

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 2057 Session of  
2021

INTRODUCED BY ROAE, KNOWLES, BRIGGS, SCHEMEL, BERNSTINE, COX,  
GALLOWAY, KLUNK, BIZZARRO, JOZWIAK, LONGIETTI, SAINATO AND  
WARREN, NOVEMBER 5, 2021

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, NOVEMBER 17, 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 DELIVERY OF DOCUMENT, for functions of <--  
6 Department of State, for processing of documents by  
7 Department of State, for court to pass upon rejection of  
8 documents by Department of State, for statement of correction  
9 and for tax clearance of certain fundamental transactions,  
10 providing for annual report and further providing for short  
11 title and application of 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

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

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

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

19 The General Assembly of the Commonwealth of Pennsylvania  
20 hereby enacts as follows:

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

25 § 102. Definitions.

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

32 \* \* \*

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

36 "Associate." When used to indicate a relationship with any  
37 person:

38 (1) a corporation or other association of which the  
39 person is a governor or officer, or is, directly or

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

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

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

10 \* \* \*

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

13 \* \* \*

14 "Court." [Subject] Either:

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

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

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

27 [(2)] (ii) where an association results from a  
28 merger, division or other transaction without  
29 establishing a registered office in this Commonwealth or  
30 withdraws as a foreign corporation or association, the

1 court of common pleas in which venue would have been laid  
2 immediately prior to the transaction or withdrawal.

3 \* \* \*

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

6 \* \* \*

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

9 \* \* \*

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

12 \* \* \*

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

17 \* \* \*

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

25 \* \* \*

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

1       \* \* \*

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

7       Section 2. Sections 107(a), 113 and 132(d) of Title 15 are <--  
8 amended to read:

9       § 107. Form of records.

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

15       \* \* \*

16       § 113. DELIVERY OF DOCUMENT. <--

17       (A) PERMISSIBLE MEANS.--PERMISSIBLE MEANS OF DELIVERY OF A  
18 DOCUMENT IN RECORD FORM INCLUDE:

- 19           (1) PERSONAL DELIVERY;  
20           (2) MAIL;  
21           (3) CONVENTIONAL COMMERCIAL PRACTICE; AND  
22           (4) ELECTRONIC TRANSMISSION.

23       (B) DELIVERY TO DEPARTMENT.--DELIVERY TO THE DEPARTMENT OF A  
24 DOCUMENT IN RECORD FORM IS EFFECTIVE ONLY ON RECEIPT BY THE  
25 DEPARTMENT.

26       (C) DELIVERY BY DEPARTMENT.--EXCEPT AS PROVIDED BY LAW OTHER  
27 THAN THIS TITLE, THE DEPARTMENT MAY DELIVER A DOCUMENT IN RECORD  
28 FORM TO A PERSON BY DELIVERING IT:

- 29           (1) IN PERSON TO THE PERSON THAT SUBMITTED IT FOR  
30 FILING;

1 (2) TO THE ADDRESS OF THE PERSON'S REGISTERED OFFICE;  
2 (3) TO THE PRINCIPAL OFFICE ADDRESS OF THE PERSON; OR  
3 (4) TO ANOTHER ADDRESS THE PERSON PROVIDES TO THE  
4 DEPARTMENT FOR DELIVERY.

5 (D) DELIVERY BY ELECTRONIC COMMUNICATION.--THE DEPARTMENT  
6 MAY DELIVER DOCUMENTS IN RECORD FORM TO AN ADDRESS FOR EMAIL OR  
7 OTHER ELECTRONIC COMMUNICATIONS SUPPLIED TO THE DEPARTMENT BY A  
8 PERSON UNTIL THE PERSON NOTIFIES THE DEPARTMENT IN RECORD FORM  
9 THAT THE PERSON NO LONGER WISHES TO HAVE DOCUMENTS DELIVERED TO  
10 THAT ADDRESS.

11 § 132. Functions of Department of State.

12 \* \* \*

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

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

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

27 (a) Filing of documents.--[If] Except as provided in  
28 subsection (f), if a document conforms to section 135 (relating  
29 to requirements to be met by filed documents) the Department of  
30 State shall forthwith file the document, certify that the



document has been filed by endorsing upon the document the fact and date of filing, make and retain a copy thereof and return the document or a copy thereof so endorsed to or upon the order of the person who delivered the document to the department.

\* \* \*

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

(1) is being filed fraudulently; or

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

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

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

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

(1) the original document or copies thereof;

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

(3) any other papers relating thereto;]

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

of the court vested by or pursuant to Title 42 (relating to judiciary and judicial procedure) with jurisdiction of appeals from the department. Immediately the prothonotary or clerk shall transmit the papers to the court without formality or expense to

1 the person who delivered the original document to the  
2 department. The question of the eligibility of the document for  
3 filing [in] by the department shall thereupon, at the earliest  
4 possible time, be heard by a judge of the court, without jury,  
5 in the court or in chambers. The finding of the court, or any  
6 judge thereof, that the document is eligible for filing [in] by  
7 the department shall be final and the department shall act in  
8 accordance therewith. The true intent of this section is to  
9 secure for applicants an immediate hearing in court and a  
10 determination by the court without delay or expense to the  
11 applicants.

12 \* \* \*

13 § 138. Statement of correction.

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

24 (1) The name of the association or other person and,  
25 subject to section 109 (relating to name of commercial  
26 registered office provider in lieu of registered address),  
27 the location, including street and number, if any, of its  
28 registered or other office.

29 (2) The statute by or under which the association was  
30 formed, or the preceding filing was made, in the case of a

1 filing that does not constitute a part of the public organic  
2 record of an association.

3 (3) [The] Either:

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

5 (ii) the portion of the document requiring  
6 correction in corrected form.

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

12 (b) Effect of filing.--

13 (1) The [corrected document] correction shall be  
14 effective:

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

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

20 (2) A filing under this section:

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

25 (A) the first public organic record of a  
26 domestic association that creates the association  
27 under any provision of this title other than Chapter  
28 3 (relating to entity transactions); or

29 (B) the registration under Subchapter B of  
30 Chapter 4 (relating to registration) of a foreign

1           association; but

2           (ii) may be used to correct the public organic  
3       record [may be corrected under this section] or  
4       registration.

5       \* \* \*

6       § 139. Tax clearance of certain fundamental transactions.

7       \* \* \*

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

10       \* \* \*

11       (2) With articles of dissolution under section 1971  
12       (relating to voluntary dissolution by shareholders or  
13       incorporators) or 5971 (relating to voluntary dissolution by  
14       members or incorporators).

15       \* \* \*

16       Section 5. Title 15 is amended by adding a section to read:  
17       § 146. Annual report.

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

23           (1) its name and jurisdiction of formation;

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

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

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

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

3       (6) its entity number or similar identifier issued by  
4       the department.

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

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

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

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

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

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

21           (1) reject the report;

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

24           (3) return the report for correction.

25       (e) Modification of prior filings.--If an annual report  
26       contains information about the registered office which differs  
27       from the information shown in the records of the department  
28       immediately before the report is delivered to the department for  
29       filing, the address of the registered office of the entity or  
30       association delivering the report to the department for filing

1 will be deemed to be changed to the address set forth in the  
2 report effective as of the filing of the report.

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

9 (g) Notice by department.--~~During the first five years~~ <--  
10 ~~ending after (insert the effective date of this section), the~~  
11 THE department annually must deliver notice to each association <--  
12 required to file an annual report under this section of the  
13 annual report filing requirement AT LEAST TWO MONTHS BEFORE THE <--  
14 ANNUAL REPORT IS DUE. Failure by the department to deliver  
15 notice to any party, or failure by any party to receive notice,  
16 of an annual report filing requirement does not relieve the  
17 party of the obligation to make the annual report filing.

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

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

22 § 151. Short title and application of subchapter.

23 \* \* \*

24 (b) Application.--This subchapter contains an enumeration of  
25 fees to be charged by the [Corporation Bureau of the department]  
26 bureau for services performed under this title or any other  
27 provision of law relating to corporations or associations and  
28 under Titles 13 (relating to commercial code), 17 (relating to  
29 credit unions) and 54 (relating to names).

30 Section 7. Section 153(b) of Title 15 is amended and

1 subsection (a) is amended by adding paragraphs to read:

2 § 153. Fee schedule.

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

7 \* \* \*

8 (18) Annual report of domestic or foreign  
9 association:

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

14 (ii) Annual report delivered to the bureau  
15 electronically..... ~~30~~ 0 <--

16 (iii) Annual report not delivered to the  
17 bureau electronically..... ~~50~~ 0 <--

18 (19) Reinstatement of domestic association:

19 (i) Application for reinstatement delivered to  
20 the bureau electronically..... ~~70~~ 35 <--

21 (ii) Application for reinstatement not  
22 delivered to the bureau electronically..... ~~80~~ 40 <--

23 (iii) Additional fee required by section  
24 383(a)(4)(ii) (relating to reinstatement) for each  
25 annual report not previously paid..... ~~30~~ 15 <--

26 (20) Statement of validation:

27 (i) Statement of validation, any filing fee  
28 referred to in section 227(c) (relating to 125 <--  
29 statement of validation), plus..... 75 <--

30 (ii) (Reserved).

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

5 \* \* \*

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

8 § 202. Requirements for names generally.

9 \* \* \*

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

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

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

25 (ii) filed a tax return or certificate with the  
26 Department of Revenue indicating that the covered  
27 association or other association is out of existence or  
28 has failed for a period of three successive years to file  
29 with the Department of Revenue a report or return  
30 required by law and the fact of the failure has been



certified by the Department of Revenue to the Department of State;

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

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

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

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

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

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

\* \* \*

Section 9. Sections 207(a) and (b) and 209(a) and (b) of Title 15 are amended to read:

§ 207. Required name changes by senior associations.

(a) Loss of rights to name.--A covered association shall

1 cease to have the exclusive right to its proper name [if the  
2 association]:

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

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

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

12 (3) while its statement of election is canceled under  
13 Subchapter H of Chapter 3, if the association is an electing  
14 partnership; or

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

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

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

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

29 \* \* \*

30 § 209. Registration of name of nonregistered foreign

1           association.

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

10           (1) The name of the association.

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

13           (3) The name being registered.

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

22       \* \* \*

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

25                               SUBCHAPTER B

26                               [(Reserved)]

27                               RATIFICATION OF DEFECTIVE

28                               ENTITY ACTIONS

29       Section 11. Subchapter B of Chapter 2 of Title 15 is amended  
30 by adding sections to read:

1 § 221. Definitions.

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

5 "Applicable rule." A statute, rule or regulation regulating  
6 the procedures for seeking or obtaining authorization or  
7 approval of an entity action. The term includes this title and  
8 the provisions of prior organic laws applicable to a domestic  
9 entity and an entity action subject to this subchapter.

10 "Date of the defective entity action." The date, or the  
11 approximate date if the exact date is unknown, the defective  
12 entity action was purported to have become effective.

13 "Defective entity action." An overissue or any other entity  
14 action purportedly taken that is and, at the time the entity  
15 action was purportedly effective, would have been within the  
16 power of the entity, but due to a failure of authorization of  
17 the entity action:

18 (1) is void or voidable;

19 (2) cannot be determined not to be void or voidable by  
20 the governors of the ratifying entity or previous entity; or

21 (3) otherwise does not operate fully in the manner  
22 intended at the time the entity action was purported to have  
23 become effective.

24 "Entity action." An action taken by or on behalf of a  
25 domestic entity, including any action taken by the incorporator  
26 or organizer, the governors or a committee of the governors, an  
27 officer or other agent of the entity or the interest holders and  
28 any action taken by or on behalf of a previous entity pursuant  
29 to a plan or plan agreement providing for the formation or  
30 augmentation of the domestic entity.

1 "Failure of authorization." Either:

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

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

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

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

20 "Overissue." The purported issuance:

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

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

27 (ii) shares of any class or series that is not at  
28 the time authorized for issuance by the articles of  
29 incorporation of a business corporation; or

30 (2) with respect to any type of domestic entity other

1 than a business corporation, of:

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

5 (ii) interests of any type that is not at the time  
6 authorized for issuance by the organic rules of the  
7 entity.

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

13 "Plan agreement." An agreement providing for the adoption or  
14 implementation of a plan to which the entity is a party or  
15 providing for the formation or augmentation of the entity.

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

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

25 "Ratifying entity." The domestic entity whose governors or  
26 interest holders have ratified a defective entity action or who  
27 seek review under section 228 of a defective entity action that  
28 has not been ratified.

29 "Valid interests." The shares or interests of any class,  
30 series or type that have been duly authorized and validly issued

1 in accordance with all applicable rules, including as a result  
2 of ratification or validation under this subchapter.

3 "Validation effective time." With respect to a defective  
4 entity action ratified under this subchapter, means the later  
5 of:

6 (1) the time at which the ratification of the defective  
7 entity action is approved in accordance with this subchapter  
8 by either:

9 (i) the interest holders; or

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

12 (2) the time at which any statement of validation filed  
13 in accordance with section 227 (relating to statement of  
14 validation) becomes effective.

15 § 222. Nonexclusivity.

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

24 § 223. Ratification of defective entity actions.

25 (a) Action by governors.--To ratify a defective entity  
26 action under this subchapter other than the ratification of an  
27 election of the initial governors under subsection (b), the  
28 governors of the ratifying entity must take an action, in  
29 accordance with section 224 (relating to action on  
30 ratification), stating:

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

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

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

8       (4) that the governors approve the ratification of the  
9       defective entity action.

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

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

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

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

22      (c) Action by interest holders.--If any provision of the  
23      organic rules, a resolution of the governors, an applicable  
24      rule, a plan, a plan agreement or a governance agreement  
25      requires action by the interest holders or would have required  
26      action by the interest holders of the entity or of a previous  
27      entity at the date of the occurrence of the defective entity  
28      action, and that required action by the interest holders has not  
29      previously been obtained, the ratification of the defective  
30      entity action approved in the action taken by the governors



1 under subsection (a) shall be submitted to the interest holders  
2 for action in accordance with section 224.

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

10 § 224. Action on ratification.

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

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

1 defective entity action and must be accompanied by:

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

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

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

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

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

27 (2) in the case of directors or a class of directors of  
28 a business corporation elected by cumulative voting, that the  
29 votes cast against ratification not be sufficient to elect  
30 one or more directors to the board or to the class.

1 (e) Putative interests.--The following apply to putative  
2 interests:

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

9 (i) they are shares of a registered corporation  
10 described in section 2502(1) (relating to registered  
11 corporation status); and

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

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

23 (f) Required amendment.--If the approval under this section  
24 of putative interests would result in an overissue, in addition  
25 to the approval required by section 223, approval of an  
26 amendment to the organic rules of the entity to increase the  
27 number of interests of an authorized class or series or to  
28 authorize the creation of a class or series of interests so  
29 there will be no over issue is also required.

30 § 225. Optional notice.

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

9 (1) the date of the action by the governors; and

10 (2) the date of the defective entity action ratified.

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

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

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

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

26 (d) Notice by registered corporations.--A notice given by a  
27 registered corporation under this section may be given by means  
28 of a publicly available filing with the United States Securities  
29 and Exchange Commission.

30 § 226. Effect of ratification.

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

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

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

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

24         (3) Any entity action taken subsequent to the defective  
25         entity action in reliance on the defective entity action  
26         having been validly effected is duly authorized and valid as  
27         of the time taken. Any subsequent defective entity action  
28         resulting directly or indirectly from the original defective  
29         entity action, if the failure of authorization of the  
30         subsequent defective entity action relates solely to the

1 defective entity action ratified under this subchapter, is  
2 duly authorized and valid as of the time taken.

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

8 § 227. Statement of validation.

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

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

- 21 (1) the name of the ratifying entity;  
22 (2) subject to section 109 (relating to name of  
23 commercial registered office provider in lieu of registered  
24 address), the address of its registered office, including  
25 street and number, if any, in this Commonwealth;  
26 (3) the defective entity action that is the subject of  
27 the statement of validation (including, in the case of any  
28 defective entity action involving the issuance of putative  
29 interests, the number and type of putative interests issued  
30 and the date or dates upon which the putative interests were

1 purported to have been issued);

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

3 (5) the nature of the failure of authorization in  
4 respect of the defective entity action;

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

10 (7) the following information with respect to previous  
11 documents delivered to the department by the ratifying entity  
12 or by a previous entity:

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

18 (A) state the name of the entity filing the  
19 statement of validation and the statute under which  
20 it was incorporated or formed;

21 (B) state the name, title and filing date of the  
22 filing previously made and any previous statement of  
23 correction to that filing; and

24 (C) have attached a copy of the filing  
25 previously made, together with any previous statement  
26 of correction to that filing.

27 (ii) if a document was previously filed by the  
28 department in respect to the defective entity action and  
29 the filing requires a change to give effect to the  
30 ratification of the defective entity action, the

1 statement of validation must:

2 (A) state the name of the entity filing the  
3 statement of validation and the statute under which  
4 it was incorporated or formed;

5 (B) state the name, title and filing date of the  
6 filing previously made and any previous statement of  
7 correction to that filing;

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

12 (D) state the date and time that the filing  
13 attached to the statement of validation is deemed to  
14 have become effective; or

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

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

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

27 (C) state the date and time that the document is  
28 deemed to have become effective.

29 (c) Additional filing fee.--In addition to the filing fee  
30 required under section 153 (relating to fee schedule) for the



statement of validation, if the statement of validation relates to a situation described in subsection (b) (7) (iii), the entity shall also pay a fee equal to the filing fee for that document required by section 153 at the time the statement of validation is delivered for filing.

§ 228. Judicial proceedings regarding validity of entity actions.

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

(1) the ratifying entity; or

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

(i) a successor to the ratifying entity;

(ii) a governor of the ratifying entity;

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

(iv) materially and adversely affected by the ratification.

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

(c) Determination by the court.--In an action under this section, the court may:

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

1       (2) determine the validity and effectiveness of any  
2       defective entity action not ratified under this subchapter;  
3       and

4       (3) establish conditions upon the validity or  
5       effectiveness of a ratification or defective entity action  
6       reviewed by the court.

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

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

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

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

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

25              (1) a defective entity action other than an overissue is  
26              not void or voidable as the result of the failure of  
27              authorization and is a valid entity action effective as of  
28              the date of the defective entity action;

29              (2) any entity action taken subsequent to the defective  
30              entity action in reliance on the defective entity action

1 having been validly effected is valid as of the time taken;  
2 and

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

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

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

18 (2) the putative interests are duly authorized and  
19 validly issued valid interests;

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

23 (4) any subsequent defective entity action resulting  
24 directly or indirectly from the original overissue is duly  
25 authorized and valid as of the time taken, if the failure of  
26 authorization of the subsequent defective entity action  
27 relates solely to the defective entity action referred to in  
28 paragraph (1).

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

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

8       (2) six years from the date when:

9               (i) the defective entity action is set forth in or  
10              implemented or purported to be implemented through the  
11              public organic record of the entity taking the action; or

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

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

23       (3) 21 years after the defective entity action.

24       (d) Application to court to void defective entity action.--  
25       To the extent that relief is available under other applicable  
26       law, a person entitled to assert under applicable law that a  
27       defective entity action is void or voidable may, before the  
28       expiration of the applicable period set forth in this section,  
29       file an action for relief declaring or otherwise establishing  
30       that the defective entity action is void or voidable. If such an

action is filed, the operation of subsection (a) or subsection (b) shall be suspended until the final resolution of the action, and, to the extent that relief is obtained, subsection (a) and subsection (b) shall not apply.

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

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

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

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

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

(g) Presumptions.--For purposes of this section, the governors and interest holders of the entity are deemed to have acted in reliance on the defective entity action in authorizing subsequent entity actions unless clear and convincing evidence demonstrates a lack of such reliance. For purposes of subsection (c)(2)(ii) and (iii), a contemporaneous record in record form of the giving of disclosure by a governor, officer or agent of the entity is presumptive evidence of the giving and receipt of such

1 disclosure.

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

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

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

17 (i) Effectiveness of section.--In the case of a defective  
18 entity action occurring before (insert the effective date of  
19 this act):

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

24 (2) despite any expiration of the applicable period set  
25 forth in subsection (c), a person entitled to assert under  
26 applicable law that a defective entity action is void or  
27 voidable may file an action under subsection (d) if the  
28 action is filed on or before (insert the first anniversary of  
29 the effective date of this act);

30 (3) any action pending on (insert the effective date of

this act), seeking relief on the grounds that a defective entity action is void or voidable, including any relief that may be obtained in the action, is not affected by this section;

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

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

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

§ 312. Definitions.

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

"Interest exchange." A transaction authorized by Subchapter D (relating to interest exchange).]

\* \* \*

["Merger." A transaction in which two or more merging

1 associations are combined into a surviving association pursuant  
2 to a document filed by the department or similar office in  
3 another jurisdiction.]

4 \* \* \*

5 (b) Index of definitions.--Following is a nonexclusive list  
6 of definitions in section 102 (relating to definitions) that  
7 apply to this chapter:

8 "Act" or "action."

9 "Banking institution."

10 "Conversion."

11 "Department."

12 "Dissenters rights."

13 "Division."

14 "Domestic entity."

15 "Domestication."

16 "Entity."

17 "Filing entity."

18 "Foreign entity."

19 "Governor."

20 "Interest."

21 "Interest exchange."

22 "Interest holder."

23 "Merger."

24 "Obligation."

25 "Organic law."

26 "Organic rules."

27 "Private organic rules."

28 "Property."

29 "Public organic record."

30 "Record form."



1 "Registered foreign association."

2 "Representative."

3 "Sign."

4 "Transfer."

5 "Type."

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

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

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

26 (1) If the corporation does not survive the transaction,  
27 the transaction satisfies any requirements of the provision  
28 applicable to the transaction.

29 (2) If the corporation survives the transaction, the  
30 approval of the transaction is by a vote of the shareholders

1 or directors which would be sufficient to impair the right or  
2 obligation under the provision or make [the corporation  
3 subject to] the provision[.

4 (b) Transitional provision.--

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

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

9 (ii) the transaction does not take effect by July 1,  
10 2015.

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

14 (i) is abandoned; or

15 (ii) takes effect.

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

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

25 § 315. Nature of transactions.

26 (a) General rule.--The fact that a sale or conversion of the  
27 interests in or assets of an association or a transaction under  
28 [a particular subchapter] this chapter or other law produces a  
29 result that could be accomplished in any other manner permitted  
30 by a different [subchapter] set of provisions of this chapter or

1 other law shall not be a basis for recharacterizing the sale,  
2 conversion or transaction as a different form of sale,  
3 conversion or transaction under [any other subchapter or other  
4 law] this chapter.

5 \* \* \*

6 Section 14. Section 318(a) is amended by adding a paragraph  
7 to read:

8 § 318. Excluded entities and transactions.

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

11 \* \* \*

12 (3) A credit union.

13 \* \* \*

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

17 § 321. Approval by business corporation.

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

1       \* \* \*

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

23       \* \* \*

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

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

30                       (i) permits or requires the merger or interest

1 exchange to be effected under this subsection; and  
2 (ii) provides that, if the merger or interest  
3 exchange is to be effected under this subsection, the  
4 merger or interest exchange will be effected as soon as  
5 practicable following the satisfaction of the requirement  
6 set forth in paragraph (6).

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

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

16 (A) owned at the commencement of the offer by  
17 the corporation, the offeror, any parent of the  
18 offeror, or any wholly owned subsidiary of any of the  
19 foregoing; or

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

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

24 (3) The offer discloses that the plan of merger or  
25 interest exchange provides that the merger or interest  
26 exchange will be effected as soon as practicable following  
27 the satisfaction of the requirement set forth in paragraph  
28 (6) and that the shares of the corporation that are not  
29 tendered in response to the offer will be treated as set  
30 forth in paragraph (8).

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

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

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

14               (i) shares purchased by the offeror in accordance  
15               with the offer;

16               (ii) shares otherwise owned by the offeror or by any  
17               parent of the offeror or any wholly owned subsidiary of  
18               any of the foregoing; and

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

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

27       (8) Each outstanding share of each class or series of  
28       shares of the corporation that the offeror is offering to  
29       purchase in accordance with the offer, and that is not  
30       purchased in accordance with the offer, is to be converted in

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

10 (i) shares owned by the corporation;

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

12 and

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

17 (9) As used in this subsection:

18 (i) "offer" means the offer referred to in paragraph  
19 (2);

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

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

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

28 (A) the offeror has irrevocably accepted those  
29 shares for payment; and

30 (B) either:

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

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

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

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

18                   Subchapter A of Chapter 17 (relating to notice and  
19 meetings generally).

20                   Section 2512 (relating to dissenters rights procedure).

21                   Section 2539 (relating to adoption of plan of merger by  
22 board of directors).

23                   Section 3304(b) (relating to election of benefit  
24 corporation status).

25                   Section 3305(b) (relating to termination of benefit  
26 corporation status).

27                   Section 16. Sections 341(a) and (e), 355(b)(8), 363(c) and  
28 364 of Title 15 are amended to read:

29 § 341. Interest exchange authorized.

30                   (a) General rule.--Except as provided in section 318



(relating to excluded entities and transactions) or this section, by complying with this subchapter:

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

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

\* \* \*

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

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

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

\* \* \*

§ 355. Statement of conversion; effectiveness.

\* \* \*

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

\* \* \*

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

(i) The street and mailing addresses of its

1 registered agent and registered office in its  
2 jurisdiction of formation if it is a filing entity.

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

5 \* \* \*

6 § 363. Approval of division.

7 \* \* \*

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

17 \* \* \*

18 § 364. Division without interest holder approval.

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

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

25 (i) alter the jurisdiction of formation of the  
26 dividing association;

27 (ii) provide for special treatment; or

28 (iii) amend in any respect the provisions of the  
29 [public organic record] organic rules of the dividing  
30 association, except amendments [which] that may be made

1 without the approval of the interest holders.

2 (2) Either:

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

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

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

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

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

23 (2) if the dividing association is a limited  
24 partnership:

25 (i) it has only one class of general partners and  
26 one class of limited partners;

27 (ii) each new association is a limited partnership;  
28 and

29 (iii) all of the following apply:

30 (A) the general partner interests in each new

1 association are distributed pro rata to the general  
2 partners of the dividing limited partnership;

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

6 (C) no securities [of obligations] of any of the  
7 new associations are distributed to any of the  
8 interest holders of the dividing limited partnership.

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

12 § 367. Effect of division.

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

15 (1) If the dividing association is to survive the  
16 division:

17 (i) It continues to exist.

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

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

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

26 \* \* \*

27 (3) With respect to each new association, all of the  
28 following apply:

29 (i) It comes into existence.

30 (ii) [It holds any] Any property allocated to it [as

1 the successor to the dividing association, and not by  
2 transfer, whether directly or indirectly, or by operation  
3 of law.] vests in the new association without reversion  
4 or impairment, and the division shall not constitute a  
5 transfer, directly or indirectly, of any of that  
6 property.

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

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

11 (v) If it is a limited liability limited partnership  
12 and is not using the alternative procedure in section  
13 8201(f) (relating to scope), its statement of  
14 registration is effective.

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

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

22 \* \* \*

23 (6) The liabilities of the dividing association are  
24 allocated between or among the resulting associations as  
25 provided in section 368 (relating to allocation of  
26 liabilities in division) [and the resulting associations to  
27 which liabilities are allocated are liable for those  
28 liabilities as successors to the dividing association, and  
29 not by transfer, whether directly, indirectly or by operation  
30 of law.] and the division shall not constitute a transfer,

1 directly or indirectly, of any of those liabilities.

2 \* \* \*

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

14 \* \* \*

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

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

22 § 368. Allocation of liabilities in division.

23 (a) General rule.--Except as provided in this section, when  
24 a division becomes effective, a resulting association is  
25 responsible:

26 \* \* \*

27 (2) Individually for the liabilities of the dividing  
28 association that are allocated to or remain the liability of  
29 that resulting association to the extent specified in the  
30 plan of division, but not for liabilities allocated in the

1 plan to another resulting association.

2 \* \* \*

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

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

16 (2) The validity and effectiveness of the division are  
17 not affected [thereby.] by the action or proceeding or the  
18 determination of the court.

19 \* \* \*

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

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

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

27 (ii) If it survives the division, it is subject to  
28 that [law] chapter only in its capacity as a resulting  
29 association.

30 (2) [The law] 12 Pa.C.S. Ch. 51 applies to each

1 resulting association as follows:

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

3 (ii) [The liabilities] Each liability allocated to  
4 the association [are] is treated as an obligation  
5 incurred by the debtor.

6 (iii) The association is treated as not having  
7 received a reasonably equivalent value in exchange for  
8 incurring the obligation.

9 (iv) The property allocated to the association is  
10 treated as remaining property.

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

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

19 \* \* \*

20 § 371. Domestication authorized.

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

27 \* \* \*

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

30 SUBCHAPTER H



1                   ADMINISTRATIVE DISSOLUTION OR CANCELLATION

2   Sec.

3   381. Grounds for administrative dissolution or cancellation.

4   382. Procedure and effect.

5   383. Reinstatement.

6   384. Rejection of reinstatement.

7   § 381. Grounds for administrative dissolution or cancellation.

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

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

20   § 382. Procedure and effect.

21       (a) Notice of initial determination.--If the department  
22   determines that grounds exist under section 381 (relating to  
23   grounds for administrative dissolution or cancellation) for  
24   administratively dissolving a domestic filing entity or  
25   canceling the statement of registration of a domestic limited  
26   liability partnership or the statement of election of an  
27   electing partnership that is not also a limited partnership, the  
28   department must deliver to the entity a notice of the  
29   department's determination at the entity's registered office, if  
30   any, and the address of the entity's principal office as shown

1 in its most recently filed annual report.

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

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

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

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

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

26 (1) continues its existence as the same type of entity  
27 but may not carry on any activities except as necessary to  
28 wind up its activities and affairs and liquidate its assets  
29 in the manner provided in its organic law or to apply for  
30 reinstatement under section 383 (relating to reinstatement);

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

3               (i) continue as such;

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

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

8       (3) is not currently subsisting for purposes of section  
9       145 (relating to subsistence certificate) during the period  
10       it is administratively dissolved.

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

17       § 383. Reinstatement.

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

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

27               (2) subject to section 109 (relating to name of  
28       commercial registered office provider in lieu of registered  
29       address), the address, if any, including street and number,  
30       if any, of the entity's registered office;

1       (3) the principal office of the entity at the time of  
2 the application for restatement; and

3       (4) either:

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

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

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

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

18           (2) deliver a copy to the entity.

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

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

25           (2) The activities of the entity between the date of its  
26 administrative dissolution and the date of its reinstatement  
27 are valid as if the administrative dissolution had never  
28 occurred.

29           (3) If the entity is a limited liability partnership,  
30 limited liability limited partnership or electing

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

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

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

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

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

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

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

25 § 384. Rejection of reinstatement.

26 (a) Notice of rejection.--If the department rejects an  
27 entity's application for reinstatement under section 383  
28 (relating to reinstatement) or fails to reinstate the entity  
29 within the time required by section 383(b)(1), the department  
30 shall deliver to the entity a notice in record form that

1 explains the reasons for the rejection or failure.

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

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

6 § 402. Governing law.

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

9 (1) The internal affairs of the association.

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

14 (3) The liability of a series or protected cell of [~~a~~  
15 ~~foreign~~] the association.

16 \* \* \*

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

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

28 Section 21. Section 403(a)(7) and (10) of Title 15 are  
29 amended and subsection (a) is amended by adding paragraphs to  
30 read:

1 § 403. Activities not constituting doing business.

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

6 \* \* \*

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

9 \* \* \*

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

11 \* \* \*

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

15 (i) real estate and mortgages and other liens  
16 thereon; or

17 (ii) personal property and security interests  
18 therein.

19 (13) Conducting operations or performing work or  
20 services in good faith in response to a disaster or emergency  
21 event.

22 \* \* \*

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

25 § 414. Noncomplying name of foreign association.

26 \* \* \*

27 (d) Use of permitted names.--The doing of business by a  
28 registered foreign association using a name permitted by  
29 subsection (a) has the same force and effect as doing business  
30 using the proper name of the association under the laws of its

1 jurisdiction of formation.

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

6 § 417. Required withdrawal on certain transactions.

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

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

11 \* \* \*

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

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

24 (i) The name under which the association is  
25 registered to do business in this Commonwealth and its  
26 jurisdiction of formation.

27 (ii) That the association withdraws its registration  
28 to do business in this Commonwealth.

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



1           \* \* \*

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

10      (d) Signature.--The statement of withdrawal shall be signed  
11 by:

- 12           (1) the surviving association in the merger;  
13           (2) a resulting association in the division;  
14           (3) the dissolved association; or  
15           (4) the converted or domesticated association.

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

19      § 419. Termination of registration.

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

24           (1) has not amended its registration when required by  
25 section 413 (relating to amendment of foreign registration  
26 statement); [or]

27           (2) has been administratively, voluntarily or  
28 involuntarily dissolved under the laws of its jurisdiction of  
29 formation[.]; or

30           (3) has failed to deliver to the department for filing

1 an annual report under section 146 (relating to annual  
2 report) within six months after it is due.

3 \* \* \*

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

8 § 511. Application and effect of subchapter.

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

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

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

16 (3) A fraternal benefit society.

17 \* \* \*

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

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

25 § 512. Standard of care [and], justifiable reliance and  
26 business judgment rule.

27 (a) Directors.--A director of a domestic corporation shall  
28 stand in a fiduciary relation to the corporation and shall  
29 perform [his duties as] the duties of a director, including  
30 [his] duties as a member of any committee of the board upon

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

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

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

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

26 (3) A committee of the board upon which [he] the  
27 director does not serve, duly designated in accordance with  
28 law, as to matters within its designated authority, which  
29 committee the director reasonably believes to merit  
30 confidence.

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

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

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

17 (1) the subject of the business judgment does not  
18 involve self-dealing by the director or officer or an  
19 associate or affiliate of the director or officer;

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

24 (3) the director or officer rationally believes that the  
25 business judgment is in the best interests of the  
26 corporation.

27 (e) Burden of proof.--A person challenging the conduct of a  
28 director or officer as violating the duty of care under this  
29 section has the burden of proving:

30 (1) a breach of the duty of care, including that a

1 requirement for the fulfillment of that duty under subsection  
2 (d) has not been met; and  
3 (2) in a damage action, that the breach was the legal  
4 cause of damage suffered by the corporation.

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

8 § 513. Personal liability of directors.

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

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

16 \* \* \*

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

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

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

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

28 A director of a domestic corporation who is present at a  
29 meeting of its board of directors, or of a committee of the  
30 board, at which action on any corporate matter is taken on which

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

18 § 515. Exercise of powers generally.

19 \* \* \*

20 (b) Consideration of interests and factors.--The board of  
21 directors, committees of the board and individual directors  
22 shall not be required, in considering the best interests of the  
23 corporation or the effects of any action, to regard any  
24 corporate interest or the interests of any particular group  
25 affected by such action as a dominant or controlling interest or  
26 factor. The consideration of interests and factors in the manner  
27 described in this subsection and in subsection (a) shall not  
28 constitute a violation of section 512 (relating to standard of  
29 care [and], justifiable reliance and business judgment rule).

30 \* \* \*

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

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

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

25 (i) A director who has a direct or indirect  
26 financial or other interest in the person acquiring or  
27 seeking to acquire control of the corporation or who is  
28 an affiliate or associate[, as defined in section 2552  
29 (relating to definitions),] of, or was nominated or  
30 designated as a director by, a person acquiring or

1 seeking to acquire control of the corporation.

2 \* \* \*

3 § 516. Alternative standard.

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

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

18 (c) Cross reference.--See section 511(b) (relating to  
19 alternative provisions).

20 § 517. Limitation on standing.

21 The duty of the board of directors, committees of the board  
22 and individual directors under section 512 (relating to standard  
23 of care [and], justifiable reliance and business judgment rule)  
24 is solely to the domestic corporation and not to any  
25 shareholder, member or creditor or any other person or group,  
26 and may be enforced directly by the corporation or may be  
27 enforced [by a shareholder or member, as such,] by an action in  
28 the right of the corporation, and may not be enforced directly  
29 by a shareholder, member or creditor or by any other person or  
30 group. Notwithstanding the preceding sentence, sections 515(a)



1 and (b) (relating to exercise of powers generally) and 516(a)  
2 (relating to alternative standard) do not impose upon the board  
3 of directors, committees of the board and individual directors  
4 any legal or equitable duties, obligations or liabilities or  
5 create any right or cause of action against, or basis for  
6 standing to sue, the board of directors, committees of the board  
7 and individual directors.

8 § 523. Actions by shareholders or members to enforce a  
9 secondary right.

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

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

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

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

24 "Director." Includes any individual performing the function  
25 of director, regardless of title.

26 "Member." Includes depositors in a mutual banking  
27 institution.

28 "Shares." Includes outstanding contracts or accounts of  
29 members in a mutual banking institution.

30 Section 27. Title 15 is amended by adding a section to read:

1 § 524. 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 banking  
4 institution 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, shareholders or members.

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

11 § 1102. Application of subpart.

12 \* \* \*

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

17 \* \* \*

18 [(3) A savings association.]

19 \* \* \*

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

25 § 1103. Definitions.

26 (a) General definitions.--Subject to additional definitions  
27 contained in subsequent provisions of this subpart that are  
28 applicable to specific provisions of this subpart, the following  
29 words and phrases when used in Part I (relating to preliminary  
30 provisions) or in this subpart shall have the meanings given to

1 them in this section unless the context clearly indicates  
2 otherwise:

3 \* \* \*

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

9 \* \* \*

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

12 \* \* \*

13 "Dissolve" or "dissolution." The termination of corporate  
14 existence effected by:

15 (1) filing of articles of dissolution in the department  
16 under this subpart by the corporation or by the office of the  
17 clerk of the court of common pleas;

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

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

23 (4) filing of a certified copy of a decree of  
24 dissolution in the department under the former act of April  
25 9, 1856 (P.L.293, No.308), entitled "Supplement to the acts  
26 relating to incorporations by the Courts of Common Pleas," or  
27 otherwise; or

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

30 "Distribution." A direct or indirect transfer of money or

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

14 \* \* \*

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

22 \* \* \*

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

28 \* \* \*

29 "Share register." Records administered by or on behalf of a  
30 corporation in which the names of all of its shareholders, the

address of each shareholder, the number and class of shares  
registered in the name of each shareholder and all issuances and  
transfers of shares are recorded.

\* \* \*

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

"Act" or "action."

"Banking institution" or "domestic banking institution."

"Conversion."

"Corporation for profit."

"Corporation not-for-profit."

"Court."

"Credit union."

"Department."

"Dissenters rights."

"Division."

"Domestic corporation for profit."

"Domestic corporation not-for-profit."

"Domestication."

"Execute."

"Foreign corporation for profit."

"Foreign corporation not-for-profit."

"Insurance corporation" or "domestic insurance corporation."

"Interest exchange."

"Internal Revenue Code of 1986."

"Merger."

"Obligation."

"Officially publish."

1 "Record form."

2 "Representative."

3 ["Savings association" or "domestic savings association."]

4 "Sign."

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

6 [§ 1110. Annual report information.

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

14 Section 31. ~~Section 1306(a)(5) and (b)~~ SECTIONS 1306(A)(5) <--  
15 AND (B) AND 1502(A)(18) of Title 15 are amended to read:

16 § 1306. Articles of incorporation.

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

20 \* \* \*

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

23 \* \* \*

24 (b) Other provisions authorized.--A provision of the  
25 original articles or a provision of the articles approved by the  
26 shareholders, in either case adopted under subsection (a)(8)  
27 (ii), may relax or be inconsistent with and supersede any  
28 provision of Chapter 3 (relating to entity transactions), 13  
29 (relating to incorporation), 15 (relating to corporate powers,  
30 duties and safeguards), 17 (relating to officers, directors and

1 shareholders) or 19 (relating to fundamental changes) concerning  
2 the subjects specified in subsection (a)(8)(ii), except where a  
3 provision of those chapters expressly provides that the articles  
4 shall not relax or be inconsistent with any provision on a  
5 specified subject. [Notwithstanding the foregoing, the articles  
6 may provide greater rights for shareholders than are authorized  
7 by any provision of those chapters that otherwise provides that  
8 the articles shall not relax or be inconsistent with any  
9 provision on a specified subject.] Notwithstanding the  
10 foregoing:

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

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

21 \* \* \*

22 § 1502. GENERAL POWERS.

<--

23 (A) GENERAL RULE.--SUBJECT TO THE LIMITATIONS AND  
24 RESTRICTIONS IMPOSED BY STATUTE OR CONTAINED IN ITS ARTICLES,  
25 EVERY BUSINESS CORPORATION SHALL HAVE POWER:

26 \* \* \*

27 (18) TO ACCEPT, REJECT, RESPOND TO OR TAKE NO ACTION IN  
28 RESPECT OF AN ACTUAL OR PROPOSED ACQUISITION, DIVESTITURE,  
29 TENDER OFFER, TAKEOVER OR OTHER FUNDAMENTAL CHANGE UNDER  
30 CHAPTER 3 (RELATING TO ENTITY TRANSACTIONS) OR 19 (RELATING



TO FUNDAMENTAL CHANGES) OR OTHERWISE.

\* \* \*

Section 32. ~~Section 1504(c) of Title 15 is~~ 1504(B) AND (C) <--  
OF TITLE 15 ARE amended and the section is amended by adding a  
subsection to read:

§ 1504. Adoption, amendment and contents of bylaws.

\* \* \*

(B) EXCEPTION.--EXCEPT AS OTHERWISE PROVIDED IN SECTION <--  
1310(A) (RELATING TO ORGANIZATION MEETING), OR IN THE ARTICLES  
TO THE EXTENT AUTHORIZED BY SECTION 1306(B) (RELATING TO OTHER  
PROVISIONS AUTHORIZED), THE BOARD OF DIRECTORS SHALL NOT HAVE  
THE AUTHORITY TO ADOPT OR CHANGE A BYLAW ON ANY SUBJECT THAT IS  
COMMITTED EXPRESSLY TO THE SHAREHOLDERS BY ANY OF THE PROVISIONS  
OF THIS SUBPART. SEE:

SUBSECTION (D) (RELATING TO AMENDMENT OF VOTING PROVISIONS).

SECTION 1521 (RELATING TO AUTHORIZED SHARES).

SECTION 1713 (RELATING TO PERSONAL LIABILITY OF DIRECTORS).

SECTION 1721 (RELATING TO BOARD OF DIRECTORS).

SECTION 1725 (RELATING TO SELECTION OF DIRECTORS).

SECTION 1726 (RELATING TO REMOVAL OF DIRECTORS).

SECTION 1729 (RELATING TO VOTING RIGHTS OF DIRECTORS).

SECTION 1735 (RELATING TO PERSONAL LIABILITY OF OFFICERS).

SECTION 1756 (RELATING TO QUORUM).

SECTION 1757 (RELATING TO ACTION BY SHAREHOLDERS).

SECTION 1765 (RELATING TO JUDGES OF ELECTION).

SECTION 2105 (RELATING TO TERMINATION OF NONSTOCK CORPORATION  
STATUS).

SECTION 2122 (RELATING TO CLASSES OF MEMBERSHIP).

SECTION 2124 (RELATING TO VOTING RIGHTS OF MEMBERS).

SECTION 2302 (RELATING TO DEFINITION OF MINIMUM VOTE).

SECTION 2321 (RELATING TO SHARES) .

SECTION 2322 (RELATING TO SHARE TRANSFER RESTRICTIONS) .

SECTION 2325 (RELATING TO SALE OPTION OF ESTATE OF  
SHAREHOLDER) .

SECTION 2332 (RELATING TO MANAGEMENT BY SHAREHOLDERS) .

SECTION 2334 (RELATING TO APPOINTMENT OF PROVISIONAL DIRECTOR  
IN CERTAIN CASES) .

SECTION 2337 (RELATING TO OPTION OF SHAREHOLDER TO DISSOLVE  
CORPORATION) .

SECTION 2923 (RELATING TO ISSUANCE AND RETENTION OF SHARES) .

(b.1) Restated bylaws.--Subsection (b) does not prohibit the  
board of directors from including in restated bylaws, without  
substantive change, a bylaw adopted by the shareholders, and  
such a restated provision continues to have the status of a  
bylaw adopted by the shareholders.

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

\* \* \*

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

§ 1505. Persons bound by bylaws.

Except as otherwise provided by section 1713 (relating to

1 personal liability of directors) or any similar provision of  
2 law, the bylaws of a business corporation [shall operate only as  
3 regulations among] are binding on the shareholders, directors  
4 and officers of the corporation [and] with respect to its  
5 internal affairs whether or not a shareholder, director or  
6 officer has actual knowledge of the provisions of the bylaws,  
7 but a bylaw shall not affect contracts or other dealings with  
8 other persons unless those persons have actual knowledge of the  
9 [bylaws] bylaw.

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

13 § 1507. Registered office.

14 \* \* \*

15 (b) Statement of change of registered office.--After  
16 incorporation, a change of the location of the registered office  
17 may be authorized at any time by the board of directors. Before  
18 the change of location becomes effective, the corporation  
19 [either] shall include the change in an annual report under  
20 section 146 (relating to annual report), amend its articles  
21 under the provisions of this subpart to reflect the change [in  
22 location or shall file in] or deliver to the Department of State  
23 for filing a statement of change of registered office executed  
24 by the corporation setting forth:

25 \* \* \*

26 (d) Effect of statement.--A statement regarding the  
27 registered office of a corporation set forth in a document filed  
28 in the department pursuant to this section shall operate as an  
29 amendment of the articles.

30 [(d)] (e) Cross reference.--See section 134 (relating to

1 docketing statement).

2 Section 35. Sections 1508 and 1509 of Title 15 are amended  
3 to read:

4 § 1508. Corporate records; inspection by shareholders.

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

10 The share register shall be kept at any of the following  
11 locations:

12 (1) the registered office of the corporation in this  
13 Commonwealth;

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

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

17 (4) the office of the registrar or transfer agent of the  
18 corporation.]

19 (b) Right of inspection by a shareholder.--[Every  
20 shareholder shall, upon written verified demand stating the  
21 purpose thereof, have a] On demand, in compliance with the  
22 requirements in subsection (b.1), a shareholder has the right to  
23 examine, in person or by agent or attorney, during the usual  
24 hours for business for any proper purpose, the share register,  
25 books and records of account, and [records of the proceedings  
26 of] minutes of, and consents in lieu of meetings by, the  
27 incorporators, shareholders and directors and to make copies or  
28 extracts therefrom.

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

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

3       (2) In every instance where an attorney or other agent  
4 is the person who seeks the right of inspection, the demand  
5 shall be accompanied by a verified power of attorney or other  
6 ~~[writing]~~ document in record form that authorizes the  
7 attorney or other agent to so act on behalf of the  
8 shareholder.

9       (3) The demand must be:

10           (i) made in good faith;

11           (ii) in record form; and

12           (iii) verified.

13       (4) The demand must describe with reasonable  
14 particularity:

15           (i) the purpose of the shareholder; and

16           (ii) the records the shareholder desires to inspect  
17 and how the records relate to the purpose of the  
18 shareholder.

19       (5) The demand ~~[shall be directed]~~ must be delivered to  
20 the corporation:

21           ~~[(1)]~~ (i) at its registered office in this  
22 Commonwealth;

23           ~~[(2)]~~ (ii) at its principal place of business  
24 wherever situated; ~~[or]~~

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

27           (iv) in care of the secretary of the corporation at  
28 the most recent address of the secretary shown in the  
29 records of the department.

30       (c) Proceedings for the enforcement of inspection by a

1 shareholder.--If the corporation, or an officer or agent  
2 thereof, refuses to permit an inspection sought by a shareholder  
3 or attorney or other agent acting for the shareholder pursuant  
4 to subsection (b) or does not reply to the demand within five  
5 business days after the demand has been [made] received, the  
6 shareholder may [apply to] file an action in the court for an  
7 order to compel the inspection. The court [shall] is hereby  
8 vested with exclusive jurisdiction to determine whether or not  
9 the person seeking inspection is entitled to the inspection  
10 sought. The court may summarily order the corporation to permit  
11 the shareholder to inspect the share register and the other  
12 books and records of the corporation and to make copies or  
13 extracts therefrom, or the court may order the corporation to  
14 furnish to the shareholder a list of its shareholders as of a  
15 specific date on condition that the shareholder first pay to the  
16 corporation the reasonable cost of obtaining and furnishing the  
17 list and on such other conditions as the court deems  
18 appropriate.

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

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

26 (2) That the inspection he seeks is for a proper  
27 purpose.

28 Where] and the shareholder seeks to inspect:

29 (1) the share register or list of shareholders of the  
30 corporation [and he has complied with the provisions of this

1 section respecting the form and manner of making demand for  
2 inspection of the documents], the burden of proof shall be  
3 upon the corporation to establish that the inspection he  
4 seeks is for an improper purpose[.]; or

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

9 (c.2) Available relief.--The court may, in its discretion,  
10 prescribe any limitations or conditions with reference to the  
11 inspection or award such other or further relief as the court  
12 deems just and proper. The court may order books, documents and  
13 records, pertinent extracts therefrom, or duly authenticated  
14 copies thereof, to be brought into this Commonwealth and kept in  
15 this Commonwealth upon such terms and conditions as the order  
16 may prescribe.

17 (c.3) Right to bylaws.--Every shareholder shall have the  
18 right to receive, promptly after demand and without charge, a  
19 copy in record form of the currently effective text of the  
20 bylaws. If the corporation does not provide a shareholder with a  
21 copy of the bylaws as required by this subsection, the  
22 shareholder may file an action in the court for an order to  
23 compel the production. The court shall summarily order the  
24 corporation to provide a copy of the bylaws unless the  
25 corporation establishes that the person seeking the bylaws is  
26 not a shareholder.

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

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

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

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

§ 1509. Bylaws and other powers in emergency.

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

(1) Procedures for calling meetings of the board.

(2) Quorum requirements for meetings of the board.

(3) Procedures for designating additional or substitute directors.

(b) Lines of succession; head office.--The board of directors or the officers, if authorized by the board of



1 directors, either before or during any emergency, may:

2       (1) provide, and from time to time modify, lines of  
3 succession in the event that during the emergency any or all  
4 officers or agents of the corporation shall for any reason be  
5 rendered incapable of discharging their duties [~~and may,~~];

6 and

7       (2) effective in the emergency, change the head offices  
8 or designate several alternative head offices or regional  
9 offices of the corporation [~~or authorize the officers to do~~  
10 ~~so~~].

11       (c) [~~Personnel~~] Representatives not liable.--A  
12 representative of the corporation:

13       (1) Acting in accordance with any emergency bylaws  
14 [~~shall not be liable except for willful misconduct.~~] in  
15 effect at the time or otherwise in accordance with this  
16 section is not personally liable for monetary damages except  
17 for:

18               (i) self-dealing, willful misconduct or  
19 recklessness;

20               (ii) violation of a criminal statute; or

21               (iii) payment of taxes pursuant to Federal, State or  
22 local law.

23       (2) [~~Shall not be~~] Is not liable for any action taken  
24 [~~by him~~] by the representative in good faith in an emergency  
25 in furtherance of the ordinary business affairs of the  
26 corporation even though not authorized by the emergency or  
27 other bylaws then in effect.

28       (d) Effect on regular bylaws.--To the extent not  
29 inconsistent with any emergency bylaws [~~so adopted~~], the bylaws  
30 of the corporation shall remain in effect during any emergency

1 and, upon its termination, the emergency bylaws shall cease to  
2 be effective.

3 (e) Procedure in absence of emergency bylaws.--Unless  
4 otherwise provided in emergency bylaws, notice of any meeting of  
5 the board of directors during an emergency shall be given only  
6 to those directors it is feasible to reach at the time and by  
7 such means as are feasible at the time, including publication,  
8 radio or television. To the extent required to constitute a  
9 quorum at any meeting of the board of directors during any  
10 emergency, the officers of the corporation who are present at  
11 the meeting shall, unless otherwise provided in emergency  
12 bylaws, be deemed, in order of rank and within the same rank in  
13 order of seniority, directors for the meeting. An officer  
14 serving as a director under this subsection shall be subject to,  
15 and entitled to the benefits of, the provisions of this subpart  
16 relating to directors.

17 (f) Corporate actions.--A corporate action to further the  
18 ordinary business affairs of the corporation that is taken in  
19 accordance with any emergency bylaws in effect at the time or  
20 otherwise in accordance with this section is valid and binding  
21 on the corporation.

22 (g) Shareholder meetings.--The required time for holding the  
23 annual meeting of the shareholders of a corporation provided in  
24 section 1755(a) (relating to time of holding meetings of  
25 shareholders) or the articles or bylaws is tolled during an  
26 emergency. The board of directors, acting by a majority of those  
27 directors that can be assembled, may take any action during an  
28 emergency that the board determines to be practical and  
29 necessary to address the circumstances of the emergency with  
30 respect to a meeting of shareholders notwithstanding anything to

1 the contrary in this subpart or in the articles or bylaws. The  
2 actions the board may take include:

3 (1) postponing the meeting to a later time or date, with  
4 the record date for determining the shareholders entitled to  
5 notice of, and to vote at, the meeting applying to the  
6 postponed meeting without regard to section 1763 (relating to  
7 determination of shareholders of record); and

8 (2) with respect to a registered corporation, notifying  
9 the shareholders of any postponement or a change of the place  
10 of the meeting, or a change to hold the meeting solely by  
11 means of remote communication, solely by a document publicly  
12 filed by the corporation with the Securities and Exchange  
13 Commission pursuant to section 13, 14 or 15(d) of the  
14 Exchange Act and the rules and regulations thereunder.

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

20 (1) the new payment date must be not more than 60 days  
21 after the record date that applies to the new payment date;  
22 and

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

30 (i) Definition.--As used in this section, and for no other

1 purpose, "emergency" means a period during which a quorum of the  
2 board, or of persons on whom the powers and duties of the board  
3 have been conferred or imposed under section 1721, cannot be  
4 assembled as a result of:

5 (1) an attack on the United States;

6 (2) a nuclear disaster;

7 (3) an epidemic or pandemic;

8 (4) a state of emergency under federal or state law  
9 covering a geographic area in which the corporation has its  
10 principal office or a significant regional office or  
11 operation; or

12 (5) any other catastrophe or disaster.

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

15 § 1512. Informational rights of a director.

16 \* \* \*

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

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

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

11 (d) Reasonable restrictions permitted.--The corporation may  
12 impose reasonable restrictions and conditions on access to and  
13 use of information to be furnished under this section, including  
14 designating information confidential and imposing nondisclosure  
15 and safeguarding obligations on the recipient. In a dispute  
16 concerning the reasonableness of a restriction, condition or  
17 obligation under this subsection, the corporation has the burden  
18 of proving reasonableness.

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

23 Section 37. Title 15 is amended by adding a section to read:  
24 § 1513. Forum selection provisions.

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

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

29 (i) other identified courts sitting in this  
30 Commonwealth; or

1           (ii) identified courts sitting in other  
2           jurisdictions with which the business corporation has a  
3           reasonable relationship; or

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

7           (b) Jurisdiction.--A provision of the bylaws adopted under  
8           subsection (a) shall not have the effect of conferring  
9           jurisdiction on any court or over any person or claim, and shall  
10           not apply if none of the courts specified in the provision has  
11           the requisite personal and subject matter jurisdiction. If none  
12           of the courts of this Commonwealth specified in a provision  
13           adopted under subsection (a)(1) has the requisite personal and  
14           subject matter jurisdiction and another court of this  
15           Commonwealth does have such jurisdiction, then the internal  
16           corporate claim may be brought in the court with jurisdiction,  
17           notwithstanding that it is not specified in the provision.

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

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

24           (2) a derivative action or proceeding brought on behalf  
25           of the corporation;

26           (3) an action asserting a claim arising pursuant to any  
27           provision of:

28                   (i) this title;

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

30                   (iii) an agreement regarding the governance of the

corporation or the transfer of shares in the corporation  
if:

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

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

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

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

§ 1521. Authorized shares.

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

(b) Provisions specifically authorized.--

\* \* \*

(3) The articles may confer upon a shareholder a  
specifically enforceable right to the declaration and payment  
of dividends, the redemption of shares or the making of any

1 other form of distribution if the distribution is at the time  
2 of enforcement then not prohibited by section [1551(b)(2)]  
3 1551(b) (relating to limitation). Such a right shall not  
4 arise by implication, but only by either an express reference  
5 to this section or another express reference to specific  
6 enforceability of a distribution.

7 \* \* \*

8 (d) Status and rights.--Shares of a business corporation  
9 shall be deemed personal property. Except as otherwise provided  
10 by the articles or, when so permitted by subsection (c), by one  
11 or more bylaws adopted by the shareholders, each share shall be  
12 in all respects equal to every other share. Nothing in this  
13 subsection shall require a distribution by way of purchase,  
14 redemption or other acquisition of the corporation's shares to  
15 be made or offered with respect to all shares or all shares of  
16 the same class or series. See section 1906(d)(4) (relating to  
17 special treatment of holders of shares of same class or series).

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

20 § 1525. Stock rights and options.

21 \* \* \*

22 (b) Specifically authorized provisions.--The securities,  
23 contracts, warrants or other instruments evidencing any shares,  
24 option rights, securities having conversion or option rights, or  
25 obligations of a corporation may contain such terms as are fixed  
26 by the board of directors, including, without limiting the  
27 generality of such authority:

28 (1) Restrictions upon the authorization or issuance of  
29 additional shares, option rights, securities having  
30 conversion or option rights, or obligations.



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

3           (3) Provisions concerning rights or adjustments in the  
4     event of reorganization, merger, [consolidation,] sale of  
5     assets, interest exchange [of shares] or other fundamental  
6     changes.

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

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

11          (6) Conditions relating to the exercise, conversion,  
12    transfer or receipt of such shares, option rights, securities  
13    having conversion or option rights, or obligations.

14 [There shall be no authority under this subsection to include a  
15 provision authorized by section 2513 (relating to disparate  
16 treatment of certain persons).]

17    (b.1) Disparate treatment.--Subsection (b) does not  
18 authorize the inclusion of a condition described in section 2513  
19 (relating to disparate treatment of certain persons) in the case  
20 of a corporation that is not a registered corporation described  
21 in section 2502(1)(i) (relating to registered corporation  
22 status).

23       \* \* \*

24    (d) Pricing and payment.--The provisions of this subchapter  
25    applicable to the [pricing of and payment for] issuance and  
26 pricing of, and payment for, shares shall be applicable to [the  
27 pricing of and payment for] rights and options except that the  
28    rights and options may be issued to representatives of the  
29    corporation or any of its affiliates as an incentive to service  
30    or continued service with the corporation and its affiliates or

1 for such other purpose and upon such other terms as its  
2 directors, who may benefit by their action, [deem advantageous  
3 to the corporation] approve.

4 \* \* \*

5 Section 40. Sections 1529(b), (c) and (d), 1552(a), 1553(a),  
6 1571(b)(1) introductory paragraph and (f), 1702(a) and (d),  
7 1704(a) and (d), 1708 and 1709(b) and (c) of Title 15 are  
8 amended to read:

9 § 1529. Transfer of securities; restrictions.

10 \* \* \*

11 (b) Transfer restrictions generally.--A restriction on the  
12 transfer or registration of transfer of securities of a business  
13 corporation may be imposed by the bylaws or by an agreement  
14 among any number of securityholders or among them and the  
15 corporation. A restriction so imposed shall not be binding with  
16 respect to securities issued prior to the adoption of the  
17 restriction unless the holders of the securities are parties to  
18 the agreement or voted in favor of the restriction[.], except  
19 that a provision of the bylaws of a registered corporation  
20 described in section 2502(1) (relating to registered corporation  
21 status) adopted by the shareholders that is described in  
22 subsection (d)(1)(ii), (2) or (3) shall be binding with respect  
23 to all of the securities of each class or series to which it  
24 applies. A restriction may be amended [by the vote or consent  
25 and otherwise] in the manner provided in the bylaws or agreement  
26 for amending the restriction or, in the absence of such a  
27 provision, as provided for amending the bylaws or agreement  
28 generally.

29 (c) Restrictions specifically authorized.--A restriction on  
30 the transfer of securities of a business corporation is

permitted by this section if it:

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

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

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

(3.1) obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, or causes or results in the automatic sale or transfer of an amount of restricted securities to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing; or

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

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

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

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

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

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

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

(3) maintaining any statutory or regulatory status.

\* \* \*

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

(a) General rule.--A business corporation shall have the power to acquire its own shares. If the articles provide that shares acquired by the corporation shall not be reissued, the authorized shares of the class or series that was acquired shall be reduced by the number of shares acquired. In any other case

1 the shares acquired shall be deemed to be issued but not  
2 outstanding, except that, unless otherwise provided in the  
3 bylaws, the board may, by resolution, restore any or all of the  
4 previously issued shares of the corporation owned by it to the  
5 status of:

- 6       (1) authorized but unissued shares[.]; or  
7       (2) authorized but unissued shares of the class or  
8       series.

9       \* \* \*

10 § 1553. Liability for unlawful dividends and other  
11 distributions.

12       (a) Directors.--Except as otherwise provided pursuant to  
13 section 1713 (relating to personal liability of directors), a  
14 director who votes for or assents to any dividend or other  
15 distribution contrary to the provisions of this subpart or  
16 contrary to any restrictions contained in the bylaws shall, if  
17 he has not complied with the standard provided in or pursuant to  
18 section 1712 (relating to standard of care [and], justifiable  
19 reliance and business judgment rule), be liable to the  
20 corporation, jointly and severally with all other directors so  
21 voting or assenting, for the amount of the dividend that is paid  
22 or the value of the other distribution in excess of the amount  
23 of the dividend or other distribution that could have been made  
24 without a violation of the provisions of this subpart or the  
25 restrictions in the bylaws.

26       \* \* \*

27 § 1571. Application and effect of subchapter.

28       \* \* \*

29       (b) Exceptions.--

30           (1) Except as otherwise provided in paragraph (2), the

holders of the shares of any class or series of shares shall not have the right to dissent and obtain payment of the fair value of the shares under this subchapter if, on the record date fixed to determine the shareholders entitled to notice of and to vote at the meeting at which a plan specified in any of section 333, 343, 353, 363 or 1932(c) is to be voted on or on the date of the first public announcement that such a plan has been approved by the shareholders by consent without a meeting, the shares of the class or series are either:

\* \* \*

(f) Certain provisions of articles ineffective.--This subchapter may not be relaxed by any provision of the articles[.], except that the articles may limit or eliminate dissenters rights for a class or series of shares entitled to a preference. If a limitation or elimination is added by amendment, the limitation or elimination shall not apply to shares that are outstanding on the effective date of the amendment or that are issuable pursuant to a conversion, exchange or other right exercisable on the effective date of the amendment.

\* \* \*

§ 1702. Manner of giving notice.

(a) General rule.--

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

(i) By first class or express mail, postage prepaid, or courier service, charges prepaid, to [his] the postal

1 address of the person appearing on the books of the  
2 corporation or, in the case of directors, supplied by  
3 [him] the director to the corporation for the purpose of  
4 notice. Notice pursuant to this subparagraph shall be  
5 deemed to have been given to the person entitled thereto  
6 when deposited in the United States mail or with a  
7 courier service for delivery to that person.

8 (ii) By facsimile transmission, e-mail or other  
9 electronic communication to [his] the facsimile number or  
10 address for e-mail or other electronic communications  
11 supplied by [him] the person to the corporation for the  
12 purpose of notice. Notice pursuant to this subparagraph  
13 shall be deemed to have been given to the person entitled  
14 thereto when sent.

15 (2) A notice of meeting shall specify the day and hour  
16 and geographic location, if any, of the meeting and any other  
17 information required by any other provision of this subpart.  
18 A notice of meeting may include other information if the  
19 information required by this subpart appears conspicuously at  
20 or near the beginning of the notice.

21 \* \* \*

22 (d) Cross [reference] references.--See [section] sections  
23 2522 (relating to adjournment or postponement of meeting of  
24 shareholders), 2528 (relating to notice of shareholder meetings)  
25 and 3133 (relating to notice of meetings of members of mutual  
26 insurance companies).

27 § 1704. Place and notice of meetings of shareholders.

28 (a) Place.--Meetings of shareholders may be held at such  
29 geographic location within or without this Commonwealth as may  
30 be provided in or fixed pursuant to the bylaws. Authority to

1 provide for the location of a meeting of the shareholders  
2 includes the authority to determine to hold a meeting solely by  
3 means of electronic technology in accordance with section 1708  
4 (relating to use of conference telephone or other electronic  
5 technology), notwithstanding that the authority may refer to one  
6 or more geographic locations. Unless otherwise provided in or  
7 fixed pursuant to the bylaws, all meetings of the shareholders  
8 that are not held solely by means of electronic technology shall  
9 be held at the executive office of the corporation wherever  
10 situated. [If a meeting of the shareholders is held by means of  
11 the Internet or other electronic communications technology in a  
12 fashion pursuant to which the shareholders have the opportunity  
13 to read or hear the proceedings substantially concurrently with  
14 their occurrence, vote on matters submitted to the shareholders,  
15 pose questions to the directors, make appropriate motions and  
16 comment on the business of the meeting, the meeting need not be  
17 held at a particular geographic location.]

18 \* \* \*

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

23 \* \* \*

24 § 1708. Use of conference telephone or other electronic  
25 technology.

26 (a) Incorporators and directors.--Except as otherwise  
27 provided in the bylaws, one or more persons may participate in a  
28 meeting of the incorporators or the board of directors of a  
29 business corporation by means of conference telephone or other  
30 electronic technology by means of which all persons



1 participating in the meeting can hear each other. Participation  
2 in a meeting pursuant to this [section] subsection shall  
3 constitute presence in person at the meeting.

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

14 (c) Exclusive use of electronic technology.--Unless the  
15 bylaws provide expressly that a meeting of shareholders may not  
16 be held solely by means of electronic technology, a meeting of  
17 the shareholders does not need to be held at a geographic  
18 location if the meeting is held by means of electronic  
19 technology in a fashion pursuant to which the shareholders have  
20 a reasonable opportunity to participate in the meeting, read or  
21 hear the proceedings substantially concurrently with their  
22 occurrence, vote on matters submitted to the shareholders and,  
23 subject to such guidelines and procedures as the board of  
24 directors may adopt, make appropriate motions and comment on the  
25 business of the meeting. Any guidelines or procedures adopted by  
26 the board must comply with sections 1709(c) (relating to conduct  
27 of shareholders meeting) and 1758(e) (relating to voting rights  
28 of shareholders).

29 § 1709. Conduct of shareholders meeting.

30 \* \* \*

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

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

\* \* \*

Section 41. Section 1711 of Title 15 is amended by adding a subsection to read:

§ 1711. Alternative provisions.

\* \* \*

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

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

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

(a) [Directors] General rule.--A director of a business corporation shall stand in a fiduciary relation to the corporation and shall perform [his duties as] the duties of a director, including [his] duties as a member of any committee of the board upon which [he] the director may serve, in good faith, in a manner [he] the director reasonably believes to be in the

1 best interests of the corporation and with such care, including  
2 ~~[reasonable inquiry,]~~ the skill and diligence[, as] that a  
3 person of ordinary prudence would use under similar  
4 circumstances~~[.]~~ and reasonable inquiry into those issues  
5 required by the statutes of this Commonwealth to be considered  
6 in the circumstances and those interests and factors listed or  
7 described in section 1715(a) (relating to exercise of powers  
8 generally) or 1716(a) (relating to alternative standard) that  
9 the director considers appropriate. This subsection is subject  
10 to subsection (d) where applicable.

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

17 (1) One or more officers or employees of the corporation  
18 or an affiliate of the corporation whom the director  
19 reasonably believes to be reliable and competent in the  
20 matters presented.

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

24 (3) A committee of the board upon which ~~[he]~~ the  
25 director does not serve, duly designated in accordance with  
26 law, as to matters within its designated authority, which  
27 committee the director reasonably believes to merit  
28 confidence.

29 (b) Effect of actual knowledge.--A director ~~[shall not be]~~  
30 is not considered to be acting in good faith ~~[if he has]~~ under

1 subsection (a.1) if the director has actual knowledge concerning  
2 the matter [in question that would cause his] that causes the  
3 director to believe reliance [to be] is unwarranted.

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

12 (d) Business judgment rule.--A director who makes a business  
13 judgment in good faith fulfills the duties under this section  
14 if:

15 (1) the subject of the business judgment does not  
16 involve self-dealing by the director or an associate or  
17 affiliate of the director;

18 (2) the director is informed with respect to the subject  
19 of the business judgment to the extent the director  
20 reasonably believes to be appropriate under the  
21 circumstances; and

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

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

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

30 (2) in a damage action, that the breach was the legal

1 cause of damage suffered by the corporation.

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

5 § 1713. Personal liability of directors.

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

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

12 \* \* \*

13 (c) Application.--An amendment or repeal of a provision  
14 adopted under subsection (a) does not affect its application  
15 with respect to an act by a director occurring before the  
16 amendment or repeal unless the provision in effect at the time  
17 of the act explicitly authorizes its amendment or repeal after  
18 an act has occurred.

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

21 Section 44. Sections 1714, 1715(b), (d) and (e)(1)(i), 1716,  
22 1717 and 1718 of Title 15 are amended to read:

23 § 1714. [Notation of dissent] Presumption of assent.

24 A director of a business corporation who is present at a  
25 meeting of its board of directors, or of a committee of the  
26 board, at which action on any corporate matter is taken on which  
27 the director is generally competent to act, shall be presumed to  
28 have assented to the action taken unless [his dissent] the  
29 director's dissent, abstention or vote against the matter is  
30 entered in the minutes of the meeting or unless [he files his

1 written dissent] the director delivers to the secretary of the  
2 meeting before the adjournment thereof a dissent in record form  
3 to the action [with the secretary of the meeting before the  
4 adjournment thereof] or transmits the dissent [in writing] in  
5 record form to the secretary of the corporation immediately  
6 after the adjournment of the meeting. The right to dissent shall  
7 not apply to a director who voted in favor of the action.  
8 Nothing in this subchapter shall bar a director from asserting  
9 that minutes of the meeting incorrectly omitted [his dissent]  
10 the director's dissent, abstention or vote against if, promptly  
11 upon receipt of a copy of such minutes, [he] the director  
12 notifies the secretary [in writing] of the corporation in record  
13 form of the asserted omission or inaccuracy.

14 § 1715. Exercise of powers generally.

15 \* \* \*

16 (b) Consideration of interests and factors.--The board of  
17 directors, committees of the board and individual directors  
18 shall not be required, in considering the best interests of the  
19 corporation or the effects of any action, to regard any  
20 corporate interest or the interests of any particular group  
21 affected by such action as a dominant or controlling interest or  
22 factor. The consideration of interests and factors in the manner  
23 described in this subsection and in subsection (a) shall not  
24 constitute a violation of section 1712 (relating to standard of  
25 care [and], justifiable reliance and business judgment rule).  
26

26 \* \* \*

27 (d) Presumption.--[Absent breach of fiduciary duty, lack of  
28 good faith or self-dealing, any act as the board of directors, a  
29 committee of the board or an individual director shall be  
30 presumed to be in the best interests of the corporation.] In

1 assessing whether the standard set forth in section 1712 or 1728  
2 (relating to interested directors or officers; quorum) has been  
3 satisfied, there shall not be any greater obligation to justify,  
4 or higher burden of proof with respect to, any act as the board  
5 of directors, any committee of the board or any individual  
6 director relating to or affecting an acquisition or potential or  
7 proposed acquisition of control of the corporation than is  
8 applied to any other act as a board of directors, any committee  
9 of the board or any individual director. Notwithstanding section  
10 1712(d) and the preceding [provisions] provision of this  
11 subsection, any act as the board of directors, a committee of  
12 the board or an individual director relating to or affecting an  
13 acquisition or potential or proposed acquisition of control to  
14 which a majority of the disinterested directors shall have  
15 assented shall be presumed to satisfy the standard set forth in  
16 section 1712 or 1728, unless it is proven by clear and  
17 convincing evidence that the disinterested directors did not  
18 assent to such act in good faith after reasonable investigation.

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

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

22 (i) A director who has a direct or indirect  
23 financial or other interest in the person acquiring or  
24 seeking to acquire control of the corporation or who is  
25 an affiliate or associate[, as defined in section 2552  
26 (relating to definitions),] of, or was nominated or  
27 designated as a director by, a person acquiring or  
28 seeking to acquire control of the corporation.

29 \* \* \*

30 § 1716. Alternative standard.

1 (a) General rule.--In discharging the duties of their  
2 respective positions, the board of directors, committees of the  
3 board and individual directors of a business corporation may, in  
4 considering the best interests of the corporation, consider the  
5 effects of any action upon employees, upon suppliers and  
6 customers of the corporation and upon communities in which  
7 offices or other establishments of the corporation are located,  
8 and all other pertinent factors. The consideration of those  
9 factors shall not constitute a violation of section 1712  
10 (relating to standard of care [and], justifiable reliance and  
11 business judgment rule).

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

15 (c) Cross reference.--See section 1711 (relating to  
16 alternative provisions).  
17 § 1717. Limitation on standing.

18 The duty of the board of directors, committees of the board  
19 and individual directors under section 1712 (relating to  
20 standard of care [and], justifiable reliance and business  
21 judgment rule) is solely to the business corporation and not to  
22 any shareholder or creditor or any other person or group, and  
23 may be enforced directly by the corporation or may be enforced  
24 by [a shareholder, as such, by] an action in the right of the  
25 corporation, and may not be enforced directly by a shareholder  
26 or creditor or by any other person or group. Notwithstanding the  
27 preceding sentence, sections 1715(a) and (b) (relating to  
28 exercise of powers generally) and 1716(a) (relating to  
29 alternative standard) do not impose upon the board of directors,  
30 committees of the board and individual directors any legal or



1 equitable duties, obligations or liabilities or create any right  
2 or cause of action against, or basis for standing to sue, the  
3 board of directors, committees of the board and individual  
4 directors.

5 § 1718. Inconsistent articles ineffective.

6 Except as otherwise expressly provided in this subchapter,  
7 the articles may not contain any provision that relaxes,  
8 restricts, is inconsistent with or supersedes any provision of  
9 this subchapter. [The last sentence of section 1306(b)] Section  
10 1306(b)(2) (relating to other provisions authorized) shall not  
11 apply to this subchapter.

12 Section 45. Title 15 is amended by adding a section to read:  
13 § 1719. Renunciation of business opportunities.

14 The articles of incorporation, or an action of the board of  
15 directors, may renounce any interest or expectancy of a business  
16 corporation in, or in being offered an opportunity to  
17 participate in, a specified business opportunity or specified  
18 classes or categories of business opportunities that are  
19 presented to the corporation or to one or more of its directors,  
20 officers or shareholders.

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

23 § 1721. Board of directors.

24 (a) General rule.--Unless otherwise provided by statute or  
25 in a bylaw adopted by the shareholders, all powers enumerated in  
26 section 1502 (relating to general powers) and elsewhere in this  
27 [subpart] title or otherwise vested by law in a business  
28 corporation shall be exercised by or under the authority of the  
29 board of directors, and the business and affairs of every  
30 business corporation shall be managed by or under the direction

1 of, a board of directors. If any such provision is made in the  
2 bylaws, the powers and duties conferred or imposed upon the  
3 board of directors by this [subpart] title shall be exercised or  
4 performed to such extent and by such person or persons as shall  
5 be provided in the bylaws. Persons upon whom the [liabilities]  
6 powers and duties of directors are imposed by this section shall  
7 to that extent be subject to the liabilities imposed, and  
8 entitled to the rights and immunities conferred, by or pursuant  
9 to this part and other provisions of law upon directors of a  
10 corporation.

11 \* \* \*

12 § 1722. Qualifications of directors.

13 \* \* \*

14 (b) Cross [reference] references.--See [section] sections  
15 2530 (relating to qualifications of directors) and 3131  
16 (relating to directors).

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

19 § 1724. Term of office of directors.

20 (a) General rule.--Each director of a business corporation  
21 shall hold office until the expiration of the term for which  
22 [he] the director was selected and until [his] a successor has  
23 been selected and qualified or until [his] the director's  
24 earlier death, resignation or removal. [Any director may resign  
25 at any time upon written notice to the corporation. The  
26 resignation shall be effective upon receipt thereof by the  
27 corporation or at such subsequent time as shall be specified in  
28 the notice of resignation.] Each director shall be selected for  
29 the term of office provided in the bylaws, which shall be one  
30 year [and until his successor has been selected and qualified or

1 until his earlier death, resignation or removal,] unless the  
2 board is classified as provided by subsection (b). A decrease in  
3 the number of directors shall not have the effect of shortening  
4 the term of any incumbent director.

5 \* \* \*

6 (c) Resignation.--A director may resign at any time upon  
7 notice in record form to the corporation. A resignation that is  
8 not conditioned upon acceptance by the board of directors shall  
9 be effective upon receipt by the corporation of the notice of  
10 resignation, unless the notice specifies a later effective time  
11 or an effective time determined upon the happening of an event  
12 or events. If a resignation is conditioned upon its acceptance  
13 by the board, a decision by the board to accept or reject the  
14 resignation shall be made by the board in accordance with  
15 Subchapter B (relating to fiduciary duty).

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

18 § 1725. Selection of directors.

19 \* \* \*

20 (b) Vacancies.--

21 \* \* \*

22 (3) At any time when the offices of all of the directors  
23 of a corporation are vacant, any officer or shareholder, or a  
24 fiduciary for a shareholder, may call a special meeting of  
25 shareholders for the purpose of electing directors. This  
26 paragraph shall not apply if the articles or bylaws, or an  
27 agreement among the shareholders of a closely held  
28 corporation, provide that all of the powers and duties of  
29 directors are exercised by persons other than directors.

30 \* \* \*

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

4   § 1727. Quorum of and action by directors.

5       \* \* \*

6       (b) Action by consent.--Unless otherwise restricted in the  
7 bylaws, any action required or permitted to be approved at a  
8 meeting of the directors may be approved without a meeting [if]  
9 by a consent or consents to the action in record form [are].  
10 Except as provided in subsection (c), the consents must be  
11 signed, before, on or after the effective [date] time of the  
12 action by all of the directors in office [on the date the first  
13 consent is signed] at the effective time. The consent or  
14 consents must be filed with the minutes of the proceedings of  
15 the board of directors.

16       (c) Effectiveness of consent.--A consent may provide, or a  
17 person signing a consent, whether or not then a director, may  
18 instruct in record form, that the consent will be effective at a  
19 future time, including a time determined upon the happening of  
20 an event. In the case of a consent signed by a person not a  
21 director at the time of signing, the consent is effective at the  
22 stated effective time if the person who signed the consent is a  
23 director at the effective time and did not revoke the consent in  
24 record form prior to the effective time. A consent is effective  
25 at the stated effective time even if one or more signers are no  
26 longer directors at the effective time unless the consent has  
27 been revoked by a signer who is a director at the effective  
28 time. A signer of a consent may revoke the signer's consent in  
29 record form until the consent becomes effective.

30   § 1728. Interested directors or officers; quorum.

1 (a) General rule.--A contract or transaction between a  
2 business corporation and one or more of its directors or  
3 officers or between a business corporation and another domestic  
4 or foreign corporation for profit or not-for-profit,  
5 partnership, joint venture, trust or other enterprise in which  
6 one or more of [its] the corporation's directors or officers are  
7 [directors] governors or officers of the other association or  
8 have a financial or other interest, [shall not be] is not void  
9 or voidable solely for that reason, or solely because the  
10 director or officer of the corporation is present at or  
11 participates in the meeting of the board of directors that  
12 authorizes the contract or transaction, or solely because [his  
13 or their votes are] the vote of the director or officer is  
14 counted for that purpose, if:

15 (1) the material facts as to the relationship or  
16 interest and as to the contract or transaction are disclosed  
17 or are known to the board of directors and the board  
18 authorizes the contract or transaction by the affirmative  
19 votes of a majority of the disinterested directors even  
20 though the disinterested directors are less than a quorum;

21 (2) the material facts as to [his] the relationship or  
22 interest and as to the contract or transaction are disclosed  
23 or are known to the shareholders entitled to vote thereon and  
24 the contract or transaction is specifically approved in good  
25 faith by vote of those shareholders; [or]

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

29 (4) the contract or transaction satisfies subsection (d)  
30 or (e).

1       \* \* \*

2       (d) Common governors or officers with not wholly owned  
3 associations.--A contract or transaction between a business  
4 corporation and an association that is not wholly owned by the  
5 corporation, is not void or voidable solely on the grounds that  
6 a person who is a director or officer of the corporation is also  
7 a governor or officer of the other association if:

8           (1) one of the conditions set forth in subsection (a)  
9 (1), (2) or (3) is satisfied; or

10          (2) (i) the director or officer does not participate  
11 personally and substantially in negotiating the  
12 transaction for either the corporation or the other  
13 association; and

14          (ii) if the transaction is approved by the governors  
15 of either association, the person that is a governor or  
16 officer of each association does not cast a vote that  
17 would be necessary at a meeting to approve the  
18 transaction on behalf of either association.

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

25       (f) Cross references.--See sections 1715(d) (relating to  
26 exercise of powers generally) and 1730 (relating to compensation  
27 of directors).

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

30       § 1730. Compensation of directors.

1     (a) General rule.--Except as otherwise restricted in the  
2 bylaws, the board of directors of a business corporation [~~shall~~  
3 ~~have~~] has the authority to fix the compensation of directors for  
4 their services as directors [~~and a~~], regardless of the personal  
5 interest of the directors. A director may be a salaried officer  
6 of the corporation.

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

10 § 1731. Executive and other committees of the board.

11     (a) Establishment and powers.--Unless otherwise restricted  
12 in the bylaws:

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

16         (2) Any committee, to the extent provided in the  
17 [~~resolution~~] action of the board of directors or in the  
18 bylaws, shall have and may exercise all of the powers and  
19 authority of the board of directors except that a committee  
20 shall not have any power or authority as to the following:

21             (i) The submission to shareholders of any action or  
22 matter, other than the election or removal of directors,  
23 requiring approval of shareholders under this subpart or  
24 Chapter 3 (relating to entity transactions).

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

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

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

1           only by the board.

2           (v)   Action on matters committed by the bylaws or  
3           [resolution] action of the board of directors exclusively  
4           to another committee of the board.

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

16          \* \* \*

17   § 1732.   Officers.

18          (a)   General rule.--Every business corporation shall have a  
19          president, a secretary and a treasurer, or persons who shall act  
20          as such, regardless of the name or title by which they may be  
21          designated, elected or appointed and may have such other  
22          officers [and assistant officers] as it may authorize from time  
23          to time. The bylaws may prescribe special qualifications for the  
24          officers. The president and secretary shall be natural persons  
25          of full age. The treasurer may be a corporation, but if a  
26          natural person shall be of full age. Unless otherwise restricted  
27          in the bylaws, it shall not be necessary for the officers to be  
28          directors. Any number of offices may be held by the same person.

29          (b) Election, appointment and term of office.--The officers  
30          [and assistant officers] shall be elected or appointed at such



1 time, in such manner and for such terms as may be fixed by or  
2 pursuant to the bylaws. Unless otherwise provided by or pursuant  
3 to the bylaws, each officer shall hold office for a term of one  
4 year and until [his] the officer's successor has been selected  
5 and qualified or until [his] the officer's earlier death,  
6 resignation or removal.

7 (c) Resignation.--Any officer may resign at any time upon  
8 written notice to the corporation. The resignation shall be  
9 effective upon receipt thereof by the corporation or at such  
10 subsequent time as may be specified in the notice of  
11 resignation.

12 (d) Bonding.--The corporation may secure the fidelity of any  
13 or all of the officers by bond or otherwise.

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

17 [(b)] (f) Authority.--Unless otherwise provided in the  
18 bylaws, all officers of the corporation, as between themselves  
19 and the corporation, shall have such authority and perform such  
20 duties in the management of the corporation as may be provided  
21 by or pursuant to the bylaws or, in the absence of controlling  
22 provisions in the bylaws, as may be determined by or pursuant to  
23 [resolutions or orders] actions of the board of directors.

24 [(c) Cross references.--See sections 1110 (relating to  
25 annual report information), 1712(c) (relating to officers) and  
26 3132 (relating to officers).]

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

1 Section 51. Title 15 is amended by adding sections to read:

2 § 1734. Officer's standard of care and justifiable reliance.

3 (a) General rule.--Except as otherwise provided in the  
4 bylaws, an officer shall perform the officer's duties in good  
5 faith, in a manner the officer reasonably believes to be in the  
6 best interests of the business corporation and with such care,  
7 including reasonable inquiry, skill and diligence, as a person  
8 of ordinary prudence would use under similar circumstances. A  
9 person who performs the duties of an officer in accordance with  
10 this subsection, and any provision of the bylaws that modify  
11 this subsection, shall not be liable to the corporation by  
12 reason of having been an officer of the corporation.

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

18 (1) One or more other officers or employees of the  
19 corporation or an affiliate of the corporation whom the  
20 officer reasonably believes to be reliable and competent in  
21 the matters presented.

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

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

29 (d) Business judgment rule.--Except as otherwise restricted  
30 in the bylaws, an officer who makes a business judgment in good

faith fulfills the duties of an officer if:

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

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

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

(e) Burden of proof.--A person challenging the conduct of an officer under this section has the burden of proving a breach of the duty of care, including the provisions of subsections (c) and (d), and, in a damage action, the burden of proving that the breach was the legal cause of damage suffered by the corporation.

§ 1735. Personal liability of officers.

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

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

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

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

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

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

(c) Application.--An amendment or repeal of a provision

1 described in subsection (a) does not affect its application with  
2 respect to an act by an officer occurring before the amendment  
3 or repeal unless the provision in effect at the time of the act  
4 explicitly authorizes its amendment or repeal after an act has  
5 occurred.

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

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

10 Section 52. Sections 1743 and 1750 of Title 15 is amended to  
11 read:

12 § 1743. Mandatory indemnification.

13 (a) General rule.--To the extent that a [representative]  
14 present or former director or officer of a business corporation  
15 has been successful on the merits or otherwise in defense of any  
16 action or proceeding referred to in section 1741 (relating to  
17 third-party actions) or 1742 (relating to derivative and  
18 corporate actions) or in defense of any claim, issue or matter  
19 therein, [he] the director or officer shall be indemnified  
20 against expenses (including attorney fees) actually and  
21 reasonably incurred by [him] the director or officer in  
22 connection therewith.

23 (b) Prospective application.--The limitation of the scope of  
24 subsection (a) to a present or former director or officer  
25 applies only to acts occurring after (insert the effective date  
26 of the amendment of subsection (a)).

27 § 1750. Duration and extent of coverage.

28 The indemnification and advancement of expenses provided by,  
29 or granted pursuant to, this subchapter shall, unless otherwise  
30 provided when authorized or ratified, continue as to a person

1 who has ceased to be a representative of the corporation and  
2 shall inure to the benefit of the heirs and personal  
3 representative of that person. A right to indemnification or to  
4 advancement of expenses arising under a provision of the  
5 articles or bylaws may not be eliminated or impaired by an  
6 amendment to or repeal of the provision after the occurrence of  
7 an act that is the subject of the threatened, pending or  
8 completed action or proceeding, whether civil, criminal,  
9 administrative or investigative, for which indemnification or  
10 advancement of expenses is sought, unless the provision in  
11 effect at the time of the act explicitly authorizes the  
12 elimination or impairment after an act has occurred.

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

16 § 1755. Time of holding meetings of shareholders.

17 \* \* \*

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

20 (1) by the board of directors;

21 (2) unless otherwise provided in the articles, by  
22 shareholders entitled to cast at least 20% of the votes that  
23 all shareholders are entitled to cast at the particular  
24 meeting; [or]

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

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

29 (b.1) Duties of secretary.--At any time, upon written  
30 request of any person who has called a special meeting, it shall

1 be the duty of the secretary to fix the time of the meeting  
2 which, if the meeting is called pursuant to a statutory right,  
3 shall be held within any period specified by this subpart, or if  
4 no period is specified, not more than 60 days after the receipt  
5 of the request. If the secretary neglects or refuses to fix the  
6 time of the meeting, the person or persons calling the meeting  
7 may do so. See [section] sections 2521 (relating to call of  
8 special meetings of shareholders) and 2565(a) (relating to  
9 procedure for establishing voting rights of control shares).

10 (c) Adjournments.--Adjournments of any regular or special  
11 meeting may be taken but any meeting at which directors are to  
12 be elected shall be adjourned [only] for no longer than from day  
13 to day, or for such longer periods not exceeding 15 days each as  
14 the shareholders present and entitled to vote shall direct,  
15 until the directors have been elected. See section 2522  
16 (relating to adjournment [of meetings] or postponement of  
17 meeting of shareholders).

18 (d) Postponement or cancellation.--The board of directors  
19 may postpone, or delegate to an officer the authority to  
20 postpone, the annual or other regular meeting of shareholders,  
21 subject to the provision of subsection (a) providing for a  
22 meeting each calendar year. Unless otherwise restricted in the  
23 bylaws or otherwise provided by statute, the holding of a  
24 special meeting of shareholders may be postponed for not more  
25 than 15 days or may be canceled by the person or group that  
26 called the special meeting. In the case of a postponed or  
27 canceled meeting, prompt notice in record form of the  
28 postponement or cancellation must be given to the shareholders  
29 entitled to vote at the meeting.

30 [(d)] (e) Cross reference.--See section 1106(b)(4) (relating

1 to uniform application of subpart).

2 Section 54. Sections 1756(a)(1), (3) and (4), 1758(a) and  
3 (b), 1763, 1764 and 1766 of Title 15 are amended to read:

4 § 1756. Quorum.

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

9 (1) [The] A quorum for the purposes of consideration and  
10 action on a particular matter at a meeting shall consist of:

11 (i) the presence of shareholders entitled to cast at  
12 least a majority of the votes that all shareholders are  
13 entitled to cast on [a particular matter to be acted upon  
14 at the meeting shall constitute a quorum for the purposes  
15 of consideration and action on] the matter[.]; and

16 (ii) if any shareholders are entitled to vote as a  
17 class on the matter, the presence of shareholders  
18 entitled to cast at least a majority of the votes  
19 entitled to be cast in the class vote.

20 \* \* \*

21 (3) If a meeting cannot be organized because a quorum  
22 has not attended, those present may, except as otherwise  
23 provided in this subpart, adjourn the meeting to [such] a  
24 time and place [as] they may determine.

25 (4) If a proxy casts a vote or takes other action on  
26 behalf of a shareholder on any issue other than a procedural  
27 motion considered at a meeting of shareholders, the  
28 [shareholder] shares for which the proxy has so acted shall  
29 be deemed to be present during the entire meeting for  
30 purposes of determining whether a quorum is present for

1 consideration of any other issue.

2 \* \* \*

3 § 1758. Voting rights of shareholders.

4 (a) General rule.--Unless otherwise provided in the  
5 articles, every shareholder of a business corporation shall be  
6 entitled to one vote for every share standing in [his] the  
7 shareholder's name on the [books of the corporation] share  
8 register. The articles may restrict the number of votes that a  
9 single holder or beneficial owner, or such a group of holders or  
10 owners as the bylaws may define, of shares of any class or  
11 series may directly or indirectly cast in the aggregate for the  
12 election of directors or on any other matter coming before the  
13 shareholders on the basis of any facts or circumstances that are  
14 not manifestly unreasonable, including without limitation:

15 (1) the number of shares of any class or series held by  
16 such single holder or beneficial owner or group of holders or  
17 owners; or

18 (2) the length of time shares of any class or series  
19 have been held by such single holder or beneficial owner or  
20 group of holders or owners.

21 (b) Procedures for election of directors.--The following  
22 apply to the election of directors:

23 (1) Unless otherwise restricted in the bylaws, in  
24 elections for directors at a meeting of shareholders held at  
25 a geographic location, voting need not be by ballot unless  
26 required by vote of the shareholders before the voting for  
27 election of directors begins. The shareholders do not have  
28 the right to vote by ballot at a meeting that is not held at  
29 a geographic location pursuant to section 1708(c) (relating  
30 to use of conference telephone or other electronic



1 technology).

2 (2) Unless otherwise provided in a bylaw adopted by the  
3 shareholders, the candidates for election as directors  
4 receiving the highest number of votes from each class or  
5 group of classes, if any, entitled to elect directors  
6 separately up to the number of directors to be elected by the  
7 class or group of classes shall be elected. This paragraph  
8 applies retroactively, and a bylaw described in this  
9 paragraph shall be valid if it was adopted after January 1,  
10 2000.

11 (3) If at any meeting of shareholders, directors of more  
12 than one class are to be elected, each class of directors  
13 shall be elected in a separate election.

14 \* \* \*

15 § 1763. Determination of shareholders of record.

16 (a) Fixing record date.--Unless otherwise restricted in the  
17 bylaws, the board of directors of a business corporation may fix  
18 a time prior to the date of any meeting of shareholders as a  
19 record date for the determination of the shareholders entitled  
20 to notice of[, or to vote at,] the meeting, which time, except  
21 in the case of an adjourned or postponed meeting, shall be not  
22 more than 90 days prior to the date of the meeting of  
23 shareholders. If the board fixes a record date for notice of a  
24 meeting, that date shall also be the record date for determining  
25 the shareholders entitled to vote at the meeting unless the  
26 board determines, at the time it fixes the record date for  
27 notice, that a later date on or before the date of the meeting  
28 shall be the date for determining the shareholders entitled to  
29 vote. Only shareholders of record on the date fixed shall be so  
30 entitled notwithstanding any transfer of shares on the books of

1 the corporation after any record date fixed as provided in this  
2 subsection. Unless otherwise provided in the bylaws, the board  
3 of directors may similarly fix a record date for the  
4 determination of shareholders of record for any other purpose. A  
5 record date may not precede the date on which the board acts to  
6 fix that record date. The shareholders of record shall be  
7 determined as of the close of business on the record date unless  
8 the board fixes a different time of day for that determination.  
9 When a determination of shareholders of record has been made as  
10 provided in this section for purposes of a meeting, the  
11 determination shall apply to any adjournment or postponement  
12 thereof unless otherwise restricted in the bylaws or unless the  
13 board fixes a new record date for the adjourned meeting.

14 (b) Determination when a record date is not fixed.--Unless  
15 otherwise provided in the bylaws, if a record date is not fixed:

16 (1) The [record date for determining shareholders  
17 entitled to notice of or to vote at a meeting of shareholders  
18 shall be at the] close of business on the day next preceding  
19 the day on which notice is given or, if notice is waived, at  
20 the close of business on the day immediately preceding the  
21 day on which the meeting is held[.] shall be the record date  
22 for determining shareholders entitled to notice of or to vote  
23 at a meeting of shareholders.

24 (2) The close of business on the day on which the first  
25 consent, request or petition is filed in record form with the  
26 secretary of the corporation shall be the record date for  
27 determining shareholders entitled to:

28 (i) express consent or dissent to corporate action  
29 [in writing] without a meeting, when prior action by the  
30 board of directors is not necessary;

(ii) call a special meeting of the shareholders; or  
(iii) propose an amendment of the articles. [;  
shall be at the close of business on the day on which the  
first written consent or dissent, request for a special  
meeting or petition proposing an amendment of the articles is  
filed with the secretary of the corporation.]

(3) The record date for determining shareholders for any  
other purpose shall be at the close of business on the day on  
which the board of directors adopts the resolution relating  
thereto.

(c) Certification by nominee.--If the bylaws so provide, the  
board of directors may adopt a procedure whereby a shareholder  
of the corporation may certify in writing to the corporation  
that all or a portion of the shares registered in the name of  
the shareholder are held for the account of a specified person  
or persons. [The resolution of the board may set forth:] The  
persons specified in a certification shall be deemed, for the  
purposes set forth in the certification, to be the holders of  
record of the number of shares specified in place of the  
shareholder making the certification. A certification procedure  
may include provisions on:

(1) The classification of shareholder who may certify.

(2) The purpose or purposes for which the certification  
may be made.

(3) The form of certification and information to be  
contained therein.

(4) If the certification is with respect to a record  
date, the time after the record date within which the  
certification must be received by the corporation.

(5) Such other provisions with respect to the procedure

as are deemed necessary or desirable.

[Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be deemed, for the purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.]

§ 1764. Voting lists.

(a) General rule.--The officer or agent having charge of the [transfer books for shares] share register of a business corporation shall make a complete list of the shareholders entitled to vote at any meeting of shareholders, arranged in alphabetical order, with the address of and the number of shares held by each. This section does not require the corporation to include electronic mail addresses or other electronic contact information on the list. The list shall be produced and kept open at the time and place of each meeting of shareholders [of a nonregistered corporation held at a geographic location] and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. [See section 2529 (relating to voting lists).] A shareholder and any agent or attorney who inspects the list may use the information on the list only for purposes related to the meeting and must keep the information on the list confidential.

(b) Effect of list.--Failure to comply with the requirements of this section shall not affect the validity of any action taken at a meeting prior to a demand at the meeting by any shareholder entitled to vote thereat to examine the list. The original share register [or transfer book], or a duplicate thereof kept in this Commonwealth, shall be prima facie evidence

1 as to who are the shareholders entitled to examine the list or  
2 share register [or transfer book] or to vote at any meeting of  
3 shareholders.

4 (c) Electronic meetings.--If a meeting of shareholders [of a  
5 nonregistered corporation] is not held at a geographic location,  
6 the corporation shall make the list of shareholders required by  
7 subsection (a) available in a reasonably accessible manner.

8 (d) Cross reference.--See section 2529 (relating to voting  
9 lists).

10 § 1766. Consent of shareholders in lieu of meeting.

11 (a) Unanimous consent.--Unless otherwise restricted in the  
12 bylaws, any action required or permitted to be taken at a  
13 meeting of the shareholders or of a class of shareholders of a  
14 business corporation may be taken without a meeting if a consent  
15 or consents to the action in record form are signed, before, on  
16 or after the effective [date] time of the action by all of the  
17 shareholders who would be entitled to vote at a meeting for such  
18 purpose. The consent or consents must be filed with the minutes  
19 of the proceedings of the shareholders.

20 (b) Partial consent.--If the bylaws so provide, any action  
21 required or permitted to be taken at a meeting of the  
22 shareholders or of a class of shareholders may be taken without  
23 a meeting upon the signed consent or consents of shareholders  
24 who would have been entitled to cast the minimum number of votes  
25 that would be necessary to authorize the action at a meeting at  
26 which all shareholders entitled to vote thereon were present and  
27 voting. The [consents shall] consent or consents must be filed  
28 in record form with the minutes of the proceedings of the  
29 shareholders.

30 (c) Effectiveness of action by partial consent.--An action

1 taken pursuant to subsection (b) to approve a transaction under  
2 Chapter 3 (relating to entity transactions) shall not become  
3 effective until after at least ten days' notice of the action  
4 has been given to each shareholder entitled to vote thereon who  
5 has not consented thereto. Any other action may become effective  
6 immediately, but prompt notice that the action has been taken  
7 shall be given to each shareholder entitled to vote thereon that  
8 has not consented. Notice under this subsection must include the  
9 information that a notice of a meeting of shareholders seeking  
10 approval of the action would have been required to contain. This  
11 subsection may not be relaxed by any provision of the articles.

12 (d) Escrowing of consents.--A consent may provide, or a  
13 person signing a consent, whether or not then a shareholder, may  
14 instruct in record form, that the consent will be effective at a  
15 future time, including a time determined upon the happening of  
16 an event. In the case of a consent signed by a person not a  
17 shareholder at the time of signing, the consent is effective at  
18 the stated effective time if the person who signed the consent  
19 is a shareholder at the effective time and did not revoke the  
20 consent in record form prior to the effective time. A consent is  
21 effective at the stated effective time, even if one or more  
22 signers are no longer shareholders at the effective time if  
23 consents by shareholders entitled to cast the required number of  
24 votes have not been revoked before the effective time.

25 (e) Revocation of consent.--Unless otherwise provided in a  
26 consent, a signer of the consent may revoke the signer's consent  
27 in record form until it becomes effective.

28 [(d)] (f) Cross references.--See sections 1702 (relating to  
29 manner of giving notice) and 2524 (relating to consent of  
30 shareholders in lieu of meeting).

1 Section 55. Section 1781(a)(1) and (c) and 1782(a) and (d)  
2 of Title 15 are amended and the sections are amended by adding  
3 subsections to read:

4 § 1781. Derivative action.

5 (a) General rule.--Subject to section 1782 (relating to  
6 eligible shareholder plaintiffs and security for costs) and  
7 [subsection (b)] subsections (b) and (g), a plaintiff may  
8 maintain a derivative action to enforce a right of a business  
9 corporation only if:

10 (1) the plaintiff first makes a demand on the  
11 corporation or the board of directors requesting that [it  
12 cause the corporation to] the corporation bring an action to  
13 enforce the right, and:

14 (i) if a special litigation committee is not  
15 appointed under section 1783 (relating to special  
16 litigation committee), [the corporation does not bring  
17 the action within a reasonable time; or] the board  
18 determines that:

19 (A) an action based on some or all of the claims  
20 asserted in the demand not be brought by the  
21 corporation but that the corporation not object to an  
22 action being brought by the party that made the  
23 demand; or

24 (B) an action already commenced continue under  
25 the control of the plaintiff; or

26 (ii) if a special litigation committee is appointed  
27 under section 1783, a determination is made:

28 (A) under section 1783(e)(1) that the  
29 corporation not object to the action; or

30 (B) under section 1783(e)(5)(i) that the

1           plaintiff continue the action;

2           \* \* \*

3           (c) Contents of demand.--A demand under this section must be  
4 in record form and give notice with reasonable specificity of:

5           (1) the [essential] material facts relied upon to  
6 support each of the claims made in the demand[.] against each  
7 proposed defendant; and

8           (2) in the case of a derivative action commenced by a  
9 shareholder, the basis on which the person making the demand  
10 has standing under section 1782.

11          \* \* \*

12          (g) Exception.--This subchapter does not apply to an action  
13 brought by a holder of an equity security of a business  
14 corporation under Subchapter H of Chapter 25 (relating to  
15 disgorgement by certain controlling shareholders following  
16 attempts to acquire control).

17 § 1782. Eligible shareholder plaintiffs and security for costs.

18          (a) General rule.--Except as provided in subsection (b), in  
19 any action or proceeding brought [to enforce a secondary right  
20 on the part of] by one or more shareholders of a business  
21 corporation [against any present or former officer or director  
22 of the corporation because the corporation refuses to enforce  
23 rights that may properly be asserted by it, each plaintiff must  
24 aver and it must be made to appear that each plaintiff] to  
25 enforce rights that the plaintiff claims could be, but have not  
26 been, asserted by the corporation, each plaintiff has standing  
27 to commence and maintain the derivative action only if the  
28 plaintiff:

29           (1) was a shareholder of the corporation or owner of a  
30 beneficial interest in the shares at the time of the



1 transaction or conduct of which [he] the plaintiff complains,  
2 or that [his] the plaintiff's shares or beneficial interest  
3 in the shares devolved upon [him] the plaintiff by operation  
4 of law from a person who was a shareholder or owner of a  
5 beneficial interest in the shares at that time[.]; and

6 (2) continues to hold the shares until the time of  
7 judgment, unless the failure to do so is the result of  
8 corporate action that:

9 (i) was done merely to eliminate derivative claims;  
10 or

11 (ii) has the effect of a reorganization that does  
12 not affect the plaintiff's ownership of the business  
13 enterprise.

14 \* \* \*

15 (d) Failure to maintain ownership.--If a plaintiff loses the  
16 right to maintain a derivative action under subsection (a) (2),  
17 the court may entertain a motion by the corporation to  
18 substitute the corporation as the named plaintiff.

19 [(d)] (e) Cross reference.--See section 4146 (relating to  
20 provisions applicable to all foreign corporations).

21 Section 56. Sections 1783 and 1905 of Title 15 are amended  
22 to read:

23 § 1783. Special litigation committee.

24 (a) General rule.--If a business corporation or the board of  
25 directors receives a demand to bring an action to enforce a  
26 right of the corporation, or if a derivative action is commenced  
27 before demand has been made on the corporation or the board, the  
28 board may appoint a special litigation committee to investigate  
29 the claims asserted in the demand or action and to determine on  
30 behalf of the corporation or recommend to the board whether

1 pursuing any of the claims asserted is in the best interests of  
2 the corporation. The corporation [shall send] must deliver a  
3 notice in record form to the person making the demand, or to the  
4 plaintiff if a derivative action has been commenced, promptly  
5 after the appointment of a committee under this section  
6 notifying the person making the demand or the plaintiff that a  
7 committee has been appointed and identifying by name the members  
8 of the committee. A committee may not be appointed under this  
9 section if every shareholder of the corporation is also a  
10 director of the corporation.

11 (b) Discovery stay.--If the board of directors appoints a  
12 special litigation committee and an action is commenced before a  
13 determination has been made under subsection (e):

14 (1) On motion by the business corporation, or the  
15 committee made in the name of the [business] corporation, the  
16 court shall stay discovery for the time reasonably necessary  
17 to permit the committee to complete its investigation, except  
18 for good cause shown.

19 (2) The time for the defendants to plead shall be tolled  
20 until the process provided for under subsection (f) has been  
21 completed.

22 (c) Composition of committee.--A special litigation  
23 committee shall be composed of two or more individuals who:

24 (1) are not interested in the claims asserted in the  
25 demand or action;

26 (2) are capable as a group of objective judgment in the  
27 circumstances; and

28 (3) may, but need not, be shareholders or directors.

29 (c.1) Committee members who are not directors.--A member of  
30 a special litigation committee who is not a director is subject,

1 when acting as a member of the committee, to the liabilities  
2 imposed, and entitled to the rights and immunities conferred,  
3 under Subchapters B (relating to fiduciary duty) and D (relating  
4 to indemnification) and other provisions of law upon directors  
5 of a corporation.

6 (d) Appointment of committee.--A special litigation  
7 committee may be appointed:

8 (1) by a majority of the directors not named as actual  
9 or potential parties in the demand or action; or

10 (2) if all the directors are named as actual or  
11 potential parties in the demand or action, by a majority of  
12 the directors so named.

13 (e) Determination.--After appropriate investigation by a  
14 special litigation committee, the committee [~~or the~~] may  
15 determine, or the committee may recommend to the board of  
16 directors [~~may~~] that the board determine, that it is in the best  
17 interests of the business corporation that:

18 (1) an action based on some or all of the claims  
19 asserted in the demand not be brought by the corporation but  
20 that the corporation not object to an action being brought by  
21 the party that made the demand;

22 (2) an action based on some or all of the claims  
23 asserted in the demand be brought by the corporation;

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 (4) an action not be brought based on any of the claims  
28 asserted in the demand;

29 (5) an action already commenced continue under the  
30 control of:

1 (i) the plaintiff;

2 (ii) the corporation; or

3 (iii) the committee;

4 (6) some or all the claims asserted in an action already  
5 commenced be settled on terms [approved] determined or  
6 recommended by the committee; or

7 (7) an action already commenced be dismissed.

8 (f) Court review and action.--If a special litigation  
9 committee is appointed and a derivative action is commenced  
10 either before or after the committee makes a determination [is  
11 made] under subsection (e) or the board of directors determines  
12 under subsection (e) to accept the recommendation of the  
13 committee:

14 (1) The business corporation or the committee shall file  
15 with the court after a determination is made under subsection  
16 (e) a statement of the determination and a report of the  
17 committee supporting the determination. The corporation or  
18 the committee shall serve each party with a copy of the  
19 determination and report. If the corporation or the committee  
20 moves to file the report under seal, the report shall be  
21 served on the parties subject to an appropriate stipulation  
22 agreed to by the parties or a protective order issued by the  
23 court.

24 (2) The corporation or the committee shall file with the  
25 court a motion, pleading or notice consistent with the  
26 determination under subsection (e).

27 (3) If the determination is one described in subsection  
28 (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall  
29 determine whether the members of the committee met the  
30 qualifications required under subsection (c)(1) and (2) and

1 whether the committee conducted its investigation and made  
2 its determination or recommendation in good faith,  
3 independently and with reasonable care. The plaintiff has the  
4 burden of proving that the committee did not meet those  
5 qualifications or act in the required manner. If the court  
6 finds that the members of the committee met the  
7 qualifications required under subsection (c)(1) and (2) and  
8 that the committee acted in good faith, independently and  
9 with reasonable care, the court shall enforce the  
10 determination of the committee or the board. Otherwise, the  
11 court shall:

12 (i) dissolve any stay of discovery entered under  
13 subsection (b);

14 (ii) allow the action to continue under the control  
15 of the plaintiff; and

16 (iii) permit the defendants to file preliminary  
17 objections, other appropriate pleadings and motions.

18 (g) Certain provisions of articles ineffective.--The  
19 provisions of this section may not be varied by the articles.

20 (h) Interest of a defendant.--The fact that a person is  
21 named as a defendant does not make the person interested in the  
22 claims asserted in a demand or action for purposes of subsection  
23 (c)(1) if the claims against the person:

24 (1) are based only on an allegation that the person  
25 approved of or acquiesced in the transaction or conduct that  
26 is the subject of the claims; and

27 (2) do not otherwise allege with particularity facts  
28 that, if true, raise a significant prospect that the person  
29 would be adjudged liable.

30 § 1905. Proposal of fundamental transactions.

1       Where any provision of this chapter requires that an  
2       amendment of the articles, a plan of asset transfer or the  
3       dissolution of a business corporation be proposed or approved by  
4       action of the board of directors, that requirement shall be  
5       construed to authorize and be satisfied by the [written]  
6       agreement or consent in record form of all of the shareholders  
7       of the corporation entitled to vote thereon.

8       Section 57. Sections ~~1911(b)(2)~~ 1911(A)(1), (B)(2) and (c), <--  
9       1912(a) and (b)(1) and 1914(a) and (c)(2) of Title 15 are  
10      amended and the sections are amended by adding subsections to  
11      read:

12      § 1911. Amendment of articles authorized.

13           \* \* \* <--

14           (A) GENERAL RULE.--A BUSINESS CORPORATION, IN THE MANNER <--  
15      PROVIDED IN THIS SUBCHAPTER, MAY FROM TIME TO TIME AMEND ITS  
16      ARTICLES FOR ONE OR MORE OF THE FOLLOWING PURPOSES:

17           (1) TO ADOPT A NEW NAME, SUBJECT TO THE RESTRICTIONS  
18      PROVIDED IN THIS [SUBPART] TITLE.

19           \* \* \*

20           (b) Exceptions.--An amendment adopted under this section  
21      shall not amend articles in such a way that as so amended they  
22      would not be authorized by this subpart as original articles of  
23      incorporation except that:

24           \* \* \*

25           (2) The corporation shall not be required to revise any  
26      other provision of its articles if the provision is valid and  
27      operative immediately prior to the [filing of the amendment  
28      in] delivery of the amendment to the Department of State for  
29      filing.

30      (c) Amendments pursuant to other provisions.--Amendments to

the articles authorized pursuant to Chapter 2 (relating to entities generally) or 3 (relating to entity transactions) or set forth in statements or certificates permitted or required to be delivered to the department for filing by section 108 (relating to change in location or status of registered office provided by agent) or 138 (relating to statement of correction) or by this subpart need not be proposed or adopted in the manner provided in this subchapter, except to the extent that the provisions of this subchapter have been incorporated into Chapter 2 or 3 or into the provisions authorizing such statements or certificates.

[(c)] (d) Cross [reference.--See section 1521(b)(1)(i) (relating to provisions specifically authorized).] references.-- See sections 224(f) (relating to action on ratification), 321 (relating to approval by business corporation), 1103 (relating to definitions), 1507 (relating to registered office) and 1522(c) (relating to issuance of shares in classes or series; board action).

§ 1912. Proposal of amendments.

(a) General rule.--Every amendment of the articles of a business corporation shall be proposed:

(1) by the adoption by the board of directors of a resolution setting forth the proposed amendment; [or]

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

Except where the approval of the shareholders is unnecessary

1 under this subchapter, the board of directors shall direct that  
2 the proposed amendment be submitted to a vote of the  
3 shareholders entitled to vote thereon. An amendment proposed  
4 pursuant to paragraph (2) shall be submitted to a vote either at  
5 the next annual meeting held not earlier than 120 days after the  
6 amendment is proposed or at a special meeting of the  
7 shareholders called for that purpose by the shareholders. See  
8 sections 1106(b)(4) (relating to uniform application of subpart)  
9 and 2535 (relating to proposal of amendment to articles).] or

10 (3) by action of the board of directors directing the  
11 submission of the proposed amendment to the shareholders  
12 without the board having adopted the amendment.

13 (b) Form of amendment.--The resolution or petition shall  
14 contain the language of the proposed amendment of the articles:

15 (1) by setting forth the existing text of the articles  
16 or the provision thereof that is proposed to be amended, with  
17 brackets around language that is to be deleted and  
18 underscoring under language that is to be added or otherwise  
19 clearly showing the changes to be made; or

20 \* \* \*

21 (d) Submission to the shareholders.--Except where the  
22 approval of the shareholders is unnecessary under this  
23 subchapter, the board of directors shall direct that the  
24 proposed amendment be submitted to a vote of the shareholders  
25 entitled to vote thereon. An amendment proposed under subsection  
26 (a)(2) shall be submitted to a vote either at the next annual  
27 meeting held not earlier than 120 days after the amendment is  
28 proposed or at a special meeting of the shareholders called for  
29 that purpose by the shareholders.

30 (e) Cross references.--See sections 1106(b)(4) (relating to



1 uniform application of subpart) and 2535 (relating to proposal  
2 of amendment to articles).

3 § 1914. Adoption of amendments.

4 (a) General rule.--A vote of the shareholders entitled to  
5 vote on a proposed amendment shall be taken at the next annual  
6 or special meeting of which notice for that purpose has been  
7 duly given. Unless the articles or a specific provision of this  
8 subpart requires a greater vote, a proposed amendment of the  
9 articles of a business corporation shall be adopted upon  
10 receiving the affirmative vote of a majority of the votes cast  
11 by all shareholders entitled to vote thereon and, if any class  
12 or series of shares is entitled to vote thereon as a class, the  
13 affirmative vote of a majority of the votes cast in each such  
14 class vote. Any number of amendments may be submitted to the  
15 shareholders and voted upon by them at one meeting. [Except as  
16 provided in section 1912(a)(2) (relating to proposal of  
17 amendments), a proposed] An amendment of the articles proposed  
18 under section 1912(a)(3) (relating to proposal of amendments)  
19 shall not be deemed to have been adopted by the corporation  
20 unless it has also been approved by the board of directors,  
21 regardless of the fact that the board has directed or suffered  
22 the submission of the amendment to the shareholders for action.

23 \* \* \*

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

27 \* \* \*

28 (2) the amendment is restricted to one or more of the  
29 following:

30 (i) changing the corporate name;

(ii) providing for perpetual existence;

(iii) reflecting a reduction in authorized shares effected by operation of section 1552(a) (relating to power of corporation to acquire its own shares) and, if appropriate, deleting all references to a class or series of shares that is no longer outstanding;

(iv) adding or deleting a provision authorized by section 1528(f) (relating to shares represented by certificates and uncertificated shares); [or]

(v) adding, changing or eliminating the par value of any class or series of shares if the par value of that class or series does not have any substantive effect under the terms of that or any other class or series of shares; or

(vi) implementing an amendment authorized by section 229(h) (relating to limitation on voiding certain defective entity actions);

\* \* \*

(c.1) Board amendment under other sections.--Whenever a provision of this subpart authorizes the board of directors to take any action without the approval of the shareholders and provides that a statement, certificate, plan or other document relating to such action shall be filed in the Department of State and shall operate as an amendment of the articles, the board upon taking such action may, in lieu of filing the statement, certificate, plan or other document, amend the articles under this subsection without the approval of the shareholders to reflect the taking of such action.

(c.2) Effect of board amendment.--An amendment of articles under [this subsection] subsection (c) shall be deemed adopted

1 by the corporation when it has been adopted by the board of  
2 directors pursuant to section 1912 (relating to proposal of  
3 amendments).

4 \* \* \*

5 Section 58. Section 1932(g) of Title 15 is amended to read:  
6 § 1932. Voluntary transfer of corporate assets.

7 \* \* \*

8 (g) Presumption.--The following apply to a determination  
9 whether a corporation has sold, leased, exchanged or otherwise  
10 disposed of all or substantially all, of its property and  
11 assets, with or without good will:

12 (1) A corporation will conclusively be deemed not to  
13 have [sold, leased, exchanged or otherwise disposed of all,  
14 or substantially all, of its property and assets, with or  
15 without goodwill,] done so if the corporation or any direct  
16 or indirect subsidiary controlled by the corporation retains  
17 a business activity that represented at the end of its most  
18 recently completed fiscal year before the transaction, on a  
19 consolidated basis, at least:

20 [(1)] (i) 25% of total assets; and

21 [(2)] (ii) 25% of either:

22 [(i)] (A) income from continuing operations  
23 before taxes; or

24 [(ii)] (B) revenues from continuing operations.

25 (2) A determination under paragraph (1)(i) may be based  
26 on a balance sheet that reflects:

27 (i) the book values of the assets of the  
28 corporation, as reflected on its books and records;

29 (ii) a valuation that takes into consideration  
30 unrealized appreciation and depreciation or other changes

1           in value of the assets of the corporation;

2           (iii) the current value of the assets of the  
3           corporation, either valued separately or valued in  
4           segments or as an entirety as a going concern; or

5           (iv) any other method that is reasonable in the  
6           circumstances.

7           (3) A determination under paragraph (1)(ii) may be based  
8           on financial statements prepared on the basis of generally  
9           accepted accounting principles, or such other accounting  
10           practices and principles as are used generally by the  
11           corporation in the maintenance of its books and records and  
12           as are reasonable in the circumstances.

13       Section 59. Section 1979(b) of Title 15 is amended and the  
14 section is amended by adding a subsection to read:

15       § 1979. Survival of remedies and rights after dissolution.

16       \* \* \*

17       (b) Rights and assets.--The dissolution of a business  
18 corporation shall not affect the limited liability of a  
19 shareholder of the corporation theretofore existing with respect  
20 to transactions occurring or acts or omissions done or omitted  
21 in the name of or by the corporation except that, subject to  
22 subsection (d) and sections 1992(d) (relating to [claims barred]  
23 notice to claimants) and 1993(b) (relating to [claims barred]  
24 acceptance or rejection of matured claims), if applicable, each  
25 shareholder shall be liable for his pro rata portion of the  
26 unpaid liabilities of the corporation up to the amount of the  
27 net assets of the corporation distributed to the shareholder in  
28 connection with the dissolution. Should any property right of a  
29 corporation be discovered, or the corporation be named as a  
30 defendant in an action or proceeding, at any time after the

dissolution of the corporation, the surviving member or members of the board of directors that wound up the affairs of the corporation, or a receiver appointed by the court, shall have authority to enforce the property right and to collect and divide the assets so discovered among the persons entitled thereto and to prosecute actions or proceedings in the corporate name of the corporation. Any assets so collected shall be distributed and disposed of in accordance with the applicable order of court, if any, and otherwise in accordance with this subchapter.

\* \* \*

(f) Late-filed action or proceeding.--The following apply to an action or proceeding commenced against a dissolved corporation after the expiration of the period specified in subsection (a) (2):

(1) Any judgment against a dissolved corporation in an action or proceeding shall be void.

(2) The dissolved corporation may, but need not, appear and raise as a defense the expiration of the period specified in subsection (a) (2) and any other reasonably related matters in response to the action or proceeding.

(3) Any person who was a director, officer or shareholder of the dissolved corporation when the dissolution became effective or any governing person of any successor entity acting pursuant to Subchapter H (relating to postdissolution provision for liabilities), and any successor-in-interest to any of those persons, may, but need not, act on behalf of the dissolved corporation in taking the actions described in paragraph (2), and shall not thereby be deemed to be deprived of the operation of subsections (c) and

1     (d) or section 1978(b) (relating to winding up of corporation  
2     after dissolution) or otherwise be responsible for any  
3     obligations of the dissolved corporation.

4     Section 60. Sections 2104, 2105(a), 2322(b)(5) and (c),  
5     2336, 2521, 2522, 2524(a) and 2528 of Title 15 are amended to  
6     read:

7     § 2104. Election of an existing business corporation to become  
8             a nonstock corporation.

9     (a) General rule.--Any business corporation may become a  
10    nonstock corporation under this chapter by:

11         (1) Adopting a plan of [**conversion**] election providing  
12         for the redemption by the corporation of all of its shares  
13         whether or not redeemable by the terms of its articles and  
14         adjusting its affairs so as to comply with the requirements  
15         of this chapter applicable to nonstock corporations.

16         (2) Filing articles of amendment which shall contain, in  
17         addition to the requirements of section 1915 (relating to  
18         articles of amendment):

19             (i) A heading stating the name of the corporation  
20             and that it is a nonstock corporation.

21             (ii) A statement that it elects to become a nonstock  
22             corporation.

23             (iii) A statement that the corporation is organized  
24             on a nonstock basis.

25             (iv) Such other changes, if any, that may be desired  
26             in the articles.

27     (b) Procedure.--The plan of [**conversion**] election of the  
28     corporation into a nonstock corporation (which plan shall  
29     include the amendment of the articles required by subsection  
30     (a)) shall be adopted in accordance with the requirements of

1 Subchapter B of Chapter 19 (relating to amendment of articles)

2 except that:

3 (1) The holders of shares of every class shall be  
4 entitled to vote on the plan regardless of any limitations  
5 stated in the articles or bylaws on the voting rights of any  
6 class.

7 (2) The plan must be approved by two-thirds of the votes  
8 cast by all shares of each class.

9 (3) If any shareholder of a business corporation that  
10 adopts a plan of [conversion] election into a nonstock  
11 corporation objects to the plan of [conversion] election and  
12 complies with the provisions of Subchapter D of Chapter 15  
13 (relating to dissenters rights), the shareholder shall be  
14 entitled to the rights and remedies of dissenting  
15 shareholders therein provided. There shall be included in, or  
16 enclosed with, the notice of the meeting of shareholders  
17 called to act upon the plan of [conversion] election a copy  
18 or a summary of the plan and a copy of Subchapter D of  
19 Chapter 15 and of this subsection.

20 (4) The plan shall not impose any additional liability  
21 upon any existing patron of the business of the corporation,  
22 whether or not that person becomes a member of the  
23 corporation pursuant to the plan, unless the patron expressly  
24 assumes such liability.

25 § 2105. Termination of nonstock corporation status.

26 (a) General rule.--A nonstock corporation may terminate its  
27 status as such and cease to be subject to this chapter by:

28 (1) Adopting a plan of [conversion] termination  
29 providing for the issue of appropriate shares to its members  
30 and adjusting its affairs so as to comply with the

requirements of this subpart applicable to business corporations that are not nonstock corporations.

(2) Amending its articles to delete therefrom the additional provisions required or permitted by sections 2102(a)(1) (relating to formation of nonstock corporations) and 2103 (relating to contents of articles and other documents of nonstock corporations) to be stated in the articles of a nonstock corporation. The plan of [conversion] termination (which plan shall include the amendment of the articles required by this section) shall be adopted in accordance with Subchapter B of Chapter 19 (relating to amendment of articles) except that:

(i) The members of every class shall be entitled to vote on the plan regardless of any limitations stated in the articles or bylaws, or in a document evidencing membership, on the voting rights of any class.

(ii) The plan must be approved by a majority of the votes cast by the members of each class.

\* \* \*

§ 2322. Share transfer restrictions.

\* \* \*

(b) Exception.--Subsection (a) shall not apply to a transfer:

\* \* \*

(5) By merger[, consolidation or share] or interest exchange that becomes effective pursuant to section 2336 (relating to fundamental changes) or a [share exchange] reclassification of existing shares [for other shares of a different class or series in the corporation].

\* \* \*



(c) Offer by nonexempt purchaser.--Any person desiring to transfer shares in a transaction not exempt under subsection (b) (1) through (7) shall obtain an offer from a third party who meets the requirements of subsection (d) to purchase the shares for cash and shall deliver written notice of the third-party offer to the corporation at its registered office stating the number and [kind] type of shares, the offering price, the other terms of the offer and the name and address of the third-party offeror.

\* \* \*

§ 2336. Fundamental changes.

Except as permitted or required by this chapter, a statutory close corporation shall not effect any corporate action that under Chapter 3 (relating to entity transactions) or 19 (relating to fundamental changes) requires the approval of shareholders unless the action is adopted by at least the minimum vote.

§ 2521. Call of special meetings of shareholders.

(a) General rule.--[The] Except as provided in subsections (b) and (c), the shareholders of a registered corporation [shall not be entitled by statute to] described in subsection 2502(1) (relating to registered corporation status) do not have the right to call a special meeting of the shareholders.

(b) Exception.--[Subsection (a) shall not apply to the call of a special meeting by an] An interested shareholder (as defined in section 2553 (relating to interested shareholder)) may call a special meeting of shareholders for the purpose of approving a business combination under section 2555(3) or (4) (relating to requirements relating to certain business combinations).

1 (c) Contrary articles provision.--A provision of the  
2 articles of a registered corporation described in section  
3 2502(1) [(relating to registered corporation status)] that gives  
4 shareholders the right to call a special meeting of the  
5 shareholders and:

6 (1) is adopted after July 1, 2015, may [not] provide  
7 that a special meeting may be called [by less than 25%] only  
8 by shareholders entitled to cast 25% or more of the votes  
9 that all shareholders would be entitled to cast at the  
10 meeting[.]; or

11 (2) was adopted on or before July 1, 2015, is  
12 enforceable in accordance with its terms.

13 § 2522. Adjournment [of meetings] or postponement of meeting of  
14 shareholders.

15 (a) Authority to adjourn.--Except as otherwise provided in  
16 the bylaws, any regular or special meeting of the shareholders  
17 of a registered corporation, including one at which directors  
18 are to be elected, may be adjourned for such period as the  
19 presiding officer or the shareholders present and entitled to  
20 vote shall direct.

21 (b) Notice of adjourned virtual meeting.--If notice of an  
22 adjourned meeting of shareholders of a registered corporation  
23 held exclusively by means of electronic technology as provided  
24 in section 1708(c) (relating to use of conference telephone or  
25 other electronic technology) cannot be given by announcement at  
26 the meeting at which the adjournment is taken when permitted by  
27 section 1702(b) (relating to manner of giving notice), notice  
28 may be given by means solely of a publicly available filing with  
29 the Securities and Exchange Commission.

30 (c) Postponement of virtual meeting.--If the presiding

officer for a meeting of shareholders of a registered corporation that is to be held exclusively by means of electronic technology as provided in section 1708(c) decides in his or her reasonable judgment on the day of the meeting that the meeting cannot be convened because of a reason outside the control of the corporation, the presiding officer may postpone the meeting to a specified time later that day or the following day. Notice of the postponed meeting may be given by means solely of a publicly available filing with the Securities and Exchange Commission.

§ 2524. Consent of shareholders in lieu of meeting.

(a) General rule.--An action may be authorized by the shareholders of a registered corporation without a meeting by less than unanimous consent of all shareholders entitled to vote thereon only if permitted by its articles.

\* \* \*

§ 2528. Notice of shareholder meetings.

(a) Householding.--If a registered corporation solicits proxies generally with respect to a meeting of its shareholders, the corporation is not required to give notice of the meeting to any shareholder to whom the corporation is not required to send a proxy statement pursuant to the rules of the Securities and Exchange Commission.

(b) Notice and access.--If a registered corporation has given a shareholder notice of the Internet availability of proxy materials in a manner conforming with the rules of the Securities and Exchange Commission, the corporation may give notice of the meeting to the shareholder by posting the notice on the Internet website to which the proxy materials are posted.

Section 61. Title 15 is amended by adding a section to read:

1 § 2530. Qualifications of directors.

2 (a) General rule.--The bylaws of a registered corporation  
3 may not impose a qualification of directors that is based on a  
4 past, present or future action by a nominee or director in the  
5 discharge of the director's powers or duties as a governor of an  
6 association.

7 (b) Certain permitted qualifications.--This section does not  
8 prohibit qualifications relating to:

9 (1) not having entered a guilty plea, or not being or  
10 having been subject to a criminal conviction, civil judgment  
11 or regulatory sanction or penalty; or

12 (2) not having been removed as a governor of an  
13 association by judicial action or for cause.

14 (c) Relationship to nomination procedures.--This section  
15 applies to a qualification included in a nomination procedure  
16 adopted under section 1758(e) (relating to voting rights of  
17 shareholders), but does not prohibit the corporation from  
18 excluding a nomination that does not comply with such a  
19 procedure.

20 Section 62. Section 2541 of Title 15 is amended by adding a  
21 subsection to read:

22 § 2541. Application and effect of subchapter.

23 \* \* \*

24 (e) Exemption.--Voting shares acquired by a person or group  
25 in a transaction that complies with section 321(f) (relating to  
26 approval by business corporation) shall be disregarded for  
27 purposes of determining if the person or group constitutes a  
28 controlling person or group.

29 Section 63. The definitions of "affiliate" and "associate"  
30 in section 2552 of Title 15 are amended to read:

1 § 2552. Definitions.

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

5 ["Affiliate." A person that directly, or indirectly through  
6 one or more intermediaries, controls, or is controlled by, or is  
7 under common control with, a specified person.]

8 \* \* \*

9 ["Associate." When used to indicate a relationship with any  
10 person:

11 (1) any corporation or organization of which such person  
12 is an officer, director or partner or is, directly or  
13 indirectly, the beneficial owner of shares entitling that  
14 person to cast at least 10% of the votes that all  
15 shareholders would be entitled to cast in an election of  
16 directors of the corporation or organization;

17 (2) any trust or other estate in which such person has a  
18 substantial beneficial interest or as to which such person  
19 serves as trustee or in a similar fiduciary capacity; and

20 (3) any relative or spouse of such person, or any  
21 relative of the spouse, who has the same home as such  
22 person.]

23 \* \* \*

24 Section 64. Section 2554(1) and (5) of Title 15 are amended  
25 to read:

26 § 2554. Business combination.

27 The term "business combination," when used in reference to  
28 any registered corporation and any interested shareholder of the  
29 corporation, means any of the following:

30 (1) A merger, [consolidation, share] interest exchange

1 or division of the corporation or any subsidiary of the  
2 corporation:

- 3 (i) with the interested shareholder; or
- 4 (ii) with, involving or resulting in any other  
5 corporation (whether or not itself an interested  
6 shareholder of the registered corporation) which is, or  
7 after the merger, [consolidation, share] interest  
8 exchange or division would be, an affiliate or associate  
9 of the interested shareholder.

10 \* \* \*

11 (5) A reclassification of securities (including, without  
12 limitation, any split of shares, dividend of shares, or other  
13 distribution of shares in respect of shares, or any reverse  
14 split of shares), or recapitalization of the corporation, or  
15 any merger [or consolidation] of the corporation with any  
16 subsidiary of the corporation, or any other transaction  
17 (whether or not with or into or otherwise involving the  
18 interested shareholder), proposed by, or pursuant to any  
19 agreement, arrangement or understanding (whether or not in  
20 writing) with, the interested shareholder or any affiliate or  
21 associate of the interested shareholder, which has the  
22 effect, directly or indirectly, of increasing the  
23 proportionate share of the outstanding shares of any class or  
24 series of voting shares or securities convertible into voting  
25 shares of the corporation or any subsidiary of the  
26 corporation which is, directly or indirectly, owned by the  
27 interested shareholder or any affiliate or associate of the  
28 interested shareholder, except as a result of immaterial  
29 changes due to fractional share adjustments.

30 \* \* \*

Section 65. Section 2561(b)(5) and (e) of Title 15 are amended, subsection (d) is amended by adding a paragraph and the section is amended by adding a subsection to read:

§ 2561. Application and effect of subchapter.

\* \* \*

(b) Exceptions.--This subchapter shall not apply to any control-share acquisition:

\* \* \*

(5) Consummated:

(i) Pursuant to:

(A) a gift, devise, bequest or otherwise through the laws of inheritance or descent[.]; or

(B) a transfer, sale or other disposition by a beneficial or record holder of shares of the corporation, or by a fiduciary of a beneficial or record holder, either to, or in trust for, a spouse, parent, sibling, child or descendant of:

(I) the holder; or

(II) a spouse, parent, sibling, child or descendant of the holder.

(ii) By a settlor to a trustee under the terms of a family, testamentary or charitable trust.

(iii) By a trustee to a trust beneficiary or a trustee to a successor trustee under the terms of, or the addition, withdrawal or demise of a beneficiary or beneficiaries of, a family, testamentary or charitable trust.

(iv) Pursuant to the appointment of a guardian or custodian.

(v) Pursuant to a transfer from one spouse to

1 another by reason of separation or divorce or pursuant to  
2 community property laws or other similar laws of any  
3 jurisdiction.

4 (vi) Pursuant to the satisfaction of a pledge or  
5 other security interest created in good faith and not for  
6 the purpose of circumventing this subchapter.

7 (vii) Pursuant to a plan of merger[, consolidation]  
8 or plan of [share] interest exchange effected in  
9 compliance with the provisions of this chapter if the  
10 corporation is a party to the [agreement of merger,  
11 consolidation or plan of share] merger or is the acquired  
12 entity in the interest exchange.

13 (viii) Pursuant to a transfer from a person who  
14 beneficially owns voting shares of the corporation that  
15 would entitle the holder thereof to cast at least 20% of  
16 the votes that all shareholders would be entitled to cast  
17 in an election of directors of the corporation and who  
18 acquired beneficial ownership of such shares prior to  
19 October 17, 1989.

20 (ix) By the corporation or any of its subsidiaries.

21 (x) By any savings, stock ownership, stock option or  
22 other benefit plan of the corporation or any of its  
23 subsidiaries, or by any fiduciary with respect to any  
24 such plan when acting in such capacity.

25 (xi) By a person engaged in business as an  
26 underwriter of securities who acquires the shares  
27 directly from the corporation or an affiliate or  
28 associate of the corporation through his participation in  
29 good faith in a firm commitment underwriting registered  
30 under the Securities Act of 1933.



1           (xi.1) Pursuant to an acquisition of shares directly  
2           from the corporation in a transaction exempt from the  
3           registration requirements of the Securities Act of 1933.

4           (xii) Or commenced by a person who first became an  
5           acquiring person:

6                   (A) after April 27, 1990; and

7                   (B) (I) at a time when this subchapter was or  
8                   is not applicable to the corporation; or

9                           (II) on or before ten business days after  
10                   the first public announcement by the corporation  
11                   that this subchapter is applicable to the  
12                   corporation, if this subchapter was not  
13                   applicable to the corporation on July 27, 1990.

14           \* \* \*

15           (d) Status of certain shares and effect of formation of  
16           group on status.--

17                   \* \* \*

18           (5) The acquisition of record title to a voting share by  
19           a member of a group that is an acquiring person as a result  
20           of a transfer of the share from another member of the group  
21           does not constitute a control-share acquisition.

22           (e) Application of duties.--The duty of the board of  
23           directors, committees of the board and individual directors  
24           under section 2565 (relating to procedure for establishing  
25           voting rights of control shares) is solely to the corporation  
26           and not to any shareholder or creditor or any other person or  
27           group, and may be enforced directly by the corporation or may be  
28           enforced by [a shareholder, as such, by] an action in the right  
29           of the corporation, and may not be enforced directly by a  
30           shareholder or creditor or by any other person or group.

1     (f) Reversal of opt-out.--A provision of the articles or  
2 bylaws providing that this subchapter shall not be applicable to  
3 the corporation may be rescinded pursuant to the procedures  
4 required by this subpart and the articles and bylaws at the time  
5 to amend the articles or bylaws generally.

6     Section 66. The definitions of "affiliate," "associate" and  
7 "beneficial owner" and "existing shares" in section 2562 of  
8 Title 15 are amended and the section is amended by adding a  
9 definition to read:

10    § 2562. Definitions.

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

14     \* \* \*

15     ["Affiliate," "associate" and "beneficial owner." The terms  
16 shall have the meanings specified in section 2552 (relating to  
17 definitions). The corporation may adopt reasonable provisions to  
18 evidence beneficial ownership, specifically including  
19 requirements that holders of voting shares of the corporation  
20 provide verified statements evidencing beneficial ownership and  
21 attesting to the date of acquisition thereof.]

22     \* \* \*

23     "Beneficial owner." The term has the meaning specified in  
24 section 2552 (relating to definitions). The corporation may  
25 adopt reasonable provisions to evidence beneficial ownership,  
26 specifically including requirements that holders of voting  
27 shares of the corporation provide verified statements evidencing  
28 beneficial ownership and attesting to the date of acquisition  
29 thereof.

30     \* \* \*

1 "Existing shares."

2 (1) Voting shares which have been beneficially owned  
3 continuously by the same natural person since January 1,  
4 1988.

5 (2) Voting shares which are beneficially owned by any  
6 natural person or trust, estate, foundation or other similar  
7 entity to the extent the voting shares were acquired solely  
8 by gift, inheritance, bequest, devise or other testamentary  
9 distribution or series of these transactions, directly or  
10 indirectly, from a natural person who had beneficially owned  
11 the voting shares prior to January 1, 1988.

12 (3) Voting shares which were acquired pursuant to a  
13 stock split, stock dividend, or other similar distribution  
14 described in section 2561(c) (relating to [effect of  
15 distributions] application and effect of subchapter) with  
16 respect to existing shares that have been beneficially owned  
17 continuously since their issuance by the corporation by the  
18 natural person or entity that acquired them from the  
19 corporation or that were acquired, directly or indirectly,  
20 from such natural person or entity, solely pursuant to a  
21 transaction or series of transactions described in paragraph  
22 (2), and that are held at such time by a natural person or  
23 entity described in paragraph (2).

24 (4) Voting shares which were acquired in a transaction  
25 described in section 2561(b)(5).

26 \* \* \*

27 Section 67. Section 2564 of Title 15 is amended by adding a  
28 subsection to read:

29 § 2564. Voting rights of shares acquired in a control-share  
30 acquisition.

1 \* \* \*

2 (d) Exemption.--The acquisition of voting shares by a person  
3 or group in a transaction that complies with section 321(f)  
4 (relating to approval by business corporation) shall be  
5 disregarded for purposes of determining if the transaction  
6 constitutes a control-share acquisition.

7 Section 68. Sections 2565(a) and (c) and 2571(b)(5) and (6)  
8 (i) and (iii) of Title 15 are amended and the sections are  
9 amended by adding subsections to read:

10 § 2565. Procedure for establishing voting rights of control  
11 shares.

12 (a) Special meeting.--A special meeting of the shareholders  
13 of a registered corporation shall be called by the board of  
14 directors of the corporation for the purpose of considering the  
15 voting rights to be accorded to the control shares if an  
16 acquiring person:

17 (1) files an information statement fully conforming to  
18 section 2566 (relating to information statement of acquiring  
19 person);

20 (2) makes a request in writing for a special meeting of  
21 the shareholders at the time of delivery of the information  
22 statement;

23 (3) makes a control-share acquisition or a bona fide  
24 written offer to make a control-share acquisition; and

25 (4) gives a written undertaking at the time of delivery  
26 of the information statement to pay or reimburse the  
27 corporation for the expenses of a special meeting of the  
28 shareholders.

29 (a.1) Time of special meeting.--The special meeting  
30 requested by the acquiring person shall be held on the date set

1 by the board of directors of the corporation, but in no event  
2 later than 50 days after the receipt of the information  
3 statement by the corporation, unless the corporation and the  
4 acquiring person mutually agree to a later date. If the  
5 acquiring person so requests in writing at the time of delivery  
6 of the information statement to the corporation, the special  
7 meeting shall not be held sooner than 30 days after receipt by  
8 the corporation of the complete information statement. Section  
9 1755(d) (relating to time of holding meetings of shareholders)  
10 does not apply to a special meeting called pursuant to this  
11 subsection, unless the acquiring person has consented in record  
12 form to the application of that subsection.

13 \* \* \*

14 (c) Notice and record date.--The notice of any annual or  
15 special meeting at which the issue of the voting rights to be  
16 accorded the control shares shall be submitted to shareholders  
17 shall be given at least ten days prior to the date named for the  
18 meeting and shall be accompanied by:

19 (1) A copy of the information statement of the acquiring  
20 person.

21 (2) A copy of any amendment of such information  
22 statement previously delivered to the corporation at least  
23 seven days prior to the date on which such notice is given.

24 (3) A statement disclosing whether the board of  
25 directors of the corporation recommends approval of,  
26 expresses no opinion and remains neutral toward, recommends  
27 rejection of, or is unable to take a position with respect to  
28 according voting rights to control shares. In determining the  
29 position that it shall take with respect to according voting  
30 rights to control shares, including to express no opinion and

1 remain neutral or to be unable to take a position with  
2 respect to such issue, the board of directors shall  
3 specifically consider, in addition to any other factors it  
4 deems appropriate, the effect of according voting rights to  
5 control shares upon the interests of employees and of  
6 communities in which offices or other establishments of the  
7 corporation are located.

8 (4) Any other matter required by this subchapter to be  
9 incorporated into or to accompany the notice of meeting of  
10 shareholders or that the corporation elects to include with  
11 such notice.

12 (c.1) Record date.--Only shareholders of record on the date  
13 determined by the board of directors in accordance with the  
14 provisions of section 1763 (relating to determination of  
15 shareholders of record) shall be entitled to notice of and to  
16 vote at the meeting to consider the voting rights to be accorded  
17 to control shares.

18 \* \* \*

19 § 2571. Application and effect of subchapter.

20 \* \* \*

21 (b) Exceptions.--This subchapter shall not apply to any  
22 transfer of an equity security:

23 \* \* \*

24 (5) Constituting:

25 (i) In the case of a person or group that, as of  
26 October 17, 1989, beneficially owned shares entitling the  
27 person or group to cast at least 20% of the votes that  
28 all shareholders would be entitled to cast in an election  
29 of directors of the corporation:

30 (A) The disposition of equity securities of the

1 corporation by the person or group.

2 (B) Subsequent dispositions of any or all equity  
3 securities of the corporation disposed of by the  
4 person or group where such subsequent dispositions  
5 are effected by:

6 (I) the direct purchaser of the securities  
7 from the person or group if, as a result of the  
8 acquisition by the purchaser of the securities  
9 disposed of by the person or group, the  
10 purchaser, immediately following the acquisition,  
11 is entitled to cast at least 20% of the votes  
12 that all shareholders would be entitled to cast  
13 in an election of directors of the  
14 corporation[.];

15 (II) a person that acquired the securities  
16 from the person or group in a transaction or  
17 series of transactions each of which is described  
18 in this paragraph (5) if at the time of the  
19 subsequent disposition the person disposing of  
20 the securities is entitled to cast at least 20%  
21 of the votes that all shareholders would be  
22 entitled to cast in an election of directors of  
23 the corporation; or

24 (III) an affiliate or associate of the  
25 person or group.

26 (ii) The transfer of the beneficial ownership of the  
27 equity security by:

28 (A) Gift, devise, bequest or otherwise through  
29 the laws of inheritance or descent.

30 (A.1) Transfer, sale or other disposition by a

1           beneficial or record holder of the equity security of  
2           the corporation, or by a fiduciary of a beneficial or  
3           record holder, either to, or in trust for, a spouse,  
4           parent, sibling, child or descendant of:

5                     (I) the holder; or

6                     (II) a spouse, parent, sibling, child or  
7                     descendant of the holder.

8                     (B) A settlor to a trustee under the terms of a  
9                     family, testamentary or charitable trust.

10                    (C) A trustee to a trust beneficiary or a  
11                    trustee to a successor trustee under the terms of a  
12                    family, testamentary or charitable trust.

13                    (iii) The addition, withdrawal or demise of a  
14                    beneficiary or beneficiaries of a family, testamentary or  
15                    charitable trust.

16                    (iv) The appointment of a guardian or custodian with  
17                    respect to the equity security.

18                    (v) The transfer of the beneficial ownership of the  
19                    equity security from one spouse to another by reason of  
20                    separation or divorce or pursuant to community property  
21                    laws or other similar laws of any jurisdiction.

22                    (vi) The transfer of record or the transfer of a  
23                    beneficial interest or interests in the equity security  
24                    where the circumstances surrounding the transfer clearly  
25                    demonstrate that no material change in beneficial  
26                    ownership has occurred.

27                    (6) Consummated by:

28                    (i) The corporation or any of its subsidiaries as a  
29                    disposition of shares by it.

30                    \* \* \*



1 (iii) A person engaged in business as an underwriter  
2 of securities who acquires the equity securities directly  
3 from the corporation or an affiliate or associate[, as  
4 defined in section 2552 (relating to definitions),] of  
5 the corporation through [his] the person's participation  
6 in good faith in a firm commitment underwriting  
7 registered under the Securities Act of 1933.

8 \* \* \*

9 (e) Reversal of opt-out.--A provision of the articles or  
10 bylaws providing that this subchapter shall not be applicable to  
11 the corporation may be rescinded pursuant to the procedures  
12 required by this subpart and the articles and bylaws at the time  
13 to amend the articles or bylaws generally.

14 Section 69. The definitions of "equity security" and  
15 "transfer" in section 2573 of Title 15 are amended to read:  
16 § 2573. Definitions.

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

20 \* \* \*

21 "Equity security." Any security, including all shares, stock  
22 or similar security, and any security convertible into (with or  
23 without additional consideration) or exercisable for any such  
24 shares, stock or similar security, or carrying any warrant,  
25 right or option to subscribe to or purchase such shares, stock  
26 or similar security or any such warrant, right, option or  
27 similar instrument. The term also includes any other security,  
28 instrument, right of payment or other arrangement based on the  
29 value of any of the foregoing.

30 \* \* \*

1 "Transfer." [Acquisition or disposition.] Includes an  
2 acquisition or disposition of equity securities in a transaction  
3 under chapter 3 (relating to entity transactions).

4 \* \* \*

5 Section 70. Section 3321(a)(3), (b) and (c) of Title 15 are  
6 amended and the section is amended by adding a subsection to  
7 read:

8 § 3321. Standard of conduct for directors.

9 (a) Consideration of interests.--Without regard to whether  
10 the benefit corporation is subject to section 1715 (relating to  
11 exercise of powers generally) or 1716 (relating to alternative  
12 standard), in discharging the duties of their respective  
13 positions, the board of directors, committees of the board and  
14 individual directors of a benefit corporation, in considering  
15 the best interest of the benefit corporation:

16 \* \* \*

17 (3) shall not be required to give priority to [the  
18 interests of any person or group] any matter referred to in  
19 paragraph (1) or (2) over [the interests of any other person  
20 or group] any other such matter or to regard any such matter  
21 as dominant or controlling unless the benefit corporation has  
22 stated in its articles its intention to give priority to  
23 certain interests related to its accomplishment of its  
24 general public benefit purpose or of a specific public  
25 benefit purpose identified in its articles.

26 (b) Coordination with other provisions of law.--The  
27 consideration of [interests and factors] matters in the manner  
28 required under subsection (a) [:

29 (1) shall not constitute a violation of section 1712  
30 (relating to standard of care and justifiable reliance); and

(2) is in addition to the ability of directors to consider interests and factors as provided in section 1715 or 1716.] shall not constitute a violation of section 1712 (relating to standards of care, justifiable reliance and business judgment rule). A benefit corporation:

(1) shall not be subject to section 1715(a) and (b) or section 1716(a); but

(2) shall be subject to section 1715(c), (d) and (e) unless its articles or bylaws provide that it is subject to section 1716, and references in section 1715(c), (d) and (e) to the fiduciary duty of directors or the standard set forth in section 1712 include the provisions of subsection (a).

(c) Exoneration from personal liability.--Regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized under section 1713 (relating to personal liability of directors):

(1) A director shall not be personally liable, as such, for monetary damages for any action taken as a director in the course of performing the duties specified in subsection (a) unless the action constitutes self-dealing, willful misconduct or [a knowing violation of law] recklessness.

(2) A director shall not be personally liable for monetary damages for failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

\* \* \*

(e) Ownership of shares.--A director's ownership of, or other interest in, the shares of a benefit corporation does not alone, create a conflict of interest on the part of the director

1 with respect to the director's performance of the duties of a  
2 director under subsection (a), except to the extent the  
3 ownership or interest would create a conflict of interest if the  
4 corporation were not a benefit corporation.

5 Section 71. Section 3322(b) and (f) of Title 15 are amended  
6 to read:

7 § 3322. Benefit director.

8 \* \* \*

9 (b) Election, removal and qualifications.--The benefit  
10 director shall be elected and may be removed in the manner  
11 provided under Subchapter C of Chapter 17 (relating to directors  
12 and officers). Except as set forth in subsection [(e)(2)(i) or]  
13 (g), the benefit director shall be an individual who is  
14 independent. The benefit director may serve as the benefit  
15 officer at the same time as serving as the benefit director. The  
16 articles or bylaws of a benefit corporation may prescribe  
17 additional qualifications of the benefit director not  
18 inconsistent with this subsection.

19 \* \* \*

20 (f) Exoneration from personal liability.--Regardless of  
21 whether the bylaws of a benefit corporation include a provision  
22 eliminating or limiting the personal liability of directors  
23 authorized under section 1713 (relating to personal liability of  
24 directors), a benefit director shall not be personally liable  
25 for any act or omission in the capacity of a benefit director  
26 unless the act or omission constitutes self-dealing, willful  
27 misconduct or [a knowing violation of law] recklessness.

28 \* \* \*

29 Section 72. Section 3323(b) of Title 15 is amended and the  
30 section is amended by adding a subsection to read:

1 § 3323. Standard of conduct for officers.

2 \* \* \*

3 (b) Coordination with other provisions of law.--The  
4 consideration of interests and factors in the manner described  
5 in subsection (a) shall not constitute a violation of section  
6 [1712(c) (relating to standard of care and justifiable  
7 reliance)] ~~1732 (relating to officers)~~ 1734 (RELATING TO  
8 OFFICER'S STANDARD OF CARE AND JUSTIFIABLE RELIANCE).

<--

9 \* \* \*

10 (e) Ownership of shares.--An officer's ownership of, or  
11 other interest in, the shares of a benefit corporation does not  
12 alone, create a conflict of interest on the part of the officer  
13 with respect to the officer's performance of the duties of an  
14 officer under subsection (a), except to the extent the ownership  
15 or interest would create a conflict of interest if the  
16 corporation were not a benefit corporation.

17 Section 73. The definition of "plan" in section 5103(a) and  
18 (b) of Title 15 are amended and subsection (a) is amended by  
19 adding a definition to read:

20 § 5103. Definitions.

21 (a) General definitions.--Subject to additional definitions  
22 contained in subsequent provisions of this subpart that are  
23 applicable to specific provisions of this subpart, the following  
24 words and phrases when used in Part I (relating to preliminary  
25 provisions) or in this subpart shall have the meanings given to  
26 them in this section unless the context clearly indicates  
27 otherwise:

28 \* \* \*

29 "Membership register." Records administered by or on behalf  
30 of a corporation in which the names of all of its members, the

address of each member and the class and other details of the  
membership of each member are recorded.

\* \* \*

["Plan." A plan of reclassification, merger, consolidation,  
asset transfer, division or conversion.]

\* \* \*

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

"Act" or "action."

"Conversion."

"Corporation for profit."

"Corporation not-for-profit."

"Court."

"Department."

"Division."

"Domestic corporation for profit."

"Domestic corporation not-for-profit."

"Domestication."

"Execute."

"Foreign corporation for profit."

"Foreign corporation not-for-profit."

"Interest exchange."

"Internal Revenue Code of 1986."

"Merger."

"Obligation."

"Officially publish."

"Record form."

"Representative."

1 "Sign."

2 Section 74. Section 5110 of Title 15 is repealed:

3 [§ 5110. Annual report.

4 (a) General rule.--On or before April 30 of each year, a  
5 corporation described in subsection (b) that has effected any  
6 change in its officers during the preceding calendar year shall  
7 file in the Department of State a statement executed by the  
8 corporation and setting forth:

9 (1) The name of the corporation.

10 (2) The post office address, including street and  
11 number, if any, of its principal office.

12 (3) The names and titles of the persons who are its  
13 principal officers.

14 (b) Application.--This section shall apply to every:

15 (1) domestic nonprofit corporation that has been  
16 incorporated after December 31, 1972;

17 (2) domestic nonprofit corporation that has made any  
18 filing under the Nonprofit Corporation Law of 1933 in the  
19 Department of State as amended by the act of June 19, 1969  
20 (P.L.86, No.31);

21 (3) domestic nonprofit corporation that has filed a  
22 statement of summary of record with the Department of State  
23 after December 31, 1972; and

24 (4) qualified foreign nonprofit corporation.

25 (c) Separate change in registered office required.--A filing  
26 under this section shall not constitute compliance with section  
27 5507(b) (relating to registered office).

28 (d) Fee.--No fee shall be charged for effecting a filing  
29 under this section.

30 (e) Cross reference.--See section 134 (relating to docketing

1 statement).]

2 Section 75. Sections 5306(a)(8) and 5504(c) of Title 15 are  
3 amended and the sections are amended by adding subsections to  
4 read:

5 § 5306. Articles of incorporation.

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

9 \* \* \*

10 (8) The name [and address, including street and number,  
11 if any,] of each of the incorporators.

12 \* \* \*

13 (d) Reference to external facts.--Except for the provisions  
14 required by subsection (a)(1), (2), (4), (5), (6)(i) and (8),  
15 any provision of the articles of incorporation may be made  
16 dependent upon facts ascertainable outside of the articles if  
17 the manner in which the facts will operate upon the provision is  
18 set forth in the articles. The facts may include actions or  
19 events within the control of or determinations made by the  
20 corporation or a representative of the corporation.

21 § 5504. Adoption, amendment and contents of bylaws.

22 \* \* \*

23 (b.1) Restated bylaws.--Subsection (b) does not prohibit the  
24 board of directors from including in restated bylaws, without  
25 substantive change, a bylaw adopted by the members, and such a  
26 restated provision continues to have the status of a bylaw  
27 adopted by the members.

28 (c) [Bylaw provisions in articles] Relationship of articles  
29 and bylaws.--Where any provision of this subpart or any other  
30 provision of law refers to a rule as set forth in the bylaws of



1 a corporation or in a bylaw adopted by the members, the  
2 reference shall be construed to include and be satisfied by any  
3 rule on the same subject as set forth in the articles of the  
4 corporation. Where any provision of this subpart or any other  
5 provision of law refers to a rule as set forth in the articles  
6 of a corporation or prohibits the articles from setting forth a  
7 rule, the contemplated rule may not be included in a bylaw or a  
8 bylaw adopted by the members.

9 \* \* \*

10 Section 76. Section 5505 of Title 15 is amended to read:

11 § 5505. Persons bound by bylaws.

12 Except as otherwise provided by section 5713 (relating to  
13 personal liability of directors) or any similar provision of  
14 law, the bylaws of a nonprofit corporation [shall operate only  
15 as regulations among] are binding on the members, directors,  
16 members of an other body and officers of the corporation[, and]  
17 with respect to its internal affairs whether or not a member,  
18 director, member of an other body or officer has actual  
19 knowledge of the provisions of the bylaws, but a bylaw shall not  
20 affect contracts or other dealings with other persons, unless  
21 those persons have actual knowledge of the [bylaws] bylaw.

22 Section 77. Section 5507(b) and (d) of Title 15 are amended  
23 and the section is amended by adding a subsection to read:

24 § 5507. Registered office.

25 \* \* \*

26 (b) Statement of change of registered office.--After  
27 incorporation, a change of the location of the registered office  
28 may be authorized at any time by the board of directors or other  
29 body. Before the change of location becomes effective, the  
30 corporation [either] shall include the change in an annual

1 report under section 146 (relating to annual report), amend its  
2 articles under the provisions of this subpart to reflect the  
3 change [in location or shall file in] or deliver to the  
4 Department of State for filing a statement of change of  
5 registered office executed by the corporation, setting forth:

6 (1) The name of the corporation.

7 (2) The address, including street number, if any, of its  
8 then registered office.

9 (3) The address, including street number, if any, to  
10 which the registered office is to be changed.

11 (4) A statement that the change was authorized by the  
12 board of directors or other body.

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 78. Sections 5508, 5509 and 5512 of Title 15 are  
21 amended to read:

22 § 5508. Corporate records; inspection by members.

23 (a) Required records.--Every nonprofit corporation shall  
24 keep minutes of the proceedings of the incorporators, members,  
25 the directors and any other body, and a membership register[,  
26 giving the names and addresses of all members and the class and  
27 other details of the membership of each]. The corporation shall  
28 also keep appropriate, complete and accurate books or records of  
29 account. [The records provided for in this subsection shall be  
30 kept at any of the following locations:

1 (1) the registered office of the corporation in this  
2 Commonwealth;

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

5 (3) any actual business office of the corporation.]

6 (b) Right of inspection by a member.--[Every member shall,  
7 upon written verified demand stating the purpose thereof, have

8 a] On demand, in compliance with the requirements in subsection  
9 (b.1), a member has the right to examine, in person or by agent  
10 or attorney, during the usual hours for business for any proper  
11 purpose, the membership register, books and records of account,  
12 and [records of the proceedings of] minutes of, and consents in  
13 lieu of meetings by, the incorporators, members, directors and  
14 any other body, and to make copies or extracts therefrom.

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

17 (1) A proper purpose shall mean a purpose reasonably  
18 related to the interest of the person as a member.

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

24 (3) The demand must be:

25 (i) made in good faith;

26 (ii) in record form; and

27 (iii) verified.

28 (4) The demand must describe with reasonable  
29 particularity:

30 (i) the purpose of the member; and

1           (ii) the records the member desires to inspect and  
2           how the records relate to the purpose of the member.

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

5           [(1)] (i) at its registered office in this  
6           Commonwealth;

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

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

11          (iv) in care of the secretary of the corporation at  
12          the most recent address of the secretary shown in the  
13          records of the department.

14          (c) Proceedings for the enforcement of inspection by a  
15          member.--If the corporation, or an officer or agent thereof,  
16          refuses to permit an inspection sought by a member or attorney  
17          or other agent acting for the member pursuant to subsection (b)  
18          or does not reply to the demand within five business days after  
19          the demand has been [made] received, the member may [apply to]  
20          file an action in the court for an order to compel the  
21          inspection. The court [shall] is hereby vested with exclusive  
22          jurisdiction to determine whether or not the person seeking  
23          inspection is entitled to the inspection sought. The court may  
24          summarily order the corporation to permit the member to inspect  
25          the membership register and the other books and records of the  
26          corporation and to make copies or extracts therefrom; or the  
27          court may order the corporation to furnish to the member a list  
28          of its members as of a specific date on condition that the  
29          member first pay to the corporation the reasonable cost of  
30          obtaining and furnishing the list and on such other conditions

1 as the court deems appropriate. Where the member seeks to  
2 inspect the books and records of the corporation, other than its  
3 membership register or list of members, [he] the member shall  
4 first establish:

5 (1) that [he] the member has complied with the  
6 provisions of this section respecting the form and manner of  
7 making demand for inspection of such document; and

8 (2) that the inspection [he] the member seeks is for a  
9 proper purpose.

10 (d) Burden of proof.--Where the member seeks to inspect the  
11 membership register or list of members of the corporation and  
12 [he] the member has complied with the provisions of this section  
13 respecting the form and manner of making demand for inspection  
14 of the documents, the burden of proof shall be upon the  
15 corporation to establish that the inspection he seeks is for an  
16 improper purpose.

17 (e) Available relief.--The court may, in its discretion,  
18 prescribe any limitations or conditions with reference to the  
19 inspection, or award such other or further relief as the court  
20 deems just and proper. The court may order books, documents and  
21 records, pertinent extracts therefrom, or duly authenticated  
22 copies thereof, to be brought into this Commonwealth and kept in  
23 this Commonwealth upon such terms and conditions as the order  
24 may prescribe.

25 (f) Right to bylaws.--Every member shall have the right to  
26 receive, promptly after demand and without charge, a copy in  
27 record form of the currently effective text of the bylaws. If  
28 the corporation does not provide a member with a copy of the  
29 bylaws as required by this subsection, the member may apply to  
30 the court for an order to compel the production. The court shall

1 summarily order the corporation to provide a copy of the bylaws  
2 unless the corporation establishes that the person seeking the  
3 bylaws is not a member.

4 (g) Reasonable restrictions permitted.--The corporation may  
5 impose reasonable restrictions and conditions on access to and  
6 use of information to be furnished under this section, including  
7 designating information confidential and imposing nondisclosure  
8 and safeguarding obligations on the recipient. In a dispute  
9 concerning the reasonableness of a restriction, condition or  
10 obligation under this subsection, the corporation has the burden  
11 of proving reasonableness.

12 [(d)] (h) Cross references.--See sections 107 (relating to  
13 form of records) and 5512 (relating to informational rights of a  
14 director)[.] and 42 Pa.C.S. § 2503(7) and (9) (relating to right  
15 of participants to receive counsel fees).

16 § 5509. Bylaws and other powers in emergency.

17 (a) General rule.--Except as otherwise restricted in the  
18 bylaws, the board of directors or other body of any nonprofit  
19 corporation may adopt emergency bylaws, subject to repeal or  
20 change by action of the members, which shall, notwithstanding  
21 any different provisions of law or of the articles or bylaws, be  
22 effective during [any emergency resulting from an attack on the  
23 United States, a nuclear disaster or another catastrophe as a  
24 result of which a quorum of the board cannot readily be  
25 assembled] an emergency. The emergency bylaws may make any  
26 provision that may be appropriate for the circumstances of the  
27 emergency, including:

28 (1) Procedures for calling meetings of delegates, the  
29 board or [other] an other body.

30 (2) Quorum requirements for meetings of delegates, the

1 board or an other body.

2 (3) Procedures for designating additional or substitute  
3 directors or members of an other body.

4 (b) Lines of succession; head office.--The board of  
5 directors or other body, or the officers, if [given  
6 authorization] authorized by the board of directors or other  
7 body, either before or during any emergency, may:

8 (1) provide, and from time to time modify, lines of  
9 succession in the event that during the emergency any or all  
10 officers or agents of the corporation shall for any reason be  
11 rendered incapable of discharging their duties; and

12 (2) effective in the emergency, change the head offices  
13 or designate several alternative head offices or regional  
14 offices of the corporation.

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

17 (1) Acting in accordance with any emergency bylaws  
18 [shall not be] in effect at the time or otherwise in  
19 accordance with this section is not liable for monetary  
20 damages except for:

21 (i) self-dealing, willful misconduct or  
22 recklessness[.];

23 (ii) violation of a criminal statute; or

24 (iii) payment of taxes pursuant to Federal, State or  
25 local law.

26 (2) [Shall not be] Is not liable for any action taken  
27 [by him] by the representative in good faith in an emergency  
28 in furtherance of the ordinary business affairs of the  
29 corporation even though not authorized by the emergency or  
30 other bylaws then in effect.

1 (d) Effect on regular bylaws.--To the extent [that they are]  
2 not inconsistent with any emergency bylaws [adopted], the bylaws  
3 of the corporation shall remain in effect during any emergency,  
4 and, upon its termination, the emergency bylaws shall cease to  
5 be effective.

6 (e) Procedure in absence of emergency bylaws.--Unless  
7 otherwise provided in emergency bylaws, notice of any meeting of  
8 delegates, the board of directors or an other body during an  
9 emergency shall be given only to those delegates, directors or  
10 members of an other body it is feasible to reach at the time and  
11 by such means as are feasible at the time, including  
12 publication, radio or television. To the extent required to  
13 constitute a quorum at any meeting of the board of directors or  
14 an other body during any emergency, the officers of the  
15 corporation who are present at the meeting shall, unless  
16 otherwise provided in emergency bylaws, be deemed, in order of  
17 rank and within the same rank in order of seniority, directors  
18 or members of the other body, as the case may be, for the  
19 meeting. An officer serving as a director or member of an other  
20 body under this subsection shall be subject to, and entitled to  
21 the benefits of, the provisions of this subpart relating to  
22 directors or members of an other body.

23 (f) Corporate actions.--A corporate action to further the  
24 ordinary business affairs of the corporation that is taken in  
25 good faith in accordance with any emergency bylaws in effect at  
26 the time or otherwise in accordance with this section is valid  
27 and binding on the corporation.

28 (g) Member meetings.--The required time for holding the  
29 annual meeting of delegates or members of a corporation provided  
30 in section 5755(a) (relating to time of holding meetings of



1 members) or the articles or bylaws is tolled during an  
2 emergency. The board or other body, acting by a majority of the  
3 directors or members of the other body that can be assembled,  
4 may take any action during an emergency that the board or other  
5 body determines to be practical and necessary to address the  
6 circumstances of the emergency with respect to a meeting of  
7 members notwithstanding anything to the contrary in this subpart  
8 or in the articles or bylaws. The actions the board or other  
9 body may take include postponing the meeting to a later time or  
10 date, with the record date for determining the members entitled  
11 to notice of, and to vote at, the meeting applying to the  
12 postponed meeting without regard to section 5763 (relating to  
13 determination of members of record).

14 (h) Definition.--As used in this section, and for no other  
15 purpose, "emergency" means a period during which a quorum of the  
16 board or an other body cannot readily be assembled as a result  
17 of:

18 (1) an attack on the United States;

19 (2) a nuclear disaster;

20 (3) an epidemic or pandemic;

21 (4) a state of emergency under Federal or State law  
22 covering a geographic area in which the corporation has its  
23 principal office or a significant regional office or  
24 operation; or

25 (5) any other catastrophe or disaster.

26 § 5512. Informational rights of a director.

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

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

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

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

1 that would violate the duty of the director to the corporation.

2 (c) Right to the bylaws.--Every director has the right to  
3 receive, on demand and without charge, a copy in record form of  
4 the currently effective text of the bylaws.

5 (d) Reasonable restrictions permitted.--The corporation may  
6 impose reasonable restrictions and conditions on access to and  
7 use of information to be furnished under this section, including  
8 designating information confidential and imposing nondisclosure  
9 and safeguarding obligations on the recipient. In a dispute  
10 concerning the reasonableness of a restriction, condition or  
11 obligation under this subsection, the corporation has the burden  
12 of proving reasonableness.

13 [(c)] (e) Cross references.--See sections 107 (relating to  
14 form of records), 5508 (relating to corporate records;  
15 inspection by members) and 5734 (relating to other body) and 42  
16 Pa.C.S. § 2503(7) (relating to right of participants to receive  
17 counsel fees).

18 Section 79. Title 15 is amended by adding a section to read:  
19 § 5513. Forum selection provisions.

20 (a) General rule.--The bylaws may require that an internal  
21 corporate claim must be brought exclusively in a specified court  
22 or courts of this Commonwealth and, if so specified, also in  
23 other courts sitting in this Commonwealth or in any other  
24 jurisdiction with which the nonprofit corporation has a  
25 reasonable relationship.

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

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

7 (c) Definition.--For the purposes of this section:

8 (1) Except as provided in paragraph (2), "internal  
9 corporate claim" means:

10 (i) an action that is based upon an alleged  
11 violation of a duty owed to the nonprofit corporation  
12 under the laws of this Commonwealth by a current or  
13 former director, member of an other body, officer or  
14 member in that capacity;

15 (ii) a derivative action or proceeding brought on  
16 behalf of the corporation;

17 (iii) an action asserting a claim arising pursuant  
18 to any provision of:

19 (A) this title;

20 (B) the articles of incorporation or bylaws; or

21 (C) an agreement regarding the governance of the  
22 corporation or the transfer of memberships in the  
23 corporation if:

24 (I) the corporation and at least one member  
25 are parties to the agreement or stated or  
26 intended beneficiaries thereof; and

27 (II) the agreement is entered into after the  
28 adoption of the forum selection provision under  
29 this section and the agreement does not contain  
30 an inconsistent forum selection provision; or

1           (iv) any action asserting a claim regarding the  
2           internal affairs of the corporation that is not included  
3           in subparagraphs (i), (ii) and (iii).

4           (2) An internal corporate claim does not include a  
5           claim, action or proceeding described in paragraph (1) that  
6           is subject to section 5107 (relating to subordination of  
7           subpart to canon law).

8           Section 80. Sections 5547(b), 5702(a)(1), 5704, 5708,  
9           5709(b) and (c), 5711 and 5712 of Title 15 are amended to read:

10          § 5547. Authority to take and hold trust property.

11          \* \* \*

12          (b) Nondiversion of certain property.--Property committed to  
13          charitable purposes shall not, by any proceeding under Chapter 3  
14          (relating to entity transactions) or 59 (relating to  
15          [fundamental changes] amendments, sale of assets and  
16          dissolution) or otherwise, be diverted from the objects to which  
17          it was donated, granted or devised, unless and until the board  
18          of directors or other body obtains from the court an order under  
19          20 Pa.C.S. Ch. 77 (relating to trusts) specifying the  
20          disposition of the property.

21          § 5702. Manner of giving notice.

22          (a) General rule.--

23                 (1) Any notice required to be given to any person under  
24                 the provisions of this subpart or by the articles or bylaws  
25                 of any nonprofit corporation shall be given to the person  
26                 either personally or by [sending] delivering a copy thereof:

27                         (i) By first class or express mail, postage prepaid,  
28                         or courier service, charges prepaid, to the person's  
29                         postal address appearing on the books of the corporation  
30                         or, in the case of directors or members of an other body,

1 supplied by the person to the corporation for the purpose  
2 of notice. Notice under this subparagraph shall be deemed  
3 to have been given to the person entitled thereto when  
4 deposited in the United States mail or with a courier  
5 service for delivery to that person.

6 (ii) By facsimile transmission, e-mail or other  
7 electronic communication to the [person's] facsimile  
8 number or address for e-mail or other electronic  
9 communications supplied by the person to the corporation  
10 for the purpose of notice. Notice under this subparagraph  
11 shall be deemed to have been given to the person entitled  
12 thereto when sent.

13 \* \* \*

14 § 5704. Place and notice of meetings of members.

15 (a) Place.--Meetings of members may be held at [the] a  
16 geographic location within or without this Commonwealth as may  
17 be provided in or fixed pursuant to the bylaws. Authority to  
18 provide for the location of a meeting of the members includes  
19 the authority to determine to hold a meeting solely by means of  
20 electronic technology in accordance with section 5708 (relating  
21 to use of conference telephone or other electronic technology),  
22 notwithstanding that the authority may refer to one or more  
23 geographic locations. Unless otherwise provided in or fixed  
24 pursuant to the bylaws, all meetings of the members that are not  
25 held solely by means of electronic technology shall be held at  
26 the executive office of the corporation wherever situated. [If a  
27 meeting of members is held by means of the Internet or other  
28 electronic communications technology in a fashion pursuant to  
29 which the members have the opportunity to read or hear the  
30 proceedings substantially concurrently with their occurrence,

1 vote on matters submitted to the members, pose questions to the  
2 directors and members of any other body, make appropriate  
3 motions and comment on the business of the meeting, the meeting  
4 need not be held at a particular geographic location.]

5 (b) Notice.--Notice in record form of every meeting of the  
6 members shall be given by, or at the direction of, the secretary  
7 or other authorized person to each member of record entitled to  
8 vote at the meeting at least:

9 (1) ten days prior to the day named for a meeting that  
10 will consider a transaction under Chapter 3 (relating to  
11 entity transactions) or a fundamental change under Chapter 59  
12 (relating to amendments, sale of assets and dissolution); or

13 (2) five days prior to the day named for the meeting in  
14 any other case.

15 [If the secretary or other authorized person neglects or refuses  
16 to give notice of a meeting, the person or persons calling the  
17 meeting may do so.]

18 (c) Contents.--In the case of a special meeting of the  
19 members, the notice shall specify the general nature of the  
20 business to be transacted, and in all cases the notice shall  
21 comply with the express requirements of this subpart. The  
22 corporation shall not have a duty to augment the notice.

23 (d) Alternative authority.--If the secretary or other  
24 authorized person does not give notice of a meeting within a  
25 reasonable time, a person calling the meeting may do so.

26 § 5708. Use of conference telephone or other electronic  
27 technology.

28 (a) Incorporators, directors and members of an other body.--  
29 Except as otherwise provided in the bylaws, one or more persons  
30 may participate in a meeting of the incorporators, the board of

1 directors or an other body of a nonprofit corporation by means  
2 of conference telephone or other electronic technology by means  
3 of which all persons participating in the meeting can hear each  
4 other. Participation in a meeting pursuant to this [section]  
5 subsection shall constitute presence in person at the meeting.

6 (b) Members.--Except as otherwise provided in the bylaws,  
7 the presence or participation by a member, including voting and  
8 taking other action, at a meeting of members[, or the expression  
9 of consent or dissent to corporate action, by a member] by  
10 conference telephone or other electronic [means, including,  
11 without limitation, the Internet, shall constitute] technology  
12 constitutes the presence of, or vote or action by, [or consent  
13 or dissent of] the member for the purposes of this subpart.

14 (c) Exclusive use of electronic technology.--Unless the  
15 bylaws provide expressly that a meeting of members may not be  
16 held solely by means of electronic technology, a meeting of the  
17 members does not need to be held at a geographic location if the  
18 meeting is held by means of electronic technology in a fashion  
19 pursuant to which the members have a reasonable opportunity to  
20 participate in the meeting, read or hear the proceedings  
21 substantially concurrently with their occurrence, vote on  
22 matters submitted to the members and, subject to such guidelines  
23 and procedures as the board of directors may adopt, make  
24 appropriate motions and comment on the business of the meeting.  
25 Any guidelines or procedures adopted by the board or an other  
26 body must comply with section 5709(c) (relating to conduct of  
27 members meeting).

28 § 5709. Conduct of members meeting.

29 \* \* \*

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



1 provided in the bylaws, the presiding officer shall determine  
2 the order of business and shall have the authority to establish  
3 rules for the conduct of the meeting if the board of directors  
4 has not determined the order of business or established such  
5 rules.

6 (c) Procedural standard.--Any [action by the presiding  
7 officer in adopting rules for, and in conducting] rules adopted  
8 for, and the conduct of, a meeting shall be fair to the members.

9 \* \* \*

10 § 5711. Alternative provisions.

11 (a) General rule.--Section 5716 (relating to alternative  
12 standard) shall not be applicable to any nonprofit corporation  
13 to which section 5715 (relating to exercise of powers generally)  
14 is applicable. Section 5715 shall be applicable to any  
15 corporation except a corporation:

16 (1) the bylaws of which by amendment adopted by the  
17 board of directors on or before July 26, 1990, and not  
18 subsequently rescinded by an articles amendment, explicitly  
19 provide that section 5715 or corresponding provisions of  
20 prior law shall not be applicable to the corporation; or

21 (2) the articles of which explicitly provide that  
22 section 5715 or corresponding provisions of prior law shall  
23 not be applicable to the corporation.

24 (b) Reversal of opt-out.--A provision of the articles or  
25 bylaws providing that section 5715 or corresponding provisions  
26 of prior law shall not be applicable to the corporation may be  
27 rescinded pursuant to the procedures required by this subpart  
28 and the articles and bylaws at the time of the rescission to  
29 amend the articles or bylaws.

30 § 5712. Standard of care [and], justifiable reliance and

1           business judgment rule.

2           (a) [Directors] General rule.--A director of a nonprofit  
3 corporation shall stand in a fiduciary relation to the  
4 corporation and shall perform [his duties as] the duties of a  
5 director, including [his] duties as a member of any committee of  
6 the board upon which [he] the director may serve, in good faith,  
7 in a manner [he] the director reasonably believes to be in the  
8 best interests of the corporation and with such care, including  
9 [reasonable inquiry,] the skill and diligence[, as] that a  
10 person of ordinary prudence would use under similar  
11 circumstances[.] and reasonable inquiry into those issues  
12 required by the statutes of this Commonwealth to be considered  
13 in the circumstances and those interests and factors listed in  
14 section 5715(a) (relating to exercise of powers generally) or  
15 5716(a) (relating to alternative standard) that the director  
16 considers appropriate. This subsection is subject to subsection  
17 (d) where applicable.

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

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

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

1           (3) A committee of the board upon which [he] the  
2     director does not serve, duly designated in accordance with  
3     law, as to matters within its designated authority, which  
4     committee the director reasonably believes to merit  
5     confidence.

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

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

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

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

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

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

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

4 (1) a breach of the duty of care, including the  
5 inapplicability of the provisions as to the fulfillment of  
6 that duty under subsection (d); and

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

9 Section 81. Section 5713(c) of Title 15 is amended and the  
10 section is amended by adding a subsection to read:

11 § 5713. Personal liability of directors.

12 \* \* \*

13 (c) Application.--An amendment or repeal of a provision  
14 adopted under subsection (a) does not affect its application  
15 with respect to an act by a director occurring before the  
16 amendment or repeal unless the provision in effect at the time  
17 of the act explicitly authorizes its amendment or repeal after  
18 an act has occurred.

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

21 Section 82. Sections 5714, 5715(b), (d) and (e)(1)(i), 5716  
22 and 5717 of Title 15 are amended to read:

23 § 5714. [Notation of dissent] Presumption of assent.

24 A director of a nonprofit corporation who is present at a  
25 meeting of its board of directors, or of a committee of the  
26 board, at which action on any corporate matter is taken on which  
27 the director is generally competent to act, shall be presumed to  
28 have assented to the action taken unless [his] the director's  
29 dissent, abstention or vote against the matter is entered in the  
30 minutes of the meeting or unless [he files his written dissent]

1 the director delivers to the secretary of the meeting before the  
2 adjournment thereof a dissent in record form to the action [with  
3 the secretary of the meeting before the adjournment thereof] or  
4 transmits the dissent in [writing] record form to the secretary  
5 of the corporation immediately after the adjournment of the  
6 meeting. The right to dissent shall not apply to a director who  
7 voted in favor of the action. Nothing in this subchapter shall  
8 bar a director from asserting that minutes of the meeting  
9 incorrectly omitted [his] the director's dissent, abstention or  
10 vote against if, promptly upon receipt of a copy of such  
11 minutes, [he] the director notifies the secretary [in writing]  
12 of the corporation in record form of the asserted omission or  
13 inaccuracy.

14 § 5715. Exercise of powers generally.

15 \* \* \*

16 (b) Consideration of interests and factors.--The board of  
17 directors, committees of the board and individual directors  
18 shall not be required, in considering the best interests of the  
19 corporation or the effects of any action, to regard any  
20 corporate interest or the interests of any particular group  
21 affected by such action as a dominant or controlling interest or  
22 factor. The consideration of interests and factors in the manner  
23 described in this subsection and in subsection (a) shall not  
24 constitute a violation of section 5712 (relating to standard of  
25 care [and], justifiable reliance and business judgment rule).

26 \* \* \*

27 (d) Presumption.--[Absent breach of fiduciary duty, lack of  
28 good faith or self-dealing, any act as the board of directors, a  
29 committee of the board or an individual director shall be  
30 presumed to be in the best interests of the corporation.] In

1 assessing whether the standard set forth in section 5712 or 5728  
2 (relating to interested directors or officers; quorum) has been  
3 satisfied, there shall not be any greater obligation to justify,  
4 or higher burden of proof with respect to, any act as the board  
5 of directors, any committee of the board or any individual  
6 director relating to or affecting an acquisition or potential or  
7 proposed acquisition of control of the corporation than is  
8 applied to any other act as a board of directors, any committee  
9 of the board or any individual director. Notwithstanding section  
10 5712(d) and the preceding [provisions] provision of this  
11 subsection, any act as the board of directors, a committee of  
12 the board or an individual director relating to or affecting an  
13 acquisition or potential or proposed acquisition of control to  
14 which a majority of the disinterested directors shall have  
15 assented shall be presumed to satisfy the standard set forth in  
16 section 5712 or 5728, unless it is proven by clear and  
17 convincing evidence that the disinterested directors did not  
18 assent to such act in good faith after reasonable investigation.

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

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

22 (i) A director who has a direct or indirect  
23 financial or other interest in the person acquiring or  
24 seeking to acquire control of the corporation or who is  
25 an affiliate or associate[, as defined in section 2552  
26 (relating to definitions),] of, or was nominated or  
27 designated as a director by, a person acquiring or  
28 seeking to acquire control of the corporation.

29 \* \* \*

30 § 5716. Alternative standard.

1 (a) General rule.--In discharging the duties of their  
2 respective positions, the board of directors, committees of the  
3 board and individual directors of a nonprofit corporation may,  
4 in considering the best interests of the corporation, consider  
5 the effects of any action upon employees, upon suppliers and  
6 customers of the corporation and upon communities in which  
7 offices or other establishments of the corporation are located,  
8 and all other pertinent factors. The consideration of those  
9 factors shall not constitute a violation of section 5712  
10 (relating to standard of care [and], justifiable reliance and  
11 business judgment rule).

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

15 (c) Cross reference.--See section 5711 (relating to  
16 alternative provisions).  
17 § 5717. Limitation on standing.

18 The duty of the board of directors, committees of the board  
19 and individual directors under section 5712 (relating to  
20 standard of care [and], justifiable reliance and business  
21 judgment rule) is solely to the nonprofit corporation and not to  
22 any member or creditor or any other person or group, and may be  
23 enforced directly by the corporation or may be enforced by [a  
24 member, as such, by] an action in the right of the corporation,  
25 and may not be enforced directly by a member or creditor or by  
26 any other person or group. Notwithstanding the preceding  
27 sentence, sections 5715(a) and (b) (relating to exercise of  
28 powers generally) and 5716(a) (relating to alternative standard)  
29 do not impose upon the board of directors, committees of the  
30 board and individual directors, any legal or equitable duties,

obligations or liabilities or create any right or cause of action against, or basis for standing to sue, the board of directors, committees of the board and individual directors.

Section 83. Title 15 is amended by adding sections to read:

§ 5718. (Reserved).

§ 5719. Renunciation of corporate opportunities.

The articles of incorporation or bylaws, or an action of the board of directors, may renounce any interest or expectancy of a nonprofit corporation in, or in being offered an opportunity to participate in, a specified corporate opportunity or specified classes or categories of corporate opportunities that are presented to the corporation or to one or more of its directors, officers or members.

Section 84. Sections 5721 and 5724(b) of Title 15 are amended to read:

§ 5721. Board of directors.

Unless otherwise provided by statute or in a bylaw adopted by the members, all powers enumerated in section 5502 (relating to general powers) and elsewhere in this [subpart] title or otherwise vested by law in a nonprofit corporation shall be exercised by or under the authority of the board of directors, and the business and affairs of every nonprofit corporation shall be managed by or under the direction of, a board of directors. If any such provision is made in the bylaws, the powers and duties conferred or imposed upon the board of directors by this [subpart] title shall be exercised or performed to such extent and by such other body as shall be provided in the bylaws.

§ 5724. Term of office of directors.

\* \* \*



1 (b) Resignations.--[Any director may resign at any time upon  
2 notice in record form to the corporation. The resignation shall  
3 be effective upon its receipt by the corporation or at a  
4 subsequent time specified in the notice of resignation.] A  
5 director may resign at any time upon notice in record form to  
6 the corporation. A resignation that is not conditioned upon  
7 acceptance by the board of directors shall be effective upon  
8 receipt by the corporation of the notice of resignation, unless  
9 the notice specifies a later effective time or an effective time  
10 determined upon the happening of an event or events. If a  
11 resignation is conditioned upon its acceptance by the board, a  
12 decision by the board to accept or reject the resignation shall  
13 be made by the board in the manner required by Subchapter B  
14 (relating to fiduciary duty).

15 \* \* \*

16 Section 85. Section 5725 of Title 15 is amended by adding a  
17 subsection to read:

18 § 5725. Selection of directors.

19 \* \* \*

20 (c.1) No directors in office.--At any time when the offices  
21 of all of the directors of a membership corporation are vacant,  
22 any officer, member of an other body or member may call a  
23 special meeting of members for the purpose of electing  
24 directors.

25 \* \* \*

26 Section 86. Sections 5727, 5728, 5730, 5731(a) and 5732 of  
27 Title 15 are amended to read:

28 § 5727. Quorum of and action by directors.

29 (a) General rule.--Unless otherwise provided in the bylaws,  
30 a majority of the directors in office of a nonprofit corporation

1 shall be necessary to constitute a quorum for the transaction of  
2 business, and the acts of a majority of the directors present  
3 and voting at a meeting at which a quorum is present shall be  
4 the acts of the board of directors.

5 (b) Action by consent.--Unless otherwise restricted in the  
6 bylaws, any action required or permitted to be approved at a  
7 meeting of the directors may be approved without a meeting [if a  
8 consent or] if one or more consents to the action in record form  
9 [are]. Except as provided in subsection (c), the consents must  
10 be signed, before, on or after the effective [date] time of the  
11 action by all of the directors in office [on the date the last  
12 consent is signed] at the effective time. The consent or  
13 consents must be filed with the secretary of the corporation.

14 (c) Effectiveness of consent.--A consent may provide, or a  
15 person signing a consent, whether or not then a director, may  
16 instruct in record form, that the consent will be effective at a  
17 future time, including a time determined upon the happening of  
18 an event. In the case of a consent signed by a person not a  
19 director at the time of signing, the consent is effective at the  
20 stated effective time if the person who signed the consent is a  
21 director at the effective time and did not revoke the consent in  
22 record form prior to the effective time. A consent is effective  
23 at the stated effective time even if one or more signers are no  
24 longer directors at the effective time unless the consent has  
25 been revoked by a signer who is a director at the effective  
26 time. A signer of a consent may revoke the signer's consent in  
27 record form until the consent becomes effective.

28 § 5728. Interested directors or officers; quorum.

29 (a) General rule.--A contract or transaction between a  
30 nonprofit corporation and one or more of its directors or

1 officers or between a nonprofit corporation and another domestic  
2 or foreign corporation for profit or not-for-profit,  
3 partnership, joint venture, trust or other association in which  
4 one or more of [its] the corporation's directors or officers are  
5 [directors] governors or officers of the other association or  
6 have a financial or other interest, [shall not be] is not void  
7 or voidable solely for that reason, or solely because the  
8 director or officer of the corporation is present at or  
9 participates in the meeting of the board of directors that  
10 authorizes the contract or transaction, or solely because the  
11 vote of the director or officer is counted for that purpose, if:

12 (1) the material facts as to the relationship or  
13 interest and as to the contract or transaction are disclosed  
14 or are known to the board of directors and the board  
15 authorizes the contract or transaction by the affirmative  
16 votes of a majority of the disinterested directors even  
17 though the disinterested directors are less than a quorum;

18 (2) the material facts as to the [director's or  
19 officer's] relationship or interest and as to the contract or  
20 transaction are disclosed or are known to the members  
21 entitled to vote thereon, if any, and the contract or  
22 transaction is specifically approved in good faith by vote of  
23 those members; [or]

24 (3) the contract or transaction is fair as to the  
25 corporation as of the time it is authorized, approved or  
26 ratified by the board of directors or the members[.]; or

27 (4) the contract or transaction satisfies subsection (d)  
28 or (e).

29 (b) Quorum.--Common or interested directors may be counted  
30 in determining the presence of a quorum at a meeting of the

board that authorizes a contract or transaction specified in subsection (a).

(c) Applicability.--The provisions of this section shall be applicable except as otherwise restricted in the bylaws.

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

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

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

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

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

(f) Cross references.--See sections 5715(d) (relating to exercise of powers generally) and 5730 (relating to compensation

1 of directors).

2 § 5730. Compensation of directors.

3 (a) General rule.--Except as otherwise restricted in the  
4 bylaws, the board of directors of a nonprofit corporation [shall  
5 have] has the authority to fix the compensation of directors for  
6 their services as directors[, and a] regardless of the personal  
7 interest of the directors. A director may be a salaried officer  
8 of the corporation.

9 (b) Presumption.--If the board of directors of a nonprofit  
10 corporation that is not incorporated for a charitable purpose  
11 establishes the compensation of directors in accordance with  
12 subsection (a), that action is presumed to be fair to the  
13 corporation.

14 § 5731. Executive and other committees of the board.

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

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

22 (2) Any committee, to the extent provided in the  
23 [resolution] action of the board of directors or in the  
24 bylaws, shall have and may exercise all of the powers and  
25 authority of the board of directors, except that a committee  
26 shall not have any power or authority as to the following:

27 (i) The submission to members of any action or  
28 matter, other than the election or removal of directors,  
29 requiring approval of members under this subpart or  
30 Chapter 3 (relating to entity transactions).

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

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

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

8 (v) Action on matters committed by the bylaws or [a  
9 resolution] an action of the board of directors  
10 exclusively to another committee of the board.

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

22 \* \* \*

23 § 5732. Officers.

24 (a) General rule.--Every nonprofit corporation shall have a  
25 president, a secretary, and a treasurer, or persons who shall  
26 act as such, regardless of the name or title by which they may  
27 be designated, elected or appointed and may have such other  
28 officers [and assistant officers] as it may authorize from time  
29 to time. The bylaws may prescribe special qualifications for the  
30 officers. The president and secretary shall be natural persons

1 of full age. The treasurer may be a corporation, but if a  
2 natural person shall be of full age. Unless otherwise restricted  
3 in the bylaws, it shall not be necessary for the officers to be  
4 directors. Any number of offices may be held by the same person.

5 (b) Term of office.--The officers [and assistant officers]  
6 shall be elected or appointed at such time, in such manner and  
7 for such terms as may be fixed by or pursuant to the bylaws.  
8 Unless otherwise provided by or pursuant to the bylaws, each  
9 officer shall hold office for a term of one year and until [his]  
10 the officer's successor has been selected and qualified or until  
11 [his] the officer's earlier death, resignation or removal.

12 (c) Resignation.--Any officer may resign at any time upon  
13 written notice to the corporation. The resignation shall be  
14 effective upon receipt thereof by the corporation or at such  
15 subsequent time as may be specified in the notice of  
16 resignation.

17 (d) Bonding.--The corporation may secure the fidelity of any  
18 or all of the officers by bond or otherwise.

19 (e) Vacancies.--Unless otherwise provided in the bylaws, the  
20 board of directors shall have power to fill any vacancies in any  
21 office occurring from whatever reason.

22 [(b)] (f) Authority.--Unless otherwise provided in the  
23 bylaws, all officers of the corporation, as between themselves  
24 and the corporation, shall have such authority and perform such  
25 duties in the management of the corporation as may be provided  
26 by or pursuant to the bylaws or, in the absence of controlling  
27 provisions in the bylaws, as may be determined by or pursuant to  
28 [resolutions or orders] actions of the board of directors or  
29 other body.

30 [(c) Nomination of officers.--Unless the bylaws provide

1 otherwise, officers shall be nominated by a nominating committee  
2 or from the floor.

3 (d) Cross reference.--See section 5110 (relating to annual  
4 report).]

5 (g) Right to bylaws.--Every officer 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, but  
8 only to the extent reasonably related to the officer's duties.

9 Section 87. Title 15 is amended by adding sections to read:  
10 § 5733.1. Officer's standard of care and justifiable reliance.

11 (a) General rule.--Except as otherwise provided in the  
12 bylaws, an officer shall perform the duties of an officer in  
13 good faith, in a manner the officer reasonably believes to be in  
14 the best interests of the nonprofit corporation and with such  
15 care, including reasonable inquiry, skill and diligence, as a  
16 person of ordinary prudence would use under similar  
17 circumstances. A person who performs the duties of an officer in  
18 accordance with this subsection, and any provision of the bylaws  
19 that modify this subsection, shall not be liable to the  
20 corporation by reason of having been an officer of the  
21 corporation.

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

27 (1) One or more other officers or employees of the  
28 corporation or an affiliate of the corporation whom the  
29 officer reasonably believes to be reliable and competent in  
30 the matters presented.



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

4       (c) Effect of actual knowledge.--An officer is not  
5       considered to be acting in good faith under subsection (a) if  
6       the director has actual knowledge concerning the matter that  
7       causes the officer to believe reliance is unwarranted.

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

11       (1) the subject of the business judgment does not  
12       involve self-dealing by the officer or an associate or  
13       affiliate of the officer;

14       (2) the officer is informed with respect to the subject  
15       of the business judgment to the extent the officer reasonably  
16       believes to be appropriate under the circumstances; and

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

19       (e) Burden of proof.--A person challenging the conduct of an  
20       officer under this section has the burden of proving a breach of  
21       the duty of care, including the provisions of subsections (c)  
22       and (d), and, in a damage action, the burden of proving that the  
23       breach was the legal cause of damage suffered by the  
24       corporation.

25       § 5733.2. Personal liability of officers.

26       (a) General rule.--If a bylaw adopted by the members of a  
27       nonprofit corporation so provides, an officer shall not be  
28       personally liable, as such, for monetary damages for any action  
29       taken unless:

30       (1) the officer has breached or failed to perform the

1 duties of an officer under this subchapter; and

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

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

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

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

9 (c) Application.--An amendment or repeal of a provision  
10 described in subsection (a) does not affect its application with  
11 respect to an act by an officer occurring before the amendment  
12 or repeal unless the provision in effect at the time of the act  
13 explicitly authorizes its amendment or repeal after an act has  
14 occurred.

15 (d) Cross reference.--See 42 Pa.C.S. § 8332.5 (relating to  
16 corporate representatives).

17 Section 88. Sections 5743, 5750, 5755, 5756(a)(1) and (b)  
18 (1), 5758 and 5763 of Title 15 are amended to read:

19 § 5743. Mandatory indemnification.

20 (a) General rule.--To the extent that a [representative]  
21 present or former director or officer of a nonprofit corporation  
22 has been successful on the merits or otherwise in defense of any  
23 action or proceeding referred to in section 5741 (relating to  
24 third-party actions) or 5742 (relating to derivative and  
25 corporate actions) or in defense of any claim, issue or matter  
26 therein, [he] the director or officer shall be indemnified  
27 against expenses (including attorney fees) actually and  
28 reasonably incurred by [him] the director or officer in  
29 connection therewith.

30 (b) Prospective application.--The limitation of the scope of

1 subsection (a) to a present or former director or officer  
2 applies only to acts occurring after (insert the effective date  
3 of this act).

4 [(b)] (c) Cross reference.--See section 6145 (relating to  
5 applicability of certain safeguards to foreign corporations).  
6 § 5750. Duration and extent of coverage.

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

22 § 5755. Time of holding meetings of members.

23 (a) Regular meetings.--The bylaws of a nonprofit corporation  
24 may provide for the number and the time of meetings of members[,  
25 but unless]. Except as otherwise provided in a bylaw adopted by  
26 the members, at least one meeting of the members [of a  
27 corporation that has members, as such,] that are entitled to  
28 vote[, ] for the election of directors shall be held in each  
29 calendar year for the election of directors at the time provided  
30 in or fixed pursuant to authority granted by the bylaws. Failure

1 to hold the annual or other regular meeting at the designated  
2 time shall not work a dissolution of the corporation or affect  
3 otherwise valid corporate acts. If the annual or other regular  
4 meeting is not called and held within six months after the  
5 designated time, any member may call the meeting at any time  
6 thereafter.

7 (b) Special meetings.--Special meetings of the members may  
8 be called at any time by:

9 (1) the board of directors;

10 (2) members entitled to cast at least 10% of the votes  
11 that all members are entitled to cast at the particular  
12 meeting; [or]

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

15 (4) as provided in section 5725(c.1) (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.

26 (c) Adjournments.--Adjournments of any regular or special  
27 meeting may be taken but any meeting at which directors are to  
28 be elected shall be adjourned [only] for no longer than from day  
29 to day, or for longer periods not exceeding 15 days each, as the  
30 members present and entitled to vote shall direct, until the

1 directors have been elected.

2 (d) Postponement or cancellation.--The board of directors  
3 may postpone, or delegate to an officer the authority to  
4 postpone, the annual or other regular meeting of members,  
5 subject to the provision of subsection (a) providing for a  
6 meeting each calendar year. Unless otherwise restricted in the  
7 bylaws or otherwise provided by statute, the holding of a  
8 special meeting of members may be postponed for not more than 15  
9 days or may be canceled by the person or group that called the  
10 special meeting. In the case of a postponed or canceled meeting,  
11 prompt notice in record form of the postponement or cancellation  
12 must be given to the members entitled to vote at the meeting.

13 [(d)] (e) Cross reference.--See section 6145 (relating to  
14 applicability of certain safeguards to foreign domiciliary  
15 corporations).

16 § 5756. Quorum.

17 (a) General rule.--A meeting of members of a nonprofit  
18 corporation duly called shall not be organized for the  
19 transaction of business unless a quorum is present. Unless  
20 otherwise provided in a bylaw adopted by the members:

21 (1) [The] A quorum for the purposes of consideration and  
22 action on a particular matter at a meeting shall consist of:

23 (i) the presence of members entitled to cast at  
24 least a majority of the votes that all members are  
25 entitled to cast on [a particular] the matter [to be  
26 acted upon at the meeting shall constitute a quorum for  
27 the purposes of consideration and action on the matter.];  
28 and

29 (ii) if any members are entitled to vote as a class  
30 on the matter, the presence of members entitled to cast

1       at least a majority of the votes entitled to be cast in  
2       the class vote.

3       \* \* \*

4       (b) Exceptions.--Notwithstanding any contrary provision in  
5 the articles or bylaws, those members entitled to vote who  
6 attend a meeting of members:

7           (1) At which directors are to be elected that has been  
8 previously adjourned for lack of a quorum, although less than  
9 a quorum as fixed in this section or in the bylaws, shall  
10 nevertheless constitute a quorum for the purpose of [election  
11 of] electing directors.

12       \* \* \*

13 § 5758. Voting rights of members.

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

17       (b) Procedures.--The following apply to voting by the  
18 members:

19           (1) The manner of voting on any matter, including  
20 changes in the articles or bylaws, may be by ballot, mail or  
21 any reasonable means provided in a bylaw adopted by the  
22 members.

23           (2) If a bylaw adopted by the members provides a fair  
24 and reasonable procedure for the nomination of candidates for  
25 any office, only candidates who have been duly nominated in  
26 accordance therewith shall be eligible for election.

27           (3) Unless otherwise provided in [such] a bylaw adopted  
28 by the members, in elections for directors at a meeting of  
29 members held at a geographic location, voting shall be by  
30 ballot[, and the]. The members do not have the right to vote

1 by ballot at a meeting that is not held at a geographic  
2 location pursuant to section 5708(c) (relating to use of  
3 conference telephone or other electronic technology).

4 (4) The candidates for election as directors receiving  
5 the highest number of votes from each class or group of  
6 classes, if any, of members entitled to elect directors  
7 separately up to the number of directors to be elected by  
8 such class or group of classes shall be elected. If at any  
9 meeting of members directors of more than one class are to be  
10 elected, each class of directors shall be elected in a  
11 separate election.

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

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

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

1 foreign corporations).

2 § 5763. Determination of members of record.

3 (a) Fixing record date.--Unless otherwise restricted in the  
4 bylaws, the board of directors of a nonprofit corporation may  
5 fix a time prior to the date of any meeting of members as a  
6 record date for the determination of the members entitled to  
7 notice of, or to vote at, the meeting, which time, except in the  
8 case of an adjourned meeting, shall not be more than 90 days  
9 prior to the date of the meeting of members. Only members of  
10 record on the date fixed shall be so entitled notwithstanding  
11 any increase or other change in membership on the books of the  
12 corporation after any record date fixed as provided in this  
13 subsection. Unless otherwise provided in the bylaws, the board  
14 of directors may similarly fix a record date for the  
15 determination of members of record for any other purpose. A  
16 record date may not precede the date on which the board acts to  
17 fix that record date. The members of record shall be determined  
18 as of the close of business on the record date unless the board  
19 fixes a different time of day for that determination. When a  
20 determination of members of record has been made as provided in  
21 this section for purposes of a meeting, the determination shall  
22 apply to any adjournment thereof unless otherwise restricted in  
23 the bylaws or unless the board fixes a new record date for the  
24 adjourned meeting.

25 (b) Determination when no record date fixed.--Unless  
26 otherwise provided in the bylaws, if a record date is not fixed:

27 (1) The [record date for determining members entitled to  
28 notice of or to vote at a meeting of members shall be at the]  
29 close of business on the day next preceding the day on which  
30 notice is given or, if notice is waived, at the close of



1 business on the day immediately preceding the day on which  
2 the meeting is held[.] shall be the record date for  
3 determining members entitled to notice of or to vote at a  
4 meeting of members.

5 (2) The close of business on the day on which the first  
6 consent or dissent, request or petition is filed in record  
7 form with the secretary of the corporation shall be the  
8 record date for determining members entitled to:

9 (i) express consent or dissent to corporate action  
10 [in writing] without a meeting, when prior action by the  
11 board of directors or other body is not necessary;

12 (ii) call a special meeting of the members; or

13 (iii) propose an amendment of the articles.[;  
14 shall be the close of business on the day on which the first  
15 written consent or dissent, request for a special meeting or  
16 petition proposing an amendment of the articles is filed with  
17 the secretary of the corporation.]

18 (3) The record date for determining members for any  
19 other purpose shall be at the close of business on the day on  
20 which the board of directors or other body adopts the  
21 resolution relating thereto.

22 Section 89. Section 5766(a) of Title 15 is amended and the  
23 section is amended by adding subsections to read:

24 § 5766. Consent of members in lieu of meeting.

25 (a) Unanimous consent.--Unless otherwise restricted in the  
26 bylaws, any action required or permitted to be taken at a  
27 meeting of the members or of a class of members of a nonprofit  
28 corporation may be taken without a meeting if a consent or  
29 consents to the action in record form are signed, before, on or  
30 after the effective [date] time of the action by all of the

1 members who would be entitled to vote at a meeting for that  
2 purpose. The consent or consents must be filed with the minutes  
3 of the proceedings of the members.

4 \* \* \*

5 (d) Escrowing of consents.--A consent may provide, or a  
6 person signing a consent, whether or not then a member, may  
7 instruct in record form, that the consent will be effective at a  
8 future time, including a time determined upon the happening of  
9 an event. In the case of a consent signed by a person not a  
10 member at the time of signing, the consent is effective at the  
11 stated effective time if the person who signed the consent is a  
12 member at the effective time and did not revoke the consent in  
13 record form prior to the effective time. A consent is effective  
14 at the stated effective time, even if one or more signers are no  
15 longer members at the effective time if consents by members  
16 entitled to cast the required number of votes have not been  
17 revoked before the effective time.

18 (e) Revocation of consent.--Unless otherwise provided in a  
19 consent, a signer of the consent may revoke the signer's consent  
20 in record form until it becomes effective.

21 Section 90. Section 5781(a)(1)(i), (b) and (c) of Title 15  
22 are amended to read:

23 § 5781. Derivative action.

24 (a) General rule.--Subject to section 5782 (relating to  
25 eligible member plaintiffs and security for costs) and  
26 subsection (b), a plaintiff may maintain a derivative action to  
27 enforce a right of a nonprofit 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 5783 (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 \* \* \*

15 (b) Prior demand excused.--

16 (1) A demand under subsection (a)(1) is excused only if  
17 the [member] plaintiff makes a specific showing that  
18 immediate and irreparable harm to the nonprofit corporation  
19 would otherwise result.

20 (2) If demand is excused under paragraph (1), demand  
21 shall be made promptly after commencement of the action.

22 (c) Contents of demand.--A demand under this section must be  
23 in record form and give notice with reasonable specificity of:

24 (1) the [essential] material facts relied upon to  
25 support each of the claims made in the demand[.] against each  
26 proposed defendant; and

27 (2) in the case of a derivative action commenced by a  
28 member, the basis on which the person making the demand has  
29 standing under section 5782.

30 \* \* \*

Section 91. Section 5782(a) and (d) of Title 15 are amended  
and the section is amended by adding a subsection to read:

§ 5782. Eligible member plaintiffs and security for costs.

(a) General rule.--Except as provided in subsection (b), in  
any action or proceeding brought [to enforce a secondary right  
on the part of] by one or more members of a nonprofit  
corporation [against any present or former officer, director or  
member of an other body of the corporation because the  
corporation refuses to enforce rights that may properly be  
asserted by it] to enforce rights that the plaintiff claims  
could be, but have not been, asserted by the corporation, each  
plaintiff [must aver and it must be made to appear that each  
plaintiff] has standing to commence and maintain the derivative  
action if the plaintiff:

(1) was a member of the corporation at the time of the  
transaction or conduct of which [he] the plaintiff  
complains[.]; and

(2) continues to be a member until the time of judgment,  
unless the failure to do so is the result of corporate action  
that:

(i) was done merely to eliminate derivative claims;  
or

(ii) has the effect of a reorganization that does  
not affect the plaintiff's ownership of the enterprise.

\* \* \*

(d) Failure to maintain ownership.--If a plaintiff loses the  
right to maintain a derivative action under subsection (a)(2),  
the court may entertain a motion to substitute the corporation  
as the named plaintiff.

[(d)] (e) Cross reference.--See section 6146 (relating to

1 provisions applicable to all foreign corporations).

2 Section 92. Section 5783(a), (b)(1), (e) introductory  
3 paragraph, (3) and (6) and (f) of Title 15 are amended and the  
4 section is amended by adding subsections to read:

5 § 5783. Special litigation committee.

6 (a) General rule.--If a nonprofit corporation or the board  
7 of directors receives a demand to bring an action to enforce a  
8 right of the corporation, or if a derivative action is commenced  
9 before demand has been made on the corporation or the board, the  
10 board may appoint a special litigation committee to investigate  
11 the claims asserted in the demand or action and to determine on  
12 behalf of the corporation or recommend to the board whether  
13 pursuing any of the claims asserted is in the best interests of  
14 the corporation. The corporation [~~shall send~~] must deliver a  
15 notice in record form to the [~~plaintiff~~] person making the  
16 demand, or to the plaintiff if a derivative action has been  
17 commenced, promptly after the appointment of a committee under  
18 this section notifying the person making the demand or the  
19 plaintiff that a committee has been appointed and identifying by  
20 name the members of the committee.

21 (b) Discovery stay.--If the board of directors appoints a  
22 special litigation committee and an action is commenced before a  
23 determination has been made under subsection (e):

24 (1) On motion by the nonprofit corporation, or the  
25 committee made in the name of the [~~nonprofit~~] corporation,  
26 the court shall stay discovery for the time reasonably  
27 necessary to permit the committee to complete its  
28 investigation, except for good cause shown.

29 \* \* \*

30 (c.1) Committee members who are not directors or members of

1 an other body.--A member of a special litigation committee who  
2 is not a director or member of an other body, when acting as a  
3 member of the committee, is subject to the liabilities imposed,  
4 and entitled to the rights and immunities conferred, by  
5 Subchapters B (relating to fiduciary duty) and D (relating to  
6 indemnification) and other provisions of law upon directors of a  
7 corporation.

8 \* \* \*

9 (e) Determination.--After appropriate investigation by a  
10 special litigation committee, the committee [or the] may  
11 determine, or the committee may recommend to the board of  
12 directors [may] that the board determine that it is in the best  
13 interests of the nonprofit corporation that:

14 \* \* \*

15 (3) some or all of the claims asserted in the demand be  
16 settled on terms [approved] determined or recommended by the  
17 committee;

18 \* \* \*

19 (6) some or all the claims asserted in an action already  
20 commenced be settled on terms [approved] determined or  
21 recommended by the committee; or

22 \* \* \*

23 (f) Court review and action.--If a special litigation  
24 committee is appointed and a derivative action is commenced  
25 before or after the committee makes a determination [is made]  
26 under subsection (e) or the board of directors determines under  
27 subsection (e) to accept the recommendation of the committee:

28 (1) The nonprofit corporation or the committee shall  
29 file with the court after a determination is made under  
30 subsection (e) a statement of the determination and a report

1 of the committee supporting the determination. The  
2 corporation or the committee shall serve each party with a  
3 copy of the determination and report. If the corporation or  
4 the committee moves to file the report under seal, the report  
5 shall be served on the parties subject to an appropriate  
6 stipulation agreed to by the parties or a protective order  
7 issued by the court.

8 (2) The corporation or the committee shall file with the  
9 court a motion, pleading or notice consistent with the  
10 determination under subsection (e).

11 (3) If the determination is one described in subsection  
12 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall  
13 determine whether the members of the committee met the  
14 qualifications required under subsection (c) (1) and (2) and  
15 whether the committee conducted its investigation and made  
16 its determination or recommendation in good faith,  
17 independently and with reasonable care. The plaintiff has the  
18 burden of proving that the committee did not meet those  
19 qualifications or act in the required manner. If the court  
20 finds that the members of the committee met the  
21 qualifications required under subsection (c) (1) and (2) and  
22 that the committee acted in good faith, independently and  
23 with reasonable care, the court shall enforce the  
24 determination of the committee or the board. Otherwise, the  
25 court shall:

26 (i) dissolve any stay of discovery entered under  
27 subsection (b);

28 (ii) allow the action to continue under the control  
29 of the plaintiff; and

30 (iii) permit the defendants to file preliminary

1 objections, other appropriate pleadings and motions.

2 \* \* \*

3 (h) Interest of a defendant.--The fact that a person is  
4 named as a defendant does not make the person interested in the  
5 claims asserted in a demand or action for purposes of subsection  
6 (c) (1) if the claims against the person:

7 (1) are based only on an allegation that the person  
8 approved of or acquiesced in the transaction or conduct that  
9 is the subject of the claims; and

10 (2) do not otherwise allege with particularity facts  
11 that, if true, raise a significant prospect that the person  
12 would be adjudged liable.

13 Section 93. Section 5911(b) of Title 15 is amended and the  
14 section is amended by adding a subsection to read:

15 § 5911. Amendment of articles authorized.

16 \* \* \*

17 (b) Exceptions.--An amendment adopted under this section  
18 shall not amend articles in such a way that as so amended they  
19 would not be authorized by this subpart as original articles of  
20 incorporation except that:

21 (1) Restated articles shall, subject to section 109  
22 (relating to name of commercial registered office provider in  
23 lieu of registered address), state the address of the current  
24 instead of the initial registered office of the corporation  
25 in this Commonwealth and need not state the names and  
26 addresses of the incorporators.

27 (2) The corporation shall not be required to revise any  
28 other provision of its articles if the provision is valid and  
29 operative immediately prior to the [filing of the amendment  
30 in] delivery of the amendment to the department for filing.



1     (c) Amendments pursuant to other provisions.--Amendments to  
2 the articles authorized pursuant to Chapter 2 (relating to  
3 entities generally) or Chapter 3 (relating to entity  
4 transactions) or set forth in statements or certificates  
5 permitted or required to be delivered to the department for  
6 filing by sections 108 (relating to change in location or status  
7 of registered office provided by agent) and 138 (relating to  
8 statement of correction) or by this subpart need not be proposed  
9 or adopted in the manner provided in this subchapter, except to  
10 the extent that the provisions of this subchapter have been  
11 incorporated into Chapter 2 or Chapter 3 or into the provisions  
12 authorizing such statements or certificates.

13     Section 94. Section 5912(b) and (c)(1) of Title 15 are  
14 amended to read:

15     § 5912. Proposal of amendments.

16     \* \* \*

17     (b) Submission to members.--Except where the approval of the  
18 members is unnecessary under this subchapter, the board of  
19 directors or other body shall direct that the proposed amendment  
20 be submitted to a vote of the members entitled to vote thereon  
21 [at a regular or special meeting of the members]. An amendment  
22 proposed pursuant to subsection (a)(2) shall be submitted to a  
23 vote either at the next annual meeting held not earlier than 120  
24 days after the amendment is proposed or at a special meeting of  
25 the members called for that purpose by the members.

26     (c) Form of amendment.--The resolution or petition shall  
27 contain the language of the proposed amendment of the articles:

28         (1) by setting forth the existing text of the articles  
29         or the provision thereof that is proposed to be amended, with  
30         brackets around language that is to be deleted and

underscoring under language that is to be added or otherwise  
clearly showing the changes to be made; or

\* \* \*

Section 95. Section 5979(b) of Title 15 is amended and the  
section is amended by adding a subsection to read:

§ 5979. Survival of remedies and rights after dissolution.

\* \* \*

(b) Rights and assets.--The dissolution of a nonprofit  
corporation shall not affect the limited liability of a member  
of the corporation theretofore existing with respect to  
transactions occurring or acts or omissions done or omitted in  
the name of or by the corporation except that, subject to  
subsection (d) and sections 5992(d) (relating to [claims barred]  
notice to claimants) and 5993(b) (relating to [claims barred]  
acceptance or rejection of matured claims), if applicable, each  
member shall be liable for his pro rata portion of the unpaid  
liabilities of the corporation up to the amount of the net  
assets of the corporation distributed to the member in  
connection with the dissolution. Should any property right of a  
corporation be discovered, or the corporation be named as a  
defendant in an action or proceeding, at any time after the  
dissolution of the corporation, the surviving member or members  
of the board of directors or other body that wound up the  
affairs of the corporation, or a receiver appointed by the  
court, shall have authority to enforce the property right and to  
collect and divide the assets so discovered among the persons  
entitled thereto and to prosecute or defend actions or  
proceedings in the corporate name of the corporation. Any assets  
so collected shall be distributed and disposed of in accordance  
with the applicable order of court, if any, and otherwise in

1 accordance with this subchapter.

2 \* \* \*

3 (f) Late-filed action or proceeding.--The following apply to  
4 an action or proceeding commenced against a dissolved  
5 corporation after the expiration of the period specified in  
6 subsection (a) (2):

7 (1) Any judgment against a dissolved corporation in the  
8 action or proceeding shall be void.

9 (2) The dissolved corporation may, but need not, appear  
10 and raise as a defense the expiration of the period specified  
11 in subsection (a) (2) and any other reasonably related matters  
12 in response to the action or proceeding.

13 (3) Any person who was a director, member of an other  
14 body, officer or member of the dissolved corporation when the  
15 dissolution became effective or any governing person of any  
16 successor entity acting pursuant to Subchapter H (relating to  
17 postdissolution provision for liabilities), and any  
18 successor-in-interest to any of those persons, may, but need  
19 not, act on behalf of the dissolved corporation in taking the  
20 actions described in paragraph (2), and shall not thereby be  
21 deemed to be deprived of the operation of subsections (c) and  
22 (d) or of section 5978(b) (relating to winding up of  
23 corporation after dissolution) or otherwise be responsible  
24 for any obligations of the dissolved corporation.

25 Section 96. Section 7331 heading and (a) of Title 15 are  
26 amended to read:

27 § 7331. Merger, [consolidation,] division or sale of assets.

28 (a) Merger[, consolidation] or division.--Any two or more  
29 electric cooperative corporations may merge[, consolidate] or  
30 divide but only if the surviving or resulting corporation is a

1 corporation existing under this chapter. Every merger[,  
2 consolidation] or division shall be proposed by the adoption by  
3 the board of directors of a resolution approving the plan of  
4 merger[, consolidation] or division and directing that the plan  
5 be submitted to a vote of the members entitled to vote thereon  
6 at a regular or special meeting of the members.

7 \* \* \*

8 Section 97. Section 8411(e) of Title 15 is amended and the  
9 section is amended by adding a subsection to read:

10 § 8411. Short title and application of chapter.

11 \* \* \*

12 (e) References to withdrawal.--A reference in a partnership  
13 agreement to the withdrawal of a partner shall be deemed to be a  
14 reference to the dissociation of the partner.

15 ~~[(e)]~~ (f) Cross reference.--See section 8415(c)(5) (relating  
16 to contents of partnership agreement).

17 Section 98. Section 8441(a) of Title 15 is amended to read:  
18 § 8441. Partner's rights and duties.

19 (a) Distributions ~~[and losses]~~.--Each partner is entitled to  
20 share in distributions as provided in section 8445 (relating to  
21 sharing of and right to distribution before dissolution).

22 \* \* \*

23 Section 99. Sections 8446(k) and 8611(f) of Title 15 are  
24 amended and the sections are amended by adding subsections to  
25 read:

26 § 8446. Rights to information.

27 \* \* \*

28 (k) Enforcement of right to information.--If the  
29 partnership, or a partner or agent thereof, refuses to permit an  
30 inspection sought by a partner or person dissociated as a

partner or attorney or other agent acting for the partner or person dissociated as a partner pursuant to subsection (b) or (e), or does not reply to the demand made under either of those subsections within ten days after the demand has been received, the partner or person dissociated as a partner may file an action in the court for an order to compel the inspection. The court is vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the partnership to permit the partner or person dissociated as a partner to inspect the information and to make copies or extracts therefrom.

[(k)] (l) Cross reference.--See section 8415 (relating to contents of partnership agreement).

§ 8611. Short title and application of chapter.

\* \* \*

(f) References to withdrawal.--A reference in the organic rules of a limited partnership to the withdrawal of a general partner or limited partner shall be deemed to be a reference to the dissociation of the partner.

[(f)] (g) Cross reference.--See section 8615 (relating to contents of partnership agreement).

Section 100. Section 8623(a)(3) of Title 15 is amended to read:

§ 8623. Signing of filed documents.

(a) Required signatures.--Except as provided in this title, a document delivered to the department for filing under this title relating to a limited partnership must be signed as follows:

\* \* \*

(3) An amendment to the certificate of limited partnership designating as general partner a person admitted under section 8681(a)(3)(ii) (relating to events causing dissolution) following the dissociation of a limited partnership's last general partner must be signed by [that person] the person admitted as a general partner.

\* \* \*

Section 101. Section 8625(b) and (d), 8634(i) and 8647(k) of Title 15 are amended and the sections are amended by adding subsections to read:

§ 8625. Registered office.

\* \* \*

(b) Change of registered office.--After formation, a change in the location of the registered office may be effected at any time by the limited partnership. Before the change becomes effective, the limited partnership shall amend its certificate of limited partnership under the provisions of this chapter to reflect the change [in location], include the change in an annual report under section 146 (relating to annual report) or [shall] deliver to the department for filing a certificate of change of registered office setting forth:

(1) The name of the limited partnership.

(2) The address, including street and number, if any, of its then registered office.

(3) The address, including street and number, if any, to which the registered office is to be changed.

\* \* \*

(d) Effect of statement.--A statement regarding the registered office of a limited partnership set forth in a document filed in the department pursuant to this section shall

operate as an amendment of the certificate of limited  
partnership.

[(d)] (e) Cross references.--See:

Section 108 (relating to change in location or status of  
registered office provided by agent).

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed  
documents).

Section 136(c) (relating to processing of documents by  
Department of State).

Section 8615(c)(6) (relating to contents of partnership  
agreement).

Section 8623 (relating to signing of filed documents).

§ 8634. Limited partner rights to information.

\* \* \*

(i) Enforcement of right to information.--If the limited  
partnership, or a general partner or agent thereof, refuses to  
permit an inspection sought by a limited partner or person  
dissociated as a limited partner or attorney or other agent  
acting for the limited partner or person dissociated as a  
limited partner pursuant to subsection (a), (b) or (c), or does  
not reply to the demand made under any of those subsections  
within ten days after the demand has been received, the limited  
partner may file an action in the court for an order to compel  
the inspection. The court is vested with exclusive jurisdiction  
to determine whether or not the person seeking inspection is  
entitled to the inspection sought. The court may summarily order  
the limited partnership to permit the limited partner to inspect  
the information and to make copies or extracts therefrom.

[(i)] (j) Cross reference.--See section 8615 (relating to

1 contents of partnership agreement).

2 § 8647. General partner rights to information.

3 \* \* \*

4 (k) Enforcement of right to information.--If the limited  
5 partnership, or a general partner or agent thereof, refuses to  
6 permit an inspection sought by a general partner or person  
7 dissociated as a general partner or attorney or other agent  
8 acting for the general partner or person dissociated as a  
9 general partner pursuant to subsection (a), (b) or (e), or does  
10 not reply to the demand made under any of those subsections  
11 within ten days after the demand has been received, the general  
12 partner may file an action in the court for an order to compel  
13 the inspection. The court is vested with exclusive jurisdiction  
14 to determine whether or not the person seeking inspection is  
15 entitled to the inspection sought. The court may summarily order  
16 the limited partnership to permit the general partner to inspect  
17 the information and to make copies or extracts therefrom.

18 [(k)] (l) Cross reference.--See section 8615 (relating to  
19 contents of partnership agreement).

20 Section 102. Sections 8692(a)(1)(i), (b)(1) and (c) and 8693  
21 of Title 15 are amended to read:

22 § 8692. Derivative action.

23 (a) General rule.--Subject to section 8693 (relating to  
24 eligible partner plaintiffs and security for costs) and  
25 subsection (b), a [partner] plaintiff may maintain a derivative  
26 action to enforce a right of a limited partnership only if:

27 (1) the [partner] plaintiff first makes a demand on the  
28 limited partnership or the general partners requesting that  
29 [they cause] the partnership [to] bring an action to enforce  
30 the right, and:



1 (i) if a special litigation committee is not  
2 appointed under section 8694 (relating to special  
3 litigation committee), the [partnership does not bring  
4 the action within a reasonable time; or] general partners  
5 determine that:

6 (A) an action based on some or all of the claims  
7 asserted in the demand not be brought by the limited  
8 partnership but that the partnership not object to an  
9 action being brought by the party that made the  
10 demand; or

11 (B) an action already commenced continue under  
12 the control of the plaintiff; or

13 \* \* \*

14 (b) Prior demand excused.--

15 (1) A demand under subsection (a)(1) is excused only if  
16 the [partner] plaintiff makes a specific showing that  
17 immediate and irreparable harm to the limited partnership  
18 would otherwise result.

19 \* \* \*

20 (c) Contents of demand.--A demand under this section must be  
21 in record form and give notice with reasonable specificity of:

22 (1) the [essential] material facts relied upon to  
23 support each of the claims made in the demand[.] against each  
24 proposed defendant; and

25 (2) in the case of a derivative action commenced by a  
26 partner, the basis on which the person making the demand has  
27 standing under section 8693.

28 \* \* \*

29 § 8693. [Security] Eligible partner plaintiffs and security for  
30 costs.

1     (a) General rule.--Except as provided in subsection (b), in  
2 any action or proceeding brought by one or more partners of a  
3 limited partnership to enforce rights that the plaintiff claims  
4 could be, but have not been, asserted by the partnership, each  
5 plaintiff has standing to commence and maintain a derivative  
6 action only if the plaintiff:

7         (1) was a partner at the time of the transaction or  
8 conduct of which the plaintiff complains, or that the  
9 plaintiff's interest as a partner devolved upon the plaintiff  
10 by operation of law from a person who was a partner at that  
11 time; and

12         (2) continues to be a partner until the time of  
13 judgment, unless the failure to do so is the result of  
14 partnership action that:

15             (i) was done merely to eliminate derivative claims;  
16         or

17             (ii) has the effect of a reorganization that does  
18 not affect the plaintiff's ownership of the business  
19 enterprise.

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

30     (c) Security for costs.--In any action or proceeding

1 instituted or maintained by partners holding transferable  
2 interests entitled to receive less than 5% of any distribution  
3 by a limited partnership, unless the transferable interests held  
4 by the partners have an aggregate fair market value in excess of  
5 \$200,000, the partnership in whose right the action or  
6 proceeding is brought shall be entitled at any stage of the  
7 proceedings to require the plaintiffs to give security for the  
8 reasonable expenses, including attorneys' fees, that may be  
9 incurred by the partnership in connection therewith or for which  
10 it may become liable pursuant to section 8648(b) (relating to  
11 reimbursement, indemnification, advancement and insurance) to  
12 which security the partnership shall have recourse in such  
13 amount as the court determines upon the termination of the  
14 action or proceeding. The amount of security may, from time to  
15 time, be increased or decreased in the discretion of the court  
16 upon showing that the security provided has or is likely to  
17 become inadequate or excessive. The security may be denied or  
18 limited by the court if the court finds after an evidentiary  
19 hearing that undue hardship on plaintiffs and serious injustice  
20 would result.

21 (d) Failure to maintain ownership.--If a plaintiff loses the  
22 right to maintain a derivative action under subsection (a)(2),  
23 the court may entertain a motion by the limited partnership to  
24 substitute the partnership as the named plaintiff.

25 Section 103. Section 8694(a), (b)(1), (e)(3) and (6), (f)  
26 and (h) of Title 15 are amended and the section is amended by  
27 adding subsections to read:

28 § 8694. Special litigation committee.

29 (a) General rule.--If a limited partnership or the general  
30 partners receive a demand to bring an action to enforce a right

1 of the partnership, or if a derivative action is commenced  
2 before demand has been made on the partnership or the general  
3 partners, the general partners may appoint a special litigation  
4 committee to investigate the claims asserted in the demand or  
5 action and to determine on behalf of the limited partnership or  
6 recommend to the general partners whether pursuing any of the  
7 claims asserted is in the best interests of the partnership. The  
8 partnership [shall send] must deliver a notice in record form to  
9 the person making the demand, or to the plaintiff if a  
10 derivative action has been commenced, promptly after the  
11 appointment of the committee under this section notifying the  
12 person making the demand or the plaintiff that a committee has  
13 been appointed and identifying by name the members of the  
14 committee.

15 (b) Discovery stay.--If the general partners appoint a  
16 special litigation committee and an action is commenced before a  
17 determination has been made under subsection (e):

18 (1) On motion by the limited partnership, or the  
19 committee made in the name of the partnership, the court  
20 shall stay discovery for the time reasonably necessary to  
21 permit the committee to make its investigation, except for  
22 good cause shown.

23 \* \* \*

24 (c.1) Committee members who are not general partners.--A  
25 member of a special litigation committee who is not a general  
26 partner, when acting as a member of the committee, is subject to  
27 the liabilities imposed, and entitled to the rights and  
28 immunities conferred, by sections 8648 (relating to  
29 reimbursement, indemnification, advancement and insurance) and  
30 8649 (relating to standards of conduct for general partners).

1       \* \* \*

2       (e) Determination.--After appropriate investigation by a  
3 special litigation committee, the committee [~~or the general~~  
4 ~~partners~~] may determine, or the committee may recommend to the  
5 general partners that the general partners determine, that it is  
6 in the best interests of the limited partnership that:

7       \* \* \*

8       (3) some or all of the claims asserted in the demand be  
9 settled on terms [~~approved~~] determined or recommended by the  
10 committee;

11       \* \* \*

12       (6) some or all of the claims asserted in an action  
13 already commenced be settled on terms [~~approved~~] determined  
14 or recommended by the committee; or

15       \* \* \*

16       (f) Court review and action.--If a special litigation  
17 committee is appointed and [~~an~~] a derivative action is commenced  
18 before or after either the committee makes a determination [~~is~~  
19 ~~made~~] under subsection (e) or the general partners determine  
20 under that subsection to accept the recommendation of the  
21 committee:

22       (1) The limited partnership or the committee shall file  
23 with the court after a determination is made under subsection  
24 (e) a statement of the determination and a report of the  
25 committee supporting the determination. The partnership or  
26 the committee shall serve each party with a copy of the  
27 determination and report. If the partnership or the committee  
28 moves to file the report under seal, the report shall be  
29 served on the parties subject to an appropriate stipulation  
30 agreed to by the parties or a protective order issued by the

1 court.

2 (2) The partnership or the committee shall file with the  
3 court a motion, pleading or notice consistent with the  
4 determination under subsection (e).

5 (3) If the determination is one described in subsection  
6 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall  
7 determine whether the members of the committee met the  
8 qualifications required under subsection (c) (1) and (2) and  
9 whether the committee conducted its investigation and made  
10 its determination or recommendation in good faith,  
11 independently and with reasonable care. The plaintiff has the  
12 burden of proving that the committee did not meet those  
13 qualifications or act in the required manner. If the court  
14 finds that the members of the committee met the  
15 qualifications required under subsection (c) (1) and (2) and  
16 that the committee acted in good faith, independently and  
17 with reasonable care, the court shall enforce the  
18 determination of the committee or the general partners.

19 Otherwise, the court shall:

20 (i) dissolve any stay of discovery entered under  
21 subsection (b);

22 (ii) allow the action to continue under the control  
23 of the plaintiff; and

24 (iii) permit the defendants to file preliminary  
25 objections and other appropriate motions and pleadings.

26 \* \* \*

27 (h) Interest of a defendant.--The fact that a person is  
28 named as a defendant does not make the person interested in the  
29 claims asserted in a demand or action for purposes of subsection  
30 (c) (1) if the claims against the person:

1       (1) are based only on an allegation that the person  
2       approved of or acquiesced in the transaction or conduct that  
3       is the subject of the claims; and

4       (2) do not otherwise allege with particularity facts  
5       that, if true, raise a significant prospect that the person  
6       would be adjudged liable.

7       [(h)] (i) Cross reference.--See section 8615(c)(18)  
8       (relating to contents of partnership agreement).

9       Section 104. Section 8821(a) and (g) of Title 15 are amended  
10      to read:

11     § 8821. Formation of limited liability company and certificate  
12               of organization.

13       (a) Formation.--One or more [persons] associations or  
14     individuals 18 years of age or older may act as organizers to  
15     form a limited liability company by delivering to the department  
16     for filing a certificate of organization.

17       \* \* \*

18       (g) Cross references.--See:

19             Section 134 (relating to docketing statement).

20             Section 135 (relating to requirements to be met by filed  
21     documents).

22             Section 136(c) (relating to processing of documents by  
23     Department of State).

24             Section 8818(d)(1) (relating to characteristics of  
25     limited liability company).

26             Section 8823 (relating to signing of filed documents).

27             Section 8893(a) (relating to benefit company status).

28     Section 105. Sections 8825(b) and (d) and 8850(i) of Title  
29     15 are amended and the sections are amended by adding  
30     subsections to read:

1 § 8825. Registered office.

2 \* \* \*

3 (b) Change of registered office.--After organization, a  
4 change in the location of the registered office may be effected  
5 at any time by the company. Before the change becomes effective,  
6 the company shall amend its certificate of organization under  
7 the provisions of this chapter to reflect the change [in  
8 location], include the change in an annual report under section  
9 146 (relating to annual report) or [shall] file with the  
10 department a certificate of change of registered office setting  
11 forth:

12 (1) The name of the company.

13 (2) The address, including street and number, if any, of  
14 its then-registered office.

15 (3) The address, including street and number, if any, to  
16 which the registered office is to be changed.

17 \* \* \*

18 (d) Effect of statement.--A statement regarding the  
19 registered office of a limited liability company set forth in a  
20 document filed in the department pursuant to this section shall  
21 operate as an amendment of the certificate of organization.

22 [(d)] (e) Cross references.--See:

23 Section 108 (relating to change in location or status of  
24 registered office provided by agent).

25 Section 134 (relating to docketing statement).

26 Section 135 (relating to requirements to be met by filed  
27 documents).

28 Section 136(c) (relating to processing of documents by  
29 Department of State).

30 Section 8815(c) (7) (relating to contents of operating



1 agreement).

2 Section 8823 (relating to signing of filed documents).

3 § 8850. Rights to information.

4 \* \* \*

5 (i) Enforcement of right to information.--If a limited  
6 liability company, or a manager, member or agent thereof,  
7 refuses to permit an inspection sought by a person or attorney  
8 or other agent acting for the person pursuant to this section,  
9 or does not reply to the demand made under this section within  
10 ten days after the demand has been received, the person seeking  
11 inspection may file an action in the court for an order to  
12 compel the inspection. The court is vested with exclusive  
13 jurisdiction to determine whether or not the person seeking  
14 inspection is entitled to the inspection sought. The court may  
15 summarily order the company to permit the person to inspect the  
16 information and to make copies or extracts therefrom.

17 [(i)] (j) Cross reference.--See section 8815 (relating to  
18 contents of operating agreement).

19 Section 106. Sections 8882(a)(1)(i), (b)(1) and (c) and 8883  
20 of Title 15 are amended to read:

21 § 8882. Derivative action.

22 (a) General rule.--Subject to section 8883 (relating to  
23 eligible plaintiffs and security for costs) and subsection (b),  
24 a [member or manager] plaintiff may maintain a derivative action  
25 to enforce a right of a limited liability company only if:

26 (1) the plaintiff first makes a demand on the company or  
27 the other members in a member-managed limited liability  
28 company, or the managers of a manager-managed limited  
29 liability company, requesting that [they cause] the company  
30 [to] bring an action to enforce the right and:

(i) if a special litigation committee is not appointed under section 8884 (relating to special litigation committee), [the company does not bring the action within a reasonable time; or] the members in a member-managed company or managers of a manager-managed company determine that:

(A) an action based on some or all of the claims asserted in the demand not be brought by the company but that the company not object to an action being brought by the party that made the demand; or

(B) an action already commenced continue under the control of the plaintiff; or

\* \* \*

(b) Prior demand excused.--

(1) A demand under subsection (a)(1) is excused only if the plaintiff makes a specific showing that immediate and irreparable harm to the limited liability company would otherwise result.

\* \* \*

(c) Contents of demand.--A demand under this section must be in record form and give notice with reasonable specificity of:

(1) the [essential] material facts relied upon to support each of the claims made in the demand[.] against each proposed defendant; and

(2) in the case of a derivative action commenced by a member or manager, the basis on which the person making the demand has standing under section 8883.

\* \* \*

§ 8883. [Security] Eligible plaintiffs and security for costs.

(a) General rule.--Except as provided in subsection (b), in

any action or proceeding brought by one or more members or managers of a limited liability company to enforce rights that the plaintiff claims could be, but have not been, asserted by the company, each plaintiff has standing to commence and maintain the derivative action if the plaintiff:

(1) was a member or manager of the company at the time of the transaction or conduct of which the plaintiff complains, or that the plaintiff's status as a member or manager devolved upon the plaintiff by operation of law from a person who was a member or manager at that time; and

(2) continues to be a member or manager until the time of judgment, unless the failure to do so is the result of company action that:

(i) was done merely to eliminate derivative claims;  
or

(ii) has the effect of a reorganization that does not affect the plaintiff's ownership of the business enterprise.

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

(c) Security for costs.--In any action or proceeding instituted or maintained by members holding transferable

1 interests entitled to receive less than 5% of any distribution  
2 by a limited liability company, unless the transferable  
3 interests held by the members have an aggregate fair market  
4 value in excess of \$200,000, the company in whose right the  
5 action or proceeding is brought shall be entitled at any stage  
6 of the proceedings to require the plaintiffs to give security  
7 for the reasonable expenses, including attorney fees, that may  
8 be incurred by the company in connection therewith or for which  
9 it may become liable pursuant to section 8848(b) (relating to  
10 reimbursement, indemnification, advancement and insurance) to  
11 which security the company shall have recourse in such amount as  
12 the court determines upon the termination of the action or  
13 proceeding. The amount of security may, from time to time, be  
14 increased or decreased in the discretion of the court upon  
15 showing that the security provided has or may become inadequate  
16 or excessive. The security may be denied or limited by the court  
17 if the court finds after an evidentiary hearing that undue  
18 hardship on plaintiffs and serious injustice would result.

19 (d) Failure to maintain ownership.--If a plaintiff loses the  
20 right to maintain a derivative action under subsection (a)(2),  
21 the court may entertain a motion by the limited liability  
22 company to substitute the limited liability company as the named  
23 plaintiff.

24 Section 107. Sections 8884(a), (b)(1), (e)(3) and (6), (f)  
25 and (h), 8895(a)(3), (b) and (c) and 8896(d) of Title 15 are  
26 amended and the sections are amended by adding subsections to  
27 read:

28 § 8884. Special litigation committee.

29 (a) General rule.--If a limited liability company or its  
30 members or managers receive a demand to bring an action to

1 enforce a right of the company, or if a derivative action is  
2 commenced before demand has been made on the company or its  
3 members or managers, the members in a member-managed limited  
4 liability company, or the managers in a manager-managed limited  
5 liability company, may appoint a special litigation committee to  
6 investigate the claims asserted in the demand or action and to  
7 determine on behalf of the company or recommend to the managers  
8 or members whether pursuing any of the claims asserted is in the  
9 best interests of the company. The company [shall send] must  
10 deliver a notice in record form to the person making the demand,  
11 or to the plaintiff if a derivative action has been commenced,  
12 promptly after the appointment of a committee under this section  
13 notifying the person making the demand or the plaintiff that a  
14 committee has been appointed and identifying by name the members  
15 of the committee. A committee may not be appointed under this  
16 section if:

17 (1) every member of the company is also a manager of the  
18 company; or

19 (2) the company is member-managed and every member is  
20 actively involved in the management of the company.

21 (b) Discovery stay.--If the members or managers appoint a  
22 special litigation committee and an action is commenced before a  
23 determination has been made under subsection (e):

24 (1) On motion by the limited liability company, or the  
25 committee made in the name of the [limited liability]  
26 company, the court shall stay discovery for the time  
27 reasonably necessary to permit the committee to make its  
28 investigation, except for good cause shown.

29 \* \* \*

30 (c.1) Committee members who are not managers.--A member of a

1 special litigation committee who is not a manager, when acting  
2 as a member of the committee, is subject to the liabilities  
3 imposed, and entitled to the rights and immunities conferred, by  
4 sections 8848 (relating to reimbursement, indemnification,  
5 advancement and insurance) and 8849.2 (relating to standards of  
6 conduct for managers).

7 \* \* \*

8 (e) Determination.--After appropriate investigation by a  
9 special litigation committee, the committee [or the] may  
10 determine, or the committee may recommend to the managers or  
11 members [may] that they determine, that it is in the best  
12 interests of the limited liability company that:

13 \* \* \*

14 (3) some or all of the claims asserted in the demand be  
15 settled on terms [approved] determined or recommended by the  
16 committee;

17 \* \* \*

18 (6) some or all of the claims asserted in an action  
19 already commenced be settled on terms [approved] determined  
20 or recommended by the committee; or

21 \* \* \*

22 (f) Court review and action.--If a special litigation  
23 committee is appointed and a derivative action is commenced  
24 either before or after either the committee makes a  
25 determination [is made] under subsection (e) or the members or  
26 managers determine under that subsection to accept the  
27 recommendation of the committee:

28 (1) The limited liability company or the committee shall  
29 file with the court after a determination is made under  
30 subsection (e) a statement of the determination and a report

1 of the committee supporting the determination. The company or  
2 the committee shall serve each party with a copy of the  
3 determination and report. If the company or the committee  
4 moves to file the report under seal, the report shall be  
5 served on the parties subject to an appropriate stipulation  
6 agreed to by the parties or a protective order issued by the  
7 court.

8 (2) The company or the committee shall file with the  
9 court a motion, pleading or notice consistent with the  
10 determination under subsection (e).

11 (3) If the determination is one described in subsection  
12 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall  
13 determine whether the members of the committee met the  
14 qualifications required under subsection (c) (1) and (2) and  
15 whether the committee conducted its investigation and made  
16 its determination or recommendation in good faith,  
17 independently and with reasonable care. The plaintiff has the  
18 burden of proving that the committee did not meet those  
19 qualifications or act in the required manner. If the court  
20 finds that the members of the committee met the  
21 qualifications required under subsection (c) (1) and (2) and  
22 that the committee acted in good faith, independently and  
23 with reasonable care, the court shall enforce the  
24 determination of the committee or the members or managers.  
25 Otherwise, the court shall:

26 (i) dissolve any stay of discovery entered under  
27 subsection (b);

28 (ii) allow the action to continue under the control  
29 of the plaintiff; and

30 (iii) permit the defendants to file preliminary

1 objections and other appropriate motions and pleadings.

2 \* \* \*

3 (h) Interest of a defendant.--The fact that a person is  
4 named as a defendant does not make the person interested in the  
5 claims asserted in a demand or action for purposes of subsection  
6 (c) (1) if the claims against the person:

7 (1) are based only on an allegation that the person  
8 approved of or acquiesced in the transaction or conduct that  
9 is the subject of the claims; and

10 (2) does not otherwise allege with particularity facts  
11 that, if true, raise a significant prospect that the person  
12 would be adjudged liable.

13 [(h)] (i) Cross reference.--See section 8815(c) (18)  
14 (relating to contents of operating agreement).

15 § 8895. Standard of conduct for members.

16 (a) Consideration of interests.--The members of a member-  
17 managed limited liability company that is a benefit company,  
18 when discharging their duties under this title or under the  
19 operating agreement:

20 \* \* \*

21 (3) shall not be required to give priority to [the  
22 interests of any person or group] any matter referred to in  
23 paragraph (1) or (2) over [the interests of any other person  
24 or group] any other such matter or to regard any such matter  
25 as dominant or controlling unless the benefit company has  
26 stated in its certificate of organization its intention to  
27 give priority to certain interests related to its  
28 accomplishment of its general public benefit purpose or of a  
29 specific public benefit purpose identified in the  
30 certificate.



1 (b) Coordination with other provisions of law.--The  
2 consideration of [interests and factors] matters in the manner  
3 required under subsection (a) shall not constitute a violation  
4 of section 8849.1 (relating to standards of conduct for  
5 members).

6 (c) Exoneration from personal liability.--Regardless of  
7 whether the operating agreement of a member-managed benefit  
8 company includes a provision eliminating or limiting the  
9 personal liability of a member:

10 (1) A member shall not be personally liable for monetary  
11 damages for any action taken as a member of [a member-managed  
12 limited liability] the benefit company in the course of  
13 performing the duties specified in subsection (a) unless the  
14 action constitutes self-dealing, willful misconduct or [a  
15 knowing violation of law] recklessness.

16 (2) A member shall not be personally liable for monetary  
17 damages for failure of the benefit company to pursue or  
18 create general public benefit or a specific public benefit.

19 \* \* \*

20 (e) Ownership of interest.--A member's ownership, directly  
21 or indirectly, of an interest in a benefit company does not  
22 alone create a conflict of interest on the part of the member  
23 with respect to the member's performance of the duties of a  
24 member under subsection (a), except to the extent the ownership  
25 would create a conflict of interest if the limited liability  
26 company were not a benefit company.

27 § 8896. Standard of conduct for managers and officers.

28 \* \* \*

29 (d) Exoneration from personal liability.--Regardless of  
30 whether the operating agreement of a manager-managed benefit

company includes a provision eliminating or limiting the  
personal liability of a manager or officer:

(1) A manager or officer shall not be personally liable,  
as such, for monetary damages for any action taken as a  
manager or officer in the course of performing the duties  
specified in subsection (a) or (b) unless the action  
constitutes self-dealing, willful misconduct or [a knowing  
violation of law] recklessness.

(2) A manager or officer shall not be personally liable  
for monetary damages for failure of the benefit company to  
pursue or create general public benefit or a specific public  
benefit.

\* \* \*

(f) Ownership of interest.--The ownership by a manager or  
officer, directly or indirectly, of an interest in a benefit  
company does not alone create a conflict of interest on the part  
of the manager or officer with respect to the performance by the  
manager or officer of the duties of a manager or officer under  
subsection (a) or (b), except to the extent the ownership would  
create a conflict of interest if the limited liability company  
were not a benefit company.

Section 108. Section 8995 of Title 15 is amended by adding  
subsections to read:

§ 8995. Application and effect of subchapter.

\* \* \*

(f) Indication of status.--The certificate of organization  
of a domestic restricted professional company or the foreign  
registration statement of a foreign restricted professional  
company shall contain a statement that the entity is a  
restricted professional company and include a brief description

1 of the restricted professional service or services to be  
2 rendered by the company.

3 (g) Definition.--For purposes of this subchapter, the  
4 following term has the meaning indicated:

5 "Restricted professional company." A domestic or foreign  
6 limited liability company that renders one or more restricted  
7 professional services in this Commonwealth.

8 Section 109. Section 9504(b) of Title 15 is amended and the  
9 section is amended by adding a subsection to read:

10 § 9504. Registered office.

11 \* \* \*

12 (b) Change.--The registered office [location] of a business  
13 trust may be changed by an amendment of the instrument[.] or by  
14 including the change in an annual report under section 146  
15 (relating to annual report).

16 \* \* \*

17 (d) Effect of statement.--A statement regarding the  
18 registered office of a business trust set forth in a document  
19 filed in the department pursuant to this section shall operate  
20 as an amendment of the instrument.

21 Section 110. Sections 101, 103(a), 302, 311(b) and (e)(1),  
22 331 and 332 of Title 54 are amended to read:

23 § 101. Definitions.

24 Subject to additional definitions contained in subsequent  
25 provisions of this title which are applicable to specific  
26 provisions of this title, the [following words and phrases when  
27 used in] definitions in 15 Pa.C.S. § 102 (relating to  
28 definitions) apply to this title [shall have], unless the  
29 context clearly indicates otherwise.[, the meanings given to  
30 them in this section:

1 "Department." The Department of State of the Commonwealth.

2 "Domestic corporation." A corporation incorporated under the  
3 laws of this Commonwealth.

4 "Domestic corporation not-for-profit." A domestic  
5 corporation not incorporated for a purpose or purposes involving  
6 pecuniary profit, incidental or otherwise.

7 "Officially publish." The meaning specified in 15 Pa.C.S. §  
8 1103 (relating to definitions) except that the county of  
9 publication shall be as specified in this title.

10 "Qualified foreign corporation." A corporation incorporated  
11 under any laws other than those of this Commonwealth that is  
12 authorized to do business in this Commonwealth under either 15  
13 Pa.C.S. Ch. 41 (relating to foreign business corporations) or  
14 Ch. 61 (relating to foreign nonprofit corporations).

15 "Verified statement." A document filed under this title  
16 containing statements of fact and a statement by the signatory  
17 that it is made subject to the penalties of 18 Pa.C.S. § 4904  
18 (relating to unsworn falsification to authorities).]

19 § 103. Execution of documents.

20 (a) General rule.--Any document [~~filed in~~] delivered to the  
21 Department of State for filing under this title by [~~a~~  
22 ~~corporation~~] an association may be executed on behalf of the  
23 [~~corporation~~] association by any one duly authorized [~~officer~~]  
24 representative thereof. The corporate seal may be affixed and  
25 attested, but the affixation and attestation of the corporate  
26 seal shall not be necessary for the due execution of any filing  
27 by a corporation under this title.

28 \* \* \*

29 § 302. Definitions.

30 [(a) Definitions.--]The following words and phrases when

used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Business." Any commercial or professional activity.

"Entity." Any individual or any corporation, association, partnership, joint-stock company, business trust, syndicate, joint adventureship or other combination or group of persons, regardless of whether it is organized or formed under the laws of this Commonwealth or any other jurisdiction.

"Fictitious name." Any assumed or fictitious name, style or designation other than the proper name of the entity using such name. The term includes a name assumed by a general partnership, syndicate, joint adventureship or similar combination or group of persons.

"Proper name." When used with respect to an association of a type listed in the following paragraphs, the term means the name set forth in:

(1) the public organic record, for a domestic filing association;

(2) the statement of registration, for a limited liability partnership;

(4) the statement of election, for an electing partnership;

(9) the statement of registration of a [foreign] registered foreign association under 15 Pa.C.S. § 412(a)(1) (i) (relating to foreign registration statement) or, if that name does not comply with 15 Pa.C.S. § 202 (relating to requirements for names generally), the name set forth in the statement under 15 Pa.C.S. § 412 (a)(1)(ii).

[(b) Other defined terms.--The definitions in 15 Pa.C.S. § 102 (relating to definitions) apply to this title except to the

1 extent they are inconsistent with the provisions of this title.]

2 § 311. Registration.

3 \* \* \*

4 (b) Use of [corporate] designators.--A fictitious name  
5 registered under this chapter:

6 (1) May not contain a corporate designator such as  
7 "corporation," "incorporated" or "limited" or any derivation  
8 or abbreviation thereof unless the entity or at least one  
9 entity named in the application for registration of  
10 fictitious name is a corporation. The use of the word  
11 "company" or any derivation or abbreviation thereof by a sole  
12 proprietorship, a partnership or a corporation is  
13 permissible.

14 (2) Need not contain [a corporate] an association  
15 designator, notwithstanding the fact that some or all of the  
16 persons interested therein are [corporations] associations.  
17 This paragraph shall not be construed to limit or affect any  
18 personal liability otherwise existing of [shareholders of a  
19 corporation] interest holders of an association to persons  
20 who deal with the [corporation] association without knowledge  
21 of its status as such.

22 \* \* \*

23 (e) Duplicate use of names.--The fictitious name shall be  
24 distinguishable upon the records of the department from:

25 (1) The name of any domestic filing entity, domestic  
26 limited liability limited partnership, domestic electing  
27 partnership[, ] or registered foreign association [or the name  
28 of any corporation or other association registered at any  
29 time under Chapter 5 (relating to corporate and other  
30 association names)] unless such name is available or is made

1 available for use under the provisions or procedures of 15  
2 Pa.C.S. § 202(b)(1) (relating to requirements for names  
3 generally).

4 \* \* \*

5 § 331. Contracts [entered into] and acts by entity using  
6 unregistered fictitious name.

7 (a) General rule.--No entity which has failed to register a  
8 fictitious name as required by this chapter shall be permitted  
9 to maintain any action in any tribunal of this Commonwealth  
10 until such entity shall have complied with the provisions of  
11 this chapter. Nor shall any action be maintained in any tribunal  
12 of this Commonwealth by any successor or assignee of such entity  
13 on any right, claim or demand arising out of a transaction with  
14 respect to which such entity used such fictitious name until  
15 such entity, or an entity which has acquired all or  
16 substantially all of its assets, shall have complied with the  
17 provisions of this chapter. The failure [of any] by itself of an  
18 entity to register a fictitious name as required by this chapter  
19 shall not impair the validity of any contract or act of [such  
20 entity] the entity using the fictitious name and shall not  
21 prevent [such] the entity from defending any action in any  
22 tribunal of this Commonwealth.

23 [(b) Civil penalty.--Before any entity may institute any  
24 action in any tribunal of this Commonwealth on any cause of  
25 action arising out of any transaction in respect to which such  
26 entity used a fictitious name prior to the date of the  
27 registration of such fictitious name, or after the date its  
28 registration under this chapter was cancelled or otherwise  
29 terminated as to such entity, the entity shall pay to the  
30 department for the use of the Commonwealth a civil penalty of

1 \$500.]

2 (c) Substantial compliance.--The [penalties of subsections  
3 (a) and (b)] penalty under subsection (a) shall not be  
4 applicable if there has been substantial compliance in good  
5 faith with the requirements of this chapter or the corresponding  
6 provisions of prior law.

7 § 332. Effect of registration.

8 (a) General rule.--Registration of a fictitious name under  
9 this chapter imparts no legal right to the registering entity  
10 other than that:

11 (1) the conducting of business by it under a fictitious  
12 name shall not result in the penalties provided by section  
13 331 (relating to contracts [entered into] and acts by entity  
14 using unregistered fictitious name) [.]; and

15 (2) the doing of business by the entity using the  
16 registered name has the same force and effect as doing  
17 business under the proper name of the entity.

18 (b) [Corporate qualification] Foreign registration  
19 unaffected.--The registration required under this chapter is in  
20 addition to all other acts required of [a corporation] an entity  
21 prerequisite to its doing business in this Commonwealth and no  
22 provision of this chapter shall be construed as relieving [a  
23 corporation] an entity of any duty under any other statute.

24 Section 111. Sections 501, 502, 503, 504, 505 and 506 of  
25 Title 54 are repealed:

26 [§ 501. Register established.

27 (a) General rule.--A register is established by this chapter  
28 which shall consist of such of the following names as are not  
29 deleted therefrom by operation of section 504 (relating to  
30 effect of failure to make filings) or 506 (relating to voluntary



1 termination of registration by corporations and other  
2 associations):

3 (1) A name registered prior to February 13, 1973, under  
4 the act of May 16, 1923 (P.L.246, No.160), relating to  
5 registration of certain names.

6 (2) A name registered under section 502 (relating to  
7 certain additions to register).

8 (3) In the case of a domestic or registered foreign  
9 corporation, a name rendered unavailable for corporate use by  
10 other corporations by reason of any filing in the department  
11 by such domestic or registered foreign corporation.

12 (4) A name registered under 15 Pa.C.S. § 209 (relating  
13 to registration of name of nonregistered foreign association)  
14 or any similar provision of law.

15 (5) In the case of a business trust which exists subject  
16 to 15 Pa.C.S. Ch. 95 (relating to business trusts), the name  
17 of the trust as set forth in the instrument filed in the  
18 department under 15 Pa.C.S. § 9503 (relating to documentation  
19 of trust).

20 (6) In the case of a limited partnership or limited  
21 liability company subject to 15 Pa.C.S. Ch. 86 (relating to  
22 limited partnerships) or 88 (relating to limited liability  
23 companies), the name of the partnership or company as set  
24 forth in the certificate of limited partnership, certificate  
25 of organization or statement of registration as a foreign  
26 association.

27 (8) In the case of a limited liability partnership  
28 subject to 15 Pa.C.S. Ch. 82 (relating to limited liability  
29 partnerships and limited liability limited partnerships) that  
30 is not also a limited partnership, the name of the

partnership as set forth in the statement of registration as a foreign association.

(b) Subsequent availability of certain names.--Whenever, by reason of change in name, withdrawal or dissolution of a domestic or registered foreign association, failure to renew a registration of its name by a nonregistered foreign association, or for any other cause, its name is no longer rendered unavailable by the express provisions of Title 15 (relating to corporations and unincorporated associations), such name shall no longer be deemed to be registered under subsection (a)(3) or (4) on the register established by this chapter.

§ 502. Certain additions to register.

(a) Corporation names.--

(1) A domestic corporation not-for-profit incorporated prior to May 16, 1923 may register its name with the department under this chapter by effecting the filing specified in 15 Pa.C.S. § 5311 (relating to filing of certificate of summary of record by certain corporations).

(2) Any person who is not eligible to make a filing under 15 Pa.C.S. § 209 (relating to registration of name of nonregistered foreign association) may register a corporation name with the department by filing an application for registration of name, executed by the person, which shall set forth:

(i) The name of the corporation.

(ii) The address, including street and number, if any, of the person who executed the application.

(b) Associations generally.--An association other than a corporation may register with the department the name under which it is doing business or operating by filing an application

1 for registration, which shall be executed by the association,  
2 and shall set forth:

3 (1) The name to be registered.

4 (2) The address, including street and number, if any, of  
5 the association.

6 (3) The length of time, if any, during which the name  
7 has been used by the applicant.

8 (4) Such other information necessary to the  
9 administration of this chapter as the department may specify  
10 by regulation.

11 (c) Limitation on names which may be registered.--

12 Notwithstanding subsections (a) and (b), no new name shall be  
13 registered or deemed to be registered under this section which  
14 is not distinguishable upon the records of the department from  
15 any other name then registered or deemed to be registered under  
16 this chapter, without the consent of the senior registrant.

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

24 (e) Cross reference.--See 15 Pa.C.S. § 134 (relating to  
25 docketing statement).

26 § 503. Decennial filings required.

27 (a) General rule.--Except as otherwise provided in this  
28 section, every corporation or other association whose name is  
29 registered under this chapter shall, during the year 2001 and  
30 every tenth year thereafter, file in the department a report,

1 which shall be executed by the corporation or other association,  
2 and shall set forth:

3 (1) The name of the corporation or other association.

4 (2) The address, including street and number, if any, of  
5 its registered or other office.

6 (3) A statement that the corporation or other  
7 association continues to exist.

8 (4) Such other information necessary to the  
9 administration of this chapter as the department may specify  
10 by regulation.

11 (b) Exceptions.--Subsection (a) shall not apply to any of  
12 the following:

13 (1) A corporation or other association that during the  
14 ten years ending on December 31 of the year in which a filing  
15 would otherwise be required under subsection (a) has made any  
16 filing in the department pursuant to a provision of this  
17 title or 15 Pa.C.S. (relating to corporations and  
18 unincorporated associations) other than:

19 (i) a report required by subsection (a); or

20 (ii) a filing under 15 Pa.C.S. § 208 (relating to  
21 reservation of name) or 209 (relating to registration of  
22 name of nonregistered foreign association).

23 (2) A corporation whose name is registered pursuant to  
24 section 501(a)(4) (relating to register established).

25 (3) A corporation that has had officer information  
26 forwarded to the department by the Department of Revenue  
27 during the preceding ten years under 15 Pa.C.S. § 1110  
28 (relating to annual report information).

29 (d) Cross references.--See 15 Pa.C.S. §§ 134 (relating to  
30 docketing statement) and 135 (relating to requirements to be met

1 by filed documents).

2 § 504. Effect of failure to make filings.

3 On January 1 of the year following the year during which a  
4 report is required to be filed under section 503 (relating to  
5 decennial filings required), the name of every corporation and  
6 association which has failed to comply with such section shall  
7 no longer be deemed to be registered under this chapter.

8 § 505. Late filings.

9 A corporation or association which has failed to file the  
10 report required by section 503 (relating to decennial filings  
11 required) may do so at any later time, which filing shall  
12 reinstate the name of the corporation or association on the  
13 register established by this chapter unless its name has been  
14 appropriated during the period of the delinquency by any other  
15 person in the manner provided in this chapter or as otherwise  
16 provided by law.

17 § 506. Voluntary termination of registration by corporations  
18 and other associations.

19 (a) General rule.--Any corporation or other association  
20 which has its name registered under this chapter may terminate  
21 such registration by filing in the department a statement of  
22 termination of registration of name, which shall be executed by  
23 the corporation or other association, and shall set forth:

24 (1) The name of the corporation or other association.

25 (2) The address, including street and number, if any, of  
26 the corporation or other association.

27 (3) The date on which and the statute under which the  
28 name of the corporation or other association was registered.

29 (4) A statement that the registration of the name of the  
30 corporation or other association under this chapter is

1 terminated.

2 (5) Such other information necessary to the  
3 administration of this chapter as the department may specify  
4 by regulation.

5 (b) Cross reference.--See 15 Pa.C.S. § 134 (relating to  
6 docketing statement).]

7 Section 112. This act shall take effect in 60 days.