

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 22, 2022

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 voting rights of shareholders,  
43 for determination of shareholders of record, for voting  
44 lists, for consent of members in lieu of meeting, for  
45 derivative action, for eligible shareholder plaintiffs and  
46 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



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

5 \* \* \*

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

9 (1) is being filed fraudulently; or

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

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

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

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

21 (1) the original document or copies thereof;

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

24 (3) any other papers relating thereto;]

25 title, the original document or a copy thereof and any papers

26 relating thereto may be delivered to the prothonotary or clerk

27 of the court vested by or pursuant to Title 42 (relating to

28 judiciary and judicial procedure) with jurisdiction of appeals

29 from the department. Immediately the prothonotary or clerk shall

30 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.--The department annually must  
10 deliver notice to each association required to file an annual  
11 report under this section of the annual report filing  
12 requirement at least two months before the annual report is due.  
13 Failure by the department to deliver notice to any party, or  
14 failure by any party to receive notice, of an annual report  
15 filing requirement does not relieve the party of the obligation  
16 to make the annual report filing.

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

20 Section 6. Section 151(b) of Title 15 is amended to read:  
21 § 151. Short title and application of subchapter.

22 \* \* \*

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

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

1 § 153. Fee schedule.

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

6 \* \* \*

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

9	<u>(i) Annual report delivered to the bureau by a</u>	
10	<u>nonprofit corporation or a limited partnership or</u>	
11	<u>limited liability company with a not-for-profit</u>	
12	<u>purpose.....</u>	<u>0</u>
13	<u>(ii) Annual report delivered to the bureau</u>	
14	<u>electronically.....</u>	<u>0 7 &lt;--</u>
15	<u>(iii) Annual report not delivered to the</u>	
16	<u>bureau electronically.....</u>	<u>0 7 &lt;--</u>
17	<u>(19) Reinstatement of domestic association:</u>	
18	<u>(i) Application for reinstatement delivered to</u>	
19	<u>the bureau electronically.....</u>	<u>35</u>
20	<u>(ii) Application for reinstatement not</u>	
21	<u>delivered to the bureau electronically.....</u>	<u>40</u>
22	<u>(iii) Additional fee required by section</u>	
23	<u>383(a)(4)(ii) (relating to reinstatement) for each</u>	
24	<u>annual report not previously paid.....</u>	<u>15</u>
25	<u>(20) Statement of validation:</u>	
26	<u>(i) Statement of validation, any filing fee</u>	
27	<u>referred to in section 227(c) (relating to</u>	
28	<u>statement of validation), plus.....</u>	<u>75</u>
29	<u>(ii) (Reserved).</u>	

30 (b) Daily listings.--The bureau may provide listings or

1 copies [of microfilm], or both, of complete daily filings of any  
2 class of documents or papers for a fee of 25¢ per filing listed  
3 or set forth therein.

4 \* \* \*

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

7 § 202. Requirements for names generally.

8 \* \* \*

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

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

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

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



1 of State;

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

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

12 (1.1) Paragraph (1) does not apply to protect the proper  
13 name of another covered association during the time while:

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

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

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

25 \* \* \*

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

28 § 207. Required name changes by senior associations.

29 (a) Loss of rights to name.--A covered association shall  
30 cease to have the exclusive right to its proper name [if the

1 association]:

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

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

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

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

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

16 [; or

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

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

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

28 \* \* \*

29 § 209. Registration of name of nonregistered foreign  
30 association.

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

9 (1) The name of the association.

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

12 (3) The name being registered.

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

21 \* \* \*

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

24 SUBCHAPTER B

25 [(Reserved)]

26 RATIFICATION OF DEFECTIVE

27 ENTITY ACTIONS

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

30 § 221. Definitions.

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

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

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

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

17 (1) is void or voidable;

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

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

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

30 "Failure of authorization." Either:

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

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

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

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

19 "Overissue." The purported issuance:

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

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

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

29           (2) with respect to any type of domestic entity other  
30 than a business corporation, of:

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

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

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

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

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

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

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

28 "Valid interests." The shares or interests of any class,  
29 series or type that have been duly authorized and validly issued  
30 in accordance with all applicable rules, including as a result

1 of ratification or validation under this subchapter.

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

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

8 (i) the interest holders; or

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

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

14 § 222. Nonexclusivity.

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

23 § 223. Ratification of defective entity actions.

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

30 (1) the defective entity action to be ratified and, if

1 the defective entity action involved the issuance of putative  
2 interests, the number and type of putative interests  
3 purportedly issued;

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

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

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

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

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

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

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

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



1 for action in accordance with section 224.

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

9 § 224. Action on ratification.

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

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

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

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

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

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

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

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

30       (e) Putative interests.--The following apply to putative

1 interests:

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

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

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

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

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

29 § 225. Optional notice.

30 (a) General rule.--If interest holder approval is not

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

- 8       (1) the date of the action by the governors; and  
9       (2) the date of the defective entity action ratified.

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

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

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

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

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

29 § 226. Effect of ratification.

30 (a) General rule.--A defective entity action is not void or

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

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

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

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

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

1 duly authorized and valid as of the time taken.

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

7 § 227. Statement of validation.

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

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

20 (1) the name of the ratifying entity;

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

25 (3) the defective entity action that is the subject of  
26 the statement of validation (including, in the case of any  
27 defective entity action involving the issuance of putative  
28 interests, the number and type of putative interests issued  
29 and the date or dates upon which the putative interests were  
30 purported to have been issued);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28          (c) Additional filing fee.--In addition to the filing fee  
29          required under section 153 (relating to fee schedule) for the  
30          statement of validation, if the statement of validation relates



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

5 § 228. Judicial proceedings regarding validity of entity  
6 actions.

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

10 (1) the ratifying entity; or

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

13 (i) a successor to the ratifying entity;

14 (ii) a governor of the ratifying entity;

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

18 (iv) materially and adversely affected by the  
19 ratification.

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

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

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

30 (2) determine the validity and effectiveness of any

1 defective entity action not ratified under this subchapter;  
2 and

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

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

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

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

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

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

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

28 (2) any entity action taken subsequent to the defective  
29 entity action in reliance on the defective entity action  
30 having been validly effected is valid as of the time taken;

1 and

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

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

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

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

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

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

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

30 (1) in the case of a defective entity action taken by a

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

7 (2) six years from the date when:

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

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

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

22 (3) 21 years after the defective entity action.

23 (d) Application to court to void defective entity action.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) any action pending on (insert the effective date of  
30 this act), seeking relief on the grounds that a defective

1 entity action is void or voidable, including any relief that  
2 may be obtained in the action, is not affected by this  
3 section;

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

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

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

13 § 312. Definitions.

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

17 \* \* \*

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

20 \* \* \*

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

23 \* \* \*

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

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

28 \* \* \*

29 ["Merger." A transaction in which two or more merging  
30 associations are combined into a surviving association pursuant

1 to a document filed by the department or similar office in  
2 another jurisdiction.]

3 \* \* \*

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

7 "Act" or "action."

8 "Banking institution."

9 "Conversion."

10 "Department."

11 "Dissenters rights."

12 "Division."

13 "Domestic entity."

14 "Domestication."

15 "Entity."

16 "Filing entity."

17 "Foreign entity."

18 "Governor."

19 "Interest."

20 "Interest exchange."

21 "Interest holder."

22 "Merger."

23 "Obligation."

24 "Organic law."

25 "Organic rules."

26 "Private organic rules."

27 "Property."

28 "Public organic record."

29 "Record form."

30 "Registered foreign association."



1 "Representative."

2 "Sign."

3 "Transfer."

4 "Type."

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

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

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

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

28 (2) If the corporation survives the transaction, the  
29 approval of the transaction is by a vote of the shareholders  
30 or directors which would be sufficient to impair the right or

1 obligation under the provision or make [the corporation  
2 subject to] the provision[.

3 (b) Transitional provision.--

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

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

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

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

13 (i) is abandoned; or

14 (ii) takes effect.

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

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

24 § 315. Nature of transactions.

25 (a) General rule.--The fact that a sale or conversion of the  
26 interests in or assets of an association or a transaction under  
27 [a particular subchapter] this chapter or other law produces a  
28 result that could be accomplished in any other manner permitted  
29 by a different [subchapter] set of provisions of this chapter or  
30 other law shall not be a basis for recharacterizing the sale,

1 conversion or transaction as a different form of sale,  
2 conversion or transaction under [any other subchapter or other  
3 law] this chapter.

4 \* \* \*

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

7 § 318. Excluded entities and transactions.

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

10 \* \* \*

11 (3) A credit union.

12 \* \* \*

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

16 § 321. Approval by business corporation.

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

30 \* \* \*

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

22 \* \* \*

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

- 28 (1) The plan of merger or interest exchange:  
29 (i) permits or requires the merger or interest  
30 exchange to be effected under this subsection; and

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

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

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

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

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

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

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

30           (4) The board has not rescinded its recommendation at

1 the time the offer closes.

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

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

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

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

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

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

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

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

9 (i) shares owned by the corporation;

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

11 and

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

16 (9) As used in this subsection:

17 (i) "offer" means the offer referred to in paragraph

18 (2);

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

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

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

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

29 (B) either:

30 (I) in the case of shares represented by

1 certificates, the offeror or the offeror's  
2 designated depository or other agent has  
3 physically received the certificates representing  
4 those shares; or

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

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

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

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

19 Section 2512 (relating to dissenters rights procedure).

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

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

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

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

28 § 341. Interest exchange authorized.

29 (a) General rule.--Except as provided in section 318  
30 (relating to excluded entities and transactions) or this



1 section, by complying with this subchapter:

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

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

13 \* \* \*

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

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

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

21 \* \* \*

22 § 355. Statement of conversion; effectiveness.

23 \* \* \*

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

26 \* \* \*

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

29 (i) The street and mailing addresses of its  
30 registered agent and registered office in its

1 jurisdiction of formation if it is a filing entity.

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

4 \* \* \*

5 § 363. Approval of division.

6 \* \* \*

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

16 \* \* \*

17 § 364. Division without interest holder approval.

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

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

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

26 (ii) provide for special treatment; or

27 (iii) amend in any respect the provisions of the  
28 [public organic record] organic rules of the dividing  
29 association, except amendments [which] that may be made  
30 without the approval of the interest holders.

1 (2) Either:

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

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

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

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

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

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

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

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

28 (iii) all of the following apply:

29 (A) the general partner interests in each new  
30 association are distributed pro rata to the general

1 partners of the dividing limited partnership;

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

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

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

11 § 367. Effect of division.

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

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

16 (i) It continues to exist.

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

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

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

25 \* \* \*

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

28 (i) It comes into existence.

29 (ii) [It holds any] Any property allocated to it [as  
30 the successor to the dividing association, and not by

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

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

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

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

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

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

21 \* \* \*

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

1 \* \* \*

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

13 \* \* \*

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

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

21 § 368. Allocation of liabilities in division.

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

25 \* \* \*

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

1 \* \* \*

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

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

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

18 \* \* \*

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

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

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

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

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

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

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

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

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

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

18 \* \* \*

19 § 371. Domestication authorized.

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

26 \* \* \*

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

29 SUBCHAPTER H

30 ADMINISTRATIVE DISSOLUTION OR CANCELLATION



1 Sec.

2 381. Grounds for administrative dissolution or cancellation.

3 382. Procedure and effect.

4 383. Reinstatement.

5 384. Rejection of reinstatement.

6 § 381. Grounds for administrative dissolution or cancellation.

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

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

19 § 382. Procedure and effect.

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

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

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

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

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

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

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

30 (2) continues to be managed by or under the direction of

1 its governors, who:

2 (i) continue as such;

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

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

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

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

16 § 383. Reinstatement.

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

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

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

30 (3) the principal office of the entity at the time of

1 the application for restatement; and

2 (4) either:

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

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

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

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

17 (2) deliver a copy to the entity.

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

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

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

28 (3) If the entity is a limited liability partnership,  
29 limited liability limited partnership or electing  
30 partnership, its statement of registration, the provisions of

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

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

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

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

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

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

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

24 § 384. Rejection of reinstatement.

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

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

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

5 § 402. Governing law.

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

8 (1) The internal affairs of the association.

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

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

15 \* \* \*

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

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

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

30 § 403. Activities not constituting doing business.

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

5 \* \* \*

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

8 \* \* \*

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

10 \* \* \*

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

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

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

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

21 \* \* \*

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

24 § 414. Noncomplying name of foreign association.

25 \* \* \*

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

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

5 § 417. Required withdrawal on certain transactions.

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

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

10 \* \* \*

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

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

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

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

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

30 \* \* \*



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

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

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

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

18 § 419. Termination of registration.

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

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

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

29 (3) has failed to deliver to the department for filing  
30 an annual report under section 146 (relating to annual

1 report) within six months after it is due.

2 \* \* \*

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

7 § 511. Application and effect of subchapter.

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

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

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

15 (3) A fraternal benefit society.

16 \* \* \*

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

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

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

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

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

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

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

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

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

30 (b) Effect of actual knowledge.--A director [shall not be]

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

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

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

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

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

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

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

29 (1) a breach of the duty of care, including that a  
30 requirement for the fulfillment of that duty under subsection

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

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

7 § 513. Personal liability of directors.

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

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

15 \* \* \*

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

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

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

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

27 A director of a domestic corporation who is present at a  
28 meeting of its board of directors, or of a committee of the  
29 board, at which action on any corporate matter is taken on which  
30 the director is generally competent to act, shall be presumed to

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

17 § 515. Exercise of powers generally.

18 \* \* \*

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

29 \* \* \*

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

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

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

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

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

1                   \* \* \*

2 § 516. Alternative standard.

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

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

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

19 § 517. Limitation on standing.

20       The duty of the board of directors, committees of the board  
21 and individual directors under section 512 (relating to standard  
22 of care [and], justifiable reliance and business judgment rule)  
23 is solely to the domestic corporation and not to any  
24 shareholder, member or creditor or any other person or group,  
25 and may be enforced directly by the corporation or may be  
26 enforced [by a shareholder or member, as such,] by an action in  
27 the right of the corporation, and may not be enforced directly  
28 by a shareholder, member or creditor or by any other person or  
29 group. Notwithstanding the preceding sentence, sections 515(a)  
30 and (b) (relating to exercise of powers generally) and 516(a)



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

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

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

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

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

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

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

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

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

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

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

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

10 § 1102. Application of subpart.

11 \* \* \*

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

16 \* \* \*

17 [(3) A savings association.]

18 \* \* \*

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

24 § 1103. Definitions.

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

1 otherwise:

2 \* \* \*

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

8 \* \* \*

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

11 \* \* \*

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

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

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

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

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

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

29 "Distribution." A direct or indirect transfer of money or  
30 other property (except its own shares or options, rights or

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

13 \* \* \*

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

21 \* \* \*

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

27 \* \* \*

28 "Share register." Records administered by or on behalf of a  
29 corporation in which the names of all of its shareholders, the  
30 address of each shareholder, the number and class of shares

1 registered in the name of each shareholder and all issuances and  
2 transfers of shares are recorded.

3 \* \* \*

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

8 "Act" or "action."

9 "Banking institution" or "domestic banking institution."

10 "Conversion."

11 "Corporation for profit."

12 "Corporation not-for-profit."

13 "Court."

14 "Credit union."

15 "Department."

16 "Dissenters rights."

17 "Division."

18 "Domestic corporation for profit."

19 "Domestic corporation not-for-profit."

20 "Domestication."

21 "Execute."

22 "Foreign corporation for profit."

23 "Foreign corporation not-for-profit."

24 "Insurance corporation" or "domestic insurance corporation."

25 "Interest exchange."

26 "Internal Revenue Code of 1986."

27 "Merger."

28 "Obligation."

29 "Officially publish."

30 "Record form."

1 "Representative."  
2 ["Savings association" or "domestic savings association."]  
3 "Sign."

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

5 [§ 1110. Annual report information.

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

13 Section 31. Sections 1306(a)(5) and (b) and 1502(a)(18) of  
14 Title 15 are amended to read:

15 § 1306. Articles of incorporation.

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

19 \* \* \*

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

22 \* \* \*

23 (b) Other provisions authorized.--A provision of the  
24 original articles or a provision of the articles approved by the  
25 shareholders, in either case adopted under subsection (a)(8)  
26 (ii), may relax or be inconsistent with and supersede any  
27 provision of Chapter 3 (relating to entity transactions), 13  
28 (relating to incorporation), 15 (relating to corporate powers,  
29 duties and safeguards), 17 (relating to officers, directors and  
30 shareholders) or 19 (relating to fundamental changes) concerning

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

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

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

20 \* \* \*

21 § 1502. General powers.

22 (a) General rule.--Subject to the limitations and  
23 restrictions imposed by statute or contained in its articles,  
24 every business corporation shall have power:

25 \* \* \*

26 (18) To accept, reject, respond to or take no action in  
27 respect of an actual or proposed acquisition, divestiture,  
28 tender offer, takeover or other fundamental change under  
29 Chapter 3 (relating to entity transactions) or 19 (relating  
30 to fundamental changes) or otherwise.



1 \* \* \*

2 Section 32. Section 1504(b) and (c) of Title 15 are amended  
3 and the section is amended by adding a subsection to read:

4 § 1504. Adoption, amendment and contents of bylaws.

5 \* \* \*

6 (b) Exception.--Except as otherwise provided in section  
7 1310(a) (relating to organization meeting), or in the articles  
8 to the extent authorized by section 1306(b) (relating to other  
9 provisions authorized), the board of directors shall not have  
10 the authority to adopt or change a bylaw on any subject that is  
11 committed expressly to the shareholders by any of the provisions  
12 of this subpart. See:

13 Subsection (d) (relating to amendment of voting provisions).

14 Section 1521 (relating to authorized shares).

15 Section 1713 (relating to personal liability of directors).

16 Section 1721 (relating to board of directors).

17 Section 1725 (relating to selection of directors).

18 Section 1726 (relating to removal of directors).

19 Section 1729 (relating to voting rights of directors).

20 Section 1735 (relating to personal liability of officers).

21 Section 1756 (relating to quorum).

22 Section 1757 (relating to action by shareholders).

23 Section 1765 (relating to judges of election).

24 Section 2105 (relating to termination of nonstock corporation  
25 status).

26 Section 2122 (relating to classes of membership).

27 Section 2124 (relating to voting rights of members).

28 Section 2302 (relating to definition of minimum vote).

29 Section 2321 (relating to shares).

30 Section 2322 (relating to share transfer restrictions).

1 Section 2325 (relating to sale option of estate of  
2 shareholder).

3 Section 2332 (relating to management by shareholders).

4 Section 2334 (relating to appointment of provisional director  
5 in certain cases).

6 Section 2337 (relating to option of shareholder to dissolve  
7 corporation).

8 Section 2923 (relating to issuance and retention of shares).

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

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

25 \* \* \*

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

27 § 1505. Persons bound by bylaws.

28 Except as otherwise provided by section 1713 (relating to  
29 personal liability of directors) or any similar provision of  
30 law, the bylaws of a business corporation [shall operate only as

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

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

11 § 1507. Registered office.

12 \* \* \*

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

23 \* \* \*

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

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

30 Section 35. Sections 1508 and 1509 of Title 15 are amended

1 to read:

2 § 1508. Corporate records; inspection by shareholders.

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

10 (1) the registered office of the corporation in this  
11 Commonwealth;

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

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

15 (4) the office of the registrar or transfer agent of the  
16 corporation.]

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

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

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

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

7           (3) The demand must be:

8                 (i) made in good faith;

9                 (ii) in record form; and

10                (iii) verified.

11           (4) The demand must describe with reasonable  
12 particularity:

13                 (i) the purpose of the shareholder; and

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

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

19                 [(1)] (i) at its registered office in this  
20 Commonwealth;

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

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

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

28           (c) Proceedings for the enforcement of inspection by a  
29 shareholder.--If the corporation, or an officer or agent  
30 thereof, refuses to permit an inspection sought by a shareholder

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

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

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

24 (2) That the inspection he seeks is for a proper  
25 purpose.

26 Where] and the shareholder seeks to inspect:

27 (1) the share register or list of shareholders of the  
28 corporation [and he has complied with the provisions of this  
29 section respecting the form and manner of making demand for  
30 inspection of the documents], the burden of proof shall be

1 upon the corporation to establish that the inspection he  
2 seeks is for an improper purpose[.]; or

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

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

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

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

27 (e) Reasonable restrictions permitted.--The corporation may  
28 impose reasonable restrictions and conditions on access to and  
29 use of information to be furnished under this section, including  
30 designating information confidential and imposing nondisclosure

1 and safeguarding obligations on the recipient. In a dispute  
2 concerning the reasonableness of a restriction, condition or  
3 obligation under this subsection, the corporation has the burden  
4 of proving reasonableness.

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

11 § 1509. Bylaws and other powers in emergency.

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

- 23 (1) Procedures for calling meetings of the board.  
24 (2) Quorum requirements for meetings of the board.  
25 (3) Procedures for designating additional or substitute  
26 directors.

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

- 30 (1) provide, and from time to time modify, lines of



1 succession in the event that during the emergency any or all  
2 officers or agents of the corporation shall for any reason be  
3 rendered incapable of discharging their duties [~~and may,~~];  
4 and

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

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

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

16 (i) self-dealing, willful misconduct or  
17 recklessness;

18 (ii) violation of a criminal statute; or

19 (iii) payment of taxes pursuant to Federal, State or  
20 local law.

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

26 (d) Effect on regular bylaws.--To the extent not  
27 inconsistent with any emergency bylaws [~~so adopted~~], the bylaws  
28 of the corporation shall remain in effect during any emergency  
29 and, upon its termination, the emergency bylaws shall cease to  
30 be effective.

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

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

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

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

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

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

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

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

28 (i) Definition.--As used in this section, and for no other  
29 purpose, "emergency" means a period during which a quorum of the  
30 board, or of persons on whom the powers and duties of the board

1 have been conferred or imposed under section 1721, cannot be  
2 assembled as a result of:

3 (1) an attack on the United States;

4 (2) a nuclear disaster;

5 (3) an epidemic or pandemic;

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

10 (5) any other catastrophe or disaster.

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

13 § 1512. Informational rights of a director.

14 \* \* \*

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

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

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

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

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

21 Section 37. Title 15 is amended by adding a section to read:  
22 § 1513. Forum selection provisions.

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

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

27 (i) other identified courts sitting in this  
28 Commonwealth; or

29 (ii) identified courts sitting in other  
30 jurisdictions with which the business corporation has a

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

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

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

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

22 (2) a derivative action or proceeding brought on behalf  
23 of the corporation;

24 (3) an action asserting a claim arising pursuant to any  
25 provision of:

26 (i) this title;

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

28 (iii) an agreement regarding the governance of the  
29 corporation or the transfer of shares in the corporation

30 if:

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

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

8           (4) any action asserting a claim regarding the internal  
9           affairs of the corporation that is not included in paragraphs  
10          (1), (2) and (3).

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

13 § 1521. Authorized shares.

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

24          (b) Provisions specifically authorized.--

25                 \* \* \*

26          (3) The articles may confer upon a shareholder a  
27 specifically enforceable right to the declaration and payment  
28 of dividends, the redemption of shares or the making of any  
29 other form of distribution if the distribution is at the time  
30 of enforcement then not prohibited by section [1551(b) (2)]

1       1551(b) (relating to limitation). Such a right shall not  
2       arise by implication, but only by either an express reference  
3       to this section or another express reference to specific  
4       enforceability of a distribution.

5       \* \* \*

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

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

18      § 1525. Stock rights and options.

19      \* \* \*

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

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

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



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

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

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

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

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

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

21 \* \* \*

22 (d) Pricing and payment.--The provisions of this subchapter  
23 applicable to the [pricing of and payment for] issuance and  
24 pricing of, and payment for, shares shall be applicable to [the  
25 pricing of and payment for] rights and options except that the  
26 rights and options may be issued to representatives of the  
27 corporation or any of its affiliates as an incentive to service  
28 or continued service with the corporation and its affiliates or  
29 for such other purpose and upon such other terms as its  
30 directors, who may benefit by their action, [deem advantageous

1 to the corporation] approve.

2 \* \* \*

3 Section 40. Sections 1529(b), (c) and (d), 1552(a), 1553(a),  
4 1571(b) (1) introductory paragraph and (f), 1702(a) and (d),  
5 1704(a) and (d), 1708 and 1709(b) and (c) of Title 15 are  
6 amended to read:

7 § 1529. Transfer of securities; restrictions.

8 \* \* \*

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

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

30 (1) obligates the holder of the restricted securities to

1 offer to the corporation or to any other holders of  
2 securities of the corporation or to any other person or to  
3 any combination of the foregoing a prior opportunity, to be  
4 exercised within a reasonable time, to acquire the restricted  
5 securities;

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

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

17 (3.1) obligates the holder of the restricted securities  
18 to sell or transfer an amount of restricted securities to the  
19 corporation or to any other holders of securities of the  
20 corporation or to any other person or to any combination of  
21 the foregoing, or causes or results in the automatic sale or  
22 transfer of an amount of restricted securities to the  
23 corporation or to any other holders of securities of the  
24 corporation or to any other person or to any combination of  
25 the foregoing; or

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

29 (d) [Subchapter S] Tax and regulatory restrictions.--Any  
30 restriction on the transfer of [the shares] securities of a

1 business corporation [for the purpose of maintaining its status  
2 as an electing small business corporation under Subchapter S of  
3 the Internal Revenue Code of 1986 or a comparable provision  
4 under state law] or on the amount of securities of a corporation  
5 that may be owned by a person or group of persons for any of the  
6 following purposes shall be conclusively presumed to be for a  
7 reasonable purpose[.]:

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

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

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

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

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

21 (3) maintaining any statutory or regulatory status.

22 \* \* \*

23 § 1552. Power of corporation to acquire its own shares.

24 (a) General rule.--A business corporation shall have the  
25 power to acquire its own shares. If the articles provide that  
26 shares acquired by the corporation shall not be reissued, the  
27 authorized shares of the class or series that was acquired shall  
28 be reduced by the number of shares acquired. In any other case  
29 the shares acquired shall be deemed to be issued but not  
30 outstanding, except that, unless otherwise provided in the

1 bylaws, the board may, by resolution, restore any or all of the  
2 previously issued shares of the corporation owned by it to the  
3 status of:

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

5 (2) authorized but unissued shares of the class or  
6 series.

7 \* \* \*

8 § 1553. Liability for unlawful dividends and other  
9 distributions.

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

24 \* \* \*

25 § 1571. Application and effect of subchapter.

26 \* \* \*

27 (b) Exceptions.--

28 (1) Except as otherwise provided in paragraph (2), the  
29 holders of the shares of any class or series of shares shall  
30 not have the right to dissent and obtain payment of the fair

1 value of the shares under this subchapter if, on the record  
2 date fixed to determine the shareholders entitled to notice  
3 of and to vote at the meeting at which a plan specified in  
4 any of section 333, 343, 353, 363 or 1932(c) is to be voted  
5 on or on the date of the first public announcement that such  
6 a plan has been approved by the shareholders by consent  
7 without a meeting, the shares of the class or series are  
8 either:

9 \* \* \*

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

20 \* \* \*

21 § 1702. 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 business 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 [his] the postal  
29 address of the person appearing on the books of the  
30 corporation or, in the case of directors, supplied by

1 [him] the director to the corporation for the purpose of  
2 notice. Notice pursuant to this subparagraph shall be  
3 deemed to have been given to the person entitled thereto  
4 when deposited in the United States mail or with a  
5 courier service for delivery to that person.

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

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

19 \* \* \*

20 (d) Cross [reference] references.--See [section] sections  
21 2522 (relating to adjournment or postponement of meeting of  
22 shareholders), 2528 (relating to notice of shareholder meetings)  
23 and 3133 (relating to notice of meetings of members of mutual  
24 insurance companies).

25 § 1704. Place and notice of meetings of shareholders.

26 (a) Place.--Meetings of shareholders may be held at such  
27 geographic location within or without this Commonwealth as may  
28 be provided in or fixed pursuant to the bylaws. Authority to  
29 provide for the location of a meeting of the shareholders  
30 includes the authority to determine to hold a meeting solely by

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

16 \* \* \*

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

21 \* \* \*

22 § 1708. Use of conference telephone or other electronic  
23 technology.

24 (a) Incorporators and directors.--Except as otherwise  
25 provided in the bylaws, one or more persons may participate in a  
26 meeting of the incorporators or the board of directors of a  
27 business corporation by means of conference telephone or other  
28 electronic technology by means of which all persons  
29 participating in the meeting can hear each other. Participation  
30 in a meeting pursuant to this [section] subsection shall



1 constitute presence in person at the meeting.

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

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

27 § 1709. Conduct of shareholders meeting.

28 \* \* \*

29 (b) Authority of the presiding officer.--Except as otherwise  
30 provided in the bylaws, the presiding officer shall determine

1 the order of business and shall have the authority to establish  
2 rules for the conduct of the meeting if the board of directors  
3 has not determined the order of business or established the  
4 rules.

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

9 \* \* \*

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

12 § 1711. Alternative provisions.

13 \* \* \*

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

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

21 § 1712. Standard of care [and], justifiable reliance and  
22 business judgment rule.

23 (a) [Directors] General rule.--A director of a business  
24 corporation shall stand in a fiduciary relation to the  
25 corporation and shall perform [his duties as] the duties of a  
26 director, including [his] duties as a member of any committee of  
27 the board upon which [he] the director may serve, in good faith,  
28 in a manner [he] the director reasonably believes to be in the  
29 best interests of the corporation and with such care, including  
30 [reasonable inquiry,] the skill and diligence[, as] that a

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

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

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

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

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

27 (b) Effect of actual knowledge.--A director [shall not be]  
28 is not considered to be acting in good faith [if he has] under  
29 subsection (a.1) if the director has actual knowledge concerning  
30 the matter [in question that would cause his] that causes the

1 director to believe reliance [to be] is unwarranted.

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

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

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

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

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

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

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

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

30 Section 43. Section 1713(a)(1) and (c) of Title 15 are

1 amended and the section is amended by adding a subsection to  
2 read:

3 § 1713. Personal liability of directors.

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

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

10 \* \* \*

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

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

19 Section 44. Sections 1714, 1715(b), (d) and (e)(1)(i), 1716,  
20 1717 and 1718 of Title 15 are amended to read:

21 § 1714. [Notation of dissent] Presumption of assent.

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

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

12 § 1715. Exercise of powers generally.

13 \* \* \*

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

24 \* \* \*

25 (d) Presumption.--[Absent breach of fiduciary duty, lack of  
26 good faith or self-dealing, any act as the board of directors, a  
27 committee of the board or an individual director shall be  
28 presumed to be in the best interests of the corporation.] In  
29 assessing whether the standard set forth in section 1712 or 1728  
30 (relating to interested directors or officers; quorum) has been

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

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

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

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

27 \* \* \*

28 § 1716. Alternative standard.

29 (a) General rule.--In discharging the duties of their  
30 respective positions, the board of directors, committees of the

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

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

13 (c) Cross reference.--See section 1711 (relating to  
14 alternative provisions).

15 § 1717. Limitation on standing.

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



1 board of directors, committees of the board and individual  
2 directors.

3 § 1718. Inconsistent articles ineffective.

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

10 Section 45. Title 15 is amended by adding a section to read:  
11 § 1719. Renunciation of business opportunities.

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

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

21 § 1721. Board of directors.

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

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

9 \* \* \*

10 § 1722. Qualifications of directors.

11 \* \* \*

12 (b) Cross [reference] references.--See [section] sections  
13 2530 (relating to qualifications of directors) and 3131  
14 (relating to directors).

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

17 § 1724. Term of office of directors.

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

1 the number of directors shall not have the effect of shortening  
2 the term of any incumbent director.

3 \* \* \*

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

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

16 § 1725. Selection of directors.

17 \* \* \*

18 (b) Vacancies.--

19 \* \* \*

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

28 \* \* \*

29 Section 49. Sections 1727(b) and 1728(a) of Title 15 are  
30 amended and the sections are amended by adding subsections to

1 read:

2 § 1727. Quorum of and action by directors.

3 \* \* \*

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

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 § 1728. Interested directors or officers; quorum.

29 (a) General rule.--A contract or transaction between a  
30 business corporation and one or more of its directors or

1 officers or between a business corporation and another domestic  
2 or foreign corporation for profit or not-for-profit,  
3 partnership, joint venture, trust or other enterprise 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 [his  
11 or their votes are] the vote of the director or officer is  
12 counted for that purpose, if:

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

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

27 (4) the contract or transaction satisfies subsection (d)  
28 or (e).

29 \* \* \*

30 (d) Common governors or officers with not wholly owned

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

6 (1) one of the conditions set forth in subsection (a)  
7 (1), (2) or (3) is satisfied; or

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

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

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

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

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

28 § 1730. Compensation of directors.

29 (a) General rule.--Except as otherwise restricted in the  
30 bylaws, the board of directors of a business corporation [shall

1 have] has the authority to fix the compensation of directors for  
2 their services as directors [and a], regardless of the personal  
3 interest of the directors. A director may be a salaried officer  
4 of the corporation.

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

8 § 1731. Executive and other committees of the board.

9 (a) Establishment and powers.--Unless otherwise restricted  
10 in the bylaws:

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

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

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

23 (ii) The creation or filling of vacancies in the  
24 board of directors.

25 (iii) The adoption, amendment or repeal of the  
26 bylaws.

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

30 (v) Action on matters committed by the bylaws or

1 [resolution] action of the board of directors exclusively  
2 to another committee of the board.

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

14 \* \* \*

15 § 1732. Officers.

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

27 (b) Election, appointment and term of office.--The officers  
28 [and assistant officers] shall be elected or appointed at such  
29 time, in such manner and for such terms as may be fixed by or  
30 pursuant to the bylaws. Unless otherwise provided by or pursuant



1 to the bylaws, each officer shall hold office for a term of one  
2 year and until [his] the officer's successor has been selected  
3 and qualified or until [his] the officer's earlier death,  
4 resignation or removal.

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

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

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

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

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

25 (g) Right to bylaws.--Every officer 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, but  
28 only to the extent reasonably related to the officer's duties.

29 Section 51. Title 15 is amended by adding sections to read:  
30 § 1734. Officer's standard of care and justifiable reliance.

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

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

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

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

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

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

30 (1) the subject of the business judgment does not

1 involve self-dealing by the officer or an associate or  
2 affiliate of the officer;

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

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

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

14 § 1735. Personal liability of officers.

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

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

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

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

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

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

28 (c) Application.--An amendment or repeal of a provision  
29 described in subsection (a) does not affect its application with  
30 respect to an act by an officer occurring before the amendment

1 or repeal unless the provision in effect at the time of the act  
2 explicitly authorizes its amendment or repeal after an act has  
3 occurred.

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

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

8 Section 52. Sections 1743 and 1750 of Title 15 is amended to  
9 read:

10 § 1743. Mandatory indemnification.

11 (a) General rule.--To the extent that a [representative]  
12 present or former director or officer of a business corporation  
13 has been successful on the merits or otherwise in defense of any  
14 action or proceeding referred to in section 1741 (relating to  
15 third-party actions) or 1742 (relating to derivative and  
16 corporate actions) or in defense of any claim, issue or matter  
17 therein, [he] the director or officer shall be indemnified  
18 against expenses (including attorney fees) actually and  
19 reasonably incurred by [him] the director or officer in  
20 connection therewith.

21 (b) Prospective application.--The limitation of the scope of  
22 subsection (a) to a present or former director or officer  
23 applies only to acts occurring after (insert the effective date  
24 of the amendment of subsection (a)).

25 § 1750. Duration and extent of coverage.

26 The indemnification and advancement of expenses provided by,  
27 or granted pursuant to, this subchapter shall, unless otherwise  
28 provided when authorized or ratified, continue as to a person  
29 who has ceased to be a representative of the corporation and  
30 shall inure to the benefit of the heirs and personal

1 representative of that person. A right to indemnification or to  
2 advancement of expenses arising under a provision of the  
3 articles or bylaws may not be eliminated or impaired by an  
4 amendment to or repeal of the provision after the occurrence of  
5 an act that is the subject of the threatened, pending or  
6 completed action or proceeding, whether civil, criminal,  
7 administrative or investigative, for which indemnification or  
8 advancement of expenses is sought, unless the provision in  
9 effect at the time of the act explicitly authorizes the  
10 elimination or impairment after an act has occurred.

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

14 § 1755. Time of holding meetings of shareholders.

15 \* \* \*

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

18 (1) by the board of directors;

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

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

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

27 (b.1) Duties of secretary.--At any time, upon written  
28 request of any person who has called a special meeting, it shall  
29 be the duty of the secretary to fix the time of the meeting  
30 which, if the meeting is called pursuant to a statutory right,

1 shall be held within any period specified by this subpart, or if  
2 no period is specified, not more than 60 days after the receipt  
3 of the request. If the secretary neglects or refuses to fix the  
4 time of the meeting, the person or persons calling the meeting  
5 may do so. See [section] sections 2521 (relating to call of  
6 special meetings of shareholders) and 2565(a) (relating to  
7 procedure for establishing voting rights of control shares).

8 (c) Adjournments.--Adjournments of any regular or special  
9 meeting may be taken but any meeting at which directors are to  
10 be elected shall be adjourned [only] for no longer than from day  
11 to day, or for such longer periods not exceeding 15 days each as  
12 the shareholders present and entitled to vote shall direct,  
13 until the directors have been elected. See section 2522  
14 (relating to adjournment [of meetings] or postponement of  
15 meeting of shareholders).

16 (d) Postponement or cancellation.--The board of directors  
17 may postpone, or delegate to an officer the authority to  
18 postpone, the annual or other regular meeting of shareholders,  
19 subject to the provision of subsection (a) providing for a  
20 meeting each calendar year. Unless otherwise restricted in the  
21 bylaws or otherwise provided by statute, the holding of a  
22 special meeting of shareholders may be postponed for not more  
23 than 15 days or may be canceled by the person or group that  
24 called the special meeting. In the case of a postponed or  
25 canceled meeting, prompt notice in record form of the  
26 postponement or cancellation must be given to the shareholders  
27 entitled to vote at the meeting.

28 [(d)] (e) Cross reference.--See section 1106(b)(4) (relating  
29 to uniform application of subpart).

30 Section 54. Sections 1756(a)(1), (3) and (4), 1758(a) and

1 (b), 1763, 1764 and 1766 of Title 15 are amended to read:

2 § 1756. Quorum.

3 (a) General rule.--A meeting of shareholders of a business  
4 corporation duly called shall not be organized for the  
5 transaction of business unless a quorum is present. Unless  
6 otherwise provided in a bylaw adopted by the shareholders:

7 (1) [The] A quorum for the purposes of consideration and  
8 action on a particular matter at a meeting shall consist of:

9 (i) the presence of shareholders entitled to cast at  
10 least a majority of the votes that all shareholders are  
11 entitled to cast on [a particular matter to be acted upon  
12 at the meeting shall constitute a quorum for the purposes  
13 of consideration and action on] the matter[.]; and

14 (ii) if any shareholders are entitled to vote as a  
15 class on the matter, the presence of shareholders  
16 entitled to cast at least a majority of the votes  
17 entitled to be cast in the class vote.

18 \* \* \*

19 (3) If a meeting cannot be organized because a quorum  
20 has not attended, those present may, except as otherwise  
21 provided in this subpart, adjourn the meeting to [such] a  
22 time and place [as] they may determine.

23 (4) If a proxy casts a vote or takes other action on  
24 behalf of a shareholder on any issue other than a procedural  
25 motion considered at a meeting of shareholders, the  
26 [shareholder] shares for which the proxy has so acted shall  
27 be deemed to be present during the entire meeting for  
28 purposes of determining whether a quorum is present for  
29 consideration of any other issue.

30 \* \* \*

1 § 1758. Voting rights of shareholders.

2 (a) General rule.--Unless otherwise provided in the  
3 articles, every shareholder of a business corporation shall be  
4 entitled to one vote for every share standing in [his] the  
5 shareholder's name on the [books of the corporation] share  
6 register. The articles may restrict the number of votes that a  
7 single holder or beneficial owner, or such a group of holders or  
8 owners as the bylaws may define, of shares of any class or  
9 series may directly or indirectly cast in the aggregate for the  
10 election of directors or on any other matter coming before the  
11 shareholders on the basis of any facts or circumstances that are  
12 not manifestly unreasonable, including without limitation:

13 (1) the number of shares of any class or series held by  
14 such single holder or beneficial owner or group of holders or  
15 owners; or

16 (2) the length of time shares of any class or series  
17 have been held by such single holder or beneficial owner or  
18 group of holders or owners.

19 (b) Procedures for election of directors.--The following  
20 apply to the election of directors:

21 (1) Unless otherwise restricted in the bylaws, in  
22 elections for directors at a meeting of shareholders held at  
23 a geographic location, voting need not be by ballot unless  
24 required by vote of the shareholders before the voting for  
25 election of directors begins. The shareholders do not have  
26 the right to vote by ballot at a meeting that is not held at  
27 a geographic location pursuant to section 1708(c) (relating  
28 to use of conference telephone or other electronic  
29 technology).

30 (2) Unless otherwise provided in a bylaw adopted by the



1 shareholders, the candidates for election as directors  
2 receiving the highest number of votes from each class or  
3 group of classes, if any, entitled to elect directors  
4 separately up to the number of directors to be elected by the  
5 class or group of classes shall be elected. This paragraph  
6 applies retroactively, and a bylaw described in this  
7 paragraph shall be valid if it was adopted after January 1,  
8 2000.

9 (3) If at any meeting of shareholders, directors of more  
10 than one class are to be elected, each class of directors  
11 shall be elected in a separate election.

12 \* \* \*

13 § 1763. Determination of shareholders of record.

14 (a) Fixing record date.--Unless otherwise restricted in the  
15 bylaws, the board of directors of a business corporation may fix  
16 a time prior to the date of any meeting of shareholders as a  
17 record date for the determination of the shareholders entitled  
18 to notice of[, or to vote at,] the meeting, which time, except  
19 in the case of an adjourned or postponed meeting, shall be not  
20 more than 90 days prior to the date of the meeting of  
21 shareholders. If the board fixes a record date for notice of a  
22 meeting, that date shall also be the record date for determining  
23 the shareholders entitled to vote at the meeting unless the  
24 board determines, at the time it fixes the record date for  
25 notice, that a later date on or before the date of the meeting  
26 shall be the date for determining the shareholders entitled to  
27 vote. Only shareholders of record on the date fixed shall be so  
28 entitled notwithstanding any transfer of shares on the books of  
29 the corporation after any record date fixed as provided in this  
30 subsection. Unless otherwise provided in the bylaws, the board

1 of directors may similarly fix a record date for the  
2 determination of shareholders of record for any other purpose. A  
3 record date may not precede the date on which the board acts to  
4 fix that record date. The shareholders of record shall be  
5 determined as of the close of business on the record date unless  
6 the board fixes a different time of day for that determination.  
7 When a determination of shareholders of record has been made as  
8 provided in this section for purposes of a meeting, the  
9 determination shall apply to any adjournment or postponement  
10 thereof unless otherwise restricted in the bylaws or unless the  
11 board fixes a new record date for the adjourned meeting.

12 (b) Determination when a record date is not fixed.--Unless  
13 otherwise provided in the bylaws, if a record date is not fixed:

14 (1) The [record date for determining shareholders  
15 entitled to notice of or to vote at a meeting of shareholders  
16 shall be at the] close of business on the day next preceding  
17 the day on which notice is given or, if notice is waived, at  
18 the close of business on the day immediately preceding the  
19 day on which the meeting is held[.] shall be the record date  
20 for determining shareholders entitled to notice of or to vote  
21 at a meeting of shareholders.

22 (2) The close of business on the day on which the first  
23 consent, request or petition is filed in record form with the  
24 secretary of the corporation shall be the record date for  
25 determining shareholders entitled to:

26 (i) express consent or dissent to corporate action  
27 [in writing] without a meeting, when prior action by the  
28 board of directors is not necessary;

29 (ii) call a special meeting of the shareholders; or

30 (iii) propose an amendment of the articles.[;]

1 shall be at the close of business on the day on which the  
2 first written consent or dissent, request for a special  
3 meeting or petition proposing an amendment of the articles is  
4 filed with the secretary of the corporation.]

5 (3) The record date for determining shareholders for any  
6 other purpose shall be at the close of business on the day on  
7 which the board of directors adopts the resolution relating  
8 thereto.

9 (c) Certification by nominee.--If the bylaws so provide, the  
10 board of directors may adopt a procedure whereby a shareholder  
11 of the corporation may certify in writing to the corporation  
12 that all or a portion of the shares registered in the name of  
13 the shareholder are held for the account of a specified person  
14 or persons. [The resolution of the board may set forth:] The  
15 persons specified in a certification shall be deemed, for the  
16 purposes set forth in the certification, to be the holders of  
17 record of the number of shares specified in place of the  
18 shareholder making the certification. A certification procedure  
19 may include provisions on:

20 (1) The classification of shareholder who may certify.

21 (2) The purpose or purposes for which the certification  
22 may be made.

23 (3) The form of certification and information to be  
24 contained therein.

25 (4) If the certification is with respect to a record  
26 date, the time after the record date within which the  
27 certification must be received by the corporation.

28 (5) Such other provisions with respect to the procedure  
29 as are deemed necessary or desirable.

30 [Upon receipt by the corporation of a certification complying

1 with the procedure, the persons specified in the certification  
2 shall be deemed, for the purposes set forth in the  
3 certification, to be the holders of record of the number of  
4 shares specified in place of the shareholder making the  
5 certification.]

6 § 1764. Voting lists.

7 (a) General rule.--The officer or agent having charge of the  
8 [transfer books for shares] share register of a business  
9 corporation shall make a complete list of the shareholders  
10 entitled to vote at any meeting of shareholders, arranged in  
11 alphabetical order, with the address of and the number of shares  
12 held by each. This section does not require the corporation to  
13 include electronic mail addresses or other electronic contact  
14 information on the list. The list shall be produced and kept  
15 open at the time and place of each meeting of shareholders [of a  
16 nonregistered corporation held at a geographic location] and  
17 shall be subject to the inspection of any shareholder during the  
18 whole time of the meeting for the purposes thereof. [See section  
19 2529 (relating to voting lists).] A shareholder and any agent or  
20 attorney who inspects the list may use the information on the  
21 list only for purposes related to the meeting and must keep the  
22 information on the list confidential.

23 (b) Effect of list.--Failure to comply with the requirements  
24 of this section shall not affect the validity of any action  
25 taken at a meeting prior to a demand at the meeting by any  
26 shareholder entitled to vote thereat to examine the list. The  
27 original share register [or transfer book], or a duplicate  
28 thereof kept in this Commonwealth, shall be prima facie evidence  
29 as to who are the shareholders entitled to examine the list or  
30 share register [or transfer book] or to vote at any meeting of

1 shareholders.

2 (c) Electronic meetings.--If a meeting of shareholders [of a  
3 nonregistered corporation] is not held at a geographic location,  
4 the corporation shall make the list of shareholders required by  
5 subsection (a) available in a reasonably accessible manner.

6 (d) Cross reference.--See section 2529 (relating to voting  
7 lists).

8 § 1766. Consent of shareholders in lieu of meeting.

9 (a) Unanimous consent.--Unless otherwise restricted in the  
10 bylaws, any action required or permitted to be taken at a  
11 meeting of the shareholders or of a class of shareholders of a  
12 business corporation may be taken without a meeting if a consent  
13 or consents to the action in record form are signed, before, on  
14 or after the effective [date] time of the action by all of the  
15 shareholders who would be entitled to vote at a meeting for such  
16 purpose. The consent or consents must be filed with the minutes  
17 of the proceedings of the shareholders.

18 (b) Partial consent.--If the bylaws so provide, any action  
19 required or permitted to be taken at a meeting of the  
20 shareholders or of a class of shareholders may be taken without  
21 a meeting upon the signed consent or consents of shareholders  
22 who would have been entitled to cast the minimum number of votes  
23 that would be necessary to authorize the action at a meeting at  
24 which all shareholders entitled to vote thereon were present and  
25 voting. The [consents shall] consent or consents must be filed  
26 in record form with the minutes of the proceedings of the  
27 shareholders.

28 (c) Effectiveness of action by partial consent.--An action  
29 taken pursuant to subsection (b) to approve a transaction under  
30 Chapter 3 (relating to entity transactions) shall not become

1 effective until after at least ten days' notice of the action  
2 has been given to each shareholder entitled to vote thereon who  
3 has not consented thereto. Any other action may become effective  
4 immediately, but prompt notice that the action has been taken  
5 shall be given to each shareholder entitled to vote thereon that  
6 has not consented. Notice under this subsection must include the  
7 information that a notice of a meeting of shareholders seeking  
8 approval of the action would have been required to contain. This  
9 subsection may not be relaxed by any provision of the articles.

10 (d) Escrowing of consents.--A consent may provide, or a  
11 person signing a consent, whether or not then a shareholder, may  
12 instruct in record form, that the consent will be effective at a  
13 future time, including a time determined upon the happening of  
14 an event. In the case of a consent signed by a person not a  
15 shareholder at the time of signing, the consent is effective at  
16 the stated effective time if the person who signed the consent  
17 is a shareholder at the effective time and did not revoke the  
18 consent in record form prior to the effective time. A consent is  
19 effective at the stated effective time, even if one or more  
20 signers are no longer shareholders at the effective time if  
21 consents by shareholders entitled to cast the required number of  
22 votes have not been revoked before the effective time.

23 (e) Revocation of consent.--Unless otherwise provided in a  
24 consent, a signer of the consent may revoke the signer's consent  
25 in record form until it becomes effective.

26 **[(d)]** (f) Cross references.--See sections 1702 (relating to  
27 manner of giving notice) and 2524 (relating to consent of  
28 shareholders in lieu of meeting).

29 Section 55. Section 1781(a)(1) and (c) and 1782(a) and (d)  
30 of Title 15 are amended and the sections are amended by adding

1 subsections to read:

2 § 1781. Derivative action.

3 (a) General rule.--Subject to section 1782 (relating to  
4 eligible shareholder plaintiffs and security for costs) and  
5 [subsection (b)] subsections (b) and (g), a plaintiff may  
6 maintain a derivative action to enforce a right of a business  
7 corporation only if:

8 (1) the plaintiff first makes a demand on the  
9 corporation or the board of directors requesting that [it  
10 cause the corporation to] the corporation bring an action to  
11 enforce the right, and:

12 (i) if a special litigation committee is not  
13 appointed under section 1783 (relating to special  
14 litigation committee), [the corporation does not bring  
15 the action within a reasonable time; or] the board  
16 determines that:

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

22 (B) an action already commenced continue under  
23 the control of the plaintiff; or

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

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

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

30 \* \* \*

1 (c) Contents of demand.--A demand under this section must be  
2 in record form and give notice with reasonable specificity of:

3 (1) the [essential] material facts relied upon to  
4 support each of the claims made in the demand[.] against each  
5 proposed defendant; and

6 (2) in the case of a derivative action commenced by a  
7 shareholder, the basis on which the person making the demand  
8 has standing under section 1782.

9 \* \* \*

10 (g) Exception.--This subchapter does not apply to an action  
11 brought by a holder of an equity security of a business  
12 corporation under Subchapter H of Chapter 25 (relating to  
13 disgorgement by certain controlling shareholders following  
14 attempts to acquire control).

15 § 1782. Eligible shareholder plaintiffs and security for costs.

16 (a) General rule.--Except as provided in subsection (b), in  
17 any action or proceeding brought [to enforce a secondary right  
18 on the part of] by one or more shareholders of a business  
19 corporation [against any present or former officer or director  
20 of the corporation because the corporation refuses to enforce  
21 rights that may properly be asserted by it, each plaintiff must  
22 aver and it must be made to appear that each plaintiff] to  
23 enforce rights that the plaintiff claims could be, but have not  
24 been, asserted by the corporation, each plaintiff has standing  
25 to commence and maintain the derivative action only if the  
26 plaintiff:

27 (1) was a shareholder of the corporation or owner of a  
28 beneficial interest in the shares at the time of the  
29 transaction or conduct of which [he] the plaintiff complains,  
30 or that [his] the plaintiff's shares or beneficial interest



1 in the shares devolved upon [him] the plaintiff by operation  
2 of law from a person who was a shareholder or owner of a  
3 beneficial interest in the shares at that time[.]; and

4 (2) continues to hold the shares until the time of  
5 judgment, unless the failure to do so is the result of  
6 corporate action that:

7 (i) was done merely to eliminate derivative claims;

8 or

9 (ii) has the effect of a reorganization that does  
10 not affect the plaintiff's ownership of the business  
11 enterprise.

12 \* \* \*

13 (d) Failure to maintain ownership.--If a plaintiff loses the  
14 right to maintain a derivative action under subsection (a) (2),  
15 the court may entertain a motion by the corporation to  
16 substitute the corporation as the named plaintiff.

17 [(d)] (e) Cross reference.--See section 4146 (relating to  
18 provisions applicable to all foreign corporations).

19 Section 56. Sections 1783 and 1905 of Title 15 are amended  
20 to read:

21 § 1783. Special litigation committee.

22 (a) General rule.--If a business corporation or the board of  
23 directors receives a demand to bring an action to enforce a  
24 right of the corporation, or if a derivative action is commenced  
25 before demand has been made on the corporation or the board, the  
26 board may appoint a special litigation committee to investigate  
27 the claims asserted in the demand or action and to determine on  
28 behalf of the corporation or recommend to the board whether  
29 pursuing any of the claims asserted is in the best interests of  
30 the corporation. The corporation [shall send] must deliver a

1 notice in record form to the person making the demand, or to the  
2 plaintiff if a derivative action has been commenced, promptly  
3 after the appointment of a committee under this section  
4 notifying the person making the demand or the plaintiff that a  
5 committee has been appointed and identifying by name the members  
6 of the committee. A committee may not be appointed under this  
7 section if every shareholder of the corporation is also a  
8 director of the corporation.

9 (b) Discovery stay.--If the board of directors appoints a  
10 special litigation committee and an action is commenced before a  
11 determination has been made under subsection (e):

12 (1) On motion by the business corporation, or the  
13 committee made in the name of the [business] corporation, the  
14 court shall stay discovery for the time reasonably necessary  
15 to permit the committee to complete its investigation, except  
16 for good cause shown.

17 (2) The time for the defendants to plead shall be tolled  
18 until the process provided for under subsection (f) has been  
19 completed.

20 (c) Composition of committee.--A special litigation  
21 committee shall be composed of two or more individuals who:

22 (1) are not interested in the claims asserted in the  
23 demand or action;

24 (2) are capable as a group of objective judgment in the  
25 circumstances; and

26 (3) may, but need not, be shareholders or directors.

27 (c.1) Committee members who are not directors.--A member of  
28 a special litigation committee who is not a director is subject,  
29 when acting as a member of the committee, to the liabilities  
30 imposed, and entitled to the rights and immunities conferred,

1 under Subchapters B (relating to fiduciary duty) and D (relating  
2 to indemnification) and other provisions of law upon directors  
3 of a corporation.

4 (d) Appointment of committee.--A special litigation  
5 committee may be appointed:

6 (1) by a majority of the directors not named as actual  
7 or potential parties in the demand or action; or

8 (2) if all the directors are named as actual or  
9 potential parties in the demand or action, by a majority of  
10 the directors so named.

11 (e) Determination.--After appropriate investigation by a  
12 special litigation committee, the committee [or the] may  
13 determine, or the committee may recommend to the board of  
14 directors [may] that the board determine, that it is in the best  
15 interests of the business corporation that:

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

20 (2) an action based on some or all of the claims  
21 asserted in the demand be brought by the corporation;

22 (3) some or all of the claims asserted in the demand be  
23 settled on terms [approved] determined or recommended by the  
24 committee;

25 (4) an action not be brought based on any of the claims  
26 asserted in the demand;

27 (5) an action already commenced continue under the  
28 control of:

29 (i) the plaintiff;

30 (ii) the corporation; or

1 (iii) the committee;

2 (6) some or all the claims asserted in an action already  
3 commenced be settled on terms [approved] determined or  
4 recommended by the committee; or

5 (7) an action already commenced be dismissed.

6 (f) Court review and action.--If a special litigation  
7 committee is appointed and a derivative action is commenced  
8 either before or after the committee makes a determination [is  
9 made] under subsection (e) or the board of directors determines  
10 under subsection (e) to accept the recommendation of the  
11 committee:

12 (1) The business corporation or the committee shall file  
13 with the court after a determination is made under subsection  
14 (e) a statement of the determination and a report of the  
15 committee supporting the determination. The corporation or  
16 the committee shall serve each party with a copy of the  
17 determination and report. If the corporation or the committee  
18 moves to file the report under seal, the report shall be  
19 served on the parties subject to an appropriate stipulation  
20 agreed to by the parties or a protective order issued by the  
21 court.

22 (2) The corporation or the committee shall file with the  
23 court a motion, pleading or notice consistent with the  
24 determination under subsection (e).

25 (3) If the determination is one described in subsection  
26 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall  
27 determine whether the members of the committee met the  
28 qualifications required under subsection (c) (1) and (2) and  
29 whether the committee conducted its investigation and made  
30 its determination or recommendation in good faith,

1 independently and with reasonable care. The plaintiff has the  
2 burden of proving that the committee did not meet those  
3 qualifications or act in the required manner. If the court  
4 finds that the members of the committee met the  
5 qualifications required under subsection (c) (1) and (2) and  
6 that the committee acted in good faith, independently and  
7 with reasonable care, the court shall enforce the  
8 determination of the committee or the board. Otherwise, the  
9 court shall:

10 (i) dissolve any stay of discovery entered under  
11 subsection (b);

12 (ii) allow the action to continue under the control  
13 of the plaintiff; and

14 (iii) permit the defendants to file preliminary  
15 objections, other appropriate pleadings and motions.

16 (g) Certain provisions of articles ineffective.--The  
17 provisions of this section may not be varied by the articles.

18 (h) Interest of a defendant.--The fact that a person is  
19 named as a defendant does not make the person interested in the  
20 claims asserted in a demand or action for purposes of subsection  
21 (c) (1) if the claims against the person:

22 (1) are based only on an allegation that the person  
23 approved of or acquiesced in the transaction or conduct that  
24 is the subject of the claims; and

25 (2) do not otherwise allege with particularity facts  
26 that, if true, raise a significant prospect that the person  
27 would be adjudged liable.

28 § 1905. Proposal of fundamental transactions.

29 Where any provision of this chapter requires that an  
30 amendment of the articles, a plan of asset transfer or the

1 dissolution of a business corporation be proposed or approved by  
2 action of the board of directors, that requirement shall be  
3 construed to authorize and be satisfied by the [written]  
4 agreement or consent in record form of all of the shareholders  
5 of the corporation entitled to vote thereon.

6 Section 57. Sections 1911(a)(1), (b)(2) and (c), 1912(a) and  
7 (b)(1) and 1914(a) and (c)(2) of Title 15 are amended and the  
8 sections are amended by adding subsections to read:

9 § 1911. Amendment of articles authorized.

10 (a) General rule.--A business corporation, in the manner  
11 provided in this subchapter, may from time to time amend its  
12 articles for one or more of the following purposes:

13 (1) To adopt a new name, subject to the restrictions  
14 provided in this [subpart] title.

15 \* \* \*

16 (b) Exceptions.--An amendment adopted under this section  
17 shall not amend articles in such a way that as so amended they  
18 would not be authorized by this subpart as original articles of  
19 incorporation except that:

20 \* \* \*

21 (2) The corporation shall not be required to revise any  
22 other provision of its articles if the provision is valid and  
23 operative immediately prior to the [filing of the amendment  
24 in] delivery of the amendment to the Department of State for  
25 filing.

26 (c) Amendments pursuant to other provisions.--Amendments to  
27 the articles authorized pursuant to Chapter 2 (relating to  
28 entities generally) or 3 (relating to entity transactions) or  
29 set forth in statements or certificates permitted or required to  
30 be delivered to the department for filing by section 108

1 (relating to change in location or status of registered office  
2 provided by agent) or 138 (relating to statement of correction)  
3 or by this subpart need not be proposed or adopted in the manner  
4 provided in this subchapter, except to the extent that the  
5 provisions of this subchapter have been incorporated into  
6 Chapter 2 or 3 or into the provisions authorizing such  
7 statements or certificates.

8 [(c)] (d) Cross [reference.--See section 1521(b)(1)(i)  
9 (relating to provisions specifically authorized).] references.--  
10 See sections 224(f) (relating to action on ratification), 321  
11 (relating to approval by business corporation), 1103 (relating  
12 to definitions), 1507 (relating to registered office) and  
13 1522(c) (relating to issuance of shares in classes or series;  
14 board action).

15 § 1912. Proposal of amendments.

16 (a) General rule.--Every amendment of the articles of a  
17 business corporation shall be proposed:

18 (1) by the adoption by the board of directors of a  
19 resolution setting forth the proposed amendment; [or]

20 (2) unless otherwise provided in the articles, by  
21 petition of shareholders entitled to cast at least 10% of the  
22 votes that all shareholders are entitled to cast thereon,  
23 setting forth the proposed amendment, which petition shall be  
24 directed to the board of directors and filed with the  
25 secretary of the corporation[.]

26 Except where the approval of the shareholders is unnecessary  
27 under this subchapter, the board of directors shall direct that  
28 the proposed amendment be submitted to a vote of the  
29 shareholders entitled to vote thereon. An amendment proposed  
30 pursuant to paragraph (2) shall be submitted to a vote either at

1 the next annual meeting held not earlier than 120 days after the  
2 amendment is proposed or at a special meeting of the  
3 shareholders called for that purpose by the shareholders. See  
4 sections 1106(b)(4) (relating to uniform application of subpart)  
5 and 2535 (relating to proposal of amendment to articles).]; or

6 (3) by action of the board of directors directing the  
7 submission of the proposed amendment to the shareholders  
8 without the board having adopted the amendment.

9 (b) Form of amendment.--The resolution or petition shall  
10 contain the language of the proposed amendment of the articles:

11 (1) by setting forth the existing text of the articles  
12 or the provision thereof that is proposed to be amended, with  
13 brackets around language that is to be deleted and  
14 underscoring under language that is to be added or otherwise  
15 clearly showing the changes to be made; or

16 \* \* \*

17 (d) Submission to the shareholders.--Except where the  
18 approval of the shareholders is unnecessary under this  
19 subchapter, the board of directors shall direct that the  
20 proposed amendment be submitted to a vote of the shareholders  
21 entitled to vote thereon. An amendment proposed under subsection  
22 (a)(2) shall be submitted to a vote either at the next annual  
23 meeting held not earlier than 120 days after the amendment is  
24 proposed or at a special meeting of the shareholders called for  
25 that purpose by the shareholders.

26 (e) Cross references.--See sections 1106(b)(4) (relating to  
27 uniform application of subpart) and 2535 (relating to proposal  
28 of amendment to articles).

29 § 1914. Adoption of amendments.

30 (a) General rule.--A vote of the shareholders entitled to



1 vote on a proposed amendment shall be taken at the next annual  
2 or special meeting of which notice for that purpose has been  
3 duly given. Unless the articles or a specific provision of this  
4 subpart requires a greater vote, a proposed amendment of the  
5 articles of a business corporation shall be adopted upon  
6 receiving the affirmative vote of a majority of the votes cast  
7 by all shareholders entitled to vote thereon and, if any class  
8 or series of shares is entitled to vote thereon as a class, the  
9 affirmative vote of a majority of the votes cast in each such  
10 class vote. Any number of amendments may be submitted to the  
11 shareholders and voted upon by them at one meeting. [Except as  
12 provided in section 1912(a)(2) (relating to proposal of  
13 amendments), a proposed] An amendment of the articles proposed  
14 under section 1912(a)(3) (relating to proposal of amendments)  
15 shall not be deemed to have been adopted by the corporation  
16 unless it has also been approved by the board of directors,  
17 regardless of the fact that the board has directed or suffered  
18 the submission of the amendment to the shareholders for action.

19 \* \* \*

20 (c) Adoption by board of directors.--Unless otherwise  
21 restricted in the articles, an amendment of articles shall not  
22 require the approval of the shareholders of the corporation if:

23 \* \* \*

24 (2) the amendment is restricted to one or more of the  
25 following:

26 (i) changing the corporate name;

27 (ii) providing for perpetual existence;

28 (iii) reflecting a reduction in authorized shares

29 effected by operation of section 1552(a) (relating to

30 power of corporation to acquire its own shares) and, if

1 appropriate, deleting all references to a class or series  
2 of shares that is no longer outstanding;

3 (iv) adding or deleting a provision authorized by  
4 section 1528(f) (relating to shares represented by  
5 certificates and uncertificated shares); [or]

6 (v) adding, changing or eliminating the par value of  
7 any class or series of shares if the par value of that  
8 class or series does not have any substantive effect  
9 under the terms of that or any other class or series of  
10 shares; or

11 (vi) implementing an amendment authorized by section  
12 229(h) (relating to limitation on voiding certain  
13 defective entity actions);

14 \* \* \*

15 (c.1) Board amendment under other sections.--Whenever a  
16 provision of this subpart authorizes the board of directors to  
17 take any action without the approval of the shareholders and  
18 provides that a statement, certificate, plan or other document  
19 relating to such action shall be filed in the Department of  
20 State and shall operate as an amendment of the articles, the  
21 board upon taking such action may, in lieu of filing the  
22 statement, certificate, plan or other document, amend the  
23 articles under this subsection without the approval of the  
24 shareholders to reflect the taking of such action.

25 (c.2) Effect of board amendment.--An amendment of articles  
26 under [this subsection] subsection (c) shall be deemed adopted  
27 by the corporation when it has been adopted by the board of  
28 directors pursuant to section 1912 (relating to proposal of  
29 amendments).

30 \* \* \*

1 Section 58. Section 1932(g) of Title 15 is amended to read:  
2 § 1932. Voluntary transfer of corporate assets.

3 \* \* \*

4 (g) Presumption.--The following apply to a determination  
5 whether a corporation has sold, leased, exchanged or otherwise  
6 disposed of all or substantially all, of its property and  
7 assets, with or without good will:

8 (1) A corporation will conclusively be deemed not to  
9 have [sold, leased, exchanged or otherwise disposed of all,  
10 or substantially all, of its property and assets, with or  
11 without goodwill,] done so if the corporation or any direct  
12 or indirect subsidiary controlled by the corporation retains  
13 a business activity that represented at the end of its most  
14 recently completed fiscal year before the transaction, on a  
15 consolidated basis, at least:

16 [(1)] (i) 25% of total assets; and

17 [(2)] (ii) 25% of either:

18 [(i)] (A) income from continuing operations  
19 before taxes; or

20 [(ii)] (B) revenues from continuing operations.

21 (2) A determination under paragraph (1)(i) may be based  
22 on a balance sheet that reflects:

23 (i) the book values of the assets of the  
24 corporation, as reflected on its books and records;

25 (ii) a valuation that takes into consideration  
26 unrealized appreciation and depreciation or other changes  
27 in value of the assets of the corporation;

28 (iii) the current value of the assets of the  
29 corporation, either valued separately or valued in  
30 segments or as an entirety as a going concern; or

1           (iv) any other method that is reasonable in the  
2           circumstances.

3           (3) A determination under paragraph (1)(ii) may be based  
4           on financial statements prepared on the basis of generally  
5           accepted accounting principles, or such other accounting  
6           practices and principles as are used generally by the  
7           corporation in the maintenance of its books and records and  
8           as are reasonable in the circumstances.

9           Section 59. Section 1979(b) of Title 15 is amended and the  
10 section is amended by adding a subsection to read:

11 § 1979. Survival of remedies and rights after dissolution.

12           \* \* \*

13           (b) Rights and assets.--The dissolution of a business  
14 corporation shall not affect the limited liability of a  
15 shareholder of the corporation theretofore existing with respect  
16 to transactions occurring or acts or omissions done or omitted  
17 in the name of or by the corporation except that, subject to  
18 subsection (d) and sections 1992(d) (relating to [claims barred]  
19 notice to claimants) and 1993(b) (relating to [claims barred]  
20 acceptance or rejection of matured claims), if applicable, each  
21 shareholder shall be liable for his pro rata portion of the  
22 unpaid liabilities of the corporation up to the amount of the  
23 net assets of the corporation distributed to the shareholder in  
24 connection with the dissolution. Should any property right of a  
25 corporation be discovered, or the corporation be named as a  
26 defendant in an action or proceeding, at any time after the  
27 dissolution of the corporation, the surviving member or members  
28 of the board of directors that wound up the affairs of the  
29 corporation, or a receiver appointed by the court, shall have  
30 authority to enforce the property right and to collect and

1 divide the assets so discovered among the persons entitled  
2 thereto and to prosecute actions or proceedings in the corporate  
3 name of the corporation. Any assets so collected shall be  
4 distributed and disposed of in accordance with the applicable  
5 order of court, if any, and otherwise in accordance with this  
6 subchapter.

7 \* \* \*

8 (f) Late-filed action or proceeding.--The following apply to  
9 an action or proceeding commenced against a dissolved  
10 corporation after the expiration of the period specified in  
11 subsection (a) (2):

12 (1) Any judgment against a dissolved corporation in an  
13 action or proceeding shall be void.

14 (2) The dissolved corporation may, but need not, appear  
15 and raise as a defense the expiration of the period specified  
16 in subsection (a) (2) and any other reasonably related matters  
17 in response to the action or proceeding.

18 (3) Any person who was a director, officer or  
19 shareholder of the dissolved corporation when the dissolution  
20 became effective or any governing person of any successor  
21 entity acting pursuant to Subchapter H (relating to  
22 postdissolution provision for liabilities), and any  
23 successor-in-interest to any of those persons, may, but need  
24 not, act on behalf of the dissolved corporation in taking the  
25 actions described in paragraph (2), and shall not thereby be  
26 deemed to be deprived of the operation of subsections (c) and  
27 (d) or section 1978(b) (relating to winding up of corporation  
28 after dissolution) or otherwise be responsible for any  
29 obligations of the dissolved corporation.

30 Section 60. Sections 2104, 2105(a), 2322(b) (5) and (c),

1 2336, 2521, 2522, 2524(a) and 2528 of Title 15 are amended to  
2 read:

3 § 2104. Election of an existing business corporation to become  
4 a nonstock corporation.

5 (a) General rule.--Any business corporation may become a  
6 nonstock corporation under this chapter by:

7 (1) Adopting a plan of [conversion] election providing  
8 for the redemption by the corporation of all of its shares  
9 whether or not redeemable by the terms of its articles and  
10 adjusting its affairs so as to comply with the requirements  
11 of this chapter applicable to nonstock corporations.

12 (2) Filing articles of amendment which shall contain, in  
13 addition to the requirements of section 1915 (relating to  
14 articles of amendment):

15 (i) A heading stating the name of the corporation  
16 and that it is a nonstock corporation.

17 (ii) A statement that it elects to become a nonstock  
18 corporation.

19 (iii) A statement that the corporation is organized  
20 on a nonstock basis.

21 (iv) Such other changes, if any, that may be desired  
22 in the articles.

23 (b) Procedure.--The plan of [conversion] election of the  
24 corporation into a nonstock corporation (which plan shall  
25 include the amendment of the articles required by subsection  
26 (a)) shall be adopted in accordance with the requirements of  
27 Subchapter B of Chapter 19 (relating to amendment of articles)  
28 except that:

29 (1) The holders of shares of every class shall be  
30 entitled to vote on the plan regardless of any limitations

1 stated in the articles or bylaws on the voting rights of any  
2 class.

3 (2) The plan must be approved by two-thirds of the votes  
4 cast by all shares of each class.

5 (3) If any shareholder of a business corporation that  
6 adopts a plan of [conversion] election into a nonstock  
7 corporation objects to the plan of [conversion] election and  
8 complies with the provisions of Subchapter D of Chapter 15  
9 (relating to dissenters rights), the shareholder shall be  
10 entitled to the rights and remedies of dissenting  
11 shareholders therein provided. There shall be included in, or  
12 enclosed with, the notice of the meeting of shareholders  
13 called to act upon the plan of [conversion] election a copy  
14 or a summary of the plan and a copy of Subchapter D of  
15 Chapter 15 and of this subsection.

16 (4) The plan shall not impose any additional liability  
17 upon any existing patron of the business of the corporation,  
18 whether or not that person becomes a member of the  
19 corporation pursuant to the plan, unless the patron expressly  
20 assumes such liability.

21 § 2105. Termination of nonstock corporation status.

22 (a) General rule.--A nonstock corporation may terminate its  
23 status as such and cease to be subject to this chapter by:

24 (1) Adopting a plan of [conversion] termination  
25 providing for the issue of appropriate shares to its members  
26 and adjusting its affairs so as to comply with the  
27 requirements of this subpart applicable to business  
28 corporations that are not nonstock corporations.

29 (2) Amending its articles to delete therefrom the  
30 additional provisions required or permitted by sections

1 2102(a)(1) (relating to formation of nonstock corporations)  
2 and 2103 (relating to contents of articles and other  
3 documents of nonstock corporations) to be stated in the  
4 articles of a nonstock corporation. The plan of [conversion]  
5 termination (which plan shall include the amendment of the  
6 articles required by this section) shall be adopted in  
7 accordance with Subchapter B of Chapter 19 (relating to  
8 amendment of articles) except that:

9 (i) The members of every class shall be entitled to  
10 vote on the plan regardless of any limitations stated in  
11 the articles or bylaws, or in a document evidencing  
12 membership, on the voting rights of any class.

13 (ii) The plan must be approved by a majority of the  
14 votes cast by the members of each class.

15 \* \* \*

16 § 2322. Share transfer restrictions.

17 \* \* \*

18 (b) Exception.--Subsection (a) shall not apply to a  
19 transfer:

20 \* \* \*

21 (5) By merger[, consolidation or share] or interest  
22 exchange that becomes effective pursuant to section 2336  
23 (relating to fundamental changes) or a [share exchange]  
24 reclassification of existing shares [for other shares of a  
25 different class or series in the corporation].

26 \* \* \*

27 (c) Offer by nonexempt purchaser.--Any person desiring to  
28 transfer shares in a transaction not exempt under subsection (b)  
29 (1) through (7) shall obtain an offer from a third party who  
30 meets the requirements of subsection (d) to purchase the shares



1 for cash and shall deliver written notice of the third-party  
2 offer to the corporation at its registered office stating the  
3 number and [~~kind~~] type of shares, the offering price, the other  
4 terms of the offer and the name and address of the third-party  
5 offeror.

6 \* \* \*

7 § 2336. Fundamental changes.

8 Except as permitted or required by this chapter, a statutory  
9 close corporation shall not effect any corporate action that  
10 under Chapter 3 (relating to entity transactions) or 19  
11 (relating to fundamental changes) requires the approval of  
12 shareholders unless the action is adopted by at least the  
13 minimum vote.

14 § 2521. Call of special meetings of shareholders.

15 (a) General rule.--~~[The]~~ Except as provided in subsections  
16 (b) and (c), the shareholders of a registered corporation [shall  
17 not be entitled by statute to] described in subsection 2502(1)  
18 (relating to registered corporation status) do not have the  
19 right to call a special meeting of the shareholders.

20 (b) Exception.--~~[Subsection (a) shall not apply to the call~~  
21 ~~of a special meeting by an]~~ An interested shareholder (as  
22 defined in section 2553 (relating to interested shareholder))  
23 may call a special meeting of shareholders for the purpose of  
24 approving a business combination under section 2555(3) or (4)  
25 (relating to requirements relating to certain business  
26 combinations).

27 (c) Contrary articles provision.--A provision of the  
28 articles of a registered corporation described in section  
29 2502(1) [~~(relating to registered corporation status)]~~ that gives  
30 shareholders the right to call a special meeting of the

1 shareholders and:

2 (1) is adopted after July 1, 2015, may [not] provide  
3 that a special meeting may be called [by less than 25%] only  
4 by shareholders entitled to cast 25% or more of the votes  
5 that all shareholders would be entitled to cast at the  
6 meeting[.]; or

7 (2) was adopted on or before July 1, 2015, is  
8 enforceable in accordance with its terms.

9 § 2522. Adjournment [of meetings] or postponement of meeting of  
10 shareholders.

11 (a) Authority to adjourn.--Except as otherwise provided in  
12 the bylaws, any regular or special meeting of the shareholders  
13 of a registered corporation, including one at which directors  
14 are to be elected, may be adjourned for such period as the  
15 presiding officer or the shareholders present and entitled to  
16 vote shall direct.

17 (b) Notice of adjourned virtual meeting.--If notice of an  
18 adjourned meeting of shareholders of a registered corporation  
19 held exclusively by means of electronic technology as provided  
20 in section 1708(c) (relating to use of conference telephone or  
21 other electronic technology) cannot be given by announcement at  
22 the meeting at which the adjournment is taken when permitted by  
23 section 1702(b) (relating to manner of giving notice), notice  
24 may be given by means solely of a publicly available filing with  
25 the Securities and Exchange Commission.

26 (c) Postponement of virtual meeting.--If the presiding  
27 officer for a meeting of shareholders of a registered  
28 corporation that is to be held exclusively by means of  
29 electronic technology as provided in section 1708(c) decides in  
30 his or her reasonable judgment on the day of the meeting that

1 the meeting cannot be convened because of a reason outside the  
2 control of the corporation, the presiding officer may postpone  
3 the meeting to a specified time later that day or the following  
4 day. Notice of the postponed meeting may be given by means  
5 solely of a publicly available filing with the Securities and  
6 Exchange Commission.

7 § 2524. Consent of shareholders in lieu of meeting.

8 (a) General rule.--An action may be authorized by the  
9 shareholders of a registered corporation without a meeting by  
10 less than unanimous consent of all shareholders entitled to vote  
11 thereon only if permitted by its articles.

12 \* \* \*

13 § 2528. Notice of shareholder meetings.

14 (a) Householding.--If a registered corporation solicits  
15 proxies generally with respect to a meeting of its shareholders,  
16 the corporation is not required to give notice of the meeting to  
17 any shareholder to whom the corporation is not required to send  
18 a proxy statement pursuant to the rules of the Securities and  
19 Exchange Commission.

20 (b) Notice and access.--If a registered corporation has  
21 given a shareholder notice of the Internet availability of proxy  
22 materials in a manner conforming with the rules of the  
23 Securities and Exchange Commission, the corporation may give  
24 notice of the meeting to the shareholder by posting the notice  
25 on the Internet website to which the proxy materials are posted.

26 Section 61. Title 15 is amended by adding a section to read:

27 § 2530. Qualifications of directors.

28 (a) General rule.--The bylaws of a registered corporation  
29 may not impose a qualification of directors that is based on a  
30 past, present or future action by a nominee or director in the

1 discharge of the director's powers or duties as a governor of an  
2 association.

3 (b) Certain permitted qualifications.--This section does not  
4 prohibit qualifications relating to:

5 (1) not having entered a guilty plea, or not being or  
6 having been subject to a criminal conviction, civil judgment  
7 or regulatory sanction or penalty; or

8 (2) not having been removed as a governor of an  
9 association by judicial action or for cause.

10 (c) Relationship to nomination procedures.--This section  
11 applies to a qualification included in a nomination procedure  
12 adopted under section 1758(e) (relating to voting rights of  
13 shareholders), but does not prohibit the corporation from  
14 excluding a nomination that does not comply with such a  
15 procedure.

16 Section 62. Section 2541 of Title 15 is amended by adding a  
17 subsection to read:

18 § 2541. Application and effect of subchapter.

19 \* \* \*

20 (e) Exemption.--Voting shares acquired by a person or group  
21 in a transaction that complies with section 321(f) (relating to  
22 approval by business corporation) shall be disregarded for  
23 purposes of determining if the person or group constitutes a  
24 controlling person or group.

25 Section 63. The definitions of "affiliate" and "associate"  
26 in section 2552 of Title 15 are amended to read:

27 § 2552. Definitions.

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

1 ["Affiliate." A person that directly, or indirectly through  
2 one or more intermediaries, controls, or is controlled by, or is  
3 under common control with, a specified person.]

4 \* \* \*

5 ["Associate." When used to indicate a relationship with any  
6 person:

7 (1) any corporation or organization of which such person  
8 is an officer, director or partner or is, directly or  
9 indirectly, the beneficial owner of shares entitling that  
10 person to cast at least 10% of the votes that all  
11 shareholders would be entitled to cast in an election of  
12 directors of the corporation or organization;

13 (2) any trust or other estate in which such person has a  
14 substantial beneficial interest or as to which such person  
15 serves as trustee or in a similar fiduciary capacity; and

16 (3) any relative or spouse of such person, or any  
17 relative of the spouse, who has the same home as such  
18 person.]

19 \* \* \*

20 Section 64. Section 2554(1) and (5) of Title 15 are amended  
21 to read:

22 § 2554. Business combination.

23 The term "business combination," when used in reference to  
24 any registered corporation and any interested shareholder of the  
25 corporation, means any of the following:

26 (1) A merger, [consolidation, share] interest exchange  
27 or division of the corporation or any subsidiary of the  
28 corporation:

29 (i) with the interested shareholder; or

30 (ii) with, involving or resulting in any other

1 corporation (whether or not itself an interested  
2 shareholder of the registered corporation) which is, or  
3 after the merger, [consolidation, share] interest  
4 exchange or division would be, an affiliate or associate  
5 of the interested shareholder.

6 \* \* \*

7 (5) A reclassification of securities (including, without  
8 limitation, any split of shares, dividend of shares, or other  
9 distribution of shares in respect of shares, or any reverse  
10 split of shares), or recapitalization of the corporation, or  
11 any merger [or consolidation] of the corporation with any  
12 subsidiary of the corporation, or any other transaction  
13 (whether or not with or into or otherwise involving the  
14 interested shareholder), proposed by, or pursuant to any  
15 agreement, arrangement or understanding (whether or not in  
16 writing) with, the interested shareholder or any affiliate or  
17 associate of the interested shareholder, which has the  
18 effect, directly or indirectly, of increasing the  
19 proportionate share of the outstanding shares of any class or  
20 series of voting shares or securities convertible into voting  
21 shares of the corporation or any subsidiary of the  
22 corporation which is, directly or indirectly, owned by the  
23 interested shareholder or any affiliate or associate of the  
24 interested shareholder, except as a result of immaterial  
25 changes due to fractional share adjustments.

26 \* \* \*

27 Section 65. Section 2561(b)(5) and (e) of Title 15 are  
28 amended, subsection (d) is amended by adding a paragraph and the  
29 section is amended by adding a subsection to read:

30 § 2561. Application and effect of subchapter.

1 \* \* \*

2 (b) Exceptions.--This subchapter shall not apply to any  
3 control-share acquisition:

4 \* \* \*

5 (5) Consummated:

6 (i) Pursuant to:

7 (A) a gift, devise, bequest or otherwise through  
8 the laws of inheritance or descent[.]; or

9 (B) a transfer, sale or other disposition by a  
10 beneficial or record holder of shares of the  
11 corporation, or by a fiduciary of a beneficial or  
12 record holder, either to, or in trust for, a spouse,  
13 parent, sibling, child or descendant of:

14 (I) the holder; or

15 (II) a spouse, parent, sibling, child or  
16 descendant of the holder.

17 (ii) By a settlor to a trustee under the terms of a  
18 family, testamentary or charitable trust.

19 (iii) By a trustee to a trust beneficiary or a  
20 trustee to a successor trustee under the terms of, or the  
21 addition, withdrawal or demise of a beneficiary or  
22 beneficiaries of, a family, testamentary or charitable  
23 trust.

24 (iv) Pursuant to the appointment of a guardian or  
25 custodian.

26 (v) Pursuant to a transfer from one spouse to  
27 another by reason of separation or divorce or pursuant to  
28 community property laws or other similar laws of any  
29 jurisdiction.

30 (vi) Pursuant to the satisfaction of a pledge or

1 other security interest created in good faith and not for  
2 the purpose of circumventing this subchapter.

3 (vii) Pursuant to a plan of merger[, consolidation]  
4 or plan of [share] interest exchange effected in  
5 compliance with the provisions of this chapter if the  
6 corporation is a party to the [agreement of merger,  
7 consolidation or plan of share] merger or is the acquired  
8 entity in the interest exchange.

9 (viii) Pursuant to a transfer from a person who  
10 beneficially owns voting shares of the corporation that  
11 would entitle the holder thereof to cast at least 20% of  
12 the votes that all shareholders would be entitled to cast  
13 in an election of directors of the corporation and who  
14 acquired beneficial ownership of such shares prior to  
15 October 17, 1989.

16 (ix) By the corporation or any of its subsidiaries.

17 (x) By any savings, stock ownership, stock option or  
18 other benefit plan of the corporation or any of its  
19 subsidiaries, or by any fiduciary with respect to any  
20 such plan when acting in such capacity.

21 (xi) By a person engaged in business as an  
22 underwriter of securities who acquires the shares  
23 directly from the corporation or an affiliate or  
24 associate of the corporation through his participation in  
25 good faith in a firm commitment underwriting registered  
26 under the Securities Act of 1933.

27 (xi.1) Pursuant to an acquisition of shares directly  
28 from the corporation in a transaction exempt from the  
29 registration requirements of the Securities Act of 1933.

30 (xii) Or commenced by a person who first became an



1 acquiring person:

2 (A) after April 27, 1990; and

3 (B) (I) at a time when this subchapter was or  
4 is not applicable to the corporation; or

5 (II) on or before ten business days after  
6 the first public announcement by the corporation  
7 that this subchapter is applicable to the  
8 corporation, if this subchapter was not  
9 applicable to the corporation on July 27, 1990.

10 \* \* \*

11 (d) Status of certain shares and effect of formation of  
12 group on status.--

13 \* \* \*

14 (5) The acquisition of record title to a voting share by  
15 a member of a group that is an acquiring person as a result  
16 of a transfer of the share from another member of the group  
17 does not constitute a control-share acquisition.

18 (e) Application of duties.--The duty of the board of  
19 directors, committees of the board and individual directors  
20 under section 2565 (relating to procedure for establishing  
21 voting rights of control shares) is solely to the corporation  
22 and not to any shareholder or creditor or any other person or  
23 group, and may be enforced directly by the corporation or may be  
24 enforced by [a shareholder, as such, by] an action in the right  
25 of the corporation, and may not be enforced directly by a  
26 shareholder or creditor or by any other person or group.

27 (f) Reversal of opt-out.--A provision of the articles or  
28 bylaws providing that this subchapter shall not be applicable to  
29 the corporation may be rescinded pursuant to the procedures  
30 required by this subpart and the articles and bylaws at the time

1 to amend the articles or bylaws generally.

2 Section 66. The definitions of "affiliate," "associate" and  
3 "beneficial owner" and "existing shares" in section 2562 of  
4 Title 15 are amended and the section is amended by adding a  
5 definition to read:

6 § 2562. Definitions.

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

10 \* \* \*

11 ["Affiliate," "associate" and "beneficial owner." The terms  
12 shall have the meanings specified in section 2552 (relating to  
13 definitions). The corporation may adopt reasonable provisions to  
14 evidence beneficial ownership, specifically including  
15 requirements that holders of voting shares of the corporation  
16 provide verified statements evidencing beneficial ownership and  
17 attesting to the date of acquisition thereof.]

18 \* \* \*

19 "Beneficial owner." The term has the meaning specified in  
20 section 2552 (relating to definitions). The corporation may  
21 adopt reasonable provisions to evidence beneficial ownership,  
22 specifically including requirements that holders of voting  
23 shares of the corporation provide verified statements evidencing  
24 beneficial ownership and attesting to the date of acquisition  
25 thereof.

26 \* \* \*

27 "Existing shares."

28 (1) Voting shares which have been beneficially owned  
29 continuously by the same natural person since January 1,  
30 1988.

1 (2) Voting shares which are beneficially owned by any  
2 natural person or trust, estate, foundation or other similar  
3 entity to the extent the voting shares were acquired solely  
4 by gift, inheritance, bequest, devise or other testamentary  
5 distribution or series of these transactions, directly or  
6 indirectly, from a natural person who had beneficially owned  
7 the voting shares prior to January 1, 1988.

8 (3) Voting shares which were acquired pursuant to a  
9 stock split, stock dividend, or other similar distribution  
10 described in section 2561(c) (relating to [effect of  
11 distributions] application and effect of subchapter) with  
12 respect to existing shares that have been beneficially owned  
13 continuously since their issuance by the corporation by the  
14 natural person or entity that acquired them from the  
15 corporation or that were acquired, directly or indirectly,  
16 from such natural person or entity, solely pursuant to a  
17 transaction or series of transactions described in paragraph  
18 (2), and that are held at such time by a natural person or  
19 entity described in paragraph (2).

20 (4) Voting shares which were acquired in a transaction  
21 described in section 2561(b)(5).

22 \* \* \*

23 Section 67. Section 2564 of Title 15 is amended by adding a  
24 subsection to read:

25 § 2564. Voting rights of shares acquired in a control-share  
26 acquisition.

27 \* \* \*

28 (d) Exemption.--The acquisition of voting shares by a person  
29 or group in a transaction that complies with section 321(f)  
30 (relating to approval by business corporation) shall be

1 disregarded for purposes of determining if the transaction  
2 constitutes a control-share acquisition.

3 Section 68. Sections 2565(a) and (c) and 2571(b)(5) and (6)  
4 (i) and (iii) of Title 15 are amended and the sections are  
5 amended by adding subsections to read:

6 § 2565. Procedure for establishing voting rights of control  
7 shares.

8 (a) Special meeting.--A special meeting of the shareholders  
9 of a registered corporation shall be called by the board of  
10 directors of the corporation for the purpose of considering the  
11 voting rights to be accorded to the control shares if an  
12 acquiring person:

13 (1) files an information statement fully conforming to  
14 section 2566 (relating to information statement of acquiring  
15 person);

16 (2) makes a request in writing for a special meeting of  
17 the shareholders at the time of delivery of the information  
18 statement;

19 (3) makes a control-share acquisition or a bona fide  
20 written offer to make a control-share acquisition; and

21 (4) gives a written undertaking at the time of delivery  
22 of the information statement to pay or reimburse the  
23 corporation for the expenses of a special meeting of the  
24 shareholders.

25 (a.1) Time of special meeting.--The special meeting  
26 requested by the acquiring person shall be held on the date set  
27 by the board of directors of the corporation, but in no event  
28 later than 50 days after the receipt of the information  
29 statement by the corporation, unless the corporation and the  
30 acquiring person mutually agree to a later date. If the

1 acquiring person so requests in writing at the time of delivery  
2 of the information statement to the corporation, the special  
3 meeting shall not be held sooner than 30 days after receipt by  
4 the corporation of the complete information statement. Section  
5 1755(d) (relating to time of holding meetings of shareholders)  
6 does not apply to a special meeting called pursuant to this  
7 subsection, unless the acquiring person has consented in record  
8 form to the application of that subsection.

9 \* \* \*

10 (c) Notice and record date.--The notice of any annual or  
11 special meeting at which the issue of the voting rights to be  
12 accorded the control shares shall be submitted to shareholders  
13 shall be given at least ten days prior to the date named for the  
14 meeting and shall be accompanied by:

15 (1) A copy of the information statement of the acquiring  
16 person.

17 (2) A copy of any amendment of such information  
18 statement previously delivered to the corporation at least  
19 seven days prior to the date on which such notice is given.

20 (3) A statement disclosing whether the board of  
21 directors of the corporation recommends approval of,  
22 expresses no opinion and remains neutral toward, recommends  
23 rejection of, or is unable to take a position with respect to  
24 according voting rights to control shares. In determining the  
25 position that it shall take with respect to according voting  
26 rights to control shares, including to express no opinion and  
27 remain neutral or to be unable to take a position with  
28 respect to such issue, the board of directors shall  
29 specifically consider, in addition to any other factors it  
30 deems appropriate, the effect of according voting rights to

1 control shares upon the interests of employees and of  
2 communities in which offices or other establishments of the  
3 corporation are located.

4 (4) Any other matter required by this subchapter to be  
5 incorporated into or to accompany the notice of meeting of  
6 shareholders or that the corporation elects to include with  
7 such notice.

8 (c.1) Record date.--Only shareholders of record on the date  
9 determined by the board of directors in accordance with the  
10 provisions of section 1763 (relating to determination of  
11 shareholders of record) shall be entitled to notice of and to  
12 vote at the meeting to consider the voting rights to be accorded  
13 to control shares.

14 \* \* \*

15 § 2571. Application and effect of subchapter.

16 \* \* \*

17 (b) Exceptions.--This subchapter shall not apply to any  
18 transfer of an equity security:

19 \* \* \*

20 (5) Constituting:

21 (i) In the case of a person or group that, as of  
22 October 17, 1989, beneficially owned shares entitling the  
23 person or group to cast at least 20% of the votes that  
24 all shareholders would be entitled to cast in an election  
25 of directors of the corporation:

26 (A) The disposition of equity securities of the  
27 corporation by the person or group.

28 (B) Subsequent dispositions of any or all equity  
29 securities of the corporation disposed of by the  
30 person or group where such subsequent dispositions

1 are effected by:

2 (I) the direct purchaser of the securities  
3 from the person or group if, as a result of the  
4 acquisition by the purchaser of the securities  
5 disposed of by the person or group, the  
6 purchaser, immediately following the acquisition,  
7 is entitled to cast at least 20% of the votes  
8 that all shareholders would be entitled to cast  
9 in an election of directors of the  
10 corporation[.];

11 (II) a person that acquired the securities  
12 from the person or group in a transaction or  
13 series of transactions each of which is described  
14 in this paragraph (5) if at the time of the  
15 subsequent disposition the person disposing of  
16 the securities is entitled to cast at least 20%  
17 of the votes that all shareholders would be  
18 entitled to cast in an election of directors of  
19 the corporation; or

20 (III) an affiliate or associate of the  
21 person or group.

22 (ii) The transfer of the beneficial ownership of the  
23 equity security by:

24 (A) Gift, devise, bequest or otherwise through  
25 the laws of inheritance or descent.

26 (A.1) Transfer, sale or other disposition by a  
27 beneficial or record holder of the equity security of  
28 the corporation, or by a fiduciary of a beneficial or  
29 record holder, either to, or in trust for, a spouse,  
30 parent, sibling, child or descendant of:

1                   (I) the holder; or

2                   (II) a spouse, parent, sibling, child or  
3                   descendant of the holder.

4                   (B) A settlor to a trustee under the terms of a  
5                   family, testamentary or charitable trust.

6                   (C) A trustee to a trust beneficiary or a  
7                   trustee to a successor trustee under the terms of a  
8                   family, testamentary or charitable trust.

9                   (iii) The addition, withdrawal or demise of a  
10                   beneficiary or beneficiaries of a family, testamentary or  
11                   charitable trust.

12                   (iv) The appointment of a guardian or custodian with  
13                   respect to the equity security.

14                   (v) The transfer of the beneficial ownership of the  
15                   equity security from one spouse to another by reason of  
16                   separation or divorce or pursuant to community property  
17                   laws or other similar laws of any jurisdiction.

18                   (vi) The transfer of record or the transfer of a  
19                   beneficial interest or interests in the equity security  
20                   where the circumstances surrounding the transfer clearly  
21                   demonstrate that no material change in beneficial  
22                   ownership has occurred.

23                   (6) Consummated by:

24                   (i) The corporation or any of its subsidiaries as a  
25                   disposition of shares by it.

26                   \* \* \*

27                   (iii) A person engaged in business as an underwriter  
28                   of securities who acquires the equity securities directly  
29                   from the corporation or an affiliate or associate[, as  
30                   defined in section 2552 (relating to definitions),] of



1 the corporation through [his] the person's participation  
2 in good faith in a firm commitment underwriting  
3 registered under the Securities Act of 1933.

4 \* \* \*

5 (e) Reversal of opt-out.--A provision of the articles or  
6 bylaws providing that this subchapter shall not be applicable to  
7 the corporation may be rescinded pursuant to the procedures  
8 required by this subpart and the articles and bylaws at the time  
9 to amend the articles or bylaws generally.

10 Section 69. The definitions of "equity security" and  
11 "transfer" in section 2573 of Title 15 are amended to read:

12 § 2573. Definitions.

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

16 \* \* \*

17 "Equity security." Any security, including all shares, stock  
18 or similar security, and any security convertible into (with or  
19 without additional consideration) or exercisable for any such  
20 shares, stock or similar security, or carrying any warrant,  
21 right or option to subscribe to or purchase such shares, stock  
22 or similar security or any such warrant, right, option or  
23 similar instrument. The term also includes any other security,  
24 instrument, right of payment or other arrangement based on the  
25 value of any of the foregoing.

26 \* \* \*

27 "Transfer." [Acquisition or disposition.] Includes an  
28 acquisition or disposition of equity securities in a transaction  
29 under chapter 3 (relating to entity transactions).

30 \* \* \*

1 Section 70. Section 3321(a) (3), (b) and (c) of Title 15 are  
2 amended and the section is amended by adding a subsection to  
3 read:

4 § 3321. Standard of conduct for directors.

5 (a) Consideration of interests.--Without regard to whether  
6 the benefit corporation is subject to section 1715 (relating to  
7 exercise of powers generally) or 1716 (relating to alternative  
8 standard), in discharging the duties of their respective  
9 positions, the board of directors, committees of the board and  
10 individual directors of a benefit corporation, in considering  
11 the best interest of the benefit corporation:

12 \* \* \*

13 (3) shall not be required to give priority to [the  
14 interests of any person or group] any matter referred to in  
15 paragraph (1) or (2) over [the interests of any other person  
16 or group] any other such matter or to regard any such matter  
17 as dominant or controlling unless the benefit corporation has  
18 stated in its articles its intention to give priority to  
19 certain interests related to its accomplishment of its  
20 general public benefit purpose or of a specific public  
21 benefit purpose identified in its articles.

22 (b) Coordination with other provisions of law.--The  
23 consideration of [interests and factors] matters in the manner  
24 required under subsection (a) [:

25 (1) shall not constitute a violation of section 1712  
26 (relating to standard of care and justifiable reliance); and

27 (2) is in addition to the ability of directors to  
28 consider interests and factors as provided in section 1715 or  
29 1716.] shall not constitute a violation of section 1712  
30 (relating to standards of care, justifiable reliance and

1 business judgment rule). A benefit corporation:

2 (1) shall not be subject to section 1715(a) and (b) or  
3 section 1716(a); but

4 (2) shall be subject to section 1715(c), (d) and (e)  
5 unless its articles or bylaws provide that it is subject to  
6 section 1716, and references in section 1715(c), (d) and (e)  
7 to the fiduciary duty of directors or the standard set forth  
8 in section 1712 include the provisions of subsection (a).

9 (c) Exoneration from personal liability.--Regardless of  
10 whether the bylaws of a benefit corporation include a provision  
11 eliminating or limiting the personal liability of directors  
12 authorized under section 1713 (relating to personal liability of  
13 directors):

14 (1) A director shall not be personally liable, as such,  
15 for monetary damages for any action taken as a director in  
16 the course of performing the duties specified in subsection  
17 (a) unless the action constitutes self-dealing, willful  
18 misconduct or [a knowing violation of law] recklessness.

19 (2) A director shall not be personally liable for  
20 monetary damages for failure of the benefit corporation to  
21 pursue or create general public benefit or a specific public  
22 benefit.

23 \* \* \*

24 (e) Ownership of shares.--A director's ownership of, or  
25 other interest in, the shares of a benefit corporation does not  
26 alone, create a conflict of interest on the part of the director  
27 with respect to the director's performance of the duties of a  
28 director under subsection (a), except to the extent the  
29 ownership or interest would create a conflict of interest if the  
30 corporation were not a benefit corporation.

1 Section 71. Section 3322(b) and (f) of Title 15 are amended  
2 to read:

3 § 3322. Benefit director.

4 \* \* \*

5 (b) Election, removal and qualifications.--The benefit  
6 director shall be elected and may be removed in the manner  
7 provided under Subchapter C of Chapter 17 (relating to directors  
8 and officers). Except as set forth in subsection [(e)(2)(i) or]  
9 (g), the benefit director shall be an individual who is  
10 independent. The benefit director may serve as the benefit  
11 officer at the same time as serving as the benefit director. The  
12 articles or bylaws of a benefit corporation may prescribe  
13 additional qualifications of the benefit director not  
14 inconsistent with this subsection.

15 \* \* \*

16 (f) Exoneration from personal liability.--Regardless of  
17 whether the bylaws of a benefit corporation include a provision  
18 eliminating or limiting the personal liability of directors  
19 authorized under section 1713 (relating to personal liability of  
20 directors), a benefit director shall not be personally liable  
21 for any act or omission in the capacity of a benefit director  
22 unless the act or omission constitutes self-dealing, willful  
23 misconduct or [a knowing violation of law] recklessness.

24 \* \* \*

25 Section 72. Section 3323(b) of Title 15 is amended and the  
26 section is amended by adding a subsection to read:

27 § 3323. Standard of conduct for officers.

28 \* \* \*

29 (b) Coordination with other provisions of law.--The  
30 consideration of interests and factors in the manner described

1 in subsection (a) shall not constitute a violation of section  
2 [1712(c) (relating to standard of care and justifiable  
3 reliance)] 1734 (relating to officer's standard of care and  
4 justifiable reliance).

5 \* \* \*

6 (e) Ownership of shares.--An officer's ownership of, or  
7 other interest in, the shares of a benefit corporation does not  
8 alone, create a conflict of interest on the part of the officer  
9 with respect to the officer's performance of the duties of an  
10 officer under subsection (a), except to the extent the ownership  
11 or interest would create a conflict of interest if the  
12 corporation were not a benefit corporation.

13 Section 73. The definition of "plan" in section 5103(a) and  
14 (b) of Title 15 are amended and subsection (a) is amended by  
15 adding a definition to read:

16 § 5103. 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 "Membership register." Records administered by or on behalf  
26 of a corporation in which the names of all of its members, the  
27 address of each member and the class and other details of the  
28 membership of each member are recorded.

29 \* \* \*

30 ["Plan." A plan of reclassification, merger, consolidation,

1 asset transfer, division or conversion.]

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 "Conversion."

9 "Corporation for profit."

10 "Corporation not-for-profit."

11 "Court."

12 "Department."

13 "Division."

14 "Domestic corporation for profit."

15 "Domestic corporation not-for-profit."

16 "Domestication."

17 "Execute."

18 "Foreign corporation for profit."

19 "Foreign corporation not-for-profit."

20 "Interest exchange."

21 "Internal Revenue Code of 1986."

22 "Merger."

23 "Obligation."

24 "Officially publish."

25 "Record form."

26 "Representative."

27 "Sign."

28 Section 74. Section 5110 of Title 15 is repealed:

29 [§ 5110. Annual report.]

30 (a) General rule.--On or before April 30 of each year, a

1 corporation described in subsection (b) that has effected any  
2 change in its officers during the preceding calendar year shall  
3 file in the Department of State a statement executed by the  
4 corporation and setting forth:

5 (1) The name of the corporation.

6 (2) The post office address, including street and  
7 number, if any, of its principal office.

8 (3) The names and titles of the persons who are its  
9 principal officers.

10 (b) Application.--This section shall apply to every:

11 (1) domestic nonprofit corporation that has been  
12 incorporated after December 31, 1972;

13 (2) domestic nonprofit corporation that has made any  
14 filing under the Nonprofit Corporation Law of 1933 in the  
15 Department of State as amended by the act of June 19, 1969  
16 (P.L.86, No.31);

17 (3) domestic nonprofit corporation that has filed a  
18 statement of summary of record with the Department of State  
19 after December 31, 1972; and

20 (4) qualified foreign nonprofit corporation.

21 (c) Separate change in registered office required.--A filing  
22 under this section shall not constitute compliance with section  
23 5507(b) (relating to registered office).

24 (d) Fee.--No fee shall be charged for effecting a filing  
25 under this section.

26 (e) Cross reference.--See section 134 (relating to docketing  
27 statement).]

28 Section 75. Sections 5306(a)(8) and 5504(c) of Title 15 are  
29 amended and the sections are amended by adding subsections to  
30 read:

1 § 5306. Articles of incorporation.

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

5 \* \* \*

6 (8) The name [and address, including street and number,  
7 if any,] of each of the incorporators.

8 \* \* \*

9 (d) Reference to external facts.--Except for the provisions  
10 required by subsection (a) (1), (2), (4), (5), (6) (i) and (8),  
11 any provision of the articles of incorporation may be made  
12 dependent upon facts ascertainable outside of the articles if  
13 the manner in which the facts will operate upon the provision is  
14 set forth in the articles. The facts may include actions or  
15 events within the control of or determinations made by the  
16 corporation or a representative of the corporation.

17 § 5504. Adoption, amendment and contents of bylaws.

18 \* \* \*

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

24 (c) [Bylaw provisions in articles] Relationship of articles  
25 and bylaws.--Where any provision of this subpart or any other  
26 provision of law refers to a rule as set forth in the bylaws of  
27 a corporation or in a bylaw adopted by the members, the  
28 reference shall be construed to include and be satisfied by any  
29 rule on the same subject as set forth in the articles of the  
30 corporation. Where any provision of this subpart or any other



1 provision of law refers to a rule as set forth in the articles  
2 of a corporation or prohibits the articles from setting forth a  
3 rule, the contemplated rule may not be included in a bylaw or a  
4 bylaw adopted by the members.

5 \* \* \*

6 Section 76. Section 5505 of Title 15 is amended to read:

7 § 5505. Persons bound by bylaws.

8 Except as otherwise provided by section 5713 (relating to  
9 personal liability of directors) or any similar provision of  
10 law, the bylaws of a nonprofit corporation [shall operate only  
11 as regulations among] are binding on the members, directors,  
12 members of an other body and officers of the corporation[, and]  
13 with respect to its internal affairs whether or not a member,  
14 director, member of an other body or officer has actual  
15 knowledge of the provisions of the bylaws, but a bylaw shall not  
16 affect contracts or other dealings with other persons, unless  
17 those persons have actual knowledge of the [bylaws] bylaw.

18 Section 77. Section 5507(b) and (d) of Title 15 are amended  
19 and the section is amended by adding a subsection to read:

20 § 5507. Registered office.

21 \* \* \*

22 (b) Statement of change of registered office.--After  
23 incorporation, a change of the location of the registered office  
24 may be authorized at any time by the board of directors or other  
25 body. Before the change of location becomes effective, the  
26 corporation [either] shall include the change in an annual  
27 report under section 146 (relating to annual report), amend its  
28 articles under the provisions of this subpart to reflect the  
29 change [in location or shall file in] or deliver to the  
30 Department of State for filing a statement of change of

1 registered office executed by the corporation, setting forth:

2 (1) The name of the corporation.

3 (2) The address, including street number, if any, of its  
4 then registered office.

5 (3) The address, including street number, if any, to  
6 which the registered office is to be changed.

7 (4) A statement that the change was authorized by the  
8 board of directors or other body.

9 \* \* \*

10 (d) Effect of statement.--A statement regarding the  
11 registered office of a corporation set forth in a document filed  
12 in the department pursuant to this section shall operate as an  
13 amendment of the articles.

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

16 Section 78. Sections 5508, 5509 and 5512 of Title 15 are  
17 amended to read:

18 § 5508. Corporate records; inspection by members.

19 (a) Required records.--Every nonprofit corporation shall  
20 keep minutes of the proceedings of the incorporators, members,  
21 the directors and any other body, and a membership register[,  
22 giving the names and addresses of all members and the class and  
23 other details of the membership of each]. The corporation shall  
24 also keep appropriate, complete and accurate books or records of  
25 account. [The records provided for in this subsection shall be  
26 kept at any of the following locations:

27 (1) the registered office of the corporation in this  
28 Commonwealth;

29 (2) the principal place of business wherever situated;  
30 or

1 (3) any actual business office of the corporation.]

2 (b) Right of inspection by a member.--[Every member shall,  
3 upon written verified demand stating the purpose thereof, have

4 a] On demand, in compliance with the requirements in subsection  
5 (b.1), a member has the right to examine, in person or by agent  
6 or attorney, during the usual hours for business for any proper  
7 purpose, the membership register, books and records of account,  
8 and [records of the proceedings of] minutes of, and consents in  
9 lieu of meetings by, the incorporators, members, directors and  
10 any other body, and to make copies or extracts therefrom.

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

13 (1) A proper purpose shall mean a purpose reasonably  
14 related to the interest of the person as a member.

15 (2) In every instance where an attorney or other agent  
16 is the person who seeks the right of inspection, the demand  
17 shall be accompanied by a verified power of attorney or other  
18 [writing] record that authorizes the attorney or other agent  
19 to so act on behalf of the member.

20 (3) The demand must be:

21 (i) made in good faith;

22 (ii) in record form; and

23 (iii) verified.

24 (4) The demand must describe with reasonable  
25 particularity:

26 (i) the purpose of the member; and

27 (ii) the records the member desires to inspect and  
28 how the records relate to the purpose of the member.

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

1           [(1)] (i) at its registered office in this  
2 Commonwealth;  
3           [(2)] (ii) at its principal place of business  
4 wherever situated; [or  
5           (3)] (iii) in care of the person in charge of an  
6 actual business office of the corporation[.]; or  
7           (iv) in care of the secretary of the corporation at  
8 the most recent address of the secretary shown in the  
9 records of the department.

10       (c) Proceedings for the enforcement of inspection by a  
11 member.--If the corporation, or an officer or agent thereof,  
12 refuses to permit an inspection sought by a member or attorney  
13 or other agent acting for the member pursuant to subsection (b)  
14 or does not reply to the demand within five business days after  
15 the demand has been [made] received, the member may [apply to]  
16 file an action in the court for an order to compel the  
17 inspection. The court [shall] is hereby vested with exclusive  
18 jurisdiction to determine whether or not the person seeking  
19 inspection is entitled to the inspection sought. The court may  
20 summarily order the corporation to permit the member to inspect  
21 the membership register and the other books and records of the  
22 corporation and to make copies or extracts therefrom; or the  
23 court may order the corporation to furnish to the member a list  
24 of its members as of a specific date on condition that the  
25 member first pay to the corporation the reasonable cost of  
26 obtaining and furnishing the list and on such other conditions  
27 as the court deems appropriate. Where the member seeks to  
28 inspect the books and records of the corporation, other than its  
29 membership register or list of members, [he] the member shall  
30 first establish:

1 (1) that [he] the member has complied with the  
2 provisions of this section respecting the form and manner of  
3 making demand for inspection of such document; and

4 (2) that the inspection [he] the member seeks is for a  
5 proper purpose.

6 (d) Burden of proof.--Where the member seeks to inspect the  
7 membership register or list of members of the corporation and  
8 [he] the member has complied with the provisions of this section  
9 respecting the form and manner of making demand for inspection  
10 of the documents, the burden of proof shall be upon the  
11 corporation to establish that the inspection he seeks is for an  
12 improper purpose.

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

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

30 (g) Reasonable restrictions permitted.--The corporation may

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

8 [(d)] (h) Cross references.--See sections 107 (relating to  
9 form of records) and 5512 (relating to informational rights of a  
10 director) [.] and 42 Pa.C.S. § 2503(7) and (9) (relating to right  
11 of participants to receive counsel fees).

12 § 5509. Bylaws and other powers in emergency.

13 (a) General rule.--Except as otherwise restricted in the  
14 bylaws, the board of directors or other body of any nonprofit  
15 corporation may adopt emergency bylaws, subject to repeal or  
16 change by action of the members, which shall, notwithstanding  
17 any different provisions of law or of the articles or bylaws, be  
18 effective during [any emergency resulting from an attack on the  
19 United States, a nuclear disaster or another catastrophe as a  
20 result of which a quorum of the board cannot readily be  
21 assembled] an emergency. The emergency bylaws may make any  
22 provision that may be appropriate for the circumstances of the  
23 emergency, including:

24 (1) Procedures for calling meetings of delegates, the  
25 board or [other] an other body.

26 (2) Quorum requirements for meetings of delegates, the  
27 board or an other body.

28 (3) Procedures for designating additional or substitute  
29 directors or members of an other body.

30 (b) Lines of succession; head office.--The board of

1 directors or other body, or the officers, if [given  
2 authorization] authorized by the board of directors or other  
3 body, either before or during any emergency, may:

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

8 (2) effective in the emergency, change the head offices  
9 or designate several alternative head offices or regional  
10 offices of the corporation.

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] in effect at the time or otherwise in  
15 accordance with this section is not liable for monetary  
16 damages except for:

17 (i) self-dealing, willful misconduct or  
18 recklessness[.];

19 (ii) violation of a criminal statute; or

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

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

27 (d) Effect on regular bylaws.--To the extent [that they are]  
28 not inconsistent with any emergency bylaws [adopted], the bylaws  
29 of the corporation shall remain in effect during any emergency,  
30 and, upon its termination, the emergency bylaws shall cease to

1 be effective.

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

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

24 (g) Member meetings.--The required time for holding the  
25 annual meeting of delegates or members of a corporation provided  
26 in section 5755(a) (relating to time of holding meetings of  
27 members) or the articles or bylaws is tolled during an  
28 emergency. The board or other body, acting by a majority of the  
29 directors or members of the other body that can be assembled,  
30 may take any action during an emergency that the board or other



1 body determines to be practical and necessary to address the  
2 circumstances of the emergency with respect to a meeting of  
3 members notwithstanding anything to the contrary in this subpart  
4 or in the articles or bylaws. The actions the board or other  
5 body may take include postponing the meeting to a later time or  
6 date, with the record date for determining the members entitled  
7 to notice of, and to vote at, the meeting applying to the  
8 postponed meeting without regard to section 5763 (relating to  
9 determination of members of record).

10 (h) Definition.--As used in this section, and for no other  
11 purpose, "emergency" means a period during which a quorum of the  
12 board or an other body cannot readily be assembled as a result  
13 of:

14 (1) an attack on the United States;

15 (2) a nuclear disaster;

16 (3) an epidemic or pandemic;

17 (4) a state of emergency under Federal or State law  
18 covering a geographic area in which the corporation has its  
19 principal office or a significant regional office or  
20 operation; or

21 (5) any other catastrophe or disaster.

22 § 5512. Informational rights of a director.

23 (a) General rule.--To the extent reasonably related to the  
24 performance of the duties of the director, including those  
25 arising from service as a member of a committee of the board of  
26 directors, a director of a nonprofit corporation is entitled:

27 (1) in person or by any attorney or other agent, at any  
28 reasonable time, to inspect and copy corporate books, records  
29 and documents and, in addition, to inspect, and receive  
30 information regarding, the assets, liabilities and operations

1 of the corporation and any subsidiaries of the corporation  
2 incorporated or otherwise organized or created under the laws  
3 of this Commonwealth that are controlled directly or  
4 indirectly by the corporation; and

5 (2) to demand that the corporation exercise whatever  
6 rights it may have to obtain information regarding any other  
7 subsidiaries of the corporation.

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

28 (c) Right to the bylaws.--Every director has the right to  
29 receive, on demand and without charge, a copy in record form of  
30 the currently effective text of the bylaws.

1 (d) Reasonable restrictions permitted.--The corporation may  
2 impose reasonable restrictions and conditions on access to and  
3 use of information to be furnished under this section, including  
4 designating information confidential and imposing nondisclosure  
5 and safeguarding obligations on the recipient. In a dispute  
6 concerning the reasonableness of a restriction, condition or  
7 obligation under this subsection, the corporation has the burden  
8 of proving reasonableness.

9 [(c)] (e) Cross references.--See sections 107 (relating to  
10 form of records), 5508 (relating to corporate records;  
11 inspection by members) and 5734 (relating to other body) and 42  
12 Pa.C.S. § 2503(7) (relating to right of participants to receive  
13 counsel fees).

14 Section 79. Title 15 is amended by adding a section to read:  
15 § 5513. Forum selection provisions.

16 (a) General rule.--The bylaws may require that an internal  
17 corporate claim must be brought exclusively in a specified court  
18 or courts of this Commonwealth and, if so specified, also in  
19 other courts sitting in this Commonwealth or in any other  
20 jurisdiction with which the nonprofit corporation has a  
21 reasonable relationship.

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

1 corporate claim may be brought in the court with jurisdiction,  
2 notwithstanding that it is not specified in the provision.

3 (c) Definition.--For the purposes of this section:

4 (1) Except as provided in paragraph (2), "internal  
5 corporate claim" means:

6 (i) an action that is based upon an alleged  
7 violation of a duty owed to the nonprofit corporation  
8 under the laws of this Commonwealth by a current or  
9 former director, member of an other body, officer or  
10 member in that capacity;

11 (ii) a derivative action or proceeding brought on  
12 behalf of the corporation;

13 (iii) an action asserting a claim arising pursuant  
14 to any provision of:

15 (A) this title;

16 (B) the articles of incorporation or bylaws; or

17 (C) an agreement regarding the governance of the  
18 corporation or the transfer of memberships in the  
19 corporation if:

20 (I) the corporation and at least one member  
21 are parties to the agreement or stated or  
22 intended beneficiaries thereof; and

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

27 (iv) any action asserting a claim regarding the  
28 internal affairs of the corporation that is not included  
29 in subparagraphs (i), (ii) and (iii).

30 (2) An internal corporate claim does not include a

1 claim, action or proceeding described in paragraph (1) that  
2 is subject to section 5107 (relating to subordination of  
3 subpart to canon law).

4 Section 80. Sections 5547(b), 5702(a)(1), 5704, 5708,  
5 5709(b) and (c), 5711 and 5712 of Title 15 are amended to read:  
6 § 5547. Authority to take and hold trust property.

7 \* \* \*

8 (b) Nondiversion of certain property.--Property committed to  
9 charitable purposes shall not, by any proceeding under Chapter 3  
10 (relating to entity transactions) or 59 (relating to  
11 [fundamental changes] amendments, sale of assets and  
12 dissolution) or otherwise, be diverted from the objects to which  
13 it was donated, granted or devised, unless and until the board  
14 of directors or other body obtains from the court an order under  
15 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the  
16 disposition of the property.

17 § 5702. Manner of giving notice.

18 (a) General rule.--

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

23 (i) By first class or express mail, postage prepaid,  
24 or courier service, charges prepaid, to the person's  
25 postal address appearing on the books of the corporation  
26 or, in the case of directors or members of an other body,  
27 supplied by the person to the corporation for the purpose  
28 of notice. Notice under this subparagraph shall be deemed  
29 to have been given to the person entitled thereto when  
30 deposited in the United States mail or with a courier

1 service for delivery to that person.

2 (ii) By facsimile transmission, e-mail or other  
3 electronic communication to the [person's] facsimile  
4 number or address for e-mail or other electronic  
5 communications supplied by the person to the corporation  
6 for the purpose of notice. Notice under this subparagraph  
7 shall be deemed to have been given to the person entitled  
8 thereto when sent.

9 \* \* \*

10 § 5704. Place and notice of meetings of members.

11 (a) Place.--Meetings of members may be held at [the] a  
12 geographic location within or without this Commonwealth as may  
13 be provided in or fixed pursuant to the bylaws. Authority to  
14 provide for the location of a meeting of the members includes  
15 the authority to determine to hold a meeting solely by means of  
16 electronic technology in accordance with section 5708 (relating  
17 to use of conference telephone or other electronic technology),  
18 notwithstanding that the authority may refer to one or more  
19 geographic locations. Unless otherwise provided in or fixed  
20 pursuant to the bylaws, all meetings of the members that are not  
21 held solely by means of electronic technology shall be held at  
22 the executive office of the corporation wherever situated. [If a  
23 meeting of members is held by means of the Internet or other  
24 electronic communications technology in a fashion pursuant to  
25 which the members have the opportunity to read or hear the  
26 proceedings substantially concurrently with their occurrence,  
27 vote on matters submitted to the members, pose questions to the  
28 directors and members of any other body, make appropriate  
29 motions and comment on the business of the meeting, the meeting  
30 need not be held at a particular geographic location.]

1 (b) Notice.--Notice in record form of every meeting of the  
2 members shall be given by, or at the direction of, the secretary  
3 or other authorized person to each member of record entitled to  
4 vote at the meeting at least:

5 (1) ten days prior to the day named for a meeting that  
6 will consider a transaction under Chapter 3 (relating to  
7 entity transactions) or a fundamental change under Chapter 59  
8 (relating to amendments, sale of assets and dissolution); or

9 (2) five days prior to the day named for the meeting in  
10 any other case.

11 [If the secretary or other authorized person neglects or refuses  
12 to give notice of a meeting, the person or persons calling the  
13 meeting may do so.]

14 (c) Contents.--In the case of a special meeting of the  
15 members, the notice shall specify the general nature of the  
16 business to be transacted, and in all cases the notice shall  
17 comply with the express requirements of this subpart. The  
18 corporation shall not have a duty to augment the notice.

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

22 § 5708. Use of conference telephone or other electronic  
23 technology.

24 (a) Incorporators, directors and members of an other body.--  
25 Except as otherwise provided in the bylaws, one or more persons  
26 may participate in a meeting of the incorporators, the board of  
27 directors or an other body of a nonprofit corporation by means  
28 of conference telephone or other electronic technology by means  
29 of which all persons participating in the meeting can hear each  
30 other. Participation in a meeting pursuant to this [section]

1 subsection shall constitute presence in person at the meeting.

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

10 (c) Exclusive use of electronic technology.--Unless the  
11 bylaws provide expressly that a meeting of members may not be  
12 held solely by means of electronic technology, a meeting of the  
13 members does not need to be held at a geographic location if the  
14 meeting is held by means of electronic technology in a fashion  
15 pursuant to which the members have a reasonable opportunity to  
16 participate in the meeting, read or hear the proceedings  
17 substantially concurrently with their occurrence, vote on  
18 matters submitted to the members and, subject to such guidelines  
19 and procedures as the board of directors may adopt, make  
20 appropriate motions and comment on the business of the meeting.  
21 Any guidelines or procedures adopted by the board or an other  
22 body must comply with section 5709(c) (relating to conduct of  
23 members meeting).

24 § 5709. Conduct of members meeting.

25 \* \* \*

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



1 rules.

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

5 \* \* \*

6 § 5711. Alternative provisions.

7 (a) General rule.--Section 5716 (relating to alternative  
8 standard) shall not be applicable to any nonprofit corporation  
9 to which section 5715 (relating to exercise of powers generally)  
10 is applicable. Section 5715 shall be applicable to any  
11 corporation except a corporation:

12 (1) the bylaws of which by amendment adopted by the  
13 board of directors on or before July 26, 1990, and not  
14 subsequently rescinded by an articles amendment, explicitly  
15 provide that section 5715 or corresponding provisions of  
16 prior law shall not be applicable to the corporation; or

17 (2) the articles of which explicitly provide that  
18 section 5715 or corresponding provisions of prior law shall  
19 not be applicable to the corporation.

20 (b) Reversal of opt-out.--A provision of the articles or  
21 bylaws providing that section 5715 or corresponding provisions  
22 of prior law shall not be applicable to the corporation may be  
23 rescinded pursuant to the procedures required by this subpart  
24 and the articles and bylaws at the time of the rescission to  
25 amend the articles or bylaws.

26 § 5712. Standard of care [and], justifiable reliance and  
27 business judgment rule.

28 (a) [Directors] General rule.--A director of a nonprofit  
29 corporation shall stand in a fiduciary relation to the  
30 corporation and shall perform [his duties as] the duties of a

1 director, including [his] duties as a member of any committee of  
2 the board upon which [he] the director may serve, in good faith,  
3 in a manner [he] the director reasonably believes to be in the  
4 best interests of the corporation and with such care, including  
5 [reasonable inquiry,] the skill and diligence[, as] that a  
6 person of ordinary prudence would use under similar  
7 circumstances[.] and reasonable inquiry into those issues  
8 required by the statutes of this Commonwealth to be considered  
9 in the circumstances and those interests and factors listed in  
10 section 5715(a) (relating to exercise of powers generally) or  
11 5716(a) (relating to alternative standard) that the director  
12 considers appropriate. This subsection is subject to subsection  
13 (d) where applicable.

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

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

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

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

1 confidence.

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

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

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

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

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

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

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

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

1 inapplicability of the provisions as to the fulfillment of  
2 that duty under subsection (d); and  
3 (2) in a damage action, that the breach was the legal  
4 cause of damage suffered by the corporation.

5 Section 81. Section 5713(c) of Title 15 is amended and the  
6 section is amended by adding a subsection to read:

7 § 5713. Personal liability of directors.

8 \* \* \*

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

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

17 Section 82. Sections 5714, 5715(b), (d) and (e)(1)(i), 5716  
18 and 5717 of Title 15 are amended to read:

19 § 5714. [Notation of dissent] Presumption of assent.

20 A director of a nonprofit corporation who is present at a  
21 meeting of its board of directors, or of a committee of the  
22 board, at which action on any corporate matter is taken on which  
23 the director is generally competent to act, shall be presumed to  
24 have assented to the action taken unless [his] the director's  
25 dissent, abstention or vote against the matter is entered in the  
26 minutes of the meeting or unless [he files his written dissent]  
27 the director delivers to the secretary of the meeting before the  
28 adjournment thereof a dissent in record form to the action [with  
29 the secretary of the meeting before the adjournment thereof] or  
30 transmits the dissent in [writing] record form to the secretary

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

10 § 5715. Exercise of powers generally.

11 \* \* \*

12 (b) Consideration of interests and factors.--The board of  
13 directors, committees of the board and individual directors  
14 shall not be required, in considering the best interests of the  
15 corporation or the effects of any action, to regard any  
16 corporate interest or the interests of any particular group  
17 affected by such action as a dominant or controlling interest or  
18 factor. The consideration of interests and factors in the manner  
19 described in this subsection and in subsection (a) shall not  
20 constitute a violation of section 5712 (relating to standard of  
21 care [and], justifiable reliance and business judgment rule).

22 \* \* \*

23 (d) Presumption.--[Absent breach of fiduciary duty, lack of  
24 good faith or self-dealing, any act as the board of directors, a  
25 committee of the board or an individual director shall be  
26 presumed to be in the best interests of the corporation.] In  
27 assessing whether the standard set forth in section 5712 or 5728  
28 (relating to interested directors or officers; quorum) has been  
29 satisfied, there shall not be any greater obligation to justify,  
30 or higher burden of proof with respect to, any act as the board

1 of directors, any committee of the board or any individual  
2 director relating to or affecting an acquisition or potential or  
3 proposed acquisition of control of the corporation than is  
4 applied to any other act as a board of directors, any committee  
5 of the board or any individual director. Notwithstanding section  
6 5712(d) and the preceding [provisions] provision of this  
7 subsection, any act as the board of directors, a committee of  
8 the board or an individual director relating to or affecting an  
9 acquisition or potential or proposed acquisition of control to  
10 which a majority of the disinterested directors shall have  
11 assented shall be presumed to satisfy the standard set forth in  
12 section 5712 or 5728, unless it is proven by clear and  
13 convincing evidence that the disinterested directors did not  
14 assent to such act in good faith after reasonable investigation.

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

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

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

25 \* \* \*

26 § 5716. Alternative standard.

27 (a) General rule.--In discharging the duties of their  
28 respective positions, the board of directors, committees of the  
29 board and individual directors of a nonprofit corporation may,  
30 in considering the best interests of the corporation, consider

1 the effects of any action upon employees, upon suppliers and  
2 customers of the corporation and upon communities in which  
3 offices or other establishments of the corporation are located,  
4 and all other pertinent factors. The consideration of those  
5 factors shall not constitute a violation of section 5712  
6 (relating to standard of care [and], justifiable reliance and  
7 business judgment rule).

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

11 (c) Cross reference.--See section 5711 (relating to  
12 alternative provisions).

13 § 5717. Limitation on standing.

14 The duty of the board of directors, committees of the board  
15 and individual directors under section 5712 (relating to  
16 standard of care [and], justifiable reliance and business  
17 judgment rule) is solely to the nonprofit corporation and not to  
18 any member or creditor or any other person or group, and may be  
19 enforced directly by the corporation or may be enforced by [a  
20 member, as such, by] an action in the right of the corporation,  
21 and may not be enforced directly by a member or creditor or by  
22 any other person or group. Notwithstanding the preceding  
23 sentence, sections 5715(a) and (b) (relating to exercise of  
24 powers generally) and 5716(a) (relating to alternative standard)  
25 do not impose upon the board of directors, committees of the  
26 board and individual directors, any legal or equitable duties,  
27 obligations or liabilities or create any right or cause of  
28 action against, or basis for standing to sue, the board of  
29 directors, committees of the board and individual directors.

30 Section 83. Title 15 is amended by adding sections to read:

1 § 5718. (Reserved).

2 § 5719. Renunciation of corporate opportunities.

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

10 Section 84. Sections 5721 and 5724(b) of Title 15 are  
11 amended to read:

12 § 5721. Board of directors.

13 Unless otherwise provided by statute or in a bylaw adopted by  
14 the members, all powers enumerated in section 5502 (relating to  
15 general powers) and elsewhere in this [subpart] title or  
16 otherwise vested by law in a nonprofit corporation shall be  
17 exercised by or under the authority of the board of directors,  
18 and the business and affairs of every nonprofit corporation  
19 shall be managed by or under the direction of, a board of  
20 directors. If any such provision is made in the bylaws, the  
21 powers and duties conferred or imposed upon the board of  
22 directors by this [subpart] title shall be exercised or  
23 performed to such extent and by such other body as shall be  
24 provided in the bylaws.

25 § 5724. Term of office of directors.

26 \* \* \*

27 (b) Resignations.--[Any director may resign at any time upon  
28 notice in record form to the corporation. The resignation shall  
29 be effective upon its receipt by the corporation or at a  
30 subsequent time specified in the notice of resignation.] A



1 director may resign at any time upon notice in record form to  
2 the corporation. A resignation that is not conditioned upon  
3 acceptance by the board of directors shall be effective upon  
4 receipt by the corporation of the notice of resignation, unless  
5 the notice specifies a later effective time or an effective time  
6 determined upon the happening of an event or events. If a  
7 resignation is conditioned upon its acceptance by the board, a  
8 decision by the board to accept or reject the resignation shall  
9 be made by the board in the manner required by Subchapter B  
10 (relating to fiduciary duty).

11 \* \* \*

12 Section 85. Section 5725 of Title 15 is amended by adding a  
13 subsection to read:

14 § 5725. Selection of directors.

15 \* \* \*

16 (c.1) No directors in office.--At any time when the offices  
17 of all of the directors of a membership corporation are vacant,  
18 any officer, member of an other body or member may call a  
19 special meeting of members for the purpose of electing  
20 directors.

21 \* \* \*

22 Section 86. Sections 5727, 5728, 5730, 5731(a) and 5732 of  
23 Title 15 are amended to read:

24 § 5727. Quorum of and action by directors.

25 (a) General rule.--Unless otherwise provided in the bylaws,  
26 a majority of the directors in office of a nonprofit corporation  
27 shall be necessary to constitute a quorum for the transaction of  
28 business, and the acts of a majority of the directors present  
29 and voting at a meeting at which a quorum is present shall be  
30 the acts of the board of directors.

1 (b) Action by consent.--Unless otherwise restricted in the  
2 bylaws, any action required or permitted to be approved at a  
3 meeting of the directors may be approved without a meeting [if a  
4 consent or] if one or more consents to the action in record form  
5 [are]. Except as provided in subsection (c), the consents must  
6 be signed, before, on or after the effective [date] time of the  
7 action by all of the directors in office [on the date the last  
8 consent is signed] at the effective time. The consent or  
9 consents must be filed with the secretary of the corporation.

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

24 § 5728. Interested directors or officers; quorum.

25 (a) General rule.--A contract or transaction between a  
26 nonprofit corporation and one or more of its directors or  
27 officers or between a nonprofit corporation and another domestic  
28 or foreign corporation for profit or not-for-profit,  
29 partnership, joint venture, trust or other association in which  
30 one or more of [its] the corporation's directors or officers are

1 [directors] governors or officers of the other association or  
2 have a financial or other interest, [shall not be] is not void  
3 or voidable solely for that reason, or solely because the  
4 director or officer of the corporation is present at or  
5 participates in the meeting of the board of directors that  
6 authorizes the contract or transaction, or solely because the  
7 vote of the director or officer is counted for that purpose, if:

8 (1) the material facts as to the relationship or  
9 interest and as to the contract or transaction are disclosed  
10 or are known to the board of directors and the board  
11 authorizes the contract or transaction by the affirmative  
12 votes of a majority of the disinterested directors even  
13 though the disinterested directors are less than a quorum;

14 (2) the material facts as to the [director's or  
15 officer's] relationship or interest and as to the contract or  
16 transaction are disclosed or are known to the members  
17 entitled to vote thereon, if any, and the contract or  
18 transaction is specifically approved in good faith by vote of  
19 those members; [or]

20 (3) the contract or transaction is fair as to the  
21 corporation as of the time it is authorized, approved or  
22 ratified by the board of directors or the members[.]; or

23 (4) the contract or transaction satisfies subsection (d)  
24 or (e).

25 (b) Quorum.--Common or interested directors may be counted  
26 in determining the presence of a quorum at a meeting of the  
27 board that authorizes a contract or transaction specified in  
28 subsection (a).

29 (c) Applicability.--The provisions of this section shall be  
30 applicable except as otherwise restricted in the bylaws.

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

25 (f) Cross references.--See sections 5715(d) (relating to  
26 exercise of powers generally) and 5730 (relating to compensation  
27 of directors).

28 § 5730. Compensation of directors.

29 (a) General rule.--Except as otherwise restricted in the  
30 bylaws, the board of directors of a nonprofit corporation [shall

1 have] has the authority to fix the compensation of directors for  
2 their services as directors[, and a] regardless of the personal  
3 interest of the directors. A director may be a salaried officer  
4 of the corporation.

5 (b) Presumption.--If the board of directors of a nonprofit  
6 corporation that is not incorporated for a charitable purpose  
7 establishes the compensation of directors in accordance with  
8 subsection (a), that action is presumed to be fair to the  
9 corporation.

10 § 5731. 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 [may, by  
14 resolution adopted by a majority of the directors in office,]  
15 of a nonprofit corporation may establish one or more  
16 committees to consist of one or more directors of the  
17 corporation.

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

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

27 (ii) The creation or filling of vacancies in the  
28 board of directors.

29 (iii) The adoption, amendment or repeal of the  
30 bylaws.

1 (iv) The amendment or repeal of any resolution of  
2 the board that by its terms is amendable or repealable  
3 only by the board.

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

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

18 \* \* \*

19 § 5732. Officers.

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

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

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

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

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

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

26     [(c) Nomination of officers.--Unless the bylaws provide  
27 otherwise, officers shall be nominated by a nominating committee  
28 or from the floor.]

29     [(d) Cross reference.--See section 5110 (relating to annual  
30 report).]

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

5 Section 87. Title 15 is amended by adding sections to read:  
6 § 5733.1. Officer's standard of care and justifiable reliance.

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

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

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

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

30 (c) Effect of actual knowledge.--An officer is not



1 considered to be acting in good faith under subsection (a) if  
2 the director has actual knowledge concerning the matter that  
3 causes the officer to believe reliance is unwarranted.

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

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

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

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

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

21 § 5733.2. Personal liability of officers.

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

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

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

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

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

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

5           (c) Application.--An amendment or repeal of a provision  
6           described in subsection (a) does not affect its application with  
7           respect to an act by an officer occurring before the amendment  
8           or repeal unless the provision in effect at the time of the act  
9           explicitly authorizes its amendment or repeal after an act has  
10           occurred.

11           (d) Cross reference.--See 42 Pa.C.S. § 8332.5 (relating to  
12           corporate representatives).

13           Section 88. Sections 5743, 5750, 5755, 5756(a)(1) and (b)  
14           (1), 5758 and 5763 of Title 15 are amended to read:

15           § 5743. Mandatory indemnification.

16           (a) General rule.--To the extent that a [representative]  
17           present or former director or officer of a nonprofit corporation  
18           has been successful on the merits or otherwise in defense of any  
19           action or proceeding referred to in section 5741 (relating to  
20           third-party actions) or 5742 (relating to derivative and  
21           corporate actions) or in defense of any claim, issue or matter  
22           therein, [he] the director or officer shall be indemnified  
23           against expenses (including attorney fees) actually and  
24           reasonably incurred by [him] the director or officer in  
25           connection therewith.

26           (b) Prospective application.--The limitation of the scope of  
27           subsection (a) to a present or former director or officer  
28           applies only to acts occurring after (insert the effective date  
29           of this act).

30           [(b)] (c) Cross reference.--See section 6145 (relating to

1 applicability of certain safeguards to foreign corporations).

2 § 5750. Duration and extent of coverage.

3 The indemnification and advancement of expenses provided by  
4 or granted pursuant to this subchapter shall, unless otherwise  
5 provided when authorized or ratified, continue as to a person  
6 who has ceased to be a representative of the corporation and  
7 shall inure to the benefit of the heirs and personal  
8 representative of that person. A right to indemnification or to  
9 advancement of expenses arising under a provision of the  
10 articles or bylaws may not be eliminated or impaired by an  
11 amendment to or repeal of the provision after the occurrence of  
12 an act that is the subject of the threatened, pending or  
13 completed action or proceeding, whether civil, criminal,  
14 administrative or investigative, for which indemnification or  
15 advancement of expenses is sought, unless the provision in  
16 effect at the time of the act explicitly authorizes the  
17 elimination or impairment after an act has occurred.

18 § 5755. Time of holding meetings of members.

19 (a) Regular meetings.--The bylaws of a nonprofit corporation  
20 may provide for the number and the time of meetings of members[,  
21 but unless]. Except as otherwise provided in a bylaw adopted by  
22 the members, at least one meeting of the members [of a  
23 corporation that has members, as such,] that are entitled to  
24 vote[,] for the election of directors shall be held in each  
25 calendar year for the election of directors at the time provided  
26 in or fixed pursuant to authority granted by the bylaws. Failure  
27 to hold the annual or other regular meeting at the designated  
28 time shall not work a dissolution of the corporation or affect  
29 otherwise valid corporate acts. If the annual or other regular  
30 meeting is not called and held within six months after the

1 designated time, any member may call the meeting at any time  
2 thereafter.

3 (b) Special meetings.--Special meetings of the members may  
4 be called at any time by:

5 (1) the board of directors;

6 (2) members entitled to cast at least 10% of the votes  
7 that all members are entitled to cast at the particular  
8 meeting; [or]

9 (3) [other] such officers or other persons as may be  
10 provided in the bylaws[.]; or

11 (4) as provided in section 5725(c.1) (relating to  
12 selection of directors).

13 (b.1) Duties of secretary.--At any time, upon written  
14 request of any person who has called a special meeting, it shall  
15 be the duty of the secretary to fix the time of the meeting  
16 which, if the meeting is called pursuant to a statutory right,  
17 shall be held within any period specified by this subpart, or if  
18 no period is specified, not more than 60 days after the receipt  
19 of the request. If the secretary neglects or refuses to fix the  
20 time of the meeting, the person or persons calling the meeting  
21 may do so.

22 (c) Adjournments.--Adjournments of any regular or special  
23 meeting may be taken but any meeting at which directors are to  
24 be elected shall be adjourned [only] for no longer than from day  
25 to day, or for longer periods not exceeding 15 days each, as the  
26 members present and entitled to vote shall direct, until the  
27 directors have been elected.

28 (d) Postponement or cancellation.--The board of directors  
29 may postpone, or delegate to an officer the authority to  
30 postpone, the annual or other regular meeting of members,

1 subject to the provision of subsection (a) providing for a  
2 meeting each calendar year. Unless otherwise restricted in the  
3 bylaws or otherwise provided by statute, the holding of a  
4 special meeting of members may be postponed for not more than 15  
5 days or may be canceled by the person or group that called the  
6 special meeting. In the case of a postponed or canceled meeting,  
7 prompt notice in record form of the postponement or cancellation  
8 must be given to the members entitled to vote at the meeting.

9 [(d)] (e) Cross reference.--See section 6145 (relating to  
10 applicability of certain safeguards to foreign domiciliary  
11 corporations).

12 § 5756. Quorum.

13 (a) General rule.--A meeting of members of a nonprofit  
14 corporation duly called shall not be organized for the  
15 transaction of business unless a quorum is present. Unless  
16 otherwise provided in a bylaw adopted by the members:

17 (1) [The] A quorum for the purposes of consideration and  
18 action on a particular matter at a meeting shall consist of:

19 (i) the presence of members entitled to cast at  
20 least a majority of the votes that all members are  
21 entitled to cast on [a particular] the matter [to be  
22 acted upon at the meeting shall constitute a quorum for  
23 the purposes of consideration and action on the matter.];  
24 and

25 (ii) if any members are entitled to vote as a class  
26 on the matter, the presence of members entitled to cast  
27 at least a majority of the votes entitled to be cast in  
28 the class vote.

29 \* \* \*

30 (b) Exceptions.--Notwithstanding any contrary provision in

1 the articles or bylaws, those members entitled to vote who  
2 attend a meeting of members:

3 (1) At which directors are to be elected that has been  
4 previously adjourned for lack of a quorum, although less than  
5 a quorum as fixed in this section or in the bylaws, shall  
6 nevertheless constitute a quorum for the purpose of [election  
7 of] electing directors.

8 \* \* \*

9 § 5758. Voting rights of members.

10 (a) General rule.--Unless otherwise provided in a bylaw  
11 adopted by the members, every member of a nonprofit corporation  
12 shall be entitled to one vote.

13 (b) Procedures.--The following apply to voting by the  
14 members:

15 (1) The manner of voting on any matter, including  
16 changes in the articles or bylaws, may be by ballot, mail or  
17 any reasonable means provided in a bylaw adopted by the  
18 members.

19 (2) If a bylaw adopted by the members provides a fair  
20 and reasonable procedure for the nomination of candidates for  
21 any office, only candidates who have been duly nominated in  
22 accordance therewith shall be eligible for election.

23 (3) Unless otherwise provided in [such] a bylaw adopted  
24 by the members, in elections for directors at a meeting of  
25 members held at a geographic location, voting shall be by  
26 ballot[, and the]. The members do not have the right to vote  
27 by ballot at a meeting that is not held at a geographic  
28 location pursuant to section 5708(c) (relating to use of  
29 conference telephone or other electronic technology).

30 (4) The candidates for election as directors receiving

1 the highest number of votes from each class or group of  
2 classes, if any, of members entitled to elect directors  
3 separately up to the number of directors to be elected by  
4 such class or group of classes shall be elected. If at any  
5 meeting of members directors of more than one class are to be  
6 elected, each class of directors shall be elected in a  
7 separate election.

8 (c) Cumulative voting.--If a bylaw adopted by the members so  
9 provides, in each election of directors of a nonprofit  
10 corporation every member entitled to vote shall have the right  
11 to multiply the number of votes to which he may be entitled by  
12 the total number of directors to be elected in the same election  
13 by the members or the class of members to which he belongs, and  
14 he may cast the whole number of his votes for one candidate or  
15 he may distribute them among any two or more candidates.

16 (d) Sale of votes.--No member shall sell his vote or issue a  
17 proxy for money or anything of value.

18 (e) Voting lists.--Upon request of a member, the [books or  
19 records of] membership register shall be produced at any regular  
20 or special meeting of the corporation. If at any meeting the  
21 right of a person to vote is challenged, the presiding officer  
22 shall require the [books or records] membership register to be  
23 produced as evidence of the right of the person challenged to  
24 vote, and all persons who appear by the [books or records]  
25 membership register to be members entitled to vote may vote. See  
26 section 6145 (relating to applicability of certain safeguards to  
27 foreign corporations).

28 § 5763. Determination of members of record.

29 (a) Fixing record date.--Unless otherwise restricted in the  
30 bylaws, the board of directors of a nonprofit corporation may

1 fix a time prior to the date of any meeting of members as a  
2 record date for the determination of the members entitled to  
3 notice of, or to vote at, the meeting, which time, except in the  
4 case of an adjourned meeting, shall not be more than 90 days  
5 prior to the date of the meeting of members. Only members of  
6 record on the date fixed shall be so entitled notwithstanding  
7 any increase or other change in membership on the books of the  
8 corporation after any record date fixed as provided in this  
9 subsection. Unless otherwise provided in the bylaws, the board  
10 of directors may similarly fix a record date for the  
11 determination of members of record for any other purpose. A  
12 record date may not precede the date on which the board acts to  
13 fix that record date. The members of record shall be determined  
14 as of the close of business on the record date unless the board  
15 fixes a different time of day for that determination. When a  
16 determination of members of record has been made as provided in  
17 this section for purposes of a meeting, the determination shall  
18 apply to any adjournment thereof unless otherwise restricted in  
19 the bylaws or unless the board fixes a new record date for the  
20 adjourned meeting.

21 (b) Determination when no record date fixed.--Unless  
22 otherwise provided in the bylaws, if a record date is not fixed:

23 (1) The [record date for determining members entitled to  
24 notice of or to vote at a meeting of members shall be at the]  
25 close of business on the day next preceding the day on which  
26 notice is given or, if notice is waived, at the close of  
27 business on the day immediately preceding the day on which  
28 the meeting is held[.] shall be the record date for  
29 determining members entitled to notice of or to vote at a  
30 meeting of members.



1           (2) The close of business on the day on which the first  
2 consent or dissent, request or petition is filed in record  
3 form with the secretary of the corporation shall be the  
4 record date for determining members entitled to:

5           (i) express consent or dissent to corporate action  
6 [in writing] without a meeting, when prior action by the  
7 board of directors or other body is not necessary;

8           (ii) call a special meeting of the members; or

9           (iii) propose an amendment of the articles. [;  
10 shall be the close of business on the day on which the first  
11 written consent or dissent, request for a special meeting or  
12 petition proposing an amendment of the articles is filed with  
13 the secretary of the corporation.]

14           (3) The record date for determining members for any  
15 other purpose shall be at the close of business on the day on  
16 which the board of directors or other body adopts the  
17 resolution relating thereto.

18           Section 89. Section 5766(a) of Title 15 is amended and the  
19 section is amended by adding subsections to read:

20 § 5766. Consent of members in lieu of meeting.

21           (a) Unanimous consent.--Unless otherwise restricted in the  
22 bylaws, any action required or permitted to be taken at a  
23 meeting of the members or of a class of members of a nonprofit  
24 corporation may be taken without a meeting if a consent or  
25 consents to the action in record form are signed, before, on or  
26 after the effective [date] time of the action by all of the  
27 members who would be entitled to vote at a meeting for that  
28 purpose. The consent or consents must be filed with the minutes  
29 of the proceedings of the members.

30           \* \* \*

1       (d) Escrowing of consents.--A consent may provide, or a  
2 person signing a consent, whether or not then a member, may  
3 instruct in record form, that the consent will be effective at a  
4 future time, including a time determined upon the happening of  
5 an event. In the case of a consent signed by a person not a  
6 member at the time of signing, the consent is effective at the  
7 stated effective time if the person who signed the consent is a  
8 member at the effective time and did not revoke the consent in  
9 record form prior to the effective time. A consent is effective  
10 at the stated effective time, even if one or more signers are no  
11 longer members at the effective time if consents by members  
12 entitled to cast the required number of votes have not been  
13 revoked before the effective time.

14       (e) Revocation of consent.--Unless otherwise provided in a  
15 consent, a signer of the consent may revoke the signer's consent  
16 in record form until it becomes effective.

17       Section 90. Section 5781(a)(1)(i), (b) and (c) of Title 15  
18 are amended to read:

19 § 5781. Derivative action.

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

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

28           (i) if a special litigation committee is not  
29 appointed under section 5783 (relating to special  
30 litigation committee), [the corporation does not bring

1 the action within a reasonable time; or] the board  
2 determines that:

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

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

10 \* \* \*

11 (b) Prior demand excused.--

12 (1) A demand under subsection (a) (1) is excused only if  
13 the [member] plaintiff makes a specific showing that  
14 immediate and irreparable harm to the nonprofit corporation  
15 would otherwise result.

16 (2) If demand is excused under paragraph (1), demand  
17 shall be made promptly after commencement of the action.

18 (c) Contents of demand.--A demand under this section must be  
19 in record form and give notice with reasonable specificity of:

20 (1) the [essential] material facts relied upon to  
21 support each of the claims made in the demand[.] against each  
22 proposed defendant; and

23 (2) in the case of a derivative action commenced by a  
24 member, the basis on which the person making the demand has  
25 standing under section 5782.

26 \* \* \*

27 Section 91. Section 5782(a) and (d) of Title 15 are amended  
28 and the section is amended by adding a subsection to read:

29 § 5782. Eligible member plaintiffs and security for costs.

30 (a) General rule.--Except as provided in subsection (b), in

1 any action or proceeding brought [to enforce a secondary right  
2 on the part of] by one or more members of a nonprofit  
3 corporation [against any present or former officer, director or  
4 member of an other body of the corporation because the  
5 corporation refuses to enforce rights that may properly be  
6 asserted by it] to enforce rights that the plaintiff claims  
7 could be, but have not been, asserted by the corporation, each  
8 plaintiff [must aver and it must be made to appear that each  
9 plaintiff] has standing to commence and maintain the derivative  
10 action if the plaintiff:

11       (1) was a member of the corporation at the time of the  
12 transaction or conduct of which [he] the plaintiff  
13 complains[.]; and

14       (2) continues to be a member until the time of judgment,  
15 unless the failure to do so is the result of corporate action  
16 that:

17           (i) was done merely to eliminate derivative claims;

18       or

19           (ii) has the effect of a reorganization that does  
20 not affect the plaintiff's ownership of the enterprise.

21       \* \* \*

22       (d) Failure to maintain ownership.--If a plaintiff loses the  
23 right to maintain a derivative action under subsection (a)(2),  
24 the court may entertain a motion to substitute the corporation  
25 as the named plaintiff.

26       [(d)] (e) Cross reference.--See section 6146 (relating to  
27 provisions applicable to all foreign corporations).

28       Section 92. Section 5783(a), (b)(1), (e) introductory  
29 paragraph, (3) and (6) and (f) of Title 15 are amended and the  
30 section is amended by adding subsections to read:

1 § 5783. Special litigation committee.

2 (a) General rule.--If a nonprofit corporation or the board  
3 of directors receives a demand to bring an action to enforce a  
4 right of the corporation, or if a derivative action is commenced  
5 before demand has been made on the corporation or the board, the  
6 board may appoint a special litigation committee to investigate  
7 the claims asserted in the demand or action and to determine on  
8 behalf of the corporation or recommend to the board whether  
9 pursuing any of the claims asserted is in the best interests of  
10 the corporation. The corporation [shall send] must deliver a  
11 notice in record form to the [plaintiff] person making the  
12 demand, or to the plaintiff if a derivative action has been  
13 commenced, promptly after the appointment of a committee under  
14 this section notifying the person making the demand or the  
15 plaintiff that a committee has been appointed and identifying by  
16 name the members of the committee.

17 (b) Discovery stay.--If the board of directors appoints a  
18 special litigation committee and an action is commenced before a  
19 determination has been made under subsection (e):

20 (1) On motion by the nonprofit corporation, or the  
21 committee made in the name of the [nonprofit] corporation,  
22 the court shall stay discovery for the time reasonably  
23 necessary to permit the committee to complete its  
24 investigation, except for good cause shown.

25 \* \* \*

26 (c.1) Committee members who are not directors or members of  
27 an other body.--A member of a special litigation committee who  
28 is not a director or member of an other body, when acting as a  
29 member of the committee, is subject to the liabilities imposed,  
30 and entitled to the rights and immunities conferred, by

1 Subchapters B (relating to fiduciary duty) and D (relating to  
2 indemnification) and other provisions of law upon directors of a  
3 corporation.

4 \* \* \*

5 (e) Determination.--After appropriate investigation by a  
6 special litigation committee, the committee [or the] may  
7 determine, or the committee may recommend to the board of  
8 directors [may] that the board determine that it is in the best  
9 interests of the nonprofit corporation that:

10 \* \* \*

11 (3) some or all of the claims asserted in the demand be  
12 settled on terms [approved] determined or recommended by the  
13 committee;

14 \* \* \*

15 (6) some or all the claims asserted in an action already  
16 commenced be settled on terms [approved] determined or  
17 recommended by the committee; or

18 \* \* \*

19 (f) Court review and action.--If a special litigation  
20 committee is appointed and a derivative action is commenced  
21 before or after the committee makes a determination [is made]  
22 under subsection (e) or the board of directors determines under  
23 subsection (e) to accept the recommendation of the committee:

24 (1) The nonprofit corporation or the committee shall  
25 file with the court after a determination is made under  
26 subsection (e) a statement of the determination and a report  
27 of the committee supporting the determination. The  
28 corporation or the committee shall serve each party with a  
29 copy of the determination and report. If the corporation or  
30 the committee moves to file the report under seal, the report

1 shall be served on the parties subject to an appropriate  
2 stipulation agreed to by the parties or a protective order  
3 issued by the court.

4 (2) The corporation or the committee shall file with the  
5 court a motion, pleading or notice consistent with the  
6 determination under subsection (e).

7 (3) If the determination is one described in subsection  
8 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall  
9 determine whether the members of the committee met the  
10 qualifications required under subsection (c) (1) and (2) and  
11 whether the committee conducted its investigation and made  
12 its determination or recommendation in good faith,  
13 independently and with reasonable care. The plaintiff has the  
14 burden of proving that the committee did not meet those  
15 qualifications or act in the required manner. If the court  
16 finds that the members of the committee met the  
17 qualifications required under subsection (c) (1) and (2) and  
18 that the committee acted in good faith, independently and  
19 with reasonable care, the court shall enforce the  
20 determination of the committee or the board. Otherwise, the  
21 court shall:

22 (i) dissolve any stay of discovery entered under  
23 subsection (b);

24 (ii) allow the action to continue under the control  
25 of the plaintiff; and

26 (iii) permit the defendants to file preliminary  
27 objections, other appropriate pleadings and motions.

28 \* \* \*

29 (h) Interest of a defendant.--The fact that a person is  
30 named as a defendant does not make the person interested in the

1 claims asserted in a demand or action for purposes of subsection  
2 (c)(1) if the claims against the person:

3 (1) are based only on an allegation that the person  
4 approved of or acquiesced in the transaction or conduct that  
5 is the subject of the claims; and

6 (2) do not otherwise allege with particularity facts  
7 that, if true, raise a significant prospect that the person  
8 would be adjudged liable.

9 Section 93. Section 5911(b) of Title 15 is amended and the  
10 section is amended by adding a subsection to read:

11 § 5911. Amendment of articles authorized.

12 \* \* \*

13 (b) Exceptions.--An amendment adopted under this section  
14 shall not amend articles in such a way that as so amended they  
15 would not be authorized by this subpart as original articles of  
16 incorporation except that:

17 (1) Restated articles shall, subject to section 109  
18 (relating to name of commercial registered office provider in  
19 lieu of registered address), state the address of the current  
20 instead of the initial registered office of the corporation  
21 in this Commonwealth and need not state the names and  
22 addresses of the incorporators.

23 (2) The corporation shall not be required to revise any  
24 other provision of its articles if the provision is valid and  
25 operative immediately prior to the [filing of the amendment  
26 in] delivery of the amendment to the department for filing.

27 (c) Amendments pursuant to other provisions.--Amendments to  
28 the articles authorized pursuant to Chapter 2 (relating to  
29 entities generally) or Chapter 3 (relating to entity  
30 transactions) or set forth in statements or certificates



1 permitted or required to be delivered to the department for  
2 filing by sections 108 (relating to change in location or status  
3 of registered office provided by agent) and 138 (relating to  
4 statement of correction) or by this subpart need not be proposed  
5 or adopted in the manner provided in this subchapter, except to  
6 the extent that the provisions of this subchapter have been  
7 incorporated into Chapter 2 or Chapter 3 or into the provisions  
8 authorizing such statements or certificates.

9 Section 94. Section 5912(b) and (c) (1) of Title 15 are  
10 amended to read:

11 § 5912. Proposal of amendments.

12 \* \* \*

13 (b) Submission to members.--Except where the approval of the  
14 members is unnecessary under this subchapter, the board of  
15 directors or other body shall direct that the proposed amendment  
16 be submitted to a vote of the members entitled to vote thereon  
17 [at a regular or special meeting of the members]. An amendment  
18 proposed pursuant to subsection (a) (2) shall be submitted to a  
19 vote either at the next annual meeting held not earlier than 120  
20 days after the amendment is proposed or at a special meeting of  
21 the members called for that purpose by the members.

22 (c) Form of amendment.--The resolution or petition shall  
23 contain the language of the proposed amendment of the articles:

24 (1) by setting forth the existing text of the articles  
25 or the provision thereof that is proposed to be amended, with  
26 brackets around language that is to be deleted and  
27 underscoring under language that is to be added or otherwise  
28 clearly showing the changes to be made; or

29 \* \* \*

30 Section 95. Section 5979(b) of Title 15 is amended and the

1 section is amended by adding a subsection to read:

2 § 5979. Survival of remedies and rights after dissolution.

3 \* \* \*

4 (b) Rights and assets.--The dissolution of a nonprofit  
5 corporation shall not affect the limited liability of a member  
6 of the corporation theretofore existing with respect to  
7 transactions occurring or acts or omissions done or omitted in  
8 the name of or by the corporation except that, subject to  
9 subsection (d) and sections 5992(d) (relating to [claims barred]  
10 notice to claimants) and 5993(b) (relating to [claims barred]  
11 acceptance or rejection of matured claims), if applicable, each  
12 member shall be liable for his pro rata portion of the unpaid  
13 liabilities of the corporation up to the amount of the net  
14 assets of the corporation distributed to the member in  
15 connection with the dissolution. Should any property right of a  
16 corporation be discovered, or the corporation be named as a  
17 defendant in an action or proceeding, at any time after the  
18 dissolution of the corporation, the surviving member or members  
19 of the board of directors or other body that wound up the  
20 affairs of the corporation, or a receiver appointed by the  
21 court, shall have authority to enforce the property right and to  
22 collect and divide the assets so discovered among the persons  
23 entitled thereto and to prosecute or defend actions or  
24 proceedings in the corporate name of the corporation. Any assets  
25 so collected shall be distributed and disposed of in accordance  
26 with the applicable order of court, if any, and otherwise in  
27 accordance with this subchapter.

28 \* \* \*

29 (f) Late-filed action or proceeding.--The following apply to  
30 an action or proceeding commenced against a dissolved

1 corporation after the expiration of the period specified in  
2 subsection (a) (2):

3 (1) Any judgment against a dissolved corporation in the  
4 action or proceeding shall be void.

5 (2) The dissolved corporation may, but need not, appear  
6 and raise as a defense the expiration of the period specified  
7 in subsection (a) (2) and any other reasonably related matters  
8 in response to the action or proceeding.

9 (3) Any person who was a director, member of an other  
10 body, officer or member of the dissolved corporation when the  
11 dissolution became effective or any governing person of any  
12 successor entity acting pursuant to Subchapter H (relating to  
13 postdissolution provision for liabilities), and any  
14 successor-in-interest to any of those persons, may, but need  
15 not, act on behalf of the dissolved corporation in taking the  
16 actions described in paragraph (2), and shall not thereby be  
17 deemed to be deprived of the operation of subsections (c) and  
18 (d) or of section 5978(b) (relating to winding up of  
19 corporation after dissolution) or otherwise be responsible  
20 for any obligations of the dissolved corporation.

21 Section 96. Section 7331 heading and (a) of Title 15 are  
22 amended to read:

23 § 7331. Merger, [**consolidation,**] division or sale of assets.

24 (a) Merger[**, consolidation**] or division.--Any two or more  
25 electric cooperative corporations may merge[**, consolidate**] or  
26 divide but only if the surviving or resulting corporation is a  
27 corporation existing under this chapter. Every merger[**,**  
28 **consolidation**] or division shall be proposed by the adoption by  
29 the board of directors of a resolution approving the plan of  
30 merger[**, consolidation**] or division and directing that the plan

1 be submitted to a vote of the members entitled to vote thereon  
2 at a regular or special meeting of the members.

3 \* \* \*

4 Section 97. Section 8411(e) of Title 15 is amended and the  
5 section is amended by adding a subsection to read:

6 § 8411. Short title and application of chapter.

7 \* \* \*

8 (e) References to withdrawal.--A reference in a partnership  
9 agreement to the withdrawal of a partner shall be deemed to be a  
10 reference to the dissociation of the partner.

11 [~~(e)~~] (f) Cross reference.--See section 8415(c) (5) (relating  
12 to contents of partnership agreement).

13 Section 98. Section 8441(a) of Title 15 is amended to read:

14 § 8441. Partner's rights and duties.

15 (a) Distributions [~~and losses~~].--Each partner is entitled to  
16 share in distributions as provided in section 8445 (relating to  
17 sharing of and right to distribution before dissolution).

18 \* \* \*

19 Section 99. Sections 8446(k) and 8611(f) of Title 15 are  
20 amended and the sections are amended by adding subsections to  
21 read:

22 § 8446. Rights to information.

23 \* \* \*

24 (k) Enforcement of right to information.--If the  
25 partnership, or a partner or agent thereof, refuses to permit an  
26 inspection sought by a partner or person dissociated as a  
27 partner or attorney or other agent acting for the partner or  
28 person dissociated as a partner pursuant to subsection (b) or  
29 (e), or does not reply to the demand made under either of those  
30 subsections within ten days after the demand has been received,

1 the partner or person dissociated as a partner may file an  
2 action in the court for an order to compel the inspection. The  
3 court is vested with exclusive jurisdiction to determine whether  
4 or not the person seeking inspection is entitled to the  
5 inspection sought. The court may summarily order the partnership  
6 to permit the partner or person dissociated as a partner to  
7 inspect the information and to make copies or extracts  
8 therefrom.

9 [(k)] (l) Cross reference.--See section 8415 (relating to  
10 contents of partnership agreement).

11 § 8611. Short title and application of chapter.

12 \* \* \*

13 (f) References to withdrawal.--A reference in the organic  
14 rules of a limited partnership to the withdrawal of a general  
15 partner or limited partner shall be deemed to be a reference to  
16 the dissociation of the partner.

17 [(f)] (g) Cross reference.--See section 8615 (relating to  
18 contents of partnership agreement).

19 Section 100. Section 8623(a)(3) of Title 15 is amended to  
20 read:

21 § 8623. Signing of filed documents.

22 (a) Required signatures.--Except as provided in this title,  
23 a document delivered to the department for filing under this  
24 title relating to a limited partnership must be signed as  
25 follows:

26 \* \* \*

27 (3) An amendment to the certificate of limited  
28 partnership designating as general partner a person admitted  
29 under section 8681(a)(3)(ii) (relating to events causing  
30 dissolution) following the dissociation of a limited

1 partnership's last general partner must be signed by [that  
2 person] the person admitted as a general partner.

3 \* \* \*

4 Section 101. Section 8625(b) and (d), 8634(i) and 8647(k) of  
5 Title 15 are amended and the sections are amended by adding  
6 subsections to read:

7 § 8625. Registered office.

8 \* \* \*

9 (b) Change of registered office.--After formation, a change  
10 in the location of the registered office may be effected at any  
11 time by the limited partnership. Before the change becomes  
12 effective, the limited partnership shall amend its certificate  
13 of limited partnership under the provisions of this chapter to  
14 reflect the change [in location], include the change in an  
15 annual report under section 146 (relating to annual report) or  
16 [shall] deliver to the department for filing a certificate of  
17 change of registered office setting forth:

18 (1) The name of the limited partnership.

19 (2) The address, including street and number, if any, of  
20 its then registered office.

21 (3) The address, including street and number, if any, to  
22 which the registered office is to be changed.

23 \* \* \*

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

29 [(d)] (e) Cross references.--See:

30 Section 108 (relating to change in location or status of

1 registered office provided by agent).

2 Section 134 (relating to docketing statement).

3 Section 135 (relating to requirements to be met by filed  
4 documents).

5 Section 136(c) (relating to processing of documents by  
6 Department of State).

7 Section 8615(c)(6) (relating to contents of partnership  
8 agreement).

9 Section 8623 (relating to signing of filed documents).

10 § 8634. Limited partner rights to information.

11 \* \* \*

12 (i) Enforcement of right to information.--If the limited  
13 partnership, or a general partner or agent thereof, refuses to  
14 permit an inspection sought by a limited partner or person  
15 dissociated as a limited partner or attorney or other agent  
16 acting for the limited partner or person dissociated as a  
17 limited partner pursuant to subsection (a), (b) or (c), or does  
18 not reply to the demand made under any of those subsections  
19 within ten days after the demand has been received, the limited  
20 partner may file an action in the court for an order to compel  
21 the inspection. The court is vested with exclusive jurisdiction  
22 to determine whether or not the person seeking inspection is  
23 entitled to the inspection sought. The court may summarily order  
24 the limited partnership to permit the limited partner to inspect  
25 the information and to make copies or extracts therefrom.

26 [(i)] (j) Cross reference.--See section 8615 (relating to  
27 contents of partnership agreement).

28 § 8647. General partner rights to information.

29 \* \* \*

30 (k) Enforcement of right to information.--If the limited

1 partnership, or a general partner or agent thereof, refuses to  
2 permit an inspection sought by a general partner or person  
3 dissociated as a general partner or attorney or other agent  
4 acting for the general partner or person dissociated as a  
5 general partner pursuant to subsection (a), (b) or (e), or does  
6 not reply to the demand made under any of those subsections  
7 within ten days after the demand has been received, the general  
8 partner may file an action in the court for an order to compel  
9 the inspection. The court is vested with exclusive jurisdiction  
10 to determine whether or not the person seeking inspection is  
11 entitled to the inspection sought. The court may summarily order  
12 the limited partnership to permit the general partner to inspect  
13 the information and to make copies or extracts therefrom.

14 [(k)] (l) Cross reference.--See section 8615 (relating to  
15 contents of partnership agreement).

16 Section 102. Sections 8692(a)(1)(i), (b)(1) and (c) and 8693  
17 of Title 15 are amended to read:

18 § 8692. Derivative action.

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

23 (1) the [partner] plaintiff first makes a demand on the  
24 limited partnership or the general partners requesting that  
25 [they cause] the partnership [to] bring an action to enforce  
26 the right, and:

27 (i) if a special litigation committee is not  
28 appointed under section 8694 (relating to special  
29 litigation committee), the [partnership does not bring  
30 the action within a reasonable time; or] general partners



1 determine 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 \* \* \*

10 (b) Prior demand excused.--

11 (1) A demand under subsection (a) (1) is excused only if  
12 the [partner] plaintiff makes a specific showing that  
13 immediate and irreparable harm to the limited partnership  
14 would otherwise result.

15 \* \* \*

16 (c) Contents of demand.--A demand under this section must be  
17 in record form and give notice with reasonable specificity of:

18 (1) the [essential] material facts relied upon to  
19 support each of the claims made in the demand[.] against each  
20 proposed defendant; and

21 (2) in the case of a derivative action commenced by a  
22 partner, the basis on which the person making the demand has  
23 standing under section 8693.

24 \* \* \*

25 § 8693. [Security] Eligible partner plaintiffs and security for  
26 costs.

27 (a) General rule.--Except as provided in subsection (b), in  
28 any action or proceeding brought by one or more partners of a  
29 limited partnership to enforce rights that the plaintiff claims  
30 could be, but have not been, asserted by the partnership, each

1 plaintiff has standing to commence and maintain a derivative  
2 action only if the plaintiff:

3 (1) was a partner at the time of the transaction or  
4 conduct of which the plaintiff complains, or that the  
5 plaintiff's interest as a partner devolved upon the plaintiff  
6 by operation of law from a person who was a partner at that  
7 time; and

8 (2) continues to be a partner until the time of  
9 judgment, unless the failure to do so is the result of  
10 partnership action that:

11 (i) was done merely to eliminate derivative claims;

12 or

13 (ii) has the effect of a reorganization that does  
14 not affect the plaintiff's ownership of the business  
15 enterprise.

16 (b) Exception.--Any partner that, except for the provisions  
17 of subsection (a), would be entitled to maintain the action or  
18 proceeding and that does not meet such requirements may,  
19 nevertheless in the discretion of the court, be allowed to  
20 maintain the action or proceeding on preliminary showing to the  
21 court, by application and upon such verified statements and  
22 depositions as may be required by the court, that there is a  
23 strong prima facie case in favor of the claim asserted on behalf  
24 of the limited partnership and that without the action serious  
25 injustice will result.

26 (c) Security for costs.--In any action or proceeding  
27 instituted or maintained by partners holding transferable  
28 interests entitled to receive less than 5% of any distribution  
29 by a limited partnership, unless the transferable interests held  
30 by the partners have an aggregate fair market value in excess of

1 \$200,000, the partnership in whose right the action or  
2 proceeding is brought shall be entitled at any stage of the  
3 proceedings to require the plaintiffs to give security for the  
4 reasonable expenses, including attorneys' fees, that may be  
5 incurred by the partnership in connection therewith or for which  
6 it may become liable pursuant to section 8648(b) (relating to  
7 reimbursement, indemnification, advancement and insurance) to  
8 which security the partnership shall have recourse in such  
9 amount as the court determines upon the termination of the  
10 action or proceeding. The amount of security may, from time to  
11 time, be increased or decreased in the discretion of the court  
12 upon showing that the security provided has or is likely to  
13 become inadequate or excessive. The security may be denied or  
14 limited by the court if the court finds after an evidentiary  
15 hearing that undue hardship on plaintiffs and serious injustice  
16 would result.

17 (d) Failure to maintain ownership.--If a plaintiff loses the  
18 right to maintain a derivative action under subsection (a)(2),  
19 the court may entertain a motion by the limited partnership to  
20 substitute the partnership as the named plaintiff.

21 Section 103. Section 8694(a), (b)(1), (e)(3) and (6), (f)  
22 and (h) of Title 15 are amended and the section is amended by  
23 adding subsections to read:

24 § 8694. Special litigation committee.

25 (a) General rule.--If a limited partnership or the general  
26 partners receive a demand to bring an action to enforce a right  
27 of the partnership, or if a derivative action is commenced  
28 before demand has been made on the partnership or the general  
29 partners, the general partners may appoint a special litigation  
30 committee to investigate the claims asserted in the demand or

1 action and to determine on behalf of the limited partnership or  
2 recommend to the general partners whether pursuing any of the  
3 claims asserted is in the best interests of the partnership. The  
4 partnership [shall send] must deliver a notice in record form to  
5 the person making the demand, or to the plaintiff if a  
6 derivative action has been commenced, promptly after the  
7 appointment of the committee under this section notifying the  
8 person making the demand or the plaintiff that a committee has  
9 been appointed and identifying by name the members of the  
10 committee.

11 (b) Discovery stay.--If the general partners appoint 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 limited partnership, or the  
15 committee made in the name of the partnership, the court  
16 shall stay discovery for the time reasonably necessary to  
17 permit the committee to make its investigation, except for  
18 good cause shown.

19 \* \* \*

20 (c.1) Committee members who are not general partners.--A  
21 member of a special litigation committee who is not a general  
22 partner, when acting as a member of the committee, is subject to  
23 the liabilities imposed, and entitled to the rights and  
24 immunities conferred, by sections 8648 (relating to  
25 reimbursement, indemnification, advancement and insurance) and  
26 8649 (relating to standards of conduct for general partners).

27 \* \* \*

28 (e) Determination.--After appropriate investigation by a  
29 special litigation committee, the committee [or the general  
30 partners] may determine, or the committee may recommend to the

1 general partners that the general partners determine, that it is  
2 in the best interests of the limited partnership that:

3 \* \* \*

4 (3) some or all of the claims asserted in the demand be  
5 settled on terms [approved] determined or recommended by the  
6 committee;

7 \* \* \*

8 (6) some or all of the claims asserted in an action  
9 already commenced be settled on terms [approved] determined  
10 or recommended by the committee; or

11 \* \* \*

12 (f) Court review and action.--If a special litigation  
13 committee is appointed and [an] a derivative action is commenced  
14 before or after either the committee makes a determination [is  
15 made] under subsection (e) or the general partners determine  
16 under that subsection to accept the recommendation of the  
17 committee:

18 (1) The limited partnership or the committee shall file  
19 with the court after a determination is made under subsection  
20 (e) a statement of the determination and a report of the  
21 committee supporting the determination. The partnership or  
22 the committee shall serve each party with a copy of the  
23 determination and report. If the partnership or the committee  
24 moves to file the report under seal, the report shall be  
25 served on the parties subject to an appropriate stipulation  
26 agreed to by the parties or a protective order issued by the  
27 court.

28 (2) The partnership or the committee shall file with the  
29 court a motion, pleading or notice consistent with the  
30 determination under subsection (e).

1 (3) If the determination is one described in subsection  
2 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall  
3 determine whether the members of the committee met the  
4 qualifications required under subsection (c) (1) and (2) and  
5 whether the committee conducted its investigation and made  
6 its determination or recommendation in good faith,  
7 independently and with reasonable care. The plaintiff has the  
8 burden of proving that the committee did not meet those  
9 qualifications or act in the required manner. If the court  
10 finds that the members of the committee met the  
11 qualifications required under subsection (c) (1) and (2) and  
12 that the committee acted in good faith, independently and  
13 with reasonable care, the court shall enforce the  
14 determination of the committee or the general partners.  
15 Otherwise, the court shall:

16 (i) dissolve any stay of discovery entered under  
17 subsection (b);

18 (ii) allow the action to continue under the control  
19 of the plaintiff; and

20 (iii) permit the defendants to file preliminary  
21 objections and other appropriate motions and pleadings.

22 \* \* \*

23 (h) Interest of a defendant.--The fact that a person is  
24 named as a defendant does not make the person interested in the  
25 claims asserted in a demand or action for purposes of subsection  
26 (c) (1) if the claims against the person:

27 (1) are based only on an allegation that the person  
28 approved of or acquiesced in the transaction or conduct that  
29 is the subject of the claims; and

30 (2) do not otherwise allege with particularity facts

1 that, if true, raise a significant prospect that the person  
2 would be adjudged liable.

3 [(h)] (i) Cross reference.--See section 8615(c) (18)  
4 (relating to contents of partnership agreement).

5 Section 104. Section 8821(a) and (g) of Title 15 are amended  
6 to read:

7 § 8821. Formation of limited liability company and certificate  
8 of organization.

9 (a) Formation.--One or more [persons] associations or  
10 individuals 18 years of age or older may act as organizers to  
11 form a limited liability company by delivering to the department  
12 for filing a certificate of organization.

13 \* \* \*

14 (g) Cross references.--See:

15 Section 134 (relating to docketing statement).

16 Section 135 (relating to requirements to be met by filed  
17 documents).

18 Section 136(c) (relating to processing of documents by  
19 Department of State).

20 Section 8818(d) (1) (relating to characteristics of  
21 limited liability company).

22 Section 8823 (relating to signing of filed documents).

23 Section 8893(a) (relating to benefit company status).

24 Section 105. Sections 8825(b) and (d) and 8850(i) of Title  
25 15 are amended and the sections are amended by adding  
26 subsections to read:

27 § 8825. Registered office.

28 \* \* \*

29 (b) Change of registered office.--After organization, a  
30 change in the location of the registered office may be effected

1 at any time by the company. Before the change becomes effective,  
2 the company shall amend its certificate of organization under  
3 the provisions of this chapter to reflect the change [in  
4 location], include the change in an annual report under section  
5 146 (relating to annual report) or [shall] file with the  
6 department a certificate of change of registered office setting  
7 forth:

8 (1) The name of the company.

9 (2) The address, including street and number, if any, of  
10 its then-registered office.

11 (3) The address, including street and number, if any, to  
12 which the registered office is to be changed.

13 \* \* \*

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

18 [(d)] (e) Cross references.--See:

19 Section 108 (relating to change in location or status of  
20 registered office provided by agent).

21 Section 134 (relating to docketing statement).

22 Section 135 (relating to requirements to be met by filed  
23 documents).

24 Section 136(c) (relating to processing of documents by  
25 Department of State).

26 Section 8815(c) (7) (relating to contents of operating  
27 agreement).

28 Section 8823 (relating to signing of filed documents).

29 § 8850. Rights to information.

30 \* \* \*



1 (i) Enforcement of right to information.--If a limited  
2 liability company, or a manager, member or agent thereof,  
3 refuses to permit an inspection sought by a person or attorney  
4 or other agent acting for the person pursuant to this section,  
5 or does not reply to the demand made under this section within  
6 ten days after the demand has been received, the person seeking  
7 inspection may file an action in the court for an order to  
8 compel the inspection. The court is vested with exclusive  
9 jurisdiction to determine whether or not the person seeking  
10 inspection is entitled to the inspection sought. The court may  
11 summarily order the company to permit the person to inspect the  
12 information and to make copies or extracts therefrom.

13 [(i)] (j) Cross reference.--See section 8815 (relating to  
14 contents of operating agreement).

15 Section 106. Sections 8882(a)(1)(i), (b)(1) and (c) and 8883  
16 of Title 15 are amended to read:

17 § 8882. Derivative action.

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

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

27 (i) if a special litigation committee is not  
28 appointed under section 8884 (relating to special  
29 litigation committee), [the company does not bring the  
30 action within a reasonable time; or] the members in a

1 member-managed company or managers of a manager-managed  
2 company determine that:

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

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

9 \* \* \*

10 (b) Prior demand excused.--

11 (1) A demand under subsection (a) (1) is excused only if  
12 the plaintiff makes a specific showing that immediate and  
13 irreparable harm to the limited liability company would  
14 otherwise result.

15 \* \* \*

16 (c) Contents of demand.--A demand under this section must be  
17 in record form and give notice with reasonable specificity of:

18 (1) the [essential] material facts relied upon to  
19 support each of the claims made in the demand[.] against each  
20 proposed defendant; and

21 (2) in the case of a derivative action commenced by a  
22 member or manager, the basis on which the person making the  
23 demand has standing under section 8883.

24 \* \* \*

25 § 8883. [Security] Eligible plaintiffs and security for costs.

26 (a) General rule.--Except as provided in subsection (b), in  
27 any action or proceeding brought by one or more members or  
28 managers of a limited liability company to enforce rights that  
29 the plaintiff claims could be, but have not been, asserted by  
30 the company, each plaintiff has standing to commence and

1 maintain the derivative action if the plaintiff:

2 (1) was a member or manager of the company at the time  
3 of the transaction or conduct of which the plaintiff  
4 complains, or that the plaintiff's status as a member or  
5 manager devolved upon the plaintiff by operation of law from  
6 a person who was a member or manager at that time; and

7 (2) continues to be a member or manager until the time  
8 of judgment, unless the failure to do so is the result of  
9 company action that:

10 (i) was done merely to eliminate derivative claims;

11 or

12 (ii) has the effect of a reorganization that does  
13 not affect the plaintiff's ownership of the business  
14 enterprise.

15 (b) Exception.--Any member or manager that, except for the  
16 provisions of subsection (a), would be entitled to maintain the  
17 action or proceeding and who does not meet such requirements  
18 may, nevertheless in the discretion of the court, be allowed to  
19 maintain the action or proceeding on preliminary showing to the  
20 court, by application and upon such verified statements and  
21 depositions as may be required by the court, that there is a  
22 strong prima facie case in favor of the claim asserted on behalf  
23 of the company and that without the action serious injustice  
24 will result.

25 (c) Security for costs.--In any action or proceeding  
26 instituted or maintained by members holding transferable  
27 interests entitled to receive less than 5% of any distribution  
28 by a limited liability company, unless the transferable  
29 interests held by the members have an aggregate fair market  
30 value in excess of \$200,000, the company in whose right the

1 action or proceeding is brought shall be entitled at any stage  
2 of the proceedings to require the plaintiffs to give security  
3 for the reasonable expenses, including attorney fees, that may  
4 be incurred by the company in connection therewith or for which  
5 it may become liable pursuant to section 8848(b) (relating to  
6 reimbursement, indemnification, advancement and insurance) to  
7 which security the company shall have recourse in such amount as  
8 the court determines upon the termination of the action or  
9 proceeding. The amount of security may, from time to time, be  
10 increased or decreased in the discretion of the court upon  
11 showing that the security provided has or may become inadequate  
12 or excessive. The security may be denied or limited by the court  
13 if the court finds after an evidentiary hearing that undue  
14 hardship on plaintiffs and serious injustice would result.

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 limited liability  
18 company to substitute the limited liability company as the named  
19 plaintiff.

20 Section 107. Sections 8884(a), (b)(1), (e)(3) and (6), (f)  
21 and (h), 8895(a)(3), (b) and (c) and 8896(d) of Title 15 are  
22 amended and the sections are amended by adding subsections to  
23 read:

24 § 8884. Special litigation committee.

25 (a) General rule.--If a limited liability company or its  
26 members or managers receive a demand to bring an action to  
27 enforce a right of the company, or if a derivative action is  
28 commenced before demand has been made on the company or its  
29 members or managers, the members in a member-managed limited  
30 liability company, or the managers in a manager-managed limited

1 liability company, may appoint a special litigation committee to  
2 investigate the claims asserted in the demand or action and to  
3 determine on behalf of the company or recommend to the managers  
4 or members whether pursuing any of the claims asserted is in the  
5 best interests of the company. The company [shall send] must  
6 deliver a notice in record form to the person making the demand,  
7 or to the plaintiff if a derivative action has been commenced,  
8 promptly after the appointment of a committee under this section  
9 notifying the person making the demand or the plaintiff that a  
10 committee has been appointed and identifying by name the members  
11 of the committee. A committee may not be appointed under this  
12 section if:

13 (1) every member of the company is also a manager of the  
14 company; or

15 (2) the company is member-managed and every member is  
16 actively involved in the management of the company.

17 (b) Discovery stay.--If the members or managers appoint a  
18 special litigation committee and an action is commenced before a  
19 determination has been made under subsection (e):

20 (1) On motion by the limited liability company, or the  
21 committee made in the name of the [limited liability]  
22 company, the court shall stay discovery for the time  
23 reasonably necessary to permit the committee to make its  
24 investigation, except for good cause shown.

25 \* \* \*

26 (c.1) Committee members who are not managers.--A member of a  
27 special litigation committee who is not a manager, when acting  
28 as a member of the committee, is subject to the liabilities  
29 imposed, and entitled to the rights and immunities conferred, by  
30 sections 8848 (relating to reimbursement, indemnification,

1 advancement and insurance) and 8849.2 (relating to standards of  
2 conduct for managers).

3 \* \* \*

4 (e) Determination.--After appropriate investigation by a  
5 special litigation committee, the committee [or the] may  
6 determine, or the committee may recommend to the managers or  
7 members [may] that they determine, that it is in the best  
8 interests of the limited liability company that:

9 \* \* \*

10 (3) some or all of the claims asserted in the demand be  
11 settled on terms [approved] determined or recommended by the  
12 committee;

13 \* \* \*

14 (6) some or all of the claims asserted in an action  
15 already commenced be settled on terms [approved] determined  
16 or recommended by the committee; or

17 \* \* \*

18 (f) Court review and action.--If a special litigation  
19 committee is appointed and a derivative action is commenced  
20 either before or after either the committee makes a  
21 determination [is made] under subsection (e) or the members or  
22 managers determine under that subsection to accept the  
23 recommendation of the committee:

24 (1) The limited liability company or the committee shall  
25 file with the court after a determination is made under  
26 subsection (e) a statement of the determination and a report  
27 of the committee supporting the determination. The company or  
28 the committee shall serve each party with a copy of the  
29 determination and report. If the company or the committee  
30 moves to file the report under seal, the report shall be

1 served on the parties subject to an appropriate stipulation  
2 agreed to by the parties or a protective order issued by the  
3 court.

4 (2) The company or the committee shall file with the  
5 court a motion, pleading or notice consistent with the  
6 determination under subsection (e).

7 (3) If the determination is one described in subsection  
8 (e) (2), (3), (4), (5) (ii), (6) or (7), the court shall  
9 determine whether the members of the committee met the  
10 qualifications required under subsection (c) (1) and (2) and  
11 whether the committee conducted its investigation and made  
12 its determination or recommendation in good faith,  
13 independently and with reasonable care. The plaintiff has the  
14 burden of proving that the committee did not meet those  
15 qualifications or act in the required manner. If the court  
16 finds that the members of the committee met the  
17 qualifications required under subsection (c) (1) and (2) and  
18 that the committee acted in good faith, independently and  
19 with reasonable care, the court shall enforce the  
20 determination of the committee or the members or managers.  
21 Otherwise, the court shall:

22 (i) dissolve any stay of discovery entered under  
23 subsection (b);

24 (ii) allow the action to continue under the control  
25 of the plaintiff; and

26 (iii) permit the defendants to file preliminary  
27 objections and other appropriate motions and pleadings.

28 \* \* \*

29 (h) Interest of a defendant.--The fact that a person is  
30 named as a defendant does not make the person interested in the

1 claims asserted in a demand or action for purposes of subsection  
2 (c) (1) if the claims against the person:

3 (1) are based only on an allegation that the person  
4 approved of or acquiesced in the transaction or conduct that  
5 is the subject of the claims; and

6 (2) does not otherwise allege with particularity facts  
7 that, if true, raise a significant prospect that the person  
8 would be adjudged liable.

9 [(h)] (i) Cross reference.--See section 8815(c) (18)  
10 (relating to contents of operating agreement).

11 § 8895. Standard of conduct for members.

12 (a) Consideration of interests.--The members of a member-  
13 managed limited liability company that is a benefit company,  
14 when discharging their duties under this title or under the  
15 operating agreement:

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 company has  
22 stated in its certificate of organization its intention to  
23 give priority to certain interests related to its  
24 accomplishment of its general public benefit purpose or of a  
25 specific public benefit purpose identified in the  
26 certificate.

27 (b) Coordination with other provisions of law.--The  
28 consideration of [interests and factors] matters in the manner  
29 required under subsection (a) shall not constitute a violation  
30 of section 8849.1 (relating to standards of conduct for



1 members).

2 (c) Exoneration from personal liability.--Regardless of  
3 whether the operating agreement of a member-managed benefit  
4 company includes a provision eliminating or limiting the  
5 personal liability of a member:

6 (1) A member shall not be personally liable for monetary  
7 damages for any action taken as a member of [a member-managed  
8 limited liability] the benefit company in the course of  
9 performing the duties specified in subsection (a) unless the  
10 action constitutes self-dealing, willful misconduct or [a  
11 knowing violation of law] recklessness.

12 (2) A member shall not be personally liable for monetary  
13 damages for failure of the benefit company to pursue or  
14 create general public benefit or a specific public benefit.

15 \* \* \*

16 (e) Ownership of interest.--A member's ownership, directly  
17 or indirectly, of an interest in a benefit company does not  
18 alone create a conflict of interest on the part of the member  
19 with respect to the member's performance of the duties of a  
20 member under subsection (a), except to the extent the ownership  
21 would create a conflict of interest if the limited liability  
22 company were not a benefit company.

23 § 8896. Standard of conduct for managers and officers.

24 \* \* \*

25 (d) Exoneration from personal liability.--Regardless of  
26 whether the operating agreement of a manager-managed benefit  
27 company includes a provision eliminating or limiting the  
28 personal liability of a manager or officer:

29 (1) A manager or officer shall not be personally liable,  
30 as such, for monetary damages for any action taken as a

1 manager or officer in the course of performing the duties  
2 specified in subsection (a) or (b) unless the action  
3 constitutes self-dealing, willful misconduct or [a knowing  
4 violation of law] recklessness.

5 (2) A manager or officer shall not be personally liable  
6 for monetary damages for failure of the benefit company to  
7 pursue or create general public benefit or a specific public  
8 benefit.

9 \* \* \*

10 (f) Ownership of interest.--The ownership by a manager or  
11 officer, directly or indirectly, of an interest in a benefit  
12 company does not alone create a conflict of interest on the part  
13 of the manager or officer with respect to the performance by the  
14 manager or officer of the duties of a manager or officer under  
15 subsection (a) or (b), except to the extent the ownership would  
16 create a conflict of interest if the limited liability company  
17 were not a benefit company.

18 Section 108. Section 8995 of Title 15 is amended by adding  
19 subsections to read:

20 § 8995. Application and effect of subchapter.

21 \* \* \*

22 (f) Indication of status.--The certificate of organization  
23 of a domestic restricted professional company or the foreign  
24 registration statement of a foreign restricted professional  
25 company shall contain a statement that the entity is a  
26 restricted professional company and include a brief description  
27 of the restricted professional service or services to be  
28 rendered by the company.

29 (g) Definition.--For purposes of this subchapter, the  
30 following term has the meaning indicated:

1 "Restricted professional company." A domestic or foreign  
2 limited liability company that renders one or more restricted  
3 professional services in this Commonwealth.

4 Section 109. Section 9504(b) of Title 15 is amended and the  
5 section is amended by adding a subsection to read:

6 § 9504. Registered office.

7 \* \* \*

8 (b) Change.--The registered office [location] of a business  
9 trust may be changed by an amendment of the instrument[.] or by  
10 including the change in an annual report under section 146  
11 (relating to annual report).

12 \* \* \*

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

17 Section 110. Sections 101, 103(a), 302, 311(b) and (e)(1),  
18 331 and 332 of Title 54 are amended to read:

19 § 101. Definitions.

20 Subject to additional definitions contained in subsequent  
21 provisions of this title which are applicable to specific  
22 provisions of this title, the [following words and phrases when  
23 used in] definitions in 15 Pa.C.S. § 102 (relating to  
24 definitions) apply to this title [shall have], unless the  
25 context clearly indicates otherwise. [the meanings given to  
26 them in this section:

27 "Department." The Department of State of the Commonwealth.

28 "Domestic corporation." A corporation incorporated under the  
29 laws of this Commonwealth.

30 "Domestic corporation not-for-profit." A domestic

1 corporation not incorporated for a purpose or purposes involving  
2 pecuniary profit, incidental or otherwise.

3 "Officially publish." The meaning specified in 15 Pa.C.S. §  
4 1103 (relating to definitions) except that the county of  
5 publication shall be as specified in this title.

6 "Qualified foreign corporation." A corporation incorporated  
7 under any laws other than those of this Commonwealth that is  
8 authorized to do business in this Commonwealth under either 15  
9 Pa.C.S. Ch. 41 (relating to foreign business corporations) or  
10 Ch. 61 (relating to foreign nonprofit corporations).

11 "Verified statement." A document filed under this title  
12 containing statements of fact and a statement by the signatory  
13 that it is made subject to the penalties of 18 Pa.C.S. § 4904  
14 (relating to unsworn falsification to authorities).]

15 § 103. Execution of documents.

16 (a) General rule.--Any document [filed in] delivered to the  
17 Department of State for filing under this title by [a  
18 corporation] an association may be executed on behalf of the  
19 [corporation] association by any one duly authorized [officer]  
20 representative thereof. The corporate seal may be affixed and  
21 attested, but the affixation and attestation of the corporate  
22 seal shall not be necessary for the due execution of any filing  
23 by a corporation under this title.

24 \* \* \*

25 § 302. Definitions.

26 [(a) Definitions.--]The following words and phrases when  
27 used in this chapter shall have, unless the context clearly  
28 indicates otherwise, the meanings given to them in this section:

29 "Business." Any commercial or professional activity.

30 "Entity." Any individual or any corporation, association,

1 partnership, joint-stock company, business trust, syndicate,  
2 joint adventureship or other combination or group of persons,  
3 regardless of whether it is organized or formed under the laws  
4 of this Commonwealth or any other jurisdiction.

5 "Fictitious name." Any assumed or fictitious name, style or  
6 designation other than the proper name of the entity using such  
7 name. The term includes a name assumed by a general partnership,  
8 syndicate, joint adventureship or similar combination or group  
9 of persons.

10 "Proper name." When used with respect to an association of a  
11 type listed in the following paragraphs, the term means the name  
12 set forth in:

13 (1) the public organic record, for a domestic filing  
14 association;

15 (2) the statement of registration, for a limited  
16 liability partnership;

17 (4) the statement of election, for an electing  
18 partnership;

19 (9) the statement of registration of a [foreign]  
20 registered foreign association under 15 Pa.C.S. § 412(a)(1)  
21 (i) (relating to foreign registration statement) or, if that  
22 name does not comply with 15 Pa.C.S. § 202 (relating to  
23 requirements for names generally), the name set forth in the  
24 statement under 15 Pa.C.S. § 412 (a) (1) (ii).

25 [(b) Other defined terms.--The definitions in 15 Pa.C.S. §  
26 102 (relating to definitions) apply to this title except to the  
27 extent they are inconsistent with the provisions of this title.]

28 § 311. Registration.

29 \* \* \*

30 (b) Use of [corporate] designators.--A fictitious name

1 registered under this chapter:

2 (1) May not contain a corporate designator such as  
3 "corporation," "incorporated" or "limited" or any derivation  
4 or abbreviation thereof unless the entity or at least one  
5 entity named in the application for registration of  
6 fictitious name is a corporation. The use of the word  
7 "company" or any derivation or abbreviation thereof by a sole  
8 proprietorship, a partnership or a corporation is  
9 permissible.

10 (2) Need not contain [a corporate] an association  
11 designator, notwithstanding the fact that some or all of the  
12 persons interested therein are [corporations] associations.  
13 This paragraph shall not be construed to limit or affect any  
14 personal liability otherwise existing of [shareholders of a  
15 corporation] interest holders of an association to persons  
16 who deal with the [corporation] association without knowledge  
17 of its status as such.

18 \* \* \*

19 (e) Duplicate use of names.--The fictitious name shall be  
20 distinguishable upon the records of the department from:

21 (1) The name of any domestic filing entity, domestic  
22 limited liability limited partnership, domestic electing  
23 partnership[, ] or registered foreign association [or the name  
24 of any corporation or other association registered at any  
25 time under Chapter 5 (relating to corporate and other  
26 association names)], unless such name is available or is made  
27 available for use under the provisions or procedures of 15  
28 Pa.C.S. § 202(b)(1) (relating to requirements for names  
29 generally).

30 \* \* \*

1 § 331. Contracts [entered into] and acts by entity using  
2 unregistered fictitious name.

3 (a) General rule.--No entity which has failed to register a  
4 fictitious name as required by this chapter shall be permitted  
5 to maintain any action in any tribunal of this Commonwealth  
6 until such entity shall have complied with the provisions of  
7 this chapter. Nor shall any action be maintained in any tribunal  
8 of this Commonwealth by any successor or assignee of such entity  
9 on any right, claim or demand arising out of a transaction with  
10 respect to which such entity used such fictitious name until  
11 such entity, or an entity which has acquired all or  
12 substantially all of its assets, shall have complied with the  
13 provisions of this chapter. The failure [of any] by itself of an  
14 entity to register a fictitious name as required by this chapter  
15 shall not impair the validity of any contract or act of [such  
16 entity] the entity using the fictitious name and shall not  
17 prevent [such] the entity from defending any action in any  
18 tribunal of this Commonwealth.

19 [(b) Civil penalty.--Before any entity may institute any  
20 action in any tribunal of this Commonwealth on any cause of  
21 action arising out of any transaction in respect to which such  
22 entity used a fictitious name prior to the date of the  
23 registration of such fictitious name, or after the date its  
24 registration under this chapter was cancelled or otherwise  
25 terminated as to such entity, the entity shall pay to the  
26 department for the use of the Commonwealth a civil penalty of  
27 \$500.]

28 (c) Substantial compliance.--The [penalties of subsections  
29 (a) and (b)] penalty under subsection (a) shall not be  
30 applicable if there has been substantial compliance in good

1 faith with the requirements of this chapter or the corresponding  
2 provisions of prior law.

3 § 332. Effect of registration.

4 (a) General rule.--Registration of a fictitious name under  
5 this chapter imparts no legal right to the registering entity  
6 other than that:

7 (1) the conducting of business by it under a fictitious  
8 name shall not result in the penalties provided by section  
9 331 (relating to contracts [entered into] and acts by entity  
10 using unregistered fictitious name) [.] and

11 (2) the doing of business by the entity using the  
12 registered name has the same force and effect as doing  
13 business under the proper name of the entity.

14 (b) [Corporate qualification] Foreign registration  
15 unaffected.--The registration required under this chapter is in  
16 addition to all other acts required of [a corporation] an entity  
17 prerequisite to its doing business in this Commonwealth and no  
18 provision of this chapter shall be construed as relieving [a  
19 corporation] an entity of any duty under any other statute.

20 Section 111. Sections 501, 502, 503, 504, 505 and 506 of  
21 Title 54 are repealed:

22 [§ 501. Register established.

23 (a) General rule.--A register is established by this chapter  
24 which shall consist of such of the following names as are not  
25 deleted therefrom by operation of section 504 (relating to  
26 effect of failure to make filings) or 506 (relating to voluntary  
27 termination of registration by corporations and other  
28 associations):

29 (1) A name registered prior to February 13, 1973, under  
30 the act of May 16, 1923 (P.L.246, No.160), relating to



1 registration of certain names.

2 (2) A name registered under section 502 (relating to  
3 certain additions to register).

4 (3) In the case of a domestic or registered foreign  
5 corporation, a name rendered unavailable for corporate use by  
6 other corporations by reason of any filing in the department  
7 by such domestic or registered foreign corporation.

8 (4) A name registered under 15 Pa.C.S. § 209 (relating  
9 to registration of name of nonregistered foreign association)  
10 or any similar provision of law.

11 (5) In the case of a business trust which exists subject  
12 to 15 Pa.C.S. Ch. 95 (relating to business trusts), the name  
13 of the trust as set forth in the instrument filed in the  
14 department under 15 Pa.C.S. § 9503 (relating to documentation  
15 of trust).

16 (6) In the case of a limited partnership or limited  
17 liability company subject to 15 Pa.C.S. Ch. 86 (relating to  
18 limited partnerships) or 88 (relating to limited liability  
19 companies), the name of the partnership or company as set  
20 forth in the certificate of limited partnership, certificate  
21 of organization or statement of registration as a foreign  
22 association.

23 (8) In the case of a limited liability partnership  
24 subject to 15 Pa.C.S. Ch. 82 (relating to limited liability  
25 partnerships and limited liability limited partnerships) that  
26 is not also a limited partnership, the name of the  
27 partnership as set forth in the statement of registration as  
28 a foreign association.

29 (b) Subsequent availability of certain names.--Whenever, by  
30 reason of change in name, withdrawal or dissolution of a

1 domestic or registered foreign association, failure to renew a  
2 registration of its name by a nonregistered foreign association,  
3 or for any other cause, its name is no longer rendered  
4 unavailable by the express provisions of Title 15 (relating to  
5 corporations and unincorporated associations), such name shall  
6 no longer be deemed to be registered under subsection (a)(3) or  
7 (4) on the register established by this chapter.

8 § 502. Certain additions to register.

9 (a) Corporation names.--

10 (1) A domestic corporation not-for-profit incorporated  
11 prior to May 16, 1923 may register its name with the  
12 department under this chapter by effecting the filing  
13 specified in 15 Pa.C.S. § 5311 (relating to filing of  
14 certificate of summary of record by certain corporations).

15 (2) Any person who is not eligible to make a filing  
16 under 15 Pa.C.S. § 209 (relating to registration of name of  
17 nonregistered foreign association) may register a corporation  
18 name with the department by filing an application for  
19 registration of name, executed by the person, which shall set  
20 forth:

21 (i) The name of the corporation.

22 (ii) The address, including street and number, if  
23 any, of the person who executed the application.

24 (b) Associations generally.--An association other than a  
25 corporation may register with the department the name under  
26 which it is doing business or operating by filing an application  
27 for registration, which shall be executed by the association,  
28 and shall set forth:

29 (1) The name to be registered.

30 (2) The address, including street and number, if any, of

1 the association.

2 (3) The length of time, if any, during which the name  
3 has been used by the applicant.

4 (4) Such other information necessary to the  
5 administration of this chapter as the department may specify  
6 by regulation.

7 (c) Limitation on names which may be registered.--

8 Notwithstanding subsections (a) and (b), no new name shall be  
9 registered or deemed to be registered under this section which  
10 is not distinguishable upon the records of the department from  
11 any other name then registered or deemed to be registered under  
12 this chapter, without the consent of the senior registrant.

13 (d) Annual renewal.--A person who has in effect a  
14 registration of a name may renew the registration from year to  
15 year by annually filing an application for renewal setting forth  
16 the facts required to be set forth in an original application  
17 for registration. A renewal application may be filed between  
18 October 1 and December 31 in each year and shall extend the  
19 registration for the following calendar year.

20 (e) Cross reference.--See 15 Pa.C.S. § 134 (relating to  
21 docketing statement).

22 § 503. Decennial filings required.

23 (a) General rule.--Except as otherwise provided in this  
24 section, every corporation or other association whose name is  
25 registered under this chapter shall, during the year 2001 and  
26 every tenth year thereafter, file in the department a report,  
27 which shall be executed by the corporation or other association,  
28 and shall set forth:

29 (1) The name of the corporation or other association.

30 (2) The address, including street and number, if any, of

1 its registered or other office.

2 (3) A statement that the corporation or other  
3 association continues to exist.

4 (4) Such other information necessary to the  
5 administration of this chapter as the department may specify  
6 by regulation.

7 (b) Exceptions.--Subsection (a) shall not apply to any of  
8 the following:

9 (1) A corporation or other association that during the  
10 ten years ending on December 31 of the year in which a filing  
11 would otherwise be required under subsection (a) has made any  
12 filing in the department pursuant to a provision of this  
13 title or 15 Pa.C.S. (relating to corporations and  
14 unincorporated associations) other than:

15 (i) a report required by subsection (a); or

16 (ii) a filing under 15 Pa.C.S. § 208 (relating to  
17 reservation of name) or 209 (relating to registration of  
18 name of nonregistered foreign association).

19 (2) A corporation whose name is registered pursuant to  
20 section 501(a)(4) (relating to register established).

21 (3) A corporation that has had officer information  
22 forwarded to the department by the Department of Revenue  
23 during the preceding ten years under 15 Pa.C.S. § 1110  
24 (relating to annual report information).

25 (d) Cross references.--See 15 Pa.C.S. §§ 134 (relating to  
26 docketing statement) and 135 (relating to requirements to be met  
27 by filed documents).

28 § 504. Effect of failure to make filings.

29 On January 1 of the year following the year during which a  
30 report is required to be filed under section 503 (relating to

1 decennial filings required), the name of every corporation and  
2 association which has failed to comply with such section shall  
3 no longer be deemed to be registered under this chapter.

4 § 505. Late filings.

5 A corporation or association which has failed to file the  
6 report required by section 503 (relating to decennial filings  
7 required) may do so at any later time, which filing shall  
8 reinstate the name of the corporation or association on the  
9 register established by this chapter unless its name has been  
10 appropriated during the period of the delinquency by any other  
11 person in the manner provided in this chapter or as otherwise  
12 provided by law.

13 § 506. Voluntary termination of registration by corporations  
14 and other associations.

15 (a) General rule.--Any corporation or other association  
16 which has its name registered under this chapter may terminate  
17 such registration by filing in the department a statement of  
18 termination of registration of name, which shall be executed by  
19 the corporation or other association, and shall set forth:

20 (1) The name of the corporation or other association.

21 (2) The address, including street and number, if any, of  
22 the corporation or other association.

23 (3) The date on which and the statute under which the  
24 name of the corporation or other association was registered.

25 (4) A statement that the registration of the name of the  
26 corporation or other association under this chapter is  
27 terminated.

28 (5) Such other information necessary to the  
29 administration of this chapter as the department may specify  
30 by regulation.

1 (b) Cross reference.--See 15 Pa.C.S. § 134 (relating to  
2 docketing statement).]

3 Section 112. This act shall take effect in 60 days.