

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 31, 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 202(b)(2) of Title 15 of the Pennsylvania
27 Consolidated Statutes is amended to read:

28 § 202. Requirements for names generally.

1 * * *

2 (b) Duplicate use of names.--Except as provided in
3 subsection (f), the proper name of a covered association must be
4 distinguishable on the records of the department from the
5 following:

6 * * *

7 (2) A name that has been reserved or registered pursuant
8 to section 208 (relating to reservation of name) [or] 209
9 (relating to registration of name of nonregistered foreign
10 association) or 210 (relating to registration of name of
11 domestic nonfiling association). A name shall be rendered
12 unavailable for use under this subchapter by reason of the
13 filing by the department of an assumed or fictitious name
14 registration under 54 Pa.C.S. Ch. 3 (relating to fictitious
15 names) only to the extent expressly provided in 54 Pa.C.S.
16 Ch. 3.

17 * * *

18 Section 2. Title 15 is amended by adding a section to read:
19 § 210. Registration of name of domestic nonfiling association.

20 (a) General rule.--A domestic nonfiling association THAT IS <--
21 NOT A LIMITED LIABILITY PARTNERSHIP may register a name that is
22 available for use by a domestic filing entity under section 202
23 (relating to requirements for names generally) by delivering to
24 the department for filing an application for registration of
25 name, signed by the association, stating:

26 (1) The name of the association.

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

29 (3) The name being registered.

30 (b) Annual renewal.--A domestic nonfiling association that

1 has in effect a registration of its name may renew the
2 registration from year to year by annually filing an application
3 for renewal stating the facts required to be stated in an
4 original application for registration. A renewal application may
5 be filed between October 1 and December 31 in each year and
6 shall extend the registration for the following calendar year.

7 (c) Use of registered name.--A domestic nonfiling
8 association whose name registration is effective may convert
9 under Subchapter E of Chapter 3 (relating to conversion) to a
10 domestic filing entity under the registered name or consent in a
11 signed record to the use of that name by another entity.

12 ~~(d) Definition. The term "domestic nonfiling association" <--~~
13 ~~means a domestic nonprofit association subject to:~~

14 ~~(1) 68 Pa.C.S. Pt. II Subpt. B (relating to~~
15 ~~condominiums);~~

16 ~~(2) 68 Pa.C.S. Pt. II Subpt. C (relating to~~
17 ~~cooperatives); or~~

18 ~~(3) 68 Pa.C.S. Pt. II Subpt. D (relating to planned~~
19 ~~communities).~~

20 ~~(e) (D) Cross references.--See sections 134 (relating to <--~~
21 ~~docketing statement) and 135 (relating to requirements to be met~~
22 ~~by filed documents).~~

23 Section 3. Sections 315(a) and 325(d)(2)(iv) of Title 15 are
24 amended to read:

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 this chapter or other law produces a result that could be
29 accomplished in any other manner permitted by a different set of
30 provisions of this chapter or other law shall not be a basis for

1 recharacterizing the sale, conversion or transaction as a
2 different form of sale, conversion or transaction under this
3 chapter or other law.

4 * * *

5 § 325. Approval by limited liability company.

6 * * *

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

14 * * *

15 (2) The plan of merger provides for the merger of the
16 company (referred to in this paragraph as the "constituent
17 company") with or into a single indirect wholly owned
18 subsidiary (referred to in this paragraph as the "subsidiary
19 company") of the constituent company if all of the following
20 provisions are satisfied:

21 * * *

22 (iv) Immediately following the effectiveness of the
23 merger, the certificate of organization and operating
24 agreement of the holding company are identical to the
25 certificate of organization and operating agreement of
26 the constituent company immediately before the
27 effectiveness of the merger, except for changes that
28 could be made without member approval pursuant to Chapter
29 [89] 88 (relating to limited liability companies).

30 * * *

1 Section 4. Section 412(b) of Title 15 is amended by adding a
2 paragraph to read:

3 § 412. Foreign registration statement.

4 * * *

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

8 * * *

9 (6) A reference in the law of this Commonwealth to
10 qualification as a foreign association includes registration
11 under subsection (a) and deemed registration under this
12 subsection.

13 * * *

14 Section 5. The definition of "foreign business corporation"
15 in section 1103(a) of Title 15 is amended to read:

16 § 1103. Definitions.

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

24 * * *

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

28 * * *

29 Section 6. Sections 1510(c), ~~1718(a)(1)~~ 1781(A)(1), 4101, <--
30 5103(b), 5510(c), 5781(a)(1), 8415(c)(2), 8615(c)(2), 8692(a)

1 (1), 8815(c) (2) and 8882(a) (1) of Title 15 are amended to read:
2 § 1510. Certain specifically authorized debt terms.

3 * * *

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

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

8 "Obligation." Includes an installment sale contract.

9 * * *

10 § 1781. Derivative action.

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

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

18 [(i) if a special litigation committee is not
19 appointed under section 1783 (relating to special
20 litigation committee), the board determines that:

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

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

28 (i.1) if a special litigation committee is not
29 appointed under section 1783 (relating to special
30 litigation committee):

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

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

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

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

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

18 (B) under section 1783(e) (5) (i) that the
19 plaintiff continue the action;

20 * * *

21 § 4101. Application of article.

22 (a) General rule.--Except as otherwise provided in this
23 section or in subsequent provisions of this article, this
24 article shall apply to and the words "corporation" or "foreign
25 business corporation" in this article shall include every
26 foreign corporation for profit, including a corporation that, if
27 a domestic corporation for profit, would be a banking
28 institution[,] or credit union [or savings association].

29 (b) Domestic Federal financial institution exclusion.--
30 Except as permitted by act of Congress, this article shall not

1 apply to:

2 (1) Any of the following institutions or similar
3 federally chartered institutions engaged in this Commonwealth
4 in activities similar to those conducted by banking
5 institutions[, saving associations] or credit unions:

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

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

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

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

19 § 5103. Definitions.

20 * * *

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

25 "Act" or "action."

26 "Charitable purposes."

27 "Conversion."

28 "Corporation for profit."

29 "Corporation not-for-profit."

30 "Court."

1 "Department."
2 "Division."
3 "Domestic corporation for profit."
4 "Domestic corporation not-for-profit."
5 "Domestication."
6 "Execute."
7 "Foreign corporation for profit."
8 "Foreign corporation not-for-profit."
9 "Interest exchange."
10 "Internal Revenue Code of 1986."
11 "Merger."
12 "Obligation."
13 "Officially publish."
14 "Record form."
15 "Representative."
16 "Sign."

17 § 5510. Certain specifically authorized debt terms.

18 * * *

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

22 "Affiliate." An affiliate or associate as defined in section
23 [2552] 102 (relating to definitions).

24 "Obligation." Includes an installment sale contract.

25 * * *

26 § 5781. Derivative action.

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

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

4 [(i) if a special litigation committee is not
5 appointed under section 5783 (relating to special
6 litigation committee), the board 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 (i.1) if a special litigation committee is not
15 appointed under section 5783 (relating to special
16 litigation committee):

17 (A) the board determines that:

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

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

25 (B) the board does not notify the party that
26 made the demand within 60 days after the demand was
27 made that the board has appointed a special
28 litigation committee or has made a determination
29 described under either clause (A) (I) or (II); or

30 (ii) if a special litigation committee is appointed

1 under section 5783, a determination is made:

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

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

6 * * *

7 § 8415. Contents of partnership agreement.

8 * * *

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

11 * * *

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

19 * * *

20 § 8615. Contents of partnership agreement.

21 * * *

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

24 * * *

25 (2) Vary the right of a partner to approve a merger,
26 interest exchange, conversion[,] or division [or
27 domestication] under section 333(a) (2) (relating to approval
28 of merger), 343(a) (2) (relating to approval of interest
29 exchange), 353(a) (3) (relating to approval of conversion) [,]
30 or 363(a) (2) (relating to approval of division) [or 373(a) (2)

1 (relating to approval of domestication)].

2 * * *

3 § 8692. Derivative action.

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

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

11 [(i) if a special litigation committee is not
12 appointed under section 8694 (relating to special
13 litigation committee), the general partners determine
14 that:

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

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

22 (i.1) if a special litigation committee is not
23 appointed under section 8694 (relating to special
24 litigation committee):

25 (A) the general partners determine that:

26 (I) an action based on some or all of the
27 claims asserted in the demand not be brought by
28 the limited partnership but that the partnership
29 not object to an action being brought by the
30 party that made the demand; or

1 (II) an action already commenced continue
2 under the control of the plaintiff; or
3 (B) the general partners do not notify the party
4 that made the demand within 60 days after the demand
5 was made that the general partners have appointed a
6 special litigation committee or have made a
7 determination described under either clause (A) (I) or
8 (II); or

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

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

13 (B) under section 8694(e) (5) (i) that the
14 plaintiff continue the action;

15 * * *

16 § 8815. Contents of operating agreement.

17 * * *

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

20 * * *

21 (2) Vary the right of a member to approve a merger,
22 interest exchange, conversion[,] or division [or
23 domestication] under section 333(a) (2) (relating to approval
24 of merger), 343(a) (2) (relating to approval of interest
25 exchange), 353(a) (3) (relating to approval of conversion) [,]
26 or 363(a) (2) (relating to approval of division) [or 373(a)
27 (2) (relating to approval of domestication)].

28 * * *

29 § 8882. Derivative action.

30 (a) General rule.--Subject to section 8883 (relating to

1 eligible plaintiffs and security for costs) and subsection (b),
2 a plaintiff may maintain a derivative action to enforce a right
3 of a limited liability company only if:

4 [(1) the plaintiff first makes a demand on the company
5 or the other members in a member-managed limited liability
6 company, or the managers of a manager-managed limited
7 liability company, requesting that the company bring an
8 action to enforce the right and:

9 (i) if a special litigation committee is not
10 appointed under section 8884 (relating to special
11 litigation committee), the members in a member-managed
12 company or managers of a manager-managed company
13 determine that:

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

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

20 (i.1) if a special litigation committee is not
21 appointed under section 8884 (relating to special
22 litigation committee):

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

25 (I) an action based on some or all of the
26 claims asserted in the demand not be brought by
27 the company but that the company not object to an
28 action being brought by the party that made the
29 demand; or

30 (II) an action already commenced continue

1 under the control of the plaintiff; or
2 (B) the members in a member-managed company or
3 managers of a manager-managed company do not notify
4 the party that made the demand within 60 days after
5 the demand was made that they have appointed a
6 special litigation committee or have made a
7 determination described under either clause (A) (I) or
8 (II); or

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

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

13 (B) under section 8884(e) (5) (i) that the
14 plaintiff continue the action;

15 * * *

16 Section 7. This act shall take effect in 60 days.