

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2057 Session of
2021

INTRODUCED BY ROAE, KNOWLES, BRIGGS, SCHEMEL, BERNSTINE, COX AND
GALLOWAY, NOVEMBER 5, 2021

REFERRED TO COMMITTEE ON COMMERCE, NOVEMBER 5, 2021

AN ACT

1 Amending Titles 15 (Corporations and Unincorporated
2 Associations) and 54 (Names) of the Pennsylvania Consolidated
3 Statutes,
4 in general provisions, further providing for definitions, for
5 form of records, for functions of Department of State, for
6 processing of documents by Department of State, for court to
7 pass upon rejection of documents by Department of State, for
8 statement of correction and for tax clearance of certain
9 fundamental transactions, providing for annual report and
10 further providing for short title and application of
11 subchapter and for fee schedule;
12 in entities generally, further providing for requirements for
13 names generally, for required name changes by senior
14 associations and for registration of name of nonregistered
15 foreign association and providing for ratification of
16 defective entity actions;
17 in entity transactions, further providing for definitions, for
18 relationship of chapter to other provisions of law, for
19 nature of transactions, for excluded entities and
20 transactions, for approval by business corporation, for
21 interest exchange authorized, for statement of conversion and
22 effectiveness, for approval of division, for division without
23 interest holder approval, for effect of division, for
24 allocation of liabilities in division and for domestication
25 authorized and providing for administrative dissolution or
26 cancellation;
27 in foreign associations, further providing for governing law,
28 for activities not constituting doing business, for
29 noncomplying name of foreign association, for required
30 withdrawal on certain transactions and for termination of
31 registration;
32 in corporations, further providing for application and effect of
33 subchapter, for standard of care and justifiable reliance,
34 for personal liability of directors, for notation of dissent,

1 for exercise of powers generally, for alternative standard,
2 for limitation on standing and for actions by shareholders or
3 members to enforce a secondary right and providing for
4 renunciation of business opportunities;
5 in general provisions relating to business corporations, further
6 providing for application of subpart and for definitions and
7 repealing provisions relating to annual report information;
8 in incorporation, further providing for articles of
9 incorporation;
10 in corporate powers, duties and safeguards, further providing
11 for adoption, amendment and contents of bylaws, for persons
12 bound by bylaws, for registered office, for corporate records
13 and inspection by members, for bylaws and other powers in
14 emergency and for informational rights of a director,
15 providing for forum selection provisions and further
16 providing for authorized shares, for stock rights and
17 options, for transfer of securities and restrictions, for
18 power of corporation to acquire its own shares, for liability
19 for unlawful dividends and other distributions and for
20 application and effect of subchapter;
21 in officers, directors and shareholders, further providing for
22 manner of giving notice, for place and notice of meetings of
23 shareholders, for use of conference telephone or other
24 electronic technology, for conduct of shareholders meeting,
25 for alternative provisions, for standard of care and
26 justifiable reliance, for personal liability of directors,
27 for notation of dissent, for exercise of powers generally,
28 for alternative standard, for limitation on standing and for
29 inconsistent articles ineffective, providing for renunciation
30 of business opportunities, further providing for board of
31 directors, for qualifications of directors, for term of
32 office of directors, for selection of directors, for quorum
33 of and action by directors, for interested directors or
34 officers and quorum, for compensation of directors, for
35 executive and other committees of the board and for officers,
36 providing for officer's standard of care and justifiable
37 reliance and for personal liability of officers and further
38 providing for mandatory indemnification, for duration and
39 extent of coverage, for time of holding meetings of
40 shareholders, for quorum, for quorum, for voting rights of
41 shareholders, for determination of shareholders of record,
42 for voting lists, for consent of members in lieu of meeting,
43 for derivative action, for eligible shareholder plaintiffs
44 and security for costs and for special litigation committee;
45 in fundamental changes, further providing for proposal of
46 fundamental transactions, for amendment of articles
47 authorized, for proposal of amendments for adoption of
48 amendments, for voluntary transfer of corporate assets and
49 for survival of remedies and rights after dissolution;
50 in nonstock corporations, further providing for election of an
51 existing business corporation to become a nonstock
52 corporation and for termination of nonstock corporation
53 status;
54 in registered corporations, further providing for call of
55 special meetings of shareholders, for adjournment of meetings
56 of shareholders, for consent of shareholders in lieu of
57 meeting, and for notice of shareholder meetings, providing
58 for qualifications of directors, and further providing for
59 application and effect of subchapter, for definitions, for
60 business combination, for application and effect of

1 subchapter, for definitions, for voting rights of shares
2 acquired in a control-share, for procedure for establishing
3 voting rights of control shares, for application and effect
4 of subchapter and for definitions;
5 in benefit corporations, further providing for standard of
6 conduct for directors, for benefit director and for standard
7 of conduct for officers;
8 in general provisions relating to nonprofit corporations,
9 further providing for definitions and repealing provisions
10 relating to annual report;
11 in incorporation, further providing for articles of
12 incorporation;
13 in corporate powers duties and safeguards, further providing for
14 adoption, amendment and contents of bylaws, for persons bound
15 by bylaws, for registered office, for corporate records and
16 inspection by members, for bylaws and other powers in
17 emergency and for informational rights of a director,
18 providing for forum selection provisions, and further
19 providing for authority to take and hold trust property;
20 in officers, directors and members, further providing for manner
21 of giving notice, for place and notice of meetings of
22 members, for use of conference telephone or other electronic
23 technology, for conduct of members meeting, for alternative
24 provisions, for standard of care and justifiable reliance,
25 for personal liability of directors, for notation of dissent,
26 for exercise of powers generally, for alternative standard
27 and for limitation on standing, providing for renunciation of
28 corporate opportunities, further providing for board of
29 directors, for term of office of directors, for selection of
30 directors, for quorum of and action by directors, for
31 interested directors or officers and quorum, for compensation
32 of directors, for executive and other committees of the board
33 and for officers, providing for officer's standard of care
34 and justifiable reliance and for personal liability of
35 officers and further providing for mandatory indemnification,
36 for duration and extent of coverage, for time of holding
37 meetings of members, for quorum, for voting rights of
38 members, for determination of members of record, for consent
39 of members in lieu of meeting, for derivative action, for
40 eligible member plaintiffs and security for costs and for
41 special litigation committee;
42 in amendments, sale of assets and dissolution, further providing
43 for amendment of articles authorized, for proposal of
44 amendments and for survival of remedies and rights after
45 dissolution;
46 in electric cooperative corporations, further providing for
47 merger, consolidation, division or sale of assets;
48 in general partnerships, further providing for short title and
49 application of chapter, for partner's rights and duties and
50 for rights to information;
51 in limited partnerships, further providing for short title and
52 application of chapter, for signing of filed documents, for
53 registered office, for limited partner rights to information,
54 for general partner rights to information, for derivative
55 action, for security for costs and for special litigation
56 committee;
57 in limited liability companies, further providing for formation
58 of limited liability company and certificate of organization,
59 for registered office, for rights to information, for
60 derivative action, for security for costs, for special

1 litigation committee, for standard of conduct for members and
2 for standard of conduct for managers and officers;
3 in limited liability companies, further providing for
4 application and effect of subchapter;
5 in business trusts, further providing for registered office;
6 in general provisions, further providing for definitions and for
7 execution of documents;
8 in fictitious names, further providing for definitions, for
9 registration, for contracts entered into by entity using
10 unregistered fictitious name and for effect of registration;
11 in corporate and other association names, repealing provisions
12 relating to register established, to certain additions to
13 register, to decennial filings required, to effect of failure
14 to make filings, to late filings and to voluntary termination
15 of registration by corporations and other associations;
16 and making editorial changes.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. The definition of "court" in section 102(a) of
20 Title 15 of the Pennsylvania Consolidated Statutes is amended,
21 the subsection is amended by adding definitions and the section
22 is amended by adding a subsection to read:

23 § 102. Definitions.

24 (a) Defined terms.--Subject to additional or inconsistent
25 definitions contained in subsequent provisions of this title
26 that are applicable to specific provisions of this title, the
27 following words and phrases when used in this title shall have,
28 unless the context clearly indicates otherwise, the meanings
29 given to them in this section:

30 * * *

31 "Affiliate." A person that directly, or indirectly through
32 one or more intermediaries, controls, is controlled by or is
33 under common control with a specified person.

34 "Associate." When used to indicate a relationship with any
35 person:

36 (1) a corporation or other association of which the
37 person is a governor or officer, or is, directly or
38 indirectly, the beneficial owner of interests entitling the

1 person to cast at least 10% of the votes that all interest
2 holders would be entitled to cast in an election of governors
3 of the corporation or other association;

4 (2) a trust or other estate in which the person has a
5 substantial beneficial interest or as to which the person
6 serves as trustee or in a similar fiduciary capacity; and

7 (3) a relative or spouse of the person, or a relative of
8 the spouse, who has the same home as the person.

9 * * *

10 "Conversion." A transaction authorized by Subchapter E of
11 Chapter 3 (relating to conversion).

12 * * *

13 "Court." [Subject] Either:

14 (1) the court or courts specified in a bylaw of a
15 domestic business corporation or domestic nonprofit
16 corporation under section 1513 (relating to forum selection
17 provisions) or section 5513 (relating to forum selection
18 provisions) with respect to an internal corporate claim as
19 defined in that section; or

20 (2) subject to any inconsistent general rule prescribed
21 by the Supreme Court of Pennsylvania:

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

26 [(2)] (ii) where an association results from a
27 merger, division or other transaction without
28 establishing a registered office in this Commonwealth or
29 withdraws as a foreign corporation or association, the
30 court of common pleas in which venue would have been laid

1 immediately prior to the transaction or withdrawal.

2 * * *

3 "Division." A transaction authorized by Subchapter F of
4 Chapter 3 (relating to division).

5 * * *

6 "Domestication." A transaction authorized by Subchapter G of
7 Chapter 3 (relating to domestication).

8 * * *

9 "Interest exchange." A transaction authorized by Subchapter
10 D of Chapter 3 (relating to interest exchange).

11 * * *

12 "Merger." A transaction in which two or more merging
13 associations are combined into a surviving association pursuant
14 to a document filed by the department or similar office in
15 another jurisdiction.

16 * * *

17 "Recklessness." Conduct that involves a conscious disregard
18 of a substantial and unjustifiable risk. The risk must be of
19 such a nature and degree that, considering the nature and intent
20 of the actor's conduct and the circumstances known to the actor,
21 its conscious disregard involves a gross deviation from the
22 standard of conduct that a reasonable person would observe in
23 the actor's situation.

24 * * *

25 "Restricted professional services." The following
26 professional services: chiropractic, dentistry, law, medicine
27 and surgery, optometry, osteopathic medicine and surgery,
28 podiatric medicine, public accounting, psychology or veterinary
29 medicine.

30 * * *

1 (c) Similar laws of other jurisdictions.--The terms
2 "conversion," "division," "domestication," "interest exchange"
3 or "merger," when used in this title, shall include a
4 transaction that has substantively the same effect, however
5 denominated under the law of a foreign jurisdiction.

6 Section 2. Sections 107(a) and 132(d) of Title 15 are
7 amended to read:

8 § 107. Form of records.

9 (a) General rule.--Information maintained [by] or
10 administered by or on behalf of a corporation or other
11 association in the regular course of its business or activities,
12 including shareholder or membership records, books of account
13 and minute books, may be kept in record form.

14 * * *

15 § 132. Functions of Department of State.

16 * * *

17 [(d) Notice of decennial filings.--Whenever a decennial
18 filing is required by Title 54 to be made in the department, the
19 department shall, not earlier than the November 1 prior to the
20 commencement of the decennial year wherever practicable, give
21 notice by mail to the registrant or other party of the decennial
22 filing requirement, which notice shall be accompanied by
23 appropriate application blanks or forms. Failure by the
24 department to give notice to any party, or failure by any party
25 to receive notice, of a decennial filing requirement shall not
26 relieve any party of the obligation to make the decennial
27 filing.]

28 Section 3. Section 136(a) of Title 15 is amended and the
29 section is amended by adding a subsection to read:

30 § 136. Processing of documents by Department of State.

1 (a) Filing of documents.--[If] Except as provided in
2 subsection (f), if a document conforms to section 135 (relating
3 to requirements to be met by filed documents) the Department of
4 State shall forthwith file the document, certify that the
5 document has been filed by endorsing upon the document the fact
6 and date of filing, make and retain a copy thereof and return
7 the document or a copy thereof so endorsed to or upon the order
8 of the person who delivered the document to the department.

9 * * *

10 (f) Rejection of document.--The department may reject a
11 document for filing if the department reasonably believes the
12 document:

13 (1) is being filed fraudulently; or

14 (2) may be used to accomplish a fraudulent, criminal or
15 unlawful purpose.

16 Section 4. Sections 137(a), 138(a) and (b) and 139(c) (2) of
17 Title 15 are amended to read:

18 § 137. Court to pass upon rejection of documents by Department
19 of State.

20 (a) General rule.--Whenever the Department of State rejects
21 a document delivered for filing under this [title or fails to
22 make available a certified duplicate copy within the time
23 provided by section 136(b) (relating to immediate certified
24 copy):

25 (1) the original document or copies thereof;

26 (2) the statement, if any, of the department made under
27 section 136(b) (1) (ii); and

28 (3) any other papers relating thereto;]

29 title, the original document or a copy thereof and any papers
30 relating thereto may be delivered to the prothonotary or clerk

1 of the court vested by or pursuant to Title 42 (relating to
2 judiciary and judicial procedure) with jurisdiction of appeals
3 from the department. Immediately the prothonotary or clerk shall
4 transmit the papers to the court without formality or expense to
5 the person who delivered the original document to the
6 department. The question of the eligibility of the document for
7 filing [in] by the department shall thereupon, at the earliest
8 possible time, be heard by a judge of the court, without jury,
9 in the court or in chambers. The finding of the court, or any
10 judge thereof, that the document is eligible for filing [in] by
11 the department shall be final and the department shall act in
12 accordance therewith. The true intent of this section is to
13 secure for applicants an immediate hearing in court and a
14 determination by the court without delay or expense to the
15 applicants.

16 * * *

17 § 138. Statement of correction.

18 (a) Filing of statement.--Whenever any document authorized
19 or required to be delivered to the department for filing by any
20 provision of this title has been so filed and is an inaccurate
21 record of the action therein referred to or was defectively or
22 erroneously executed, the document may be corrected by
23 delivering to the department for filing a statement of
24 correction. The statement of correction, except as provided in
25 subsection (c), shall be signed by the association or other
26 person that delivered the inaccurate, defective or erroneous
27 document for filing and shall set forth:

28 (1) The name of the association or other person and,
29 subject to section 109 (relating to name of commercial
30 registered office provider in lieu of registered address),

1 the location, including street and number, if any, of its
2 registered or other office.

3 (2) The statute by or under which the association was
4 formed, or the preceding filing was made, in the case of a
5 filing that does not constitute a part of the public organic
6 record of an association.

7 (3) [The] Either:

8 (i) the inaccuracy or defect to be corrected[.]; or

9 (ii) the portion of the document requiring
10 correction in corrected form.

11 (4) [The portion of the document requiring correction in
12 corrected form or, if] If the document was erroneously
13 executed, a statement that the original document shall be
14 deemed reexecuted or [stricken from the records of the
15 department] not effective ab initio, as the case may be.

16 (b) Effect of filing.--

17 (1) The [corrected document] correction shall be
18 effective:

19 (i) Upon filing [in] of the statement of correction
20 by the department, as to those persons who are
21 substantially and adversely affected by the correction.

22 (ii) As of the date the original document was
23 effective, as to all other persons.

24 (2) A filing under this section:

25 (i) shall not have the effect of causing [the
26 original public organic record of an association to be
27 stricken from the records of the department, but] either
28 of the following to cease being effective:

29 (A) the first public organic record of a
30 domestic association that creates the association

1 under any provision of this title other than Chapter
2 3 (relating to entity transactions); or
3 (B) the registration under Subchapter B of
4 Chapter 4 (relating to registration) of a foreign
5 association; but
6 (ii) may be used to correct the public organic
7 record [may be corrected under this section] or
8 registration.

9 * * *

10 § 139. Tax clearance of certain fundamental transactions.

11 * * *

12 (c) Exceptions.--It shall not be necessary to file tax
13 clearance certificates with the Department of State:

14 * * *

15 (2) With articles of dissolution under section 1971
16 (relating to voluntary dissolution by shareholders or
17 incorporators) or 5971 (relating to voluntary dissolution by
18 members or incorporators).

19 * * *

20 Section 5. Title 15 is amended by adding a section to read:

21 § 146. Annual report.

22 (a) Required contents.--A domestic filing entity, domestic
23 limited liability partnership, domestic electing partnership
24 that is not a limited partnership or registered foreign
25 association must deliver to the department for filing an annual
26 report signed by the entity or association that states:

27 (1) its name and jurisdiction of formation;

28 (2) subject to section 109 (relating to name of
29 commercial registered office provider in lieu of registered
30 address), the address of its registered office, if any,

1 including street and number, if any, in this Commonwealth;

2 (3) the name of at least one governor;

3 (4) the names and titles of the persons who are its
4 principal officers, if any, as determined by its governors;

5 (5) the address of its principal office, including
6 street and number, if any, wherever located; and

7 (6) its entity number or similar identifier issued by
8 the department.

9 (b) Date of information.--Information in an annual report
10 must be current as of the date the report is delivered to the
11 department for filing.

12 (c) Filing deadlines.--An annual report must be delivered to
13 the department for filing each year, beginning with the calendar
14 year after which an entity or association first becomes subject
15 to this section, and:

16 (1) before July 1 in the case of a domestic or foreign
17 corporation for profit or not-for-profit;

18 (2) before October 1 in the case of a domestic or
19 foreign limited liability company; and

20 (3) on or before December 31 in the case of any other
21 form of domestic or foreign association.

22 (d) Rejection of report.--If an annual report does not
23 contain the information required by this section, the department
24 must:

25 (1) reject the report;

26 (2) notify promptly in record form the reporting entity
27 or association in a record of the rejection; and

28 (3) return the report for correction.

29 (e) Modification of prior filings.--If an annual report
30 contains information about the registered office which differs

1 from the information shown in the records of the department
2 immediately before the report is delivered to the department for
3 filing, the address of the registered office of the entity or
4 association delivering the report to the department for filing
5 will be deemed to be changed to the address set forth in the
6 report effective as of the filing of the report.

7 (f) Change of information.--The information in an annual
8 report may be changed by delivering to the department an annual
9 report which includes a statement that the report contains a
10 change in the information previously included in a report for
11 that year. The department may not charge a fee for filing a
12 report or processing a change under this subsection.

13 (g) Notice by department.--During the first five years
14 ending after (insert the effective date of this section), the
15 department annually must deliver notice to each association
16 required to file an annual report under this section of the
17 annual report filing requirement. Failure by the department to
18 deliver notice to any party, or failure by any party to receive
19 notice, of an annual report filing requirement does not relieve
20 the party of the obligation to make the annual report filing.

21 (h) Transitional provision.--This section shall take effect
22 on (insert the date that is one year after the effective date of
23 this act).

24 Section 6. Section 151(b) of Title 15 is amended to read:

25 § 151. Short title and application of subchapter.

26 * * *

27 (b) Application.--This subchapter contains an enumeration of
28 fees to be charged by the [Corporation Bureau of the department]
29 bureau for services performed under this title or any other
30 provision of law relating to corporations or associations and

1 under Titles 13 (relating to commercial code), 17 (relating to
2 credit unions) and 54 (relating to names).

3 Section 7. Section 153(b) of Title 15 is amended and
4 subsection (a) is amended by adding paragraphs to read:

5 § 153. Fee schedule.

6 (a) General rule.--The nonrefundable fees of the bureau,
7 including fees for the public acts and transactions of the
8 Secretary of the Commonwealth administered through the bureau,
9 shall be as follows:

10 * * *

11 (18) Annual report of domestic or foreign
12 association:

13 (i) Annual report delivered to the bureau by a
14 nonprofit corporation or a limited partnership or
15 limited liability company with a not-for-profit
16 purpose..... 0

17 (ii) Annual report delivered to the bureau
18 electronically..... 30

19 (iii) Annual report not delivered to the
20 bureau electronically..... 50

21 (19) Reinstatement of domestic association:

22 (i) Application for reinstatement delivered to
23 the bureau electronically..... 70

24 (ii) Application for reinstatement not
25 delivered to the bureau electronically..... 80

26 (iii) Additional fee required by section
27 383(a)(4)(ii) (relating to reinstatement) for each
28 annual report not previously paid..... 30

29 (20) Statement of validation:

30 (i) Statement of validation, any filing fee

1 referred to in section 227(c) (relating to
2 statement of validation), plus..... 125

3 (ii) (Reserved).

4 (b) Daily listings.--The bureau may provide listings or
5 copies [of microfilm], or both, of complete daily filings of any
6 class of documents or papers for a fee of 25¢ per filing listed
7 or set forth therein.

8 * * *

9 Section 8. Section 202(b) (1) of Title 15 is amended and
10 subsection (b) is amended by adding a paragraph to read:

11 § 202. Requirements for names generally.

12 * * *

13 (b) Duplicate use of names.--Except as provided in
14 subsection (f), the proper name of a covered association must be
15 distinguishable on the records of the department from the
16 following:

17 (1) The proper name of another covered association [or
18 the name of an association registered at any time under 54
19 Pa.C.S. Ch. 5 (relating to corporate and other association
20 names)], unless the covered association [or other
21 association] has:

22 (i) stated that it is about to change its name, is
23 about to cease to do business, is being wound up or is a
24 foreign association about to withdraw from doing business
25 in this Commonwealth, and the statement and a consent to
26 the adoption of the name are delivered to the department
27 for filing;

28 (ii) filed a tax return or certificate with the
29 Department of Revenue indicating that the covered
30 association or other association is out of existence or

1 has failed for a period of three successive years to file
2 with the Department of Revenue a report or return
3 required by law and the fact of the failure has been
4 certified by the Department of Revenue to the Department
5 of State;

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

14 (iv) had the registration of its name under 54
15 Pa.C.S. Ch. 5 terminated.]

16 (1.1) Paragraph (1) does not apply to protect the proper
17 name of another covered association during the time while:

18 (i) the association is administratively dissolved
19 under Subchapter H of Chapter 3 (relating to
20 administrative dissolution or cancellation), if the
21 association is a domestic filing entity;

22 (ii) the statement of registration of the
23 association is canceled under Subchapter H of Chapter 3,
24 if the association is a domestic limited liability
25 partnership; or

26 (iii) the statement of election of the association
27 is canceled under Subchapter H of Chapter 3, if the
28 association is an electing partnership.

29 * * *

30 Section 9. Sections 207(a) and (b) and 209(a) and (b) of

1 Title 15 are amended to read:

2 § 207. Required name changes by senior associations.

3 (a) Loss of rights to name.--A covered association shall
4 cease to have the exclusive right to its proper name [if the
5 association]:

6 (1) [has failed to file in the Department of Revenue a
7 report or a return required by law;

8 (2)] while it is administratively dissolved under
9 Subchapter H of Chapter 3 (relating to administrative
10 dissolution or cancellation), if the association is a
11 domestic filing entity;

12 (2) while its statement of registration is canceled
13 under Subchapter H of Chapter 3, if the association is a
14 domestic limited liability partnership;

15 (3) while its statement of election is canceled under
16 Subchapter H of Chapter 3, if the association is an electing
17 partnership; or

18 (4) if it has filed in the Department of Revenue a tax
19 return or certificate indicating that it is out of existence.
20 [; or

21 (3) has failed to file the most recent required
22 decennial filing under 54 Pa.C.S. § 503 (relating to
23 decennial filings required).]

24 (b) Adoption of new name on [reactivation] reinstatement--

25 Upon the removal of the reason why a covered association has
26 lost the exclusive right to its proper name under subsection
27 (a), the association shall make inquiry with the Department of
28 State with regard to the availability of its name and, if the
29 name has been appropriated by another person, the covered
30 association shall adopt a new name in accordance with law before

1 resuming its activities.

2 * * *

3 § 209. Registration of name of nonregistered foreign
4 association.

5 (a) General rule.--A nonregistered foreign association may
6 register [its name under 54 Pa.C.S. Ch. 5 (relating to corporate
7 and other association names) if the name] a name that is
8 available for use by a registered foreign association pursuant
9 to section 206 (relating to requirements for foreign association
10 names) by delivering to the department for filing an application
11 for registration of name, signed by the association, setting
12 forth:

13 (1) The name of the association.

14 (2) The address, including street and number, if any, of
15 the principal office of the association.

16 (3) The name being registered.

17 (b) Annual renewal.--An association that has in effect [a
18 registration of its] the registration of a name may renew the
19 registration from year to year by annually delivering to the
20 department for filing an application for renewal setting forth
21 the facts required to be set forth in an original application
22 for registration. A renewal application may be filed between
23 October 1 and December 31 in each year and shall extend the
24 registration for the following calendar year.

25 * * *

26 Section 10. The heading of Subchapter B of Chapter 2 of
27 Title 15 is amended to read:

28 SUBCHAPTER B

29 [(Reserved)]

30 RATIFICATION OF DEFECTIVE

1 any action taken by or on behalf of a previous entity pursuant
2 to a plan or plan agreement providing for the formation or
3 augmentation of the domestic entity.

4 "Failure of authorization." Either:

5 (1) the failure of an entity action to have been
6 authorized, adopted, approved or otherwise effected in
7 compliance with the organic rules, a resolution of the
8 governors, an applicable rule, a plan, a plan agreement or a
9 governance agreement or the disclosure set forth in a proxy
10 or consent solicitation statement regarding the approval or
11 authorization of the entity action; or

12 (2) a circumstance where the governors cannot determine
13 that an entity action was validly authorized, approved or
14 otherwise effected in compliance with paragraph (1).

15 "Formation or augmentation." The formation of an entity
16 pursuant to a plan or the vesting of property, liabilities,
17 rights, privileges, immunities or powers in an entity pursuant
18 to a plan.

19 "Governance agreement." An agreement regarding the
20 governance of an entity or the transfer of interests in the
21 entity to which the entity and at least one interest holder are
22 parties or are stated or intended beneficiaries.

23 "Overissue." The purported issuance:

24 (1) with respect to a domestic business corporation, of:

25 (i) shares of a class or series of a business
26 corporation in excess of the number of shares of the
27 class or series the corporation has the power to issue
28 under its articles of incorporation at the time of the
29 issuance; or

30 (ii) shares of any class or series that is not at

1 the time authorized for issuance by the articles of
2 incorporation of a business corporation; or
3 (2) with respect to any type of domestic entity other
4 than a business corporation, of:

5 (i) interests of any type in excess of the number of
6 interests of that type the entity has the power to issue
7 under its organic rules at the time of the issuance; or

8 (ii) interests of any type that is not at the time
9 authorized for issuance by the organic rules of the
10 entity.

11 "Plan." A plan as defined in section 312 or a plan of asset
12 transfer under section 1932 or other sale, lease, exchange or
13 other disposition of all or substantially all assets, in each
14 case approved or adopted or implemented by an entity or by a
15 previous entity.

16 "Plan agreement." An agreement providing for the adoption or
17 implementation of a plan to which the entity is a party or
18 providing for the formation or augmentation of the entity.

19 "Previous entity." In the case of ratification of the
20 formation or augmentation of a domestic entity pursuant to a
21 plan, each entity that adopted, approved or implemented the
22 plan, other than the ratifying entity.

23 "Putative interests." The shares or interests of any class,
24 series or type, including shares or interests issued upon
25 exercise of rights, options, warrants or other securities
26 convertible into shares or interests, that purportedly were
27 created or issued as a result of a defective entity action.

28 "Ratifying entity." The domestic entity whose governors or
29 interest holders have ratified a defective entity action or who
30 seek review under section 228 of a defective entity action that

1 has not been ratified.

2 "Valid interests." The shares or interests of any class,
3 series or type that have been duly authorized and validly issued
4 in accordance with all applicable rules, including as a result
5 of ratification or validation under this subchapter.

6 "Validation effective time." With respect to a defective
7 entity action ratified under this subchapter, means the later
8 of:

9 (1) the time at which the ratification of the defective
10 entity action is approved in accordance with this subchapter
11 by either:

12 (i) the interest holders; or

13 (ii) the governors, if approval of the interest
14 holders is not required; and

15 (2) the time at which any statement of validation filed
16 in accordance with section 227 (relating to statement of
17 validation) becomes effective.

18 § 222. Nonexclusivity.

19 Ratification or validation under this subchapter is not the
20 exclusive means of ratifying or validating a defective entity
21 action, and the absence or failure of ratification or validation
22 in accordance with this subchapter does not, of itself, affect
23 the validity or effectiveness of any entity action properly
24 ratified under common law or otherwise, nor does it create a
25 presumption that an entity action is or was a defective entity
26 action or void or voidable.

27 § 223. Ratification of defective entity actions.

28 (a) Action by governors.--To ratify a defective entity
29 action under this subchapter other than the ratification of an
30 election of the initial governors under subsection (b), the

1 governors of the ratifying entity must take an action, in
2 accordance with section 224 (relating to action on
3 ratification), stating:

4 (1) the defective entity action to be ratified and, if
5 the defective entity action involved the issuance of putative
6 interests, the number and type of putative interests
7 purportedly issued;

8 (2) the date of the defective entity action;

9 (3) the nature of the failure of authorization with
10 respect to the defective entity action to be ratified; and

11 (4) that the governors approve the ratification of the
12 defective entity action.

13 (b) Election of initial governors.--In the event that the
14 defective entity action to be ratified relates to the election
15 of the initial governors of an entity, a majority of the persons
16 who, at the time of the ratification, are exercising the powers
17 of the governors may take an action stating:

18 (1) the name of each person who first took action in the
19 name of the entity as the initial governors of the entity;

20 (2) the earlier of the date on which each person first
21 took action or was purported to have been elected as an
22 initial governor; and

23 (3) that the ratification of the election of each person
24 as an initial governor is approved.

25 (c) Action by interest holders.--If any provision of the
26 organic rules, a resolution of the governors, an applicable
27 rule, a plan, a plan agreement or a governance agreement
28 requires action by the interest holders or would have required
29 action by the interest holders of the entity or of a previous
30 entity at the date of the occurrence of the defective entity

1 action, and that required action by the interest holders has not
2 previously been obtained, the ratification of the defective
3 entity action approved in the action taken by the governors
4 under subsection (a) shall be submitted to the interest holders
5 for action in accordance with section 224.

6 (d) Abandonment of ratification.--Unless otherwise provided
7 in the action taken by the governors under subsection (a), after
8 the action by the governors has been taken and, whether or not
9 the action has been approved by the interest holders, the
10 governors may abandon the ratification at any time before the
11 validation effective time without further action of the interest
12 holders.

13 § 224. Action on ratification.

14 (a) Quorum and required vote of governors.--The quorum and
15 voting requirements applicable to a ratifying action by the
16 governors under section 223 (relating to ratification of
17 defective entity actions) shall be the quorum and voting
18 requirements applicable to the entity action proposed to be
19 ratified at the time the ratifying action is taken.

20 (b) Notice to interest holders.--If the ratification of the
21 defective entity action requires action by the interest holders
22 under section 223(c), and if the action is to be taken at a
23 meeting, the entity must give notice to each holder of
24 interests, regardless of whether entitled to vote, as of the
25 record date for notice of the meeting and as of the date of the
26 occurrence of the defective entity action. If the ratification
27 relates to an overissue, the entity must give notice to the
28 holders of both valid and putative interests. The entity is not
29 required to give a notice otherwise required by this subsection
30 to holders of valid or putative interests whose identities or

1 addresses for notice cannot be determined from the records of
2 the entity. The notice must state that the purpose, or one of
3 the purposes, of the meeting is to consider ratification of a
4 defective entity action and must be accompanied by:

5 (1) either a copy of the action taken by the governors
6 in accordance with section 223 or the information required by
7 section 223(a) (1), (2), (3) and (4); and

8 (2) a statement that any claim that the ratification of
9 the defective entity action and any putative interests issued
10 as a result of the defective entity action should not be
11 effective, or should be effective only on certain conditions,
12 must be brought within 120 days after the applicable
13 validation effective time.

14 (c) Quorum and required vote of interest holders.--Except as
15 provided in subsection (d) with respect to the voting
16 requirements to ratify the election of governors, the quorum and
17 voting requirements applicable to the approval by the interest
18 holders required by section 223(c) shall be the quorum and
19 voting requirements applicable to the entity action proposed to
20 be ratified at the time of the interest holder approval, except
21 that the presence or approval of interests of any class or
22 series of which no interests are then outstanding, or of any
23 person that is no longer an interest holder, shall not be
24 required.

25 (d) Election of governors.--Action by interest holders
26 ratifying the election of governors requires either:

27 (1) that the votes cast within the voting group favoring
28 ratification exceed the votes cast opposing ratification of
29 the election at a meeting at which a quorum is present; or

30 (2) in the case of directors or a class of directors of

1 a business corporation elected by cumulative voting, that the
2 votes cast against ratification not be sufficient to elect
3 one or more directors to the board or to the class.

4 (e) Putative interests.--The following apply to putative
5 interests:

6 (1) Putative interests on the record date for
7 determining the interest holders entitled to vote on any
8 matter submitted to interest holders under section 223(c)
9 shall be entitled to vote and shall be counted for quorum
10 purposes in any vote to approve the ratification of the
11 matter if:

12 (i) they are shares of a registered corporation
13 described in section 2502(1) (relating to registered
14 corporation status); and

15 (ii) have been held of record in fungible bulk by a
16 registered clearing agency or its nominee, acting as
17 securities intermediary.

18 (2) In all other cases, putative interests on the record
19 date for determining the interest holders entitled to vote on
20 any matter submitted to interest holders under section 223(c)
21 (and without giving effect to any ratification of putative
22 interests that becomes effective as a result of the vote) are
23 not entitled to vote and do not count for quorum purposes in
24 any vote to approve the ratification of a defective entity
25 action.

26 (f) Required amendment.--If the approval under this section
27 of putative interests would result in an overissue, in addition
28 to the approval required by section 223, approval of an
29 amendment to the organic rules of the entity to increase the
30 number of interests of an authorized class or series or to

1 authorize the creation of a class or series of interests so
2 there will be no over issue is also required.

3 § 225. Optional notice.

4 (a) General rule.--If interest holder approval is not
5 required under section 223(c) (relating to ratification of
6 defective entity actions) or if notice has not been given in
7 accordance with section 224(b) (relating to action on
8 ratification), the ratifying entity nonetheless may give notice
9 of an action taken under section 223 to each interest holder,
10 including the holders of both valid and putative interests,
11 regardless of whether entitled to vote, as of both:

12 (1) the date of the action by the governors; and
13 (2) the date of the defective entity action ratified.

14 (b) Contents.--The notice shall contain:

15 (1) either a copy of the action taken by the governors
16 in accordance with section 223(a) or (b) or the information
17 required by section 223(a) (1), (2), (3) and (4) or section
18 223(b) (1), (2) and (3), as applicable; and

19 (2) a statement that any claim that the ratification of
20 the defective entity action and any putative interests issued
21 as a result of the defective entity action should not be
22 effective, or should be effective only on certain conditions,
23 must be brought within 120 days after the giving of the
24 notice.

25 (c) Exception.--Notice under this section is not required to
26 be given to holders of valid and putative interests whose
27 identities or addresses for notice cannot be determined from the
28 records of the entity.

29 (d) Notice by registered corporations.--A notice given by a
30 registered corporation under this section may be given by means

1 of a publicly available filing with the United States Securities
2 and Exchange Commission.

3 § 226. Effect of ratification.

4 (a) General rule.--A defective entity action is not void or
5 voidable, or deprived of full effect, as a result of its failure
6 of authorization if ratified in accordance with this subchapter,
7 unless the court determines under section 228 (relating to
8 judicial proceedings regarding validity of entity actions) that
9 the ratification was not valid.

10 (b) Specific aspects of validation.--Subject to a court
11 determination under section 228 that the ratification was not
12 valid, from and after the validation effective time of a
13 defective entity action, and without regard to the 120-day
14 period during which a claim may be brought under section 228:

15 (1) The defective entity action is not void or voidable,
16 or deprived of full effect, as a result of its failure of
17 authorization, and is duly authorized and a valid entity
18 action effective as of the date when the defective entity
19 action was taken.

20 (2) The issuance of each putative interest or fraction
21 of a putative interest purportedly issued pursuant to the
22 defective entity action is not void or voidable, and each
23 putative interest or fraction of a putative interest is an
24 identical, duly authorized and validly issued interest or
25 fraction of an interest as of the time it was purportedly
26 issued.

27 (3) Any entity action taken subsequent to the defective
28 entity action in reliance on the defective entity action
29 having been validly effected is duly authorized and valid as
30 of the time taken. Any subsequent defective entity action

1 resulting directly or indirectly from the original defective
2 entity action, if the failure of authorization of the
3 subsequent defective entity action relates solely to the
4 defective entity action ratified under this subchapter, is
5 duly authorized and valid as of the time taken.

6 (4) If a document was previously filed by the department
7 in respect of the defective entity action, any statement in
8 the document to the effect that the defective entity action
9 was validly approved in accordance with applicable rules is
10 deemed stricken from the document.

11 § 227. Statement of validation.

12 (a) General rule.--If a defective entity action ratified
13 under this subchapter would have required under any other
14 section of this title a filing in accordance with this title,
15 the ratifying entity shall deliver to the department for filing
16 a statement of validation in accordance with this section,
17 regardless of whether a filing was previously made in respect of
18 the defective entity action and in lieu of a filing otherwise
19 required by this title. The statement of validation shall serve
20 to amend or substitute for any other filing with respect to the
21 defective entity action required by this title.

22 (b) Contents.--The statement of validation must be signed by
23 the ratifying entity and set forth:

24 (1) the name of the ratifying entity;

25 (2) subject to section 109 (relating to name of
26 commercial registered office provider in lieu of registered
27 address), the address of its registered office, including
28 street and number, if any, in this Commonwealth;

29 (3) the defective entity action that is the subject of
30 the statement of validation (including, in the case of any

1 defective entity action involving the issuance of putative
2 interests, the number and type of putative interests issued
3 and the date or dates upon which the putative interests were
4 purported to have been issued);

5 (4) the date of the defective entity action;

6 (5) the nature of the failure of authorization in
7 respect of the defective entity action;

8 (6) a statement that the defective entity action was
9 ratified in accordance with this subchapter, including the
10 date on which the governors ratified the defective entity
11 action and the date, if any, on which the interest holders
12 approved the ratification of the defective entity action; and

13 (7) the following information with respect to previous
14 documents delivered to the department by the ratifying entity
15 or by a previous entity:

16 (i) if a document was previously filed by the
17 department in respect to the defective entity action and
18 no changes to the filing are required to give effect to
19 the ratification of the defective entity action, the
20 statement of validation must:

21 (A) state the name of the entity filing the
22 statement of validation and the statute under which
23 it was incorporated or formed;

24 (B) state the name, title and filing date of the
25 filing previously made and any previous statement of
26 correction to that filing; and

27 (C) have attached a copy of the filing
28 previously made, together with any previous statement
29 of correction to that filing.

30 (ii) if a document was previously filed by the

1 department in respect to the defective entity action and
2 the filing requires a change to give effect to the
3 ratification of the defective entity action, the
4 statement of validation must:

5 (A) state the name of the entity filing the
6 statement of validation and the statute under which
7 it was incorporated or formed;

8 (B) state the name, title and filing date of the
9 filing previously made and any previous statement of
10 correction to that filing;

11 (C) have attached a filing containing all of the
12 information required to be included under the
13 applicable section or sections of this title to give
14 effect to the defective entity action; and

15 (D) state the date and time that the filing
16 attached to the statement of validation is deemed to
17 have become effective; or

18 (iii) if a document was not previously filed by the
19 department in respect to the defective entity action and
20 the defective entity action would have required a filing
21 under any other section of this title, the statement of
22 validation must:

23 (A) state the name of the entity filing the
24 statement of validation and the statute under which
25 it was incorporated or formed;

26 (B) have attached a document containing all of
27 the information required to be included under the
28 applicable section or sections of this title to give
29 effect to the defective entity action; and

30 (C) state the date and time that the document is

1 deemed to have become effective.

2 (c) Additional filing fee.--In addition to the filing fee
3 required under section 153 (relating to fee schedule) for the
4 statement of validation, if the statement of validation relates
5 to a situation described in subsection (b)(7)(iii), the entity
6 shall also pay a fee equal to the filing fee for that document
7 required by section 153 at the time the statement of validation
8 is delivered for filing.

9 § 228. Judicial proceedings regarding validity of entity
10 actions.

11 (a) Standing.--Subject to subsection (f), review of a
12 ratification under this subchapter or of a defective entity
13 action may be commenced in the court by:

14 (1) the ratifying entity; or

15 (2) a person that, at the time of the defective action
16 or its ratification, was:

17 (i) a successor to the ratifying entity;

18 (ii) a governor of the ratifying entity;

19 (iii) an interest holder or beneficial owner of an
20 interest in the ratifying entity or in a previous entity;

21 or

22 (iv) materially and adversely affected by the
23 ratification.

24 (b) Parties.--No other party in addition to the ratifying
25 entity need be joined in order for the court to adjudicate the
26 matter. In an action filed by the ratifying entity, the court
27 may require notice of the action be provided to other persons
28 specified by the court and permit such other persons to
29 intervene in the action.

30 (c) Determination by the court.--In an action under this

1 section, the court may:

2 (1) determine the validity and effectiveness of a
3 ratification under this subchapter;

4 (2) determine the validity and effectiveness of any
5 defective entity action not ratified under this subchapter;
6 and

7 (3) establish conditions upon the validity or
8 effectiveness of a ratification or defective entity action
9 reviewed by the court.

10 (d) Time limitation.--Notwithstanding any other provision of
11 applicable law, an action asserting that the ratification of a
12 defective entity action and any putative interests issued as a
13 result of the ratification of the defective entity action should
14 not be valid must be brought within 120 days after notice has
15 been given as provided in section 224(b) (relating to action on
16 ratification) or 225 (relating to optional notice).

17 (e) Effect on validation effective time.--The validation
18 effective time shall not be affected by the filing or pendency
19 of a judicial proceeding under this section or otherwise, unless
20 otherwise ordered by the court.

21 (f) Exclusivity.--An action to review a ratification under
22 this subchapter may be brought only by a person identified in
23 subsection (a) and only in the court.

24 § 229. Limitation on voiding certain defective entity actions.

25 (a) Bar on voiding certain defective entity actions.--
26 Subject to subsection (d), after the expiration of the
27 applicable period set forth in subsection (c):

28 (1) a defective entity action other than an overissue is
29 not void or voidable as the result of the failure of
30 authorization and is a valid entity action effective as of

1 the date of the defective entity action;

2 (2) any entity action taken subsequent to the defective
3 entity action in reliance on the defective entity action
4 having been validly effected is valid as of the time taken;
5 and

6 (3) any subsequent defective entity action resulting
7 directly or indirectly from the original defective entity
8 action is duly authorized and valid as of the time taken, if
9 the failure of authorization of the subsequent defective
10 entity action relates solely to the defective entity action
11 referred to in paragraph (1).

12 (b) Bar on voiding certain overissues.--Subject to
13 subsection (d), after the expiration of the applicable period
14 set forth in subsection (c):

15 (1) an overissue is not void or voidable on the basis of
16 having been in excess of the number of interests of the class
17 or series that the domestic entity had the power to issue or
18 on the basis of the entity's lack of authority to issue
19 interests of the class or series, and is a valid entity
20 action effective as of the date of the overissue;

21 (2) the putative interests are duly authorized and
22 validly issued valid interests;

23 (3) any entity action taken subsequent to the overissue
24 in reliance on the overissue having been validly effected is
25 valid as of the time taken; and

26 (4) any subsequent defective entity action resulting
27 directly or indirectly from the original overissue is duly
28 authorized and valid as of the time taken, if the failure of
29 authorization of the subsequent defective entity action
30 relates solely to the defective entity action referred to in

1 paragraph (1).

2 (c) Applicable period.--The applicable period under this
3 section shall be the shortest of:

4 (1) in the case of a defective entity action taken by a
5 registered corporation, two years from the date when the
6 registered corporation, or any successor or any person
7 directly or indirectly owning all the shares of the
8 registered corporation or of any successor to the registered
9 corporation, has disclosed the defective entity action in a
10 public filing with the Securities and Exchange Commission;

11 (2) six years from the date when:

12 (i) the defective entity action is set forth in or
13 implemented or purported to be implemented through the
14 public organic record of the entity taking the action; or

15 (ii) disclosure in record form of the occurrence of
16 the defective entity action is received by the person or
17 persons whose authorization would have been necessary for
18 the entity action not to have been defective; or

19 (iii) in the case of an overissue of shares of a
20 business corporation, disclosure in record form is given
21 to all shareholders in the manner set forth in section
22 1702 (relating to manner of giving notice) of the fact of
23 the issuance of the putative interests or of the
24 existence of the putative interests resulting from the
25 overissue; and

26 (3) 21 years after the defective entity action.

27 (d) Application to court to void defective entity action.--
28 To the extent that relief is available under other applicable
29 law, a person entitled to assert under applicable law that a
30 defective entity action is void or voidable may, before the

1 expiration of the applicable period set forth in this section,
2 file an action for relief declaring or otherwise establishing
3 that the defective entity action is void or voidable. If such an
4 action is filed, the operation of subsection (a) or subsection
5 (b) shall be suspended until the final resolution of the action,
6 and, to the extent that relief is obtained, subsection (a) and
7 subsection (b) shall not apply.

8 (e) Other relief not affected.--The operation of subsections
9 (a) and (b) and the time periods set forth in subsection (c) do
10 not affect the availability of relief under applicable law other
11 than this subchapter relating to a defective entity action not
12 predicated on:

13 (1) a failure of authorization under this title relating
14 thereto;

15 (2) a lack of power or authority under section 1521
16 (relating to authorized shares) or the organic rules
17 resulting in an overissue; or

18 (3) the asserted void or voidable status of the
19 defective entity action.

20 (f) No tolling.--The operation of subsection (c) is not
21 tolled by reason of any person's unawareness of the failure of
22 authorization of the defective entity action or other grounds,
23 other than, in the case of subsections (c)(1) and (c)(2), active
24 and deliberate fraud, concealment or forgery proven by clear and
25 convincing evidence.

26 (g) Presumptions.--For purposes of this section, the
27 governors and interest holders of the entity are deemed to have
28 acted in reliance on the defective entity action in authorizing
29 subsequent entity actions unless clear and convincing evidence
30 demonstrates a lack of such reliance. For purposes of subsection

1 (c)(2)(ii) and (iii), a contemporaneous record in record form of
2 the giving of disclosure by a governor, officer or agent of the
3 entity is presumptive evidence of the giving and receipt of such
4 disclosure.

5 (h) Amendment of organic rules following overissue.--After
6 the expiration of the applicable period applicable to an
7 overissue, the domestic entity may, and within a reasonable
8 period after a request in record form of a holder of formerly
9 putative interests resulting from an overissue must, adopt an
10 amendment to its organic rules:

11 (1) increasing the number of interests of the class or
12 series that includes the formerly putative interests to the
13 minimum number necessary for the entity's organic rules to
14 set forth the power of the entity to have issued the total
15 number of issued interests of the class or series held by all
16 interest holders; or

17 (2) otherwise amending its organic rules to the extent
18 necessary to authorize the creation and issuance of the class
19 or series of formerly putative interests.

20 (i) Effectiveness of section.--In the case of a defective
21 entity action occurring before (insert the effective date of
22 this act):

23 (1) the operation of subsections (a) and (b) is
24 suspended until (insert the first anniversary of the
25 effective date of this act), notwithstanding any expiration
26 of the applicable period set forth in subsection (c);

27 (2) despite any expiration of the applicable period set
28 forth in subsection (c), a person entitled to assert under
29 applicable law that a defective entity action is void or
30 voidable may file an action under subsection (d) if the

1 action is filed on or before (insert the first anniversary of
2 the effective date of this act);

3 (3) any action pending on (insert the effective date of
4 this act), seeking relief on the grounds that a defective
5 entity action is void or voidable, including any relief that
6 may be obtained in the action, is not affected by this
7 section;

8 (4) any final judgment relating to the defective entity
9 action that had become no longer subject to appeal before
10 (insert the effective date of this act) is not affected by
11 this section; and

12 (5) this section shall otherwise apply with full
13 retroactive effect to a defective entity action.

14 Section 12. The definitions of "conversion," "division,"
15 "domestication," "interest exchange" and "merger" in section
16 312(a) and (b) of Title 15 are amended to read:

17 § 312. Definitions.

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

21 * * *

22 ["Conversion." A transaction authorized by Subchapter E
23 (relating to conversion).]

24 * * *

25 ["Division." A transaction authorized by Subchapter F
26 (relating to division).]

27 * * *

28 ["Domestication." A transaction authorized by Subchapter G
29 (relating to domestication).]

30 "Interest exchange." A transaction authorized by Subchapter

1 D (relating to interest exchange).]

2 * * *

3 ["Merger." A transaction in which two or more merging
4 associations are combined into a surviving association pursuant
5 to a document filed by the department or similar office in
6 another jurisdiction.]

7 * * *

8 (b) Index of definitions.--Following is a nonexclusive list
9 of definitions in section 102 (relating to definitions) that
10 apply to this chapter:

11 "Act" or "action."

12 "Banking institution."

13 "Conversion."

14 "Department."

15 "Dissenters rights."

16 "Division."

17 "Domestic entity."

18 "Domestication."

19 "Entity."

20 "Filing entity."

21 "Foreign entity."

22 "Governor."

23 "Interest."

24 "Interest exchange."

25 "Interest holder."

26 "Merger."

27 "Obligation."

28 "Organic law."

29 "Organic rules."

30 "Private organic rules."

1 "Property."
2 "Public organic record."
3 "Record form."
4 "Registered foreign association."
5 "Representative."
6 "Sign."
7 "Transfer."
8 "Type."

9 Section 13. Sections 313 and 315(a) of Title 15 are amended
10 to read:

11 § 313. Relationship of chapter to other provisions of law.

12 [(a) Antitakeover provisions.--]A transaction under this
13 chapter to which a [registered] business corporation is a party
14 may not impair any right or obligation that a person has under,
15 and may not make applicable or inapplicable to the corporation,
16 any provision of section 2538 (relating to approval of
17 transactions with interested shareholders) or 2539 (relating to
18 adoption of plan of merger by board of directors) or Subchapters
19 E (relating to control transactions), F (relating to business
20 combinations), G (relating to control-share acquisitions), H
21 (relating to disgorgement by certain controlling shareholders
22 following attempts to acquire control), I (relating to severance
23 compensation for employees terminated following certain control-
24 share acquisitions) and J (relating to business combination
25 transactions - labor contracts) of Chapter 25, nor shall it
26 change the standard of care applicable to the directors under
27 Subchapter B of Chapter 17 (relating to fiduciary duty) unless,
28 in addition to the requirements of this chapter:

29 (1) If the corporation does not survive the transaction,
30 the transaction satisfies any requirements of the provision

1 applicable to the transaction.

2 (2) If the corporation survives the transaction, the
3 approval of the transaction is by a vote of the shareholders
4 or directors which would be sufficient to impair the right or
5 obligation under the provision or make [the corporation
6 subject to] the provision[.

7 (b) Transitional provision.--

8 (1) This subsection applies to a transaction of a type
9 authorized by this chapter if:

10 (i) prior to July 1, 2015, a step has been taken to
11 effectuate the transaction; but

12 (ii) the transaction does not take effect by July 1,
13 2015.

14 (2) Except as set forth in paragraph (3), the
15 transaction shall remain subject to the former provisions of
16 law supplied by this chapter until the transaction:

17 (i) is abandoned; or

18 (ii) takes effect.

19 (3) Notwithstanding paragraph (2), if the plan provides
20 that this chapter applies to the transaction, this chapter
21 shall apply to the transaction after June 30, 2015.]

22 applicable or inapplicable to the corporation or change the
23 standard of care. A transaction that causes the corporation
24 to cease to be a registered corporation or to cease to be a
25 registered corporation described in a particular provision
26 shall not be considered a transaction rendering the provision
27 inapplicable to the corporation for purposes of this section.

28 § 315. Nature of transactions.

29 (a) General rule.--The fact that a sale or conversion of the
30 interests in or assets of an association or a transaction under

1 [a particular subchapter] this chapter or other law produces a
2 result that could be accomplished in any other manner permitted
3 by a different [subchapter] set of provisions of this chapter or
4 other law shall not be a basis for recharacterizing the sale,
5 conversion or transaction as a different form of sale,
6 conversion or transaction under [any other subchapter or other
7 law] this chapter.

8 * * *

9 Section 14. Section 318(a) is amended by adding a paragraph
10 to read:

11 § 318. Excluded entities and transactions.

12 (a) Excluded entities.--The following entities may not
13 participate in a transaction under this chapter:

14 * * *

15 (3) A credit union.

16 * * *

17 Section 15. Section 321(a), (c) and (f) of Title 15 are
18 amended and the section is amended by adding a subsection to
19 read:

20 § 321. Approval by business corporation.

21 (a) Proposal of plan.--Except where the approval of the
22 board of directors is unnecessary pursuant to section 330
23 (relating to alternative means of approval of transactions), a
24 plan shall be proposed in the case of a domestic business
25 corporation by the adoption by the board of directors of a
26 resolution approving the plan[.] and, in the case of an offer
27 referred to in subsection (f), recommending that the
28 shareholders tender their shares to the offeror in response to
29 the offer. Except where the approval of the shareholders is
30 unnecessary under this chapter, the board of directors shall

1 direct that the plan be submitted to a vote of the shareholders
2 entitled to vote thereon at a regular or special meeting of the
3 shareholders.

4 * * *

5 (c) Shareholder vote required.--Except as provided in
6 section 1757 (relating to action by shareholders) or subsection
7 (d) or (f), a plan shall be adopted by a domestic business
8 corporation that is a party to the transaction under the plan
9 upon receiving the affirmative vote of a majority of the votes
10 cast by all shareholders entitled to vote on the plan and, if
11 any class or series of shares is entitled to vote thereon as a
12 class, the affirmative vote of a majority of the votes cast in
13 each class vote. The holders of any class or series of shares of
14 a domestic business corporation that is a party to a transaction
15 under a plan that would effect any change in the articles of the
16 corporation shall be entitled to vote as a class on the plan if
17 they would have been entitled to a class vote under the
18 provisions of section 1914 (relating to adoption of amendments)
19 had the change been accomplished under Subchapter B of Chapter
20 19 (relating to amendment of articles). Except as provided in
21 section 330, a proposed plan shall not be deemed to have been
22 adopted by a domestic business corporation unless it has also
23 been approved by the board of directors, regardless of the fact
24 that the board has directed or suffered the submission of the
25 plan to the shareholders for action.

26 * * *

27 (f) Two-step transactions.--Unless the articles of
28 incorporation of a registered corporation otherwise provide,
29 approval by its shareholders of a plan of merger or interest
30 exchange is not required if the transaction complies with the

1 following:

2 (1) The plan of merger or interest exchange:

3 (i) permits or requires the merger or interest
4 exchange to be effected under this subsection; and

5 (ii) provides that, if the merger or interest
6 exchange is to be effected under this subsection, the
7 merger or interest exchange will be effected as soon as
8 practicable following the satisfaction of the requirement
9 set forth in paragraph (6).

10 (2) Another party to the merger, the acquiring
11 association in the interest exchange, or a parent of another
12 party to the merger or the acquiring association in the
13 interest exchange, makes an offer to purchase, on the terms
14 provided in the plan of merger or interest exchange, all of
15 the outstanding shares of the corporation that, absent this
16 subsection, would be entitled to vote on the plan of merger
17 or interest exchange, except that:

18 (i) the offer may exclude shares that are:

19 (A) owned at the commencement of the offer by
20 the corporation, the offeror, any parent of the
21 offeror, or any wholly owned subsidiary of any of the
22 foregoing; or

23 (B) described in paragraph (6)(iii); and

24 (ii) the offer may be subject to a specific minimum
25 number of shares or percentage of shares being tendered
26 and any other conditions permitted by applicable law.

27 (3) The offer discloses that the plan of merger or
28 interest exchange provides that the merger or interest
29 exchange will be effected as soon as practicable following
30 the satisfaction of the requirement set forth in paragraph

1 (6) and that the shares of the corporation that are not
2 tendered in response to the offer will be treated as set
3 forth in paragraph (8).

4 (4) The board has not rescinded its recommendation at
5 the time the offer closes.

6 (5) The offeror purchases all shares properly tendered
7 in response to the offer and not properly withdrawn.

8 (6) On the close of the offer, the shares listed below
9 are collectively entitled to cast at least the minimum number
10 of votes on the merger or interest exchange that, absent this
11 subsection, would be required by this chapter and by the
12 articles of incorporation for the approval of the merger or
13 interest exchange by the shareholders generally and also by
14 any shares entitled to vote as a separate voting group on the
15 merger or interest exchange at a meeting at which all shares
16 entitled to vote on the approval were present and voted:

17 (i) shares purchased by the offeror in accordance
18 with the offer;

19 (ii) shares otherwise owned by the offeror or by any
20 parent of the offeror or any wholly owned subsidiary of
21 any of the foregoing; and

22 (iii) shares subject to an agreement that they are
23 to be transferred, contributed or delivered to the
24 offeror, any parent of the offeror, or any wholly owned
25 subsidiary of any of the foregoing in exchange for shares
26 or interests in such offeror, parent or subsidiary.

27 (7) The offeror or a wholly owned subsidiary of the
28 offeror merges with or into, or effects an interest exchange
29 in which it acquires shares of, the corporation.

30 (8) Each outstanding share of each class or series of

1 shares of the corporation that the offeror is offering to
2 purchase in accordance with the offer, and that is not
3 purchased in accordance with the offer, is to be converted in
4 the merger into, or into the right to receive, or is to be
5 exchanged in the interest exchange for, or for the right to
6 receive, the same amount and type of securities, interests,
7 obligations, rights, cash, or other property to be paid or
8 exchanged in accordance with the offer for each share of that
9 class or series of shares that is tendered in response to the
10 offer, except that the following shares of the corporation
11 need not be converted into or exchanged for the consideration
12 described in this paragraph:

13 (i) shares owned by the corporation;

14 (ii) shares described in paragraph (6)(ii) or (iii);

15 and

16 (iii) shares as to which the shareholder, as defined
17 in section 1572 (relating to definitions), has perfected
18 dissenters rights under Subchapter D of Chapter 15
19 (relating to dissenters rights).

20 (9) As used in this subsection:

21 (i) "offer" means the offer referred to in paragraph
22 (2);

23 (ii) "offeror" means the person making the offer;

24 (iii) "parent" of an association means a person that
25 owns, directly or indirectly, through one or more wholly
26 owned subsidiaries, all of the outstanding shares of or
27 interests in that association;

28 (iv) shares tendered in response to the offer shall
29 be deemed to have been "purchased" in accordance with the
30 offer at the earliest time as of which:

1 (A) the offeror has irrevocably accepted those
2 shares for payment; and

3 (B) either:

4 (I) in the case of shares represented by
5 certificates, the offeror or the offeror's
6 designated depository or other agent has
7 physically received the certificates representing
8 those shares; or

9 (II) in the case of shares without
10 certificates, those shares have been transferred
11 into the account of the offeror or its designated
12 depository or other agent, or an agent's message
13 relating to those shares has been received by the
14 offeror or its designated depository or other
15 agent; and

16 (v) "wholly owned subsidiary" of a person means an
17 association of or in which that person owns, directly or
18 indirectly, through one or more wholly owned
19 subsidiaries, all of the outstanding shares or interests.

20 [(f)] (g) Cross references.--See:

21 Subchapter A of Chapter 17 (relating to notice and
22 meetings generally).

23 Section 2512 (relating to dissenters rights procedure).

24 Section 2539 (relating to adoption of plan of merger by
25 board of directors).

26 Section 3304(b) (relating to election of benefit
27 corporation status).

28 Section 3305(b) (relating to termination of benefit
29 corporation status).

30 Section 16. Sections 341(a) and (e), 355(b) (8), 363(c) and

1 364 of Title 15 are amended to read:

2 § 341. Interest exchange authorized.

3 (a) General rule.--Except as provided in section 318
4 (relating to excluded entities and transactions) or this
5 section, by complying with this subchapter:

6 (1) A domestic or foreign association may acquire all of
7 one or more classes or series of the issued and outstanding
8 interests of a domestic entity in exchange for interests,
9 securities, obligations, money, other property, rights to
10 acquire interests or securities or any combination of the
11 foregoing.

12 (2) A domestic entity may acquire all of one or more
13 classes or series of the issued and outstanding interests of
14 a foreign association in exchange for interests, securities,
15 obligations, money, other property, rights to acquire
16 interests or securities or any combination of the foregoing.

17 * * *

18 (e) Transitional provision.--A reference in either of the
19 following to a share exchange [in] means an interest exchange:

20 (1) in a provision of the organic rules of a domestic
21 business corporation which took effect before July 1, 2015[,
22 shall be deemed to include an interest exchange.]; or

23 (2) a statute of this Commonwealth that took effect
24 before July 1, 2015.

25 * * *

26 § 355. Statement of conversion; effectiveness.

27 * * *

28 (b) Contents.--A statement of conversion shall contain all
29 of the following:

30 * * *

1 [(8) If the converted association is a nonregistered
2 foreign association, one of the following:

3 (i) The street and mailing addresses of its
4 registered agent and registered office in its
5 jurisdiction of formation if it is a filing entity.

6 (ii) The street and mailing address of its principal
7 office if it is not a filing entity.]

8 * * *

9 § 363. Approval of division.

10 * * *

11 (c) Dissenters rights.--[If] Except in the case of a plan of
12 division adopted under section 364, if a shareholder of a
13 domestic business corporation that is to be a dividing
14 association objects to the plan of division and complies with
15 Subchapter D of Chapter 15 (relating to dissenters rights), the
16 shareholder shall be entitled to dissenters rights to the extent
17 provided in that subchapter. See sections 317 (relating to
18 contractual dissenters rights in entity transactions) and 329
19 (relating to special treatment of interest holders).

20 * * *

21 § 364. Division without interest holder approval.

22 (a) General rule.--Unless otherwise restricted by its
23 organic rules, a plan of division of a domestic dividing
24 association shall not require the approval of the interest
25 holders of the dividing association if all of the following are
26 satisfied:

27 (1) The plan does not do any of the following:

28 (i) alter the jurisdiction of formation of the
29 dividing association;

30 (ii) provide for special treatment; or

1 (iii) amend in any respect the provisions of the
2 [public organic record] organic rules of the dividing
3 association, except amendments [which] that may be made
4 without the approval of the interest holders.

5 (2) Either:

6 (i) the dividing association survives the division
7 and all the interests [and other securities and
8 obligations, if any, of all of] in the new associations
9 are owned solely by the dividing association; or

10 (ii) the interests in each new association are
11 distributed as provided in subsection (b).

12 (3) The organic rules of each new association do not
13 change the rights, duties or obligations of the interest
14 holders or governors from those of the interest holders or
15 governors of the dividing association, regardless of whether
16 the dividing association survives the division.

17 (b) Distribution of interests.--The requirements for
18 distributing interests in each new association referred to in
19 subsection (a) (2) (ii) are as follows:

20 (1) if the dividing association is not a limited
21 partnership, the dividing association has only one class of
22 interests outstanding and the interests [and other securities
23 and obligations, if any, of] in each new association and any
24 securities issued by a new association are distributed pro
25 rata to the interest holders of the dividing association; or

26 (2) if the dividing association is a limited
27 partnership:

28 (i) it has only one class of general partners and
29 one class of limited partners;

30 (ii) each new association is a limited partnership;

1 and

2 (iii) all of the following apply:

3 (A) the general partner interests in each new
4 association are distributed pro rata to the general
5 partners of the dividing limited partnership;

6 (B) the limited partner interests in each new
7 association are distributed pro rata to the limited
8 partners of the dividing limited partnership; and

9 (C) no securities [of obligations] of any of the
10 new associations are distributed to any of the
11 interest holders of the dividing limited partnership.

12 Section 17. Section 367(a)(1), (3) and (6) and (f)
13 introductory paragraph of Title 15 are amended and the section
14 is amended by adding a subsection to read:

15 § 367. Effect of division.

16 (a) General rule.--When a division becomes effective, all of
17 the following apply:

18 (1) If the dividing association is to survive the
19 division:

20 (i) It continues to exist.

21 (ii) Its public organic record, if any, is amended
22 as provided in the statement of division.

23 (iii) Its private organic rules that are to be in
24 record form, if any, are amended to the extent provided
25 in the plan of division.

26 (iv) Except as otherwise provided by law, all of its
27 rights, privileges, immunities and powers continue to be
28 vested in it without change.

29 * * *

30 (3) With respect to each new association, all of the

1 following apply:

2 (i) It comes into existence.

3 (ii) [It holds any] Any property allocated to it [as
4 the successor to the dividing association, and not by
5 transfer, whether directly or indirectly, or by operation
6 of law.] vests in the new association without reversion
7 or impairment, and the division shall not constitute a
8 transfer, directly or indirectly, of any of that
9 property.

10 (iii) Its public organic record, if any, and private
11 organic rules are effective.

12 (iv) If it is a limited liability partnership, its
13 statement of registration is effective.

14 (v) If it is a limited liability limited partnership
15 and is not using the alternative procedure in section
16 8201(f) (relating to scope), its statement of
17 registration is effective.

18 (vi) If it is an electing partnership, its statement
19 of election is effective.

20 (vii) Except as otherwise provided by law, all of
21 the rights, privileges, immunities and powers of the
22 dividing association necessary or desirable for the
23 conduct of the affairs of the new association vest in it
24 without change.

25 * * *

26 (6) The liabilities of the dividing association are
27 allocated between or among the resulting associations as
28 provided in section 368 (relating to allocation of
29 liabilities in division) [and the resulting associations to
30 which liabilities are allocated are liable for those

1 liabilities as successors to the dividing association, and
2 not by transfer, whether directly, indirectly or by operation
3 of law.] and the division shall not constitute a transfer,
4 directly or indirectly, of any of those liabilities.

5 * * *

6 (f) Real property.--Except with regard to the real property
7 of a dividing association that is a domestic nonprofit
8 corporation, the allocation of any fee or freehold interest or
9 leasehold having a remaining term of 30 years or more in any
10 tract or parcel of real property situate in this Commonwealth
11 owned by a dividing association, including property owned by a
12 foreign association dividing solely under the laws of another
13 jurisdiction, to a new association is not effective until one of
14 the following documents is filed [in] by the office for the
15 recording of deeds of the county, or each of them, in which the
16 tract or parcel is situated:

17 * * *

18 (j) Distribution tests not applicable.--An allocation,
19 directly or indirectly, of property, liabilities or interests in
20 a division is not a distribution for purposes of the organic law
21 of the dividing association or any of the resulting
22 associations.

23 Section 18. Sections 368(a)(2), (b), (d) and (e) and 371(a)
24 of Title 15 are amended to read:

25 § 368. Allocation of liabilities in division.

26 (a) General rule.--Except as provided in this section, when
27 a division becomes effective, a resulting association is
28 responsible:

29 * * *

30 (2) Individually for the liabilities of the dividing

1 association that are allocated to or remain the liability of
2 that resulting association to the extent specified in the
3 plan of division, but not for liabilities allocated in the
4 plan to another resulting association.

5 * * *

6 (b) Joint and several liability.--If [an allocation of
7 property or liabilities] the allocation of a liability in a
8 division is [ineffective or voidable pursuant to fraudulent
9 transfer or similar law, both] determined by the court as
10 defined in section 102 (relating to definitions) to be
11 ineffective or voidable under 12 Pa.C.S. Ch. 51 (relating to
12 voidable transactions) as of the effective date of the
13 division, all of the following apply:

14 (1) The [allocations of liabilities] allocation of the
15 liability in the plan of division [are] is ineffective and
16 the [liabilities of the dividing association become
17 liabilities] liability becomes the liability of all of the
18 resulting associations, jointly and severally.

19 (2) The validity and effectiveness of the division are
20 not affected [thereby.] by the action or proceeding or the
21 determination of the court.

22 * * *

23 (d) Application of [fraudulent transfer] voidable
24 transactions law.--In applying [the law governing fraudulent
25 transfers] 12 Pa.C.S. Ch. 51 to a division under subsection (b):

26 (1) [The law] 12 Pa.C.S. Ch. 51 applies to the dividing
27 association as follows:

28 (i) If it does not survive the division, it is not
29 subject to that [law] chapter.

30 (ii) If it survives the division, it is subject to

1 that [law] chapter only in its capacity as a resulting
2 association.

3 (2) [The law] 12 Pa.C.S. Ch. 51 applies to each
4 resulting association as follows:

5 (i) The association is treated as a debtor.

6 (ii) [The liabilities] Each liability allocated to
7 the association [are] is treated as an obligation
8 incurred by the debtor.

9 (iii) The association is treated as not having
10 received a reasonably equivalent value in exchange for
11 incurring the obligation.

12 (iv) The property allocated to the association is
13 treated as remaining property.

14 [(e) Distribution tests not applicable.--A direct or
15 indirect allocation of property or liabilities in a division is
16 not a distribution for purposes of the organic law of the
17 dividing association or any of the resulting associations.]

18 (3) The remedy of joint and several liability under
19 subsection (b)(1) is deemed to be the remedy of avoidance of
20 the transfer or obligation under 12 Pa.C.S. § 5107(a)(1)
21 (relating to remedies of creditor).

22 * * *

23 § 371. Domestication authorized.

24 (a) Domestic entities.--Except as provided in section 318
25 (relating to excluded entities and transactions), by complying
26 with this chapter, a domestic entity may become a [domestic]
27 domesticated entity of the same type in a foreign jurisdiction
28 if the domestication is authorized by the laws of the foreign
29 jurisdiction.

30 * * *

1 Section 19. Chapter 3 of Title 15 is amended by adding a
2 subchapter to read:

3 SUBCHAPTER H

4 ADMINISTRATIVE DISSOLUTION OR CANCELLATION

5 Sec.

6 381. Grounds for administrative dissolution or cancellation.

7 382. Procedure and effect.

8 383. Reinstatement.

9 384. Rejection of reinstatement.

10 § 381. Grounds for administrative dissolution or cancellation.

11 (a) General rule.--The department may commence a proceeding
12 under section 382 (relating to procedure and effect) to
13 administratively dissolve a domestic filing entity or cancel the
14 statement of registration of a domestic limited liability
15 partnership or the statement of election of an electing
16 partnership that is not also a limited partnership if the entity
17 does not deliver an annual report to the department within six
18 months after the annual report is due.

19 (b) Transitional provision.--Subsection (a) applies with
20 respect to annual reports due on or after (insert the date that
21 is three years after the effective date of section 146 pursuant
22 to section 146(h)).

23 § 382. Procedure and effect.

24 (a) Notice of initial determination.--If the department
25 determines that grounds exist under section 381 (relating to
26 grounds for administrative dissolution or cancellation) for
27 administratively dissolving a domestic filing entity or
28 canceling the statement of registration of a domestic limited
29 liability partnership or the statement of election of an
30 electing partnership that is not also a limited partnership, the

1 department must deliver to the entity a notice of the
2 department's determination at the entity's registered office, if
3 any, and the address of the entity's principal office as shown
4 in its most recently filed annual report.

5 (b) Dissolution or cancellation.--If an entity does not
6 deliver to the department for filing, within 60 days after
7 delivery of the notice required by subsection (a), the required
8 annual report or demonstrate to the satisfaction of the
9 department that the annual report was delivered to the
10 department, the department must:

11 (1) if the entity is a domestic filing entity,
12 administratively dissolve the entity by filing a statement of
13 administrative dissolution that states the effective date of
14 dissolution, which shall not be less than 60 days after the
15 date of delivery of the notice required by subsection (a);

16 (2) if the entity is a domestic limited liability
17 partnership or an electing partnership that is not also a
18 limited partnership, administratively cancel its statement of
19 registration or statement of election by filing a statement
20 of administrative cancellation that states the effective date
21 of cancellation.

22 (c) Notice of action by department.--The department must
23 deliver a copy of the statement of administrative dissolution or
24 statement of administrative cancellation to the entity at its
25 registered office, if any, and the address of its principal
26 office as shown in its most recently filed annual report.

27 (d) Effect of dissolution.--A domestic filing entity that is
28 administratively dissolved:

29 (1) continues its existence as the same type of entity
30 but may not carry on any activities except as necessary to

1 wind up its activities and affairs and liquidate its assets
2 in the manner provided in its organic law or to apply for
3 reinstatement under section 383 (relating to reinstatement);

4 (2) continues to be managed by or under the direction of
5 its governors, who:

6 (i) continue as such;

7 (ii) have full power to wind up its activities and
8 affairs or apply for reinstatement; and

9 (iii) remain subject to the same standards of
10 conduct as before administrative dissolution; and

11 (3) is not currently subsisting for purposes of section
12 145 (relating to subsistence certificate) during the period
13 it is administratively dissolved.

14 (e) Effect of cancellation.--A domestic limited liability
15 partnership or electing partnership that is not also a limited
16 partnership and whose statement of registration or statement of
17 election is administratively canceled continues its existence as
18 a general partnership but not as a limited liability partnership
19 or electing partnership.

20 § 383. Reinstatement.

21 (a) Application for reinstatement.--An entity that has been
22 the subject of action under section 382(b) (relating to
23 procedure and effect) may deliver to the department an
24 application for reinstatement along with the reinstatement fee
25 required by section 153 (relating to fee schedule). The
26 application must be signed by the entity and state:

27 (1) the name of the entity at the time of the action
28 under section 382 and, if needed, a name that is available
29 under Subchapter A of Chapter 2 (relating to names);

30 (2) subject to section 109 (relating to name of

1 commercial registered office provider in lieu of registered
2 address), the address, if any, including street and number,
3 if any, of the entity's registered office;

4 (3) the principal office of the entity at the time of
5 the application for restatement; and

6 (4) either:

7 (i) that the grounds for action under section 382
8 did not exist; or

9 (ii) that the most recent annual report not
10 previously filed is attached to the application for
11 reinstatement along with the fee for each of the annual
12 reports that should have been paid under section 153.

13 (b) Action by department.--If the department determines that
14 an application under subsection (a) meets the requirements of
15 that subsection and is accompanied by any payment required by
16 subsection (a) (4) (ii), the department shall:

17 (1) cancel the prior action under section 382 by filing
18 a statement of reinstatement that includes the effective date
19 of reinstatement within 30 days after receipt by the
20 department of the application; and

21 (2) deliver a copy to the entity.

22 (c) Effect of reinstatement.--When reinstatement under this
23 section is effective, the following rules apply:

24 (1) Except as provided in paragraphs (4) and (5), the
25 reinstatement relates back to and takes effect as of the
26 effective date of the administrative dissolution or
27 cancellation.

28 (2) The activities of the entity between the date of its
29 administrative dissolution and the date of its reinstatement
30 are valid as if the administrative dissolution had never

1 occurred.

2 (3) If the entity is a limited liability partnership,
3 limited liability limited partnership or electing
4 partnership, its statement of registration, the provisions of
5 its certificate of limited partnership required by section
6 8201(f) (relating to scope) or its statement of election is
7 reinstated as if its administrative cancellation had never
8 occurred.

9 (4) If the application for reinstatement includes a name
10 other than the name of the entity at the time of the
11 administrative dissolution or cancellation because the
12 original name is no longer available under Subchapter A of
13 Chapter 2, the statement of reinstatement shall have the
14 effect of amending:

15 (i) if the entity is a domestic filing entity, its
16 public organic record to provide for the new name;

17 (ii) if the entity is a domestic limited liability
18 partnership, its statement of registration to provide for
19 the new name; or

20 (iii) if the entity is a electing partnership that
21 is not also a limited partnership, its statement of
22 election to provide for the new name.

23 (5) The rights of a person arising out of an act in
24 reliance on the administrative dissolution or revocation of
25 the statement of registration or statement of election before
26 the reinstatement is effective are not affected.

27 (d) Cross reference.--See section 153(a)(19).

28 § 384. Rejection of reinstatement.

29 (a) Notice of rejection.--If the department rejects an
30 entity's application for reinstatement under section 383

1 (relating to reinstatement) or fails to reinstate the entity
2 within the time required by section 383(b)(1), the department
3 shall deliver to the entity a notice in record form that
4 explains the reasons for the rejection or failure.

5 (b) Cross reference.--See section 137 (relating to court to
6 pass upon rejection of documents by Department of State).

7 Section 20. Section 402(a) of Title 15 is amended and the
8 section is amended by adding subsections to read:

9 § 402. Governing law.

10 (a) General rule.--The laws of the jurisdiction of formation
11 of a foreign association [governs] govern the following:

12 (1) The internal affairs of the association.

13 (2) [The] Except as provided in subsection (h), the
14 liability that a person has solely as an interest holder or
15 governor for a debt, obligation or other liability of the
16 association.

17 (3) The liability of a series or protected cell of [a
18 foreign] the association.

19 * * *

20 (h) Exception.--Subsection (a)(2) does not relieve a
21 governor or interest holder of a foreign association from a
22 liability under the laws of this Commonwealth other than this
23 title to which a governor or interest holder of a domestic
24 association of the same type would be subject.

25 (i) Duties.--Except as otherwise provided in section 411(b)
26 (relating to registration to do business in this Commonwealth),
27 every nonregistered foreign association doing business in this
28 Commonwealth shall be subject to the same liabilities,
29 restrictions, duties and penalties now or hereafter imposed upon
30 a registered foreign association.

1 Section 21. Section 403(a)(7) and (10) of Title 15 are
2 amended and subsection (a) is amended by adding paragraphs to
3 read:

4 § 403. Activities not constituting doing business.

5 (a) General rule.--Activities of a foreign filing
6 association or foreign limited liability partnership that do not
7 constitute doing business in this Commonwealth under this
8 chapter shall include the following:

9 * * *

10 (7) Creating [or], acquiring or incurring obligations,
11 indebtedness, mortgages or security interests in property.

12 * * *

13 [(10) Owning, without more, property.]

14 * * *

15 (12) Acquiring, owning, holding, leasing as a lessee,
16 conveying and transferring, without more and whether as
17 fiduciary or otherwise:

18 (i) real estate and mortgages and other liens
19 thereon; or

20 (ii) personal property and security interests
21 therein.

22 (13) Conducting operations or performing work or
23 services in good faith in response to a disaster or emergency
24 event.

25 * * *

26 Section 22. Section 414 of Title 15 is amended by adding a
27 subsection to read:

28 § 414. Noncomplying name of foreign association.

29 * * *

30 (d) Use of permitted names.--The doing of business by a

1 registered foreign association using a name permitted by
2 subsection (a) has the same force and effect as doing business
3 using the proper name of the association under the laws of its
4 jurisdiction of formation.

5 Section 23. Sections 417(a)(1), (b) introductory paragraph
6 and (1) and (c) are amended, 419(a) and 511(a) of Title 15 are
7 amended and the sections are amended by adding subsections to
8 read:

9 § 417. Required withdrawal on certain transactions.

10 (a) Application of section.--This section shall apply to a
11 registered foreign association that has been:

12 (1) a nonsurviving party to a merger in which the
13 survivor is a [nonregistered] foreign association;

14 * * *

15 (b) Statement of withdrawal.--A registered foreign
16 association described in subsection (a) shall deliver a
17 statement of withdrawal [and the certificates required by
18 section 139 (relating to tax clearance of certain fundamental
19 transactions)] to the department for filing. The statement shall
20 [be signed by the dissolved or converted association and] state
21 as follows:

22 (1) In the case of a foreign association that has
23 completed winding up, was not the survivor of a merger in
24 which the survivor was a foreign association or was a
25 dividing association that did not survive the division, all
26 of the following:

27 (i) The name under which the association is
28 registered to do business in this Commonwealth and its
29 jurisdiction of formation.

30 (ii) That the association withdraws its registration

1 to do business in this Commonwealth.

2 (iii) The nature of the transaction that requires it
3 to make a filing under this section.

4 * * *

5 (c) Tax clearance.--The statement of withdrawal as delivered
6 to the department for filing shall be accompanied by the
7 certificates required by section 139 (relating to tax clearance
8 of certain fundamental transactions), except that those
9 certificates shall not be required if the statement is being
10 delivered for filing by a registered foreign association that
11 was not the survivor of a merger in which the survivor is
12 another registered foreign association.

13 (d) Signature.--The statement of withdrawal shall be signed
14 by:

- 15 (1) the surviving association in the merger;
16 (2) a resulting association in the division;
17 (3) the dissolved association; or
18 (4) the converted or domesticated association.

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

22 § 419. Termination of registration.

23 (a) General rule.--The department may terminate the
24 registration of a registered foreign association in the manner
25 provided in subsections (b) and (c) if the department finds that
26 the association:

27 (1) has not amended its registration when required by
28 section 413 (relating to amendment of foreign registration
29 statement); [or]

30 (2) has been administratively, voluntarily or

1 involuntarily dissolved under the laws of its jurisdiction of
2 formation[.]; or

3 (3) has failed to deliver to the department for filing
4 an annual report under section 146 (relating to annual
5 report) within six months after it is due.

6 * * *

7 (e) Transitional provision.--Subsection (a)(3) shall apply
8 with respect to annual reports due on or after (insert the date
9 that is the third anniversary of the effective date of this
10 act).

11 § 511. Application and effect of subchapter.

12 (a) General rule.--This subchapter [shall apply] applies to
13 and the terms "corporation" or "domestic corporation" in this
14 subchapter [shall mean a domestic corporation except] mean:

15 (1) A [business corporation as defined in section 1103
16 (relating to definitions)] banking institution.

17 (2) A [nonprofit corporation as defined in section 5103
18 (relating to definitions)] credit union.

19 (3) A fraternal benefit society.

20 * * *

21 (c) Reversal of opt-out.--A provision of the articles or
22 bylaws providing that section 515 or corresponding provisions of
23 prior law shall not be applicable to the corporation may be
24 rescinded pursuant to the procedures required by the organic law
25 of the corporation and the articles and bylaws at the time of
26 the rescission to amend the articles or bylaws.

27 Section 24. Section 512 of Title 15 is amended to read:

28 § 512. Standard of care [and], justifiable reliance and
29 business judgment rule.

30 (a) Directors.--A director of a domestic corporation shall

1 stand in a fiduciary relation to the corporation and shall
2 perform [his duties as] the duties of a director, including
3 [his] duties as a member of any committee of the board upon
4 which [he] the director may serve, in good faith, in a manner
5 [he] the director reasonably believes to be in the best
6 interests of the corporation and with such care, including
7 [reasonable inquiry,] the skill and diligence[, as] that a
8 person of ordinary prudence would use under similar
9 circumstances[.] and reasonable inquiry into those issues
10 required by the statutes of this Commonwealth to be considered
11 in the circumstances and those interests and factors listed in
12 section 515(a) (relating to exercise of powers generally) or
13 516(a) (relating to alternative standard) that the director
14 considers appropriate. This subsection is subject to subsection
15 (d) where applicable.

16 (a.1) Justifiable reliance.--In performing [his duties] the
17 duties of a director, and in satisfying the requirements of
18 subsection (d), a director [shall be] is entitled to rely in
19 good faith on information, opinions, reports or statements,
20 including financial statements and other financial data, in each
21 case prepared or presented by any of the following:

22 (1) One or more officers or employees of the corporation
23 or an affiliate of the corporation whom the director
24 reasonably believes to be reliable and competent in the
25 matters presented.

26 (2) Counsel, public accountants or other persons as to
27 matters which the director reasonably believes to be within
28 the professional or expert competence of such person.

29 (3) A committee of the board upon which [he] the
30 director does not serve, duly designated in accordance with

1 law, as to matters within its designated authority, which
2 committee the director reasonably believes to merit
3 confidence.

4 (b) Effect of actual knowledge.--A director [shall not be]
5 is not considered to be acting in good faith [if he has] under
6 subsection (a.1) if the director has actual knowledge concerning
7 the matter [in question that would cause his] that causes the
8 director to believe reliance [to be] is unwarranted.

9 (c) Officers.--Except as otherwise provided in the articles,
10 an officer shall perform his duties as an officer in good faith,
11 in a manner he reasonably believes to be in the best interests
12 of the corporation and with such care, including reasonable
13 inquiry, skill and diligence, as a person of ordinary prudence
14 would use under similar circumstances. A person who so performs
15 his duties shall not be liable by reason of having been an
16 officer of the corporation.

17 (d) Business judgment rule.--A director or officer who makes
18 a business judgment in good faith fulfills the duties under this
19 section if:

20 (1) the subject of the business judgment does not
21 involve self-dealing by the director or officer or an
22 associate or affiliate of the director or officer;

23 (2) the director or officer is informed with respect to
24 the subject of the business judgment to the extent the
25 director or officer reasonably believes to be appropriate
26 under the circumstances; and

27 (3) the director or officer rationally believes that the
28 business judgment is in the best interests of the
29 corporation.

30 (e) Burden of proof.--A person challenging the conduct of a

1 director or officer as violating the duty of care under this
2 section has the burden of proving:

3 (1) a breach of the duty of care, including that a
4 requirement for the fulfillment of that duty under subsection
5 (d) has not been met; and

6 (2) in a damage action, that the breach was the legal
7 cause of damage suffered by the corporation.

8 Section 25. Section 513(a)(1) and (c) of Title 15 are
9 amended and the section is amended by adding a subsection to
10 read:

11 § 513. Personal liability of directors.

12 (a) General rule.--If a bylaw adopted by the shareholders
13 entitled to vote or members entitled to vote of a domestic
14 corporation so provides, a director shall not be personally
15 liable, as such, for monetary damages for any action taken
16 unless:

17 (1) the director has breached or failed to perform the
18 duties of [his office] a director under this subchapter; and

19 * * *

20 (c) Application.--An amendment or repeal of a provision
21 adopted under subsection (a) does not affect its application
22 with respect to an act by a director occurring before the
23 amendment or repeal unless the provision in effect at the time
24 of the act explicitly authorizes its amendment or repeal after
25 an act has occurred.

26 [(c)] (d) Cross reference.--See 42 Pa.C.S. § 8332.5
27 (relating to corporate representatives).

28 Section 26. Sections 514, 515(b), (d) and (e)(1)(i), 516,
29 517 and 523 of Title 15 are amended to read:

30 § 514. [Notation of dissent] Presumption of assent.

1 A director of a domestic corporation who is present at a
2 meeting of its board of directors, or of a committee of the
3 board, at which action on any corporate matter is taken on which
4 the director is generally competent to act, shall be presumed to
5 have assented to the action taken unless [his dissent] the
6 director's dissent, abstention or vote against the matter is
7 entered in the minutes of the meeting or unless [he files his
8 written dissent] the director delivers to the secretary of the
9 meeting before the adjournment a dissent in record form to the
10 action [with the secretary of the meeting before the adjournment
11 thereof] or transmits the dissent [in writing] in record form to
12 the secretary of the corporation immediately after the
13 adjournment of the meeting. The right to dissent shall not apply
14 to a director who voted in favor of the action. Nothing in this
15 subchapter shall bar a director from asserting that minutes of
16 the meeting incorrectly omitted [his dissent] the director's
17 dissent, abstention or vote against if, promptly upon receipt of
18 a copy of such minutes, [he] the director notifies the secretary
19 [in writing] of the corporation in record form of the asserted
20 omission or inaccuracy.

21 § 515. Exercise of powers generally.

22 * * *

23 (b) Consideration of interests and factors.--The board of
24 directors, committees of the board and individual directors
25 shall not be required, in considering the best interests of the
26 corporation or the effects of any action, to regard any
27 corporate interest or the interests of any particular group
28 affected by such action as a dominant or controlling interest or
29 factor. The consideration of interests and factors in the manner
30 described in this subsection and in subsection (a) shall not

1 constitute a violation of section 512 (relating to standard of
2 care [and], justifiable reliance and business judgment rule).

3 * * *

4 (d) Presumption.--[Absent breach of fiduciary duty, lack of
5 good faith or self-dealing, any act as the board of directors, a
6 committee of the board or an individual director shall be
7 presumed to be in the best interests of the corporation.] In
8 assessing whether the standard set forth in section 512 has been
9 satisfied, there shall not be any greater obligation to justify,
10 or higher burden of proof with respect to, any act as the board
11 of directors, any committee of the board or any individual
12 director relating to or affecting an acquisition or potential or
13 proposed acquisition of control of the corporation than is
14 applied to any other act as a board of directors, any committee
15 of the board or any individual director. Notwithstanding section
16 512(d) and the preceding [provisions] provision of this
17 subsection, any act as the board of directors, a committee of
18 the board or an individual director relating to or affecting an
19 acquisition or potential or proposed acquisition of control to
20 which a majority of the disinterested directors shall have
21 assented shall be presumed to satisfy the standard set forth in
22 section 512, unless it is proven by clear and convincing
23 evidence that the disinterested directors did not assent to such
24 act in good faith after reasonable investigation.

25 (e) Definition.--The term "disinterested director" as used
26 in subsection (d) and for no other purpose means:

27 (1) A director of the corporation other than:

28 (i) A director who has a direct or indirect
29 financial or other interest in the person acquiring or
30 seeking to acquire control of the corporation or who is

1 an affiliate or associate[, as defined in section 2552
2 (relating to definitions),] of, or was nominated or
3 designated as a director by, a person acquiring or
4 seeking to acquire control of the corporation.

5 * * *

6 § 516. Alternative standard.

7 (a) General rule.--In discharging the duties of their
8 respective positions, the board of directors, committees of the
9 board and individual directors of a domestic corporation may, in
10 considering the best interests of the corporation, consider the
11 effects of any action upon employees, upon suppliers and
12 customers of the corporation and upon communities in which
13 offices or other establishments of the corporation are located,
14 and all other pertinent factors. The consideration of those
15 factors shall not constitute a violation of section 512
16 (relating to standard of care [and], justifiable reliance and
17 business judgment rule).

18 [(b) Presumption.--Absent breach of fiduciary duty, lack of
19 good faith or self-dealing, actions taken as a director shall be
20 presumed to be in the best interests of the corporation.]

21 (c) Cross reference.--See section 511(b) (relating to
22 alternative provisions).

23 § 517. Limitation on standing.

24 The duty of the board of directors, committees of the board
25 and individual directors under section 512 (relating to standard
26 of care [and], justifiable reliance and business judgment rule)
27 is solely to the domestic corporation and not to any
28 shareholder, member or creditor or any other person or group,
29 and may be enforced directly by the corporation or may be
30 enforced [by a shareholder or member, as such,] by an action in

1 the right of the corporation, and may not be enforced directly
2 by a shareholder, member or creditor or by any other person or
3 group. Notwithstanding the preceding sentence, sections 515(a)
4 and (b) (relating to exercise of powers generally) and 516(a)
5 (relating to alternative standard) do not impose upon the board
6 of directors, committees of the board and individual directors
7 any legal or equitable duties, obligations or liabilities or
8 create any right or cause of action against, or basis for
9 standing to sue, the board of directors, committees of the board
10 and individual directors.

11 § 523. Actions by shareholders or members to enforce a
12 secondary right.

13 (a) General rule.--[In any action brought to enforce a
14 secondary right on the part of one or more shareholders or
15 members against any officer or director or former officer or
16 director of a banking institution, because the corporation
17 refuses to enforce rights which may properly be asserted by it,
18 the plaintiff or plaintiffs must aver and it must be made to
19 appear that the plaintiff or each plaintiff was a shareholder or
20 was a member of the corporation at the time of the transaction
21 of which he complains or that his stock or membership devolved
22 upon him by operation of law from a person who was a shareholder
23 or member at that time.

24 (b) Security for costs.--In any such action instituted or
25 maintained by a holder or holders of less than 5% of the
26 outstanding shares of any class of the corporation or voting
27 trust certificates therefor, or by a member or members of a
28 corporation organized without capital stock which has
29 outstanding contracts or accounts with its members if the value
30 of the contracts or accounts held or owned by the member or

1 members instituting or maintaining the suit is less than 5% of
2 the value of all the contracts or accounts outstanding, the
3 corporation in whose right the action is brought shall be
4 entitled, at any stage of the proceedings, to require the
5 plaintiff or plaintiffs to give security for the reasonable
6 expenses, including attorneys' fees, which may be incurred by
7 the corporation in connection therewith or for which it may
8 become liable pursuant to section 522 (relating to
9 indemnification of authorized representatives) (but only insofar
10 as relates to mandatory indemnification in actions by or in the
11 right of the corporation) to which security the corporation
12 shall have recourse in such amount as the court having
13 jurisdiction shall determine upon the termination of the action.
14 The amount of the security may, from time to time, be increased
15 or decreased in the discretion of the court having jurisdiction
16 of the action upon showing that the security provided has or is
17 likely to become inadequate or excessive. The security may be
18 denied or limited by the court if the court finds after an
19 evidentiary hearing that undue hardship on plaintiffs and
20 serious injustice would result.] A banking institution shall be
21 governed by the provisions of Subchapter F of Chapter 17
22 (relating to derivative actions).

23 (c) Definitions.--[As used in this section] When applying
24 the provisions of Subchapter F of Chapter 17, the following
25 words and phrases shall have the meanings given to them in this
26 subsection:

27 "Director." Includes any individual performing the function
28 of director, regardless of title.

29 "Member." Includes depositors in a mutual banking
30 institution.

1 "Shares." Includes outstanding contracts or accounts of
2 members in a mutual banking institution.

3 Section 27. Title 15 is amended by adding a section to read:
4 § 524. Renunciation of business opportunities.

5 The articles of incorporation, or an action of the board of
6 directors, may renounce any interest or expectancy of a banking
7 institution in, or in being offered an opportunity to
8 participate in, a specified business opportunity or specified
9 classes or categories of business opportunities that are
10 presented to the corporation or to one or more of its directors,
11 officers, shareholders or members.

12 Section 28. Section 1102(c) (3) of Title 15 is amended to
13 read:

14 § 1102. Application of subpart.

15 * * *

16 (c) Exclusions.--This subpart shall not apply to any of the
17 following corporations, whether proposed or existing, except as
18 otherwise expressly provided in this subpart or as otherwise
19 provided by statute applicable to the corporation:

20 * * *

21 [(3) A savings association.]

22 * * *

23 Section 29. The definitions of "board of directors" or
24 "board," "bylaws," "dissolve" or "dissolution," "distribution,"
25 "entitled to vote" and "officer" in section 1103(a) and (b) of
26 Title 15 are amended and subsection (a) is amended by adding a
27 definition to read:

28 § 1103. Definitions.

29 (a) General definitions.--Subject to additional definitions
30 contained in subsequent provisions of this subpart that are

1 applicable to specific provisions of this subpart, the following
2 words and phrases when used in Part I (relating to preliminary
3 provisions) or in this subpart shall have the meanings given to
4 them in this section unless the context clearly indicates
5 otherwise:

6 * * *

7 "Board of directors" or "board." The persons selected under
8 section 1725 (relating to selection of directors) irrespective
9 of the name by which the group is designated in the articles.
10 See section 1731(c) (relating to [status of committee action]
11 executive and other committees of the board).

12 * * *

13 "Bylaws." See section 1504(c) (relating to [bylaw provisions
14 in articles] adoption, amendment and contents of bylaws).

15 * * *

16 "Dissolve" or "dissolution." The termination of corporate
17 existence effected by:

18 (1) filing of articles of dissolution in the department
19 under this subpart by the corporation or by the office of the
20 clerk of the court of common pleas;

21 (2) expiration of the term of existence of a corporation
22 by reason of any limitation contained in its articles;

23 (3) forfeiture by proclamation of the Governor under
24 section 1704 of the act of April 9, 1929 (P.L.343, No.176),
25 known as The Fiscal Code, or otherwise;

26 (4) filing of a certified copy of a decree of
27 dissolution in the department under the former act of April
28 9, 1856 (P.L.293, No.308), entitled "Supplement to the acts
29 relating to incorporations by the Courts of Common Pleas," or
30 otherwise; or

1 (5) judgment of ouster, upon proceedings in quo
2 warranto, under former provisions of law.

3 "Distribution." A direct or indirect transfer of money or
4 other property (except its own shares or options, rights or
5 warrants to acquire its own shares) or incurrence of
6 indebtedness by a corporation to or for the benefit of any or
7 all of its shareholders in respect of any of its shares whether
8 by dividend or by purchase, redemption or other acquisition of
9 its shares or otherwise. Neither the making of, nor payment or
10 performance upon, a guaranty or similar arrangement by a
11 corporation for the benefit of any or all of its shareholders
12 nor a direct or indirect transfer or allocation of assets or
13 liabilities effected under Chapter 3 (relating to entity
14 transactions) or Subchapter B or C of Chapter 19 (relating to
15 fundamental changes) with the approval of the shareholders shall
16 constitute a distribution for the purposes of this subpart.

17 * * *

18 "Entitled to vote." Those persons entitled to vote on the
19 matter under either the bylaws of the corporation or any
20 applicable controlling provision of law. The term includes those
21 persons entitled at the time to vote on the matter under a plan
22 or the terms of a fundamental transaction where dissenters
23 rights are not available under section 1571(b)(2)(ii) (relating
24 to [exceptions] application and effect of subchapter).

25 * * *

26 "Officer." Includes assistant officer. If a corporation is
27 in the hands of a custodian, receiver, trustee or like official,
28 the term includes that official or any person appointed by that
29 official to act as an officer for any purpose under this
30 subpart.

1 * * *

2 "Share register." Records administered by or on behalf of a
3 corporation in which the names of all of its shareholders, the
4 address of each shareholder, the number and class of shares
5 registered in the name of each shareholder and all issuances and
6 transfers of shares are recorded.

7 * * *

8 (b) Index of other definitions.--The following is a
9 nonexclusive list of words and phrases which when used in this
10 subpart shall have the meanings given to them in section 102
11 (relating to definitions):

12 "Act" or "action."

13 "Banking institution" or "domestic banking institution."

14 "Conversion."

15 "Corporation for profit."

16 "Corporation not-for-profit."

17 "Court."

18 "Credit union."

19 "Department."

20 "Dissenters rights."

21 "Division."

22 "Domestic corporation for profit."

23 "Domestic corporation not-for-profit."

24 "Domestication."

25 "Execute."

26 "Foreign corporation for profit."

27 "Foreign corporation not-for-profit."

28 "Insurance corporation" or "domestic insurance corporation."

29 "Interest exchange."

30 "Internal Revenue Code of 1986."

1 "Merger."
2 "Obligation."
3 "Officially publish."
4 "Record form."
5 "Representative."
6 ["Savings association" or "domestic savings association."]
7 "Sign."

8 Section 30. Section 1110 of Title 15 is repealed:

9 [§ 1110. Annual report information.

10 The Department of State shall make available as public
11 information for inspection and copying the names of the
12 president, vice-president, secretary and treasurer and the
13 address of the principal office of corporations for profit as
14 annually forwarded to the department by the Department of
15 Revenue pursuant to section 403(a) (3) of the act of March 4,
16 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.]

17 Section 31. Section 1306(a) (5) and (b) of Title 15 are
18 amended to read:

19 § 1306. Articles of incorporation.

20 (a) General rule.--Articles of incorporation shall be signed
21 by each of the incorporators and shall set forth in the English
22 language:

23 * * *

24 (5) The name [and address, including street and number,
25 if any,] of each of the incorporators.

26 * * *

27 (b) Other provisions authorized.--A provision of the
28 original articles or a provision of the articles approved by the
29 shareholders, in either case adopted under subsection (a) (8)
30 (ii), may relax or be inconsistent with and supersede any

1 provision of Chapter 3 (relating to entity transactions), 13
2 (relating to incorporation), 15 (relating to corporate powers,
3 duties and safeguards), 17 (relating to officers, directors and
4 shareholders) or 19 (relating to fundamental changes) concerning
5 the subjects specified in subsection (a)(8)(ii), except where a
6 provision of those chapters expressly provides that the articles
7 shall not relax or be inconsistent with any provision on a
8 specified subject. [Notwithstanding the foregoing, the articles
9 may provide greater rights for shareholders than are authorized
10 by any provision of those chapters that otherwise provides that
11 the articles shall not relax or be inconsistent with any
12 provision on a specified subject.] Notwithstanding the
13 foregoing:

14 (1) A provision of those chapters prohibiting the
15 articles from relaxing or being inconsistent with any
16 provision of those chapters on a specified subject does not
17 apply to an agreement between or among the shareholders
18 relating to that subject.

19 (2) The articles may provide greater rights for
20 shareholders than are authorized by any provision of those
21 chapters that otherwise provides that the articles shall not
22 relax or be inconsistent with any provision on a specified
23 subject.

24 * * *

25 Section 32. Section 1504(c) of Title 15 is amended and the
26 section is amended by adding a subsection to read:

27 § 1504. Adoption, amendment and contents of bylaws.

28 * * *

29 (b.1) Restated bylaws.--Subsection (b) does not prohibit the
30 board of directors from including in restated bylaws, without

1 substantive change, a bylaw adopted by the shareholders, and
2 such a restated provision continues to have the status of a
3 bylaw adopted by the shareholders.

4 (c) [Bylaw provisions in articles] Relationship of articles
5 and bylaws.--Where any provision of this subpart or any other
6 provision of law refers to a rule as set forth in the bylaws of
7 a corporation or in a bylaw adopted by the shareholders, the
8 reference shall be construed to include and be satisfied by any
9 rule on the same subject as set forth in the articles of the
10 corporation. Where any provision of this subpart or any other
11 provision of law refers to a rule as set forth in the articles
12 of a corporation or prohibits the articles from setting forth a
13 rule, the contemplated rule may not be included in a bylaw or a
14 bylaw adopted by the shareholders.

15 * * *

16 Section 33. Section 1505 of Title 15 is amended to read:

17 § 1505. Persons bound by bylaws.

18 Except as otherwise provided by section 1713 (relating to
19 personal liability of directors) or any similar provision of
20 law, the bylaws of a business corporation [shall operate only as
21 regulations among] are binding on the shareholders, directors
22 and officers of the corporation [and] with respect to its
23 internal affairs whether or not a shareholder, director or
24 officer has actual knowledge of the provisions of the bylaws,
25 but a bylaw shall not affect contracts or other dealings with
26 other persons unless those persons have actual knowledge of the
27 [bylaws] bylaw.

28 Section 34. Section 1507(b) introductory paragraph and (d)
29 of Title 15 are amended and the section is amended by adding a
30 subsection to read:

1 § 1507. Registered office.

2 * * *

3 (b) Statement of change of registered office.--After
4 incorporation, a change of the location of the registered office
5 may be authorized at any time by the board of directors. Before
6 the change of location becomes effective, the corporation
7 [either] shall include the change in an annual report under
8 section 146 (relating to annual report), amend its articles
9 under the provisions of this subpart to reflect the change [in
10 location or shall file in] or deliver to the Department of State
11 for filing a statement of change of registered office executed
12 by the corporation setting forth:

13 * * *

14 (d) Effect of statement.--A statement regarding the
15 registered office of a corporation set forth in a document filed
16 in the department pursuant to this section shall operate as an
17 amendment of the articles.

18 [(d)] (e) Cross reference.--See section 134 (relating to
19 docketing statement).

20 Section 35. Sections 1508 and 1509 of Title 15 are amended
21 to read:

22 § 1508. Corporate records; inspection by shareholders.

23 (a) Required records.--Every business corporation shall keep
24 complete and accurate books and records of account, minutes of
25 the proceedings of the incorporators, shareholders and directors
26 and a share register. [giving the names and addresses of all
27 shareholders and the number and class of shares held by each.
28 The share register shall be kept at any of the following
29 locations:

30 (1) the registered office of the corporation in this

1 Commonwealth;

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

4 (3) any actual business office of the corporation; or

5 (4) the office of the registrar or transfer agent of the
6 corporation.]

7 (b) Right of inspection by a shareholder.--[Every
8 shareholder shall, upon written verified demand stating the
9 purpose thereof, have a] On demand, in compliance with the
10 requirements in subsection (b.1), a shareholder has the right to
11 examine, in person or by agent or attorney, during the usual
12 hours for business for any proper purpose, the share register,
13 books and records of account, and [records of the proceedings
14 of] minutes of, and consents in lieu of meetings by, the
15 incorporators, shareholders and directors and to make copies or
16 extracts therefrom.

17 (b.1) Contents and delivery of demand.--All of the following
18 apply to a demand under subsection (b):

19 (1) A proper purpose shall mean a purpose reasonably
20 related to the interest of the person as a shareholder.

21 (2) In every instance where an attorney or other agent
22 is the person who seeks the right of inspection, the demand
23 shall be accompanied by a verified power of attorney or other
24 [writing] document in record form that authorizes the
25 attorney or other agent to so act on behalf of the
26 shareholder.

27 (3) The demand must be:

28 (i) made in good faith;

29 (ii) in record form; and

30 (iii) verified.

1 (4) The demand must describe with reasonable
2 particularity:

3 (i) the purpose of the shareholder; and

4 (ii) the records the shareholder desires to inspect
5 and how the records relate to the purpose of the
6 shareholder.

7 (5) The demand [shall be directed] must be delivered to
8 the corporation:

9 [(1)] (i) at its registered office in this
10 Commonwealth;

11 [(2)] (ii) at its principal place of business
12 wherever situated; [or]

13 [(3)] (iii) in care of the person in charge of an
14 actual business office of the corporation[.]; or

15 (iv) in care of the secretary of the corporation at
16 the most recent address of the secretary shown in the
17 records of the department.

18 (c) Proceedings for the enforcement of inspection by a
19 shareholder.--If the corporation, or an officer or agent
20 thereof, refuses to permit an inspection sought by a shareholder
21 or attorney or other agent acting for the shareholder pursuant
22 to subsection (b) or does not reply to the demand within five
23 business days after the demand has been [made] received, the
24 shareholder may [apply to] file an action in the court for an
25 order to compel the inspection. The court [shall] is hereby
26 vested with exclusive jurisdiction to determine whether or not
27 the person seeking inspection is entitled to the inspection
28 sought. The court may summarily order the corporation to permit
29 the shareholder to inspect the share register and the other
30 books and records of the corporation and to make copies or

1 extracts therefrom, or the court may order the corporation to
2 furnish to the shareholder a list of its shareholders as of a
3 specific date on condition that the shareholder first pay to the
4 corporation the reasonable cost of obtaining and furnishing the
5 list and on such other conditions as the court deems
6 appropriate.

7 (c.1) Burden of proof.--Where [the shareholder seeks to
8 inspect the books and records of the corporation, other than its
9 share register or list of shareholders, he shall first
10 establish:

11 (1) That he] a shareholder has complied with the
12 provisions of this section respecting the form and manner of
13 making demand for inspection [of the document.

14 (2) That the inspection he seeks is for a proper
15 purpose.

16 Where] and the shareholder seeks to inspect:

17 (1) the share register or list of shareholders of the
18 corporation [and he has complied with the provisions of this
19 section respecting the form and manner of making demand for
20 inspection of the documents], the burden of proof shall be
21 upon the corporation to establish that the inspection he
22 seeks is for an improper purpose[.]; or

23 (2) the books and records of the corporation, other than
24 the share register or list of shareholders, the burden of
25 proof shall be upon the shareholder to establish that the
26 inspection the shareholder seeks is for a proper purpose.

27 (c.2) Available relief.--The court may, in its discretion,
28 prescribe any limitations or conditions with reference to the
29 inspection or award such other or further relief as the court
30 deems just and proper. The court may order books, documents and

1 records, pertinent extracts therefrom, or duly authenticated
2 copies thereof, to be brought into this Commonwealth and kept in
3 this Commonwealth upon such terms and conditions as the order
4 may prescribe.

5 (c.3) Right to bylaws.--Every shareholder shall have the
6 right to receive, promptly after demand and without charge, a
7 copy in record form of the currently effective text of the
8 bylaws. If the corporation does not provide a shareholder with a
9 copy of the bylaws as required by this subsection, the
10 shareholder may file an action in the court for an order to
11 compel the production. The court shall summarily order the
12 corporation to provide a copy of the bylaws unless the
13 corporation establishes that the person seeking the bylaws is
14 not a shareholder.

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

17 (e) Reasonable restrictions permitted.--The corporation may
18 impose reasonable restrictions and conditions on access to and
19 use of information to be furnished under this section, including
20 designating information confidential and imposing nondisclosure
21 and safeguarding obligations on the recipient. In a dispute
22 concerning the reasonableness of a restriction, condition or
23 obligation under this subsection, the corporation has the burden
24 of proving reasonableness.

25 [(e)] (f) Cross references.--See sections 107 (relating to
26 form of records), 1512 (relating to informational rights of a
27 director) [and], 1763(c) (relating to certification by nominee)
28 [.] and 2511 (relating to financial reports to shareholders) and
29 42 Pa.C.S. § 2503(7) and (9) (relating to right of participants
30 to receive counsel fees).

1 § 1509. Bylaws and other powers in emergency.

2 (a) General rule.--Except as otherwise restricted in the
3 bylaws, the board of directors of any business corporation may
4 adopt emergency bylaws, subject to repeal or change by action of
5 the shareholders, which shall, notwithstanding any different
6 provisions of law or of the articles or bylaws, be effective
7 during [any emergency resulting from an attack on the United
8 States, a nuclear disaster or another catastrophe as a result of
9 which a quorum of the board cannot readily be assembled] an
10 emergency. The emergency bylaws may make any provision that may
11 be appropriate for the circumstances of the emergency,
12 including:

- 13 (1) Procedures for calling meetings of the board.
- 14 (2) Quorum requirements for meetings of the board.
- 15 (3) Procedures for designating additional or substitute
16 directors.

17 (b) Lines of succession; head office.--The board of
18 directors or the officers, if authorized by the board of
19 directors, either before or during any emergency, may:

20 (1) provide, and from time to time modify, lines of
21 succession in the event that during the emergency any or all
22 officers or agents of the corporation shall for any reason be
23 rendered incapable of discharging their duties [and may,];
24 and

25 (2) effective in the emergency, change the head offices
26 or designate several alternative head offices or regional
27 offices of the corporation [or authorize the officers to do
28 so].

29 (c) [Personnel] Representatives not liable.--A
30 representative of the corporation:

1 (1) Acting in accordance with any emergency bylaws
2 [shall not be liable except for willful misconduct.] in
3 effect at the time or otherwise in accordance with this
4 section is not personally liable for monetary damages except
5 for:

6 (i) self-dealing, willful misconduct or
7 recklessness;

8 (ii) violation of a criminal statute; or

9 (iii) payment of taxes pursuant to Federal, State or
10 local law.

11 (2) [Shall not be] Is not liable for any action taken
12 [by him] by the representative in good faith in an emergency
13 in furtherance of the ordinary business affairs of the
14 corporation even though not authorized by the emergency or
15 other bylaws then in effect.

16 (d) Effect on regular bylaws.--To the extent not
17 inconsistent with any emergency bylaws [so adopted], the bylaws
18 of the corporation shall remain in effect during any emergency
19 and, upon its termination, the emergency bylaws shall cease to
20 be effective.

21 (e) Procedure in absence of emergency bylaws.--Unless
22 otherwise provided in emergency bylaws, notice of any meeting of
23 the board of directors during an emergency shall be given only
24 to those directors it is feasible to reach at the time and by
25 such means as are feasible at the time, including publication,
26 radio or television. To the extent required to constitute a
27 quorum at any meeting of the board of directors during any
28 emergency, the officers of the corporation who are present at
29 the meeting shall, unless otherwise provided in emergency
30 bylaws, be deemed, in order of rank and within the same rank in

1 order of seniority, directors for the meeting. An officer
2 serving as a director under this subsection shall be subject to,
3 and entitled to the benefits of, the provisions of this subpart
4 relating to directors.

5 (f) Corporate actions.--A corporate action to further the
6 ordinary business affairs of the corporation that is taken in
7 accordance with any emergency bylaws in effect at the time or
8 otherwise in accordance with this section is valid and binding
9 on the corporation.

10 (g) Shareholder meetings.--The required time for holding the
11 annual meeting of the shareholders of a corporation provided in
12 section 1755(a) (relating to time of holding meetings of
13 shareholders) or the articles or bylaws is tolled during an
14 emergency. The board of directors, acting by a majority of those
15 directors that can be assembled, may take any action during an
16 emergency that the board determines to be practical and
17 necessary to address the circumstances of the emergency with
18 respect to a meeting of shareholders notwithstanding anything to
19 the contrary in this subpart or in the articles or bylaws. The
20 actions the board may take include:

21 (1) postponing the meeting to a later time or date, with
22 the record date for determining the shareholders entitled to
23 notice of, and to vote at, the meeting applying to the
24 postponed meeting without regard to section 1763 (relating to
25 determination of shareholders of record); and

26 (2) with respect to a registered corporation, notifying
27 the shareholders of any postponement or a change of the place
28 of the meeting, or a change to hold the meeting solely by
29 means of remote communication, solely by a document publicly
30 filed by the corporation with the Securities and Exchange

1 Commission pursuant to section 13, 14 or 15(d) of the
2 Exchange Act and the rules and regulations thereunder.

3 (h) Declared distributions.--The board of directors, acting
4 by a majority of the directors that can be assembled, may change
5 during an emergency the record date or payment date of a
6 distribution that has been declared if the record date has not
7 yet occurred. If the board acts under this subsection:

8 (1) the new payment date must be not more than 60 days
9 after the record date that applies to the new payment date;
10 and

11 (2) the corporation must give notice of the changes to
12 shareholders as promptly as practicable thereafter, and in
13 any event before the record date theretofore in effect, which
14 notice, in the case of a registered corporation, may be given
15 solely by a document publicly filed with the Securities and
16 Exchange Commission pursuant to section 13, 14 or 15(d) of
17 the Exchange Act and the rules and regulations thereunder.

18 (i) Definition.--As used in this section, and for no other
19 purpose, "emergency" means a period during which a quorum of the
20 board, or of persons on whom the powers and duties of the board
21 have been conferred or imposed under section 1721, cannot be
22 assembled as a result of:

23 (1) an attack on the United States;

24 (2) a nuclear disaster;

25 (3) an epidemic or pandemic;

26 (4) a state of emergency under federal or state law
27 covering a geographic area in which the corporation has its
28 principal office or a significant regional office or
29 operation; or

30 (5) any other catastrophe or disaster.

1 Section 36. Section 1512(b) and (c) of Title 15 are amended
2 and the section is amended by adding subsections to read:

3 § 1512. Informational rights of a director.

4 * * *

5 (b) Proceedings for enforcement of inspection by a
6 director.--If the corporation, or an officer or agent thereof,
7 refuses to permit an inspection or obtain or provide information
8 sought by a director or attorney or other agent acting for the
9 director pursuant to subsection (a) or does not reply to the
10 request within two business days after the request has been
11 made, the director may [apply to] file an action in the court
12 for an order to compel the inspection or the obtaining or
13 providing of the information. The court shall summarily order
14 the corporation to permit the requested inspection or to obtain
15 the information unless the corporation establishes that [the]
16 information other than the bylaws to be obtained by the exercise
17 of the right is not reasonably related to the performance of the
18 duties of the director or that the director or the attorney or
19 agent of the director is likely to use [the] that information in
20 a manner that would violate the duty of the director to the
21 corporation. The order of the court may contain provisions
22 protecting the corporation from undue burden or expense and
23 prohibiting the director from using the information in a manner
24 that would violate the duty of the director to the corporation.

25 (c) Right to bylaws.--Every director has the right to
26 receive, on demand and without charge, a copy in record form of
27 the currently effective text of the bylaws. This subsection may
28 not be relaxed by any provision of the articles.

29 (d) Reasonable restrictions permitted.--The corporation may
30 impose reasonable restrictions and conditions on access to and

1 use of information to be furnished under this section, including
2 designating information confidential and imposing nondisclosure
3 and safeguarding obligations on the recipient. In a dispute
4 concerning the reasonableness of a restriction, condition or
5 obligation under this subsection, the corporation has the burden
6 of proving reasonableness.

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

11 Section 37. Title 15 is amended by adding a section to read:
12 § 1513. Forum selection provisions.

13 (a) General rule.--The bylaws may provide that:

14 (1) an internal corporate claim must be brought
15 exclusively in a specified court or courts of this
16 Commonwealth and, if so specified, also in:

17 (i) other identified courts sitting in this
18 Commonwealth; or

19 (ii) identified courts sitting in other
20 jurisdictions with which the business corporation has a
21 reasonable relationship; or

22 (2) a claim arising under the Securities Act of 1933 (48
23 Stat. 74, 15 U.S.C. § 77a et seq.) must be brought
24 exclusively in Federal court.

25 (b) Jurisdiction.--A provision of the bylaws adopted under
26 subsection (a) shall not have the effect of conferring
27 jurisdiction on any court or over any person or claim, and shall
28 not apply if none of the courts specified in the provision has
29 the requisite personal and subject matter jurisdiction. If none
30 of the courts of this Commonwealth specified in a provision

1 adopted under subsection (a)(1) has the requisite personal and
2 subject matter jurisdiction and another court of this
3 Commonwealth does have such jurisdiction, then the internal
4 corporate claim may be brought in the court with jurisdiction,
5 notwithstanding that it is not specified in the provision.

6 (c) Definition.--For the purposes of this section, "internal
7 corporate claim" means:

8 (1) an action that is based upon an alleged violation of
9 a duty owed to the business corporation under the laws of
10 this Commonwealth by a current or former director, officer or
11 shareholder in that capacity;

12 (2) a derivative action or proceeding brought on behalf
13 of the corporation;

14 (3) an action asserting a claim arising pursuant to any
15 provision of:

16 (i) this title;

17 (ii) the articles of incorporation or bylaws; or

18 (iii) an agreement regarding the governance of the
19 corporation or the transfer of shares in the corporation
20 if:

21 (A) the corporation and at least one shareholder
22 are parties to the agreement or stated or intended
23 beneficiaries thereof; and

24 (B) the agreement is entered into after the
25 adoption of a forum selection provision under this
26 section and the agreement does not contain an
27 inconsistent forum selection provision; or

28 (4) any action asserting a claim regarding the internal
29 affairs of the corporation that is not included in paragraphs
30 (1), (2) and (3).

1 Section 38. Section 1521(a), (b) (3) and (d) of Title 15 are
2 amended to read:

3 § 1521. Authorized shares.

4 (a) General rule.--Every business corporation shall have
5 power to create and issue the number of shares stated in its
6 articles. The shares may consist of one class or be divided into
7 two or more classes and one or more series within any class
8 thereof, which classes or series may have full, limited,
9 multiple or fractional or no voting rights and such
10 designations, preferences, limitations and special rights as may
11 be desired. [Shares that are not entitled to a preference, even
12 if identified by a class or other designation, shall not be
13 designated as preference or preferred shares.]

14 (b) Provisions specifically authorized.--

15 * * *

16 (3) The articles may confer upon a shareholder a
17 specifically enforceable right to the declaration and payment
18 of dividends, the redemption of shares or the making of any
19 other form of distribution if the distribution is at the time
20 of enforcement then not prohibited by section [1551(b) (2)]
21 1551(b) (relating to limitation). Such a right shall not
22 arise by implication, but only by either an express reference
23 to this section or another express reference to specific
24 enforceability of a distribution.

25 * * *

26 (d) Status and rights.--Shares of a business corporation
27 shall be deemed personal property. Except as otherwise provided
28 by the articles or, when so permitted by subsection (c), by one
29 or more bylaws adopted by the shareholders, each share shall be
30 in all respects equal to every other share. Nothing in this

1 subsection shall require a distribution by way of purchase,
2 redemption or other acquisition of the corporation's shares to
3 be made or offered with respect to all shares or all shares of
4 the same class or series. See section 1906(d)(4) (relating to
5 special treatment of holders of shares of same class or series).

6 Section 39. Section 1525(b) and (d) of the act are amended
7 and the section is amended by adding a subsection to read:

8 § 1525. Stock rights and options.

9 * * *

10 (b) Specifically authorized provisions.--The securities,
11 contracts, warrants or other instruments evidencing any shares,
12 option rights, securities having conversion or option rights, or
13 obligations of a corporation may contain such terms as are fixed
14 by the board of directors, including, without limiting the
15 generality of such authority:

16 (1) Restrictions upon the authorization or issuance of
17 additional shares, option rights, securities having
18 conversion or option rights, or obligations.

19 (2) Provisions for the adjustment of the conversion or
20 option rights price.

21 (3) Provisions concerning rights or adjustments in the
22 event of reorganization, merger, [consolidation,] sale of
23 assets, interest exchange [of shares] or other fundamental
24 changes.

25 (4) Provisions for the reservation of authorized but
26 unissued shares or other securities.

27 (5) Restrictions upon the declaration or payment of
28 dividends or distributions or related party transactions.

29 (6) Conditions relating to the exercise, conversion,
30 transfer or receipt of such shares, option rights, securities

1 having conversion or option rights, or obligations.
2 [There shall be no authority under this subsection to include a
3 provision authorized by section 2513 (relating to disparate
4 treatment of certain persons).]

5 (b.1) Disparate treatment.--Subsection (b) does not
6 authorize the inclusion of a condition described in section 2513
7 (relating to disparate treatment of certain persons) in the case
8 of a corporation that is not a registered corporation described
9 in section 2502(1)(i) (relating to registered corporation
10 status).

11 * * *

12 (d) Pricing and payment.--The provisions of this subchapter
13 applicable to the [pricing of and payment for] issuance and
14 pricing of, and payment for, shares shall be applicable to [the
15 pricing of and payment for] rights and options except that the
16 rights and options may be issued to representatives of the
17 corporation or any of its affiliates as an incentive to service
18 or continued service with the corporation and its affiliates or
19 for such other purpose and upon such other terms as its
20 directors, who may benefit by their action, [deem advantageous
21 to the corporation] approve.

22 * * *

23 Section 40. Sections 1529(b), (c) and (d), 1552(a), 1553(a),
24 1571(b)(1) introductory paragraph and (f), 1702(a) and (d),
25 1704(a) and (d), 1708 and 1709(b) and (c) of Title 15 are
26 amended to read:

27 § 1529. Transfer of securities; restrictions.

28 * * *

29 (b) Transfer restrictions generally.--A restriction on the
30 transfer or registration of transfer of securities of a business

1 corporation may be imposed by the bylaws or by an agreement
2 among any number of securityholders or among them and the
3 corporation. A restriction so imposed shall not be binding with
4 respect to securities issued prior to the adoption of the
5 restriction unless the holders of the securities are parties to
6 the agreement or voted in favor of the restriction[.], except
7 that a provision of the bylaws of a registered corporation
8 described in section 2502(1) (relating to registered corporation
9 status) adopted by the shareholders that is described in
10 subsection (d)(1)(ii), (2) or (3) shall be binding with respect
11 to all of the securities of each class or series to which it
12 applies. A restriction may be amended [by the vote or consent
13 and otherwise] in the manner provided in the bylaws or agreement
14 for amending the restriction or, in the absence of such a
15 provision, as provided for amending the bylaws or agreement
16 generally.

17 (c) Restrictions specifically authorized.--A restriction on
18 the transfer of securities of a business corporation is
19 permitted by this section if it:

20 (1) obligates the holder of the restricted securities to
21 offer to the corporation or to any other holders of
22 securities of the corporation or to any other person or to
23 any combination of the foregoing a prior opportunity, to be
24 exercised within a reasonable time, to acquire the restricted
25 securities;

26 (2) obligates the corporation or any holder of
27 securities of the corporation or any other person or any
28 combination of the foregoing, to purchase the securities that
29 are the subject of an agreement respecting the purchase and
30 sale of the restricted securities;

1 (3) requires the corporation or the holders of any class
2 or series of securities of the corporation to consent to any
3 proposed transfer of the restricted securities or to approve
4 the proposed transferee of the restricted securities [;] or
5 to approve the amount of securities of the corporation that
6 may be owned by any person or group of persons;

7 (3.1) obligates the holder of the restricted securities
8 to sell or transfer an amount of restricted securities to the
9 corporation or to any other holders of securities of the
10 corporation or to any other person or to any combination of
11 the foregoing, or causes or results in the automatic sale or
12 transfer of an amount of restricted securities to the
13 corporation or to any other holders of securities of the
14 corporation or to any other person or to any combination of
15 the foregoing; or

16 (4) prohibits the transfer of the restricted securities
17 to designated persons or classes of persons and the
18 designation is not manifestly unreasonable.

19 (d) [Subchapter S] Tax and regulatory restrictions.--Any
20 restriction on the transfer of [the shares] securities of a
21 business corporation [for the purpose of maintaining its status
22 as an electing small business corporation under Subchapter S of
23 the Internal Revenue Code of 1986 or a comparable provision
24 under state law] or on the amount of securities of a corporation
25 that may be owned by a person or group of persons for any of the
26 following purposes shall be conclusively presumed to be for a
27 reasonable purpose[.]:

28 (1) relating to the Federal, State, local or foreign
29 taxation of the corporation or its shareholders, including
30 without limitation:

1 (i) maintaining the status of the corporation as an
2 electing small business corporation under Subchapter S of
3 the Internal Revenue Code of 1986;

4 (ii) maintaining or preserving any tax attribute,
5 including without limitation net operating losses; or

6 (iii) qualifying or maintaining the qualification of
7 the corporation as a real estate investment trust
8 pursuant to the Internal Revenue Code of 1986;

9 (2) complying with any statutory or regulatory
10 requirement; or

11 (3) maintaining any statutory or regulatory status.

12 * * *

13 § 1552. Power of corporation to acquire its own shares.

14 (a) General rule.--A business corporation shall have the
15 power to acquire its own shares. If the articles provide that
16 shares acquired by the corporation shall not be reissued, the
17 authorized shares of the class or series that was acquired shall
18 be reduced by the number of shares acquired. In any other case
19 the shares acquired shall be deemed to be issued but not
20 outstanding, except that, unless otherwise provided in the
21 bylaws, the board may, by resolution, restore any or all of the
22 previously issued shares of the corporation owned by it to the
23 status of:

24 (1) authorized but unissued shares[.]; or

25 (2) authorized but unissued shares of the class or
26 series.

27 * * *

28 § 1553. Liability for unlawful dividends and other
29 distributions.

30 (a) Directors.--Except as otherwise provided pursuant to

1 section 1713 (relating to personal liability of directors), a
2 director who votes for or assents to any dividend or other
3 distribution contrary to the provisions of this subpart or
4 contrary to any restrictions contained in the bylaws shall, if
5 he has not complied with the standard provided in or pursuant to
6 section 1712 (relating to standard of care [and] justifiable
7 reliance and business judgment rule), be liable to the
8 corporation, jointly and severally with all other directors so
9 voting or assenting, for the amount of the dividend that is paid
10 or the value of the other distribution in excess of the amount
11 of the dividend or other distribution that could have been made
12 without a violation of the provisions of this subpart or the
13 restrictions in the bylaws.

14 * * *

15 § 1571. Application and effect of subchapter.

16 * * *

17 (b) Exceptions.--

18 (1) Except as otherwise provided in paragraph (2), the
19 holders of the shares of any class or series of shares shall
20 not have the right to dissent and obtain payment of the fair
21 value of the shares under this subchapter if, on the record
22 date fixed to determine the shareholders entitled to notice
23 of and to vote at the meeting at which a plan specified in
24 any of section 333, 343, 353, 363 or 1932(c) is to be voted
25 on or on the date of the first public announcement that such
26 a plan has been approved by the shareholders by consent
27 without a meeting, the shares of the class or series are
28 either:

29 * * *

30 (f) Certain provisions of articles ineffective.--This

1 subchapter may not be relaxed by any provision of the
2 articles[.], except that the articles may limit or eliminate
3 dissenters rights for a class or series of shares entitled to a
4 preference. If a limitation or elimination is added by
5 amendment, the limitation or elimination shall not apply to
6 shares that are outstanding on the effective date of the
7 amendment or that are issuable pursuant to a conversion,
8 exchange or other right exercisable on the effective date of the
9 amendment.

10 * * *

11 § 1702. Manner of giving notice.

12 (a) General rule.--

13 (1) Any notice required to be given to any person under
14 the provisions of this subpart or by the articles or bylaws
15 of any business corporation shall be given to the person
16 either personally or by [sending] delivering a copy thereof:

17 (i) By first class or express mail, postage prepaid,
18 or courier service, charges prepaid, to [his] the postal
19 address of the person appearing on the books of the
20 corporation or, in the case of directors, supplied by
21 [him] the director to the corporation for the purpose of
22 notice. Notice pursuant to this subparagraph shall be
23 deemed to have been given to the person entitled thereto
24 when deposited in the United States mail or with a
25 courier service for delivery to that person.

26 (ii) By facsimile transmission, e-mail or other
27 electronic communication to [his] the facsimile number or
28 address for e-mail or other electronic communications
29 supplied by [him] the person to the corporation for the
30 purpose of notice. Notice pursuant to this subparagraph

1 shall be deemed to have been given to the person entitled
2 thereto when sent.

3 (2) A notice of meeting shall specify the day and hour
4 and geographic location, if any, of the meeting and any other
5 information required by any other provision of this subpart.
6 A notice of meeting may include other information if the
7 information required by this subpart appears conspicuously at
8 or near the beginning of the notice.

9 * * *

10 (d) Cross [reference] references.--See [section] sections
11 2522 (relating to adjournment or postponement of meeting of
12 shareholders), 2528 (relating to notice of shareholder meetings)
13 and 3133 (relating to notice of meetings of members of mutual
14 insurance companies).

15 § 1704. Place and notice of meetings of shareholders.

16 (a) Place.--Meetings of shareholders may be held at such
17 geographic location within or without this Commonwealth as may
18 be provided in or fixed pursuant to the bylaws. Authority to
19 provide for the location of a meeting of the shareholders
20 includes the authority to determine to hold a meeting solely by
21 means of electronic technology in accordance with section 1708
22 (relating to use of conference telephone or other electronic
23 technology), notwithstanding that the authority may refer to one
24 or more geographic locations. Unless otherwise provided in or
25 fixed pursuant to the bylaws, all meetings of the shareholders
26 that are not held solely by means of electronic technology shall
27 be held at the executive office of the corporation wherever
28 situated. [If a meeting of the shareholders is held by means of
29 the Internet or other electronic communications technology in a
30 fashion pursuant to which the shareholders have the opportunity

1 to read or hear the proceedings substantially concurrently with
2 their occurrence, vote on matters submitted to the shareholders,
3 pose questions to the directors, make appropriate motions and
4 comment on the business of the meeting, the meeting need not be
5 held at a particular geographic location.]

6 * * *

7 (d) Alternative authority.--If the secretary or other
8 authorized person [neglects or refuses to] does not give notice
9 of a meeting within a reasonable time, a person calling the
10 meeting may do so.

11 * * *

12 § 1708. Use of conference telephone or other electronic
13 technology.

14 (a) Incorporators and directors.--Except as otherwise
15 provided in the bylaws, one or more persons may participate in a
16 meeting of the incorporators or the board of directors of a
17 business corporation by means of conference telephone or other
18 electronic technology by means of which all persons
19 participating in the meeting can hear each other. Participation
20 in a meeting pursuant to this [section] subsection shall
21 constitute presence in person at the meeting.

22 (b) Shareholders.--Except as otherwise provided in the
23 bylaws, the presence or participation, including voting and
24 taking other action, by a shareholder at a meeting of
25 shareholders [or the expression of consent or dissent to
26 corporate action by a shareholder] by conference telephone or
27 other electronic [means, including, without limitation, the
28 Internet, shall constitute the presence of, or vote or action
29 by, or consent or dissent of] technology constitutes the
30 presence or participation, including voting and taking other

1 action, by the shareholder for the purposes of this subpart.

2 (c) Exclusive use of electronic technology.--Unless the
3 bylaws provide expressly that a meeting of shareholders may not
4 be held solely by means of electronic technology, a meeting of
5 the shareholders does not need to be held at a geographic
6 location if the meeting is held by means of electronic
7 technology in a fashion pursuant to which the shareholders have
8 a reasonable opportunity to participate in the meeting, read or
9 hear the proceedings substantially concurrently with their
10 occurrence, vote on matters submitted to the shareholders and,
11 subject to such guidelines and procedures as the board of
12 directors may adopt, make appropriate motions and comment on the
13 business of the meeting. Any guidelines or procedures adopted by
14 the board must comply with sections 1709(c) (relating to conduct
15 of shareholders meeting) and 1758(e) (relating to voting rights
16 of shareholders).

17 § 1709. Conduct of shareholders meeting.

18 * * *

19 (b) Authority of the presiding officer.--Except as otherwise
20 provided in the bylaws, the presiding officer shall determine
21 the order of business and shall have the authority to establish
22 rules for the conduct of the meeting if the board of directors
23 has not determined the order of business or established the
24 rules.

25 (c) Procedural standard.--Any [action by the presiding
26 officer in adopting rules for and in conducting a meeting shall]
27 rules adopted for, and the conduct of, a meeting must be fair to
28 the shareholders.

29 * * *

30 Section 41. Section 1711 of Title 15 is amended by adding a

1 subsection to read:

2 § 1711. Alternative provisions.

3 * * *

4 (d) Reversal of opt-out.--A provision of the articles or
5 bylaws providing that section 1715 or corresponding provisions
6 of prior law shall not be applicable to the corporation may be
7 rescinded pursuant to the procedures required by this subpart
8 and the articles and bylaws at the time of the rescission to
9 amend the articles or bylaws.

10 Section 42. Section 1712 of Title 15 is amended to read:

11 § 1712. Standard of care [and], justifiable reliance and
12 business judgment rule.

13 (a) [Directors] General rule.--A director of a business
14 corporation shall stand in a fiduciary relation to the
15 corporation and shall perform [his duties as] the duties of a
16 director, including [his] duties as a member of any committee of
17 the board upon which [he] the director may serve, in good faith,
18 in a manner [he] the director reasonably believes to be in the
19 best interests of the corporation and with such care, including
20 [reasonable inquiry,] the skill and diligence[, as] that a
21 person of ordinary prudence would use under similar
22 circumstances[.] and reasonable inquiry into those issues
23 required by the statutes of this Commonwealth to be considered
24 in the circumstances and those interests and factors listed or
25 described in section 1715(a) (relating to exercise of powers
26 generally) or 1716(a) (relating to alternative standard) that
27 the director considers appropriate. This subsection is subject
28 to subsection (d) where applicable.

29 (a.1) Justifiable reliance.--In performing [his duties] the
30 duties of a director, and in satisfying the requirements of

1 subsection (d), a director [~~shall be~~] is entitled to rely in
2 good faith on information, opinions, reports or statements,
3 including financial statements and other financial data, in each
4 case prepared or presented by any of the following:

5 (1) One or more officers or employees of the corporation
6 or an affiliate of the corporation whom the director
7 reasonably believes to be reliable and competent in the
8 matters presented.

9 (2) Counsel, public accountants or other persons as to
10 matters which the director reasonably believes to be within
11 the professional or expert competence of such person.

12 (3) A committee of the board upon which [~~he~~] the
13 director does not serve, duly designated in accordance with
14 law, as to matters within its designated authority, which
15 committee the director reasonably believes to merit
16 confidence.

17 (b) Effect of actual knowledge.--A director [~~shall not be~~]
18 is not considered to be acting in good faith [~~if he has~~] under
19 subsection (a.1) if the director has actual knowledge concerning
20 the matter [~~in question that would cause his~~] that causes the
21 director to believe reliance [~~to be~~] is unwarranted.

22 [~~(c) Officers.--Except as otherwise provided in the bylaws,~~
23 ~~an officer shall perform his duties as an officer in good faith,~~
24 ~~in a manner he reasonably believes to be in the best interests~~
25 ~~of the corporation and with such care, including reasonable~~
26 ~~inquiry, skill and diligence, as a person of ordinary prudence~~
27 ~~would use under similar circumstances. A person who so performs~~
28 ~~his duties shall not be liable by reason of having been an~~
29 ~~officer of the corporation.]~~

30 (d) Business judgment rule.--A director who makes a business

1 judgment in good faith fulfills the duties under this section
2 if:

3 (1) the subject of the business judgment does not
4 involve self-dealing by the director or an associate or
5 affiliate of the director;

6 (2) the director is informed with respect to the subject
7 of the business judgment to the extent the director
8 reasonably believes to be appropriate under the
9 circumstances; and

10 (3) the director rationally believes that the business
11 judgment is in the best interests of the corporation.

12 (e) Burden of proof.--A person challenging the conduct of a
13 director as violating the duty of care under this section has
14 the burden of proving:

15 (1) a breach of the duty of care, including that a
16 requirement for fulfillment of that duty under subsection (d)
17 has not been met; and

18 (2) in a damage action, that the breach was the legal
19 cause of damage suffered by the corporation.

20 Section 43. Section 1713(a) (1) and (c) of Title 15 are
21 amended and the section is amended by adding a subsection to
22 read:

23 § 1713. Personal liability of directors.

24 (a) General rule.--If a bylaw adopted by the shareholders of
25 a business corporation so provides, a director shall not be
26 personally liable, as such, for monetary damages for any action
27 taken unless:

28 (1) the director has breached or failed to perform the
29 duties of [his office] a director under this subchapter; and

30 * * *

1 (c) Application.--An amendment or repeal of a provision
2 adopted under subsection (a) does not affect its application
3 with respect to an act by a director occurring before the
4 amendment or repeal unless the provision in effect at the time
5 of the act explicitly authorizes its amendment or repeal after
6 an act has occurred.

7 [(c)] (d) Cross reference.--See 42 Pa.C.S. § 8332.5
8 (relating to corporate representatives).

9 Section 44. Sections 1714, 1715(b), (d) and (e)(1)(i), 1716,
10 1717 and 1718 of Title 15 are amended to read:

11 § 1714. [Notation of dissent] Presumption of assent.

12 A director of a business corporation who is present at a
13 meeting of its board of directors, or of a committee of the
14 board, at which action on any corporate matter is taken on which
15 the director is generally competent to act, shall be presumed to
16 have assented to the action taken unless [his dissent] the
17 director's dissent, abstention or vote against the matter is
18 entered in the minutes of the meeting or unless [he files his
19 written dissent] the director delivers to the secretary of the
20 meeting before the adjournment thereof a dissent in record form
21 to the action [with the secretary of the meeting before the
22 adjournment thereof] or transmits the dissent [in writing] in
23 record form to the secretary of the corporation immediately
24 after the adjournment of the meeting. The right to dissent shall
25 not apply to a director who voted in favor of the action.
26 Nothing in this subchapter shall bar a director from asserting
27 that minutes of the meeting incorrectly omitted [his dissent]
28 the director's dissent, abstention or vote against if, promptly
29 upon receipt of a copy of such minutes, [he] the director
30 notifies the secretary [in writing] of the corporation in record

1 form of the asserted omission or inaccuracy.

2 § 1715. Exercise of powers generally.

3 * * *

4 (b) Consideration of interests and factors.--The board of
5 directors, committees of the board and individual directors
6 shall not be required, in considering the best interests of the
7 corporation or the effects of any action, to regard any
8 corporate interest or the interests of any particular group
9 affected by such action as a dominant or controlling interest or
10 factor. The consideration of interests and factors in the manner
11 described in this subsection and in subsection (a) shall not
12 constitute a violation of section 1712 (relating to standard of
13 care [and], justifiable reliance and business judgment rule).

14 * * *

15 (d) Presumption.--[Absent breach of fiduciary duty, lack of
16 good faith or self-dealing, any act as the board of directors, a
17 committee of the board or an individual director shall be
18 presumed to be in the best interests of the corporation.] In
19 assessing whether the standard set forth in section 1712 or 1728
20 (relating to interested directors or officers; quorum) has been
21 satisfied, there shall not be any greater obligation to justify,
22 or higher burden of proof with respect to, any act as the board
23 of directors, any committee of the board or any individual
24 director relating to or affecting an acquisition or potential or
25 proposed acquisition of control of the corporation than is
26 applied to any other act as a board of directors, any committee
27 of the board or any individual director. Notwithstanding section
28 1712(d) and the preceding [provisions] provision of this
29 subsection, any act as the board of directors, a committee of
30 the board or an individual director relating to or affecting an

1 acquisition or potential or proposed acquisition of control to
2 which a majority of the disinterested directors shall have
3 assented shall be presumed to satisfy the standard set forth in
4 section 1712 or 1728, unless it is proven by clear and
5 convincing evidence that the disinterested directors did not
6 assent to such act in good faith after reasonable investigation.

7 (e) Definition.--The term "disinterested director" as used
8 in subsection (d) and for no other purpose means:

9 (1) A director of the corporation other than:

10 (i) A director who has a direct or indirect
11 financial or other interest in the person acquiring or
12 seeking to acquire control of the corporation or who is
13 an affiliate or associate[, as defined in section 2552
14 (relating to definitions),] of, or was nominated or
15 designated as a director by, a person acquiring or
16 seeking to acquire control of the corporation.

17 * * *

18 § 1716. Alternative standard.

19 (a) General rule.--In discharging the duties of their
20 respective positions, the board of directors, committees of the
21 board and individual directors of a business corporation may, in
22 considering the best interests of the corporation, consider the
23 effects of any action upon employees, upon suppliers and
24 customers of the corporation and upon communities in which
25 offices or other establishments of the corporation are located,
26 and all other pertinent factors. The consideration of those
27 factors shall not constitute a violation of section 1712
28 (relating to standard of care [and], justifiable reliance and
29 business judgment rule).

30 [(b) Presumption.--Absent breach of fiduciary duty, lack of

1 good faith or self-dealing, actions taken as a director shall be
2 presumed to be in the best interests of the corporation.]

3 (c) Cross reference.--See section 1711 (relating to
4 alternative provisions).

5 § 1717. Limitation on standing.

6 The duty of the board of directors, committees of the board
7 and individual directors under section 1712 (relating to
8 standard of care [and], justifiable reliance and business
9 judgment rule) is solely to the business corporation and not to
10 any shareholder or creditor or any other person or group, and
11 may be enforced directly by the corporation or may be enforced
12 by [a shareholder, as such, by] an action in the right of the
13 corporation, and may not be enforced directly by a shareholder
14 or creditor or by any other person or group. Notwithstanding the
15 preceding sentence, sections 1715(a) and (b) (relating to
16 exercise of powers generally) and 1716(a) (relating to
17 alternative standard) do not impose upon the board of directors,
18 committees of the board and individual directors any legal or
19 equitable duties, obligations or liabilities or create any right
20 or cause of action against, or basis for standing to sue, the
21 board of directors, committees of the board and individual
22 directors.

23 § 1718. Inconsistent articles ineffective.

24 Except as otherwise expressly provided in this subchapter,
25 the articles may not contain any provision that relaxes,
26 restricts, is inconsistent with or supersedes any provision of
27 this subchapter. [The last sentence of section 1306(b)] Section
28 1306(b)(2) (relating to other provisions authorized) shall not
29 apply to this subchapter.

30 Section 45. Title 15 is amended by adding a section to read:

1 § 1719. Renunciation of business opportunities.

2 The articles of incorporation, or an action of the board of
3 directors, may renounce any interest or expectancy of a business
4 corporation in, or in being offered an opportunity to
5 participate in, a specified business opportunity or specified
6 classes or categories of business opportunities that are
7 presented to the corporation or to one or more of its directors,
8 officers or shareholders.

9 Section 46. Sections 1721(a) and 1722(b) of Title 15 are
10 amended to read:

11 § 1721. Board of directors.

12 (a) General rule.--Unless otherwise provided by statute or
13 in a bylaw adopted by the shareholders, all powers enumerated in
14 section 1502 (relating to general powers) and elsewhere in this
15 [subpart] title or otherwise vested by law in a business
16 corporation shall be exercised by or under the authority of the
17 board of directors, and the business and affairs of every
18 business corporation shall be managed by or under the direction
19 of, a board of directors. If any such provision is made in the
20 bylaws, the powers and duties conferred or imposed upon the
21 board of directors by this [subpart] title shall be exercised or
22 performed to such extent and by such person or persons as shall
23 be provided in the bylaws. Persons upon whom the [liabilities]
24 powers and duties of directors are imposed by this section shall
25 to that extent be subject to the liabilities imposed, and
26 entitled to the rights and immunities conferred, by or pursuant
27 to this part and other provisions of law upon directors of a
28 corporation.

29 * * *

30 § 1722. Qualifications of directors.

1 * * *

2 (b) Cross [reference] references.--See [section] sections
3 2530 (relating to qualifications of directors) and 3131
4 (relating to directors).

5 Section 47. Section 1724(a) of Title 15 is amended and the
6 section is amended by adding a subsection to read:

7 § 1724. Term of office of directors.

8 (a) General rule.--Each director of a business corporation
9 shall hold office until the expiration of the term for which
10 [he] the director was selected and until [his] a successor has
11 been selected and qualified or until [his] the director's
12 earlier death, resignation or removal. [Any director may resign
13 at any time upon written notice to the corporation. The
14 resignation shall be effective upon receipt thereof by the
15 corporation or at such subsequent time as shall be specified in
16 the notice of resignation.] Each director shall be selected for
17 the term of office provided in the bylaws, which shall be one
18 year [and until his successor has been selected and qualified or
19 until his earlier death, resignation or removal,] unless the
20 board is classified as provided by subsection (b). A decrease in
21 the number of directors shall not have the effect of shortening
22 the term of any incumbent director.

23 * * *

24 (c) Resignation.--A director may resign at any time upon
25 notice in record form to the corporation. A resignation that is
26 not conditioned upon acceptance by the board of directors shall
27 be effective upon receipt by the corporation of the notice of
28 resignation, unless the notice specifies a later effective time
29 or an effective time determined upon the happening of an event
30 or events. If a resignation is conditioned upon its acceptance

1 by the board, a decision by the board to accept or reject the
2 resignation shall be made by the board in accordance with
3 Subchapter B (relating to fiduciary duty).

4 Section 48. Section 1725(b) of Title 15 is amended by adding
5 a paragraph to read:

6 § 1725. Selection of directors.

7 * * *

8 (b) Vacancies.--

9 * * *

10 (3) At any time when the offices of all of the directors
11 of a corporation are vacant, any officer or shareholder, or a
12 fiduciary for a shareholder, may call a special meeting of
13 shareholders for the purpose of electing directors. This
14 paragraph shall not apply if the articles or bylaws, or an
15 agreement among the shareholders of a closely held
16 corporation, provide that all of the powers and duties of
17 directors are exercised by persons other than directors.

18 * * *

19 Section 49. Sections 1727(b) and 1728(a) of Title 15 are
20 amended and the sections are amended by adding subsections to
21 read:

22 § 1727. Quorum of and action by directors.

23 * * *

24 (b) Action by consent.--Unless otherwise restricted in the
25 bylaws, any action required or permitted to be approved at a
26 meeting of the directors may be approved without a meeting [if]
27 by a consent or consents to the action in record form [are].
28 Except as provided in subsection (c), the consents must be
29 signed, before, on or after the effective [date] time of the
30 action by all of the directors in office [on the date the first

1 consent is signed] at the effective time. The consent or
2 consents must be filed with the minutes of the proceedings of
3 the board of directors.

4 (c) Effectiveness of consent.--A consent may provide, or a
5 person signing a consent, whether or not then a director, may
6 instruct in record form, that the consent will be effective at a
7 future time, including a time determined upon the happening of
8 an event. In the case of a consent signed by a person not a
9 director at the time of signing, the consent is effective at the
10 stated effective time if the person who signed the consent is a
11 director at the effective time and did not revoke the consent in
12 record form prior to the effective time. A consent is effective
13 at the stated effective time even if one or more signers are no
14 longer directors at the effective time unless the consent has
15 been revoked by a signer who is a director at the effective
16 time. A signer of a consent may revoke the signer's consent in
17 record form until the consent becomes effective.

18 § 1728. Interested directors or officers; quorum.

19 (a) General rule.--A contract or transaction between a
20 business corporation and one or more of its directors or
21 officers or between a business corporation and another domestic
22 or foreign corporation for profit or not-for-profit,
23 partnership, joint venture, trust or other enterprise in which
24 one or more of [its] the corporation's directors or officers are
25 [directors] governors or officers of the other association or
26 have a financial or other interest, [shall not be] is not void
27 or voidable solely for that reason, or solely because the
28 director or officer of the corporation is present at or
29 participates in the meeting of the board of directors that
30 authorizes the contract or transaction, or solely because [his

1 or their votes are] the vote of the director or officer is
2 counted for that purpose, if:

3 (1) the material facts as to the relationship or
4 interest and as to the contract or transaction are disclosed
5 or are known to the board of directors and the board
6 authorizes the contract or transaction by the affirmative
7 votes of a majority of the disinterested directors even
8 though the disinterested directors are less than a quorum;

9 (2) the material facts as to [his] the relationship or
10 interest and as to the contract or transaction are disclosed
11 or are known to the shareholders entitled to vote thereon and
12 the contract or transaction is specifically approved in good
13 faith by vote of those shareholders; [or]

14 (3) the contract or transaction is fair as to the
15 corporation as of the time it is authorized, approved or
16 ratified by the board of directors or the shareholders[.]; or

17 (4) the contract or transaction satisfies subsection (d)
18 or (e).

19 * * *

20 (d) Common governors or officers with not wholly owned
21 associations.--A contract or transaction between a business
22 corporation and an association that is not wholly owned by the
23 corporation, is not void or voidable solely on the grounds that
24 a person who is a director or officer of the corporation is also
25 a governor or officer of the other association if:

26 (1) one of the conditions set forth in subsection (a)
27 (1), (2) or (3) is satisfied; or

28 (2) (i) the director or officer does not participate
29 personally and substantially in negotiating the
30 transaction for either the corporation or the other

1 association; and

2 (ii) if the transaction is approved by the governors
3 of either association, the person that is a governor or
4 officer of each association does not cast a vote that
5 would be necessary at a meeting to approve the
6 transaction on behalf of either association.

7 (e) Common governors or officers with wholly owned
8 associations.--A contract or transaction between a business
9 corporation and an association that is wholly owned by the
10 corporation is not void or voidable solely on the grounds that a
11 director or officer of the corporation is also a governor or
12 officer of the wholly owned association.

13 (f) Cross references.--See sections 1715(d) (relating to
14 exercise of powers generally) and 1730 (relating to compensation
15 of directors).

16 Section 50. Sections 1730, 1731(a) and 1732 of Title 15 are
17 amended to read:

18 § 1730. Compensation of directors.

19 (a) General rule.--Except as otherwise restricted in the
20 bylaws, the board of directors of a business corporation [shall
21 have] has the authority to fix the compensation of directors for
22 their services as directors [and a], regardless of the personal
23 interest of the directors. A director may be a salaried officer
24 of the corporation.

25 (b) Presumption.--If the board of directors establishes the
26 compensation of directors in accordance with subsection (a),
27 that action is presumed to be fair to the corporation.

28 § 1731. Executive and other committees of the board.

29 (a) Establishment and powers.--Unless otherwise restricted
30 in the bylaws:

1 (1) The bylaws or the board of directors of a business
2 corporation may establish one or more committees to consist
3 of one or more directors of the corporation.

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

9 (i) The submission to shareholders of any action or
10 matter, other than the election or removal of directors,
11 requiring approval of shareholders under this subpart or
12 Chapter 3 (relating to entity transactions).

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

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

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

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

23 (3) The board may designate one or more directors as
24 alternate members of any committee who may replace any absent
25 or disqualified member at any meeting of the committee or for
26 the purposes of [any written] action in record form by the
27 committee. In the absence or disqualification of a member and
28 alternate member or members of a committee, the member or
29 members thereof present at any meeting and not disqualified
30 from voting, whether or not [he or they] those present

1 constitute a quorum, may unanimously appoint another director
2 to act at the meeting in the place of the absent or
3 disqualified member.

4 * * *

5 § 1732. Officers.

6 (a) General rule.--Every business corporation shall have a
7 president, a secretary and a treasurer, or persons who shall act
8 as such, regardless of the name or title by which they may be
9 designated, elected or appointed and may have such other
10 officers [and assistant officers] as it may authorize from time
11 to time. The bylaws may prescribe special qualifications for the
12 officers. The president and secretary shall be natural persons
13 of full age. The treasurer may be a corporation, but if a
14 natural person shall be of full age. Unless otherwise restricted
15 in the bylaws, it shall not be necessary for the officers to be
16 directors. Any number of offices may be held by the same person.

17 (b) Election, appointment and term of office.--The officers
18 [and assistant officers] shall be elected or appointed at such
19 time, in such manner and for such terms as may be fixed by or
20 pursuant to the bylaws. Unless otherwise provided by or pursuant
21 to the bylaws, each officer shall hold office for a term of one
22 year and until [his] the officer's successor has been selected
23 and qualified or until [his] the officer's earlier death,
24 resignation or removal.

25 (c) Resignation.--Any officer may resign at any time upon
26 written notice to the corporation. The resignation shall be
27 effective upon receipt thereof by the corporation or at such
28 subsequent time as may be specified in the notice of
29 resignation.

30 (d) Bonding.--The corporation may secure the fidelity of any

1 or all of the officers by bond or otherwise.

2 (e) Vacancies.--Unless otherwise provided in the bylaws, the
3 board of directors has the power to fill any vacancies in any
4 office occurring from whatever reason.

5 [(b)] (f) Authority.--Unless otherwise provided in the
6 bylaws, all officers of the corporation, as between themselves
7 and the corporation, shall have such authority and perform such
8 duties in the management of the corporation as may be provided
9 by or pursuant to the bylaws or, in the absence of controlling
10 provisions in the bylaws, as may be determined by or pursuant to
11 [resolutions or orders] actions of the board of directors.

12 [(c) Cross references.--See sections 1110 (relating to
13 annual report information), 1712(c) (relating to officers) and
14 3132 (relating to officers).]

15 (g) Right to bylaws.--Every officer shall have the right to
16 receive, promptly after demand and without charge, a copy in
17 record form of the currently effective text of the bylaws, but
18 only to the extent reasonably related to the officer's duties.

19 Section 51. Title 15 is amended by adding sections to read:
20 § 1734. Officer's standard of care and justifiable reliance.

21 (a) General rule.--Except as otherwise provided in the
22 bylaws, an officer shall perform the officer's duties in good
23 faith, in a manner the officer reasonably believes to be in the
24 best interests of the business corporation and with such care,
25 including reasonable inquiry, skill and diligence, as a person
26 of ordinary prudence would use under similar circumstances. A
27 person who performs the duties of an officer in accordance with
28 this subsection, and any provision of the bylaws that modify
29 this subsection, shall not be liable to the corporation by
30 reason of having been an officer of the corporation.

1 (b) Justifiable reliance.--In performing the duties of an
2 officer, an officer is entitled to rely in good faith on
3 information, opinions, reports or statements, including
4 financial statements and other financial data, in each case
5 prepared or presented by any of the following:

6 (1) One or more other officers or employees of the
7 corporation or an affiliate of the corporation whom the
8 officer reasonably believes to be reliable and competent in
9 the matters presented.

10 (2) Counsel, public accountants or other persons as to
11 matters that the officer reasonably believes to be within the
12 professional or expert competence of such person.

13 (c) Effect of actual knowledge.--An officer is not
14 considered to be acting in good faith under subsection (a) if
15 the officer has actual knowledge concerning the matter that
16 causes the officer to believe reliance is unwarranted.

17 (d) Business judgment rule.--Except as otherwise restricted
18 in the bylaws, an officer who makes a business judgment in good
19 faith fulfills the duties of an officer if:

20 (1) the subject of the business judgment does not
21 involve self-dealing by the officer or an associate or
22 affiliate of the officer;

23 (2) the officer is informed with respect to the subject
24 of the business judgment to the extent the officer reasonably
25 believes to be appropriate under the circumstances; and

26 (3) the officer rationally believes that the business
27 judgment is in the best interests of the corporation.

28 (e) Burden of proof.--A person challenging the conduct of an
29 officer under this section has the burden of proving a breach of
30 the duty of care, including the provisions of subsections (c)

1 and (d), and, in a damage action, the burden of proving that the
2 breach was the legal cause of damage suffered by the
3 corporation.

4 § 1735. Personal liability of officers.

5 (a) General rule.--If a bylaw adopted by the shareholders of
6 a business corporation so provides, an officer shall not be
7 personally liable, as such, for monetary damages for any action
8 taken unless:

9 (1) the officer has breached or failed to perform the
10 duties of an officer under this subchapter; and

11 (2) the breach or failure to perform constitutes self-
12 dealing, willful misconduct or recklessness.

13 (b) Exceptions.--Subsection (a) shall not apply to:

14 (1) the responsibility or liability of an officer
15 pursuant to any criminal statute; or

16 (2) the liability of an officer for the payment of taxes
17 pursuant to Federal, State or local law.

18 (c) Application.--An amendment or repeal of a provision
19 described in subsection (a) does not affect its application with
20 respect to an act by an officer occurring before the amendment
21 or repeal unless the provision in effect at the time of the act
22 explicitly authorizes its amendment or repeal after an act has
23 occurred.

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

26 (e) Cross reference.--See 42 Pa.C.S. § 8332.5 (relating to
27 corporate representatives).

28 Section 52. Sections 1743 and 1750 of Title 15 is amended to
29 read:

30 § 1743. Mandatory indemnification.

1 (a) General rule.--To the extent that a [representative]
2 present or former director or officer of a business corporation
3 has been successful on the merits or otherwise in defense of any
4 action or proceeding referred to in section 1741 (relating to
5 third-party actions) or 1742 (relating to derivative and
6 corporate actions) or in defense of any claim, issue or matter
7 therein, [he] the director or officer shall be indemnified
8 against expenses (including attorney fees) actually and
9 reasonably incurred by [him] the director or officer in
10 connection therewith.

11 (b) Prospective application.--The limitation of the scope of
12 subsection (a) to a present or former director or officer
13 applies only to acts occurring after (insert the effective date
14 of the amendment of subsection (a)).

15 § 1750. Duration and extent of coverage.

16 The indemnification and advancement of expenses provided by,
17 or granted pursuant to, this subchapter shall, unless otherwise
18 provided when authorized or ratified, continue as to a person
19 who has ceased to be a representative of the corporation and
20 shall inure to the benefit of the heirs and personal
21 representative of that person. A right to indemnification or to
22 advancement of expenses arising under a provision of the
23 articles or bylaws may not be eliminated or impaired by an
24 amendment to or repeal of the provision after the occurrence of
25 an act that is the subject of the threatened, pending or
26 completed action or proceeding, whether civil, criminal,
27 administrative or investigative, for which indemnification or
28 advancement of expenses is sought, unless the provision in
29 effect at the time of the act explicitly authorizes the
30 elimination or impairment after an act has occurred.

1 Section 53. Section 1755(b), (c) and (d) of Title 15 are
2 amended and the section is amended by adding a subsection to
3 read:

4 § 1755. Time of holding meetings of shareholders.

5 * * *

6 (b) Special meetings.--Special meetings of the shareholders
7 may be called at any time:

8 (1) by the board of directors;

9 (2) unless otherwise provided in the articles, by
10 shareholders entitled to cast at least 20% of the votes that
11 all shareholders are entitled to cast at the particular
12 meeting; [or]

13 (3) by such officers or other persons as may be provided
14 in the bylaws[.]; or

15 (4) as provided in section 1725(b)(3) (relating to
16 selection of directors).

17 (b.1) Duties of secretary.--At any time, upon written
18 request of any person who has called a special meeting, it shall
19 be the duty of the secretary to fix the time of the meeting
20 which, if the meeting is called pursuant to a statutory right,
21 shall be held within any period specified by this subpart, or if
22 no period is specified, not more than 60 days after the receipt
23 of the request. If the secretary neglects or refuses to fix the
24 time of the meeting, the person or persons calling the meeting
25 may do so. See [section] sections 2521 (relating to call of
26 special meetings of shareholders) and 2565(a) (relating to
27 procedure for establishing voting rights of control shares).

28 (c) Adjournments.--Adjournments of any regular or special
29 meeting may be taken but any meeting at which directors are to
30 be elected shall be adjourned [only] for no longer than from day

1 to day, or for such longer periods not exceeding 15 days each as
2 the shareholders present and entitled to vote shall direct,
3 until the directors have been elected. See section 2522
4 (relating to adjournment [~~of meetings~~] or postponement of
5 meeting of shareholders).

6 (d) Postponement or cancellation.--The board of directors
7 may postpone, or delegate to an officer the authority to
8 postpone, the annual or other regular meeting of shareholders,
9 subject to the provision of subsection (a) providing for a
10 meeting each calendar year. Unless otherwise restricted in the
11 bylaws or otherwise provided by statute, the holding of a
12 special meeting of shareholders may be postponed for not more
13 than 15 days or may be canceled by the person or group that
14 called the special meeting. In the case of a postponed or
15 canceled meeting, prompt notice in record form of the
16 postponement or cancellation must be given to the shareholders
17 entitled to vote at the meeting.

18 [~~(d)~~] (e) Cross reference.--See section 1106(b)(4) (relating
19 to uniform application of subpart).

20 Section 54. Sections 1756(a)(1), (3) and (4), 1758(a) and
21 (b), 1763, 1764 and 1766 of Title 15 are amended to read:

22 § 1756. Quorum.

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

27 (1) [~~The~~] A quorum for the purposes of consideration and
28 action on a particular matter at a meeting shall consist of:

29 (i) the presence of shareholders entitled to cast at
30 least a majority of the votes that all shareholders are

1 entitled to cast on [a particular matter to be acted upon
2 at the meeting shall constitute a quorum for the purposes
3 of consideration and action on] the matter[.]; and

4 (ii) if any shareholders are entitled to vote as a
5 class on the matter, the presence of shareholders
6 entitled to cast at least a majority of the votes
7 entitled to be cast in the class vote.

8 * * *

9 (3) If a meeting cannot be organized because a quorum
10 has not attended, those present may, except as otherwise
11 provided in this subpart, adjourn the meeting to [such] a
12 time and place [as] they may determine.

13 (4) If a proxy casts a vote or takes other action on
14 behalf of a shareholder on any issue other than a procedural
15 motion considered at a meeting of shareholders, the
16 [shareholder] shares for which the proxy has so acted shall
17 be deemed to be present during the entire meeting for
18 purposes of determining whether a quorum is present for
19 consideration of any other issue.

20 * * *

21 § 1758. Voting rights of shareholders.

22 (a) General rule.--Unless otherwise provided in the
23 articles, every shareholder of a business corporation shall be
24 entitled to one vote for every share standing in [his] the
25 shareholder's name on the [books of the corporation] share
26 register. The articles may restrict the number of votes that a
27 single holder or beneficial owner, or such a group of holders or
28 owners as the bylaws may define, of shares of any class or
29 series may directly or indirectly cast in the aggregate for the
30 election of directors or on any other matter coming before the

1 shareholders on the basis of any facts or circumstances that are
2 not manifestly unreasonable, including without limitation:

3 (1) the number of shares of any class or series held by
4 such single holder or beneficial owner or group of holders or
5 owners; or

6 (2) the length of time shares of any class or series
7 have been held by such single holder or beneficial owner or
8 group of holders or owners.

9 (b) Procedures for election of directors.--The following
10 apply to the election of directors:

11 (1) Unless otherwise restricted in the bylaws, in
12 elections for directors at a meeting of shareholders held at
13 a geographic location, voting need not be by ballot unless
14 required by vote of the shareholders before the voting for
15 election of directors begins. The shareholders do not have
16 the right to vote by ballot at a meeting that is not held at
17 a geographic location pursuant to section 1708(c) (relating
18 to use of conference telephone or other electronic
19 technology).

20 (2) Unless otherwise provided in a bylaw adopted by the
21 shareholders, the candidates for election as directors
22 receiving the highest number of votes from each class or
23 group of classes, if any, entitled to elect directors
24 separately up to the number of directors to be elected by the
25 class or group of classes shall be elected. This paragraph
26 applies retroactively, and a bylaw described in this
27 paragraph shall be valid if it was adopted after January 1,
28 2000.

29 (3) If at any meeting of shareholders, directors of more
30 than one class are to be elected, each class of directors

1 shall be elected in a separate election.

2 * * *

3 § 1763. Determination of shareholders of record.

4 (a) Fixing record date.--Unless otherwise restricted in the
5 bylaws, the board of directors of a business corporation may fix
6 a time prior to the date of any meeting of shareholders as a
7 record date for the determination of the shareholders entitled
8 to notice of[, or to vote at,] the meeting, which time, except
9 in the case of an adjourned or postponed meeting, shall be not
10 more than 90 days prior to the date of the meeting of
11 shareholders. If the board fixes a record date for notice of a
12 meeting, that date shall also be the record date for determining
13 the shareholders entitled to vote at the meeting unless the
14 board determines, at the time it fixes the record date for
15 notice, that a later date on or before the date of the meeting
16 shall be the date for determining the shareholders entitled to
17 vote. Only shareholders of record on the date fixed shall be so
18 entitled notwithstanding any transfer of shares on the books of
19 the corporation after any record date fixed as provided in this
20 subsection. Unless otherwise provided in the bylaws, the board
21 of directors may similarly fix a record date for the
22 determination of shareholders of record for any other purpose. A
23 record date may not precede the date on which the board acts to
24 fix that record date. The shareholders of record shall be
25 determined as of the close of business on the record date unless
26 the board fixes a different time of day for that determination.
27 When a determination of shareholders of record has been made as
28 provided in this section for purposes of a meeting, the
29 determination shall apply to any adjournment or postponement
30 thereof unless otherwise restricted in the bylaws or unless the

1 board fixes a new record date for the adjourned meeting.

2 (b) Determination when a record date is not fixed.--Unless
3 otherwise provided in the bylaws, if a record date is not fixed:

4 (1) The [record date for determining shareholders
5 entitled to notice of or to vote at a meeting of shareholders
6 shall be at the] close of business on the day next preceding
7 the day on which notice is given or, if notice is waived, at
8 the close of business on the day immediately preceding the
9 day on which the meeting is held[.] shall be the record date
10 for determining shareholders entitled to notice of or to vote
11 at a meeting of shareholders.

12 (2) The close of business on the day on which the first
13 consent, request or petition is filed in record form with the
14 secretary of the corporation shall be the record date for
15 determining shareholders entitled to:

16 (i) express consent or dissent to corporate action
17 [in writing] without a meeting, when prior action by the
18 board of directors is not necessary;

19 (ii) call a special meeting of the shareholders; or

20 (iii) propose an amendment of the articles.[;]
21 shall be at the close of business on the day on which the
22 first written consent or dissent, request for a special
23 meeting or petition proposing an amendment of the articles is
24 filed with the secretary of the corporation.]

25 (3) The record date for determining shareholders for any
26 other purpose shall be at the close of business on the day on
27 which the board of directors adopts the resolution relating
28 thereto.

29 (c) Certification by nominee.--If the bylaws so provide, the
30 board of directors may adopt a procedure whereby a shareholder

1 of the corporation may certify in writing to the corporation
2 that all or a portion of the shares registered in the name of
3 the shareholder are held for the account of a specified person
4 or persons. [The resolution of the board may set forth:] The
5 persons specified in a certification shall be deemed, for the
6 purposes set forth in the certification, to be the holders of
7 record of the number of shares specified in place of the
8 shareholder making the certification. A certification procedure
9 may include provisions on:

10 (1) The classification of shareholder who may certify.

11 (2) The purpose or purposes for which the certification
12 may be made.

13 (3) The form of certification and information to be
14 contained therein.

15 (4) If the certification is with respect to a record
16 date, the time after the record date within which the
17 certification must be received by the corporation.

18 (5) Such other provisions with respect to the procedure
19 as are deemed necessary or desirable.

20 [Upon receipt by the corporation of a certification complying
21 with the procedure, the persons specified in the certification
22 shall be deemed, for the purposes set forth in the
23 certification, to be the holders of record of the number of
24 shares specified in place of the shareholder making the
25 certification.]

26 § 1764. Voting lists.

27 (a) General rule.--The officer or agent having charge of the
28 [transfer books for shares] share register of a business
29 corporation shall make a complete list of the shareholders
30 entitled to vote at any meeting of shareholders, arranged in

1 alphabetical order, with the address of and the number of shares
2 held by each. This section does not require the corporation to
3 include electronic mail addresses or other electronic contact
4 information on the list. The list shall be produced and kept
5 open at the time and place of each meeting of shareholders [of a
6 nonregistered corporation held at a geographic location] and
7 shall be subject to the inspection of any shareholder during the
8 whole time of the meeting for the purposes thereof. [See section
9 2529 (relating to voting lists).] A shareholder and any agent or
10 attorney who inspects the list may use the information on the
11 list only for purposes related to the meeting and must keep the
12 information on the list confidential.

13 (b) Effect of list.--Failure to comply with the requirements
14 of this section shall not affect the validity of any action
15 taken at a meeting prior to a demand at the meeting by any
16 shareholder entitled to vote thereat to examine the list. The
17 original share register [or transfer book], or a duplicate
18 thereof kept in this Commonwealth, shall be prima facie evidence
19 as to who are the shareholders entitled to examine the list or
20 share register [or transfer book] or to vote at any meeting of
21 shareholders.

22 (c) Electronic meetings.--If a meeting of shareholders [of a
23 nonregistered corporation] is not held at a geographic location,
24 the corporation shall make the list of shareholders required by
25 subsection (a) available in a reasonably accessible manner.

26 (d) Cross reference.--See section 2529 (relating to voting
27 lists).

28 § 1766. Consent of shareholders in lieu of meeting.

29 (a) Unanimous consent.--Unless otherwise restricted in the
30 bylaws, any action required or permitted to be taken at a

1 meeting of the shareholders or of a class of shareholders of a
2 business corporation may be taken without a meeting if a consent
3 or consents to the action in record form are signed, before, on
4 or after the effective [date] time of the action by all of the
5 shareholders who would be entitled to vote at a meeting for such
6 purpose. The consent or consents must be filed with the minutes
7 of the proceedings of the shareholders.

8 (b) Partial consent.--If the bylaws so provide, any action
9 required or permitted to be taken at a meeting of the
10 shareholders or of a class of shareholders may be taken without
11 a meeting upon the signed consent or consents of shareholders
12 who would have been entitled to cast the minimum number of votes
13 that would be necessary to authorize the action at a meeting at
14 which all shareholders entitled to vote thereon were present and
15 voting. The [consents shall] consent or consents must be filed
16 in record form with the minutes of the proceedings of the
17 shareholders.

18 (c) Effectiveness of action by partial consent.--An action
19 taken pursuant to subsection (b) to approve a transaction under
20 Chapter 3 (relating to entity transactions) shall not become
21 effective until after at least ten days' notice of the action
22 has been given to each shareholder entitled to vote thereon who
23 has not consented thereto. Any other action may become effective
24 immediately, but prompt notice that the action has been taken
25 shall be given to each shareholder entitled to vote thereon that
26 has not consented. Notice under this subsection must include the
27 information that a notice of a meeting of shareholders seeking
28 approval of the action would have been required to contain. This
29 subsection may not be relaxed by any provision of the articles.

30 (d) Escrowing of consents.--A consent may provide, or a

1 person signing a consent, whether or not then a shareholder, may
2 instruct in record form, that the consent will be effective at a
3 future time, including a time determined upon the happening of
4 an event. In the case of a consent signed by a person not a
5 shareholder at the time of signing, the consent is effective at
6 the stated effective time if the person who signed the consent
7 is a shareholder at the effective time and did not revoke the
8 consent in record form prior to the effective time. A consent is
9 effective at the stated effective time, even if one or more
10 signers are no longer shareholders at the effective time if
11 consents by shareholders entitled to cast the required number of
12 votes have not been revoked before the effective time.

13 (e) Revocation of consent.--Unless otherwise provided in a
14 consent, a signer of the consent may revoke the signer's consent
15 in record form until it becomes effective.

16 [(d)] (f) Cross references.--See sections 1702 (relating to
17 manner of giving notice) and 2524 (relating to consent of
18 shareholders in lieu of meeting).

19 Section 55. Section 1781(a)(1) and (c) and 1782(a) and (d)
20 of Title 15 are amended and the sections are amended by adding
21 subsections to read:

22 § 1781. Derivative action.

23 (a) General rule.--Subject to section 1782 (relating to
24 eligible shareholder plaintiffs and security for costs) and
25 [subsection (b)] subsections (b) and (g), a plaintiff may
26 maintain a derivative action to enforce a right of a business
27 corporation only if:

28 (1) the plaintiff first makes a demand on the
29 corporation or the board of directors requesting that [it
30 cause the corporation to] the corporation bring an action to

1 enforce the right, and:

2 (i) if a special litigation committee is not
3 appointed under section 1783 (relating to special
4 litigation committee), [the corporation does not bring
5 the action within a reasonable time; or] the board
6 determines that:

7 (A) an action based on some or all of the claims
8 asserted in the demand not be brought by the
9 corporation but that the corporation not object to an
10 action being brought by the party that made the
11 demand; or

12 (B) an action already commenced continue under
13 the control of the plaintiff; or

14 (ii) if a special litigation committee is appointed
15 under section 1783, a determination is made:

16 (A) under section 1783(e) (1) that the
17 corporation not object to the action; or

18 (B) under section 1783(e) (5) (i) that the
19 plaintiff continue the action;

20 * * *

21 (c) Contents of demand.--A demand under this section must be
22 in record form and give notice with reasonable specificity of:

23 (1) the [essential] material facts relied upon to
24 support each of the claims made in the demand[.] against each
25 proposed defendant; and

26 (2) in the case of a derivative action commenced by a
27 shareholder, the basis on which the person making the demand
28 has standing under section 1782.

29 * * *

30 (g) Exception.--This subchapter does not apply to an action

1 brought by a holder of an equity security of a business
2 corporation under Subchapter H of Chapter 25 (relating to
3 disgorgement by certain controlling shareholders following
4 attempts to acquire control).

5 § 1782. Eligible shareholder plaintiffs and security for costs.

6 (a) General rule.--Except as provided in subsection (b), in
7 any action or proceeding brought [to enforce a secondary right
8 on the part of] by one or more shareholders of a business
9 corporation [against any present or former officer or director
10 of the corporation because the corporation refuses to enforce
11 rights that may properly be asserted by it, each plaintiff must
12 aver and it must be made to appear that each plaintiff] to
13 enforce rights that the plaintiff claims could be, but have not
14 been, asserted by the corporation, each plaintiff has standing
15 to commence and maintain the derivative action only if the
16 plaintiff:

17 (1) was a shareholder of the corporation or owner of a
18 beneficial interest in the shares at the time of the
19 transaction or conduct of which [he] the plaintiff complains,
20 or that [his] the plaintiff's shares or beneficial interest
21 in the shares devolved upon [him] the plaintiff by operation
22 of law from a person who was a shareholder or owner of a
23 beneficial interest in the shares at that time[.]; and

24 (2) continues to hold the shares until the time of
25 judgment, unless the failure to do so is the result of
26 corporate action that:

27 (i) was done merely to eliminate derivative claims;

28 or

29 (ii) has the effect of a reorganization that does
30 not affect the plaintiff's ownership of the business

1 enterprise.

2 * * *

3 (d) Failure to maintain ownership.--If a plaintiff loses the
4 right to maintain a derivative action under subsection (a) (2),
5 the court may entertain a motion by the corporation to
6 substitute the corporation as the named plaintiff.

7 [(d)] (e) Cross reference.--See section 4146 (relating to
8 provisions applicable to all foreign corporations).

9 Section 56. Sections 1783 and 1905 of Title 15 are amended
10 to read:

11 § 1783. Special litigation committee.

12 (a) General rule.--If a business corporation or the board of
13 directors receives a demand to bring an action to enforce a
14 right of the corporation, or if a derivative action is commenced
15 before demand has been made on the corporation or the board, the
16 board may appoint a special litigation committee to investigate
17 the claims asserted in the demand or action and to determine on
18 behalf of the corporation or recommend to the board whether
19 pursuing any of the claims asserted is in the best interests of
20 the corporation. The corporation [shall send] must deliver a
21 notice in record form to the person making the demand, or to the
22 plaintiff if a derivative action has been commenced, promptly
23 after the appointment of a committee under this section
24 notifying the person making the demand or the plaintiff that a
25 committee has been appointed and identifying by name the members
26 of the committee. A committee may not be appointed under this
27 section if every shareholder of the corporation is also a
28 director of the corporation.

29 (b) Discovery stay.--If the board of directors appoints a
30 special litigation committee and an action is commenced before a

1 determination has been made under subsection (e):

2 (1) On motion by the business corporation, or the
3 committee made in the name of the [business] corporation, the
4 court shall stay discovery for the time reasonably necessary
5 to permit the committee to complete its investigation, except
6 for good cause shown.

7 (2) The time for the defendants to plead shall be tolled
8 until the process provided for under subsection (f) has been
9 completed.

10 (c) Composition of committee.--A special litigation
11 committee shall be composed of two or more individuals who:

12 (1) are not interested in the claims asserted in the
13 demand or action;

14 (2) are capable as a group of objective judgment in the
15 circumstances; and

16 (3) may, but need not, be shareholders or directors.

17 (c.1) Committee members who are not directors.--A member of
18 a special litigation committee who is not a director is subject,
19 when acting as a member of the committee, to the liabilities
20 imposed, and entitled to the rights and immunities conferred,
21 under Subchapters B (relating to fiduciary duty) and D (relating
22 to indemnification) and other provisions of law upon directors
23 of a corporation.

24 (d) Appointment of committee.--A special litigation
25 committee may be appointed:

26 (1) by a majority of the directors not named as actual
27 or potential parties in the demand or action; or

28 (2) if all the directors are named as actual or
29 potential parties in the demand or action, by a majority of
30 the directors so named.

1 (e) Determination.--After appropriate investigation by a
2 special litigation committee, the committee [or the] may
3 determine, or the committee may recommend to the board of
4 directors [may] that the board determine, that it is in the best
5 interests of the business corporation that:

6 (1) an action based on some or all of the claims
7 asserted in the demand not be brought by the corporation but
8 that the corporation not object to an action being brought by
9 the party that made the demand;

10 (2) an action based on some or all of the claims
11 asserted in the demand be brought by the corporation;

12 (3) some or all of the claims asserted in the demand be
13 settled on terms [approved] determined or recommended by the
14 committee;

15 (4) an action not be brought based on any of the claims
16 asserted in the demand;

17 (5) an action already commenced continue under the
18 control of:

- 19 (i) the plaintiff;
20 (ii) the corporation; or
21 (iii) the committee;

22 (6) some or all the claims asserted in an action already
23 commenced be settled on terms [approved] determined or
24 recommended by the committee; or

25 (7) an action already commenced be dismissed.

26 (f) Court review and action.--If a special litigation
27 committee is appointed and a derivative action is commenced
28 either before or after the committee makes a determination [is
29 made] under subsection (e) or the board of directors determines
30 under subsection (e) to accept the recommendation of the

1 committee:

2 (1) The business corporation or the committee shall file
3 with the court after a determination is made under subsection
4 (e) a statement of the determination and a report of the
5 committee supporting the determination. The corporation or
6 the committee shall serve each party with a copy of the
7 determination and report. If the corporation or the committee
8 moves to file the report under seal, the report shall be
9 served on the parties subject to an appropriate stipulation
10 agreed to by the parties or a protective order issued by the
11 court.

12 (2) The corporation or the committee shall file with the
13 court a motion, pleading or notice consistent with the
14 determination under subsection (e).

15 (3) If the determination is one described in subsection
16 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall
17 determine whether the members of the committee met the
18 qualifications required under subsection (c) (1) and (2) and
19 whether the committee conducted its investigation and made
20 its determination or recommendation in good faith,
21 independently and with reasonable care. The plaintiff has the
22 burden of proving that the committee did not meet those
23 qualifications or act in the required manner. If the court
24 finds that the members of the committee met the
25 qualifications required under subsection (c) (1) and (2) and
26 that the committee acted in good faith, independently and
27 with reasonable care, the court shall enforce the
28 determination of the committee or the board. Otherwise, the
29 court shall:

30 (i) dissolve any stay of discovery entered under

1 subsection (b);

2 (ii) allow the action to continue under the control
3 of the plaintiff; and

4 (iii) permit the defendants to file preliminary
5 objections, other appropriate pleadings and motions.

6 (g) Certain provisions of articles ineffective.--The
7 provisions of this section may not be varied by the articles.

8 (h) Interest of a defendant.--The fact that a person is
9 named as a defendant does not make the person interested in the
10 claims asserted in a demand or action for purposes of subsection
11 (c) (1) if the claims against the person:

12 (1) are based only on an allegation that the person
13 approved of or acquiesced in the transaction or conduct that
14 is the subject of the claims; and

15 (2) do not otherwise allege with particularity facts
16 that, if true, raise a significant prospect that the person
17 would be adjudged liable.

18 § 1905. Proposal of fundamental transactions.

19 Where any provision of this chapter requires that an
20 amendment of the articles, a plan of asset transfer or the
21 dissolution of a business corporation be proposed or approved by
22 action of the board of directors, that requirement shall be
23 construed to authorize and be satisfied by the [written]
24 agreement or consent in record form of all of the shareholders
25 of the corporation entitled to vote thereon.

26 Section 57. Sections 1911(b) (2) and (c), 1912(a) and (b) (1)
27 and 1914(a) and (c) (2) of Title 15 are amended and the sections
28 are amended by adding subsections to read:

29 § 1911. Amendment of articles authorized.

30 * * *

1 (b) Exceptions.--An amendment adopted under this section
2 shall not amend articles in such a way that as so amended they
3 would not be authorized by this subpart as original articles of
4 incorporation except that:

5 * * *

6 (2) The corporation shall not be required to revise any
7 other provision of its articles if the provision is valid and
8 operative immediately prior to the [filing of the amendment
9 in] delivery of the amendment to the Department of State for
10 filing.

11 (c) Amendments pursuant to other provisions.--Amendments to
12 the articles authorized pursuant to Chapter 2 (relating to
13 entities generally) or 3 (relating to entity transactions) or
14 set forth in statements or certificates permitted or required to
15 be delivered to the department for filing by section 108
16 (relating to change in location or status of registered office
17 provided by agent) or 138 (relating to statement of correction)
18 or by this subpart need not be proposed or adopted in the manner
19 provided in this subchapter, except to the extent that the
20 provisions of this subchapter have been incorporated into
21 Chapter 2 or 3 or into the provisions authorizing such
22 statements or certificates.

23 [(c)] (d) Cross [reference.--See section 1521(b)(1)(i)
24 (relating to provisions specifically authorized).] references.--
25 See sections 224(f) (relating to action on ratification), 321
26 (relating to approval by business corporation), 1103 (relating
27 to definitions), 1507 (relating to registered office) and
28 1522(c) (relating to issuance of shares in classes or series;
29 board action).

30 § 1912. Proposal of amendments.

1 (a) General rule.--Every amendment of the articles of a
2 business corporation shall be proposed:

3 (1) by the adoption by the board of directors of a
4 resolution setting forth the proposed amendment; [~~or~~]

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

11 ~~Except where the approval of the shareholders is unnecessary~~
12 ~~under this subchapter, the board of directors shall direct that~~
13 ~~the proposed amendment be submitted to a vote of the~~
14 ~~shareholders entitled to vote thereon. An amendment proposed~~
15 ~~pursuant to paragraph (2) shall be submitted to a vote either at~~
16 ~~the next annual meeting held not earlier than 120 days after the~~
17 ~~amendment is proposed or at a special meeting of the~~
18 ~~shareholders called for that purpose by the shareholders. See~~
19 ~~sections 1106(b)(4) (relating to uniform application of subpart)~~
20 ~~and 2535 (relating to proposal of amendment to articles).]; or~~

21 (3) by action of the board of directors directing the
22 submission of the proposed amendment to the shareholders
23 without the board having adopted the amendment.

24 (b) Form of amendment.--The resolution or petition shall
25 contain the language of the proposed amendment of the articles:

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

1 * * *

2 (d) Submission to the shareholders.--Except where the
3 approval of the shareholders is unnecessary under this
4 subchapter, the board of directors shall direct that the
5 proposed amendment be submitted to a vote of the shareholders
6 entitled to vote thereon. An amendment proposed under subsection
7 (a) (2) shall be submitted to a vote either at the next annual
8 meeting held not earlier than 120 days after the amendment is
9 proposed or at a special meeting of the shareholders called for
10 that purpose by the shareholders.

11 (e) Cross references.--See sections 1106(b) (4) (relating to
12 uniform application of subpart) and 2535 (relating to proposal
13 of amendment to articles).

14 § 1914. Adoption of amendments.

15 (a) General rule.--A vote of the shareholders entitled to
16 vote on a proposed amendment shall be taken at the next annual
17 or special meeting of which notice for that purpose has been
18 duly given. Unless the articles or a specific provision of this
19 subpart requires a greater vote, a proposed amendment of the
20 articles of a business corporation shall be adopted upon
21 receiving the affirmative vote of a majority of the votes cast
22 by all shareholders entitled to vote thereon and, if any class
23 or series of shares is entitled to vote thereon as a class, the
24 affirmative vote of a majority of the votes cast in each such
25 class vote. Any number of amendments may be submitted to the
26 shareholders and voted upon by them at one meeting. [Except as
27 provided in section 1912(a) (2) (relating to proposal of
28 amendments), a proposed] An amendment of the articles proposed
29 under section 1912(a) (3) (relating to proposal of amendments)
30 shall not be deemed to have been adopted by the corporation

1 unless it has also been approved by the board of directors,
2 regardless of the fact that the board has directed or suffered
3 the submission of the amendment to the shareholders for action.

4 * * *

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

8 * * *

9 (2) the amendment is restricted to one or more of the
10 following:

11 (i) changing the corporate name;

12 (ii) providing for perpetual existence;

13 (iii) reflecting a reduction in authorized shares
14 effected by operation of section 1552(a) (relating to
15 power of corporation to acquire its own shares) and, if
16 appropriate, deleting all references to a class or series
17 of shares that is no longer outstanding;

18 (iv) adding or deleting a provision authorized by
19 section 1528(f) (relating to shares represented by
20 certificates and uncertificated shares); [or]

21 (v) adding, changing or eliminating the par value of
22 any class or series of shares if the par value of that
23 class or series does not have any substantive effect
24 under the terms of that or any other class or series of
25 shares; or

26 (vi) implementing an amendment authorized by section
27 229(h) (relating to limitation on voiding certain
28 defective entity actions);

29 * * *

30 (c.1) Board amendment under other sections.--Whenever a

1 provision of this subpart authorizes the board of directors to
2 take any action without the approval of the shareholders and
3 provides that a statement, certificate, plan or other document
4 relating to such action shall be filed in the Department of
5 State and shall operate as an amendment of the articles, the
6 board upon taking such action may, in lieu of filing the
7 statement, certificate, plan or other document, amend the
8 articles under this subsection without the approval of the
9 shareholders to reflect the taking of such action.

10 (c.2) Effect of board amendment.--An amendment of articles
11 under [this subsection] subsection (c) shall be deemed adopted
12 by the corporation when it has been adopted by the board of
13 directors pursuant to section 1912 (relating to proposal of
14 amendments).

15 * * *

16 Section 58. Section 1932(g) of Title 15 is amended to read:
17 § 1932. Voluntary transfer of corporate assets.

18 * * *

19 (g) Presumption.--The following apply to a determination
20 whether a corporation has sold, leased, exchanged or otherwise
21 disposed of all or substantially all, of its property and
22 assets, with or without good will:

23 (1) A corporation will conclusively be deemed not to
24 have [sold, leased, exchanged or otherwise disposed of all,
25 or substantially all, of its property and assets, with or
26 without goodwill,] done so if the corporation or any direct
27 or indirect subsidiary controlled by the corporation retains
28 a business activity that represented at the end of its most
29 recently completed fiscal year before the transaction, on a
30 consolidated basis, at least:

1 [(1)] (i) 25% of total assets; and
2 [(2)] (ii) 25% of either:
3 [(i)] (A) income from continuing operations
4 before taxes; or
5 [(ii)] (B) revenues from continuing operations.

6 (2) A determination under paragraph (1)(i) may be based
7 on a balance sheet that reflects:

8 (i) the book values of the assets of the
9 corporation, as reflected on its books and records;

10 (ii) a valuation that takes into consideration
11 unrealized appreciation and depreciation or other changes
12 in value of the assets of the corporation;

13 (iii) the current value of the assets of the
14 corporation, either valued separately or valued in
15 segments or as an entirety as a going concern; or

16 (iv) any other method that is reasonable in the
17 circumstances.

18 (3) A determination under paragraph (1)(ii) may be based
19 on financial statements prepared on the basis of generally
20 accepted accounting principles, or such other accounting
21 practices and principles as are used generally by the
22 corporation in the maintenance of its books and records and
23 as are reasonable in the circumstances.

24 Section 59. Section 1979(b) of Title 15 is amended and the
25 section is amended by adding a subsection to read:

26 § 1979. Survival of remedies and rights after dissolution.

27 * * *

28 (b) Rights and assets.--The dissolution of a business
29 corporation shall not affect the limited liability of a
30 shareholder of the corporation theretofore existing with respect

1 to transactions occurring or acts or omissions done or omitted
2 in the name of or by the corporation except that, subject to
3 subsection (d) and sections 1992(d) (relating to [claims barred]
4 notice to claimants) and 1993(b) (relating to [claims barred]
5 acceptance or rejection of matured claims), if applicable, each
6 shareholder shall be liable for his pro rata portion of the
7 unpaid liabilities of the corporation up to the amount of the
8 net assets of the corporation distributed to the shareholder in
9 connection with the dissolution. Should any property right of a
10 corporation be discovered, or the corporation be named as a
11 defendant in an action or proceeding, at any time after the
12 dissolution of the corporation, the surviving member or members
13 of the board of directors that wound up the affairs of the
14 corporation, or a receiver appointed by the court, shall have
15 authority to enforce the property right and to collect and
16 divide the assets so discovered among the persons entitled
17 thereto and to prosecute actions or proceedings in the corporate
18 name of the corporation. Any assets so collected shall be
19 distributed and disposed of in accordance with the applicable
20 order of court, if any, and otherwise in accordance with this
21 subchapter.

22 * * *

23 (f) Late-filed action or proceeding.--The following apply to
24 an action or proceeding commenced against a dissolved
25 corporation after the expiration of the period specified in
26 subsection (a) (2):

27 (1) Any judgment against a dissolved corporation in an
28 action or proceeding shall be void.

29 (2) The dissolved corporation may, but need not, appear
30 and raise as a defense the expiration of the period specified

1 in subsection (a)(2) and any other reasonably related matters
2 in response to the action or proceeding.

3 (3) Any person who was a director, officer or
4 shareholder of the dissolved corporation when the dissolution
5 became effective or any governing person of any successor
6 entity acting pursuant to Subchapter H (relating to
7 postdissolution provision for liabilities), and any
8 successor-in-interest to any of those persons, may, but need
9 not, act on behalf of the dissolved corporation in taking the
10 actions described in paragraph (2), and shall not thereby be
11 deemed to be deprived of the operation of subsections (c) and
12 (d) or section 1978(b) (relating to winding up of corporation
13 after dissolution) or otherwise be responsible for any
14 obligations of the dissolved corporation.

15 Section 60. Sections 2104, 2105(a), 2322(b)(5) and (c),
16 2336, 2521, 2522, 2524(a) and 2528 of Title 15 are amended to
17 read:

18 § 2104. Election of an existing business corporation to become
19 a nonstock corporation.

20 (a) General rule.--Any business corporation may become a
21 nonstock corporation under this chapter by:

22 (1) Adopting a plan of [**conversion**] election providing
23 for the redemption by the corporation of all of its shares
24 whether or not redeemable by the terms of its articles and
25 adjusting its affairs so as to comply with the requirements
26 of this chapter applicable to nonstock corporations.

27 (2) Filing articles of amendment which shall contain, in
28 addition to the requirements of section 1915 (relating to
29 articles of amendment):

30 (i) A heading stating the name of the corporation

1 and that it is a nonstock corporation.

2 (ii) A statement that it elects to become a nonstock
3 corporation.

4 (iii) A statement that the corporation is organized
5 on a nonstock basis.

6 (iv) Such other changes, if any, that may be desired
7 in the articles.

8 (b) Procedure.--The plan of [conversion] election of the
9 corporation into a nonstock corporation (which plan shall
10 include the amendment of the articles required by subsection
11 (a)) shall be adopted in accordance with the requirements of
12 Subchapter B of Chapter 19 (relating to amendment of articles)
13 except that:

14 (1) The holders of shares of every class shall be
15 entitled to vote on the plan regardless of any limitations
16 stated in the articles or bylaws on the voting rights of any
17 class.

18 (2) The plan must be approved by two-thirds of the votes
19 cast by all shares of each class.

20 (3) If any shareholder of a business corporation that
21 adopts a plan of [conversion] election into a nonstock
22 corporation objects to the plan of [conversion] election and
23 complies with the provisions of Subchapter D of Chapter 15
24 (relating to dissenters rights), the shareholder shall be
25 entitled to the rights and remedies of dissenting
26 shareholders therein provided. There shall be included in, or
27 enclosed with, the notice of the meeting of shareholders
28 called to act upon the plan of [conversion] election a copy
29 or a summary of the plan and a copy of Subchapter D of
30 Chapter 15 and of this subsection.

1 (4) The plan shall not impose any additional liability
2 upon any existing patron of the business of the corporation,
3 whether or not that person becomes a member of the
4 corporation pursuant to the plan, unless the patron expressly
5 assumes such liability.

6 § 2105. Termination of nonstock corporation status.

7 (a) General rule.--A nonstock corporation may terminate its
8 status as such and cease to be subject to this chapter by:

9 (1) Adopting a plan of [conversion] termination
10 providing for the issue of appropriate shares to its members
11 and adjusting its affairs so as to comply with the
12 requirements of this subpart applicable to business
13 corporations that are not nonstock corporations.

14 (2) Amending its articles to delete therefrom the
15 additional provisions required or permitted by sections
16 2102(a)(1) (relating to formation of nonstock corporations)
17 and 2103 (relating to contents of articles and other
18 documents of nonstock corporations) to be stated in the
19 articles of a nonstock corporation. The plan of [conversion]
20 termination (which plan shall include the amendment of the
21 articles required by this section) shall be adopted in
22 accordance with Subchapter B of Chapter 19 (relating to
23 amendment of articles) except that:

24 (i) The members of every class shall be entitled to
25 vote on the plan regardless of any limitations stated in
26 the articles or bylaws, or in a document evidencing
27 membership, on the voting rights of any class.

28 (ii) The plan must be approved by a majority of the
29 votes cast by the members of each class.

30 * * *

1 § 2322. Share transfer restrictions.

2 * * *

3 (b) Exception.--Subsection (a) shall not apply to a
4 transfer:

5 * * *

6 (5) By merger[, consolidation or share] or interest
7 exchange that becomes effective pursuant to section 2336
8 (relating to fundamental changes) or a [share exchange]
9 reclassification of existing shares [for other shares of a
10 different class or series in the corporation].

11 * * *

12 (c) Offer by nonexempt purchaser.--Any person desiring to
13 transfer shares in a transaction not exempt under subsection (b)
14 (1) through (7) shall obtain an offer from a third party who
15 meets the requirements of subsection (d) to purchase the shares
16 for cash and shall deliver written notice of the third-party
17 offer to the corporation at its registered office stating the
18 number and [kind] type of shares, the offering price, the other
19 terms of the offer and the name and address of the third-party
20 offeror.

21 * * *

22 § 2336. Fundamental changes.

23 Except as permitted or required by this chapter, a statutory
24 close corporation shall not effect any corporate action that
25 under Chapter 3 (relating to entity transactions) or 19
26 (relating to fundamental changes) requires the approval of
27 shareholders unless the action is adopted by at least the
28 minimum vote.

29 § 2521. Call of special meetings of shareholders.

30 (a) General rule.--[The] Except as provided in subsections

1 (b) and (c), the shareholders of a registered corporation [shall
2 not be entitled by statute to] described in subsection 2502(1)
3 (relating to registered corporation status) do not have the
4 right to call a special meeting of the shareholders.

5 (b) Exception.--[Subsection (a) shall not apply to the call
6 of a special meeting by an] An interested shareholder (as
7 defined in section 2553 (relating to interested shareholder))
8 may call a special meeting of shareholders for the purpose of
9 approving a business combination under section 2555(3) or (4)
10 (relating to requirements relating to certain business
11 combinations).

12 (c) Contrary articles provision.--A provision of the
13 articles of a registered corporation described in section
14 2502(1) [(relating to registered corporation status)] that gives
15 shareholders the right to call a special meeting of the
16 shareholders and:

17 (1) is adopted after July 1, 2015, may [not] provide
18 that a special meeting may be called [by less than 25%] only
19 by shareholders entitled to cast 25% or more of the votes
20 that all shareholders would be entitled to cast at the
21 meeting[.]; or

22 (2) was adopted on or before July 1, 2015, is
23 enforceable in accordance with its terms.

24 § 2522. Adjournment [of meetings] or postponement of meeting of
25 shareholders.

26 (a) Authority to adjourn.--Except as otherwise provided in
27 the bylaws, any regular or special meeting of the shareholders
28 of a registered corporation, including one at which directors
29 are to be elected, may be adjourned for such period as the
30 presiding officer or the shareholders present and entitled to

1 vote shall direct.

2 (b) Notice of adjourned virtual meeting.--If notice of an
3 adjourned meeting of shareholders of a registered corporation
4 held exclusively by means of electronic technology as provided
5 in section 1708(c) (relating to use of conference telephone or
6 other electronic technology) cannot be given by announcement at
7 the meeting at which the adjournment is taken when permitted by
8 section 1702(b) (relating to manner of giving notice), notice
9 may be given by means solely of a publicly available filing with
10 the Securities and Exchange Commission.

11 (c) Postponement of virtual meeting.--If the presiding
12 officer for a meeting of shareholders of a registered
13 corporation that is to be held exclusively by means of
14 electronic technology as provided in section 1708(c) decides in
15 his or her reasonable judgment on the day of the meeting that
16 the meeting cannot be convened because of a reason outside the
17 control of the corporation, the presiding officer may postpone
18 the meeting to a specified time later that day or the following
19 day. Notice of the postponed meeting may be given by means
20 solely of a publicly available filing with the Securities and
21 Exchange Commission.

22 § 2524. Consent of shareholders in lieu of meeting.

23 (a) General rule.--An action may be authorized by the
24 shareholders of a registered corporation without a meeting by
25 less than unanimous consent of all shareholders entitled to vote
26 thereon only if permitted by its articles.

27 * * *

28 § 2528. Notice of shareholder meetings.

29 (a) Householding.--If a registered corporation solicits
30 proxies generally with respect to a meeting of its shareholders,

1 the corporation is not required to give notice of the meeting to
2 any shareholder to whom the corporation is not required to send
3 a proxy statement pursuant to the rules of the Securities and
4 Exchange Commission.

5 (b) Notice and access.--If a registered corporation has
6 given a shareholder notice of the Internet availability of proxy
7 materials in a manner conforming with the rules of the
8 Securities and Exchange Commission, the corporation may give
9 notice of the meeting to the shareholder by posting the notice
10 on the Internet website to which the proxy materials are posted.

11 Section 61. Title 15 is amended by adding a section to read:
12 § 2530. Qualifications of directors.

13 (a) General rule.--The bylaws of a registered corporation
14 may not impose a qualification of directors that is based on a
15 past, present or future action by a nominee or director in the
16 discharge of the director's powers or duties as a governor of an
17 association.

18 (b) Certain permitted qualifications.--This section does not
19 prohibit qualifications relating to:

20 (1) not having entered a guilty plea, or not being or
21 having been subject to a criminal conviction, civil judgment
22 or regulatory sanction or penalty; or

23 (2) not having been removed as a governor of an
24 association by judicial action or for cause.

25 (c) Relationship to nomination procedures.--This section
26 applies to a qualification included in a nomination procedure
27 adopted under section 1758(e) (relating to voting rights of
28 shareholders), but does not prohibit the corporation from
29 excluding a nomination that does not comply with such a
30 procedure.

1 Section 62. Section 2541 of Title 15 is amended by adding a
2 subsection to read:

3 § 2541. Application and effect of subchapter.

4 * * *

5 (e) Exemption.--Voting shares acquired by a person or group
6 in a transaction that complies with section 321(f) (relating to
7 approval by business corporation) shall be disregarded for
8 purposes of determining if the person or group constitutes a
9 controlling person or group.

10 Section 63. The definitions of "affiliate" and "associate"
11 in section 2552 of Title 15 are amended to read:

12 § 2552. Definitions.

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

16 ["Affiliate." A person that directly, or indirectly through
17 one or more intermediaries, controls, or is controlled by, or is
18 under common control with, a specified person.]

19 * * *

20 ["Associate." When used to indicate a relationship with any
21 person:

22 (1) any corporation or organization of which such person
23 is an officer, director or partner or is, directly or
24 indirectly, the beneficial owner of shares entitling that
25 person to cast at least 10% of the votes that all
26 shareholders would be entitled to cast in an election of
27 directors of the corporation or organization;

28 (2) any trust or other estate in which such person has a
29 substantial beneficial interest or as to which such person
30 serves as trustee or in a similar fiduciary capacity; and

1 (3) any relative or spouse of such person, or any
2 relative of the spouse, who has the same home as such
3 person.]

4 * * *

5 Section 64. Section 2554(1) and (5) of Title 15 are amended
6 to read:

7 § 2554. Business combination.

8 The term "business combination," when used in reference to
9 any registered corporation and any interested shareholder of the
10 corporation, means any of the following:

11 (1) A merger, [consolidation, share] interest exchange
12 or division of the corporation or any subsidiary of the
13 corporation:

14 (i) with the interested shareholder; or

15 (ii) with, involving or resulting in any other
16 corporation (whether or not itself an interested
17 shareholder of the registered corporation) which is, or
18 after the merger, [consolidation, share] interest
19 exchange or division would be, an affiliate or associate
20 of the interested shareholder.

21 * * *

22 (5) A reclassification of securities (including, without
23 limitation, any split of shares, dividend of shares, or other
24 distribution of shares in respect of shares, or any reverse
25 split of shares), or recapitalization of the corporation, or
26 any merger [or consolidation] of the corporation with any
27 subsidiary of the corporation, or any other transaction
28 (whether or not with or into or otherwise involving the
29 interested shareholder), proposed by, or pursuant to any
30 agreement, arrangement or understanding (whether or not in

1 writing) with, the interested shareholder or any affiliate or
2 associate of the interested shareholder, which has the
3 effect, directly or indirectly, of increasing the
4 proportionate share of the outstanding shares of any class or
5 series of voting shares or securities convertible into voting
6 shares of the corporation or any subsidiary of the
7 corporation which is, directly or indirectly, owned by the
8 interested shareholder or any affiliate or associate of the
9 interested shareholder, except as a result of immaterial
10 changes due to fractional share adjustments.

11 * * *

12 Section 65. Section 2561(b)(5) and (e) of Title 15 are
13 amended, subsection (d) is amended by adding a paragraph and the
14 section is amended by adding a subsection to read:

15 § 2561. Application and effect of subchapter.

16 * * *

17 (b) Exceptions.--This subchapter shall not apply to any
18 control-share acquisition:

19 * * *

20 (5) Consummated:

21 (i) Pursuant to:

22 (A) a gift, devise, bequest or otherwise through
23 the laws of inheritance or descent[.]; or

24 (B) a transfer, sale or other disposition by a
25 beneficial or record holder of shares of the
26 corporation, or by a fiduciary of a beneficial or
27 record holder, either to, or in trust for, a spouse,
28 parent, sibling, child or descendant of:

29 (I) the holder; or

30 (II) a spouse, parent, sibling, child or

1 descendant of the holder.

2 (ii) By a settlor to a trustee under the terms of a
3 family, testamentary or charitable trust.

4 (iii) By a trustee to a trust beneficiary or a
5 trustee to a successor trustee under the terms of, or the
6 addition, withdrawal or demise of a beneficiary or
7 beneficiaries of, a family, testamentary or charitable
8 trust.

9 (iv) Pursuant to the appointment of a guardian or
10 custodian.

11 (v) Pursuant to a transfer from one spouse to
12 another by reason of separation or divorce or pursuant to
13 community property laws or other similar laws of any
14 jurisdiction.

15 (vi) Pursuant to the satisfaction of a pledge or
16 other security interest created in good faith and not for
17 the purpose of circumventing this subchapter.

18 (vii) Pursuant to a plan of merger[, consolidation]
19 or plan of [share] interest exchange effected in
20 compliance with the provisions of this chapter if the
21 corporation is a party to the [agreement of merger,
22 consolidation or plan of share] merger or is the acquired
23 entity in the interest exchange.

24 (viii) Pursuant to a transfer from a person who
25 beneficially owns voting shares of the corporation that
26 would entitle the holder thereof to cast at least 20% of
27 the votes that all shareholders would be entitled to cast
28 in an election of directors of the corporation and who
29 acquired beneficial ownership of such shares prior to
30 October 17, 1989.

1 (ix) By the corporation or any of its subsidiaries.

2 (x) By any savings, stock ownership, stock option or
3 other benefit plan of the corporation or any of its
4 subsidiaries, or by any fiduciary with respect to any
5 such plan when acting in such capacity.

6 (xi) By a person engaged in business as an
7 underwriter of securities who acquires the shares
8 directly from the corporation or an affiliate or
9 associate of the corporation through his participation in
10 good faith in a firm commitment underwriting registered
11 under the Securities Act of 1933.

12 (xi.1) Pursuant to an acquisition of shares directly
13 from the corporation in a transaction exempt from the
14 registration requirements of the Securities Act of 1933.

15 (xii) Or commenced by a person who first became an
16 acquiring person:

17 (A) after April 27, 1990; and

18 (B) (I) at a time when this subchapter was or
19 is not applicable to the corporation; or

20 (II) on or before ten business days after
21 the first public announcement by the corporation
22 that this subchapter is applicable to the
23 corporation, if this subchapter was not
24 applicable to the corporation on July 27, 1990.

25 * * *

26 (d) Status of certain shares and effect of formation of
27 group on status.--

28 * * *

29 (5) The acquisition of record title to a voting share by
30 a member of a group that is an acquiring person as a result

1 of a transfer of the share from another member of the group
2 does not constitute a control-share acquisition.

3 (e) Application of duties.--The duty of the board of
4 directors, committees of the board and individual directors
5 under section 2565 (relating to procedure for establishing
6 voting rights of control shares) is solely to the corporation
7 and not to any shareholder or creditor or any other person or
8 group, and may be enforced directly by the corporation or may be
9 enforced by [a shareholder, as such, by] an action in the right
10 of the corporation, and may not be enforced directly by a
11 shareholder or creditor or by any other person or group.

12 (f) Reversal of opt-out.--A provision of the articles or
13 bylaws providing that this subchapter shall not be applicable to
14 the corporation may be rescinded pursuant to the procedures
15 required by this subpart and the articles and bylaws at the time
16 to amend the articles or bylaws generally.

17 Section 66. The definitions of "affiliate," "associate" and
18 "beneficial owner" and "existing shares" in section 2562 of
19 Title 15 are amended and the section is amended by adding a
20 definition to read:

21 § 2562. Definitions.

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

25 * * *

26 ["Affiliate," "associate" and "beneficial owner." The terms
27 shall have the meanings specified in section 2552 (relating to
28 definitions). The corporation may adopt reasonable provisions to
29 evidence beneficial ownership, specifically including
30 requirements that holders of voting shares of the corporation

1 provide verified statements evidencing beneficial ownership and
2 attesting to the date of acquisition thereof.]

3 * * *

4 "Beneficial owner." The term has the meaning specified in
5 section 2552 (relating to definitions). The corporation may
6 adopt reasonable provisions to evidence beneficial ownership,
7 specifically including requirements that holders of voting
8 shares of the corporation provide verified statements evidencing
9 beneficial ownership and attesting to the date of acquisition
10 thereof.

11 * * *

12 "Existing shares."

13 (1) Voting shares which have been beneficially owned
14 continuously by the same natural person since January 1,
15 1988.

16 (2) Voting shares which are beneficially owned by any
17 natural person or trust, estate, foundation or other similar
18 entity to the extent the voting shares were acquired solely
19 by gift, inheritance, bequest, devise or other testamentary
20 distribution or series of these transactions, directly or
21 indirectly, from a natural person who had beneficially owned
22 the voting shares prior to January 1, 1988.

23 (3) Voting shares which were acquired pursuant to a
24 stock split, stock dividend, or other similar distribution
25 described in section 2561(c) (relating to [effect of
26 distributions] application and effect of subchapter) with
27 respect to existing shares that have been beneficially owned
28 continuously since their issuance by the corporation by the
29 natural person or entity that acquired them from the
30 corporation or that were acquired, directly or indirectly,

1 from such natural person or entity, solely pursuant to a
2 transaction or series of transactions described in paragraph
3 (2), and that are held at such time by a natural person or
4 entity described in paragraph (2).

5 (4) Voting shares which were acquired in a transaction
6 described in section 2561(b)(5).

7 * * *

8 Section 67. Section 2564 of Title 15 is amended by adding a
9 subsection to read:

10 § 2564. Voting rights of shares acquired in a control-share
11 acquisition.

12 * * *

13 (d) Exemption.--The acquisition of voting shares by a person
14 or group in a transaction that complies with section 321(f)
15 (relating to approval by business corporation) shall be
16 disregarded for purposes of determining if the transaction
17 constitutes a control-share acquisition.

18 Section 68. Sections 2565(a) and (c) and 2571(b)(5) and (6)
19 (i) and (iii) of Title 15 are amended and the sections are
20 amended by adding subsections to read:

21 § 2565. Procedure for establishing voting rights of control
22 shares.

23 (a) Special meeting.--A special meeting of the shareholders
24 of a registered corporation shall be called by the board of
25 directors of the corporation for the purpose of considering the
26 voting rights to be accorded to the control shares if an
27 acquiring person:

28 (1) files an information statement fully conforming to
29 section 2566 (relating to information statement of acquiring
30 person);

1 (2) makes a request in writing for a special meeting of
2 the shareholders at the time of delivery of the information
3 statement;

4 (3) makes a control-share acquisition or a bona fide
5 written offer to make a control-share acquisition; and

6 (4) gives a written undertaking at the time of delivery
7 of the information statement to pay or reimburse the
8 corporation for the expenses of a special meeting of the
9 shareholders.

10 (a.1) Time of special meeting.--The special meeting
11 requested by the acquiring person shall be held on the date set
12 by the board of directors of the corporation, but in no event
13 later than 50 days after the receipt of the information
14 statement by the corporation, unless the corporation and the
15 acquiring person mutually agree to a later date. If the
16 acquiring person so requests in writing at the time of delivery
17 of the information statement to the corporation, the special
18 meeting shall not be held sooner than 30 days after receipt by
19 the corporation of the complete information statement. Section
20 1755(d) (relating to time of holding meetings of shareholders)
21 does not apply to a special meeting called pursuant to this
22 subsection, unless the acquiring person has consented in record
23 form to the application of that subsection.

24 * * *

25 (c) Notice and record date.--The notice of any annual or
26 special meeting at which the issue of the voting rights to be
27 accorded the control shares shall be submitted to shareholders
28 shall be given at least ten days prior to the date named for the
29 meeting and shall be accompanied by:

30 (1) A copy of the information statement of the acquiring

1 person.

2 (2) A copy of any amendment of such information
3 statement previously delivered to the corporation at least
4 seven days prior to the date on which such notice is given.

5 (3) A statement disclosing whether the board of
6 directors of the corporation recommends approval of,
7 expresses no opinion and remains neutral toward, recommends
8 rejection of, or is unable to take a position with respect to
9 according voting rights to control shares. In determining the
10 position that it shall take with respect to according voting
11 rights to control shares, including to express no opinion and
12 remain neutral or to be unable to take a position with
13 respect to such issue, the board of directors shall
14 specifically consider, in addition to any other factors it
15 deems appropriate, the effect of according voting rights to
16 control shares upon the interests of employees and of
17 communities in which offices or other establishments of the
18 corporation are located.

19 (4) Any other matter required by this subchapter to be
20 incorporated into or to accompany the notice of meeting of
21 shareholders or that the corporation elects to include with
22 such notice.

23 (c.1) Record date.--Only shareholders of record on the date
24 determined by the board of directors in accordance with the
25 provisions of section 1763 (relating to determination of
26 shareholders of record) shall be entitled to notice of and to
27 vote at the meeting to consider the voting rights to be accorded
28 to control shares.

29 * * *

30 § 2571. Application and effect of subchapter.

1 * * *

2 (b) Exceptions.--This subchapter shall not apply to any
3 transfer of an equity security:

4 * * *

5 (5) Constituting:

6 (i) In the case of a person or group that, as of
7 October 17, 1989, beneficially owned shares entitling the
8 person or group to cast at least 20% of the votes that
9 all shareholders would be entitled to cast in an election
10 of directors of the corporation:

11 (A) The disposition of equity securities of the
12 corporation by the person or group.

13 (B) Subsequent dispositions of any or all equity
14 securities of the corporation disposed of by the
15 person or group where such subsequent dispositions
16 are effected by:

17 (I) the direct purchaser of the securities
18 from the person or group if, as a result of the
19 acquisition by the purchaser of the securities
20 disposed of by the person or group, the
21 purchaser, immediately following the acquisition,
22 is entitled to cast at least 20% of the votes
23 that all shareholders would be entitled to cast
24 in an election of directors of the
25 corporation[.];

26 (II) a person that acquired the securities
27 from the person or group in a transaction or
28 series of transactions each of which is described
29 in this paragraph (5) if at the time of the
30 subsequent disposition the person disposing of

1 the securities is entitled to cast at least 20%
2 of the votes that all shareholders would be
3 entitled to cast in an election of directors of
4 the corporation; or

5 (III) an affiliate or associate of the
6 person or group.

7 (ii) The transfer of the beneficial ownership of the
8 equity security by:

9 (A) Gift, devise, bequest or otherwise through
10 the laws of inheritance or descent.

11 (A.1) Transfer, sale or other disposition by a
12 beneficial or record holder of the equity security of
13 the corporation, or by a fiduciary of a beneficial or
14 record holder, either to, or in trust for, a spouse,
15 parent, sibling, child or descendant of:

16 (I) the holder; or

17 (II) a spouse, parent, sibling, child or
18 descendant of the holder.

19 (B) A settlor to a trustee under the terms of a
20 family, testamentary or charitable trust.

21 (C) A trustee to a trust beneficiary or a
22 trustee to a successor trustee under the terms of a
23 family, testamentary or charitable trust.

24 (iii) The addition, withdrawal or demise of a
25 beneficiary or beneficiaries of a family, testamentary or
26 charitable trust.

27 (iv) The appointment of a guardian or custodian with
28 respect to the equity security.

29 (v) The transfer of the beneficial ownership of the
30 equity security from one spouse to another by reason of

1 separation or divorce or pursuant to community property
2 laws or other similar laws of any jurisdiction.

3 (vi) The transfer of record or the transfer of a
4 beneficial interest or interests in the equity security
5 where the circumstances surrounding the transfer clearly
6 demonstrate that no material change in beneficial
7 ownership has occurred.

8 (6) Consummated by:

9 (i) The corporation or any of its subsidiaries as a
10 disposition of shares by it.

11 * * *

12 (iii) A person engaged in business as an underwriter
13 of securities who acquires the equity securities directly
14 from the corporation or an affiliate or associate[, as
15 defined in section 2552 (relating to definitions),] of
16 the corporation through [his] the person's participation
17 in good faith in a firm commitment underwriting
18 registered under the Securities Act of 1933.

19 * * *

20 (e) Reversal of opt-out.--A provision of the articles or
21 bylaws providing that this subchapter shall not be applicable to
22 the corporation may be rescinded pursuant to the procedures
23 required by this subpart and the articles and bylaws at the time
24 to amend the articles or bylaws generally.

25 Section 69. The definitions of "equity security" and
26 "transfer" in section 2573 of Title 15 are amended to read:

27 § 2573. Definitions.

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

1 * * *

2 "Equity security." Any security, including all shares, stock
3 or similar security, and any security convertible into (with or
4 without additional consideration) or exercisable for any such
5 shares, stock or similar security, or carrying any warrant,
6 right or option to subscribe to or purchase such shares, stock
7 or similar security or any such warrant, right, option or
8 similar instrument. The term also includes any other security,
9 instrument, right of payment or other arrangement based on the
10 value of any of the foregoing.

11 * * *

12 "Transfer." [Acquisition or disposition.] Includes an
13 acquisition or disposition of equity securities in a transaction
14 under chapter 3 (relating to entity transactions).

15 * * *

16 Section 70. Section 3321(a)(3), (b) and (c) of Title 15 are
17 amended and the section is amended by adding a subsection to
18 read:

19 § 3321. Standard of conduct for directors.

20 (a) Consideration of interests.--Without regard to whether
21 the benefit corporation is subject to section 1715 (relating to
22 exercise of powers generally) or 1716 (relating to alternative
23 standard), in discharging the duties of their respective
24 positions, the board of directors, committees of the board and
25 individual directors of a benefit corporation, in considering
26 the best interest of the benefit corporation:

27 * * *

28 (3) shall not be required to give priority to [the
29 interests of any person or group] any matter referred to in
30 paragraph (1) or (2) over [the interests of any other person

1 or group] any other such matter or to regard any such matter
2 as dominant or controlling unless the benefit corporation has
3 stated in its articles its intention to give priority to
4 certain interests related to its accomplishment of its
5 general public benefit purpose or of a specific public
6 benefit purpose identified in its articles.

7 (b) Coordination with other provisions of law.--The
8 consideration of [interests and factors] matters in the manner
9 required under subsection (a) [:

10 (1) shall not constitute a violation of section 1712
11 (relating to standard of care and justifiable reliance); and

12 (2) is in addition to the ability of directors to
13 consider interests and factors as provided in section 1715 or
14 1716.] shall not constitute a violation of section 1712
15 (relating to standards of care, justifiable reliance and
16 business judgment rule). A benefit corporation:

17 (1) shall not be subject to section 1715(a) and (b) or
18 section 1716(a); but

19 (2) shall be subject to section 1715(c), (d) and (e)
20 unless its articles or bylaws provide that it is subject to
21 section 1716, and references in section 1715(c), (d) and (e)
22 to the fiduciary duty of directors or the standard set forth
23 in section 1712 include the provisions of subsection (a).

24 (c) Exoneration from personal liability.--Regardless of
25 whether the bylaws of a benefit corporation include a provision
26 eliminating or limiting the personal liability of directors
27 authorized under section 1713 (relating to personal liability of
28 directors):

29 (1) A director shall not be personally liable, as such,
30 for monetary damages for any action taken as a director in

1 the course of performing the duties specified in subsection
2 (a) unless the action constitutes self-dealing, willful
3 misconduct or [a knowing violation of law] recklessness.

4 (2) A director shall not be personally liable for
5 monetary damages for failure of the benefit corporation to
6 pursue or create general public benefit or a specific public
7 benefit.

8 * * *

9 (e) Ownership of shares.--A director's ownership of, or
10 other interest in, the shares of a benefit corporation does not
11 alone, create a conflict of interest on the part of the director
12 with respect to the director's performance of the duties of a
13 director under subsection (a), except to the extent the
14 ownership or interest would create a conflict of interest if the
15 corporation were not a benefit corporation.

16 Section 71. Section 3322(b) and (f) of Title 15 are amended
17 to read:

18 § 3322. Benefit director.

19 * * *

20 (b) Election, removal and qualifications.--The benefit
21 director shall be elected and may be removed in the manner
22 provided under Subchapter C of Chapter 17 (relating to directors
23 and officers). Except as set forth in subsection [(e) (2) (i) or]
24 (g), the benefit director shall be an individual who is
25 independent. The benefit director may serve as the benefit
26 officer at the same time as serving as the benefit director. The
27 articles or bylaws of a benefit corporation may prescribe
28 additional qualifications of the benefit director not
29 inconsistent with this subsection.

30 * * *

1 (f) Exoneration from personal liability.--Regardless of
2 whether the bylaws of a benefit corporation include a provision
3 eliminating or limiting the personal liability of directors
4 authorized under section 1713 (relating to personal liability of
5 directors), a benefit director shall not be personally liable
6 for any act or omission in the capacity of a benefit director
7 unless the act or omission constitutes self-dealing, willful
8 misconduct or [a knowing violation of law] recklessness.

9 * * *

10 Section 72. Section 3323(b) of Title 15 is amended and the
11 section is amended by adding a subsection to read:

12 § 3323. Standard of conduct for officers.

13 * * *

14 (b) Coordination with other provisions of law.--The
15 consideration of interests and factors in the manner described
16 in subsection (a) shall not constitute a violation of section
17 [1712(c) (relating to standard of care and justifiable
18 reliance)] 1732 (relating to officers).

19 * * *

20 (e) Ownership of shares.--An officer's ownership of, or
21 other interest in, the shares of a benefit corporation does not
22 alone, create a conflict of interest on the part of the officer
23 with respect to the officer's performance of the duties of an
24 officer under subsection (a), except to the extent the ownership
25 or interest would create a conflict of interest if the
26 corporation were not a benefit corporation.

27 Section 73. The definition of "plan" in section 5103(a) and
28 (b) of Title 15 are amended and subsection (a) is amended by
29 adding a definition to read:

30 § 5103. Definitions.

1 (a) General definitions.--Subject to additional definitions
2 contained in subsequent provisions of this subpart that are
3 applicable to specific provisions of this subpart, the following
4 words and phrases when used in Part I (relating to preliminary
5 provisions) or in this subpart shall have the meanings given to
6 them in this section unless the context clearly indicates
7 otherwise:

8 * * *

9 "Membership register." Records administered by or on behalf
10 of a corporation in which the names of all of its members, the
11 address of each member and the class and other details of the
12 membership of each member are recorded.

13 * * *

14 ["Plan." A plan of reclassification, merger, consolidation,
15 asset transfer, division or conversion.]

16 * * *

17 (b) Index of other definitions.--The following is a
18 nonexclusive list of words and phrases which when used in this
19 subpart shall have the meanings given to them in section 102
20 (relating to definitions):

21 "Act" or "action."

22 "Conversion."

23 "Corporation for profit."

24 "Corporation not-for-profit."

25 "Court."

26 "Department."

27 "Division."

28 "Domestic corporation for profit."

29 "Domestic corporation not-for-profit."

30 "Domestication."

1 "Execute."
2 "Foreign corporation for profit."
3 "Foreign corporation not-for-profit."
4 "Interest exchange."
5 "Internal Revenue Code of 1986."
6 "Merger."
7 "Obligation."
8 "Officially publish."
9 "Record form."
10 "Representative."
11 "Sign."

12 Section 74. Section 5110 of Title 15 is repealed:

13 [§ 5110. Annual report.

14 (a) General rule.--On or before April 30 of each year, a
15 corporation described in subsection (b) that has effected any
16 change in its officers during the preceding calendar year shall
17 file in the Department of State a statement executed by the
18 corporation and setting forth:

19 (1) The name of the corporation.

20 (2) The post office address, including street and
21 number, if any, of its principal office.

22 (3) The names and titles of the persons who are its
23 principal officers.

24 (b) Application.--This section shall apply to every:

25 (1) domestic nonprofit corporation that has been
26 incorporated after December 31, 1972;

27 (2) domestic nonprofit corporation that has made any
28 filing under the Nonprofit Corporation Law of 1933 in the
29 Department of State as amended by the act of June 19, 1969
30 (P.L.86, No.31);

1 (3) domestic nonprofit corporation that has filed a
2 statement of summary of record with the Department of State
3 after December 31, 1972; and

4 (4) qualified foreign nonprofit corporation.

5 (c) Separate change in registered office required.--A filing
6 under this section shall not constitute compliance with section
7 5507(b) (relating to registered office).

8 (d) Fee.--No fee shall be charged for effecting a filing
9 under this section.

10 (e) Cross reference.--See section 134 (relating to docketing
11 statement).]

12 Section 75. Sections 5306(a) (8) and 5504(c) of Title 15 are
13 amended and the sections are amended by adding subsections to
14 read:

15 § 5306. Articles of incorporation.

16 (a) General rule.--Articles of incorporation shall be signed
17 by each of the incorporators and shall set forth in the English
18 language:

19 * * *

20 (8) The name [and address, including street and number,
21 if any,] of each of the incorporators.

22 * * *

23 (d) Reference to external facts.--Except for the provisions
24 required by subsection (a) (1), (2), (4), (5), (6) (i) and (8),
25 any provision of the articles of incorporation may be made
26 dependent upon facts ascertainable outside of the articles if
27 the manner in which the facts will operate upon the provision is
28 set forth in the articles. The facts may include actions or
29 events within the control of or determinations made by the
30 corporation or a representative of the corporation.

1 § 5504. Adoption, amendment and contents of bylaws.

2 * * *

3 (b.1) Restated bylaws.--Subsection (b) does not prohibit the
4 board of directors from including in restated bylaws, without
5 substantive change, a bylaw adopted by the members, and such a
6 restated provision continues to have the status of a bylaw
7 adopted by the members.

8 (c) [Bylaw provisions in articles] Relationship of articles
9 and bylaws.--Where any provision of this subpart or any other
10 provision of law refers to a rule as set forth in the bylaws of
11 a corporation or in a bylaw adopted by the members, the
12 reference shall be construed to include and be satisfied by any
13 rule on the same subject as set forth in the articles of the
14 corporation. Where any provision of this subpart or any other
15 provision of law refers to a rule as set forth in the articles
16 of a corporation or prohibits the articles from setting forth a
17 rule, the contemplated rule may not be included in a bylaw or a
18 bylaw adopted by the members.

19 * * *

20 Section 76. Section 5505 of Title 15 is amended to read:

21 § 5505. Persons bound by bylaws.

22 Except as otherwise provided by section 5713 (relating to
23 personal liability of directors) or any similar provision of
24 law, the bylaws of a nonprofit corporation [shall operate only
25 as regulations among] are binding on the members, directors,
26 members of an other body and officers of the corporation[, and]
27 with respect to its internal affairs whether or not a member,
28 director, member of an other body or officer has actual
29 knowledge of the provisions of the bylaws, but a bylaw shall not
30 affect contracts or other dealings with other persons, unless

1 those persons have actual knowledge of the [bylaws] bylaw.

2 Section 77. Section 5507(b) and (d) of Title 15 are amended
3 and the section is amended by adding a subsection to read:

4 § 5507. Registered office.

5 * * *

6 (b) Statement of change of registered office.--After
7 incorporation, a change of the location of the registered office
8 may be authorized at any time by the board of directors or other
9 body. Before the change of location becomes effective, the
10 corporation [either] shall include the change in an annual
11 report under section 146 (relating to annual report), amend its
12 articles under the provisions of this subpart to reflect the
13 change [in location or shall file in] or deliver to the
14 Department of State for filing a statement of change of
15 registered office executed by the corporation, setting forth:

16 (1) The name of the corporation.

17 (2) The address, including street number, if any, of its
18 then registered office.

19 (3) The address, including street number, if any, to
20 which the registered office is to be changed.

21 (4) A statement that the change was authorized by the
22 board of directors or other body.

23 * * *

24 (d) Effect of statement.--A statement regarding the
25 registered office of a corporation set forth in a document filed
26 in the department pursuant to this section shall operate as an
27 amendment of the articles.

28 [(d)] (e) Cross reference.--See section 134 (relating to
29 docketing statement).

30 Section 78. Sections 5508, 5509 and 5512 of Title 15 are

1 amended to read:

2 § 5508. Corporate records; inspection by members.

3 (a) Required records.--Every nonprofit corporation shall
4 keep minutes of the proceedings of the incorporators, members,
5 the directors and any other body, and a membership register[,
6 giving the names and addresses of all members and the class and
7 other details of the membership of each]. The corporation shall
8 also keep appropriate, complete and accurate books or records of
9 account. [The records provided for in this subsection shall be
10 kept at any of the following locations:

11 (1) the registered office of the corporation in this
12 Commonwealth;

13 (2) the principal place of business wherever situated;
14 or

15 (3) any actual business office of the corporation.]

16 (b) Right of inspection by a member.--[Every member shall,
17 upon written verified demand stating the purpose thereof, have
18 a] On demand, in compliance with the requirements in subsection
19 (b.1), a member has the right to examine, in person or by agent
20 or attorney, during the usual hours for business for any proper
21 purpose, the membership register, books and records of account,
22 and [records of the proceedings of] minutes of, and consents in
23 lieu of meetings by, the incorporators, members, directors and
24 any other body, and to make copies or extracts therefrom.

25 (b.1) Contents and delivery of demand.--All of the following
26 apply to a demand under subsection (b):

27 (1) A proper purpose shall mean a purpose reasonably
28 related to the interest of the person as a member.

29 (2) In every instance where an attorney or other agent
30 is the person who seeks the right of inspection, the demand

1 shall be accompanied by a verified power of attorney or other
2 [writing] record that authorizes the attorney or other agent
3 to so act on behalf of the member.

4 (3) The demand must be:

5 (i) made in good faith;

6 (ii) in record form; and

7 (iii) verified.

8 (4) The demand must describe with reasonable
9 particularity:

10 (i) the purpose of the member; and

11 (ii) the records the member desires to inspect and
12 how the records relate to the purpose of the member.

13 (5) The demand [shall be directed] must be delivered to
14 the corporation:

15 [(1)] (i) at its registered office in this
16 Commonwealth;

17 [(2)] (ii) at its principal place of business
18 wherever situated; [or

19 (3)] (iii) in care of the person in charge of an
20 actual business office of the corporation[.]; or

21 (iv) in care of the secretary of the corporation at
22 the most recent address of the secretary shown in the
23 records of the department.

24 (c) Proceedings for the enforcement of inspection by a
25 member.--If the corporation, or an officer or agent thereof,
26 refuses to permit an inspection sought by a member or attorney
27 or other agent acting for the member pursuant to subsection (b)
28 or does not reply to the demand within five business days after
29 the demand has been [made] received, the member may [apply to]
30 file an action in the court for an order to compel the

1 inspection. The court [shall] is hereby vested with exclusive
2 jurisdiction to determine whether or not the person seeking
3 inspection is entitled to the inspection sought. The court may
4 summarily order the corporation to permit the member to inspect
5 the membership register and the other books and records of the
6 corporation and to make copies or extracts therefrom; or the
7 court may order the corporation to furnish to the member a list
8 of its members as of a specific date on condition that the
9 member first pay to the corporation the reasonable cost of
10 obtaining and furnishing the list and on such other conditions
11 as the court deems appropriate. Where the member seeks to
12 inspect the books and records of the corporation, other than its
13 membership register or list of members, [he] the member shall
14 first establish:

15 (1) that [he] the member has complied with the
16 provisions of this section respecting the form and manner of
17 making demand for inspection of such document; and

18 (2) that the inspection [he] the member seeks is for a
19 proper purpose.

20 (d) Burden of proof.--Where the member seeks to inspect the
21 membership register or list of members of the corporation and
22 [he] the member has complied with the provisions of this section
23 respecting the form and manner of making demand for inspection
24 of the documents, the burden of proof shall be upon the
25 corporation to establish that the inspection he seeks is for an
26 improper purpose.

27 (e) Available relief.--The court may, in its discretion,
28 prescribe any limitations or conditions with reference to the
29 inspection, or award such other or further relief as the court
30 deems just and proper. The court may order books, documents and

1 records, pertinent extracts therefrom, or duly authenticated
2 copies thereof, to be brought into this Commonwealth and kept in
3 this Commonwealth upon such terms and conditions as the order
4 may prescribe.

5 (f) Right to bylaws.--Every member shall have the right to
6 receive, promptly after demand and without charge, a copy in
7 record form of the currently effective text of the bylaws. If
8 the corporation does not provide a member with a copy of the
9 bylaws as required by this subsection, the member may apply to
10 the court for an order to compel the production. The court shall
11 summarily order the corporation to provide a copy of the bylaws
12 unless the corporation establishes that the person seeking the
13 bylaws is not a member.

14 (g) Reasonable restrictions permitted.--The corporation may
15 impose reasonable restrictions and conditions on access to and
16 use of information to be furnished under this section, including
17 designating information confidential and imposing nondisclosure
18 and safeguarding obligations on the recipient. In a dispute
19 concerning the reasonableness of a restriction, condition or
20 obligation under this subsection, the corporation has the burden
21 of proving reasonableness.

22 ~~[(d)]~~ (h) Cross references.--See sections 107 (relating to
23 form of records) and 5512 (relating to informational rights of a
24 director) [.] and 42 Pa.C.S. § 2503(7) and (9) (relating to right
25 of participants to receive counsel fees).

26 § 5509. Bylaws and other powers in emergency.

27 (a) General rule.--Except as otherwise restricted in the
28 bylaws, the board of directors or other body of any nonprofit
29 corporation may adopt emergency bylaws, subject to repeal or
30 change by action of the members, which shall, notwithstanding

1 any different provisions of law or of the articles or bylaws, be
2 effective during [any emergency resulting from an attack on the
3 United States, a nuclear disaster or another catastrophe as a
4 result of which a quorum of the board cannot readily be
5 assembled] an emergency. The emergency bylaws may make any
6 provision that may be appropriate for the circumstances of the
7 emergency, including:

8 (1) Procedures for calling meetings of delegates, the
9 board or [other] an other body.

10 (2) Quorum requirements for meetings of delegates, the
11 board or an other body.

12 (3) Procedures for designating additional or substitute
13 directors or members of an other body.

14 (b) Lines of succession; head office.--The board of
15 directors or other body, or the officers, if [given
16 authorization] authorized by the board of directors or other
17 body, either before or during any emergency, may:

18 (1) provide, and from time to time modify, lines of
19 succession in the event that during the emergency any or all
20 officers or agents of the corporation shall for any reason be
21 rendered incapable of discharging their duties; and

22 (2) effective in the emergency, change the head offices
23 or designate several alternative head offices or regional
24 offices of the corporation.

25 (c) [Personnel] Representatives not liable.--A
26 representative of the corporation:

27 (1) Acting in accordance with any emergency bylaws
28 [shall not be] in effect at the time or otherwise in
29 accordance with this section is not liable for monetary
30 damages except for:

1 (i) self-dealing, willful misconduct or
2 recklessness[.];

3 (ii) violation of a criminal statute; or

4 (iii) payment of taxes pursuant to Federal, State or
5 local law.

6 (2) [Shall not be] Is not liable for any action taken
7 [by him] by the representative in good faith in an emergency
8 in furtherance of the ordinary business affairs of the
9 corporation even though not authorized by the emergency or
10 other bylaws then in effect.

11 (d) Effect on regular bylaws.--To the extent [that they are]
12 not inconsistent with any emergency bylaws [adopted], the bylaws
13 of the corporation shall remain in effect during any emergency,
14 and, upon its termination, the emergency bylaws shall cease to
15 be effective.

16 (e) Procedure in absence of emergency bylaws.--Unless
17 otherwise provided in emergency bylaws, notice of any meeting of
18 delegates, the board of directors or an other body during an
19 emergency shall be given only to those delegates, directors or
20 members of an other body it is feasible to reach at the time and
21 by such means as are feasible at the time, including
22 publication, radio or television. To the extent required to
23 constitute a quorum at any meeting of the board of directors or
24 an other body during any emergency, the officers of the
25 corporation who are present at the meeting shall, unless
26 otherwise provided in emergency bylaws, be deemed, in order of
27 rank and within the same rank in order of seniority, directors
28 or members of the other body, as the case may be, for the
29 meeting. An officer serving as a director or member of an other
30 body under this subsection shall be subject to, and entitled to

1 the benefits of, the provisions of this subpart relating to
2 directors or members of an other body.

3 (f) Corporate actions.--A corporate action to further the
4 ordinary business affairs of the corporation that is taken in
5 good faith in accordance with any emergency bylaws in effect at
6 the time or otherwise in accordance with this section is valid
7 and binding on the corporation.

8 (g) Member meetings.--The required time for holding the
9 annual meeting of delegates or members of a corporation provided
10 in section 5755(a) (relating to time of holding meetings of
11 members) or the articles or bylaws is tolled during an
12 emergency. The board or other body, acting by a majority of the
13 directors or members of the other body that can be assembled,
14 may take any action during an emergency that the board or other
15 body determines to be practical and necessary to address the
16 circumstances of the emergency with respect to a meeting of
17 members notwithstanding anything to the contrary in this subpart
18 or in the articles or bylaws. The actions the board or other
19 body may take include postponing the meeting to a later time or
20 date, with the record date for determining the members entitled
21 to notice of, and to vote at, the meeting applying to the
22 postponed meeting without regard to section 5763 (relating to
23 determination of members of record).

24 (h) Definition.--As used in this section, and for no other
25 purpose, "emergency" means a period during which a quorum of the
26 board or an other body cannot readily be assembled as a result
27 of:

- 28 (1) an attack on the United States;
29 (2) a nuclear disaster;
30 (3) an epidemic or pandemic;

1 (4) a state of emergency under Federal or State law
2 covering a geographic area in which the corporation has its
3 principal office or a significant regional office or
4 operation; or

5 (5) any other catastrophe or disaster.

6 § 5512. Informational rights of a director.

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

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

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

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

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

12 (c) Right to the bylaws.--Every director has the right to
13 receive, on demand and without charge, a copy in record form of
14 the currently effective text of the bylaws.

15 (d) Reasonable restrictions permitted.--The corporation may
16 impose reasonable restrictions and conditions on access to and
17 use of information to be furnished under this section, including
18 designating information confidential and imposing nondisclosure
19 and safeguarding obligations on the recipient. In a dispute
20 concerning the reasonableness of a restriction, condition or
21 obligation under this subsection, the corporation has the burden
22 of proving reasonableness.

23 [(c)] (e) Cross references.--See sections 107 (relating to
24 form of records), 5508 (relating to corporate records;
25 inspection by members) and 5734 (relating to other body) and 42
26 Pa.C.S. § 2503(7) (relating to right of participants to receive
27 counsel fees).

28 Section 79. Title 15 is amended by adding a section to read:
29 § 5513. Forum selection provisions.

30 (a) General rule.--The bylaws may require that an internal

1 corporate claim must be brought exclusively in a specified court
2 or courts of this Commonwealth and, if so specified, also in
3 other courts sitting in this Commonwealth or in any other
4 jurisdiction with which the nonprofit corporation has a
5 reasonable relationship.

6 (b) Jurisdiction.--A provision of the bylaws adopted under
7 subsection (a) shall not have the effect of conferring
8 jurisdiction on any court or over any person or claim, and shall
9 not apply if none of the courts specified in the provision has
10 the requisite personal and subject matter jurisdiction. If none
11 of the courts of this Commonwealth specified in a provision
12 adopted under subsection (a) has the requisite personal and
13 subject matter jurisdiction and another court of this
14 Commonwealth does have such jurisdiction, then the internal
15 corporate claim may be brought in the court with jurisdiction,
16 notwithstanding that it is not specified in the provision.

17 (c) Definition.--For the purposes of this section:

18 (1) Except as provided in paragraph (2), "internal
19 corporate claim" means:

20 (i) an action that is based upon an alleged
21 violation of a duty owed to the nonprofit corporation
22 under the laws of this Commonwealth by a current or
23 former director, member of an other body, officer or
24 member in that capacity;

25 (ii) a derivative action or proceeding brought on
26 behalf of the corporation;

27 (iii) an action asserting a claim arising pursuant
28 to any provision of:

29 (A) this title;

30 (B) the articles of incorporation or bylaws; or

1 (C) an agreement regarding the governance of the
2 corporation or the transfer of memberships in the
3 corporation if:

4 (I) the corporation and at least one member
5 are parties to the agreement or stated or
6 intended beneficiaries thereof; and

7 (II) the agreement is entered into after the
8 adoption of the forum selection provision under
9 this section and the agreement does not contain
10 an inconsistent forum selection provision; or

11 (iv) any action asserting a claim regarding the
12 internal affairs of the corporation that is not included
13 in subparagraphs (i), (ii) and (iii).

14 (2) An internal corporate claim does not include a
15 claim, action or proceeding described in paragraph (1) that
16 is subject to section 5107 (relating to subordination of
17 subpart to canon law).

18 Section 80. Sections 5547(b), 5702(a)(1), 5704, 5708,
19 5709(b) and (c), 5711 and 5712 of Title 15 are amended to read:
20 § 5547. Authority to take and hold trust property.

21 * * *

22 (b) Nondiversion of certain property.--Property committed to
23 charitable purposes shall not, by any proceeding under Chapter 3
24 (relating to entity transactions) or 59 (relating to
25 [fundamental changes] amendments, sale of assets and
26 dissolution) or otherwise, be diverted from the objects to which
27 it was donated, granted or devised, unless and until the board
28 of directors or other body obtains from the court an order under
29 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the
30 disposition of the property.

1 § 5702. Manner of giving notice.

2 (a) General rule.--

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

7 (i) By first class or express mail, postage prepaid,
8 or courier service, charges prepaid, to the person's
9 postal address appearing on the books of the corporation
10 or, in the case of directors or members of an other body,
11 supplied by the person to the corporation for the purpose
12 of notice. Notice under this subparagraph shall be deemed
13 to have been given to the person entitled thereto when
14 deposited in the United States mail or with a courier
15 service for delivery to that person.

16 (ii) By facsimile transmission, e-mail or other
17 electronic communication to the [person's] facsimile
18 number or address for e-mail or other electronic
19 communications supplied by the person to the corporation
20 for the purpose of notice. Notice under this subparagraph
21 shall be deemed to have been given to the person entitled
22 thereto when sent.

23 * * *

24 § 5704. Place and notice of meetings of members.

25 (a) Place.--Meetings of members may be held at [the] a
26 geographic location within or without this Commonwealth as may
27 be provided in or fixed pursuant to the bylaws. Authority to
28 provide for the location of a meeting of the members includes
29 the authority to determine to hold a meeting solely by means of
30 electronic technology in accordance with section 5708 (relating

1 to use of conference telephone or other electronic technology),
2 notwithstanding that the authority may refer to one or more
3 geographic locations. Unless otherwise provided in or fixed
4 pursuant to the bylaws, all meetings of the members that are not
5 held solely by means of electronic technology shall be held at
6 the executive office of the corporation wherever situated. [If a
7 meeting of members is held by means of the Internet or other
8 electronic communications technology in a fashion pursuant to
9 which the members have the opportunity to read or hear the
10 proceedings substantially concurrently with their occurrence,
11 vote on matters submitted to the members, pose questions to the
12 directors and members of any other body, make appropriate
13 motions and comment on the business of the meeting, the meeting
14 need not be held at a particular geographic location.]

15 (b) Notice.--Notice in record form of every meeting of the
16 members shall be given by, or at the direction of, the secretary
17 or other authorized person to each member of record entitled to
18 vote at the meeting at least:

19 (1) ten days prior to the day named for a meeting that
20 will consider a transaction under Chapter 3 (relating to
21 entity transactions) or a fundamental change under Chapter 59
22 (relating to amendments, sale of assets and dissolution); or

23 (2) five days prior to the day named for the meeting in
24 any other case.

25 [If the secretary or other authorized person neglects or refuses
26 to give notice of a meeting, the person or persons calling the
27 meeting may do so.]

28 (c) Contents.--In the case of a special meeting of the
29 members, the notice shall specify the general nature of the
30 business to be transacted, and in all cases the notice shall

1 comply with the express requirements of this subpart. The
2 corporation shall not have a duty to augment the notice.

3 (d) Alternative authority.--If the secretary or other
4 authorized person does not give notice of a meeting within a
5 reasonable time, a person calling the meeting may do so.

6 § 5708. Use of conference telephone or other electronic
7 technology.

8 (a) Incorporators, directors and members of an other body.--
9 Except as otherwise provided in the bylaws, one or more persons
10 may participate in a meeting of the incorporators, the board of
11 directors or an other body of a nonprofit corporation by means
12 of conference telephone or other electronic technology by means
13 of which all persons participating in the meeting can hear each
14 other. Participation in a meeting pursuant to this [section]
15 subsection shall constitute presence in person at the meeting.

16 (b) Members.--Except as otherwise provided in the bylaws,
17 the presence or participation by a member, including voting and
18 taking other action, at a meeting of members[, or the expression
19 of consent or dissent to corporate action, by a member] by
20 conference telephone or other electronic [means, including,
21 without limitation, the Internet, shall constitute] technology
22 constitutes the presence of, or vote or action by, [or consent
23 or dissent of] the member for the purposes of this subpart.

24 (c) Exclusive use of electronic technology.--Unless the
25 bylaws provide expressly that a meeting of members may not be
26 held solely by means of electronic technology, a meeting of the
27 members does not need to be held at a geographic location if the
28 meeting is held by means of electronic technology in a fashion
29 pursuant to which the members have a reasonable opportunity to
30 participate in the meeting, read or hear the proceedings

1 substantially concurrently with their occurrence, vote on
2 matters submitted to the members and, subject to such guidelines
3 and procedures as the board of directors may adopt, make
4 appropriate motions and comment on the business of the meeting.
5 Any guidelines or procedures adopted by the board or an other
6 body must comply with section 5709(c) (relating to conduct of
7 members meeting).

8 § 5709. Conduct of members meeting.

9 * * *

10 (b) Authority of the presiding officer.--Except as otherwise
11 provided in the bylaws, the presiding officer shall determine
12 the order of business and shall have the authority to establish
13 rules for the conduct of the meeting if the board of directors
14 has not determined the order of business or established such
15 rules.

16 (c) Procedural standard.--Any [action by the presiding
17 officer in adopting rules for, and in conducting] rules adopted
18 for, and the conduct of, a meeting shall be fair to the members.

19 * * *

20 § 5711. Alternative provisions.

21 (a) General rule.--Section 5716 (relating to alternative
22 standard) shall not be applicable to any nonprofit corporation
23 to which section 5715 (relating to exercise of powers generally)
24 is applicable. Section 5715 shall be applicable to any
25 corporation except a corporation:

26 (1) the bylaws of which by amendment adopted by the
27 board of directors on or before July 26, 1990, and not
28 subsequently rescinded by an articles amendment, explicitly
29 provide that section 5715 or corresponding provisions of
30 prior law shall not be applicable to the corporation; or

1 (2) the articles of which explicitly provide that
2 section 5715 or corresponding provisions of prior law shall
3 not be applicable to the corporation.

4 (b) Reversal of opt-out.--A provision of the articles or
5 bylaws providing that section 5715 or corresponding provisions
6 of prior law shall not be applicable to the corporation may be
7 rescinded pursuant to the procedures required by this subpart
8 and the articles and bylaws at the time of the rescission to
9 amend the articles or bylaws.

10 § 5712. Standard of care [and], justifiable reliance and
11 business judgment rule.

12 (a) [Directors] General rule.--A director of a nonprofit
13 corporation shall stand in a fiduciary relation to the
14 corporation and shall perform [his duties as] the duties of a
15 director, including [his] duties as a member of any committee of
16 the board upon which [he] the director may serve, in good faith,
17 in a manner [he] the director reasonably believes to be in the
18 best interests of the corporation and with such care, including
19 [reasonable inquiry,] the skill and diligence[, as] that a
20 person of ordinary prudence would use under similar
21 circumstances[.] and reasonable inquiry into those issues
22 required by the statutes of this Commonwealth to be considered
23 in the circumstances and those interests and factors listed in
24 section 5715(a) (relating to exercise of powers generally) or
25 5716(a) (relating to alternative standard) that the director
26 considers appropriate. This subsection is subject to subsection
27 (d) where applicable.

28 (a.1) Justifiable reliance.--In performing [his duties] the
29 duties of a director and in satisfying the requirements of
30 subsection (d), a director [shall be] is entitled to rely in

1 good faith on information, opinions, reports or statements,
2 including financial statements and other financial data, in each
3 case prepared or presented by any of the following:

4 (1) One or more officers or employees of the corporation
5 or an affiliate of the corporation whom the director
6 reasonably believes to be reliable and competent in the
7 matters presented.

8 (2) Counsel, public accountants or other persons as to
9 matters which the director reasonably believes to be within
10 the professional or expert competence of such person.

11 (3) A committee of the board upon which [he] the
12 director does not serve, duly designated in accordance with
13 law, as to matters within its designated authority, which
14 committee the director reasonably believes to merit
15 confidence.

16 (b) Effect of actual knowledge.--A director [shall not be]
17 is not considered to be acting in good faith [if he has] under
18 subsection (a.1) if the director has actual knowledge concerning
19 the matter [in question that would cause his reliance to be]
20 that causes the director to believe reliance is unwarranted.

21 [(c) Officers.--Except as otherwise provided in the bylaws,
22 an officer shall perform his duties as an officer in good faith,
23 in a manner he reasonably believes to be in the best interests
24 of the corporation and with such care, including reasonable
25 inquiry, skill and diligence, as a person of ordinary prudence
26 would use under similar circumstances. A person who so performs
27 his duties shall not be liable by reason of having been an
28 officer of the corporation.]

29 (d) Business judgment rule.--A director who makes a business
30 judgment in good faith fulfills the duties under this section

1 if:

2 (1) the subject of the business judgment does not
3 involve self-dealing by the director or an associate or
4 affiliate of the director;

5 (2) the director is informed with respect to the subject
6 of the business judgment to the extent the director
7 reasonably believes to be appropriate under the
8 circumstances; and

9 (3) the director rationally believes that the business
10 judgment is in the best interests of the corporation.

11 (e) Burden of proof.--A person challenging the conduct of a
12 director as violating the duty of care under this section has
13 the burden of proving:

14 (1) a breach of the duty of care, including the
15 inapplicability of the provisions as to the fulfillment of
16 that duty under subsection (d); and

17 (2) in a damage action, that the breach was the legal
18 cause of damage suffered by the corporation.

19 Section 81. Section 5713(c) of Title 15 is amended and the
20 section is amended by adding a subsection to read:

21 § 5713. Personal liability of directors.

22 * * *

23 (c) Application.--An amendment or repeal of a provision
24 adopted under subsection (a) does not affect its application
25 with respect to an act by a director occurring before the
26 amendment or repeal unless the provision in effect at the time
27 of the act explicitly authorizes its amendment or repeal after
28 an act has occurred.

29 [(c)] (d) Cross reference.--See 42 Pa.C.S. § 8332.5
30 (relating to corporate representatives).

1 Section 82. Sections 5714, 5715(b), (d) and (e)(1)(i), 5716
2 and 5717 of Title 15 are amended to read:

3 § 5714. [Notation of dissent] Presumption of assent.

4 A director of a nonprofit corporation who is present at a
5 meeting of its board of directors, or of a committee of the
6 board, at which action on any corporate matter is taken on which
7 the director is generally competent to act, shall be presumed to
8 have assented to the action taken unless [his] the director's
9 dissent, abstention or vote against the matter is entered in the
10 minutes of the meeting or unless [he files his written dissent]
11 the director delivers to the secretary of the meeting before the
12 adjournment thereof a dissent in record form to the action [with
13 the secretary of the meeting before the adjournment thereof] or
14 transmits the dissent in [writing] record form to the secretary
15 of the corporation immediately after the adjournment of the
16 meeting. The right to dissent shall not apply to a director who
17 voted in favor of the action. Nothing in this subchapter shall
18 bar a director from asserting that minutes of the meeting
19 incorrectly omitted [his] the director's dissent, abstention or
20 vote against if, promptly upon receipt of a copy of such
21 minutes, [he] the director notifies the secretary [in writing]
22 of the corporation in record form of the asserted omission or
23 inaccuracy.

24 § 5715. Exercise of powers generally.

25 * * *

26 (b) Consideration of interests and factors.--The board of
27 directors, committees of the board and individual directors
28 shall not be required, in considering the best interests of the
29 corporation or the effects of any action, to regard any
30 corporate interest or the interests of any particular group

1 affected by such action as a dominant or controlling interest or
2 factor. The consideration of interests and factors in the manner
3 described in this subsection and in subsection (a) shall not
4 constitute a violation of section 5712 (relating to standard of
5 care [and], justifiable reliance and business judgment rule).

6 * * *

7 (d) Presumption.--[Absent breach of fiduciary duty, lack of
8 good faith or self-dealing, any act as the board of directors, a
9 committee of the board or an individual director shall be
10 presumed to be in the best interests of the corporation.] In
11 assessing whether the standard set forth in section 5712 or 5728
12 (relating to interested directors or officers; quorum) has been
13 satisfied, there shall not be any greater obligation to justify,
14 or higher burden of proof with respect to, any act as the board
15 of directors, any committee of the board or any individual
16 director relating to or affecting an acquisition or potential or
17 proposed acquisition of control of the corporation than is
18 applied to any other act as a board of directors, any committee
19 of the board or any individual director. Notwithstanding section
20 5712(d) and the preceding [provisions] provision of this
21 subsection, any act as the board of directors, a committee of
22 the board or an individual director relating to or affecting an
23 acquisition or potential or proposed acquisition of control to
24 which a majority of the disinterested directors shall have
25 assented shall be presumed to satisfy the standard set forth in
26 section 5712 or 5728, unless it is proven by clear and
27 convincing evidence that the disinterested directors did not
28 assent to such act in good faith after reasonable investigation.

29 (e) Definition.--The term "disinterested director" as used
30 in subsection (d) and for no other purpose means:

1 (1) A director of the corporation other than:
2 (i) A director who has a direct or indirect
3 financial or other interest in the person acquiring or
4 seeking to acquire control of the corporation or who is
5 an affiliate or associate[, as defined in section 2552
6 (relating to definitions),] of, or was nominated or
7 designated as a director by, a person acquiring or
8 seeking to acquire control of the corporation.

9 * * *

10 § 5716. Alternative standard.

11 (a) General rule.--In discharging the duties of their
12 respective positions, the board of directors, committees of the
13 board and individual directors of a nonprofit corporation may,
14 in considering the best interests of the corporation, consider
15 the effects of any action upon employees, upon suppliers and
16 customers of the corporation and upon communities in which
17 offices or other establishments of the corporation are located,
18 and all other pertinent factors. The consideration of those
19 factors shall not constitute a violation of section 5712
20 (relating to standard of care [and], justifiable reliance and
21 business judgment rule).

22 [(b) Presumption.--Absent breach of fiduciary duty, lack of
23 good faith or self-dealing, actions taken as a director shall be
24 presumed to be in the best interests of the corporation.]

25 (c) Cross reference.--See section 5711 (relating to
26 alternative provisions).

27 § 5717. Limitation on standing.

28 The duty of the board of directors, committees of the board
29 and individual directors under section 5712 (relating to
30 standard of care [and], justifiable reliance and business

1 judgment rule) is solely to the nonprofit corporation and not to
2 any member or creditor or any other person or group, and may be
3 enforced directly by the corporation or may be enforced by [a
4 member, as such, by] an action in the right of the corporation,
5 and may not be enforced directly by a member or creditor or by
6 any other person or group. Notwithstanding the preceding
7 sentence, sections 5715(a) and (b) (relating to exercise of
8 powers generally) and 5716(a) (relating to alternative standard)
9 do not impose upon the board of directors, committees of the
10 board and individual directors, any legal or equitable duties,
11 obligations or liabilities or create any right or cause of
12 action against, or basis for standing to sue, the board of
13 directors, committees of the board and individual directors.

14 Section 83. Title 15 is amended by adding sections to read:
15 § 5718. (Reserved).

16 § 5719. Renunciation of corporate opportunities.

17 The articles of incorporation or bylaws, or an action of the
18 board of directors, may renounce any interest or expectancy of a
19 nonprofit corporation in, or in being offered an opportunity to
20 participate in, a specified corporate opportunity or specified
21 classes or categories of corporate opportunities that are
22 presented to the corporation or to one or more of its directors,
23 officers or members.

24 Section 84. Sections 5721 and 5724(b) of Title 15 are
25 amended to read:

26 § 5721. Board of directors.

27 Unless otherwise provided by statute or in a bylaw adopted by
28 the members, all powers enumerated in section 5502 (relating to
29 general powers) and elsewhere in this [subpart] title or
30 otherwise vested by law in a nonprofit corporation shall be

1 exercised by or under the authority of the board of directors,
2 and the business and affairs of every nonprofit corporation
3 shall be managed by or under the direction of, a board of
4 directors. If any such provision is made in the bylaws, the
5 powers and duties conferred or imposed upon the board of
6 directors by this [subpart] title shall be exercised or
7 performed to such extent and by such other body as shall be
8 provided in the bylaws.

9 § 5724. Term of office of directors.

10 * * *

11 (b) Resignations.--[Any director may resign at any time upon
12 notice in record form to the corporation. The resignation shall
13 be effective upon its receipt by the corporation or at a
14 subsequent time specified in the notice of resignation.] A
15 director may resign at any time upon notice in record form to
16 the corporation. A resignation that is not conditioned upon
17 acceptance by the board of directors shall be effective upon
18 receipt by the corporation of the notice of resignation, unless
19 the notice specifies a later effective time or an effective time
20 determined upon the happening of an event or events. If a
21 resignation is conditioned upon its acceptance by the board, a
22 decision by the board to accept or reject the resignation shall
23 be made by the board in the manner required by Subchapter B
24 (relating to fiduciary duty).

25 * * *

26 Section 85. Section 5725 of Title 15 is amended by adding a
27 subsection to read:

28 § 5725. Selection of directors.

29 * * *

30 (c.1) No directors in office.--At any time when the offices

1 of all of the directors of a membership corporation are vacant,
2 any officer, member of an other body or member may call a
3 special meeting of members for the purpose of electing
4 directors.

5 * * *

6 Section 86. Sections 5727, 5728, 5730, 5731(a) and 5732 of
7 Title 15 are amended to read:

8 § 5727. Quorum of and action by directors.

9 (a) General rule.--Unless otherwise provided in the bylaws,
10 a majority of the directors in office of a nonprofit corporation
11 shall be necessary to constitute a quorum for the transaction of
12 business, and the acts of a majority of the directors present
13 and voting at a meeting at which a quorum is present shall be
14 the acts of the board of directors.

15 (b) Action by consent.--Unless otherwise restricted in the
16 bylaws, any action required or permitted to be approved at a
17 meeting of the directors may be approved without a meeting [if a
18 consent or] if one or more consents to the action in record form
19 [are]. Except as provided in subsection (c), the consents must
20 be signed, before, on or after the effective [date] time of the
21 action by all of the directors in office [on the date the last
22 consent is signed] at the effective time. The consent or
23 consents must be filed with the secretary of the corporation.

24 (c) Effectiveness of consent.--A consent may provide, or a
25 person signing a consent, whether or not then a director, may
26 instruct in record form, that the consent will be effective at a
27 future time, including a time determined upon the happening of
28 an event. In the case of a consent signed by a person not a
29 director at the time of signing, the consent is effective at the
30 stated effective time if the person who signed the consent is a

1 director at the effective time and did not revoke the consent in
2 record form prior to the effective time. A consent is effective
3 at the stated effective time even if one or more signers are no
4 longer directors at the effective time unless the consent has
5 been revoked by a signer who is a director at the effective
6 time. A signer of a consent may revoke the signer's consent in
7 record form until the consent becomes effective.

8 § 5728. Interested directors or officers; quorum.

9 (a) General rule.--A contract or transaction between a
10 nonprofit corporation and one or more of its directors or
11 officers or between a nonprofit corporation and another domestic
12 or foreign corporation for profit or not-for-profit,
13 partnership, joint venture, trust or other association in which
14 one or more of [its] the corporation's directors or officers are
15 [directors] governors or officers of the other association or
16 have a financial or other interest, [shall not be] is not void
17 or voidable solely for that reason, or solely because the
18 director or officer of the corporation is present at or
19 participates in the meeting of the board of directors that
20 authorizes the contract or transaction, or solely because the
21 vote of the director or officer is counted for that purpose, if:

22 (1) the material facts as to the relationship or
23 interest and as to the contract or transaction are disclosed
24 or are known to the board of directors and the board
25 authorizes the contract or transaction by the affirmative
26 votes of a majority of the disinterested directors even
27 though the disinterested directors are less than a quorum;

28 (2) the material facts as to the [director's or
29 officer's] relationship or interest and as to the contract or
30 transaction are disclosed or are known to the members

1 entitled to vote thereon, if any, and the contract or
2 transaction is specifically approved in good faith by vote of
3 those members; [or]

4 (3) the contract or transaction is fair as to the
5 corporation as of the time it is authorized, approved or
6 ratified by the board of directors or the members[.]; or

7 (4) the contract or transaction satisfies subsection (d)
8 or (e).

9 (b) Quorum.--Common or interested directors may be counted
10 in determining the presence of a quorum at a meeting of the
11 board that authorizes a contract or transaction specified in
12 subsection (a).

13 (c) Applicability.--The provisions of this section shall be
14 applicable except as otherwise restricted in the bylaws.

15 (d) Common governors or officers with nonwholly owned
16 associations.--A contract or transaction between a nonprofit
17 corporation and an association that is not wholly owned or
18 controlled by the corporation, is not void or voidable solely on
19 the grounds that a person who is a director or officer of the
20 corporation is also a governor or officer of the other
21 association if:

22 (1) one of the conditions set forth in subsection (a)
23 (1), (2) or (3) is satisfied; or

24 (2) (i) the director or officer does not participate
25 personally and substantially in negotiating the
26 transaction for either the corporation or the other
27 association; and

28 (ii) if the transaction is approved by the governors
29 of either association, the person that is a governor or
30 officer of each association does not cast a vote that

1 would be necessary at a meeting to approve the
2 transaction on behalf of either association.

3 (e) Common governors or officers with wholly owned
4 associations.--A contract or transaction between a nonprofit
5 corporation and an association wholly owned or controlled by the
6 corporation is not void or voidable solely on the grounds that a
7 director or officer of the corporation is also a governor or
8 officer of the wholly owned or controlled association.

9 (f) Cross references.--See sections 5715(d) (relating to
10 exercise of powers generally) and 5730 (relating to compensation
11 of directors).

12 § 5730. Compensation of directors.

13 (a) General rule.--Except as otherwise restricted in the
14 bylaws, the board of directors of a nonprofit corporation [shall
15 have] has the authority to fix the compensation of directors for
16 their services as directors[, and a] regardless of the personal
17 interest of the directors. A director may be a salaried officer
18 of the corporation.

19 (b) Presumption.--If the board of directors of a nonprofit
20 corporation that is not incorporated for a charitable purpose
21 establishes the compensation of directors in accordance with
22 subsection (a), that action is presumed to be fair to the
23 corporation.

24 § 5731. Executive and other committees of the board.

25 (a) Establishment and powers.--Unless otherwise restricted
26 in the bylaws:

27 (1) The bylaws or the board of directors [may, by
28 resolution adopted by a majority of the directors in office,]
29 of a nonprofit corporation may establish one or more
30 committees to consist of one or more directors of the

1 corporation.

2 (2) Any committee, to the extent provided in the
3 [resolution] action of the board of directors or in the
4 bylaws, shall have and may exercise all of the powers and
5 authority of the board of directors, except that a committee
6 shall not have any power or authority as to the following:

7 (i) The submission to members of any action or
8 matter, other than the election or removal of directors,
9 requiring approval of members under this subpart or
10 Chapter 3 (relating to entity transactions).

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

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

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

18 (v) Action on matters committed by the bylaws or [a
19 resolution] an action of the board of directors
20 exclusively to another committee of the board.

21 (3) The board may designate one or more directors as
22 alternate members of any committee, who may replace any
23 absent or disqualified member at any meeting of the committee
24 or for purposes of action in record form by the committee. In
25 the absence or disqualification of a member and alternate
26 member or members of a committee, the member or members
27 thereof present at any meeting and not disqualified from
28 voting, whether or not [he or they] those present constitute
29 a quorum, may unanimously appoint another director to act at
30 the meeting in the place of any absent or disqualified

1 member.

2 * * *

3 § 5732. Officers.

4 (a) General rule.--Every nonprofit corporation shall have a
5 president, a secretary, and a treasurer, or persons who shall
6 act as such, regardless of the name or title by which they may
7 be designated, elected or appointed and may have such other
8 officers [and assistant officers] as it may authorize from time
9 to time. The bylaws may prescribe special qualifications for the
10 officers. The president and secretary shall be natural persons
11 of full age. The treasurer may be a corporation, but if a
12 natural person shall be of full age. Unless otherwise restricted
13 in the bylaws, it shall not be necessary for the officers to be
14 directors. Any number of offices may be held by the same person.

15 (b) Term of office.--The officers [and assistant officers]
16 shall be elected or appointed at such time, in such manner and
17 for such terms as may be fixed by or pursuant to the bylaws.
18 Unless otherwise provided by or pursuant to the bylaws, each
19 officer shall hold office for a term of one year and until [his]
20 the officer's successor has been selected and qualified or until
21 [his] the officer's earlier death, resignation or removal.

22 (c) Resignation.--Any officer may resign at any time upon
23 written notice to the corporation. The resignation shall be
24 effective upon receipt thereof by the corporation or at such
25 subsequent time as may be specified in the notice of
26 resignation.

27 (d) Bonding.--The corporation may secure the fidelity of any
28 or all of the officers by bond or otherwise.

29 (e) Vacancies.--Unless otherwise provided in the bylaws, the
30 board of directors shall have power to fill any vacancies in any

1 office occurring from whatever reason.

2 [(b)] (f) Authority.--Unless otherwise provided in the
3 bylaws, all officers of the corporation, as between themselves
4 and the corporation, shall have such authority and perform such
5 duties in the management of the corporation as may be provided
6 by or pursuant to the bylaws or, in the absence of controlling
7 provisions in the bylaws, as may be determined by or pursuant to
8 [resolutions or orders] actions of the board of directors or
9 other body.

10 [(c) Nomination of officers.--Unless the bylaws provide
11 otherwise, officers shall be nominated by a nominating committee
12 or from the floor.]

13 (d) Cross reference.--See section 5110 (relating to annual
14 report).]

15 (g) Right to bylaws.--Every officer shall have the right to
16 receive, promptly after demand and without charge, a copy in
17 record form of the currently effective text of the bylaws, but
18 only to the extent reasonably related to the officer's duties.

19 Section 87. Title 15 is amended by adding sections to read:
20 § 5733.1. Officer's standard of care and justifiable reliance.

21 (a) General rule.--Except as otherwise provided in the
22 bylaws, an officer shall perform the duties of an officer in
23 good faith, in a manner the officer reasonably believes to be in
24 the best interests of the nonprofit corporation and with such
25 care, including reasonable inquiry, skill and diligence, as a
26 person of ordinary prudence would use under similar
27 circumstances. A person who performs the duties of an officer in
28 accordance with this subsection, and any provision of the bylaws
29 that modify this subsection, shall not be liable to the
30 corporation by reason of having been an officer of the

1 corporation.

2 (b) Justifiable reliance.--In performing the duties of an
3 officer, an officer is entitled to rely in good faith on
4 information, opinions, reports or statements, including
5 financial statements and other financial data, in each case
6 prepared or presented by any of the following:

7 (1) One or more other officers or employees of the
8 corporation or an affiliate of the corporation whom the
9 officer reasonably believes to be reliable and competent in
10 the matters presented.

11 (2) Counsel, public accountants or other persons as to
12 matters that the officer reasonably believes to be within the
13 professional or expert competence of such person.

14 (c) Effect of actual knowledge.--An officer is not
15 considered to be acting in good faith under subsection (a) if
16 the director has actual knowledge concerning the matter that
17 causes the officer to believe reliance is unwarranted.

18 (d) Business judgment rule.--Except as otherwise restricted
19 in the bylaws, an officer who makes a business judgment in good
20 faith fulfills the duties of an officer if:

21 (1) the subject of the business judgment does not
22 involve self-dealing by the officer or an associate or
23 affiliate of the officer;

24 (2) the officer is informed with respect to the subject
25 of the business judgment to the extent the officer reasonably
26 believes to be appropriate under the circumstances; and

27 (3) the officer rationally believes that the business
28 judgment is in the best interests of the corporation.

29 (e) Burden of proof.--A person challenging the conduct of an
30 officer under this section has the burden of proving a breach of

1 the duty of care, including the provisions of subsections (c)
2 and (d), and, in a damage action, the burden of proving that the
3 breach was the legal cause of damage suffered by the
4 corporation.

5 § 5733.2. Personal liability of officers.

6 (a) General rule.--If a bylaw adopted by the members of a
7 nonprofit corporation so provides, an officer shall not be
8 personally liable, as such, for monetary damages for any action
9 taken unless:

10 (1) the officer has breached or failed to perform the
11 duties of an officer under this subchapter; and

12 (2) the breach or failure to perform constitutes self-
13 dealing, willful misconduct or recklessness.

14 (b) Exceptions.--Subsection (a) shall not apply to:

15 (1) the responsibility or liability of an officer
16 pursuant to any criminal statute; or

17 (2) the liability of an officer for the payment of taxes
18 pursuant to Federal, State or local law.

19 (c) Application.--An amendment or repeal of a provision
20 described in subsection (a) does not affect its application with
21 respect to an act by an officer occurring before the amendment
22 or repeal unless the provision in effect at the time of the act
23 explicitly authorizes its amendment or repeal after an act has
24 occurred.

25 (d) Cross reference.--See 42 Pa.C.S. § 8332.5 (relating to
26 corporate representatives).

27 Section 88. Sections 5743, 5750, 5755, 5756(a)(1) and (b)
28 (1), 5758 and 5763 of Title 15 are amended to read:

29 § 5743. Mandatory indemnification.

30 (a) General rule.--To the extent that a [representative]

1 present or former director or officer of a nonprofit corporation
2 has been successful on the merits or otherwise in defense of any
3 action or proceeding referred to in section 5741 (relating to
4 third-party actions) or 5742 (relating to derivative and
5 corporate actions) or in defense of any claim, issue or matter
6 therein, [he] the director or officer shall be indemnified
7 against expenses (including attorney fees) actually and
8 reasonably incurred by [him] the director or officer in
9 connection therewith.

10 (b) Prospective application.--The limitation of the scope of
11 subsection (a) to a present or former director or officer
12 applies only to acts occurring after (insert the effective date
13 of this act).

14 [(b)] (c) Cross reference.--See section 6145 (relating to
15 applicability of certain safeguards to foreign corporations).
16 § 5750. Duration and extent of coverage.

17 The indemnification and advancement of expenses provided by
18 or granted pursuant to this subchapter shall, unless otherwise
19 provided when authorized or ratified, continue as to a person
20 who has ceased to be a representative of the corporation and
21 shall inure to the benefit of the heirs and personal
22 representative of that person. A right to indemnification or to
23 advancement of expenses arising under a provision of the
24 articles or bylaws may not be eliminated or impaired by an
25 amendment to or repeal of the provision after the occurrence of
26 an act that is the subject of the threatened, pending or
27 completed action or proceeding, whether civil, criminal,
28 administrative or investigative, for which indemnification or
29 advancement of expenses is sought, unless the provision in
30 effect at the time of the act explicitly authorizes the

1 elimination or impairment after an act has occurred.

2 § 5755. Time of holding meetings of members.

3 (a) Regular meetings.--The bylaws of a nonprofit corporation
4 may provide for the number and the time of meetings of members[,
5 but unless]. Except as otherwise provided in a bylaw adopted by
6 the members, at least one meeting of the members [of a
7 corporation that has members, as such,] that are entitled to
8 vote[,] for the election of directors shall be held in each
9 calendar year for the election of directors at the time provided
10 in or fixed pursuant to authority granted by the bylaws. Failure
11 to hold the annual or other regular meeting at the designated
12 time shall not work a dissolution of the corporation or affect
13 otherwise valid corporate acts. If the annual or other regular
14 meeting is not called and held within six months after the
15 designated time, any member may call the meeting at any time
16 thereafter.

17 (b) Special meetings.--Special meetings of the members may
18 be called at any time by:

19 (1) the board of directors;

20 (2) members entitled to cast at least 10% of the votes
21 that all members are entitled to cast at the particular
22 meeting; [or]

23 (3) [other] such officers or other persons as may be
24 provided in the bylaws[.]; or

25 (4) as provided in section 5725(c.1) (relating to
26 selection of directors).

27 (b.1) Duties of secretary.--At any time, upon written
28 request of any person who has called a special meeting, it shall
29 be the duty of the secretary to fix the time of the meeting
30 which, if the meeting is called pursuant to a statutory right,

1 shall be held within any period specified by this subpart, or if
2 no period is specified, not more than 60 days after the receipt
3 of the request. If the secretary neglects or refuses to fix the
4 time of the meeting, the person or persons calling the meeting
5 may do so.

6 (c) Adjournments.--Adjournments of any regular or special
7 meeting may be taken but any meeting at which directors are to
8 be elected shall be adjourned [~~only~~] for no longer than from day
9 to day, or for longer periods not exceeding 15 days each, as the
10 members present and entitled to vote shall direct, until the
11 directors have been elected.

12 (d) Postponement or cancellation.--The board of directors
13 may postpone, or delegate to an officer the authority to
14 postpone, the annual or other regular meeting of members,
15 subject to the provision of subsection (a) providing for a
16 meeting each calendar year. Unless otherwise restricted in the
17 bylaws or otherwise provided by statute, the holding of a
18 special meeting of members may be postponed for not more than 15
19 days or may be canceled by the person or group that called the
20 special meeting. In the case of a postponed or canceled meeting,
21 prompt notice in record form of the postponement or cancellation
22 must be given to the members entitled to vote at the meeting.

23 [~~(d)~~] (e) Cross reference.--See section 6145 (relating to
24 applicability of certain safeguards to foreign domiciliary
25 corporations).

26 § 5756. Quorum.

27 (a) General rule.--A meeting of members of a nonprofit
28 corporation duly called shall not be organized for the
29 transaction of business unless a quorum is present. Unless
30 otherwise provided in a bylaw adopted by the members:

1 (1) [The] A quorum for the purposes of consideration and
2 action on a particular matter at a meeting shall consist of:

3 (i) the presence of members entitled to cast at
4 least a majority of the votes that all members are
5 entitled to cast on [a particular] the matter [to be
6 acted upon at the meeting shall constitute a quorum for
7 the purposes of consideration and action on the matter.];
8 and

9 (ii) if any members are entitled to vote as a class
10 on the matter, the presence of members entitled to cast
11 at least a majority of the votes entitled to be cast in
12 the class vote.

13 * * *

14 (b) Exceptions.--Notwithstanding any contrary provision in
15 the articles or bylaws, those members entitled to vote who
16 attend a meeting of members:

17 (1) At which directors are to be elected that has been
18 previously adjourned for lack of a quorum, although less than
19 a quorum as fixed in this section or in the bylaws, shall
20 nevertheless constitute a quorum for the purpose of [election
21 of] electing directors.

22 * * *

23 § 5758. Voting rights of members.

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

27 (b) Procedures.--The following apply to voting by the
28 members:

29 (1) The manner of voting on any matter, including
30 changes in the articles or bylaws, may be by ballot, mail or

1 any reasonable means provided in a bylaw adopted by the
2 members.

3 (2) If a bylaw adopted by the members provides a fair
4 and reasonable procedure for the nomination of candidates for
5 any office, only candidates who have been duly nominated in
6 accordance therewith shall be eligible for election.

7 (3) Unless otherwise provided in [such] a bylaw adopted
8 by the members, in elections for directors at a meeting of
9 members held at a geographic location, voting shall be by
10 ballot[, and the]. The members do not have the right to vote
11 by ballot at a meeting that is not held at a geographic
12 location pursuant to section 5708(c) (relating to use of
13 conference telephone or other electronic technology).

14 (4) The candidates for election as directors receiving
15 the highest number of votes from each class or group of
16 classes, if any, of members entitled to elect directors
17 separately up to the number of directors to be elected by
18 such class or group of classes shall be elected. If at any
19 meeting of members directors of more than one class are to be
20 elected, each class of directors shall be elected in a
21 separate election.

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

30 (d) Sale of votes.--No member shall sell his vote or issue a

1 proxy for money or anything of value.

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

12 § 5763. Determination of members of record.

13 (a) Fixing record date.--Unless otherwise restricted in the
14 bylaws, the board of directors of a nonprofit corporation may
15 fix a time prior to the date of any meeting of members as a
16 record date for the determination of the members entitled to
17 notice of, or to vote at, the meeting, which time, except in the
18 case of an adjourned meeting, shall not be more than 90 days
19 prior to the date of the meeting of members. Only members of
20 record on the date fixed shall be so entitled notwithstanding
21 any increase or other change in membership on the books of the
22 corporation after any record date fixed as provided in this
23 subsection. Unless otherwise provided in the bylaws, the board
24 of directors may similarly fix a record date for the
25 determination of members of record for any other purpose. A
26 record date may not precede the date on which the board acts to
27 fix that record date. The members of record shall be determined
28 as of the close of business on the record date unless the board
29 fixes a different time of day for that determination. When a
30 determination of members of record has been made as provided in

1 this section for purposes of a meeting, the determination shall
2 apply to any adjournment thereof unless otherwise restricted in
3 the bylaws or unless the board fixes a new record date for the
4 adjourned meeting.

5 (b) Determination when no record date fixed.--Unless
6 otherwise provided in the bylaws, if a record date is not fixed:

7 (1) The [record date for determining members entitled to
8 notice of or to vote at a meeting of members shall be at the]
9 close of business on the day next preceding the day on which
10 notice is given or, if notice is waived, at the close of
11 business on the day immediately preceding the day on which
12 the meeting is held[.] shall be the record date for
13 determining members entitled to notice of or to vote at a
14 meeting of members.

15 (2) The close of business on the day on which the first
16 consent or dissent, request or petition is filed in record
17 form with the secretary of the corporation shall be the
18 record date for determining members entitled to:

19 (i) express consent or dissent to corporate action
20 [in writing] without a meeting, when prior action by the
21 board of directors or other body is not necessary;

22 (ii) call a special meeting of the members; or

23 (iii) propose an amendment of the articles.[;
24 shall be the close of business on the day on which the first
25 written consent or dissent, request for a special meeting or
26 petition proposing an amendment of the articles is filed with
27 the secretary of the corporation.]

28 (3) The record date for determining members for any
29 other purpose shall be at the close of business on the day on
30 which the board of directors or other body adopts the

1 resolution relating thereto.

2 Section 89. Section 5766(a) of Title 15 is amended and the
3 section is amended by adding subsections to read:

4 § 5766. Consent of members in lieu of meeting.

5 (a) Unanimous consent.--Unless otherwise restricted in the
6 bylaws, any action required or permitted to be taken at a
7 meeting of the members or of a class of members of a nonprofit
8 corporation may be taken without a meeting if a consent or
9 consents to the action in record form are signed, before, on or
10 after the effective [date] time of the action by all of the
11 members who would be entitled to vote at a meeting for that
12 purpose. The consent or consents must be filed with the minutes
13 of the proceedings of the members.

14 * * *

15 (d) Escrowing of consents.--A consent may provide, or a
16 person signing a consent, whether or not then a member, may
17 instruct in record form, that the consent will be effective at a
18 future time, including a time determined upon the happening of
19 an event. In the case of a consent signed by a person not a
20 member at the time of signing, the consent is effective at the
21 stated effective time if the person who signed the consent is a
22 member at the effective time and did not revoke the consent in
23 record form prior to the effective time. A consent is effective
24 at the stated effective time, even if one or more signers are no
25 longer members at the effective time if consents by members
26 entitled to cast the required number of votes have not been
27 revoked before the effective time.

28 (e) Revocation of consent.--Unless otherwise provided in a
29 consent, a signer of the consent may revoke the signer's consent
30 in record form until it becomes effective.

1 Section 90. Section 5781(a)(1)(i), (b) and (c) of Title 15
2 are amended to read:

3 § 5781. Derivative action.

4 (a) General rule.--Subject to section 5782 (relating to
5 eligible member plaintiffs and security for costs) and
6 subsection (b), a plaintiff may maintain a derivative action to
7 enforce a right of a nonprofit corporation only if:

8 (1) the plaintiff first makes a demand on the
9 corporation or the board of directors, requesting that [it
10 cause the corporation to] the corporation bring an action to
11 enforce the right, and:

12 (i) if a special litigation committee is not
13 appointed under section 5783 (relating to special
14 litigation committee), [the corporation does not bring
15 the action within a reasonable time; or] the board
16 determines that:

17 (A) an action based on some or all of the claims
18 asserted in the demand not be brought by the
19 corporation but that the corporation not object to an
20 action being brought by the party that made the
21 demand; or

22 (B) an action already commenced continue under
23 the control of the plaintiff; or

24 * * *

25 (b) Prior demand excused.--

26 (1) A demand under subsection (a)(1) is excused only if
27 the [member] plaintiff makes a specific showing that
28 immediate and irreparable harm to the nonprofit corporation
29 would otherwise result.

30 (2) If demand is excused under paragraph (1), demand

1 shall be made promptly after commencement of the action.

2 (c) Contents of demand.--A demand under this section must be
3 in record form and give notice with reasonable specificity of:

4 (1) the [essential] material facts relied upon to
5 support each of the claims made in the demand[.] against each
6 proposed defendant; and

7 (2) in the case of a derivative action commenced by a
8 member, the basis on which the person making the demand has
9 standing under section 5782.

10 * * *

11 Section 91. Section 5782(a) and (d) of Title 15 are amended
12 and the section is amended by adding a subsection to read:

13 § 5782. Eligible member plaintiffs and security for costs.

14 (a) General rule.--Except as provided in subsection (b), in
15 any action or proceeding brought [to enforce a secondary right
16 on the part of] by one or more members of a nonprofit
17 corporation [against any present or former officer, director or
18 member of an other body of the corporation because the
19 corporation refuses to enforce rights that may properly be
20 asserted by it] to enforce rights that the plaintiff claims
21 could be, but have not been, asserted by the corporation, each
22 plaintiff [must aver and it must be made to appear that each
23 plaintiff] has standing to commence and maintain the derivative
24 action if the plaintiff:

25 (1) was a member of the corporation at the time of the
26 transaction or conduct of which [he] the plaintiff
27 complains[.]; and

28 (2) continues to be a member until the time of judgment,
29 unless the failure to do so is the result of corporate action
30 that:

1 (i) was done merely to eliminate derivative claims;
2 or
3 (ii) has the effect of a reorganization that does
4 not affect the plaintiff's ownership of the enterprise.

5 * * *

6 (d) Failure to maintain ownership.--If a plaintiff loses the
7 right to maintain a derivative action under subsection (a)(2),
8 the court may entertain a motion to substitute the corporation
9 as the named plaintiff.

10 [(d)] (e) Cross reference.--See section 6146 (relating to
11 provisions applicable to all foreign corporations).

12 Section 92. Section 5783(a), (b)(1), (e) introductory
13 paragraph, (3) and (6) and (f) of Title 15 are amended and the
14 section is amended by adding subsections to read:

15 § 5783. Special litigation committee.

16 (a) General rule.--If a nonprofit corporation or the board
17 of directors receives a demand to bring an action to enforce a
18 right of the corporation, or if a derivative action is commenced
19 before demand has been made on the corporation or the board, the
20 board may appoint a special litigation committee to investigate
21 the claims asserted in the demand or action and to determine on
22 behalf of the corporation or recommend to the board whether
23 pursuing any of the claims asserted is in the best interests of
24 the corporation. The corporation [shall send] must deliver a
25 notice in record form to the [plaintiff] person making the
26 demand, or to the plaintiff if a derivative action has been
27 commenced, promptly after the appointment of a committee under
28 this section notifying the person making the demand or the
29 plaintiff that a committee has been appointed and identifying by
30 name the members of the committee.

1 (b) Discovery stay.--If the board of directors appoints a
2 special litigation committee and an action is commenced before a
3 determination has been made under subsection (e):

4 (1) On motion by the nonprofit corporation, or the
5 committee made in the name of the [nonprofit] corporation,
6 the court shall stay discovery for the time reasonably
7 necessary to permit the committee to complete its
8 investigation, except for good cause shown.

9 * * *

10 (c.1) Committee members who are not directors or members of
11 an other body.--A member of a special litigation committee who
12 is not a director or member of an other body, when acting as a
13 member of the committee, is subject to the liabilities imposed,
14 and entitled to the rights and immunities conferred, by
15 Subchapters B (relating to fiduciary duty) and D (relating to
16 indemnification) and other provisions of law upon directors of a
17 corporation.

18 * * *

19 (e) Determination.--After appropriate investigation by a
20 special litigation committee, the committee [or the] may
21 determine, or the committee may recommend to the board of
22 directors [may] that the board determine that it is in the best
23 interests of the nonprofit corporation that:

24 * * *

25 (3) some or all of the claims asserted in the demand be
26 settled on terms [approved] determined or recommended by the
27 committee;

28 * * *

29 (6) some or all the claims asserted in an action already
30 commenced be settled on terms [approved] determined or

1 recommended by the committee; or

2 * * *

3 (f) Court review and action.--If a special litigation
4 committee is appointed and a derivative action is commenced
5 before or after the committee makes a determination [is made]
6 under subsection (e) or the board of directors determines under
7 subsection (e) to accept the recommendation of the committee:

8 (1) The nonprofit corporation or the committee shall
9 file with the court after a determination is made under
10 subsection (e) a statement of the determination and a report
11 of the committee supporting the determination. The
12 corporation or the committee shall serve each party with a
13 copy of the determination and report. If the corporation or
14 the committee moves to file the report under seal, the report
15 shall be served on the parties subject to an appropriate
16 stipulation agreed to by the parties or a protective order
17 issued by the court.

18 (2) The corporation or the committee shall file with the
19 court a motion, pleading or notice consistent with the
20 determination under subsection (e).

21 (3) If the determination is one described in subsection
22 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall
23 determine whether the members of the committee met the
24 qualifications required under subsection (c) (1) and (2) and
25 whether the committee conducted its investigation and made
26 its determination or recommendation in good faith,
27 independently and with reasonable care. The plaintiff has the
28 burden of proving that the committee did not meet those
29 qualifications or act in the required manner. If the court
30 finds that the members of the committee met the

1 qualifications required under subsection (c) (1) and (2) and
2 that the committee acted in good faith, independently and
3 with reasonable care, the court shall enforce the
4 determination of the committee or the board. Otherwise, the
5 court shall:

6 (i) dissolve any stay of discovery entered under
7 subsection (b);

8 (ii) allow the action to continue under the control
9 of the plaintiff; and

10 (iii) permit the defendants to file preliminary
11 objections, other appropriate pleadings and motions.

12 * * *

13 (h) Interest of a defendant.--The fact that a person is
14 named as a defendant does not make the person interested in the
15 claims asserted in a demand or action for purposes of subsection
16 (c) (1) if the claims against the person:

17 (1) are based only on an allegation that the person
18 approved of or acquiesced in the transaction or conduct that
19 is the subject of the claims; and

20 (2) do not otherwise allege with particularity facts
21 that, if true, raise a significant prospect that the person
22 would be adjudged liable.

23 Section 93. Section 5911(b) of Title 15 is amended and the
24 section is amended by adding a subsection to read:

25 § 5911. Amendment of articles authorized.

26 * * *

27 (b) Exceptions.--An amendment adopted under this section
28 shall not amend articles in such a way that as so amended they
29 would not be authorized by this subpart as original articles of
30 incorporation except that:

1 (1) Restated articles shall, subject to section 109
2 (relating to name of commercial registered office provider in
3 lieu of registered address), state the address of the current
4 instead of the initial registered office of the corporation
5 in this Commonwealth and need not state the names and
6 addresses of the incorporators.

7 (2) The corporation shall not be required to revise any
8 other provision of its articles if the provision is valid and
9 operative immediately prior to the [filing of the amendment
10 in] delivery of the amendment to the department for filing.

11 (c) Amendments pursuant to other provisions.--Amendments to
12 the articles authorized pursuant to Chapter 2 (relating to
13 entities generally) or Chapter 3 (relating to entity
14 transactions) or set forth in statements or certificates
15 permitted or required to be delivered to the department for
16 filing by sections 108 (relating to change in location or status
17 of registered office provided by agent) and 138 (relating to
18 statement of correction) or by this subpart need not be proposed
19 or adopted in the manner provided in this subchapter, except to
20 the extent that the provisions of this subchapter have been
21 incorporated into Chapter 2 or Chapter 3 or into the provisions
22 authorizing such statements or certificates.

23 Section 94. Section 5912(b) and (c)(1) of Title 15 are
24 amended to read:

25 § 5912. Proposal of amendments.

26 * * *

27 (b) Submission to members.--Except where the approval of the
28 members is unnecessary under this subchapter, the board of
29 directors or other body shall direct that the proposed amendment
30 be submitted to a vote of the members entitled to vote thereon

1 [at a regular or special meeting of the members]. An amendment
2 proposed pursuant to subsection (a)(2) shall be submitted to a
3 vote either at the next annual meeting held not earlier than 120
4 days after the amendment is proposed or at a special meeting of
5 the members called for that purpose by the members.

6 (c) Form of amendment.--The resolution or petition shall
7 contain the language of the proposed amendment of the articles:

8 (1) by setting forth the existing text of the articles
9 or the provision thereof that is proposed to be amended, with
10 brackets around language that is to be deleted and
11 underscoring under language that is to be added or otherwise
12 clearly showing the changes to be made; or

13 * * *

14 Section 95. Section 5979(b) of Title 15 is amended and the
15 section is amended by adding a subsection to read:

16 § 5979. Survival of remedies and rights after dissolution.

17 * * *

18 (b) Rights and assets.--The dissolution of a nonprofit
19 corporation shall not affect the limited liability of a member
20 of the corporation theretofore existing with respect to
21 transactions occurring or acts or omissions done or omitted in
22 the name of or by the corporation except that, subject to
23 subsection (d) and sections 5992(d) (relating to [claims barred]
24 notice to claimants) and 5993(b) (relating to [claims barred]
25 acceptance or rejection of matured claims), if applicable, each
26 member shall be liable for his pro rata portion of the unpaid
27 liabilities of the corporation up to the amount of the net
28 assets of the corporation distributed to the member in
29 connection with the dissolution. Should any property right of a
30 corporation be discovered, or the corporation be named as a

1 defendant in an action or proceeding, at any time after the
2 dissolution of the corporation, the surviving member or members
3 of the board of directors or other body that wound up the
4 affairs of the corporation, or a receiver appointed by the
5 court, shall have authority to enforce the property right and to
6 collect and divide the assets so discovered among the persons
7 entitled thereto and to prosecute or defend actions or
8 proceedings in the corporate name of the corporation. Any assets
9 so collected shall be distributed and disposed of in accordance
10 with the applicable order of court, if any, and otherwise in
11 accordance with this subchapter.

12 * * *

13 (f) Late-filed action or proceeding.--The following apply to
14 an action or proceeding commenced against a dissolved
15 corporation after the expiration of the period specified in
16 subsection (a) (2):

17 (1) Any judgment against a dissolved corporation in the
18 action or proceeding shall be void.

19 (2) The dissolved corporation may, but need not, appear
20 and raise as a defense the expiration of the period specified
21 in subsection (a) (2) and any other reasonably related matters
22 in response to the action or proceeding.

23 (3) Any person who was a director, member of an other
24 body, officer or member of the dissolved corporation when the
25 dissolution became effective or any governing person of any
26 successor entity acting pursuant to Subchapter H (relating to
27 postdissolution provision for liabilities), and any
28 successor-in-interest to any of those persons, may, but need
29 not, act on behalf of the dissolved corporation in taking the
30 actions described in paragraph (2), and shall not thereby be

1 deemed to be deprived of the operation of subsections (c) and
2 (d) or of section 5978(b) (relating to winding up of
3 corporation after dissolution) or otherwise be responsible
4 for any obligations of the dissolved corporation.

5 Section 96. Section 7331 heading and (a) of Title 15 are
6 amended to read:

7 § 7331. Merger, [consolidation,] division or sale of assets.

8 (a) Merger[, consolidation] or division.--Any two or more
9 electric cooperative corporations may merge[, consolidate] or
10 divide but only if the surviving or resulting corporation is a
11 corporation existing under this chapter. Every merger[,
12 consolidation] or division shall be proposed by the adoption by
13 the board of directors of a resolution approving the plan of
14 merger[, consolidation] or division and directing that the plan
15 be submitted to a vote of the members entitled to vote thereon
16 at a regular or special meeting of the members.

17 * * *

18 Section 97. Section 8411(e) of Title 15 is amended and the
19 section is amended by adding a subsection to read:

20 § 8411. Short title and application of chapter.

21 * * *

22 (e) References to withdrawal.--A reference in a partnership
23 agreement to the withdrawal of a partner shall be deemed to be a
24 reference to the dissociation of the partner.

25 [(e)] (f) Cross reference.--See section 8415(c) (5) (relating
26 to contents of partnership agreement).

27 Section 98. Section 8441(a) of Title 15 is amended to read:

28 § 8441. Partner's rights and duties.

29 (a) Distributions [and losses].--Each partner is entitled to
30 share in distributions as provided in section 8445 (relating to

1 sharing of and right to distribution before dissolution).

2 * * *

3 Section 99. Sections 8446(k) and 8611(f) of Title 15 are
4 amended and the sections are amended by adding subsections to
5 read:

6 § 8446. Rights to information.

7 * * *

8 (k) Enforcement of right to information.--If the
9 partnership, or a partner or agent thereof, refuses to permit an
10 inspection sought by a partner or person dissociated as a
11 partner or attorney or other agent acting for the partner or
12 person dissociated as a partner pursuant to subsection (b) or
13 (e), or does not reply to the demand made under either of those
14 subsections within ten days after the demand has been received,
15 the partner or person dissociated as a partner may file an
16 action in the court for an order to compel the inspection. The
17 court is vested with exclusive jurisdiction to determine whether
18 or not the person seeking inspection is entitled to the
19 inspection sought. The court may summarily order the partnership
20 to permit the partner or person dissociated as a partner to
21 inspect the information and to make copies or extracts
22 therefrom.

23 [(k)] (l) Cross reference.--See section 8415 (relating to
24 contents of partnership agreement).

25 § 8611. Short title and application of chapter.

26 * * *

27 (f) References to withdrawal.--A reference in the organic
28 rules of a limited partnership to the withdrawal of a general
29 partner or limited partner shall be deemed to be a reference to
30 the dissociation of the partner.

1 [(f)] (g) Cross reference.--See section 8615 (relating to
2 contents of partnership agreement).

3 Section 100. Section 8623(a) (3) of Title 15 is amended to
4 read:

5 § 8623. Signing of filed documents.

6 (a) Required signatures.--Except as provided in this title,
7 a document delivered to the department for filing under this
8 title relating to a limited partnership must be signed as
9 follows:

10 * * *

11 (3) An amendment to the certificate of limited
12 partnership designating as general partner a person admitted
13 under section 8681(a) (3) (ii) (relating to events causing
14 dissolution) following the dissociation of a limited
15 partnership's last general partner must be signed by [that
16 person] the person admitted as a general partner.

17 * * *

18 Section 101. Section 8625(b) and (d), 8634(i) and 8647(k) of
19 Title 15 are amended and the sections are amended by adding
20 subsections to read:

21 § 8625. Registered office.

22 * * *

23 (b) Change of registered office.--After formation, a change
24 in the location of the registered office may be effected at any
25 time by the limited partnership. Before the change becomes
26 effective, the limited partnership shall amend its certificate
27 of limited partnership under the provisions of this chapter to
28 reflect the change [in location], include the change in an
29 annual report under section 146 (relating to annual report) or
30 [shall] deliver to the department for filing a certificate of

1 change of registered office setting forth:

2 (1) The name of the limited partnership.

3 (2) The address, including street and number, if any, of
4 its then registered office.

5 (3) The address, including street and number, if any, to
6 which the registered office is to be changed.

7 * * *

8 (d) Effect of statement.--A statement regarding the
9 registered office of a limited partnership set forth in a
10 document filed in the department pursuant to this section shall
11 operate as an amendment of the certificate of limited
12 partnership.

13 [(d)] (e) Cross references.--See:

14 Section 108 (relating to change in location or status of
15 registered office provided by agent).

16 Section 134 (relating to docketing statement).

17 Section 135 (relating to requirements to be met by filed
18 documents).

19 Section 136(c) (relating to processing of documents by
20 Department of State).

21 Section 8615(c)(6) (relating to contents of partnership
22 agreement).

23 Section 8623 (relating to signing of filed documents).

24 § 8634. Limited partner rights to information.

25 * * *

26 (i) Enforcement of right to information.--If the limited
27 partnership, or a general partner or agent thereof, refuses to
28 permit an inspection sought by a limited partner or person
29 dissociated as a limited partner or attorney or other agent
30 acting for the limited partner or person dissociated as a

1 limited partner pursuant to subsection (a), (b) or (c), or does
2 not reply to the demand made under any of those subsections
3 within ten days after the demand has been received, the limited
4 partner may file an action in the court for an order to compel
5 the inspection. The court is vested with exclusive jurisdiction
6 to determine whether or not the person seeking inspection is
7 entitled to the inspection sought. The court may summarily order
8 the limited partnership to permit the limited partner to inspect
9 the information and to make copies or extracts therefrom.

10 [(i)] (j) Cross reference.--See section 8615 (relating to
11 contents of partnership agreement).

12 § 8647. General partner rights to information.

13 * * *

14 (k) Enforcement of right to information.--If the limited
15 partnership, or a general partner or agent thereof, refuses to
16 permit an inspection sought by a general partner or person
17 dissociated as a general partner or attorney or other agent
18 acting for the general partner or person dissociated as a
19 general partner pursuant to subsection (a), (b) or (e), or does
20 not reply to the demand made under any of those subsections
21 within ten days after the demand has been received, the general
22 partner may file an action in the court for an order to compel
23 the inspection. The court is vested with exclusive jurisdiction
24 to determine whether or not the person seeking inspection is
25 entitled to the inspection sought. The court may summarily order
26 the limited partnership to permit the general partner to inspect
27 the information and to make copies or extracts therefrom.

28 [(k)] (l) Cross reference.--See section 8615 (relating to
29 contents of partnership agreement).

30 Section 102. Sections 8692(a)(1)(i), (b)(1) and (c) and 8693

1 of Title 15 are amended to read:

2 § 8692. Derivative action.

3 (a) General rule.--Subject to section 8693 (relating to
4 eligible partner plaintiffs and security for costs) and
5 subsection (b), a [partner] plaintiff may maintain a derivative
6 action to enforce a right of a limited partnership only if:

7 (1) the [partner] plaintiff first makes a demand on the
8 limited partnership or the general partners requesting that
9 [they cause] the partnership [to] bring an action to enforce
10 the right, and:

11 (i) if a special litigation committee is not
12 appointed under section 8694 (relating to special
13 litigation committee), the [partnership does not bring
14 the action within a reasonable time; or] general partners
15 determine that:

16 (A) an action based on some or all of the claims
17 asserted in the demand not be brought by the limited
18 partnership but that the partnership not object to an
19 action being brought by the party that made the
20 demand; or

21 (B) an action already commenced continue under
22 the control of the plaintiff; or

23 * * *

24 (b) Prior demand excused.--

25 (1) A demand under subsection (a) (1) is excused only if
26 the [partner] plaintiff makes a specific showing that
27 immediate and irreparable harm to the limited partnership
28 would otherwise result.

29 * * *

30 (c) Contents of demand.--A demand under this section must be

1 in record form and give notice with reasonable specificity of:

2 (1) the [essential] material facts relied upon to
3 support each of the claims made in the demand[.] against each
4 proposed defendant; and

5 (2) in the case of a derivative action commenced by a
6 partner, the basis on which the person making the demand has
7 standing under section 8693.

8 * * *

9 § 8693. [Security] Eligible partner plaintiffs and security for
10 costs.

11 (a) General rule.--Except as provided in subsection (b), in
12 any action or proceeding brought by one or more partners of a
13 limited partnership to enforce rights that the plaintiff claims
14 could be, but have not been, asserted by the partnership, each
15 plaintiff has standing to commence and maintain a derivative
16 action only if the plaintiff:

17 (1) was a partner at the time of the transaction or
18 conduct of which the plaintiff complains, or that the
19 plaintiff's interest as a partner devolved upon the plaintiff
20 by operation of law from a person who was a partner at that
21 time; and

22 (2) continues to be a partner until the time of
23 judgment, unless the failure to do so is the result of
24 partnership action that:

25 (i) was done merely to eliminate derivative claims;

26 or

27 (ii) has the effect of a reorganization that does
28 not affect the plaintiff's ownership of the business
29 enterprise.

30 (b) Exception.--Any partner that, except for the provisions

1 of subsection (a), would be entitled to maintain the action or
2 proceeding and that does not meet such requirements may,
3 nevertheless in the discretion of the court, be allowed to
4 maintain the action or proceeding on preliminary showing to the
5 court, by application and upon such verified statements and
6 depositions as may be required by the court, that there is a
7 strong prima facie case in favor of the claim asserted on behalf
8 of the limited partnership and that without the action serious
9 injustice will result.

10 (c) Security for costs.--In any action or proceeding
11 instituted or maintained by partners holding transferable
12 interests entitled to receive less than 5% of any distribution
13 by a limited partnership, unless the transferable interests held
14 by the partners have an aggregate fair market value in excess of
15 \$200,000, the partnership in whose right the action or
16 proceeding is brought shall be entitled at any stage of the
17 proceedings to require the plaintiffs to give security for the
18 reasonable expenses, including attorneys' fees, that may be
19 incurred by the partnership in connection therewith or for which
20 it may become liable pursuant to section 8648(b) (relating to
21 reimbursement, indemnification, advancement and insurance) to
22 which security the partnership shall have recourse in such
23 amount as the court determines upon the termination of the
24 action or proceeding. The amount of security may, from time to
25 time, be increased or decreased in the discretion of the court
26 upon showing that the security provided has or is likely to
27 become inadequate or excessive. The security may be denied or
28 limited by the court if the court finds after an evidentiary
29 hearing that undue hardship on plaintiffs and serious injustice
30 would result.

1 (d) Failure to maintain ownership.--If a plaintiff loses the
2 right to maintain a derivative action under subsection (a)(2),
3 the court may entertain a motion by the limited partnership to
4 substitute the partnership as the named plaintiff.

5 Section 103. Section 8694(a), (b)(1), (e)(3) and (6), (f)
6 and (h) of Title 15 are amended and the section is amended by
7 adding subsections to read:

8 § 8694. Special litigation committee.

9 (a) General rule.--If a limited partnership or the general
10 partners receive a demand to bring an action to enforce a right
11 of the partnership, or if a derivative action is commenced
12 before demand has been made on the partnership or the general
13 partners, the general partners may appoint a special litigation
14 committee to investigate the claims asserted in the demand or
15 action and to determine on behalf of the limited partnership or
16 recommend to the general partners whether pursuing any of the
17 claims asserted is in the best interests of the partnership. The
18 partnership [shall send] must deliver a notice in record form to
19 the person making the demand, or to the plaintiff if a
20 derivative action has been commenced, promptly after the
21 appointment of the committee under this section notifying the
22 person making the demand or the plaintiff that a committee has
23 been appointed and identifying by name the members of the
24 committee.

25 (b) Discovery stay.--If the general partners appoint a
26 special litigation committee and an action is commenced before a
27 determination has been made under subsection (e):

28 (1) On motion by the limited partnership, or the
29 committee made in the name of the partnership, the court
30 shall stay discovery for the time reasonably necessary to

1 permit the committee to make its investigation, except for
2 good cause shown.

3 * * *

4 (c.1) Committee members who are not general partners.--A
5 member of a special litigation committee who is not a general
6 partner, when acting as a member of the committee, is subject to
7 the liabilities imposed, and entitled to the rights and
8 immunities conferred, by sections 8648 (relating to
9 reimbursement, indemnification, advancement and insurance) and
10 8649 (relating to standards of conduct for general partners).

11 * * *

12 (e) Determination.--After appropriate investigation by a
13 special litigation committee, the committee [or the general
14 partners] may determine, or the committee may recommend to the
15 general partners that the general partners determine, that it is
16 in the best interests of the limited partnership that:

17 * * *

18 (3) some or all of the claims asserted in the demand be
19 settled on terms [approved] determined or recommended by the
20 committee;

21 * * *

22 (6) some or all of the claims asserted in an action
23 already commenced be settled on terms [approved] determined
24 or recommended by the committee; or

25 * * *

26 (f) Court review and action.--If a special litigation
27 committee is appointed and [an] a derivative action is commenced
28 before or after either the committee makes a determination [is
29 made] under subsection (e) or the general partners determine
30 under that subsection to accept the recommendation of the

1 committee:

2 (1) The limited partnership or the committee shall file
3 with the court after a determination is made under subsection
4 (e) a statement of the determination and a report of the
5 committee supporting the determination. The partnership or
6 the committee shall serve each party with a copy of the
7 determination and report. If the partnership or the committee
8 moves to file the report under seal, the report shall be
9 served on the parties subject to an appropriate stipulation
10 agreed to by the parties or a protective order issued by the
11 court.

12 (2) The partnership or the committee shall file with the
13 court a motion, pleading or notice consistent with the
14 determination under subsection (e).

15 (3) If the determination is one described in subsection
16 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall
17 determine whether the members of the committee met the
18 qualifications required under subsection (c) (1) and (2) and
19 whether the committee conducted its investigation and made
20 its determination or recommendation in good faith,
21 independently and with reasonable care. The plaintiff has the
22 burden of proving that the committee did not meet those
23 qualifications or act in the required manner. If the court
24 finds that the members of the committee met the
25 qualifications required under subsection (c) (1) and (2) and
26 that the committee acted in good faith, independently and
27 with reasonable care, the court shall enforce the
28 determination of the committee or the general partners.
29 Otherwise, the court shall:

30 (i) dissolve any stay of discovery entered under

1 subsection (b);

2 (ii) allow the action to continue under the control
3 of the plaintiff; and

4 (iii) permit the defendants to file preliminary
5 objections and other appropriate motions and pleadings.

6 * * *

7 (h) Interest of a defendant.--The fact that a person is
8 named as a defendant does not make the person interested in the
9 claims asserted in a demand or action for purposes of subsection
10 (c) (1) if the claims against the person:

11 (1) are based only on an allegation that the person
12 approved of or acquiesced in the transaction or conduct that
13 is the subject of the claims; and

14 (2) do not otherwise allege with particularity facts
15 that, if true, raise a significant prospect that the person
16 would be adjudged liable.

17 [(h)] (i) Cross reference.--See section 8615(c) (18)
18 (relating to contents of partnership agreement).

19 Section 104. Section 8821(a) and (g) of Title 15 are amended
20 to read:

21 § 8821. Formation of limited liability company and certificate
22 of organization.

23 (a) Formation.--One or more [persons] associations or
24 individuals 18 years of age or older may act as organizers to
25 form a limited liability company by delivering to the department
26 for filing a certificate of organization.

27 * * *

28 (g) Cross references.--See:

29 Section 134 (relating to docketing statement).

30 Section 135 (relating to requirements to be met by filed

1 documents).

2 Section 136(c) (relating to processing of documents by
3 Department of State).

4 Section 8818(d)(1) (relating to characteristics of
5 limited liability company).

6 Section 8823 (relating to signing of filed documents).

7 Section 8893(a) (relating to benefit company status).

8 Section 105. Sections 8825(b) and (d) and 8850(i) of Title
9 15 are amended and the sections are amended by adding
10 subsections to read:

11 § 8825. Registered office.

12 * * *

13 (b) Change of registered office.--After organization, a
14 change in the location of the registered office may be effected
15 at any time by the company. Before the change becomes effective,
16 the company shall amend its certificate of organization under
17 the provisions of this chapter to reflect the change [in
18 location], include the change in an annual report under section
19 146 (relating to annual report) or [shall] file with the
20 department a certificate of change of registered office setting
21 forth:

22 (1) The name of the company.

23 (2) The address, including street and number, if any, of
24 its then-registered office.

25 (3) The address, including street and number, if any, to
26 which the registered office is to be changed.

27 * * *

28 (d) Effect of statement.--A statement regarding the
29 registered office of a limited liability company set forth in a
30 document filed in the department pursuant to this section shall

1 operate as an amendment of the certificate of organization.

2 [(d)] (e) Cross references.--See:

3 Section 108 (relating to change in location or status of
4 registered office provided by agent).

5 Section 134 (relating to docketing statement).

6 Section 135 (relating to requirements to be met by filed
7 documents).

8 Section 136(c) (relating to processing of documents by
9 Department of State).

10 Section 8815(c) (7) (relating to contents of operating
11 agreement).

12 Section 8823 (relating to signing of filed documents).

13 § 8850. Rights to information.

14 * * *

15 (i) Enforcement of right to information.--If a limited
16 liability company, or a manager, member or agent thereof,
17 refuses to permit an inspection sought by a person or attorney
18 or other agent acting for the person pursuant to this section,
19 or does not reply to the demand made under this section within
20 ten days after the demand has been received, the person seeking
21 inspection may file an action in the court for an order to
22 compel the inspection. The court is vested with exclusive
23 jurisdiction to determine whether or not the person seeking
24 inspection is entitled to the inspection sought. The court may
25 summarily order the company to permit the person to inspect the
26 information and to make copies or extracts therefrom.

27 [(i)] (j) Cross reference.--See section 8815 (relating to
28 contents of operating agreement).

29 Section 106. Sections 8882(a) (1) (i), (b) (1) and (c) and 8883
30 of Title 15 are amended to read:

1 § 8882. Derivative action.

2 (a) General rule.--Subject to section 8883 (relating to
3 eligible plaintiffs and security for costs) and subsection (b),
4 a [member or manager] plaintiff may maintain a derivative action
5 to enforce a right of a limited liability company only if:

6 (1) the plaintiff first makes a demand on the company or
7 the other members in a member-managed limited liability
8 company, or the managers of a manager-managed limited
9 liability company, requesting that [they cause] the company
10 [to] bring an action to enforce the right and:

11 (i) if a special litigation committee is not
12 appointed under section 8884 (relating to special
13 litigation committee), [the company does not bring the
14 action within a reasonable time; or] the members in a
15 member-managed company or managers of a manager-managed
16 company determine that:

17 (A) an action based on some or all of the claims
18 asserted in the demand not be brought by the company
19 but that the company not object to an action being
20 brought by the party that made the demand; or

21 (B) an action already commenced continue under
22 the control of the plaintiff; or

23 * * *

24 (b) Prior demand excused.--

25 (1) A demand under subsection (a) (1) is excused only if
26 the plaintiff makes a specific showing that immediate and
27 irreparable harm to the limited liability company would
28 otherwise result.

29 * * *

30 (c) Contents of demand.--A demand under this section must be

1 in record form and give notice with reasonable specificity of:

2 (1) the [essential] material facts relied upon to
3 support each of the claims made in the demand[.] against each
4 proposed defendant; and

5 (2) in the case of a derivative action commenced by a
6 member or manager, the basis on which the person making the
7 demand has standing under section 8883.

8 * * *

9 § 8883. [Security] Eligible plaintiffs and security for costs.

10 (a) General rule.--Except as provided in subsection (b), in
11 any action or proceeding brought by one or more members or
12 managers of a limited liability company to enforce rights that
13 the plaintiff claims could be, but have not been, asserted by
14 the company, each plaintiff has standing to commence and
15 maintain the derivative action if the plaintiff:

16 (1) was a member or manager of the company at the time
17 of the transaction or conduct of which the plaintiff
18 complains, or that the plaintiff's status as a member or
19 manager devolved upon the plaintiff by operation of law from
20 a person who was a member or manager at that time; and

21 (2) continues to be a member or manager until the time
22 of judgment, unless the failure to do so is the result of
23 company action that:

24 (i) was done merely to eliminate derivative claims;

25 or

26 (ii) has the effect of a reorganization that does
27 not affect the plaintiff's ownership of the business
28 enterprise.

29 (b) Exception.--Any member or manager that, except for the
30 provisions of subsection (a), would be entitled to maintain the

1 action or proceeding and who does not meet such requirements
2 may, nevertheless in the discretion of the court, be allowed to
3 maintain the action or proceeding on preliminary showing to the
4 court, by application and upon such verified statements and
5 depositions as may be required by the court, that there is a
6 strong prima facie case in favor of the claim asserted on behalf
7 of the company and that without the action serious injustice
8 will result.

9 (c) Security for costs.--In any action or proceeding
10 instituted or maintained by members holding transferable
11 interests entitled to receive less than 5% of any distribution
12 by a limited liability company, unless the transferable
13 interests held by the members have an aggregate fair market
14 value in excess of \$200,000, the company in whose right the
15 action or proceeding is brought shall be entitled at any stage
16 of the proceedings to require the plaintiffs to give security
17 for the reasonable expenses, including attorney fees, that may
18 be incurred by the company in connection therewith or for which
19 it may become liable pursuant to section 8848(b) (relating to
20 reimbursement, indemnification, advancement and insurance) to
21 which security the company shall have recourse in such amount as
22 the court determines upon the termination of the action or
23 proceeding. The amount of security may, from time to time, be
24 increased or decreased in the discretion of the court upon
25 showing that the security provided has or may become inadequate
26 or excessive. The security may be denied or limited by the court
27 if the court finds after an evidentiary hearing that undue
28 hardship on plaintiffs and serious injustice would result.

29 (d) Failure to maintain ownership.--If a plaintiff loses the
30 right to maintain a derivative action under subsection (a)(2),

1 the court may entertain a motion by the limited liability
2 company to substitute the limited liability company as the named
3 plaintiff.

4 Section 107. Sections 8884(a), (b)(1), (e)(3) and (6), (f)
5 and (h), 8895(a)(3), (b) and (c) and 8896(d) of Title 15 are
6 amended and the sections are amended by adding subsections to
7 read:

8 § 8884. Special litigation committee.

9 (a) General rule.--If a limited liability company or its
10 members or managers receive a demand to bring an action to
11 enforce a right of the company, or if a derivative action is
12 commenced before demand has been made on the company or its
13 members or managers, the members in a member-managed limited
14 liability company, or the managers in a manager-managed limited
15 liability company, may appoint a special litigation committee to
16 investigate the claims asserted in the demand or action and to
17 determine on behalf of the company or recommend to the managers
18 or members whether pursuing any of the claims asserted is in the
19 best interests of the company. The company [shall send] must
20 deliver a notice in record form to the person making the demand,
21 or to the plaintiff if a derivative action has been commenced,
22 promptly after the appointment of a committee under this section
23 notifying the person making the demand or the plaintiff that a
24 committee has been appointed and identifying by name the members
25 of the committee. A committee may not be appointed under this
26 section if:

27 (1) every member of the company is also a manager of the
28 company; or

29 (2) the company is member-managed and every member is
30 actively involved in the management of the company.

1 (b) Discovery stay.--If the members or managers appoint a
2 special litigation committee and an action is commenced before a
3 determination has been made under subsection (e):

4 (1) On motion by the limited liability company, or the
5 committee made in the name of the [limited liability]
6 company, the court shall stay discovery for the time
7 reasonably necessary to permit the committee to make its
8 investigation, except for good cause shown.

9 * * *

10 (c.1) Committee members who are not managers.--A member of a
11 special litigation committee who is not a manager, when acting
12 as a member of the committee, is subject to the liabilities
13 imposed, and entitled to the rights and immunities conferred, by
14 sections 8848 (relating to reimbursement, indemnification,
15 advancement and insurance) and 8849.2 (relating to standards of
16 conduct for managers).

17 * * *

18 (e) Determination.--After appropriate investigation by a
19 special litigation committee, the committee [or the] may
20 determine, or the committee may recommend to the managers or
21 members [may] that they determine, that it is in the best
22 interests of the limited liability company that:

23 * * *

24 (3) some or all of the claims asserted in the demand be
25 settled on terms [approved] determined or recommended by the
26 committee;

27 * * *

28 (6) some or all of the claims asserted in an action
29 already commenced be settled on terms [approved] determined
30 or recommended by the committee; or

1 * * *

2 (f) Court review and action.--If a special litigation
3 committee is appointed and a derivative action is commenced
4 either before or after either the committee makes a
5 determination [is made] under subsection (e) or the members or
6 managers determine under that subsection to accept the
7 recommendation of the committee:

8 (1) The limited liability company or the committee shall
9 file with the court after a determination is made under
10 subsection (e) a statement of the determination and a report
11 of the committee supporting the determination. The company or
12 the committee shall serve each party with a copy of the
13 determination and report. If the company or the committee
14 moves to file the report under seal, the report shall be
15 served on the parties subject to an appropriate stipulation
16 agreed to by the parties or a protective order issued by the
17 court.

18 (2) The company or the committee shall file with the
19 court a motion, pleading or notice consistent with the
20 determination under subsection (e).

21 (3) If the determination is one described in subsection
22 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall
23 determine whether the members of the committee met the
24 qualifications required under subsection (c) (1) and (2) and
25 whether the committee conducted its investigation and made
26 its determination or recommendation in good faith,
27 independently and with reasonable care. The plaintiff has the
28 burden of proving that the committee did not meet those
29 qualifications or act in the required manner. If the court
30 finds that the members of the committee met the

1 qualifications required under subsection (c) (1) and (2) and
2 that the committee acted in good faith, independently and
3 with reasonable care, the court shall enforce the
4 determination of the committee or the members or managers.

5 Otherwise, the court shall:

6 (i) dissolve any stay of discovery entered under
7 subsection (b);

8 (ii) allow the action to continue under the control
9 of the plaintiff; and

10 (iii) permit the defendants to file preliminary
11 objections and other appropriate motions and pleadings.

12 * * *

13 (h) Interest of a defendant.--The fact that a person is
14 named as a defendant does not make the person interested in the
15 claims asserted in a demand or action for purposes of subsection
16 (c) (1) if the claims against the person:

17 (1) are based only on an allegation that the person
18 approved of or acquiesced in the transaction or conduct that
19 is the subject of the claims; and

20 (2) does not otherwise allege with particularity facts
21 that, if true, raise a significant prospect that the person
22 would be adjudged liable.

23 [(h)] (i) Cross reference.--See section 8815(c) (18)
24 (relating to contents of operating agreement).

25 § 8895. Standard of conduct for members.

26 (a) Consideration of interests.--The members of a member-
27 managed limited liability company that is a benefit company,
28 when discharging their duties under this title or under the
29 operating agreement:

30 * * *

1 (3) shall not be required to give priority to [the
2 interests of any person or group] any matter referred to in
3 paragraph (1) or (2) over [the interests of any other person
4 or group] any other such matter or to regard any such matter
5 as dominant or controlling unless the benefit company has
6 stated in its certificate of organization its intention to
7 give priority to certain interests related to its
8 accomplishment of its general public benefit purpose or of a
9 specific public benefit purpose identified in the
10 certificate.

11 (b) Coordination with other provisions of law.--The
12 consideration of [interests and factors] matters in the manner
13 required under subsection (a) shall not constitute a violation
14 of section 8849.1 (relating to standards of conduct for
15 members).

16 (c) Exoneration from personal liability.--Regardless of
17 whether the operating agreement of a member-managed benefit
18 company includes a provision eliminating or limiting the
19 personal liability of a member:

20 (1) A member shall not be personally liable for monetary
21 damages for any action taken as a member of [a member-managed
22 limited liability] the benefit company in the course of
23 performing the duties specified in subsection (a) unless the
24 action constitutes self-dealing, willful misconduct or [a
25 knowing violation of law] recklessness.

26 (2) A member shall not be personally liable for monetary
27 damages for failure of the benefit company to pursue or
28 create general public benefit or a specific public benefit.

29 * * *

30 (e) Ownership of interest.--A member's ownership, directly

1 or indirectly, of an interest in a benefit company does not
2 alone create a conflict of interest on the part of the member
3 with respect to the member's performance of the duties of a
4 member under subsection (a), except to the extent the ownership
5 would create a conflict of interest if the limited liability
6 company were not a benefit company.

7 § 8896. Standard of conduct for managers and officers.

8 * * *

9 (d) Exoneration from personal liability.--Regardless of
10 whether the operating agreement of a manager-managed benefit
11 company includes a provision eliminating or limiting the
12 personal liability of a manager or officer:

13 (1) A manager or officer shall not be personally liable,
14 as such, for monetary damages for any action taken as a
15 manager or officer in the course of performing the duties
16 specified in subsection (a) or (b) unless the action
17 constitutes self-dealing, willful misconduct or [a knowing
18 violation of law] recklessness.

19 (2) A manager or officer shall not be personally liable
20 for monetary damages for failure of the benefit company to
21 pursue or create general public benefit or a specific public
22 benefit.

23 * * *

24 (f) Ownership of interest.--The ownership by a manager or
25 officer, directly or indirectly, of an interest in a benefit
26 company does not alone create a conflict of interest on the part
27 of the manager or officer with respect to the performance by the
28 manager or officer of the duties of a manager or officer under
29 subsection (a) or (b), except to the extent the ownership would
30 create a conflict of interest if the limited liability company

1 were not a benefit company.

2 Section 108. Section 8995 of Title 15 is amended by adding
3 subsections to read:

4 § 8995. Application and effect of subchapter.

5 * * *

6 (f) Indication of status.--The certificate of organization
7 of a domestic restricted professional company or the foreign
8 registration statement of a foreign restricted professional
9 company shall contain a statement that the entity is a
10 restricted professional company and include a brief description
11 of the restricted professional service or services to be
12 rendered by the company.

13 (g) Definition.--For purposes of this subchapter, the
14 following term has the meaning indicated:

15 "Restricted professional company." A domestic or foreign
16 limited liability company that renders one or more restricted
17 professional services in this Commonwealth.

18 Section 109. Section 9504(b) of Title 15 is amended and the
19 section is amended by adding a subsection to read:

20 § 9504. Registered office.

21 * * *

22 (b) Change.--The registered office [location] of a business
23 trust may be changed by an amendment of the instrument[.] or by
24 including the change in an annual report under section 146
25 (relating to annual report).

26 * * *

27 (d) Effect of statement.--A statement regarding the
28 registered office of a business trust set forth in a document
29 filed in the department pursuant to this section shall operate
30 as an amendment of the instrument.

1 Section 110. Sections 101, 103(a), 302, 311(b) and (e)(1),
2 331 and 332 of Title 54 are amended to read:

3 § 101. Definitions.

4 Subject to additional definitions contained in subsequent
5 provisions of this title which are applicable to specific
6 provisions of this title, the [following words and phrases when
7 used in] definitions in 15 Pa.C.S. § 102 (relating to
8 definitions) apply to this title [shall have], unless the
9 context clearly indicates otherwise. [, the meanings given to
10 them in this section:

11 "Department." The Department of State of the Commonwealth.

12 "Domestic corporation." A corporation incorporated under the
13 laws of this Commonwealth.

14 "Domestic corporation not-for-profit." A domestic
15 corporation not incorporated for a purpose or purposes involving
16 pecuniary profit, incidental or otherwise.

17 "Officially publish." The meaning specified in 15 Pa.C.S. §
18 1103 (relating to definitions) except that the county of
19 publication shall be as specified in this title.

20 "Qualified foreign corporation." A corporation incorporated
21 under any laws other than those of this Commonwealth that is
22 authorized to do business in this Commonwealth under either 15
23 Pa.C.S. Ch. 41 (relating to foreign business corporations) or
24 Ch. 61 (relating to foreign nonprofit corporations).

25 "Verified statement." A document filed under this title
26 containing statements of fact and a statement by the signatory
27 that it is made subject to the penalties of 18 Pa.C.S. § 4904
28 (relating to unsworn falsification to authorities).]

29 § 103. Execution of documents.

30 (a) General rule.--Any document [filed in] delivered to the

1 Department of State for filing under this title by [a
2 corporation] an association may be executed on behalf of the
3 [corporation] association by any one duly authorized [officer]
4 representative thereof. The corporate seal may be affixed and
5 attested, but the affixation and attestation of the corporate
6 seal shall not be necessary for the due execution of any filing
7 by a corporation under this title.

8 * * *

9 § 302. Definitions.

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

13 "Business." Any commercial or professional activity.

14 "Entity." Any individual or any corporation, association,
15 partnership, joint-stock company, business trust, syndicate,
16 joint adventureship or other combination or group of persons,
17 regardless of whether it is organized or formed under the laws
18 of this Commonwealth or any other jurisdiction.

19 "Fictitious name." Any assumed or fictitious name, style or
20 designation other than the proper name of the entity using such
21 name. The term includes a name assumed by a general partnership,
22 syndicate, joint adventureship or similar combination or group
23 of persons.

24 "Proper name." When used with respect to an association of a
25 type listed in the following paragraphs, the term means the name
26 set forth in:

27 (1) the public organic record, for a domestic filing
28 association;

29 (2) the statement of registration, for a limited
30 liability partnership;

1 (4) the statement of election, for an electing
2 partnership;

3 (9) the statement of registration of a [foreign]
4 registered foreign association under 15 Pa.C.S. § 412(a)(1)
5 (i) (relating to foreign registration statement) or, if that
6 name does not comply with 15 Pa.C.S. § 202 (relating to
7 requirements for names generally), the name set forth in the
8 statement under 15 Pa.C.S. § 412 (a)(1)(ii).

9 [(b) Other defined terms.--The definitions in 15 Pa.C.S. §
10 102 (relating to definitions) apply to this title except to the
11 extent they are inconsistent with the provisions of this title.]

12 § 311. Registration.

13 * * *

14 (b) Use of [corporate] designators.--A fictitious name
15 registered under this chapter:

16 (1) May not contain a corporate designator such as
17 "corporation," "incorporated" or "limited" or any derivation
18 or abbreviation thereof unless the entity or at least one
19 entity named in the application for registration of
20 fictitious name is a corporation. The use of the word
21 "company" or any derivation or abbreviation thereof by a sole
22 proprietorship, a partnership or a corporation is
23 permissible.

24 (2) Need not contain [a corporate] an association
25 designator, notwithstanding the fact that some or all of the
26 persons interested therein are [corporations] associations.
27 This paragraph shall not be construed to limit or affect any
28 personal liability otherwise existing of [shareholders of a
29 corporation] interest holders of an association to persons
30 who deal with the [corporation] association without knowledge

1 of its status as such.

2 * * *

3 (e) Duplicate use of names.--The fictitious name shall be
4 distinguishable upon the records of the department from:

5 (1) The name of any domestic filing entity, domestic
6 limited liability limited partnership, domestic electing
7 partnership[,] or registered foreign association [or the name
8 of any corporation or other association registered at any
9 time under Chapter 5 (relating to corporate and other
10 association names)], unless such name is available or is made
11 available for use under the provisions or procedures of 15
12 Pa.C.S. § 202(b)(1) (relating to requirements for names
13 generally).

14 * * *

15 § 331. Contracts [entered into] and acts by entity using
16 unregistered fictitious name.

17 (a) General rule.--No entity which has failed to register a
18 fictitious name as required by this chapter shall be permitted
19 to maintain any action in any tribunal of this Commonwealth
20 until such entity shall have complied with the provisions of
21 this chapter. Nor shall any action be maintained in any tribunal
22 of this Commonwealth by any successor or assignee of such entity
23 on any right, claim or demand arising out of a transaction with
24 respect to which such entity used such fictitious name until
25 such entity, or an entity which has acquired all or
26 substantially all of its assets, shall have complied with the
27 provisions of this chapter. The failure [of any] by itself of an
28 entity to register a fictitious name as required by this chapter
29 shall not impair the validity of any contract or act of [such
30 entity] the entity using the fictitious name and shall not

1 prevent [such] the entity from defending any action in any
2 tribunal of this Commonwealth.

3 [(b) Civil penalty.--Before any entity may institute any
4 action in any tribunal of this Commonwealth on any cause of
5 action arising out of any transaction in respect to which such
6 entity used a fictitious name prior to the date of the
7 registration of such fictitious name, or after the date its
8 registration under this chapter was cancelled or otherwise
9 terminated as to such entity, the entity shall pay to the
10 department for the use of the Commonwealth a civil penalty of
11 \$500.]

12 (c) Substantial compliance.--The [penalties of subsections
13 (a) and (b)] penalty under subsection (a) shall not be
14 applicable if there has been substantial compliance in good
15 faith with the requirements of this chapter or the corresponding
16 provisions of prior law.

17 § 332. Effect of registration.

18 (a) General rule.--Registration of a fictitious name under
19 this chapter imparts no legal right to the registering entity
20 other than that:

21 (1) the conducting of business by it under a fictitious
22 name shall not result in the penalties provided by section
23 331 (relating to contracts [entered into] and acts by entity
24 using unregistered fictitious name) [.]; and

25 (2) the doing of business by the entity using the
26 registered name has the same force and effect as doing
27 business under the proper name of the entity.

28 (b) [Corporate qualification] Foreign registration
29 unaffected.--The registration required under this chapter is in
30 addition to all other acts required of [a corporation] an entity

1 prerequisite to its doing business in this Commonwealth and no
2 provision of this chapter shall be construed as relieving [a
3 corporation] an entity of any duty under any other statute.

4 Section 111. Sections 501, 502, 503, 504, 505 and 506 of
5 Title 54 are repealed:

6 [§ 501. Register established.

7 (a) General rule.--A register is established by this chapter
8 which shall consist of such of the following names as are not
9 deleted therefrom by operation of section 504 (relating to
10 effect of failure to make filings) or 506 (relating to voluntary
11 termination of registration by corporations and other
12 associations):

13 (1) A name registered prior to February 13, 1973, under
14 the act of May 16, 1923 (P.L.246, No.160), relating to
15 registration of certain names.

16 (2) A name registered under section 502 (relating to
17 certain additions to register).

18 (3) In the case of a domestic or registered foreign
19 corporation, a name rendered unavailable for corporate use by
20 other corporations by reason of any filing in the department
21 by such domestic or registered foreign corporation.

22 (4) A name registered under 15 Pa.C.S. § 209 (relating
23 to registration of name of nonregistered foreign association)
24 or any similar provision of law.

25 (5) In the case of a business trust which exists subject
26 to 15 Pa.C.S. Ch. 95 (relating to business trusts), the name
27 of the trust as set forth in the instrument filed in the
28 department under 15 Pa.C.S. § 9503 (relating to documentation
29 of trust).

30 (6) In the case of a limited partnership or limited

1 liability company subject to 15 Pa.C.S. Ch. 86 (relating to
2 limited partnerships) or 88 (relating to limited liability
3 companies), the name of the partnership or company as set
4 forth in the certificate of limited partnership, certificate
5 of organization or statement of registration as a foreign
6 association.

7 (8) In the case of a limited liability partnership
8 subject to 15 Pa.C.S. Ch. 82 (relating to limited liability
9 partnerships and limited liability limited partnerships) that
10 is not also a limited partnership, the name of the
11 partnership as set forth in the statement of registration as
12 a foreign association.

13 (b) Subsequent availability of certain names.--Whenever, by
14 reason of change in name, withdrawal or dissolution of a
15 domestic or registered foreign association, failure to renew a
16 registration of its name by a nonregistered foreign association,
17 or for any other cause, its name is no longer rendered
18 unavailable by the express provisions of Title 15 (relating to
19 corporations and unincorporated associations), such name shall
20 no longer be deemed to be registered under subsection (a) (3) or
21 (4) on the register established by this chapter.

22 § 502. Certain additions to register.

23 (a) Corporation names.--

24 (1) A domestic corporation not-for-profit incorporated
25 prior to May 16, 1923 may register its name with the
26 department under this chapter by effecting the filing
27 specified in 15 Pa.C.S. § 5311 (relating to filing of
28 certificate of summary of record by certain corporations).

29 (2) Any person who is not eligible to make a filing
30 under 15 Pa.C.S. § 209 (relating to registration of name of

1 nonregistered foreign association) may register a corporation
2 name with the department by filing an application for
3 registration of name, executed by the person, which shall set
4 forth:

5 (i) The name of the corporation.

6 (ii) The address, including street and number, if
7 any, of the person who executed the application.

8 (b) Associations generally.--An association other than a
9 corporation may register with the department the name under
10 which it is doing business or operating by filing an application
11 for registration, which shall be executed by the association,
12 and shall set forth:

13 (1) The name to be registered.

14 (2) The address, including street and number, if any, of
15 the association.

16 (3) The length of time, if any, during which the name
17 has been used by the applicant.

18 (4) Such other information necessary to the
19 administration of this chapter as the department may specify
20 by regulation.

21 (c) Limitation on names which may be registered.--

22 Notwithstanding subsections (a) and (b), no new name shall be
23 registered or deemed to be registered under this section which
24 is not distinguishable upon the records of the department from
25 any other name then registered or deemed to be registered under
26 this chapter, without the consent of the senior registrant.

27 (d) Annual renewal.--A person who has in effect a
28 registration of a name may renew the registration from year to
29 year by annually filing an application for renewal setting forth
30 the facts required to be set forth in an original application

1 for registration. A renewal application may be filed between
2 October 1 and December 31 in each year and shall extend the
3 registration for the following calendar year.

4 (e) Cross reference.--See 15 Pa.C.S. § 134 (relating to
5 docketing statement).

6 § 503. Decennial filings required.

7 (a) General rule.--Except as otherwise provided in this
8 section, every corporation or other association whose name is
9 registered under this chapter shall, during the year 2001 and
10 every tenth year thereafter, file in the department a report,
11 which shall be executed by the corporation or other association,
12 and shall set forth:

13 (1) The name of the corporation or other association.

14 (2) The address, including street and number, if any, of
15 its registered or other office.

16 (3) A statement that the corporation or other
17 association continues to exist.

18 (4) Such other information necessary to the
19 administration of this chapter as the department may specify
20 by regulation.

21 (b) Exceptions.--Subsection (a) shall not apply to any of
22 the following:

23 (1) A corporation or other association that during the
24 ten years ending on December 31 of the year in which a filing
25 would otherwise be required under subsection (a) has made any
26 filing in the department pursuant to a provision of this
27 title or 15 Pa.C.S. (relating to corporations and
28 unincorporated associations) other than:

29 (i) a report required by subsection (a); or

30 (ii) a filing under 15 Pa.C.S. § 208 (relating to

1 reservation of name) or 209 (relating to registration of
2 name of nonregistered foreign association).

3 (2) A corporation whose name is registered pursuant to
4 section 501(a)(4) (relating to register established).

5 (3) A corporation that has had officer information
6 forwarded to the department by the Department of Revenue
7 during the preceding ten years under 15 Pa.C.S. § 1110
8 (relating to annual report information).

9 (d) Cross references.--See 15 Pa.C.S. §§ 134 (relating to
10 docketing statement) and 135 (relating to requirements to be met
11 by filed documents).

12 § 504. Effect of failure to make filings.

13 On January 1 of the year following the year during which a
14 report is required to be filed under section 503 (relating to
15 decennial filings required), the name of every corporation and
16 association which has failed to comply with such section shall
17 no longer be deemed to be registered under this chapter.

18 § 505. Late filings.

19 A corporation or association which has failed to file the
20 report required by section 503 (relating to decennial filings
21 required) may do so at any later time, which filing shall
22 reinstate the name of the corporation or association on the
23 register established by this chapter unless its name has been
24 appropriated during the period of the delinquency by any other
25 person in the manner provided in this chapter or as otherwise
26 provided by law.

27 § 506. Voluntary termination of registration by corporations
28 and other associations.

29 (a) General rule.--Any corporation or other association
30 which has its name registered under this chapter may terminate

1 such registration by filing in the department a statement of
2 termination of registration of name, which shall be executed by
3 the corporation or other association, and shall set forth:

4 (1) The name of the corporation or other association.

5 (2) The address, including street and number, if any, of
6 the corporation or other association.

7 (3) The date on which and the statute under which the
8 name of the corporation or other association was registered.

9 (4) A statement that the registration of the name of the
10 corporation or other association under this chapter is
11 terminated.

12 (5) Such other information necessary to the
13 administration of this chapter as the department may specify
14 by regulation.

15 (b) Cross reference.--See 15 Pa.C.S. § 134 (relating to
16 docketing statement).]

17 Section 112. This act shall take effect in 60 days.