

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1716 Session of 2023

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

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 18, 2023

AN ACT

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

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

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

1 SECTION 1. SECTION 202(B)(2) OF TITLE 15 OF THE PENNSYLVANIA <--
2 CONSOLIDATED STATUTES IS AMENDED TO READ:
3 § 202. REQUIREMENTS FOR NAMES GENERALLY.

4 * * *

5 (B) DUPLICATE USE OF NAMES.--EXCEPT AS PROVIDED IN
6 SUBSECTION (F), THE PROPER NAME OF A COVERED ASSOCIATION MUST BE
7 DISTINGUISHABLE ON THE RECORDS OF THE DEPARTMENT FROM THE
8 FOLLOWING:

9 * * *

10 (2) A NAME THAT HAS BEEN RESERVED OR REGISTERED PURSUANT
11 TO SECTION 208 (RELATING TO RESERVATION OF NAME) [OR] 209
12 (RELATING TO REGISTRATION OF NAME OF NONREGISTERED FOREIGN
13 ASSOCIATION) OR 210 (RELATING TO REGISTRATION OF NAME OF
14 DOMESTIC NONFILING ASSOCIATION). A NAME SHALL BE RENDERED
15 UNAVAILABLE FOR USE UNDER THIS SUBCHAPTER BY REASON OF THE
16 FILING BY THE DEPARTMENT OF AN ASSUMED OR FICTITIOUS NAME
17 REGISTRATION UNDER 54 PA.C.S. CH. 3 (RELATING TO FICTITIOUS
18 NAMES) ONLY TO THE EXTENT EXPRESSLY PROVIDED IN 54 PA.C.S.
19 CH. 3.

20 * * *

21 SECTION 2. TITLE 15 IS AMENDED BY ADDING A SECTION TO READ:
22 § 210. REGISTRATION OF NAME OF DOMESTIC NONFILING ASSOCIATION.

23 (A) GENERAL RULE.--A DOMESTIC NONFILING ASSOCIATION MAY
24 REGISTER A NAME THAT IS AVAILABLE FOR USE BY A DOMESTIC FILING
25 ENTITY UNDER SECTION 202 (RELATING TO REQUIREMENTS FOR NAMES
26 GENERALLY) BY DELIVERING TO THE DEPARTMENT FOR FILING AN
27 APPLICATION FOR REGISTRATION OF NAME, SIGNED BY THE ASSOCIATION,
28 STATING:

29 (1) THE NAME OF THE ASSOCIATION.

30 (2) THE ADDRESS, INCLUDING STREET AND NUMBER, IF ANY, OF

1 THE PRINCIPAL OFFICE OF THE ASSOCIATION.

2 (3) THE NAME BEING REGISTERED.

3 (B) ANNUAL RENEWAL.--A DOMESTIC NONFILING ASSOCIATION THAT
4 HAS IN EFFECT A REGISTRATION OF ITS NAME MAY RENEW THE
5 REGISTRATION FROM YEAR TO YEAR BY ANNUALLY FILING AN APPLICATION
6 FOR RENEWAL STATING THE FACTS REQUIRED TO BE STATED IN AN
7 ORIGINAL APPLICATION FOR REGISTRATION. A RENEWAL APPLICATION MAY
8 BE FILED BETWEEN OCTOBER 1 AND DECEMBER 31 IN EACH YEAR AND
9 SHALL EXTEND THE REGISTRATION FOR THE FOLLOWING CALENDAR YEAR.

10 (C) USE OF REGISTERED NAME.--A DOMESTIC NONFILING
11 ASSOCIATION WHOSE NAME REGISTRATION IS EFFECTIVE MAY CONVERT
12 UNDER SUBCHAPTER E OF CHAPTER 3 (RELATING TO CONVERSION) TO A
13 DOMESTIC FILING ENTITY UNDER THE REGISTERED NAME OR CONSENT IN A
14 SIGNED RECORD TO THE USE OF THAT NAME BY ANOTHER ENTITY.

15 (D) DEFINITION.--THE TERM "DOMESTIC NONFILING ASSOCIATION"
16 MEANS A DOMESTIC NONPROFIT ASSOCIATION SUBJECT TO:

17 (1) 68 PA.C.S. PT. II SUBPT. B (RELATING TO
18 CONDOMINIUMS);

19 (2) 68 PA.C.S. PT. II SUBPT. C (RELATING TO
20 COOPERATIVES); OR

21 (3) 68 PA.C.S. PT. II SUBPT. D (RELATING TO PLANNED
22 COMMUNITIES).

23 (E) CROSS REFERENCES.--SEE SECTIONS 134 (RELATING TO
24 DOCKETING STATEMENT) AND 135 (RELATING TO REQUIREMENTS TO BE MET
25 BY FILED DOCUMENTS).

26 SECTION 3. SECTIONS 315(A) AND 325(D)(2)(IV) OF TITLE 15 ARE
27 AMENDED TO READ:

28 § 315. Nature of transactions.

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

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

7 * * *

8 ~~Section 2. Section 325(d)(2)(iv) of Title 15 is amended to~~ <--
9 ~~read:~~

10 § 325. Approval by limited liability company.

11 * * *

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

19 * * *

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

26 * * *

27 (iv) Immediately following the effectiveness of the
28 merger, the certificate of organization and operating
29 agreement of the holding company are identical to the
30 certificate of organization and operating agreement of

1 the constituent company immediately before the
2 effectiveness of the merger, except for changes that
3 could be made without member approval pursuant to Chapter
4 [89] 88 (relating to limited liability companies).

5 * * *

6 Section 3 4. Section 412(b) of Title 15 is amended by adding <--
7 a paragraph to read:

8 § 412. Foreign registration statement.

9 * * *

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

13 * * *

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

18 * * *

19 Section 4 5. The definition of "foreign business <--
20 corporation" in section 1103(a) of Title 15 is amended to read:

21 § 1103. Definitions.

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

29 * * *

30 "Foreign business corporation." A foreign corporation for

1 profit subject to Chapter 4 (relating to foreign associations),
2 whether or not required to [qualify] register thereunder.

3 * * *

4 ~~Section 5. Section 1510(c) of Title 15 is amended to read: <--~~

5 SECTION 6. SECTIONS 1510(C), 1718(A)(1), 4101, 5103(B), <--

6 5510(C), 5781(A)(1), 8415(C)(2), 8615(C)(2), 8692(A)(1), 8815(C)

7 (2) AND 8882(A)(1) OF TITLE 15 ARE AMENDED TO READ:

8 § 1510. Certain specifically authorized debt terms.

9 * * *

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

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

14 "Obligation." Includes an installment sale contract.

15 * * *

16 ~~Section 6. Section 1781(a)(1) of Title 15, amended November <--~~

17 ~~3, 2022 (P.L.1791, No.122), is amended to read:~~

18 § 1781. Derivative action.

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

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

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

29 (A) an action based on some or all of the claims
30 asserted in the demand not be brought by the

1 corporation but that the corporation not object to an
2 action being brought by the party that made the
3 demand; or

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

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

9 (A) the board determines that:

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

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

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

21 ~~under clause (A); or DESCRIBED UNDER EITHER CLAUSE~~ <--
22 (A) (I) OR (II); OR

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

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

27 (B) under section 1783(e) (5) (i) that the
28 plaintiff continue the action;

29 * * *

30 ~~Section 7. Section 4101 of Title 15 is amended to read:~~ <--

1 § 4101. Application of article.

2 (a) General rule.--Except as otherwise provided in this
3 section or in subsequent provisions of this article, this
4 article shall apply to and the words "corporation" or "foreign
5 business corporation" in this article shall include every
6 foreign corporation for profit, including a corporation that, if
7 a domestic corporation for profit, would be a banking
8 institution[,] or credit union [or savings association].

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

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

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

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

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

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

29 ~~Section 8. Section 5103(b) of Title 15, amended November 3, <--~~
30 ~~2022 (P.L.1791, No.122), is amended to read:~~

1 § 5103. Definitions.

2 * * *

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

7 "Act" or "action."

8 "Charitable purposes."

9 "Conversion."

10 "Corporation for profit."

11 "Corporation not-for-profit."

12 "Court."

13 "Department."

14 "Division."

15 "Domestic corporation for profit."

16 "Domestic corporation not-for-profit."

17 "Domestication."

18 "Execute."

19 "Foreign corporation for profit."

20 "Foreign corporation not-for-profit."

21 "Interest exchange."

22 "Internal Revenue Code of 1986."

23 "Merger."

24 "Obligation."

25 "Officially publish."

26 "Record form."

27 "Representative."

28 "Sign."

29 ~~Section 9. Section 5510(c) of Title 15 is amended to read: <--~~

30 § 5510. Certain specifically authorized debt terms.

1 * * *

2 (c) Definitions.--As used in this section, the following
3 words and phrases shall have the meanings given to them in this
4 subsection:

5 "Affiliate." An affiliate or associate as defined in section
6 [2552] 102 (relating to definitions).

7 "Obligation." Includes an installment sale contract.

8 * * *

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

11 § 5781. Derivative action.

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

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

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

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

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

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

1 litigation committee):

2 (A) the board determines that:

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

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

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

14 ~~under clause (A); or DESCRIBED UNDER EITHER CLAUSE~~ <--

15 (A) (I) OR (II); OR

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

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

20 (B) under section 5783(e) (5) (i) that the
21 plaintiff continue the action;

22 * * *

23 ~~Section 11. Sections 8415(c) (2) and 8615(c) (2) of Title 15~~ <--

24 ~~are amended to read:~~

25 § 8415. Contents of partnership agreement.

26 * * *

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

29 * * *

30 (2) Vary the right of a partner to approve a merger,

1 interest exchange, conversion[,] or division [or
2 domestication] under section 333(a) (2) (relating to approval
3 of merger), 343(a) (2) (relating to approval of interest
4 exchange), 353(a) (3) (relating to approval of conversion) [,]
5 or 363(a) (2) (relating to approval of division) [or 373(a) (2)
6 (relating to approval of domestication)].

7 * * *

8 § 8615. Contents of partnership agreement.

9 * * *

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

12 * * *

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

20 * * *

21 ~~Section 12. Section 8692(a)(1) of Title 15, amended November <--~~
22 ~~3, 2022 (P.L.1791, No.122), is amended to read:~~

23 § 8692. Derivative action.

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

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

1 [(i) if a special litigation committee is not
2 appointed under section 8694 (relating to special
3 litigation committee), the general partners determine
4 that:

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

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

12 (i.1) if a special litigation committee is not
13 appointed under section 8694 (relating to special
14 litigation committee):

15 (A) the general partners determine that:

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

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

23 (B) the general partners do not notify the party
24 that made the demand within 60 days after the demand
25 was made that the general partners have appointed a
26 special litigation committee or have made a
27 determination under clause (A); or DESCRIBED UNDER <--
28 EITHER CLAUSE (A) (I) OR (II); OR

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

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

3 (B) under section 8694(e)(5)(i) that the
4 plaintiff continue the action;

5 * * *

6 ~~Section 13. Section 8815(c)(2) of Title 15 is amended to~~ <--
7 ~~read:~~

8 § 8815. Contents of operating agreement.

9 * * *

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

12 * * *

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

20 * * *

21 ~~Section 14. Section 8882(a)(1) of Title 15, amended November~~ <--
22 ~~3, 2022 (P.L.1791, No.122), is amended to read:~~

23 § 8882. Derivative action.

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

28 [(1) the plaintiff first makes a demand on the company
29 or the other members in a member-managed limited liability
30 company, or the managers of a manager-managed limited

1 liability company, requesting that the company bring an
2 action to enforce the right and:

3 (i) if a special litigation committee is not
4 appointed under section 8884 (relating to special
5 litigation committee), the members in a member-managed
6 company or managers of a manager-managed company
7 determine that:

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

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

14 (i.1) if a special litigation committee is not
15 appointed under section 8884 (relating to special
16 litigation committee):

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

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

24 (II) an action already commenced continue
25 under the control of the plaintiff; or

26 (B) the members in a member-managed company or
27 managers of a manager-managed company do not notify
28 the party that made the demand within 60 days after
29 the demand was made that they have appointed a
30 special litigation committee or have made a

1 determination under clause (A); or DESCRIBED UNDER <--

2 EITHER CLAUSE (A) (I) OR (II); OR

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

5 (A) under section 8884(e)(1) that the company
6 not object to the action; or

7 (B) under section 8884(e)(5)(i) that the
8 plaintiff continue the action;

9 * * *

10 Section ~~15~~ 7. This act shall take effect in 60 days. <--