall not apply to:

9 (i) a matter arising under section 832(a)(1), (2),
10 (3), (8), (9) or (10) or (c) (relating to original
11 jurisdiction); or

12 (ii) a matter arising under section 832(a)(12) that
13 is also within the jurisdiction of the court under
14 section 832(a)(1), (2), (3), (8), (9) or (10).

15 (2) A civil matter where a natural person or his
16 personal representative is seeking damages for personal
17 injury or wrongful death.

18 (3) A civil matter involving domestic relations,
19 distribution of marital property or denial of civil rights of
20 a person other than an association.

21 (4) A civil matter involving occupational health and
22 safety or where a labor organization is a party defendant,
23 other than in the capacity of an owner or investor, or
24 otherwise involving labor and management relations, workers'
25 compensation or unemployment compensation.

26 (5) A civil matter involving a claim for contribution,
27 indemnity, insurance or subrogation relating to a matter
28 described in paragraph (2), (3) or (4).

29 (6) Environmental claims not involved in the sale or
30 other disposition of a business unit of an enterprise or an

enterprise as a whole.

(7) A proceeding in eminent domain.

(8) Any matter required to be heard and determined in the orphans' court division of a court of common pleas under 20 Pa.C.S. Ch. 7 (relating to orphans' court divisions), except a matter described in the last sentence of section 832(a)(2).

(9) A criminal matter not involving criminal contempt of the court.

(10) Claims for damages from malpractice by lawyers or health care professionals.

(11) A civil matter involving employment discrimination or sexual harassment, except a matter described in section 832(a)(5), (6) or (7).

(12) Claims relating to the rights, responsibilities and obligations of insurance companies and insureds arising under contracts of insurance or reinsurance, except a matter described in section 832(a)(1).

(13) Property damage claims and claims for lost income arising from property damage asserted in a separate action by a subrogated insurance or reinsurance company.

(b) Minor judiciary matters.--Except as provided in section 832(d), the Commerce Court shall have no original jurisdiction over any matter within the jurisdiction of the minor judiciary. § 836. Waiver of objection to jurisdiction.

The failure of a party to file an objection to the jurisdiction of the Commerce Court, the Commonwealth Court or a court of common pleas within such time after the commencement of the matter in court as may be specified by general rule or rule of court shall, unless the court in which the matter is filed

otherwise orders, operate to perfect the jurisdiction of the court, notwithstanding any provision of this title, or of any general rule adopted pursuant to section 503 (relating to reassignment of matters), vesting jurisdiction in the Commerce Court, the Commonwealth Court or the courts of common pleas.

§ 837. Limitation on issue preclusion and admissibility of prior judgment.

Except as provided in section 785 (relating to certification of questions of law), a judgment of the Commerce Court shall not be binding or admissible in any concurrent or later action by reason of the doctrine of issue preclusion, res judicata or collateral estoppel or for any other reason, with respect to a matter or claim described in section 835(a) (relating to restrictions on jurisdiction).

SUBCHAPTER D

TRANSITIONAL PROVISIONS

Sec.

841. Organization of court.

842. Existing cases unaffected.

843. Rules.

844. Procurement of juries.

845. Filing fees.

846. Expiration review.

§ 841. Organization of court.

(a) General rule.--The Commerce Court shall meet and organize in the City of Harrisburg. The court shall procure the necessary supplies, equipment and personnel to commence operation and promulgate any necessary rules of court or operating procedures. When the court is organized and ready for the transaction of business, the president judge of the court

1 shall so certify to the Governor, who shall issue a proclamation
2 stating that the court is organized and ready for the
3 transaction of its judicial business.

4 (b) Initial term of office.--The Governor shall proceed to
5 appoint persons to serve as judges of the court for purposes of
6 organizing its affairs immediately upon the effectiveness of the
7 Commerce Court Act; but, in order to permit the efficient
8 organization of the court, the date of the proclamation issued
9 under subsection (a) shall be deemed to be the date on which the
10 vacancies in the offices of the initial judges of the court
11 filled by the Governor under this subsection occurred, so that,
12 for purposes of applying the provisions of Section 13 of Article
13 V of the Constitution of Pennsylvania, the first election of
14 judges of the court shall not be held until the first municipal
15 election occurring more than ten months after the date of the
16 proclamation.

17 § 842. Existing cases unaffected.

18 A change in jurisdiction effected by the Commerce Court Act
19 shall not affect the jurisdiction of any court over any pending
20 matter, but, in the interest of justice, an existing matter may
21 be transferred to the Commerce Court under section 834 (relating
22 to transfers between Commerce Court and other courts).

23 § 843. Rules.

24 (a) Commerce Court.--Until otherwise provided by Commerce
25 Court rule, the rules applicable in the court of common pleas of
26 a particular judicial district shall be applicable to original
27 matters heard in the Commerce Court in that judicial district.

28 (b) Appellate division.--Until otherwise provided by
29 Commerce Court rule, the Pennsylvania Rules of Appellate
30 Procedure shall be applicable to matters in the appellate

1 division of the Commerce Court, and rules of court promulgated
2 by the Commerce Court applicable in the appellate division shall
3 be classified under Chapter 39 of the Pennsylvania Rules of
4 Appellate Procedure.

5 § 844. Procurement of juries.

6 Until otherwise provided by Commerce Court rule, the
7 procedures for the selection, compensation and maintenance of
8 juries for service in the Commonwealth Court shall be applicable
9 to the selection, compensation and maintenance of juries in the
10 Commerce Court. The Commerce Court may utilize special or other
11 juries.

12 § 845. Filing fees.

13 Until otherwise provided by Commerce Court rule, the fee bill
14 applicable in the Commonwealth Court shall be applicable in the
15 Commerce Court.

16 § 846. Expiration review.

17 (a) Reports to General Assembly.--Within 120 days after the
18 expiration of ten years after the entry by the Commerce Court of
19 its first final order in any action, proceeding or appeal, the:

20 (1) Commerce Court shall submit to the General Assembly
21 any recommendations for legislation relating to the size,
22 structure or operations of the court.

23 (2) Attorney General shall submit a report to the
24 General Assembly reviewing and commenting upon the operations
25 of the Commerce Court and making any recommendations for
26 legislation relating to the size, structure or operations of
27 the court.

28 (3) Appropriate committees of the General Assembly shall
29 request comments from the organized bar and the general
30 public concerning the size, structure and operations of the

Commerce Court.

(b) Expiration.--Unless continued by statute, sections 301(4) (relating to unified judicial system), 581(a) (relating to appellate division of the Commerce Court) and 811 (relating to Commerce Court) shall expire on the twelfth anniversary after the entry by the Commerce Court of its first final order in any action, proceeding or appeal. In such event the Supreme Court shall provide for the allocation and disposition of any unfinished business of the Commerce Court.

CHAPTER 21

JUDICIAL BOARDS AND COMMISSIONS

* * *

SUBCHAPTER G

COMMERCE COURT QUALIFICATIONS COMMISSION

Sec.

2161. Commerce Court Qualifications Commission.

2162. Composition of commission.

2163. Organization.

2164. Powers and duties.

§ 2161. Commerce Court Qualifications Commission.

(a) General rule.--The Commerce Court Qualifications Commission shall consist of 12 residents of this Commonwealth selected as provided in this subchapter.

(b) Seal.--The Commerce Court Qualifications Commission shall have a seal engraved with its name and such other inscriptions as may be specified by Commerce Court rule. A facsimile or preprinted seal may be used for all purposes in lieu of the original seal.

(c) Status.--The Commerce Court Qualifications Commission shall not be deemed to be an "agency" for purposes of the act of

1 July 3, 1986 (P.L.388, No.84), known as the Sunshine Act.

2 § 2162. Composition of commission.

3 (a) General rule.--The Commerce Court Qualifications

4 Commission shall consist of:

5 (1) Three commissioners appointed by the President pro
6 tempore of the Senate.

7 (2) Three commissioners appointed by the Minority Leader
8 of the Senate.

9 (3) Three commissioners appointed by the Speaker of the
10 House of Representatives.

11 (4) Three commissioners appointed by the Minority Leader
12 of the House of Representatives.

13 (b) Qualifications.--Two of the commissioners appointed
14 under each paragraph of subsection (a) shall be members of the
15 bar of the courts of this Commonwealth. The third commissioner
16 appointed in each case shall be a nonlawyer elector.

17 (c) Terms of office.--Except as provided in subsection (e),
18 each commissioner shall be appointed for a four-year term. A
19 commissioner shall not be appointed for more than two successive
20 full terms. An appointment to fill an unexpired term which has
21 fewer than two years remaining shall not be deemed a full term.
22 A vacancy on the commission shall be filled for the balance of
23 the term by appointment made by the person who at the time is
24 the ranking member in the same chamber of the General Assembly
25 and of the same political party as the person who appointed the
26 vacating member of the commission.

27 (d) Restriction on public or political activities.--During
28 his term of service, a commissioner shall not hold:

29 (1) A compensated public office or public appointment.

30 (2) Office in any political party or political

1 organization.

2 (e) Transitional provisions.--

3 (1) The initial Commerce Court Qualifications Commission
4 provided for in this section shall come into existence on (in
5 printing this act in the Laws of Pennsylvania and the
6 Pennsylvania Consolidated Statutes, the Legislative Reference
7 Bureau shall insert, in lieu of this statement, the effective
8 date of this act).

9 (2) The initial members of the Commerce Court
10 Qualifications Commission shall serve as follows:

11 (i) the commissioners appointed by the President pro
12 tempore of the Senate, one each for two, three and four
13 years;

14 (ii) the commissioners appointed by the Minority
15 Leader of the Senate, one each for two, three and four
16 years;

17 (iii) the commissioners appointed by the Speaker of
18 the House of Representatives, one each for one, two and
19 three years; and

20 (iv) the commissioners appointed by the Minority
21 Leader of the House of Representatives, one each for one,
22 two and three years.

23 § 2163. Organization.

24 The Commerce Court Qualifications Commission shall elect a
25 chairman from among its members and shall establish its own
26 rules of procedure. The clerk of the appellate division of the
27 Commerce Court shall be secretary of the commission. The
28 Commerce Court shall furnish such staff support as may be
29 necessary for the conduct of the business of the commission. The
30 cost and expense of the commission shall be paid out of the

1 Commerce Court Fund.

2 § 2164. Powers and duties.

3 (a) General rule.--The Commerce Court Qualifications
4 Commission shall evaluate the qualifications of:

5 (1) those applicants seeking election as a judge of the
6 Commerce Court who request evaluation of their qualifications
7 pursuant to section 3161(c) (relating to evaluation of
8 qualifications);

9 (2) applicants seeking appointment by the Governor to a
10 vacancy on the Commerce Court pursuant to section 3162
11 (relating to vacancies in office of judge of the Commerce
12 Court); and

13 (3) those judges of the Commerce Court who seek
14 retention in office pursuant to section 3163 (relating to
15 retention of judges of the Commerce Court).

16 (b) Rules and regulations.--The commission may adopt such
17 rules and regulations as it deems necessary to discharge its
18 duties under this part.

19 (c) Immunity.--A member of the commission shall not be held
20 to have violated any criminal law, or to be civilly liable under
21 any law, by reason of the performance by him of any duty,
22 function or activity authorized or required of the commission if
23 the member has exercised due care in such performance. This
24 subsection shall not apply with respect to any action taken by
25 any individual if the individual, in taking the action, was
26 motivated by malice toward any person affected by the action.

27 § 3131. Selection of judicial officers for regular terms.

28 * * *

29 (f) Commerce Court.--The judges of the Commerce Court shall
30 be elected in the manner provided in section 3161 (relating to

1 election of judges of the Commerce Court).

2 § 3132. Vacancies in office.

3 * * *

4 (e) Commerce Court.--Subsections (a) through (d) shall not
5 apply to a vacancy in the office of a judge of the Commerce
6 Court. See section 3162 (relating to vacancies in office of
7 judge of the Commerce Court).

8 § 3153. Retention elections after regular term.

9 * * *

10 (d) Commerce Court.--Except as provided in section 3163
11 (relating to retention of judges of the Commerce Court),
12 subsections (a) through (c) shall apply to the judges of the
13 Commerce Court.

14 SUBCHAPTER E
15 SELECTION AND RETENTION OF
16 JUDGES OF THE COMMERCE COURT
17 Sec.

18 3161. Election of judges of the Commerce Court.

19 3162. Vacancies in office of judge of the Commerce Court.

20 3163. Retention of judges of the Commerce Court.

21 § 3161. Election of judges of the Commerce Court.

22 (a) General rule.--Judges of the Commerce Court shall be
23 elected for a regular term of office at the municipal election
24 next preceding the commencement of their respective regular
25 terms of office by the electors of this Commonwealth.

26 (b) Special procedures.--The judges of the Commerce Court
27 shall be elected as provided in the act of June 3, 1937
28 (P.L.1333, No.320), known as the Pennsylvania Election Code,
29 except that:

30 (1) The dates:

1 (i) by which the Secretary of the Commonwealth is to
2 notify the county boards of election of the offices for
3 which candidates are to be nominated at the ensuing
4 primary,

5 (ii) by which the county boards of election are to
6 publish notice of public offices for which nominations
7 are to be made and

8 (iii) before and after which nomination petitions
9 and nomination papers may be circulated
10 shall be 60 days prior to the dates that would otherwise
11 apply in the absence of this section.

12 (2) Candidates for nomination who desire to have their
13 qualifications evaluated by the Commerce Court Qualifications
14 Commission shall proceed under the procedures provided in
15 subsection (c). Candidates who do not desire to have their
16 qualifications evaluated by the commission shall not be
17 subject to subsection (c) and shall proceed instead in the
18 manner provided in the Pennsylvania Election Code.

19 (3) Candidates for nomination shall present a nominating
20 petition containing valid signatures of at least 1,000
21 registered and enrolled members of the proper party,
22 including at least 100 from each of at least five counties.

23 (4) Each person filing a nomination petition or
24 nomination papers for a candidate shall pay a filing fee, at
25 the time of filing either with the Commerce Court
26 Qualifications Commission or the Department of State, as the
27 case may be, of \$200. A nomination petition or nomination
28 papers shall not be accepted or filed unless and until the
29 filing fee is paid in cash or by certified or cashier's check
30 or money order made payable to the Commonwealth of

1 Pennsylvania. All moneys paid on account of filing fees for
2 candidates for nomination for the office of judge of the
3 Commerce Court shall be transmitted to the State Treasurer
4 and shall become part of the Commerce Court Fund.

5 (5) Official ballots shall include with respect to each
6 candidate one of the following statements:

7 (i) "Rated extremely well qualified by the Commerce
8 Court Qualifications Commission."

9 (ii) "Rated well qualified by the Commerce Court
10 Qualifications Commission."

11 (iii) "Rated qualified by the Commerce Court
12 Qualifications Commission."

13 (iv) "Rated unqualified by the Commerce Court
14 Qualifications Commission."

15 (v) "Candidate did not request a rating by the
16 Commerce Court Qualifications Commission."

17 (6) On all official ballots except absentee ballots, the
18 names of all candidates from the same political party for
19 nomination or election shall be rotated from one precinct to
20 another. On absentee ballots the names of those candidates
21 shall be so alternated that each name shall appear, insofar
22 as reasonably possible, substantially an equal number of
23 times at the beginning, at the end and at each intermediate
24 place, if any, of the group of candidates from the same
25 political party.

26 (c) Evaluation of qualifications.--Candidates who desire to
27 have their qualifications evaluated by the Commerce Court
28 Qualifications Commission shall proceed in the following
29 fashion:

30 (1) Nomination petitions and nomination papers shall be

1 filed with the Commerce Court Qualifications Commission
2 instead of the Department of State, and must be filed with
3 the commission no later than 60 days prior to the date for
4 filing nomination petitions and nomination papers generally.

5 (2) The affidavit of candidates submitted to the
6 Commerce Court Qualifications Commission shall be in the form
7 prescribed by the Pennsylvania Election Code, with such
8 additional information as may be required by the rules and
9 regulations of the commission.

10 (3) The commission shall evaluate the qualifications of
11 each candidate in accordance with such criteria and measures
12 of qualification as the commission in its discretion shall
13 consider fair and relevant, and shall assign each candidate a
14 rating of:

- 15 (i) extremely well qualified;
- 16 (ii) well qualified;
- 17 (iii) qualified; or
- 18 (iv) unqualified.

19 (4) The commission shall certify to the Department of
20 State the rating assigned to each candidate by the
21 commission. The certification of the commission shall be
22 filed with the Department of State not later than the date
23 the nomination petition or nomination papers of the candidate
24 would have been due to be filed absent the provisions of this
25 subsection. The certification shall include the nomination
26 petition or nomination papers and the affidavit of the
27 candidate. The certification of the commission shall be the
28 basis for the statement on the official ballot required by
29 paragraph (5) of the preceding subsection.

30 (5) A determination by the commission to certify a

1 candidate as unqualified may be challenged in the same manner
2 as a contested nomination of the second class except that the
3 petition commencing the proceeding shall be filed by the
4 candidate himself within 20 days after the last day for
5 filing certifications of the commission with the Department
6 of State. A determination by the commission to certify a
7 candidate as extremely well qualified, well qualified or
8 qualified shall not be subject to challenge.

9 § 3162. Vacancies in office of judge of the Commerce Court.

10 (a) General rule.--A vacancy in the office of judge of the
11 Commerce Court shall be filled by appointment by the Governor in
12 the manner provided in this section.

13 (b) Advertisement of vacancy.--Whenever a vacancy occurs in
14 the office of judge of the Commerce Court, the Commerce Court
15 Qualifications Commission shall publicly advertise the vacancy
16 and solicit applications. When it is known that a vacancy will
17 occur in the future on a date certain, the process set forth in
18 this section may proceed 90 days prior to that date.

19 (c) Preparation of list.--From the applications received,
20 the commission shall prepare and submit to the Governor a list
21 of not more than seven persons who are qualified to hold the
22 office of judge of the Commerce Court. When more than one
23 vacancy exists, the maximum number of persons who may be
24 included on the list submitted to the Governor shall be
25 increased by two persons for each additional vacancy. The list
26 shall be submitted to the Governor no later than 60 days after
27 the vacancy occurs. Immediately following submission of the list
28 to the Governor, the list shall be filed with the Senate and
29 made public by the commission, and the commission shall also
30 make public the name of each applicant not on the list who has

1 not requested that his name be kept confidential.

2 (d) Vote required for commission endorsement.--The list
3 submitted to the Governor shall contain the names of those
4 persons who receive affirmative votes from eight or more
5 commissioners, except that the number of persons shall not
6 exceed the limitations imposed by subsection (c).

7 (e) Nomination to Senate.--The Governor shall nominate from
8 the list one person for each vacancy with respect to which a
9 list of recommended applicants has been submitted. If the
10 Governor does not nominate, within 30 days of receipt of the
11 list, as many of the persons recommended as there are vacancies
12 to be filled, the first person or persons named on the list in
13 the order determined by the commission who have not been
14 nominated by the Governor, up to the number of vacancies the
15 Governor has failed to make nominations for, shall be deemed
16 nominated.

17 (f) Action by Senate.--Senate action on a nomination to fill
18 a vacancy in the office of judge of the Commerce Court shall be
19 in accordance with section 8 of Article IV of the Constitution
20 of Pennsylvania.

21 (g) Substitute nominations.--The Governor may make a
22 substitute nomination from the list within 30 days after
23 receiving notification from the Senate of the rejection of a
24 prior nominee; otherwise, the ranking person on the list who has
25 not been rejected by the Senate shall be deemed nominated as a
26 substitute.

27 (h) Rejection of all candidates.--If all of the persons on a
28 list have been nominated and rejected by the Senate, the Senate
29 shall so notify the Commerce Court Qualifications Commission.
30 The commission shall meet within ten days of receipt of such

notification and publicly select by lot one person from the list. The person selected shall thereupon be deemed appointed and confirmed to the vacant position and shall be so commissioned by the Governor.

§ 3163. Retention of judges of the Commerce Court.

At the expiration of the term of office of a judge of the Commerce Court, he shall be subject to retention in office and retirement as provided in this part except that:

(1) Whenever a judge of the Commerce Court files a declaration of candidacy for retention election, the Commerce Court Qualifications Commission shall review his judicial performance and shall, on or before the first Monday of April of the year of the retention election, certify to the Department of State whether or not in the opinion of the commission the judge is qualified to be retained in office.

(2) The official ballot for the retention election shall include one of the following statements based on the certification of the commission:

(i) "Rated qualified to be retained in office by the Commerce Court Qualifications Commission."

(ii) "Rated unqualified to be retained in office by the Commerce Court Qualifications Commission."

CHAPTER 35

BUDGET AND FINANCE

* * *

§ 3582. Salaries of judges of Commerce Court.

(a) Salaries.--The annual salary of the President Judge of the Commerce Court shall be \$104,500. The annual salary of each of the other judges of the Commerce Court shall be \$104,000.

(b) Annual cost-of-living adjustment.--Beginning January 1,

1998, and each January 1 thereafter, the annual salaries under this section shall be increased by the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and Maryland area for the most recent 12-month period for which figures have been officially reported by the United States Department of Labor, Bureau of Labor Statistics immediately prior to the date the adjustment is due to take effect. The percentage increase and salary amounts shall be determined prior to the annual effective date of the adjustment by the Supreme Court and shall be published in the Pennsylvania Bulletin by the Court Administrator of Pennsylvania within 20 days of the date the determination is made.

SUBCHAPTER G

COMMERCE COURT FUND

Sec.

3591. Commerce Court Fund.

3592. Receipts and other credits.

3593. Payments and other debits.

§ 3591. Commerce Court Fund.

There shall be established in the State Treasury a special operating fund to be known as the Commerce Court Fund. Debits and credits shall be made to that fund as provided by or pursuant to this subchapter. The operating and capital expenses of the Commerce Court shall be paid solely from the Commerce Court Fund.

§ 3592. Receipts and other credits.

(a) General rule.--There shall be paid or credited to the Commerce Court Fund:

(1) Amounts appropriated to the Commerce Court in the

1 manner provided by law.

2 (2) The following surcharges, which are hereby imposed:

3 (i) A surcharge upon the fees of the Corporation
4 Bureau of the Department of State established by 15
5 Pa.C.S. Ch. 1 Subch. C (relating to Corporation Bureau
6 and UCC fees), in the amount of 25% of each such fee,
7 except that the surcharge shall not be imposed upon the
8 fee set forth in 15 Pa.C.S. § 153(a)(9)(i) (relating to
9 fee schedule). None of such surcharge shall be credited
10 to the Corporation Bureau Restricted Account.

11 (ii) A surcharge upon the licensing, examination and
12 other fees of the Department of Banking, in the amount of
13 10% of each such fee. None of such surcharge shall be
14 credited to the Banking Department Fund established by
15 section 302 of the act of April 9, 1929 (P.L.343,
16 No.176), known as The Fiscal Code.

17 (iii) A surcharge upon the licensing, examination
18 and other fees of the Insurance Department, in the amount
19 of 10% of each such fee.

20 (iv) A surcharge upon the licensing, examination and
21 other fees of the Pennsylvania Securities Commission in
22 the amount of 10% of each such fee.

23 (3) Amounts received by the Commonwealth on account of
24 the operation of the Commerce Court. Fees and charges of the
25 Commerce Court shall be fixed by the governing authority of
26 the Commerce Court with a view initially to the operation of
27 the Commerce Court on a self-sustaining basis to the extent
28 feasible, and eventually to the elimination of the surcharges
29 set forth in paragraph (2)(ii) through (iv) and the reduction
30 of the surcharge set forth in paragraph (2)(i).

(b) Money paid into court.--Money paid into court shall not be credited to the Commerce Court Fund, except to the extent that the amounts constitute poundage.

§ 3593. Payments and other debits.

There shall be disbursed from or debited to the Commerce Court Fund amounts payable by the Commonwealth on account of the operation of the Commerce Court.

§ 5105. Right to appellate review.

* * *

(b) Successive appeals.--

(1) Except as otherwise provided in this subsection, the rights conferred by subsection (a) are cumulative, so that a litigant may as a matter of right cause a final order of any tribunal in any matter which itself constitutes an appeal to such tribunal, to be further reviewed by the court having jurisdiction of appeals from such tribunal. Except as provided in section 723 (relating to appeals from the Commonwealth Court) there shall be no right of appeal from the Superior Court or the Commonwealth Court to the Supreme Court under this section or otherwise.

(2) There shall be a right of appeal in all cases from the Commerce Court to its appellate division, which shall constitute a separate court for the purposes of section 9 of Article V of the Constitution of Pennsylvania, but, except as provided in section 724(b) (relating to Commerce Court appeals), there shall be no right of appeal from the Commerce Court or the appellate division of the Commerce Court to the Supreme Court under this section or otherwise.

* * *

§ 5322. Bases of personal jurisdiction over persons outside

1 this Commonwealth.

2 * * *

3 (e) Inconvenient forum.--When a tribunal finds that in the
4 interest of substantial justice the matter should be heard in
5 another forum, the tribunal may stay or dismiss the matter in
6 whole or in part on any conditions that may be just unless the
7 action arises out of a contract, agreement or undertaking to
8 which 12 Pa.C.S. § 302 (relating to choice of forum) applies.
9 § 5571. Appeals generally.

10 (a) General rule.--The time for filing an appeal, a petition
11 for allowance of appeal, a petition for permission to appeal or
12 a petition for review of a quasi-judicial order, in the Supreme
13 Court, the Superior Court [or], the Commonwealth Court, the
14 Commerce Court or the appellate division of the Commerce Court
15 shall be governed by general rules. No other provision of this
16 subchapter shall be applicable to matters subject to this
17 subsection.

18 * * *

19 § 7302. Scope of subchapter.

20 * * *

21 (d) Special application.--

22 (1) Paragraph (2) shall be applicable where:

23 * * *

24 (iv) An individual or sole proprietor has agreed to
25 arbitrate a controversy, whether or not pursuant to this
26 subchapter, and the controversy is within the scope of
27 section 832(a)(3), (9) or (11) (relating to original
28 jurisdiction), or any matter ancillary thereto, and
29 review of the arbitration proceeding is had in the courts
30 of common pleas or in the courts of another jurisdiction

1 in circumstances where the laws of this Commonwealth
2 apply.

3 * * *

4 (3) Where an individual or sole proprietor has agreed to
5 arbitrate a controversy, whether or not pursuant to this
6 subchapter, and the controversy is within the scope of
7 section 832(a)(2) through (11) and review of the arbitration
8 proceeding is had in the Commerce Court, the court shall,
9 notwithstanding any other provision of this subchapter or
10 Subchapter B, modify or correct the award where the award is
11 contrary to law, is not in conformity with the substantial
12 evidence or is such that had it been a verdict of a jury the
13 court would have entered a different judgment, a directed
14 verdict or judgment notwithstanding the verdict.

15 § 7363. Commerce Court arbitration.

16 (a) General rule.--When prescribed or provided by Commerce
17 Court rule or order, such matters or issues therein as shall be
18 specified by rule or order shall first be submitted to and heard
19 by a board of one or more arbitrators having such qualifications
20 and selected in such manner as shall be specified by rule or
21 order.

22 (b) Limitation.--No matter shall be referred under
23 subsection (a) where the amount in controversy, exclusive of
24 interest and costs, exceeds \$150,000 or such higher amount as
25 shall be prescribed by Commerce Court rule.

26 (c) Procedure.--The arbitrator or arbitrators appointed
27 pursuant to this section shall have such powers and shall
28 proceed in such manner as shall be prescribed or provided by
29 Commerce Court rule or order.

30 (d) Appeals.--Any party shall have the right to appeal to

1 the court in the manner prescribed or provided by Commerce Court
2 rule or order upon the record made before the arbitrators,
3 except that where there is a substantial issue of credibility of
4 testimony any party shall have the right to trial de novo of the
5 issue in the court. In the absence of appeal the judgment
6 entered on the award of the arbitrators shall be enforced as any
7 other judgment of the court. For the purposes of this section
8 and section 5571 (relating to appeals generally), an award of
9 arbitrators constitutes an order of a tribunal.

10 Section 5. Delayed amendments to Title 42.

11 The following provisions of Title 42, as added by this act,
12 are further amended to read:

13 § 581. Appellate division of the Commerce Court.

14 (a) General rule.--There shall be an appellate division of
15 the Commerce Court which shall consist of the president judge
16 and the four senior other judges in regular active service.

17 * * *

18 § 811. Commerce Court.

19 (a) General rule.--There shall be a Commerce Court of
20 Pennsylvania which shall consist of [six] ten judges.

21 * * *

22 Section 6. Repeal.

23 All acts and parts of acts are hereby repealed insofar as
24 such acts vest jurisdiction in any court or district justice in
25 addition to or in any manner inconsistent with the jurisdiction
26 provided by Title 42 of the Pennsylvania Consolidated Statutes,
27 as amended by this act.

28 Section 7. Effective date.

29 This act shall take effect as follows:

30 (1) Except as provided in paragraphs (2) and (3), this

1 act shall take effect immediately.

2 (2) As much of the amendments effected by sections 3 and
3 4 as change jurisdiction of courts shall take effect
4 immediately upon the publication in the Pennsylvania Bulletin
5 of the proclamation issued under 42 Pa.C.S. § 841.

6 (3) Section 5 shall take effect on the fourth
7 anniversary of the general effective date of this act.

SOURCE NOTES

Section 2: The source notes for the added provisions of Title 12 are as follows:

12 Pa.C.S. § 301: Patterned after 14 N.Y. Gen. Oblig. Law § 5-1401, but limited to the jurisdiction of the Commerce Court under 42 Pa.C.S. § 832 as restricted by § 835.

12 Pa.C.S. § 302: Patterned after 14 N.Y. Gen. Oblig. Law § 5-1402, but limited to the jurisdiction of the Commerce Court under 42 Pa.C.S. § 832 as restricted by § 835.

12 Pa.C.S. § 303: Patterned after N.Y. CPLR § 501, but limited to the jurisdiction of the Commerce Court under 42 Pa.C.S. § 832 as restricted by § 835.

Section 3: No source notes for the amended provisions of Title 15 are provided hereby.

Section 4: The source notes for the amended or added provisions of Title 42 are as follows:

42 Pa.C.S. § 102: Conforming amendment amending the definitions of "appellate court"; and adding definitions of "appellate division," "Commerce Court," "Commerce Court rule" and "Statewide judges."

42 Pa.C.S. § 301: Conforming amendment.

42 Pa.C.S. § 581: The last sentence of subsection (b) is intended to permit a judge to sit on the en banc court, if necessary, to reconcile conflicting panel decisions, some of which may have passed on actions of the judge at the trial level.

42 Pa.C.S. § 582: New. Patterned after 42 Pa.C.S. § 542.

42 Pa.C.S. § 583: New. Patterned after 42 Pa.C.S. § 543.

42 Pa.C.S. § 705: Conforming amendment.

42 Pa.C.S. § 707: Conforming amendment. See also new 42 Pa.C.S. § 814.

42 Pa.C.S. § 722: Subsection (b) is new and is intended to permit the Commerce Court to develop a comprehensive jurisprudence in the Federal regulatory preemption area, such as contemplated by 42 Pa.C.S. § 832(a)(9).

42 Pa.C.S. § 724: Subsection (b) is new.

42 Pa.C.S. § 742: Conforming amendment. See 42 Pa.C.S. § 783.

42 Pa.C.S. § 761: Subsection (a)(1)(vi) is a conforming amendment. See new 42 Pa.C.S. § 832. Revision of subsection (a)(2), deletion of subsection (a)(3) and revision of subsection (a)(4) are conforming amendments. See new 42 Pa.C.S. § 832(a)(1). Subsection (b) is a conforming amendment.

42 Pa.C.S. § 762: Conforming amendment. See 42 Pa.C.S. §§ 783 and 832(a)(2).

42 Pa.C.S. § 763: Conforming amendment. See 42 Pa.C.S. § 832(c).

42 Pa.C.S. § 781: New. Patterned after 42 Pa.C.S. § 741.

42 Pa.C.S. § 782: Patterned after 42 Pa.C.S. § 742.

42 Pa.C.S. § 783: Patterned after 42 Pa.C.S. § 722. The section insures a coherent development of the Commonwealth's mercantile law by providing that most mercantile cases which are not originally commenced in the Commerce Court may reach the appellate division of the Commerce Court on judicial review.

42 Pa.C.S. § 784: Patterned after the Uniform Certification of Questions of Law Act.

42 Pa.C.S. § 785: Patterned after the Uniform Certification of Questions of Law Act. Subsection (b) provides a procedure for authoritatively assuring that an opinion stating the law

1 governing certified questions will not be merely advisory.
2 42 Pa.C.S. § 811: Patterned after 42 Pa.C.S. § 561.
3 42 Pa.C.S. § 812: New. Patterned after 42 Pa.C.S. § 562.
4 42 Pa.C.S. § 813: Patterned in part after 42 Pa.C.S. § 563.
5 It is not intended that subsection (b) require the maintenance
6 of a permanent clerk's office at each location, and a deputized
7 local prothonotary could, for example, be used to receive
8 initial case filings, with the parties required to transmit all
9 subsequent filings to a central case file management location,
10 e.g., in Philadelphia, Harrisburg or Pittsburgh.
11 42 Pa.C.S. § 814: New. Patterned after 42 Pa.C.S. § 707.
12 42 Pa.C.S. § 831: The following comments apply to the
13 definitions of this section:
14 "Association." Patterned after 15 Pa.C.S. § 102. The express
15 exclusion of a political unit of government or any agency or
16 instrumentality thereof has been added for clarity. Although a
17 sole proprietor is not included within the definition of
18 "association," transactions by a sole proprietor are included
19 within the scope of the various mercantile provisions of the
20 subchapter to the extent otherwise applicable e.g., if the sole
21 proprietor is a vendor, vendee, borrower, lender etc. Consistent
22 with new 42 Pa.C.S. § 835(a)(4), labor organizations are
23 excluded from this definition and thus the Commerce Court will
24 not have jurisdiction over their internal affairs.
25 "Association person." Includes any person who is involved in
26 the ownership, management or operation of an association,
27 including members of an "other body," as used in the Nonprofit
28 Corporation Law of 1988. Since employees and agents are not
29 governed by organic law applicable to an association, they are
30 excluded from this definition; issues concerning an employee's
31 or agent's performance of his or her duties, and other
32 employment or agency issues, are not intended to be covered
33 within the scope of "association matters" in § 832(a)(2), but
34 are included within Commerce Court jurisdiction, if at all, only
35 under § 832(a)(5) and (7).
36 "Charitable purposes." Derived from 15 Pa.C.S. § 5103.
37 "Consumer or personal claim." This definition has no effect
38 on the jurisdiction of the court in cases where jurisdiction is
39 expressly conferred under this subchapter over nonbusiness
40 individuals, e.g., 42 Pa.C.S. § 832(a)(2), where all owners or
41 investors in an association and all members of a nonprofit
42 corporation are potentially within the jurisdiction of the
43 Commerce Court.
44 "Enterprise." The term is intended to include any business,
45 nonprofit or cooperative undertaking or sole proprietorship for
46 purposes of jurisdiction over mercantile or professional
47 matters. There appears to be no organic law relating to a sole
48 proprietorship, and therefore § 832(a)(2) is limited to
49 "associations," rather than "enterprises."
50 "Executive officer." Derived from Securities and Exchange
51 Commission Rules 3b-7 and 16a-1(f).
52 "Law." Intended to make clear that common or court-developed
53 law, and foreign laws are included.
54 "Manager." Derived from Securities and Exchange Commission
55 Regulation S-K, Item 401, paragraph (c).
56 "Mercantile activity or matter." This term is intended to
57 embrace the whole class of matters that are within the original
58 jurisdiction of the Commerce Court, other than matters involving
59 organic laws or miscellaneous corporation laws.

1 "Miscellaneous corporation law." The term is intended to be
2 expansive and to include any overlooked or subsequently-created
3 classes of private corporations.

4 "Organic law." The term "regulatory law" is not intended to
5 include provisions of associational law, including Titles 15 and
6 17 and "miscellaneous corporation law," as well as laws
7 governing banking, insurance and the like (e.g., 15 Pa.C.S. Ch.
8 31), which limit or restrict activities or powers and thus
9 "regulate" the association in question. For example, statutes
10 restricting the ability to pay dividends or reacquire shares of
11 stock, restricting investment powers or investments in
12 subsidiaries, or limiting the number or character of owners or
13 investors. Such provisions would therefore be considered
14 "organic law."

15 "Regulatory law." Includes only provisions for regulation of
16 an activity which would be applicable to conduct by a person
17 without regard to the person's form of organization, or which
18 restrict a class of business activity to a particular type of
19 organization (e.g., limiting banking and insurance to corporate
20 form). See comment to "organic law."

21 42 Pa.C.S. § 832: The section is subject to the general
22 restrictions of 42 Pa.C.S. § 835. As to subsection (a)(1), see
23 section 6 of the act and the related source note. Subsection
24 (a)(2) is intended to include, without limitation, questions of
25 authority to execute contracts on behalf of an association.
26 Jurisdiction under the last sentence of subsection (a)(2) does
27 not extend to property given to an association for charitable
28 purposes until after the property passes out of the hands of the
29 personal representative and into the hands of the association.
30 Subsection (a)(3) is intended to include, without limitation,
31 matters involving a note issued by a sole proprietorship.
32 Subsection (a)(4) is intended to apply broadly, e.g., by
33 covering all matters arising under Title 13, subject to the
34 exclusions of 42 Pa.C.S. § 835. The term "relationship" includes
35 competing claims to title to or a lien or security interest on
36 or in specific real or personal property. However, true in rem
37 proceedings, such as those in the nature of an action to quiet
38 title, are not within the jurisdiction of the Commerce Court
39 under this subsection because in such cases the "whole world" is
40 adverse, including consumers outside of the scope of the
41 mercantile jurisdiction. Subsection (a)(3), (7) and (10) at
42 least partially overlap other subsections but have been included
43 for purposes of clarity and completeness. Subsection (a)(9) is
44 intended to give the Commerce Court jurisdiction over claims
45 arising under Federal law where there is concurrent jurisdiction
46 in Federal and State courts, e.g., under section 22(a) of the
47 Securities Act of 1933, 15 U.S.C. § 77v(a), and section 322(b)
48 of the Trust Indenture Act of 1939, 15 U.S.C. § 77vvv(b).

49 42 Pa.C.S. § 833: New. One effect of subsections (c) and (d)
50 is that an agreement fixing jurisdiction in the Commerce Court
51 made by a person not described in 12 Pa.C.S. § 303 will not be
52 enforceable.

53 42 Pa.C.S. § 834: New. Patterned after 42 Pa.C.S. § 705.
54 See also 42 Pa.C.S. § 833.

55 42 Pa.C.S. § 835: Subsection (a)(2) and (4) are intended to
56 make clear that no action taken by the Commerce Court could
57 affect the right of an injured person or his or her estate to
58 recover for personal injury or death from a particular
59 enterprise under either an indemnity or direct action principle,

1 and that claims over among enterprises (whether as direct actors
2 or as insurers) in such cases are not mercantile claims within
3 the meaning of the Commerce Court jurisdictional provisions of
4 the Judicial Code. Unlike subsection (a)(12) and (13),
5 subsection (a)(5) is not limited to situations where there is an
6 applicable policy of insurance. The effect of the last clause of
7 subsection (a)(11) is to permit the Commerce Court to exercise
8 ancillary jurisdiction over claims for employment discrimination
9 or sexual harassment in the context of cases brought under 42
10 Pa.C.S. § 832(a)(5), (6) and (7). The limitation on the
11 restriction in subsection (a)(13) to claims brought in a
12 separate action is necessary so that the joinder of an insurance
13 or reinsurance company will not defeat jurisdiction over
14 warranty claims between merchants.

15 42 Pa.C.S. § 836: Patterned after 42 Pa.C.S. § 704.

16 42 Pa.C.S. § 837: New.

17 42 Pa.C.S. § 841: New.

18 42 Pa.C.S. § 842: New.

19 42 Pa.C.S. § 843: New.

20 42 Pa.C.S. § 844: New.

21 42 Pa.C.S. § 845: New. Compare 42 Pa.C.S. § 3592(a)(3).

22 42 Pa.C.S. § 846: New.

23 42 Pa.C.S. § 2161: New.

24 42 Pa.C.S. § 2162: New.

25 42 Pa.C.S. § 2163: New.

26 42 Pa.C.S. § 2164: New. Subsection (c) is patterned after
27 section 3(b) of the act of July 20, 1974 (P.L.564, No.193),
28 known as the Peer Review Protection Act.

29 42 Pa.C.S. § 3131: Subsection (f) is a conforming amendment.

30 42 Pa.C.S. § 3132: Subsection (e) is a conforming amendment.

31 42 Pa.C.S. § 3153: Subsection (d) is a conforming amendment.

32 42 Pa.C.S. § 3161: New.

33 42 Pa.C.S. § 3162: New.

34 42 Pa.C.S. § 3163: New.

35 42 Pa.C.S. § 3581: Conforming amendment.

36 42 Pa.C.S. § 3591: New.

37 42 Pa.C.S. § 3592: New.

38 42 Pa.C.S. § 3593: New.

39 42 Pa.C.S. § 5105: New.

40 42 Pa.C.S. § 5322: New exception patterned after N.Y. CPLR
41 Rule 327(b).

42 42 Pa.C.S. § 5571: Conforming amendment.

43 42 Pa.C.S. § 7302: Subsection (d)(1)(iv) and (3) are new. A
44 proceeding commenced in the Commerce Court under subsection
45 (d)(3) may be removed to common pleas court under 42 Pa.C.S. §
46 833(d). The standard set forth in subsection (d)(3) is
47 applicable only where review of the arbitration proceeding is
48 had in the Commerce Court and will not apply where the review
49 proceeding has been removed to common pleas court.

50 42 Pa.C.S. § 7363: New. Patterned after 42 Pa.C.S. § 7361.

51 Section 6: Patterned after the act of April 28, 1978
52 (P.L.202, No.53), known as the Judiciary Act Repealer Act,
53 section 2(f). The affected provisions include:

54 Article V of the act of May 17, 1921 (P.L.789, No.285), known
55 as The Insurance Department Act of one thousand nine hundred and
56 twenty-one.

57 The act of May 15, 1933 (P.L.565, No.111), known as the
58 Department of Banking Code.