
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1716 Session of
2023

INTRODUCED BY WARREN, MADDEN, SANCHEZ, M. JONES AND DELLOSO,
SEPTEMBER 26, 2023

REFERRED TO COMMITTEE ON COMMERCE, SEPTEMBER 26, 2023

AN ACT

1 Amending Title 15 (Corporations and Unincorporated Associations)
2 of the Pennsylvania Consolidated Statutes, in entity
3 transactions, further providing for nature of transactions
4 and for approval by limited liability company; in foreign
5 associations, further providing for foreign registration
6 statement; in general provisions, further providing for
7 definitions; in corporate powers, duties and safeguards,
8 further providing for certain specifically authorized debt
9 terms; in officers, directors and shareholders, further
10 providing for derivative action; in foreign business
11 corporations, further providing for application of article;
12 in general provisions, further providing for definitions; in
13 corporate powers, duties and safeguards, further providing
14 for certain specifically authorized debt terms; in officers,
15 directors and members, further providing for derivative
16 action; in general partnerships, further providing for
17 contents of partnership agreement; in limited partnerships,
18 further providing for contents of partnership agreement and
19 for derivative action; and, in limited liability companies,
20 further providing for contents of operating agreement and for
21 derivative action.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Section 315(a) of Title 15 of the Pennsylvania
25 Consolidated Statutes, amended November 3, 2022 (P.L.1791,
26 No.122), is amended to read:

27 § 315. Nature of transactions.

1 (a) General rule.--The fact that a sale or conversion of the
2 interests in or assets of an association or a transaction under
3 this chapter or other law produces a result that could be
4 accomplished in any other manner permitted by a different set of
5 provisions of this chapter or other law shall not be a basis for
6 recharacterizing the sale, conversion or transaction as a
7 different form of sale, conversion or transaction under this
8 chapter or other law.

9 * * *

10 Section 2. Section 325(d)(2)(iv) of Title 15 is amended to
11 read:

12 § 325. Approval by limited liability company.

13 * * *

14 (d) Merger by action of managers only.--Unless otherwise
15 required by a provision of the organic rules in record form, a
16 plan of merger shall not require the approval of the members of
17 a manager-managed, domestic limited liability company and shall
18 be deemed adopted by the company when a resolution approving the
19 plan has been adopted by the managers pursuant to subsection (a)
20 if:

21 * * *

22 (2) The plan of merger provides for the merger of the
23 company (referred to in this paragraph as the "constituent
24 company") with or into a single indirect wholly owned
25 subsidiary (referred to in this paragraph as the "subsidiary
26 company") of the constituent company if all of the following
27 provisions are satisfied:

28 * * *

29 (iv) Immediately following the effectiveness of the
30 merger, the certificate of organization and operating

1 agreement of the holding company are identical to the
2 certificate of organization and operating agreement of
3 the constituent company immediately before the
4 effectiveness of the merger, except for changes that
5 could be made without member approval pursuant to Chapter
6 [89] 88 (relating to limited liability companies).

7 * * *

8 Section 3. Section 412(b) of Title 15 is amended by adding a
9 paragraph to read:

10 § 412. Foreign registration statement.

11 * * *

12 (b) Qualification or registration under former statutes.--
13 The effect of a foreign association qualifying or registering to
14 do business under prior provisions of law shall be as follows:

15 * * *

16 (6) A reference in the law of this Commonwealth to
17 qualification as a foreign association includes registration
18 under subsection (a) and deemed registration under this
19 subsection.

20 * * *

21 Section 4. The definition of "foreign business corporation"
22 in section 1103(a) of Title 15 is amended to read:

23 § 1103. Definitions.

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

1 * * *

2 "Foreign business corporation." A foreign corporation for
3 profit subject to Chapter 4 (relating to foreign associations),
4 whether or not required to [qualify] register thereunder.

5 * * *

6 Section 5. Section 1510(c) of Title 15 is amended to read:
7 § 1510. Certain specifically authorized debt terms.

8 * * *

9 (c) Definitions.--As used in this section, the following
10 words shall have the meanings given to them in this subsection:

11 "Affiliate." An affiliate or associate as defined in
12 section [2552] 102 (relating to definitions).

13 "Obligation." Includes an installment sale contract.

14 * * *

15 Section 6. Section 1781(a)(1) of Title 15, amended November
16 3, 2022 (P.L.1791, No.122), is amended to read:
17 § 1781. Derivative action.

18 (a) General rule.--Subject to section 1782 (relating to
19 eligible shareholder plaintiffs and security for costs) and
20 subsections (b) and (g), a plaintiff may maintain a derivative
21 action to enforce a right of a business corporation only if:

22 (1) the plaintiff first makes a demand on the
23 corporation or the board of directors requesting that the
24 corporation bring an action to enforce the right, and:

25 [(i) if a special litigation committee is not
26 appointed under section 1783 (relating to special
27 litigation committee), the board determines that:

28 (A) an action based on some or all of the claims
29 asserted in the demand not be brought by the
30 corporation but that the corporation not object to an

1 action being brought by the party that made the
2 demand; or

3 (B) an action already commenced continue under
4 the control of the plaintiff; or]

5 (i.1) if a special litigation committee is not
6 appointed under section 1783 (relating to special
7 litigation committee):

8 (A) the board determines that:

9 (I) an action based on some or all of the
10 claims asserted in the demand not be brought by
11 the corporation but that the corporation not
12 object to an action being brought by the party
13 that made the demand; or

14 (II) an action already commenced continue
15 under the control of the plaintiff; or

16 (B) the board does not notify the party that
17 made the demand within 60 days after the demand was
18 made that the board has appointed a special
19 litigation committee or has made a determination
20 under clause (A); or

21 (ii) if a special litigation committee is appointed
22 under section 1783, a determination is made:

23 (A) under section 1783(e)(1) that the
24 corporation not object to the action; or

25 (B) under section 1783(e)(5)(i) that the
26 plaintiff continue the action;

27 * * *

28 Section 7. Section 4101 of Title 15 is amended to read:

29 § 4101. Application of article.

30 (a) General rule.--Except as otherwise provided in this

1 section or in subsequent provisions of this article, this
2 article shall apply to and the words "corporation" or "foreign
3 business corporation" in this article shall include every
4 foreign corporation for profit, including a corporation that, if
5 a domestic corporation for profit, would be a banking
6 institution[,] or credit union [or savings association].

7 (b) Domestic Federal financial institution exclusion.--
8 Except as permitted by act of Congress, this article shall not
9 apply to:

10 (1) Any of the following institutions or similar
11 federally chartered institutions engaged in this Commonwealth
12 in activities similar to those conducted by banking
13 institutions[, saving associations] or credit unions:

14 (i) National banking associations organized under
15 The National Bank Act (13 Stat. 99, 12 U.S.C. § 1 et
16 seq.).

17 (ii) Federal savings and loan associations and
18 Federal mutual savings banks organized under the Home
19 Owners' Loan Act of 1933 (48 Stat. 128, 12 U.S.C. § 1461
20 et seq.).

21 (iii) Federal credit unions organized under the
22 Federal Credit Union Act (48 Stat. 1216, 12 U.S.C. § 1751
23 et seq.).

24 (2) Any other Federal corporation intended by the
25 Congress to be treated for state law purposes as a domestic
26 corporation of this Commonwealth.

27 Section 8. Section 5103(b) of Title 15, amended November 3,
28 2022 (P.L.1791, No.122), is amended to read:

29 § 5103. Definitions.

30 * * *

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

5 "Act" or "action."

6 "Charitable purposes."

7 "Conversion."

8 "Corporation for profit."

9 "Corporation not-for-profit."

10 "Court."

11 "Department."

12 "Division."

13 "Domestic corporation for profit."

14 "Domestic corporation not-for-profit."

15 "Domestication."

16 "Execute."

17 "Foreign corporation for profit."

18 "Foreign corporation not-for-profit."

19 "Interest exchange."

20 "Internal Revenue Code of 1986."

21 "Merger."

22 "Obligation."

23 "Officially publish."

24 "Record form."

25 "Representative."

26 "Sign."

27 Section 9. Section 5510(c) of Title 15 is amended to read:

28 § 5510. Certain specifically authorized debt terms.

29 * * *

30 (c) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection:

3 "Affiliate." An affiliate or associate as defined in section
4 [2552] 102 (relating to definitions).

5 "Obligation." Includes an installment sale contract.

6 * * *

7 Section 10. Section 5781(a)(1) of Title 15, amended November
8 3, 2022 (P.L.1791, No.122), is amended to read:

9 § 5781. Derivative action.

10 (a) General rule.--Subject to section 5782 (relating to
11 eligible member plaintiffs and security for costs) and
12 subsection (b), a plaintiff may maintain a derivative action to
13 enforce a right of a nonprofit corporation only if:

14 (1) the plaintiff first makes a demand on the corporation
15 or the board of directors, requesting that the corporation
16 bring an action to enforce the right, and:

17 [(i) if a special litigation committee is not
18 appointed under section 5783 (relating to special
19 litigation committee), the board determines that:

20 (A) an action based on some or all of the claims
21 asserted in the demand not be brought by the
22 corporation but that the corporation not object to an
23 action being brought by the party that made the
24 demand; or

25 (B) an action already commenced continue under
26 the control of the plaintiff; or]

27 (i.1) if a special litigation committee is not
28 appointed under section 5783 (relating to special
29 litigation committee):

30 (A) the board determines that:

1 (I) an action based on some or all of the
2 claims asserted in the demand not be brought by
3 the corporation but that the corporation not
4 object to an action being brought by the party
5 that made the demand; or

6 (II) an action already commenced continue
7 under the control of the plaintiff; or

8 (B) the board does not notify the party that
9 made the demand within 60 days after the demand was
10 made that the board has appointed a special
11 litigation committee or has made a determination
12 under clause (A); or

13 (ii) if a special litigation committee is appointed
14 under section 5783, a determination is made:

15 (A) under section 5783(e) (1) that the
16 corporation not object to the action; or

17 (B) under section 5783(e) (5) (i) that the
18 plaintiff continue the action;

19 * * *

20 Section 11. Sections 8415(c) (2) and 8615(c) (2) of Title 15
21 are amended to read:

22 § 8415. Contents of partnership agreement.

23 * * *

24 (c) Limitations.--A partnership agreement may not do any of
25 the following:

26 * * *

27 (2) Vary the right of a partner to approve a merger,
28 interest exchange, conversion[,] or division [or
29 domestication] under section 333(a) (2) (relating to approval
30 of merger), 343(a) (2) (relating to approval of interest

1 exchange), 353(a)(3) (relating to approval of conversion) [,]
2 or 363(a)(2) (relating to approval of division) [or 373(a)(2)
3 (relating to approval of domestication)].

4 * * *

5 § 8615. Contents of partnership agreement.

6 * * *

7 (c) Limitations.--A partnership agreement may not do any of
8 the following:

9 * * *

10 (2) Vary the right of a partner to approve a merger,
11 interest exchange, conversion[,], or division [or
12 domestication] under section 333(a)(2) (relating to approval
13 of merger), 343(a)(2) (relating to approval of interest
14 exchange), 353(a)(3) (relating to approval of conversion) [,]
15 or 363(a)(2) (relating to approval of division) [or 373(a)(2)
16 (relating to approval of domestication)].

17 * * *

18 Section 12. Section 8692(a)(1) of Title 15, amended November
19 3, 2022 (P.L.1791, No.122), is amended to read:

20 § 8692. Derivative action.

21 (a) General rule.--Subject to section 8693 (relating to
22 eligible partner plaintiffs and security for costs) and
23 subsection (b), a plaintiff may maintain a derivative action to
24 enforce a right of a limited partnership only if:

25 (1) the plaintiff first makes a demand on the limited
26 partnership or the general partners requesting that the
27 partnership bring an action to enforce the right, and:

28 [(i) if a special litigation committee is not
29 appointed under section 8694 (relating to special
30 litigation committee), the general partners determine

1 that:

2 (A) an action based on some or all of the claims
3 asserted in the demand not be brought by the limited
4 partnership but that the partnership not object to an
5 action being brought by the party that made the
6 demand; or

7 (B) an action already commenced continue under
8 the control of the plaintiff; or]

9 (i.1) if a special litigation committee is not
10 appointed under section 8694 (relating to special
11 litigation committee):

12 (A) the general partners determine that:

13 (I) an action based on some or all of the
14 claims asserted in the demand not be brought by
15 the limited partnership but that the partnership
16 not object to an action being brought by the
17 party that made the demand; or

18 (II) an action already commenced continue
19 under the control of the plaintiff; or

20 (B) the general partners do not notify the party
21 that made the demand within 60 days after the demand
22 was made that the general partners have appointed a
23 special litigation committee or have made a
24 determination under clause (A); or

25 (ii) if a special litigation committee is appointed
26 under section 8694, a determination is made:

27 (A) under section 8694(e) (1) that the
28 partnership not object to the action; or

29 (B) under section 8694(e) (5) (i) that the
30 plaintiff continue the action;

1 * * *

2 Section 13. Section 8815(c)(2) of Title 15 is amended to
3 read:

4 § 8815. Contents of operating agreement.

5 * * *

6 (c) Limitations.--An operating agreement may not do any of
7 the following:

8 * * *

9 (2) Vary the right of a member to approve a merger,
10 interest exchange, conversion[,] or division [or
11 domestication] under section 333(a)(2) (relating to approval
12 of merger), 343(a)(2) (relating to approval of interest
13 exchange), 353(a)(3) (relating to approval of conversion)[,]
14 or 363(a)(2) (relating to approval of division) [or 373(a)
15 (2) (relating to approval of domestication)].

16 * * *

17 Section 14. Section 8882(a)(1) of Title 15, amended November
18 3, 2022 (P.L.1791, No.122), is amended to read:

19 § 8882. Derivative action.

20 (a) General rule.--Subject to section 8883 (relating to
21 eligible plaintiffs and security for costs) and subsection (b),
22 a plaintiff may maintain a derivative action to enforce a right
23 of a limited liability company only if:

24 [(1) the plaintiff first makes a demand on the company
25 or the other members in a member-managed limited liability
26 company, or the managers of a manager-managed limited
27 liability company, requesting that the company bring an
28 action to enforce the right and:

29 (i) if a special litigation committee is not
30 appointed under section 8884 (relating to special

1 litigation committee), the members in a member-managed
2 company or managers of a manager-managed company
3 determine that:

4 (A) an action based on some or all of the claims
5 asserted in the demand not be brought by the company
6 but that the company not object to an action being
7 brought by the party that made the demand; or

8 (B) an action already commenced continue under
9 the control of the plaintiff; or]

10 (i.1) if a special litigation committee is not
11 appointed under section 8884 (relating to special
12 litigation committee):

13 (A) the members in a member-managed company or
14 managers of a manager-managed company determine that:

15 (I) an action based on some or all of the
16 claims asserted in the demand not be brought by
17 the company but that the company not object to an
18 action being brought by the party that made the
19 demand; or

20 (II) an action already commenced continue
21 under the control of the plaintiff; or

22 (B) the members in a member-managed company or
23 managers of a manager-managed company do not notify
24 the party that made the demand within 60 days after
25 the demand was made that they have appointed a
26 special litigation committee or have made a
27 determination under clause (A); or

28 (ii) if a special litigation committee is appointed
29 under section 8884, a determination is made:

30 (A) under section 8884(e)(1) that the company

1 not object to the action; or
2 (B) under section 8884(e)(5)(i) that the
3 plaintiff continue the action;

4 * * *

5 Section 15. This act shall take effect in 60 days.