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V. Business Trusts

Enactment. Unless otherwise noted, the provisions of Title 15 were added November 15, 1972, P.L.1063, No.271, effective in 90 days.

Special Provisions in Appendix. See sections 104, 107, 206, 303 and 304 of Act 177 of 1988 in the appendix to this title for special provisions relating to legislative findings as to acceptance of Constitution of Pennsylvania, prior law transitional provision, conforming cross references in unconsolidated statutes, preparation of act for printing and effective date and applicability.

See sections 309, 402 and 404 of Act 198 of 1990 in the appendix to this title for special provisions relating to conforming cross references in unconsolidated statutes, preparation of act for printing and effective dates and applicability.

See sections 56 and 57 of Act 67 of 2013 in the appendix to this title for special provisions relating to restoration of provisions and retroactivity.

See section 1.1 of Act 172 of 2014 in the appendix to this title for special provisions relating to legislative findings and declarations.

Short Titles of Implementing Statutes. Section 101 of Act 177 of 1988 provided that the act shall be known and may be cited as the General Association Act of 1988.

Section 101 of Act 198 of 1990 provided that the act shall be known and may be cited as the GAA Amendments Act of 1990.

Section 1 of Act 169 of 1992 provided that the act shall be known and may be cited as the GAA Amendments Act of 1992.

Section 1 of Act 106 of 1994 provided that the act shall be known and may be cited as the Limited Liability Company Act.

Section 1 of Act 34 of 2001 provided that the act shall be known and may be cited as the GAA Amendments Act of 2001.

Section 1 of Act 67 of 2013 provided that the act shall be known and may be cited as the GAA Amendments Act of 2013.

Section 1 of Act 172 of 2014 provided that the act shall be known and may be cited as the Association Transactions Act.

PART I
PRELIMINARY PROVISIONS

Chapter

1. General Provisions
2. Entities Generally
3. Entity Transactions
4. Foreign Associations

Enactment. Part I was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Prior Provisions. Former Part I, which related to corporations generally, was added November 15, 1972, P.L.1063, No.271, and repealed December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

CHAPTER 1
GENERAL PROVISIONS

Subchapter

A. Preliminary Provisions
B. Functions and Powers of Department of State
C. Corporation Bureau and UCC Fees
D. Domestication of Certain Alien Associations

Enactment. Chapter 1 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Prior Provisions. Former Chapter 1, which related to the same subject matter, was added November 15, 1972, P.L.1063, No.271, and repealed December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 1 is referred to in sections 7102, 8415, 8615, 8815 of this title.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.
101. Short title and application of title.
102. Definitions.
103. Subordination of title to regulatory laws.
104. Equitable remedies.
105. Fees.
106. Effect of filing papers required to be filed.
107. Form of records.
108. Change in location or status of registered office provided by agent.
109. Name of commercial registered office provider in lieu of registered address.
110. Supplementary general principles of law applicable.
111. Relation of title to Electronic Signatures in Global and National Commerce Act.
112. Receipt of electronic communications.
113. Delivery of document.
114. Defense of usury.

§ 101. Short title and application of title.

(a) Short title of title.--This title shall be known and may be cited as the Associations Code.

(b) Application of title.--Except as otherwise provided in the scope provisions of subsequent provisions of this title, this title shall apply to every association heretofore or hereafter incorporated or otherwise organized.

(c) References to prior statutes.--A reference in the organic rules of an association to any provision of law supplied or repealed by this title shall be deemed to be a reference to the superseding provision of this title.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 amended subsec. (c).

Cross References. Section 101 is referred to in sections 1102, 2541, 2551, 5102 of this title.

§ 102. Definitions.

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

"Act" or **"action."** Includes failure to act.

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

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

(1) a corporation or other association of which the person is a governor or officer, or is, directly or indirectly, the beneficial owner of interests entitling the person to cast at least 10% of the votes that all interest holders would be entitled to cast in an election of governors of the corporation or other association;

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

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

"Association." A corporation, for profit or not-for-profit, a partnership, a limited liability company, a business or statutory trust, an entity or two or more persons associated

in a common enterprise or undertaking. The term does not include:

(1) a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans' court division in general);

(2) an association or relationship that:

(i) is not a person that has:

(A) a legal existence separate from any interest holder of the person; or

(B) the power to acquire an interest in real property in its own name; and

(ii) is not a partnership under the rules stated in section 8422(c) (relating to formation of partnership) or a similar provision of the laws of another jurisdiction;

(3) a decedent's estate; or

(4) a government or a governmental subdivision, agency or instrumentality.

"Banking institution." An institution as defined in section 102(r) of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

"Bureau." The Bureau of Corporations and Charitable Organizations of the Department of State.

"Business corporation." A domestic or foreign business corporation as defined in section 1103 (relating to definitions), whether or not it is a cooperative corporation.

"Business trust." A trust subject to Chapter 95 (relating to business trusts).

"Charitable purposes." The relief of poverty, the advancement and provision of education, including postsecondary education, the advancement of religion, the prevention and treatment of disease or injury, including mental retardation and mental disorders, governmental or municipal purposes and any other purpose the accomplishment of which is recognized as important and beneficial to the public.

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

"Cooperative corporation." A domestic corporation that is subject to Subpart D of Part II (relating to cooperative corporations), or a foreign corporation that is subject to a similar law of a foreign jurisdiction.

"Corporation for profit." A domestic or foreign corporation incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise, to its shareholders or members, whether or not it is a cooperative corporation.

"Corporation not-for-profit." A domestic or foreign corporation not incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise, whether or not it is a cooperative corporation.

"Court." Either:

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

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

(i) the court of common pleas of the judicial district embracing the county where the registered office

of the corporation or other association is or is to be located; or

(ii) where an association results from a merger, division or other transaction without establishing a registered office in this Commonwealth or withdraws as a foreign corporation or association, the court of common pleas in which venue would have been laid immediately prior to the transaction or withdrawal.

"Credit union." A credit union as defined in 17 Pa.C.S. § 102 (relating to application of title).

"Debtor in bankruptcy." A person that is the subject of:

(1) an order for relief under 11 U.S.C. (relating to bankruptcy) or a comparable order under a successor statute of general application; or

(2) a comparable order under Federal, State or foreign law governing insolvency.

"Department." The Department of State of the Commonwealth.

"Dissenters rights." The rights and remedies provided by Subchapter D of Chapter 15 (relating to dissenters rights).

"Distributional interest." The right under the organic law of an entity that is not a corporation for profit or not-for-profit, or under the organic rules of such an entity, to receive distributions from the entity.

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

"Domestic association." An association, the internal affairs of which are governed by the laws of this Commonwealth.

"Domestic banking institution." A domestic association which is an institution as defined in section 102(r) of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

"Domestic corporation." A corporation for profit or not-for-profit incorporated under the laws of this Commonwealth.

"Domestic corporation for profit." A corporation for profit incorporated under the laws of this Commonwealth.

"Domestic corporation not-for-profit." A corporation not-for-profit incorporated under the laws of this Commonwealth.

"Domestic entity." An entity, the internal affairs of which are governed by the laws of this Commonwealth.

"Domestic filing association." A domestic association, the formation of which requires the filing of a public organic record. The term does not include a general partnership that is also:

(1) a limited liability partnership; or

(2) an electing partnership.

"Domestic filing entity." A domestic entity, the formation of which requires the filing of a public organic record. The term does not include a general partnership that is also:

(1) a limited liability partnership; or

(2) an electing partnership.

"Domestic insurance corporation." An insurance corporation as defined in section 3102 (relating to definitions).

"Domestic savings association." (Deleted by amendment).

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

"Electing partnership." An electing partnership as defined in section 8701(c) (relating to scope and definition).

"Electronic." Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Entity." A domestic or foreign:

(1) business corporation;
(2) nonprofit corporation;
(3) general partnership;
(4) limited partnership;
(5) limited liability company;
(6) unincorporated nonprofit association;
(7) professional association; or
(8) business trust, common-law business trust or statutory trust.

"Execute." When used with respect to authenticating or adopting a filing, document or other record, means "sign."

"Filing association." A domestic or foreign association, the formation of which requires the filing of a public organic record. The term does not include a general partnership that is also:
(1) a limited liability partnership; or
(2) an electing partnership.

"Filing entity." A domestic or foreign entity, the formation of which requires the filing of a public organic record. The term does not include a general partnership that is also:
(1) a limited liability partnership; or
(2) an electing partnership.

"Foreign association." An association that is not a domestic association.

"Foreign corporation for profit." A corporation for profit incorporated under any laws other than those of this Commonwealth.

"Foreign corporation not-for-profit." A corporation not-for-profit incorporated under any laws other than those of this Commonwealth.

"Foreign entity." An entity that is not a domestic entity.

"Foreign filing association." A foreign association, the formation of which requires the filing of a public organic record.

"Fraternal benefit society." A fraternal benefit society as defined in section 2403 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

"General partnership." Either of the following:
(1) A partnership as defined in section 8412 (relating to definitions).
(2) An association whose internal affairs are governed by the laws of a jurisdiction other than this Commonwealth which would be a partnership if its internal affairs were governed by the laws of this Commonwealth.

"Governance interest." A right under the organic law or organic rules of an association that is not a corporation for profit or not-for-profit, other than as a governor, agent, assignee or proxy, to:
(1) receive or demand access to information concerning, or the books and records of, the association;
(2) vote for the election of the governors of the association; or
(3) receive notice of or vote on an issue involving the internal affairs of the association.

"Governor." A person by or under whose authority the powers of an association are exercised and under whose direction the activities and affairs of the association are managed pursuant to the organic law and organic rules of the association. The term includes:
(1) A director of a corporation for profit or a shareholder of a statutory close corporation that is deemed

to be a director under section 2332(a) (relating to management by shareholders).

(2) A director or member of an other body of a corporation not-for-profit.

(3) A partner of a general partnership.

(4) A general partner of a limited partnership.

(5) A general partner of an electing partnership.

(6) A manager of a manager-managed limited liability company or a member that has the right to participate materially in the management of a member-managed limited liability company.

(7) A manager of an unincorporated nonprofit association.

(8) A member of the board of governors of a professional association.

(9) A trustee of a business trust, common-law business trust or statutory trust.

"Health maintenance organization." An entity that is subject to the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act.

"Hospital plan corporation." A hospital plan corporation as defined in 40 Pa.C.S. § 6101 (relating to definitions).

"Insurance corporation." An insurance corporation as defined in section 3102 (relating to definitions).

"Interest." A share in a corporation for profit, a membership or share in a corporation not-for-profit, a governance interest or a distributional interest. The term includes the following:

(1) A governance interest or transferable interest in a general partnership.

(2) A governance interest or transferable interest in a limited partnership.

(3) A governance interest or transferable interest in a limited liability company.

(4) A membership in an unincorporated nonprofit association.

(5) An ownership interest in a professional association.

(6) A beneficial interest in a business trust, common-law business trust or statutory trust.

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

"Interest holder." A direct or record holder of an interest. The term includes the following:

(1) A shareholder of a corporation for profit.

(2) A member or shareholder of a corporation not-for-profit.

(3) A partner or transferee in a general partnership.

(4) A general or limited partner or transferee in a limited partnership.

(5) A member or transferee in a limited liability company.

(6) A member of an unincorporated nonprofit association.

(7) An associate in a professional association.

(8) A beneficiary or beneficial owner of record of a business trust, common-law business trust or statutory trust.

"Internal Revenue Code of 1986." The Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Jurisdiction." When used to refer to a political entity, the United States, a state, a foreign country or a political subdivision of a foreign country.

"Jurisdiction of formation." The jurisdiction whose law includes the organic law of an association.

"Licensed person." A natural person who is duly licensed or admitted to practice his profession by a court, department, board, commission or other agency of the Commonwealth or another jurisdiction to render a professional service that is or will be rendered by the association of which he is, or intends to become, a shareholder, partner, owner, director, officer, manager, member, employee or agent.

"Limited liability company." Either of the following:

(1) A limited liability company as defined in section 8812 (relating to definitions).

(2) An association whose internal affairs are governed by the laws of a jurisdiction other than this Commonwealth which would be a limited liability company if its internal affairs were governed by the laws of this Commonwealth.

"Limited liability limited partnership." A domestic or foreign limited partnership for which there is in effect:

(1) a statement of registration under Chapter 82 (relating to registered limited liability partnerships);

(2) a provision of its certificate of limited partnership electing to be subject to Chapter 82; or

(3) a similar filing or provision under the organic law of a foreign partnership.

"Limited liability partnership." A domestic or foreign general partnership for which there is in effect:

(1) a statement of registration under Chapter 82; or

(2) a similar filing under the organic law of a foreign general partnership.

"Limited partnership." Either of the following:

(1) A limited partnership as defined in section 8612 (relating to definitions).

(2) An association whose internal affairs are governed by the laws of a jurisdiction other than this Commonwealth which would be a limited partnership if its internal affairs were governed by the laws of this Commonwealth.

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

"Nonfiling association." An association that is not a filing association.

"Nonprofit corporation." A domestic or foreign nonprofit corporation as defined in section 5103 (relating to definitions), whether or not it is a cooperative corporation.

"Nonregistered foreign association." A foreign association that is not registered to do business in this Commonwealth pursuant to a filing with the department.

"Obligation." Includes a note or other form of indebtedness, whether secured or unsecured.

"Officially publish." Publish in two newspapers of general circulation in the English language in the county in which the registered office of the association is located or, in the case of a proposed association, will be located, one of which must be the legal newspaper, if any, designated by the rules of court for the publication of legal notices. If there is only one newspaper of general circulation in the county, advertisement in that newspaper is sufficient. If no other frequency is specified, the notice must be published one time. See section 109(a)(2) (relating to name of commercial registered office provider in lieu of registered address).

"Organic law." The laws of the jurisdiction of formation of an association governing its internal affairs.

"Organic rules." The public organic record and private organic rules of an association.

"Principal office." The principal executive office of an association, whether or not the office is located in this Commonwealth.

"Private organic rules." The rules that govern the internal affairs of an association, are binding on all its interest holders and are not part of its public organic record, if any. The term includes the following:

(1) The bylaws of a corporation for profit.

(2) The bylaws of a corporation not-for-profit.

(3) The partnership agreement of a general partnership.

(4) The partnership agreement of a limited partnership.

(5) The operating agreement of a limited liability company.

(6) The governing principles of an unincorporated nonprofit association.

(7) The bylaws of a professional association.

(8) The bylaws or similar rules, by whatever name they may be referred to, of a business trust, common-law business trust or statutory trust.

"Profession." Includes the performance of any type of personal service to the public that requires as a condition precedent to the performance of the service the obtaining of a license or admission to practice or other legal authorization from the Supreme Court of Pennsylvania or a licensing board or commission under the Bureau of Professional and Occupational Affairs in the Department of State. Except as otherwise expressly provided by law, this definition shall be applicable to this title only and shall not affect the interpretation of any other statute or any local zoning ordinance or other official document heretofore or hereafter enacted or promulgated.

"Professional association." An association as defined in section 9302 (relating to application of chapter).

"Professional health service corporation." A professional health service corporation as defined in 40 Pa.C.S. § 6302 (relating to definitions).

"Professional services." Any type of services that may be rendered by a member of a profession within the purview of his profession.

"Property." All property, whether real, personal or mixed, or tangible or intangible, or any right or interest therein, including rights under contracts and other binding agreements.

"Public organic record." The document the public filing of which by the department or a similar agency in another jurisdiction is required to form an association. The term includes any amendment or restatement of the document and includes the following:

(1) The articles of incorporation of a corporation for profit.

(2) The articles of incorporation of a corporation not-for-profit.

(3) The certificate of limited partnership of a limited partnership.

(4) The certificate of organization of a limited liability company.

(5) The articles of association of a professional association.

(6) The declaration of trust or other instrument of a business trust or statutory trust which has been filed by the department or a similar agency in another jurisdiction.

"Receipt." Actual coming into possession.

"Receive." To actually come into possession.

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

"Record form." Inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

"Registered corporation." A corporation defined in section 2502 (relating to registered corporation status).

"Registered foreign association." A foreign association that is registered to do business in this Commonwealth pursuant to a filing in the department.

"Representative." When used with respect to an association, joint venture, trust or other enterprise, a person occupying the position or discharging the functions of a director, officer, partner, manager, trustee, fiduciary, employee or agent, regardless of the name or title by which the person may be designated. The term does not imply that a director, as such, is an agent of a corporation.

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

"Savings association." (Deleted by amendment).

"Sign." With present intent to authenticate or adopt information in record form:

(1) to sign manually or adopt a tangible symbol; or

(2) to attach to, or logically associate with, information in record form, an electronic sound, symbol or process.

"Transfer." Includes:

(1) an assignment;

(2) a conveyance;

(3) a sale;

(4) a lease;

(5) an encumbrance, including a mortgage or security interest;

(6) a gift; and

(7) a transfer by operation of law.

"Type." When used with respect to an association, a generic form:

(1) recognized at common law; or

(2) organized under an organic law, whether or not some associations organized under that organic law are subject to provisions of that law which create different categories of the form of association.

"Unincorporated nonprofit association." A nonprofit association as defined in section 9112 (relating to definitions).

"Verified." Includes an unsworn document containing a statement by the signatory that is made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(b) Application of definitions.--The words and phrases defined in subsection (a) shall have the same meanings when used in 54 Pa.C.S. (relating to names) except to the extent

those meanings are inconsistent with the provisions of that title.

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

(Apr. 27, 1990, P.L.129, No.36, eff. imd.; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Dec. 7, 1994, P.L.703, No.106, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended the def. of "court" and added the defs. of "affiliate," "associate," "conversion," "division," "domestication," "interest exchange," "merger," "recklessness" and "restricted professional services" in subsec. (a) and added subsec. (c).

2016 Amendment. Act 170 amended the defs. of "association," "general partnership," "limited liability company" and "limited partnership" and added the defs. of "charitable purposes" and "debtor in bankruptcy" in subsec. (a).

2014 Amendment. Act 172 amended the defs. of "association," "cooperative corporation," "corporation for profit," "corporation not for profit" and par. (2) of the def. of "court," added the defs. of "business corporation," "dissenters rights," "distributional interest," "domestic association," "domestic entity," "domestic filing association," "domestic filing entity," "electronic," "entity," "filing association," "filing entity," "foreign association," "foreign entity," "foreign filing association," "fraternal benefit society," "general partnership," "governance interest," "governor," "health maintenance organization," "hospital plan corporation," "interest," "interest holder," "jurisdiction," "jurisdiction of formation," "limited liability limited partnership," "limited liability partnership," "limited partnership," "nonfiling association," "nonprofit corporation," "nonregistered foreign association," "organic law," "organic rules," "principal office," "private organic rules," "professional association," "professional health service corporation," "property," "public organic record," "receipt," "receive," "registered corporation," "registered foreign association," "transfer," "type" and "unincorporated nonprofit association" and deleted the defs. of "domestic savings association" and "savings association" and added subsecs. (a) hdg. and (b).

2013 Amendment. Act 67 amended the defs. of "banking institution," "representative" and "savings association" and added the defs. of "bureau," "domestic banking institution," "domestic insurance corporation," "domestic savings association," "execute," "obligation," "officially publish," "record form" and "sign."

2001 Amendment. Act 34 amended the def. of "limited liability company" and added the defs. of "profession" and "professional services."

1994 Amendment. Act 106 amended the defs. of "association" and "limited liability company" and added the def. of "licensed person."

1992 Amendment. Act 169 amended the def. of "association" and added the defs. of "business trust," "Internal Revenue Code of 1986" and "limited liability company."

1990 Amendments. Act 36 added the def. of "act" or "action" and Act 198 amended the defs. of "association," "credit union" and "insurance corporation" and added the defs. of "corporation for profit," "corporation not-for-profit," "electing partnership" and "representative."

Cross References. Section 102 is referred to in sections 312, 368, 1103, 1510, 2902, 5103, 5510, 8412, 8612, 8812 of this title; section 1991 of Title 1 (General Provisions); section 101 of Title 54 (Names).

§ 103. Subordination of title to regulatory laws.

(a) Regulatory laws unaffected.--This title is not intended to authorize any corporation or other association to do any act prohibited by any statute regulating the business of the association or by any rule or regulation validly promulgated thereunder by any department, board or commission of this Commonwealth. Except as otherwise provided by the statutes and prescribed by the rules and regulations promulgated thereunder applicable to the business of the association, the issuance by the Department of State of any certificate evidencing the incorporation of a corporation or the filing of an instrument with respect to or the organization or qualification of an association under this title or any amendment to its articles or certificate or other change in its status or other action under this title shall not be effective to exempt the association from any of the requirements of those statutes or rules and regulations.

(b) Compliance with regulatory laws condition precedent to effectiveness of corporate or other action.--Any document filed in the Department of State or any bylaw adopted or other corporate or other action taken under the authority of this title or other action pursuant thereto in violation of any statutes or rules or regulations regulating the business of the association shall be ineffective as against the Commonwealth, including the departments, boards and commissions thereof, unless and until the violation is cured.

(c) Structural provisions in regulatory statutes controlling.--If and to the extent that a statute regulating the business of a corporation or other association sets forth provisions relating to the government and regulation of the affairs of associations that are inconsistent with the provisions of this title on the same subject, the provisions of the other statute shall control.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 amended subsec. (a).

Cross References. Section 103 is referred to in sections 202, 318, 1501, 1524, 1903, 2105, 5501, 5903, 8102, 8204 of this title.

§ 104. Equitable remedies.

Except to the extent otherwise provided in this title in cases where a statutory remedy is provided by this title, the court shall have the powers of a court of equity or chancery insofar as those powers relate to the supervision and control of corporations and other associations.

§ 105. Fees.

(a) General rule.--The Department of State shall be entitled to receive for services performed, as required by this title and other applicable provisions of law, such fees as are specified in or pursuant to Subchapter C (relating to Corporation Bureau and UCC fees).

(b) Other services.--Any other department, board, commission or officer of this Commonwealth shall be entitled to receive

for services performed, as required by this title, such fees as are or may be lawfully charged for those or similar services.
(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

§ 106. Effect of filing papers required to be filed.

The filing of articles or of any other papers or documents pursuant to the provisions of this title is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof, but, except as otherwise provided by statute, no person shall be charged with constructive notice of the contents of any articles, papers or documents by reason of the filing.

§ 107. Form of records.

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

(b) Meaning of "written".--References in this title to a document in writing or to a written provision of an agreement or other document shall be deemed to include and be satisfied by a document or provision of an agreement or document in record form.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

Cross References. Section 107 is referred to in sections 1508, 1512, 5508, 5512 of this title.

§ 108. Change in location or status of registered office provided by agent.

(a) General rule.--Where the registered office of a corporation or other association is stated to be in care of or is in fact in care of an agent who maintains the registered office for the corporation or other association and the agent changes its name or the location of its office in a county from one address to another within the county or ceases to provide a registered office for one or more associations, the agent may, in the manner provided in this section, reflect such change of name or effect a corresponding change in the registered office address of or cease to provide a registered office for one or more or all of the associations represented by it. The agent shall execute and file in the Department of State with respect to each association represented by it a statement of change of registered office by agent, setting forth:

(1) The name of the association represented.

(2) The address, including street and number, if any, of its then registered office.

(3) The address, including street and number, if any, of the new registered office of the association represented if the registered office of the association represented is to be changed.

(4) The name of the person in care of the office and a statement that the person has been designated in fact as the agent in care of the registered office of the association represented in this Commonwealth and that the change in registered office reflects a change of name of the agent, the removal of the place of business of the agent to a new location within the county or a termination of the status of the agent as the provider of the registered office of the association represented, as the case may be.

If the status of an agent as a provider of a registered office is terminated under this section, the location of the registered

office of the association represented shall not be affected, but the person formerly in care of the office shall thereafter not have any responsibility with respect to matters tendered to the office in the name of the association represented.

(b) Action by and notice to association.--It is not necessary for the association represented to take any action in order to effect a termination of status of agent or other change of registered office under this section, but the person representing the association shall promptly furnish the association represented with a copy of the statement of change of registered office by agent as filed in the Department of State.

Cross References. Section 108 is referred to in sections 109, 1103, 1911, 5103, 5911, 8625, 8825, 9503 of this title.

§ 109. Name of commercial registered office provider in lieu of registered address.

(a) General rule.--Where any provision of this title authorizes or requires the inclusion of a registered office address in any document filed in the Department of State, the person filing the document may substitute in lieu thereof the term "c/o" followed by:

(1) The name of an association or a division thereof that has filed in the department, and not withdrawn, a statement of address of commercial registered office.

(2) The name of any county of this Commonwealth and a statement that the registered office of the association represented shall be deemed for venue and official publication purposes to be located in the county so named. For venue and official publication purposes, the county so named shall control over the address contained in the currently applicable statement filed under subsection (b).

(b) Statement of address of commercial registered office.--A domestic or registered foreign association engaged in the business of maintaining registered offices in this Commonwealth for corporations or other associations may file in the department a statement of address of commercial registered office executed by the representing association or a division thereof and setting forth:

(1) The name of the representing association.

(2) The form of organization of the representing association.

(3) A statement that it is in the business of maintaining registered offices in this Commonwealth for corporations or other associations.

(4) The address, including street and number, if any, of a place of business of the representing association in this Commonwealth to which communications and other matters directed to each person represented by it may be delivered.

(c) Change or withdrawal.--A representing association that has effected a filing in the department under subsection (b) may:

(1) Amend the filing by filing in the department a superseding statement of address of commercial registered office.

(2) Withdraw its filing under subsection (b) and cease to provide registered office service by filing in the department a statement of termination of commercial registered office setting forth:

(i) The name of the representing association.

(ii) A statement that it has ceased to be in the business of maintaining registered offices in this Commonwealth for corporations and other associations.

(d) Action by and notice to association.--It is not necessary for an association represented to take any action in connection with a change or withdrawal effected under subsection (c), but a representing association that has effected a filing under subsection (c) (other than to reflect a change in the information required by subsection (b)(2)) shall promptly file a statement of change of registered office by agent under section 108 (relating to change in location or status of registered office provided by agent) with respect to each association represented.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (b).

1990 Amendment. Act 198 amended subsecs. (c) and (d).

Cross References. Section 109 is referred to in sections 102, 138, 146, 227, 335, 345, 355, 366, 375, 383, 411, 412, 413, 415, 418, 1103, 1306, 1311, 1341, 1507, 1911, 1915, 1971, 1977, 2309, 2905, 4124, 4129, 5103, 5306, 5311, 5341, 5507, 5911, 5915, 5971, 5977, 6124, 6129, 7306, 7502, 7704, 8201, 8433, 8434, 8474, 8482, 8621, 8622, 8625, 8636, 8665, 8681.1, 8682, 8821, 8822, 8825, 8832, 8833, 8872, 8878, 9504 of this title.

§ 110. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this title, the principles of law and equity, including, but not limited to, the law relating to principal and agent, estoppel, waiver, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause, shall supplement its provisions.

§ 111. Relation of title to Electronic Signatures in Global and National Commerce Act.

(a) General rule.--Except as set forth in subsection (b), this title modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.).

(b) Exception.--This title does not do any of the following:

(1) Modify, limit or supersede section 101(c) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001(c)).

(2) Authorize electronic delivery of a notice described in section 103(b) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7003(b)).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 111.

§ 112. Receipt of electronic communications.

(a) Requirements.--Unless otherwise provided in the organic rules of an entity or otherwise agreed between the sender and the recipient, an electronic communication is received when it:

(1) enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) is in a form capable of being processed by that system.

(b) Awareness not required.--An electronic communication is received under subsection (a) even if no individual is aware of its receipt.

(c) Presumption.--Receipt of an electronic acknowledgment from an information processing system described in subsection (a) establishes that a communication was received but, by itself, does not establish that the content sent corresponds to the content received.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 added section 112.

§ 113. Delivery of document.

(a) Permissible means.--Permissible means of delivery of a document in record form include:

(1) personal delivery;
(2) mail;
(3) conventional commercial practice; and
(4) electronic transmission.

(b) Delivery to department.--Delivery to the department of a document in record form is effective only on receipt by the department.

(c) Delivery by department.--Except as provided by law other than this title, the department may deliver a document in record form to a person by delivering it:

(1) in person to the person that submitted it for filing;
(2) to the address of the person's registered office;
(3) to the principal office address of the person; or
(4) to another address the person provides to the department for delivery.

(d) Delivery by electronic communication.--The department may deliver documents in record form to an address for email or other electronic communications supplied to the department by a person until the person notifies the department in record form that the person no longer wishes to have documents delivered to that address.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 113 is referred to in sections 8413, 8613, 8813 of this title.

§ 114. Defense of usury.

A domestic association other than a business corporation shall be subject to section 1510 (relating to certain specifically authorized debt terms) with respect to obligations, as defined in that section, governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth, to the same extent as if the domestic association were a domestic business corporation.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 added section 114.

SUBCHAPTER B
FUNCTIONS AND POWERS OF DEPARTMENT OF STATE

Sec.

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143. Liability for inaccurate information in filing.
144. Signing and filing pursuant to judicial order.
145. Subsistence certificate.
146. Annual report.

Cross References. Subchapter B is referred to in section 7123 of this title; section 102 of Title 54 (Names).

§ 131. Application of subchapter.

As used in this subchapter, the term "this title" includes Titles 17 (relating to credit unions) and 54 (relating to names) and any other provision of law that:

(1) makes reference to the powers and procedures of this subchapter; or

(2) to the extent not inconsistent with this subchapter:

(i) requires a filing in the bureau; and

(ii) does not specify some or all of the necessary procedures for the filing provided in this subchapter.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 132. Functions of Department of State.

(a) General rule.--The function of the Department of State under this title is to act in a manner comparable to the offices of recorder of deeds under former provisions of law as an office of public record wherein articles and other papers relating to association affairs may be filed to establish the permanent and definitive text thereof and to afford all persons the opportunity of acquiring knowledge of the contents thereof.

(b) Names and marks.--The department shall supervise and administer the provisions of this title and of Title 54 (relating to names) concerning names and marks.

(c) Collection of taxes and charges imposed by statute.--This subchapter shall not limit the power and duty of the department to assess and collect taxes and charges imposed or authorized by statute.

(d) Notice of decennial filings.--(Deleted by amendment).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 deleted subsec. (d).

Cross References. Section 132 is referred to in section 133 of this title.

§ 133. Powers of Department of State.

(a) General rule.--The department has the power and authority reasonably necessary to enable it to administer this subchapter efficiently and to perform the functions specified in section 132 (relating to functions of Department of State), in 13 Pa.C.S. (relating to commercial code) and in 17 Pa.C.S. (relating to credit unions). The following shall not be agency regulations for the purposes of section 612 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, or any

similar provision of law, but shall be subject to the opportunity of public comment requirement under section 201 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law:

(1) Sample filing forms promulgated by the department.

(2) Instructions accompanying sample filing forms and other explanatory material published in the Pennsylvania Code that is intended to substantially track applicable statutory provisions relating to the particular filing or to any of the functions of the department covered by this subsection, if a regulation of the department expressly states that those instructions or explanatory materials shall not have the force of law.

(3) Regulations, which the department is hereby authorized to promulgate, that:

(i) Authorize payment of fees and other remittances through or by a credit or debit card issuer or other financial intermediary.

(ii) Authorize contracts with credit or debit card issuers and other financial intermediaries relating to the collection, transmission and payment of fees and other remittances.

(iii) (Deleted by amendment).

(iv) Adjust, not more than once per year, the fees set forth in section 153(a) (relating to fee schedule) and 13 Pa.C.S. § 9525 (relating to fees) for filings transmitted to the department electronically.

(v) Relate to the format or means of delivering documents to the department for filing.

(vi) Specify the symbols or characters which:

(A) do not make a name distinguishable on the records of the department; or

(B) may be used in the name of an entity.

(b) Language and content of documents.--Except to the extent required in order to determine whether a document complies with section 135 (relating to requirements to be met by filed documents), the department shall not examine articles and other documents authorized or required to be filed in the department under this title to determine whether the language or content thereof conforms to the provisions of this title.

(c) Meaning of term "conform to law".--A document delivered to the department for the purpose of filing in the department shall be deemed to be in accordance with law and to conform to law, as those terms are used in statutes relating to the powers and duties of the department, if the document conforms to section 135.

(d) (Reserved).

(e) Engrossed certificate.--Whenever the department has taken any action under this title, the Secretary of the Commonwealth shall, upon request and payment of the fee or additional fee therefor fixed by regulation of the department, issue to any person entitled thereto an engrossed certificate evidencing the action, executed by the Secretary of the Commonwealth under the seal of the Commonwealth.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 7, 1994, P.L.703, No.106, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 added subsec. (a)(3)(vi).

2013 Amendment. Act 67 amended subsecs. (a) and (d).

Cross References. Section 133 is referred to in sections 135, 202 of this title.

§ 134. Docketing statement.

(a) General rule.--The department may, but shall not be required to, prescribe by regulation one or more official docketing statement forms designed to elicit from a person effecting a filing under this title information that the department has found to be necessary or desirable in connection with the processing of a filing. A form of docketing statement prescribed under this subsection:

(1) Shall be published in the Pennsylvania Code.

(2) Shall not be integrated into a single document covering the requirements of the filing and its related docketing statement.

(3) May be required by the department in connection with a filing only if notice of the requirement appears on the official format for the filing prescribed by the department.

(4) Shall not be required to be submitted on department-furnished forms.

(5) Shall not constitute a document filed in, with or by the department for the purposes of this title or any other provision of law except 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(b) Transmission to Department of Revenue.--The department shall note on the docketing statement the fact and date of the filing to which the docketing statement relates and shall transmit a copy of the docketing statement or the information contained therein to the Department of Revenue. If a docketing statement is not required for a particular filing, the Department of State may transmit a copy of the filing or the information contained therein to the Department of Revenue at no cost to the person effecting the filing.

(c) Transmission to other agencies.--If the docketing statement delivered to the Department of State sets forth any kind of business in which a corporation, partnership or other association may not engage without the approval of or a license from any department, board or commission of the Commonwealth, the Department of State shall, upon processing the filing, promptly transmit a copy of the docketing statement or the information contained therein to each such department, board or commission.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (a)(3).

Cross References. Section 134 is referred to in sections 135, 161, 208, 209, 210, 335, 345, 355, 366, 375, 412, 413, 415, 417, 418, 1308, 1311, 1341, 1507, 1522, 1902, 1916, 1971, 1977, 1989, 2309, 2704, 2905, 5308, 5311, 5341, 5507, 5902, 5916, 5971, 5977, 5989, 7306, 7704, 7720, 8201, 8433, 8434, 8474, 8482, 8621, 8622, 8625, 8636, 8665, 8681.1, 8682, 8701, 8821, 8822, 8825, 8832, 8833, 8872, 8878, 9305, 9503 of this title; sections 304, 903, 904, 1101, 1102, 1105, 1302, 1305 of Title 17 (Credit Unions); sections 311, 312, 313, 1112, 1114, 1115, 1116, 1311, 1312, 1313, 1314, 1511, 1512, 1513, 1514, 1515 of Title 54 (Names).

§ 135. Requirements to be met by filed documents.

(a) General rule.--A document shall be accepted for filing by the department if it satisfies the following requirements:

(1) The document purports on its face to relate to matters authorized or required to be filed under this title or contains a caption indicating that relationship and, if no applicable statement has been prescribed under section 134 (relating to docketing statement), contains sufficient information to permit the department to prepare a docket record entry:

(i) Identifying the name of the association or other person to which the document relates.

(ii) Identifying the association or associations, if any, the existence of which is to be created, extended, limited or terminated by reason of the filing and the duration of existence of any such association.

(iii) Specifying the date upon which the creation or termination of existence, if any, of the association or associations effected by the filing will take effect.

(2) The document complies with any regulations promulgated by the department and is accompanied by any applicable statement prescribed under section 134.

(3) In the case of a document that creates a new association or effects or reflects a change in name:

(i) the document is accompanied by evidence that the proposed name has been reserved by or on behalf of the applicant; or

(ii) the proposed name is available for use under the applicable standard established by this title and any other applicable provision of law.

(4) In the case of any other document that sets forth a name or mark, the proposed name or mark is available for use under the applicable standard established by law.

(5) All fees, taxes and certificates or statements relating thereto required by section 139 (relating to tax clearance of certain fundamental transactions) or otherwise have been tendered therewith.

(6) All certificates and other instruments required by statute evidencing the consent or approval of any department, board, commission or other agency of this Commonwealth as a prerequisite to the filing of the document in the Department of State have been incorporated into, attached to or otherwise tendered with the document.

(7) It is in record form and executed. The department shall not examine a document to determine whether the document has been signed by an authorized person or by sufficient authorized persons or otherwise is duly signed.

(b) Attorney-in-fact.--Any person, other than an incorporator or officer of a corporation, as such, may sign a document by an attorney-in-fact or fiduciary. It shall not be necessary to present to or file in the department the original or a copy of any document evidencing the authority of an attorney-in-fact or fiduciary.

(c) Addresses.--

(1) Whenever any provision of this title requires that any person set forth an address in any document, such provision shall be construed to require the submission of an actual street address or rural route box number, and the department shall refuse to receive or file any document that sets forth only a post office box address.

(2) Whenever any provision of this title requires the statement of a registered office address in any document filed in the department, such provision shall be construed to require the statement also of the county in which the registered office address is located.

(d) (Reserved).

(e) Distinguishable names.--A name shall not be considered distinguishable upon the records of the department from another name for purposes of this title and 54 Pa.C.S. (relating to names) solely because the names differ from each other in any or all of the following respects:

(1) Use of punctuation marks and of symbols or characters specified by regulation of the department under section 133(a)(3)(vi) (relating to powers of Department of State).

(2) Use of a definite or indefinite article.

(3) Use of any of the following terms to designate the status of an association: corporation, company, incorporated, limited, association, fund, syndicate, limited partnership, limited liability company, trust or business trust. This paragraph includes abbreviations, in any language, of the terms listed in this paragraph.

(Dec. 19, 1990, P.L.834, No.198; June 22, 2000, P.L.356, No.43, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (e)(1).

2013 Amendment . Act 67 amended subsecs. (a) intro. par., (2) and (7) and (d).

2000 Amendment. Act 43 added subsec. (e).

1990 Amendment. Act 198 amended subsec. (c) and added subsecs. (a)(7) and (d), effective in four months as to subsec. (c)(2) and immediately as to the other amendments.

Cross References. Section 135 is referred to in sections 133, 136, 137, 138, 161, 208, 209, 210, 335, 345, 355, 366, 375, 412, 413, 415, 417, 418, 1109, 1311, 1341, 1977, 1989, 5109, 5308, 5311, 5341, 5977, 5989, 8201, 8433, 8434, 8474, 8482, 8621, 8622, 8625, 8636, 8665, 8681.1, 8682, 8701, 8821, 8822, 8825, 8832, 8833, 8872, 8878, 9120, 9503 of this title; section 103 of Title 54 (Names).

§ 136. Processing of documents by Department of State.

(a) Filing of documents.--Except as provided in subsection (f), if a document conforms to section 135 (relating to requirements to be met by filed documents) the Department of State shall forthwith file the document, certify that the document has been filed by endorsing upon the document the fact and date of filing, make and retain a copy thereof and return the document or a copy thereof so endorsed to or upon the order of the person who delivered the document to the department.

(b) Duplicate copy.--

(1) If a duplicate copy, which may be either a signed or conformed copy, of any articles or other document authorized or required by this title to be filed in the department is delivered to the department with the original signed document, the department shall stamp the duplicate copy with the date received by the department and return the duplicate copy to the person who delivered it to the department.

(2) (Reserved).

(3) In lieu of date stamping the duplicate copy of the original signed document as provided in paragraph (1), the department may make a copy of the original signed document at the cost of the person who delivered it to the department.

(c) Effective date and time.--Except as otherwise provided in this title and subject to sections 138 (relating to statement of correction) and 141 (relating to abandonment of filing before

effectiveness), a document filed by the department under a provision of this title is effective:

(1) on the date and at the time of its delivery to the department;

(2) on the date of delivery and at the time specified in the document as its effective time, if the time specified is later than the time under paragraph (1); or

(3) at a specified delayed effective date and:

(i) at a specified time; or

(ii) if no time is specified, at 12:01 a.m. on the date specified.

(d) Copies.--The department may make a copy, on microfilm or otherwise, of any document filed in, with or by it pursuant to this title, or any statute hereby supplied or repealed, and thereafter destroy the document or return it to or upon the order of the person who delivered the document to the department.

(e) Redaction of information.--If law other than this title prohibits the disclosure by the department of information contained in a document in record form delivered to the department for filing, the department shall accept the document if it otherwise complies with this title but may redact the information.

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

(1) is being filed fraudulently; or

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

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a) and added subsec. (f).

2014 Amendment. Act 172 amended subsec. (c) and added subsec. (e).

2013 Amendment. Act 67 amended subsec. (b).

Cross References. Section 136 is referred to in sections 335, 345, 355, 366, 375, 8433, 8434, 8474, 8482, 8621, 8622, 8625, 8636, 8665, 8681.1, 8682, 8701, 8821, 8822, 8825, 8832, 8833, 8872, 8878 of this title.

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

(a) General rule.--Whenever the Department of State rejects a document delivered for filing under this title, the original document or a copy thereof and any papers relating thereto may be delivered to the prothonotary or clerk of the court vested by or pursuant to Title 42 (relating to judiciary and judicial procedure) with jurisdiction of appeals from the department. Immediately the prothonotary or clerk shall transmit the papers to the court without formality or expense to the person who delivered the original document to the department. The question of the eligibility of the document for filing by the department shall thereupon, at the earliest possible time, be heard by a judge of the court, without jury, in the court or in chambers. The finding of the court, or any judge thereof, that the document is eligible for filing by the department shall be final and the department shall act in accordance therewith. The true intent of this section is to secure for applicants an immediate

hearing in court and a determination by the court without delay or expense to the applicants.

(1) (Deleted by amendment).

(2) (Deleted by amendment).

(3) (Deleted by amendment).

(b) Further appellate review.--The corporation or any incorporator of a proposed corporation or other aggrieved applicant may within the time and in the manner provided by law seek judicial review of an adverse order of court entered pursuant to subsection (a). The department shall not have any right in the exercise of its functions under this title to seek judicial review of an adverse order entered pursuant to subsection (a) and any such right which the department might otherwise enjoy under the Constitution of Pennsylvania or otherwise is hereby waived, but any department, board or commission of the Commonwealth which contends that the document fails to comply with section 135(a)(6) (relating to requirements to be met by filed documents) may seek judicial review of the order.

(c) Exceptions.--

(1) This section shall not impair the right of any person to proceed under section 138 (relating to statement of correction) nor impair the right of the Attorney General to institute proceedings under section 503 (relating to actions to revoke corporate franchises).

(2) A determination by the department with respect to the registrability of a label or other mark under Title 54 (relating to names) or otherwise affecting the status of a label or other mark shall be subject to judicial review under Title 2 (relating to administrative law and procedure) and not under this section.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

Saved from Suspension. Pennsylvania Rule of Appellate Procedure No. 5102, as amended July 7, 1997, provided that section 137 shall not be deemed suspended or affected by the Pennsylvania Rules of Appellate Procedure.

Cross References. Section 137 is referred to in section 384 of this title.

§ 138. Statement of correction.

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

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

(2) The statute by or under which the association was formed, or the preceding filing was made, in the case of a filing that does not constitute a part of the public organic record of an association.

(3) Either:

(i) the inaccuracy or defect to be corrected; or

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

(4) If the document was erroneously executed, a statement that the original document shall be deemed reexecuted or not effective ab initio, as the case may be.

(b) Effect of filing.--

(1) The correction shall be effective:

(i) Upon filing of the statement of correction by the department, as to those persons who are substantially and adversely affected by the correction.

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

(2) A filing under this section:

(i) shall not have the effect of causing either of the following to cease being effective:

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

(B) the registration under Subchapter B of Chapter 4 (relating to registration) of a foreign association; but

(ii) may be used to correct the public organic record or registration.

(c) Filing pursuant to court order.--If the association or other person refuses to deliver to the department for filing an appropriate statement of correction under this section within ten business days after any person adversely affected has made a demand in record form for the correction, the affected person may apply to the court for an order to compel the filing. If the court finds that a document on file in the department is inaccurate, defective or erroneous, it may direct the association or other person who effected the inaccurate, defective or erroneous filing to deliver to the department for filing an appropriate statement of correction, or it may order the clerk to execute the statement under the seal of the court and cause the statement to be delivered to the department for filing. In the absence of fraud, an application may not be made to a court under this subsection with respect to a document more than one year after the date on which it was originally filed in the department.

(d) Cross reference.--See section 135 (relating to requirements to be met by filed documents).

(June 22, 2001, P.L.418, No.34, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (b).

Cross References. Section 138 is referred to in sections 136, 137, 1103, 1902, 1911, 5103, 5902, 5911, 8419, 8622, 8624, 8822, 8824, 9503 of this title.

§ 139. Tax clearance of certain fundamental transactions.

(a) Requirement.--Except as provided in subsection (c) or (d), clearance certificates from the Department of Revenue and the Department of Labor and Industry, evidencing the payment by the association of all taxes and charges due the Commonwealth required by law, must be delivered to the department for filing when any of the following is delivered to the department for filing:

(1) Articles or a statement or certificate of merger merging a domestic association into a nonregistered foreign association.

(2) Articles or a statement or certificate of conversion or domestication effecting a conversion or domestication of a domestic association into a nonregistered foreign association.

(3) Articles of dissolution, a certificate of dissolution or termination or a statement of revival of a domestic association.

(4) An application for termination of registration, statement of withdrawal or similar document by a registered foreign association.

(5) Articles or a statement or certificate of division dividing a domestic association solely into foreign associations.

(b) Tax clearance in judicial proceedings.--Until the clearance certificates described in subsection (a) have been filed with the court:

(1) The court shall not order the dissolution of a domestic business corporation, nonprofit corporation or business trust.

(2) The court shall not approve a final distribution of the assets of a domestic general partnership, limited partnership, electing partnership or limited liability company if the court is supervising the winding up of the association.

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

(1) If clearance certificates are filed with the court as required under subsection (b).

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

(3) With a certificate of dissolution under section 8482(b)(2)(i) (relating to winding up and filing of certificates).

(4) With a certificate of termination under section 8681.1 (relating to voluntary termination by partners).

(5) With a certificate of dissolution under section 8872(b)(2)(i) (relating to winding up and filing of certificates).

(6) With a certificate of termination under section 8878 (relating to voluntary termination by members or organizers).

(d) Registration of foreign associations.--It shall not be necessary to deliver clearance certificates under subsection (a) if, simultaneously with the delivery of the articles, statement or certificate of merger, conversion, division or domestication:

(1) the foreign association that is the surviving, converted or domesticated association registers to do business in this Commonwealth; or

(2) at least one of the new foreign associations resulting from the division registers to do business in this Commonwealth.

(Dec. 7, 1994, P.L.703, No.106, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (c)(2).

2016 Amendment. Act 170 amended subsecs. (a) and (c).

2014 Amendment. Act 172 amended subsec. (a) and added subsec. (d).

Cross References. Section 139 is referred to in sections 135, 335, 355, 366, 375, 415, 417, 1341, 1977, 1989, 5341, 5977, 5989, 8482, 8682, 8872 of this title; section 1305 of Title 17 (Credit Unions).

§ 140. Custody and management of orphan corporate and business records.

(a) General rule.--Any orphan corporate and business record under the custody or control of a county, including the City and County of Philadelphia, may become a Commonwealth record in the manner provided in this section. The Department of State, with the concurrence of the county records committee existing under the act of August 14, 1963 (P.L.839, No.407), may provide for the transfer on a progressive and phased basis to the custody and management of the department of any or all orphan corporate and business records. To the extent feasible, such records shall be integrated with records of the department relating to the same type of matters or transactions.

(b) Procedure.--The transfer contemplated by subsection (a) shall be effected on a basis consistent with the availability of appropriations. It is the intention of this section to encourage the department to schedule work under this section on a seasonal or otherwise intermittent basis in order to facilitate the smoothing of the workload of the department. The department may classify orphan corporate and business records for purposes of priority of transfer by county of origin, type of matter or transaction, vintage of matter or transaction, or on any other basis or combination of bases which the department may deem to be appropriate. The department shall publish and update in the Pennsylvania Code a schedule, by county and type of matter or transaction, setting forth where, as between a county and the department, custody of all orphan corporate and business records then resides.

(c) Fictitious name records.--The following statutes provided for duplicate filing of fictitious name registrations in both the department and in the office of the clerk of the court of common pleas or an equivalent row office in a home rule charter county:

(1) Act of June 28, 1917 (P.L.645, No.227), relating to individual fictitious names.

(2) Act of May 24, 1945 (P.L.967, No.380), referred to as the Fictitious Names Act.

(3) Act of July 11, 1957 (P.L.783, No.374), known as the Fictitious Corporate Name Act.

The county records committee may provide for the destruction of such duplicate records without transfer to the custody of the department.

(d) Definition.--As used in this section, the term "orphan corporate and business records" means corporate and limited partnership filings and recordings which were formerly effected in the office of the clerk of the court of common pleas or the office for the recording of deeds or an equivalent row office in a home rule charter county and which are no longer effected in such offices by reason of the enactment of:

(1) The act of December 19, 1990 (P.L.834, No.198), known as the GAA Amendments Act of 1990, with respect to insurance corporations, including corporations incorporated under or subject to the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, or incorporated under the acts of: April 28, 1903 (P.L.329, No.259); April 20, 1927 (P.L.317, No.190); June 24, 1939

(P.L.686, No.320); June 20, 1947 (P.L.687, No.298); June 28, 1951 (P.L.941, No.184); or July 15, 1957 (P.L.929, No.401); or any similar act relating to the incorporation or reincorporation of limited life insurance companies.

(2) The act of December 21, 1988 (P.L.1444, No.177), known as the General Association Act of 1988, with respect to certain:

(i) cooperative corporations incorporated under or subject to the act of June 7, 1887 (P.L.365, No.252), referred to as the Cooperative Association Act; and

(ii) public utility corporations, including corporations incorporated under or subject to the act of April 4, 1868 (P.L.62, No.29), referred to as the General Railroad Law; the act of April 29, 1874 (P.L.73, No.32), known as the Corporation Act of 1874; or the act of May 29, 1885 (P.L.29, No.32), referred to as the Natural Gas Company Act of 1885.

(3) The act of December 19, 1975 (P.L.524, No.155), with respect to certain limited partnerships, including limited partnerships formed under the act of April 12, 1917 (P.L.55, No.37), known as The Uniform Limited Partnership Act, or the act of March 21, 1836 (P.L.143, No.51), referred to as the Limited Partnerships Act of 1836.

(4) The act of November 15, 1972 (P.L.1063, No.271), with respect to nonprofit corporations incorporated under or subject to the act of May 5, 1933 (P.L.289, No.105), known as the Nonprofit Corporation Law of 1933, including corporations of the first class incorporated under or subject to the Corporation Act of 1874.

(5) Any similar act providing for the central filing in the department of a document of a type previously filed or recorded solely on a county or other decentralized basis.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 added section 140.

References in Text. The acts of March 21, 1836 (P.L.143, No.51), April 4, 1868 (P.L.62, No.29), April 29, 1874 (P.L.73, No.32), May 29, 1885 (P.L.29, No.32), June 7, 1887 (P.L.365, No.252), April 28, 1903 (P.L.329, No.259), April 12, 1917 (P.L.55, No.37), June 28, 1917 (P.L.645, No.227), April 20, 1927 (P.L.317, No.190), May 24, 1945 (P.L.967, No.380) and July 11, 1957 (P.L.783, No.374), referred to in this section, are repealed.

Cross References. Section 140 is referred to in sections 1311, 5311 of this title.

§ 141. Abandonment of filing before effectiveness.

(a) General rule.--A document in record form delivered to the department for filing may be abandoned before it takes effect by delivering to the department for filing a statement of abandonment.

(b) Requirements for statement of abandonment.--A statement of abandonment must:

(1) be signed by a person with the authority to sign the statement;

(2) identify the document to be abandoned; and

(3) state that abandonment of the document has been validly approved.

(c) Effect of statement of abandonment.--Upon filing by the department of a statement of abandonment, the action or transaction evidenced by the original document shall not take effect.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 added section 141.

Cross References. Section 141 is referred to in sections 136, 334, 344, 354, 365, 374, 8419, 8622, 8624, 8822, 8824 of this title.

§ 142. Effect of signing filings.

(a) Affirmation of truth.--Signing a document delivered to the department for filing is an affirmation under the penalties provided in 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that the facts stated in the document are true in all material respects.

(b) Signature by agent or legal representative.--A document filed under this title may be signed by an agent. If this title requires a particular individual to sign a document and the individual is deceased or incompetent, the document may be signed by a legal representative of the individual on behalf of the individual.

(c) Affirmation of authority.--A person that signs a document delivered to the department for filing affirms as a fact that the person is authorized to sign the document.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 added section 142.

Cross References. Section 142 is referred to in sections 8418, 8623, 8624, 8823 of this title.

§ 143. Liability for inaccurate information in filing.

If a document that is delivered to the department for filing under this title and filed by the department contains inaccurate information at the time of delivery to the department, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the document or caused another to sign it on behalf of the person and knew at the time the document was delivered that the information was inaccurate.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 added section 143.

Cross References. Section 143 is referred to in sections 8419, 8624 of this title.

§ 144. Signing and filing pursuant to judicial order.

(a) Petition.--If a person required by this title to sign a document or deliver a document to the department for filing under this title does not do so, another person that is aggrieved may petition the court to order:

(1) the person to sign the document;

(2) the person to deliver the document to the department for filing; or

(3) the department to file the document unsigned.

(b) Association.--If a petitioner under subsection (a) is not the association to which the document pertains, the petitioner shall make the association a party to the action.

(c) Effect.--A record filed under subsection (a)(3) is effective without being signed.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 added section 144.

Cross References. Section 144 is referred to in sections 8419, 8624, 8824 of this title.

§ 145. Subsistence certificate.

(a) General rule.--On request of a person, the department shall issue:

(1) a subsistence certificate for a domestic filing entity or domestic limited liability partnership; or

(2) a certificate of registration for a registered foreign association.

(b) Contents of certificate.--A certificate under subsection (a) must state:

(1) the name of the domestic filing entity or domestic limited liability partnership or the name under which the registered foreign association is registered in this Commonwealth;

(2) in the case of a domestic filing entity or domestic limited liability partnership, that the entity is currently subsisting on the records of the department; and

(3) in the case of a registered foreign association, that it is registered to do business in this Commonwealth.

(c) Effect of certificate.--Subject to any qualification stated in the certificate, a certificate issued by the department under subsection (a) may be relied on as conclusive evidence of the facts stated in the certificate.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 added section 145.

Cross References. Section 145 is referred to in section 382 of this title.

§ 146. Annual report.

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

(1) its name and jurisdiction of formation;

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

(3) the name of at least one governor;

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

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

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

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

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

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

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

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

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

(1) reject the report;

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

(3) return the report for correction.

(e) Modification of prior filings.--If an annual report contains information about the registered office which differs from the information shown in the records of the department immediately before the report is delivered to the department for filing, the address of the registered office of the entity or association delivering the report to the department for filing will be deemed to be changed to the address set forth in the report effective as of the filing of the report.

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

(g) Notice by department.--The department annually must deliver notice to each association required to file an annual report under this section of the annual report filing requirement at least two months before the annual report is due. Failure by the department to deliver notice to any party, or failure by any party to receive notice, of an annual report filing requirement does not relieve the party of the obligation to make the annual report filing.

(h) Transitional provision.--This section shall take effect on January 3, 2024.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 146.

Cross References. Section 146 is referred to in sections 419, 1507, 5507, 8625, 8825, 9504 of this title.

SUBCHAPTER C
CORPORATION BUREAU AND UCC FEES

Sec.

151. Short title and application of subchapter.
152. Definitions.
153. Fee schedule.
154. Enforcement and collection.
155. Disposition of funds.
156. References.

Enactment. Subchapter C was added December 19, 1990, P.L.834, No.198, effective January 1, 1991.

Subchapter Heading. The heading of Subchapter C was carried without amendment June 8, 2001, P.L.123, No.18, effective July 1, 2001.

Prior Provisions. Former Subchapter C, which related to definitive and contingent domestication of foreign associations, was added December 21, 1988, P.L.1444, No.177, and relettered to Subchapter D December 19, 1990, P.L.834, No.198, effective immediately.

Cross References. Subchapter C is referred to in sections 105, 8221, 8998 of this title.

§ 151. Short title and application of subchapter.

(a) Short title.--This subchapter shall be known and may be cited as the Corporation Bureau and UCC Fee Law.

(b) Application.--This subchapter contains an enumeration of fees to be charged by the bureau for services performed under this title or any other provision of law relating to corporations or associations and under Titles 13 (relating to

commercial code), 17 (relating to credit unions) and 54 (relating to names).
(June 8, 2001, P.L.123, No.18, eff. July 1, 2001; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b).

§ 152. Definitions.

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

"Ancillary transaction." Includes:

(1) preclearance of document;

(2) amendment of articles, charter, certificate or other organic document, restatement of articles, charter, certificate or other organic document;

(3) dissolution, cancellation or termination of an association;

(4) withdrawal or transfer of registration by foreign association;

(5) dissociation as a partner;

(5.1) statement or certificate of authority and denial or negation of authority;

(6) any transaction similar to any item listed in paragraphs (1) through (5.1);

(6.1) withdrawal, abandonment or termination of a document which has been delivered to the department for filing but has not yet become effective; or

(7) delivery to the department for filing in, by or with the department or the Secretary of the Commonwealth of any articles, statements, proceedings, agreements or any similar papers affecting associations under the statutes of this Commonwealth for which a specific fee is not set forth in section 153 (relating to fee schedule) or other applicable statute.

"Bureau." (Deleted by amendment).

(July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

§ 153. Fee schedule.

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

(1) Domestic corporations:	
(i) Articles of incorporation, letters patent or similar instruments incorporating a corporation.	$125
(ii) Each ancillary transaction.....	70
(2) Foreign associations:	
(i) Registration statement or similar qualifications to do business.....	250
(ii) Amendment of registration statement or similar change in qualification to do business.....	250
(iii) Domestication of alien association under section 161 (relating to domestication of certain alien associations).....	250
(iv) (Deleted by amendment).	
(v) Additional fee for each registered foreign association which is named in a statement of merger or similar instrument.....	40
(vi) Each ancillary transaction.....	70
(3) Partnerships and limited liability companies:	

(i) Certificate of limited partnership or certificate of organization of a limited liability company..... 125

(ii) Statement of registration of limited liability partnership or limited liability limited partnership or statement of election as an electing partnership..... 125

(iii) Each ancillary transaction..... 70

(4) Unincorporated nonprofit associations:

(i) Statement appointing an agent to receive serviceofprocess..... 70

(ii) Resignation of appointed agent..... 40

(iii) Amendment or cancellation of statement appointinganagent..... 70

(5) Business trusts:

(i) Declaration of trust or other initial instrument for a business trust..... 125

(ii) Each ancillary transaction..... 70

(6) Fictitious names:

(i) Registration..... 70

(ii) Each ancillary transaction..... 70

(7) Service of process:

(i) Each defendant named or served..... 70

(ii) (Reserved).

(8) Trademarks, emblems, union labels, description of bottles and similar matters:

(i) Trademark registration..... 50

(ii) Each ancillary trademark transaction..... 50

(iii) Another registration under this paragraph..... 70

(iv) Another ancillary transaction under this paragraph..... 70

(9) Uniform Commercial Code:

(i) As provided in 13 Pa.C.S. § 9525 (relating to fees).

(ii) (Reserved).

(10) Copy fees, including copies furnished under the Uniform Commercial Code:

(i) Each page furnished..... 3

(ii) (Reserved).

(11) Certification fees:

(i) For certifying copies of a document or paper on file, the fee specified under paragraph (10), if the department furnished the copy, plus... 40

(ii) (Reserved).

(iii) For issuing any other certificate of the Secretary of the Commonwealth or the department, other than an engrossed certificate..... 40

(iv) For preparing and issuing an engrossed certificate..... 125

(12) Report of record search other than a search under paragraph (9):

(i) For preparing and providing a report of a record search, the fee specified in paragraph (10), if any, plus..... 15

(ii) (Reserved).

(13) Reservation and registration of names:

(i) Reservation of association name..... 70

(ii) Registration of foreign association name. 70

(14) Change of registered office or address:

(i) Each statement of change of registered officebyagent..... 5
(ii) Each statement or certificate of change ofregisteredoffice..... 5
(iii) Each statement of change of address..... 5
(15) Expedited service:
(i) For the processing of a filing under this title or 13 Pa.C.S. (relating to commercial code) which is received by the bureau before 4 p.m. and is requested to be completed within one hour, an additionalfeeof..... 1,000
(ii) For the processing of a filing under this title or 13 Pa.C.S. which is received by the bureau before 2 p.m. and is requested to be completed within three hours, an additional fee of..... 300
(iii) For processing of a filing under this title or 13 Pa.C.S. which is received by the bureau before 10 a.m. and is requested to be completed the same day, an additional fee of..... 100
(16) Entity transactions:
(i) Statement of merger, interest exchange, conversion, division or domestication..... 70
(ii) Additional fee for each association that is a party to a merger..... 40
(iii) Additional fee for each new association resulting from a division..... 125
(iv) Each ancillary transaction..... 70
(17) Special processing fees:
(i) Request that multiple documents delivered to the department on the same day be filed in a certainorder..... 70
(ii) (Reserved).
(18) Annual report of domestic or foreign association:
(i) Annual report delivered to the bureau by a nonprofit corporation or a limited partnership or limited liability company with a not-for-profit purpose..... 0
(ii) Annual report delivered to the bureau electronically..... 7
(iii) Annual report not delivered to the bureauelectronically..... 7
(19) Reinstatement of domestic association:
(i) Application for reinstatement delivered to the bureau electronically..... 35
(ii) Application for reinstatement not delivered to the bureau electronically..... 40
(iii) Additional fee required by section 383(a)(4)(ii) (relating to reinstatement) for each annual report not previously paid..... 15
(20) Statement of validation:
(i) Statement of validation, any filing fee referred to in section 227(c) (relating to statement of validation), plus..... 75
(ii) (Reserved).

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

(c) Other services.--The bureau may charge equivalent fees for any like service not specified in subsection (a) or (b).

(d) Restriction.--UCC Revenue received by a county recorder of deeds under 13 Pa.C.S. § 9525 (relating to fees) after June 30, 2001, shall be restricted for use by the county recorder of deeds and the county prothonotary. The revenue shall be credited to the offices of the county recorder of deeds and the county prothonotary on the basis of the amount collected in each office in calendar year 2000, excluding any amounts paid to the Commonwealth. Revenue received in excess of the total amount received by each office during the year 2000, excluding amounts paid to the Commonwealth, shall be distributed pro rata to the county recorder of deeds and the county prothonotary. In a county without a recorder of deeds or a prothonotary, the provisions of this subsection shall apply to the equivalent county officials.

(Dec. 18, 1992, P.L.1269, No.167, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Dec. 7, 1994, P.L.703, No.106, eff. 60 days; Dec. 3, 1998, P.L.944, No.124, eff. 60 days; June 8, 2001, P.L.123, No.18, eff. July 1, 2001; Dec. 23, 2003, P.L.282, No.47, eff. imd.; July 9, 2013, P.L.476, No.67; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) and added subsec. (a)(18), (19) and (20).

2016 Amendment. Act 170 amended subsec. (a)(2) and (3).

2014 Amendment. Act 172 amended subsec. (a).

2013 Amendment. Section 58(2) of Act 67 provided that subsec. (a)(16) shall take effect upon publication of the notice under section 55 of Act 67. See section 55 of Act 67 in the appendix to this title for special provisions relating to publication of notice. The notice was published December 21, 2013, at 43 Pa.B. 7515.

2001 Amendment. Act 18 amended subsec. (a) intro. par. and (8) and added subsec. (d).

Cross References. Section 153 is referred to in sections 133, 152, 227, 383 of this title; section 1112 of Title 54 (Names).

§ 154. Enforcement and collection.

(a) General rule.--

(1) The department shall not be required to receive or file any document or paper unless the same shall be accompanied by the proper fee, but the department may in its discretion permit the filing of any document or paper without first requiring payment of the fee required by this subchapter when satisfied that the fee will be paid promptly. If any such fee is not paid in the manner and within the time prescribed by regulation of the department, the filing to which such fee relates shall become void.

(2) With respect to filings under 13 Pa.C.S. Div. 9 (relating to secured transactions), paragraph (1) is subject to 13 Pa.C.S. §§ 9516 (relating to what constitutes filing; effectiveness of filing) and 9520 (relating to acceptance and refusal to accept record).

(b) Extension of credit.--The department may make provision by regulation for the extension of credit to persons dealing with it. Any person who shall fail or refuse to satisfy any indebtedness owing to the Commonwealth under this subchapter in the manner and within the time prescribed by regulation adopted pursuant to this subsection shall pay to the

Commonwealth, in addition to the principal amount of such indebtedness and interest thereon, liquidated damages in the amount of $500.
(June 8, 2001, P.L.123, No.18, eff. July 1, 2001)

2001 Amendment. Act 18 amended subsec. (a).

§ 155. Disposition of funds.

(a) Corporation Bureau Restricted Account.--The Corporation Bureau Restricted Account, established under former section 814 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is continued. This account shall receive 30% of the amount received by the department under this subchapter except for the fees collected under 13 Pa.C.S. § 9525(a)(1)(ii) (relating to fees). This account shall receive 5% of the amount received by the department under 13 Pa.C.S. § 9525(a)(1)(ii). The balance of the amount received by the department under this subchapter shall be deposited in the General Fund. Money in the account shall be used solely for the operation of the bureau and for its modernization as may be required for improved operations of the bureau unless a surplus arises after two consecutive years, at which time the Secretary of the Commonwealth shall transfer any amount in excess of the bureau's budget into the General Fund.

(b) Expenditures.--The department shall submit a budget for the operation or modernization of the bureau to the Governor for approval. Such funds as are approved by the Governor are hereby appropriated from the Corporation Bureau Restricted Account to the department for the operation of the bureau.

(c) Advisory committee.--The Secretary of the Commonwealth shall appoint a Corporation Bureau Advisory Committee. The committee shall be composed of persons knowledgeable in matters covered by this title and related provisions of law and who have been recommended for appointment to the committee by the organized bar or other organized users of the facilities and services of the bureau. Members shall serve without compensation other than reimbursement for reasonable and necessary expenses in accordance with Commonwealth policy or regulations, shall serve for terms fixed by the secretary and may be reappointed. The Chairman of the committee shall be elected by the committee. The committee shall make recommendations to the Governor with respect to each budget submitted under subsection (b) and may consult with the department in the administration of this title and related provisions of law. The committee, in consultation with the bureau and the department, shall submit, by June 1 of each odd-numbered year, a report to the General Assembly describing its activities under this title and any recommended changes to this title.
(June 8, 2001, P.L.123, No.18, eff. July 1, 2001; June 22, 2001, P.L.418, No.34, eff. 60 days; Dec. 23, 2003, P.L.282, No.47, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (b) and added subsec. (a).

2001 Amendments. Act 18 amended subsec. (a) and Act 34 amended subsec. (c).

Cross References. Section 155 is referred to in sections 8221, 8998 of this title.

§ 156. References.

In statutes, regulations and orders, a reference to the Corporation Bureau shall be deemed a reference to the bureau.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 156.

SUBCHAPTER D
DOMESTICATION OF CERTAIN ALIEN ASSOCIATIONS

Sec.
161. Domestication of certain alien associations.
162. Contingent domestication of certain alien associations (Repealed).

Enactment. Subchapter D was added as Subchapter C December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter D December 19, 1990, P.L.834, No.198, effective immediately.

Subchapter Heading. The heading of Subchapter D was amended October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 161. Domestication of certain alien associations.

(a) General rule.--Except as restricted by subsection (e), any association as defined in subsection (f) may become a domestic association by filing in the Department of State a statement of domestication.

(b) Statement of domestication.--The statement of domestication shall be signed by the association and shall set forth in the English language:

(1) The name of the association. If the name is in a foreign language, it shall be set forth in Roman letters or characters or Arabic or Roman numerals. If the name is one that is rendered unavailable for use by a domestic entity by section 202(b) or (c) (relating to requirements for names generally), the association shall adopt a new name, in accordance with any procedures for changing the name of the association that are applicable prior to the domestication of the association, and shall set forth the new name in the statement.

(2) The name of the jurisdiction under the laws of which and the date on which it was first formed, incorporated or otherwise came into being.

(3) The name of the jurisdiction that constituted the seat, siege social or principal place of business or control administration of the association, or any equivalent under applicable law, immediately prior to the filing of the statement.

(4) A statement of the type of domestic association that the association will be upon domestication.

(5) A statement that the filing of the statement of domestication and, if desired, the renunciation of the prior domicile has been authorized (unless its organic rules require a greater vote) by a majority in interest of the interest holders of the association.

(6) If the association will be a type of domestic association that is created by a filing in the department, such other provisions as are required to be included in an initial filing to create that type of domestic association, except that it shall not be necessary to set forth the name of the person organizing the association.

(7) Any other provision that the association may choose to insert unless this title prohibits the inclusion of such a provision in a filing that creates the type of domestic association that the association will be upon domestication.

(c) Execution.--The statement shall be signed on behalf of the association by any authorized person.

(d) Effect of domestication.--Upon the filing of the statement of domestication, the association shall be domesticated in this Commonwealth and the association shall thereafter be subject to any applicable provisions of this title and any other provisions of law applicable to associations existing under the laws of this Commonwealth. If the association will be a type of domestic association that is created by a filing in the department, the statement of domestication shall constitute that filing. The domestication of any association in this Commonwealth pursuant to this section shall not be deemed to affect any obligations or liabilities of the association incurred prior to its domestication.

(e) Exclusion.--An association that can be domesticated under Subchapter G of Chapter 3 (relating to domestication) shall not be domesticated under this section.

(f) Definition.--As used in this section, the term "association," except as restricted by subsection (e), includes any incorporated organization, private law corporation (whether or not organized for business purposes), public law corporation, partnership, proprietorship, joint venture, foundation, trust, association or similar organization or entity existing under the laws of any jurisdiction other than this Commonwealth.

(g) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2019 Correction. The Legislative Reference Bureau made a 2019 correction adding back subsec. (g) that was erroneously dropped.

2014 Amendment. Act 172 amended subsecs. (b) intro. par., (1) and (5), (e) and (f).

2001 Amendment. Act 34 amended subsecs. (b), (d), (e), (f) and (g) and carried without amendment subsec. (c).

1990 Amendment. Act 198 renumbered section 151 to section 161 and amended the section heading and subsecs. (e) and (f).

Cross References. Section 161 is referred to in section 153 of this title.

§ 162. Contingent domestication of certain alien associations (Repealed).

2014 Repeal. Section 162 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

CHAPTER 2
ENTITIES GENERALLY

Subchapter

A. Names
B. Ratification of Defective Entity Actions

Enactment. Chapter 2 was added October 22, 2014, P.L.2640, No.172, effective July 1, 2015, unless otherwise noted.

Cross References. Chapter 2 is referred to in sections 1911, 5911 of this title.

SUBCHAPTER A
NAMES

Sec.
201. Definitions.
202. Requirements for names generally.
203. Corporation names.
204. Partnership and limited liability company names.
205. Business trust names.
206. Requirements for foreign association names.
207. Required name changes by senior associations.
208. Reservation of name.
209. Registration of name of nonregistered foreign association.
210. Registration of name of domestic nonfiling association.

Cross References. Subchapter A is referred to in sections 383, 414, 8415, 8615, 8621, 8815, 8821 of this title.

§ 201. Definitions.

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

"Covered association." Any of the following:

(1) a domestic filing entity;

(2) a domestic limited liability partnership;

(3) an electing partnership; or

(4) a registered foreign association.

"Proper name." The name set forth in:

(1) the public organic record of a domestic filing association;

(2) the statement of registration of a limited liability partnership;

(3) the statement of election of an electing partnership; or

(4) the statement of registration of a registered foreign association under section 412(a)(1)(i) (relating to foreign registration statement) or, if that name does not comply with this section, the name set forth in the statement under section 412(a)(1)(ii).

§ 202. Requirements for names generally.

(a) General rule.--The proper name of a covered association may be in any language, but it must be expressed in Roman letters or characters, Arabic or Roman numerals or symbols or characters specified by regulation of the department under section 133(a)(3)(vi) (relating to powers of Department of State).

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

(1) The proper name of another covered association, unless the covered association has:

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

(ii) filed a tax return or certificate with the Department of Revenue indicating that the covered association or other association is out of existence or has failed for a period of three successive years to

file with the Department of Revenue a report or return required by law and the fact of the failure has been certified by the Department of Revenue to the Department of State;

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

(iv) (Deleted by amendment).

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

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

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

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

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

(c) Required approvals or conditions.--

(1) The proper name of a covered association shall not imply that the association is:

(i) A governmental agency of the Commonwealth or of the United States.

(ii) A bank, bank and trust company, savings bank, private bank or trust company, as defined in the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, unless:

(A) The association is a Pennsylvania bank holding company or is otherwise authorized by statute to use its name.

(B) The association is a nonprofit corporation holding property in trust under section 5547 (relating to authority to take and hold trust property) and has been converted from a trust company under Subchapter E of Chapter 3 (relating to conversion). The preceding sentence controls over section 805(b) of the Banking Code of 1965.

(iii) An insurance company, nor shall it contain any of the words "annuity," "assurance," "beneficial," "bond," "casualty," "endowment," "fidelity," "fraternal," "guaranty," "indemnity," "insurance," "insurer," "reassurance," "reinsurance," "surety" or "title" when used in a manner as to imply that the association is engaged in the business of writing insurance or

reinsurance as principal or any other words of like purport unless it is duly licensed as an insurance company by its jurisdiction of formation or the Insurance Department certifies that it has no objection to the use by the association or proposed association of the designation. The proper name of a domestic insurance company shall:

(A) contain the word "mutual" only if it is a mutual insurance company; and

(B) clearly designate the object and purpose of the association.

(iv) A public utility furnishing electric or gas service to the public, unless the association or proposed association has as an express purpose the furnishing of service subject to the jurisdiction of the Pennsylvania Public Utility Commission or the Federal Energy Regulatory Commission.

(v) A credit union. See 17 Pa.C.S. § 104 (relating to prohibition on use of words "credit union").

(2) The proper name of a covered association shall not contain:

(i) The word "college," "university" or "seminary" when used in a manner as to imply that it is an educational institution conforming to the standards and qualifications prescribed by the State Board of Education, unless there is submitted a certificate from the Department of Education certifying that the association or proposed association is entitled to use that designation.

(ii) Words that constitute blasphemy, profane cursing or swearing or that profane the Lord's name.

(iii) The words "engineer" or "engineering," "surveyor" or "surveying" or any other word implying that any form of the practice of engineering or surveying as defined in the act of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and Geologist Registration Law, is provided unless at least one of the individuals signing the initial public organic record of the association or one of the governors of the existing association has been properly registered with the State Registration Board for Professional Engineers in the practice of engineering or surveying and there is submitted to the department a certificate from the board to that effect.

(iv) The words "architect" or "architecture" or any other word implying that any form of the practice of architecture as defined in the act of December 14, 1982 (P.L.1227, No.281), known as the Architects Licensure Law, is provided unless at least one of the individuals signing the initial public organic record of the association or one of the governors of the existing association has been properly registered with the Architects Licensure Board in the practice of architecture and there is submitted to the department a certificate from the board to that effect.

(v) The word "cooperative" or an abbreviation thereof unless the corporation is a cooperative corporation.

(vi) Any other words prohibited by law. See section 103 (relating to subordination of title to regulatory laws).

(d) Other rights unaffected.--This section shall not abrogate or limit the law as to unfair competition or unfair practices nor derogate from the common law, the principles of equity or the provisions of 54 Pa.C.S. (relating to names) with respect to the right to acquire and protect trade names.

(e) Remedies for violation of section.--The use of a name in violation of this section shall not vitiate or otherwise affect the existence or any acts of an association, but a court having jurisdiction may enjoin the association from using or continuing to use a name in violation of this section on the application of:

(1) the Attorney General, acting on his or her own motion or at the instance of an administrative department, board or commission of this Commonwealth; or

(2) a person adversely affected.

(f) Court-ordered use of name.--Subsection (b) shall not apply if an association delivers to the department for filing a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the association to use a name in this Commonwealth.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days; July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (b)(2).

2022 Amendment. Act 122 amended subsec. (b)(1) and added subsec. (b)(1.1).

References in Text. The name of the State Registration Board for Professional Engineers and Professional Land Surveyors was changed to the State Registration Board for Professional Engineers, Land Surveyors and Geologists by the act of December 16, 1992 (P.L.1151, No.151).

Cross References. Section 202 is referred to in sections 161, 206, 207, 210, 412, 418, 2121, 2921, 7703 of this title; sections 302, 311 of Title 54 (Names).

§ 203. Corporation names.

(a) Business corporations.--The proper name of a domestic or registered foreign business corporation must contain:

(1) the word "corporation," "company," "incorporated" or "limited" or an abbreviation of any of the terms;

(2) the word "association," "fund" or "syndicate"; or

(3) words or abbreviations of like import used in a jurisdiction other than this Commonwealth.

(b) Nonprofit corporations.--The proper name of a domestic nonprofit corporation or registered foreign corporation not-for-profit shall not be required to contain one of the words or abbreviations described under subsection (a).

§ 204. Partnership and limited liability company names.

(a) Limited liability partnerships.--The proper name of a domestic limited liability partnership or registered foreign limited liability partnership must contain the term "company," "limited" or "limited liability partnership," or an abbreviation of one of those terms, or words or abbreviations of like import used in a jurisdiction other than this Commonwealth.

(b) Limited partnerships.--The proper name of a domestic or registered foreign limited partnership:

(1) shall not be required to contain a word or abbreviation indicating that it is a limited partnership;

(2) if it is a limited liability limited partnership, must contain:

(i) the term "company," "limited" or "limited liability limited partnership" or a term of like import; or

(ii) an abbreviation of a term under subparagraph (i); and

(3) may contain the name of a partner.

(c) Limited liability companies.--The proper name of a domestic limited liability company or registered foreign limited liability company must contain the term "company," "limited" or "limited liability company," or an abbreviation of one of those terms, or words or abbreviations of like import used in a jurisdiction other than this Commonwealth.

§ 205. Business trust names.

The proper name of a domestic business trust or registered foreign business trust shall not be required to contain a word or abbreviation indicating that it is a business trust.

§ 206. Requirements for foreign association names.

(a) General rule.--The department shall not file a registration statement pursuant to section 412 (relating to foreign registration statement) for a foreign association that, except as provided under subsection (b), has a name that is rendered unavailable for use by a covered association by any provision of this subchapter.

(b) Exception.--The provisions of section 202(b) and (c) (relating to requirements for names generally) shall not prevent the filing of a registration statement of a foreign association whose name in its jurisdiction of formation would be prohibited from use in this Commonwealth by section 202(b) and (c) if the foreign association adopts a name for use in registering to do business in this Commonwealth that is available for use by a covered association.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 206 is referred to in section 209 of this title.

§ 207. Required name changes by senior associations.

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

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

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

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

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

(b) Adoption of new name on reinstatement.--Upon the removal of the reason why a covered association has lost the exclusive right to its proper name under subsection (a), the association shall make inquiry with the Department of State with regard to the availability of its name and, if the name has been appropriated by another person, the covered association shall adopt a new name in accordance with law before resuming its activities.

(c) Enforcement of undertaking to release name.--If a covered association has used a name that is not distinguishable on the records of the Department of State from the name of another association as permitted by section 202(b)(1) (relating to requirements for names generally) and the other association continues to use its name in this Commonwealth and does not change its name, cease to do business, be wound up or withdraw

as it proposed to do in its consent or change its name as required by subsection (a), any court having jurisdiction may enjoin the other association from continuing to use its name or a name that is not distinguishable therefrom on the application of:

(1) the Attorney General, acting on his or her own motion or at the instance of an administrative department, board or commission of this Commonwealth; or

(2) any person adversely affected.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (b).

Cross References. Section 207 is referred to in sections 1341, 5341 of this title.

§ 208. Reservation of name.

(a) General rule.--The exclusive right to the use of a name may be reserved by any person. The reservation shall be made by delivering to the department an application to reserve a specified name, signed by the applicant. If the department finds that the name is available for use, it shall reserve the name for the exclusive use of the applicant for a period of 120 days.

(b) Transfer of reservation.--The right to exclusive use of a name reserved pursuant to subsection (a) may be transferred to any other person by delivering to the department a notice in record form of the transfer, signed by the person who reserved the name, and specifying the name and address of the other person.

(c) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 209 (relating to registration of name of nonregistered foreign association).

Cross References. Section 208 is referred to in section 202 of this title; section 311 of Title 54 (Names).

§ 209. Registration of name of nonregistered foreign association.

(a) General rule.--A nonregistered foreign association may register a name that is available for use by a registered foreign association pursuant to section 206 (relating to requirements for foreign association names) by delivering to the department for filing an application for registration of name, signed by the association, setting forth:

(1) The name of the association.

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

(3) The name being registered.

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

(c) Use of registered name.--A foreign association whose name registration is effective may register as a foreign association under the registered name or consent in record form to the use of that name by another association.

(d) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (b).
Cross References. Section 209 is referred to in sections 202, 208 of this title; section 311 of Title 54 (Names).

§ 210. Registration of name of domestic nonfiling association.

(a) General rule.--A domestic nonfiling association that is not a limited liability partnership may register a name that is available for use by a domestic filing entity under section 202 (relating to requirements for names generally) by delivering to the department for filing an application for registration of name, signed by the association, stating:

(1) The name of the association.

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

(3) The name being registered.

(b) Annual renewal.--A domestic nonfiling association that has in effect a registration of its name may renew the registration from year to year by annually filing an application for renewal stating the facts required to be stated in an original application for registration. A renewal application may be filed between October 1 and December 31 in each year and shall extend the registration for the following calendar year.

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

(d) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).
(July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 added section 210.
Cross References. Section 210 is referred to in section 202 of this title.

SUBCHAPTER B
RATIFICATION OF DEFECTIVE ENTITY ACTIONS

Sec.
221. Definitions.
222. Nonexclusivity.
223. Ratification of defective entity actions.
224. Action on ratification.
225. Optional notice.
226. Effect of ratification.
227. Statement of validation.
228. Judicial proceedings regarding validity of entity actions.
229. Limitation on voiding certain defective entity actions.

Subchapter Heading. The heading of Subchapter B was amended November 3, 2022, P.L.1791, No.122, effective in 60 days.

§ 221. Definitions.

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

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

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

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

(1) is void or voidable;

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

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

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

"Failure of authorization." Either:

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

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

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

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

"Overissue." The purported issuance:

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

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

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

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

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

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

"Plan." A plan as defined in section 312 (relating to definitions) or a plan of asset transfer under section 1932 (relating to voluntary transfer of corporate assets) or other sale, lease, exchange or other disposition of all or substantially all assets, in each case approved or adopted or implemented by an entity or by a previous entity.

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

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

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

"Ratifying entity." The domestic entity whose governors or interest holders have ratified a defective entity action or who seek review under section 228 (relating to judicial proceedings regarding validity of entity actions) of a defective entity action that has not been ratified.

"Valid interests." The shares or interests of any class, series or type that have been duly authorized and validly issued in accordance with all applicable rules, including as a result of ratification or validation under this subchapter.

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

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

(i) the interest holders; or

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 221.

§ 222. Nonexclusivity.

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 222.

§ 223. Ratification of defective entity actions.

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

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

(2) the date of the defective entity action;

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

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

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

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

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

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

(c) Action by interest holders.--If any provision of the organic rules, a resolution of the governors, an applicable rule, a plan, a plan agreement or a governance agreement requires action by the interest holders or would have required action by the interest holders of the entity or of a previous entity at the date of the occurrence of the defective entity action, and that required action by the interest holders has not previously been obtained, the ratification of the defective entity action approved in the action taken by the governors under subsection (a) shall be submitted to the interest holders for action in accordance with section 224.

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 223.

Cross References. Section 223 is referred to in sections 224, 225 of this title.

§ 224. Action on ratification.

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

(b) Notice to interest holders.--If the ratification of the defective entity action requires action by the interest holders under section 223(c), and if the action is to be taken at a meeting, the entity must give notice to each holder of

interests, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of the defective entity action. If the ratification relates to an overissue, the entity must give notice to the holders of both valid and putative interests. The entity is not required to give notice as otherwise required by this subsection to holders of valid or putative interests whose identities or addresses for notice cannot be determined from the records of the entity. The notice must state that the purpose, or one of the purposes, of the meeting is to consider ratification of a defective entity action and must be accompanied by:

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

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

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

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

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

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

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

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

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

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

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

(f) Required amendment.--If the approval under this section of putative interests would result in an overissue, in addition to the approval required by section 223, approval of an amendment to the organic rules of the entity to increase the number of interests of an authorized class or series or to authorize the creation of a class or series of interests so there will be no over issue is also required.
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 224.
Cross References. Section 224 is referred to in sections 223, 225, 228, 1911 of this title.

§ 225. Optional notice.

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

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

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

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

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

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

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

(d) Notice by registered corporations.--Notice given by a registered corporation under this section may be given by means of a publicly available filing with the Securities and Exchange Commission.
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 225.
Cross References. Section 225 is referred to in section 228 of this title.

§ 226. Effect of ratification.

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

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

(1) The defective entity action is not void or voidable, or deprived of full effect, as a result of its failure of authorization and is duly authorized and a valid entity

action effective as of the date when the defective entity action was taken.

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 226.

§ 227. Statement of validation.

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

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

(1) the name of the ratifying entity;

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

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

(4) the date of the defective entity action;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 227.

Cross References. Section 227 is referred to in sections 153, 221 of this title.

§ 228. Judicial proceedings regarding validity of entity actions.

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

(1) the ratifying entity; or

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

(i) a successor to the ratifying entity;

(ii) a governor of the ratifying entity;

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

(iv) materially and adversely affected by the ratification.

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

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

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

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

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

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 228.

Cross References. Section 228 is referred to in sections 221, 226 of this title.

§ 229. Limitation on voiding certain defective entity actions.

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

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

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

(3) any subsequent defective entity action resulting directly or indirectly from the original defective entity

action is duly authorized and valid as of the time taken, if the failure of authorization of the subsequent defective entity action relates solely to the defective entity action referred to in paragraph (1).

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

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

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

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

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

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

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

(2) six years from the date when:

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

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

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

(3) 21 years after the defective entity action.

(d) Application to court to void defective entity action.--To the extent that relief is available under other applicable law, a person entitled to assert under applicable law that a defective entity action is void or voidable may, before the expiration of the applicable period set forth in this section, file an action for relief declaring or otherwise establishing that the defective entity action is void or voidable. If such an action is filed, the operation of subsection (a) or (b) shall be suspended until the final resolution of the action, and, to the extent that relief is obtained, subsections (a) and (b) shall not apply.

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

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

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

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

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

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

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

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

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

(i) Effectiveness of section.--In the case of a defective entity action occurring before January 3, 2023:

(1) the operation of subsections (a) and (b) is suspended until January 3, 2024, notwithstanding any expiration of the applicable period set forth in subsection (c);

(2) despite any expiration of the applicable period set forth in subsection (c), a person entitled to assert under applicable law that a defective entity action is void or voidable may file an action under subsection (d) if the action is filed on or before January 3, 2024;

(3) any action pending on January 3, 2023, seeking relief on the grounds that a defective entity action is void or voidable, including any relief that may be obtained in the action, is not affected by this section;

(4) any final judgment relating to the defective entity action that had become no longer subject to appeal before January 3, 2023, is not affected by this section; and

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 229.

Cross References. Section 229 is referred to in section 1914 of this title.

CHAPTER 3
ENTITY TRANSACTIONS

Subchapter

A. Preliminary Provisions
B. Approval of Entity Transactions
C. Merger
D. Interest Exchange
E. Conversion
F. Division
G. Domestication
H. Administrative Dissolution or Cancellation

Enactment. Chapter 3 was added October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

Cross References. Chapter 3 is referred to in sections 138, 1103, 1306, 1502, 1704, 1731, 1766, 1911, 1932, 2336, 2573, 2721, 5103, 5547, 5704, 5731, 5911, 7723, 8202, 8412, 8413, 8415, 8442, 8461, 8463, 8472, 8612, 8613, 8615, 8620, 8631, 8641, 8661, 8662, 8663, 8665, 8666, 8812, 8813, 8815, 8818, 8841, 8844, 8847, 8861, 8863, 9115, 9503 of this title.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

311. Short title of chapter.
312. Definitions.
313. Relationship of chapter to other provisions of law.
314. Regulatory conditions and required notices and approvals.
315. Nature of transactions.
316. Contents of plan.
317. Contractual dissenters rights in entity transactions.
318. Excluded entities and transactions.
319. Party to plan or transaction.
320. Submission of matters to interest holders.

§ 311. Short title of chapter.

This chapter shall be known and may be cited as the Entity Transactions Law.

§ 312. Definitions.

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

"Acquired association." The domestic entity or foreign association, all of one or more classes or series of interests in which are acquired in an interest exchange.

"Acquiring association." The domestic entity or foreign association that acquires all of one or more classes or series of interests of the acquired association in an interest exchange.

"Conversion." (Deleted by amendment).

"Converted association." The converting association as it continues in existence after a conversion.

"Converting association." The domestic entity or domestic banking institution that approves a plan of conversion pursuant to section 353 (relating to approval of conversion) or the foreign association that approves a conversion pursuant to the laws of its jurisdiction of formation.

"Dividing association." The domestic entity that approves a plan of division pursuant to section 363 (relating to approval of division) or 364 (relating to division without interest holder approval) or the foreign association that approves a division pursuant to the laws of its jurisdiction of formation.

"Division." (Deleted by amendment).

"Domesticated entity." The domesticating entity as it continues in existence after a domestication.

"Domesticating entity." The domestic entity that approves a plan of domestication pursuant to section 373(a) (relating to approval of domestication) or the foreign entity that approves a domestication pursuant to section 373(b).

"Domestication." (Deleted by amendment).

"Interest exchange." (Deleted by amendment).

"Interest holder liability." Either of the following:

(1) Personal liability for a liability of an association that is imposed on a person either:

(i) Solely by reason of the status of the person as an interest holder.

(ii) By the organic rules of the association that make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity.

(2) An obligation of an interest holder under the organic rules of an association to contribute to the association.

"Merger." (Deleted by amendment).

"Merging association." A domestic entity, domestic banking institution or foreign association that is a party to a merger under Subchapter C (relating to merger) and exists immediately before the merger becomes effective.

"New association." An association that is created by a division.

"Plan." A plan of merger, plan of interest exchange, plan of conversion, plan of division or plan of domestication, as applicable.

"Protected agreement." Either of the following:

(1) A record evidencing indebtedness and any related agreement in effect on July 1, 2015.

(2) A protected governance agreement.

"Protected governance agreement." Either of the following:

(1) The organic rules of a domestic entity or foreign association in effect on July 1, 2015.

(2) An agreement that is binding on any of the governors or interest holders of a domestic entity or foreign association on July 1, 2015.

"Registered office." In the case of a domestic banking institution that is a corporation, the principal place of business of the corporation set forth in its articles of incorporation as required by section 1004 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

"Resulting association." A dividing association, if it survives the division, or a new association.

"Special treatment." A provision of a plan permitted by section 329 (relating to special treatment of interest holders).

"Surviving association." The domestic entity, domestic banking institution or foreign association that continues in existence after or is created by a merger under Subchapter C.

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

"Act" or **"action."**
"Banking institution."
"Conversion."
"Department."
"Dissenters rights."
"Division."
"Domestic entity."
"Domestication."
"Entity."
"Filing entity."
"Foreign entity."
"Governor."
"Interest."
"Interest exchange."
"Interest holder."
"Merger."
"Obligation."
"Organic law."
"Organic rules."
"Private organic rules."
"Property."
"Public organic record."
"Record form."
"Registered foreign association."
"Representative."
"Sign."
"Transfer."
"Type."

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) and deleted the defs. of "conversion," "division," "domestication," "interest exchange" and "merger" in subsec. (a).

Cross References. Section 312 is referred to in section 221 of this title.

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

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

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

(2) If the corporation survives the transaction, the approval of the transaction is by a vote of the shareholders or directors which would be sufficient to impair the right or obligation under the provision or make the provision applicable or inapplicable to the corporation or change the standard of care. A transaction that causes the corporation to cease to be a registered corporation or to cease to be a registered corporation described in a particular provision shall not be considered a transaction rendering the provision inapplicable to the corporation for purposes of this section.

(a) Antitakeover provisions.--(Deleted by amendment).

(b) Transitional provision.--(Deleted by amendment).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 314. Regulatory conditions and required notices and approvals.

(a) Regulatory approvals.--If the law of this Commonwealth other than this chapter requires notice to or the approval of a governmental agency or officer of the Commonwealth in connection with the participation under an organic law that is not part of this title by a domestic or foreign association in a transaction which is a form of transaction authorized by this chapter, the notice must be given or the approval obtained by the association before it may participate in any form of transaction under this chapter.

(b) Certain regulated businesses.--A domestic converted association, domestic domesticated entity, domestic new association, domestic resulting association or domestic surviving association may not acquire as a result of a transaction under this chapter the power to engage in the business of banking, insurance or acting as a trust company unless an association of that type is authorized to have and exercise that power under the laws of this Commonwealth.

(c) Charitable assets.--Property held for a charitable purpose under the laws of this Commonwealth by a domestic or foreign association immediately before a transaction under this chapter becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised or otherwise transferred unless, to the extent required by or pursuant to the laws of this Commonwealth concerning cy pres or other laws dealing with nondiversion of charitable assets, the domestic or foreign association obtains an appropriate order of a court of competent jurisdiction specifying the disposition of the property.

(d) Preservation of transfers.--Subject to subsection (c) and section 5550 (relating to devises, bequests and gifts after certain fundamental changes), a bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance that is made to:

(1) a merging association that is not the surviving association and that takes effect or remains payable after the merger inures to the surviving association; and

(2) a dividing association may be allocated in the division as if it were an asset of the dividing association and, if the bequest, devise, gift, grant or promise takes effect or remains payable after the division, vests as provided in section 367(a)(4) (relating to effect of division).

(e) Trust obligations.--A trust obligation that would govern property:

(1) if transferred to a merging association that is not the surviving association applies to property that is transferred after a merger to the surviving association; and

(2) if transferred to a dividing association that is not a resulting association applies to property that is transferred after a division to a resulting association.

(f) Cross reference.--See section 318 (relating to excluded entities and transactions).

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 amended subsec. (a), relettered and amended parts of subsec. (d) to subsec. (e) and relettered former subsec. (e) to subsec. (f).

Cross References. Section 314 is referred to in sections 318, 331, 341, 351, 361, 371 of this title.

§ 315. Nature of transactions.

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

(b) Business purpose not required.--A transaction under this chapter does not require an independent business purpose in order for the transaction to be lawful.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days; July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (a).

Cross References. Section 315 is referred to in section 1571 of this title.

§ 316. Contents of plan.

(a) Omission of certain provisions.--A plan as delivered to the department for filing under any provision of this chapter in lieu of a statement of merger, statement of interest exchange, statement of conversion, statement of division or statement of domestication may omit all provisions of the plan except provisions, if any, that:

(1) are intended to amend or constitute the operative provisions of the public organic record of a domestic association as in effect subsequent to the effectiveness of the plan;

(2) are required by this chapter in the statement in lieu of which the plan is being delivered to the department for filing; or

(3) allocate or specify the respective property and liabilities of the resulting associations, in the case of a plan of division.

(b) Availability of full plan.--If any of the provisions of a plan are omitted from the plan as delivered to the department as permitted under subsection (a), the plan must state that the full text of the plan is on file at the principal office of the surviving, acquiring, converted, new or resulting association or domesticated entity and the address thereof. An association that takes advantage of this section shall furnish a copy of the full text of the plan, on request and without cost, to any interest holder of any domestic or foreign association that was a party to the plan.

(c) Reference to external facts.--A plan may refer to facts ascertainable outside of the plan if the manner in which the facts will operate on the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination or action is within the control of a party to the transaction.

Cross References. Section 316 is referred to in sections 332, 335, 342, 352, 362, 372 of this title.

§ 317. Contractual dissenters rights in entity transactions.

(a) General rule.--An interest holder of a domestic entity other than a nonprofit corporation or unincorporated nonprofit association shall be entitled to contractual dissenters rights in connection with a transaction under this chapter, even though the interest holder would not otherwise be entitled to dissenters rights under this title to the extent provided:

(1) in the entity's organic rules; or

(2) in the plan.

(b) Procedures for contractual dissenters rights.--If an interest holder is entitled to contractual dissenters rights pursuant to subsection (a), Subchapter D of Chapter 15 (relating to dissenters rights) applies to the extent practicable except as otherwise provided in the organic rules of the domestic entity or the plan.

(c) Cross references.--See sections 329 (relating to special treatment of interest holders) and 1571(c) (relating to application and effect of subchapter).

Cross References. Section 317 is referred to in sections 333, 336, 343, 346, 353, 356, 363, 367, 373, 1571 of this title.

§ 318. Excluded entities and transactions.

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

(1) A cooperative corporation subject to Chapter 73 (relating to electric cooperative corporations).

(2) A beneficial, benevolent, fraternal or fraternal benefit society:

(i) having a lodge system and a representative form of government; or

(ii) transacting any type of insurance.

(3) A credit union.

(b) Excluded transactions involving certain nonprofit corporations.--The following apply to nonprofit corporations:

(1) Except as provided in paragraph (2), this chapter may not be used to accomplish a transaction that has the effect of converting a domestic nonprofit corporation that is subject to the supervision of the Department of Banking and Securities, the Insurance Department or the Pennsylvania Public Utility Commission to a different type of entity.

(2) Paragraph (1) does not apply to a transaction under this chapter in which a health maintenance organization is converted to a different type of entity if the transaction has received the prior approval of the Insurance Department.

(c) Cross references.--See sections 103 (relating to subordination of title to regulatory laws) and 314 (relating to regulatory conditions and required notices and approvals).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added subsec. (a)(3).

Cross References. Section 318 is referred to in sections 314, 331, 341, 351, 361, 371 of this title.

§ 319. Party to plan or transaction.

An association that approves a plan in its capacity as an interest holder or creditor of a domestic or foreign association that is a party to the transaction under the plan, or that furnishes all or a part of the consideration contemplated by a plan, does not thereby become a party to the plan or the transaction under the plan for purposes of this chapter.

§ 320. Submission of matters to interest holders.

(a) General rule.--A domestic association may agree, in record form, to submit a plan to its interest holders whether or not the governors determine, at any time after approving the plan, that the plan is no longer advisable and recommend that the interest holders reject or vote against it, regardless of whether the governors change their recommendation. If an association so agrees to submit a plan to its interest holders, the plan is deemed to have been validly adopted by the association when it has been approved by the interest holders.

(b) Cross references.--See sections 321(c) (relating to approval by business corporation) and 325(c)(2) (relating to approval by limited liability company).

SUBCHAPTER B
APPROVAL OF ENTITY TRANSACTIONS

Sec.

321. Approval by business corporation.
322. Approval by nonprofit corporation.
323. Approval by general partnership.
324. Approval by limited partnership.
325. Approval by limited liability company.
326. Approval by professional association.
327. Approval by business trust.
328. Approval by unincorporated nonprofit association.
329. Special treatment of interest holders.
330. Alternative means of approval of transactions.

Cross References. Subchapter B is referred to in sections 333, 343, 353, 363, 373, 375 of this title.

§ 321. Approval by business corporation.

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

(b) Notice of meeting of shareholders.--Notice in record form of the meeting of shareholders that will act on the proposed plan must be given to each shareholder of record, whether or not entitled to vote thereon, of each domestic business corporation that is a party to the transaction under the plan. There shall be included in or enclosed with the notice a copy of the proposed plan or a summary thereof and any notice required by section 329 (relating to special treatment of interest holders). If the holders of shares of any class or series of shares are entitled to assert dissenters rights, the

notice must include or be accompanied by the text of the provision of this chapter granting dissenters rights and the text of Subchapter D of Chapter 15 (relating to dissenters rights). The notice must state that a copy of the organic rules of the surviving, acquired, converted, new or resulting association or domesticated entity as they will be in effect immediately following the transaction will be furnished to any shareholder of the corporation giving the notice on request and without cost.

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

(d) Adoption of plan of merger without shareholder vote.--

(1) Unless otherwise required by the organic rules, a plan of merger shall not require the approval of the shareholders of a domestic business corporation that is a merging association if:

(i) whether or not the corporation is the surviving association:

(A) the surviving association is a domestic business corporation and its articles are identical to the articles of the corporation for which shareholder approval is not required, except for changes that could be made without shareholder approval pursuant to section 1914(c);

(B) each share of the corporation outstanding immediately prior to the effectiveness of the merger is to continue as or be converted into, except as may be otherwise agreed by the holder thereof, an identical share of the surviving association; and

(C) the plan provides that the shareholders of the corporation are to hold in the aggregate shares of the surviving association to be outstanding immediately after the effectiveness of the merger entitled to cast at least a majority of the votes entitled to be cast generally for the election of directors;

(ii) immediately prior to the adoption of the plan and at all times thereafter prior to the effectiveness of the merger, another association owns directly or indirectly 80% or more of the outstanding shares of each class of the corporation; or

(iii) no shares of the corporation have been issued prior to the adoption of the plan by the board of directors pursuant to subsection (a).

(2) If a merger is effected pursuant to paragraph (1)(i) or (iii), the plan shall be deemed adopted by the corporation when it has been adopted by the board of directors pursuant to subsection (a).

(3) If a merger of a subsidiary corporation is effected pursuant to paragraph (1)(ii), the plan shall be deemed adopted by the subsidiary corporation when it has been adopted by the governors of the parent association and neither approval of the plan by the board of directors of the subsidiary corporation nor signing of the statement of merger by the subsidiary corporation shall be necessary.

(4) Unless otherwise required by the organic rules, a plan of merger providing for the merger of a domestic business corporation (referred to in this paragraph as a "constituent corporation") with or into a single indirect wholly owned subsidiary (referred to in this paragraph as the "subsidiary corporation") of the constituent corporation shall not require the approval of the shareholders of either the constituent corporation or the subsidiary corporation if all of the following provisions are satisfied:

(i) A merger under this paragraph must satisfy the following conditions:

(A) The constituent corporation and the subsidiary corporation are the only parties to the merger, other than a surviving association that is a corporation created in the merger.

(B) Each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effectiveness of the merger is converted in the merger into a share or equal fraction of a share of capital stock of a holding company having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the share of capital stock of the constituent corporation being converted in the merger.

(C) The holding company and the surviving association are each domestic business corporations.

(D) Immediately following the effectiveness of the merger, the articles of incorporation and bylaws of the holding company are identical to the articles of incorporation and bylaws of the constituent corporation immediately before the effectiveness of the merger, except for changes that could be made without shareholder approval pursuant to section 1914(c).

(E) Immediately following the effectiveness of the merger, the surviving association is a direct or indirect wholly owned subsidiary of the holding company.

(F) The directors of the constituent corporation become or remain the directors of the holding company on the effectiveness of the merger.

(G) The board of directors of the constituent corporation has made a good faith determination that the shareholders of the constituent corporation will not recognize gain or loss for United States Federal income tax purposes.

(ii) If the holding company is a registered corporation, the shares of the holding company issued in connection with the merger shall be deemed to have been acquired at the time that the shares of the constituent corporation converted in the merger were acquired.

(iii) As used in this paragraph only, the term "holding company" means a corporation that, from its incorporation until consummation of the merger governed by this paragraph, was at all times a direct wholly owned subsidiary of the constituent corporation and whose capital stock is issued in the merger.

(e) Approval of division by preferred shares.--If a dividing association that is a business corporation has outstanding any shares of a preferred or special class or series of shares, regardless of a limitation stated in the articles or bylaws on the voting rights of the class or series of shares, the holders of outstanding shares of the class or series shall be entitled to vote as a class on a plan of division which:

(1) provides that the dividing association will not survive the division; or

(2) amends the articles or bylaws of the surviving corporation in a manner that would entitle the holders of the preferred or special shares to a class vote on the amendment under the articles, the bylaws or section 1914(b).

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

(1) The plan of merger or interest exchange:

(i) permits or requires the merger or interest exchange to be effected under this subsection; and

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

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

(i) the offer may exclude shares that are:

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

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

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

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

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

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

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

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

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

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

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

(8) Each outstanding share of each class or series of shares of the corporation that the offeror is offering to purchase in accordance with the offer, and that is not purchased in accordance with the offer, is to be converted in the merger into, or into the right to receive, or is to be exchanged in the interest exchange for, or for the right to receive, the same amount and type of securities, interests, obligations, rights, cash or other property to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except that the following shares of the corporation need not be converted into or exchanged for the consideration described in this paragraph:

(i) shares owned by the corporation;

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

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

(9) As used in this subsection:

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

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

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

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

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

(B) either:

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

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

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

(g) Cross references.--See:

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

Section 2512 (relating to dissenters rights procedure).

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (c), relettered former subsec. (f) to subsec. (g) and added present subsec. (f).

Cross References. Section 321 is referred to in sections 320, 333, 1757, 1911, 1932, 2538, 2539, 2541, 2564 of this title.

§ 322. Approval by nonprofit corporation.

(a) Proposal of plan.--A plan shall be proposed in the case of a domestic nonprofit corporation as follows:

(1) by the adoption by the board of directors or other body of a resolution approving the plan;

(2) unless otherwise provided in the articles, by petition of members entitled to cast at least 10% of the votes that all members are entitled to cast thereon, setting forth the proposed plan, which petition shall be directed to the board of directors and filed with the secretary of the corporation; or

(3) by such other method as may be provided in the bylaws.

(b) Submission to members.--Except where the domestic nonprofit corporation has no members entitled to vote thereon, the board of directors or other body shall direct that the plan be submitted to a vote of the members entitled to vote thereon at a regular or special meeting of the members.

(c) Notice of meeting of members.--Notice in record form of the meeting of members that will act on the proposed plan shall be given to each member of record, whether or not entitled to vote thereon, of each domestic nonprofit corporation that is a party to the transaction under the plan. A copy of the proposed plan or a summary thereof shall be included in or enclosed with the notice. The notice shall state that a copy of the organic rules of the surviving, acquired, converted, new or resulting association or domesticated entity as they will be in effect immediately following the transaction will be

furnished to any member of the corporation giving the notice on request and without cost.

(d) Member vote required.--Except as provided in section 5757 (relating to action by members), a plan shall be adopted upon receiving the affirmative vote of at least a majority of the votes that all members present are entitled to cast thereon of each domestic nonprofit corporation that is a party to the transaction under the plan. If any class of members is entitled to vote on the plan as a class, the plan must be adopted by the affirmative vote of at least a majority of the votes that all members present of such class are entitled to cast thereon.

(e) Adoption in absence of voting members.--If a domestic nonprofit corporation has no members entitled to vote thereon, a plan shall be deemed adopted by the corporation when it has been adopted by the board of directors or other body pursuant to subsection (a).

(f) Cross references.--See Subchapter A of Chapter 57 (relating to notice and meetings generally) and section 3304(b) (relating to election of benefit corporation status).

Cross References. Section 322 is referred to in section 5757 of this title.

§ 323. Approval by general partnership.

(a) General rule.--A plan shall be approved in the case of a domestic general partnership as follows:

(1) in the manner provided in its organic rules for the type of plan involved;

(2) if its organic rules do not provide for approval of the type of plan involved, in the manner provided in its organic rules for approval of a plan of merger; or

(3) if its organic rules do not provide for approval of the type of plan involved or a plan of merger, the plan shall be approved by all of the partners.

(b) Cross reference.--See section 3304(b) (relating to election of benefit corporation status).

§ 324. Approval by limited partnership.

(a) Proposal of plan.--Except as provided in the organic rules, a plan shall be proposed in the case of a domestic limited partnership by the adoption by a unanimous vote of the general partners of a resolution approving the plan. Except where the approval of the limited partners is unnecessary under this chapter or the organic rules, the general partners shall submit the plan to a vote of the limited partners entitled to vote thereon at a regular or special meeting of the limited partners.

(b) Notice of meeting of limited partners.--Notwithstanding any other provision of the organic rules, notice in record form of the meeting of limited partners called for the purpose of considering the proposed plan shall be given to each limited partner, whether or not entitled to vote thereon, of each domestic limited partnership that is a party to the transaction under the plan. A copy of the proposed plan or a summary thereof shall be included in or enclosed with the notice. The notice shall state that a copy of the organic rules of the surviving, acquired, converted, new or resulting association or domesticated entity as they will be in effect immediately following the transaction will be furnished to any limited partner of the limited partnership giving the notice on request and without cost.

(c) Required vote by limited partners.--Except as provided in the organic rules:

(1) A plan shall be adopted upon receiving the affirmative vote or consent of limited partners owning the rights to receive a majority of the distributions as limited partners of each domestic limited partnership that is a party to the proposed transaction under the plan and, if any class of limited partners is entitled to vote thereon as a class, the affirmative vote or consent of limited partners owning the rights to receive a majority of the distributions as limited partners in each class vote.

(2) A proposed plan shall not be deemed to have been adopted by the limited partnership unless it has also been approved by the general partners, regardless of the fact that the general partners have directed or suffered the submission of the plan to the limited partners for action.

(d) Merger by action of general partners only.--Except as provided in the organic rules, a plan of merger shall not require the approval of the limited partners of a domestic limited partnership that is a merging association and shall be deemed adopted by the limited partnership when it has been adopted by the general partners pursuant to subsection (a) if:

(1) whether or not the limited partnership is the surviving association, the surviving association is a domestic limited partnership and its organic rules are identical to the organic rules of the merging limited partnership, except for changes that could be made without action by the limited partners; and

(2) each partnership interest outstanding immediately before the effectiveness of the merger is to continue as or to be converted into, except as may be otherwise agreed by the holder thereof, an identical partnership interest in the surviving limited partnership after the effectiveness of the merger.

(e) Cross reference.--See section 3304(b) (relating to election of benefit corporation status).

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 amended subsecs. (a) and (c).

Cross References. Section 324 is referred to in section 8646 of this title.

§ 325. Approval by limited liability company.

(a) Proposal of plan in manager-managed company.--Except as provided in the organic rules or where the approval of the managers is unnecessary under section 330 (relating to alternative means of approval of transactions), a plan shall be proposed, in the case of a manager-managed, domestic limited liability company, by the adoption by the managers of a resolution approving the plan. Except where the approval of the members of a manager-managed, domestic limited liability company is unnecessary under this chapter or the organic rules, the plan shall be submitted to a vote of the members entitled to vote thereon at a regular or special meeting of the members.

(b) Notice of meeting of members.--Except as provided in the organic rules:

(1) Notice in record form of the meeting of members of a domestic limited liability company that will act on the proposed plan shall be given to each member of record, whether or not entitled to vote thereon, of each domestic limited liability company that is a party to the transaction under the plan.

(2) There shall be included in or enclosed with the notice a copy of the proposed plan or a summary thereof.

(3) The notice shall state that a copy of the organic rules of the surviving, acquired, converted, new or resulting association or domesticated entity as they will be in effect immediately following the transaction will be furnished to any member of the company giving the notice on request and without cost.

(c) Adoption of plan by members.--A plan:

(1) Except as provided in the organic rules, shall be adopted upon receiving a majority of the votes cast by all members, if any, entitled to vote thereon of each of the domestic limited liability companies that is a party to the transaction under the plan and, if any class of members is entitled to vote thereon as a class, a majority of the votes cast in each class vote.

(2) Except as provided in the organic rules or section 330, shall not be deemed to have been adopted by a manager-managed company unless it has also been approved by the managers, regardless of the fact that the managers have directed or suffered the submission of the plan to the members for action.

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

(1) Whether the company is the surviving association:

(i) the surviving association is a domestic limited liability company and its organic rules are identical to the organic rules of the limited liability company that is party to the merger, except for changes that could be made without action by the members; and

(ii) each membership interest outstanding immediately prior to the effectiveness of the merger is to continue as or to be converted into, except as may be otherwise agreed by the holder thereof, an identical membership interest in the surviving association after the effectiveness of the merger.

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

(i) The constituent company and the subsidiary company are the only parties to the merger, other than a surviving association that is created in the merger.

(ii) Each interest of the constituent company outstanding immediately prior to the effectiveness of the merger is converted in the merger into an interest of a holding company having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the interest of the constituent company being converted in the merger.

(iii) The holding company and the surviving association are each domestic limited liability companies.

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

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

(v) Immediately following the effectiveness of the merger, the surviving association is a direct or indirect wholly owned subsidiary of the holding company.

(vi) The managers of the constituent company become or remain the managers of the holding company on the effectiveness of the merger.

(vii) The managers of the constituent company have made a good faith determination that the members of the constituent company will not recognize gain or loss for United States Federal income tax purposes.

(viii) As used in this paragraph only, the term "holding company" means a limited liability company that, from its formation until consummation of the merger governed by this paragraph, was at all times a direct wholly owned subsidiary of the constituent company and interests in which are issued in the merger.

(e) Cross reference.--See section 3304(b) (relating to election of benefit corporation status).

(July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended (d)(2)(iv).

Cross References. Section 325 is referred to in sections 320, 8847 of this title.

§ 326. Approval by professional association.

(a) General rule.--A plan shall be approved in the case of a domestic professional association by vote of a majority, or such higher percentage as may be provided in the organic rules, of the associates, voting according to their proportionate shares of ownership.

(b) Cross reference.--See section 3304(b) (relating to election of benefit corporation status).

§ 327. Approval by business trust.

(a) General rule.--Except as provided in subsection (b), a plan shall be approved in the case of a domestic business trust as follows:

(1) in the manner provided in its organic rules for the type of plan involved;

(2) if its organic rules do not provide for approval of the type of plan involved, in the manner provided in its organic rules for approval of a plan of merger; or

(3) if its organic rules do not provide for approval of the type of plan involved or a plan of merger, the plan shall be approved by all of the beneficial owners.

(b) Adoption of plan of merger without beneficiary vote.--Unless otherwise required by the organic rules, a plan of merger providing for the merger of a domestic business trust (referred to in this paragraph as the "constituent trust") with or into a single indirect wholly owned subsidiary (referred to in this paragraph as the "subsidiary trust") of the constituent trust shall not require the approval of the beneficiaries of the constituent trust if all of the following provisions are satisfied:

(1) The constituent trust and the subsidiary trust are the only parties to the merger, other than a surviving association created in the merger.

(2) Each interest in the constituent trust outstanding immediately prior to the effectiveness of the merger is converted in the merger into an interest in the holding trust

having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the interests in the constituent trust being converted in the merger.

(3) The holding trust and the surviving association are each domestic business trusts.

(4) Immediately following the effectiveness of the merger, the instrument and organic rules of the holding trust are identical to the instrument and organic rules of the constituent trust immediately before the effectiveness of the merger, except for changes that could be made without beneficiary approval under Chapter 95 (relating to business trusts).

(5) Immediately following the effectiveness of the merger, the surviving association is a direct or indirect wholly owned subsidiary of the holding trust.

(6) The trustees of the constituent trust become or remain the trustees of the holding trust on the effectiveness of the merger.

(7) The trustees of the constituent trust have made a good faith determination that the beneficiaries of the constituent trust will not recognize gain or loss for United States Federal income tax purposes.

(8) As used in this subsection only, the term "holding trust" means a business trust that, from its formation until consummation of the merger governed by this subsection, was at all times a direct wholly owned subsidiary of the constituent trust and the interests in which are issued in the merger.

(c) Cross reference.--See section 3304(b) (relating to election of benefit corporation status).

§ 328. Approval by unincorporated nonprofit association.

(a) General rule.--Except as provided in the governing principles, a plan shall be approved in the case of a domestic unincorporated nonprofit association by the affirmative vote of at least a majority of the votes cast at a meeting of the members.

(b) Cross reference.--See section 3304(b) (relating to election of benefit corporation status).

§ 329. Special treatment of interest holders.

(a) General rule.--Except as otherwise restricted in the organic rules, a plan may contain a provision classifying the interest holders of a class or series of interests into one or more separate groups by reference to any facts or circumstances that are not manifestly unreasonable and providing mandatory treatment for interests of the class or series held by particular interest holders or groups of interest holders that differs materially from the treatment accorded other interest holders or groups of interest holders that hold interests of the same class or series, including a provision modifying or rescinding rights previously created under this section if either of the following applies:

(1) The plan:

(i) is approved by a majority of the votes cast by the holders of any class or series of interests any of the interests of which are so classified into groups, whether or not such class or series would otherwise be entitled to vote on the plan; and

(ii) specifically enumerates the type and extent of the special treatment authorized.

(2) Under all the facts and circumstances, a court of competent jurisdiction finds such special treatment is

undertaken in good faith, after reasonable deliberation and is in the best interest of the association.

(b) Statutory voting rights on special treatment.--Except as provided in subsection (d), if a plan contains a provision for special treatment, each group of holders of any outstanding interests of a class or series who are to receive the same special treatment under the plan shall be entitled to vote as a special class in respect to the plan regardless of any limitations stated in the organic rules on the voting rights of any class or series.

(c) Determination of groups.--For purposes of applying subsections (a)(1) and (b), the determination of which interest holders are part of each group receiving special treatment shall be made as of the record date for interest holder action on the plan.

(d) Dissenters rights on special treatment.--If a plan contains a provision for special treatment without requiring for the adoption of the plan the statutory class vote required under subsection (b), the holder of any outstanding interests the statutory class voting rights of which are so denied shall be entitled to assert dissenters rights with respect to those interests. A shareholder of a business corporation who wishes to assert dissenters rights shall comply with Subchapter D of Chapter 15 (relating to dissenters rights). An interest holder in any other type of domestic entity shall comply with Subchapter D of Chapter 15 to the extent practicable.

(e) Notice to interest holders.--Any notice to interest holders of a meeting called to act on a plan that provides for special treatment shall state that the plan provides for special treatment. The notice shall identify the interest holders receiving special treatment unless the notice is accompanied by either a summary of the plan that includes that information or the full text of the plan.

(f) Exceptions.--This section shall not apply to any of the following:

(1) A provision of a plan that offers to all holders of interests of a class or series the same option to elect certain treatment.

(2) A plan involving any type of domestic entity that contains an express provision that this section does not apply or that fails to contain an express provision that this section shall apply.

(3) A provision of a plan that treats all of the holders of a particular class or series of interests of any type of domestic entity differently from the holders of another class or series. A provision of a plan that treats the holders of a class or series of shares of a domestic business corporation differently from the holders of another class or series of shares shall not constitute a violation of section 1521(d) (relating to authorized shares).

Cross References. Section 329 is referred to in sections 312, 317, 321, 332, 333, 342, 343, 352, 353, 362, 363, 372, 373, 376, 1571 of this title.

§ 330. Alternative means of approval of transactions.

(a) General rule.--Except as provided in subsection (b) or the organic rules of a domestic entity, approval of a transaction under this chapter by the unanimous vote or consent of its interest holders satisfies the requirements of this chapter for approval of the transaction.

(b) Exception.--Subsection (a) shall not apply to a nonprofit corporation.

Cross References. Section 330 is referred to in sections 321, 325 of this title.

SUBCHAPTER C
MERGER

Sec.
331. Merger authorized.
332. Plan of merger.
333. Approval of merger.
334. Amendment or abandonment of plan of merger.
335. Statement of merger; effectiveness.
336. Effect of merger.

Cross References. Subchapter C is referred to in sections 312, 2538 of this title.

§ 331. Merger authorized.

(a) General rule.--Except as provided in section 318 (relating to excluded entities and transactions) or this section, by complying with this chapter:

(1) One or more domestic entities may merge with one or more domestic entities or foreign associations into a surviving association.

(2) Two or more foreign associations may merge into a surviving association that is a domestic entity.

(3) A domestic banking institution may be a merging association or surviving association in a merger with one or more domestic or foreign associations if the surviving association or at least one of the merging associations is a domestic entity.

(b) Foreign law authorization required.--By complying with the applicable provisions of this subchapter, a foreign association may be a party to a merger under this subchapter or may be the surviving association in such a merger if the merger is authorized by the laws of the jurisdiction of formation of the foreign association.

(c) Banking institutions.--Subsection (a)(3) controls over any inconsistent provision of the organic law of a domestic banking institution that is a merging association.

(d) Exception.--A health maintenance organization may be a merging association only if the surviving association is a health maintenance organization.

(e) Cross reference.--See section 314 (relating to regulatory conditions and required notices and approvals).

§ 332. Plan of merger.

(a) General rule.--A domestic entity may become a party to a merger by approving a plan of merger. The plan shall be in record form and contain all of the following:

(1) As to each merging association, its name, jurisdiction of formation and type.

(2) If the surviving association is to be created in the merger, a statement to that effect and the association's name, jurisdiction of formation and type.

(3) The manner, if any, of:

(i) converting some or all of the interests in a merging association into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

(ii) canceling some or all of the interests in a merging association.

(4) If the surviving association exists before the merger, any proposed amendments to:

(i) its public organic record, if any; or

(ii) its private organic rules that are or are proposed to be in record form.

(5) If the surviving association is to be created in the merger:

(i) its proposed public organic record, if any; and

(ii) the full text of its private organic rules that are proposed to be in record form.

(6) Provisions, if any, providing special treatment of interests in a merging association held by any interest holder or group of interest holders as authorized by and subject to section 329 (relating to special treatment of interest holders).

(7) The other terms and conditions of the merger.

(8) Any other provision required by:

(i) the laws of this Commonwealth;

(ii) the laws of the jurisdiction of formation of a foreign merging or surviving association; or

(iii) the organic rules of a merging association.

(b) Optional contents.--In addition to the requirements of subsection (a), a plan of merger may contain any other provision not prohibited by law.

(c) Cross reference.--See section 316 (relating to contents of plan).

Cross References. Section 332 is referred to in sections 8415, 8615, 8815 of this title.

§ 333. Approval of merger.

(a) Approval by domestic entities.--A plan of merger shall not be effective unless it has been approved in both of the following ways:

(1) The plan is approved by a domestic entity that is a merging association in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

(2) The plan is approved in record form by each interest holder, if any, of a domestic entity that is a merging association that will have interest holder liability for debts, obligations and other liabilities that arise after the merger becomes effective, unless, as to an interest holder that does not approve the plan, both of the following apply:

(i) The organic rules of the domestic entity provide in record form for the approval of a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders.

(ii) The interest holder consented in record form to or voted for that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) Approval by foreign associations.--A merger under this subchapter in which a foreign association is a merging association is not effective unless the merger is approved by the foreign association in accordance with the laws of its jurisdiction of formation.

(c) Approval by domestic banking institutions.--A merger under this subchapter in which a domestic banking institution

that is not a domestic entity is a merging association is not effective unless the merger is approved by the domestic banking institution in accordance with the requirements in its organic laws and organic rules for approval of a merger.

(d) Dissenters rights.--

(1) Except as provided in paragraph (2), if a shareholder of a domestic business corporation that is to be a merging association objects to the plan of merger and complies with Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to dissenters rights to the extent provided in that subchapter.

(2) Except as provided under section 317 (relating to contractual dissenters rights in entity transactions), dissenters rights shall not be available to shareholders of a domestic business corporation that is a merging association in a merger described in section 321(d)(1)(i) or (4) (relating to approval by business corporation).

(3) If a shareholder of a domestic banking institution that is to be a merging association objects to the plan of merger and complies with section 1222 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, the shareholder shall be entitled to the rights provided in that section.

(4) See section 329 (relating to special treatment of interest holders).

Cross References. Section 333 is referred to in sections 336, 1571, 8415, 8615, 8815 of this title.

§ 334. Amendment or abandonment of plan of merger.

(a) General rule.--A plan of merger may be amended or abandoned only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) Approval of amendment.--A domestic entity that is a merging association may approve an amendment of a plan of merger in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan.

(ii) The public organic record, if any, or private organic rules of the surviving association that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving association under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would:

(A) increase the interest holder liability to which the interest holder will be subject; or

(B) otherwise adversely affect the interest holder in any material respect.

(c) Approval of abandonment.--After a plan of merger has been approved by a domestic entity that is a merging association

and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic entity that is a merging association may abandon the plan in the same manner as the plan was approved.

(d) Statement of abandonment.--If a plan of merger is abandoned after a statement of merger has been delivered to the department for filing and before the statement becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by a party to the plan, must be delivered to the department for filing before the statement of merger becomes effective.

§ 335. Statement of merger; effectiveness.

(a) General rule.--A statement of merger shall be signed by each merging association and delivered to the department for filing along with the certificates, if any, required by section 139 (relating to tax clearance of certain fundamental transactions).

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

(1) With respect to each merging association that is not the surviving association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address);

(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(2) With respect to the surviving association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109;

(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(3) If the statement of merger is not to be effective on filing, the later date or date and time on which it will become effective.

(4) A statement that the merger was approved in the following ways as applicable:

(i) By a domestic entity that is a merging association, in accordance with this chapter.

(ii) By a foreign merging association, in accordance with the laws of its jurisdiction of formation.

(iii) By a domestic merging association that is not a domestic entity, in the same manner required by its organic law for approving a merger that requires the approval of its interest holders.

(5) If the surviving association exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger.

(6) If the surviving association is created by the merger and is a domestic filing entity, its public organic record, as an attachment. The public organic record does not need to state the name or address of an incorporator of a corporation, organizer of a limited liability company or similar person with respect to any other type of entity.

(7) If the surviving association is created by the merger and is a nonregistered foreign association, one of the following:

(i) The street and mailing addresses of its registered agent and registered office in its jurisdiction of formation if it is a filing entity.

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

(8) If the surviving association is created by the merger and is a domestic limited liability partnership or a domestic limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration, as an attachment.

(9) If the surviving association is created by the merger and is a domestic electing partnership, its statement of election.

(c) Other provisions.--In addition to the requirements of subsection (b), a statement of merger may contain any other provision not prohibited by law.

(d) Domestic surviving association.--If the surviving association is a domestic entity, its public organic record, if any, shall satisfy the requirements of the laws of this Commonwealth, except that the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) Filing of plan.--A plan of merger that is signed by all of the merging associations and meets all of the requirements of subsection (b) may be delivered to the department for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this chapter to a statement of merger refer to the plan of merger filed under this subsection.

(f) Effectiveness of statement of merger.--A statement of merger is effective as provided in section 136(c) (relating to processing of documents by Department of State).

(g) Effectiveness of merger.--If the surviving association is a domestic association, the merger is effective when the statement of merger is effective. If the surviving association

is a foreign association, the merger is effective on the later of:

(1) the date and time provided by the organic law of the surviving association; or

(2) when the statement of merger is effective.

(h) Cross references.--See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 316 (relating to contents of plan).

§ 336. Effect of merger.

(a) General rule.--When a merger under this subchapter becomes effective, all of the following apply:

(1) The surviving association continues or comes into existence.

(2) The separate existence of each merging association that is not the surviving association ceases.

(3) All property of each merging association vests in the surviving association without reversion or impairment, and the merger shall not constitute a transfer of any of that property.

(4) All debts, obligations and other liabilities of each merging association are debts, obligations and other liabilities of the surviving association.

(5) Except as otherwise provided by law, all the rights, privileges, immunities and powers of each merging association vest in the surviving association.

(6) If the surviving association exists before the merger, all of the following apply:

(i) All of its property continues to be vested in it without transfer, reversion or impairment.

(ii) It remains subject to all its debts, obligations and other liabilities.

(iii) All its rights, privileges, immunities and powers continue to be vested without change in it.

(iv) Its public organic record, if any, is amended to the extent provided in the statement of merger.

(v) Its private organic rules that are to be in record form, if any, are amended to the extent provided in the plan of merger.

(7) Liens on the property of the merging association shall not be impaired by the merger.

(8) A claim existing or an action or a proceeding pending by or against any of the merging associations may be prosecuted to judgment as if the merger had not taken place, or the surviving association may be proceeded against or substituted in place of the appropriate merging association.

(9) If the surviving association is created by the merger, its private organic rules are effective and the following apply:

(i) If it is a filing entity, its public organic record is effective.

(ii) If it is a limited liability partnership or a limited liability limited partnership that is not using the alternative procedure under section 8201(f) (relating to scope), its statement of registration is effective.

(iii) If it is an electing partnership, its statement of election is effective.

(10) The interests in each merging association that are to be converted or canceled as provided in the plan of merger are converted or canceled, and the interest holders of those interests are entitled only to the rights provided to them under the plan and to any dissenters rights they have

pursuant to section 317 (relating to contractual dissenters rights in entity transactions) or 333(d) (relating to approval of merger).

(b) No dissolution rights.--Except as provided in the organic law or organic rules of a merging association, a merger under this subchapter does not give rise to any rights that an interest holder, governor or third party would have on a dissolution, liquidation or winding up of the merging association.

(c) New interest holder liability.--When a merger under this subchapter becomes effective, a person that becomes subject to interest holder liability with respect to an association as a result of the merger has interest holder liability only to the extent provided by the organic law of that association and only for those debts, obligations and other liabilities that arise after the merger becomes effective.

(d) Prior interest holder liability.--When a merger under this subchapter becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic entity that is a merging association with respect to which the person had interest holder liability shall be as follows:

(1) The merger does not discharge any interest holder liability under the organic law of the domestic entity to the extent the interest holder liability arose before the merger became effective.

(2) The person does not have interest holder liability under the organic law of the domestic entity for any debt, obligation or other liability that arises after the merger becomes effective.

(3) The organic law of the domestic entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by law other than this chapter or the organic rules of the domestic entity with respect to any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(e) Foreign surviving association.--When a merger under this subchapter becomes effective, a foreign association that is the surviving association may be served with process in this Commonwealth for the collection and enforcement of any debts, obligations or other liabilities of a domestic entity that is a merging association in accordance with applicable law.

(f) Registration of foreign association.--When a merger under this subchapter becomes effective, the registration to do business in this Commonwealth of a registered foreign association that is a merging association and is not the surviving association is canceled.

(g) Taxes.--Any taxes, interest, penalties and public accounts of the Commonwealth claimed against any of the merging associations that are settled, assessed or determined prior to or after the merger shall be the liability of the surviving association and, together with interest thereon, shall be a lien against the franchises and property of the surviving association.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 amended subsec. (a)(2).

SUBCHAPTER D

Sec.
341. Interest exchange authorized.
342. Plan of interest exchange.
343. Approval of interest exchange.
344. Amendment or abandonment of plan of interest exchange.
345. Statement of interest exchange; effectiveness.
346. Effect of interest exchange.

Cross References. Subchapter D is referred to in sections 102, 2538 of this title.

§ 341. Interest exchange authorized.

(a) General rule.--Except as provided in section 318 (relating to excluded entities and transactions) or this section, by complying with this subchapter:

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

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

(b) Foreign associations.--By complying with the applicable provisions of this subchapter:

(1) A foreign association may be the acquiring association in an interest exchange under this subchapter regardless of whether the laws of its jurisdiction of formation authorizes an interest exchange.

(2) A foreign association may be the acquired association in an interest exchange under this subchapter only if the interest exchange is authorized by the laws of its jurisdiction of formation.

(c) Protected agreements.--If a protected agreement of a domestic entity other than a business corporation contains a provision that applies to a merger of the entity but does not refer to an interest exchange, the provision shall apply to an interest exchange in which the domestic entity is the acquired association as if the interest exchange were a merger until the provision is amended after July 1, 2015.

(d) Excluded entities.--The following domestic entities shall not be the acquired association in an interest exchange:

(1) a health maintenance organization;

(2) a hospital plan corporation; or

(3) a professional health service organization.

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

(1) in a provision of the organic rules of a domestic business corporation which took effect before July 1, 2015; or

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

(f) Cross reference.--See section 314 (relating to regulatory conditions and required notices and approvals).
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (e).

Cross References. Section 341 is referred to in section 1106 of this title.

§ 342. Plan of interest exchange.

(a) General rule.--A domestic entity may be the acquired association in an interest exchange under this chapter by approving a plan of interest exchange. The plan shall be in record form and contain all of the following:

(1) The name and type of the acquired association.

(2) The name, jurisdiction of formation and type of the acquiring association.

(3) The manner of:

(i) exchanging the interests in the acquired association to be acquired in the interest exchange into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; and

(ii) canceling, if desired, some or all other interests in the acquired association.

(4) Any proposed amendments to:

(i) the public organic record, if any, of the acquired association; and

(ii) the private organic rules of the acquired association that are or are proposed to be in record form.

(5) Provisions, if any, providing special treatment of interests in the acquired association held by any interest holder or group of interest holders as authorized by and subject to section 329 (relating to special treatment of interest holders).

(6) The other terms and conditions of the interest exchange.

(7) Any other provision required by:

(i) the laws of this Commonwealth; or

(ii) the organic rules of the acquired association.

(b) Optional contents.--In addition to the requirements of subsection (a), a plan of interest exchange may contain any other provision not prohibited by law.

(c) Cross reference.--See section 316(c) (relating to contents of plan).

Cross References. Section 342 is referred to in sections 8415, 8615, 8815 of this title.

§ 343. Approval of interest exchange.

(a) Approval by domestic entities.--A plan of interest exchange in which the acquired association is a domestic entity shall not be effective unless it has been approved in the following ways:

(1) By the acquired domestic entity in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

(2) In record form, by each interest holder of the acquired domestic entity that will have interest holder liability for debts, obligations and other liabilities that arise after the interest exchange becomes effective, unless, as to an interest holder that does not approve the plan, both of the following apply:

(i) The organic rules of the entity provide in record form for the approval of an interest exchange or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all the interest holders.

(ii) The interest holder voted for or consented in record form to that provision of the organic rules or became an interest holder after the adoption of that provision.

(3) Except as provided in the organic rules of the domestic entity, by the following class votes:

(i) the holders of any class or series of interests of the acquired association to be exchanged or canceled shall be entitled to vote as a class on the plan; and

(ii) the holders of any class or series of interests of the acquired association shall be entitled to vote as a class on the plan if the plan effects any change in the organic rules and those holders would have been entitled to vote as a class if the change had been made in any other manner.

(b) Approval by foreign associations.--An interest exchange in which the acquired association is a foreign association is not effective unless it is approved by the foreign association in accordance with the laws of its jurisdiction of formation.

(c) Acquiring association.--Except as provided in its organic law or organic rules, the interest holders of the acquiring association are not required to approve the interest exchange.

(d) Dissenters rights.--If a shareholder of a domestic business corporation that is to be the acquired association in an interest exchange objects to the plan of exchange and complies with Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to dissenters rights to the extent provided in that subchapter.

(e) Cross references.--See sections 317 (relating to contractual dissenters rights in entity transactions) and 329(c) (relating to special treatment of interest holders).

Cross References. Section 343 is referred to in sections 346, 1571, 8415, 8615, 8815 of this title.

§ 344. Amendment or abandonment of plan of interest exchange.

(a) General rule.--A plan of interest exchange may be amended or abandoned only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) Approval of amendment.--A domestic entity that is the acquired association may approve an amendment of a plan of interest exchange in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the entity under the plan.

(ii) The public organic record, if any, or private organic rules of the entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the interest holders of the entity under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would:

(A) increase the interest holder liability to which the interest holder will be subject; or

(B) otherwise adversely affect the interest holder in any material respect.

(c) Approval of abandonment.--After a plan of interest exchange has been approved by a domestic entity that is the acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic entity that is the acquired association may abandon the plan in the same manner as the plan was approved.

(d) Statement of abandonment.--If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the department for filing and before the statement becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by the acquired association, must be delivered to the department for filing before the time the statement of interest exchange becomes effective.

§ 345. Statement of interest exchange; effectiveness.

(a) General rule.--If the acquired association is a domestic entity, a statement of interest exchange shall be signed by that entity and delivered to the department for filing.

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

(1) With respect to the acquired association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing association or domestic limited liability partnership, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address); and

(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office.

(2) With respect to the acquiring association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109;

(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(3) If the statement of interest exchange is not to be effective on filing, the later date or date and time on which it will become effective.

(4) A statement that the plan of interest exchange was approved by the acquired association in accordance with this chapter.

(5) Any amendments to the public organic record of the acquired association approved as part of the plan of interest exchange.

(c) Other provisions.--In addition to the requirements of subsection (b), a statement of interest exchange may contain any other provision not prohibited by law.

(d) Filing of plan.--A plan of interest exchange that is signed by the domestic entity that is the acquired association and that meets all of the requirements of subsection (b) may be delivered to the department for filing instead of a statement of interest exchange and on filing shall have the same effect. If a plan of interest exchange is delivered to the department for filing as provided in this subsection, references in this chapter to a statement of interest exchange shall refer to the plan of interest exchange filed under this subsection.

(e) Effectiveness.--An interest exchange in which the acquired association is a domestic entity is effective when the statement of interest exchange is effective as provided in section 136(c) (relating to processing of documents by Department of State).

(f) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

§ 346. Effect of interest exchange.

(a) General rule.--When an interest exchange in which the acquired association is a domestic entity becomes effective, all of the following apply:

(1) Interests in the acquired association are exchanged or canceled as provided in the plan of exchange, and the interest holders of those interests are entitled only to the rights provided to them under the plan and to any dissenters rights they have pursuant to section 317 (relating to contractual dissenters rights in entity transactions) or 343(d) (relating to approval of interest exchange).

(2) The acquiring association becomes the interest holder of the interests in the acquired association stated in the plan of interest exchange to be acquired by the acquiring entity.

(3) The public organic record, if any, of the acquired association is amended to the extent provided in the statement of interest exchange.

(4) The private organic rules of the acquired association that are to be in record form, if any, are amended to the extent provided in the plan of interest exchange.

(b) No dissolution rights.--Except as provided in the organic rules of the acquired association, the interest exchange shall not give rise to any rights that an interest holder, governor or third party would have upon a dissolution, liquidation or winding up of the acquired association.

(c) New interest holder liability.--When an interest exchange becomes effective, a person that becomes subject to interest holder liability with respect to an association as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the association and only for those debts, obligations and other

liabilities that arise after the interest exchange becomes effective.

(d) Prior interest holder liability.--When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired association with respect to which the person had interest holder liability is as follows:

(1) The interest exchange does not discharge any interest holder liability under the organic law of the domestic acquired association to the extent the interest holder liability arose before the interest exchange became effective.

(2) The person does not have interest holder liability under the organic law of the domestic acquired association for any debt, obligation or other liability that arises after the interest exchange becomes effective.

(3) The organic law of the domestic acquired association continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by law other than this title or the organic law or organic rules of the domestic acquired association with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

SUBCHAPTER E
CONVERSION

Sec.

351. Conversion authorized.
352. Plan of conversion.
353. Approval of conversion.
354. Amendment or abandonment of plan of conversion.
355. Statement of conversion; effectiveness.
356. Effect of conversion.

Cross References. Subchapter E is referred to in sections 102, 202, 210, 9302 of this title.

§ 351. Conversion authorized.

(a) Domestic converting associations.--Except as provided in section 318 (relating to excluded entities and transactions) or this section, by complying with this chapter:

(1) A domestic entity may become a domestic entity of a different type or a domestic banking institution.

(2) A domestic banking institution may become a domestic association of a different type.

(3) A domestic entity may become a foreign association of a different type, if the conversion is authorized by the laws of the foreign jurisdiction.

(b) Foreign converting associations.--By complying with the applicable provisions of this subchapter, a foreign association may become a domestic entity of a different type if the conversion is authorized by the laws of the jurisdiction of formation of the foreign association.

(c) Protected governance agreements.--If a protected governance agreement that is binding on a domestic entity immediately before the effectiveness of a transaction under this chapter contains a provision that applies to a merger of the entity but does not refer to a conversion, the provision

shall apply to a conversion of the entity as if the conversion were a merger until the provision is amended after July 1, 2015.

(d) Exceptions.--This subchapter may not be used to accomplish a transaction that has the same effect as a transaction under any of the following provisions:

(1) Section 7104 (relating to election of an existing business corporation to become a cooperative corporation).

(2) Section 7105 (relating to termination of status as a cooperative corporation for profit).

(3) Section 7106 (relating to election of an existing nonprofit corporation to become a cooperative corporation).

(4) Section 7107 (relating to termination of nonprofit cooperative corporation status).

(e) Cross reference.--See section 314 (relating to regulatory conditions and required notices and approvals).

Cross References. Section 351 is referred to in section 1106 of this title.

§ 352. Plan of conversion.

(a) General rule.--A domestic entity or domestic banking institution may be a party to a conversion by approving a plan of conversion. The plan shall be in record form and contain all of the following:

(1) The name and type of the converting association.

(2) The name, jurisdiction of formation and type of converted association.

(3) The manner of:

(i) canceling, if desired, some, but less than all, of the interests in the converting association;

(ii) converting at least some of the interests in the converting association into interests in the converted association; and

(iii) converting the interests in the converting association not canceled under subparagraph (i) or converted under subparagraph (ii) into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(4) The proposed public organic record of the converted association if it will be a filing entity.

(5) The full text of the private organic rules of the converted association that are proposed to be in record form.

(6) Provisions, if any, providing special treatment of interests in the converting association held by any interest holder or group of interest holders as authorized by and subject to section 329 (relating to special treatment of interest holders).

(7) The other terms and conditions of the conversion.

(8) Any other provision required by:

(i) the laws of this Commonwealth;

(ii) the laws of the jurisdiction of formation of the converted association if it is to be a foreign association; or

(iii) the organic rules of the converting association.

(b) Optional contents.--In addition to the requirements of subsection (a), a plan of conversion may contain any other provision not prohibited by law.

(c) Terms of interests.--The ownership, voting and other rights of the interest holders in the converted association shall be substantially the same as they were in the converting association except:

(1) as provided in the plan of conversion pursuant to section 329;

(2) as provided in the express terms of the organic rules of the converted association that are in record form; or

(3) to the extent a difference in those rights is required by a provision of the organic law of the converted association that cannot be varied in its organic rules.

(d) Cross reference.--See section 316(c) (relating to contents of plan).

Cross References. Section 352 is referred to in sections 353, 356, 8415, 8615, 8815 of this title.

§ 353. Approval of conversion.

(a) Approval by domestic associations.--A plan of conversion in which the converting association is a domestic entity or domestic banking institution shall not be effective unless it has been approved in the following ways:

(1) In the case of a domestic entity, in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

(2) In the case of a domestic banking institution that is a corporation, by at least:

(i) In the case of a mutual savings bank:

(A) two-thirds of the trustees present at a meeting at which the plan is proposed; and

(B) two-thirds of all the trustees at a subsequent meeting held upon not less than ten days' notice to all the trustees.

(ii) In the case of any other institution:

(A) a majority of the directors; and

(B) the shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast thereon, and, if any class of shares is entitled to vote thereon as a class, the holders of at least two-thirds of the outstanding shares of such class, at a meeting held upon not less than ten days' notice to all shareholders.

(3) In record form, by each interest holder, if any, of the converting association that will have interest holder liability for debts, obligations and other liabilities that arise after the conversion becomes effective, unless, as to an interest holder that does not approve the plan, both of the following apply:

(i) The organic rules of the converting association provide in record form for the approval of a conversion or a merger in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders.

(ii) The interest holder voted for or consented in record form to that provision of the organic rules or became an interest holder after the adoption of that provision.

(b) Approval by foreign associations.--A conversion in which the converting association is a foreign association shall not be effective unless it is approved by the foreign association in accordance with the laws of its jurisdiction of formation.

(c) Dissenters rights.--The following apply with respect to the rights of an interest holder of the converting association:

(1) A shareholder of a domestic business corporation that is to be a converting association shall be entitled to dissenters rights if:

(i) the shareholder objects to the plan of conversion and complies with Subchapter D of Chapter 15 (relating to dissenters rights); and

(ii) the conversion involves a change in the rights of the shareholder pursuant to section 352(c)(1) or (2) (relating to plan of conversion).

(2) A shareholder of a domestic banking institution that is to be a converting association shall be entitled to the rights provided in section 1222 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, if:

(i) the shareholder objects to the plan of conversion and complies with section 1222 of the Banking Code of 1965; and

(ii) the conversion involves a change in the rights of the shareholder pursuant to section 352(c)(1) or (2).

(3) See sections 317 (relating to contractual dissenters rights in entity transactions) and 329 (relating to special treatment of interest holders).

Cross References. Section 353 is referred to in sections 312, 356, 1571, 8415, 8615, 8815 of this title.

§ 354. Amendment or abandonment of plan of conversion.

(a) Approval of amendment.--A plan of conversion in which the converting association is a domestic association may be amended in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the converting association under the plan.

(ii) The public organic record, if any, or private organic rules of the converted association that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted association under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would:

(A) increase the interest holder liability to which the interest holder will be subject; or

(B) otherwise adversely affect the interest holder in any material respect.

(b) Approval of abandonment.--After a plan of conversion has been approved by a converting association that is a domestic association and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting association may abandon the plan in the same manner as the plan was approved.

(c) Statement of abandonment.--If a plan of conversion is abandoned after a statement of conversion has been delivered to the department for filing and before the statement of conversion becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by the converting association, must be delivered to the department for filing before the statement of conversion becomes effective.

§ 355. Statement of conversion; effectiveness.

(a) General rule.--A statement of conversion shall be signed by the converting association and delivered to the department for filing along with the certificates, if any, required by section 139 (relating to tax clearance of certain fundamental transactions).

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

(1) With respect to the converting association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) the date on which it was first created, incorporated, formed or otherwise came into existence;

(v) if it is a domestic filing association, the statute under which it was first created, incorporated, formed or otherwise came into existence;

(vi) if it is a domestic filing association, domestic limited liability partnership or registered foreign association:

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

(B) if it is not required to maintain a registered office in this Commonwealth, the address, including street and number, if any, of its principal office;

(vii) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and

(viii) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(2) With respect to the converted association:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association:

(A) the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109; or

(B) if it is not required to maintain a registered office in this Commonwealth, the address, including street and number, if any, of its principal office;

(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(3) If the statement of conversion is not to be effective on filing, the later date or date and time on which it will become effective.

(4) If the converting association is a domestic association, a statement that the plan of conversion was approved in accordance with this chapter or, if the converting association is a foreign association, a statement that the conversion was approved by the foreign association in accordance with the laws of its jurisdiction of formation.

(5) If the converted association is a domestic filing entity or domestic banking institution, its public organic record as an attachment. The public organic record does not need to state the name or address of an incorporator of a corporation, organizer of a limited liability company or similar person with respect to any other type of entity.

(6) If the converted association is a domestic limited liability partnership or a domestic limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration as an attachment.

(7) If the converted association is a domestic electing partnership, its statement of election as an attachment.

(8) (Deleted by amendment).

(c) Other provisions.--In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) Domestic converted association.--If the converted association is a domestic association, its public organic record, if any, must satisfy the requirements of the laws of this Commonwealth, except that the public organic record does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) Filing of plan.--A plan of conversion that is signed by the converting association and meets all the requirements of subsection (b) may be delivered to the department for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this chapter to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) Effectiveness of statement of conversion.--A statement of conversion is effective as provided in section 136(c) (relating to processing of documents by Department of State).

(g) Effectiveness of conversion.--If the converted association is a domestic association, the conversion is effective when the statement of conversion is effective. If the converted association is a foreign association, the conversion is effective on the later of:

(1) the date and time provided by the organic law of the converted association; or

(2) when the statement of conversion is effective.

(h) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 deleted subsec. (b)(8).

§ 356. Effect of conversion.

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

(1) The converted association is:

(i) Organized under and subject to the organic law of the converted association.

(ii) The same association without interruption as the converting association.

(iii) Deemed to have commenced its existence on the date the converting association commenced its existence in the jurisdiction in which the converting association was first created, incorporated, formed or otherwise came into existence, except for purposes of determining how the converted association is taxed.

(2) All property of the converting association continues to be vested in the converted association without reversion or impairment, and the conversion shall not constitute a transfer of any of that property.

(3) All debts, obligations and other liabilities of the converting association continue as debts, obligations and other liabilities of the converted association.

(4) Except as provided by law, all of the rights, privileges, immunities and powers of the converting association continue to be vested without change in the converted association.

(5) Liens on the property of the converting association shall not be impaired by the conversion.

(6) A claim existing or an action or a proceeding pending by or against the converting association may be prosecuted to judgment as if the conversion had not taken place, and the name of the converted association may be substituted for the name of the converting association in any pending action or proceeding.

(7) If a converted association is a filing association, its public organic record is effective.

(8) If the converted association is a limited liability partnership or a limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration is effective.

(9) If the converted association is an electing partnership, its statement of election is effective.

(10) Any private organic rules of the converted association that are to be in record form and were approved as part of the plan of conversion are effective.

(11) The interests in the converting association are converted or canceled in accordance with and as provided in the plan of conversion, and the interest holders of the converting association are entitled only to the rights provided to them under the plan and to any dissenters rights they have pursuant to section 317 (relating to contractual dissenters rights in entity transactions) or 353(c) (relating to approval of conversion).

(12) Except as otherwise provided in the plan of conversion or organic rules pursuant to section 352(c)

(relating to plan of conversion), the conversion does not constitute and shall not be deemed to result in a change of control of the converting association, and the converted association shall remain under the control of the same persons that controlled the converting association immediately before the conversion.

(b) No other rights.--The conversion does not give rise to any rights:

(1) that a third party would have upon a transfer of assets, merger, dissolution, liquidation or winding up of the converting association, except as provided in subsection (a)(11); or

(2) that an interest holder or governor would have upon a dissolution, liquidation or winding up of the converting association, except as provided in the organic law or organic rules of the converting association.

(c) New interest holder liability.--When a conversion becomes effective, a person that becomes subject to interest holder liability with respect to a domestic association as a result of the conversion has interest holder liability only to the extent provided by the organic law of the association and only for those debts, obligations and other liabilities that arise after the conversion becomes effective.

(d) Prior interest holder liability.--When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting association with respect to which the person had interest holder liability is as follows:

(1) The conversion does not discharge any interest holder liability under the organic law of the domestic converting association to the extent the interest holder liability arose before the conversion became effective.

(2) The person does not have interest holder liability under the organic law of the domestic converting association for any debt, obligation or other liability that arises after the conversion becomes effective.

(3) The organic law of the domestic converting association continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by other law or the organic law or organic rules of the domestic converting association with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) Foreign converted association.--When a conversion becomes effective, a foreign association that is the converted association may be served with process in this Commonwealth for the collection and enforcement of any of its debts, obligations and other liabilities in accordance with applicable law.

(f) Association not dissolved.--A conversion does not require a domestic converting association to liquidate, dissolve or wind up its affairs and does not constitute or cause the liquidation or dissolution of the association.

(g) Taxes.--Any taxes, interest, penalties and public accounts of the Commonwealth claimed against the converting association that are settled, assessed or determined prior to or after the conversion shall be the liability of the converted association and, together with interest thereon, shall be a lien against the franchises and property of the converted association.

(h) Cross references.--See sections 416 (relating to withdrawal deemed on certain transactions) and 417 (relating to required withdrawal on certain transactions).

SUBCHAPTER F
DIVISION

Sec.
361. Division authorized.
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Cross References. Subchapter F is referred to in sections 102, 1932, 2538, 5930 of this title.

§ 361. Division authorized.

(a) Domestic entities.--Except as provided in section 318 (relating to excluded entities and transactions) or this section, by complying with this subchapter, a domestic entity may divide into:

(1) the dividing association and one or more new associations that are either domestic entities or foreign associations; or

(2) two or more new associations that are either domestic entities or foreign associations.

(b) Foreign associations.--

(1) A foreign association may be created by the division of a domestic entity only if the division is authorized by the laws of the jurisdiction of formation of the foreign association.

(2) If the division is authorized by the laws of the jurisdiction of formation of the foreign association, one or more of the resulting associations created in a division of a foreign association may be a domestic entity.

(c) Exception.--A domestic banking institution that is a domestic entity may be a dividing association only if all of the resulting associations are domestic banking institutions.

(d) Cross reference.--See section 314 (relating to regulatory conditions and required notices and approvals).

§ 362. Plan of division.

(a) General rule.--A domestic entity may become a dividing association under this chapter by approving a plan of division. The plan shall be in record form and contain all of the following:

(1) The name and type of the dividing association.

(2) A statement as to whether the dividing association will survive the division.

(3) The name, jurisdiction of formation and type of each new association.

(4) The manner of:

(i) If the dividing association survives the division and it is desired:

(A) Canceling some, but less than all, of the interests in the dividing association.

(B) Converting some, but less than all, of the interests in the dividing association into interests, securities, obligations, money, other property,

rights to acquire interests or securities, or any combination of the foregoing.

(ii) If the dividing association does not survive the division, canceling or converting the interests in the dividing association into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(iii) Allocating between or among the resulting associations the property of the dividing association that will not be owned by all of the resulting associations as tenants in common pursuant to section 367(a)(4) (relating to effect of division) and those liabilities of the dividing association as to which not all of the resulting associations will be liable jointly and severally pursuant to section 368(a)(3) (relating to allocation of liabilities in division).

(iv) Distributing the interests of the new associations.

(5) For each new association:

(i) its proposed public organic record if it will be a filing association; and

(ii) the full text of its private organic rules that will be in record form.

(6) If the dividing association will survive the division, any proposed amendments to its public organic record or private organic rules that are or will be in record form.

(7) Provisions, if any, providing special treatment of interests in the dividing association held by any interest holder or group of interest holders as authorized by and subject to section 329 (relating to special treatment of interest holders).

(8) The other terms and conditions of the division.

(9) Any other provision required by:

(i) the laws of this Commonwealth;

(ii) the laws of the jurisdiction of formation of any of the resulting associations; or

(iii) the organic rules of the dividing association.

(b) Optional contents.--In addition to the requirements of subsection (a), a plan of division may contain any other provision not prohibited by law.

(c) Description of property and liabilities.--It shall not be necessary for a plan of division to list each individual liability or item of property of the dividing association to be allocated to a resulting association so long as the liabilities and property are described in a reasonable manner.

(d) Cross reference.--See section 316(c) (relating to contents of plan).

Cross References. Section 362 is referred to in sections 8415, 8615, 8815 of this title.

§ 363. Approval of division.

(a) Approval by domestic entities.--Except as provided in section 364 (relating to division without interest holder approval) or subsection (d), a plan of division in which the dividing association is a domestic entity is not effective unless it has been approved in both of the following ways:

(1) The plan is approved by the domestic entity in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

(2) The plan is approved in record form by each interest holder, if any, of the domestic entity that will have interest holder liability for debts, obligations and other liabilities that arise after the division becomes effective, unless, as to an interest holder that does not approve the plan, both of the following apply:

(i) The organic rules of the domestic entity provide in record form for the approval of a division in which some or all of its interest holders become subject to interest holder liability by the vote or consent of fewer than all of the interest holders.

(ii) The interest holder voted for or consented in record form to that provision of the organic rules or became an interest holder after the adoption of the provision.

(b) Approval by foreign associations.--A division of a foreign association in which one or more of the resulting associations is a domestic entity is not effective unless it is approved by the foreign association in accordance with the laws of its jurisdiction of formation.

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

(d) Transitional approval requirements.--

(1) If a provision of the organic rules of a dividing association that is a domestic entity of the type described was adopted before the date indicated and requires for the proposal or adoption of a plan of merger a specific number or percentage of votes of governors or interest holders or other special procedures, a plan of division shall not be proposed or adopted by the governors or interest holders without that number or percentage of votes or compliance with the other special procedures:

(i) For a dividing association that is a domestic business corporation, before October 1, 1989.

(ii) For a dividing association that is a general partnership, before July 1, 2015.

(iii) For a dividing association that is a limited partnership, before February 5, 1995.

(iv) For a dividing association that is an unincorporated nonprofit association, before July 1, 2015.

(2) If a provision of any debt securities, notes or similar evidences of indebtedness for money borrowed, whether secured or unsecured, indentures or other contracts that were issued, incurred or executed by a dividing association that is a domestic entity of the type described before the date indicated, and the provision requires the consent of the obligee to a merger of the dividing association or treats such a merger as a default, the provision shall apply to a division of the dividing association as if it were a merger:

(i) For a dividing association that is a domestic business corporation, before August 21, 2001.

(ii) For a dividing association that is a general partnership, before July 1, 2015.

(iii) For a dividing association that is a limited partnership, before July 1, 2015.

(iv) For a dividing association that is an unincorporated nonprofit association, before July 1, 2015.

(3) When a provision described in paragraph (1) or (2) has been amended after the applicable date, the provision shall cease to be subject to the respective paragraph and shall thereafter apply only in accordance with its express terms.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (c).

Cross References. Section 363 is referred to in sections 312, 367, 1106, 1571, 5106, 8415, 8615, 8815 of this title.

§ 364. Division without interest holder approval.

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

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

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

(ii) provide for special treatment; or

(iii) amend in any respect the provisions of the organic rules of the dividing association, except amendments that may be made without the approval of the interest holders.

(2) Either:

(i) the dividing association survives the division and all the interests in the new associations are owned solely by the dividing association; or

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

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

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

(1) if the dividing association is not a limited partnership, the dividing association has only one class of interests outstanding and the interests in each new association and any securities issued by a new association are distributed pro rata to the interest holders of the dividing association; or

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

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

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

(iii) all of the following apply:

(A) the general partner interests in each new association are distributed pro rata to the general partners of the dividing limited partnership;

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

(C) no securities of any of the new associations are distributed to any of the interest holders of the dividing limited partnership.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 364 is referred to in sections 312, 363 of this title.

§ 365. Amendment or abandonment of plan of division.

(a) Approval of amendment.--A plan of division in which the dividing association is a domestic entity may be amended in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

(2) By its governors or interest holders in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the dividing association under the plan.

(ii) The public organic record, if any, or private organic rules of any of the resulting associations that will be in effect immediately after the division becomes effective, except for changes that do not require approval of the interest holders of the resulting association under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would:

(A) increase the interest holder liability to which the interest holder will be subject; or

(B) otherwise adversely affect the interest holder in any material respect.

(b) Approval of abandonment.--After a plan of division has been approved by a domestic entity that is the dividing association and before a statement of division becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic entity that is the dividing association may abandon the plan in the same manner as the plan was approved.

(c) Statement of abandonment.--If a plan of division is abandoned after a statement of division has been delivered to the department for filing and before the statement becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by the dividing association, must be delivered to the department for filing before the time the statement of division becomes effective. The statement of abandonment shall take effect on filing, and the division shall be abandoned and shall not become effective.

§ 366. Statement of division; effectiveness.

(a) General rule.--A statement of division shall be signed by the dividing association and delivered to the department for filing along with the certificates, if any, required by section 139 (relating to tax clearance of certain fundamental transactions).

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

(1) With respect to the dividing association:

(i) its name;
(ii) its jurisdiction of formation;
(iii) its type;
(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address);
(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and
(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:
(A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or
(B) if it is not required to maintain a registered or similar office, its principal office.

(2) A statement as to whether the dividing association will survive the division.

(3) With respect to each resulting association created by the division:
(i) its name;
(ii) its jurisdiction of formation;
(iii) its type;
(iv) if it is a domestic filing association, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109;
(v) if it is a domestic association that is not a domestic filing association or limited liability partnership, the address, including street and number, if any, of its principal office; and
(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:
(A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or
(B) if it is not required to maintain a registered or similar office, its principal office.

(4) If the statement of division is not to be effective on filing, the later date or date and time on which it will become effective.

(5) A statement that the division was approved in the following ways:
(i) By a dividing association that is a domestic entity, in accordance with this chapter.
(ii) By a dividing association that is a foreign association, in accordance with the laws of its jurisdiction of formation.

(6) If the dividing association is a domestic filing entity and survives the division, any amendment to its public organic record approved as part of the plan of division.

(7) For each resulting association created by the division that is a domestic entity, its public organic record, if any, as an attachment. The public organic record does not need to state the name or address of an incorporator

of a corporation, organizer of a limited liability company or similar person with respect to any other type of entity.

(8) For each new association that is a domestic limited liability partnership or a domestic limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration as an attachment.

(9) For each new association that is an electing partnership, its statement of election as an attachment.

(10) The property and liabilities of the dividing association that are to be allocated to each resulting association, but it shall not be necessary to list in the statement of division each individual liability or item of property of the dividing association to be allocated to a resulting association so long as the liabilities and property are described in a reasonable manner.

(c) Other provisions.--In addition to the requirements of subsection (b), a statement of division may contain any other provision not prohibited by law.

(d) New domestic entity.--If a new association is a domestic entity, its public organic record, if any, must satisfy the requirements of the laws of this Commonwealth, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) Filing of plan.--A plan of division that is signed by the dividing association and meets all of the requirements of subsection (b) may be delivered to the department for filing instead of a statement of division and on filing has the same effect. If a plan of division is filed as provided in this subsection, references in this chapter to a statement of division refer to the plan of division filed under this subsection.

(f) Effectiveness of statement of division.--A statement of division is effective as provided in section 136(c) (relating to processing of documents by Department of State).

(g) Effectiveness of division.--A division takes effect as follows:

(1) If the division is one in which all of the resulting associations are domestic associations, the division is effective when the statement of division is effective.

(2) If the division is one in which one or more of the resulting associations is a foreign association, the division is effective on the later of:

(i) the effectiveness of the statement of division; or

(ii) when the division is effective under the laws of each of the jurisdictions of formation of the foreign resulting associations.

(h) Coordination of transactions.--A new association may be a party to another transaction under this chapter that takes effect simultaneously with the division. The new association shall be deemed to exist before the effectiveness of the other transaction, but solely for the purpose of being a party to the other transaction. The plan relating to the other transaction shall be deemed to have been approved by the new association if the plan is approved by the dividing association in connection with its approval of the plan of division. The statement that is delivered to the department for filing with respect to the other transaction shall state that it was approved by the new association under this subsection.

(i) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).
(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 relettered former subsec. (h) to subsec. (i) and added a new subsec. (h).

§ 367. Effect of division.

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

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

(i) It continues to exist.

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

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

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

(2) If the dividing association is not to survive the division, the separate existence of the dividing association ceases.

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

(i) It comes into existence.

(ii) Any property allocated to it vests in the new association without reversion or impairment, and the division shall not constitute a transfer, directly or indirectly, of any of that property.

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

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

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

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

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

(4) Property of the dividing association:

(i) That is allocated by the plan of division either:

(A) vests in the new associations as provided in the plan of division; or

(B) remains vested in the dividing association.

(ii) That is not allocated by the plan of division:

(A) remains vested in the dividing association, if the dividing association survives the division; or

(B) is allocated to and vests equally in the resulting associations as tenants in common, if the dividing association does not survive the division.

(iii) Vests as provided in this paragraph without transfer, reversion or impairment.

(5) A resulting association to which a cause of action is allocated as provided in paragraph (4) may be substituted or added in any pending action or proceeding to which the dividing association is a party at the effective time of the division.

(6) The liabilities of the dividing association are allocated between or among the resulting associations as provided in section 368 (relating to allocation of liabilities in division), and the division shall not constitute a transfer, directly or indirectly, of any of those liabilities.

(7) The interests in the dividing association that are to be converted or canceled in the division are converted or canceled, and the interest holders of those interests are entitled only to the rights provided to them under the plan of division and to any dissenters rights they may have pursuant to section 317 (relating to contractual dissenters rights in entity transactions) or 363(c) (relating to approval of division).

(b) Dividing association not dissolved.--Except as provided in the organic law or organic rules of the dividing association, the division does not give rise to any rights that an interest holder, governor or third party would have upon a dissolution, liquidation or winding up of the dividing association.

(c) New interest holder liability.--When a division becomes effective, a person that did not have interest holder liability with respect to the dividing association and that becomes subject to interest holder liability with respect to an association as a result of the division has interest holder liability only to the extent provided by the organic law of the association and only for those liabilities that arise after the division becomes effective.

(d) Prior interest holder liability.--When a division becomes effective, the interest holder liability of a person that ceases to hold an interest in the dividing association that is a domestic entity with respect to which the person had interest holder liability is as follows:

(1) The division does not discharge any interest holder liability under the organic law of the domestic entity to the extent the interest holder liability arose before the division became effective.

(2) The person does not have interest holder liability under the organic law of the domestic entity for any debt, obligation or other liability that arises after the division becomes effective.

(3) The organic law of the domestic entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the division had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by other law or the organic law or organic rules of the domestic entity with respect to any interest holder liability preserved by paragraph (1) as if the division had not occurred.

(e) Registration of registered foreign association.--When a division of a registered foreign association in which at least one of the resulting associations is a domestic entity becomes effective, the registration to do business of the dividing association is canceled if it does not survive the division.

(f) Real property.--Except with regard to the real property of a dividing association that is a domestic nonprofit corporation, the allocation of any fee or freehold interest or

leasehold having a remaining term of 30 years or more in any tract or parcel of real property situate in this Commonwealth owned by a dividing association, including property owned by a foreign association dividing solely under the laws of another jurisdiction, to a new association is not effective until one of the following documents is filed by the office for the recording of deeds of the county, or each of them, in which the tract or parcel is situated:

(1) A deed, lease or other instrument of confirmation describing the tract or parcel.

(2) A duly executed duplicate original copy of the statement of division.

(3) A copy of the statement of division certified by the department.

(4) A declaration of acquisition stating the value of real estate holdings in the county of the new association as an acquired association.

(g) Secured collateral.--The allocation to a new association of property that is collateral covered by an effective financing statement shall not be effective until a new financing statement naming the new association as a debtor is effective under 13 Pa.C.S. Div. 9 (relating to secured transactions) as enacted in the relevant jurisdiction.

(h) Vehicles.--The provisions of 75 Pa.C.S. § 1114 (relating to transfer of vehicle by operation of law) shall not be applicable to an allocation of ownership of any motor vehicle, trailer or semitrailer to a new association under this section or under a similar law of any other jurisdiction, but any such allocation shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer), unless the dividing association is a domestic nonprofit corporation.

(i) Disposition of interests.--Unless otherwise provided in the plan of division, the interests and any securities or obligations of each new association shall be distributed to:

(1) the dividing association, if it survives the division; or

(2) the holders of the common or other residuary interest of the dividing association that do not assert dissenters rights, pro rata, if the dividing association does not survive the division.

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

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a)(1), (3) and (6) and (f) intro. par. and added subsec. (j).

2016 Amendment. Act 170 amended subsec. (a)(2) and (6).

Cross References. Section 367 is referred to in sections 314, 362 of this title.

§ 368. Allocation of liabilities in division.

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

(1) Individually for the liabilities the resulting association undertakes or incurs in its own name after the division.

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

(3) Jointly and severally with the other resulting associations for the liabilities of the dividing association that are not allocated by the plan of division.

(b) Joint and several liability.--If the allocation of a liability in a division is determined by the court as defined in section 102 (relating to definitions) to be ineffective or voidable under 12 Pa.C.S. Ch. 51 (relating to voidable transactions) as of the effective date of the division, all of the following apply:

(1) The allocation of the liability in the plan of division is ineffective and the liability becomes the liability of all of the resulting associations, jointly and severally.

(2) The validity and effectiveness of the division are not affected by the action or proceeding or the determination of the court.

(c) Breach of obligation.--If a division breaches an obligation of the dividing association, all of the resulting associations are liable, jointly and severally, for the breach, but the validity and effectiveness of the division are not affected thereby.

(d) Application of voidable transactions law.--In applying 12 Pa.C.S. Ch. 51 to a division under subsection (b):

(1) 12 Pa.C.S. Ch. 51 applies to the dividing association as follows:

(i) If it does not survive the division, it is not subject to that chapter.

(ii) If it survives the division, it is subject to that chapter only in its capacity as a resulting association.

(2) 12 Pa.C.S. Ch. 51 applies to each resulting association as follows:

(i) The association is treated as a debtor.

(ii) Each liability allocated to the association is treated as an obligation incurred by the debtor.

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

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

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

(e) Distribution tests not applicable.--(Deleted by amendment).

(f) Liens and other charges.--Liens, security interests and other charges on the property of the dividing association are not impaired by the division, notwithstanding any otherwise enforceable allocation of liabilities of the dividing association.

(g) Security agreements.--If the dividing association is bound by a security agreement governed by 13 Pa.C.S. Div. 9 (relating to secured transactions) as enacted in any jurisdiction and the security agreement provides that the security interest attaches to after-acquired collateral, each resulting association is bound by the security agreement.

(h) Creditors and guarantors.--An allocation of a liability does not:

(1) Affect the rights under other law of a creditor owed payment of the liability or performance of the obligation that creates the liability, except that those rights are available only against an association responsible for the liability or obligation under this section.

(2) Release or reduce the obligation of a surety or guarantor of the liability or obligation.

(i) Regulatory approvals.--The conditions in this section for freeing one or more of the resulting associations from the liabilities of the dividing association and for allocating some or all of the liabilities of the dividing association shall be conclusively deemed to have been satisfied if the plan of division has been approved by the Department of Banking and Securities, the Insurance Department or the Pennsylvania Public Utility Commission in a final order issued after August 21, 2001, that is not subject to further appeal.

(j) Taxes.--Any taxes, interest, penalties and public accounts of the Commonwealth claimed against the dividing association for periods prior to the effective date of the division that are settled, assessed or determined prior to or after the division shall be the liability of all of the resulting associations and, together with interest thereon, shall be a lien against the franchises and property of each resulting association. Upon the application of the dividing association, the Department of Revenue, with the concurrence of the Department of Labor and Industry, shall release one or more, but less than all, of the resulting associations from liability and liens for all taxes, interest, penalties and public accounts of the dividing association due the Commonwealth for periods prior to the effective date of the division if those departments are satisfied that the public revenues will be adequately secured.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a)(2), (b) and (d) and deleted subsec. (e).

2016 Amendment. Act 170 amended subsec. (j).

Cross References. Section 368 is referred to in sections 362, 367 of this title.

SUBCHAPTER G
DOMESTICATION

Sec.

371. Domestication authorized.
372. Plan of domestication.
373. Approval of domestication.
374. Amendment or abandonment of plan of domestication.
375. Statement of domestication; effectiveness.
376. Effect of domestication.

Cross References. Subchapter G is referred to in sections 102, 161 of this title.

§ 371. Domestication authorized.

(a) Domestic entities.--Except as provided in section 318 (relating to excluded entities and transactions), by complying with this chapter, a domestic entity may become a domesticated entity of the same type in a foreign jurisdiction if the

domestication is authorized by the laws of the foreign jurisdiction.

(b) Foreign entities.--By complying with the applicable provisions of this subchapter, a foreign entity may become a domestic entity of the same type in this Commonwealth if this title provides for the formation of that type of entity.

(c) Cross reference.--See section 314 (relating to regulatory conditions and required notices and approvals).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

§ 372. Plan of domestication.

(a) General rule.--A domestic entity may become a foreign entity of the same type by approving a plan of domestication. The plan shall be in record form and contain all of the following:

(1) The name and type of the domesticating entity.

(2) The name and jurisdiction of formation of the domesticated entity.

(3) The manner, if any, of canceling or converting those interests in the domesticating entity, if any, that are to receive special treatment as authorized by and subject to section 329 (relating to special treatment of interest holders).

(4) The proposed public organic record of the domesticated entity if it is a filing entity.

(5) The full text of the private organic rules of the domesticated entity that are proposed to be in record form.

(6) The other terms and conditions of the domestication.

(7) Any other provision required by:

(i) laws of this Commonwealth;

(ii) the laws of the jurisdiction of formation of the foreign domesticated entity; or

(iii) the organic rules of the domesticating entity.

(b) Optional contents.--In addition to the requirements of subsection (a), a plan of domestication may contain any other provision not prohibited by law.

(c) Terms of interests.--Except as provided in the plan of domestication pursuant to section 329, the terms of the interests in the domesticated entity and the rights of the interest holders in the domesticated entity shall be substantially the same as the terms of the interests and the rights of the interest holders in the domesticating entity, except to the extent a different term or right is required by a provision of the organic law of the domesticated entity that cannot be varied in its organic rules.

(d) Cross reference.--See section 316(c) (relating to contents of plan).

Cross References. Section 372 is referred to in sections 8415, 8615, 8815 of this title.

§ 373. Approval of domestication.

(a) Approval by domestic entities.--A plan of domestication in which the domesticating entity is a domestic entity is not effective unless it has been approved by the domestic entity in accordance with the applicable provisions of Subchapter B (relating to approval of entity transactions).

(b) Approval by foreign entities.--A plan of domestication in which the domesticating entity is a foreign entity is not effective unless it has been approved in one of the following ways:

(1) In accordance with the laws of the jurisdiction of formation of the foreign entity.

(2) By at least a majority of the votes cast with respect to approval of the domestication by all interest holders of the foreign entity entitled to vote generally on a merger to which the foreign entity is a party if the laws of the foreign entity's jurisdiction of formation does not provide for a domestication of the foreign entity.

(c) Cross references.--See sections 317 (relating to contractual dissenters rights in entity transactions) and 329 (relating to special treatment of interest holders).

Cross References. Section 373 is referred to in sections 312, 375 of this title.

§ 374. Amendment or abandonment of plan of domestication.

(a) Approval of amendment.--A plan of domestication in which the domesticating entity is a domestic entity may be amended in one of the following ways:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended.

(2) By the governors or interest holders of the domestic entity in the manner provided in the plan, but an interest holder that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent to any amendment of the plan that will change any of the following:

(i) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the interest holders of the domesticating entity under the plan.

(ii) The public organic record, if any, or private organic rules of the domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the interest holders of the domesticated entity under its organic law or organic rules.

(iii) Any other terms or conditions of the plan, if the change would adversely affect the interest holder in any material respect.

(b) Approval of abandonment.--After a plan of domestication has been approved by a domestic entity that is the domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic entity that is the domesticating entity may abandon the plan in the same manner as the plan was approved.

(c) Statement of abandonment.--If a plan of domestication is abandoned after a statement of domestication has been delivered to the department for filing and before the statement becomes effective, a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness), signed by the domesticating entity, must be delivered to the department for filing before the time the statement of domestication becomes effective.

§ 375. Statement of domestication; effectiveness.

(a) General rule.--A statement of domestication shall be signed by the domesticating entity and delivered to the department for filing along with the certificates, if any, required by section 139 (relating to tax clearance of certain fundamental transactions).

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

(1) With respect to the domesticating entity:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) the date on which it was first created, incorporated, formed or otherwise came into existence;

(v) if it is a domestic filing entity, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address);

(vi) if it is a domestic entity that is not a domestic filing entity or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vii) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(2) With respect to the domesticated entity:

(i) its name;

(ii) its jurisdiction of formation;

(iii) its type;

(iv) if it is a domestic filing entity, domestic limited liability partnership or registered foreign association, the address of its registered office, including street and number, if any, in this Commonwealth, subject to section 109;

(v) if it is a domestic entity that is not a domestic filing entity or limited liability partnership, the address, including street and number, if any, of its principal office; and

(vi) if it is a nonregistered foreign association, the address, including street and number, if any, of:

(A) its registered or similar office, if any, required to be maintained by the laws of its jurisdiction of formation; or

(B) if it is not required to maintain a registered or similar office, its principal office.

(3) If the statement of domestication is not to be effective on filing, the later date or date and time on which it will become effective.

(4) If the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with Subchapter B (relating to approval of entity transactions) or, if the domesticating entity is a foreign entity, a statement that the domestication was approved in accordance with section 373(b) (relating to approval of domestication).

(5) If the domesticated entity is a domestic filing entity, its public organic record as an attachment. The public organic record does not need to state the name or address of an incorporator of a corporation, organizer of a limited liability company or similar person with respect to any other type of entity.

(6) If the domesticated entity is a domestic limited liability partnership or a domestic limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration as an attachment.

(7) If the domesticated entity is an electing partnership, its statement of election as an attachment.

(8) If the domesticating entity is to be a domestic entity in both this Commonwealth and the foreign jurisdiction, a statement to that effect.

(c) Other provisions.--In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) Public organic record of new domestic entity.--If the domesticated entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the laws of this Commonwealth, except that it does not need to be signed and may omit any provision that is not required to be included in a restatement of the public organic record.

(e) Filing of plan.--A plan of domestication that is signed by a domesticating entity that is a domestic entity and meets all of the requirements of subsection (b) may be delivered to the department for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this chapter to a statement of domestication refer to the plan of domestication filed under this subsection.

(f) Effectiveness of domestication.--A domestication in which the domesticated entity is a domestic entity is effective when the statement of domestication is effective under section 136(c) (relating to processing of documents by Department of State). A domestication in which the domesticated entity is a foreign entity becomes effective on the later of:

(1) the date and time provided by the organic law of the domesticated entity; or

(2) when the statement of domestication is effective.

(g) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Cross References. Section 375 is referred to in section 376 of this title.

§ 376. Effect of domestication.

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

(1) The domesticated entity is:

(i) organized under and subject to the organic law of the domesticated entity;

(ii) the same entity without interruption as the domesticating entity;

(iii) deemed to have commenced its existence on the date the domesticating entity commenced its existence in the jurisdiction in which the domesticating entity was first created, formed, incorporated or otherwise came into existence; and

(iv) also organized under and subject to the organic law of the domesticating entity if the statement of domestication includes the statement provided for in section 375(b)(8) (relating to statement of domestication; effectiveness).

(2) All property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion or impairment.

(3) All debts, obligations and other liabilities of the domesticating entity continue as debts, obligations and other liabilities of the domesticated entity.

(4) Except as provided by law, all of the rights, privileges, immunities and powers of the domesticating entity continue to be vested without change in the domesticated entity.

(5) The name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding.

(6) If the domesticated entity is a filing entity, its public organic record is effective and is binding on its interest holders.

(7) If the domesticated entity is a domestic limited liability partnership or a limited liability limited partnership that is not using the alternative procedure in section 8201(f) (relating to scope), its statement of registration is effective.

(8) If the domesticated entity is an electing partnership, its statement of election is effective.

(9) The private organic rules of the domesticated entity that are to be in record form, if any, approved as part of the plan of domestication are effective.

(10) The interest holders in the domesticating entity are interest holders in the domesticated entity except to the extent that an interest holder does not receive interests in the domesticated entity pursuant to a provision in the plan of domestication for special treatment pursuant to section 329 (relating to special treatment of interest holders).

(b) No dissolution rights.--Except as otherwise provided in the organic law or organic rules of a domestic domesticating entity, the domestication does not give rise to any rights that an interest holder, governor or third party would have upon a dissolution, liquidation or winding up of the domesticating entity.

(c) Collection of liabilities.--When a domestication becomes effective, a foreign domesticated entity may be served with process in this Commonwealth for the collection and enforcement of any of its debts, obligations and other liabilities in accordance with applicable law.

(d) New interest holder liability.--When a domestication becomes effective, a person that becomes subject to interest holder liability with respect to a domestic association as a result of the domestication has interest holder liability only to the extent provided by the organic law of the association and only for those debts, obligations and other liabilities that arise after the domestication is effective.

(e) Prior interest holder liability.--When a domestication becomes effective, the following rules apply:

(1) The domestication does not discharge any interest holder liability under the organic law of a domesticating domestic entity to the extent the interest holder liability arose before the domestication became effective.

(2) A person does not have interest holder liability under the organic law of a domestic domesticating entity for any debt, obligation or other liability that arises after the domestication becomes effective.

(3) The organic law of a domestic domesticating entity continues to apply to the release, collection or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(4) A person has whatever rights of contribution from any other person as are provided by other law or the organic rules of a domestic domesticating entity with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(f) Service of process.--(Deleted by amendment).

(g) No dissolution.--A domestication does not require a domestic domesticating entity to liquidate, dissolve or wind up its affairs and does not constitute or cause the liquidation or dissolution of the entity.

(h) Taxes.--Any taxes, interest, penalties and public accounts of the Commonwealth claimed against the domesticating entity that are settled, assessed or determined prior to or after the domestication shall be the liability of the domesticated entity and, together with interest thereon, shall be a lien against the franchises and property of the domesticated entity.

(i) Cross references.--See sections 416 (relating to withdrawal deemed on certain transactions) and 417 (relating to required withdrawal on certain transactions).

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 deleted subsec. (f).

SUBCHAPTER H
ADMINISTRATIVE DISSOLUTION OR CANCELLATION

Sec.

381. Grounds for administrative dissolution or cancellation.
382. Procedure and effect.
383. Reinstatement.
384. Rejection of reinstatement.

Enactment. Subchapter H was added November 3, 2022, P.L.1791, No.122, effective in 60 days.

Cross References. Subchapter H is referred to in sections 202, 207 of this title.

§ 381. Grounds for administrative dissolution or cancellation.

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

(b) Transitional provision.--Subsection (a) applies with respect to annual reports due on or after January 4, 2027.

Cross References. Section 381 is referred to in section 382 of this title.

§ 382. Procedure and effect.

(a) Notice of initial determination.--If the department determines that grounds exist under section 381 (relating to grounds for administrative dissolution or cancellation) for administratively dissolving a domestic filing entity or canceling the statement of registration of a domestic limited

liability partnership or the statement of election of an electing partnership that is not also a limited partnership, the department must deliver to the entity a notice of the department's determination at the entity's registered office, if any, and the address of the entity's principal office as shown in its most recently filed annual report.

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

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

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

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

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

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

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

(i) continue as such;

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

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

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

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

Cross References. Section 382 is referred to in sections 381, 383 of this title.

§ 383. Reinstatement.

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

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

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

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

(4) either:

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

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

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

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

(2) deliver a copy to the entity.

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

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

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

(3) If the entity is a limited liability partnership, limited liability limited partnership or electing partnership, its statement of registration, the provisions of its certificate of limited partnership required by section 8201(f) (relating to scope) or its statement of election is reinstated as if its administrative cancellation had never occurred.

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

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

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

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

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

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

Cross References. Section 383 is referred to in sections 153, 382, 384 of this title.

§ 384. Rejection of reinstatement.

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

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

CHAPTER 4
FOREIGN ASSOCIATIONS

Subchapter

A. General Provisions
B. Registration

Enactment. Chapter 4 was added October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

Cross References. Chapter 4 is referred to in sections 1103, 4124, 4146, 5103, 6124, 6146, 8832 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

401. Application of chapter.
402. Governing law.
403. Activities not constituting doing business.

§ 401. Application of chapter.

(a) General rule.--Except as otherwise provided in this section or in subsequent provisions of this chapter, this chapter shall apply to all foreign associations.

(b) Application to foreign banking institutions.--The words "foreign filing association" or "foreign association" in this chapter include an association that, if a domestic association, would be a banking institution or credit union. The term does not include an interstate bank as defined in section 102 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

(c) Domestic Federal financial association exclusion.--Except as permitted by act of Congress, this chapter shall not apply to:

(1) Any of the following institutions or similar federally chartered institutions engaged in this Commonwealth in activities similar to those conducted by banking institutions or credit unions:

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

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

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

(2) Any other Federal association intended by the Congress to be treated for State law purposes as a domestic association of this Commonwealth.

(d) Foreign insurance corporations.--A foreign insurance corporation shall be subject to this chapter, except as provided in section 402(e) (relating to governing law) or 411(g) (relating to registration to do business in this Commonwealth).

(e) Government entities.--This chapter shall apply to and the words "association" and "foreign association" shall include a government or other sovereign, other than the Commonwealth or any of its political subdivisions, and any governmental corporation, agency or other entity thereof.

(f) Admitted foreign fraternal benefit society exclusion.--This chapter shall not apply to any foreign corporation not-for-profit licensed to transact business in this Commonwealth under section 2455 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

Cross References. Section 401 is referred to in section 411 of this title.

§ 402. Governing law.

(a) General rule.--The laws of the jurisdiction of formation of a foreign association govern the following:

(1) The internal affairs of the association.

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

(3) The liability of a series or protected cell of the association.

(b) Effect of differences in law.--A foreign association is not precluded from registering to do business in this Commonwealth because of any difference between the laws of the jurisdiction of formation of the foreign association and the laws of this Commonwealth.

(c) Limitations on domestic associations applicable.--Registration of a foreign association to do business in this Commonwealth does not authorize the foreign association to engage in any activities and affairs or exercise any power that a domestic association of the same type may not engage in or exercise in this Commonwealth.

(d) Equal rights and privileges of registered foreign associations.--Except as otherwise provided by law, a registered foreign association, so long as its registration to do business is not terminated or canceled, shall enjoy the same rights and privileges as a domestic entity and shall be subject to the same liabilities, restrictions, duties and penalties now in force or hereafter imposed on domestic entities, to the same extent as if it had been formed under this title. A foreign insurance corporation shall be deemed a registered foreign association except as provided in subsection (e).

(e) Foreign insurance corporations.--A foreign insurance corporation shall, insofar as it is engaged in the business of writing insurance or reinsurance as principal, be subject to the laws of this Commonwealth regulating the conduct of the business of insurance by a foreign insurance corporation in lieu of the provisions of subsection (d) regarding its rights, privileges, liabilities, restrictions and duties and the penalties to which it may be subject.

(f) Agricultural lands.--Interests in agricultural land shall be subject to the restrictions of, and escheatable as provided by, the act of April 6, 1980 (P.L.102, No.39), referred to as the Agricultural Land Acquisition by Aliens Law.

(g) Defense of usury.--A foreign association shall be subject to section 1510 (relating to certain specifically authorized debt terms) with respect to obligations, as defined in that section, governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth, to the same extent as if the foreign association were a domestic business corporation.

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

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

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a) and added subsecs. (h) and (i).

2016 Amendment. Act 170 added subsec. (g).

Cross References. Section 402 is referred to in sections 401, 411 of this title.

§ 403. Activities not constituting doing business.

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

(1) Maintaining, defending, mediating, arbitrating or settling an action or proceeding.

(2) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors.

(3) Maintaining accounts in financial institutions.

(4) Maintaining offices or agencies for the transfer, exchange and registration of securities of the association or maintaining trustees or depositories with respect to the securities.

(5) Selling through independent contractors.

(6) Soliciting or obtaining orders by any means if the orders require acceptance outside of this Commonwealth before the orders become contracts.

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

(8) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting or maintaining property so acquired.

(9) Conducting an isolated transaction that is not in the course of similar transactions.

(10) (Deleted by amendment).

(11) Doing business in interstate or foreign commerce.

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

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

(ii) personal property and security interests therein.

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

(b) Participation in other associations.--Being an interest holder or governor of a foreign association that does business in this Commonwealth shall not by itself constitute doing business in this Commonwealth.

(c) Applicability.--This section shall not apply in determining the contacts or activities that may subject a foreign filing association or foreign limited liability partnership to service of process, taxation or regulation under laws of this Commonwealth other than this title.
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a)(7), added subsec. (a)(12) and (13) and deleted subsec. (a)(10).

SUBCHAPTER B
REGISTRATION

Sec.
411. Registration to do business in this Commonwealth.
412. Foreign registration statement.
413. Amendment of foreign registration statement.
414. Noncomplying name of foreign association.
415. Voluntary withdrawal of registration.
416. Withdrawal deemed on certain transactions.
417. Required withdrawal on certain transactions.
418. Transfer of registration.
419. Termination of registration.

Cross References. Subchapter B is referred to in section 138 of this title.

§ 411. Registration to do business in this Commonwealth.

(a) Registration required.--Except as provided in section 401 (relating to application of chapter) or subsection (g), a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department under this chapter.

(b) Penalty for failure to register.--A foreign filing association or foreign limited liability partnership doing business in this Commonwealth may not maintain an action or proceeding in this Commonwealth unless it is registered to do business under this chapter.

(c) Contracts and acts not impaired by failure to register.--The failure of a foreign filing association or foreign limited liability partnership to register to do business in this Commonwealth does not impair the validity of a contract or act of the foreign filing association or foreign limited liability partnership or preclude it from defending an action or proceeding in this Commonwealth.

(d) Limitations on liability preserved.--A limitation on the liability of an interest holder or governor of a foreign filing association or of a partner of a foreign limited liability partnership is not waived solely because the foreign filing association or foreign limited liability partnership does business in this Commonwealth without registering.

(e) Governing law not affected.--Section 402 (relating to governing law) applies even if a foreign association fails to register under this chapter.

(f) Registered office.--Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), every registered foreign association shall have, and continuously maintain, in this Commonwealth a registered office, which may but need not be the same as its place of business in this Commonwealth.

(g) Foreign insurance corporations.--A foreign insurance corporation is not required to register under this chapter.

Cross References. Section 411 is referred to in sections 401, 402 of this title.

§ 412. Foreign registration statement.

(a) General rule.--To register to do business in this Commonwealth, a foreign filing association or foreign limited liability partnership must deliver a foreign registration statement to the department for filing. The statement must be signed by the association and state all of the following:

(1) Both:

(i) The name of the foreign filing association or foreign limited liability partnership.

(ii) If the name does not comply with section 202 (relating to requirements for names generally), an alternate name adopted pursuant to section 414(a) (relating to noncomplying name of foreign association).

(2) The type of association and, if it is a foreign limited partnership, whether it is a foreign limited liability limited partnership.

(3) The association's jurisdiction of formation.

(4) The street and mailing addresses of the association's principal office and, if the laws of the association's jurisdiction of formation requires the association to maintain an office in that jurisdiction, the street and mailing addresses of the office.

(5) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office in this Commonwealth.

(6) If the association may have one or more series, a statement to that effect.

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

(1) With respect to corporations for profit, the following apply:

(i) If a foreign corporation for profit was admitted to do business in this Commonwealth by the filing of a power of attorney and statement under the former act of June 8, 1911 (P.L.710, No.283), entitled "An act to regulate the doing of business in this Commonwealth by foreign corporations; the registration thereof and service of process thereon; and providing punishment and penalties for the violation of its provisions; and repealing previous legislation on the subject," on July 1, 2015, the power of attorney and statement shall be deemed a filed registration statement under this chapter. The corporation shall include in its first amended registration statement under this chapter the information required by this chapter to be set forth in a registration statement.

(ii) A certificate of authority issued under the former provisions of the act of May 5, 1933 (P.L.364,

No.106), known as the Business Corporation Law of 1933, or Subpart B of Part II (relating to business corporations) that is in effect on July 1, 2015, shall be deemed to be a registration statement under this chapter and shall be deemed not to contain any reference to the kind of business that the corporation proposes to do in this Commonwealth.

(iii) A certificate of authority issued under the former provisions of Subchapter B of Chapter 41 (relating to qualification) that is in effect on July 1, 2015, shall be deemed to be a registration statement under this chapter.

(2) With respect to corporations not-for-profit, the following apply:

(i) If a foreign corporation not-for-profit was admitted to do business in this Commonwealth by the filing of a power of attorney and statement under the former act of June 8, 1911 (P.L.710, No.283), on July 1, 2015, the power of attorney and statement shall be deemed a filed registration statement under this chapter. The corporation shall include in its first amended registration statement under this chapter the information required by this chapter to be set forth in a registration statement.

(ii) A certificate of authority issued under the former provisions of the act of May 5, 1933 (P.L.289, No.105), known as the Nonprofit Corporation Law of 1933, or the former provisions of Article B of Part III known as the Nonprofit Corporation Law of 1972, as added by the act of November 15, 1972 (P.L.1063, No.271), that is in effect on July 1, 2015, shall be deemed to be a registration statement under this chapter and shall be deemed not to contain any reference to the kind of business that the corporation proposes to do in this Commonwealth.

(iii) A certificate of authority issued under the former provisions of Subchapter B of Chapter 61 (relating to qualification) that is in effect on July 1, 2015, shall be deemed to be a registration statement under this chapter.

(3) With respect to limited partnerships, the following apply:

(i) An application for registration filed under the former provisions of 59 Pa.C.S. § 563 (relating to registration) that is in effect on July 1, 2015, shall be deemed to be a registration statement under this chapter and shall be deemed not to contain any reference to:

(A) the general character of the business the limited partnership proposes to transact in this Commonwealth; or

(B) the names and addresses of the limited partners.

(ii) An application for registration filed under the former provisions of section 8582 (relating to registration) that is in effect on July 1, 2015, shall be deemed to be a registration statement under this chapter and shall be deemed not to contain:

(A) any reference to the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions; or

(B) an undertaking to keep those records until the registration of the limited partnership in this Commonwealth is canceled or withdrawn.

(4) An application for registration filed by a limited liability company under the former provisions of section 8981 (relating to foreign limited liability companies) that is in effect on July 1, 2015, shall be deemed to be a registration statement under this chapter.

(5) A certificate of authority issued to a business trust under the former provisions of section 9507 (relating to foreign business trusts) that is in effect on July 1, 2015, shall be deemed to be a registration statement under this chapter.

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

(c) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 4124 (relating to advertisement of registration to do business).

Section 6124 (relating to advertisement of registration to do business).

(July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 added subsec. (b)(6).

Cross References. Section 412 is referred to in sections 201, 206, 413 of this title; section 302 of Title 54 (Names).

§ 413. Amendment of foreign registration statement.

(a) General rule.--A registered foreign association shall deliver to the department for filing an amendment to its foreign registration statement if there is a change in any of the following:

(1) The name of the association.

(2) The type of association, including, if it is a foreign limited partnership, whether the association became or ceased to be a foreign limited liability limited partnership.

(3) The association's jurisdiction of formation.

(4) An address required by section 412(a)(4) (relating to foreign registration statement).

(5) Its registered office.

(6) The authority of the association to have one or more series.

(b) Contents of amendment.--An amendment of a foreign registration statement shall be signed by the registered foreign association and state all of the following:

(1) The name under which the registered foreign association is registered to do business in this Commonwealth.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office in this Commonwealth.

(3) If the amendment is not to be effective on filing, the later date or date and time on which it will become effective.

(4) The information that is to be changed.

(c) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Cross References. Section 413 is referred to in section 419 of this title.

§ 414. Noncomplying name of foreign association.

(a) General rule.--A foreign filing association or foreign limited liability partnership whose name does not comply with Subchapter A of Chapter 2 (relating to names) may not register to do business in this Commonwealth until it adopts, for the purpose of doing business in this Commonwealth, an alternate name that complies with Subchapter A of Chapter 2. A foreign association that registers under an alternate name under this subsection is not required to comply with 54 Pa.C.S. Ch. 3 (relating to fictitious names) with respect to the alternate name. After registering to do business in this Commonwealth under an alternate name, a foreign association shall do business in this Commonwealth under any of the following:

(1) The alternate name.

(2) Its proper name under the laws of its jurisdiction of formation, with the addition of the name of its jurisdiction of formation.

(3) A name the foreign association is authorized to use under 54 Pa.C.S. Ch. 3.

(b) Change of name.--If a registered foreign association changes its name to one that does not comply with Subchapter A of Chapter 2, it may not do business in this Commonwealth until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with Subchapter A of Chapter 2.

(c) Filed documents.--If a registered foreign association adopts an alternate name under subsection (a), the association shall use the alternate name in response to a requirement in this title that a document delivered to the department for filing state the name of the association.

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added subsec. (d).

Cross References. Section 414 is referred to in sections 412, 418 of this title.

§ 415. Voluntary withdrawal of registration.

(a) General rule.--A registered foreign association may withdraw its registration by delivering a statement of withdrawal to the department for filing. The statement of withdrawal shall be signed by the association and state all of the following:

(1) The name of the association and its jurisdiction of formation.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office in this Commonwealth.

(3) That the association is not doing business in this Commonwealth.

(4) That the association withdraws its registration to do business in this Commonwealth.

(b) Filing.--The statement of withdrawal and the certificates required by section 139 (relating to tax clearance of certain fundamental transactions) shall be delivered to the department for filing and shall take effect on filing.

(c) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Cross References. Section 415 is referred to in sections 4129, 6129 of this title.

§ 416. Withdrawal deemed on certain transactions.

(a) Merger.--A registered foreign association that merges into a domestic filing entity or domestic limited liability partnership shall be deemed to have withdrawn its registration on the effective date of the merger.

(b) Conversion.--A registered foreign association that converts to any type of domestic filing entity or to a domestic limited liability partnership shall be deemed to have withdrawn its registration on the effective date of the conversion.

(c) Domestication.--A registered foreign association that domesticates in this Commonwealth as a domestic filing entity or a domestic limited liability partnership shall be deemed to have withdrawn its registration on the effective date of the domestication.

Cross References. Section 416 is referred to in sections 356, 376 of this title.

§ 417. Required withdrawal on certain transactions.

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

(1) a nonsurviving party to a merger in which the survivor is a foreign association;

(2) a dividing association which did not survive the division;

(3) dissolved and completed winding up;

(4) converted to a domestic or foreign nonfiling association other than a limited liability partnership; or

(5) the domesticating entity in a domestication in which the domesticated entity is a domestic or foreign nonfiling association other than a limited liability partnership.

(b) Statement of withdrawal.--A registered foreign association described in subsection (a) shall deliver a statement of withdrawal to the department for filing. The statement shall state as follows:

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

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

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

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

(2) In the case of a foreign association that has converted to a domestic or foreign nonfiling association other than a limited liability partnership, all of the following:

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

(ii) The type of nonfiling association to which the association has converted and its jurisdiction of formation.

(iii) That the association withdraws its registration to do business in this Commonwealth.

(3) In the case of a foreign association that has domesticated as a domestic or foreign nonfiling association other than a limited liability partnership in a jurisdiction other than this Commonwealth, all of the following:

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

(ii) The jurisdiction of formation of the domesticated association.

(iii) That the association withdraws its registration to do business in this Commonwealth.

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

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

(1) the surviving association in the merger;

(2) a resulting association in the division;

(3) the dissolved association; or

(4) the converted or domesticated association.

(e) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a)(1), (b) intro. par. and (1), relettered former subsec. (c) to subsec. (e), added present subsec. (c) and added subsec. (d).

Cross References. Section 417 is referred to in sections 356, 376 of this title.

§ 418. Transfer of registration.

(a) General rule.--If a registered foreign association merges into a nonregistered foreign association or converts to a foreign association required to register with the department to do business in this Commonwealth, the association shall deliver to the department for filing an application for transfer of registration. The application shall be signed by the surviving or converted association and state all of the following:

(1) The name of the association before the merger or conversion.

(2) The type of association it was before the merger or conversion.

(3) The name of the applicant association and, if the name does not comply with section 202 (relating to requirements for names generally), an alternate name adopted in accordance with section 414(a) (relating to noncomplying name of foreign association).

(4) The type of association of the applicant association and its jurisdiction of formation.

(5) If different than the information for the foreign association before the merger or conversion, all of the following information regarding the applicant association:

(i) The street and mailing addresses of the principal office of the association and, if the laws of the association's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office.

(ii) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address of its registered office in this Commonwealth.

(b) Effect of application.--When an application for transfer of registration takes effect, the registration of the registered foreign association to do business in this Commonwealth is transferred without interruption to the association into which it has merged or to which it has been converted.

(c) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

§ 419. Termination of registration.

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

(1) has not amended its registration when required by section 413 (relating to amendment of foreign registration statement);

(2) has been administratively, voluntarily or involuntarily dissolved under the laws of its jurisdiction of formation; or

(3) has failed to deliver to the department for filing an annual report under section 146 (relating to annual report) within six months after it is due.

(b) Notice by department.--The department may terminate the registration of a registered foreign association by taking both of the following actions:

(1) Filing a notice of termination or noting the termination in the records of the department.

(2) Delivering a copy of the notice or the information in the notation to the association's registered office or, if the association does not have a registered office, to the association's principal office.

(c) Contents.--The notice shall state, or the information in the notation under subsection (b) shall include, both of the following:

(1) The effective date of the termination, which shall be no less than 60 days after the date the department delivers the copy.

(2) The grounds for termination under subsection (a).

(d) Effectiveness or cure.--The registration of a registered foreign association to do business in this Commonwealth shall cease on the effective date of the notice of termination or notation under subsection (b), unless before that date the association cures each ground for termination stated in the notice or notation. If the association cures each ground, the department shall file a record stating as such.

(e) Transitional provision.--Subsection (a)(3) shall apply with respect to annual reports due on or after January 4, 2027.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days; June 10, 2024, P.L.381, No.20, eff. imd.)

2024 Amendment. Act 20 amended subsec. (e).
2022 Amendment. Act 122 amended subsec. (a) and added subsec. (e).

PART II
CORPORATIONS

Subpart
A. Corporations Generally
B. Business Corporations
C. Nonprofit Corporations
D. Cooperative Corporations

Enactment. Part II was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.
Prior Provisions. Former Part II (Reserved) was added November 15, 1972, P.L.1063, No.271, and repealed December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

SUBPART A
CORPORATIONS GENERALLY

Chapter
5. Corporations

CHAPTER 5
CORPORATIONS

Subchapter
A. In General
B. Fiduciary Duty and Indemnification
C. Provisions Applicable to Particular Types of Corporations

Enactment. Chapter 5 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.
Cross References. Chapter 5 is referred to in section 7102 of this title.

SUBCHAPTER A
IN GENERAL

Sec.
501. Reserved power of General Assembly.
502. Application of chapter.
503. Actions to revoke corporate franchises.
504. Validation of certain defective corporations.
505. Validation of certain defective corporate acts.
506. Scope and duration of certain franchises.
507. Validation of certain share authorizations.

§ 501. Reserved power of General Assembly.

(a) General rule.--All charters of private corporations and all present and future common or statutory law with respect to the formation or regulation of private corporations or prescribing powers, rights, duties or liabilities of private

corporations or their officers, directors, shareholders or members may be revoked, amended or repealed.

(b) Scope.--Subsection (a) is applicable to all corporations incorporated under the authority of the Commonwealth or of the late Proprietaries of the Province of Pennsylvania, the General Assembly having found in section 104 of the act of December 21, 1988 (P.L.1444, No.177), known as the General Association Act of 1988, that all corporations incorporated prior to October 14, 1857, which purported to register under the act of January 18, 1966 (1965 P.L.1443, No.521), referred to as the Registry Act of 1966, or companion statutes, either failed to register effectively or accepted the benefit of a law or laws passed by the General Assembly after 1873 governing the affairs of corporations.

References in Text. The act of January 18, 1966 (1965 P.L.1443, No.521), referred to in subsec. (b), was repealed.

Cross References. Section 501 is referred to in section 501 of Title 17 (Credit Unions).

§ 502. Application of chapter.

(a) General rule.--Except as otherwise provided in the scope provisions of subsequent provisions of this chapter, this chapter shall apply to and the word "corporation" in this chapter shall mean:

(1) A domestic or foreign corporation for profit.

(2) A domestic or foreign corporation not-for-profit.

(b) Corporations claiming exemption from power of the General Assembly.--Any provision of this chapter otherwise applicable to a corporation claiming exemption from the power of the General Assembly shall be inapplicable to such corporation to the extent, and only to the extent, required by the Constitution of the United States or the Constitution of Pennsylvania, or both.

§ 503. Actions to revoke corporate franchises.

(a) General rule.--The Attorney General may institute proceedings to revoke the articles and franchises of a corporation if it:

(1) misused or failed to use its powers, privileges or franchises;

(2) procured its articles by fraud; or

(3) should not have been incorporated under the statutory authority relied upon.

(b) Powers of court.--In every action or proceeding instituted under subsection (a), the court shall have power to wind up the affairs of and to dissolve the corporation in the manner provided in this part or as otherwise provided by law.

Cross References. Section 503 is referred to in sections 137, 1309, 1502, 1503, 2907, 5309, 5502, 5503 of this title.

§ 504. Validation of certain defective corporations.

Where heretofore or hereafter any act has been or may be done or any transfer or conveyance of any property has been or may be made to or by any corporation created or intended to be created under any statute supplied or repealed by this part, in good faith, after the approval of the articles or application for a charter or issuance of letters patent but without the actual recording of the original papers with the endorsements thereon, or a certified copy thereof, in the office of any recorder of deeds, as provided in such statutes then in force, the acts, transfers and conveyances shall nevertheless be deemed and taken to be valid and effectual for all purposes, regardless of the omission to record the original papers with the

endorsements thereon, or a certified copy thereof, as heretofore required by such statutes. Every such corporation shall be deemed and taken to have been incorporated on the date of approval of its articles or application for a charter or on the date of issuance of its letters patent, whichever event shall have last occurred.

§ 505. Validation of certain defective corporate acts.

Where any corporation governed by this part or created or intended to be created or governed by any statute supplied or repealed by this part has, in good faith, extended its territory or term of existence, changed its name, merged, consolidated or otherwise altered or amended its charter or articles under any statute supplied or repealed by this part but without the actual recording of a document or documents evidencing the corporate action in the office of any recorder of deeds, as provided in such statutes then in force, and a record of the corporate action is on file in the office of the clerk of any court of this Commonwealth or in the Department of State, the corporate action shall nevertheless be deemed and taken to be valid for all purposes, regardless of the omission to record the document or documents as heretofore required by such statutes, and every such corporate action shall be deemed and taken to have been effected upon the filing of the corporate action in the office of the clerk of any court or in the department, or upon the approval of the action, if required, by a court, or by the Governor, Secretary of the Commonwealth or other officer performing corresponding functions with respect to corporate affairs, whichever event has last occurred.

§ 506. Scope and duration of certain franchises.

(a) General rule.--Except as provided in subsection (b), whenever any corporation has sold, assigned, disposed of and conveyed all or any part of its franchises and all or any part of its property, real, personal and mixed, to any other corporation, and the franchises and property have vested in the vendee corporation, or whenever any corporation has heretofore merged or may hereafter merge with and into or consolidate into a surviving or new corporation, the vendee, surviving or new corporation or its successor corporation shall be deemed to possess as a constituent of its own charter, and not as a direct or indirect acquisition from the vendor or nonsurviving corporation, franchise rights of identical scope and character as those originally acquired by it and any of its predecessors in interest from every vendor or nonsurviving predecessor corporation regardless of the fact, if such is the case, that the franchises of any vendor or nonsurviving predecessor corporation, had they been separately existing, would have theretofore expired of their own limitations. The charter of any vendee, surviving, new or successor corporation to which this section may become applicable and all franchise rights thereof attributable under this section or otherwise to or acquired from any vendor or nonsurviving predecessor corporation shall expire upon the same date, which date shall be the later of the dates on which the charter or the most remotely limited of the franchise rights would otherwise expire, and every renewal, extension or change in the term of existence of the vendee, surviving, new or successor corporation by merger, consolidation or otherwise shall inure to the franchise rights attributable to or acquired from all such vendor or nonsurviving predecessor corporations.

(b) Exception.--This section shall not operate to revive any franchise rights heretofore or hereafter expressly

surrendered by the affirmative action of any such vendee, surviving, new or successor corporation.

§ 507. Validation of certain share authorizations.

(a) General rule.--Where heretofore any domestic corporation for profit shall have redeemed and canceled any shares subject to redemption and cancellation, acquired its own shares on conversion thereof into or exchange thereof for other shares of the corporation, purchased or redeemed and canceled any shares, canceled any treasury shares, redeemed any shares or adopted any resolution of the board with respect to authorized but unissued shares reducing the number of shares that the corporation is authorized to issue without filing in the Department of State a statement of redemption and cancellation, a statement of cancellation of shares, a statement of reduction of authorized shares or similar document as then provided by any statute supplied or repealed by Subpart B (relating to business corporations), such action shall be deemed not to have had any effect on the authorized share structure of the corporation and the number and class of shares authorized to be issued by the corporation from time to time and at any time shall be deemed and taken to be the number and class of shares as set forth at the time in the most recently amended text of the charter or articles of the corporation as then on file in the department.

(b) Restriction on reissuance.--Subsection (a) shall not validate any shares reissued in violation of a provision of the charter or articles prohibiting the reissuance of redeemed or otherwise acquired shares. Except as otherwise expressly provided therein, such a provision shall not be interpreted as prohibiting the reissuance of redeemed or otherwise acquired shares as shares of a different class or series.

SUBCHAPTER B
FIDUCIARY DUTY AND INDEMNIFICATION

Sec.

511. Application and effect of subchapter.
512. Standard of care, justifiable reliance and business judgment rule.
513. Personal liability of directors.
514. Presumption of assent.
515. Exercise of powers generally.
516. Alternative standard.
517. Limitation on standing.
518. Nonexclusivity and supplementary coverage.

Enactment. Subchapter B was added December 19, 1990, P.L.834, No.198, effective immediately.

Prior Provisions. Former Subchapter B, which related to indemnification and corporate directors' liability, was added December 21, 1988, P.L.1444, No.177, and repealed December 19, 1990, P.L.834, No.198, effective immediately.

Special Provisions in Appendix. See section 404(b) of Act 198 of 1990 in the appendix to this title for special provisions relating to applicability.

Cross References. Subchapter B is referred to in section 8332.5 of Title 42 (Judiciary and Judicial Procedure).

§ 511. Application and effect of subchapter.

(a) General rule.--This subchapter applies to and the terms "corporation" or "domestic corporation" in this subchapter mean:

(1) A banking institution.

(2) A credit union.
(3) A fraternal benefit society.

(b) Alternative provisions.--Section 516 (relating to alternative standard) shall not be applicable to any corporation to which section 515 (relating to exercise of powers generally) is applicable. Section 515 shall be applicable to any corporation except a corporation:

(1) the bylaws of which, by amendment adopted by the board of directors on or before July 26, 1990, and not subsequently rescinded by an articles amendment, explicitly provide that section 515 or corresponding provisions of prior law shall not be applicable to the corporation; or

(2) the articles of which explicitly provide that section 515 or corresponding provisions of prior law shall not be applicable to the corporation.

(c) Reversal of opt-out.--A provision of the articles or bylaws providing that section 515 or corresponding provisions of prior law shall not be applicable to the corporation and may be rescinded pursuant to the procedures required by the organic law of the corporation and the articles and bylaws at the time of the rescission to amend the articles or bylaws.
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a) and added subsec. (c).

Cross References. Section 511 is referred to in sections 515, 516, 1711 of this title.

§ 512. Standard of care, justifiable reliance and business judgment rule.

(a) Directors.--A director of a domestic corporation shall stand in a fiduciary relation to the corporation and shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director reasonably believes to be in the best interests of the corporation and with such care, including the skill and diligence that a person of ordinary prudence would use under similar circumstances and reasonable inquiry into those issues required by the statutes of this Commonwealth to be considered in the circumstances and those interests and factors listed in section 515(a) (relating to exercise of powers generally) or 516(a) (relating to alternative standard) that the director considers appropriate. This subsection is subject to subsection (d) where applicable.

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

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

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

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

(b) Effect of actual knowledge.--A director is not considered to be acting in good faith under subsection (a.1)

if the director has actual knowledge concerning the matter that causes the director to believe reliance is unwarranted.

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

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

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

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

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

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 512 is referred to in sections 515, 516, 517 of this title; section 712 of Title 17 (Credit Unions).

§ 513. Personal liability of directors.

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

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

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

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

(1) the responsibility or liability of a director pursuant to any criminal statute; or

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a)(1), relettered former subsec. (c) to subsec. (d) and added present subsec. (c).

Cross References. Section 513 is referred to in section 712 of Title 17 (Credit Unions).

§ 514. Presumption of assent.

A director of a domestic corporation who is present at a meeting of its board of directors, or of a committee of the board, at which action on any corporate matter is taken on which the director is generally competent to act, shall be presumed to have assented to the action taken unless the director's dissent, abstention or vote against the matter is entered in the minutes of the meeting or unless the director delivers to the secretary of the meeting before the adjournment a dissent in record form to the action or transmits the dissent in record form to the secretary of the corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a director who voted in favor of the action. Nothing in this subchapter shall bar a director from asserting that minutes of the meeting incorrectly omitted the director's dissent, abstention or vote against if, promptly upon receipt of a copy of such minutes, the director notifies the secretary of the corporation in record form of the asserted omission or inaccuracy.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 515. Exercise of powers generally.

(a) General rule.--In discharging the duties of their respective positions, the board of directors, committees of the board and individual directors of a domestic corporation may, in considering the best interests of the corporation, consider to the extent they deem appropriate:

(1) The effects of any action upon any or all groups affected by such action, including shareholders, members, employees, suppliers, customers and creditors of the corporation, and upon communities in which offices or other establishments of the corporation are located.

(2) The short-term and long-term interests of the corporation, including benefits that may accrue to the corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the corporation.

(3) The resources, intent and conduct (past, stated and potential) of any person seeking to acquire control of the corporation.

(4) All other pertinent factors.

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

(c) Specific applications.--In exercising the powers vested in the corporation, and in no way limiting the discretion of the board of directors, committees of the board and individual directors pursuant to subsections (a) and (b), the fiduciary duty of directors shall not be deemed to require them to act as the board of directors, a committee of the board or an individual director solely because of the effect such action

might have on an acquisition or potential or proposed acquisition of control of the corporation or the consideration that might be offered or paid to shareholders or members in such an acquisition.

(d) Presumption.--In assessing whether the standard set forth in section 512 has been satisfied, there shall not be any greater obligation to justify, or higher burden of proof with respect to, any act as the board of directors, any committee of the board or any individual director relating to or affecting an acquisition or potential or proposed acquisition of control of the corporation than is applied to any other act as a board of directors, any committee of the board or any individual director. Notwithstanding section 512(d) and the preceding provision of this subsection, any act as the board of directors, a committee of the board or an individual director relating to or affecting an acquisition or potential or proposed acquisition of control to which a majority of the disinterested directors shall have assented shall be presumed to satisfy the standard set forth in section 512, unless it is proven by clear and convincing evidence that the disinterested directors did not assent to such act in good faith after reasonable investigation.

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

(1) A director of the corporation other than:

(i) A director who has a direct or indirect financial or other interest in the person acquiring or seeking to acquire control of the corporation or who is an affiliate or associate of, or was nominated or designated as a director by, a person acquiring or seeking to acquire control of the corporation.

(ii) Depending on the specific facts surrounding the director and the act under consideration, an officer or employee or former officer or employee of the corporation.

(2) A person shall not be deemed to be other than a disinterested director solely by reason of any or all of the following:

(i) The ownership by the director of shares of or a membership in the corporation.

(ii) The receipt as a holder of shares of or as a member of any class or series of any distribution made to all owners of shares of or members of that class or series.

(iii) The receipt by the director of director's fees or other consideration as a director.

(iv) Any interest the director may have in retaining the status or position of director.

(v) The former business or employment relationship of the director with the corporation.

(vi) Receiving or having the right to receive retirement or deferred compensation from the corporation due to service as a director, officer or employee.

(f) Cross reference.--See section 511(b) (relating to alternative provisions).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b), (d) and (e)(1)(i).

Cross References. Section 515 is referred to in sections 511, 512, 517, 1711 of this title.

§ 516. Alternative standard.

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

(b) Presumption.--(Deleted by amendment).

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 516 is referred to in sections 511, 512, 517 of this title.

§ 517. Limitation on standing.

The duty of the board of directors, committees of the board and individual directors under section 512 (relating to standard of care, justifiable reliance and business judgment rule) is solely to the domestic corporation and not to any shareholder, member or creditor or any other person or group, and may be enforced directly by the corporation or may be enforced by an action in the right of the corporation, and may not be enforced directly by a shareholder, member or creditor or by any other person or group. Notwithstanding the preceding sentence, sections 515(a) and (b) (relating to exercise of powers generally) and 516(a) (relating to alternative standard) do not impose upon the board of directors, committees of the board and individual directors any legal or equitable duties, obligations or liabilities or create any right or cause of action against, or basis for standing to sue, the board of directors, committees of the board and individual directors.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 518. Nonexclusivity and supplementary coverage.

(a) General rule.--The indemnification and advancement of expenses provided by or pursuant to section 522 (relating to indemnification of authorized representatives) or any other provisions of law providing for indemnification or advancement of expenses applicable to any domestic corporation shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders, members or directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding that office. Any domestic corporation may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this section or otherwise.

(b) When indemnification is not to be made.--Indemnification pursuant to subsection (a) shall not be made in any case where the act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

(c) Grounds.--Indemnification pursuant to subsection (a) under any bylaw, agreement, vote of shareholders, members or directors or otherwise may be granted for any action taken and may be made whether or not the corporation would have the power to indemnify the person under any other provision of law except

as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the corporation. Such indemnification is declared to be consistent with the public policy of this Commonwealth.

(d) Payment of expenses.--Expenses incurred by an officer, director, employee or agent in defending any action or proceeding against which indemnification may be made pursuant to this section may be paid by the corporation in advance of the final disposition of such action or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation.

(e) Rights to indemnification.--The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

SUBCHAPTER C
PROVISIONS APPLICABLE TO PARTICULAR TYPES OF CORPORATIONS

Sec.

521. Pensions and allowances.
522. Indemnification of authorized representatives.
523. Actions by shareholders or members to enforce a secondary right.
524. Renunciation of business opportunities.

§ 521. Pensions and allowances.

A banking institution may grant allowances or pensions to officers, directors and employees for faithful and long-continued services and, after the death of the officer, director or employee either while in the service of the corporation or after retirement, pensions or allowances may be granted or continued to their dependents. The allowances to dependents shall be reasonable in amount and paid only for a limited time and, unless part of an employee benefit plan or employment contract in effect at the time of retirement or death of the officer, director or employee, shall not exceed in total the amount of the compensation paid to the officer, director or employee during the 12 months preceding retirement or death. (Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

§ 522. Indemnification of authorized representatives.

A banking institution shall be governed by the provisions of Subchapter D of Chapter 17 (relating to indemnification). (Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 522 is referred to in section 518 of this title.

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

(a) General rule.--A banking institution shall be governed by the provisions of Subchapter F of Chapter 17 (relating to derivative actions).

(b) Security for costs.--(Deleted by amendment).

(c) Definitions.--When applying the provisions of Subchapter F of Chapter 17, the following words and phrases shall have the meanings given to them in this subsection:

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

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

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

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 524. Renunciation of business opportunities.

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 524.

SUBPART B
BUSINESS CORPORATIONS

Article

A. Preliminary Provisions
B. Domestic Business Corporations Generally
C. Domestic Business Corporation Ancillaries
D. Foreign Business Corporations

Special Provisions in Appendix. See section 404(a)(8) of Act 198 of 1990 in the appendix to this title for special provisions relating to the expansion of the scope of Subpart B.

ARTICLE A
PRELIMINARY PROVISIONS

Chapter

11. General Provisions

CHAPTER 11
GENERAL PROVISIONS

Sec.

1101. Short titles.
1102. Application of subpart.
1103. Definitions.
1104. Other general provisions (Repealed).
1105. Restriction on equitable relief.
1106. Uniform application of subpart.
1107. (Reserved).
1108. Limitation on incorporation.
1109. Execution of documents.
1110. Annual report information (Repealed).

Enactment. Chapter 11 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 1101. Short titles.

(a) Title of subpart.--This subpart shall be known and may be cited as the Business Corporation Law of 1988.

(b) Prior law.--The act of May 5, 1933 (P.L.364, No.106), shall be known and may be cited as the Business Corporation Law of 1933.

§ 1102. Application of subpart.

(a) General rule.--Except as otherwise provided in this section, in the scope provisions of subsequent provisions of this subpart or where the context clearly indicates otherwise, this subpart shall apply to and the words "corporation" or "business corporation" in this subpart shall mean a domestic corporation for profit. See section 101(b) (relating to application of title).

(b) Coordination with other laws.--Where any other provision of law contemplates notice to, the presence of or the vote, consent or other action by the shareholders, directors or officers of a business corporation, without specifying the applicable corporate standards and procedures, the standards and procedures specified by or pursuant to this subpart shall be applicable.

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

(1) A banking institution.

(2) A credit union.

(3) (Deleted by amendment).

(d) Cooperative corporations.--This subpart shall apply to a domestic corporation for profit organized on the cooperative principle only to the extent provided by Subpart D (relating to cooperative corporations).

(e) Business corporation ancillaries.--The domestic corporation provisions of this subpart shall apply to any of the following corporations, whether proposed or existing, except as otherwise expressly provided by statute applicable to the corporation:

(1) A business development credit corporation.

(2) Any other domestic corporation for profit incorporated under or subject to a statute that provides that the corporate affairs of the corporation shall be governed by the laws applicable to domestic business corporations.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 deleted subsec. (c)(3).

1990 Amendment. Act 198 amended subsec. (c).

Cross References. Section 1102 is referred to in section 1103 of this title.

§ 1103. Definitions.

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

"Act" or **"action."** (Deleted by amendment).

"Amendment." An amendment of the articles.

"Articles." The original articles of incorporation, all amendments thereof and any other articles, statements or certificates permitted or required to be filed in the Department of State by sections 108 (relating to change in location or status of registered office provided by agent) and 138 (relating to statement of correction), Chapter 3 (relating to entity transactions) or this subpart and including what have heretofore been designated by law as certificates of incorporation or charters. If an amendment of the articles or a statement filed under Chapter 3 restates articles in their entirety, thenceforth the "articles" shall not include any prior documents and any certificate issued by the department with respect thereto shall so state.

"Authorized shares." The shares of all classes that the corporation is authorized to issue.

"Banking institution" or **"domestic banking institution."** (Deleted by amendment).

"Board of directors" or **"board."** The persons selected under section 1725 (relating to selection of directors) irrespective of the name by which the group is designated in the articles. See section 1731(c) (relating to executive and other committees of the board).

"Business corporation" or **"domestic business corporation."** A domestic corporation for profit that is not excluded from the scope of this subpart by section 1102 (relating to application of subpart).

"Business development credit corporation." A domestic corporation for profit that is a corporation as defined in the act of December 1, 1959 (P.L.1647, No.606), known as the Business Development Credit Corporation Law.

"Bylaws." See section 1504(c) (relating to adoption, amendment and contents of bylaws).

"Closely held corporation." A business corporation that:

(1) has not more than 30 shareholders; or

(2) is a statutory close corporation.

Shares that are held jointly or in common or in trust by two or more persons, as fiduciaries or otherwise, or that are held by spouses shall be deemed to be held by one shareholder for the purposes of this definition.

"Corporation for profit." (Deleted by amendment).

"Corporation not-for-profit." (Deleted by amendment).

"Court." (Deleted by amendment).

"Credit union." (Deleted by amendment).

"Department." (Deleted by amendment).

"Directors." The term, when used in relation to any power or duty requiring collective action, shall be construed to mean "board of directors."

"Dissenters rights." (Deleted by amendment).

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

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

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

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

(4) filing of a certified copy of a decree of dissolution in the department under the former act of April

9, 1856 (P.L.293, No.308), entitled "Supplement to the acts relating to incorporations by the Courts of Common Pleas," or otherwise; or

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

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

"Domestic corporation for profit." (Deleted by amendment).

"Domestic corporation not-for-profit." (Deleted by amendment).

"Employee." Includes officers but not directors, as such. See section 1730 (relating to compensation of directors) as to acceptance by a director of duties that make him also an employee.

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

"Exchange Act." The Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.).

"Fair value." In the case of shares, fair value as determined under the standards and procedures provided by Subchapter D of Chapter 15 (relating to dissenters rights).

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

"Foreign corporation for profit." (Deleted by amendment).

"Foreign corporation not-for-profit." (Deleted by amendment).

"Foreign domiciliary corporation." A foreign business corporation defined in section 4102 (relating to foreign domiciliary corporations).

"Foreign insurance corporation." A corporation for profit incorporated under any laws other than those of this Commonwealth that is qualified to do business in this Commonwealth under the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

"Full age." Of the age of 18 years or older.

"Incorporator." A signer of the original articles of incorporation.

"Insurance corporation" or **"domestic insurance corporation."** (Deleted by amendment).

"Internal Revenue Code of 1986." (Deleted by amendment).

"Investment Company Act of 1940." The Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.).

"Issue." Includes sale or other disposition of a security previously issued by the corporation and thereafter acquired by it.

"Management corporation." A business corporation that has elected to become subject to Chapter 27 (relating to management corporations) and whose status as a management corporation has not been terminated as provided in Chapter 27.

"Mutual insurance company." A mutual insurance company as defined in section 3102 (relating to definitions).

"Nonprofit corporation." A domestic corporation not-for-profit defined in section 5103 (relating to definitions).

"Nonqualified foreign business corporation." (Deleted by amendment).

"Nonregistered corporation." A corporation that is not a registered corporation.

"Nonstock corporation." A business corporation that has elected to become subject to Chapter 21 (relating to nonstock corporations) and whose status as a nonstock corporation has not been terminated as provided in Chapter 21.

"Obligation." (Deleted by amendment).

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

"Officially publish." (Deleted by amendment).

"Plan." (Deleted by amendment).

"Preference." A right in one class or series of shares that is senior to any right in a junior class or series of shares:

(1) as to the right to payment of dividends;

(2) as to the right to distribution of assets upon redemption of shares or upon the voluntary or involuntary liquidation of the corporation; or

(3) as to both dividends and assets.

"Professional corporation." A business corporation that is subject to Chapter 29 (relating to professional corporations) and whose status as a professional corporation has not been terminated as provided in Chapter 29.

"Public utility corporation." Any domestic or foreign corporation for profit that:

(1) is subject to regulation as a public utility by the Pennsylvania Public Utility Commission or an officer or agency of the United States; or

(2) was subject to such regulation on December 31, 1980, or would have been so subject if it had been then existing.

"Qualified foreign business corporation." (Deleted by amendment).

"Reclassification." A change in the number, voting rights, designations, preferences, limitations, special rights or par value of shares, or a conversion or exchange of one class or series of shares into or for another class or series of shares, other securities or obligations of the same corporation, or the cancellation of shares. The term does not include a stock dividend or split effected by distribution of its own previously authorized shares pro rata to the holders of shares of the same or any other class or series pursuant to action solely of the board of directors.

"Registered corporation." (Deleted by amendment).

"Registered office." That office maintained by a corporation in this Commonwealth as required by section 1507 (relating to

registered office). See section 109 (relating to name of commercial registered office provider in lieu of registered address).

"Relax." When used with respect to a provision of the articles or bylaws, means to provide lesser rights for an affected representative or shareholder.

"Representative." (Deleted by amendment).

"Savings association" or **"domestic savings association."** (Deleted by amendment).

"Securities Act of 1933." The Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.).

"Share certificate." A written instrument signed on behalf of the corporation evidencing the fact that the person therein named is the record owner of the shares therein described.

"Share register." Records administered by or on behalf of a corporation in which the names of all of its shareholders, the address of each shareholder, the number and class of shares registered in the name of each shareholder and all issuances and transfers of shares are recorded.

"Shareholder." A record holder or record owner of shares of a corporation, including a subscriber to shares. The term, when used in relation to the taking of corporate action, includes the proxy of a shareholder. If and to the extent the articles confer rights of shareholders upon holders of obligations of the corporation or governmental or other entities pursuant to any provision of this subpart or other provision of law, the term shall be construed to include those holders and governmental or other entities.

"Shares." The units into which the rights of the shareholders to participate in the control of a corporation, in its profits or in the distribution of its assets are divided.

"Special treatment." A provision of an amendment or plan permitted by section 1906 (relating to special treatment of holders of shares of same class or series).

"Statutory close corporation." A business corporation that has elected to become subject to Chapter 23 (relating to statutory close corporations) and whose status as a statutory close corporation has not been terminated as provided in Chapter 23.

"Subscriber." One who subscribes for or otherwise takes shares by agreement from the issuing corporation, whether before or after incorporation.

"Subscription." The promise to pay a consideration or the agreement fixing the amount of the consideration paid or to be paid for shares by a subscriber.

"Unless otherwise provided" or **"except as otherwise provided."** When used to introduce or modify a rule, implies that the alternative provisions contemplated may either relax or restrict the stated rule.

"Unless otherwise restricted" or **"except as otherwise restricted."** When used to introduce or modify a rule, implies that the alternative provisions contemplated may further restrict, but may not relax, the stated rule.

"Voting" or **"casting a vote."** Includes the giving of consent in lieu of voting. The term does not include either recording the fact of abstention or failing to vote for a candidate or for approval or disapproval of a matter, whether or not the person entitled to vote characterizes the conduct as voting or casting a vote.

(b) Index of other definitions.--The following is a nonexclusive list of words and phrases which when used in this

subpart shall have the meanings given to them in section 102 (relating to definitions):

"Act" or **"action."**
"Banking institution" or **"domestic banking institution."**
"Conversion."
"Corporation for profit."
"Corporation not-for-profit."
"Court."
"Credit union."
"Department."
"Dissenters rights."
"Division."
"Domestic corporation for profit."
"Domestic corporation not-for-profit."
"Domestication."
"Execute."
"Foreign corporation for profit."
"Foreign corporation not-for-profit."
"Insurance corporation" or **"domestic insurance corporation."**
"Interest exchange."
"Internal Revenue Code of 1986."
"Merger."
"Obligation."
"Officially publish."
"Record form."
"Representative."
"Savings association" or **"domestic savings association."**
(Deleted by amendment).
"Sign."

(Apr. 27, 1990, P.L.129, No.36, eff. imd.; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Dec. 7, 1994, P.L.703, No.106, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days; July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended the def. of "foreign business corporation" in subsec. (a).

2022 Amendment. Act 122 amended the defs. of "board of directors" or "board," "bylaws," "dissolve" or "dissolution," "distribution," "entitled to vote" and "officer" in subsec. (a) and (b) and added the def. of "share register" in subsec. (a).

2014 Amendment. Act 172 amended subsec. (a) intro. par. and in subsec. (a) amended the defs. of "articles," "distribution" and "foreign business corporation" and deleted the defs. of "dissenters rights," "nonqualified foreign business corporation," "plan," "qualified foreign business corporation" and "registered corporation."

2013 Amendment. Act 67 amended the defs. of "distribution" and "voting" or "casting a vote" and deleted the defs. of "act" or "action," "banking institution" or "domestic banking institution," "corporation for profit," "corporation not-for-profit," "court," "credit union," "department," "domestic corporation for profit," "domestic corporation not-for-profit," "foreign corporation for profit," "foreign corporation not-for-profit," "insurance corporation" or "domestic insurance corporation," "Internal Revenue Code of 1986," "obligation," "officially publish," "representative" and "savings association" or "domestic savings association" and added subsecs. (a) hdg. and (b).

1992 Amendment. Act 169 amended the defs. of "distribution," retroactive to October 1, 1989, "professional corporation" and "registered office" and added the def. of "dissolve" or "dissolution."

1990 Amendments. Act 36 added the def. of "act" or "action" and Act 198 amended the defs. of "credit union" or "domestic credit union," "distribution," "entitled to vote," "foreign insurance corporation," "insurance corporation" or "domestic insurance corporation," "qualified foreign business corporation" and "reclassification" and added the defs. of "Exchange Act," "Internal Revenue Code of 1986," "Investment Company Act of 1940," "mutual insurance company," "relax" and "Securities Act of 1933."

Cross References. Section 1103 is referred to in sections 102, 1572, 1725, 1903, 1911, 2301, 5103 of this title.

§ 1104. Other general provisions (Repealed).

2013 Repeal. Section 1104 was repealed July 9, 2013, P.L.476, No.67, effective in 60 days.

§ 1105. Restriction on equitable relief.

A shareholder of a business corporation shall not have any right to obtain, in the absence of fraud or fundamental unfairness, an injunction against any proposed plan or amendment of articles authorized under any provision of this title, nor any right to claim the right to valuation and payment of the fair value of his shares because of the plan or amendment, except that he may dissent and claim such payment if and to the extent provided in Subchapter D of Chapter 15 (relating to dissenters rights) where this title expressly provides that dissenting shareholders shall have the rights and remedies provided in that subchapter. Absent fraud or fundamental unfairness, the rights and remedies so provided shall be exclusive. Structuring a plan or transaction for the purpose or with the effect of eliminating or avoiding the application of dissenters rights is not fraud or fundamental unfairness within the meaning of this section.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

Cross References. Section 1105 is referred to in sections 1571, 1904 of this title.

§ 1106. Uniform application of subpart.

(a) General rule.--Except as provided in subsection (b), Part I (relating to preliminary provisions) and this subpart are intended to provide uniform rules for the government and regulation of the affairs of business corporations and of their officers, directors and shareholders regardless of the date or manner of incorporation or qualification, or of the issuance of any shares thereof.

(b) Exceptions.--

(1) Unless expressly provided otherwise in any amendment to this subpart, the amendment shall take effect only prospectively.

(2) An existing corporation lawfully using a name or, as part of its name, a word that could not be used as or included in the name of a corporation subsequently incorporated or qualified under this subpart may continue to use the name or word as part of its name if the use or inclusion of the word or name was lawful when first adopted by the corporation in this Commonwealth.

(3) Subsection (a) shall not adversely affect the rights specifically provided for or saved in this title. See:

The provisions of section 341(c) (relating to interest exchange authorized).

The provisions of section 351(c) (relating to conversion authorized).

The transitional approval requirements set forth in section 363(d) (relating to approval of division).

The provisions of section 1524(e) (relating to transitional provision).

The provisions of section 1554(c) (relating to transitional provision).

The cumulative voting rights set forth in section 1758(c)(2) (relating to cumulative voting).

The provisions of section 2301(d) (relating to transitional provisions).

The provisions of section 2541(a)(2) and (3) and (c) (relating to application and effect of subchapter).

The provisions of section 2543(b)(1) and (2) (relating to exceptions generally).

The provisions of section 2551(b)(3)(i), (5) and (6) (relating to exceptions).

The provisions of section 2553(b)(2) (relating to exception).

(4) Except as otherwise expressly provided in the articles, a domestic corporation for profit that, on September 30, 1989, was not subject to the Business Corporation Law of 1933 and that thereafter becomes subject to this subpart by operation of law shall be deemed to have in effect articles that provide that the following provisions of this subpart shall not be applicable to the corporation:

(i) Section 1726(a)(1) (relating to removal by the shareholders) insofar as it provides a statutory right on the part of shareholders to remove directors from office without assigning any cause.

(ii) Section 1755(b)(2) (relating to special meetings).

(iii) Section 1912(a)(2) (relating to proposal of amendments).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

Cross References. Section 1106 is referred to in sections 1311, 1726, 1755, 1912 of this title.

§ 1107. (Reserved).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 renumbered section 1107 to section 1108 and added present section 1107 (Reserved).

§ 1108. Limitation on incorporation.

A corporation that can be incorporated under this subpart shall not be incorporated except under the provisions of this subpart.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 renumbered section 1107 to section 1108 and renumbered former section 1108 to section 1109.

§ 1109. Execution of documents.

(a) General rule.--Any document filed in the Department of State under this title by a domestic or foreign business corporation subject to this subpart may be executed on behalf of the corporation by any one duly authorized officer thereof. The corporate seal may be affixed and attested but the

affixation or attestation of the corporate seal shall not be necessary for the due execution of any filing by a corporation under this title.

(b) Cross reference.--See section 135 (relating to requirements to be met by filed documents).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 renumbered former section 1108 to present section 1109.

§ 1110. Annual report information (Repealed).

2022 Repeal. Section 1110 was repealed November 3, 2022, P.L.1791, No.122, effective in 60 days.

ARTICLE B
DOMESTIC BUSINESS CORPORATIONS GENERALLY

Chapter

13. Incorporation
15. Corporate Powers, Duties and Safeguards
17. Officers, Directors and Shareholders
19. Fundamental Changes

CHAPTER 13
INCORPORATION

Subchapter

A. Incorporation Generally
B. Revival

Enactment. Chapter 13 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 13 is referred to in section 1306 of this title.

SUBCHAPTER A
INCORPORATION GENERALLY

Sec.

1301. Purposes.
1302. Number and qualifications of incorporators.
1303. Corporate name (Repealed).
1304. Required name changes by senior corporations (Repealed).
1305. Reservation of corporate name (Repealed).
1306. Articles of incorporation.
1307. Advertisement.
1308. Filing of articles.
1309. Effect of filing of articles of incorporation.
1310. Organization meeting.
1311. Filing of statement of summary of record by certain corporations.

§ 1301. Purposes.

Corporations may be incorporated under this subpart for any lawful purpose or purposes. Unless otherwise restricted in its articles, every business corporation has as its corporate purpose the engaging in all lawful business for which corporations may be incorporated under this subpart.

Cross References. Section 1301 is referred to in section 3311 of this title.

§ 1302. Number and qualifications of incorporators.

One or more corporations for profit or not-for-profit or natural persons of full age may incorporate a business corporation under the provisions of this subpart.

§ 1303. Corporate name (Repealed).

2014 Repeal. Section 1303 was repealed October 22, 2014, P.L.2640, No.172, July 21, 2015.

§ 1304. Required name changes by senior corporations (Repealed).

2014 Repeal. Section 1304 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1305. Reservation of corporate name (Repealed).

2014 Repeal. Section 1305 was repealed October 22, 2014, P.L.2640, No.172, effective July 21, 2015.

§ 1306. Articles of incorporation.

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

(1) The name of the corporation, unless the name is in a foreign language in which case it shall be set forth in Roman letters or characters or Arabic or Roman numerals.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its initial registered office in this Commonwealth.

(3) A statement that the corporation is incorporated under the provisions of the Business Corporation Law of 1988.

(4) A statement that the corporation is to be organized upon a nonstock basis, or if it is to be organized on a stock share basis:

(i) The aggregate number of shares that the corporation shall have authority to issue. It shall not be necessary to set forth in the articles the designations of the classes of shares of the corporation, or the maximum number of shares of each class that may be issued.

(ii) A statement of the voting rights, designations, preferences, limitations and special rights in respect of the shares of any class or any series of any class, to the extent that they have been determined.

(iii) A statement of any authority vested in the board of directors to divide the authorized and unissued shares into classes or series, or both, and to determine for any such class or series its voting rights, designations, preferences, limitations and special rights.

(5) The name of each of the incorporators.

(6) The term for which the corporation is to exist, if not perpetual.

(7) If the articles are to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

(8) Any other provisions that the incorporators may choose to insert if:

(i) any provision of this subpart authorizes or requires provisions pertaining to the subject matter thereof to be set forth in the articles or bylaws of a

business corporation or in an agreement or other instrument; or

(ii) the provisions, whether or not specifically authorized by this subpart, relate to the purpose or purposes of the corporation, the management of its business or affairs or the rights, powers or duties of its securityholders, directors or officers.

(b) Other provisions authorized.--A provision of the original articles or a provision of the articles approved by the shareholders, in either case adopted under subsection (a)(8)(ii), may relax or be inconsistent with and supersede any provision of Chapter 3 (relating to entity transactions), 13 (relating to incorporation), 15 (relating to corporate powers, duties and safeguards), 17 (relating to officers, directors and shareholders) or 19 (relating to fundamental changes) concerning the subjects specified in subsection (a)(8)(ii), except where a provision of those chapters expressly provides that the articles shall not relax or be inconsistent with any provision on a specified subject. Notwithstanding the foregoing:

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

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

(c) Par value.--The articles may, but need not, set forth a par value for any authorized shares or class or series of shares.

(d) Written consent to naming directors.--The naming of directors in articles of incorporation shall constitute an affirmation that the directors have consented in writing to serve as such.

(e) Reference to external facts.--Except for the provisions required by subsection (a)(1), (2), (3), (4)(i), (5) and (7), any provision of the articles of incorporation may be made dependent upon facts ascertainable outside of the articles if the manner in which the facts will operate upon the provision is set forth in the articles. The facts may include actions or events within the control of or determinations made by the corporation or a representative of the corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a)(5) and (b).

2013 Amendment. Act 67 added subsec. (e).

1990 Amendment. Act 198 amended subsec. (a)(8), relettered subsec. (b) to subsec. (d) and added subsecs. (b) and (c).

Cross References. Section 1306 is referred to in sections 1504, 1718, 3304 of this title.

§ 1307. Advertisement.

The incorporators or the corporation shall officially publish a notice of intention to file or of the filing of articles of incorporation. The notice may appear prior to or after the day the articles of incorporation are filed in the Department of State and shall set forth briefly:

(1) The name of the proposed corporation.

(2) A statement that the corporation is to be or has been incorporated under the provisions of the Business Corporation Law of 1988.

§ 1308. Filing of articles.

(a) General rule.--The articles of incorporation shall be filed in the Department of State.

(b) Cross reference.--See section 134 (relating to docketing statement).

§ 1309. Effect of filing of articles of incorporation.

(a) Corporate existence.--Upon the filing of the articles of incorporation in the Department of State or upon the effective date specified in the articles of incorporation, whichever is later, the corporate existence shall begin.

(b) Evidence of incorporation.--Subject to the provisions of section 503 (relating to actions to revoke corporate franchises), the articles of incorporation filed in the department, or recorded in the office of the recorder of deeds under the former provisions of law, shall be conclusive evidence of the fact that the corporation has been incorporated.

§ 1310. Organization meeting.

(a) General rule.--After the corporate existence begins, an organization meeting of the initial directors or, if directors are not named in the articles, of the incorporator or incorporators shall be held, within or without this Commonwealth, for the purpose of adopting bylaws which they shall have authority to do at the meeting, of electing directors, if directors are not named in the articles, and the transaction of such other business as may come before the meeting. A bylaw adopted at the organization meeting of directors or incorporators shall be deemed to be a bylaw adopted by the shareholders for the purposes of this subpart and of any other provision of law.

(b) Call of and action at meeting.--The meeting may be held at the call of any director or, if directors are not named in the articles, of any incorporator, who shall give at least five days' written notice thereof to each other director or incorporator, which notice shall set forth the time and place of the meeting. For the purposes of this section, any incorporator may act in person, by written consent or by proxy signed by him or his attorney-in-fact.

(c) Death or incapacity of directors or incorporators.--If a designated director or an incorporator dies or is for any reason unable to act at the meeting, the other or others may act. If there is no other designated director or incorporator able to act, any person for whom an incorporator was acting as agent may act or appoint another to act in his stead.

Cross References. Section 1310 is referred to in section 1504 of this title.

§ 1311. Filing of statement of summary of record by certain corporations.

(a) General rule.--Where any of the charter documents of a business corporation are not on file in the Department of State or there is an error in any such document as transferred to the department pursuant to section 140 (relating to custody and management of orphan corporate and business records), and the corporation desires to file any document in the department under any other provision of this subpart or the corporation desires to secure from the department any certificate to the effect that the corporation is a corporation duly incorporated and existing under the laws of this Commonwealth or a certified copy of the articles of the corporation or the corporation

desires to correct the text of its charter documents as on file in the department, the corporation shall file in the department a statement of summary of record which shall be executed by the corporation and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the location, including street and number, if any, of its registered office.

(2) The statute by or under which the corporation was incorporated.

(3) The name under which, the manner in which and the date on which the corporation was originally incorporated, including the date when and the place where the original articles were recorded.

(4) The place or places, including volume and page numbers or their equivalent, where the documents that are not on file in the department or that require correction in the records of the department were originally filed or recorded, the date or dates of each filing or recording and the correct text of the documents. The information specified in this paragraph may be omitted in a statement of summary of record that is delivered to the department contemporaneously with amended and restated articles of the corporation filed under this subpart.

(5) (Deleted by amendment).

(6) (Deleted by amendment).

(b) Validation of prior defects in incorporation.--Upon the filing of a statement by a corporation under this section or the transfer to the department of the records relating to a corporation pursuant to section 140, the corporation shall be deemed to be a validly subsisting corporation to the same extent as if it had been duly incorporated and was existing under this subpart and the department shall so certify regardless of any absence of or defect in the prior proceedings relating to incorporation.

(c) Cross references.--See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 1106(b)(2) (relating to uniform application of subpart).

(June 22, 2001, P.L.418, No.34, eff. 60 days)

Cross References. Section 1311 is referred to in section 9305 of this title.

SUBCHAPTER B
REVIVAL

Sec.

1341. Statement of revival.

§ 1341. Statement of revival.

(a) General rule.--Any business corporation whose charter or articles have been forfeited by proclamation of the Governor pursuant to section 1704 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, or otherwise, or whose corporate existence has expired by reason of any limitation contained in its charter or articles and the failure to effect a timely renewal or extension of its corporate existence, may at any time by filing a statement of revival procure a revival of its charter or articles, together with all the rights, franchises, privileges and immunities and subject to all of its

duties, debts and liabilities that had been vested in and imposed upon the corporation by its charter or articles as last in effect.

(b) Contents of statement.--The statement of revival shall be executed in the name of the forfeited or expired corporation and shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), set forth:

(1) The name of the corporation at the time its charter or articles were forfeited or expired and the address, including street and number, if any, of its last registered office.

(2) The statute by or under which the corporation was incorporated and the date of incorporation.

(3) The name that the corporation adopts as its new name if the adoption of a new name is required by section 207 (relating to required name changes by senior associations).

(4) The address, including street and number, if any, of its registered office in this Commonwealth.

(5) A reference to the proclamation or other action by which its charter or articles were forfeited or a reference to the limitation contained in its expired charter or articles.

(6) A statement that the corporate existence of the corporation shall be revived.

(7) A statement that the filing of the statement of revival has been authorized by the corporation. Every forfeited or expired corporation may act by its last directors or may elect directors and officers in the manner provided by this subpart for the limited purpose of effecting a filing under this section.

(c) Filing and effect.--The statement of revival and, in the case of a forfeited corporation, the clearance certificates required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State. Upon the filing of the statement of revival, the corporation shall be revived with the same effect as if its charter or articles had not been forfeited or expired by limitation. The revival shall validate all contracts and other transactions made and effected within the scope of the articles of the corporation by its representatives during the time when its charter or articles were forfeited or expired to the same effect as if its charter or articles had not been forfeited or expired.

(d) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsecs. (b)(3) and (d).

CHAPTER 15
CORPORATE POWERS, DUTIES AND SAFEGUARDS

Subchapter

A. General Provisions
B. Shares and Other Securities
C. Corporate Finance
D. Dissenters Rights

Enactment. Chapter 15 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 15 is referred to in section 1306 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

1501. Corporate capacity.
1502. General powers.
1503. Defense of ultra vires.
1504. Adoption, amendment and contents of bylaws.
1505. Persons bound by bylaws.
1506. Form of execution of instruments.
1507. Registered office.
1508. Corporate records; inspection by shareholders.
1509. Bylaws and other powers in emergency.
1510. Certain specifically authorized debt terms.
1511. Additional powers of certain public utility corporations.
1512. Informational rights of a director.
1513. Forum selection provisions.

§ 1501. Corporate capacity.

Except as provided in section 103 (relating to subordination of title to regulatory laws), a business corporation shall have the legal capacity of natural persons to act.

§ 1502. General powers.

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

(1) To have perpetual succession by its corporate name unless a limited period of duration is specified in its articles, subject to the power of the Attorney General under section 503 (relating to actions to revoke corporate franchises) and to the power of the General Assembly under the Constitution of Pennsylvania.

(2) To sue and be sued, complain and defend and participate as a party or otherwise in any judicial, administrative, arbitrative or other proceeding in its corporate name.

(3) To have a corporate seal, which may be altered at pleasure, and to use the seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

(4) To acquire, own and utilize any real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of all or any part of its property and assets, or any interest therein, wherever situated.

(6) To guarantee, become surety for, acquire, own and dispose of obligations, capital stock and other securities.

(7) To borrow money, issue or incur its obligations and secure any of its obligations by mortgage on or pledge of or security interest in all or any part of its property and assets, wherever situated, franchises or income, or any interest therein.

(8) To invest its funds, lend money and take and hold real and personal property as security for the repayment of funds so invested or loaned.

(9) To make contributions and donations.

(10) To use abbreviations, words, logos or symbols upon the records of the corporation, and in connection with the registration of, and inscription of ownership or entitlement on, certificates evidencing shares in or other securities or obligations of the corporation, or upon any notice such as the notice provided by section 1528(f) (relating to uncertificated shares), and upon checks, proxies, notices and other instruments and documents relating to the foregoing, which abbreviations, words, logos or symbols shall have the same force and effect as though the respective words and phrases for which they stand were set forth in full for the purposes of all statutes of this Commonwealth and all other purposes.

(11) To be a promoter, partner, member, associate or manager of any partnership, enterprise or venture or in any transaction, undertaking or arrangement that the corporation would have power to conduct itself, whether or not its participation involves sharing or delegation of control with or to others.

(12) To transact any lawful business that the board of directors finds will aid governmental policy.

(13) To continue the salaries of such of its employees as may be serving in the active or reserve armed forces of the United States, or in the National Guard or in any other organization established for the protection of the lives and property of citizens of this Commonwealth or the United States, during the term of that service or during such part thereof as the employees, by reason of that service, may be unable to perform their duties as employees of the corporation.

(14) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, incentive and deferred compensation plans and other plans or trusts for any or all of its present or former representatives and, after their death, to grant allowances or pensions to their dependents or beneficiaries, whether or not the grant was made during their lifetime.

(15) To conduct its business, carry on its operations, have offices and exercise the powers granted by this subpart or any other provision of law in any jurisdiction within or without the United States.

(16) To elect or appoint and remove officers, employees and agents of the corporation, define their duties, fix their compensation and the compensation of directors, to lend any of the foregoing money and credit and to pay bonuses or other additional compensation to any of the foregoing for past services.

(17) To enter into any obligation appropriate for the transaction of its affairs, including contracts or other agreements with its shareholders.

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

(19) To have and exercise all of the powers and means appropriate to effect the purpose or purposes for which the corporation is incorporated.

(20) To have and exercise all other powers enumerated elsewhere in this subpart or otherwise vested by law in the corporation.

(b) Enumeration unnecessary.--It shall not be necessary to set forth in the articles of the corporation the powers enumerated in subsection (a).

(c) Board to exercise.--See section 1721 (relating to board of directors).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a)(18).

Cross References. Section 1502 is referred to in sections 1715, 1721, 7521 of this title.

§ 1503. Defense of ultra vires.

(a) General rule.--A limitation upon the business, purposes or powers of a business corporation, expressed or implied in its articles or bylaws or implied by law, shall not be asserted in order to defend any action at law or in equity between the corporation and a third person, or between a shareholder and a third person, involving any contract to which the corporation is a party or any right of property or any alleged liability of whatever nature, but the limitation may be asserted:

(1) In an action by a shareholder against the corporation to enjoin the doing of unauthorized acts or the transaction or continuation of unauthorized business. If the unauthorized acts or business sought to be enjoined are being transacted pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the result to be equitable, set aside and enjoin the performance of the contract, and in so doing shall allow to the corporation, or to the other parties to the contract, as the case may be, such compensation as may be appropriate for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In any action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer or director of the corporation for loss or damage due to his unauthorized acts.

(3) In a proceeding by the Commonwealth under section 503 (relating to actions to revoke corporate franchises) or in a proceeding by the Commonwealth to enjoin the corporation from the doing of unauthorized or unlawful business.

(b) Conveyances of property by or to a corporation.--A conveyance or transfer by or to a business corporation of property, real or personal, of any kind or description, shall not be invalid or fail because in making the conveyance or transfer, or in acquiring the property, real or personal, any representative of the corporation acting within the scope of the actual or apparent authority given to him by the corporation has exceeded any of the purposes or powers of the corporation.

(c) Cross reference.--See section 4146 (relating to provisions applicable to all foreign corporations).

Cross References. Section 1503 is referred to in section 4146 of this title.

§ 1504. Adoption, amendment and contents of bylaws.

(a) General rule.--Except as otherwise provided in this subpart, the shareholders entitled to vote shall have the power to adopt, amend and repeal the bylaws of a business corporation. Except as provided in subsection (b), the authority to adopt, amend and repeal bylaws may be expressly vested by the bylaws

in the board of directors, subject to the power of the shareholders to change such action. The bylaws may contain any provisions for managing the business and regulating the affairs of the corporation not inconsistent with law or the articles. In the case of a meeting of shareholders, written notice shall be given to each shareholder that the purpose, or one of the purposes, of a meeting is to consider the adoption, amendment or repeal of the bylaws. There shall be included in, or enclosed with, the notice a copy of the proposed amendment or a summary of the changes to be effected thereby. Any change in the bylaws shall take effect when adopted unless otherwise provided in the resolution effecting the change.

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

Subsection (d) (relating to amendment of voting provisions).
Section 1521 (relating to authorized shares).
Section 1713 (relating to personal liability of directors).
Section 1721 (relating to board of directors).
Section 1725 (relating to selection of directors).
Section 1726 (relating to removal of directors).
Section 1729 (relating to voting rights of directors).
Section 1735 (relating to personal liability of officers).
Section 1756 (relating to quorum).
Section 1757 (relating to action by shareholders).
Section 1765 (relating to judges of election).
Section 2105 (relating to termination of nonstock corporation status).
Section 2122 (relating to classes of membership).
Section 2124 (relating to voting rights of members).
Section 2302 (relating to definition of minimum vote).
Section 2321 (relating to shares).
Section 2322 (relating to share transfer restrictions).
Section 2325 (relating to sale option of estate of shareholder).
Section 2332 (relating to management by shareholders).
Section 2334 (relating to appointment of provisional director in certain cases).
Section 2337 (relating to option of shareholder to dissolve corporation).
Section 2923 (relating to issuance and retention of shares).

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

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

(d) Amendment of voting provisions.--

(1) Unless otherwise provided in a bylaw adopted by the shareholders, whenever the bylaws require for the taking of any action by the shareholders or a class of shareholders a specific number or percentage of votes, the provision of the bylaws setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes of the shareholders or of the class of shareholders.

(2) Paragraph (1) shall not apply to a bylaw setting forth the right of shareholders to act by unanimous written consent as provided in section 1766(a) (relating to unanimous consent).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b) and (c) and added subsec. (b.1).

1992 Amendment. Act 169 amended subsecs. (b) and (d), retroactive to October 1, 1989, as to subsec. (d).

Cross References. Section 1504 is referred to in sections 1103, 1757, 2332, 3121 of this title.

§ 1505. Persons bound by bylaws.

Except as otherwise provided by section 1713 (relating to personal liability of directors) or any similar provision of law, the bylaws of a business corporation are binding on the shareholders, directors and officers of the corporation with respect to its internal affairs whether or not a shareholder, director or officer has actual knowledge of the provisions of the bylaws, but a bylaw shall not affect contracts or other dealings with other persons unless those persons have actual knowledge of the bylaw.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 1506. Form of execution of instruments.

(a) General rule.--Any form of execution provided in the articles or bylaws to the contrary notwithstanding, any note, mortgage, evidence of indebtedness, contract or other document, or any assignment or endorsement thereof, executed or entered into between any business corporation and any other person, when signed by one or more officers or agents having actual or apparent authority to sign it, or by the president or vice president and secretary or assistant secretary or treasurer or assistant treasurer of the corporation, shall be held to have been properly executed for and in behalf of the corporation.

(b) Seal unnecessary.--The affixation of the corporate seal shall not be necessary to the valid execution, assignment or endorsement by a corporation of any instrument or other document.

(c) Cross reference.--See section 4146 (relating to provisions applicable to all foreign corporations).

Cross References. Section 1506 is referred to in section 4146 of this title.

§ 1507. Registered office.

(a) General rule.--Every business corporation shall have and continuously maintain in this Commonwealth a registered office which may, but need not, be the same as its place of business.

(b) Statement of change of registered office.--After incorporation, a change of the location of the registered office may be authorized at any time by the board of directors. Before

the change of location becomes effective, the corporation shall include the change in an annual report under section 146 (relating to annual report), amend its articles under the provisions of this subpart to reflect the change or deliver to the Department of State for filing a statement of change of registered office executed by the corporation setting forth:

(1) The name of the corporation.

(2) The address, including street and number, if any, of its then registered office.

(3) The address, including street and number, if any, to which the registered office is to be changed.

(4) A statement that the change was authorized by the board of directors.

(c) Alternative procedure.--A corporation may satisfy the requirements of this subpart concerning the maintenance of a registered office in this Commonwealth by setting forth in any document filed in the department under any provision of this subpart that permits or requires the statement of the address of its then registered office, in lieu of that address, the statement authorized by section 109(a) (relating to name of commercial registered office provider in lieu of registered address).

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

(e) Cross reference.--See section 134 (relating to docketing statement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) intro. par., relettered former subsec. (d) to subsec. (e) and added present subsec. (d).

Cross References. Section 1507 is referred to in sections 1103, 1911 of this title.

§ 1508. Corporate records; inspection by shareholders.

(a) Required records.--Every business corporation shall keep complete and accurate books and records of account, minutes of the proceedings of the incorporators, shareholders and directors and a share register.

(1) (Deleted by amendment).

(2) (Deleted by amendment).

(3) (Deleted by amendment).

(4) (Deleted by amendment).

(b) Right of inspection by a shareholder.--On demand, in compliance with the requirements in subsection (b.1), a shareholder has the right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the share register, books and records of account, and minutes of, and consents in lieu of meetings by, the incorporators, shareholders and directors and to make copies or extracts therefrom.

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

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

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

(3) The demand must be:

(i) made in good faith;
(ii) in record form; and
(iii) verified.

(4) The demand must describe with reasonable particularity:
(i) the purpose of the shareholder; and
(ii) the records the shareholder desires to inspect and how the records relate to the purpose of the shareholder.

(5) The demand must be delivered to the corporation:
(i) at its registered office in this Commonwealth;
(ii) at its principal place of business wherever situated;
(iii) in care of the person in charge of an actual business office of the corporation; or
(iv) in care of the secretary of the corporation at the most recent address of the secretary shown in the records of the department.

(c) Proceedings for the enforcement of inspection by a shareholder.--If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a shareholder or attorney or other agent acting for the shareholder pursuant to subsection (b) or does not reply to the demand within five business days after the demand has been received, the shareholder may file an action in the court for an order to compel the inspection. The court is hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the corporation to permit the shareholder to inspect the share register and the other books and records of the corporation and to make copies or extracts therefrom, or the court may order the corporation to furnish to the shareholder a list of its shareholders as of a specific date on condition that the shareholder first pay to the corporation the reasonable cost of obtaining and furnishing the list and on such other conditions as the court deems appropriate.

(c.1) Burden of proof.--Where a shareholder has complied with the provisions of this section respecting the form and manner of making demand for inspection and the shareholder seeks to inspect:

(1) the share register or list of shareholders of the corporation, the burden of proof shall be upon the corporation to establish that the inspection he seeks is for an improper purpose; or

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

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

(c.3) Right to bylaws.--Every shareholder shall have the right to receive, promptly after demand and without charge, a copy in record form of the currently effective text of the bylaws. If the corporation does not provide a shareholder with a copy of the bylaws as required by this subsection, the shareholder may file an action in the court for an order to

compel the production. The court shall summarily order the corporation to provide a copy of the bylaws unless the corporation establishes that the person seeking the bylaws is not a shareholder.

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

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

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

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 1508 is referred to in section 1512 of this title.

§ 1509. Bylaws and other powers in emergency.

(a) General rule.--Except as otherwise restricted in the bylaws, the board of directors of any business corporation may adopt emergency bylaws, subject to repeal or change by action of the shareholders, which shall, notwithstanding any different provisions of law or of the articles or bylaws, be effective during an emergency. The emergency bylaws may make any provision that may be appropriate for the circumstances of the emergency, including:

(1) Procedures for calling meetings of the board.

(2) Quorum requirements for meetings of the board.

(3) Procedures for designating additional or substitute directors.

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

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

(2) effective in the emergency, change the head offices or designate several alternative head offices or regional offices of the corporation.

(c) Representatives not liable.--A representative of the corporation:

(1) Acting in accordance with any emergency bylaws in effect at the time or otherwise in accordance with this section is not personally liable for monetary damages except for:

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

(ii) violation of a criminal statute; or

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

(2) Is not liable for any action taken by the representative in good faith in an emergency in furtherance

of the ordinary business affairs of the corporation even though not authorized by the emergency or other bylaws then in effect.

(d) Effect on regular bylaws.--To the extent not inconsistent with any emergency bylaws, the bylaws of the corporation shall remain in effect during any emergency and, upon its termination, the emergency bylaws shall cease to be effective.

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

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

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

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

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

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

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

(2) the corporation must give notice of the changes to shareholders as promptly as practicable thereafter, and in any event before the record date theretofore in effect, which notice, in the case of a registered corporation, may be given

solely by a document publicly filed with the Securities and Exchange Commission pursuant to section 13, 14 or 15(d) of the Exchange Act and the rules and regulations thereunder.

(i) Definition.--As used in this section, and for no other purpose, "emergency" means a period during which a quorum of the board, or of persons on whom the powers and duties of the board have been conferred or imposed under section 1721, cannot be assembled as a result of:

(1) an attack on the United States;

(2) a nuclear disaster;

(3) an epidemic or pandemic;

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

(5) any other catastrophe or disaster.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 1510. Certain specifically authorized debt terms.

(a) Interest rates.--A business corporation shall not plead or set up usury, or the taking of more than the lawful rate of interest, or the taking of any finance, service or default charge in excess of any maximum rate therefor provided or prescribed by law, as a defense to any action or proceeding brought against it to recover damages on, or to enforce payment of, or to enforce any other remedy on, any obligation executed or effected by the corporation.

(b) Yield maintenance premiums.--A prepayment premium determined by reference to the approximate spread between the yield at issuance, or at the date of amendment of any of the terms, of an obligation of a corporation and the yield at or about such date of an interest rate index of independent significance and contingent upon a change in the ownership of the shares of or a default by or other change in the condition or prospects of the issuer or any affiliate of the issuer shall be deemed liquidated damages and shall not constitute a penalty.

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

"Affiliate." An affiliate or associate as defined in section 102 (relating to definitions).

"Obligation." Includes an installment sale contract.

(d) Cross reference.--See section 4146 (relating to provisions applicable to all foreign corporations).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (c).

Cross References. Section 1510 is referred to in sections 114, 402, 4146, 8819, 9506, 9507 of this title.

§ 1511. Additional powers of certain public utility corporations.

(a) General rule.--A public utility corporation shall, in addition to any other power of eminent domain conferred by any other statute, have the right to take, occupy and condemn property for one or more of the following principal purposes and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes:

(1) The transportation of passengers or property or both as a common carrier by means of elevated street railway, ferry, inclined plane railway, railroad, street railway or underground street railway, trackless-trolley omnibus or by any combination of such means.

(2) The transportation of artificial or natural gas, electricity, petroleum or petroleum products or water or any combination of such substances for the public.

(3) The production, generation, manufacture, transmission, storage, distribution or furnishing of natural or artificial gas, electricity, steam, air conditioning or refrigerating service or any combination thereof to or for the public.

(4) The diverting, developing, pumping, impounding, distributing or furnishing of water from either surface or subsurface sources to or for the public.

(5) The collection, treatment or disposal of sewage for the public.

(6) The conveyance or transmission of messages or communications by telephone or telegraph for the public.

(7) The diverting, pumping or impounding of water for the development or furnishing of hydroelectric power to or for the public.

(8) The transportation of oxygen or nitrogen, or both, by pipeline or conduit for the public.

(b) Restrictions.--The powers conferred by subsection (a) shall not be exercised:

(1) To condemn for the purpose of constructing any street railway, trackless-trolley omnibus, petroleum or petroleum products transportation or aerial electric transmission, aerial telephone or aerial telegraph lines:

(i) Any dwelling house or, except in the case of any condemnation for petroleum or petroleum products transportation lines, any part of the reasonable curtilage of a dwelling house within 100 meters therefrom and not within the limits of any street, highway, water or other public way or place.

(ii) Any place of public worship or burying ground.

(2) To condemn any place of public worship or burying ground for the purpose of constructing any elevated street railway, sewer or underground street railway line.

(c) Public Utility Commission approval.--The powers conferred by subsection (a) may be exercised to condemn property outside the limits of any street, highway, water or other public way or place for the purpose of erecting poles or running wires or other aerial electric, intrastate aerial telephone or intrastate aerial telegraph facilities only after the Pennsylvania Public Utility Commission, upon application of the public utility corporation, has found and determined, after notice and opportunity for hearing, that the service to be furnished by the corporation through the exercise of those powers is necessary or proper for the service, accommodation, convenience or safety of the public. The power of the public utility corporation to condemn the subject property or the procedure followed by it shall not be an issue in the commission proceedings held under this subsection, and no court shall entertain any proceeding questioning the jurisdiction of the commission under this subsection. A final order of the commission approving or denying an application under this subsection, including an order involving a question of jurisdiction under this subsection, may be made the subject of any appeal in the manner provided or prescribed by law.

(d) Estate in property condemned.--The estate in property condemned and taken by a public utility corporation shall be in fee simple absolute unless the resolution of condemnation specifies a lesser estate. Whenever it is necessary for any public utility corporation to condemn by authority of subsection

(a) the freehold in the surface of any tract of property or the right to the exclusive possession for any indefinite period of the surface of any tract of property, the public utility corporation shall condemn a fee simple absolute and no less estate in the tract or the surface thereof.

(e) Streets and other public places.--A public utility corporation shall have the right to enter upon and occupy streets, highways, waters and other public ways and places for one or more of the principal purposes specified in subsection (a) and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes, including the placement, maintenance and removal of aerial, surface and subsurface public utility facilities thereon or therein. Before entering upon any street, highway or other public way, the public utility corporation shall obtain such permits as may be required by law and shall comply with the lawful and reasonable regulations of the governmental authority having responsibility for the maintenance thereof.

(f) Effect on other statutes.--Subsections (a) through (e) shall not be construed to eliminate the exemption by statute of certain agricultural or historical lands from liability to condemnation or entry nor to affect or modify any of the provisions of the act of December 19, 1984 (P.L.1140, No.223), known as the Oil and Gas Act, or of 66 Pa.C.S. § 1104 (relating to certain appropriations by the right of eminent domain prohibited) or 2702 (relating to construction, relocation, suspension and abolition of crossings), nor to permit the acquisition of water rights, water or land underlying them by any public utility corporation that has not received from the Department of Environmental Resources a limited power permit, limited water supply permit, order of confirmation, permit for acquisition of water rights or gubernatorial easement, right-of-way, license or lease authorizing the acquisition or occupancy.

(g) Procedure.--

(1) The act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code, shall be applicable to proceedings for the condemnation and taking of property conducted pursuant to this section.

(2) Notwithstanding paragraph (1), a corporation having the power of eminent domain that condemns for occupation by electric, underground telephone or telegraph, gas, oil or petroleum products lines used directly or indirectly in furnishing service to the public an interest (other than a fee) for right-of-way purposes or an easement for such purposes may elect to proceed as follows in lieu of the procedures specified in sections 402, 403, 405 and 406 of the Eminent Domain Code:

(i) If the corporation and any interested party cannot agree on the amount of damages sustained, or if any interested party is an unincorporated association, or is absent, unknown, not of full age or otherwise incompetent or unavailable to contract with the corporation, or in the case of disputed, doubtful or defective title, the corporation may make a verified application to the appropriate court for an order directing the filing of a bond to the Commonwealth, in an amount and with security to be approved by the court, for the use of the person or persons who may be found to be entitled to the damages sustained. The application shall be accompanied by the bond and a certified copy

of the resolution of condemnation. The resolution shall describe the nature and extent of the taking.

(ii) If the address of such interested party is known to the corporation, written notice of the filing of the application under subparagraph (i) shall be sent to such party by mail, or otherwise, at least ten days prior to the consideration thereof by the court. Otherwise the corporation shall officially publish such notice in the county or counties where the property is situated twice a week for two weeks prior to consideration by the court and shall give such supplemental or alternative notice as the court may direct.

(iii) Upon entry by the court of an order approving the bond and directing that it be filed, the title that the corporation acquires in the right-of-way or easement described in the resolution of condemnation shall pass to the corporation and the corporation shall be entitled to possession.

(iv) The papers filed by the corporation with the court under this paragraph shall constitute the declaration of taking for the purposes of sections 404, 408 and 409 and Articles V through VIII of the Eminent Domain Code.

Saved from Repeal. Subsec. (g)(2) is saved from repeal by section 5(4) of the act of May 4, 2006, P.L.112, No.34, which put into effect the provisions of Title 26 (Eminent Domain).

References in Text. The act of June 22, 1964, Sp. Sess., P.L.84, No.6, known as the Eminent Domain Code, referred to in this section, was repealed by the act of May 4, 2006, P.L.112, No.43. The subject matter is now contained in Title 26 (Eminent Domain).

The act of December 19, 1984, P.L.1140, No.223, known as the Oil and Gas Act, referred to in subsec. (f), was repealed by the act of February 14, 2012, P.L.87, No.13. The subject matter is now contained in Title 58 (Oil and Gas).

The Department of Environmental Resources, referred to in subsec. (f), was abolished by the act of June 28, 1995, P.L.89, No.18. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Cross References. Section 1511 is referred to in section 8102 of this title.

§ 1512. Informational rights of a director.

(a) General rule.--To the extent reasonably related to the performance of the duties of the director, including those arising from service as a member of a committee of the board of directors, a director of a business corporation is entitled:

(1) in person or by any attorney or other agent, at any reasonable time, to inspect and copy corporate books, records and documents and, in addition, to inspect and receive information regarding the assets, liabilities and operations of the corporation and any subsidiaries of the corporation incorporated or otherwise organized or created under the laws of this Commonwealth that are controlled directly or indirectly by the corporation; and

(2) to demand that the corporation exercise whatever rights it may have to obtain information regarding any other subsidiaries of the corporation.

(b) Proceedings for enforcement of inspection by a director.--If the corporation, or an officer or agent thereof,

refuses to permit an inspection or obtain or provide information sought by a director or attorney or other agent acting for the director pursuant to subsection (a) or does not reply to the request within two business days after the request has been made, the director may file an action in the court for an order to compel the inspection or the obtaining or providing of the information. The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that information other than the bylaws to be obtained by the exercise of the right is not reasonably related to the performance of the duties of the director or that the director or the attorney or agent of the director is likely to use that information in a manner that would violate the duty of the director to the corporation. The order of the court may contain provisions protecting the corporation from undue burden or expense and prohibiting the director from using the information in a manner that would violate the duty of the director to the corporation.

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

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

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

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b), relettered former subsec. (c) to subsec. (e), added present subsec. (c) and added subsec. (d).

2001 Amendment. Act 34 added section 1512.

Cross References. Section 1512 is referred to in section 1508 of this title.

§ 1513. Forum selection provisions.

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

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

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

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

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

(b) Jurisdiction.--A provision of the bylaws adopted under subsection (a) shall not have the effect of conferring jurisdiction on any court or over any person or claim and shall not apply if none of the courts specified in the provision have the requisite personal and subject matter jurisdiction. If none of the courts of this Commonwealth specified in a provision

adopted under subsection (a)(1) have the requisite personal and subject matter jurisdiction and another court of this Commonwealth does have such jurisdiction, then the internal corporate claim may be brought in the court with jurisdiction, notwithstanding that it is not specified in the provision.

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

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

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

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

(i) this title;

(ii) the articles of incorporation or bylaws; or

(iii) an agreement regarding the governance of the corporation or the transfer of shares in the corporation if:

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 1513.

Cross References. Section 1513 is referred to in section 102 of this title.

SUBCHAPTER B
SHARES AND OTHER SECURITIES

Sec.

1521. Authorized shares.
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Cross References. Subchapter B is referred to in section 2125 of this title.

§ 1521. Authorized shares.

(a) General rule.--Every business corporation shall have power to create and issue the number of shares stated in its

articles. The shares may consist of one class or be divided into two or more classes and one or more series within any class thereof, which classes or series may have full, limited, multiple or fractional or no voting rights and such designations, preferences, limitations and special rights as may be desired.

(b) Provisions specifically authorized.--

(1) Without limiting the authority contained in subsection (a), a corporation, when so authorized in its articles, may issue classes or series of shares:

(i) Subject to the right or obligation of the corporation to redeem any of the shares for the consideration, if any, fixed by or in the manner provided by the articles for the redemption thereof. Unless otherwise provided in the articles, any shares subject to redemption shall be redeemable only pro rata or by lot or by such other equitable method as may be selected by the corporation.

(ii) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

(iii) Having preference over any other shares as to dividends or assets or both.

(iv) Convertible into shares of any other class or series, or into obligations of the corporation.

(2) Any of the terms of a class or series of shares may be made dependent upon:

(i) Facts ascertainable outside of the articles if the manner in which the facts will operate upon the terms of the class or series is set forth in the articles. Such facts may include, without limitation, actions or events within the control of or determinations made by the corporation or a representative of the corporation.

(ii) Terms incorporated by reference to an existing agreement between the corporation and one or more other parties, or to another document of independent significance, if the articles state that the full text of the agreement or other document is on file at the principal place of business of the corporation and state the address thereof. A corporation that takes advantage of this subparagraph shall furnish a copy of the full text of the agreement or other document, on request and without cost, to any shareholder and, unless it is a closely held corporation, on request and at cost, to any other person.

(3) The articles may confer upon a shareholder a specifically enforceable right to the declaration and payment of dividends, the redemption of shares or the making of any other form of distribution if the distribution is at the time of enforcement then not prohibited by section 1551(b) (relating to limitation). Such a right shall not arise by implication, but only by either an express reference to this section or another express reference to specific enforceability of a distribution.

(c) Additional restrictions upon exercise of corporate powers.--Additional provisions regulating or restricting the exercise of corporate powers, including provisions requiring the votes of classes or series of shares as conditions to the exercise thereof, may be specified in a bylaw adopted by the shareholders.

(d) Status and rights.--Shares of a business corporation shall be deemed personal property. Except as otherwise provided by the articles or, when so permitted by subsection (c), by one

or more bylaws adopted by the shareholders, each share shall be in all respects equal to every other share. Nothing in this subsection shall require a distribution by way of purchase, redemption or other acquisition of the corporation's shares to be made or offered with respect to all shares or all shares of the same class or series. See section 1906(d)(4) (relating to special treatment of holders of shares of same class or series). (Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a), (b)(3) and (d).

2001 Amendment. Act 34 amended subsecs. (b)(1) and (2)(i) and (d).

1990 Amendment. Act 198 amended subsec. (b).

Cross References. Section 1521 is referred to in sections 229, 329, 1504, 1906 of this title.

§ 1522. Issuance of shares in classes or series; board action.

(a) General rule.--The division of shares into classes and into series within any class, the determination of the designation and the number of shares of any class or series and the determination of the voting rights, preferences, limitations and special rights, if any, of the shares of any class or series of a business corporation may be accomplished by the original articles or by any amendment thereof. The amendment may be made by the board of directors as provided in subsection (b).

(b) Divisions and determinations by the board.--An amendment of articles described in subsection (a) may be made solely by action of the board if the articles authorize the board to make the divisions and determinations. Unless otherwise restricted in the articles, authority granted to the board to determine the number of shares of any class or series shall be deemed to include the power to increase the previously determined number of shares of the class or series to a number not greater than the aggregate number of shares of all classes and series that the corporation is authorized to issue by the articles and to decrease the previously determined number of shares of a class or series to a number not less than that then outstanding. Upon any such decrease under this section, the affected shares shall continue as part of the aggregate number of shares of all classes and series that the corporation is authorized to issue. Unless otherwise restricted in the articles, if no shares of a class or series are outstanding, the board of directors may amend the designations and the voting rights, preferences, limitations and special rights, if any, of the shares of the class or series.

(c) Statement with respect to shares.--Whenever the board acts under subsection (b), it shall adopt a resolution setting forth its actions. Before any business corporation issues any shares of any class or any series of any class with respect to which the board has acted under subsection (b), the corporation shall file in the Department of State a statement with respect to shares executed by the corporation, setting forth:

(1) The name of the corporation.

(2) The resolution of the board required by this subsection.

(3) The aggregate number of shares of the class or series established and designated by:

(i) The resolution.

(ii) All prior statements, if any, filed under this section or corresponding provisions of prior law with respect thereto.

(iii) Any other provision of the articles.

(4) The date of the adoption of the resolution.

(5) If the resolution is to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

(d) Effect of filing statement.--Upon the filing of the statement in the department or upon the effective date specified in the statement, whichever is later, the resolution shall become effective and shall operate as an amendment of the articles, except that neither the filing of the statement nor the integration of the substance of the resolution into the text of the articles by means of a restatement of the articles as permitted by this subpart or otherwise shall prohibit the board of directors from subsequently adopting resolutions authorized by this section.

(e) Termination of proposal.--Prior to the time when a resolution required by subsection (c) becomes effective, the amendment to be effected thereby may be terminated by the board or pursuant to the provisions therefor, if any, set forth in the resolution. If a statement with respect to shares has been filed in the department prior to the termination, a statement under section 1902 (relating to statement of termination) shall be filed in the department.

(f) Cross reference.--See section 134 (relating to docketing statement).

Cross References. Section 1522 is referred to in section 1911 of this title.

§ 1523. Pricing and issuance of shares.

Except as otherwise restricted in the bylaws, shares of a business corporation may be issued at a price determined by the board of directors; or the board may authorize one or more directors or one or more officers, acting alone or with the participation of one or more directors, to determine, within limits, pursuant to a formula or method or subject to relevant criteria specifically prescribed by the board:

(1) the persons that shares will be issued to; and

(2) the number of shares, price or consideration and other terms on which shares will be issued.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 1524. Payment for shares.

(a) General rule.--Consideration for shares, unless otherwise restricted in the bylaws:

(1) May consist of money, obligations (including an obligation of a shareholder), services performed whether or not contracted for, contracts for services to be performed, shares or other securities or obligations of the issuing business corporation, or any other tangible or intangible property or benefit to the corporation. If shares are issued for other than money, the value of the consideration shall be determined by or in the manner provided by the board of directors.

(2) Shall be provided or paid to or as ordered by the corporation.

(b) Issuance without consideration.--Except as otherwise restricted in the bylaws, upon authorization by the board of directors, the corporation may issue or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series, if the relative rights of the holders

of any class or series are not adversely affected thereby, to effectuate stock dividends or splits, and any such transaction shall not require payment of consideration.

(c) Status of issued shares.--Except as provided in subsection (e), all issued shares of a business corporation shall be deemed fully paid regardless of failure to pay in full the agreed consideration therefor. Except as otherwise provided by a regulatory statute controlling under section 103(c) (relating to structural provisions in regulatory statutes controlling), all issued shares of a corporation shall be nonassessable. This subsection shall not affect the personal obligation of a subscriber for shares of a corporation to pay the agreed consideration for the shares.

(d) Rights of subscribing shareholder.--Notwithstanding any other provision of this subpart, the right to vote, to receive dividends and to have and exercise the other rights of a shareholder prior to payment in full of the agreed consideration for the shares of a shareholder who has acquired his shares by subscription may be denied or limited as provided in the subscription agreement. Any such denial or limitation of rights shall be noted conspicuously on the face or back of the share certificate, if any, or in the notice provided by section 1528(f) (relating to uncertificated shares). Unless so noted, such denial or limitation (even though permitted by this section) shall be ineffective except against a person with actual knowledge of the denial or limitation.

(e) Transitional provision.--A corporation may enforce calls on partly paid shares outstanding on September 30, 1989, in the same manner and to the same extent as if this subpart had not been enacted.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 amended subsec. (a).

1990 Amendment. Act 198 amended subsecs. (a), (c) and (e).

Cross References. Section 1524 is referred to in sections 1106, 1528 of this title.

§ 1525. Stock rights and options.

(a) General rule.--Except as otherwise provided in its articles prior to the creation and issuance thereof, a business corporation may create and issue (whether or not in connection with the issuance of any of its shares or other securities) option rights or securities having conversion or option rights entitling the holders thereof to purchase or acquire shares, option rights, securities having conversion or option rights, or obligations, of any class or series, or assets of the corporation, or to purchase or acquire from the corporation shares, option rights, securities having conversion or option rights, or obligations, of any class or series, owned by the corporation and issued by any other person. Except as otherwise provided in its articles, the shares, option rights, securities having conversion or option rights, or obligations shall be evidenced in such manner as the corporation may determine and may be offered without first offering them to shareholders of any class or classes.

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

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

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

(3) Provisions concerning rights or adjustments in the event of reorganization, merger, sale of assets, interest exchange or other fundamental changes.

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

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

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

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

(c) Standard of care unaffected.--The provisions of subsections (a) and (b) and section 2513 shall not be construed to effect a change in the fiduciary relationship between a director and a business corporation or to change the standard of care of a director provided for in Subchapter B of Chapter 17 (relating to fiduciary duty).

(d) Pricing and payment.--The provisions of this subchapter applicable to the issuance and pricing of, and payment for, shares shall be applicable to rights and options except that the rights and options may be issued to representatives of the corporation or any of its affiliates as an incentive to service or continued service with the corporation and its affiliates or for such other purpose and upon such other terms as its directors, who may benefit by their action, approve.

(e) Shares subject to preemptive rights.--Authorized but unissued shares subject to preemptive rights may be issued and sold pursuant to a plan providing for the issuance of rights or options entitling the holders thereof to purchase shares of the same class or series as the shares subject to such preemptive rights upon the exercise of such rights or options if the plan is approved by the affirmative vote of a majority of the votes cast by the shareholders entitled to exercise such preemptive rights.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b) and (d) and added subsec. (b.1).

1992 Amendment. Act 169 amended subsec. (a).

1990 Amendment. Act 198 amended subsecs. (c) and (e).

Cross References. Section 1525 is referred to in sections 1530, 2513 of this title.

§ 1526. Liability of shareholders.

(a) General rule.--A shareholder of a business corporation shall not be liable, solely by reason of being a shareholder, under an order of a court or in any other manner for a debt, obligation or liability of the corporation of any kind or for the acts of any shareholder or representative of the corporation.

(b) Professional relationship unaffected.--Subsection (a) shall not afford the shareholders of a business corporation that is not a professional corporation but that provides professional services with greater immunity than is available to the officers, shareholders, employees or agents of a business corporation that is a professional corporation. See section 2925 (relating to professional relationship retained).

(c) Disciplinary jurisdiction unaffected.--A business corporation providing professional services shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other government unit regulating the profession in which the corporation is engaged. The court, department, board or other government unit may require that a corporation include in its articles provisions that conform to any rule or regulation heretofore or hereafter promulgated for the purpose of enforcing the ethics of a profession. This subpart shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.
(June 22, 2001, P.L.418, No.34, eff. 60 days)

§ 1527. Issuance of fractional shares or scrip.

(a) General rule.--A business corporation may but shall not be required to create and issue fractions of a share, either represented by a certificate or uncertificated, which, unless otherwise provided in the articles, shall represent proportional interests in all the voting rights, preferences, limitations and special rights, if any, of full shares. If the corporation creates but does not provide for the issuance of fractions of a share, it shall:

(1) arrange for the disposition of fractional interests by those entitled thereto;

(2) pay in money the fair value of fractions of a share determined at the time and in the manner provided in the plan, amendment or resolution of the board providing for the creation of the fractional interests; or

(3) issue scrip or other evidence of ownership, in registered form (either represented by a certificate or uncertificated) or in bearer form (represented by a certificate), entitling the holder to receive a full share upon the surrender of the scrip or other evidence of ownership aggregating a full share, or the transfer of uncertificated scrip aggregating a full share, but which shall not entitle the holder to exercise any voting right, to receive dividends or to participate in any of the assets of the corporation in the event of liquidation.

(b) Elimination of shares or scrip.--The scrip or other evidence of ownership may be issued subject to the condition that it shall become void if not exchanged for full shares before a specified date, or subject to the condition that the shares for which the scrip or evidence of ownership is exchangeable may be sold and the proceeds thereof distributed to the holders of the scrip or evidence of ownership, or subject to any other conditions that the corporation deems advisable.

(c) Limitation.--The articles may not provide that scrip or other evidence of ownership entitles the holder to exercise any voting right, to receive dividends or to participate in any of the assets of the corporation in the event of liquidation.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (a)(3) and added subsec. (c).

§ 1528. Shares represented by certificates and uncertificated shares.

(a) General rule.--The shares of a business corporation shall be represented by certificates or shall be uncertificated shares.

(b) Issue of certificates.--Every shareholder shall, except as otherwise provided in a provision of the articles adopted pursuant to subsection (f) or in the terms of a subscription that has not been fully performed by the subscriber, be entitled to a share certificate representing the shares owned by him.

(c) Form of certificate.--Share certificates shall state:

(1) That the corporation is incorporated under the laws of this Commonwealth.

(2) The name of the person to whom issued.

(3) The number and class of shares and the designation of the series, if any, that the certificate represents.

(d) Notice of variations in rights.--Every certificate representing shares issued by a business corporation that is authorized to issue shares of more than one class or series shall set forth upon the face or back of the certificate (or shall state on the face or back of the certificate that the corporation will furnish to any shareholder upon request and without charge) a full or summary statement of the designations, voting rights, preferences, limitations and special rights of the shares of each class or series authorized to be issued so far as they have been fixed and determined and the authority of the board of directors to fix and determine the designations, voting rights, preferences, limitations and special rights of the classes and series of shares of the corporation. See also sections 1524(d) (relating to rights of subscribing shareholder), 1529(f) (relating to notice to transferee) and 2321(c) (relating to notice of statutory close corporation status).

(e) Execution.--Every share certificate shall be executed, by facsimile or otherwise, by or on behalf of the corporation issuing the shares in such manner as it may determine.

(f) Uncertificated shares.--The articles may provide that any or all classes and series of shares, or any part thereof, shall be uncertificated shares except that such a provision shall not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates by subsections (c) and (d). Except as otherwise expressly provided by law, the rights and obligations of the holders of shares represented by certificates and the rights and obligations of the holders of uncertificated shares of the same class and series shall be identical. See section 2321(a) (relating to uncertificated shares prohibited).

(g) Bearer shares prohibited.--A business corporation may not issue share certificates in bearer form. This subsection may not be varied by the articles.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment . Act 67 added subsec. (g).

1992 Amendment. Act 169 amended subsec. (f).

1990 Amendment. Act 198 amended subsecs. (b), (d) and (f).

Cross References. Section 1528 is referred to in sections 1502, 1524, 1529, 1554, 1914, 2547 of this title.

§ 1529. Transfer of securities; restrictions.

(a) General rule.--The transfer of securities of a business corporation may be regulated by any provisions of the bylaws that are not inconsistent with 13 Pa.C.S. Div. 8 (relating to investment securities) and other provisions of law.

(b) Transfer restrictions generally.--A restriction on the transfer or registration of transfer of securities of a business corporation may be imposed by the bylaws or by an agreement among any number of securityholders or among them and the corporation. A restriction so imposed shall not be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to the agreement or voted in favor of the restriction, except that a provision of the bylaws of a registered corporation described in section 2502(1) (relating to registered corporation status) adopted by the shareholders that is described in subsection (d)(1)(ii), (2) or (3) shall be binding with respect to all of the securities of each class or series to which it applies. A restriction may be amended in the manner provided in the bylaws or agreement for amending the restriction or, in the absence of such a provision, as provided for amending the bylaws or agreement generally.

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

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

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

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

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

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

(d) Tax and regulatory restrictions.--Any restriction on the transfer of securities of a business corporation or on the amount of securities of a corporation that may be owned by a

person or group of persons for any of the following purposes shall be conclusively presumed to be for a reasonable purpose:

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

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

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

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

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

(3) maintaining any statutory or regulatory status.

(e) Other restrictions.--Any other lawful restriction on transfer or registration of transfer of securities is permitted by this section.

(f) Notice to transferee.--A written restriction on the transfer or registration of transfer of a share or other security of a business corporation, if permitted by this section and noted conspicuously on the face or back of the security or in the notice provided by section 1528(f) (relating to uncertificated shares) or in an equivalent notice with respect to another uncertificated security, may be enforced against the holder of the restricted security or any successor or transferee of the holder, including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the security or in the notice provided by section 1528(f) or in an equivalent notice with respect to another uncertificated security, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b), (c) and (d).

Cross References. Section 1529 is referred to in sections 1528, 2301, 2324, 2703 of this title.

§ 1530. Preemptive rights of shareholders.

(a) General rule.--Except as otherwise provided in the articles, a business corporation may issue shares, option rights or securities having conversion or option rights, or obligations without first offering them to shareholders of any class or classes.

(b) Cross references.--See sections 1525(e) (relating to shares subject to preemptive rights) and 2321(b) (relating to preemptive rights).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 amended subsec. (b).

§ 1531. Voting powers and other rights of certain securityholders and other entities.

The power to vote in respect to the corporate affairs and management of a business corporation and other shareholder rights as may be provided in the articles may be conferred upon:

(1) Registered holders of obligations issued or to be issued by the corporation.

(2) The United States of America, the Commonwealth, a state, or any political subdivision of any of the foregoing, or any entity prohibited by law from becoming a shareholder of a corporation.

§ 1532. Effect of failure to surrender securities converted by reorganization.

Whenever any outstanding securities of a business corporation are converted into new shares or other securities or property by any merger, consolidation, reclassification, amendment of articles, division or otherwise, the plan or other instrument effecting the conversion may fix a period of not less than two years within which the outstanding securities must be surrendered for exchange. The plan or other instrument may provide that, in the event any outstanding securities are not surrendered for exchange within that time period, the shares, securities or property that would otherwise have been issued or delivered in exchange for the unsurrendered outstanding securities shall be sold and the net proceeds of the sale shall be held for the holders of the unsurrendered outstanding securities to be paid to them upon surrender of their outstanding securities. From and after the sale, the sole right of the holders of the unsurrendered outstanding securities shall be the right to collect the net sales proceeds held for their account.

SUBCHAPTER C
CORPORATE FINANCE

Sec.

1551. Distributions to shareholders.
1552. Power of corporation to acquire its own shares.
1553. Liability for unlawful dividends and other distributions.
1554. Financial reports to shareholders.

§ 1551. Distributions to shareholders.

(a) General rule.--Unless otherwise restricted in the bylaws, the board of directors may authorize and a business corporation may make distributions. A provision in the articles setting forth a par value for any authorized shares or class or series of shares shall not restrict the ability of a corporation to make distributions.

(b) Limitation.--A distribution, including a distribution under Subchapter F (relating to voluntary dissolution and winding up) or H (relating to postdissolution provision for liabilities) of Chapter 19, may not be made if, after giving effect thereto:

(1) the corporation would be unable to pay its debts as they become due in the usual course of its business; or

(2) the total assets of the corporation would be less than the sum of its total liabilities plus (unless otherwise provided in the articles) the amount that would be needed, if the corporation were to be dissolved at the time as of which the distribution is measured, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(c) Valuation.--The board of directors may base its determination that a distribution is not prohibited under subsection (b)(2) on one or more of the following:

(1) the book values of the assets and liabilities of the corporation, as reflected on its books and records;

(2) a valuation that takes into consideration unrealized appreciation and depreciation or other changes in value of the assets and liabilities of the corporation;

(3) the current value of the assets and liabilities of the corporation, either valued separately or valued in segments or as an entirety as a going concern; or

(4) any other method that is reasonable in the circumstances.

In determining whether a distribution is prohibited by subsection (b)(2), the board of directors need not consider obligations and liabilities unless they are required to be reflected on a balance sheet (not including the notes thereto) prepared on the basis of generally accepted accounting principles, or such other accounting practices and principles as are used generally by the corporation in the maintenance of its books and records and as are reasonable in the circumstances.

(d) Date of distribution.--The effect of a distribution shall be measured:

(1) as of the date specified by the board of directors when it authorizes the distribution if the distribution occurs within 125 days of the earlier of the date so specified or the date of authorization; or

(2) as of the date of distribution in all other cases.

In the case of a purchase, redemption or other acquisition of its own shares by a corporation, the distribution shall be deemed to occur as of the date money or other property is transferred or debt is incurred by the corporation or as of the date the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is earlier.

(d.1) Distribution in winding up.--In measuring the effect of a distribution under Subchapter F or H of Chapter 19, the liabilities of a dissolved corporation do not include any liabilities for which adequate provision has been made or any claim that has been barred under those subchapters.

(e) Redemption related and similar debt.--Indebtedness of a corporation to a shareholder incurred by reason of a distribution made in accordance with this section shall be at least on a parity with the indebtedness of the corporation to its general unsecured creditors except to the extent subordinated by agreement.

(f) Certain subordinated debt.--Indebtedness of a corporation, including indebtedness issued as a distribution, shall not be considered a liability for purposes of determinations under subsection (b) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If such indebtedness is issued as a distribution, each payment of principal or interest shall be treated as a distribution, the effect of which shall be measured on the date the payment is actually made.

(g) Cross references.--See Subchapter B of Chapter 17 (relating to fiduciary duty) and section 3122 (relating to distributions by insurance corporations).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 amended subsec. (b) and added subsec. (d.1).

Cross References. Section 1551 is referred to in sections 1521, 1552, 1932, 2125, 2703, 2907 of this title.

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

(a) General rule.--A business corporation shall have the power to acquire its own shares. If the articles provide that shares acquired by the corporation shall not be reissued, the authorized shares of the class or series that was acquired shall be reduced by the number of shares acquired. In any other case the shares acquired shall be deemed to be issued but not outstanding, except that, unless otherwise provided in the bylaws, the board may, by resolution, restore any or all of the previously issued shares of the corporation owned by it to the status of:

(1) authorized but unissued shares; or

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

(b) Security for acquisition.--In connection with an acquisition by a corporation of its shares, the corporation may grant a security interest in the acquired shares to secure an obligation to pay for the acquisition. A share shall not be canceled on the books of the corporation until the obligation of the corporation secured by the share is fully paid or discharged.

(c) Application of distribution tests.--A corporation may acquire or agree to acquire its shares, even though the acquisition would violate section 1551 (relating to distributions to shareholders), if payment of all or part of the purchase price is deferred until the payment would not violate that section.

(d) Cross reference.--See section 1914(c)(2) (relating to adoption by board of directors).

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

2013 Amendment. Act 67 relettered former subsec. (b) to present subsec. (d) and added subsecs. (b) and (c).

Cross References. Section 1552 is referred to in section 1914 of this title.

§ 1553. Liability for unlawful dividends and other distributions.

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

(b) Contribution by shareholders.--Any director against whom a claim is asserted under or pursuant to this section for the making of a distribution and who is held liable thereon shall be entitled to contribution from the shareholders who accepted or received any such distribution, knowing the distribution to have been made in violation of this subpart, in proportion to the amounts received by them.

(c) Contribution by other directors.--Any director against whom a claim is asserted under or pursuant to this section shall be entitled to contribution from any other director who voted

for or assented to the action upon which the claim is asserted and who did not comply with the standard provided by or pursuant to this subpart for the performance of the duties of directors.

(d) Limitation of actions.--See 42 Pa.C.S. § 5524(5) (relating to two year limitation).

(e) Contrary articles ineffective.--Except as provided by subsection (a), this section may not be varied by any provision of the articles.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

1990 Amendment. Act 198 amended subsec. (a) and added subsec. (e).

§ 1554. Financial reports to shareholders.

(a) General rule.--Except as otherwise provided in subsection (d) or unless otherwise agreed between a business corporation and a shareholder, every corporation shall furnish to its shareholders annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income and expenses for the fiscal year. The financial statements shall be prepared on the basis of generally accepted accounting principles, if the corporation prepares financial statements for the fiscal year on that basis for any purpose, and may be consolidated statements of the corporation and one or more of its subsidiaries. The financial statements shall be mailed by the corporation to each of its shareholders entitled thereto within 120 days after the close of each fiscal year and, after the mailing and upon written request, shall be mailed by the corporation to any shareholder or beneficial owner entitled thereto to whom a copy of the most recent annual financial statements has not previously been mailed. In lieu of mailing the statements, the corporation may send them by facsimile, e-mail or other electronic transmission to any shareholder who has supplied the corporation with a facsimile number or address for electronic transmissions for the purpose of receiving financial statements from the corporation. Statements that are audited or reviewed by a certified public accountant or a public accountant shall be accompanied by the report of the accountant; in other cases, each copy shall be accompanied by a statement of the person in charge of the financial records of the corporation:

(1) Stating his reasonable belief as to whether or not the financial statements were prepared in accordance with generally accepted accounting principles and, if not, describing the basis of presentation.

(2) Describing any material respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

(b) Contrary agreement.--An agreement restricting the rights specified in subsection (a) shall be set forth in a writing that, except as provided in subsection (c), is separate from the articles, bylaws and share certificate or notice provided pursuant to section 1528(f) (relating to uncertificated shares). The agreement may provide that it is binding on the shareholder and all persons who are shareholders in the corporation solely by reason of acquiring shares directly or indirectly from the shareholder in one or more transactions that, if the corporation were a statutory close corporation, would be described in section 2322(b)(2), (4), (5) or (6) (relating to exception).

(c) Transitional provision.--A bylaw adopted on or before June 30, 1991, that:

(1) provides that this section shall not apply to the shares of the corporation or to shares outstanding on a specified or otherwise determinable date; or

(2) restricts the right of shareholders to receive financial information in a manner permissible under the Business Corporation Law of 1933;

shall be deemed, for the purposes of subsection (b), to be a separate written agreement between the corporation and any person holding shares, option rights or securities having conversion or option rights, or to whom the corporation is otherwise obligated to issue shares on June 30, 1991, but only with respect to the shares held by the person on that date or to be acquired pursuant to such option rights, securities having conversion or option rights or other obligation of the corporation.

(d) Exception.--Subsection (a) shall not apply to a corporation that is required by law to file financial statements at least once a year in a public office.

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

(f) Cross references.--See section 2511 (relating to financial reports to shareholders) and 42 Pa.C.S. § 2503(7) (relating to right of participants to receive counsel fees).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsec. (a).

1992 Amendment. Act 169 amended subsec. (a), relettered subsec. (d) to subsec. (e), relettered subsec. (e) to subsec. (f) and added present subsec. (d).

1990 Amendment. Act 198 amended subsec. (c), amended and relettered subsec. (d) to subsec. (e) and added present subsec. (d).

Cross References. Section 1554 is referred to in sections 1106, 2511 of this title.

SUBCHAPTER D
DISSENTERS RIGHTS

Sec.

1571. Application and effect of subchapter.
1572. Definitions.
1573. Record and beneficial holders and owners.
1574. Notice of intention to dissent.
1575. Notice to demand payment.
1576. Failure to comply with notice to demand payment, etc.
1577. Release of restrictions or payment for shares.
1578. Estimate by dissenter of fair value of shares.
1579. Valuation proceedings generally.
1580. Costs and expenses of valuation proceedings.

Cross References. Subchapter D is referred to in sections 102, 317, 321, 329, 333, 343, 353, 363, 1103, 1105, 1906, 1913, 1932, 2104, 2123, 2321, 2324, 2325, 2512, 2538, 2704, 2705, 2904, 2907, 7104 of this title.

§ 1571. Application and effect of subchapter.

(a) General rule.--Except as otherwise provided in subsection (b), any shareholder (as defined in section 1572 (relating to definitions)) of a business corporation shall have the rights and remedies provided in this subchapter in

connection with a transaction under this title only where this title expressly provides that a shareholder shall have the rights and remedies provided in this subchapter. See:

Section 329(c) (relating to special treatment of interest holders).

Section 333 (relating to approval of merger).

Section 343 (relating to approval of interest exchange).

Section 353 (relating to approval of conversion).

Section 363 (relating to approval of division).

Section 1906(c) (relating to dissenters rights upon special treatment).

Section 1932(c) (relating to dissenters rights in asset transfers).

Section 2104(b) (relating to procedure).

Section 2324 (relating to corporation option where a restriction on transfer of a security is held invalid).

Section 2325(b) (relating to minimum vote requirement).

Section 2704(c) (relating to dissenters rights upon election).

Section 2705(d) (relating to dissenters rights upon renewal of election).

Section 2904(b) (relating to procedure).

Section 2907(a) (relating to proceedings to terminate breach of qualifying conditions).

Section 7104(b)(3) (relating to procedure).

(b) Exceptions.--

(1) Except as otherwise provided in paragraph (2), the holders of the shares of any class or series of shares shall not have the right to dissent and obtain payment of the fair value of the shares under this subchapter if, on the record date fixed to determine the shareholders entitled to notice of and to vote at the meeting at which a plan specified in any of section 333, 343, 353, 363 or 1932(c) is to be voted on or on the date of the first public announcement that such a plan has been approved by the shareholders by consent without a meeting, the shares of the class or series are either:

(i) listed on a national securities exchange registered under section 6 of the Exchange Act; or

(ii) held beneficially or of record by more than 2,000 persons.

(2) Paragraph (1) shall not apply to and dissenters rights shall be available without regard to the exception provided in that paragraph in the case of:

(i) (Repealed).

(ii) Shares of any preferred or special class or series unless the articles, the plan or the terms of the transaction entitle all shareholders of the class or series to vote thereon and require for the adoption of the plan or the effectuation of the transaction the affirmative vote of a majority of the votes cast by all shareholders of the class or series.

(iii) Shares entitled to dissenters rights under section 329(d) or 1906(c) (relating to dissenters rights upon special treatment).

(3) The shareholders of a corporation that acquires by purchase, lease, exchange or other disposition all or substantially all of the shares, property or assets of another corporation by the issuance of shares, obligations or otherwise, with or without assuming the liabilities of the other corporation and with or without the intervention of another corporation or other person, shall not be entitled

to the rights and remedies of dissenting shareholders provided in this subchapter regardless of the fact, if it be the case, that the acquisition was accomplished by the issuance of voting shares of the corporation to be outstanding immediately after the acquisition sufficient to elect a majority or more of the directors of the corporation.

(c) Grant of optional dissenters rights.--The bylaws or a resolution of the board of directors may direct that all or a part of the shareholders shall have dissenters rights in connection with any corporate action or other transaction that would otherwise not entitle such shareholders to dissenters rights. See section 317 (relating to contractual dissenters rights in entity transactions).

(d) Notice of dissenters rights.--Unless otherwise provided by statute, if a proposed corporate action that would give rise to dissenters rights under this subpart is submitted to a vote at a meeting of shareholders, there shall be included in or enclosed with the notice of meeting:

(1) a statement of the proposed action and a statement that the shareholders have a right to dissent and obtain payment of the fair value of their shares by complying with the terms of this subchapter; and

(2) a copy of this subchapter.

(e) Other statutes.--The procedures of this subchapter shall also be applicable to any transaction described in any statute other than this part that makes reference to this subchapter for the purpose of granting dissenters rights.

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

(g) Computation of beneficial ownership.--For purposes of subsection (b)(1)(ii), shares that are held beneficially as joint tenants, tenants by the entireties, tenants in common or in trust by two or more persons, as fiduciaries or otherwise, shall be deemed to be held beneficially by one person.

(h) Cross references.--See:

Section 315 (relating to nature of transactions).

Section 1105 (relating to restriction on equitable relief).

Section 1763(c) (relating to determination of shareholders of record).

Section 2512 (relating to dissenters rights procedure).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b)(1) intro. par. and (f).

2014 Amendment. Act 172 amended subsecs. (a), (b), (c) and (h).

2001 Amendment. Act 34 amended subsecs. (a) and (b), amended and relettered subsec. (g) to subsec. (h) and added present subsec. (g).

1990 Amendment. Act 198 amended subsecs. (a), (b) and (e), relettered subsec. (f) to subsec. (g) and added present subsec. (f).

Cross References. Section 1571 is referred to in sections 317, 1103, 2537 of this title.

§ 1572. Definitions.

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

"Corporation." The issuer of the shares held or owned by the dissenter before the corporate action or the successor by merger, consolidation, division, conversion or otherwise of that issuer. A plan of division may designate which one or more of the resulting corporations is the successor corporation for the purposes of this subchapter. The designated successor corporation or corporations in a division shall have sole responsibility for payments to dissenters and other liabilities under this subchapter except as otherwise provided in the plan of division.

"Dissenter." A shareholder who is entitled to and does assert dissenters rights under this subchapter and who has performed every act required up to the time involved for the assertion of those rights.

"Fair value." The fair value of shares immediately before the effectuation of the corporate action to which the dissenter objects, taking into account all relevant factors, but excluding any appreciation or depreciation in anticipation of the corporate action.

"Interest." Interest from the effective date of the corporate action until the date of payment at such rate as is fair and equitable under all the circumstances, taking into account all relevant factors, including the average rate currently paid by the corporation on its principal bank loans.

"Shareholder." A shareholder as defined in section 1103 (relating to definitions) or an ultimate beneficial owner of shares, including, without limitation, a holder of depository receipts, where the beneficial interest owned includes an interest in the assets of the corporation upon dissolution. (Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended the defs. of "corporation" and "dissenter" and added the def. of "shareholder."

Cross References. Section 1572 is referred to in sections 321, 1571 of this title.

§ 1573. Record and beneficial holders and owners.

(a) Record holders of shares.--A record holder of shares of a business corporation may assert dissenters rights as to fewer than all of the shares registered in his name only if he dissents with respect to all the shares of the same class or series beneficially owned by any one person and discloses the name and address of the person or persons on whose behalf he dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(b) Beneficial owners of shares.--A beneficial owner of shares of a business corporation who is not the record holder may assert dissenters rights with respect to shares held on his behalf and shall be treated as a dissenting shareholder under the terms of this subchapter if he submits to the corporation not later than the time of the assertion of dissenters rights a written consent of the record holder. A beneficial owner may not dissent with respect to some but less than all shares of the same class or series owned by the owner, whether or not the shares so owned by him are registered in his name.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 amended subsec. (a).

§ 1574. Notice of intention to dissent.

If the proposed corporate action is submitted to a vote at a meeting of shareholders of a business corporation, any person who wishes to dissent and obtain payment of the fair value of his shares must file with the corporation, prior to the vote, a written notice of intention to demand that he be paid the fair value for his shares if the proposed action is effectuated, must effect no change in the beneficial ownership of his shares from the date of such filing continuously through the effective date of the proposed action and must refrain from voting his shares in approval of such action. A dissenter who fails in any respect shall not acquire any right to payment of the fair value of his shares under this subchapter. Neither a proxy nor a vote against the proposed corporate action shall constitute the written notice required by this section.

§ 1575. Notice to demand payment.

(a) General rule.--If the proposed corporate action is approved by the required vote at a meeting of shareholders of a business corporation, the corporation shall deliver a further notice to all dissenters who gave due notice of intention to demand payment of the fair value of their shares and who refrained from voting in favor of the proposed action. If the proposed corporate action is approved by the shareholders by less than unanimous consent without a meeting or is taken without the need for approval by the shareholders, the corporation shall deliver to all shareholders who are entitled to dissent and demand payment of the fair value of their shares a notice of the adoption of the plan or other corporate action. In either case, the notice shall:

(1) State where and when a demand for payment must be sent and certificates for certificated shares must be deposited in order to obtain payment.

(2) Inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received.

(3) Supply a form for demanding payment that includes a request for certification of the date on which the shareholder, or the person on whose behalf the shareholder dissents, acquired beneficial ownership of the shares.

(4) Be accompanied by a copy of this subchapter.

(b) Time for receipt of demand for payment.--The time set for receipt of the demand and deposit of certificated shares shall be not less than 30 days from the delivery of the notice. (July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsecs. (a) intro par. and (b).

Cross References. Section 1575 is referred to in sections 1576, 1577, 1579, 2512 of this title.

§ 1576. Failure to comply with notice to demand payment, etc.

(a) Effect of failure of shareholder to act.--A shareholder who fails to timely demand payment, or fails (in the case of certificated shares) to timely deposit certificates, as required by a notice pursuant to section 1575 (relating to notice to demand payment) shall not have any right under this subchapter to receive payment of the fair value of his shares.

(b) Restriction on uncertificated shares.--If the shares are not represented by certificates, the business corporation

may restrict their transfer from the time of receipt of demand for payment until effectuation of the proposed corporate action or the release of restrictions under the terms of section 1577(a) (relating to failure to effectuate corporate action).

(c) Rights retained by shareholder.--The dissenter shall retain all other rights of a shareholder until those rights are modified by effectuation of the proposed corporate action. (Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (a).

§ 1577. Release of restrictions or payment for shares.

(a) Failure to effectuate corporate action.--Within 60 days after the date set for demanding payment and depositing certificates, if the business corporation has not effectuated the proposed corporate action, it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment.

(b) Renewal of notice to demand payment.--When uncertificated shares have been released from transfer restrictions and deposited certificates have been returned, the corporation may at any later time send a new notice conforming to the requirements of section 1575 (relating to notice to demand payment), with like effect.

(c) Payment of fair value of shares.--Promptly after effectuation of the proposed corporate action, or upon timely receipt of demand for payment if the corporate action has already been effectuated, the corporation shall either remit to dissenters who have made demand and (if their shares are certificated) have deposited their certificates the amount that the corporation estimates to be the fair value of the shares, or give written notice that no remittance under this section will be made. The remittance or notice shall be accompanied by:

(1) The closing balance sheet and statement of income of the issuer of the shares held or owned by the dissenter for a fiscal year ending not more than 16 months before the date of remittance or notice together with the latest available interim financial statements.

(2) A statement of the corporation's estimate of the fair value of the shares.

(3) A notice of the right of the dissenter to demand payment or supplemental payment, as the case may be, accompanied by a copy of this subchapter.

(d) Failure to make payment.--If the corporation does not remit the amount of its estimate of the fair value of the shares as provided by subsection (c), it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment. The corporation may make a notation on any such certificate or on the records of the corporation relating to any such uncertificated shares that such demand has been made. If shares with respect to which notation has been so made shall be transferred, each new certificate issued therefor or the records relating to any transferred uncertificated shares shall bear a similar notation, together with the name of the original dissenting holder or owner of such shares. A transferee of such shares shall not acquire by such transfer any rights in the corporation other than those that the original dissenter had after making demand for payment of their fair value. (Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsecs. (c) and (d).

Cross References. Section 1577 is referred to in sections 1576, 1578, 2512 of this title.

§ 1578. Estimate by dissenter of fair value of shares.

(a) General rule.--If the business corporation gives notice of its estimate of the fair value of the shares, without remitting such amount, or remits payment of its estimate of the fair value of a dissenter's shares as permitted by section 1577(c) (relating to payment of fair value of shares) and the dissenter believes that the amount stated or remitted is less than the fair value of his shares, he may send to the corporation his own estimate of the fair value of the shares, which shall be deemed a demand for payment of the amount or the deficiency.

(b) Effect of failure to file estimate.--Where the dissenter does not file his own estimate under subsection (a) within 30 days after the mailing by the corporation of its remittance or notice, the dissenter shall be entitled to no more than the amount stated in the notice or remitted to him by the corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (b).

Cross References. Section 1578 is referred to in sections 1579, 1580 of this title.

§ 1579. Valuation proceedings generally.

(a) General rule.--Within 60 days after the latest of:

(1) effectuation of the proposed corporate action;

(2) timely receipt of any demands for payment under section 1575 (relating to notice to demand payment); or

(3) timely receipt of any estimates pursuant to section 1578 (relating to estimate by dissenter of fair value of shares);

if any demands for payment remain unsettled, the business corporation may file in court an application for relief requesting that the fair value of the shares be determined by the court.

(b) Mandatory joinder of dissenters.--All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the application shall be served on each such dissenter. If a dissenter is a nonresident, the copy may be served on him in the manner provided or prescribed by or pursuant to 42 Pa.C.S. Ch. 53 (relating to bases of jurisdiction and interstate and international procedure).

(c) Jurisdiction of the court.--The jurisdiction of the court shall be plenary and exclusive. The court may appoint an appraiser to receive evidence and recommend a decision on the issue of fair value. The appraiser shall have such power and authority as may be specified in the order of appointment or in any amendment thereof.

(d) Measure of recovery.--Each dissenter who is made a party shall be entitled to recover the amount by which the fair value of his shares is found to exceed the amount, if any, previously remitted, plus interest.

(e) Effect of corporation's failure to file application.--If the corporation fails to file an application as provided in subsection (a), any dissenter who made a demand and who has not already settled his claim against the corporation may do so in the name of the corporation at any time within 30 days after the expiration of the 60-day period. If a dissenter does not file an application within the 30-day period, each dissenter entitled to file an application shall be paid the corporation's

estimate of the fair value of the shares and no more, and may bring an action to recover any amount not previously remitted.

Cross References. Section 1579 is referred to in section 1580 of this title.

§ 1580. Costs and expenses of valuation proceedings.

(a) General rule.--The costs and expenses of any proceeding under section 1579 (relating to valuation proceedings generally), including the reasonable compensation and expenses of the appraiser appointed by the court, shall be determined by the court and assessed against the business corporation except that any part of the costs and expenses may be apportioned and assessed as the court deems appropriate against all or some of the dissenters who are parties and whose action in demanding supplemental payment under section 1578 (relating to estimate by dissenter of fair value of shares) the court finds to be dilatory, obdurate, arbitrary, vexatious or in bad faith.

(b) Assessment of counsel fees and expert fees where lack of good faith appears.--Fees and expenses of counsel and of experts for the respective parties may be assessed as the court deems appropriate against the corporation and in favor of any or all dissenters if the corporation failed to comply substantially with the requirements of this subchapter and may be assessed against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted in bad faith or in a dilatory, obdurate, arbitrary or vexatious manner in respect to the rights provided by this subchapter.

(c) Award of fees for benefits to other dissenters.--If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and should not be assessed against the corporation, it may award to those counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

CHAPTER 17
OFFICERS, DIRECTORS AND SHAREHOLDERS

Subchapter

A. Notice and Meetings Generally
B. Fiduciary Duty
C. Directors and Officers
D. Indemnification
E. Shareholders
F. Derivative Actions
G. Judicial Supervision of Corporate Action

Enactment. Chapter 17 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 17 is referred to in sections 1306, 1978 of this title.

SUBCHAPTER A
NOTICE AND MEETINGS GENERALLY

Sec.

1701. Applicability of subchapter.
1702. Manner of giving notice.
1703. Place and notice of meetings of board of directors.

1704. Place and notice of meetings of shareholders.
1705. Waiver of notice.
1706. Modification of proposal contained in notice.
1707. Exception to requirement of notice.
1708. Use of conference telephone or other electronic technology.
1709. Conduct of shareholders meeting.

Cross References. Subchapter A is referred to in sections 321, 1913, 1973 of this title.

§ 1701. Applicability of subchapter.

(a) General rule.--The provisions of this subchapter shall apply to every business corporation unless otherwise restricted:

(1) by any other provision of this subpart; or

(2) except with respect to section 1707(a) (relating to exception to requirement of notice), in the bylaws.

(b) Limitation on certain provisions in the articles.--The articles may not relax the statutory rights of shareholders to notice provided in this subchapter.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

Cross References. Section 1701 is referred to in section 1707 of this title.

§ 1702. Manner of giving notice.

(a) General rule.--

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

(i) By first class or express mail, postage prepaid, or courier service, charges prepaid, to the postal address of the person appearing on the books of the corporation or, in the case of directors, supplied by the director to the corporation for the purpose of notice. Notice pursuant to this subparagraph shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a courier service for delivery to that person.

(ii) By facsimile transmission, e-mail or other electronic communication to the facsimile number or address for e-mail or other electronic communications supplied by the person to the corporation for the purpose of notice. Notice pursuant to this subparagraph shall be deemed to have been given to the person entitled thereto when sent.

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

(b) Adjourned shareholder meetings.--When a meeting of shareholders is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which the adjournment is taken, unless the board fixes a new record date for the adjourned meeting or this subpart requires notice of the business to be transacted and such notice has not previously been given.

(c) Bulk mail notice.--A corporation that is not a closely held corporation and that gives notice by mail of any regular or special meeting of the shareholders (or any other notice

required by this subpart or by the articles or bylaws to be given to all shareholders or to all holders of a class or series of shares) at least 20 days prior to the day named for the meeting or any corporate or shareholder action specified in the notice may use any class of postpaid mail.

(d) Cross references.--See sections 2522 (relating to adjournment or postponement of meeting of shareholders), 2528 (relating to notice of shareholder meetings) and 3133 (relating to notice of meetings of members of mutual insurance companies).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (d).

Cross References. Section 1702 is referred to in sections 229, 1759, 1766, 2522, 2545 of this title.

§ 1703. Place and notice of meetings of board of directors.

(a) Place.--Meetings of the board of directors may be held at such place within or without this Commonwealth as the board of directors may from time to time appoint or as may be designated in the notice of the meeting.

(b) Notice.--Regular meetings of the board of directors may be held upon such notice, if any, as the bylaws may prescribe. Unless otherwise provided in the bylaws, written notice of every special meeting of the board of directors shall be given to each director at least five days before the day named for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board need be specified in the notice of the meeting.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (b).

§ 1704. Place and notice of meetings of shareholders.

(a) Place.--Meetings of shareholders may be held at such geographic location within or without this Commonwealth as may be provided in or fixed pursuant to the bylaws. Authority to provide for the location of a meeting of the shareholders includes the authority to determine to hold a meeting solely by means of electronic technology in accordance with section 1708 (relating to use of conference telephone or other electronic technology), notwithstanding that the authority may refer to one or more geographic locations. Unless otherwise provided in or fixed pursuant to the bylaws, all meetings of the shareholders that are not held solely by means of electronic technology shall be held at the executive office of the corporation wherever situated.

(b) Notice.--Notice in record form of every meeting of the shareholders shall be given by, or at the direction of, the secretary or other authorized person to each shareholder of record entitled to vote at the meeting at least:

(1) ten days prior to the day named for a meeting that will consider a transaction under Chapter 3 (relating to entity transactions) or a fundamental change under Chapter 19 (relating to fundamental changes); or

(2) five days prior to the day named for the meeting in any other case.

(c) Contents.--In the case of a special meeting of shareholders, the notice shall specify the general nature of the business to be transacted, and in all cases the notice shall comply with the express requirements of this subpart. The corporation shall not have a duty to augment the notice.

(d) Alternative authority.--If the secretary or other authorized person does not give notice of a meeting within a reasonable time, a person calling the meeting may do so.

(e) Cross reference.--See section 2528 (relating to notice of shareholder meetings).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (d).

2014 Amendment. Act 172 amended subsec. (b)(1).

2013 Amendment . Act 67 amended subsecs. (a) and (b) and added subsecs. (d) and (e).

1990 Amendment. Act 198 amended subsec. (b) and added subsec. (c).

§ 1705. Waiver of notice.

(a) General rule.--Whenever any notice is required to be given under the provisions of this subpart or the articles or bylaws of any business corporation, a waiver thereof which is filed with the secretary of the corporation in record form signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of the notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting.

(b) Waiver by attendance.--Attendance of a person at any meeting shall constitute a waiver of notice of the meeting except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment . Act 67 amended subsec. (a).

§ 1706. Modification of proposal contained in notice.

Whenever the language of a proposed resolution is included in a written notice of a meeting required to be given under the provisions of this subpart or the articles or bylaws of any business corporation, the meeting considering the resolution may without further notice adopt it with such clarifying or other amendments as do not enlarge its original purpose.

§ 1707. Exception to requirement of notice.

(a) General rule.--Whenever any notice or communication is required to be given to any person under the provisions of this subpart or by the articles or bylaws of any business corporation or by the terms of any agreement or other instrument or as a condition precedent to taking any corporate action and communication with that person is then unlawful, the giving of the notice or communication to that person shall not be required, and there shall not be any duty to apply for a license or other permission to do so. Any action or meeting that is taken or held without notice or communication to that person shall have the same validity as if the notice or communication had been duly given. If the action taken is such as to require the filing of any document with respect thereto under any provision of law or any agreement or other instrument, it shall be sufficient, if such is the fact and if notice or communication is required, to state therein that notice or communication was given to all persons entitled to receive

notice or communication except persons with whom communication was unlawful. See section 1701 (relating to applicability of subchapter).

(b) Shareholders without forwarding addresses.--Subsection (a) shall also be applicable to any shareholder with whom the corporation has been unable to communicate for more than 24 consecutive months because communications to the shareholder are returned unclaimed or the shareholder has otherwise failed to provide the corporation with a current address. Whenever the shareholder provides the corporation with a current address, subsection (a) shall cease to be applicable to the shareholder under this subsection.

Cross References. Section 1707 is referred to in section 1701 of this title.

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

(a) Incorporators and directors.--Except as otherwise provided in the bylaws, one or more persons may participate in a meeting of the incorporators or the board of directors of a business corporation by means of conference telephone or other electronic technology by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

(b) Shareholders.--Except as otherwise provided in the bylaws, the presence or participation, including voting and taking other action, by a shareholder at a meeting of shareholders by conference telephone or other electronic technology constitutes the presence or participation, including voting and taking other action, by the shareholder for the purposes of this subpart.

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

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 1708 is referred to in sections 1704, 1758, 2522 of this title.

§ 1709. Conduct of shareholders meeting.

(a) Presiding officer.--There shall be a presiding officer at every meeting of the shareholders. The presiding officer shall be appointed in the manner provided in the bylaws or, in the absence of such provision, by the board of directors. If the bylaws are silent on the appointment of the presiding officer and the board fails to designate a presiding officer, the president shall be the presiding officer.

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

(c) Procedural standard.--Any rules adopted for, and the conduct of, a meeting must be fair to the shareholders.

(d) Closing of the polls.--The presiding officer shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes thereto, may be accepted.

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b) and (c).

2001 Amendment. Act 34 added section 1709.

Cross References. Section 1709 is referred to in section 1708 of this title.

SUBCHAPTER B
FIDUCIARY DUTY

Sec.

1711. Alternative provisions.
1712. Standard of care, justifiable reliance and business judgment rule.
1713. Personal liability of directors.
1714. Presumption of assent.
1715. Exercise of powers generally.
1716. Alternative standard.
1717. Limitation on standing.
1718. Inconsistent articles ineffective.
1719. Renunciation of business opportunities.

Enactment. Subchapter B was added December 19, 1990, P.L.834, No.198, effective immediately.

Prior Provisions. Former Subchapter B, which related to directors and officers, was added December 21, 1988, P.L.1444, No.177, and relettered to Subchapter C December 19, 1990, P.L.834, No.198, effective immediately.

Special Provisions in Appendix. See section 404(b) of Act 198 of 1990 in the appendix to this title for special provisions relating to applicability.

Cross References. Subchapter B is referred to in sections 313, 1525, 1551, 1724, 1783, 9506 of this title; section 8332.5 of Title 42 (Judiciary and Judicial Procedure).

§ 1711. Alternative provisions.

(a) General rule.--Section 1716 (relating to alternative standard) shall not be applicable to any business corporation to which section 1715 (relating to exercise of powers generally) is applicable.

(b) Exceptions.--Section 1715 shall be applicable to:

(1) Any registered corporation described in section 2502(1)(i) (relating to registered corporation status), except a corporation:

(i) the bylaws of which explicitly provide that section 1715 or corresponding provisions of prior law shall not be applicable to the corporation by amendment

adopted by the board of directors on or before July 26, 1990, in the case of a corporation that was a registered corporation described in section 2502(1)(i) on April 27, 1990; or

(ii) in any other case, the articles of which explicitly provide that section 1715 or corresponding provisions of prior law shall not be applicable to the corporation by a provision included in the original articles, or by an articles amendment adopted on or before 90 days after the corporation first becomes a registered corporation described in section 2502(1)(i).

(2) Any registered corporation described solely in section 2502(1)(ii), except a corporation:

(i) the bylaws of which explicitly provide that section 1715 or corresponding provisions of prior law shall not be applicable to the corporation by amendment adopted by the board of directors on or before April 27, 1991, in the case of a corporation that was a registered corporation described solely in section 2502(1)(ii) on April 27, 1990; or

(ii) in any other case, the articles of which explicitly provide that section 1715 or corresponding provisions of prior law shall not be applicable to the corporation by a provision included in the original articles, or by an articles amendment adopted on or before one year after the corporation first becomes a registered corporation described in section 2502(1)(ii).

(3) Any business corporation that is not a registered corporation described in section 2502(1), except a corporation:

(i) the bylaws of which explicitly provide that section 1715 or corresponding provisions of prior law shall not be applicable to the corporation by amendment adopted by the board of directors on or before April 27, 1991, in the case of a corporation that was a business corporation on April 27, 1990; or

(ii) in any other case, the articles of which explicitly provide that section 1715 or corresponding provisions of prior law shall not be applicable to the corporation by a provision included in the original articles, or by an articles amendment adopted on or before one year after the corporation first becomes a business corporation.

(c) Transitional provision.--A provision of the articles or bylaws adopted pursuant to section 511(b) (relating to alternative provisions) at a time when the corporation was not a business corporation that provides that section 515 (relating to exercise of powers generally) or corresponding provisions of prior law shall not be applicable to the corporation shall be deemed to provide that section 1715 shall not be applicable to the corporation.

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added subsec. (d).

Cross References. Section 1711 is referred to in sections 1715, 1716 of this title.

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

(a) General rule.--A director of a business corporation shall stand in a fiduciary relation to the corporation and shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director reasonably believes to be in the best interests of the corporation and with such care, including the skill and diligence that a person of ordinary prudence would use under similar circumstances and reasonable inquiry into those issues required by the statutes of this Commonwealth to be considered in the circumstances and those interests and factors listed or described in section 1715(a) (relating to exercise of powers generally) or 1716(a) (relating to alternative standard) that the director considers appropriate. This subsection is subject to subsection (d) where applicable.

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

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

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

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

(b) Effect of actual knowledge.--A director is not considered to be acting in good faith under subsection (a.1) if the director has actual knowledge concerning the matter that causes the director to believe reliance is unwarranted.

(c) Officers.--(Deleted by amendment).

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

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

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

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

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 1712 is referred to in sections 1553, 1715, 1716, 1717, 3321 of this title.

§ 1713. Personal liability of directors.

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

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

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

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

(1) the responsibility or liability of a director pursuant to any criminal statute; or

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

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

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

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a)(1), relettered former subsec. (c) to subsec. (d) and added present subsec. (c).

1992 Amendment. Act 169 amended subsec. (b).

Cross References. Section 1713 is referred to in sections 1504, 1505, 1553, 3321, 3322 of this title.

§ 1714. Presumption of assent.

A director of a business corporation who is present at a meeting of its board of directors, or of a committee of the board, at which action on any corporate matter is taken on which the director is generally competent to act, shall be presumed to have assented to the action taken unless the director's dissent, abstention or vote against the matter is entered in the minutes of the meeting or unless the director delivers to the secretary of the meeting before the adjournment thereof a dissent in record form to the action or transmits the dissent in record form to the secretary of the corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a director who voted in favor of the action. Nothing in this subchapter shall bar a director from asserting that minutes of the meeting incorrectly omitted the director's dissent, abstention or vote against if, promptly upon receipt of a copy of such minutes, the director notifies the secretary of the corporation in record form of the asserted omission or inaccuracy.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 1715. Exercise of powers generally.

(a) General rule.--In discharging the duties of their respective positions, the board of directors, committees of the board and individual directors of a business corporation may, in considering the best interests of the corporation, consider to the extent they deem appropriate:

(1) The effects of any action upon any or all groups affected by such action, including shareholders, employees, suppliers, customers and creditors of the corporation, and

upon communities in which offices or other establishments of the corporation are located.

(2) The short-term and long-term interests of the corporation, including benefits that may accrue to the corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the corporation.

(3) The resources, intent and conduct (past, stated and potential) of any person seeking to acquire control of the corporation.

(4) All other pertinent factors.

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

(c) Specific applications.--In exercising the powers vested in the corporation, including, without limitation, those powers pursuant to section 1502 (relating to general powers), and in no way limiting the discretion of the board of directors, committees of the board and individual directors pursuant to subsections (a) and (b), the fiduciary duty of directors shall not be deemed to require them:

(1) to redeem any rights under, or to modify or render inapplicable, any shareholder rights plan, including, but not limited to, a plan adopted pursuant or made subject to section 2513 (relating to disparate treatment of certain persons);

(2) to render inapplicable, or make determinations under, the provisions of Subchapter E (relating to control transactions), F (relating to business combinations), G (relating to control-share acquisitions) or H (relating to disgorgement by certain controlling shareholders following attempts to acquire control) of Chapter 25 or under any other provision of this title relating to or affecting acquisitions or potential or proposed acquisitions of control; or

(3) to act as the board of directors, a committee of the board or an individual director solely because of the effect such action might have on an acquisition or potential or proposed acquisition of control of the corporation or the consideration that might be offered or paid to shareholders in such an acquisition.

(d) Presumption.--In assessing whether the standard set forth in section 1712 or 1728 (relating to interested directors or officers; quorum) has been satisfied, there shall not be any greater obligation to justify, or higher burden of proof with respect to, any act as the board of directors, any committee of the board or any individual director relating to or affecting an acquisition or potential or proposed acquisition of control of the corporation than is applied to any other act as a board of directors, any committee of the board or any individual director. Notwithstanding section 1712(d) and the preceding provision of this subsection, any act as the board of directors, a committee of the board or an individual director relating to or affecting an acquisition or potential or proposed acquisition of control to which a majority of the disinterested directors shall have assented shall be presumed to satisfy the standard

set forth in section 1712 or 1728, unless it is proven by clear and convincing evidence that the disinterested directors did not assent to such act in good faith after reasonable investigation.

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

(1) A director of the corporation other than:

(i) A director who has a direct or indirect financial or other interest in the person acquiring or seeking to acquire control of the corporation or who is an affiliate or associate of, or was nominated or designated as a director by, a person acquiring or seeking to acquire control of the corporation.

(ii) Depending on the specific facts surrounding the director and the act under consideration, an officer or employee or former officer or employee of the corporation.

(2) A person shall not be deemed to be other than a disinterested director solely by reason of any or all of the following:

(i) The ownership by the director of shares of the corporation.

(ii) The receipt as a holder of any class or series of any distribution made to all owners of shares of that class or series.

(iii) The receipt by the director of director's fees or other consideration as a director.

(iv) Any interest the director may have in retaining the status or position of director.

(v) The former business or employment relationship of the director with the corporation.

(vi) Receiving or having the right to receive retirement or deferred compensation from the corporation due to service as a director, officer or employee.

(f) Cross reference.--See section 1711 (relating to alternative provisions).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b), (d) and (e)(1)(i).

Cross References. Section 1715 is referred to in sections 1711, 1712, 1717, 1728, 3321 of this title.

§ 1716. Alternative standard.

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

(b) Presumption.--(Deleted by amendment).

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 1716 is referred to in sections 1711, 1712, 1717, 3321 of this title.

§ 1717. Limitation on standing.

The duty of the board of directors, committees of the board and individual directors under section 1712 (relating to standard of care, justifiable reliance and business judgment rule) is solely to the business corporation and not to any shareholder or creditor or any other person or group, and may be enforced directly by the corporation or may be enforced by an action in the right of the corporation, and may not be enforced directly by a shareholder or creditor or by any other person or group. Notwithstanding the preceding sentence, sections 1715(a) and (b) (relating to exercise of powers generally) and 1716(a) (relating to alternative standard) do not impose upon the board of directors, committees of the board and individual directors any legal or equitable duties, obligations or liabilities or create any right or cause of action against, or basis for standing to sue, the board of directors, committees of the board and individual directors.
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 1718. Inconsistent articles ineffective.

Except as otherwise expressly provided in this subchapter, the articles may not contain any provision that relaxes, restricts, is inconsistent with or supersedes any provision of this subchapter. Section 1306(b)(2) (relating to other provisions authorized) shall not apply to this subchapter.
(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 1719. Renunciation of business opportunities.

The articles of incorporation, or an action of the board of directors, may renounce any interest or expectancy of a business corporation in, or in being offered an opportunity to participate in, a specified business opportunity or specified classes or categories of business opportunities that are presented to the corporation or to one or more of its directors, officers or shareholders.
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 1719.

SUBCHAPTER C
DIRECTORS AND OFFICERS

Sec.

1721. Board of directors.
1722. Qualifications of directors.
1723. Number of directors.
1724. Term of office of directors.
1725. Selection of directors.
1726. Removal of directors.
1727. Quorum of and action by directors.
1728. Interested directors or officers; quorum.
1729. Voting rights of directors.
1730. Compensation of directors.
1731. Executive and other committees of the board.
1732. Officers.
1733. Removal of officers and agents.
1734. Officer's standard of care and justifiable reliance.
1735. Personal liability of officers.

Enactment. Subchapter C was added as Subchapter B December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter C December 19, 1990, P.L.834, No.198, effective immediately.

Cross References. Subchapter C is referred to in section 3322 of this title.

§ 1721. Board of directors.

(a) General rule.--Unless otherwise provided by statute or in a bylaw adopted by the shareholders, all powers enumerated in section 1502 (relating to general powers) and elsewhere in this title or otherwise vested by law in a business corporation shall be exercised by or under the authority of the board of directors, and the business and affairs of every business corporation shall be managed by or under the direction of, a board of directors. If any such provision is made in the bylaws, the powers and duties conferred or imposed upon the board of directors by this title shall be exercised or performed to such extent and by such person or persons as shall be provided in the bylaws. Persons upon whom the powers and duties of directors are imposed by this section shall to that extent be subject to the liabilities imposed, and entitled to the rights and immunities conferred, by or pursuant to this part and other provisions of law upon directors of a corporation.

(b) Cross reference.--See section 2527 (relating to authority of board of directors).

(Apr. 27, 1990, P.L.129, No.36, eff. imd.; Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

Liability of Directors. Section 8(b) of Act 36 of 1990 provided that a director shall not be held liable for taking or omitting to take any action permitted by section 2571(b)(2), it being the intention of Act 36 that any such director may exercise absolute discretion in taking or omitting to take any such action.

Cross References. Section 1721 is referred to in sections 1502, 1504, 1509 of this title.

§ 1722. Qualifications of directors.

(a) General rule.--Each director of a business corporation shall be a natural person of full age who, unless otherwise restricted in the bylaws, need not be a resident of this Commonwealth or a shareholder of the corporation. Except as otherwise provided in this section, the qualifications of directors may be prescribed in the bylaws.

(b) Cross references.--See sections 2530 (relating to qualifications of directors) and 3131 (relating to directors).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b).

§ 1723. Number of directors.

(a) General rule.--The board of directors of a business corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the bylaws. If not so fixed, the number of directors shall be the same as that stated in the articles or three if no number is so stated.

(b) Cross reference.--See section 3131 (relating to directors).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

§ 1724. Term of office of directors.

(a) General rule.--Each director of a business corporation shall hold office until the expiration of the term for which the director was selected and until a successor has been

selected and qualified or until the director's earlier death, resignation or removal. Each director shall be selected for the term of office provided in the bylaws, which shall be one year unless the board is classified as provided by subsection (b). A decrease in the number of directors shall not have the effect of shortening the term of any incumbent director.

(b) Classified board of directors.--Except as otherwise provided in the articles, if the directors are classified in respect of the time for which they shall severally hold office:

(1) Each class shall be as nearly equal in number as possible.

(2) The term of office of at least one class shall expire in each year.

(3) The members of a class shall not be elected for a longer period than four years.

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

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a) and added subsec. (c).

1990 Amendment. Act 198 amended subsec. (b).

Cross References. Section 1724 is referred to in sections 1725, 1726 of this title.

§ 1725. Selection of directors.

(a) General rule.--Except as otherwise provided in this section, directors of a business corporation, other than those constituting the first board of directors, shall be elected by the shareholders. A bylaw adopted by the shareholders may classify the directors with respect to the shareholders who exercise the power to elect directors.

(b) Vacancies.--

(1) Except as otherwise provided in the bylaws:

(i) Vacancies in the board of directors, including vacancies resulting from an increase in the number of directors, may be filled by a majority vote of the remaining members of the board though less than a quorum, or by a sole remaining director, and each person so selected shall be a director to serve for the balance of the unexpired term unless otherwise restricted in the bylaws.

(ii) When one or more directors resign from the board effective at a future date, the directors then in office, including those who have so resigned, shall have power by the applicable vote to fill the vacancies, the vote thereon to take effect when the resignations become effective.

(2) In the case of a corporation having a board classified as permitted by section 1724(b) (relating to classified board of directors), any director chosen to fill a vacancy, including a vacancy resulting from an increase in the number of directors, shall hold office until the next selection of the class for which such director has been

chosen, and until his successor has been selected and qualified or until his earlier death, resignation or removal.

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

(c) Alternate directors.--If the bylaws so provide, a shareholder or group of shareholders entitled to elect, appoint, designate or otherwise select one or more directors may select an alternate for each director. In the absence of a director from a meeting of the board, his alternate may, in the manner and upon such notice, if any, as may be provided in the bylaws, attend the meeting or execute a written consent and exercise at the meeting or in such consent such of the powers of the absent director as may be specified by, or in the manner provided in, the bylaws. When so exercising the powers of the absent director, the alternate shall be subject in all respects to the provisions of this subpart relating to directors.

(d) Cross references.--See the definition of "shareholder" in section 1103 (relating to definitions) and section 1758(c) (relating to cumulative voting).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added subsec. (b)(3).

1990 Amendment. Act 198 amended subsecs. (a), (b) and (d).

Cross References. Section 1725 is referred to in sections 1103, 1504, 1755 of this title.

§ 1726. Removal of directors.

(a) Removal by the shareholders.--

(1) Unless otherwise provided in a bylaw adopted by the shareholders, the entire board of directors, or a class of the board where the board is classified with respect to the power to select directors, or any individual director of a business corporation may be removed from office without assigning any cause by the vote of shareholders, or of the holders of a class or series of shares, entitled to elect directors, or the class of directors. In case the board or a class of the board or any one or more directors are so removed, new directors may be elected at the same meeting. Notwithstanding the first sentence of this paragraph, unless otherwise provided in the articles by a specific and unambiguous statement that directors may be removed from office without assigning any cause, the entire board of directors, or any class of the board, or any individual director of a corporation having a board classified as permitted by section 1724(b) (relating to classified board of directors), may be removed from office by vote of the shareholders entitled to vote thereon only for cause, if such classification has been effected in the articles or by a bylaw adopted by the shareholders.

(2) The repeal of a provision of the articles or bylaws prohibiting, or the addition of a provision to the articles or bylaws permitting, the removal by the shareholders of the board, a class of the board or a director without assigning any cause shall not apply to any incumbent director during the balance of the term for which he was selected.

(3) An individual director shall not be removed (unless the entire board or class of the board is removed) from the board of a corporation in which shareholders are entitled to vote cumulatively for the board or a class of the board if sufficient votes are cast against the resolution for his removal which, if cumulatively voted at an annual or other regular election of directors, would be sufficient to elect one or more directors to the board or to the class.

(4) The board of directors may be removed at any time with or without cause by the unanimous vote or consent of shareholders entitled to vote thereon.

(5) The articles may not prohibit the removal of directors by the shareholders for cause.

(b) Removal by the board.--Unless otherwise provided in a bylaw adopted by the shareholders, the board of directors may declare vacant the office of a director who has been judicially declared of unsound mind or who has been convicted of an offense punishable by imprisonment for a term of more than one year or for any other proper cause which the bylaws may specify or if, within 60 days or such other time as the bylaws may specify after notice of his selection, he does not accept the office either in writing or by attending a meeting of the board of directors and fulfill such other requirements of qualification as the bylaws may specify.

(c) Removal by the court.--Upon application of any shareholder or director, the court may remove from office any director in case of fraudulent or dishonest acts, or gross abuse of authority or discretion with reference to the corporation, or for any other proper cause, and may bar from office any director so removed for a period prescribed by the court. The corporation shall be made a party to the action and as a prerequisite to the maintenance of an action under this subsection a shareholder shall comply with Subchapter F (relating to derivative actions).

(d) Effect of reinstatement.--An act of the board done during the period when a director has been suspended or removed for cause shall not be impugned or invalidated if the suspension or removal is thereafter rescinded by the shareholders or by the board or by the final judgment of a court.

(e) Cross reference.--See section 1106(b)(4) (relating to uniform application of subpart).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Feb. 10, 2006, P.L.21, No.6, eff. imd.)

2006 Amendment. Act 6 amended subsec. (a)(1).

1990 Amendment. Act 198 amended subsec. (c) and added subsecs. (a)(5) and (e).

Cross References. Section 1726 is referred to in sections 1106, 1504 of this title.

§ 1727. Quorum of and action by directors.

(a) General rule.--Unless otherwise provided in the bylaws, a majority of the directors in office of a business corporation shall be necessary to constitute a quorum for the transaction of business, and the acts of a majority of the directors present and voting at a meeting at which a quorum is present shall be the acts of the board of directors.

(b) Action by consent.--Unless otherwise restricted in the bylaws, any action required or permitted to be approved at a meeting of the directors may be approved without a meeting by a consent or consents to the action in record form. Except as provided in subsection (c), the consents must be signed, before, on or after the effective time of the action by all of the

directors in office at the effective time. The consent or consents must be filed with the minutes of the proceedings of the board of directors.

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

(June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) and added subsec. (c).

§ 1728. Interested directors or officers; quorum.

(a) General rule.--A contract or transaction between a business corporation and one or more of its directors or officers or between a business corporation and another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise in which one or more of the corporation's directors or officers are governors or officers of the other association or have a financial or other interest, is not void or voidable solely for that reason, or solely because the director or officer of the corporation is present at or participates in the meeting of the board of directors that authorizes the contract or transaction, or solely because the vote of the director or officer is counted for that purpose, if:

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

(2) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon and the contract or transaction is specifically approved in good faith by vote of those shareholders;

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

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

(b) Quorum.--Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board that authorizes a contract or transaction specified in subsection (a).

(c) Applicability.--The provisions of this section shall be applicable except as otherwise restricted in the bylaws.

(d) Common governors or officers with not wholly owned associations.--A contract or transaction between a business

corporation and an association that is not wholly owned by the corporation is not void or voidable solely on the grounds that a person who is a director or officer of the corporation is also a governor or officer of the other association if:

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

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

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a) and added subsecs. (d), (e) and (f).

Special Provisions in Appendix. See section 404(b)(1) of Act 198 of 1990 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 1728 is referred to in sections 1715, 1745, 1746 of this title.

§ 1729. Voting rights of directors.

(a) General rule.--Unless otherwise provided in a bylaw adopted by the shareholders, every director of a business corporation shall be entitled to one vote.

(b) Multiple and fractional voting.--Any requirement of this subpart for the presence of or vote or other action by a specified percentage of directors shall be satisfied by the presence of or vote or other action by directors entitled to cast the specified percentage of the votes that all voting directors in office are entitled to cast.

(c) Cross reference.--See section 2526 (relating to voting rights of directors).

(June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 added subsec. (c).

Cross References. Section 1729 is referred to in section 1504 of this title.

§ 1730. Compensation of directors.

(a) General rule.--Except as otherwise restricted in the bylaws, the board of directors of a business corporation has the authority to fix the compensation of directors for their services as directors, regardless of the personal interest of the directors. A director may be a salaried officer of the corporation.

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 1730 is referred to in sections 1103, 1728 of this title.

§ 1731. Executive and other committees of the board.

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

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

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

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

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

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

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

(v) Action on matters committed by the bylaws or action of the board of directors exclusively to another committee of the board.

(3) The board may designate one or more directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee or for the purposes of action in record form by the committee. In the absence or disqualification of a member and alternate member or members of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not those present constitute a quorum, may unanimously appoint another director to act at the meeting in the place of the absent or disqualified member.

(b) Term.--Each committee of the board shall serve at the pleasure of the board.

(c) Status of committee action.--The term "board of directors" or "board," when used in any provision of this subpart relating to the organization or procedures of or the manner of taking action by the board of directors, shall be construed to include and refer to any executive or other committee of the board. Any provision of this subpart relating or referring to action to be taken by the board of directors or the procedure required therefor shall be satisfied by the taking of corresponding action by a committee of the board of directors to the extent authority to take the action has been delegated to the committee pursuant to this section.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

Cross References. Section 1731 is referred to in section 1103 of this title.

§ 1732. Officers.

(a) General rule.--Every business corporation shall have a president, a secretary and a treasurer, or persons who shall act as such, regardless of the name or title by which they may be designated, elected or appointed and may have such other

officers as it may authorize from time to time. The bylaws may prescribe special qualifications for the officers. The president and secretary shall be natural persons of full age. The treasurer may be a corporation, but if a natural person shall be of full age. Unless otherwise restricted in the bylaws, it shall not be necessary for the officers to be directors. Any number of offices may be held by the same person.

(b) Election, appointment and term of office.--The officers shall be elected or appointed at such time, in such manner and for such terms as may be fixed by or pursuant to the bylaws. Unless otherwise provided by or pursuant to the bylaws, each officer shall hold office for a term of one year and until the officer's successor has been selected and qualified or until the officer's earlier death, resignation or removal.

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

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

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

(f) Authority.--Unless otherwise provided in the bylaws, all officers of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided by or pursuant to the bylaws or, in the absence of controlling provisions in the bylaws, as may be determined by or pursuant to actions of the board of directors.

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

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 1733. Removal of officers and agents.

Any officer or agent of a business corporation may be removed by the board of directors with or without cause. The removal shall be without prejudice to the contract rights, if any, of any person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

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

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

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

(1) One or more other officers or employees of the corporation or an affiliate of the corporation whom the

officer reasonably believes to be reliable and competent in the matters presented.

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

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

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

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

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 1734.

Cross References. Section 1734 is referred to in section 3323 of this title.

§ 1735. Personal liability of officers.

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

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

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

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

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

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

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 1735.

Cross References. Section 1735 is referred to in section 1504 of this title.

SUBCHAPTER D
INDEMNIFICATION

Sec.
1741. Third-party actions.
1742. Derivative and corporate actions.
1743. Mandatory indemnification.
1744. Procedure for effecting indemnification.
1745. Advancing expenses.
1746. Supplementary coverage.
1747. Power to purchase insurance.
1748. Application to surviving or new corporations.
1749. Application to employee benefit plans.
1750. Duration and extent of coverage.

Enactment. Subchapter D was added as Subchapter C December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter D December 19, 1990, P.L.834, No.198, effective immediately.

Cross References. Subchapter D is referred to in sections 522, 1783, 9506 of this title; section 712 of Title 17 (Credit Unions).

§ 1741. Third-party actions.

Unless otherwise restricted in its bylaws, a business corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that he is or was a representative of the corporation, or is or was serving at the request of the corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action or proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner that he reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal proceeding, had reasonable cause to believe that his conduct was unlawful.

Cross References. Section 1741 is referred to in sections 1743, 1744 of this title.

§ 1742. Derivative and corporate actions.

Unless otherwise restricted in its bylaws, a business corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a representative of the corporation or is or was serving at the request of the corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise, against expenses (including

attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of the action if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation. Indemnification shall not be made under this section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the corporation unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the corporation is located or the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses that the court of common pleas or other court deems proper.
(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 amended the section heading.

Cross References. Section 1742 is referred to in sections 1743, 1744 of this title.

§ 1743. Mandatory indemnification.

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

(b) Prospective application.--The limitation of the scope of subsection (a) to a present or former director or officer applies only to acts occurring after January 3, 2023.
(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 1743 is referred to in section 1782 of this title.

§ 1744. Procedure for effecting indemnification.

Unless ordered by a court, any indemnification under section 1741 (relating to third-party actions) or 1742 (relating to derivative and corporate actions) shall be made by the business corporation only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstances because he has met the applicable standard of conduct set forth in those sections. The determination shall be made:

(1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action or proceeding;

(2) if such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or

(3) by the shareholders.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

§ 1745. Advancing expenses.

Expenses (including attorneys' fees) incurred in defending any action or proceeding referred to in this subchapter may be paid by a business corporation in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the representative to repay the

amount if it is ultimately determined that he is not entitled to be indemnified by the corporation as authorized in this subchapter or otherwise. Except as otherwise provided in the bylaws, advancement of expenses shall be authorized by the board of directors. Sections 1728 (relating to interested directors or officers; quorum) and 2538 (relating to approval of transactions with interested shareholders) shall not be applicable to the advancement of expenses under this section. (June 22, 2001, P.L.418, No.34, eff. 60 days)

§ 1746. Supplementary coverage.

(a) General rule.--The indemnification and advancement of expenses provided by, or granted pursuant to, the other sections of this subchapter shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding that office. Section 1728 (relating to interested directors or officers; quorum) and, in the case of a registered corporation, section 2538 (relating to approval of transactions with interested shareholders) shall be applicable to any bylaw, contract or transaction authorized by the directors under this section. A corporation may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this section or otherwise.

(b) When indemnification is not to be made.--Indemnification pursuant to subsection (a) shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness. The articles may not provide for indemnification in the case of willful misconduct or recklessness.

(c) Grounds.--Indemnification pursuant to subsection (a) under any bylaw, agreement, vote of shareholders or directors or otherwise may be granted for any action taken and may be made whether or not the corporation would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the corporation. Such indemnification is declared to be consistent with the public policy of this Commonwealth.

(d) Cross references.--(Deleted by amendment).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 7, 1994, P.L.703, No.106, eff. 60 days)

1994 Amendment. Act 106 amended subsec. (c).

1990 Amendment. Act 198 amended subsecs. (a) and (b) and deleted subsec. (d).

§ 1747. Power to purchase insurance.

Unless otherwise restricted in its bylaws, a business corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a representative of the corporation or is or was serving at the request of the corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against that

liability under the provisions of this subchapter. Such insurance is declared to be consistent with the public policy of this Commonwealth.
(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

§ 1748. Application to surviving or new corporations.

(a) General rule.--Except as provided in subsection (b), for the purposes of this subchapter, references to "the corporation" include all constituent corporations absorbed in a consolidation, merger or division, as well as the surviving or new corporations surviving or resulting therefrom, so that any person who is or was a representative of the constituent, surviving or new corporation, or is or was serving at the request of the constituent, surviving or new corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this subchapter with respect to the surviving or new corporation as he would if he had served the surviving or new corporation in the same capacity.

(b) Divisions.--Notwithstanding subsection (a), the obligations of a dividing corporation to indemnify and advance expenses to its representatives, whether arising under this subchapter or otherwise, may be allocated in a division in the same manner and with the same effect as any other liability of the dividing corporation.
(June 22, 2001, P.L.418, No.34, eff. 60 days)

§ 1749. Application to employee benefit plans.

For purposes of this subchapter:

(1) References to "other enterprises" shall include employee benefit plans and references to "serving at the request of the corporation" shall include any service as a representative of the business corporation that imposes duties on, or involves services by, the representative with respect to an employee benefit plan, its participants or beneficiaries.

(2) Excise taxes assessed on a person with respect to an employee benefit plan pursuant to applicable law shall be deemed "fines."

(3) Action with respect to an employee benefit plan taken or omitted in good faith by a representative of the corporation in a manner he reasonably believed to be in the interest of the participants and beneficiaries of the plan shall be deemed to be action in a manner that is not opposed to the best interests of the corporation.

§ 1750. Duration and extent of coverage.

The indemnification and advancement of expenses provided by, or granted pursuant to, this subchapter shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a representative of the corporation and shall inure to the benefit of the heirs and personal representative of that person. A right to indemnification or to advancement of expenses arising under a provision of the articles or bylaws may not be eliminated or impaired by an amendment to or repeal of the provision after the occurrence of an act that is the subject of the threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of the act explicitly authorizes the elimination or impairment after an act has occurred.
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

SUBCHAPTER E
SHAREHOLDERS

Sec.
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Enactment. Subchapter E was added as Subchapter D December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter E December 19, 1990, P.L.834, No.198, effective immediately.

§ 1755. Time of holding meetings of shareholders.

(a) Regular meetings.--The bylaws of a business corporation may provide for the number and the time of meetings of shareholders. Except as otherwise provided in the articles, at least one meeting of the shareholders shall be held in each calendar year for the election of directors at such time as shall be provided in or fixed pursuant to authority granted by the bylaws. Failure to hold the annual or other regular meeting at the designated time shall not work a dissolution of the corporation or affect otherwise valid corporate acts. If the annual or other regular meeting is not called and held within six months after the designated time, any shareholder may call the meeting at any time thereafter.

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

(1) by the board of directors;

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

(3) by such officers or other persons as may be provided in the bylaws; or

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

(b.1) Duties of secretary.--At any time, upon written request of any person who has called a special meeting, it shall be the duty of the secretary to fix the time of the meeting which, if the meeting is called pursuant to a statutory right, shall be held within any period specified by this subpart or, if no period is specified, not more than 60 days after the receipt of the request. If the secretary neglects or refuses to fix the time of the meeting, the person or persons calling the meeting may do so. See sections 2521 (relating to call of special meetings of shareholders) and 2565(a) (relating to procedure for establishing voting rights of control shares).

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

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

(e) Cross reference.--See section 1106(b)(4) (relating to uniform application of subpart).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b) and (c), added subsec. (b.1), relettered former subsec. (d) to subsec. (e) and added present subsec. (d).

1990 Amendment. Act 198 amended subsec. (a) and added subsec. (d).

Cross References. Section 1755 is referred to in sections 1106, 1509, 2565 of this title.

§ 1756. Quorum.

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

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

(i) the presence of shareholders entitled to cast at least a majority of the votes that all shareholders are entitled to cast on the matter; and

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

(2) The shareholders present at a duly organized meeting can continue to do business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

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

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

(b) Exceptions.--Unless otherwise provided in a bylaw adopted by the shareholders, those shareholders entitled to vote who attend a meeting of shareholders:

(1) At which directors are to be elected that has been previously adjourned for lack of a quorum, although less than a quorum as fixed in this section or in the bylaws, shall nevertheless constitute a quorum for the purpose of electing directors.

(2) That has been previously adjourned for one or more periods aggregating at least 15 days because of an absence of a quorum, although less than a quorum as fixed in this section or in the bylaws, shall nevertheless constitute a quorum for the purpose of acting upon any matter set forth in the notice of the meeting if the notice states that those shareholders who attend the adjourned meeting shall nevertheless constitute a quorum for the purpose of acting upon the matter.

(c) Cross references.--See sections 2523 (relating to quorum at shareholder meetings) and 3134 (relating to quorum at shareholder or member meetings).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a)(1), (3) and (4).

1992 Amendment. Act 169 amended subsec. (b).

1990 Amendment. Act 198 amended subsec. (c).

Cross References. Section 1756 is referred to in sections 1504, 2523, 3134 of this title.

§ 1757. Action by shareholders.

(a) General rule.--Except as otherwise provided in this title or in a bylaw adopted by the shareholders, whenever any corporate action is to be taken by vote of the shareholders of a business corporation, it shall be authorized upon receiving the affirmative vote of a majority of the votes cast by all shareholders entitled to vote thereon and, if any shareholders are entitled to vote thereon as a class, upon receiving the affirmative vote of a majority of the votes cast by the shareholders entitled to vote as a class.

(b) Changes in required vote.--Whenever a provision of this title requires a specified number or percentage of votes of shareholders or of a class of shareholders for the taking of any action, a business corporation may prescribe in a bylaw adopted by the shareholders that a higher number or percentage of votes shall be required for the action. See sections 1504(d) (relating to amendment of voting provisions) and 1914(e) (relating to amendment of voting provisions).

(c) Expenses.--Unless otherwise restricted in the articles, the corporation shall pay the reasonable expenses of solicitation of votes, proxies or consents of shareholders by or on behalf of the board of directors or its nominees for election to the board, including solicitation by professional proxy solicitors and otherwise, and may pay the reasonable expenses of a solicitation by or on behalf of other persons.

(d) Cross reference.--See section 321 (relating to approval by business corporation).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsecs. (a) and (b) and added subsec. (d).

Cross References. Section 1757 is referred to in sections 321, 1504 of this title.

§ 1758. Voting rights of shareholders.

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

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

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

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

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

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

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

(c) Cumulative voting.--

(1) Except as otherwise provided in paragraph (2) or in the articles, in each election of directors every shareholder entitled to vote shall have the right to multiply the number of votes to which he may be entitled by the total number of directors to be elected in the same election by the holders of the class or classes of shares of which his shares are a part and he may cast the whole number of his votes for one candidate or he may distribute them among any two or more candidates.

(2) The shareholders of a corporation not incorporated under the Business Corporation Law of 1933 or this subpart, the shareholders of which were not entitled to cumulate their votes for the election of directors at the date the corporation became subject to the provisions of the Business Corporation Law of 1933 or became or becomes subject to the provisions of this subpart, shall be entitled so to cumulate

their votes only if and to the extent its articles so provide.

(d) Redeemable shares.--Unless otherwise provided in the articles, redeemable shares that have been called for redemption shall not be entitled to vote on any matter and shall not be deemed outstanding shares after written notice has been mailed to holders thereof that the shares have been called for redemption and that a sum sufficient to redeem the shares has been deposited with a specified financial institution with irrevocable instruction and authority to pay the redemption price to the holders of the shares on the redemption date, in the case of uncertificated shares, or upon surrender of certificates therefor in the case of certificated shares, and the sum has been so deposited.

(e) Advance notice of nominations and other business.--If the bylaws provide a fair and reasonable procedure for the nomination of candidates for election as directors, only candidates who have been duly nominated in accordance therewith shall be eligible for election. If the bylaws impose a fair and reasonable requirement of advance notice of proposals to be made by a shareholder at the annual meeting of the shareholders, only proposals for which advance notice has been properly given may be acted upon at the meeting.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (b).

2001 Amendment. Act 34 amended subsec. (b) and added subsec. (e).

Cross References. Section 1758 is referred to in sections 1106, 1708, 1725, 2530 of this title.

§ 1759. Voting and other action by proxy.

(a) General rule.--

(1) Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent to corporate action without a meeting may authorize another person to act for him by proxy.

(2) The vote or other action on behalf of a shareholder at a meeting of shareholders, or the expression of consent or dissent to corporate action, by a proxy of a shareholder shall constitute the vote or action by, or consent or dissent of the shareholder for the purposes of this subpart.

(3) Where two or more proxies of a shareholder are present, the corporation shall, unless otherwise expressly provided in the proxy, accept as the vote or other action of all shares represented thereby the vote cast or other action taken by a majority of them and, if a majority of the proxies cannot agree whether the shares represented shall be voted or upon the manner of voting the shares or taking the other action, the voting of the shares or right to take other action shall be divided equally among those persons.

(b) Execution and filing.--Every proxy shall be executed or authenticated by the shareholder or by his duly authorized attorney-in-fact and filed with or transmitted to the secretary of the corporation or its designated agent. A shareholder or his duly authorized attorney-in-fact may execute or authenticate a writing or transmit an electronic message authorizing another person to act for him by proxy. A telegram, telex, cablegram, datagram, e-mail, Internet communication or other means of electronic transmission from a shareholder or attorney-in-fact,

or a photographic, facsimile or similar reproduction of a writing executed by a shareholder or attorney-in-fact:

(1) may be treated as properly executed or authenticated for purposes of this subsection; and

(2) shall be so treated if it sets forth or utilizes a confidential and unique identification number or other mark furnished by the corporation to the shareholder for the purposes of a particular meeting or transaction.

(c) Revocation.--A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the corporation or its designated agent in writing or by electronic transmission. An unrevoked proxy shall not be valid after three years from the date of its signature, authentication or transmission unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, notice in record form of the death or incapacity is given to the secretary of the corporation or its designated agent.

(d) Proxy coupled with an interest.--As used in this section, the term "proxy coupled with an interest" includes:

(1) a vote pooling or similar arrangement among shareholders;

(2) an agreement permitted by section 1768(b) (relating to other agreements); and

(3) an unrevoked proxy in favor of an existing or potential creditor of a shareholder.

A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the share itself or an interest in the corporation generally.

(e) Cross references.--See sections 1702 (relating to manner of giving notice) and 3135 (relating to proxies of members of mutual insurance companies).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment . Act 67 amended subsecs. (a), (c) and (e).

2001 Amendment. Act 34 amended subsecs. (b) and (c).

1990 Amendment. Act 198 amended subsec. (b), relettered part of subsec. (b) to subsec. (c), relettered former subsec. (c) to subsec. (d) and added subsec. (e).

§ 1760. Voting by fiduciaries and pledgees.

Shares of a business corporation standing in the name of a trustee or other fiduciary and shares held by an assignee for the benefit of creditors or by a receiver may be voted by the trustee, fiduciary, assignee or receiver. A shareholder whose shares are pledged shall be entitled to vote the shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee, but nothing in this section shall affect the validity of a proxy given to a pledgee or nominee.

§ 1761. Voting by joint holders of shares.

(a) General rule.--Where shares of a business corporation are held jointly or as tenants in common by two or more persons, as fiduciaries or otherwise:

(1) if only one or more of such persons is present in person or by proxy, all of the shares standing in the names of such persons shall be deemed to be represented for the purpose of determining a quorum and the corporation shall

accept as the vote of all the shares the vote cast by him or a majority of them; and

(2) if the persons are equally divided upon whether the shares held by them shall be voted or upon the manner of voting the shares, the voting of the shares shall be divided equally among the persons without prejudice to the rights of the joint owners or the beneficial owners thereof among themselves.

(b) Exception.--If there has been filed with the secretary of the corporation a copy, certified by an attorney at law to be correct, of the relevant portions of the agreement under which the shares are held or the instrument by which the trust or estate was created or the order of court appointing them or of an order of court directing the voting of the shares, the persons specified as having such voting power in the latest document so filed, and only those persons, shall be entitled to vote the shares but only in accordance therewith.

§ 1762. Voting by corporations.

(a) Voting in business corporation matters.--Any other domestic or foreign corporation for profit or not-for-profit that is a shareholder of a business corporation may vote by any of its officers or agents, or by proxy appointed by any officer or agent, unless some other person, by resolution of the board of directors of the other corporation or a provision of its articles or bylaws, a copy of which resolution or provision certified to be correct by one of its officers has been filed with the secretary of the business corporation, is appointed its general or special proxy in which case that person shall be entitled to vote the shares.

(b) Voting by business corporations.--Shares of or memberships in a domestic or foreign corporation for profit or not-for-profit other than a business corporation, standing in the name of a shareholder or member that is a business corporation, may be voted by the persons and in the manner provided for in the case of business corporations by subsection (a) unless the laws of the jurisdiction in which the issuer of the shares or memberships is incorporated require the shares or memberships to be voted by some other person or persons or in some other manner in which case, to the extent that those laws are inconsistent herewith, this subsection shall not apply.

(c) Controlled shares.--Shares of a business corporation owned, directly or indirectly, by it and controlled, directly or indirectly, by the board of directors of the corporation, as such, shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares for voting purposes at any given time.

§ 1763. Determination of shareholders of record.

(a) Fixing record date.--Unless otherwise restricted in the bylaws, the board of directors of a business corporation may fix a time prior to the date of any meeting of shareholders as a record date for the determination of the shareholders entitled to notice of the meeting, which time, except in the case of an adjourned or postponed meeting, shall be not more than 90 days prior to the date of the meeting of shareholders. If the board fixes a record date for notice of a meeting, that date shall also be the record date for determining the shareholders entitled to vote at the meeting unless the board determines, at the time it fixes the record date for notice, that a later date on or before the date of the meeting shall be the date for determining the shareholders entitled to vote. Only shareholders of record on the date fixed shall be so entitled notwithstanding any transfer of shares on the books of the corporation after

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

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

(1) The close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held shall be the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders.

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

(i) express consent or dissent to corporate action without a meeting, when prior action by the board of directors is not necessary;

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

(iii) propose an amendment of the articles.

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

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

(1) The classification of shareholder who may certify.

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

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

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

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

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 1763 is referred to in sections 1508, 1509, 1571, 2565, 4102 of this title.

§ 1764. Voting lists.

(a) General rule.--The officer or agent having charge of the share register of a business corporation shall make a complete list of the shareholders entitled to vote at any meeting of shareholders, arranged in alphabetical order, with the address of and the number of shares held by each. This section does not require the corporation to include electronic mail addresses or other electronic contact information on the list. The list shall be produced and kept open at the time and place of each meeting of shareholders and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. A shareholder and any agent or attorney who inspects the list may use the information on the list only for purposes related to the meeting and must keep the information on the list confidential.

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

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

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

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 1765. Judges of election.

(a) General rule.--Unless otherwise provided in a bylaw adopted by the shareholders:

(1) Appointment.--In advance of any meeting of shareholders of a business corporation, the board of directors may appoint judges of election, who need not be shareholders, to act at the meeting or any adjournment thereof. If judges of election are not so appointed, the presiding officer of the meeting may, and on the request of any shareholder shall, appoint judges of election at the meeting. The number of judges shall be one or three. A person who is a candidate for office to be filled at the meeting shall not act as a judge.

(2) Vacancies.--In case any person appointed as a judge fails to appear or fails or refuses to act, the vacancy may be filled by appointment made by the board of directors in advance of the convening of the meeting or at the meeting by the presiding officer thereof.

(3) Duties.--The judges of election shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the authenticity, validity and effect of proxies, receive votes or ballots, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all shareholders. The judges of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three judges of election, the decision, act or certificate of a majority shall be effective in all respects as the decision, act or certificate of all.

(4) Report.--On request of the presiding officer of the meeting, or of any shareholder, the judges shall make a report in writing of any challenge or question or matter determined by them, and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated therein.

(b) Cross reference.--See section 3136 (relating to judges of election).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

Cross References. Section 1765 is referred to in sections 1504, 3136 of this title.

§ 1766. Consent of shareholders in lieu of meeting.

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

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

(c) Effectiveness of action by partial consent.--An action taken pursuant to subsection (b) to approve a transaction under Chapter 3 (relating to entity transactions) shall not become effective until after at least ten days' notice of the action has been given to each shareholder entitled to vote thereon who has not consented thereto. Any other action may become effective immediately, but prompt notice that the action has been taken shall be given to each shareholder entitled to vote thereon that has not consented. Notice under this subsection must include the information that a notice of a meeting of shareholders seeking approval of the action would have been required to contain. This subsection may not be relaxed by any provision of the articles.

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

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

(f) Cross references.--See sections 1702 (relating to manner of giving notice) and 2524 (relating to consent of shareholders in lieu of meeting).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 1766 is referred to in section 1504 of this title.

§ 1767. Appointment of custodian of corporation on deadlock or other cause.

(a) General rule.--Except as provided in subsection (b), upon application of any shareholder, the court may appoint one or more persons to be custodians of and for any business corporation when it is made to appear that:

(1) at any meeting for the election of directors, the shareholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon the qualification of their successors;

(2) in the case of a closely held corporation, the directors or those in control of the corporation have acted illegally, oppressively or fraudulently toward one or more holders or owners of 5% or more of the outstanding shares of any class of the corporation in their capacities as shareholders, directors, officers or employees; or

(3) the conditions specified in section 1981(a)(1), (2) or (3) (relating to proceedings upon application of shareholder or director), other than that it is beneficial to the interests of the shareholders that the corporation be wound up and dissolved, exist with respect to the corporation.

(b) Exceptions.--

(1) The court shall not appoint a custodian to resolve a deadlock if the shareholders by agreement or otherwise have provided for the appointment of a provisional director or other means for the resolution of the deadlock, but the court shall enforce the remedy so provided if appropriate.

(2) Subsection (a)(2) shall not be applicable:

(i) to a corporation that has at the time a person holding or owning 5% or more of the outstanding shares of any class of the corporation that is:

(A) a registered corporation or a foreign corporation for profit described in section 4102(b) (relating to registered corporation exclusions); or

(B) a person (other than a natural person) that is engaged principally in the business of making equity investments in other businesses; or

(ii) with respect to any matter involving a person described in subparagraph (i) that is or was a holder or owner of shares of the corporation.

(c) Power and title of custodian.--A custodian appointed under this section shall have all the power and title of a receiver appointed under Subchapter G of Chapter 19 (relating to involuntary liquidation and dissolution), but the authority of the custodian shall be to continue the business of the corporation and not to liquidate its affairs and distribute its assets except when the court shall otherwise order.

(d) Contrary provisions of the articles.--

(1) The articles may not contain a provision that varies or is otherwise inconsistent with subsection (b)(2).

(2) A provision of the articles that varies or is otherwise inconsistent with any provision of this section shall not be effective unless it is included in the original articles or in an amendment adopted by the affirmative vote of all shareholders of the corporation whether or not otherwise entitled to vote thereon.

(e) Cross references.--See sections 2525 (relating to appointment of custodian) and 3137 (relating to appointment of custodian).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsecs. (a) intro. par. and (3) and (b) and added subsecs. (d) and (e).

Cross References. Section 1767 is referred to in sections 2333, 2334, 2525, 3137 of this title.

§ 1768. Voting trusts and other agreements among shareholders.

(a) Voting trusts.--One or more shareholders of any business corporation may, by agreement in writing, transfer all or part of their shares to any person for the purpose of vesting in the transferee voting or other rights pertaining to the shares upon the terms and conditions and for the period stated in the agreement.

(b) Other agreements.--Agreements among shareholders, or among or between the corporation and one or more shareholders, regarding the voting of their shares shall be valid and enforceable in accordance with their terms.

Cross References. Section 1768 is referred to in sections 1759, 9501 of this title.

§ 1769. Minors as securityholders.

(a) General rule.--A business corporation may treat a minor who holds shares or obligations of the corporation as having capacity to receive and to empower others to receive dividends, interest, principal and other payments or distributions, to vote or express consent or dissent and to make elections and exercise rights relating to such shares or obligations unless, in the case of payments or distributions on shares, the corporate officer responsible for maintaining the list of shareholders or the transfer agent of the corporation or, in the case of payments or distributions on obligations, the treasurer or paying officer or agent has received written notice that the holder is a minor.

(b) Disaffirmance limited.--A minor who holds shares or obligations of a corporation and who has received or who has empowered others to receive dividends, interest, principal and other payments or distributions, voted or expressed consent or dissent or made an election or exercised a right relating to the shares or obligations shall have no right thereafter to disaffirm or avoid, as against the corporation, any such act on his part.

(c) Other statutes unaffected.--This section does not limit any other statute that authorizes any corporation to deal with a minor or limits the right of a minor to disaffirm his acts.

§ 1770. Interested shareholders (Repealed).

1990 Repeal. Section 1770 was repealed December 19, 1990, P.L.834, No.198, effective immediately.

SUBCHAPTER F
DERIVATIVE ACTIONS

Sec.
1781. Derivative action.
1782. Eligible shareholder plaintiffs and security for costs.
1783. Special litigation committee.
1784. Proceeds and expenses.

Enactment. Subchapter F was added as Subchapter E December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter F December 19, 1990, P.L.834, No.198, effective immediately.

Cross References. Subchapter F is referred to in sections 523, 1726, 3325 of this title.

§ 1781. Derivative action.

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

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

(i) (Deleted by amendment).

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

(A) the board determines that:

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

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

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

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

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

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

(2) demand is excused under subsection (b);

(3) the action is maintained for the limited purpose of seeking court review under section 1783(f); or

(4) the court has allowed the action to continue under the control of the plaintiff under section 1783(f)(3)(ii).

(b) Prior demand excused.--

(1) A demand under subsection (a)(1) is excused only if the plaintiff makes a specific showing that immediate and irreparable harm to the business corporation would otherwise result.

(2) If demand is excused under paragraph (1), demand shall be made promptly upon commencement of the action.

(c) Contents of demand.--A demand under this section must be in record form and give notice with reasonable specificity of:

(1) the material facts relied upon to support each of the claims made in the demand against each proposed defendant; and

(2) in the case of a derivative action commenced by a shareholder, the basis on which the person making the demand has standing under section 1782.

(d) Additional claims.--If a derivative action is commenced after a demand has been made under this section and includes a claim that was not fairly subsumed under the demand, a new demand must be made with respect to that claim. The new demand shall not relate back to the date of the original demand for purposes of subsection (e).

(e) Statute of limitations.--The making of a demand tolls any applicable statute of limitations with respect to a claim asserted in the demand until the earlier of the date:

(1) the plaintiff making the demand is notified either:

(i) that the board of directors has decided not to bring an action and not to appoint a special litigation committee; or

(ii) of a determination under section 1783(e) after the appointment of a special litigation committee under section 1783; or

(2) the plaintiff commences an action asserting the claim.

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

(g) Exception.--This subchapter does not apply to an action brought by a holder of an equity security of a business corporation under Subchapter H of Chapter 25 (relating to disgorgement by certain controlling shareholders following attempts to acquire control).

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days; July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (a)(1).

2022 Amendment. Act 122 amended subsecs. (a)(1) and (c) and added subsec. (g).

§ 1782. Eligible shareholder plaintiffs and security for costs.

(a) General rule.--Except as provided in subsection (b), in any action or proceeding brought by one or more shareholders of a business corporation to enforce rights that the plaintiff claims could be, but have not been, asserted by the corporation, each plaintiff has standing to commence and maintain the derivative action only if the plaintiff:

(1) was a shareholder of the corporation or owner of a beneficial interest in the shares at the time of the transaction or conduct of which the plaintiff complains, or that the plaintiff's shares or beneficial interest in the shares devolved upon the plaintiff by operation of law from a person who was a shareholder or owner of a beneficial interest in the shares at that time; and

(2) continues to hold the shares until the time of judgment, unless the failure to do so is the result of corporate action that:

(i) was done merely to eliminate derivative claims; or

(ii) has the effect of a reorganization that does not affect the plaintiff's ownership of the business enterprise.

(b) Exception.--Any shareholder or person beneficially interested in shares of the corporation who, except for the provisions of subsection (a), would be entitled to maintain the action or proceeding and who does not meet such requirements may, nevertheless in the discretion of the court, be allowed

to maintain the action or proceeding on preliminary showing to the court, by application and upon such verified statements and depositions as may be required by the court, that there is a strong prima facie case in favor of the claim asserted on behalf of the corporation and that without the action serious injustice will result.

(c) Security for costs.--In any action or proceeding instituted or maintained by holders or owners of less than 5% of the outstanding shares of any class of the corporation, unless the shares held or owned by the holders or owners have an aggregate fair market value in excess of $200,000, the corporation in whose right the action or proceeding is brought shall be entitled at any stage of the proceedings to require the plaintiffs to give security for the reasonable expenses, including attorneys' fees, that may be incurred by the corporation in connection therewith or for which it may become liable pursuant to section 1743 (relating to mandatory indemnification) (but only insofar as relates to actions by or in the right of the corporation) to which security the corporation shall have recourse in such amount as the court determines upon the termination of the action or proceeding. The amount of security may, from time to time, be increased or decreased in the discretion of the court upon showing that the security provided has or is likely to become inadequate or excessive. The security may be denied or limited by the court if the court finds after an evidentiary hearing that undue hardship on plaintiffs and serious injustice would result.

(d) Failure to maintain ownership.--If a plaintiff loses the right to maintain a derivative action under subsection (a)(2), the court may entertain a motion by the corporation to substitute the corporation as the named plaintiff.

(e) Cross reference.--See section 4146 (relating to provisions applicable to all foreign corporations).

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a), relettered former subsec. (d) to subsec. (e) and added present subsec. (d).

2016 Amendment. Act 170 amended the section heading and subsec. (c).

Suspension by Court Rule. Section 1782(a) and (b) were suspended by Pennsylvania Rule of Civil Procedure No. 1506(e), amended April 12, 1999, insofar as inconsistent with Rule No. 1506 relating to stockholder's derivative action. Rule No. 1506(e) further provided that section 1782(c) and (d) shall not be deemed suspended or affected by Rule No. 1506.

Cross References. Section 1782 is referred to in sections 1781, 4146 of this title.

§ 1783. Special litigation committee.

(a) General rule.--If a business corporation or the board of directors receives a demand to bring an action to enforce a right of the corporation, or if a derivative action is commenced before demand has been made on the corporation or the board, the board may appoint a special litigation committee to investigate the claims asserted in the demand or action and to determine on behalf of the corporation or recommend to the board whether pursuing any of the claims asserted is in the best interests of the corporation. The corporation must deliver a notice in record form to the person making the demand, or to the plaintiff if a derivative action has been commenced, promptly after the appointment of a committee under this section

notifying the person making the demand or the plaintiff that a committee has been appointed and identifying by name the members of the committee. A committee may not be appointed under this section if every shareholder of the corporation is also a director of the corporation.

(b) Discovery stay.--If the board of directors appoints a special litigation committee and an action is commenced before a determination has been made under subsection (e):

(1) On motion by the business corporation, or the committee made in the name of the corporation, the court shall stay discovery for the time reasonably necessary to permit the committee to complete its investigation, except for good cause shown.

(2) The time for the defendants to plead shall be tolled until the process provided for under subsection (f) has been completed.

(c) Composition of committee.--A special litigation committee shall be composed of two or more individuals who:

(1) are not interested in the claims asserted in the demand or action;

(2) are capable as a group of objective judgment in the circumstances; and

(3) may, but need not, be shareholders or directors.

(c.1) Committee members who are not directors.--A member of a special litigation committee who is not a director is subject, when acting as a member of the committee, to the liabilities imposed, and entitled to the rights and immunities conferred, under Subchapters B (relating to fiduciary duty) and D (relating to indemnification) and other provisions of law upon directors of a corporation.

(d) Appointment of committee.--A special litigation committee may be appointed:

(1) by a majority of the directors not named as actual or potential parties in the demand or action; or

(2) if all the directors are named as actual or potential parties in the demand or action, by a majority of the directors so named.

(e) Determination.--After appropriate investigation by a special litigation committee, the committee may determine, or the committee may recommend to the board of directors that the board determine, that it is in the best interests of the business corporation that:

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

(2) an action based on some or all of the claims asserted in the demand be brought by the corporation;

(3) some or all of the claims asserted in the demand be settled on terms determined or recommended by the committee;

(4) an action not be brought based on any of the claims asserted in the demand;

(5) an action already commenced continue under the control of:

(i) the plaintiff;

(ii) the corporation; or

(iii) the committee;

(6) some or all the claims asserted in an action already commenced be settled on terms determined or recommended by the committee; or

(7) an action already commenced be dismissed.

(f) Court review and action.--If a special litigation committee is appointed and a derivative action is commenced either before or after the committee makes a determination under subsection (e) or the board of directors determines under subsection (e) to accept the recommendation of the committee:

(1) The business corporation or the committee shall file with the court after a determination is made under subsection (e) a statement of the determination and a report of the committee supporting the determination. The corporation or the committee shall serve each party with a copy of the determination and report. If the corporation or the committee moves to file the report under seal, the report shall be served on the parties subject to an appropriate stipulation agreed to by the parties or a protective order issued by the court.

(2) The corporation or the committee shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).

(3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made its determination or recommendation in good faith, independently and with reasonable care. The plaintiff has the burden of proving that the committee did not meet those qualifications or act in the required manner. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee or the board. Otherwise, the court shall:

(i) dissolve any stay of discovery entered under subsection (b);

(ii) allow the action to continue under the control of the plaintiff; and

(iii) permit the defendants to file preliminary objections, other appropriate pleadings and motions.

(g) Certain provisions of articles ineffective.--The provisions of this section may not be varied by the articles.

(h) Interest of a defendant.--The fact that a person is named as a defendant does not make the person interested in the claims asserted in a demand or action for purposes of subsection (c)(1) if the claims against the person:

(1) are based only on an allegation that the person approved of or acquiesced in the transaction or conduct that is the subject of the claims; and

(2) do not otherwise allege with particularity facts that, if true, raise a significant prospect that the person would be adjudged liable.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 1783 is referred to in section 1781 of this title.

§ 1784. Proceeds and expenses.

(a) Proceeds.--Except as provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong to the business corporation and not to the plaintiff; and

(2) if the plaintiff or its counsel receives any proceeds, the proceeds shall be remitted immediately to the corporation.

(b) Expenses.--If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the business corporation, but in no event shall the attorney fees awarded exceed a reasonable proportion of the value of the relief, including nonpecuniary relief, obtained by the plaintiff for the corporation.

(c) Certain provisions of articles ineffective.--This section may not be relaxed by any provision of the articles.
(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 added section 1784.

SUBCHAPTER G
JUDICIAL SUPERVISION OF CORPORATE ACTION

Sec.
1791. Corporate action subject to subchapter.
1792. Proceedings prior to corporate action.
1793. Review of contested corporate action.

Enactment. Subchapter G was added as Subchapter F December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter G December 19, 1990, P.L.834, No.198, effective immediately.

Cross References. Subchapter G is referred to in section 3138 of this title.

§ 1791. Corporate action subject to subchapter.

(a) General rule.--This subchapter shall apply to and the term "corporate action" in this subchapter shall mean any of the following actions:

(1) The election, appointment, designation or other selection and the suspension or removal of directors or officers of a business corporation.

(2) The taking of any action on any matter that is required under this subpart or under any other provision of law to be, or that under the bylaws may be, submitted for action to the shareholders, directors or officers of a business corporation.

(b) Cross reference.--See section 3138 (relating to judicial supervision of corporate action).
(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

Cross References. Section 1791 is referred to in section 4102 of this title.

§ 1792. Proceedings prior to corporate action.

(a) General rule.--Where under applicable law or the bylaws of a business corporation there has been a failure to hold a meeting to take corporate action and the failure has continued for 30 days after the date designated or appropriate therefor, the court may summarily order a meeting to be held upon the application of any person entitled, either alone or in conjunction with other persons similarly seeking relief under this section, to call a meeting to consider the corporate action in issue.

(b) Conduct of meeting.--The court may determine the right to vote at the meeting of persons claiming that right, may appoint a master to hold the meeting under such orders and

powers as the court deems proper and may take such action as may be required to give due notice of the meeting and to convene and conduct the meeting in the interests of justice.

(c) Cross reference.--See section 3138 (relating to judicial supervision of corporate action).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (c).

Cross References. Section 1792 is referred to in section 1793 of this title.

§ 1793. Review of contested corporate action.

(a) General rule.--Upon application of any person aggrieved by any corporate action, the court may hear and determine the validity of the corporate action.

(b) Powers and procedures.--The court may make such orders in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation and other relevant evidence that may relate to the issue. The court shall provide for notice of the pendency of the proceedings under this section to all persons affected thereby. If it is determined that no valid corporate action has been taken, the court may order a meeting to be held in accordance with section 1792 (relating to proceedings prior to corporate action).

(c) Cross reference.--See section 3138 (relating to judicial supervision of corporate action).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (c).

CHAPTER 19
FUNDAMENTAL CHANGES

Subchapter

A. Preliminary Provisions
B. Amendment of Articles
C. Merger Liabilities and Sale of Assets
D. Division (Repealed)
E. Conversion (Repealed)
F. Voluntary Dissolution and Winding Up
G. Involuntary Liquidation and Dissolution
H. Postdissolution Provision for Liabilities

Enactment. Chapter 19 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 19 is referred to in sections 1103, 1306, 1502, 1704, 2336 of this title.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

1901. Omission of certain provisions from filed plans (Deleted by amendment).
1902. Statement of termination.
1903. Bankruptcy or insolvency proceedings.
1904. De facto transaction doctrine abolished.
1905. Proposal of fundamental transactions.
1906. Special treatment of holders of shares of same class or series.

1907. Purpose of fundamental transactions.
1908. Submission of matters to shareholders.

§ 1901. Omission of certain provisions from filed plans (Deleted by amendment).

2014 Amendment. Section 1901 was deleted by amendment October 22, 2014, P.L.2640, No.172 effective July 1, 2015.

§ 1902. Statement of termination.

(a) General rule.--If articles of amendment have been filed in the department prior to the termination of the amendment pursuant to provisions therefor set forth in the resolution or petition relating to the amendment, the termination shall not be effective unless the corporation shall, prior to the time the amendment is to become effective, file in the department a statement of termination. The statement of termination shall be signed by the corporation that filed the amendment and shall set forth:

(1) A copy of the articles of amendment.

(2) A statement that the amendment has been terminated in accordance with the provisions therefor set forth therein.

(b) Cross references.--See sections 134 (relating to docketing statement) and 138 (relating to statement of correction).

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (a).

Cross References. Section 1902 is referred to in sections 1522, 1914 of this title.

§ 1903. Bankruptcy or insolvency proceedings.

(a) General rule.--Whenever a business corporation is insolvent or in financial difficulty, the board of directors may, by resolution and without the consent of the shareholders, authorize and designate the officers of the corporation to execute a deed of assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or file an answer consenting to the appointment of a receiver upon a complaint in the nature of an equity action filed by creditors or shareholders, or file an answer to an involuntary petition in bankruptcy admitting the willingness of the corporation to have relief ordered against it.

(b) Bankruptcy proceedings.--A business corporation may participate in a case and proceedings under and in the manner provided by the Bankruptcy Code (11 U.S.C. § 101 et seq.) notwithstanding any contrary provision of its articles or bylaws or this subpart, other than section 103 (relating to subordination of title to regulatory laws). The corporation shall have full power and authority to put into effect and carry out a plan of reorganization and the decrees and orders of the court or judge, and may take any proceeding and do any act provided in the plan or directed by such decrees and orders, without further action by its directors or shareholders. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such plan or decrees or orders, by designated officers of the corporation or by a trustee appointed by the court or judge, with the effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation. Without limiting the generality or effect of the foregoing, the corporation may:

(1) alter, amend or repeal its bylaws;

(2) constitute or reconstitute and classify or reclassify its board of directors and name, constitute or

appoint directors and officers in place of or in addition to all or some of the directors or officers then in office;

(3) amend its articles of incorporation, including, without limitation, for the purpose of:

(i) canceling or modifying the relative rights or preferences of any or all authorized classes or series of shares, whether or not any shares thereof are outstanding;

(ii) providing that any of Subchapter E (relating to control transactions), F (relating to business combinations), G (relating to control-share acquisitions) or H (relating to disgorgement by certain controlling shareholders following attempts to acquire control) of Chapter 25 shall not be applicable to the corporation, whether or not the amendment is adopted in conformance with the procedures specified in those subchapters, which amendment may take effect immediately without regard to any passage of time otherwise required by those subchapters; or

(iii) otherwise altering, amending or repealing any provision of the articles or bylaws notwithstanding any provision therein that the articles or bylaws may be altered, amended or repealed only under certain conditions or only upon receiving the approval of a specified number or percentage of votes of shareholders or of a class of shareholders;

(4) be dissolved, transfer all or part of its assets, merge, consolidate, participate in a share exchange, divide or convert to a nonprofit corporation, as permitted by this chapter, but in any such case a shareholder shall not be entitled to dissenters rights with respect to his shares;

(5) authorize and fix the terms, manner and conditions of the issuance of obligations, whether or not convertible into shares of any class or series, or bearing warrants or other evidence of optional rights to purchase or subscribe for shares of any class or series; or

(6) lease its property and franchises to any person.

(c) Cross reference.--See the definition of "officer" in section 1103 (relating to definitions).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

§ 1904. De facto transaction doctrine abolished.

The doctrine of de facto mergers, consolidations and other fundamental transactions is abolished and the rules laid down by Bloch v. Baldwin Locomotive Works, 75 Pa. D. & C. 24 (C.P. Del. Cty. 1950), and Marks v. The Autocar Co., 153 F.Supp. 768 (E.D. Pa. 1954), and similar cases are overruled. A transaction that in form satisfies the requirements of this title may be challenged by reason of its substance only to the extent permitted by section 1105 (relating to restriction on equitable relief).

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

§ 1905. Proposal of fundamental transactions.

Where any provision of this chapter requires that an amendment of the articles, a plan of asset transfer or the dissolution of a business corporation be proposed or approved by action of the board of directors, that requirement shall be construed to authorize and be satisfied by the agreement or consent in record form of all of the shareholders of the corporation entitled to vote thereon.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 1906. Special treatment of holders of shares of same class or series.

(a) General rule.--Except as otherwise restricted in the articles, a plan may contain a provision classifying the holders of shares of a class or series into one or more separate groups by reference to any facts or circumstances that are not manifestly unreasonable and providing mandatory treatment for shares of the class or series held by particular shareholders or groups of shareholders that differs materially from the treatment accorded other shareholders or groups of shareholders holding shares of the same class or series (including a provision modifying or rescinding rights previously created under this section) if:

(1) (i) the plan is approved by a majority of the votes cast by any class or series of shares any of the shares of which are so classified into groups, whether or not such class or series would otherwise be entitled to vote on the plan; and

(ii) the provision voted on specifically enumerates the type and extent of the special treatment authorized; or

(2) under all the facts and circumstances, a court of competent jurisdiction finds such special treatment is undertaken in good faith, after reasonable deliberation and is in the best interest of the corporation.

(b) Statutory voting rights upon special treatment.--Except as provided in subsection (c), if a plan contains a provision for special treatment, each group of holders of any outstanding shares of a class or series who are to receive the same special treatment under the plan shall be entitled to vote as a special class in respect to the plan regardless of any limitations stated in the articles or bylaws on the voting rights of any class or series.

(c) Dissenters rights upon special treatment.--If any plan contains a provision for special treatment without requiring for the adoption of the plan the statutory class vote required by subsection (b), the holder of any outstanding shares the statutory class voting rights of which are so denied, who objects to the plan and complies with Subchapter D of Chapter 15 (relating to dissenters rights), shall be entitled to the rights and remedies of dissenting shareholders provided in that subchapter.

(c.1) Determination of groups.--For purposes of applying subsections (a)(1) and (b), the determination of which shareholders are part of each group receiving special treatment shall be made as of the record date for shareholder action on the plan.

(c.2) Notice to shareholders.--A notice to shareholders of a meeting called to act on a plan that provides for special treatment must state that the plan provides for special treatment. The notice must identify the shareholders receiving special treatment unless the notice is accompanied by either a summary of the plan that includes that information or the full text of the plan.

(d) Exceptions.--This section shall not apply to:

(1) (Reserved).

(2) A provision of a plan that offers to all holders of shares of a class or series the same option to elect certain treatment.

(3) A plan that contains an express provision that this section shall not apply or that fails to contain an express provision that this section shall apply.

(4) A provision of a plan that treats all of the holders of a particular class or series of shares differently from the holders of another class or series. A provision of a plan that treats the holders of a class or series of shares differently from the holders of another class or series of shares shall not constitute a violation of section 1521(d) (relating to authorized shares).

(e) Definition.--As used in this section, the term "plan" means:

(1) an amendment of the articles that effects a reclassification of shares, whether or not the amendment is accompanied by a separate plan of reclassification;

(1.1) a plan of asset transfer adopted under section 1932(b) (relating to voluntary transfer of corporate assets); or

(2) a resolution recommending that the corporation dissolve voluntarily adopted under section 1972(a) (relating to proposal of voluntary dissolution).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsecs. (a), (d)(1) and (e) and added subsec. (c.2).

2013 Amendment . Act 67 amended subsec. (d)(3) and added subsec. (c.1).

Cross References. Section 1906 is referred to in sections 1103, 1521, 1571, 1911, 1932, 1972, 2537 of this title.

§ 1907. Purpose of fundamental transactions.

A transaction under this chapter does not require an independent business purpose in order for the transaction to be lawful.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 1907.

§ 1908. Submission of matters to shareholders.

A business corporation may agree, in record form, to submit an amendment or other matter to its shareholders whether or not the board of directors determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the shareholders reject or vote against it, regardless of whether the board of directors changes its recommendation. If a corporation so agrees to submit a matter to its shareholders, the matter is deemed to have been validly adopted by the corporation when it has been approved by the shareholders.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

SUBCHAPTER B
AMENDMENT OF ARTICLES

Sec.

1911. Amendment of articles authorized.
1912. Proposal of amendments.
1913. Notice of meeting of shareholders.
1914. Adoption of amendments.
1915. Articles of amendment.
1916. Filing and effectiveness of articles of amendment.

Cross References. Subchapter B is referred to in sections 321, 1103, 2104, 2105, 2332, 2538, 2704, 2904, 2906, 7104, 7105 of this title.

§ 1911. Amendment of articles authorized.

(a) General rule.--A business corporation, in the manner provided in this subchapter, may from time to time amend its articles for one or more of the following purposes:

(1) To adopt a new name, subject to the restrictions provided in this title.

(2) To modify any provision of the articles relating to its term of existence.

(3) To change, add to or diminish its purposes or to set forth different or additional purposes.

(4) To cancel or otherwise affect the right of holders of the shares of any class or series to receive dividends that have accrued but have not been declared or to otherwise effect a reclassification of or otherwise affect the substantial rights of the holders of any shares, including, without limitation, by providing special treatment of shares held by any shareholder or group of shareholders consistent with section 1906 (relating to special treatment of holders of shares of same class or series).

(5) To restate the articles in their entirety.

(6) In any and as many other respects as desired.

(b) Exceptions.--An amendment adopted under this section shall not amend articles in such a way that as so amended they would not be authorized by this subpart as original articles of incorporation except that:

(1) Restated articles shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), state the address of the current instead of the initial registered office of the corporation in this Commonwealth and need not state the names and addresses of the incorporators.

(2) The corporation shall not be required to revise any other provision of its articles if the provision is valid and operative immediately prior to the delivery of the amendment to the Department of State for filing.

(c) Amendments pursuant to other provisions.--Amendments to the articles authorized pursuant to Chapter 2 (relating to entities generally) or 3 (relating to entity transactions) or set forth in statements or certificates permitted or required to be delivered to the department for filing by section 108 (relating to change in location or status of registered office provided by agent) or 138 (relating to statement of correction) or by this subpart need not be proposed or adopted in the manner provided in this subchapter, except to the extent that the provisions of this subchapter have been incorporated into Chapter 2 or 3 or into the provisions authorizing such statements or certificates.

(d) Cross references.--See sections 224(f) (relating to action on ratification), 321 (relating to approval by business corporation), 1103 (relating to definitions), 1507 (relating to registered office) and 1522(c) (relating to issuance of shares in classes or series; board action).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a)(1) and (b)(2), amended and relettered former subsec. (c) to subsec. (d) and added present subsec. (c).

2013 Amendment. Act 67 amended subsec. (a)(4).

1990 Amendment. Act 198 amended subsec. (a) and added subsec. (c).

Cross References. Section 1911 is referred to in section 2305 of this title.

§ 1912. Proposal of amendments.

(a) General rule.--Every amendment of the articles of a business corporation shall be proposed:

(1) by the adoption by the board of directors of a resolution setting forth the proposed amendment;

(2) unless otherwise provided in the articles, by petition of shareholders entitled to cast at least 10% of the votes that all shareholders are entitled to cast thereon, setting forth the proposed amendment, which petition shall be directed to the board of directors and filed with the secretary of the corporation; or

(3) by action of the board of directors directing the submission of the proposed amendment to the shareholders without the board having adopted the amendment.

(b) Form of amendment.--The resolution or petition shall contain the language of the proposed amendment of the articles:

(1) by setting forth the existing text of the articles or the provision thereof that is proposed to be amended, with brackets around language that is to be deleted and underscoring under language that is to be added or otherwise clearly showing the changes to be made; or

(2) by providing that the articles shall be amended so as to read as therein set forth in full, or that any provision thereof be amended so as to read as therein set forth in full, or that the matter stated in the resolution or petition be added to or stricken from the articles.

(c) Terms of amendment.--The resolution or petition may set forth the manner and basis of reclassifying the shares of the corporation. Any of the terms of a plan of reclassification or other action contained in an amendment may be made dependent upon facts ascertainable outside of the amendment if the manner in which the facts will operate upon the terms of the amendment is set forth in the amendment. Such facts may include, without limitation, actions or events within the control of or determinations made by the corporation or a representative of the corporation.

(d) Submission to the shareholders.--Except where the approval of the shareholders is unnecessary under this subchapter, the board of directors shall direct that the proposed amendment be submitted to a vote of the shareholders entitled to vote thereon. An amendment proposed under subsection (a)(2) shall be submitted to a vote either at the next annual meeting held not earlier than 120 days after the amendment is proposed or at a special meeting of the shareholders called for that purpose by the shareholders.

(e) Cross references.--See sections 1106(b)(4) (relating to uniform application of subpart) and 2535 (relating to proposal of amendment to articles).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (b)(1) and added subsecs. (d) and (e).

2001 Amendment. Act 34 added subsec. (c).

Cross References. Section 1912 is referred to in sections 1106, 1914 of this title.

§ 1913. Notice of meeting of shareholders.

(a) General rule.--Notice in record form of the meeting of shareholders of a business corporation that will act on the proposed amendment must be given to each shareholder entitled to vote thereon. The notice must include the proposed amendment or a summary of the changes to be effected thereby and, if Subchapter D of Chapter 15 (relating to dissenters rights) is applicable, the text of that subchapter.

(b) Cross references.--See Subchapter A of Chapter 17 (relating to notice and meetings generally) and section 2528 (relating to notice of shareholder meetings).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 1914. Adoption of amendments.

(a) General rule.--A vote of the shareholders entitled to vote on a proposed amendment shall be taken at the next annual or special meeting of which notice for that purpose has been duly given. Unless the articles or a specific provision of this subpart requires a greater vote, a proposed amendment of the articles of a business corporation shall be adopted upon receiving the affirmative vote of a majority of the votes cast by all shareholders entitled to vote thereon and, if any class or series of shares is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each such class vote. Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting. An amendment of the articles proposed under section 1912(a)(3) (relating to proposal of amendments) shall not be deemed to have been adopted by the corporation unless it has also been approved by the board of directors, regardless of the fact that the board has directed or suffered the submission of the amendment to the shareholders for action.

(b) Statutory voting rights.--Except as provided in this subpart, the holders of the outstanding shares of a class or series of shares shall be entitled to vote as a class in respect of a proposed amendment regardless of any limitations stated in the articles or bylaws on the voting rights of any class or series if the amendment would:

(1) authorize the board of directors to fix and determine the relative rights and preferences, as between series, of any preferred or special class;

(2) make any change in the preferences, limitations or special rights (other than preemptive rights or the right to vote cumulatively) of the shares of a class or series adverse to the class or series;

(3) authorize a new class or series of shares having a preference as to dividends or assets which is senior to the shares of a class or series;

(4) increase the number of authorized shares of any class or series having a preference as to dividends or assets which is senior in any respect to the shares of a class or series; or

(5) make the outstanding shares of a class or series redeemable by a method that is not pro rata, by lot or otherwise equitable.

(c) Adoption by board of directors.--Unless otherwise restricted in the articles, an amendment of articles shall not require the approval of the shareholders of the corporation if:

(1) shares have not been issued;

(2) the amendment is restricted to one or more of the following:

(i) changing the corporate name;

(ii) providing for perpetual existence;

(iii) reflecting a reduction in authorized shares effected by operation of section 1552(a) (relating to power of corporation to acquire its own shares) and, if appropriate, deleting all references to a class or series of shares that is no longer outstanding;

(iv) adding or deleting a provision authorized by section 1528(f) (relating to shares represented by certificates and uncertificated shares);

(v) adding, changing or eliminating the par value of any class or series of shares if the par value of that class or series does not have any substantive effect under the terms of that or any other class or series of shares; or

(vi) implementing an amendment authorized by section 229(h) (relating to limitation on voiding certain defective entity actions);

(3) (i) the corporation has only one class or series of voting shares outstanding;

(ii) the corporation does not have any class or series of shares outstanding that is:

(A) convertible into those voting shares;

(B) junior in any way to those voting shares; or

(C) entitled to participate on any basis in distributions with those voting shares; and

(iii) the amendment is effective solely to accomplish one of the following purposes with respect to those voting shares:

(A) in connection with effectuating a stock dividend of voting shares on the voting shares, to increase the number of authorized shares of the voting shares in the same proportion that the voting shares to be distributed in the stock dividend increase the issued voting shares; or

(B) to split the voting shares and, if desired, increase the number of authorized shares of the voting shares or change the par value of the voting shares, or both, in proportion thereto;

(4) to the extent the amendment has not been approved by the shareholders, it restates without change all of the operative provisions of the articles as theretofore amended or as amended thereby; or

(5) the amendment accomplishes any combination of purposes specified in this subsection.

(c.1) Board amendment under other sections.--Whenever a provision of this subpart authorizes the board of directors to take any action without the approval of the shareholders and provides that a statement, certificate, plan or other document relating to such action shall be filed in the Department of State and shall operate as an amendment of the articles, the board upon taking such action may, in lieu of filing the statement, certificate, plan or other document, amend the articles under this subsection without the approval of the shareholders to reflect the taking of such action.

(c.2) Effect of board amendment.--An amendment of articles under subsection (c) shall be deemed adopted by the corporation when it has been adopted by the board of directors pursuant to section 1912 (relating to proposal of amendments).

(d) Termination of proposal.--Prior to the time when an amendment becomes effective, the amendment may be terminated pursuant to provisions therefor, if any, set forth in the

resolution or petition. If articles of amendment have been filed in the department prior to the termination, a statement under section 1902 (relating to statement of termination) shall be filed in the department.

(e) Amendment of voting provisions.--Unless otherwise provided in the articles, whenever the articles require for the taking of any action by the shareholders or a class of shareholders a specific number or percentage of votes, the provision of the articles setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes of the shareholders or of the class of shareholders.

(f) Definition.--As used in this section, the term "voting shares" has the meaning specified in section 2552 (relating to definitions).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (c)(2) and added subsecs. (c.1) and (c.2).

2001 Amendment. Act 34 amended subsecs. (b) and (c) and added subsec. (f).

1990 Amendment. Act 198 amended subsecs. (b), (c)(2) and (e).

Cross References. Section 1914 is referred to in sections 321, 1552, 1757 of this title.

§ 1915. Articles of amendment.

Upon the adoption of an amendment by a business corporation, as provided in this subchapter, articles of amendment shall be executed by the corporation and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(2) The statute under which the corporation was incorporated and the date of incorporation.

(3) If the amendment is to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

(4) The manner in which the amendment was adopted by the corporation.

(5) The amendment adopted by the corporation, which shall be set forth in full.

(6) If the amendment effects a restatement of the articles, a statement that the restated articles supersede the original articles and all amendments thereto.

Cross References. Section 1915 is referred to in sections 2104, 2704, 2722, 2904, 7104 of this title.

§ 1916. Filing and effectiveness of articles of amendment.

(a) Filing.--The articles of amendment of a business corporation shall be filed in the Department of State. See section 134 (relating to docketing statement).

(b) Effectiveness.--Upon the filing of the articles of amendment in the department or upon the effective date specified in the articles of amendment, whichever is later, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly. An amendment shall not affect any existing cause of action in favor of or against the corporation, or any pending action or proceeding to which the corporation is a party, or the existing rights of persons other

than shareholders. If the corporate name is changed by the amendment, an action brought by or against the corporation under its former name shall not be abated for that reason.

SUBCHAPTER C
MERGER LIABILITIES AND SALE OF ASSETS

Sec.
1921. Merger and consolidation authorized (Repealed).
1922. Plan of merger or consolidation (Repealed).
1923. Notice of meeting of shareholders (Repealed).
1924. Adoption of plan (Repealed).
1925. Authorization by foreign corporations (Repealed).
1926. Articles of merger or consolidation (Repealed).
1927. Filing of articles of merger or consolidation (Repealed).
1928. Effective date of merger or consolidation (Repealed).
1929. Effect of merger or consolidation (Repealed).
1929.1. Limitations on asbestos-related liabilities relating to certain mergers or consolidations.
1930. Dissenters rights (Repealed).
1931. Share exchanges (Repealed).
1932. Voluntary transfer of corporate assets.

Subchapter Heading. The heading of Subchapter C was amended October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

Cross References. Subchapter C is referred to in sections 1103, 2538, 7723 of this title.

§ 1921. Merger and consolidation authorized (Repealed).

2014 Repeal. Section 1921 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1922. Plan of merger or consolidation (Repealed).

2014 Repeal. Section 1922 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1923. Notice of meeting of shareholders (Repealed).

2014 Repeal. Section 1923 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1924. Adoption of plan (Repealed).

2014 Repeal. Section 1924 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1925. Authorization by foreign corporations (Repealed).

2014 Repeal. Section 1925 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1926. Articles of merger or consolidation (Repealed).

2014 Repeal. Section 1926 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1927. Filing of articles of merger or consolidation (Repealed).

2014 Repeal. Section 1927 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1928. Effective date of merger or consolidation (Repealed).

2014 Repeal. Section 1928 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1929. Effect of merger or consolidation (Repealed).

2014 Repeal. Section 1929 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1929.1. Limitations on asbestos-related liabilities relating to certain mergers or consolidations.

(a) Limitation on successor asbestos-related liabilities.--

(1) Except as further limited in paragraph (2), the cumulative successor asbestos-related liabilities of a domestic business corporation that was incorporated in this Commonwealth prior to May 1, 2001, shall be limited to the fair market value of the total assets of the transferor determined as of the time of the merger or consolidation, and such corporation shall have no responsibility for successor asbestos-related liabilities in excess of such limitation.

(2) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in paragraph (1) for purposes of determining the limitation of liability of a domestic business corporation.

(b) Limitation on total assets available to satisfy successor asbestos-related liabilities.--

(1) Except as further limited in paragraph (2), the assets of a domestic business corporation that was incorporated in this Commonwealth prior to May 1, 2001, shall be exempt from restraint, attachment or execution on judgments related to claims for successor asbestos-related liabilities if the cumulative amounts which, after the time of the merger or consolidation as to which the fair market value of total assets is determined for purposes of this subsection and subsection (a), are paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments or other discharges of claims of asbestos-related liabilities exceed the fair market value of the total assets of the transferor, determined as of the time of the merger or consolidation.

(2) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in paragraph (1) for purposes of determining the extent of the exemption of the assets of a domestic business corporation.

(c) Fair market value of total assets.--

(1) A domestic business corporation may establish the fair market value of total assets through any method reasonable under the circumstances, including by reference to the going concern value of such assets or to the purchase price attributable to or paid for such assets in an arm's length transaction, or, in the absence of other readily available information from which fair market value can be determined, by reference to the value of such assets recorded on a balance sheet. Total assets shall include intangible assets. A showing by the domestic business corporation of a reasonable determination of the fair market value of total

assets shall be prima facie evidence of their fair market value.

(2) Once a reasonable determination of the fair market value of total assets has been thus established by a domestic business corporation, a claimant disputing that determination of value shall then have the burden of establishing a different fair market value of such assets.

(3) For the purpose of adjusting the limitations set forth in subsections (a) and (b) to account for the passage of time, the fair market value of total assets at the time of a merger or consolidation shall be increased annually until the earlier of:

(i) the date of the settlement, judgment or other discharge to which the limitations in subsection (a) or (b) are being applied; or

(ii) the date on which such adjusted fair market value is first exceeded by the cumulative amounts paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, after the time of the merger or consolidation as to which the fair market value of total assets is determined for purposes of subsections (a) and (b) in connection with settlements, judgments or other discharges of the successor asbestos-related liabilities;

at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since such merger or consolidation, plus 1%, not compounded.

(d) Application.--

(1) The limitations set forth in subsections (a) and (b) shall apply to mergers or consolidations effected under the laws of this Commonwealth or another jurisdiction consummated prior to May 1, 2001.

(2) The limitations set forth in subsections (a) and (b) shall apply to all asbestos claims, including existing asbestos claims, and all litigation, including existing litigation, and shall apply to successors of a domestic business corporation to which this section applies.

(3) The limitations set forth in subsections (a) and (b) shall not apply to workers' compensation benefits paid by or on behalf of an employer to an employee pursuant to the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, or comparable workers' compensation law of another jurisdiction.

(4) The limitations set forth in subsections (a) and (b) shall not apply to any claim against a domestic business corporation that does not constitute a successor asbestos-related liability.

(5) This section shall not apply to an insurance corporation as defined in section 3102 (relating to definitions).

(6) The limitations set forth in subsections (a) and (b) shall not apply to any obligations arising under the National Labor Relations Act (49 Stat. 449, 29 U.S.C. § 151 et seq.) or under any collective bargaining agreement.

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

"Asbestos claim." Any claim, wherever or whenever made, for damages, losses, indemnification, contribution or other relief arising out of, based on or in any way related to asbestos, including property damage caused by the installation, presence

or removal of asbestos, the health effects of exposure to asbestos, including any claim for personal injury, death, mental or emotional injury, risk of disease or other injury or the costs of medical monitoring or surveillance. The term shall also include any claim made by or on behalf of any person exposed to asbestos or any representative, spouse, parent, child or other relative of any such person.

"Successor asbestos-related liabilities." Any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated or due or to become due, related in any way to asbestos claims, that were assumed or incurred by a domestic business corporation or foreign business corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related thereto, with or into another domestic business corporation or foreign business corporation effected under the laws of this Commonwealth or another jurisdiction or which are related in any way to asbestos claims based on the exercise of control or the ownership of stock of such corporation prior to such merger or consolidation. The term shall also include liabilities which, after the time of the merger or consolidation as to which the fair market value of total assets is determined for purposes of subsections (a) and (b), were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments or other discharges in this Commonwealth or another jurisdiction.

"Transferor." A domestic business corporation or foreign business corporation from which successor asbestos-related liabilities are assumed or incurred.

(Dec. 17, 2001, P.L.904, No.101, eff. imd.)

2001 Amendment. Act 101 added section 1929.1.

Cross References. Section 1929.1 is referred to in sections 8128, 8368.1, 8368.6 of Title 42 (Judiciary and Judicial Procedure).

§ 1930. Dissenters rights (Repealed).

2014 Repeal. Section 1930 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1931. Share exchanges (Repealed).

2014 Repeal. Section 1931 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 1932. Voluntary transfer of corporate assets.

(a) Shareholder approval not required.--The sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a business corporation, when made in the usual and regular course of the business of the corporation, or for the purpose of relocating all, or substantially all, of the business of the corporation, may be made upon such terms and conditions, and for such consideration, as shall be authorized by its board of directors. Except as otherwise restricted by the bylaws, authorization or consent of the shareholders shall not be required for such a transaction.

(b) Shareholder approval required.--

(1) A sale, lease, exchange or other disposition of all, or substantially all, the property and assets, with or without the goodwill, of a business corporation, if not made pursuant to subsection (a) or (d) or to section 1551 (relating to distributions to shareholders) or Subchapter F

of Chapter 3 (relating to division), may be made only pursuant to a plan of asset transfer in the manner provided in this subsection. A corporation selling, leasing or otherwise disposing of all, or substantially all, its property and assets is referred to in this subsection and in subsection (c) as the "transferring corporation."

(2) The property or assets of a direct or indirect subsidiary corporation that is controlled by a parent corporation shall also be deemed the property or assets of the parent corporation for the purposes of this subsection and of subsection (c). A merger to which such a subsidiary corporation is a party and in which a third party acquires direct or indirect ownership of the property or assets of the subsidiary corporation constitutes an "other disposition" of the property or assets of the parent corporation within the meaning of that term as used in this section.

(3) The plan of asset transfer shall set forth the terms and conditions of the sale, lease, exchange or other disposition or may authorize the board of directors to fix any or all of the terms and conditions, including the consideration to be received by the corporation therefor. The plan may provide for the distribution to the shareholders of some or all of the consideration to be received by the corporation, including provisions for special treatment of shares held by any shareholder or group of shareholders as authorized by, and subject to the provisions of, section 1906 (relating to special treatment of holders of shares of same class or series). It shall not be necessary for the person acquiring the property or assets of the transferring corporation to be a party to the plan. Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. Such facts may include, without limitation, actions or events within the control of or determinations made by the corporation or a representative of the corporation.

(4) The plan of asset transfer shall be proposed and adopted, and may be amended after its adoption and terminated, by the transferring corporation in the manner provided in Chapter 3 (relating to entity transactions) for the proposal, adoption, amendment and termination of a plan of merger, except section 321(d) (relating to approval by business corporation). The procedures of Chapter 3 shall not be applicable to the person acquiring the property or assets of the transferring corporation. There shall be included in, or enclosed with, the notice of the meeting of the shareholders of the transferring corporation to act on the plan a copy or a summary of the plan and, if Subchapter D of Chapter 15 (relating to dissenters rights) is applicable, a copy of the subchapter and of subsection (c).

(5) In order to make effective the plan of asset transfer so adopted, it shall not be necessary to file any articles or other documents in the Department of State.

(c) Dissenters rights in asset transfers.--

(1) If a shareholder of a transferring corporation that adopts a plan of asset transfer objects to the plan and complies with Subchapter D of Chapter 15, the shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided, if any.

(2) Paragraph (1) shall not apply to a sale pursuant to an order of court having jurisdiction in the premises or a sale pursuant to a plan of asset transfer that requires

that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale or to a liquidating trust.

(3) See sections 1906(c) (relating to dissenters rights upon special treatment) and 2537 (relating to dissenters rights in asset transfers).

(d) Exceptions.--Subsections (b) and (c)(1) shall not apply to a sale, lease, exchange or other disposition of all, or substantially all, of the property and assets of a business corporation:

(1) that directly or indirectly owns all of the outstanding shares of another corporation to the other corporation if the voting rights, preferences, limitations or relative rights, granted to or imposed upon the shares of any class of the parent corporation are not altered by the sale, lease, exchange or other disposition;

(2) when made in connection with the dissolution or liquidation of the corporation, which transaction shall be governed by the provisions of Subchapter F (relating to voluntary dissolution and winding up) or G (relating to involuntary liquidation and dissolution), as the case may be; or

(3) when made in connection with a transaction pursuant to which all the assets sold, leased, exchanged or otherwise disposed of are simultaneously leased back to the corporation.

(e) Mortgage.--A mortgage, pledge, grant of a security interest or dedication of property to the repayment of indebtedness (with or without recourse) shall not be deemed a sale, lease, exchange or other disposition for the purposes of this section.

(f) Restrictions.--This section shall not be construed to authorize the conversion or exchange of property or assets in fraud of corporate creditors or in violation of law.

(g) Presumption.--The following apply to a determination whether a corporation has sold, leased, exchanged or otherwise disposed of all or substantially all, of its property and assets, with or without good will:

(1) A corporation will conclusively be deemed not to have done so if the corporation or any direct or indirect subsidiary controlled by the corporation retains a business activity that represented at the end of its most recently completed fiscal year before the transaction, on a consolidated basis, at least:

(i) 25% of total assets; and

(ii) 25% of either:

(A) income from continuing operations before taxes; or

(B) revenues from continuing operations.

(2) A determination under paragraph (1)(i) may be based on a balance sheet that reflects:

(i) the book values of the assets of the corporation, as reflected on its books and records;

(ii) a valuation that takes into consideration unrealized appreciation and depreciation or other changes in value of the assets of the corporation;

(iii) the current value of the assets of the corporation, either valued separately or valued in segments or as an entirety as a going concern; or

(iv) any other method that is reasonable in the circumstances.

(3) A determination under paragraph (1)(ii) may be based on financial statements prepared on the basis of generally accepted accounting principles or such other accounting practices and principles as are used generally by the corporation in the maintenance of its books and records and as are reasonable in the circumstances.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (g).

2014 Amendment. Act 172 amended subsec. (b)(1), (2) and (4).

2001 Amendment. Act 34 amended subsecs. (b) and (c)(1) and (2) and added subsec. (g).

Cross References. Section 1932 is referred to in sections 221, 1571, 1906, 2721 of this title.

SUBCHAPTER D
DIVISION
(Repealed)

2014 Repeal. Subchapter D (§§ 1951 - 1957) was added December 21, 1988, P.L.1444, No.177, and repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER E
CONVERSION
(Repealed)

2014 Repeal. Subchapter E (§§ 1961 - 1966) was added December 21, 1988, P.L.1444, No.177, and repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER F
VOLUNTARY DISSOLUTION AND WINDING UP

Sec.

1971. Voluntary dissolution by shareholders or incorporators.
1972. Proposal of voluntary dissolution.
1973. Notice of meeting of shareholders.
1974. Adoption of proposal.
1975. Predissolution provision for liabilities.
1976. Judicial supervision of proceedings.
1977. Articles of dissolution.
1978. Winding up of corporation after dissolution.
1979. Survival of remedies and rights after dissolution.
1980. Dissolution by domestication (Repealed).

Cross References. Subchapter F is referred to in sections 1551, 1932, 2126, 2337, 2538, 5930 of this title.

§ 1971. Voluntary dissolution by shareholders or incorporators.

(a) General rule.--The shareholders or incorporators of a business corporation that has never transacted business or held assets other than money received from subscriptions for shares may effect the dissolution of the corporation by filing articles of dissolution in the Department of State. The articles of dissolution shall be executed in the name of the corporation

by a majority of the incorporators or a majority in interest of the shareholders and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(2) The statute under which the corporation was incorporated and the date of incorporation.

(3) That the corporation has never transacted business or held assets other than money received from subscriptions for shares.

(4) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(5) That all liabilities of the corporation have been discharged or that adequate provision has been made therefor.

(6) That a majority of the incorporators or a majority in interest of the shareholders elect that the corporation be dissolved.

(b) Filing.--The articles of dissolution shall be filed in the Department of State. See section 134 (relating to docketing statement).

(c) Effect.--Upon the filing of the articles of dissolution, the existence of the corporation shall cease.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 amended subsec. (a).

Cross References. Section 1971 is referred to in section 139 of this title.

§ 1972. Proposal of voluntary dissolution.

(a) General rule.--Any business corporation that has commenced business may dissolve voluntarily in the manner provided in this subchapter and wind up its affairs in the manner provided in section 1975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities). Voluntary dissolution shall be proposed by the adoption by the board of directors of a resolution recommending that the corporation be dissolved voluntarily. The resolution shall contain a statement either that the dissolution shall proceed under section 1975 or that the dissolution shall proceed under Subchapter H. The resolution may set forth provisions for the distribution to shareholders of any surplus remaining after paying or providing for all liabilities of the corporation, including provisions for special treatment of shares held by any shareholder or group of shareholders as authorized by, and subject to the provisions of, section 1906 (relating to special treatment of holders of shares of same class or series).

(b) Submission to shareholders.--The board of directors shall direct that the resolution recommending dissolution be submitted to a vote of the shareholders of the corporation entitled to vote thereon at a regular or special meeting of the shareholders.

(c) Cross reference.--See section 1974(d) (relating to amendment of winding-up election).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsecs. (a) and (b).

1992 Amendment. Act 169 amended subsec. (a) and added subsec. (c).

Cross References. Section 1972 is referred to in sections 1906, 1975, 1997 of this title.

§ 1973. Notice of meeting of shareholders.

(a) General rule.--Notice in record form of the meeting of shareholders that will consider the resolution recommending dissolution of the business corporation must be given to each shareholder of record entitled to vote thereon. The purpose of the meeting must be stated in the notice.

(b) Cross references.--See Subchapter A of Chapter 17 (relating to notice and meetings generally) and section 2528 (relating to notice of shareholder meetings).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 1974. Adoption of proposal.

(a) General rule.--The resolution shall be adopted upon receiving the affirmative vote of a majority of the votes cast by all shareholders of the business corporation entitled to vote thereon and, if any class of shares is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote. A proposal for the voluntary dissolution of a corporation shall not be deemed to have been adopted by the corporation unless it has also been recommended by resolution of the board of directors, regardless of the fact that the board has directed or suffered the submission of such a proposal to the shareholders for action.

(b) Termination of proposal.--Prior to the time when articles of dissolution are filed in the Department of State, the proposal may be terminated pursuant to provisions therefor, if any, set forth in the resolution.

(c) Action rescinding election to dissolve.--Prior to the time when articles of dissolution are filed in the department, any business corporation may rescind its election to dissolve in the same manner and by the same procedure as that provided in this subchapter for the election of a corporation to dissolve voluntarily.

(d) Amendment of winding-up election.--If the resolution with respect to voluntary dissolution so provides, an election to proceed under section 1975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities) may be reversed by the board of directors prior to the time when articles of dissolution are filed in the department, notwithstanding the adoption by the shareholders of the proposal for voluntary dissolution.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 added subsec. (d).

1990 Amendment. Act 198 amended subsec. (a).

Cross References. Section 1974 is referred to in section 1972 of this title.

§ 1975. Predissolution provision for liabilities.

(a) Powers of board.--The board of directors of a business corporation that has elected to proceed under this section shall have full power to wind up and settle the affairs of the corporation in accordance with this section prior to filing articles of dissolution in accordance with section 1977 (relating to articles of dissolution).

(b) Notice to creditors and taxing authorities.--After the approval by the shareholders of the resolution recommending that the corporation dissolve voluntarily, the corporation shall immediately cause notice of the winding up proceedings to be officially published and to be mailed by certified or registered mail to each known creditor and claimant and to each municipal corporation in which it has a place of business in this Commonwealth.

(c) Winding up and distribution.--The corporation shall, as speedily as possible, proceed to collect all sums due it, convert into cash all corporate assets the conversion of which into cash is required to discharge its liabilities and, out of the assets of the corporation, discharge or make adequate provision for the discharge of all liabilities of the corporation, according to their respective priorities. Any surplus remaining after paying or providing for all liabilities of the corporation shall be distributed to the shareholders according to their respective rights and preferences. See section 1972(a) (relating to proposal of voluntary dissolution).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days)

Cross References. Section 1975 is referred to in sections 1972, 1974, 1976, 1977, 1978, 1979, 1985, 4129 of this title.

§ 1976. Judicial supervision of proceedings.

A business corporation that has elected to proceed under section 1975 (relating to predissolution provision for liabilities), at any time during the winding up proceedings, may apply to the court to have the proceedings continued under the supervision of the court and thereafter the proceedings shall continue under the supervision of the court as provided in Subchapter G (relating to involuntary liquidation and dissolution).

(June 22, 2001, P.L.418, No.34, eff. 60 days)

§ 1977. Articles of dissolution.

(a) General rule.--Articles of dissolution and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State when:

(1) all liabilities of the business corporation have been discharged, or adequate provision has been made therefor, in accordance with section 1975 (relating to predissolution provision for liabilities), and all of the remaining assets of the corporation have been distributed as provided in section 1975 (or in case its assets are not sufficient to discharge its liabilities, when all the assets have been fairly and equitably applied, as far as they will go, to the payment of such liabilities); or

(2) an election to proceed under Subchapter H (relating to postdissolution provision for liabilities) has been made.

(b) Contents of articles.--The articles of dissolution shall be executed by the corporation and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(2) The statute under which the corporation was incorporated and the date of incorporation.

(3) The names and respective addresses, including street and number, if any, of its directors and officers.

(4) The manner in which the proposal to dissolve voluntarily was adopted by the corporation.

(5) A statement that:

(i) all liabilities of the corporation have been discharged or that adequate provision has been made therefor;

(ii) the assets of the corporation are not sufficient to discharge its liabilities, and that all the assets of the corporation have been fairly and equitably applied, as far as they will go, to the payment of such liabilities; or

(iii) the corporation has elected to proceed under Subchapter H.

(6) A statement:

(i) that all the remaining assets of the corporation, if any, have been distributed as provided in the Business Corporation Law of 1988; or

(ii) that the corporation has elected to proceed under Subchapter H and that any remaining assets of the corporation will be distributed as provided in that subchapter.

(7) In the case of a corporation that has not elected to proceed under Subchapter H, a statement that no actions or proceedings are pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment or decree that may be obtained against the corporation in each pending action or proceeding.

(8) In the case of a corporation that has not elected to proceed under Subchapter H, a statement that notice of the winding-up proceedings of the corporation was mailed by certified or registered mail to each known creditor and claimant and to each municipal corporation in which the corporation has a place of business in this Commonwealth.

(c) Effect.--Upon the filing of the articles of dissolution in the department, the existence of the corporation shall cease.

(d) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsecs. (a) and (b)(5), (7) and (8) and added subsec. (d).

1992 Amendment. Act 169 amended subsecs. (a) and (b).

Cross References. Section 1977 is referred to in sections 1975, 1989, 1991.1, 1992, 9319 of this title.

§ 1978. Winding up of corporation after dissolution.

(a) Winding up and distribution.--Every business corporation that is dissolved by expiration of its period of duration or otherwise shall, nevertheless, continue to exist for the purpose of winding up its affairs, prosecuting and defending actions or proceedings by or against it, collecting and discharging obligations, disposing of and conveying its property and collecting and dividing its assets, but not for the purpose of continuing business except insofar as necessary for the winding up of the corporation. The board of directors of the corporation may continue as such and shall have full power to wind up the affairs of the corporation.

(b) Standard of care of directors and officers.--The dissolution of the corporation shall not subject its directors or officers to standards of conduct different from those prescribed by or pursuant to Chapter 17 (relating to officers,

directors and shareholders). Directors of a dissolved corporation who have complied with section 1975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities) and governing persons of a successor entity who have complied with Subchapter H shall not be personally liable to the creditors or claimants of the dissolved corporation.
(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (b).

Cross References. Section 1978 is referred to in section 1979 of this title.

§ 1979. Survival of remedies and rights after dissolution.

(a) General rule.--The dissolution of a business corporation, either under this subchapter or under Subchapter G (relating to involuntary liquidation and dissolution) or by expiration of its period of duration or otherwise, shall not eliminate nor impair any remedy available to or against the corporation or its directors, officers or shareholders for any right or claim existing, or liability incurred, prior to the dissolution, if an action or proceeding thereon is brought on behalf of:

(1) the corporation within the time otherwise limited by law; or

(2) any other person before or within two years after the date of the dissolution or within the time otherwise limited by this subpart or other provision of law, whichever is less. See sections 1987 (relating to proof of claims), 1993 (relating to acceptance or rejection of matured claims) and 1994 (relating to disposition of unmatured claims).

(b) Rights and assets.--The dissolution of a business corporation shall not affect the limited liability of a shareholder of the corporation theretofore existing with respect to transactions occurring or acts or omissions done or omitted in the name of or by the corporation except that, subject to subsection (d) and sections 1992(d) (relating to notice to claimants) and 1993(b) (relating to acceptance or rejection of matured claims), if applicable, each shareholder shall be liable for his pro rata portion of the unpaid liabilities of the corporation up to the amount of the net assets of the corporation distributed to the shareholder in connection with the dissolution. Should any property right of a corporation be discovered, or the corporation be named as a defendant in an action or proceeding, at any time after the dissolution of the corporation, the surviving member or members of the board of directors that wound up the affairs of the corporation, or a receiver appointed by the court, shall have authority to enforce the property right and to collect and divide the assets so discovered among the persons entitled thereto and to prosecute actions or proceedings in the corporate name of the corporation. Any assets so collected shall be distributed and disposed of in accordance with the applicable order of court, if any, and otherwise in accordance with this subchapter.

(c) Liability of shareholders.--A shareholder of a dissolved business corporation, the assets of which were distributed under section 1975(c) (relating to winding up and distribution) or 1997 (relating to payments and distributions), shall not be liable for any claim against the corporation in an amount in excess of the shareholder's pro rata share of the claim or the amount so distributed to the shareholder, whichever is less.

The aggregate liability of any shareholder of a dissolved corporation for claims against the dissolved corporation shall not exceed the amount distributed to the shareholder in dissolution.

(d) Limitation of actions.--A shareholder of a dissolved corporation, the assets of which were distributed under section 1975(c) or 1997(a) through (c), shall not be liable for any claim against the corporation on which an action is not commenced prior to the expiration of the period specified in subsection (a)(2).

(e) Conduct of actions.--An action or proceeding may be prosecuted against and defended by a dissolved corporation in its corporate name.

(f) Late-filed action or proceeding.--The following apply to an action or proceeding commenced against a dissolved corporation after the expiration of the period specified in subsection (a)(2):

(1) Any judgment against a dissolved corporation in an action or proceeding shall be void.

(2) The dissolved corporation may, but need not, appear and raise as a defense the expiration of the period specified in subsection (a)(2) and any other reasonably related matters in response to the action or proceeding.

(3) Any person who was a director, officer or shareholder of the dissolved corporation when the dissolution became effective or any governing person of any successor entity acting pursuant to Subchapter H (relating to postdissolution provision for liabilities), and any successor-in-interest to any of those persons, may, but need not, act on behalf of the dissolved corporation in taking the actions described in paragraph (2) and shall not thereby be deemed to be deprived of the operation of subsections (c) and (d) or section 1978(b) (relating to winding up of corporation after dissolution) or otherwise be responsible for any obligations of the dissolved corporation.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) and added subsec. (f).

2001 Amendment. Act 34 amended subsec. (a) and added subsec. (e).

1992 Amendment. Act 169 amended subsec. (b) and added subsecs. (c) and (d).

Cross References. Section 1979 is referred to in sections 1987, 1993, 1994, 1995 of this title.

§ 1980. Dissolution by domestication (Repealed).

2014 Repeal. Section 1980 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER G
INVOLUNTARY LIQUIDATION AND DISSOLUTION

Sec.

1981. Proceedings upon application of shareholder or director.
1982. Proceedings upon application of creditor.
1983. (Reserved).
1984. Appointment of receiver pendente lite and other interim powers.

1985. Liquidating receiver.
1986. Qualifications of receivers.
1987. Proof of claims.
1988. Discontinuance of proceedings; reorganization.
1989. Articles of involuntary dissolution.

Cross References. Subchapter G is referred to in sections 1767, 1932, 1976, 1979, 2333, 2334, 5930 of this title.

§ 1981. Proceedings upon application of shareholder or director.

(a) General rule.--Upon application filed by a shareholder or director of a business corporation, the court may entertain proceedings for the involuntary winding up and dissolution of the corporation when any one of the following is made to appear:

(1) The acts of the directors, or those in control of the corporation, are illegal, oppressive or fraudulent and that it is beneficial to the interests of the shareholders that the corporation be wound up and dissolved.

(2) The corporate assets are being misapplied or wasted and that it is beneficial to the interests of the shareholders that the corporation be wound up and dissolved.

(3) The directors are deadlocked in the direction of the management of the business and affairs of the corporation and the shareholders are unable to break the deadlock and that irreparable injury to the corporation is being suffered or is threatened by reason thereof. The court shall not appoint a receiver or grant other similar relief under this paragraph if the shareholders by agreement or otherwise have provided for the appointment of a provisional director or other means for the resolution of a deadlock but the court shall enforce the remedy so provided if appropriate.

(b) Cross reference.--See section 2536 (relating to application by director for involuntary dissolution).

Cross References. Section 1981 is referred to in section 1767 of this title.

§ 1982. Proceedings upon application of creditor.

Upon application filed by a creditor of a business corporation whose claim has either been reduced to judgment and an execution thereon returned unsatisfied or whose claim is admitted by the corporation, the court may entertain proceedings for the involuntary winding up and dissolution of the corporation when, in either case, it is made to appear that the corporation is unable to discharge its liabilities in the regular course of business, as they mature, or is unable to afford reasonable security to those who may deal with it.

§ 1983. (Reserved).

§ 1984. Appointment of receiver pendente lite and other interim powers.

Upon the filing of an application under this subchapter, the court may issue injunctions, appoint a receiver pendente lite with such powers and duties as the court from time to time may direct and proceed as may be requisite to preserve the corporate assets wherever situated and to carry on the business of the corporation until a full hearing can be had.

Saved from Suspension. Pennsylvania Rule of Civil Procedure No. 1549(10), adopted June 3, 1994, provided that section 1984 insofar as it relates to the appointment of receivers in corporate dissolutions shall not be deemed suspended or affected by Rules 1501 through 1536 relating to action in equity.

§ 1985. Liquidating receiver.

Upon a hearing, after such notice as the court may direct to be given to all parties to the proceeding and to any other parties in interest designated by the court, the court may appoint a liquidating receiver with authority to collect the assets of the corporation. The liquidating receiver shall have authority, subject to the order of the court, to dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation, or the proceeds resulting from a disposition thereof, shall be applied to the expenses of the liquidation and to the payment of the liabilities of the corporation and any remaining assets or proceeds shall be distributed by the court in the manner provided by section 1975(c) (relating to winding up and distribution). The court may direct that any or all of the provisions of Subchapter H (relating to postdissolution provision for liabilities) shall apply. The order appointing the liquidating receiver shall state his powers and duties. The powers and duties may be increased or diminished at any time during the proceedings. A receiver of a corporation appointed under this section shall have authority to sue and defend in all courts in his own name as receiver of the corporation. The court appointing the receiver shall have exclusive jurisdiction of the corporation and its property wherever situated.
(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

Saved from Suspension. Pennsylvania Rule of Civil Procedure No. 1549(10), adopted June 3, 1994, provided that section 1985 insofar as it relates to the appointment of receivers in corporate dissolutions shall not be deemed suspended or affected by Rules 1501 through 1536 relating to action in equity.

§ 1986. Qualifications of receivers.

A receiver shall in all cases be a natural person of full age or a corporation authorized to act as receiver, which corporation, if so authorized, may be a domestic corporation for profit or not-for-profit or a foreign corporation for profit or not-for-profit authorized to do business in this Commonwealth, and shall give such bond, if any, as the court may direct, with such sureties, if any, as the court may require.

Saved from Suspension. Pennsylvania Rule of Civil Procedure No. 1549(10), adopted June 3, 1994, provided that section 1986 insofar as it relates to the appointment of receivers in corporate dissolutions shall not be deemed suspended or affected by Rules 1501 through 1536 relating to action in equity.

§ 1987. Proof of claims.

(a) General rule.--In a proceeding under this subchapter, the court may require all creditors of the business corporation to file with the office of the clerk of the court of common pleas or with the receiver, in such form as the court may prescribe, verified proofs of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall not be less than 120 days from the date of the order, as the last day for filing of claims and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to or after the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants who do not file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

(b) Cross reference.--See section 1979 (relating to survival of remedies and rights after dissolution).

Cross References. Section 1987 is referred to in section 1979 of this title.

§ 1988. Discontinuance of proceedings; reorganization.

The proceedings under this subchapter may be discontinued at any time when it is established that cause for liquidation no longer exists. In that event, the court shall dismiss the proceedings and direct the receiver to redeliver to the business corporation all its remaining property and assets.

§ 1989. Articles of involuntary dissolution.

(a) General rule.--In a proceeding under this subchapter, the court shall enter an order dissolving the business corporation when the costs and expenses of the proceeding and all liabilities of the corporation have been discharged, and all of its remaining assets have been distributed to its shareholders or, in case its assets are not sufficient to discharge such costs, expenses and liabilities, when all the assets have been applied, as far as they will go, to the payment of such costs, expenses and liabilities. See section 139(b) (relating to tax clearance in judicial proceedings).

(b) Filing.--After entry of an order of dissolution, the office of the clerk of the court of common pleas shall prepare and execute articles of dissolution substantially in the form provided by section 1977 (relating to articles of dissolution), attach thereto a certified copy of the order and transmit the articles and attached order to the Department of State. The department shall not charge a fee in connection with the filing of articles of dissolution under this section. See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(c) Effect.--Upon the filing of the articles of dissolution in the department, the existence of the corporation shall cease. (June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsecs. (a) and (b).

SUBCHAPTER H
POSTDISSOLUTION PROVISION FOR LIABILITIES

Sec.

1991. Definitions.
1991.1. Authority of board of directors.
1992. Notice to claimants.
1993. Acceptance or rejection of matured claims.
1994. Disposition of unmatured claims.
1995. Court proceedings.
1996. No revival or waiver.
1997. Payments and distributions.
1998. Liability of shareholders (Repealed).

Subchapter Heading. The heading of Subchapter H was amended December 18, 1992, P.L.1333, No.169, effective in 60 days.

Cross References. Subchapter H is referred to in sections 1551, 1972, 1974, 1977, 1978, 1979, 1985 of this title.

§ 1991. Definitions.

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

"Contractual claims." Excludes contingent contractual claims based on any implied warranty as to any product manufactured, sold, distributed or handled by the dissolved corporation.

"Priority." Does not refer either to the order of payments set forth in section 1997(a)(1) through (4) (relating to payments and distributions) or to the relative times at which any claims mature or are reduced to judgment.

"Successor entity." Includes any trust, receivership or other legal entity governed by the laws of this Commonwealth or any other jurisdiction to which the remaining assets of a dissolved business corporation are transferred subject to its liabilities and which exists solely for the purposes of prosecuting and defending actions, by or against the corporation, enabling the corporation to settle and close its business, to dispose of and convey the property of the corporation, to discharge the liabilities of the corporation, and to distribute to the shareholders of the corporation any remaining assets, but not for the purpose of continuing the business for which the corporation was incorporated.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

§ 1991.1. Authority of board of directors.

(a) General rule.--The board of directors of a business corporation that has elected to proceed under this subchapter shall have full power to wind up and settle the affairs of the corporation in accordance with this subchapter both prior to and after the filing of articles of dissolution in accordance with section 1977 (relating to articles of dissolution).

(b) Winding up.--The corporation shall, as speedily as possible, proceed to comply with the requirements of this subchapter while simultaneously collecting all sums due it and converting into cash all corporate assets, the conversion of which into cash is required to make adequate provision for its liabilities.

(June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 added section 1991.1.

§ 1992. Notice to claimants.

(a) General rule.--After a business corporation that has elected to proceed under this subchapter has been dissolved in accordance with section 1977 (relating to articles of dissolution), the corporation or any successor entity shall give notice of the dissolution requesting all persons having a claim against the corporation to present their claims against the corporation in accordance with the notice. The notice shall state:

(1) That all claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim.

(2) The mailing address to which a claim must be sent.

(3) The deadline, which shall be not less than 60 days after the date the notice is given, by which the corporation or successor entity must receive the claim.

(4) That the claim will be barred if not received by the deadline.

(5) That the corporation or a successor entity may make distribution to other claimants and the shareholders of the corporation or persons interested as having been such without further notice to the claimant.

(b) Unmatured contractual claims.--The corporation or successor entity electing to follow the procedures specified in this subchapter shall also give notice of the dissolution of the corporation to persons with contractual claims contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and shall request that such

persons present their claims in accordance with the terms of the notice. The notice shall be in substantially the form specified in subsection (a).

(c) Publication and service of notices.--

(1) The notices required by this section shall be officially published at least once a week for two consecutive weeks and, in the case of a corporation having $10,000,000 or more in total assets at the time of its dissolution, at least once in all editions of a daily newspaper with a national circulation.

(2) Concurrently with or preceding the publication, the corporation or successor entity shall send a copy of the notice by certified or registered mail, return receipt requested, to each:

(i) known creditor or claimant;

(ii) holder of a claim described in subsection (b); and

(iii) municipal corporation in which a place of business of the corporation in this Commonwealth was located at the time of filing the articles of dissolution in the department.

(d) Claims barred.--A claim against a dissolved corporation is barred if a claimant who was given written notice under subsection (c)(2) does not deliver the claim to the dissolved corporation or successor entity by the deadline.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsec. (c).

Cross References. Section 1992 is referred to in sections 1979, 1993, 1994, 1995 of this title.

§ 1993. Acceptance or rejection of matured claims.

(a) Notice.--A dissolved business corporation or successor entity may reject, in whole or in part, any matured claim made by a claimant pursuant to section 1992 (relating to notice to claimants) by sending notice of the rejection by certified or registered mail, return receipt requested, to the claimant within 90 days after receipt of the claim and, in all events, at least 30 days before the expiration of the two-year period specified in section 1979(a)(2) (relating to survival of remedies and rights after dissolution). A notice sent pursuant to this section shall include or be accompanied by a copy of this subchapter and of section 1979.

(b) Claims barred.--A claim against a dissolved corporation is barred if a claimant whose claim is rejected by the dissolved corporation or successor entity does not commence an action in the court to enforce the claim within 90 days after mailing of the rejection notice.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

Cross References. Section 1993 is referred to in sections 1979, 1997 of this title.

§ 1994. Disposition of unmatured claims.

(a) Contractual claims.--The dissolved business corporation or successor entity shall offer any claimant whose contractual claim made pursuant to section 1992 (relating to notice to claimants) is contingent, conditional or unmatured, such security as the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall send the offer to the claimant by certified or registered mail, return receipt requested, within 90 days after receipt of the claim

and, in all events, at least 30 days before the expiration of the two-year period specified in section 1979(a)(2) (relating to survival of remedies and rights after dissolution). A notice sent pursuant to this section shall include or be accompanied by a copy of this subchapter and of section 1979. If the claimant offered the security does not deliver to the corporation or successor entity a written notice rejecting the offer within 60 days after mailing of the offer for security, the claimant shall be deemed to have accepted the security as the sole source from which to satisfy his claim against the corporation.

(b) Other claims.--Except as provided in section 1997(d) (relating to liability of directors), the holder of any other claim may bring an action against the dissolved corporation or its directors, officers or shareholders within the time limited by section 1979(a).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

Cross References. Section 1994 is referred to in sections 1979, 1995, 1997 of this title.

§ 1995. Court proceedings.

(a) General rule.--A dissolved business corporation or successor entity that has given notice in accordance with section 1992 (relating to notice to claimants) shall file an application with the court for a determination of the amount and form of security:

(1) that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to section 1994 (relating to disposition of unmatured claims); and

(2) that will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen but that, based on the facts known to the corporation or successor entity, are likely to arise or to become known to the corporation or successor entity prior to the expiration of the two-year period specified in section 1979(a)(2) (relating to survival of remedies and rights after dissolution).

(b) Guardian ad litem.--The court may appoint a guardian ad litem in respect of any proceeding brought under this subchapter. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the applicant in the proceeding unless otherwise ordered by the court.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

Cross References. Section 1995 is referred to in section 1997 of this title.

§ 1996. No revival or waiver.

The giving of any notice or making of any offer under this subchapter shall not revive any claim then barred or constitute acknowledgment by the dissolved business corporation or successor entity that any person to whom the notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom the notice is sent.

§ 1997. Payments and distributions.

(a) General rule.--A dissolved business corporation or successor entity that has elected to proceed under this subchapter shall:

(1) Pay the claims made and not rejected under section 1993 (relating to acceptance or rejection of matured claims).

(2) Post the security offered and not rejected under section 1994 (relating to disposition of unmatured claims).

(3) Post security ordered by the court in any proceeding under section 1995 (relating to court proceedings).

(4) Pay or make provision for all other claims that are mature, known and uncontested or that have been finally determined to be owing by the corporation or the successor entity.

(b) Disposition.--The claims and liabilities shall be paid in full and any provision for payment shall be made in full if there are sufficient assets. If there are insufficient assets, the claims and liabilities shall be paid or provided for in order of their priority, and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining assets shall be distributed to the shareholders of the corporation according to their respective rights and preferences, except that the distribution shall not be made less than 60 days after the last notice of rejection, if any, was given under section 1993 (relating to acceptance or rejection of matured claims). See section 1972(a) (relating to proposal of voluntary dissolution).

(c) Evaluation of other liabilities.--In the absence of actual fraud, the judgment of the board of directors of the dissolved corporation or the governing persons of the successor entity as to the provision made for the payment of all claims under subsection (a)(4) shall be conclusive.

(d) Liability of directors.--(Deleted by amendment).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsec. (b) and deleted subsec. (d).

1992 Amendment. Act 169 amended subsecs. (a) and (c), deleted subsec. (d) and relettered subsec. (e) to subsec. (d).

Cross References. Section 1997 is referred to in sections 1979, 1991, 1994 of this title.

§ 1998. Liability of shareholders (Repealed).

1992 Repeal. Section 1998 was repealed December 18, 1992, P.L.1333, No.169, effective in 60 days.

ARTICLE C
DOMESTIC BUSINESS CORPORATION ANCILLARIES

Chapter

21. Nonstock Corporations
23. Statutory Close Corporations
25. Registered Corporations
27. Management Corporations
29. Professional Corporations
31. Insurance Corporations
33. Benefit Corporations

CHAPTER 21
NONSTOCK CORPORATIONS

Subchapter

A. Preliminary Provisions
B. Powers, Duties and Safeguards

Enactment. Chapter 21 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 21 is referred to in section 1103 of this title.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

2101. Application and effect of chapter.
2102. Formation of nonstock corporations.
2103. Contents of articles and other documents of nonstock corporations.
2104. Election of an existing business corporation to become a nonstock corporation.
2105. Termination of nonstock corporation status.

§ 2101. Application and effect of chapter.

(a) General rule.--This chapter shall be applicable to:

(1) A business corporation that elects to become a nonstock corporation in the manner provided by this chapter.

(2) A domestic corporation for profit subject to Subpart D (relating to cooperative corporations) organized on a nonstock basis.

(3) A domestic insurance corporation that is a mutual insurance company.

(b) Application to business corporations generally.--The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not a nonstock corporation. This chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not a nonstock corporation.

(c) Laws applicable to nonstock corporations.--Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all nonstock corporations. The specific provisions of this chapter shall control over the general provisions of Part I and this subpart. In the case of a nonstock corporation, references in this part to "shares," "shareholder," "share register," "share ledger," "transfer book for shares," "number of shares entitled to vote" or "class of shares" shall mean memberships, member, membership register, membership ledger, membership transfer book, number of votes entitled to be cast or class of members, respectively. Except as otherwise provided in this article, a nonstock corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (c).

1990 Amendment. Act 198 amended subsec. (a).

§ 2102. Formation of nonstock corporations.

(a) General rule.--A nonstock corporation shall be formed in accordance with Article B (relating to domestic business corporations generally) except that its articles shall contain:

(1) A heading stating the name of the corporation and that it is a nonstock corporation.

(2) The provisions required by section 2103 (relating to contents of articles and other documents of nonstock corporations).

(b) Initial members.--Upon the filing of articles of a nonstock corporation, the subscribers to the minimum guaranteed capital of the corporation, if any, and the incorporators shall be the initial members of the corporation.

Cross References. Section 2102 is referred to in sections 2105, 7105 of this title.

§ 2103. Contents of articles and other documents of nonstock corporations.

In lieu of required statements relating to shares or share structure, a nonstock corporation shall set forth in any document permitted or required to be filed under this subpart the fact that the corporation is organized on a nonstock basis. A nonstock corporation may, but need not, have a minimum guaranteed capital which shall be furnished by the subscribers thereto in such proportions as they may agree.

Cross References. Section 2103 is referred to in sections 2102, 2105, 7105 of this title.

§ 2104. Election of an existing business corporation to become a nonstock corporation.

(a) General rule.--Any business corporation may become a nonstock corporation under this chapter by:

(1) Adopting a plan of election providing for the redemption by the corporation of all of its shares whether or not redeemable by the terms of its articles and adjusting its affairs so as to comply with the requirements of this chapter applicable to nonstock corporations.

(2) Filing articles of amendment which shall contain, in addition to the requirements of section 1915 (relating to articles of amendment):

(i) A heading stating the name of the corporation and that it is a nonstock corporation.

(ii) A statement that it elects to become a nonstock corporation.

(iii) A statement that the corporation is organized on a nonstock basis.

(iv) Such other changes, if any, that may be desired in the articles.

(b) Procedure.--The plan of election of the corporation into a nonstock corporation (which plan shall include the amendment of the articles required by subsection (a)) shall be adopted in accordance with the requirements of Subchapter B of Chapter 19 (relating to amendment of articles) except that:

(1) The holders of shares of every class shall be entitled to vote on the plan regardless of any limitations stated in the articles or bylaws on the voting rights of any class.

(2) The plan must be approved by two-thirds of the votes cast by all shares of each class.

(3) If any shareholder of a business corporation that adopts a plan of election into a nonstock corporation objects to the plan of election and complies with the provisions of Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided. There shall be included in, or enclosed with, the notice of the meeting of shareholders called to act upon the plan of election a copy or a summary of the plan and a copy of Subchapter D of Chapter 15 and of this subsection.

(4) The plan shall not impose any additional liability upon any existing patron of the business of the corporation,

whether or not that person becomes a member of the corporation pursuant to the plan, unless the patron expressly assumes such liability.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 2104 is referred to in section 1571 of this title.

§ 2105. Termination of nonstock corporation status.

(a) General rule.--A nonstock corporation may terminate its status as such and cease to be subject to this chapter by:

(1) Adopting a plan of termination providing for the issue of appropriate shares to its members and adjusting its affairs so as to comply with the requirements of this subpart applicable to business corporations that are not nonstock corporations.

(2) Amending its articles to delete therefrom the additional provisions required or permitted by sections 2102(a)(1) (relating to formation of nonstock corporations) and 2103 (relating to contents of articles and other documents of nonstock corporations) to be stated in the articles of a nonstock corporation. The plan of termination (which plan shall include the amendment of the articles required by this section) shall be adopted in accordance with Subchapter B of Chapter 19 (relating to amendment of articles) except that:

(i) The members of every class shall be entitled to vote on the plan regardless of any limitations stated in the articles or bylaws, or in a document evidencing membership, on the voting rights of any class.

(ii) The plan must be approved by a majority of the votes cast by the members of each class.

(b) Increased vote requirements.--The bylaws of a nonstock corporation adopted by the members may provide that on any amendment to terminate its status as a nonstock corporation, a vote greater than that specified in subsection (a) shall be required. If the bylaws contain such a provision, that provision shall not be amended, repealed or modified by any vote less than that required to terminate the status of the corporation as a nonstock corporation.

(c) Mutual insurance companies.--With respect to the termination of the status of a mutual insurance company as a nonstock corporation, see section 103 (relating to subordination of title to regulatory laws) and Article VIII-A of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

2001 Amendment. Act 34 amended subsec. (c).

Cross References. Section 2105 is referred to in section 1504 of this title.

SUBCHAPTER B
POWERS, DUTIES AND SAFEGUARDS

Sec.

2121. Corporate name of nonstock corporations.
2122. Classes of membership.
2123. Evidence of membership; liability of members.

2124. Voting rights of members.
2125. Inapplicability of certain provisions to nonstock corporations.
2126. Dissolution of nonstock corporations.

§ 2121. Corporate name of nonstock corporations.

(a) General rule.--The corporate name of a nonstock corporation may contain the word "mutual."

(b) Insurance names.--See section 202(c)(1)(iii) (relating to requirements for names generally).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

§ 2122. Classes of membership.

The bylaws of a nonstock corporation adopted by the members may vest in the board of directors the power to establish classes of membership and to fix the several rights and liabilities thereof.

Cross References. Section 2122 is referred to in section 1504 of this title.

§ 2123. Evidence of membership; liability of members.

(a) General rule.--Every member of record of a nonstock corporation shall be entitled to a written document evidencing his membership in the corporation. The document shall state:

(1) That the corporation is a nonstock corporation incorporated under the laws of this Commonwealth, unless the name of the corporation contains the word "mutual."

(2) The name of the person to whom issued.

(3) The class of membership, if any, held by the member.

(b) Notice of variations in rights.--If the membership of the corporation is divided into classes, the document shall set forth (or shall state that the corporation will furnish to any member, upon request and without charge) a full or summary statement of the special rights and liabilities of membership of each class and the variations in the rights and liabilities of membership between classes. If a membership is not fully paid or if the member is otherwise liable to assessment, the document evidencing the membership shall so state.

(c) Liability.--A subscriber to the minimum guaranteed capital of or member of a nonstock corporation shall not be under any liability to the corporation or any creditor thereof other than the obligations of complying with the terms of the subscription to the minimum guaranteed capital, if any, and with the terms of the document evidencing his membership. Otherwise, the members of a nonstock corporation shall not be personally liable for the debts, liabilities or obligations of the corporation.

(d) Dissenters rights.--The document evidencing membership shall constitute a share certificate for the purposes of Subchapter D of Chapter 15 (relating to dissenters rights).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

§ 2124. Voting rights of members.

Except as otherwise provided in a bylaw adopted by the members or in a written document evidencing membership, every member of record of a nonstock corporation shall have the right, at every meeting of members, to one vote.

Cross References. Section 2124 is referred to in section 1504 of this title.

§ 2125. Inapplicability of certain provisions to nonstock corporations.

(a) Share structure.--The provisions of Subchapter B of Chapter 15 (relating to shares and other securities) shall not

be applicable to a nonstock corporation. A nonstock corporation shall not create or issue shares.

(b) Corporate finance.--A patronage rebate or dividend that is, or is equivalent to, a reduction in the charge made by a nonstock corporation to a member for goods or services shall not constitute a dividend or distribution within the meaning of section 1551 (relating to distributions to shareholders).

§ 2126. Dissolution of nonstock corporations.

If at the time of dissolution of a nonstock corporation the articles, bylaws and documents evidencing membership fail to define the respective rights and preferences of the members upon dissolution, the surplus of cash or property remaining after discharging all liabilities of the corporation shall be paid to or distributed among the members according to such a plan of distribution as the members may adopt. The plan shall be adopted in accordance with Subchapter F of Chapter 19 (relating to voluntary dissolution and winding up) except that:

(1) The members of every class shall be entitled to vote on the plan regardless of any limitations stated in the articles or bylaws, or in a document evidencing membership, on the voting rights of any class.

(2) The plan must be approved by a majority of the votes cast by the members of each class.

CHAPTER 23
STATUTORY CLOSE CORPORATIONS

Subchapter

A. Preliminary Provisions
B. Shares
C. Powers, Duties and Safeguards

Enactment. Chapter 23 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 23 is referred to in section 1103 of this title.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

2301. Application and effect of chapter.
2302. Definition of minimum vote.
2303. Formation of statutory close corporations.
2304. Additional contents of articles of statutory close corporations.
2305. Election of an existing business corporation to become a statutory close corporation.
2306. Limitations on continuation of statutory close corporation status.
2307. Voluntary termination of statutory close corporation status by amendment of articles.
2308. Issuance or transfer of shares of a statutory close corporation in breach of qualifying conditions.
2309. Involuntary termination of statutory close corporation status; proceeding to prevent loss of status.

§ 2301. Application and effect of chapter.

(a) General rule.--This chapter shall be applicable to a business corporation, other than a management corporation, that:

(1) had elected to become a close corporation subject to Chapter B of Article III of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law of 1933 (relating to close corporations), and that, as of the effective date of this chapter, had not terminated that election in the manner prescribed by statute; or

(2) elects to become a statutory close corporation in the manner provided by this chapter.

(b) Application of business corporation law generally.--The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not a statutory close corporation. This chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not a statutory close corporation.

(c) Laws applicable to statutory close corporations.--Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all statutory close corporations. The specific provisions of this chapter shall control over the general provisions of Part I and this subpart. Except as otherwise provided in this article, a statutory close corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

(d) Transitional provisions.--The following provisions of this chapter shall not apply to a statutory close corporation existing on September 30, 1989, unless otherwise provided in a bylaw adopted in the manner provided by section 2332(b) (relating to procedure):

Section 2321(b) (relating to preemptive rights) insofar as such provision authorizes the shareholders to adopt a bylaw eliminating or limiting the preemptive rights provided in that subsection.

Section 2322 (relating to share transfer restrictions).

Section 2323 (relating to transfer of shares in breach of transfer restrictions). If section 2323 is not applicable to the corporation, transfer restrictions (including a restriction that is held not to be authorized by section 1529 (relating to transfer of securities; restrictions)) shall be enforced in the same manner as if this article had not been enacted.

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

Section 2336 (relating to fundamental changes).

(e) Cross reference.--See the definition of "closely held corporation" in section 1103 (relating to definitions).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (c).

1990 Amendment. Act 198 amended subsec. (d).

Cross References. Section 2301 is referred to in section 1106 of this title.

§ 2302. Definition of minimum vote.

(a) General rule.--As used in this chapter, the term "minimum vote" as applied to corporate action means that:

(1) The holders of shares of every class shall be entitled to vote on the corporate action regardless of any limitations stated in the articles or bylaws on the voting rights of any class.

(2) The corporate action must be approved by vote of the shareholders of each class entitled to cast at least

two-thirds of the votes that all shareholders of the class are entitled to cast thereon.

(b) Increased vote requirements.--The bylaws of a statutory close corporation adopted by the shareholders may provide that on any corporate action subject to the minimum vote requirement of subsection (a) a vote greater than two-thirds or a vote of all shares of any class shall be required. If the bylaws contain such a provision, that provision shall not be amended, repealed or modified by any vote less than that required to effect such corporation action.

Cross References. Section 2302 is referred to in section 1504 of this title.

§ 2303. Formation of statutory close corporations.

A statutory close corporation shall be formed in accordance with Article B (relating to domestic business corporations generally) except that its articles shall contain:

(1) A heading stating the name of the corporation and that it is a statutory close corporation.

(2) The provision required by section 2304(a) (relating to additional contents of articles of statutory close corporations).

Cross References. Section 2303 is referred to in section 2307 of this title.

§ 2304. Additional contents of articles of statutory close corporations.

(a) General rule.--In addition to the provisions otherwise required by this subpart, the articles of a statutory close corporation shall provide that neither the corporation nor any shareholder shall make an offering of any of its shares of any class that would constitute a "public offering" within the meaning of the Securities Act of 1933.

(b) Number or qualifications of shareholders.--The articles of a statutory close corporation may set forth:

(1) The maximum number of persons who are entitled to be record holders or beneficial owners of its shares.

(2) The qualifications of shareholders, either by specifying classes of persons who shall be entitled to be holders of record of shares of any class or by specifying classes of persons who shall not be entitled to be holders of shares of any class or both.

(c) Aggregation of holdings.--Except as otherwise provided in the articles, for purposes of determining the number of holders of record or beneficial owners of the shares of a statutory close corporation, shares that are held jointly or in common or in a trust, by two or more persons, as fiduciaries or otherwise, or that are held by spouses, shall be treated as held by one shareholder.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (a).

Cross References. Section 2304 is referred to in sections 2303, 2305, 2306, 2308, 2309, 2322 of this title.

§ 2305. Election of an existing business corporation to become a statutory close corporation.

(a) General rule.--A business corporation may become a statutory close corporation under this chapter by amending its articles so that they shall contain, in addition to the requirements of section 1911(b) (relating to exceptions):

(1) A heading stating the name of the corporation and that it is a statutory close corporation.

(2) A statement that it elects to become a statutory close corporation.

(3) The provision required by section 2304(a) (relating to additional contents of articles of statutory close corporations).

(b) Procedure.--The amendment shall not be effective unless it is adopted by the affirmative vote of all shareholders of the corporation whether or not otherwise entitled to vote thereon.

§ 2306. Limitations on continuation of statutory close corporation status.

A statutory close corporation continues to be such and to be subject to this chapter until:

(1) it terminates its status as a statutory close corporation pursuant to section 2307 (relating to voluntary termination of statutory close corporation status by amendment of articles); or

(2) the provisions required or permitted by section 2304 (relating to additional contents of articles of statutory close corporations) to be stated in the articles to qualify a business corporation as a statutory close corporation have in fact been breached and neither the corporation nor any of its shareholders takes the steps required by section 2309 (relating to involuntary termination of statutory close corporation status; proceeding to prevent loss of status) to prevent such loss of status or to remedy such breach.

§ 2307. Voluntary termination of statutory close corporation status by amendment of articles.

(a) General rule.--A statutory close corporation may voluntarily terminate its status as such and cease to be subject to this chapter by amending its articles to delete therefrom the additional provision required by section 2303(1) (relating to formation of statutory close corporations) to be stated in the articles of a statutory close corporation.

(b) Procedure.--The amendment shall not be effective unless it is adopted by at least the minimum vote.

Cross References. Section 2307 is referred to in sections 2306, 2308, 2309 of this title.

§ 2308. Issuance or transfer of shares of a statutory close corporation in breach of qualifying conditions.

(a) Notice of qualifications.--If shares of a statutory close corporation are issued or transferred to any person who is not entitled under any provision of the articles permitted by section 2304(b) (relating to number or qualifications of shareholders) to be a holder of record of shares of the corporation and if the certificate for the shares complies with section 2321(c) (relating to notice of statutory close corporation status) or conspicuously notes the existence of such a provision of the articles, that person shall be conclusively presumed to have notice of the fact of his ineligibility to be a shareholder.

(b) Notice of size restrictions.--If the articles of a statutory close corporation state the number of persons who are entitled to be holders or owners of its shares and if the certificate for the shares complies with section 2321(c) or conspicuously notes the existence of such a provision of the articles and if the issuance or transfer of shares to any person would cause the shares to be held by more than that number of persons, the person to whom the shares are issued or transferred shall be conclusively presumed to have notice of that fact.

(c) Refusal to register.--Whenever any person to whom shares of a statutory close corporation have been issued or transferred has, or is conclusively presumed under this section to have, notice either:

(1) that he is a person not eligible to be a holder of shares of the corporation; or

(2) that the transfer of shares to him would cause the shares of the corporation to be held by more than the number of persons permitted by its articles to hold shares of the corporation;

the corporation may, at its option, refuse to register the transfer of the shares into the name of the transferee.

(d) Exception.--The provisions of subsection (c) shall not be applicable if the transfer of shares, even though otherwise contrary to subsection (a) or (b), has been consented to by all the shareholders of the statutory close corporation or if the statutory close corporation has amended its articles in accordance with section 2307 (relating to voluntary termination of statutory close corporation status by amendment of articles).

(e) Rescission rights unaffected.--The provisions of this section do not impair any right of a transferee to rescind the transaction or to recover under any applicable warranty express or implied.

(f) Definition.--As used in this section, the term "transfer" is not limited to a transfer for value.

Cross References. Section 2308 is referred to in section 2309 of this title.

§ 2309. Involuntary termination of statutory close corporation status; proceeding to prevent loss of status.

(a) General rule.--If any event occurs as a result of which the provision included in the articles of a statutory close corporation pursuant to section 2304(a) (relating to additional contents of articles of statutory close corporations) to qualify it as a statutory close corporation has been breached, the status of the business corporation as a statutory close corporation under this chapter shall terminate unless:

(1) Within 30 days after the occurrence of the event or within 30 days after the event has been discovered, whichever is later, the corporation:

(i) Files in the Department of State a statement executed by the corporation setting forth:

(A) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(B) A statement that the provision included in its articles pursuant to section 2304(a) to qualify it as a statutory close corporation has been breached.

(ii) Furnishes a copy of the statement to each shareholder.

(2) The corporation concurrently with the filing of the statement takes such steps as are necessary to correct the situation that threatens its status as a statutory close corporation including, without limitation, the refusal to register the transfer of shares that have been wrongfully transferred as provided by section 2308 (relating to issuance or transfer of shares of a statutory close corporation in breach of qualifying conditions) or initiation of a proceeding under subsection (b).

(b) Proceeding to cure breach.--Upon the application of the corporation or of any shareholder, the court may issue all orders necessary to prevent the corporation from losing its status as a statutory close corporation or to prevent the violation of any provision of the articles permitted by section 2304(b) to be stated in the articles of a statutory close corporation or to restore its status as a statutory close corporation by enjoining or setting aside any act or threatened act on the part of the corporation or a shareholder that would be inconsistent with any of the provisions required or permitted by section 2304 to be stated in the articles of a statutory close corporation unless it is an act approved in accordance with section 2308(d) (relating to exception). The court may enjoin or set aside any transfer or threatened transfer of shares of a statutory close corporation that is contrary to any of the terms of its articles and may enjoin any public offering, as defined in section 2304(a), or threatened public offering of shares of the statutory close corporation.

(c) Notice of cure of breach.--When the situation that threatened the status of the corporation as a statutory close corporation has been remedied and if the corporation has not amended its articles in accordance with section 2307 (relating to voluntary termination of statutory close corporation status by amendment of articles), the corporation shall file in the department a statement executed by the corporation, setting forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(2) A statement that no breach of the provision included in its articles pursuant to section 2304(a) exists.

Upon the filing of the statement, the status of the corporation as a statutory close corporation under this chapter, if theretofore terminated by reason of subsection (a), shall be restored.

(d) Cross reference.--See section 134 (relating to docketing statement).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsecs. (a) and (c).

Cross References. Section 2309 is referred to in section 2306 of this title.

SUBCHAPTER B
SHARES

Sec.

2321. Shares.
2322. Share transfer restrictions.
2323. Transfer of shares in breach of transfer restrictions.
2324. Corporation option where a restriction on transfer of a security is held invalid.
2325. Sale option of estate of shareholder.

§ 2321. Shares.

(a) Uncertificated shares prohibited.--A statutory close corporation shall not issue uncertificated shares.

(b) Preemptive rights.--

(1) Unless otherwise provided in a bylaw adopted by the shareholders, the holders of any class of voting shares of

a statutory close corporation shall have a preemptive right to subscribe for or purchase any voting shares (or any option rights or securities having conversion or option rights with respect to any voting shares) issued or sold by the corporation for any form of consideration.

(2) Paragraph (1) shall not apply to any issue of voting shares (or of any option rights or securities having conversion or option rights with respect to such voting shares) pursuant to a plan to which Subchapter D of Chapter 15 (relating to dissenters rights) is applicable.

(c) Notice of statutory close corporation status.--A legend in substantially the following form shall be set forth conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, agreements among shareholders or other documents, which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

This notice shall satisfy all requirements of this subpart that notice of transfer or other restrictions or relative rights be given. All persons claiming an interest in shares of a statutory close corporation:

(1) Complying with the notice requirement of this section shall be bound by the documents referred to in the notice.

(2) Not complying with the requirement of this section shall be bound only by any documents of which they, or any person through whom they claim, have knowledge or notice.

Cross References. Section 2321 is referred to in sections 1504, 1528, 1530, 2301, 2308, 2332, 2337 of this title.

§ 2322. Share transfer restrictions.

(a) General rule.--Unless otherwise provided in a bylaw adopted by the shareholders, no interest in shares of a statutory close corporation may be transferred, by operation of law or otherwise, whether voluntary or involuntary.

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

(1) To the corporation or to any other shareholder of the same class of shares.

(2) To members of the immediate family of a shareholder or to a trust all of whose beneficiaries are members of the immediate family of a shareholder. The immediate family of a shareholder shall include only his spouse, parents, brothers, sisters, lineal descendants (including descendants related by adoption) and spouses of any lineal descendants.

(3) That has been approved by the unanimous vote of the holders of the most junior shares of the corporation having voting rights for the election of directors.

(4) To an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution or similar proceeding brought by or against a shareholder.

(5) By merger or interest exchange that becomes effective pursuant to section 2336 (relating to fundamental changes) or a reclassification of existing shares.

(6) By a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor.

(7) Made after termination of the status of the corporation as a statutory close corporation.

(8) Permitted by subsection (h).

(c) Offer by nonexempt purchaser.--Any person desiring to transfer shares in a transaction not exempt under subsection (b)(1) through (7) shall obtain an offer from a third party who meets the requirements of subsection (d) to purchase the shares for cash and shall deliver written notice of the third-party offer to the corporation at its registered office stating the number and type of shares, the offering price, the other terms of the offer and the name and address of the third-party offeror.

(d) Qualifications of transferee.--A transfer shall not be made to a third party unless:

(1) The third party is eligible to become a qualified shareholder under the provisions of any Federal or State tax statute that the corporation has elected to be subject to and the third party agrees in writing not to take any action to terminate the election without the approval of the remaining shareholders.

(2) The transfer to the third party will not result in the imposition of the personal holding company tax or any similar Federal or State penalty tax on the corporation.

(3) The third party is eligible to be a shareholder under any provision of the articles permitted by section 2304(b) (relating to number or qualifications of shareholders).

(e) Action on offer by corporation.--The notice specified in subsection (c) shall constitute an offer by the shareholder to sell the shares to the corporation on the terms of the third-party offer. Within 20 days after receipt of the notice by the corporation, the secretary shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to purchase all (but not less than all) of the offered shares. Approval of action to purchase shall be by a majority of the votes of all shareholders entitled to vote thereon, excluding the holders of offered shares. With the consent of all the shareholders entitled to vote for the approval, the corporation may allocate some or all of the shares to one or more shareholders, or to other persons, but, if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have a first option to purchase the shares that are not purchased by the corporation in proportion to their shareholdings or in such proportion as shall be agreeable to those desiring to participate in the purchase.

(f) Notice of action by corporation.--Within 75 days after receipt of the offer, written notice of the acceptance of the offer of the shareholder shall be delivered or sent to the offering shareholder at the address specified in his notice to the corporation or, in the absence of any specification, at his last known address as reflected in the records of the corporation. If the notice contains terms of purchase different from those contained in the offer of the shareholder, the different terms shall be deemed a counteroffer, and, unless the shareholder wishing to transfer his shares accepts in writing the counteroffer or the shareholder and the corporation or other purchaser otherwise resolve by written agreement the difference between the offer and counteroffer within 15 days of receipt by the shareholder of the qualified notice of acceptance, the notice containing the counteroffer shall be ineffective as an acceptance.

(g) Delivery and payment.--If a contract to sell is created under subsection (f), the shareholder shall make delivery of all the certificates for the shares so sold, duly endorsed, within 20 days of receipt of the notice of acceptance. Breach of any of the terms of the contract shall entitle the nonbreaching party to any remedy at law or equity allowed for breach of a contract including, without limitation, specific performance.

(h) Limited release from restrictions.--If the offer to sell is not accepted pursuant to subsections (e) and (f), the shareholder shall be entitled to transfer to the third-party offeror all (but not less than all) of the offered shares within 120 days after delivery of the notice specified in subsection (c) in accordance with the terms specified therein.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b)(5) and (c).

Cross References. Section 2322 is referred to in sections 1504, 1554, 2301, 2324 of this title.

§ 2323. Transfer of shares in breach of transfer restrictions.

Any attempted transfer of shares of a statutory close corporation in violation of any transfer restriction binding on the transferee shall be ineffective. Any attempted transfer of shares of a statutory close corporation in violation of any transfer restriction not binding on the transferee shall give the corporation the option, exercisable by notice and payment within 30 days after presentation of the shares for registration in the name of the transferee, to purchase the shares from the transferee for the same price and terms as contemplated for the ineffective transfer, unless such transfer was not intended to be a transfer for value.

Cross References. Section 2323 is referred to in section 2301 of this title.

§ 2324. Corporation option where a restriction on transfer of a security is held invalid.

If the bylaws contain provisions pursuant to section 2322(a) (relating to share transfer restrictions) and a restriction on transfer of a security of a statutory close corporation is held not to be authorized by section 1529 (relating to transfer of securities; restrictions), the corporation shall nevertheless have an option, for a period of 30 days after the judgment setting aside the restriction becomes final, to acquire the restricted security at a price that is agreed upon by the parties or, if an agreement is not reached, at the fair value as determined under Subchapter D of Chapter 15 (relating to dissenters rights).

Cross References. Section 2324 is referred to in section 1571 of this title.

§ 2325. Sale option of estate of shareholder.

(a) General rule.--Unless otherwise provided in a bylaw adopted by the shareholders, the personal representative of any deceased holder or owner of shares shall have the right to require a statutory close corporation to elect either to purchase or cause the purchase of all, but not less than all, of the shares owned by the decedent pursuant to subsections (c) through (e) or to be dissolved.

(b) Minimum vote requirement.--An amendment to the bylaws to provide that this section shall apply or to delete or modify the provisions of this section shall require at least the minimum vote for approval. Any shareholder who votes against

an amendment to delete or modify the provisions of this section shall, if the amendment terminates or substantially alters the existing rights of the shareholder pursuant to this section to have his shares purchased, be entitled to receive the fair value of his shares upon compliance with the provisions of Subchapter D of Chapter 15 (relating to dissenters rights).

(c) Initial procedure.--Within six months after the death of the holder or owner of shares, the personal representative shall deliver a written notice to the corporation at its registered office specifying the number and class of all shares beneficially owned by the deceased shareholder and stating that an offer by the corporation to purchase the shares is being solicited pursuant to this section. Within 20 days after receipt of the notice by the corporation, the secretary shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to offer to purchase the shares. Approval of action to offer to purchase the shares shall be by vote of a majority of the shares entitled to vote, excluding the shares covered by the notice. With the consent of all the shareholders entitled to vote for the approval, the corporation may allocate some or all of the shares to one or more shareholders, or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have a first option to purchase the shares that are not purchased by the corporation in proportion to their shareholdings or in such proportion as shall be agreeable to those desiring to participate in the purchase.

(d) Notice of action by corporation.--Written notice of the approval by the shareholders of an offer to purchase, or that no offer to purchase was approved, shall be delivered or sent to the personal representative within 75 days after receipt of the notice soliciting the offer to purchase. Any offer to purchase shall be accompanied by copies of the balance sheets as of the end of, and profit and loss statements for, the preceding two fiscal years of the corporation and any available interim balance sheet and profit and loss statement. Any offer to purchase shall be accepted or rejected in writing within 15 days.

(e) Price and other terms of purchase.--To the extent the price and other terms for purchasing the shares by the corporation or remaining shareholders are fixed or are to be determined pursuant to provisions in the bylaws or in a written agreement, those provisions shall be binding except that, in the event of a default in any payment due, subsection (i) shall apply and the person exercising his rights under this section shall have the right to petition for dissolution of the corporation.

(f) Judicial proceedings in absence of agreement to purchase.--If an offer to purchase is rejected, or if an offer to purchase is not made under this section, the personal representative may commence an action or proceeding in court under this subsection. The jurisdiction of the court shall be plenary and exclusive. The corporation shall be made a party defendant in the action and shall, at its expense, give notice of the commencement of the action to all shareholders and to such other persons as the court may direct. The court shall proceed to determine the fair value of the shares considering the going concern value of the corporation, any agreement among some or all of the shareholders fixing a price or specifying a formula for determining the value of shares of the corporation for any purpose, the recommendations of any appraiser appointed

by the court, any legal constraint on the ability of the corporation to acquire the shares and other relevant evidence. The court shall enter an order requiring the corporation to cause the purchase of the shares at fair value including such provisions as are deemed proper concerning payment of the purchase price in two or more installments, payment of interest on the installments, subordination of the obligation to the rights of other creditors of the corporation and security for payment of the deferred purchase price.

(g) Costs and expenses.--Except as otherwise prescribed by general rules:

(1) If the fair value of the shares as determined by the court does not materially exceed the last offer made by the corporation prior to the commencement of an action pursuant to subsection (f) and the court finds that the failure of the personal representative to accept the last offer of the corporation was dilatory, arbitrary, obdurate, vexatious or in bad faith, the court may assess all or a portion of the costs and expenses of the action against the estate of the deceased shareholder.

(2) If the fair value of the shares as determined by the court materially exceeds the amount of the last offer made by the corporation prior to the time an action or proceeding was commenced pursuant to subsection (f) and the court finds that the last offer of the corporation was dilatory, arbitrary, obdurate, vexatious or in bad faith, the court may assess all or a portion of the costs and expenses of the action against the corporation.

(3) Expenses assessable under paragraphs (1) and (2) shall include reasonable compensation for and reasonable expenses of any appraiser appointed by the court and the reasonable fees and expenses of counsel for and experts employed by any party.

(4) Except as provided in paragraphs (1) and (2), the costs of an action commenced pursuant to subsection (f) shall be assessed on an equal basis between the corporation and the estate of the deceased shareholder and all other fees and expenses shall be borne by the party incurring the fees and expenses.

(h) Subsequent modification of order.--Upon application of the corporation, the court may modify its order to change the terms of payment if it finds that the changed financial or legal ability of the corporation or other purchasers of the shares to complete the purchase justifies a modification. Any person making a payment in order to prevent or cure any default by any purchaser shall be entitled to recover the excess payment from the defaulting person.

(i) Failure to make payment.--If the corporation or other purchaser fails for any reason to make any payment specified in the order within 30 days after the due date for the payment, the court shall, upon application of the person to whom the payment is due and in the absence of good cause shown by the corporation, enter an order directing that the corporation be dissolved.

(j) Waiver.--Any shareholder may waive in writing the rights of his personal representative under this section.

(k) Section nonexclusive.--This section shall not be construed to prohibit any other agreement not prohibited by law that provides for the purchase of shares of the corporation nor shall it prevent a shareholder from enforcing any other remedy he may have.

Cross References. Section 2325 is referred to in sections 1504, 1571, 2301 of this title.

SUBCHAPTER C
POWERS, DUTIES AND SAFEGUARDS

Sec.
2331. Directors.
2332. Management by shareholders.
2333. Appointment of custodian for statutory close corporation.
2334. Appointment of provisional director in certain cases.
2335. Operating corporation as partnership.
2336. Fundamental changes.
2337. Option of shareholder to dissolve corporation.

§ 2331. Directors.

(a) Agreements restricting discretion of directors.--A written agreement among the shareholders of a statutory close corporation entitled to cast at least a majority of the votes that all shareholders are entitled to cast for the election of directors, whether solely among themselves or with a party not a shareholder, is not invalid, as between the parties to the agreement or the shareholders of the corporation, on the ground that it so relates to the conduct of the business and affairs of the corporation as to restrict or interfere with the discretion or powers of the board of directors.

(b) Effect of agreement.--The effect of any such agreement shall be to relieve the directors and impose upon the shareholders who are parties to the agreement the liability for acts or omissions that is imposed by law on directors to the extent and so long as the discretion or powers of the board in its direction of the management of corporate affairs is controlled by the agreement. Shareholders upon whom the liabilities of directors are imposed by this section shall to that extent be entitled to the rights and immunities conferred by this part and other provisions of law upon directors of a corporation.

§ 2332. Management by shareholders.

(a) General rule.--A bylaw of a statutory close corporation adopted by the shareholders may provide that the business and affairs of the corporation shall be managed by or under the direction of the shareholders of the corporation rather than by or under the direction of a board of directors. So long as such a provision continues in effect:

(1) Meetings of shareholders need not be called to elect directors.

(2) Unless the context clearly requires otherwise, the shareholders of the corporation shall be deemed to be directors for purposes of applying provisions of this subpart.

(3) The shareholders of the corporation shall be subject to all liabilities imposed and shall enjoy all rights and immunities conferred by law on directors.

(b) Procedure.--Such a provision may be inserted in the articles or bylaws by amendment if all incorporators or all shareholders, regardless of any limitations stated in the articles or bylaws on the voting rights of any class, authorize the provision. An amendment to the articles or bylaws to delete the provision shall be adopted and shall become effective in accordance with Subchapter B of Chapter 19 (relating to amendment of articles) or section 1504 (relating to adoption,

amendment and contents of bylaws) except that the holders of shares of every class shall be entitled to vote on the amendment regardless of any limitations stated in the articles or bylaws on the voting rights of any class.

(c) Notice on shares.--If the articles or bylaws contain a provision authorized by this section, the existence of the provision shall be noted conspicuously on every share certificate issued by the corporation unless the certificate complies with section 2321(c) (relating to notice of statutory close corporation status).

Cross References. Section 2332 is referred to in sections 102, 1504, 2301 of this title.

§ 2333. Appointment of custodian for statutory close corporation.

(a) General rule.--In addition to the provisions of section 1767 (relating to appointment of custodian of corporation on deadlock or other cause), the court, upon application of any shareholder, may appoint one or more persons to be custodians and, if the corporation is insolvent, to be receivers of any statutory close corporation when:

(1) pursuant to this subchapter, the business and affairs of the corporation are managed by or under the direction of the shareholders and they are so divided that the business of the corporation is suffering or is threatened with immediate and irreparable injury and any remedy with respect to such deadlock provided in the bylaws or in any written agreement of the shareholders has failed; or

(2) the applicant shareholder has the right to the dissolution of the corporation under a provision of the articles permitted by section 2337 (relating to option of shareholder to dissolve corporation).

A custodian appointed under paragraph (2) shall have the authority to liquidate the affairs of the corporation and distribute its assets.

(b) Provisional director.--In lieu of appointing a custodian for a statutory close corporation under subsection (a)(1) or section 1767 or a receiver under Subchapter G of Chapter 19 (relating to involuntary liquidation and dissolution), the court may appoint a provisional director, whose powers and status shall be as provided in section 2334 (relating to appointment of provisional director in certain cases), if the court determines that it would be in the best interest of the corporation. The appointment shall not preclude any subsequent order of the court appointing a custodian or receiver for the corporation.

Cross References. Section 2333 is referred to in section 2334 of this title.

§ 2334. Appointment of provisional director in certain cases.

(a) General rule.--Notwithstanding any contrary provision of the articles or the bylaws or agreement of the shareholders, the court may appoint a provisional director for a statutory close corporation if the directors are so divided respecting the management of the business and affairs of the corporation that the votes required for action by the board of directors cannot be obtained with the consequence that the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally.

(b) Application for relief.--

(1) An application for relief under this section must be filed by or on behalf of:

(i) at least one-half of the number of directors then in office;

(ii) the holders of shares entitled to cast at least one-third of the votes that all shareholders are entitled to cast for the election of directors; or

(iii) shareholders entitled to cast at least two-thirds of the votes that all shareholders of any class entitled to elect one or more directors are entitled to cast for the election of directors, if there is more than one class of shares then entitled to elect one or more directors.

A bylaw of a statutory close corporation adopted by the shareholders may provide that a lesser proportion of the directors or of the shareholders or of a class of shareholders may apply for relief under this section.

(2) Even though the requirements of paragraph (1) are not satisfied, the court may nevertheless appoint a provisional director if permitted by section 2333(b) (relating to provisional director).

(c) Qualifications.--A provisional director shall be an impartial individual who is neither a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation and whose further qualifications, if any, may be determined by the court.

(d) Status and powers.--A provisional director is not a receiver of a corporation and does not have the title and powers of a custodian or receiver appointed under section 1767 (relating to appointment of custodian of corporation on deadlock or other cause) or Subchapter G of Chapter 19 (relating to involuntary liquidation and dissolution). A provisional director shall have all the rights and powers of a duly elected director of the corporation, including the right to notice of and to vote at meetings of directors, until such time as he is removed by order of the court or by the shareholders entitled to cast at least two-thirds of the votes that all shareholders of that class of voting shares that filed the application for appointment of a provisional director are entitled to cast for directors, or by the shareholders entitled to cast at least a majority of the votes that all shareholders are entitled to cast for the election of directors, in any other case.

(e) Compensation.--The compensation of the provisional director shall be determined by agreement between him and the corporation subject to approval of the court. The court may fix his compensation in the absence of agreement or in the event of disagreement between the provisional director and the corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (b).

Cross References. Section 2334 is referred to in sections 1504, 2333 of this title.

§ 2335. Operating corporation as partnership.

A written agreement among shareholders of a statutory close corporation, or any provision of the articles or bylaws of the corporation, which agreement or provision relates to any phase of the affairs of such corporation, including, but not limited to, the management of its business or declaration and payment of dividends or other division of profits or the election of directors or officers or the employment of shareholders by the corporation or the arbitration of disputes, shall not be invalid on the ground that it is an attempt by the parties to the agreement or by the shareholders of the corporation to treat

the corporation as if it were a partnership or to arrange relations among the shareholders or between the shareholders and the corporation in a manner that would be appropriate only among partners and shall not be grounds for imposing personal liability on the shareholders for obligations of the corporation.

§ 2336. Fundamental changes.

Except as permitted or required by this chapter, a statutory close corporation shall not effect any corporate action that under Chapter 3 (relating to entity transactions) or 19 (relating to fundamental changes) requires the approval of shareholders unless the action is adopted by at least the minimum vote.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 2336 is referred to in sections 2301, 2322 of this title.

§ 2337. Option of shareholder to dissolve corporation.

(a) General rule.--A bylaw of a statutory close corporation adopted by the shareholders may include a provision granting to any shareholder, or to the holders of any specified number or percentage of shares of any class of shares, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency. Whenever the option to dissolve is exercised, the shareholders exercising the option shall give written notice thereof to all other shareholders. After the expiration of 30 days following the sending of the notice, the dissolution of the corporation shall proceed as if the required number of shareholders having voting rights had consented in writing to dissolution of the corporation as provided by Subchapter F of Chapter 19 (relating to voluntary dissolution and winding up).

(b) Amendment adding option.--If the bylaws do not contain a provision authorized by subsection (a), the bylaws may be amended to include such a provision if adopted by the unanimous vote of all the shareholders, regardless of any limitations stated in the bylaws on the voting rights of any class, unless the original bylaws, or bylaws adopted by such a unanimous vote, specifically authorize such an amendment to be adopted by a specified vote of shareholders, which shall not be less than the minimum vote.

(c) Notice on shares.--If the bylaws contain a provision authorized by this section, the existence of the provision shall be noted conspicuously on every share certificate issued by the corporation unless the certificate complies with section 2321(c) (relating to notice of statutory close corporation status).

Cross References. Section 2337 is referred to in sections 1504, 2333 of this title.

CHAPTER 25
REGISTERED CORPORATIONS

Subchapter

A. Preliminary Provisions
B. Powers, Duties and Safeguards
C. Directors and Shareholders
D. Fundamental Changes Generally
E. Control Transactions
F. Business Combinations
G. Control-Share Acquisitions

H. Disgorgement by Certain Controlling Shareholders Following Attempts to Acquire Control
I. Severance Compensation for Employees Terminated Following Certain Control-Share Acquisitions
J. Business Combination Transactions - Labor Contracts

Enactment. Chapter 25 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.
2501. Application and effect of chapter.
2502. Registered corporation status.
2503. Acquisition of registered corporation status.
2504. Termination of registered corporation status.

§ 2501. Application and effect of chapter.

(a) General rule.--Except as otherwise provided in the scope provisions of subsequent subchapters of this chapter, this chapter shall be applicable to any business corporation that is a registered corporation as defined in section 2502 (relating to registered corporation status).

(b) Laws applicable to registered corporations.--Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all registered corporations. The specific provisions of this chapter shall control over the general provisions of Part I and this subpart. Except as otherwise provided in this article, a registered corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

(c) Effect of a contrary provision of the articles.--

(1) Except as provided in section 2521 (relating to call of special meetings of shareholders), the articles of a registered corporation may provide either expressly or by necessary implication that any one or more of the provisions of Subchapters B (relating to powers, duties and safeguards), C (relating to directors and shareholders) and D (relating to fundamental changes generally) shall not be applicable in whole or in part to the corporation.

(2) The articles of a registered corporation may provide that any one or more of the provisions of Subchapter E (relating to control transactions) and following of this chapter shall not be applicable in whole or in part to the corporation only if, to the extent and in the manner, expressly permitted by the subchapter the applicability of which is so affected. Where any provision of Subchapter E and following of this chapter permits the applicability of a subchapter to be varied by a provision of the articles, the applicability may be varied by an amendment of the articles only if, to the extent and in the manner, expressly permitted by the subchapter the applicability of which is so affected.

(d) Rights cumulative.--The rights, remedies, prohibitions and requirements provided in Subchapter E and following of this chapter shall be in addition to and not in lieu of any other rights, remedies, prohibitions or requirements provided by this subpart, the articles or bylaws of the corporation, any securities, option rights or obligations of the corporation or otherwise.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsecs. (b) and (c).

1992 Amendment. Act 169 amended subsec. (c) and added subsec. (d).

§ 2502. Registered corporation status.

Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific subchapters of this chapter, as used in this chapter, the term "registered corporation" shall mean:

(1) A domestic business corporation:

(i) that:

(A) has a class or series of shares entitled to vote generally in the election of directors of the corporation registered under the Exchange Act; or

(B) is registered as a management company under the Investment Company Act of 1940 and in the ordinary course of business does not redeem outstanding shares at the option of a shareholder at the net asset value or at another agreed method or amount of value thereof; or

(ii) that is:

(A) subject to the reporting obligations imposed by section 15(d) of the Exchange Act by reason of having filed a registration statement which has become effective under the Securities Act of 1933 relating to shares of a class or series of its equity securities entitled to vote generally in the election of directors; or

(B) registered as a management company under the Investment Company Act of 1940 and in the ordinary course of business redeems outstanding shares at the option of a shareholder at the net asset value or at another agreed method or amount of value thereof.

A corporation which satisfies both subparagraphs (i) and (ii) shall be deemed to be described solely in subparagraph (i) for the purposes of this chapter.

(2) A domestic business corporation all of the shares of which are owned, directly or indirectly, by one or more registered corporations or foreign corporations for profit described in section 4102(b) (relating to registered corporation exclusions).

(Apr. 27, 1990, P.L.129, No.36, eff. imd.; Dec. 19, 1990, P.L.834, No.198, eff. imd.)

Cross References. Section 2502 is referred to in sections 102, 224, 1525, 1529, 1711, 2501, 2503, 2504, 2511, 2512, 2513, 2521, 2525, 2526, 2527, 2539, 2541, 2551, 2561, 2571, 2581 of this title.

§ 2503. Acquisition of registered corporation status.

(a) Registered corporations.--This chapter shall apply to a registered corporation described in section 2502(1) (relating to registered corporation status) on the day following the day on which the corporation becomes a registered corporation.

(b) Subsidiary corporations.--This chapter shall apply to a registered corporation described in section 2502(2) immediately upon the happening of any event whereby all of the shares of the corporation are owned, directly or indirectly, by one or more registered corporations or foreign corporations

for profit described in section 4102(b) (relating to registered corporation exclusions).

§ 2504. Termination of registered corporation status.

(a) Registered corporations.--The applicability of this chapter to a registered corporation described in section 2502(1) (relating to registered corporation status) shall terminate immediately upon the termination of the status of the corporation as a registered corporation.

(b) Subsidiary corporations.--The applicability of this chapter to a registered corporation described in section 2502(2) shall terminate immediately upon the happening of any event whereby all of the shares of the corporation are no longer owned, directly or indirectly, by one or more registered corporations or foreign corporations for profit described in section 4102(b) (relating to registered corporation exclusions).

SUBCHAPTER B
POWERS, DUTIES AND SAFEGUARDS

Sec.

2511. Financial reports to shareholders.
2512. Dissenters rights procedure.
2513. Disparate treatment of certain persons.

Cross References. Subchapter B is referred to in section 2501 of this title.

§ 2511. Financial reports to shareholders.

(a) General rule.--The requirements of section 1554 (relating to financial reports to shareholders) shall not apply to a registered corporation.

(b) Exception.--Subsection (a) does not apply to a registered corporation described in section 2502(2) (relating to registered corporation status) that has more than one shareholder.

Cross References. Section 2511 is referred to in sections 1508, 1554 of this title.

§ 2512. Dissenters rights procedure.

(a) General rule.--A registered corporation, except one described in section 2502(1)(ii) or (2) (relating to registered corporation status), shall not be required by statute to supply a copy of Subchapter D of Chapter 15 (relating to dissenters rights) to any of its shareholders entitled to dissenters rights in connection with a proposed corporate action from whom the corporation solicits a proxy relating to approval of, or to whom it sends an information statement relating to, the proposed corporate action.

(b) Exception.--Subsection (a) does not apply to notice given under sections 1575(a)(4) (relating to notice to demand payment) and 1577(c)(3) (relating to payment of fair value of shares).

Cross References. Section 2512 is referred to in sections 321, 1571 of this title.

§ 2513. Disparate treatment of certain persons.

(a) General rule.--A registered corporation, except one described in section 2502(1)(ii) or (2) (relating to registered corporation status), that creates and issues any securities, contracts, warrants or other instruments evidencing any shares, option rights, securities having conversion or option rights,

or obligations under section 1525 (relating to stock rights and options) may set forth therein such terms as are fixed by the board of directors, including, without limiting the generality of such authority, conditions including, but not limited to, conditions that preclude or limit any person or persons owning or offering to acquire a specified number or percentage of the outstanding common shares, other shares, option rights, securities having conversion or option rights, or obligations of the corporation or transferee or transferees of the person or persons from exercising, converting, transferring or receiving the shares, option rights, securities having conversion or option rights, or obligations.

(b) Cross reference.--See section 1525(c) (relating to standard of care unaffected).

Cross References. Section 2513 is referred to in sections 1525, 1715 of this title.

SUBCHAPTER C
DIRECTORS AND SHAREHOLDERS

Sec.
2521. Call of special meetings of shareholders.
2522. Adjournment or postponement of meeting of shareholders.
2523. Quorum at shareholder meetings.
2524. Consent of shareholders in lieu of meeting.
2525. Appointment of custodian.
2526. Voting rights of directors.
2527. Authority of board of directors.
2528. Notice of shareholder meetings.
2529. Voting lists.
2530. Qualifications of directors.

Cross References. Subchapter C is referred to in section 2501 of this title.

§ 2521. Call of special meetings of shareholders.

(a) General rule.--Except as provided in subsections (b) and (c), the shareholders of a registered corporation described in subsection 2502(1) (relating to registered corporation status) do not have the right to call a special meeting of the shareholders.

(b) Exception.--An interested shareholder (as defined in section 2553 (relating to interested shareholder)) may call a special meeting of shareholders for the purpose of approving a business combination under section 2555(3) or (4) (relating to requirements relating to certain business combinations).

(c) Contrary articles provision.--A provision of the articles of a registered corporation described in section 2502(1) that gives shareholders the right to call a special meeting of the shareholders and:

(1) is adopted after July 1, 2015, may provide that a special meeting may be called only by shareholders entitled to cast 25% or more of the votes that all shareholders would be entitled to cast at the meeting; or

(2) was adopted on or before July 1, 2015, is enforceable in accordance with its terms.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 2521 is referred to in sections 1755, 2501 of this title.

§ 2522. Adjournment or postponement of meeting of shareholders.

(a) Authority to adjourn.--Except as otherwise provided in the bylaws, any regular or special meeting of the shareholders of a registered corporation, including one at which directors are to be elected, may be adjourned for such period as the presiding officer or the shareholders present and entitled to vote shall direct.

(b) Notice of adjourned virtual meeting.--If notice of an adjourned meeting of shareholders of a registered corporation held exclusively by means of electronic technology as provided in section 1708(c) (relating to use of conference telephone or other electronic technology) cannot be given by announcement at the meeting at which the adjournment is taken when permitted by section 1702(b) (relating to manner of giving notice), notice may be given by means solely of a publicly available filing with the Securities and Exchange Commission.

(c) Postponement of virtual meeting.--If the presiding officer for a meeting of shareholders of a registered corporation that is to be held exclusively by means of electronic technology as provided in section 1708(c) decides in his or her reasonable judgment on the day of the meeting that the meeting cannot be convened because of a reason outside the control of the corporation, the presiding officer may postpone the meeting to a specified time later that day or the following day. Notice of the postponed meeting may be given by means solely of a publicly available filing with the Securities and Exchange Commission.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 2522 is referred to in sections 1702, 1755 of this title.

§ 2523. Quorum at shareholder meetings.

The board of directors of a registered corporation may adopt or change a bylaw on any subject otherwise expressly committed to the shareholders by section 1756(a) (relating to quorum).

Cross References. Section 2523 is referred to in section 1756 of this title.

§ 2524. Consent of shareholders in lieu of meeting.

(a) General rule.--An action may be authorized by the shareholders of a registered corporation without a meeting by less than unanimous consent of all shareholders entitled to vote thereon only if permitted by its articles.

(b) Effectiveness of action.--An action authorized by the shareholders of a registered corporation without a meeting by less than unanimous consent may become effective immediately upon its authorization, but prompt notice of the action shall be given to those shareholders entitled to vote thereon who have not consented.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

Cross References. Section 2524 is referred to in section 1766 of this title.

§ 2525. Appointment of custodian.

Section 1767(a)(2) (relating to appointment of custodian of corporation on deadlock or other cause) shall not be applicable to a registered corporation described in section 2502(2) (relating to registered corporation status).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 added section 2525.

Cross References. Section 2525 is referred to in section 1767 of this title.

§ 2526. Voting rights of directors.

Every director of a registered corporation described in section 2502(1) (relating to registered corporation status) shall be entitled to one vote except as otherwise provided in:

(1) the articles; or

(2) a bylaw adopted by the shareholders either:

(i) on or before August 21, 2001; or

(ii) at a time when the corporation was not a registered corporation described in section 2502(1).

(June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 added section 2526.

Cross References. Section 2526 is referred to in section 1729 of this title.

§ 2527. Authority of board of directors.

The authority, powers and functions of the board of directors of a registered corporation described in section 2502(1) (relating to registered corporation status) may not be varied, and a committee of the board of such a corporation may not be established, by a bylaw adopted by the shareholders unless the bylaw has been adopted:

(1) with the approval of the board of directors;

(2) on or before August 21, 2001; or

(3) at a time when the corporation was not a registered corporation described in section 2502(1).

(June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 added section 2527.

Cross References. Section 2527 is referred to in section 1721 of this title.

§ 2528. Notice of shareholder meetings.

(a) Householding.--If a registered corporation solicits proxies generally with respect to a meeting of its shareholders, the corporation is not required to give notice of the meeting to any shareholder to whom the corporation is not required to send a proxy statement pursuant to the rules of the Securities and Exchange Commission.

(b) Notice and access.--If a registered corporation has given a shareholder notice of the Internet availability of proxy materials in a manner conforming with the rules of the Securities and Exchange Commission, the corporation may give notice of the meeting to the shareholder by posting the notice on the Internet website to which the proxy materials are posted.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 2528 is referred to in sections 1702, 1704, 1913, 1973 of this title.

§ 2529. Voting lists.

A registered corporation is not required to produce or make available to its shareholders a list of shareholders in connection with any meeting of its shareholders for which a judge or judges of election are appointed, but such a list must be furnished to the judge or judges of election.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 2529.

Cross References. Section 2529 is referred to in section 1764 of this title.

§ 2530. Qualifications of directors.

(a) General rule.--The bylaws of a registered corporation may not impose a qualification of directors that is based on a past, present or future action by a nominee or director in the discharge of the director's powers or duties as a governor of an association.

(b) Certain permitted qualifications.--This section does not prohibit qualifications relating to:

(1) not having entered a guilty plea, or not being or having been subject to a criminal conviction, civil judgment or regulatory sanction or penalty; or

(2) not having been removed as a governor of an association by judicial action or for cause.

(c) Relationship to nomination procedures.--This section applies to a qualification included in a nomination procedure adopted under section 1758(e) (relating to voting rights of shareholders) but does not prohibit the corporation from excluding a nomination that does not comply with such a procedure.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 2530.

Cross References. Section 2530 is referred to in section 1722 of this title.

SUBCHAPTER D
FUNDAMENTAL CHANGES GENERALLY

Sec.

2535. Proposal of amendment to articles.
2536. Application by director for involuntary dissolution.
2537. Dissenters rights in asset transfers.
2538. Approval of transactions with interested shareholders.
2539. Adoption of plan of merger by board of directors.

Cross References. Subchapter D is referred to in section 2501 of this title.

§ 2535. Proposal of amendment to articles.

The shareholders of a registered corporation shall not be entitled by statute to propose an amendment to the articles.

Cross References. Section 2535 is referred to in section 1912 of this title.

§ 2536. Application by director for involuntary dissolution.

A director of a registered corporation, as such, shall not be entitled to file an application seeking involuntary winding up and dissolution of the corporation.

Cross References. Section 2536 is referred to in section 1981 of this title.

§ 2537. Dissenters rights in asset transfers.

The shareholders of a registered corporation that adopts a plan of asset transfer shall not be entitled to dissenters rights except as provided by section 1906(c) (relating to dissenters rights upon special treatment) or unless the board of directors or the bylaws so provide pursuant to section 1571(c) (relating to grant of optional dissenters rights).

Cross References. Section 2537 is referred to in section 1932 of this title.

§ 2538. Approval of transactions with interested shareholders.

(a) General rule.--The following transactions shall require the affirmative vote of the shareholders entitled to cast at least a majority of the votes that all shareholders other than the interested shareholder are entitled to cast with respect to the transaction, without counting the vote of the interested shareholder:

(1) Any transaction authorized under Subchapter C of Chapter 19 (relating to merger liabilities and sale of assets) or Subchapter C (relating to merger) or D (relating to interest exchange) of Chapter 3 between a registered corporation or subsidiary thereof and a shareholder of the registered corporation.

(2) Any transaction authorized under Subchapter F of Chapter 3 (relating to division) in which the interested shareholder receives a disproportionate amount of any of the shares or other securities of any corporation surviving or resulting from the plan of division.

(3) Any transaction authorized under Subchapter F of Chapter 19 (relating to voluntary dissolution and winding up) in which a shareholder is treated differently from other shareholders of the same class (other than any dissenting shareholders under Subchapter D of Chapter 15 (relating to dissenters rights)).

(4) Any reclassification authorized under Subchapter B of Chapter 19 (relating to amendment of articles) in which the percentage of voting or economic share interest in the corporation of a shareholder is materially increased relative to substantially all other shareholders.

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

(1) that has been approved by a majority vote of the board of directors without counting the vote of directors who:

(i) are directors or officers of, or have a material equity interest in, the interested shareholder; or

(ii) were nominated for election as a director by the interested shareholder, and first elected as a director, within 24 months of the date of the vote on the proposed transaction;

(2) in which the consideration to be received by the shareholders for shares of any class of which shares are owned by the interested shareholder is not less than the highest amount paid by the interested shareholder in acquiring shares of the same class; or

(3) effected pursuant to section 321(d)(1)(ii) (relating to approval by business corporation).

(c) Additional approvals.--The approvals required by this section shall be in addition to, and not in lieu of, any other approval required by this subpart, the articles of the corporation, the bylaws of the corporation or otherwise.

(d) Definition of "interested shareholder".--As used in this section, the term "interested shareholder" includes the shareholder who is a party to the transaction or who is treated differently from other shareholders and any person, or group of persons, that is acting jointly or in concert with the interested shareholder and any person who, directly or indirectly, controls, is controlled by or is under common control with the interested shareholder. An interested shareholder shall not include any person who, in good faith and

not for the purpose of circumventing this section, is an agent, bank, broker, nominee or trustee for one or more other persons, to the extent that the other person or persons are not interested shareholders.
(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsecs. (a)(1) and (2) and (b).

1990 Amendment. Act 198 added section 2538. See section 404(b)(1) of Act 198 of 1990 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 2538 is referred to in sections 313, 1745, 1746 of this title.

§ 2539. Adoption of plan of merger by board of directors.

Section 321(d)(1)(ii) (relating to approval by business corporation) shall be applicable to a plan relating to a merger to which a registered corporation described in section 2502(1)(i) (relating to registered corporation status) is a party only if the plan:

(1) has been approved by the board of directors of the registered corporation; and

(2) is consistent with the requirements, if applicable, of Subchapter F (relating to business combinations).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

Cross References. Section 2539 is referred to in sections 313, 321 of this title.

SUBCHAPTER E
CONTROL TRANSACTIONS

Sec.

2541. Application and effect of subchapter.
2542. Definitions.
2543. Controlling person or group.
2544. Right of shareholders to receive payment for shares.
2545. Notice to shareholders.
2546. Shareholder demand for fair value.
2547. Valuation procedures.
2548. Coordination with control transaction.

Effect of 1990 Amendments on Control Transactions. Section 8(c) of Act 36 of 1990 provided that, other than section 5 of Act 36 (section 2542), nothing contained in Act 36 shall be construed as having, or be deemed to have, any effect on the existing practice under Subchapter E or the interpretation, construction, scope or applicability of Subchapter E or as expressing any agreement or disagreement with any court interpretation relating to Subchapter E.

Cross References. Subchapter E is referred to in sections 313, 1715, 1903, 2501, 2551, 2575 of this title.

§ 2541. Application and effect of subchapter.

(a) General rule.--Except as otherwise provided in this section, this subchapter shall apply to a registered corporation unless:

(1) the registered corporation is one described in section 2502(1)(ii) or (2) (relating to registered corporation status);

(2) the bylaws, by amendment adopted either:

(i) by March 23, 1984; or

(ii) on or after March 23, 1988, and on or before June 21, 1988;

and, in either event, not subsequently rescinded by an article amendment, explicitly provide that this subchapter shall not be applicable to the corporation in the case of a corporation which on June 21, 1988, did not have outstanding one or more classes or series of preference shares entitled, upon the occurrence of a default in the payment of dividends or another similar contingency, to elect a majority of the members of the board of directors (a bylaw adopted on or before June 21, 1988, by a corporation excluded from the scope of this paragraph by the restriction of this paragraph relating to certain outstanding preference shares shall be ineffective unless ratified under paragraph (3));

(3) the bylaws of which explicitly provide that this subchapter shall not be applicable to the corporation by amendment ratified by the board of directors on or after December 19, 1990, and on or before March 19, 1991, in the case of a corporation:

(i) which on June 21, 1988, had outstanding one or more classes or series of preference shares entitled, upon the occurrence of a default in the payment of dividends or another similar contingency, to elect a majority of the members of the board of directors; and

(ii) the bylaws of which on that date contained a provision described in paragraph (2); or

(4) the articles explicitly provide that this subchapter shall not be applicable to the corporation by a provision included in the original articles, by an article amendment adopted prior to the date of the control transaction and prior to or on March 23, 1988, pursuant to the procedures then applicable to the corporation, or by an articles amendment adopted prior to the date of the control transaction and subsequent to March 23, 1988, pursuant to both:

(i) the procedures then applicable to the corporation; and

(ii) unless such proposed amendment has been approved by the board of directors of the corporation, in which event this subparagraph shall not be applicable, the affirmative vote of the shareholders entitled to cast at least 80% of the votes which all shareholders are entitled to cast thereon.

A reference in the articles or bylaws to former section 910 (relating to right of shareholders to receive payment for shares following a control transaction) of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law of 1933, shall be deemed a reference to this subchapter for the purposes of this section. See section 101(c) (relating to references to prior statutes).

(b) Inadvertent transactions.--This subchapter shall not apply to any person or group that inadvertently becomes a controlling person or group if that controlling person or group, as soon as practicable, divests itself of a sufficient amount of its voting shares so that it is no longer a controlling person or group.

(c) Certain subsidiaries.--This subchapter shall not apply to any corporation that on December 23, 1983, was a subsidiary of any other corporation.

(d) Rights cumulative.--(Deleted by amendment).

(e) Exemption.--Voting shares acquired by a person or group in a transaction that complies with section 321(f) (relating to approval by business corporation) shall be disregarded for purposes of determining if the person or group constitutes a controlling person or group.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added subsec. (e).

1992 Amendment. Act 169 deleted subsec. (d).

1990 Amendment. Act 198 amended subsec. (a).

Cross References. Section 2541 is referred to in section 1106 of this title.

§ 2542. Definitions.

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

"Control transaction." The acquisition by a person or group of the status of a controlling person or group.

"Controlling person or group." A controlling person or group as defined in section 2543 (relating to controlling person or group).

"Fair value." A value not less than the highest price paid per share by the controlling person or group at any time during the 90-day period ending on and including the date of the control transaction plus an increment representing any value, including, without limitation, any proportion of any value payable for acquisition of control of the corporation, that may not be reflected in such price.

"Partial payment amount." The amount per share specified in section 2545(c)(2) (relating to contents of notice).

"Subsidiary." Any corporation as to which any other corporation has or has the right to acquire, directly or indirectly, through the exercise of all warrants, options and rights and the conversion of all convertible securities, whether issued or granted by the subsidiary or otherwise, voting power over voting shares of the subsidiary that would entitle the holders thereof to cast in excess of 50% of the votes that all shareholders would be entitled to cast in the election of directors of such subsidiary, except that a subsidiary will not be deemed to cease being a subsidiary as long as such corporation remains a controlling person or group within the meaning of this subchapter.

"Voting shares." The term shall have the meaning specified in section 2552 (relating to definitions).

(Apr. 27, 1990, P.L.129, No.36, eff. imd.)

§ 2543. Controlling person or group.

(a) General rule.--For the purpose of this subchapter, a "controlling person or group" means a person who has, or a group of persons acting in concert that has, voting power over voting shares of the registered corporation that would entitle the holders thereof to cast at least 20% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation.

(b) Exceptions generally.--Notwithstanding subsection (a):

(1) A person or group which would otherwise be a controlling person or group within the meaning of this section shall not be deemed a controlling person or group unless, subsequent to the later of March 23, 1988, or the

date this subchapter becomes applicable to a corporation by bylaw or article amendment or otherwise, that person or group increases the percentage of outstanding voting shares of the corporation over which it has voting power to in excess of the percentage of outstanding voting shares of the corporation over which that person or group had voting power on such later date, and to at least the amount specified in subsection (a), as the result of forming or enlarging a group or acquiring, by purchase, voting power over voting shares of the corporation.

(2) No person or group shall be deemed to be a controlling person or group at any particular time if voting power over any of the following voting shares is required to be counted at such time in order to meet the 20% minimum:

(i) Shares which have been held continuously by a natural person since January 1, 1983, and which are held by such natural person at such time.

(ii) Shares which are held at such time by any natural person or trust, estate, foundation or other similar entity to the extent the shares were acquired solely by gift, inheritance, bequest, devise or other testamentary distribution or series of these transactions, directly or indirectly, from a natural person who had acquired the shares prior to January 1, 1983.

(iii) Shares which were acquired pursuant to a stock split, stock dividend, reclassification or similar recapitalization with respect to shares described under this paragraph that have been held continuously since their issuance by the corporation by the natural person or entity that acquired them from the corporation or that were acquired, directly or indirectly, from such natural person or entity, solely pursuant to a transaction or series of transactions described in subparagraph (ii), and that are held at such time by a natural person or entity described in subparagraph (ii).

(iv) Control shares as defined in section 2562 (relating to definitions) which have not yet been accorded voting rights pursuant to section 2564(a) (relating to voting rights of shares acquired in a control-share acquisition).

(v) Shares, the voting rights of which are attributable to a person under subsection (d) if:

(A) the person acquired the option or conversion right directly from or made the contract, arrangement or understanding or has the relationship directly with the corporation; and

(B) the person does not at the particular time own or otherwise effectively possess the voting rights of the shares.

(vi) Shares acquired directly from the corporation or an affiliate or associate, as defined in section 2552 (relating to definitions), of the corporation by a person engaged in business as an underwriter of securities who acquires the shares through his participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933.

(vii) Shares acquired directly from the corporation in a transaction exempt from the registration requirements of the Securities Act of 1933.

(3) In determining whether a person or group is or would be a controlling person or group at any particular time,

there shall be disregarded voting power arising from a contingent right of the holders of one or more classes or series of preference shares to elect one or more members of the board of directors upon or during the continuation of a default in the payment of dividends on such shares or another similar contingency.

(c) Certain record holders.--A person shall not be a controlling person under subsection (a) if the person holds voting power, in good faith and not for the purpose of circumventing this subchapter, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified in subsection (a), or who are not deemed a controlling person or group under subsection (b).

(d) Existence of voting power.--For the purposes of this subchapter, a person has voting power over a voting share if the person has or shares, directly or indirectly, through any option, contract, arrangement, understanding, conversion right or relationship, or by acting jointly or in concert or otherwise, the power to vote, or to direct the voting of, the voting share.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Feb. 10, 2006, P.L.21, No.6, eff. imd.)

2006 Amendment. Act 6 added subsec. (b)(2)(vii).

1990 Amendment. Act 198 amended subsecs. (a) and (b).

Cross References. Section 2543 is referred to in sections 1106, 2542 of this title.

§ 2544. Right of shareholders to receive payment for shares.

Any holder of voting shares of a registered corporation that becomes the subject of a control transaction who shall object to the transaction shall be entitled to the rights and remedies provided in this subchapter.

§ 2545. Notice to shareholders.

(a) General rule.--Prompt notice that a control transaction has occurred shall be given by the controlling person or group to:

(1) Each shareholder of record of the registered corporation holding voting shares.

(2) The court, accompanied by a petition to the court praying that the fair value of the voting shares of the corporation be determined pursuant to section 2547 (relating to valuation procedures) if the court should receive, pursuant to section 2547, certificates from shareholders of the corporation or an equivalent request for transfer of uncertificated securities.

(b) Obligations of the corporation.--If the controlling person or group so requests, the corporation shall, at the option of the corporation and at the expense of the person or group, either furnish a list of all such shareholders and their postal addresses to the person or group or provide the notice to all such shareholders.

(c) Contents of notice.--The notice shall state that:

(1) All shareholders are entitled to demand that they be paid the fair value of their shares.

(2) The minimum value the shareholder can receive under this subchapter is the highest price paid per share by the controlling person or group within the 90-day period ending on and including the date of the control transaction, and stating that value.

(3) If the shareholder believes the fair value of his shares is higher, this subchapter provides an appraisal procedure for determining the fair value of such shares, specifying the name of the court and its address and the caption of the petition referenced in subsection (a)(2), and stating that the information is provided for the possible use by the shareholder in electing to proceed with a court-appointed appraiser under section 2547.

There shall be included in, or enclosed with, the notice a copy of this subchapter.

(d) Optional procedure.--The controlling person or group may, at its option, supply with the notice referenced in subsection (c) a form for the shareholder to demand payment of the partial payment amount directly from the controlling person or group without utilizing the court-appointed appraiser procedure of section 2547, requiring the shareholder to state the number and class or series, if any, of the shares owned by him, and stating where the payment demand must be sent and the procedures to be followed.

(e) Cross reference.--See section 1702 (relating to manner of giving notice).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (b) and added subsec. (e).

Cross References. Section 2545 is referred to in sections 2542, 2546, 2547 of this title.

§ 2546. Shareholder demand for fair value.

(a) General rule.--After the occurrence of the control transaction, any holder of voting shares of the registered corporation may, prior to or within a reasonable time after the notice required by section 2545 (relating to notice to shareholders) is given, which time period may be specified in the notice, make written demand on the controlling person or group for payment of the amount provided in subsection (c) with respect to the voting shares of the corporation held by the shareholder, and the controlling person or group shall be required to pay that amount to the shareholder pursuant to the procedures specified in section 2547 (relating to valuation procedures).

(b) Contents of demand.--The demand of the shareholder shall state the number and class or series, if any, of the shares owned by him with respect to which the demand is made.

(c) Measure of value.--A shareholder making written demand under this section shall be entitled to receive cash for each of his shares in an amount equal to the fair value of each voting share as of the date on which the control transaction occurs, taking into account all relevant factors, including an increment representing a proportion of any value payable for acquisition of control of the corporation.

(d) Purchases independent of subchapter.--The provisions of this subchapter shall not preclude a controlling person or group subject to this subchapter from offering, whether in the notice required by section 2545 or otherwise, to purchase voting shares of the corporation at a price other than that provided in subsection (c), and the provisions of this subchapter shall not preclude any shareholder from agreeing to sell his voting shares at that or any other price to any person.

Cross References. Section 2546 is referred to in section 2547 of this title.

§ 2547. Valuation procedures.

(a) General rule.--If, within 45 days (or such other time period, if any, as required by applicable law) after the date of the notice required by section 2545 (relating to notice to shareholders), or, if such notice was not provided prior to the date of the written demand by the shareholder under section 2546 (relating to shareholder demand for fair value), then within 45 days (or such other time period, if any, required by applicable law) of the date of such written demand, the controlling person or group and the shareholder are unable to agree on the fair value of the shares or on a binding procedure to determine the fair value of the shares, then each shareholder who is unable to agree on both the fair value and on such a procedure with the controlling person or group and who so desires to obtain the rights and remedies provided in this subchapter shall, no later than 30 days after the expiration of the applicable 45-day or other period, surrender to the court certificates representing any of the shares that are certificated shares, duly endorsed for transfer to the controlling person or group, or cause any uncertificated shares to be transferred to the court as escrow agent under subsection (c) with a notice stating that the certificates or uncertificated shares are being surrendered or transferred, as the case may be, in connection with the petition referenced in section 2545 or, if no petition has theretofore been filed, the shareholder may file a petition within the 30-day period in the court praying that the fair value (as defined in this subchapter) of the shares be determined.

(b) Effect of failure to give notice and surrender certificates.--Any shareholder who does not so give notice and surrender any certificates or cause uncertificated shares to be transferred within such time period shall have no further right to receive, with respect to shares the certificates of which were not so surrendered or the uncertificated shares which were not so transferred under this section, payment under this subchapter from the controlling person or group with respect to the control transaction giving rise to the rights of the shareholder under this subchapter.

(c) Escrow and notice.--The court shall hold the certificates surrendered and the uncertificated shares transferred to it in escrow for, and shall promptly, following the expiration of the time period during which the certificates may be surrendered and the uncertificated shares transferred, provide a notice to the controlling person or group of the number of shares so surrendered or transferred.

(d) Partial payment for shares.--The controlling person or group shall then make a partial payment for the shares so surrendered or transferred to the court, within ten business days of receipt of the notice from the court, at a per-share price equal to the partial payment amount. The court shall then make payment as soon as practicable, but in any event within ten business days, to the shareholders who so surrender or transfer their shares to the court of the appropriate per-share amount received from the controlling person or group.

(e) Appointment of appraiser.--Upon receipt of any share certificate surrendered or uncertificated share transferred under this section, the court shall, as soon as practicable but in any event within 30 days, appoint an appraiser with experience in appraising share values of companies of like nature to the registered corporation to determine the fair value of the shares.

(f) Appraisal procedure.--The appraiser so appointed by the court shall, as soon as reasonably practicable, determine the

fair value of the shares subject to its appraisal and the appropriate market rate of interest on the amount then owed by the controlling person or group to the holders of the shares. The determination of any appraiser so appointed by the court shall be final and binding on both the controlling person or group and all shareholders who so surrendered their share certificates or transferred their shares to the court, except that the determination of the appraiser shall be subject to review to the extent and within the time provided or prescribed by law in the case of other appointed judicial officers. See 42 Pa.C.S. §§ 5105(a)(3) (relating to right to appellate review) and 5571(b) (relating to appeals generally).

(g) Supplemental payment.--Any amount owed, together with interest, as determined pursuant to the appraisal procedures of this section shall be payable by the controlling person or group after it is so determined and upon and concurrently with the delivery or transfer to the controlling person or group by the court (which shall make delivery of the certificate or certificates surrendered or the uncertificated shares transferred to it to the controlling person or group as soon as practicable but in any event within ten business days after the final determination of the amount owed) of the certificate or certificates representing shares surrendered or the uncertificated shares transferred to the court, and the court shall then make payment, as soon as practicable but in any event within ten business days after receipt of payment from the controlling person or group, to the shareholders who so surrendered or transferred their shares to the court of the appropriate per-share amount received from the controlling person or group.

(h) Voting and dividend rights during appraisal proceedings.--Shareholders who surrender their shares to the court pursuant to this section shall retain the right to vote their shares and receive dividends or other distributions thereon until the court receives payment in full for each of the shares so surrendered or transferred of the partial payment amount (and, thereafter, the controlling person or group shall be entitled to vote such shares and receive dividends or other distributions thereon). The fair value (as determined by the appraiser) of any dividends or other distributions so received by the shareholders shall be subtracted from any amount owing to such shareholders under this section.

(i) Powers of the court.--The court may appoint such agents, including the transfer agent of the corporation, or any other institution, to hold the share certificates so surrendered and the shares surrendered or transferred under this section, to effect any necessary change in record ownership of the shares after the payment by the controlling person or group to the court of the amount specified in subsection (h), to receive and disburse dividends or other distributions, to provide notices to shareholders and to take such other actions as the court determines are appropriate to effect the purposes of this subchapter.

(j) Costs and expenses.--The costs and expenses of any appraiser or other agents appointed by the court shall be assessed against the controlling person or group. The costs and expenses of any other procedure to determine fair value shall be paid as agreed to by the parties agreeing to the procedure.

(k) Jurisdiction exclusive.--The jurisdiction of the court under this subchapter is plenary and exclusive and the controlling person or group, and all shareholders who so surrendered or transferred their shares to the court shall be

made a party to the proceeding as in an action against their shares.

(l) Duty of corporation.--The corporation shall comply with requests for information, which may be submitted pursuant to procedures maintaining the confidentiality of the information, made by the court or the appraiser selected by the court. If any of the shares of the corporation are not represented by certificates, the transfer, escrow or retransfer of those shares contemplated by this section shall be registered by the corporation, which shall give the written notice required by section 1528(f) (relating to uncertificated shares) to the transferring shareholder, the court and the controlling shareholder or group, as appropriate in the circumstances.

(m) Payment under optional procedure.--Any amount agreed upon between the parties or determined pursuant to the procedure agreed upon between the parties shall be payable by the controlling person or group after it is agreed upon or determined and upon and concurrently with the delivery of any certificate or certificates representing such shares or the transfer of any uncertificated shares to the controlling person or group by the shareholder.

(n) Title to shares.--Upon full payment by the controlling person or group of the amount owed to the shareholder or to the court, as appropriate, the shareholder shall cease to have any interest in the shares.

Cross References. Section 2547 is referred to in sections 2545, 2546, 2556 of this title.

§ 2548. Coordination with control transaction.

(a) General rule.--A person or group that proposes to engage in a control transaction may comply with the requirements of this subchapter in connection with the control transaction, and the effectiveness of the rights afforded in this subchapter to shareholders may be conditioned upon the consummation of the control transaction.

(b) Notice.--The person or group shall give prompt written notice of the satisfaction of any such condition to each shareholder who has made demand as provided in this subchapter.

SUBCHAPTER F
BUSINESS COMBINATIONS

Sec.

2551. Application and effect of subchapter.
2552. Definitions.
2553. Interested shareholder.
2554. Business combination.
2555. Requirements relating to certain business combinations.
2556. Certain minimum conditions.

Cross References. Subchapter F is referred to in sections 313, 1715, 1903, 2539, 4146 of this title.

§ 2551. Application and effect of subchapter.

(a) General rule.--Except as otherwise provided in this section, this subchapter shall apply to every registered corporation.

(b) Exceptions.--The provisions of this subchapter shall not apply to any business combination:

(1) Of a registered corporation described in section 2502(1)(ii) or (2) (relating to registered corporation status).

(2) Of a corporation whose articles have been amended to provide that the corporation shall be subject to the provisions of this subchapter, which was not a registered corporation described in section 2502(1)(i) on the effective date of such amendment, and which is a business combination with an interested shareholder whose share acquisition date is prior to the effective date of such amendment.

(3) Of a corporation:

(i) the bylaws of which, by amendment adopted by June 21, 1988, and not subsequently rescinded either by an article amendment or by a bylaw amendment approved by at least 85% of the whole board of directors, explicitly provide that this subchapter shall not be applicable to the corporation; or

(ii) the articles of which explicitly provide that this subchapter shall not be applicable to the corporation by a provision included in the original articles, or by an article amendment adopted pursuant to both:

(A) the procedures then applicable to the corporation; and

(B) the affirmative vote of the holders, other than interested shareholders and their affiliates and associates, of shares entitling the holders to cast a majority of the votes that all shareholders would be entitled to cast in an election of directors of the corporation, excluding the voting shares of interested shareholders and their affiliates and associates, expressly electing not to be governed by this subchapter.

The amendment to the articles shall not be effective until 18 months after the vote of the shareholders of the corporation and shall not apply to any business combination of the corporation with an interested shareholder whose share acquisition date is on or prior to the effective date of the amendment.

(4) Of a corporation with an interested shareholder of the corporation which became an interested shareholder inadvertently, if the interested shareholder:

(i) as soon as practicable, divests itself of a sufficient amount of the voting shares of the corporation so that it no longer is the beneficial owner, directly or indirectly, of shares entitling the person to cast at least 20% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation; and

(ii) would not at any time within the five-year period preceding the announcement date with respect to the business combination have been an interested shareholder but for such inadvertent acquisition.

(5) With an interested shareholder who was the beneficial owner, directly or indirectly, of shares entitling the person to cast at least 15% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation on March 23, 1988, and remains so to the share acquisition date of the interested shareholder.

(6) Of a corporation that on March 23, 1988, was a subsidiary of any other corporation. A corporation that was a subsidiary on such date will not be deemed to cease being a subsidiary as long as the other corporation remains a

controlling person or group of the subsidiary within the meaning of Subchapter E (relating to control transactions). A reference in the articles or bylaws to former section 911 (relating to requirements relating to certain business combinations) of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law of 1933, shall be deemed a reference to this subchapter for the purposes of this section. See section 101(c) (relating to references to prior statutes).

(c) Continuing applicability.--A registered corporation that is organized under the laws of this Commonwealth shall not cease to be subject to this subchapter by reason of events occurring or actions taken while the corporation is subject to the provisions of this subchapter. See section 4146 (relating to provisions applicable to all foreign corporations).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 deleted subsec. (c) and relettered subsec. (d) to subsec. (c).

Cross References. Section 2551 is referred to in sections 1106, 2555, 4146 of this title.

§ 2552. Definitions.

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

"Affiliate." (Deleted by amendment).

"Announcement date." When used in reference to any business combination, the date of the first public announcement of the final, definitive proposal for such business combination.

"Associate." (Deleted by amendment).

"Beneficial owner." When used with respect to any shares, a person:

(1) that, individually or with or through any of its affiliates or associates, beneficially owns such shares, directly or indirectly;

(2) that, individually or with or through any of its affiliates or associates, has:

(i) the right to acquire such shares (whether the right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding (whether or not in writing), or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, except that a person shall not be deemed the beneficial owner of shares tendered pursuant to a tender or exchange offer made by such person or the affiliates or associates of any such person until the tendered shares are accepted for purchase or exchange; or

(ii) the right to vote such shares pursuant to any agreement, arrangement or understanding (whether or not in writing), except that a person shall not be deemed the beneficial owner of any shares under this subparagraph if the agreement, arrangement or understanding to vote such shares:

(A) arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act; and

(B) is not then reportable on a Schedule 13D under the Exchange Act, (or any comparable or successor report); or

(3) that has any agreement, arrangement or understanding (whether or not in writing), for the purpose of acquiring,

holding, voting (except voting pursuant to a revocable proxy or consent as described in paragraph (2)(ii)), or disposing of such shares with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such shares.

"Business combination." A business combination as defined in section 2554 (relating to business combination).

"Common shares." Any shares other than preferred shares.

"Consummation date." With respect to any business combination, the date of consummation of the business combination, or, in the case of a business combination as to which a shareholder vote is taken, the later of the business day prior to the vote or 20 days prior to the date of consummation of such business combination.

"Control," "controlling," "controlled by" or "under common control with." The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of shares entitling that person to cast at least 10% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation shall create a presumption that such person has control of the corporation. Notwithstanding the foregoing, a person shall not be deemed to have control of a corporation if such person holds voting shares, in good faith and not for the purpose of circumventing this subchapter, as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group have control of the corporation.

"Interested shareholder." An interested shareholder as defined in section 2553 (relating to interested shareholder).

"Market value." When used in reference to shares or property of any corporation:

(1) In the case of shares, the highest closing sale price during the 30-day period immediately preceding the date in question of the share on the composite tape for New York Stock Exchange-listed shares, or, if the shares are not quoted on the composite tape or if the shares are not listed on the exchange, on the principal United States securities exchange registered under the Exchange Act, on which such shares are listed, or, if the shares are not listed on any such exchange, the highest closing bid quotation with respect to the share during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or if no quotations are available, the fair market value on the date in question of the share as determined by the board of directors of the corporation in good faith.

(2) In the case of property other than cash or shares, the fair market value of the property on the date in question as determined by the board of directors of the corporation in good faith.

"Preferred shares." Any class or series of shares of a corporation which, under the bylaws or articles of the corporation, is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of shares, or is entitled in the event of any voluntary liquidation, dissolution or winding up of the corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.

"Share acquisition date." With respect to any person and any registered corporation, the date that such person first becomes an interested shareholder of such corporation.

"Shares."

(1) Any shares or similar security, any certificate of interest, any participation in any profit-sharing agreement, any voting trust certificate, or any certificate of deposit for shares.

(2) Any security convertible, with or without consideration, into shares, or any option right, conversion right or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to or purchase shares.

"Subsidiary." Any corporation as to which any other corporation is the beneficial owner, directly or indirectly, of shares of the first corporation that would entitle the other corporation to cast in excess of 50% of the votes that all shareholders would be entitled to cast in the election of directors of the first corporation.

"Voting shares." Shares of a corporation entitled to vote generally in the election of directors.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 deleted the defs. of "affiliate" and "associate."

1990 Amendment. Act 198 deleted the def. of "Exchange Act."

Cross References. Section 2552 is referred to in sections 1914, 2542, 2543, 2553, 2562, 2573, 2581, 2586 of this title.

§ 2553. Interested shareholder.

(a) General rule.--The term "interested shareholder," when used in reference to any registered corporation, means any person (other than the corporation or any subsidiary of the corporation) that:

(1) is the beneficial owner, directly or indirectly, of shares entitling that person to cast at least 20% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation; or

(2) is an affiliate or associate of such corporation and at any time within the five-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of shares entitling that person to cast at least 20% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation.

(b) Exception.--For the purpose of determining whether a person is an interested shareholder:

(1) the number of votes that would be entitled to be cast in an election of directors of the corporation shall be calculated by including shares deemed to be beneficially owned by the person through application of the definition of "beneficial owner" in section 2552 (relating to definitions), but excluding any other unissued shares of such corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion or option rights, or otherwise; and

(2) there shall be excluded from the beneficial ownership of the interested shareholder any:

(i) shares which have been held continuously by a natural person since January 1, 1983, and which are then held by that natural person;

(ii) shares which are then held by any natural person or trust, estate, foundation or other similar entity to the extent such shares were acquired solely by gift, inheritance, bequest, devise or other testamentary distribution or series of those transactions, directly or indirectly, from a natural person who had acquired such shares prior to January 1, 1983; or

(iii) shares which were acquired pursuant to a stock split, stock dividend, reclassification or similar recapitalization with respect to shares described under this paragraph that have been held continuously since their issuance by the corporation by the natural person or entity that acquired them from the corporation, or that were acquired, directly or indirectly, from the natural person or entity, solely pursuant to a transaction or series of transactions described in subparagraph (ii), and that are then held by a natural person or entity described in subparagraph (ii).

Cross References. Section 2553 is referred to in sections 1106, 2521, 2552 of this title.

§ 2554. Business combination.

The term "business combination," when used in reference to any registered corporation and any interested shareholder of the corporation, means any of the following:

(1) A merger, interest exchange or division of the corporation or any subsidiary of the corporation:

(i) with the interested shareholder; or

(ii) with, involving or resulting in any other corporation (whether or not itself an interested shareholder of the registered corporation) which is, or after the merger, interest exchange or division would be, an affiliate or associate of the interested shareholder.

(2) A sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with the interested shareholder or any affiliate or associate of such interested shareholder of assets of the corporation or any subsidiary of the corporation:

(i) having an aggregate market value equal to 10% or more of the aggregate market value of all the assets, determined on a consolidated basis, of such corporation;

(ii) having an aggregate market value equal to 10% or more of the aggregate market value of all the outstanding shares of such corporation; or

(iii) representing 10% or more of the earning power or net income, determined on a consolidated basis, of such corporation.

(3) The issuance or transfer by the corporation or any subsidiary of the corporation (in one transaction or a series of transactions) of any shares of such corporation or any subsidiary of such corporation which has an aggregate market value equal to 5% or more of the aggregate market value of all the outstanding shares of the corporation to the interested shareholder or any affiliate or associate of such interested shareholder except pursuant to the exercise of option rights to purchase shares, or pursuant to the conversion of securities having conversion rights, offered, or a dividend or distribution paid or made, pro rata to all shareholders of the corporation.

(4) The adoption of any plan or proposal for the liquidation or dissolution of the corporation proposed by, or pursuant to any agreement, arrangement or understanding (whether or not in writing) with, the interested shareholder or any affiliate or associate of such interested shareholder.

(5) A reclassification of securities (including, without limitation, any split of shares, dividend of shares, or other distribution of shares in respect of shares, or any reverse split of shares), or recapitalization of the corporation, or any merger of the corporation with any subsidiary of the corporation, or any other transaction (whether or not with or into or otherwise involving the interested shareholder), proposed by, or pursuant to any agreement, arrangement or understanding (whether or not in writing) with, the interested shareholder or any affiliate or associate of the interested shareholder, which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting shares or securities convertible into voting shares of the corporation or any subsidiary of the corporation which is, directly or indirectly, owned by the interested shareholder or any affiliate or associate of the interested shareholder, except as a result of immaterial changes due to fractional share adjustments.

(6) The receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit, directly or indirectly (except proportionately as a shareholder of such corporation), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by or through the corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended pars. (1) and (5).

Cross References. Section 2554 is referred to in section 2552 of this title.

§ 2555. Requirements relating to certain business combinations.

Notwithstanding anything to the contrary contained in this subpart (except the provisions of section 2551 (relating to application and effect of subchapter)), a registered corporation shall not engage at any time in any business combination with any interested shareholder of the corporation other than:

(1) A business combination approved by the board of directors of the corporation prior to the interested shareholder's share acquisition date, or where the purchase of shares made by the interested shareholder on the interested shareholder's share acquisition date had been approved by the board of directors of the corporation prior to the interested shareholder's share acquisition date.

(2) A business combination approved:

(i) by the affirmative vote of the holders of shares entitling such holders to cast a majority of the votes that all shareholders would be entitled to cast in an election of directors of the corporation, not including any voting shares beneficially owned by the interested shareholder or any affiliate or associate of such interested shareholder, at a meeting called for such purpose no earlier than three months after the interested shareholder became, and if at the time of the meeting the interested shareholder is, the beneficial owner, directly or indirectly, of shares entitling the

interested shareholder to cast at least 80% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation, and if the business combination satisfies all the conditions of section 2556 (relating to certain minimum conditions); or

(ii) by the affirmative vote of all of the holders of all of the outstanding common shares.

(3) A business combination approved by the affirmative vote of the holders of shares entitling such holders to cast a majority of the votes that all shareholders would be entitled to cast in an election of directors of the corporation, not including any voting shares beneficially owned by the interested shareholder or any affiliate or associate of the interested shareholder, at a meeting called for such purpose no earlier than five years after the interested shareholder's share acquisition date.

(4) A business combination approved at a shareholders' meeting called for such purpose no earlier than five years after the interested shareholder's share acquisition date that meets all of the conditions of section 2556.

Cross References. Section 2555 is referred to in sections 2521, 2556 of this title.

§ 2556. Certain minimum conditions.

A business combination conforming to section 2555(2)(i) or (4) (relating to requirements relating to certain business combinations) shall meet all of the following conditions:

(1) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such registered corporation in the business combination is at least equal to the higher of the following:

(i) The highest per share price paid by the interested shareholder at a time when the shareholder was the beneficial owner, directly or indirectly, of shares entitling that person to cast at least 5% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation, for any common shares of the same class or series acquired by it:

(A) within the five-year period immediately prior to the announcement date with respect to such business combination; or

(B) within the five-year period immediately prior to, or in, the transaction in which the interested shareholder became an interested shareholder;

whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per-share acquisition price was paid through the consummation date at the rate for one year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per common share since such earliest date, up to the amount of the interest.

(ii) The market value per common share on the announcement date with respect to the business combination or on the interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from such date through the

consummation date at the rate for one-year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per common share since such date, up to the amount of the interest.

(2) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the corporation is at least equal to the highest of the following (whether or not the interested shareholder has previously acquired any shares of such class or series of shares):

(i) The highest per-share price paid by the interested shareholder at a time when the shareholder was the beneficial owner, directly or indirectly, of shares entitling that person to cast at least 5% of the votes that all shareholders would be entitled to cast in an election of directors of such corporation, for any shares of such class or series of shares acquired by it:

(A) within the five-year period immediately prior to the announcement date with respect to the business combination; or

(B) within the five-year period immediately prior to, or in, the transaction in which the interested shareholder became an interested shareholder;

whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per-share acquisition price was paid through the consummation date at the rate for one-year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series of shares since such earliest date, up to the amount of the interest.

(ii) The highest preferential amount per share to which the holders of shares of such class or series of shares are entitled in the event of any voluntary liquidation, dissolution or winding up of the corporation, plus the aggregate amount of any dividends declared or due as to which such holders are entitled prior to payment of dividends on some other class or series of shares (unless the aggregate amount of the dividends is included in such preferential amount).

(iii) The market value per share of such class or series of shares on the announcement date with respect to the business combination or on the interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from such date through the consummation date at the rate for one-year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of such class or series of shares since such date, up to the amount of the interest.

(3) The consideration to be received by holders of a particular class or series of outstanding shares (including common shares) of the corporation in the business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of such

class or series of shares previously acquired by it, and the consideration shall be distributed promptly.

(4) The holders of all outstanding shares of the corporation not beneficially owned by the interested shareholder immediately prior to the consummation of the business combination are entitled to receive in the business combination cash or other consideration for such shares in compliance with paragraphs (1), (2) and (3).

(5) After the interested shareholder's share acquisition date and prior to the consummation date with respect to the business combination, the interested shareholder has not become the beneficial owner of any additional voting shares of such corporation except:

(i) as part of the transaction which resulted in such interested shareholder becoming an interested shareholder;

(ii) by virtue of proportionate splits of shares, share dividends or other distributions of shares in respect of shares not constituting a business combination as defined in this subchapter;

(iii) through a business combination meeting all of the conditions of section 2555(1), (2), (3) or (4);

(iv) through purchase by the interested shareholder at any price which, if the price had been paid in an otherwise permissible business combination the announcement date and consummation date of which were the date of such purchase, would have satisfied the requirements of paragraphs (1), (2) and (3); or

(v) through purchase required by and pursuant to the provisions of, and at no less than the fair value (including interest to the date of payment) as determined by a court-appointed appraiser under section 2547 (relating to valuation procedures) or, if such fair value was not then so determined, then at a price that would satisfy the conditions in subparagraph (iv).

Cross References. Section 2556 is referred to in section 2555 of this title.

SUBCHAPTER G
CONTROL-SHARE ACQUISITIONS

Sec.

2561. Application and effect of subchapter.
2562. Definitions.
2563. Acquiring person safe harbor.
2564. Voting rights of shares acquired in a control-share acquisition.
2565. Procedure for establishing voting rights of control shares.
2566. Information statement of acquiring person.
2567. Redemption.
2568. Board determinations.

Enactment. Subchapter G was added April 27, 1990, P.L.129, No.36, effective immediately.

Cross References. Subchapter G is referred to in sections 313, 1715, 1903, 2575, 2581 of this title.

§ 2561. Application and effect of subchapter.

(a) General rule.--Except as otherwise provided in this section, this subchapter shall apply to every registered corporation.

(b) Exceptions.--This subchapter shall not apply to any control-share acquisition:

(1) Of a registered corporation described in section 2502(1)(ii) or (2) (relating to registered corporation status).

(2) Of a corporation:

(i) the bylaws of which explicitly provide that this subchapter shall not be applicable to the corporation by amendment adopted by the board of directors on or before July 26, 1990, in the case of a corporation:

(A) which on April 27, 1990, was a registered corporation described in section 2502(1)(i); and

(B) did not on that date have outstanding one or more classes or series of preference shares entitled, upon the occurrence of a default in the payment of dividends or another similar contingency, to elect a majority of the members of the board of directors (a bylaw adopted on or before July 26, 1990, by a corporation excluded from the scope of this subparagraph by this clause shall be ineffective unless ratified under subparagraph (ii));

(ii) the bylaws of which explicitly provide that this subchapter shall not be applicable to the corporation by amendment ratified by the board of directors on or after December 19, 1990, and on or before March 19, 1991, in the case of a corporation:

(A) which on April 27, 1990, was a registered corporation described in section 2502(1)(i);

(B) which on that date had outstanding one or more classes or series of preference shares entitled, upon the occurrence of a default in the payment of dividends or another similar contingency, to elect a majority of the members of the board of directors; and

(C) the bylaws of which on that date contained a provision described in subparagraph (i); or

(iii) in any other case, the articles of which explicitly provide that this subchapter shall not be applicable to the corporation by a provision included in the original articles, or by an articles amendment adopted at any time while it is a corporation other than a registered corporation described in section 2502(1)(i) or on or before 90 days after the corporation first becomes a registered corporation described in section 2502(1)(i).

(3) Consummated before October 17, 1989.

(4) Consummated pursuant to contractual rights or obligations existing before:

(i) October 17, 1989, in the case of a corporation which was a registered corporation described in section 2502(1)(i) on that date; or

(ii) in any other case, the date this subchapter becomes applicable to the corporation.

(5) Consummated:

(i) Pursuant to:

(A) a gift, devise, bequest or otherwise through the laws of inheritance or descent; or

(B) a transfer, sale or other disposition by a beneficial or record holder of shares of the corporation, or by a fiduciary of a beneficial or record holder, either to, or in trust for, a spouse, parent, sibling, child or descendant of:

(I) the holder; or

(II) a spouse, parent, sibling, child or descendant of the holder.

(ii) By a settlor to a trustee under the terms of a family, testamentary or charitable trust.

(iii) By a trustee to a trust beneficiary or a trustee to a successor trustee under the terms of, or the addition, withdrawal or demise of a beneficiary or beneficiaries of, a family, testamentary or charitable trust.

(iv) Pursuant to the appointment of a guardian or custodian.

(v) Pursuant to a transfer from one spouse to another by reason of separation or divorce or pursuant to community property laws or other similar laws of any jurisdiction.

(vi) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this subchapter.

(vii) Pursuant to a plan of merger or plan of interest exchange effected in compliance with the provisions of this chapter if the corporation is a party to the merger or is the acquired entity in the interest exchange.

(viii) Pursuant to a transfer from a person who beneficially owns voting shares of the corporation that would entitle the holder thereof to cast at least 20% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation and who acquired beneficial ownership of such shares prior to October 17, 1989.

(ix) By the corporation or any of its subsidiaries.

(x) By any savings, stock ownership, stock option or other benefit plan of the corporation or any of its subsidiaries, or by any fiduciary with respect to any such plan when acting in such capacity.

(xi) By a person engaged in business as an underwriter of securities who acquires the shares directly from the corporation or an affiliate or associate of the corporation through his participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933.

(xi.1) Pursuant to an acquisition of shares directly from the corporation in a transaction exempt from the registration requirements of the Securities Act of 1933.

(xii) Or commenced by a person who first became an acquiring person:

(A) after April 27, 1990; and

(B) (I) at a time when this subchapter was or is not applicable to the corporation; or

(II) on or before ten business days after the first public announcement by the corporation that this subchapter is applicable to the corporation, if this subchapter was not applicable to the corporation on July 27, 1990.

(c) Effect of distributions.--For purposes of this subchapter, voting shares of a corporation acquired by a holder

as a result of a stock split, stock dividend or other similar distribution by a corporation of voting shares issued by the corporation and not involving a sale of such voting shares shall be deemed to have been acquired by the holder in the same transaction (at the same time, in the same manner and from the same person) in which the holder acquired the shares with respect to which such voting shares were subsequently distributed by the corporation.

(d) Status of certain shares and effect of formation of group on status.--

(1) No share over which voting power, or of which beneficial ownership, was or is acquired by the acquiring person in or in connection with a control-share acquisition described in subsection (b) shall be deemed to be a control share.

(2) In the case of affiliate, disinterested or existing shares, the acquisition of a beneficial ownership interest in a voting share by a group shall not, by itself, affect the status of an affiliate, disinterested or existing share, as such, if and so long as the person who had beneficial ownership of the share immediately prior to the acquisition of the beneficial ownership interest in the share by the group (or a direct or indirect transferee from the person to the extent such shares were acquired by the transferee solely pursuant to a transfer or series of transfers under subsection (b)(5)(i) through (vi)):

(i) is a participant in the group; and

(ii) continues to have at least the same voting and dispositive power over the share as the person had immediately prior to the acquisition of the beneficial ownership interest in the share by the group.

(3) Voting shares which are beneficially owned by a person described in paragraph (1), (2) or (3) of the definition of "affiliate shares" in section 2562 (relating to definitions) shall continue to be deemed affiliate shares, notwithstanding paragraph (2) of this subsection or the fact that such shares are also beneficially owned by a group.

(4) No share of a corporation over which voting power, or of which beneficial ownership, was or is acquired by the acquiring person after April 27, 1990, at a time when this subchapter was or is not applicable to the corporation shall be deemed to be a control share.

(5) The acquisition of record title to a voting share by a member of a group that is an acquiring person as a result of a transfer of the share from another member of the group does not constitute a control-share acquisition.

(e) Application of duties.--The duty of the board of directors, committees of the board and individual directors under section 2565 (relating to procedure for establishing voting rights of control shares) is solely to the corporation and not to any shareholder or creditor or any other person or group, and may be enforced directly by the corporation or may be enforced by an action in the right of the corporation, and may not be enforced directly by a shareholder or creditor or by any other person or group.

(f) Reversal of opt-out.--A provision of the articles or bylaws providing that this subchapter shall not be applicable to the corporation may be rescinded pursuant to the procedures required by this subpart and the articles and bylaws at the time to amend the articles or bylaws generally.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b)(5) and (e) and added subsecs. (d)(5) and (f).

1990 Amendment. Act 198 amended subsecs. (b)(2) and (e) and added subsecs. (b)(5)(xi) and (xii) and (d)(4).

Liability of Directors. Section 8(b) of Act 36 of 1990 provided that a director shall not be held liable for taking or omitting to take any action permitted by section 2561(b)(2), it being the intention of Act 36 that any such director may exercise absolute discretion in taking or omitting to take any such action.

Cross References. Section 2561 is referred to in sections 2562, 2564, 2581 of this title.

§ 2562. Definitions.

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

"Acquiring person." A person who makes or proposes to make a control-share acquisition. Two or more persons acting in concert, whether or not pursuant to an express agreement, arrangement, relationship or understanding, including as a partnership, limited partnership, syndicate, or through any means of affiliation whether or not formally organized, for the purpose of acquiring, holding, voting or disposing of shares of a registered corporation, shall also constitute a person for the purposes of this subchapter. A person, together with its affiliates and associates, shall constitute a person for the purposes of this subchapter.

"Affiliate," "associate" and "beneficial owner." (Deleted by amendment).

"Affiliate shares." All voting shares of a corporation beneficially owned by:

(1) an acquiring person;

(2) executive officers or directors who are also officers (including executive officers); or

(3) employee stock plans in which employee participants do not have, under the terms of the plan, the right to direct confidentially the manner in which shares held by the plan for the benefit of the employee will be voted in connection with the consideration of the voting rights to be accorded control shares.

The term does not include existing shares beneficially owned by executive officers or directors who are also officers (including executive officers) if the shares are shares described in paragraph (2) of the definition of "existing shares" that were beneficially owned continuously by the same person or entity described in such paragraph since January 1, 1988, or are shares described in paragraph (3) of that definition that were acquired with respect to such existing shares.

"Beneficial owner." The term has the meaning specified in section 2552 (relating to definitions). The corporation may adopt reasonable provisions to evidence beneficial ownership, specifically including requirements that holders of voting shares of the corporation provide verified statements evidencing beneficial ownership and attesting to the date of acquisition thereof.

"Control." The term shall have the meaning specified in section 2573 (relating to definitions).

"Control-share acquisition." An acquisition, directly or indirectly, by any person of voting power over voting shares of a corporation that, but for this subchapter, would, when

added to all voting power of the person over other voting shares of the corporation (exclusive of voting power of the person with respect to existing shares of the corporation), entitle the person to cast or direct the casting of such a percentage of the votes for the first time with respect to any of the following ranges that all shareholders would be entitled to cast in an election of directors of the corporation:

(1) at least 20% but less than 33 1/3%;

(2) at least 33 1/3% but less than 50%; or

(3) 50% or more.

"Control shares." Those voting shares of a corporation that, upon acquisition of voting power over such shares by an acquiring person, would result in a control-share acquisition. Voting shares beneficially owned by an acquiring person shall also be deemed to be control shares where such beneficial ownership was acquired by the acquiring person:

(1) within 180 days of the day the person makes a control-share acquisition; or

(2) with the intention of making a control-share acquisition.

"Disinterested shares." All voting shares of a corporation that are not affiliate shares and that were beneficially owned by the same holder (or a direct or indirect transferee from the holder to the extent such shares were acquired by the transferee solely pursuant to a transfer or series of transfers under section 2561(b)(5)(i) through (vi) (relating to application and effect of subchapter)) continuously during the period from:

(1) the last to occur of the following dates:

(i) 12 months preceding the record date described in paragraph (2);

(ii) five business days prior to the date on which there is first publicly disclosed or caused to be disclosed information that there is a person (including the acquiring person) who intends to engage or may seek to engage in a control-share acquisition or that there is a person (including the acquiring person) who has acquired shares as part of, or with the intent of making, a control-share acquisition, as determined by the board of directors of the corporation in good faith considering all the evidence that the board deems to be relevant to such determination, including, without limitation, media reports, share trading volume and changes in share prices; or

(iii) (A) October 17, 1989, in the case of a corporation which was a registered corporation on that date; or

(B) in any other case, the date this subchapter becomes applicable to the corporation; through

(2) the record date established pursuant to section 2565(c) (relating to notice and record date).

"Executive officer." When used with reference to a corporation, the president, any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policymaking function or any other person who performs similar policymaking functions. Executive officers of subsidiaries shall be deemed executive officers of the corporation if they perform such policymaking functions for the corporation.

"Existing shares."

(1) Voting shares which have been beneficially owned continuously by the same natural person since January 1, 1988.

(2) Voting shares which are beneficially owned by any natural person or trust, estate, foundation or other similar entity to the extent the voting shares were acquired solely by gift, inheritance, bequest, devise or other testamentary distribution or series of these transactions, directly or indirectly, from a natural person who had beneficially owned the voting shares prior to January 1, 1988.

(3) Voting shares which were acquired pursuant to a stock split, stock dividend, or other similar distribution described in section 2561(c) (relating to application and effect of subchapter) with respect to existing shares that have been beneficially owned continuously since their issuance by the corporation by the natural person or entity that acquired them from the corporation or that were acquired, directly or indirectly, from such natural person or entity, solely pursuant to a transaction or series of transactions described in paragraph (2), and that are held at such time by a natural person or entity described in paragraph (2).

(4) Voting shares which were acquired in a transaction described in section 2561(b)(5).

"Proxy." Includes any proxy, consent or authorization.

"Proxy solicitation" or **"solicitation of proxies."** Includes any solicitation of a proxy, including a solicitation of a revocable proxy of the nature and under the circumstances described in section 2563(b)(3) (relating to acquiring person safe harbor).

"Publicly disclosed or caused to be disclosed." Includes, but is not limited to, any disclosure (whether or not required by law) that becomes public made by a person:

(1) with the intent or expectation that such disclosure become public; or

(2) to another where the disclosing person knows, or reasonably should have known, that the receiving person was not under an obligation to refrain from making such disclosure, directly or indirectly, to the public and such receiving person does make such disclosure, directly or indirectly, to the public.

"Voting shares." The term shall have the meaning specified in section 2552 (relating to definitions).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended the def. of "existing shares," added the def. of "beneficial owner" and deleted the def. of "affiliate," "associate" and "beneficial owner."

1990 Amendment. Act 198 amended par. (2) of the def. of "disinterested shares" and the def. of "proxy solicitation" or "solicitation of proxies" and deleted the def. of "Exchange Act."

Cross References. Section 2562 is referred to in sections 2543, 2561, 2573, 2581 of this title.

§ 2563. Acquiring person safe harbor.

(a) Nonparticipant.--For the purposes of this subchapter, a person shall not be deemed an acquiring person, absent significant other activities indicating that a person should be deemed an acquiring person, by reason of voting or giving a proxy or consent as a shareholder of the corporation if the person is one who:

(1) did not acquire any voting shares of the corporation with the purpose of changing or influencing control of the corporation, seeking to acquire control of the corporation

or influencing the outcome of a vote of shareholders under section 2564 (relating to voting rights of shares acquired in a control-share acquisition) or in connection with or as a participant in any agreement, arrangement, relationship, understanding or otherwise having any such purpose;

(2) if the control-share acquisition were consummated, would not be a person that has control over the corporation and will not receive, directly or indirectly, any consideration from a person that has control over the corporation other than consideration offered proportionately to all holders of voting shares of the corporation; and

(3) if a proxy or consent is given, executes a revocable proxy or consent given without consideration in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act under circumstances not then reportable on Schedule 13d under the Exchange Act (or any comparable or successor report) by the person who gave the proxy or consent.

(b) Certain holders.--For the purpose of this subchapter, a person shall not be deemed an acquiring person if such person holds voting power within any of the ranges specified in the definition of "control-share acquisition":

(1) in good faith and not for the purpose of circumventing this subchapter, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified in any of the ranges in the definition of "control-share acquisition";

(2) in connection with the solicitation of proxies or consents by or on behalf of the corporation in connection with shareholder meetings or actions of the corporation;

(3) as a result of the solicitation of revocable proxies or consents with respect to voting shares if such proxies or consents both:

(i) are given without consideration in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act; and

(ii) do not empower the holder thereof, whether or not this power is shared with any other person, to vote such shares except on the specific matters described in such proxy or consent and in accordance with the instructions of the giver of such proxy or consent; or

(4) to the extent of voting power arising from a contingent right of the holders of one or more classes or series of preference shares to elect one or more members of the board of directors upon or during the continuation of a default in the payment of dividends on such shares or another similar contingency.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 renumbered section 2562.1 to section 2563, renumbered former section 2563 to section 2564, amended subsecs. (a)(1) and (b)(2) and (3) and added subsec. (b)(4).

Cross References. Section 2563 is referred to in section 2562 of this title.

§ 2564. Voting rights of shares acquired in a control-share acquisition.

(a) General rule.--Control shares shall not have any voting rights unless a resolution approved by a vote of shareholders of the registered corporation at an annual or special meeting of shareholders pursuant to this subchapter restores to the

control shares the same voting rights as other shares of the same class or series with respect to elections of directors and all other matters coming before the shareholders. Any such resolution may be approved only by the affirmative vote of the holders of a majority of the voting power entitled to vote in two separate votes as follows:

(1) all the disinterested shares of the corporation; and

(2) all voting shares of the corporation.

(b) Lapse of voting rights.--Voting rights accorded by approval of a resolution of shareholders shall lapse and be lost if any proposed control-share acquisition which is the subject of the shareholder approval is not consummated within 90 days after shareholder approval is obtained.

(c) Restoration of voting rights.--Any control shares that do not have voting rights accorded to them by approval of a resolution of shareholders as provided by subsection (a) or the voting rights of which lapse pursuant to subsection (b) shall regain such voting rights on transfer to a person other than the acquiring person or any affiliate or associate of the acquiring person (or direct or indirect transferee from the acquiring person or such affiliate or associate solely pursuant to a transfer or series of transfers under section 2561(b)(5)(i) through (vi) (relating to application and effect of subchapter)) unless such shares shall constitute control shares of the other person, in which case the voting rights of those shares shall again be subject to this subchapter.

(d) Exemption.--The acquisition of voting shares by a person or group in a transaction that complies with section 321(f) (relating to approval by business corporation) shall be disregarded for purposes of determining if the transaction constitutes a control-share acquisition.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added subsec. (d).

1990 Amendment. Act 198 renumbered section 2563 to section 2564 and renumbered former section 2564 to section 2565.

Cross References. Section 2564 is referred to in sections 2543, 2563, 2566, 2567, 2581 of this title.

§ 2565. Procedure for establishing voting rights of control shares.

(a) Special meeting.--A special meeting of the shareholders of a registered corporation shall be called by the board of directors of the corporation for the purpose of considering the voting rights to be accorded to the control shares if an acquiring person:

(1) files an information statement fully conforming to section 2566 (relating to information statement of acquiring person);

(2) makes a request in writing for a special meeting of the shareholders at the time of delivery of the information statement;

(3) makes a control-share acquisition or a bona fide written offer to make a control-share acquisition; and

(4) gives a written undertaking at the time of delivery of the information statement to pay or reimburse the corporation for the expenses of a special meeting of the shareholders.

(a.1) Time of special meeting.--The special meeting requested by the acquiring person shall be held on the date set by the board of directors of the corporation, but in no event

later than 50 days after the receipt of the information statement by the corporation, unless the corporation and the acquiring person mutually agree to a later date. If the acquiring person so requests in writing at the time of delivery of the information statement to the corporation, the special meeting shall not be held sooner than 30 days after receipt by the corporation of the complete information statement. Section 1755(d) (relating to time of holding meetings of shareholders) does not apply to a special meeting called pursuant to this subsection, unless the acquiring person has consented in record form to the application of that subsection.

(b) Special meeting not requested.--If the acquiring person complies with subsection (a)(1) and (3), but no request for a special meeting is made or no written undertaking to pay or reimburse the expenses of the meeting is given, the issue of the voting rights to be accorded to control shares shall be submitted to the shareholders at the next annual or special meeting of the shareholders of which notice had not been given prior to the receipt of such information statement, unless the matter of the voting rights becomes moot.

(c) Notice and record date.--The notice of any annual or special meeting at which the issue of the voting rights to be accorded the control shares shall be submitted to shareholders shall be given at least ten days prior to the date named for the meeting and shall be accompanied by:

(1) A copy of the information statement of the acquiring person.

(2) A copy of any amendment of such information statement previously delivered to the corporation at least seven days prior to the date on which such notice is given.

(3) A statement disclosing whether the board of directors of the corporation recommends approval of, expresses no opinion and remains neutral toward, recommends rejection of, or is unable to take a position with respect to according voting rights to control shares. In determining the position that it shall take with respect to according voting rights to control shares, including to express no opinion and remain neutral or to be unable to take a position with respect to such issue, the board of directors shall specifically consider, in addition to any other factors it deems appropriate, the effect of according voting rights to control shares upon the interests of employees and of communities in which offices or other establishments of the corporation are located.

(4) Any other matter required by this subchapter to be incorporated into or to accompany the notice of meeting of shareholders or that the corporation elects to include with such notice.

(c.1) Record date.--Only shareholders of record on the date determined by the board of directors in accordance with the provisions of section 1763 (relating to determination of shareholders of record) shall be entitled to notice of and to vote at the meeting to consider the voting rights to be accorded to control shares.

(d) Special meeting or submission of issue at annual or special meeting not required.--Notwithstanding subsections (a) and (b), the corporation is not required to call a special meeting of shareholders or otherwise present the issue of the voting rights to be accorded to the control shares at any annual or special meeting of shareholders unless:

(1) the acquiring person delivers to the corporation a complete information statement pursuant to section 2566; and

(2) at the time of delivery of such information statement, the acquiring person has:

(i) entered into a definitive financing agreement or agreements (which shall not include best efforts, highly confident or similar undertakings but which may have the usual and customary conditions, including conditions requiring that the control-share acquisition be consummated and that the control shares be accorded voting rights) with one or more financial institutions or other persons having the necessary financial capacity as determined by the board of directors of the corporation in good faith to provide for any amounts of financing of the control-share acquisition not to be provided by the acquiring person; and

(ii) delivered a copy of such agreements to the corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (c) and added subsecs. (a.1) and (c.1).

1990 Amendment. Act 198 renumbered section 2564 to section 2565 and renumbered former section 2565 to section 2566 and amended subsecs. (a)(1) and (d)(1).

Cross References. Section 2565 is referred to in sections 1755, 2561, 2562, 2567, 2581 of this title.

§ 2566. Information statement of acquiring person.

(a) Delivery of information statement.--An acquiring person may deliver to the registered corporation at its principal executive office an information statement which shall contain all of the following:

(1) The identity of the acquiring person and the identity of each affiliate and associate of the acquiring person.

(2) A statement that the information statement is being provided under this section.

(3) The number and class or series of voting shares and of any other security of the corporation beneficially owned, directly or indirectly, prior to the control-share acquisition and at the time of the filing of this statement by the acquiring person.

(4) The number and class or series of voting shares of the corporation acquired or proposed to be acquired pursuant to the control-share acquisition by the acquiring person and specification of the following ranges of votes that the acquiring person could cast or direct the casting of relative to all the votes that would be entitled to be cast in an election of directors of the corporation that the acquiring person in good faith believes would result from consummation of the control-share acquisition:

(i) At least 20% but less than 33 1/3%.

(ii) At least 33 1/3% but less than 50%.

(iii) 50% or more.

(5) The terms of the control-share acquisition or proposed control-share acquisition, including:

(i) The source of moneys or other consideration and the material terms of the financial arrangements for the control-share acquisition and the plans of the acquiring person for meeting its debt-service and repayment obligations with respect to any such financing.

(ii) A statement identifying any pension fund of the acquiring person or of the corporation which is a

source or proposed source of money or other consideration for the control-share acquisition, proposed control-share acquisition or the acquisition of any control shares and the amount of such money or other consideration which has been or is proposed to be used, directly or indirectly, in the financing of such acquisition.

(6) Plans or proposals of the acquiring person with regard to the corporation, including plans or proposals under consideration to:

(i) Enter into a business combination or combinations involving the corporation.

(ii) Liquidate or dissolve the corporation.

(iii) Permanently or temporarily shut down any plant, facility or establishment, or substantial part thereof, of the corporation, or sell any such plant, facility or establishment, or substantial part thereof, to any other person.

(iv) Otherwise sell all or a material part of the assets of, or merge, consolidate, divide or exchange the shares of the corporation to or with any other person.

(v) Transfer a material portion of the work, operations or business activities of any plant, facility or establishment of the corporation to a different location or to a plant, facility or establishment owned, as of the date the information statement is delivered, by any other person.

(vi) Change materially the management or policies of employment of the corporation or the policies of the corporation with respect to labor relations matters, including, but not limited to, the recognition of or negotiations with any labor organization representing employees of the corporation and the administration of collective bargaining agreements between the corporation and any such organization.

(vii) Change materially the charitable or community involvement or contributions or policies, programs or practices relating thereto of the corporation.

(viii) Change materially the relationship with suppliers or customers of, or the communities in which there are operations of, the corporation.

(ix) Make any other material change in the business, corporate structure, management or personnel of the corporation.

(7) The funding or other provisions the acquiring person intends to make with respect to all retiree insurance and employee benefit plan obligations.

(8) Any other facts that would be substantially likely to affect the decision of a shareholder with respect to voting on the control-share acquisition pursuant to section 2564 (relating to voting rights of shares acquired in a control-share acquisition).

(b) Amendment of information statement.--If any material change occurs in the facts set forth in the information statement, including any material increase or decrease in the number of voting shares of the corporation acquired or proposed to be acquired by the acquiring person, the acquiring person shall promptly deliver, to the corporation at its principal executive office, an amendment to the information statement fully explaining such material change.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 renumbered section 2565 to section 2566 and renumbered former section 2566 to section 2567 and amended subsec. (a)(8).

Cross References. Section 2566 is referred to in section 2565 of this title.

§ 2567. Redemption.

Unless prohibited by the terms of the articles of a registered corporation in effect before a control-share acquisition has occurred, the corporation may redeem all control shares from the acquiring person at the average of the high and low sales price of shares of the same class and series as such prices are specified on a national securities exchange, national quotation system or similar quotation listing service on the date the corporation provides notice to the acquiring person of the call for redemption:

(1) at any time within 24 months after the date on which the acquiring person consummates a control-share acquisition, if the acquiring person does not, within 30 days after consummation of the control-share acquisition, properly request that the issue of voting rights to be accorded control shares be presented to the shareholders under section 2565(a) or (b) (relating to procedure for establishing voting rights of control shares); and

(2) at any time within 24 months after the issue of voting rights to be accorded such shares is submitted to the shareholders pursuant to section 2565(a) or (b); and

(i) such voting rights are not accorded pursuant to section 2564(a) (relating to voting rights of shares acquired in control-share acquisition); or

(ii) such voting rights are accorded and subsequently lapse pursuant to section 2564(b) (relating to lapse of voting rights).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended and renumbered section 2566 to section 2567 and renumbered former section 2567 to section 2568.

§ 2568. Board determinations.

All determinations made by the board of directors of the registered corporation under this subchapter shall be presumed to be correct unless shown by clear and convincing evidence that the determination was not made by the directors in good faith after reasonable investigation or was clearly erroneous.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 renumbered section 2567 to section 2568.

SUBCHAPTER H
DISGORGEMENT BY CERTAIN CONTROLLING SHAREHOLDERS FOLLOWING ATTEMPTS TO ACQUIRE CONTROL

Sec.

2571. Application and effect of subchapter.
2572. Policy and purpose.
2573. Definitions.
2574. Controlling person or group safe harbor.
2575. Ownership by corporation of profits resulting from certain transactions.
2576. Enforcement actions.

Enactment. Subchapter H was added April 27, 1990, P.L.129, No.36, effective immediately.

Cross References. Subchapter H is referred to in sections 313, 1715, 1781, 1903 of this title.

§ 2571. Application and effect of subchapter.

(a) General rule.--Except as otherwise provided in this section, this subchapter shall apply to every registered corporation.

(b) Exceptions.--This subchapter shall not apply to any transfer of an equity security:

(1) Of a registered corporation described in section 2502(1)(ii) or (2) (relating to registered corporation status).

(2) Of a corporation:

(i) the bylaws of which explicitly provide that this subchapter shall not be applicable to the corporation by amendment adopted by the board of directors on or before July 26, 1990, in the case of a corporation:

(A) which on April 27, 1990, was a registered corporation described in section 2502(1)(i); and

(B) did not on that date have outstanding one or more classes or series of preference shares entitled, upon the occurrence of a default in the payment of dividends or another similar contingency, to elect a majority of the members of the board of directors (a bylaw adopted on or before July 26, 1990, by a corporation excluded from the scope of this subparagraph by this clause shall be ineffective unless ratified under subparagraph (ii));

(ii) the bylaws of which explicitly provide that this subchapter shall not be applicable to the corporation by amendment ratified by the board of directors on or after December 19, 1990, and on or before March 19, 1991, in the case of a corporation:

(A) which on April 27, 1990, was a registered corporation described in section 2502(1)(i);

(B) which on that date had outstanding one or more classes or series of preference shares entitled, upon the occurrence of a default in the payment of dividends or another similar contingency, to elect a majority of the members of the board of directors; and

(C) the bylaws of which on that date contained a provision described in subparagraph (i); or

(iii) in any other case, the articles of which explicitly provide that this subchapter shall not be applicable to the corporation by a provision included in the original articles, or by an articles amendment adopted at any time while it is a corporation other than a registered corporation described in section 2502(1)(i) or on or before 90 days after the corporation first becomes a registered corporation described in section 2502(1)(i).

(3) Consummated before October 17, 1989, if both the acquisition and disposition of such equity security were consummated before October 17, 1989.

(4) Consummated by a person or group who first became a controlling person or group prior to:

(i) October 17, 1989, if such person or group does not after such date commence a tender or exchange offer

for or proxy solicitation with respect to voting shares of the corporation, in the case of a corporation which was a registered corporation described in section 2502(1)(i) on that date; or

(ii) in any other case, the date this subchapter becomes applicable to the corporation.

(5) Constituting:

(i) In the case of a person or group that, as of October 17, 1989, beneficially owned shares entitling the person or group to cast at least 20% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation:

(A) The disposition of equity securities of the corporation by the person or group.

(B) Subsequent dispositions of any or all equity securities of the corporation disposed of by the person or group where such subsequent dispositions are effected by:

(I) the direct purchaser of the securities from the person or group if, as a result of the acquisition by the purchaser of the securities disposed of by the person or group, the purchaser, immediately following the acquisition, is entitled to cast at least 20% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation;

(II) a person that acquired the securities from the person or group in a transaction or series of transactions each of which is described in this paragraph if at the time of the subsequent disposition the person disposing of the securities is entitled to cast at least 20% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation; or

(III) an affiliate or associate of the person or group.

(ii) The transfer of the beneficial ownership of the equity security by:

(A) Gift, devise, bequest or otherwise through the laws of inheritance or descent.

(A.1) Transfer, sale or other disposition by a beneficial owner or record holder of the equity security of the corporation, or by a fiduciary of a beneficial owner or record holder, either to, or in trust for, a spouse, parent, sibling, child or descendant of:

(I) the holder; or

(II) a spouse, parent, sibling, child or descendant of the holder.

(B) A settlor to a trustee under the terms of a family, testamentary or charitable trust.

(C) A trustee to a trust beneficiary or a trustee to a successor trustee under the terms of a family, testamentary or charitable trust.

(iii) The addition, withdrawal or demise of a beneficiary or beneficiaries of a family, testamentary or charitable trust.

(iv) The appointment of a guardian or custodian with respect to the equity security.

(v) The transfer of the beneficial ownership of the equity security from one spouse to another by reason of

separation or divorce or pursuant to community property laws or other similar laws of any jurisdiction.

(vi) The transfer of record or the transfer of a beneficial interest or interests in the equity security where the circumstances surrounding the transfer clearly demonstrate that no material change in beneficial ownership has occurred.

(6) Consummated by:

(i) The corporation or any of its subsidiaries as a disposition of shares by it.

(ii) Any savings, stock ownership, stock option or other benefit plan of the corporation or any of its subsidiaries, or any fiduciary with respect to any such plan when acting in such capacity, or by any participant in any such plan with respect to any equity security acquired pursuant to any such plan or any equity security acquired as a result of the exercise or conversion of any equity security (specifically including any options, warrants or rights) issued to such participant by the corporation pursuant to any such plan.

(iii) A person engaged in business as an underwriter of securities who acquires the equity securities directly from the corporation or an affiliate or associate of the corporation through the person's participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933.

(7) (i) Where the acquisition of the equity security has been approved by a resolution adopted prior to the acquisition of the equity security; or

(ii) where the disposition of the equity security has been approved by a resolution adopted prior to the disposition of the equity security if the equity security at the time of the adoption of the resolution is beneficially owned by a person or group that is or was a controlling person or group with respect to the corporation and is in control of the corporation if: the resolution in either subparagraph (i) or (ii) is approved by the board of directors and ratified by the affirmative vote of the shareholders entitled to cast at least a majority of the votes which all shareholders are entitled to cast thereon and identifies the specific person or group that proposes such acquisition or disposition, the specific purpose of such acquisition or disposition and the specific number of equity securities that are proposed to be acquired or disposed of by such person or group.

(8) Acquired at any time by a person or group who first became a controlling person or group:

(i) after April 27, 1990; and

(ii) (A) at a time when this subchapter was or is not applicable to the corporation; or

(B) on or before ten business days after the first public announcement by the corporation that this subchapter is applicable to the corporation, if this subchapter was not applicable to the corporation on July 27, 1990.

(c) Effect of distributions.--For purposes of this subchapter, equity securities acquired by a holder as a result of a stock split, stock dividend or other similar distribution by a corporation of equity securities issued by the corporation not involving a sale of the securities shall be deemed to have been acquired by the holder in the same transaction (at the same time, in the same manner and from the same person) in which

the holder acquired the existing equity security with respect to which the equity securities were subsequently distributed by the corporation.

(d) Formation of group.--For the purposes of this subchapter, if there is no change in the beneficial ownership of an equity security held by a person, then the formation of or participation in a group involving the person shall not be deemed to constitute an acquisition of the beneficial ownership of such equity security by the group.

(e) Reversal of opt-out.--A provision of the articles or bylaws providing that this subchapter shall not be applicable to the corporation may be rescinded pursuant to the procedures required by this subpart and the articles and bylaws at the time to amend the articles or bylaws generally.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b)(5) and (6)(i) and (iii) and added subsec. (e).

1990 Amendment. Act 198 amended subsec. (b)(2) and added subsec. (b)(6)(iii) and (8).

Liability of Directors. Section 8(b) of Act 36 of 1990 provided that a director shall not be held liable for taking or omitting to take any action permitted by section 2571(b)(2), it being the intention of Act 36 that any such director may exercise absolute discretion in taking or omitting to take any such action.

Cross References. Section 2571 is referred to in section 2573 of this title.

§ 2572. Policy and purpose.

(a) General rule.--The purpose of this subchapter is to protect certain registered corporations and legitimate interests of various groups related to such corporations from certain manipulative and coercive actions. Specifically, this subchapter seeks to:

(1) Protect registered corporations from being exposed to and paying "greenmail."

(2) Promote a stable relationship among the various parties involved in registered corporations, including the public whose confidence in the future of a corporation tends to be undermined when a corporation is put "in play."

(3) Ensure that speculators who put registered corporations "in play" do not misappropriate corporate values for themselves at the expense of the corporation and groups affected by corporate actions.

(4) Discourage such speculators from putting registered corporations "in play" through any means, including, but not limited to, offering to purchase at least 20% of the voting shares of the corporation or threatening to wage or waging a proxy contest in connection with or as a means toward or part of a plan to acquire control of the corporation, with the effect of reaping short-term speculative profits.

Moreover, this subchapter recognizes the right and obligation of the Commonwealth to regulate and protect the corporations it creates from abuses resulting from the application of its own laws affecting generally corporate governance and particularly director obligations, mergers and related matters. Such laws, and the obligations imposed on directors or others thereunder, should not be the vehicles by which registered corporations are manipulated in certain instances for the purpose of obtaining short-term profits.

(b) Limitations.--The purpose of this subchapter is not to affect legitimate shareholder activity that does not involve putting a corporation "in play" or involve seeking to acquire control of the corporation. Specifically, the purpose of this subchapter is not to:

(1) curtail proxy contests on matters properly submitted for shareholder action under applicable State or other law, including, but not limited to, certain elections of directors, corporate governance matters such as cumulative voting or staggered boards, or other corporate matters such as environmental issues or conducting business in a particular country if, in any such instance, such proxy contest is not utilized in connection with or as a means toward or part of a plan to put the corporation "in play" or to seek to acquire control of the corporation; or

(2) affect the solicitation of proxies or consents by or on behalf of the corporation in connection with shareholder meetings or actions of the corporation.

§ 2573. Definitions.

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

"Beneficial owner." The term shall have the meaning specified in section 2552 (relating to definitions).

"Control." The power, whether or not exercised, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract or otherwise.

"Controlling person or group."

(1) (i) A person or group who has acquired, offered to acquire or, directly or indirectly, publicly disclosed or caused to be disclosed (other than for the purpose of circumventing the intent of this subchapter) the intention of acquiring voting power over voting shares of a registered corporation that would entitle the holder thereof to cast at least 20% of the votes that all shareholders would be entitled to cast in an election of directors of the corporation; or

(ii) a person or group who has otherwise, directly or indirectly, publicly disclosed or caused to be disclosed (other than for the purpose of circumventing the intent of this subchapter) that it may seek to acquire control of a corporation through any means.

(2) Two or more persons acting in concert, whether or not pursuant to an express agreement, arrangement, relationship or understanding, including as a partnership, limited partnership, syndicate, or through any means of affiliation whether or not formally organized, for the purpose of acquiring, holding, voting or disposing of equity securities of a corporation shall be deemed a group for purposes of this subchapter. Notwithstanding any other provision of this subchapter to the contrary and regardless of whether a group has been deemed to acquire beneficial ownership of an equity security under this subchapter, each person who participates in a group, where such group is a controlling person or group as defined in this subchapter, shall also be deemed to be a controlling person or group for the purposes of this subchapter, and a direct or indirect transferee solely pursuant to a transfer or series of transfers under section 2571(b)(5)(ii) through (vi) (relating to application and effect of subchapter) of an equity security acquired from any person or group that is or becomes

a controlling person or group, shall be deemed, with respect to such equity security, to be acting in concert with the controlling person or group, and shall be deemed to have acquired such equity security in the same transaction (at the same time, in the same manner and from the same person) as its acquisition by the controlling person or group.

"Equity security." Any security, including all shares, stock or similar security, and any security convertible into (with or without additional consideration) or exercisable for any such shares, stock or similar security, or carrying any warrant, right or option to subscribe to or purchase such shares, stock or similar security or any such warrant, right, option or similar instrument. The term also includes any other security, instrument, right of payment or other arrangement based on the value of any of the foregoing.

"Profit." The positive value, if any, of the difference between:

(1) the consideration received from the disposition of equity securities less only the usual and customary broker's commissions actually paid in connection with such disposition; and

(2) the consideration actually paid for the acquisition of such equity securities plus only the usual and customary broker's commissions actually paid in connection with such acquisition.

"Proxy." Includes any proxy, consent or authorization.

"Proxy solicitation" or **"solicitation of proxies."** Includes any solicitation of a proxy, including a solicitation of a revocable proxy of the nature and under the circumstances described in section 2574(b)(3) (relating to controlling person or group safe harbor).

"Publicly disclosed or caused to be disclosed." The term shall have the meaning specified in section 2562 (relating to definitions).

"Transfer." Includes an acquisition or disposition of equity securities in a transaction under Chapter 3 (relating to entity transactions).

"Voting shares." The term shall have the meaning specified in section 2552 (relating to definitions).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended the defs. of "equity security" and "transfer."

1992 Amendment. Act 169 deleted the def. of "Exchange Act."

1990 Amendment. Act 198 amended the def. of "proxy solicitation" or "solicitation of proxies."

Cross References. Section 2573 is referred to in sections 2562, 2574, 2576 of this title.

§ 2574. Controlling person or group safe harbor.

(a) Nonparticipant.--For the purpose of this subchapter, a person or group shall not be deemed a controlling person or group, absent significant other activities indicating that a person or group should be deemed a controlling person or group, by reason of voting or giving a proxy or consent as a shareholder of the corporation if the person or group is one who or which:

(1) did not acquire any voting shares of the corporation with the purpose of changing or influencing control of the corporation or seeking to acquire control of the corporation or in connection with or as a participant in any agreement,

arrangement, relationship, understanding or otherwise having any such purpose;

(2) if control were acquired, would not be a person or group or a participant in a group that has control over the corporation and will not receive, directly or indirectly, any consideration from a person or group that has control over the corporation other than consideration offered proportionately to all holders of voting shares of the corporation; and

(3) if a proxy or consent is given, executes a revocable proxy or consent given without consideration in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act under circumstances not then reportable on Schedule 13d under the Exchange Act (or any comparable or successor report) by the person or group who gave the proxy or consent.

(b) Certain holders.--For the purpose of this subchapter, a person or group shall not be deemed a controlling person or group under paragraph (1)(i) of the definition of "controlling person or group" in section 2573 (relating to definitions) if such person or group holds voting power:

(1) in good faith and not for the purpose of circumventing this subchapter, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified in paragraph (1)(i) of the definition of "controlling person or group" in section 2573;

(2) in connection with the solicitation of proxies or consents by or on behalf of the corporation in connection with shareholder meetings or actions of the corporation; or

(3) in the amount specified in paragraph (1)(i) of the definition of "controlling person or group" in section 2573 as a result of the solicitation of revocable proxies or consents with respect to voting shares if such proxies or consents both:

(i) are given without consideration in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act; and

(ii) do not empower the holder thereof, whether or not this power is shared with any other person, to vote such shares except on the specific matters described in such proxy or consent and in accordance with the instructions of the giver of such proxy or consent.

(c) Preference shares.--In determining whether a person or group would be a controlling person or group within the meaning of this subchapter, there shall be disregarded voting power, and the seeking to acquire control of a corporation to the extent based upon voting power arising from a contingent right of the holders of one or more classes or series of preference shares to elect one or more members of the board of directors upon or during the continuation of a default in the payment of dividends on such shares or another similar contingency. (Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 renumbered section 2573.1 to section 2574 and added subsec. (c) and renumbered former section 2574 to present section 2575.

Cross References. Section 2574 is referred to in section 2573 of this title.

§ 2575. Ownership by corporation of profits resulting from certain transactions.

Any profit realized by any person or group who is or was a controlling person or group with respect to a registered corporation from the disposition of any equity security of the corporation to any person (including under Subchapter E (relating to control transactions) or otherwise), including, without limitation, to the corporation (including under Subchapter G (relating to control-share acquisitions) or otherwise) or to another member of the controlling person or group, shall belong to and be recoverable by the corporation where the profit is realized by such person or group:

(1) from the disposition of the equity security within 18 months after the person or group obtained the status of a controlling person or group; and

(2) the equity security had been acquired by the controlling person or group within 24 months prior to or 18 months subsequent to the obtaining by the person or group of the status of a controlling person or group.

Any transfer by a controlling person or group of the ownership of any equity security may be suspended on the books of the corporation, and certificates representing such securities may be duly legended, to enforce the rights of the corporation under this subchapter.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 renumbered section 2574 to section 2575 and renumbered former section 2575 to section 2576.

§ 2576. Enforcement actions.

(a) Venue.--Actions to recover any profit due under this subchapter may be commenced in any court of competent jurisdiction by the registered corporation issuing the equity security or by any holder of any equity security of the corporation in the name and on behalf of the corporation if the corporation fails or refuses to bring the action within 60 days after written request by a holder or shall fail to prosecute the action diligently. If a judgment requiring the payment of any such profits is entered, the party bringing such action shall recover all costs, including reasonable attorney fees, incurred in connection with enforcement of this subchapter.

(b) Jurisdiction.--By engaging in the activities necessary to become a controlling person or group and thereby becoming a controlling person or group, the person or group and all persons participating in the group consent to personal jurisdiction in the courts of this Commonwealth for enforcement of this subchapter. Courts of this Commonwealth may exercise personal jurisdiction over any controlling person or group in actions to enforce this subchapter. The terms of this section shall be supplementary to the provisions of 42 Pa.C.S. §§ 5301 (relating to persons) through 5322 (relating to bases of personal jurisdiction over persons outside this Commonwealth) and, for the purpose of this section, 42 Pa.C.S. § 5322(a)(7)(iv) shall be deemed to include a controlling person or group as defined in section 2573 (relating to definitions). Service of process may be made upon such persons outside this Commonwealth in accordance with the procedures specified by 42 Pa.C.S. § 5323 (relating to service of process on persons outside this Commonwealth).

(c) Limitation.--Any action to enforce this subchapter shall be brought within two years from the date any profit recoverable by the corporation was realized.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 renumbered section 2575 to section 2576.

SUBCHAPTER I
SEVERANCE COMPENSATION FOR EMPLOYEES TERMINATED FOLLOWING CERTAIN CONTROL-SHARE ACQUISITIONS

Sec.
2581. Definitions.
2582. Severance compensation.
2583. Enforcement and remedies.

Enactment. Subchapter I was added April 27, 1990, P.L.129, No.36, effective immediately.

Cross References. Subchapter I is referred to in section 313 of this title; section 7203 of Title 20 (Decedents, Estates and Fiduciaries).

§ 2581. Definitions.

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

"Acquiring person." The term shall have the meaning specified in section 2562 (relating to definitions).

"Control-share acquisition." The term shall have the meaning specified in section 2562.

"Control-share approval."

(1) The occurrence of both:

(i) a control-share acquisition to which Subchapter G (relating to control-share acquisitions) applies with respect to a registered corporation described in section 2502(1)(i) (relating to registered corporation status) by an acquiring person; and

(ii) the according by such registered corporation of voting rights pursuant to section 2564(a) (relating to voting rights of shares acquired in a control-share acquisition) in connection with such control-share acquisition to control shares of the acquiring person.

(2) The term shall also include a control-share acquisition effected by an acquiring person, other than a control-share acquisition described in section 2561(b)(3), (4) or (5) (other than section 2561(b)(5)(vii)) (relating to application and effect of subchapter) if the control-share acquisition:

(i) (A) occurs primarily in response to the actions of an other acquiring person where Subchapter G applies to a control-share acquisition or proposed control-share acquisition by such other acquiring person; and

(B) either:

(I) pursuant to an agreement or plan described in section 2561(b)(5)(vii);

(II) after adoption of an amendment to the articles of the registered corporation pursuant to section 2561(b)(2)(iii); or

(III) after reincorporation of the registered corporation in another jurisdiction;

if the agreement or plan is approved or the amendment or reincorporation is adopted by the board of directors of the corporation during the period commencing after

the satisfaction by such other acquiring person of the requirements of section 2565(a) or (b) (relating to procedure for establishing voting rights of control shares) and ending 90 days after the date such issue is voted on by the shareholders, is withdrawn from consideration or becomes moot; or

(ii) is consummated in any manner by a person who satisfied, within two years prior to such acquisition, the requirements of section 2565(a) or (b).

"Control shares." The term shall have the meaning specified in section 2562.

"Eligible employee." Any employee of a registered corporation (or any subsidiary thereof) if:

(1) the registered corporation was the subject of a control-share approval;

(2) the employee was an employee of such corporation (or any subsidiary thereof) within 90 days before or on the day of the control-share approval and had been so employed for at least two years prior thereto; and

(3) the employment of the employee is in this Commonwealth.

"Employee." Any person lawfully employed by an employer.

"Employment in this Commonwealth."

(1) The entire service of an employee, performed inside and outside of this Commonwealth, if the service is localized in this Commonwealth.

(2) Service shall be deemed to be localized in this Commonwealth if:

(i) the service is performed entirely inside this Commonwealth; or

(ii) the service is performed both inside and outside of this Commonwealth but the service performed outside of this Commonwealth is incidental to the service of the employee inside this Commonwealth, as where such service is temporary or transitory in nature or consists of isolated transactions.

(3) Employment in this Commonwealth shall also include service of the employee, performed inside and outside of this Commonwealth, if the service is not localized in any state, but some of the service is performed in this Commonwealth, and:

(i) the base of operations of the employee is in this Commonwealth;

(ii) there is no base of operations, and the place from which such service is directed or controlled is in this Commonwealth; or

(iii) the base of operations of the employee or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the residence of the employee is in this Commonwealth.

"Minimum severance amount." With respect to an eligible employee, the weekly compensation of the employee multiplied by the number of the completed years of service of the employee, up to a maximum of 26 times the weekly compensation of the employee.

"Subsidiary." The term shall have the meaning specified in section 2552 (relating to definitions).

"Termination of employment." The layoff of at least six months, or the involuntary termination of an employee, except that any employee employed in a business operation who is continued or employed or offered employment (within 60 days)

by the purchaser of such business operation, on substantially the same terms (including geographic location) as those pursuant to which the employee was employed in such business operation, shall not be deemed to have been laid off or involuntarily terminated for the purposes of this subchapter by such transfer of employment to the purchaser, but the purchaser shall make the lump-sum payment under this subchapter in the event of a layoff of at least six months or the involuntary termination of the employee within the period specified in section 2582 (relating to severance compensation).

"Weekly compensation." The average regular weekly compensation of an employee based on normal schedule of hours in effect for such employee over the last three months preceding the control-share approval.

"Year of service." Each full year during which the employee has been employed by the employer.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended pars. (1)(ii) and (2) of the def. of "control-share approval."

Cross References. Section 2581 is referred to in section 2586 of this title.

§ 2582. Severance compensation.

(a) General rule.--Any eligible employee whose employment is terminated, other than for willful misconduct connected with the work of the employee, within 90 days before the control-share approval with respect to the registered corporation if such termination was pursuant to an agreement, arrangement or understanding, whether formal or informal, with the acquiring person whose control shares were accorded voting rights in connection with such control-share approval or within 24 calendar months after the control-share approval with respect to the registered corporation shall receive a one-time, lump-sum payment from the employer equal to:

(1) the minimum severance amount with respect to the employee; less

(2) any payments made to the employee by the employer due to termination of employment, whether pursuant to any contract, policy, plan or otherwise, but not including any final wage payments to the employee or payments to the employee under pension, savings, retirement or similar plans.

(b) Limitation.--If the amount specified in subsection (a)(2) is at least equal to the amount specified in subsection (a)(1), no payment shall be required to be made under this subchapter.

(c) Due date of payment.--Severance compensation under this subchapter to eligible employees shall be made within one regular pay period after the last day of work of the employee, in the case of a layoff known at such time to be at least six months or an involuntary termination and in all other cases within 30 days after the eligible employee first becomes entitled to compensation under this subchapter.

Cross References. Section 2582 is referred to in section 2581 of this title.

§ 2583. Enforcement and remedies.

(a) Notice.--Within 30 days of the control-share approval, the employer shall provide written notice to each eligible employee and to the collective bargaining representative, if any, of the rights of eligible employees under this subchapter.

(b) Remedies.--In the event any eligible employee is denied a lump-sum payment in violation of this subchapter or the

employer fails to provide the notice required by subsection (a), the employee on his or her own behalf or on behalf of other employees similarly situated, or the collective bargaining representative, if any, on the behalf of the employee, may, in addition to all other remedies available at law or in equity, bring an action to remedy such violation. In any such action, the court may order such equitable or legal relief as it deems just and proper.

(c) Civil penalty.--In the case of violations of subsection (a), the court may order the employer to pay to each employee who was subject to a termination of employment and entitled to severance compensation under this subchapter a civil penalty not to exceed $75 per day for each business day that notice was not provided to such employee.

(d) Successor liability.--The rights under this subchapter of any individual who was an eligible employee at the time of the control-share approval shall vest at that time, and, in any action based on a violation of this subchapter, recovery may be secured against:

(1) a merged, consolidated or resulting domestic or foreign corporation or other successor employer; or

(2) the corporation after its status as a registered corporation has terminated;

notwithstanding any provision of law to the contrary.

SUBCHAPTER J
BUSINESS COMBINATION TRANSACTIONS - LABOR CONTRACTS

Sec.

2585. Application and effect of subchapter.
2586. Definitions.
2587. Labor contracts preserved in business combination transactions.
2588. Civil remedies.

Enactment. Subchapter J was added April 27, 1990, P.L.129, No.36, effective immediately.

Cross References. Subchapter J is referred to in section 313 of this title; section 7203 of Title 20 (Decedents, Estates and Fiduciaries).

§ 2585. Application and effect of subchapter.

(a) General rule.--Except as otherwise provided in this section, this subchapter shall apply to every business combination transaction relating to a business operation if such business operation was owned by a registered corporation (or any subsidiary thereof) at the time of a control-share approval with respect to the corporation (regardless of the fact, if such be the case, that such operation after the control-share approval is owned by the registered corporation or any other person).

(b) Exceptions.--This subchapter shall not apply to:

(1) Any business combination transaction occurring more than five years after the control-share approval of the registered corporation.

(2) Any business operation located other than in this Commonwealth.

§ 2586. Definitions.

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

"Business combination transaction." Any merger or consolidation, sale, lease, exchange or other disposition, in one transaction or a series of transactions, whether affecting all or substantially all the property and assets, including its good will, of the business operation that is the subject of the labor contract referred to in section 2587 (relating to labor contracts preserved in business combination transactions) or any transfer of a controlling interest in such business operation.

"Control-share approval." The term shall have the meaning specified in section 2581 (relating to definitions).

"Covered labor contract." Any labor contract if such contract:

(1) covers persons engaged in employment in this Commonwealth;

(2) was negotiated by a labor organization or by a collective bargaining agent or other representative;

(3) relates to a business operation that was owned by the registered corporation (or any subsidiary thereof) at the time of the control-share approval with respect to such corporation; and

(4) was in effect and covered such business operation and such employees at the time of such control-share approval.

"Employee" and "employment in this Commonwealth." The terms shall have the meanings specified in section 2581.

"Subsidiary." The term shall have the meaning specified in section 2552 (relating to definitions).

§ 2587. Labor contracts preserved in business combination transactions.

No business combination transaction shall result in the termination or impairment of the provisions of any covered labor contract, and the contract shall continue in effect pursuant to its terms until it is terminated pursuant to any termination provision contained therein or until otherwise agreed upon by the parties to such contract or their successors.

Cross References. Section 2587 is referred to in section 2586 of this title.

§ 2588. Civil remedies.

(a) General rule.--In the event that an employee is denied or fails to receive wages, benefits or wage supplements or suffers any contractual loss as a result of a violation of this subchapter, the employee on his or her own behalf or on behalf of other employees similarly situated, or the labor organization or collective bargaining agent party to the labor contract, may, in addition to all other remedies available at law or in equity, bring an action in any court of competent jurisdiction to recover such wages, benefits, wage supplements or contractual losses and to enjoin the violation of this subchapter.

(b) Successor liability.--The rights under this subchapter of any employee at the time of the control-share approval shall vest at that time, and, in any action based on a violation of this subchapter, recovery may be secured against:

(1) a merged, consolidated or resulting domestic or foreign corporation or other successor employer; or

(2) the corporation after its status as a registered corporation has terminated;

notwithstanding any provision of law to the contrary.

Subchapter

A. Preliminary Provisions
B. Directors and Shareholders
C. Fundamental Changes

Enactment. Chapter 27 was added December 19, 1990, P.L.834, No.198, effective immediately.

Prior Provisions. Former Chapter 27, which related to the same subject matter, was added December 21, 1988, P.L.1444, No.177, and repealed December 19, 1990, P.L.834, No.198, effective immediately.

Cross References. Chapter 27 is referred to in section 1103 of this title.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

2701. Application and effect of chapter.
2702. Formation of management corporations.
2703. Additional contents of articles of management corporations.
2704. Election of an existing business corporation to become a management corporation.
2705. Termination and renewal of status as a management corporation.

§ 2701. Application and effect of chapter.

(a) General rule.--This chapter shall be applicable to a business corporation, other than a statutory close corporation or a professional corporation, that elects to become a management corporation in the manner provided by this chapter.

(b) Laws applicable to management corporations.--Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all management corporations. The specific provisions of this chapter shall control over the general provisions of Part I and this subpart. Except as otherwise provided in this article, a management corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

(c) Effect of a contrary provision of the bylaws.--The bylaws of a management corporation may provide either expressly or by necessary implication that any one or more of the provisions of this chapter, except this subchapter, shall not be applicable, in whole or in part, to the corporation.
(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (b).

§ 2702. Formation of management corporations.

A management corporation shall be formed in accordance with Article B (relating to domestic business corporations generally) except that its articles shall contain:

(1) A heading stating the name of the corporation and that it is a management corporation.

(2) The provisions required by section 2703 (relating to additional contents of articles of management corporations).

Cross References. Section 2702 is referred to in section 2705 of this title.

§ 2703. Additional contents of articles of management corporations.

In addition to the provisions otherwise required by this subpart, the articles of a management corporation shall provide that:

(1) If, and so long as, the corporation is not a registered corporation:

(i) All of the outstanding shares of the corporation of all classes shall be subject to one or more of the restrictions on transfer permitted by section 1529 (relating to transfer of securities; restrictions).

(ii) Except as part of a transaction having as a purpose the establishment of the corporation as a registered corporation, neither the corporation nor any shareholder shall make an offering of any of its shares of any class that would constitute a "public offering" within the meaning of the Securities Act of 1933.

(2) If and so long as the corporation is not a management company registered under the Investment Company Act of 1940:

(i) if the compensation or cost of benefits of the directors and five most highly-compensated officers of the corporation is determined other than by a fixed annual amount in dollars per year, or if the corporation is managed by persons other than its directors and officers, the rate, formula or other basis for payment by the corporation of such compensation or benefits shall be valid only if approved by the shareholders from time to time by the affirmative vote; or

(ii) if subparagraph (i) is not applicable, the compensation or the cost of benefits of directors and of the five most highly-compensated officers of the corporation shall not be increased to a higher number of dollars per year without the prior affirmative vote obtained within one year of such increase;

of the holders of the outstanding shares of each class or series whether or not otherwise entitled to vote by the articles. If the articles confer upon the holders of a class or series a specifically enforceable right to the declaration and payment of dividends which are not contingent upon or related to net income (other than as provided by section 1551(b) (relating to limitation)), the articles may deny the holders of such class or series voting rights under this paragraph.

(3) The terms "compensation" and "benefits" shall mean amounts taxable, either currently or on a deferred basis, to a director or officer of the corporation under the Internal Revenue Code of 1986.

Cross References. Section 2703 is referred to in sections 2702, 2704 of this title.

§ 2704. Election of an existing business corporation to become a management corporation.

(a) General rule.--A business corporation may become a management corporation under this chapter by filing articles of amendment which shall contain, in addition to the requirements of section 1915 (relating to articles of amendment):

(1) A heading stating the name of the corporation and that it is a management corporation.

(2) A statement that it elects to become a management corporation.

(3) The provisions required by section 2703 (relating to additional contents of articles of management corporations).

(b) Procedure.--An election to become subject to this chapter shall be proposed by a resolution adopted by the board of directors and shall be adopted in accordance with the requirements of Subchapter B of Chapter 19 (relating to amendment of articles). If an effective date is not stated in the articles of amendment, this chapter shall become applicable to the corporation on the date the articles of amendment are filed in the Department of State.

(c) Dissenters rights upon election.--If any shareholder of a corporation, other than a management company registered under the Investment Company Act of 1940, that adopts an election under this chapter to become a management corporation objects to that action and complies with the provisions of Subchapter D of Chapter 15 (relating to dissenters rights), the dissenting shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided.

(d) Cross reference.--See section 134 (relating to docketing statement).

Cross References. Section 2704 is referred to in sections 1571, 2705, 2721 of this title.

§ 2705. Termination and renewal of status as a management corporation.

(a) General rule.--A management corporation may terminate its status as such and cease to be subject to this chapter by amending its articles to delete therefrom the additional provisions required by section 2702 (relating to formation of management corporations) to be included in the articles of a management corporation. If an effective date is not stated in the articles of amendment, this chapter shall cease to be applicable to the corporation on the date the articles of amendment are filed in the Department of State.

(b) Automatic termination.--The status of a nonregistered corporation as a management corporation shall terminate at the time specified in this subsection upon the occurrence of any of the following:

(1) Three months after the end of any fiscal year:

(i) at the end of which the corporation had less than $50,000,000 of assets; and

(ii) during which it had revenue or receipts of less than $50,000,000.

(2) Three years after its date of incorporation or the effective date of its most recent articles of amendment filed under section 2704 (relating to election of an existing business corporation to become a management corporation).

(c) Renewal.--An election to be subject to this chapter terminated under subsection (b) may be renewed by complying with the provisions of section 2704 (except subsection (c)) in the same manner as an initial election, if the corporation then satisfies the requirements of subsection (b)(1).

(d) Dissenters rights upon renewal of election.--If any shareholder of a nonregistered corporation that renews an election under this chapter to continue as a management corporation objects to that action and complies with the provision of Subchapter D of Chapter 15 (relating to dissenters rights), the dissenting shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided.

Cross References. Section 2705 is referred to in section 1571 of this title.

SUBCHAPTER B
DIRECTORS AND SHAREHOLDERS

Sec.
2711. Selection and removal of directors.
2712. Shareholder meetings unnecessary.

§ 2711. Selection and removal of directors.

(a) General rule.--The bylaws of a management corporation may specify the manner in which and the persons by whom the directors of the corporation shall be selected and may be removed. Unless otherwise provided in the bylaws, the directors of a management corporation shall be selected and may be removed by the board of directors. An incidental reference to the election of directors by common or other junior shares contained in the express terms of any class or series of any preference shares defining the contingent or other voting rights of preference shares shall not constitute, for the purposes of this section, a provision of the articles providing for the election of directors by the common or other junior shares.

(b) Term.--The duration of the term of office of a director of a management corporation shall not be limited by statute.

§ 2712. Shareholder meetings unnecessary.

Annual or other regular meetings of the shareholders of a management corporation need not be held.

SUBCHAPTER C
FUNDAMENTAL CHANGES

Sec.
2721. Bylaw and fundamental change procedures.
2722. Changes in authorized shares.

§ 2721. Bylaw and fundamental change procedures.

So long as a business corporation is a management corporation subject to this chapter:

(1) The board of directors shall have the full authority vested by this subpart in the shareholders to amend the articles under section 2704(b) (relating to procedure) to renew the election of the corporation to be subject to this chapter and to adopt or change the bylaws, and a bylaw adopted by the board of directors pursuant to this section may continue in effect as long as the corporation remains subject to this chapter.

(2) None of the following shall be adopted or changed by the shareholders without the approval of the board of directors:

(i) a plan under Chapter 3 (relating to entity transactions);

(ii) an amendment of the articles;

(iii) an amendment, adoption or repeal of a bylaw;

(iv) a plan of asset transfer; or

(v) a resolution recommending dissolution.

(3) In the case of a corporation that in the ordinary course of business redeems all outstanding shares at the option of the shareholder at the net asset value or at another agreed method or amount of value thereof, a plan under Chapter 3, an amendment of the articles or a plan of

asset transfer under section 1932 (relating to voluntary transfer of corporate assets) shall not require the approval of the shareholders of the corporation for adoption by the corporation.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

§ 2722. Changes in authorized shares.

(a) General rule.--An amendment of the articles of a management corporation shall not require the approval of the shareholders of the corporation to the extent it increases or decreases (to a number not less than that then outstanding) the number of authorized shares of the corporation or of any class or series of the corporation.

(b) Procedure.--The articles of amendment shall set forth, in addition to the requirements of section 1915 (relating to articles of amendment):

(1) The aggregate number of shares that the corporation shall have authority to issue, or the designations of the classes of shares of the corporation and the maximum number of shares of each class that may be issued.

(2) A statement of the voting rights, designations, preferences, limitations and special rights, if any, in respect of the shares of any class or any series of any class, to the extent that they have been determined, and the maximum number of shares of any series of any class that may be issued.

(3) A statement of any authority vested in the board of directors to divide the authorized and unissued shares into classes or series, or both, and to determine for any such class or series its voting rights, designations, preferences, limitations and special rights.

CHAPTER 29
PROFESSIONAL CORPORATIONS

Subchapter

A. Preliminary Provisions
B. Powers, Duties and Safeguards

Enactment. Chapter 29 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 29 is referred to in sections 1103, 9303 of this title; section 2524 of Title 42 (Judiciary and Judicial Procedure).

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

2901. Application and effect of chapter.
2902. Definitions and index of definitions.
2903. Formation of professional corporations.
2904. Election of an existing business corporation to become a professional corporation.
2905. Election of professional associations to become professional corporations.
2906. Termination of professional corporation status.
2907. Proceedings to terminate breach of qualifying conditions.

§ 2901. Application and effect of chapter.

(a) General rule.--This chapter shall be applicable to a business corporation, other than a management corporation, that:

(1) on the effective date of this chapter was subject to the act of July 9, 1970 (P.L.461, No.160), known as the Professional Corporation Law; or

(2) elects to become a professional corporation in the manner provided by this chapter.

(b) Application to business corporations generally.--The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not a professional corporation, and this chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not a professional corporation. This chapter shall not alter or affect any right or privilege existing under any statute or general rule heretofore or hereafter enacted by the General Assembly or (with respect to attorneys at law) prescribed by the Supreme Court of Pennsylvania:

(1) not prohibiting; or

(2) in terms permitting;

performance of professional services in corporate form by a corporation that is not a professional corporation.

(c) Laws applicable to professional corporations.--Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all professional corporations. The specific provisions of this chapter shall control over the general provisions of Part I and this subpart. Except as otherwise provided in this article, a professional corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (c).

§ 2902. Definitions and index of definitions.

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

"Disqualified person." The term "disqualified person" as used in this chapter means a licensed person who for any reason is or becomes legally disqualified (temporarily or permanently) to render the same professional services that the particular professional corporation of which he is an officer, director, shareholder or employee is or was rendering.

"Licensed person." (Deleted by amendment).

"Profession." (Deleted by amendment).

"Professional services." (Deleted by amendment).

(b) Index of other definitions.--Other definitions applying to this chapter and the sections in which they appear are:

"Licensed person." Section 102 (relating to definitions).

"Profession." Section 102.

"Professional services." Section 102.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Dec. 7, 1994, P.L.703, No.106, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days)

§ 2903. Formation of professional corporations.

(a) General rule.--A professional corporation shall be formed in accordance with Article B (relating to domestic business corporations generally) except that its articles shall contain a heading stating the name of the corporation and that it is a professional corporation.

(b) Legislative intent.--It is the intent of the General Assembly to authorize by this chapter licensed persons to render professional services by means of a professional corporation in all cases.

(c) Single-purpose corporations.--Except as provided in subsection (d), a professional corporation may be incorporated only for the purpose of rendering one specific kind of professional service.

(d) Multiple-purpose corporations.--

(1) A professional corporation may be incorporated to render two or more specific kinds of professional services to the extent that:

(i) the several shareholders of the professional corporation, if organized as a partnership, could conduct a combined practice of such specific kinds of professional services; or

(ii) the court, department, board, commission or other government unit regulating each profession involved in the professional corporation has by rule or regulation applicable to professional corporations expressly authorized the combined practice of the profession with each other profession involved in the corporation.

Except as otherwise provided by statute, the government unit may promulgate regulations authorizing combined practice to the extent consistent with the public interest or required by the public health or welfare.

(2) The provisions of paragraph (1) shall not create any vested rights. If by reason of a change in law, rule or regulation the right to practice professions in any particular combination is terminated, all existing professional corporations rendering a combination of professional services shall promptly reduce the specific kinds of professional services rendered by the corporations or shall otherwise reconstitute themselves so as to comply with the currently applicable restrictions applicable to all professions involved.

Cross References. Section 2903 is referred to in sections 2904, 2906 of this title.

§ 2904. Election of an existing business corporation to become a professional corporation.

(a) General rule.--A business corporation may become a professional corporation under this chapter by filing articles of amendment which shall contain, in addition to the requirements of section 1915 (relating to articles of amendment):

(1) A heading stating the name of the corporation and that it is a professional corporation.

(2) A statement that it elects to become a professional corporation.

(3) Such other changes, if any, that may be desired in the articles, including any changes necessary to conform to section 2903(c) and (d) (relating to formation of professional corporations).

(b) Procedure.--The amendment shall be adopted in accordance with the requirements of Subchapter B of Chapter 19 (relating to amendment of articles). If any shareholder of a business corporation that proposes to amend its articles to become a professional corporation objects to that amendment and complies with the provisions of Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to the

rights and remedies of dissenting shareholders therein provided, if any.
(June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsec. (b).

Cross References. Section 2904 is referred to in section 1571 of this title.

§ 2905. Election of professional associations to become professional corporations.

(a) General rule.--This chapter applies to every professional association subject to Chapter 93 (relating to professional associations) that elects to accept the provisions of this chapter in the manner set forth in subsection (b).

(b) Procedure for election.--A professional association may elect to accept this chapter by filing in the Department of State a statement of election of professional corporation status which shall be executed by all of the associates of the professional association and shall set forth:

(1) The name of the professional association and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its proposed registered office.

(2) The name of the county in the office of the prothonotary of which the initial articles of association of the association were filed.

(3) A statement that the associates of the professional association have elected to accept the provisions of this chapter for the government and regulation of the affairs of the association.

See section 134 (relating to docketing statement).

(c) Date of incorporation.--This chapter shall become applicable to the professional association, and it shall be deemed incorporated, on the date the statement of election is filed in the department.

Cross References. Section 2905 is referred to in section 9302 of this title.

§ 2906. Termination of professional corporation status.

A professional corporation may terminate its status as such and cease to be subject to this chapter by amending its articles to delete therefrom the additional provisions required by section 2903(a) (relating to formation of professional corporations). The amendment shall be adopted in accordance with Subchapter B of Chapter 19 (relating to amendment of articles).

§ 2907. Proceedings to terminate breach of qualifying conditions.

(a) General rule.--If the corporation does not otherwise have the right to acquire all the shares of a shareholder who becomes a disqualified person or of a deceased shareholder, the corporation shall nevertheless have an option to acquire the shares, subject to the provisions of subsection (c), at a price that is agreed upon by the parties or, if no agreement is reached, at their fair value as determined under Subchapter D of Chapter 15 (relating to dissenters rights).

(b) Dissolution of corporation.--If the corporation or a licensed person fails to acquire, or if the corporation fails to commence proceedings under subsection (a) to acquire, all of the shares of a shareholder who becomes a disqualified person or of a deceased shareholder within 90 days following the date of disqualification or within 13 months following the date of

death of the shareholder, as the case may be, then that failure shall constitute a ground for the forfeiture of the charter of the corporation and its dissolution. When the failure of a professional corporation to comply with this section is brought to the attention of the court, department, board, commission or other government unit regulating the profession in which the corporation is engaged, the government unit shall certify that fact to the Attorney General for institution of proceedings under section 503 (relating to actions to revoke corporate franchises) to dissolve the corporation.

(c) Nominal consideration transactions.--If section 1551 (relating to distributions to shareholders) would otherwise prohibit an acquisition of shares under this section, a professional corporation shall have the right to purchase its own shares for a nominal consideration.

Cross References. Section 2907 is referred to in section 1571 of this title.

SUBCHAPTER B
POWERS, DUTIES AND SAFEGUARDS

Sec.
2921. Corporate name.
2922. Stated purposes.
2923. Issuance and retention of shares.
2924. Rendering professional services.
2925. Professional relationship retained.

§ 2921. Corporate name.

(a) General rule.--A professional corporation may adopt any name that is not prohibited by law or the ethics of the profession in which the corporation is engaged or by a rule or regulation of the court, department, board, commission or other government unit regulating the profession.

(b) Additional names permitted.--The provisions of section 202 (relating to requirements for names generally) shall not prohibit the use of a name of a professional corporation if the name contains and is restricted to the name or the last name of one or more of the present, prospective or former shareholders or of individuals who were associated with a predecessor or whose individual name or names appeared in the name of the predecessor. The name may also contain:

(1) the word "and" or any symbol or substitute therefor;
(2) the word "associates";
(3) the term "P.C."; or
(4) any or all of the words or terms in paragraphs (1), (2) and (3).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (b).

§ 2922. Stated purposes.

(a) General rule.--A professional corporation shall not engage in any business other than the rendering of the professional service or services for which it was specifically incorporated except that a professional corporation may own real and personal property necessary for, or appropriate or desirable in, the fulfillment or rendering of its specific professional service or services and it may invest its funds in real estate, mortgages, stocks, bonds or any other type of investment.

(b) Additional powers.--A professional corporation may be an equity owner of a partnership, limited liability company, corporation or other association engaged in the business of rendering the professional service or services for which the professional corporation was incorporated.
(June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsec. (b).

Cross References. Section 2922 is referred to in section 3311 of this title.

§ 2923. Issuance and retention of shares.

(a) General rule.--Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, all of the ultimate beneficial owners of shares in a professional corporation shall be licensed persons and any issuance or transfer of shares in violation of this restriction shall be void. A shareholder of a professional corporation shall not enter into a voting trust, proxy or any other arrangement vesting another person (other than a person who is qualified to be a direct or indirect shareholder of the same corporation) with the authority to exercise the voting power of any or all of his shares, and any such purported voting trust, proxy or other arrangement shall be void.

(b) Ownership by estate.--Unless a lesser period of time is provided in a bylaw adopted by the shareholders or in a written agreement among the shareholders of the corporation, the estate of a deceased shareholder may continue to hold shares of the professional corporation for a reasonable period of administration of the estate, but the personal representative of the estate shall not by reason of the retention of shares be authorized to participate in any decisions concerning the rendering of professional service.

(c) Interstate application.--Where a person who is a licensed person under the laws of another jurisdiction engages in activities in this Commonwealth that would be unlawful unless that person were also a licensed person under the laws of this Commonwealth, shares of a professional corporation shall not be issued to or retained by or on behalf of him unless he is also a licensed person under the laws of this Commonwealth. Except as provided in the preceding sentence, this chapter shall not be construed to require that any proportion or number of the holders or beneficial owners of a professional corporation who are licensed persons shall be licensed persons under the laws of this Commonwealth.
(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Dec. 7, 1994, P.L.703, No. 106, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsecs. (a) and (b).

1992 Amendment. Act 169 amended subsec. (c).

Cross References. Section 2923 is referred to in section 1504 of this title.

§ 2924. Rendering professional services.

(a) General rule.--A professional corporation may lawfully render professional services only through officers, employees or agents who are licensed persons. The corporation may employ persons not so licensed but those persons shall not render any professional services rendered or to be rendered by it.

(b) Supporting staff.--This section shall not be interpreted to preclude the use of clerks, secretaries, nurses, administrators, bookkeepers, technicians and other assistants or paraprofessionals who are not usually and ordinarily

considered by law, custom and practice to be rendering the professional service or services for which the professional corporation was incorporated nor to preclude the use of any other person who performs all his employment under the direct supervision and control of a licensed person. A person shall not, under the guise of employment, render professional services unless duly licensed or admitted to practice as required by law.

(c) Charges.--Notwithstanding any other provision of law, a professional corporation may charge for the professional services of its officers, employees and agents, may collect those charges and may compensate those who render the professional services.

(Dec. 7, 1994, P.L.703, No.106, eff. 60 days)

1994 Amendment. Act 106 amended subsec. (b).

§ 2925. Professional relationship retained.

(a) General rule.--This subpart shall not affect the law of this Commonwealth applicable to the professional relationship and the contract, tort and other legal rights, duties and liabilities between the person furnishing professional services and the person receiving professional services and to the standards for professional conduct, including the law of this Commonwealth applicable to the confidential relationship, if any, between the person rendering professional services and the person receiving professional services, and all confidential relationships enjoyed under statutes heretofore or hereafter enacted shall remain inviolate.

(b) Professional liability unaffected.--Any officer, shareholder, employee or agent of a professional corporation shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control while rendering professional services on behalf of the corporation to the person for whom the professional services were being rendered.

(c) Liability of corporation.--The professional corporation shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, employees or agents while they are engaged on behalf of the corporation in rendering professional services.

(d) Liability of shareholders.--Unless otherwise provided in its articles, shares of a professional corporation shall be nonassessable and a holder or owner of shares of a professional corporation shall not be under any liability to the professional corporation with respect to the shares. A holder or owner of shares of a professional corporation shall not be under any liability to any creditor thereof except as provided in subsection (b).

(e) Disciplinary jurisdiction unaffected.--A professional corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other government unit regulating the profession in which the corporation is engaged. The court, department, board or other government unit may require that a professional corporation include in its articles provisions that conform to any rule or regulation heretofore or hereafter promulgated for the purpose of enforcing the ethics of a profession, but, unless otherwise provided by statute, a rule or regulation shall not require the issuance by the corporation of assessable shares or require the inclusion of

any provision in the articles that is inconsistent with the provisions of Article B (relating to domestic business corporations generally) as modified by this chapter. This chapter shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.
(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 amended subsec. (b), relettered part of subsec. (b) to subsec. (c), relettered and amended parts of subsec. (b) to subsec. (d) and relettered former subsec. (c) to subsec. (e).

Cross References. Section 2925 is referred to in sections 1526, 8705, 8834, 9506 of this title.

CHAPTER 31
INSURANCE CORPORATIONS

Subchapter
A. Preliminary Provisions
B. Powers, Duties and Safeguards
C. Officers, Directors and Shareholders

Enactment. Chapter 31 was added December 19, 1990, P.L.834, No.198, effective in six months.

Special Provisions in Appendix. See sections 201, 202, 203, 204, 205, 206, 207 and 208 of Act 198 of 1990 in the appendix to this title for special provisions relating to definition of "insurance corporation," corporate powers, authorization to do business, amendment of articles, other fundamental transactions, increases in capital stock, administrative procedure and existing powers preserved.

Cross References. Chapter 31 is referred to in section 8368.6 of Title 42 (Judiciary and Judicial Procedure).

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.
3101. Application and effect of chapter.
3102. Definitions.

§ 3101. Application and effect of chapter.

(a) General rule.--This chapter shall be applicable to a business corporation that is a domestic insurance corporation.

(b) Application to business corporations generally.--The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not an insurance corporation. This chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not an insurance corporation.

(c) Laws applicable to insurance corporations.--Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall be generally applicable to all insurance corporations. The specific provisions of this chapter shall control over the general

provisions of Part I and this subpart. Except as otherwise provided in this article, an insurance corporation may be simultaneously subject to this chapter and one or more other chapters of this article.
(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (c).

§ 3102. Definitions.

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

"Insurance corporation" or **"domestic insurance corporation."** A domestic business corporation that is engaged in the business of writing insurance or reinsurance as principal and as such is subject to regulation by the Insurance Department.

"Mutual insurance company." An insurance corporation that is organized on the mutual principle.

Cross References. Section 3102 is referred to in sections 102, 1103, 1929.1 of this title.

SUBCHAPTER B
POWERS, DUTIES AND SAFEGUARDS

Sec.
3121. Bylaws.
3122. Distributions by insurance corporations.

§ 3121. Bylaws.

Except as provided in section 1504(b) (relating to adoption, amendment and contents of bylaws), the board of directors of an insurance corporation shall have the authority to adopt, amend and repeal bylaws, subject to the power of the members to change such action. The articles may restrict the authority of the board to adopt, amend or repeal bylaws generally or on any subject or class of subjects.

§ 3122. Distributions by insurance corporations.

The amount of capital received by an insurance corporation upon its stock shall be a liability of the corporation for the purpose of determining the power of the corporation to make any distribution of money or other assets to its shareholders or members.

Cross References. Section 3122 is referred to in section 1551 of this title.

SUBCHAPTER C
OFFICERS, DIRECTORS AND SHAREHOLDERS

Sec.
3131. Directors.
3132. Officers.
3133. Notice of meetings of members of mutual insurance companies.
3134. Quorum at shareholder or member meetings.
3135. Proxies of members of mutual insurance companies.
3136. Judges of election.
3137. Appointment of custodian.
3138. Judicial supervision of corporate action.

§ 3131. Directors.

(a) Qualifications.--Two-thirds of the directors of an insurance corporation shall be citizens of the United States.

(b) Number.--The board of directors of an insurance corporation shall consist of not less than seven members.

Cross References. Section 3131 is referred to in sections 1722, 1723 of this title.

§ 3132. Officers.

The treasurer of an insurance corporation shall be a natural person of full age and may also be either the president or the secretary of the corporation. The president shall be a director of the corporation.

(Dec. 7, 1994, P.L.703, No.106, eff. 60 days)

§ 3133. Notice of meetings of members of mutual insurance companies.

(a) General rule.--Unless otherwise restricted in the bylaws, persons authorized or required to give notice of an annual meeting of members of a mutual insurance company for the election of directors or of a meeting of members of a mutual insurance company called for the purpose of considering amendment of the articles or bylaws, or both, of the corporation may, in lieu of any notice of meeting of members required to be given by this subpart, give notice of such meeting by causing notice of such meeting to be officially published. Such notice shall be published each week for at least:

(1) Three successive weeks, in the case of an annual meeting.

(2) Four successive weeks, in the case of a meeting to consider amendment of the articles or bylaws, or both.

(b) Cross reference.--See 1 Pa.C.S. § 1909 (relating to time; publication for successive weeks).

(June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (a) intro. par.

2001 Amendment. Act 34 amended subsec. (a).

Cross References. Section 3133 is referred to in section 1702 of this title.

§ 3134. Quorum at shareholder or member meetings.

The board of directors of an insurance corporation may adopt or change a bylaw on any subject otherwise expressly committed to the shareholders or members by section 1756(a) (relating to quorum).

Cross References. Section 3134 is referred to in section 1756 of this title.

§ 3135. Proxies of members of mutual insurance companies.

In no event shall a proxy given by a member of a mutual insurance company, unless coupled with an interest, be voted on or utilized to express consent or dissent to corporate action after 11 months from the date of execution of the proxy.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 3135 is referred to in section 1759 of this title.

§ 3136. Judges of election.

The board of directors of an insurance corporation may adopt or change a bylaw on any subject otherwise expressly committed to the shareholders or members by section 1765 (relating to judges of election).

Cross References. Section 3136 is referred to in section 1765 of this title.

§ 3137. Appointment of custodian.

Section 1767 (relating to appointment of custodian of corporation on deadlock or other cause) shall not be applicable to an insurance corporation.

Cross References. Section 3137 is referred to in section 1767 of this title.

§ 3138. Judicial supervision of corporate action.

Subchapter G of Chapter 17 (relating to judicial supervision of corporate action) shall not be applicable to an insurance corporation, insofar as inconsistent with the jurisdiction of the Insurance Department.

Cross References. Section 3138 is referred to in sections 1791, 1792, 1793 of this title.

CHAPTER 33
BENEFIT CORPORATIONS

Subchapter

A. Preliminary Provisions
B. Corporate Purposes
C. Accountability
D. Transparency

Enactment. Chapter 33 was added October 24, 2012, P.L.1228, No.152, effective in 90 days.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

3301. Application and effect of chapter.
3302. Definitions.
3303. Formation of benefit corporations.
3304. Election of benefit corporation status.
3305. Termination of benefit corporation status.

§ 3301. Application and effect of chapter.

(a) General rule.--This chapter shall apply to all benefit corporations.

(b) Application of business corporation law generally.--The existence of a provision of this chapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a business corporation that is not a benefit corporation. This chapter shall not affect any statute or rule of law that is or would be applicable to a business corporation that is not a benefit corporation.

(c) Laws applicable to benefit corporations.--Except as otherwise provided in this chapter, Part I (relating to preliminary provisions) and this subpart shall apply generally to benefit corporations. The provisions of this chapter shall control over inconsistent provisions of this title. A benefit corporation may be simultaneously subject to this chapter and one or more other chapters of this article.

(d) Organic rules may not be inconsistent.--A provision of the articles or bylaws of a benefit corporation may not relax, be inconsistent with or supersede any provision of this chapter.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 amended subsec. (d).

2014 Amendment. Act 172 amended subsec. (c).

§ 3302. Definitions.

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

"Benefit corporation." A business corporation that is subject to this chapter.

"Benefit director." The director designated as the benefit director of a benefit corporation as provided in section 3322 (relating to benefit director).

"Benefit enforcement proceeding." A claim or action for:

(1) failure to pursue or create the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles; or

(2) violation of any obligation, duty or standard of conduct under this chapter.

"Benefit officer." The individual, if any, designated as the benefit officer of a benefit corporation as provided in section 3324 (relating to benefit officer).

"General public benefit." A material positive impact on society and the environment, taken as a whole and assessed against a third-party standard, from the business and operations of a benefit corporation.

"Independent." When a person has no material relationship with a benefit corporation or any of its subsidiaries, other than the relationship of serving as the benefit director or benefit officer. A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(1) the person is or has been within the last three years an employee of the benefit corporation or any of its subsidiaries, other than as a benefit officer;

(2) an immediate family member of the person is or has been within the last three years an executive officer, other than a benefit officer, of the benefit corporation or any of its subsidiaries; or

(3) the person, or an association of which the person is a governor or officer or in which the person owns beneficially or of record 5% or more of the outstanding interests, owns beneficially or of record 5% or more of the outstanding shares of the benefit corporation. The percentage of ownership in an association shall be calculated as if all outstanding rights to acquire interests in the association had been exercised.

"Minimum status vote." As follows:

(1) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The shareholders of every class or series must be entitled, as a class, to vote on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.

(ii) The corporate action must be approved by a vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action.

(2) In the case of a domestic association other than a business corporation, in addition to any other required approval, vote or consent, the satisfaction of the following conditions:

(i) The holders of every class or series of interest in the association that are entitled to receive a distribution of any kind from the association must be entitled as a class to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.

(ii) The action must be approved by vote or consent of the holders described in subparagraph (i) entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.

"Specific public benefit." Includes:

(1) providing low-income or underserved individuals or communities with beneficial products or services;

(2) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(3) preserving the environment;

(4) improving human health;

(5) promoting the arts, sciences or advancement of knowledge;

(6) promoting economic development through support of initiatives that increase access to capital for emerging and growing technology enterprises, facilitate the transfer and commercial adoption of new technologies, provide technical and business support to emerging and growing technology enterprises or form support partnerships that support those objectives;

(7) increasing the flow of capital to entities with a public benefit purpose; and

(8) the accomplishment of any other particular benefit for society or the environment.

"Subsidiary." An association in which a person owns beneficially or of record 50% or more of the outstanding interests. The percentage of ownership in an association shall be calculated as if all outstanding rights to acquire interests in the association had been exercised.

"Third-party standard." A standard for defining, reporting and assessing overall corporate social and environmental performance which is:

(1) Comprehensive in that it assesses the effect of the business and its operations upon the interests listed in section 3321(a)(1)(ii), (iii), (iv) and (v) (relating to standard of conduct for directors).

(2) Developed by an organization that is independent of the benefit corporation and satisfies the following requirements:

(i) Not more than one-third of the members of the governing body of the organization are representatives of any of the following:

(A) An association of businesses operating in a specific industry the performance of whose members is measured by the standard.

(B) Businesses from a specific industry or an association of businesses in that industry.

(C) Businesses whose performance is assessed against the standard.

(ii) The organization is not materially financed by an association or business described in subparagraph (i).

(3) Credible because the standard is developed by a person that both:

(i) Has access to necessary expertise to assess overall corporate social and environmental performance.

(ii) Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.

(4) Transparent because the following information is publicly available:

(i) About the standard:

(A) The criteria considered when measuring the overall social and environmental performance of a business.

(B) The relative weightings, if any, of those criteria.

(ii) About the development and revision of the standard:

(A) The identity of the directors, officers, material owners and the governing body of the organization that developed and controls revisions to the standard.

(B) The process by which revisions to the standard and changes to the membership of the governing body are made.

(C) An accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 amended the defs. of "benefit corporation," "benefit director," "independent," "minimum status vote" and "subsidiary."

Cross References. Section 3302 is referred to in section 8892 of this title.

§ 3303. Formation of benefit corporations.

A benefit corporation shall be formed in accordance with Article B (relating to domestic business corporations generally) except that its articles shall also state that it is a benefit corporation.

§ 3304. Election of benefit corporation status.

(a) Amendment.--An existing business corporation may become a benefit corporation by amending its articles so that they contain, in addition to the requirements of section 1306(a) (relating to articles of incorporation), a statement that the corporation is a benefit corporation. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(b) Fundamental transactions.--If an association that is not a benefit corporation is a party to a merger or division or is the exchanging association in an interest exchange, and the surviving, new or any resulting association in the merger, division or interest exchange is to be a benefit corporation, then the plan of merger, division or interest exchange shall not be effective unless it is adopted by the association by at least the minimum status vote.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (b).

Cross References. Section 3304 is referred to in sections 321, 322, 323, 324, 325, 326, 327, 328, 3305 of this title.

§ 3305. Termination of benefit corporation status.

(a) Amendment.--A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles to delete the provision required under section 3304 (relating to election of benefit corporation status) to be stated in the articles of a benefit corporation. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(b) Fundamental transactions.--If a plan would have the effect of terminating the status of a business corporation as a benefit corporation, the plan shall not be effective unless it is adopted by at least the minimum status vote. Any sale, lease, exchange or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum status vote.

Cross References. Section 3305 is referred to in section 321 of this title.

SUBCHAPTER B
CORPORATE PURPOSES

Sec.

3311. Corporate purposes.

§ 3311. Corporate purposes.

(a) General public benefit purpose.--A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under section 1301 (relating to purposes).

(b) Optional specific public benefit purpose.--The articles of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under section 1301 and subsection (a). The identification of a specific public benefit does not limit the obligation of a benefit corporation to create general public benefit.

(c) Effect of purposes.--The creation of general and specific public benefit as provided in subsections (a) and (b) is in the best interests of the benefit corporation.

(d) Amendment.--A benefit corporation may amend its articles to add, amend or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(e) Professional corporations.--A professional corporation that is a benefit corporation does not violate section 2922(a) (relating to stated purposes) by having the purpose to create general public benefit or a specific public benefit.

SUBCHAPTER C
ACCOUNTABILITY

Sec.

3321. Standard of conduct for directors.

3322. Benefit director.
3323. Standard of conduct for officers.
3324. Benefit officer.
3325. Right of action.

§ 3321. Standard of conduct for directors.

(a) Consideration of interests.--Without regard to whether the benefit corporation is subject to section 1715 (relating to exercise of powers generally) or 1716 (relating to alternative standard), in discharging the duties of their respective positions, the board of directors, committees of the board and individual directors of a benefit corporation, in considering the best interest of the benefit corporation:

(1) shall consider the effects of any action upon:

(i) the shareholders of the benefit corporation;

(ii) the employees and work force of the benefit corporation and its subsidiaries and suppliers;

(iii) the interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(iv) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(v) the local and global environment;

(vi) the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and

(vii) the ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose; and

(2) may consider:

(i) matters listed in section 1715(a); and

(ii) any other pertinent factors or the interests of any other group that they deem appropriate; but

(3) shall not be required to give priority to any matter referred to in paragraph (1) or (2) over any other such matter or to regard any such matter as dominant or controlling unless the benefit corporation has stated in its articles its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles.

(b) Coordination with other provisions of law.--The consideration of matters in the manner required under subsection (a) shall not constitute a violation of section 1712 (relating to standards of care, justifiable reliance and business judgment rule). A benefit corporation:

(1) shall not be subject to section 1715(a) and (b) or section 1716(a); but

(2) shall be subject to section 1715(c), (d) and (e) unless its articles or bylaws provide that it is subject to section 1716, and references in section 1715(c), (d) and (e) to the fiduciary duty of directors or the standard set forth in section 1712 include the provisions of subsection (a).

(c) Exoneration from personal liability.--Regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized under section 1713 (relating to personal liability of directors):

(1) A director shall not be personally liable, as such, for monetary damages for any action taken as a director in the course of performing the duties specified in subsection (a) unless the action constitutes self-dealing, willful misconduct or recklessness.

(2) A director shall not be personally liable for monetary damages for failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(d) Limitation on standing.--A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(e) Ownership of shares.--A director's ownership of, or other interest in, the shares of a benefit corporation does not alone create a conflict of interest on the part of the director with respect to the director's performance of the duties of a director under subsection (a), except to the extent the ownership or interest would create a conflict of interest if the corporation were not a benefit corporation.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a)(3), (b) and (c) and added subsec. (e).

Cross References. Section 3321 is referred to in sections 3302, 3322, 3323 of this title.

§ 3322. Benefit director.

(a) General rule.--

(1) The board of directors of a benefit corporation which is a registered corporation shall include a director who:

(i) shall be designated as the benefit director; and

(ii) shall have, in addition to all of the powers, duties, rights and immunities of the other directors of the benefit corporation, the powers, duties, rights and immunities provided in this subchapter.

(2) The board of directors of a benefit corporation which is not a registered corporation may include a director who:

(i) shall be designated as the benefit director; and

(ii) shall have, in addition to all of the powers, duties, rights and immunities of the other directors of the benefit corporation, the powers, duties, rights and immunities provided in this subchapter.

(b) Election, removal and qualifications.--The benefit director shall be elected and may be removed in the manner provided under Subchapter C of Chapter 17 (relating to directors and officers). Except as set forth in subsection (g), the benefit director shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this subsection.

(c) Annual compliance statement.--The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required under section 3331 (relating to annual benefit report), a statement whether, in the opinion of the benefit director, the benefit corporation

acted in accordance with its general and any specific public benefit purpose in all material respects during the period covered by the report and whether the directors and officers complied with sections 3321(a) (relating to standard of conduct for directors) and 3323(a) (relating to standard of conduct for officers), respectively. If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed so to act, then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed so to act.

(d) Status of actions.--The acts of an individual in the capacity of a benefit director shall constitute for all purposes acts of that individual in the capacity of a director of the benefit corporation.

(e) Alternative governance arrangements.--(Deleted by amendment).

(f) Exoneration from personal liability.--Regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized under section 1713 (relating to personal liability of directors), a benefit director shall not be personally liable for any act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct or recklessness.

(g) Professional corporations.--The benefit director of a professional corporation does not need to be independent. (July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b) and (f).

2016 Amendment. Act 170 deleted subsec. (e).

2013 Amendment. Act 67 amended subsecs. (a) and (b) and added subsec. (g).

Cross References. Section 3322 is referred to in sections 3302, 3331 of this title.

§ 3323. Standard of conduct for officers.

(a) General rule.--Each officer of a benefit corporation shall consider the interests and factors described in section 3321(a) (relating to standard of conduct for directors) in the manner provided in that subsection when:

(1) the officer has discretion to act with respect to a matter; and

(2) it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of general public benefit or a specific public benefit identified in the articles of the benefit corporation.

(b) Coordination with other provisions of law.--The consideration of interests and factors in the manner described in subsection (a) shall not constitute a violation of section 1734 (relating to officer's standard of care and justifiable reliance).

(c) Exoneration from personal liability.--

(1) An officer shall not be personally liable, as such, for monetary damages for any action taken as an officer in the course of performing the duties specified in subsection (a) unless the action constitutes self-dealing, willful misconduct or a knowing violation of law.

(2) An officer shall not be personally liable for monetary damages for failure of the benefit corporation to

pursue or create general public benefit or a specific public benefit.

(d) Limitation on standing.--An officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(e) Ownership of shares.--An officer's ownership of, or other interest in, the shares of a benefit corporation does not alone create a conflict of interest on the part of the officer with respect to the officer's performance of the duties of an officer under subsection (a), except to the extent the ownership or interest would create a conflict of interest if the corporation were not a benefit corporation.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) and added subsec. (e).

2016 Amendment. Act 170 amended subsec. (c).

Cross References. Section 3323 is referred to in section 3322 of this title.

§ 3324. Benefit officer.

A benefit corporation may have an officer designated as the benefits officer who shall have such authority and shall perform such duties in the management of the benefit corporation relating to the purpose of the corporation to create general or specific public benefit as may be provided by or pursuant to the bylaws or, in the absence of controlling provisions in the bylaws, as may be determined by or pursuant to resolutions or orders of the board of directors. If a benefit corporation has a benefit officer, the duties of the benefit officer shall include preparing the benefit report required under section 3331 (relating to annual benefit report).

Cross References. Section 3324 is referred to in section 3302 of this title.

§ 3325. Right of action.

(a) Limitations.--

(1) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(i) failure to pursue or create general public benefit or a specific public benefit set forth in its articles; or

(ii) violation of a duty or standard of conduct under this chapter.

(2) A benefit corporation shall not be liable for monetary damages under this chapter for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(b) Parties with standing.--A benefit enforcement proceeding may be commenced or maintained only:

(1) directly by the benefit corporation; or

(2) derivatively by:

(i) a shareholder that owned at least 2% of the total number of shares of a class or series outstanding at the time of the act complained of;

(ii) a director;

(iii) a person or group of persons that owns beneficially or of record 5% or more of the interests

in an association of which the benefit corporation is a subsidiary at the time of the act complained of; or

(iv) such other persons as may be specified in the articles or bylaws of the benefit corporation.

(c) Cross reference.--The provisions of Subchapter F of Chapter 17 (relating to derivative actions) shall apply to derivative actions under this section.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 amended subsec. (b).

SUBCHAPTER D
TRANSPARENCY

Sec.

3331. Annual benefit report.

§ 3331. Annual benefit report.

(a) Contents.--A benefit corporation must deliver to each shareholder an annual benefit report including:

(1) A narrative description of:

(i) the ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

(ii) the ways in which the benefit corporation pursued any specific public benefit that the articles state is the purpose of the benefit corporation to create and the extent to which that specific public benefit was created;

(iii) any circumstances that have hindered the creation by the benefit corporation of general or specific public benefit; and

(iv) the process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

(2) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application. The assessment does not need to be audited or certified by a third-party standards provider.

(3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed.

(4) The compensation paid by the benefit corporation during the year to each director in that capacity.

(5) (Deleted by amendment).

(6) The statement of the benefit director described in section 3322(c) (relating to benefit director).

(7) A statement of any connection between the organization that established the third-party standard, or its directors, officers or any holder of 5% or more of the governance interests in the organization, and the benefit corporation or its directors, officers or any holder of 5% or more of the outstanding shares of the benefit corporation, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(8) (Deleted by amendment).

(b) Timing of report.--A benefit corporation shall annually send a benefit report to each shareholder either:

(1) within 120 days following the end of the fiscal year of the benefit corporation; or

(2) at the same time that the benefit corporation delivers any other annual report to its shareholders.

(c) Internet website posting.--A benefit corporation must post all of its benefit reports on the public portion of its Internet website, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(d) Availability of copies.--If a benefit corporation does not have an Internet website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, but the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(e) Filing of report.--Concurrently with the delivery of the benefit report to shareholders pursuant to subsection (b), the benefit corporation must deliver a copy of the benefit report to the department for filing, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as filed under this section. The department shall charge a fee of $70 for filing a benefit report.
(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 deleted subsec. (a)(8).

2013 Amendment. Act 67 deleted subsec. (a)(5).

Cross References. Section 3331 is referred to in sections 3322, 3324 of this title.

ARTICLE D
FOREIGN BUSINESS CORPORATIONS

Chapter

41. Foreign Business Corporations

CHAPTER 41
FOREIGN BUSINESS CORPORATIONS

Subchapter

A. Preliminary Provisions
B. Qualification
C. Powers, Duties and Liabilities
D. Domestication (Repealed)

Enactment. Chapter 41 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

4101. Application of article.
4102. Foreign domiciliary corporations.

4103. Acquisition of foreign domiciliary corporation status.
4104. Termination of foreign domiciliary corporation status.

§ 4101. Application of article.

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

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

(1) Any of the following institutions or similar federally chartered institutions engaged in this Commonwealth in activities similar to those conducted by banking institutions or credit unions:

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

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

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

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

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 15, 2024, P.L.728, No.59, eff. 60 days)

§ 4102. Foreign domiciliary corporations.

(a) General rule.--Except as provided in subsection (b), a foreign business corporation is a foreign domiciliary corporation if it has as record holders of its shares persons having addresses in this Commonwealth who in the aggregate hold shares:

(1) representing 60% or more in interest of its outstanding shares whether or not entitled to vote; or

(2) entitled to cast at least 60% of the votes that all holders of outstanding shares are entitled to cast in an election of directors.

(b) Registered corporation exclusions.--None of the following is a foreign domiciliary corporation for the purposes of this subpart:

(1) Foreign corporation with registered securities.--A foreign business corporation that, if a domestic business corporation, would be a registered corporation.

(2) Subsidiary of registered corporation.--A foreign business corporation all of the shares of which are owned, directly or indirectly, by one or more registered corporations or corporations described in paragraph (1).

(c) Determination of outstanding shares.--For the purposes of subsection (a):

(1) Except as provided in paragraphs (2) and (3), any securities held to the knowledge of the corporation in the names of broker-dealers or nominees for broker-dealers shall not be considered outstanding.

(2) Persons who are identified as owners of shares pursuant to procedures equivalent to section 1763(c)

(relating to certification by nominee) shall be deemed record holders of the shares owned.

(3) (i) Securities held to the knowledge of the corporation for the direct or indirect benefit of individuals who to the knowledge of the corporation have a principal residence in this Commonwealth shall be deemed held by record holders having addresses in this Commonwealth.

(ii) A statement by the corporation in any notice of meeting or other document transmitted to shareholders in connection with any corporate action of the type described in section 1791 (relating to corporate action subject to subchapter) to the effect that it has no knowledge or only specified knowledge for the purposes of subparagraph (i) shall, except as provided in subparagraph (iii), be conclusive if there shall be included in or enclosed with such document a brief explanation of the effect upon such corporate action of a determination that the corporation is a foreign domiciliary corporation.

(iii) If, prior to the convening of a meeting of shareholders to consider the proposed corporate action, or prior to the expiration of 20 days after the transmission of the document to shareholders, in any other case, any person shall give the corporation written notice of facts relevant under this paragraph, the corporation shall have knowledge of such facts for the purposes of subparagraph (i).

Cross References. Section 4102 is referred to in sections 1103, 1767, 2502, 2503, 2504, 4103, 4104 of this title.

§ 4103. Acquisition of foreign domiciliary corporation status.

(a) Shareholding test.--A foreign corporation shall become a foreign domiciliary corporation under section 4102(a) (relating to foreign domiciliary corporations) on the first day of the sixth month following the month in which the corporation first has knowledge that the test has been met.

(b) Newly incorporated corporations.--Where the test under section 4102(a) is met at the time of initial issuance of shares of the corporation and continuously thereafter, foreign domiciliary corporation status when established shall be retroactive to the incorporation of the corporation.

(c) Foreign corporations with registered securities.--The exemption provided by section 4102(b)(1) shall terminate immediately upon the termination of the status of the corporation as a corporation described in that provision.

(d) Subsidiary corporations.--The exemption provided by section 4102(b)(2) shall terminate immediately upon the happening of any event whereby all of the shares of the corporation are no longer owned, directly or indirectly, by one or more registered corporations or corporations described in section 4102(b)(1).

§ 4104. Termination of foreign domiciliary corporation status.

(a) Shareholding test.--A foreign domiciliary corporation shall cease to be such on the first day of the sixth month following the month in which the corporation first has knowledge that the test of section 4102(a) (relating to foreign domiciliary corporations) is no longer met.

(b) Foreign corporations with registered securities.--The exemption provided by section 4102(b)(1) shall take effect on the day following the day on which the corporation becomes a corporation described in that provision.

(c) Subsidiary corporations.--The exemption provided by section 4102(b)(2) shall take effect immediately upon the acquisition, directly or indirectly, of the last outstanding share of the corporation by one or more registered corporations or corporations described in section 4102(b)(1).

SUBCHAPTER B
QUALIFICATION

Sec.
4121. Admission of foreign corporations (Repealed).
4122. Excluded activities (Repealed).
4123. Requirements for foreign corporation names (Repealed).
4124. Advertisement of registration to do business.
4125. Issuance of certificate of authority (Repealed).
4126. Amended certificate of authority (Repealed).
4127. Merger, consolidation or division of qualified foreign corporations (Repealed).
4128. Revocation of certificate of authority (Repealed).
4129. Advertisement of termination of registration to do business.
4130. Change of address after withdrawal (Repealed).
4131. Registration of name (Repealed).

Cross References. Subchapter B is referred to in section 412 of this title.

§ 4121. Admission of foreign corporations (Repealed).

2014 Repeal. Section 4121 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4122. Excluded activities (Repealed).

2014 Repeal. Section 4122 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4123. Requirements for foreign corporation names (Repealed).

2014 Repeal. Section 4123 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4124. Advertisement of registration to do business.

(a) General rule.--(Deleted by amendment).

(b) Advertisement.--A foreign business corporation shall officially publish notice of its intention to register to do business or its registration to do business in this Commonwealth under Chapter 4 (relating to foreign associations). The notice may appear prior to or after the day on which a registration statement is delivered to the department for filing and shall set forth briefly:

(1) A statement that the corporation will register or has registered to do business in this Commonwealth under Chapter 4.

(2) The name of the corporation and its jurisdiction of formation.

(3) The address, including street and number, if any, of its principal office under the laws of its jurisdiction of formation.

(4) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its proposed registered office in this Commonwealth.

(c) (Reserved).

(d) (Reserved).

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

Cross References. Section 4124 is referred to in section 412 of this title.

§ 4125. Issuance of certificate of authority (Repealed).

2014 Repeal. Section 4125 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4126. Amended certificate of authority (Repealed).

2014 Repeal. Section 4126 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4127. Merger, consolidation or division of qualified foreign corporations (Repealed).

2014 Repeal. Section 4127 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4128. Revocation of certificate of authority (Repealed).

2014 Repeal. Section 4128 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4129. Advertisement of termination of registration to do business.

(a) General rule.--(Deleted by amendment).

(b) Advertisement.--A registered foreign business corporation shall, before filing a statement under section 415 (relating to voluntary withdrawal of registration), officially publish and mail a notice of its intention to withdraw from doing business in this Commonwealth in a manner similar to that required by section 1975(b) (relating to notice to creditors and taxing authorities). The notice shall set forth:

(1) The name of the corporation and its jurisdiction of formation.

(2) The address, including street and number, if any, of its principal office under the laws of its jurisdiction of formation.

(3) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its last registered office in this Commonwealth.

(c) (Reserved).

(d) (Reserved).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

§ 4130. Change of address after withdrawal (Repealed).

2014 Repeal. Section 4130 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4131. Registration of name (Repealed).

2014 Repeal. Section 4131 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER C
POWERS, DUTIES AND LIABILITIES

Sec.

4141. Penalty for doing business without certificate of authority (Repealed).

4142. General powers and duties of qualified foreign corporations (Repealed).
4143. General powers and duties of nonqualified foreign corporations (Repealed).
4144. Registered office of qualified foreign corporations (Repealed).
4145. Applicability of certain safeguards to foreign domiciliary corporations.
4146. Provisions applicable to all foreign corporations.

§ 4141. Penalty for doing business without certificate of authority (Repealed).

2014 Repeal. Section 4141 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4142. General powers and duties of qualified foreign corporations (Repealed).

2014 Repeal. Section 4142 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4143. General powers and duties of nonqualified foreign corporations (Repealed).

2014 Repeal. Section 4143 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4144. Registered office of qualified foreign corporations (Repealed).

2014 Repeal. Section 4144 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 4145. Applicability of certain safeguards to foreign domiciliary corporations.

(a) General rule.--The General Assembly hereby finds and determines that foreign domiciliary corporations substantially affect this Commonwealth. The courts of this Commonwealth shall not dismiss or stay any action or proceeding brought by a shareholder or representative of a foreign domiciliary corporation, as such, against the corporation or any one or more of the shareholders or representatives thereof, as such, on the ground that the corporation is a foreign corporation for profit or that the cause of action relates to the internal affairs thereof, but every such action shall proceed with like effect as if the corporation were a domestic corporation. Except as provided in subsection (b), the court having jurisdiction of the action or proceeding shall apply the law of the jurisdiction under which the foreign domiciliary corporation was incorporated.

(b) (Reserved).

(c) (Reserved).

(d) Section exclusive.--The provisions of this subpart, other than the provisions of this section and section 4146 (relating to provisions applicable to all foreign corporations), shall not be construed to regulate the incorporation or internal affairs of a foreign corporation for profit.

§ 4146. Provisions applicable to all foreign corporations.

The following provisions of this subpart shall, except as otherwise provided in this section, be applicable to every foreign corporation for profit, whether or not required to register under Chapter 4 (relating to foreign associations):

Section 1503 (relating to defense of ultra vires), as to contracts and conveyances governed by the laws of this

Commonwealth and conveyances affecting real property situated in this Commonwealth.

Section 1506 (relating to form of execution of instruments), as to instruments or other documents governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 1510 (relating to certain specifically authorized debt terms), as to obligations (as defined in the section) governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 1782 (relating to eligible shareholder plaintiffs and security for costs), as to any derivative action brought in a court of this Commonwealth.

Subchapter F of Chapter 25 (relating to business combinations), to the extent provided in section 2551(c) (relating to continuing applicability).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 4146 is referred to in sections 1503, 1506, 1510, 1782, 2551, 4145 of this title.

SUBCHAPTER D
DOMESTICATION
(Repealed)

2014 Repeal. Subchapter D (§§ 4161 - 4162) was added December 21, 1988, P.L.1444, No.177, and repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBPART C
NONPROFIT CORPORATIONS

Article

A. Preliminary Provisions
B. Domestic Nonprofit Corporations Generally
C. Foreign Nonprofit Corporations

Subpart Heading. The heading of Subpart C was added December 21, 1988, P.L.1444, No.177.

ARTICLE A
PRELIMINARY PROVISIONS

Chapter

51. General Provisions

Article Heading. The heading of Article A was carried without amendment December 21, 1988, P.L.1444, No.177.

CHAPTER 51
GENERAL PROVISIONS

Sec.

5101. Short titles.
5102. Application of subpart.
5103. Definitions.
5104. Other general provisions (Deleted by amendment).
5105. Restriction on equitable relief.

5106. Uniform application of subpart.
5107. Subordination of subpart to canon law.
5108. Limitation on incorporation.
5109. Execution of documents.
5110. Annual report (Repealed).

Enactment. Chapter 51 was added as Chapter 71 on November 15, 1972, P.L.1063, No.271, effective in 90 days. Chapter 71 was renumbered to Chapter 51 on December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 5101. Short titles.

(a) Title of subpart.--This subpart shall be known and may be cited as the Nonprofit Corporation Law of 1988.

(b) Prior consolidated statute.--Former 15 Pa.C.S. Pt. III Art. B (relating to domestic nonprofit corporations), added by the act of November 15, 1972 (P.L.1063, No.271), shall be known and may be cited as the Nonprofit Corporation Law of 1972.

(c) Prior law.--The act of May 5, 1933 (P.L.289, No.105), shall be known and may be cited as the Nonprofit Corporation Law of 1933.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989)

§ 5102. Application of subpart.

(a) General rule.--Except as otherwise provided in this section, in the scope provisions of subsequent provisions of this subpart or where the context clearly indicates otherwise, this subpart shall apply to and the words "corporation" or "nonprofit corporation" in this subpart shall mean a domestic corporation not-for-profit. See section 101(b) (relating to application of title).

(b) Coordination with other laws.--Where any other provision of law contemplates notice to, the presence of, or the vote, consent or other action by the members, directors or officers of a nonprofit corporation, without specifying the applicable corporate standards and procedures, the standards and procedures specified by or pursuant to this subpart shall be applicable.

(c) Exclusion.--This subpart shall not apply to a fraternal benefit society, whether proposed or existing, except as otherwise expressly provided in this subpart or as otherwise provided by statute applicable to the fraternal benefit society.

(d) Cooperative corporations.--This subpart shall apply to a domestic corporation not-for-profit organized on the cooperative principle only to the extent provided by Subpart D (relating to cooperative corporations).

(e) Nonprofit corporation ancillaries.--The domestic corporation provisions of this subpart shall apply to any of the following corporations, whether proposed or existing, except as otherwise expressly provided by statute applicable to the corporation:

(1) The Pennsylvania Deposit Insurance Corporation established by the act of October 5, 1978 (P.L.1088, No.255), known as the Pennsylvania Deposit Insurance Corporation Act.

(2) The Pennsylvania Savings Association Corporation established by the act of April 6, 1979 (P.L.17, No.5), referred to as the Pennsylvania Savings Association Insurance Corporation Act.

(3) The Lawyer Trust Account Board established by the act of April 29, 1988 (P.L.373, No.59), known as the Interest on Lawyers' Trust Accounts Act.

(4) Any other domestic corporation not-for-profit incorporated under or subject to a statute that provides that the corporate affairs of the corporation shall be

governed by the laws applicable to domestic nonprofit corporations.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5102 is referred to in section 5103 of this title.

§ 5103. Definitions.

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

"Act" or **"action."** (Deleted by amendment).

"Amendment." An amendment of the articles.

"Articles." The original articles of incorporation, all amendments thereof, and any other articles, statements or certificates permitted or required to be filed in the Department of State by sections 108 (relating to change in location or status of registered office provided by agent) and 138 (relating to statement of correction), Chapter 3 (relating to entity transactions) or this subpart and including what have heretofore been designated by law as certificates of incorporation or charters. If an amendment of the articles or a statement filed under Chapter 3 restates articles in their entirety, thenceforth the "articles" shall not include any prior documents and any certificate issued by the department with respect thereto shall so state.

"Board of directors" or **"board."** The group of persons under the direction of whom the business and affairs of the corporation are managed irrespective of the name by which the group is designated. The term does not include an other body. See section 5731(c) (relating to executive and other committees of the board).

"Business." Any or all of the activities for which a corporation has been incorporated.

"Business corporation." A domestic corporation for profit defined in section 1103 (relating to definitions).

"Bylaws." The code or codes of rules adopted for the regulation or management of the business and affairs of the corporation irrespective of the name or names by which the rules are designated. The term includes provisions of the articles as provided by section 5504(c) (relating to adoption, amendment and contents of bylaws).

"Charitable purposes." (Deleted by amendment).

"Common trust fund." A fund maintained by the corporation for the collective investment and reinvestment of trust assets, and any other funds contributed thereto by such corporation, as fiduciary or otherwise.

"Corporation for profit." (Deleted by amendment).

"Corporation not-for-profit." (Deleted by amendment).

"Court." (Deleted by amendment).

"Department." (Deleted by amendment).

"Directors." Individuals designated, elected or appointed, by that or any other name or title, to act as members of the board of directors, and their successors. The term does not include a member of an other body, unless the person is also a

director. The term, when used in relation to any power or duty requiring collective action, shall be construed to mean "board of directors."

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

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

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

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

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

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

"Domestic corporation for profit." (Deleted by amendment).

"Domestic corporation not-for-profit." (Deleted by amendment).

"Employee." The term does not include a member, director or member of an other body, unless the person is also an employee. See section 5730 (relating to compensation of directors) as to acceptance by a director of duties that make the director also an employee.

"Entitled to vote." Those persons entitled to vote on the matter under either the bylaws of the corporation or any applicable controlling provision of law.

"Foreign corporation for profit." (Deleted by amendment).

"Foreign corporation not-for-profit." (Deleted by amendment).

"Foreign domiciliary corporation." A foreign nonprofit corporation described in section 6102 (relating to foreign domiciliary corporations).

"Foreign nonprofit corporation." A foreign corporation not-for-profit or other entity subject to Chapter 61 (relating to foreign nonprofit corporations), whether or not required to register under Chapter 4 (relating to foreign associations).

"Fraternal benefit society." A domestic corporation not-for-profit that is a society as defined in section 2402 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

"Full age." Of the age of 18 years or over.

"Incorporator." A signer of the original articles of incorporation.

"Member." Any of the following:

(1) A person that has voting rights in a membership corporation.

(2) When used in relation to the taking of corporate action by a membership corporation, a delegate to a convention or assembly of delegates of members established pursuant to any provision of this subpart who has the right to vote at the convention or assembly in accordance with the rules of the convention or assembly.

(3) A person that has been given voting rights or other membership rights in a membership corporation by a bylaw adopted by the members pursuant to section 5770 (relating to voting powers and other rights of certain securityholders

and other entities) or other provision of law, but only to the extent of those rights.

(4) A shareholder of a corporation, if the corporation issues shares of stock.

"Membership corporation." A nonprofit corporation having articles of incorporation that do not provide that the corporation is to have no members.

"Membership register." Records administered by or on behalf of a corporation in which the names of all of its members, the address of each member and the class and other details of the membership of each member are recorded.

"Nonprofit corporation" or **"domestic nonprofit corporation."** A domestic corporation not-for-profit that is not excluded from the scope of this subpart by section 5102 (relating to application of subpart).

"Nonqualified foreign corporation" or **"nonqualified foreign nonprofit corporation."** (Deleted by amendment).

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

"Other body." A term employed in this subpart to denote a person or group, other than the board of directors or a committee thereof, who pursuant to authority expressly conferred by this subpart may be vested by the bylaws of the corporation with powers that, if not vested by the bylaws in the person or group, would by this subpart be required to be exercised by:

(1) the members;

(2) a convention or assembly of delegates of members established pursuant to any provision of this subpart; or

(3) the board of directors.

Except as otherwise provided in this subpart, a corporation may establish distinct persons or groups to exercise different powers that this subpart authorizes a corporation to vest in an other body.

"Plan." (Deleted by amendment).

"Qualified foreign corporation" or **"qualified foreign nonprofit corporation."** (Deleted by amendment).

"Registered office." That office maintained by a corporation in this Commonwealth as required by section 5507 (relating to registered office). See section 109 (relating to name of commercial registered office provider in lieu of registered address).

"Relax." When used with respect to a provision of the articles or bylaws, means to provide lesser rights for an affected representative or member.

"Representative." (Deleted by amendment).

"Trust instrument." Any lawful deed of gift, grant, will or other document by which the donor, grantor or testator gives, grants or devises any real or personal property or the income from any real or personal property in trust for any charitable purpose.

"Unless otherwise provided" or **"except as otherwise provided."** When used to introduce or modify a rule, the term implies that the alternative provisions contemplated may either relax or restrict the stated rule.

"Unless otherwise restricted" or **"except as otherwise restricted."** When used to introduce or modify a rule, the term implies that the alternative provisions contemplated may further restrict, but may not relax, the stated rule.

"Voting" or **"casting a vote."** Includes the giving of consent in lieu of voting. Whether or not the person entitled to vote characterizes the conduct as voting or casting a vote, the term does not include:

(1) recording the fact of abstention; or

(2) failing to vote for a candidate or for approval or disapproval of a matter.

"Voting rights." The right of a person in a membership corporation, other than in the capacity of a director or member of an other body, to vote on the election or removal of directors or members of an other body or on approval of an amendment of the articles of incorporation, a plan or the dissolution of the corporation.

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

"Act" or **"action."**
"Charitable purposes."
"Conversion."
"Corporation for profit."
"Corporation not-for-profit."
"Court."
"Department."
"Division."
"Domestic corporation for profit."
"Domestic corporation not-for-profit."
"Domestication."
"Execute."
"Foreign corporation for profit."
"Foreign corporation not-for-profit."
"Interest exchange."
"Internal Revenue Code of 1986."
"Merger."
"Obligation."
"Officially publish."
"Record form."
"Representative."
"Sign."

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days; July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (b).

2022 Amendment. Act 122 amended subsec. (b), added the def. of "membership register" in subsec. (a) and deleted the def. of "plan" in subsec. (a).

2016 Amendment. Act 170 deleted the def. of "charitable purposes" in subsec. (a).

2014 Amendment. Act 172 amended subsec. (a) intro. par. and in subsec. (a) amended the defs. of "articles" and "foreign nonprofit corporation" and deleted the defs. of "nonqualified foreign corporation" or "nonqualified foreign nonprofit corporation" and "qualified foreign corporation" or "qualified foreign nonprofit corporation."

2013 Amendment. Act 67 amended the defs. of "board of directors" or "board," "bylaws," "charitable purposes,"

"directors," "fraternal benefit society," "member," "nonprofit corporation" or "domestic nonprofit corporation," "nonqualified foreign corporation" or "nonqualified foreign nonprofit corporation," "other body," "trust instrument," "unless otherwise provided" or "except as otherwise provided" and "unless otherwise restricted" or "except as otherwise restricted," added the defs. of "amendment," "business corporation," "employee," "foreign domiciliary corporation," "membership corporation," "plan," "voting" or "casting a vote" and "voting rights" and deleted the defs. of "act" or "action," "corporation for profit," "corporation not-for-profit," "court," "department," "domestic corporation for profit," "domestic corporation not-for-profit," "foreign corporation for profit," "foreign corporation not-for-profit" and "representative" and added subsecs. (a) hdg. and (b).

1992 Amendment. Act 169 amended the def. of "registered office" and added the def. of "dissolve" or "dissolution."

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5103 is referred to in sections 102, 1103, 5725, 5734, 5751, 5752, 5903 of this title.

§ 5104. Other general provisions (Deleted by amendment).

2013 Amendment. Section 5104 was deleted by amendment July 9, 2013, P.L.476, No.67, effective in 60 days.

§ 5105. Restriction on equitable relief.

A member of a nonprofit corporation shall not have any right to claim the right to valuation and payment of the fair value of his membership interest or shares because of any proposed plan or amendment authorized under any provision of this subpart, or to obtain, in the absence of fraud or fundamental unfairness, an injunction against the plan or amendment. (Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5106. Uniform application of subpart.

(a) General rule.--Except as provided in subsection (b), this title and its amendments are intended to provide uniform rules for the governance and regulation of the affairs of nonprofit corporations and of their officers, directors and members and of members of other bodies, regardless of the date or manner of incorporation or qualification, or of the issuance of any evidences of membership in or shares of a nonprofit corporation.

(b) Exceptions.--

(1) Unless expressly provided otherwise in any amendment to this title, the amendment shall take effect only prospectively.

(2) Any existing corporation lawfully using a name or, as a part of its name, a word that could not be used as or included in the name of a corporation subsequently incorporated or qualified under this title may continue to use the name or word as part of its name if the use or inclusion of the word or name was lawful when first adopted by the corporation in this Commonwealth.

(3) Subsection (a) shall not adversely affect the rights specifically provided for or saved in this subpart, including, without limiting the generality of the foregoing, the provisions of section 363 (relating to approval of division).

(4) Nothing in this title shall be deemed to repeal or supersede any provision in section 7 of the act of April 26, 1855 (P.L.328, No.347), entitled "An act relating to

Corporations and to Estates held for Corporate, Religious and Charitable uses."
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

Cross References. Section 5106 is referred to in section 5311 of this title.

§ 5107. Subordination of subpart to canon law.

If and to the extent canon law or similar principles applicable to a corporation incorporated for religious purposes sets forth provisions relating to the government and regulation of the affairs of the corporation that are inconsistent with the provisions of this subpart on the same subject, the canon law or similar principles shall control except to the extent prohibited by the Constitution of the United States or the Constitution of Pennsylvania.
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5107 is referred to in sections 5513, 5903 of this title.

§ 5108. Limitation on incorporation.

A corporation that can be incorporated under this subpart shall not be incorporated except under the provisions of this subpart.
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5109. Execution of documents.

(a) General rule.--Any document filed in the department under this title by a domestic or foreign nonprofit corporation subject to this subpart may be executed on behalf of the corporation by any one duly authorized officer of the corporation. The corporate seal may be affixed and attested, but the affixation or attestation of the corporate seal shall not be necessary for the due execution of any filing by a corporation under this title.

(b) Cross reference.--See section 135 (relating to requirements to be met by filed documents).

(c) Transitional provision.--(Deleted by amendment).
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5110. Annual report (Repealed).

2022 Repeal. Section 5110 was repealed November 3, 2022, P.L.1791, No.122, effective in 60 days.

ARTICLE B
DOMESTIC NONPROFIT CORPORATIONS GENERALLY

Chapter

53. Incorporation
55. Corporate Powers, Duties and Safeguards
57. Officers, Directors and Members
59. Amendments, Sale of Assets and Dissolution

Article Heading. The heading of Article B was amended December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

CHAPTER 53

Subchapter

A. Incorporation Generally
B. Special Procedures Applicable to Certain Corporations
C. Revival

Enactment. Chapter 53 was added as Chapter 73 on November 15, 1972, P.L.1063, No.271, effective in 90 days. Chapter 73 was renumbered to Chapter 53 on December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Chapter Heading. The heading of Chapter 53 was amended December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

SUBCHAPTER A
INCORPORATION GENERALLY

Sec.

5301. Purposes.
5302. Number and qualifications of incorporators.
5303. Corporate name (Repealed).
5304. Required name changes by senior corporations (Repealed).
5305. Reservation of corporate name (Repealed).
5306. Articles of incorporation.
5307. Advertisement.
5308. Filing of articles.
5309. Effect of filing of articles of incorporation.
5310. Organization meeting.
5311. Filing of statement of summary of record by certain corporations.

Subchapter Heading. The heading of Subchapter A was amended December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Subchapter A is referred to in sections 5331, 7306 of this title; section 3702 of Title 22 (Detectives and Private Police).

§ 5301. Purposes.

(a) General rule.--Except as provided in subsection (b), corporations may be incorporated under this article for any lawful purpose or purposes, including, but not limited to, any one or more of the following or similar purposes: athletic; any lawful business purpose to be conducted on a not-for-profit basis; beneficial; benevolent; cemetery; charitable; civic; control of fire; cultural; educational; encouragement of agriculture or horticulture; fraternal; health; literary; missionary; musical; mutual improvement; patriotic; political; prevention of cruelty to persons or animals; professional, commercial, industrial, trade, service or business associations; promotion of the arts; protection of natural resources; religious; research; scientific and social.

(b) Exception.--Except as otherwise provided by Title 40 (relating to insurance) or the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act, a corporation may not be incorporated under this article for the purpose of engaging in the business of writing insurance or reinsurance as principal.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5302. Number and qualifications of incorporators.

One or more corporations for profit or not-for-profit or natural persons of full age may incorporate a nonprofit corporation under the provisions of this subpart.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5303. Corporate name (Repealed).

2014 Repeal. Section 5303 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5304. Required name changes by senior corporations (Repealed).

2014 Repeal. Section 5304 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5305. Reservation of corporate name (Repealed).

2014 Repeal. Section 5305 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5306. Articles of incorporation.

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

(1) The name of the corporation, unless the name is in a foreign language in which case it shall be set forth in Roman letters or characters or Arabic or Roman numerals.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its initial registered office in this Commonwealth.

(3) A brief statement of the purpose or purposes for which the corporation is incorporated.

(4) A statement that the corporation is one which does not contemplate pecuniary gain or profit, incidental or otherwise.

(5) A statement that the corporation is incorporated under the provisions of the Nonprofit Corporation Law of 1988.

(6) If the corporation is a membership corporation, a statement whether the corporation is to be organized upon a nonstock basis or a stock share basis, and, if it is to be organized on a stock share basis:

(i) The aggregate number of shares that the corporation shall have authority to issue. It shall not be necessary to set forth in the articles the designations of the classes of shares of the corporation or the maximum number of shares of each class that may be issued.

(ii) A statement of the voting rights, designations, preferences, limitations and special rights in respect of the shares of any class or any series of any class, to the extent that they have been determined.

(iii) A statement of any authority vested in the board of directors or other body to divide by provision in the bylaws the authorized and unissued shares into classes or series, or both, and to determine for any class or series its voting rights, designations, preferences, limitations and special rights.

(7) If the corporation is to have no members, a statement to that effect.

(8) The name of each of the incorporators.

(9) The term for which the corporation is to exist, if not perpetual.

(10) If the articles are to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

(11) Any other provisions that the incorporators may choose to insert if:

(i) any provision of this subpart authorizes or requires provisions pertaining to the subject matter thereof to be set forth in the articles or bylaws of a nonprofit corporation or in an agreement or other instrument; or

(ii) such provisions are not inconsistent with this subpart and relate to the purpose or purposes of the corporation, the management of its business or affairs or the rights, powers or duties of its members, security holders, directors, members of an other body or officers.

(b) Par value.--The articles may, but need not, set forth a par value for any authorized shares or class or series of shares.

(c) Written consent to naming directors.--The naming of directors in articles of incorporation shall constitute an affirmation that such directors have consented in writing to serve as such.

(d) Reference to external facts.--Except for the provisions required by subsection (a)(1), (2), (4), (5), (6)(i) and (8), any provision of the articles of incorporation may be made dependent upon facts ascertainable outside of the articles if the manner in which the facts will operate upon the provision is set forth in the articles. The facts may include actions or events within the control of or determinations made by the corporation or a representative of the corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a)(8) and added subsec. (d).

2013 Amendment. Act 67 amended subsec. (a)(6) intro. par. and (11)(ii).

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5307. Advertisement.

The incorporators or the corporation shall officially publish a notice of intention to file or of the filing of articles of incorporation. The notice may appear prior to or after the day the articles of incorporation are filed in the department and shall set forth briefly:

(1) The name of the proposed corporation.

(2) A statement that the corporation is to be or has been incorporated under the provisions of this subpart.

(3) (Deleted by amendment).

(4) (Deleted by amendment).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5308. Filing of articles.

(a) General rule.--The articles of incorporation shall be delivered to the department for filing.

(b) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5309. Effect of filing of articles of incorporation.

(a) Corporate existence.--Upon the filing of the articles of incorporation in the department or upon the effective date specified in the articles of incorporation, whichever is later, the corporate existence shall begin.

(b) Evidence of incorporation.--Subject to the provisions of section 503 (relating to actions to revoke corporate franchises), the articles of incorporation filed in the department, or recorded in the office of the recorder of deeds under the former provisions of law, shall be conclusive evidence of the fact that the corporation has been incorporated.
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5310. Organization meeting.

(a) General rule.--After the corporate existence begins, an organization meeting of the initial directors or, if directors are not named in the articles, of the incorporators shall be held, within or without this Commonwealth, for the purpose of adopting bylaws, which they shall have authority to do at the meeting; of electing directors, if directors are not named in the articles; and of transacting other business as may come before the meeting. A bylaw adopted at the organization meeting of directors or incorporators shall be deemed to be a bylaw adopted by the members for the purposes of this subpart and any other provision of law.

(b) Call of and action at meeting.--The meeting may be held at the call of any director or, if directors are not named in the articles, of any incorporator who shall give at least five days' notice of the meeting to each other director or incorporator. The notice shall set forth the time and place of the meeting. For the purposes of this section, any director or incorporator may act in person, by consent or by proxy signed by him or his attorney-in-fact.

(c) Death or incapacity of directors or incorporators.--If a designated director or an incorporator dies or is for any reason unable to act at the meeting, the other or others may act. If there is no other designated director or incorporator able to act, any person for whom a director or incorporator was acting as agent may act or appoint another to act in his stead.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5310 is referred to in section 5504 of this title.

§ 5311. Filing of statement of summary of record by certain corporations.

(a) General rule.--Where any of the charter documents of a nonprofit corporation are not on file in the Department of State or there is an error in any such document as transferred to the department pursuant to section 140 (relating to custody and management of orphan corporate and business records), and the corporation desires to file any document in the department under any other provision of this subpart or the corporation desires to secure from the department any certificate to the effect that the corporation is a corporation duly incorporated and existing under the laws of this Commonwealth or a certified copy of the articles of the corporation or the corporation desires to correct the text of its charter documents as on file in the department, the corporation shall file in the department a statement of summary of record which shall be executed by the corporation and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the location,

including street and number, if any, of its registered office.

(2) The statute by or under which the corporation was incorporated.

(3) The name under which, the manner in which and the date on which the corporation was originally incorporated, including the date when and the place where the original articles were recorded.

(4) The place or places, including volume and page numbers or their equivalent, where the documents that are not on file in the department or that require correction in the records of the department were originally filed or recorded, the date or dates of each filing or recording and the correct text of the documents. The information specified in this paragraph may be omitted in a statement of summary of record that is delivered to the department contemporaneously with amended and restated articles of the corporation filed under this subpart.

(5) (Deleted by amendment).

(b) Validation of prior defects in incorporation.--Upon the filing of a statement by a corporation under this section or the transfer to the department of the records relating to a corporation pursuant to section 140, the corporation shall be deemed to be a validly subsisting corporation to the same extent as if it had been duly incorporated and was existing under this subpart and the department shall so certify regardless of any absence of or defect in the prior proceedings relating to incorporation.

(c) Cross references.--See sections 134 (relating to docketing statement), 135 (relating to requirements to be met by filed documents) and 5106(b)(2) (relating to limited uniform application of subpart).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days)

SUBCHAPTER B
SPECIAL PROCEDURES APPLICABLE TO CERTAIN CORPORATIONS

Sec.

5331. Incorporation of unincorporated associations.

Subchapter Heading. The heading of Subchapter B was relettered from Subchapter C December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 5331. Incorporation of unincorporated associations.

In the case of the incorporation as a nonprofit corporation under this subpart of an unincorporated association, the articles of incorporation shall contain, in addition to the provisions required in Subchapter A (relating to incorporation generally), a statement that the incorporators constitute a majority of the members of the committee authorized to incorporate the association by the requisite vote required by the organic law of the association for the amendment of the organic law.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5331 is referred to in section 9111 of this title.

SUBCHAPTER C
REVIVAL

Sec.
5341. Statement of revival.

Enactment. The heading of Subchapter C was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Subchapter Heading. The heading of Subchapter C was amended December 19, 1990, P.L.834, No.198, effective immediately.

§ 5341. Statement of revival.

(a) General rule.--Any nonprofit corporation whose charter or articles have been forfeited by proclamation of the Governor pursuant to section 1704 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, or otherwise, or whose corporate existence has expired by reason of any limitation contained in its charter or articles and the failure to effect a timely renewal or extension of its corporate existence, may, at any time by delivering to the department for filing a statement of revival, procure a revival of its charter or articles, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities that had been vested in and imposed upon the corporation by its charter or articles as last in effect.

(b) Contents of statement.--The statement of revival shall be signed in the name of the forfeited or expired corporation and shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), set forth:

(1) The name of the corporation at the time its charter or articles were forfeited or expired and the address, including street and number, if any, of its last registered office.

(2) The statute by or under which the corporation was incorporated and the date of incorporation.

(3) The name that the corporation adopts as its new name if the adoption of a new name is required by section 207 (relating to required name changes by senior associations).

(4) The address, including street and number, if any, of its registered office in this Commonwealth.

(5) A reference to the proclamation or other action by which its charter or articles were forfeited or a reference to the limitation contained in its expired charter or articles.

(6) A statement that the corporate existence of the corporation shall be revived.

(7) A statement that the filing of the statement of revival has been authorized by the corporation. Every forfeited or expired corporation may act by its last directors or may elect directors and officers in the manner provided by this subpart for the limited purpose of effecting a filing under this section.

(c) Filing and effect.--The statement of revival and, in the case of a forfeited corporation, the clearance certificates required by section 139 (relating to tax clearance of certain fundamental transactions) shall be delivered to the department for filing. Upon the filing of the statement of revival, the corporation shall be revived with the same effect as if its charter or articles had not been forfeited or expired by limitation. The revival shall validate all contracts and other

transactions made and effected within the scope of the articles of the corporation by its representatives during the time when its charter or articles were forfeited or expired to the same effect as if its charter or articles had not been forfeited or expired.

(d) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

CHAPTER 55
CORPORATE POWERS, DUTIES AND SAFEGUARDS

Subchapter

A. General Provisions
B. Financial Matters
C. Common Trust Funds

Enactment. Chapter 55 was added as Chapter 75 November 15, 1972, P.L.1063, No.271, effective in 90 days. Chapter 75 was renumbered to Chapter 55 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

5501. Corporate capacity.
5502. General powers.
5503. Defense of ultra vires.
5504. Adoption, amendment and contents of bylaws.
5505. Persons bound by bylaws.
5506. Form of execution of instruments.
5507. Registered office.
5508. Corporate records; inspection by members.
5509. Bylaws and other powers in emergency.
5510. Certain specifically authorized debt terms.
5511. Establishment of subordinate units.
5512. Informational rights of a director.
5513. Forum selection provisions.

Subchapter Heading. The heading of Subchapter A was carried without amendment December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 5501. Corporate capacity.

Except as provided in section 103 (relating to subordination of title to regulatory laws), a nonprofit corporation shall have the legal capacity of natural persons to act.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5502. General powers.

(a) General rule.--Subject to the limitations and restrictions imposed by statute and, except as otherwise provided in paragraph (4), subject to the limitations and restrictions contained in its articles, every nonprofit corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is specified in its articles, subject to the power of the Attorney General under section 503 (relating to actions to revoke corporate

franchises) and to the power of the General Assembly under the Constitution of Pennsylvania.

(2) To sue and be sued, complain and defend and participate as a party or otherwise in any judicial, administrative, arbitrative or other proceeding in its corporate name.

(3) To have a corporate seal, which may be altered at pleasure, and to use the seal by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

(4) To acquire, own and utilize any real or personal property, or any interest therein, wherever situated, regardless of any limitation set forth in its articles prior to January 1, 1972 as to the quantity or value of real or personal property which it may hold, or as to the amount of income derived therefrom.

(5) To sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of all or any part of its property and assets, or any interest therein, wherever situated.

(6) To guarantee, become surety for, acquire, own and dispose of obligations, capital stock and other securities.

(7) To borrow money, issue or incur its obligations and secure any of its obligations by mortgage on or pledge of or security interest in all or any part of its property and assets, wherever situated, franchises or income, or any interest therein.

(8) To invest its funds, lend money and take and hold real and personal property as security for the repayment of funds so invested or loaned.

(9) To make contributions and donations.

(10) To use abbreviations, words, logos or symbols upon the records of the corporation, and in connection with the registration of, and inscription of ownership or entitlement on, certificates evidencing membership in or securities or obligations of the corporation, and upon checks, proxies, notices and other instruments and documents relating to the foregoing, which abbreviations, words, logos or symbols shall have the same force and effect as though the respective words and phrases for which they stand were set forth in full for the purposes of all statutes of this Commonwealth and all other purposes.

(11) To be a promoter, partner, member, associate or manager of any partnership, enterprise or venture or in any transaction, undertaking or arrangement that the corporation would have power to conduct itself, whether or not its participation involves sharing or delegation of control with or to others.

(12) To transact any lawful business that the board of directors or other body finds will aid governmental policy.

(13) To continue the salaries of such of its employees as may be serving in the active or reserve armed forces of the United States, or in the national guard or in any other organization established for the protection of the lives and property of citizens of this Commonwealth or the United States, during the term of that service or during such part thereof as the employees, by reason of that service, may be unable to perform their duties as employees of the corporation.

(14) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, incentive and deferred compensation plans and other plans or trusts for any or all of its present or

former representatives and, after their death, to grant allowances or pensions to their dependents or beneficiaries, whether or not the grant was made during their lifetime.

(15) To conduct its business, carry on its operations, have offices and exercise the powers granted by this article or any other provision of law in any jurisdiction within or without the United States.

(16) To elect or appoint and remove officers, employees and agents of the corporation, define their duties, fix their reasonable compensation and the reasonable compensation of directors, to lend any of the foregoing money and credit and to pay bonuses or other additional compensation to any of the foregoing for past services.

(17) To enter into any obligation appropriate for the transaction of its affairs, including contracts or other agreements with its members.

(18) To have and exercise all of the powers and means appropriate to effect the purpose or purposes for which the corporation is incorporated.

(19) To have and exercise all other powers enumerated elsewhere in this subpart or otherwise vested by law in the corporation.

(b) Enumeration unnecessary.--It shall not be necessary to set forth in the articles of the corporation the powers enumerated in subsection (a).

(c) Board to exercise.--See section 5721 (relating to board of directors).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5502 is referred to in sections 5715, 5721, 7321, 7521 of this title.

§ 5503. Defense of ultra vires.

(a) General rule.--A limitation upon the business, purposes or powers of a nonprofit corporation, expressed or implied in its articles or bylaws or implied by law, shall not be asserted in order to defend any action at law or in equity between the corporation and a third person, or between a member and a third person, involving any contract to which the corporation is a party or any right of property or any alleged liability of whatever nature, but the limitation may be asserted:

(1) In an action by a member against the corporation to enjoin the doing of unauthorized acts or the transaction or continuation of unauthorized business. If the unauthorized acts or business sought to be enjoined are being transacted pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the action and if it deems the result to be equitable, set aside and enjoin the performance of the contract, and in so doing shall allow to the corporation, or to the other parties to the contract, as the case may be, such compensation as may be appropriate for the loss or damage sustained by any of them from the action of the court in setting aside and enjoining the performance of the contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In any action by or in the right of the corporation to procure a judgment in its favor against an incumbent or

former officer, director or member of an other body of the corporation for loss or damage due to his unauthorized acts.

(3) In a proceeding by the Commonwealth under section 503 (relating to actions to revoke corporate franchises) or in a proceeding by the Commonwealth to enjoin the corporation from the doing of unauthorized or unlawful business.

(b) Conveyances of property by or to a corporation.--A conveyance or transfer by or to a nonprofit corporation of property, real or personal, of any kind or description, shall not be invalid or fail because in making the conveyance or transfer, or in acquiring the property, real or personal, any representative of the corporation acting within the scope of the actual or apparent authority given to him by the corporation has exceeded any of the purposes or powers of the corporation.

(c) Cross reference.--See section 6146 (relating to provisions applicable to all foreign corporations).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; June 22, 2001, P.L.418, No.34, eff. 60 days)

Cross References. Section 5503 is referred to in section 6146 of this title.

§ 5504. Adoption, amendment and contents of bylaws.

(a) General rule.--The members entitled to vote shall have the power to adopt, amend and repeal the bylaws of a nonprofit corporation. Except as provided in subsection (b), the authority to adopt, amend and repeal bylaws may be expressly vested by the bylaws in the board of directors or other body, subject to the power of the members to change such action. The bylaws may contain any provisions for managing the business and regulating the affairs of the corporation not inconsistent with law or the articles. In the case of a meeting of members, written notice shall be given to each member entitled to vote that the purpose, or one of the purposes, of a meeting is to consider the adoption, amendment or repeal of the bylaws. There shall be included in or enclosed with the notice a copy of the proposed amendment or a summary of the changes to be effected thereby. Any change in the bylaws shall take effect when adopted unless otherwise provided in the resolution effecting the change.

(b) Exception.--Except as provided in section 5310(a) (relating to organization meeting), the board of directors or other body shall not have the authority to adopt or change a bylaw on any subject that is committed expressly to the members by any of the provisions of this subpart. See:

Subsection (d) (relating to amendment of voting provisions).
Section 5713 (relating to personal liability of directors).
Section 5721 (relating to board of directors).
Section 5725(b) (relating to selection of directors).
Section 5726(a) (relating to removal of directors by the members).
Section 5726(b) (relating to removal of directors by the board).
Section 5729 (relating to voting rights of directors).
Section 5751(a) (relating to classes and qualifications of membership).
Section 5752(c) (relating to rights of shareholders).
Section 5754(a) (relating to members grouped in local units).
Section 5755(a) (relating to regular meetings).
Section 5756 (relating to quorum).
Section 5757 (relating to action by members).
Section 5758 (relating to voting rights of members).
Section 5759(a) (relating to voting and other action by proxy).

Section 5762(a) (relating to voting by corporations).
Section 5765 (relating to judges of election).
Section 5769(a) (relating to termination and transfer of membership).
Section 5770 (relating to voting powers and other rights of certain securityholders and other entities).
Section 5975(c) (relating to predissolution provision for liabilities).

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

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

(d) Amendment of voting provisions.--

(1) Unless otherwise restricted in a bylaw adopted by the members, whenever the bylaws require for the taking of any action by the members or a class of members a specific number or percentage of votes, the provision of the bylaws setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes of the members or of the class of members.

(2) Paragraph (1) shall not apply to a bylaw setting forth the right of members to act by unanimous written consent as provided in section 5766(a) (relating to consent of members in lieu of meeting).

(e) Cross reference.--See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (c) and added subsec. (b.1).

2013 Amendment. Act 67 amended subsecs. (b), (c) and (d) and added subsec. (e).

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5504 is referred to in sections 5103, 5757, 6145 of this title.

§ 5505. Persons bound by bylaws.

Except as otherwise provided by section 5713 (relating to personal liability of directors) or any similar provision of law, the bylaws of a nonprofit corporation are binding on the members, directors, members of an other body and officers of the corporation with respect to its internal affairs whether or not a member, director, member of an other body or officer has actual knowledge of the provisions of the bylaws, but a bylaw shall not affect contracts or other dealings with other persons, unless those persons have actual knowledge of the bylaw.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 5506. Form of execution of instruments.

(a) General rule.--Any form of execution provided in the articles or bylaws to the contrary notwithstanding, any note, mortgage, evidence of indebtedness, contract or other document, or any assignment or endorsement thereof, executed or entered into between any nonprofit corporation and any other person, when signed by one or more officers or agents having actual or apparent authority to sign it, or by the president or vice-president and secretary or assistant secretary or treasurer or assistant treasurer of the corporation, shall be held to have been properly executed for and in behalf of the corporation.

(b) Seal unnecessary.--The affixation of the corporate seal shall not be necessary to the valid execution, assignment or endorsement by a corporation of any instrument or other document.

(c) Cross reference.--See section 6146 (relating to provisions applicable to all foreign corporations).

(June 22, 2001, P.L.418, No.34, eff. 60 days)

Cross References. Section 5506 is referred to in section 6146 of this title.

§ 5507. Registered office.

(a) General rule.--Every nonprofit corporation shall have and continuously maintain in this Commonwealth a registered office which may, but need not, be the same as its place of business.

(b) Statement of change of registered office.--After incorporation, a change of the location of the registered office may be authorized at any time by the board of directors or other body. Before the change of location becomes effective, the corporation shall include the change in an annual report under section 146 (relating to annual report), amend its articles under the provisions of this subpart to reflect the change or deliver to the Department of State for filing a statement of change of registered office executed by the corporation, setting forth:

(1) The name of the corporation.

(2) The address, including street number, if any, of its then registered office.

(3) The address, including street number, if any, to which the registered office is to be changed.

(4) A statement that the change was authorized by the board of directors or other body.

(c) Alternative procedure.--A corporation may satisfy the requirements of this subpart concerning the maintenance of a registered office in this Commonwealth by setting forth in any document filed in the department under any provision of this subpart that permits or requires the statement of the address of its then registered office, in lieu of that address, the statement authorized by section 109(a) (relating to name of commercial registered office provider in lieu of registered address).

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

(e) Cross reference.--See section 134 (relating to docketing statement).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b), relettered former subsec. (d) to subsec. (e) and added present subsec. (d).

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5507 is referred to in section 5103 of this title.

§ 5508. Corporate records; inspection by members.

(a) Required records.--Every nonprofit corporation shall keep minutes of the proceedings of the incorporators, members, the directors and any other body, and a membership register. The corporation shall also keep appropriate, complete and accurate books or records of account.

(1) (Deleted by amendment).

(2) (Deleted by amendment).

(3) (Deleted by amendment).

(b) Right of inspection by a member.--On demand, in compliance with the requirements in subsection (b.1), a member has the right to examine, in person or by agent or attorney, during the usual hours for business for any proper purpose, the membership register, books and records of account, and minutes of, and consents in lieu of meetings by, the incorporators, members, directors and any other body, and to make copies or extracts therefrom.

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

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

(2) In every instance where an attorney or other agent is the person who seeks the right of inspection, the demand shall be accompanied by a verified power of attorney or other record that authorizes the attorney or other agent to so act on behalf of the member.

(3) The demand must be:

(i) made in good faith;

(ii) in record form; and

(iii) verified.

(4) The demand must describe with reasonable particularity:

(i) the purpose of the member; and

(ii) the records the member desires to inspect and how the records relate to the purpose of the member.

(5) The demand must be delivered to the corporation:

(i) at its registered office in this Commonwealth;

(ii) at its principal place of business wherever situated;

(iii) in care of the person in charge of an actual business office of the corporation; or

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

(c) Proceedings for the enforcement of inspection by a member.--If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a member or attorney or other agent acting for the member pursuant to subsection (b) or does not reply to the demand within five business days after the demand has been received, the member may file an action in the court for an order to compel the inspection. The court is

hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the corporation to permit the member to inspect the membership register and the other books and records of the corporation and to make copies or extracts therefrom; or the court may order the corporation to furnish to the member a list of its members as of a specific date on condition that the member first pay to the corporation the reasonable cost of obtaining and furnishing the list and on such other conditions as the court deems appropriate. Where the member seeks to inspect the books and records of the corporation, other than its membership register or list of members, the member shall first establish:

(1) that the member has complied with the provisions of this section respecting the form and manner of making demand for inspection of such document; and

(2) that the inspection the member seeks is for a proper purpose.

(d) Burden of proof.--Where the member seeks to inspect the membership register or list of members of the corporation and the member has complied with the provisions of this section respecting the form and manner of making demand for inspection of the documents, the burden of proof shall be upon the corporation to establish that the inspection he seeks is for an improper purpose.

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

(f) Right to bylaws.--Every member shall have the right to receive, promptly after demand and without charge, a copy in record form of the currently effective text of the bylaws. If the corporation does not provide a member with a copy of the bylaws as required by this subsection, the member may apply to the court for an order to compel the production. The court shall summarily order the corporation to provide a copy of the bylaws unless the corporation establishes that the person seeking the bylaws is not a member.

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

(h) Cross references.--See sections 107 (relating to form of records) and 5512 (relating to informational rights of a director) and 42 Pa.C.S. § 2503(7) and (9) (relating to right of participants to receive counsel fees).

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5508 is referred to in sections 5512, 6145 of this title.

§ 5509. Bylaws and other powers in emergency.

(a) General rule.--Except as otherwise restricted in the bylaws, the board of directors or other body of any nonprofit

corporation may adopt emergency bylaws, subject to repeal or change by action of the members, which shall, notwithstanding any different provisions of law or of the articles or bylaws, be effective during an emergency. The emergency bylaws may make any provision that may be appropriate for the circumstances of the emergency, including:

(1) Procedures for calling meetings of delegates, the board or an other body.

(2) Quorum requirements for meetings of delegates, the board or an other body.

(3) Procedures for designating additional or substitute directors or members of an other body.

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

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

(2) effective in the emergency, change the head offices or designate several alternative head offices or regional offices of the corporation.

(c) Representatives not liable.--A representative of the corporation:

(1) Acting in accordance with any emergency bylaws in effect at the time or otherwise in accordance with this section is not liable for monetary damages except for:

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

(ii) violation of a criminal statute; or

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

(2) Is not liable for any action taken by the representative in good faith in an emergency in furtherance of the ordinary business affairs of the corporation even though not authorized by the emergency or other bylaws then in effect.

(d) Effect on regular bylaws.--To the extent not inconsistent with any emergency bylaws, the bylaws of the corporation shall remain in effect during any emergency, and, upon its termination, the emergency bylaws shall cease to be effective.

(e) Procedure in absence of emergency bylaws.--Unless otherwise provided in emergency bylaws, notice of any meeting of delegates, the board of directors or an other body during an emergency shall be given only to those delegates, directors or members of an other body it is feasible to reach at the time and by such means as are feasible at the time, including publication, radio or television. To the extent required to constitute a quorum at any meeting of the board of directors or an other body during any emergency, the officers of the corporation who are present at the meeting shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors or members of the other body, as the case may be, for the meeting. An officer serving as a director or member of an other body under this subsection shall be subject to, and entitled to the benefits of the provisions of this subpart relating to directors or members of an other body.

(f) Corporate actions.--A corporate action to further the ordinary business affairs of the corporation that is taken in

good faith in accordance with any emergency bylaws in effect at the time or otherwise in accordance with this section is valid and binding on the corporation.

(g) Member meetings.--The required time for holding the annual meeting of delegates or members of a corporation provided in section 5755(a) (relating to time of holding meetings of members) or the articles or bylaws is tolled during an emergency. The board or other body, acting by a majority of the directors or members of the other body that can be assembled, may take any action during an emergency that the board or other body determines to be practical and necessary to address the circumstances of the emergency with respect to a meeting of members notwithstanding anything to the contrary in this subpart or in the articles or bylaws. The actions the board or other body may take include postponing the meeting to a later time or date, with the record date for determining the members entitled to notice of, and to vote at, the meeting applying to the postponed meeting without regard to section 5763 (relating to determination of members of record).

(h) Definition.--As used in this section, and for no other purpose, "emergency" means a period during which a quorum of the board or an other body cannot readily be assembled as a result of:

(1) an attack on the United States;

(2) a nuclear disaster;

(3) an epidemic or pandemic;

(4) a state of emergency under Federal or State law covering a geographic area in which the corporation has its principal office or a significant regional office or operation; or

(5) any other catastrophe or disaster.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 5510. Certain specifically authorized debt terms.

(a) Interest rates.--A nonprofit corporation shall not plead or set up usury, or the taking of more than the lawful rate of interest, or the taking of any finance, service or default charge in excess of any maximum rate therefor provided or prescribed by law, as a defense to any action or proceeding brought against it to recover damages on, or to enforce payment of, or to enforce any other remedy on, any obligation executed or effected by the corporation.

(b) Yield maintenance premiums.--A prepayment premium determined by reference to the approximate spread between the yield at issuance, or at the date of amendment of any of the terms, of an obligation of a corporation and the yield at or about such date of an interest rate index of independent significance and contingent upon a change in the ownership of or memberships in the corporation or a default by or other change in the condition or prospects of the corporation or any affiliate of the corporation shall be deemed liquidated damages and shall not constitute a penalty.

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

"Affiliate." An affiliate or associate as defined in section 102 (relating to definitions).

"Obligation." Includes an installment sale contract.

(d) Cross reference.--See section 6146 (relating to provisions applicable to all foreign corporations).

(June 22, 2001, P.L.418, No.34, eff. 60 days; July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (c).

Cross References. Section 5510 is referred to in section 6146 of this title.

§ 5511. Establishment of subordinate units.

A nonprofit corporation may establish and terminate local branches, chapters, councils, clubs, churches, lodges, parishes or other subordinate units regardless of their designation, form of government, incorporated or unincorporated status or relationship to the corporation or other supervising and controlling organization of which the corporation is a member or with which it is in allegiance and to which it is subordinate.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 reenacted section 5511.

§ 5512. Informational rights of a director.

(a) General rule.--To the extent reasonably related to the performance of the duties of the director, including those arising from service as a member of a committee of the board of directors, a director of a nonprofit corporation is entitled:

(1) in person or by any attorney or other agent, at any reasonable time, to inspect and copy corporate books, records and documents and, in addition, to inspect, and receive information regarding, the assets, liabilities and operations of the corporation and any subsidiaries of the corporation incorporated or otherwise organized or created under the laws of this Commonwealth that are controlled directly or indirectly by the corporation; and

(2) to demand that the corporation exercise whatever rights it may have to obtain information regarding any other subsidiaries of the corporation.

(b) Proceedings for the enforcement of inspection by a director.--If the corporation, or an officer or agent thereof, refuses to permit an inspection or obtain or provide information sought by a director or attorney or other agent acting for the director pursuant to subsection (a) or does not reply to the request within two business days after the request has been made, the director may file an action in the court for an order to compel the inspection or the obtaining or providing of the information. The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that information other than the bylaws to be obtained by the exercise of the right is not reasonably related to the performance of the duties of the director or that the director or the attorney or agent of the director is likely to use that information in a manner that would violate the duty of the director to the corporation. The order of the court may contain provisions protecting the corporation from undue burden or expense and prohibiting the director from using the information in a manner that would violate the duty of the director to the corporation.

(c) Right to the bylaws.--Every director has the right to receive, on demand and without charge, a copy in record form of the currently effective text of the bylaws.

(d) Reasonable restrictions permitted.--The corporation may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction, condition or

obligation under this subsection, the corporation has the burden of proving reasonableness.

(e) Cross references.--See sections 107 (relating to form of records), 5508 (relating to corporate records; inspection by members) and 5734 (relating to other body) and 42 Pa.C.S. § 2503(7) (relating to right of participants to receive counsel fees).

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5512 is referred to in section 5508 of this title.

§ 5513. Forum selection provisions.

(a) General rule.--The bylaws may require that an internal corporate claim must be brought exclusively in a specified court or courts of this Commonwealth and, if so specified, also in other courts sitting in this Commonwealth or in any other jurisdiction with which the nonprofit corporation has a reasonable relationship.

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

(c) Definition.--For the purposes of this section:

(1) Except as provided in paragraph (2), "internal corporate claim" means:

(i) an action that is based upon an alleged violation of a duty owed to the nonprofit corporation under the laws of this Commonwealth by a current or former director, member of an other body, officer or member in that capacity;

(ii) a derivative action or proceeding brought on behalf of the corporation;

(iii) an action asserting a claim arising pursuant to any provision of:

(A) this title;

(B) the articles of incorporation or bylaws; or

(C) an agreement regarding the governance of the corporation or the transfer of memberships in the corporation if:

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

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

(iv) any action asserting a claim regarding the internal affairs of the corporation that is not included in subparagraphs (i), (ii) and (iii).

(2) An internal corporate claim does not include a claim, action or proceeding described in paragraph (1) that is subject to section 5107 (relating to subordination of subpart to canon law).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 5513.

Cross References. Section 5513 is referred to in section 102 of this title.

SUBCHAPTER B
FINANCIAL MATTERS

Sec.

5541. Capital contributions of members.
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5553. Liabilities of members.
5554. Annual report of directors or other body.

Subchapter Heading. The heading of Subchapter B was carried without amendment December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 5541. Capital contributions of members.

(a) General rule.--A nonprofit corporation organized on a nonstock basis may provide in its bylaws that members, upon or subsequent to admission, shall make capital contributions. The amount shall be specified in, or fixed by the board of directors or other body pursuant to authority granted by, the bylaws. The requirement of a capital contribution may apply to all members, to the members of a single class or to members of different classes in different amounts or proportions.

(b) Consideration receivable.--The capital contribution of a member, unless otherwise provided in the bylaws:

(1) May consist of money, obligations (including an obligation of a member), services performed whether or not contracted for, contracts for services to be performed, memberships in or securities or obligations of the corporation or any other tangible or intangible property or benefit to the corporation. If a capital contribution is made in a form other than money, the value of the contribution shall be determined by or in the manner provided by the board of directors or other body.

(2) Shall be provided or paid to or as ordered by the corporation.

(c) Evidence of contribution.--The capital contribution of a member shall be recorded on the books of the corporation and may be evidenced by a written instrument delivered to the member, but the instrument shall not be denominated a "share certificate" or by any other word or term implying that the

instrument is a share certificate subject to section 5752 (relating to organization on a stock share basis).

(d) Transferability of interest.--Unless otherwise provided in the bylaws, the capital contribution of a member shall not be transferable.

(e) Repayment of contribution.--The capital contribution of a member shall not be repaid by the corporation except upon dissolution of the corporation or as provided in this subpart. A corporation may provide in its bylaws that its capital contributions, or some of them, shall be repayable, in whole or in part, at the option of the corporation only, in the amount or amounts (not to exceed the amount of the capital contribution), within the period or periods and on the terms and conditions, not inconsistent with this subpart, as are stated in, or fixed by the board of directors or other body pursuant to authority granted by, the bylaws.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5542. Subventions.

(a) General rule.--The bylaws of a nonprofit corporation may provide that the corporation shall be authorized by resolution of the board of directors or other body to accept subventions from members or nonmembers on terms and conditions not inconsistent with this subpart. The resolution of the board or other body may provide that the maker of a subvention shall be entitled to a fixed or contingent periodic payment out of the corporate assets equal to a percentage of the original amount or value of the subvention. The rights of makers of subventions shall at all times be subordinate to the rights of creditors of the corporation.

(b) Consideration receivable.--Consideration for subventions, unless otherwise provided in the bylaws:

(1) May consist of money, obligations (including an obligation of a subventor), services performed whether or not contracted for, contracts for services to be performed, memberships in or securities or obligations of the corporation or any other tangible or intangible property or benefit to the corporation. If subventions are issued for other than money, the value of the consideration shall be determined by or in the manner provided by the board of directors or other body.

(2) Shall be provided or paid to or as ordered by the corporation.

(c) Form of certificate.--(Deleted by amendment).

(c.1) Form of subventions.--Subventions shall be represented by certificates or shall be uncertificated subventions. Each subvention certificate shall be executed by or on behalf of the corporation issuing the subvention in the manner it may determine. The fact that the corporation is a nonprofit corporation shall be noted conspicuously on the face or back of each certificate.

(d) Transferability of subvention.--Subventions shall be nontransferable unless the resolution of the board of directors or other body provides that they shall be transferable either at will or subject to specified restrictions.

(e) Redemption at option of corporation.--The resolution of the board of directors or other body may provide that a subvention shall be redeemable, in whole or in part, at the option of the corporation at the price or prices (not to exceed the original amount or value of the subvention plus any periodic payments due or accrued thereon), within the period or periods,

and on the terms and conditions, not inconsistent with this subpart, as are stated in the resolution.

(f) Redemption at option of holders.--The resolution of the board of directors or other body may provide that makers or holders of all or some subventions shall have the right to require the corporation after a specified period of time to redeem the subventions, in whole or in part, at a price or prices that do not exceed the original amount or value of the subvention plus any periodic payments due or accrued on the subvention, upon an affirmative showing that the financial condition of the corporation will permit the required payment to be made without impairment of its operations or injury to its creditors. The right to require redemption may in addition be conditioned upon the occurrence of a specified event. For the purpose of enforcing their rights under this subsection, makers or holders of subventions shall be entitled to inspect the books and records of the corporation.

(g) Rights of makers or holders on dissolution.--Makers or holders of subventions, upon dissolution of the corporation, shall be entitled, after the claims of creditors have been satisfied, to repayment of the original amount or value of the subvention plus any periodic payments due or accrued on the subvention, unless a lesser sum is specified in the resolution of the board of directors or other body concerning the subvention.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5543. Debt and security interests.

(a) General rule.--Unless otherwise provided in the bylaws, a nonprofit corporation may issue its bonds or other obligations for an amount and form of consideration as may be determined by or in the manner provided by the board of directors or other body.

(b) Creation of lien on real or personal property.--The board of directors or other body may authorize any mortgage or pledge of, or the creation of a security interest in, all or any part of the real or personal property of the corporation, or any interest in the real or personal property. No application to or confirmation by a court shall be required, and, unless otherwise restricted in the bylaws, no vote or consent of the members shall be required to make effective the action by the board or other body.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5543.1. Usury not a defense (Repealed).

2001 Repeal. Section 5543.1 was repealed June 22, 2001, P.L.418, No.34, effective in 60 days.

§ 5544. Dues and assessments.

(a) General rule.--A nonprofit corporation may levy dues or assessments, or both, on its members, if authority to do so is conferred by the bylaws, subject to any limitations contained in the bylaws. The dues or assessments, or both, may be imposed upon all members of the same class either alike or in different amounts or proportions, and upon a different basis upon different classes of members. Members of one or more classes may be made exempt from either dues or assessments, or both, in the manner or to the extent provided in the bylaws.

(b) Amount and method of collection.--The amount of the levy and method of collection of the dues or assessments, or both, may be fixed in the bylaws, or the bylaws may authorize the board of directors or other body to fix the amount of the dues or assessments from time to time, and make them payable

at the time and by the methods of collection as the board of directors or other body may prescribe.

(c) Enforcement of payment.--A nonprofit corporation may make bylaws necessary to enforce the collection of dues or assessments, including provisions for the termination of membership, upon reasonable notice, for nonpayment of dues or assessments, and for reinstatement of membership.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5544 is referred to in section 5769 of this title.

§ 5545. Income from corporate activities.

A nonprofit corporation whose lawful activities involve among other things the charging of fees or prices for its services or products, shall have the right to receive such income and, in so doing, may make an incidental profit. All such incidental profits shall be applied to the maintenance and operation of the lawful activities of the corporation, and in no case shall be divided or distributed in any manner whatsoever among the members, directors, or officers of the corporation. As used in this section the terms fees or prices do not include rates of contribution, fees or dues levied under an insurance certificate issued by a fraternal benefit society, so long as the distribution of profits arising from said fees or prices is limited to the purposes set forth in this section and section 5551 (relating to dividends prohibited; compensation and certain payments authorized).

(July 30, 1975, P.L.128, No.63; Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989)

§ 5546. Purchase, sale, mortgage and lease of real property.

Except as otherwise provided in this subpart and unless otherwise provided in the bylaws, no application to or confirmation of any court shall be required for the purchase by or the sale, lease or other disposition of the real or personal property, or any part of the real or personal property, of a nonprofit corporation, and, unless otherwise restricted in section 5930 (relating to voluntary transfer of corporate assets) or in the bylaws, no vote or consent of the members shall be required to make effective such action by the board or other body. If the property is subject to a trust, the conveyance away shall be free of trust, and the trust shall be impinged upon the proceeds of the conveyance.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5546.1. Insolvency or bankruptcy (Repealed).

2001 Repeal. Section 5546.1 was repealed June 22, 2001, P.L.418, No.34, effective in 60 days.

§ 5547. Authority to take and hold trust property.

(a) General rule.--Every nonprofit corporation incorporated for a charitable purpose or purposes may take, receive and hold such real and personal property as may be given, devised to, or otherwise vested in such corporation, in trust, for the purpose or purposes set forth in its articles. The board of directors or other body of the corporation shall, as trustees of such property, be held to the same degree of responsibility and accountability as if not incorporated, unless a less degree or a particular degree of responsibility and accountability is prescribed in the trust instrument, or unless the board of directors or such other body remain under the control of the members of the corporation or third persons who retain the right to direct, and do direct, the actions of the board or other body as to the use of the trust property from time to time.

(b) Nondiversion of certain property.--Property committed to charitable purposes shall not, by any proceeding under Chapter 3 (relating to entity transactions) or 59 (relating to amendments, sale of assets and dissolution) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the board of directors or other body obtains from the court an order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property. (Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Oct. 27, 2010, P.L.837, No.85, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b).

Cross References. Section 5547 is referred to in sections 202, 5548, 5548.1, 5549, 5746, 5916, 5930, 5976, 5989 of this title.

§ 5548. Investment of trust funds.

(a) General rule.--Unless otherwise specifically directed in the trust instrument, the board of directors or other body of a nonprofit corporation incorporated for charitable purposes shall have power to invest any assets vested in the corporation by such instrument or the proceeds thereof separately or together with other assets of the corporation, in the manner authorized for fiduciaries by 20 Pa.C.S. Ch. 72 (relating to prudent investor rule), and to retain any investments heretofore so made. Any such nonprofit corporation may, by appropriate action of its board of directors or other body, keep any investments or fractional interests in any investments, held by it or made by it, in the name of the corporation or in the name of a nominee of the corporation.

(b) Use and management.--Except as otherwise permitted under 20 Pa.C.S. Ch. 77 (relating to trusts), the board of directors or other body shall apply all assets thus received to the purposes specified in the trust instrument. The directors or other body shall keep accurate accounts of all trust funds, separate and apart from the accounts of other assets of the corporation.

(c) Determination of income.--

(1) Unless otherwise specifically directed in the trust instrument, the board of directors or other body may elect to be governed by this subsection with respect to assets thus received, including any participation in any common trust fund.

(2) To make an election under this subsection, the board of directors or other body shall adopt and follow an investment policy seeking a total return for the assets held by the corporation or in the name of a nominee of the corporation or by an institutional trustee pursuant to section 5549 (relating to transfer of trust or other assets to institutional trustee), whether the return is to be derived from capital appreciation, earnings or distributions with respect to the capital or both. The policy constituting the election shall be in writing, shall be maintained as part of the permanent records of the corporation and shall recite that it constitutes an election to be governed by this subsection.

(3) (i) If an election is made to be governed by this subsection, the term "income" shall mean a percentage of the value of the assets so held by or for the corporation.

(ii) Except as otherwise provided in subparagraph (iii), the board of directors or other body shall in a writing maintained as part of the permanent records of the corporation annually select a percentage and determine that it is consistent with the long-term preservation of the real value of the assets, but in no event shall the percentage be less than 2% nor more than 7% per year.

(iii) The board of directors or other governing body shall, in selecting a percentage, consider both the long-term preservation of the real value of the assets and the corporation's need for capital to fulfill its mission and may select a percentage of not more than 10% per year. This subparagraph shall only apply during calendar years 2020, 2021 and 2022, or for the corporation's fiscal years that end during those calendar years.

(4) The board of directors or other body may revoke an election to be governed by this subsection if the revocation is made as part of an alternative investment policy seeking the long-term preservation of the real value of the assets thus received. The revocation and alternative investment policy shall be in writing and maintained as part of the permanent records of the corporation.

(5) For purposes of applying this subsection, the value of the assets of the corporation shall be the fair market value of the assets so held by or for the corporation, determined at least annually and averaged over a period of three or more preceding years. However, if the assets have been held for less than three years, the average shall be determined over the period during which the assets have been held.

(d) Scope of section.--This section shall apply to assets hereafter received pursuant to section 5547 (relating to authority to take and hold trust property), to assets heretofore so received and held at the time when this article takes effect and to reinvestments of all such assets.

(e) Definition.--(Deleted by amendment).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 21, 1998, P.L.1067, No.141, eff. imd.; June 25, 1999, P.L.212, No.28, eff. 6 months; Oct. 27, 2010, P.L.837, No.85, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; July 23, 2020, P.L.681, No.71, eff. imd.)

2020 Amendment. Act 71 amended subsec. (c).

2013 Amendment. Act 67 amended subsec. (b).

1999 Amendment. Act 28 amended subsec. (a).

1998 Amendment. Act 141 amended subsecs. (b) and (c) and deleted subsec. (e). Section 4 of Act 141 provided that the amendment of subsecs. (b), (c) and (e) shall apply to all trusts, whether created before, on or after the effective date of Act 141.

1988 Amendment. Act 177 amended subsec. (d).

Cross References. Section 5548 is referred to in sections 5549, 5585 of this title.

§ 5548.1. Nonjudicial settlement agreement.

Notwithstanding section 5547(b) (relating to authority to take and hold trust property):

(1) Except as expressly provided in the gift instrument and as otherwise provided in paragraph (2), if the donor placed restrictions on the use or management of property transferred to a nonprofit corporation, the donor, together

with the nonprofit corporation holding the property, may enter into a binding nonjudicial settlement agreement with respect to any matter involving the property, including a restriction.

(2) A nonjudicial settlement agreement is valid only to the extent it includes terms and conditions that the court could approve under this chapter or other applicable law and that the property remains committed to a charitable purpose or purposes.

(3) A nonprofit corporation may request the court to review a nonjudicial settlement agreement in order to determine whether the agreement contains terms and conditions the court could have approved.

(4) A proceeding commenced to enforce a gift instrument related to assets held by a nonprofit corporation for a charitable purpose, whether or not subject to a nonjudicial settlement agreement, may be brought by the donor during the donor's lifetime or at any time by the Office of Attorney General, by a charitable organization expressly named in the gift instrument and nonjudicial settlement agreement, if applicable, to receive any portion of the assets governed by the gift instrument and nonjudicial settlement agreement, if applicable, or by any other person having standing to do so, which may include anyone appointed in the gift instrument.

(July 23, 2020, P.L.681, No.71, eff. imd.)

2020 Amendment. Act 71 added section 5548.1.

§ 5549. Transfer of trust or other assets to institutional trustee.

(a) General rule.--Any nonprofit corporation holding or receiving assets under section 5547 (relating to authority to take and hold trust property) may, by appropriate action of its board of directors or other body, transfer, which transfer may be either revocable or irrevocable, any such assets to a corporate trustee, which shall be a bank and trust company or a trust company incorporated under the laws of this Commonwealth or a national banking association having fiduciary powers and having its principal office in this Commonwealth, as trustee and with like investment restrictions. In like manner the corporation may transfer, which transfer shall be revocable, any other part of its assets to such a corporate trustee, subject to the same powers, restrictions and obligations with respect to investment as are applicable to the corporation itself.

(b) Relief from liability.--Upon such transfer the board of directors or other body of the corporation shall be relieved of all liability for the administration of such assets for as long as such assets are administered by the corporate trustee.

(c) Amount and frequency of payment.--Such corporate trustee shall pay, at least semi-annually or at more frequent intervals if so agreed, the net income from such assets, which income may be determined under section 5548(c) (relating to investment of trust funds) if such election is properly made by the board of directors or other body of the corporation, to the corporation for use and application to the purpose or purposes for which the assets were received by the corporation.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 21, 1998, P.L.1067, No.141, eff. imd.)

1998 Amendment. Act 141 amended subsec. (c). Section 4 of Act 141 provided that the amendment of subsec. (c) shall apply

to all trusts, whether created before, on or after the effective date of Act 141.

1988 Amendment. Act 177 amended subsec. (a).

Cross References. Section 5549 is referred to in sections 5548, 5585 of this title.

§ 5550. Devises, bequests and gifts after certain fundamental changes.

A devise, bequest or gift to be effective in the future, in trust or otherwise, to or for a nonprofit corporation which has:

(1) changed its purposes;

(2) sold, leased away or exchanged all or substantially all its property and assets;

(3) been converted into a business corporation;

(4) become a party to a consolidation or a division;

(5) become a party to a merger which it did not survive; or

(6) been dissolved;

after the execution of the document containing the devise, bequest or gift and before the nonprofit corporation acquires a vested interest in the devise, bequest or gift shall be effective only as a court having jurisdiction over the assets may order under 20 Pa.C.S. Ch. 77 (relating to trusts) or other applicable provisions of law.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5550 is referred to in section 314 of this title.

§ 5551. Dividends prohibited; compensation and certain payments authorized.

(a) General rule.--A nonprofit corporation shall not pay dividends or distribute any part of its income or profits to its members, directors, or officers. Nothing herein contained shall prohibit a fraternal benefit society operating under the insurance laws of Pennsylvania from paying dividends or refunds by whatever name known pursuant to the terms of its insurance contracts.

(b) Reasonable compensation for services.--A nonprofit corporation may pay compensation in a reasonable amount to members, directors, or officers for services rendered.

(c) Certain payments authorized.--A nonprofit corporation may confer benefits upon members or nonmembers in conformity with its purposes, may repay capital contributions, and may redeem its subvention certificates or evidences of indebtedness, as authorized by this article, except when the corporation is currently insolvent or would thereby be made insolvent or rendered unable to carry on its corporate purposes, or when the fair value of the assets of the corporation remaining after such conferring of benefits, payment or redemption would be insufficient to meet its liabilities. A nonprofit corporation may make distributions of cash or property to members upon dissolution or final liquidation as permitted by this article.

(July 30, 1975, P.L.128, No.63; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 reenacted section 5551.

Cross References. Section 5551 is referred to in sections 5545, 7112 of this title.

§ 5552. (Reserved).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered former section 5552 to section 5553 and added section 5552 (Reserved).

§ 5553. Liabilities of members.

(a) General rule.--A member of a nonprofit corporation shall not be liable, solely by reason of being a member, under an order of a court or in any other manner for a debt, obligation or liability of the corporation of any kind or for the acts of any member or representative of the corporation.

(b) Obligations of member to corporation.--A member shall be liable to the corporation only to the extent of any unpaid portion of the capital contributions, membership dues or assessments which the corporation may have lawfully imposed upon him, or for any other indebtedness owed by him to the corporation. No action shall be brought by any creditor of the corporation to reach and apply any such liability to any debt of the corporation until after:

(1) final judgment has been rendered against the corporation in favor of the creditor and execution thereon returned unsatisfied;

(2) a case involving the corporation has been brought under 11 U.S.C. Ch. 7 (relating to liquidation) and a distribution has been made and the case closed or a notice of no assets has been issued; or

(3) a receiver has been appointed with power to collect debts, and the receiver, on demand of a creditor to bring an action thereon, has refused to sue for the unpaid amount, or the corporation has been dissolved or ceased its activities leaving debts unpaid.

(c) Action by a creditor.--An action by a creditor under subsection (b) shall not be brought more than three years after the happening of the first to occur of the events listed in subsection (b)(1) through (3).

(June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5553 to section 5554 and renumbered former section 5552 to section 5553.

§ 5554. Annual report of directors or other body.

(a) Contents.--The board of directors or other body of a nonprofit corporation shall present annually to the members a report, verified by the president and treasurer or by a majority of the directors or members of the other body, showing in appropriate detail the following:

(1) The assets and liabilities, including trust funds, of the corporation as of the end of the fiscal year immediately preceding the date of the report.

(2) The principal changes in assets and liabilities, including trust funds, during the fiscal year immediately preceding the date of the report.

(3) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the corporation.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during the fiscal year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the corporation.

(5) The number of members of the corporation as of the date of the report, together with a statement of increase

or decrease in their number during the year immediately preceding the date of the report, and a statement of the place where the names and addresses of the current members may be found.

(b) Place of filing.--The annual report of the board of directors or other body shall be filed with the minutes of the meetings of members.

(c) Report in absence of meeting of members.--The board of directors or other body of a corporation having no members shall direct the president and treasurer to present at the annual meeting of the board or other body a report in accordance with subsection (a), but omitting the requirement of paragraph (5). The report shall be filed with the minutes of the annual meeting of the board or other body.

(d) Cross reference.--See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5553 to section 5554.

Cross References . Section 5554 is referred to in section 6145 of this title.

SUBCHAPTER C
COMMON TRUST FUNDS

Sec.

5585. Establishment or use of common trust funds authorized.
5586. Restrictions on investments.
5587. Determination of interests.
5588. Amortization of premiums on securities held.
5589. Records; ownership of assets.

Subchapter Heading. The heading of Subchapter C was carried without amendment December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 5585. Establishment or use of common trust funds authorized.

(a) General rule.--Every nonprofit corporation may establish and maintain one or more common trust funds, the assets of which shall be held, invested and reinvested by the corporation itself or by a corporate trustee to which the assets have been transferred pursuant to section 5549 (relating to transfer of trust or other assets to institutional trustee). Upon the payment by the corporate trustee to the nonprofit corporation of the net income from the assets, which income may be determined under section 5548(c) (relating to investment of trust funds) if the election is properly made by the board of directors or other body of the corporation, for use and application to the several participating interests in the common trust fund, the proportionate participation of each interest in the net income shall be designated by the corporate trustee. The nonprofit corporation may, at any time, withdraw the whole or part of any participating interest in the common trust fund for distribution by it as provided in this subchapter.

(b) Limitations in trust instrument.--Nothing contained in this section shall be construed to authorize the corporation to invest assets of a trust or fund in any common trust fund contrary to any specific limitation or restriction contained in the trust instrument nor to limit or restrict the authority

conferred upon the corporation with respect to investments by the trust instrument.

(c) Effect of good faith mistakes.--Mistakes made in good faith and in the exercise of due care and prudence in connection with the administration of any common trust fund shall not be held to exceed any power granted to or violate any duty imposed upon the corporation if, promptly after the discovery of the mistake, the corporation takes whatever action may be practicable under the circumstances to remedy the mistake.
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 21, 1998, P.L.1067, No.141, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5585 is referred to in section 5587 of this title.

§ 5586. Restrictions on investments.

(a) Legal investments.--If the trust instrument limits or restricts the investment of the assets to investments of the class authorized by law as legal investments, a nonprofit corporation may invest and reinvest the assets of the trust or fund in any common trust fund maintained by the corporation if the investments composing the fund consist solely of investments of the class authorized by 20 Pa.C.S. Ch. 72 (relating to prudent investor rule) to be held by fiduciaries.

(b) Other than legal investments.--If the trust instrument does not limit or restrict the investment of the assets to investments of the class authorized by law as legal investments, the corporation may invest and reinvest the assets of the trust or fund in any common trust fund maintained by the corporation composed of the investments as in the honest exercise of the judgment of the directors or other body of the corporation they may, after investigation, determine to be safe and proper investments.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5587. Determination of interests.

A nonprofit corporation shall invest the assets of a trust or fund in a common trust fund authorized by this subchapter by adding those assets thereto and by apportioning a participation therein to the trust or fund in the proportion that the assets of the trust or fund added thereto bears to the aggregate value of all the assets of the common trust fund at the time of the investment, including in those assets the assets of the trust or fund so added. The withdrawal of a participation from the common trust fund shall be on a basis of its proportionate interest in the aggregate value of all the assets of the common trust fund at the time of the withdrawal. The participating interest of any trust or fund in the common trust fund may from time to time be withdrawn, in whole or in part, by the corporation. Upon a withdrawal, the corporation may make distribution in cash, or ratably in kind, or partly in cash and partly in kind. Participations in the common trust funds shall not be sold by the corporation to any other corporation or person, but this sentence shall not prevent a corporate trustee designated under section 5585 (relating to establishment or use of common trust funds authorized) from investing the assets of the common trust fund in any collective investment fund established and maintained by it in accordance with law and to which the assets comprising the common trust fund are eligible contributions.
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5588. Amortization of premiums on securities held.

If a bond or other obligation for the payment of money is acquired as an investment for any common trust fund at a cost in excess of the par or maturity value thereof, the nonprofit corporation may, during but not beyond the period that the obligation is held as an investment in the fund, amortize the excess cost out of the income on the obligation, by deducting from each payment of income and adding to principal an amount equal to the sum obtained by dividing the excess cost by the number of periodic payments of income to accrue on the obligation from the date of the acquisition until its maturity date.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5589. Records; ownership of assets.

The nonprofit corporation shall designate clearly upon its records the names of the trusts or funds on behalf of which the corporation, as fiduciary or otherwise, owns a participation in any common trust fund and the extent of the interest of the trust or fund therein. The trust or fund shall not be deemed to have individual ownership of any asset in the common trust fund, but shall be deemed to have a proportionate undivided interest in the common trust fund. The ownership of the individual assets comprising any common trust fund shall be solely in the nonprofit corporation as fiduciary or otherwise.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

CHAPTER 57
OFFICERS, DIRECTORS AND MEMBERS

Subchapter

A. Notice and Meetings Generally
B. Fiduciary Duty
C. Directors, Officers and Members of An Other Body
D. Indemnification
E. Members
F. Derivative Actions
G. Judicial Supervision of Corporate Action

Enactment. Chapter 57 was added as Chapter 77 November 15, 1972, P.L.1063, No.271, effective in 90 days. Chapter 77 was renumbered to Chapter 57 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 57 is referred to in section 5978 of this title.

SUBCHAPTER A
NOTICE AND MEETINGS GENERALLY

Sec.

5701. Applicability of subchapter.
5702. Manner of giving notice.
5702.1. Optional procedures for giving of notice (Repealed).
5703. Place and notice of meetings of board of directors or other body.
5704. Place and notice of meetings of members.
5705. Waiver of notice.
5706. Modification of proposal contained in notice.
5707. Exception to requirement of notice.
5708. Use of conference telephone or other electronic technology.
5709. Conduct of members meeting.

Subchapter Heading. The heading of Subchapter A was carried without amendment December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Subchapter A is referred to in sections 322, 5913, 5973 of this title.

§ 5701. Applicability of subchapter.

The provisions of this subchapter shall apply to every nonprofit corporation unless otherwise restricted:

(1) by any other provision of this subpart; or

(2) except with respect to section 5707(a) (relating to exception to requirement of notice), in the bylaws.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5702. Manner of giving notice.

(a) General rule.--

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

(i) By first class or express mail, postage prepaid, or courier service, charges prepaid, to the person's postal address appearing on the books of the corporation or, in the case of directors or members of an other body, supplied by the person to the corporation for the purpose of notice. Notice under this subparagraph shall be deemed to have been given to the person entitled thereto when deposited in the United States mail or with a courier service for delivery to that person.

(ii) By facsimile transmission, e-mail or other electronic communication to the facsimile number or address for e-mail or other electronic communications supplied by the person to the corporation for the purpose of notice. Notice under this subparagraph shall be deemed to have been given to the person entitled thereto when sent.

(2) A notice of meeting shall specify the day, hour and geographic location, if any, of the meeting and any other information required by any other provision of this subpart.

(b) Adjourned meetings of members.--When a meeting of members is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which the adjournment is taken, unless the board or other body fixes a new record date for the adjourned meeting or this subpart requires notice of the business to be transacted and such notice has not previously been given.

(c) Bulk mail notice.--A corporation having more than 100 members of record that gives notice by mail of any regular or special meeting of the members (or any other notice required by this subpart or by the articles or bylaws to be given to all members or to a class of members) at least 20 days prior to the day named for the meeting or any corporate or member action specified in the notice may use any class of postpaid mail.

(d) Notice by publication.--If the bylaws so provide, persons authorized or required to give notice of a meeting of members may, in lieu of any written notice of a meeting of members required to be given by this subpart, give notice of the meeting by causing notice of the meeting to be officially

published. If 80% of the members of record entitled to vote at the meeting do not have addresses of record within the territory of general circulation of the newspapers required for official publication, the notice shall also be published in newspapers that have an aggregate territory of general circulation that includes the addresses of record of at least 80% of the members of record.

(e) Notice by public announcement.--In lieu of any written notice of a meeting of members required to be given by this subpart, persons authorized or required to give notice of a meeting of members of any church or other religious organization may give notice of the meeting by announcement at any two regular church or religious services held during different weeks within 30 days prior to the time at which the meeting of members will be held. In any case where notice of a meeting is given by announcement, notice shall be given at the last service preceding the meeting. In the event that two church or religious services are not held within such 30-day period, notice of a meeting of members shall be given as otherwise provided in this subchapter.

(f) Effect of notice pursuant to optional procedures.--For the purposes of this subpart, notice given under subsection (d) or (e) shall be deemed to be written notice to every member of record entitled to vote at a meeting or to every person otherwise entitled to notice.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a)(1).

2013 Amendment. Act 67 amended subsec. (a).

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5702.1. Optional procedures for giving of notice (Repealed).

1990 Repeal. Section 5702.1 was repealed December 19, 1990, P.L.834, No.198, effective immediately.

§ 5703. Place and notice of meetings of board of directors or other body.

(a) Place.--Meetings of the board of directors or other body may be held at such place within or without this Commonwealth as the board of directors or other body may from time to time appoint or as may be designated in the notice of the meeting.

(b) Notice.--Regular meetings of the board of directors or other body may be held upon such notice, if any, as the bylaws may prescribe. Unless otherwise provided in the bylaws, written notice of every special meeting of the board of directors or other body shall be given to each director or member of such other body at least five days before the day named for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board or other body need be specified in the notice of the meeting.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5704. Place and notice of meetings of members.

(a) Place.--Meetings of members may be held at a geographic location within or without this Commonwealth as may be provided in or fixed pursuant to the bylaws. Authority to provide for the location of a meeting of the members includes the authority

to determine to hold a meeting solely by means of electronic technology in accordance with section 5708 (relating to use of conference telephone or other electronic technology), notwithstanding that the authority may refer to one or more geographic locations. Unless otherwise provided in or fixed pursuant to the bylaws, all meetings of the members that are not held solely by means of electronic technology shall be held at the executive office of the corporation wherever situated.

(b) Notice.--Notice in record form of every meeting of the members shall be given by, or at the direction of, the secretary or other authorized person to each member of record entitled to vote at the meeting at least:

(1) ten days prior to the day named for a meeting that will consider a transaction under Chapter 3 (relating to entity transactions) or a fundamental change under Chapter 59 (relating to amendments, sale of assets and dissolution); or

(2) five days prior to the day named for the meeting in any other case.

(c) Contents.--In the case of a special meeting of the members, the notice shall specify the general nature of the business to be transacted, and in all cases the notice shall comply with the express requirements of this subpart. The corporation shall not have a duty to augment the notice.

(d) Alternative authority.--If the secretary or other authorized person does not give notice of a meeting within a reasonable time, a person calling the meeting may do so.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 5705. Waiver of notice.

(a) General rule.--Whenever any notice is required to be given under the provisions of this subpart or the articles or bylaws of any nonprofit corporation, a waiver thereof that is filed with the secretary of the corporation in record form, signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of the notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting.

(b) Waiver by attendance.--Attendance of a person at any meeting shall constitute a waiver of notice of the meeting except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (a).

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5706. Modification of proposal contained in notice.

Whenever the language of a proposed resolution is included in a written notice of a meeting required to be given under the provisions of this subpart or the articles or bylaws of any nonprofit corporation, the meeting considering the resolution may without further notice adopt it with such clarifying or other amendments as do not enlarge its original purpose.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5707. Exception to requirement of notice.

(a) General rule.--Whenever any notice or communication is required to be given to any person under the provisions of this subpart or by the articles or bylaws of any nonprofit corporation or by the terms of any agreement or other instrument or as a condition precedent to taking any corporate action and communication with that person is then unlawful, the giving of the notice or communication to such person shall not be required and there shall be no duty to apply for a license or other permission to do so. Any action or meeting that is taken or held without notice or communication to that person shall have the same validity as if the notice or communication had been duly given. If the action taken is such as to require the filing of any document with respect thereto under any provision of law or any agreement or other instrument, it shall be sufficient, if such is the fact and if notice or communication is required, to state therein that notice or communication was given to all persons entitled to receive notice or communication except persons with whom communication was unlawful.

(b) Members without forwarding addresses.--Subsection (a) shall also be applicable to any member with whom the corporation has been unable to communicate for more than 24 consecutive months because communications to the member are returned unclaimed or the member has otherwise failed to provide the corporation with a current address. Whenever the member provides the corporation with a current address, subsection (a) shall cease to be applicable to the member under this subsection. (Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5707 is referred to in section 5701 of this title.

§ 5708. Use of conference telephone or other electronic technology.

(a) Incorporators, directors and members of an other body.--Except as otherwise provided in the bylaws, one or more persons may participate in a meeting of the incorporators, the board of directors or an other body of a nonprofit corporation by means of conference telephone or other electronic technology by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

(b) Members.--Except as otherwise provided in the bylaws, the presence or participation by a member, including voting and taking other action, at a meeting of members by conference telephone or other electronic technology constitutes the presence of, or vote or action by, the member for the purposes of this subpart.

(c) Exclusive use of electronic technology.--Unless the bylaws provide expressly that a meeting of members may not be held solely by means of electronic technology, a meeting of the members does not need to be held at a geographic location if the meeting is held by means of electronic technology in a fashion pursuant to which the members have a reasonable opportunity to participate in the meeting, read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members and, subject to such guidelines and procedures as the board of directors may adopt, make appropriate motions and comment on the business of the

meeting. Any guidelines or procedures adopted by the board or an other body must comply with section 5709(c) (relating to conduct of members meeting).
(Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5708 is referred to in sections 5704, 5758 of this title.

§ 5709. Conduct of members meeting.

(a) Presiding officer.--There shall be a presiding officer at every meeting of the members. The presiding officer shall be appointed in the manner provided in the bylaws or, in the absence of such provision, by the board of directors. If the bylaws are silent on the appointment of the presiding officer and the board fails to designate a presiding officer, the president shall be the presiding officer.

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

(c) Procedural standard.--Any rules adopted for, and the conduct of, a meeting shall be fair to the members.

(d) Closing of the polls.--The presiding officer shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes, nor any revocations or changes thereto, may be accepted.
(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b) and (c).

2001 Amendment. Act 34 added section 5709.

Cross References. Section 5709 is referred to in section 5708 of this title.

SUBCHAPTER B
FIDUCIARY DUTY

Sec.

5711. Alternative provisions.
5712. Standard of care, justifiable reliance and business judgment rule.
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Enactment. Subchapter B was added December 19, 1990, P.L.834, No.198, effective immediately.

Prior Provisions. Former Subchapter B, which related to directors, officers and members of an other body, was added December 21, 1988, P.L.1444, No.177, and relettered to Subchapter C December 19, 1990, P.L.834, No.198, effective immediately.

Special Provisions in Appendix. See section 404(b) of Act 198 of 1990 in the appendix to this title for special provisions relating to applicability.

Cross References. Subchapter B is referred to in sections 5724, 5734, 5783 of this title; section 8332.5 of Title 42 (Judiciary and Judicial Procedure).

§ 5711. Alternative provisions.

(a) General rule.--Section 5716 (relating to alternative standard) shall not be applicable to any nonprofit corporation to which section 5715 (relating to exercise of powers generally) is applicable. Section 5715 shall be applicable to any corporation except a corporation:

(1) the bylaws of which by amendment adopted by the board of directors on or before July 26, 1990, and not subsequently rescinded by an articles amendment, explicitly provide that section 5715 or corresponding provisions of prior law shall not be applicable to the corporation; or

(2) the articles of which explicitly provide that section 5715 or corresponding provisions of prior law shall not be applicable to the corporation.

(b) Reversal of opt-out.--A provision of the articles or bylaws providing that section 5715 or corresponding provisions of prior law shall not be applicable to the corporation may be rescinded pursuant to the procedures required by this subpart and the articles and bylaws at the time of the rescission to amend the articles or bylaws.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5711 is referred to in sections 5715, 5716 of this title.

§ 5712. Standard of care, justifiable reliance and business judgment rule.

(a) General rule.--A director of a nonprofit corporation shall stand in a fiduciary relation to the corporation and shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director reasonably believes to be in the best interests of the corporation and with such care, including the skill and diligence that a person of ordinary prudence would use under similar circumstances and reasonable inquiry into those issues required by the statutes of this Commonwealth to be considered in the circumstances and those interests and factors listed in section 5715(a) (relating to exercise of powers generally) or 5716(a) (relating to alternative standard) that the director considers appropriate. This subsection is subject to subsection (d) where applicable.

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

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

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

(3) A committee of the board upon which the director does not serve, duly designated in accordance with law, as

to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(b) Effect of actual knowledge.--A director is not considered to be acting in good faith under subsection (a.1) if the director has actual knowledge concerning the matter that causes the director to believe reliance is unwarranted.

(c) Officers.--(Deleted by amendment).

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

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

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

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

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

(1) a breach of the duty of care, including the inapplicability of the provisions as to the fulfillment of that duty under subsection (d); and

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5712 is referred to in sections 5715, 5716, 5717 of this title.

§ 5713. Personal liability of directors.

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

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

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

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

(1) the responsibility or liability of a director pursuant to any criminal statute; or

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 relettered former subsec. (c) to subsec. (d) and added present subsec. (c).

Cross References. Section 5713 is referred to in sections 5504, 5505 of this title.

§ 5714. Presumption of assent.

A director of a nonprofit corporation who is present at a meeting of its board of directors, or of a committee of the

board, at which action on any corporate matter is taken on which the director is generally competent to act, shall be presumed to have assented to the action taken unless the director's dissent, abstention or vote against the matter is entered in the minutes of the meeting or unless the director delivers to the secretary of the meeting before the adjournment thereof a dissent in record form to the action or transmits the dissent in record form to the secretary of the corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a director who voted in favor of the action. Nothing in this subchapter shall bar a director from asserting that minutes of the meeting incorrectly omitted the director's dissent, abstention or vote against if, promptly upon receipt of a copy of such minutes, the director notifies the secretary of the corporation in record form of the asserted omission or inaccuracy.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 5715. Exercise of powers generally.

(a) General rule.--In discharging the duties of their respective positions, the board of directors, committees of the board and individual directors of a nonprofit corporation may, in considering the best interests of the corporation, consider to the extent they deem appropriate:

(1) The effects of any action upon any or all groups affected by such action, including members, employees, suppliers, customers and creditors of the corporation, and upon communities in which offices or other establishments of the corporation are located.

(2) The short-term and long-term interests of the corporation, including benefits that may accrue to the corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the corporation.

(3) The resources, intent and conduct (past, stated and potential) of any person seeking to acquire control of the corporation.

(4) All other pertinent factors.

(b) Consideration of interests and factors.--The board of directors, committees of the board and individual directors shall not be required, in considering the best interests of the corporation or the effects of any action, to regard any corporate interest or the interests of any particular group affected by such action as a dominant or controlling interest or factor. The consideration of interests and factors in the manner described in this subsection and in subsection (a) shall not constitute a violation of section 5712 (relating to standard of care, justifiable reliance and business judgment rule).

(c) Specific applications.--In exercising the powers vested in the corporation, including, without limitation, those powers pursuant to section 5502 (relating to general powers), and in no way limiting the discretion of the board of directors, committees of the board and individual directors pursuant to subsections (a) and (b), the fiduciary duty of directors shall not be deemed to require them to act as the board of directors, a committee of the board or an individual director solely because of the effect such action might have on an acquisition or potential or proposed acquisition of control of the corporation or the consideration that might be offered or paid to members in such an acquisition.

(d) Presumption.--In assessing whether the standard set forth in section 5712 or 5728 (relating to interested directors or officers; quorum) has been satisfied, there shall not be any

greater obligation to justify, or higher burden of proof with respect to, any act as the board of directors, any committee of the board or any individual director relating to or affecting an acquisition or potential or proposed acquisition of control of the corporation than is applied to any other act as a board of directors, any committee of the board or any individual director. Notwithstanding section 5712(d) and the preceding provision of this subsection, any act as the board of directors, a committee of the board or an individual director relating to or affecting an acquisition or potential or proposed acquisition of control to which a majority of the disinterested directors shall have assented shall be presumed to satisfy the standard set forth in section 5712 or 5728, unless it is proven by clear and convincing evidence that the disinterested directors did not assent to such act in good faith after reasonable investigation.

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

(1) A director of the corporation other than:

(i) A director who has a direct or indirect financial or other interest in the person acquiring or seeking to acquire control of the corporation or who is an affiliate or associate of, or was nominated or designated as a director by, a person acquiring or seeking to acquire control of the corporation.

(ii) Depending on the specific facts surrounding the director and the act under consideration, an officer or employee or former officer or employee of the corporation.

(2) A person shall not be deemed to be other than a disinterested director solely by reason of any or all of the following:

(i) The ownership by the director of a membership in or shares of the corporation.

(ii) The receipt as a member of or holder of shares of any class of any distribution made to all members of or holders of shares of that class.

(iii) The receipt by the director of director's fees or other consideration as a director.

(iv) Any interest the director may have in retaining the status or position of director.

(v) The former business or employment relationship of the director with the corporation.

(vi) Receiving or having the right to receive retirement or deferred compensation from the corporation due to service as a director, officer or employee.

(f) Cross reference.--See section 5711 (relating to alternative provisions).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b), (d) and (e)(1)(i).

Cross References. Section 5715 is referred to in sections 5711, 5712, 5717, 5728 of this title.

§ 5716. Alternative standard.

(a) General rule.--In discharging the duties of their respective positions, the board of directors, committees of the board and individual directors of a nonprofit corporation may, in considering the best interests of the corporation, consider the effects of any action upon employees, upon suppliers and customers of the corporation and upon communities in which offices or other establishments of the corporation are located,

and all other pertinent factors. The consideration of those factors shall not constitute a violation of section 5712 (relating to standard of care, justifiable reliance and business judgment rule).

(b) Presumption.--(Deleted by amendment).

(c) Cross reference.--See section 5711 (relating to alternative provisions).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5716 is referred to in sections 5711, 5712, 5717 of this title.

§ 5717. Limitation on standing.

The duty of the board of directors, committees of the board and individual directors under section 5712 (relating to standard of care, justifiable reliance and business judgment rule) is solely to the nonprofit corporation and not to any member or creditor or any other person or group, and may be enforced directly by the corporation or may be enforced by an action in the right of the corporation, and may not be enforced directly by a member or creditor or by any other person or group. Notwithstanding the preceding sentence, sections 5715(a) and (b) (relating to exercise of powers generally) and 5716(a) (relating to alternative standard) do not impose upon the board of directors, committees of the board and individual directors, any legal or equitable duties, obligations or liabilities or create any right or cause of action against, or basis for standing to sue, the board of directors, committees of the board and individual directors.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 5718. (Reserved).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 5718.

§ 5719. Renunciation of corporate opportunities.

The articles of incorporation or bylaws, or an action of the board of directors, may renounce any interest or expectancy of a nonprofit corporation in, or in being offered an opportunity to participate in, a specified corporate opportunity or specified classes or categories of corporate opportunities that are presented to the corporation or to one or more of its directors, officers or members.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 5719.

SUBCHAPTER C
DIRECTORS, OFFICERS AND MEMBERS OF AN OTHER BODY

Sec.

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Enactment. Subchapter C was added as Subchapter B December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter C December 19, 1990, P.L.834, No.198, effective immediately.

§ 5721. Board of directors.

Unless otherwise provided by statute or in a bylaw adopted by the members, all powers enumerated in section 5502 (relating to general powers) and elsewhere in this title or otherwise vested by law in a nonprofit corporation shall be exercised by or under the authority of the board of directors, and the business and affairs of every nonprofit corporation shall be managed by or under the direction of, a board of directors. If any such provision is made in the bylaws, the powers and duties conferred or imposed upon the board of directors by this title shall be exercised or performed to such extent and by such other body as shall be provided in the bylaws.
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5721 is referred to in sections 5502, 5504 of this title.

§ 5722. Qualifications of directors.

(a) General rule.--Each director of a nonprofit corporation shall be a natural person of full age, except as provided in subsection (b), who, unless otherwise restricted in the bylaws, need not be a resident of this Commonwealth or a member of the corporation. Except as otherwise provided in this section, the qualifications of directors may be prescribed in the bylaws.

(b) Advisory committee.--A nonprofit corporation organized primarily for recreational or youth development and delinquency prevention purposes for the benefit of individuals 18 years of age or younger may amend its articles of incorporation to establish an advisory committee to its board, composed of members who may include individuals who are 16 or 17 years of age. If a nonprofit corporation amends its articles of incorporation to establish an advisory committee under this subsection, the total number of advisory committee members may not exceed the total number of directors required for a quorum for the transaction of business.
(Feb. 10, 2006, P.L.21, No.6, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (a).

§ 5723. Number of directors.

The board of directors of a nonprofit corporation shall consist of one or more members. The number of directors shall be fixed by or in the manner provided in the bylaws. If not so fixed, the number of directors shall be the same as that stated in the articles or three if no number is so stated.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5724. Term of office of directors.

(a) General rule.--Each director of a nonprofit corporation shall hold office until the expiration of the term for which the director was selected and until a successor has been selected and qualified or until the director's earlier death,

resignation or removal. Directors, other than those selected by virtue of their office or former office in the corporation or in any other entity or organization, shall be selected for the term of office provided in the bylaws. In the absence of a provision fixing the term, it shall be one year.

(b) Resignations.--A director may resign at any time upon notice in record form to the corporation. A resignation that is not conditioned upon acceptance by the board of directors shall be effective upon receipt by the corporation of the notice of resignation, unless the notice specifies a later effective time or an effective time determined upon the happening of an event or events. If a resignation is conditioned upon its acceptance by the board, a decision by the board to accept or reject the resignation shall be made by the board in the manner required by Subchapter B (relating to fiduciary duty).

(c) Decrease in number.--A decrease in the number of directors shall not have the effect of shortening the term of any incumbent director.

(d) Classified board of directors.--Except as otherwise provided in the bylaws, if the directors are classified in respect of the time for which they shall severally hold office:

(1) Each class shall be as nearly equal in number as possible.

(2) The term of office of at least one class shall expire in each year.

(3) The members of a class shall not be elected for a longer period than four years.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b).

§ 5725. Selection of directors.

(a) General rule.--Except as otherwise provided in this section, directors of a nonprofit corporation, other than those constituting the first board of directors, shall be elected by the members.

(b) Other methods.--If a bylaw adopted by the members so provides, directors may be elected, appointed, designated or otherwise selected by the person or persons or by the method or methods as shall be fixed by, or in the manner provided in, the bylaw, and the directors may be classified as to the members who exercise the power to select directors.

(c) Vacancies.--Except as otherwise provided in the bylaws:

(1) Vacancies in the board of directors, including vacancies resulting from an increase in the number of directors, may be filled by a majority of the remaining members of the board though less than a quorum, or by a sole remaining director, and each person so selected shall be a director to serve for the balance of the unexpired term unless otherwise restricted in the bylaws.

(2) When one or more directors resign from the board effective at a future date, the directors then in office, including those who have so resigned, shall have power by the applicable vote to fill the vacancies, the vote thereon to take effect when the resignations become effective.

(3) In the case of a corporation having a board of directors classified in respect of the time for which directors shall severally hold office, any director chosen to fill a vacancy, including a vacancy resulting from an increase in the number of directors, shall hold office until the next election of the class for which the director has been chosen and until a successor has been selected and

qualified or until the director's earlier death, resignation or removal.

(c.1) No directors in office.--At any time when the offices of all of the directors of a membership corporation are vacant, any officer, member of an other body or member may call a special meeting of members for the purpose of electing directors.

(d) Alternate directors.--If the bylaws so provide, a person or group of persons entitled to elect, appoint, designate or otherwise select one or more directors may select an alternate for each director. In the absence of a director from a meeting of the board, the director's alternate may, in the manner and upon the notice, if any, as may be provided in the bylaws, attend the meeting or execute a consent in record form and exercise at the meeting or in the consent, the powers of the absent director as may be specified by, or in the manner provided in, the bylaws. When so exercising the powers of the absent director, the alternate shall be subject in all respects to the provisions of this subpart relating to directors.

(e) Nomination of directors.--Unless otherwise provided in the bylaws, directors shall be nominated by a nominating committee or from the floor.

(f) Cross reference.--See the definition of "member" in section 5103 (relating to definitions).

(Dec. 12, 1984, P.L.977, No.193, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added subsec. (c.1).

Cross References. Section 5725 is referred to in sections 5504, 5755 of this title.

§ 5726. Removal of directors.

(a) Removal by the members.--

(1) Unless otherwise provided in a bylaw adopted by the members, the entire board of directors, or a class of the board where the board is classified with respect to the power to select directors, or any individual director of a nonprofit corporation may be removed from office without assigning any cause by the vote of members, or a class of members, entitled to elect directors, or the class of directors. In case the board or a class of the board or any one or more directors are so removed, new directors may be elected at the same meeting.

(2) An individual director shall not be removed, unless the entire board or class of the board is removed, from the board of a corporation in which members are entitled to vote cumulatively for the board or a class of the board if sufficient votes are cast against the resolution for removal of the director which, if cumulatively voted at an annual or other regular election of directors, would be sufficient to elect one or more directors to the board or to the class.

(b) Removal by the board.--Unless otherwise provided in a bylaw adopted by the members, the board of directors may declare vacant the office of a director who has been judicially declared of unsound mind or who has been convicted of an offense punishable by imprisonment for a term of more than one year, or for any other proper cause which the bylaws may specify, or if, within 60 days, or other time as the bylaws may specify, after notice of selection, a director does not accept the office either in writing or by attending a meeting of the board of directors and fulfill the other requirements of qualification as the bylaws may specify.

(c) Removal by the court.--Upon application of any member or director, the court may remove from office any director in case of fraudulent or dishonest acts, or gross abuse of authority or discretion with reference to the corporation, or for any other proper cause, and may bar from office any director so removed for a period prescribed by the court. The corporation shall be made a party to the action and, as a prerequisite to the maintenance of an action under this subsection, a member shall comply with Subchapter G (relating to judicial supervision of corporate action).

(d) Effect of reinstatement.--An act of the board done during the period when a director has been suspended or removed for cause shall not be impugned or invalidated if the suspension or removal is thereafter rescinded by the members or by the board or by the final judgment of a court.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5726 is referred to in section 5504 of this title.

§ 5727. Quorum of and action by directors.

(a) General rule.--Unless otherwise provided in the bylaws, a majority of the directors in office of a nonprofit corporation shall be necessary to constitute a quorum for the transaction of business, and the acts of a majority of the directors present and voting at a meeting at which a quorum is present shall be the acts of the board of directors.

(b) Action by consent.--Unless otherwise restricted in the bylaws, any action required or permitted to be approved at a meeting of the directors may be approved without a meeting if one or more consents to the action in record form. Except as provided in subsection (c), the consents must be signed, before, on or after the effective time of the action by all of the directors in office at the effective time. The consent or consents must be filed with the secretary of the corporation.

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

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 5728. Interested directors or officers; quorum.

(a) General rule.--A contract or transaction between a nonprofit corporation and one or more of its directors or officers or between a nonprofit corporation and another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other association in which one or more of the corporation's directors or officers are governors or officers of the other association or have a financial or other interest, is not void or voidable solely for that reason, or solely because the director or officer of the corporation is present at or participates in the meeting of the

board of directors that authorizes the contract or transaction, or solely because the vote of the director or officer is counted for that purpose, if:

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

(2) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by vote of those members;

(3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the board of directors or the members; or

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

(b) Quorum.--Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board that authorizes a contract or transaction specified in subsection (a).

(c) Applicability.--The provisions of this section shall be applicable except as otherwise restricted in the bylaws.

(d) Common governors or officers with nonwholly owned associations.--A contract or transaction between a nonprofit corporation and an association that is not wholly owned or controlled by the corporation is not void or voidable solely on the grounds that a person who is a director or officer of the corporation is also a governor or officer of the other association if:

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

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

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

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

(f) Cross references.--See sections 5715(d) (relating to exercise of powers generally) and 5730 (relating to compensation of directors).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5728 is referred to in sections 5715, 5745, 5746 of this title.

§ 5729. Voting rights of directors.

(a) General rule.--Unless otherwise provided in a bylaw adopted by the members every director shall be entitled to one vote.

(b) Multiple and fractional voting.--The requirement of this subpart for the presence of or vote or other action by a specified percentage of directors shall be satisfied by the presence of or vote or other action by directors entitled to cast the specified percentage of the votes which all directors are entitled to cast.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (b).

Cross References. Section 5729 is referred to in section 5504 of this title.

§ 5730. Compensation of directors.

(a) General rule.--Except as otherwise restricted in the bylaws, the board of directors of a nonprofit corporation has the authority to fix the compensation of directors for their services as directors regardless of the personal interest of the directors. A director may be a salaried officer of the corporation.

(b) Presumption.--If the board of directors of a nonprofit corporation that is not incorporated for a charitable purpose establishes the compensation of directors in accordance with subsection (a), that action is presumed to be fair to the corporation.
(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5730 is referred to in sections 5103, 5728 of this title.

§ 5731. Executive and other committees of the board.

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

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

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

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

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

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

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

(v) Action on matters committed by the bylaws or an action of the board of directors exclusively to another committee of the board.

(3) The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee or for purposes of action in record form by the committee. In the absence or disqualification of a member and alternate member or members of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not those present constitute a quorum,

may unanimously appoint another director to act at the meeting in the place of any absent or disqualified member.

(b) Term.--Each committee of the board shall serve at the pleasure of the board.

(c) Status of committee action.--The term "board of directors" or "board," when used in any provision of this subpart relating to the organization or procedures of or the manner of taking action by the board of directors, shall be construed to include and refer to any executive or other committee of the board. Any provision of this subpart relating or referring to action to be taken by the board of directors or the procedure required therefor shall be satisfied by the taking of corresponding action by a committee of the board of directors to the extent authority to take the action has been delegated to the committee under this section.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

2013 Amendment. Act 67 added subsec. (c).

Cross References. Section 5731 is referred to in section 5103 of this title.

§ 5732. Officers.

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

(b) Term of office.--The officers shall be elected or appointed at such time, in such manner and for such terms as may be fixed by or pursuant to the bylaws. Unless otherwise provided by or pursuant to the bylaws, each officer shall hold office for a term of one year and until the officer's successor has been selected and qualified or until the officer's earlier death, resignation or removal.

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

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

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

(f) Authority.--Unless otherwise provided in the bylaws, all officers of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided by or pursuant to the bylaws or, in the absence of controlling provisions in the bylaws, as may be determined by or pursuant to actions of the board of directors or other body.

(g) Right to bylaws.--Every officer shall have the right to receive, promptly after demand and without charge, a copy

in record form of the currently effective text of the bylaws, but only to the extent reasonably related to the officer's duties.
(Dec. 12, 1984, P.L.977, No.193, eff. 60 days; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

§ 5733. Removal of officers and agents.

Unless otherwise provided in the bylaws, any officer or agent of a nonprofit corporation may be removed by the board of directors or other body with or without cause. The removal shall be without prejudice to the contract rights, if any, of any person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5733.1. Officer's standard of care and justifiable reliance.

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

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

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

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

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

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

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

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

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

(e) Burden of proof.--A person challenging the conduct of an officer under this section has the burden of proving a breach of the duty of care, including the provisions of subsections (c) and (d), and, in a damage action, the burden of proving that the breach was the legal cause of damage suffered by the corporation.
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 5733.1.

§ 5733.2. Personal liability of officers.

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

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

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

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

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

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

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

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

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added section 5733.2.

§ 5734. Other body.

The provisions of this subchapter, of Subchapters B (relating to fiduciary duty) and D (relating to indemnification) and of other provisions of law applicable to the board of directors and to directors individually shall be applicable also to any "other body" as defined in section 5103 (relating to definitions) and to the members of an other body individually.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5734 is referred to in section 5512 of this title.

SUBCHAPTER D
INDEMNIFICATION

Sec.

5741. Third-party actions.
5742. Derivative and corporate actions.
5743. Mandatory indemnification.
5744. Procedure for effecting indemnification.
5745. Advancing expenses.
5746. Supplementary coverage.
5747. Power to purchase insurance.
5748. Application to surviving or new corporations.
5749. Application to employee benefit plans.
5750. Duration and extent of coverage.

Enactment. Subchapter D was added as Subchapter C December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter D December 19, 1990, P.L.834, No.198, effective immediately.

Cross References. Subchapter D is referred to in sections 5734, 5783, 9133 of this title.

§ 5741. Third-party actions.

Unless otherwise restricted in its bylaws, a nonprofit corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that he is or was a representative of the corporation, or is or was serving at the request of the corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action or proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner that he reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal proceeding, had reasonable cause to believe that his conduct was unlawful.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5741 is referred to in sections 5743, 5744 of this title.

§ 5742. Derivative and corporate actions.

Unless otherwise restricted in its bylaws, a nonprofit corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a representative of the corporation or is or was serving at the request of the corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of the action if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation. Indemnification shall not be made under this section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the corporation unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the corporation is located or the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the court of common pleas or other court shall deem proper.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 amended the section heading.

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5742 is referred to in sections 5743, 5744 of this title.

§ 5743. Mandatory indemnification.

(a) General rule.--To the extent that a present or former director or officer of a nonprofit corporation has been successful on the merits or otherwise in defense of any action or proceeding referred to in section 5741 (relating to third-party actions) or 5742 (relating to derivative and corporate actions) or in defense of any claim, issue or matter therein, the director or officer shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by the director or officer in connection therewith.

(b) Prospective application.--The limitation of the scope of subsection (a) to a present or former director or officer applies only to acts occurring after January 3, 2023.

(c) Cross reference.--See section 6145 (relating to applicability of certain safeguards to foreign corporations).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5743 is referred to in sections 5782, 6145 of this title.

§ 5744. Procedure for effecting indemnification.

Unless ordered by a court, any indemnification under section 5741 (relating to third-party actions) or 5742 (relating to derivative and corporate actions) shall be made by the nonprofit corporation only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstances because he has met the applicable standard of conduct set forth in those sections. The determination shall be made:

(1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action or proceeding;

(2) if such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested directors so directs, by independent legal counsel in a written opinion;

(3) by such other body as may be provided in the bylaws; or

(4) by the members.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

§ 5745. Advancing expenses.

Expenses (including attorneys' fees) incurred in defending any action or proceeding referred to in this subchapter may be paid by a nonprofit corporation in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the representative to repay the amount if it is ultimately determined that he is not entitled to be indemnified by the corporation as authorized in this subchapter or otherwise. Except as otherwise provided in the bylaws, advancement of expenses shall be authorized by the board of directors. Section 5728 (relating to interested members, directors or officers; quorum) shall not be applicable to the advancement of expenses under this section.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days)

§ 5746. Supplementary coverage.

(a) General rule.--The indemnification and advancement of expenses provided by or granted pursuant to the other sections of this subchapter shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding that office. Section 5728 (relating to interested directors or officers; quorum) shall be applicable to any bylaw, contract or transaction authorized by the directors under this section. A corporation may create a fund of any nature, which may, but need not, be under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this section or otherwise.

(b) When indemnification is not to be made.--Indemnification pursuant to subsection (a) shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

(c) Grounds.--Indemnification pursuant to subsection (a) under any bylaw, agreement, vote of members or directors or otherwise may be granted for any action taken or any failure to take any action and may be made whether or not the corporation would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the corporation. Such indemnification is declared to be consistent with the public policy of this Commonwealth.

(d) Trust property.--This subchapter shall not affect the liability of a representative with respect to the administration of assets held by the corporation pursuant to section 5547 (relating to authority to take and hold trust property).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (a).

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5747. Power to purchase insurance.

Unless otherwise restricted in its bylaws, a nonprofit corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a representative of the corporation or is or was serving at the request of the corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against that liability under the provisions of this subchapter. Such insurance is declared to be consistent with the public policy of this Commonwealth.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5748. Application to surviving or new corporations.

(a) General rule.--Except as provided in subsection (b), for the purposes of this subchapter, references to "the corporation" include all constituent corporations absorbed in a consolidation, merger or division, as well as the surviving or new corporations surviving or resulting therefrom, so that any person who is or was a representative of the constituent, surviving or new corporation, or is or was serving at the request of the constituent, surviving or new corporation as a representative of another domestic or foreign corporation for profit or not-for-profit, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this subchapter with respect to the surviving or new corporation as he would if he had served the surviving or new corporation in the same capacity.

(b) Divisions.--Notwithstanding subsection (a), the obligations of a dividing corporation to indemnify and advance expenses of its representatives, whether arising under this subchapter or otherwise, may be allocated in a division in the same manner and with the same effect as any other liability of the dividing corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days)

§ 5749. Application to employee benefit plans.

For the purposes of this subchapter:

(1) References to "other enterprises" shall include employee benefit plans and references to "serving at the request of the corporation" shall include any service as a representative of the nonprofit corporation that imposes duties on or involves services by the representative with respect to an employee benefit plan, its participants or beneficiaries.

(2) Excise taxes assessed on a person with respect to any employee benefit plan pursuant to applicable law shall be deemed "fines."

(3) Action with respect to an employee benefit plan taken or omitted in good faith by a representative of the corporation in a manner he reasonably believed to be in the interest of the participants and beneficiaries of the plan shall be deemed to be action in a manner that is not opposed to the best interests of the corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 added section 5749.

§ 5750. Duration and extent of coverage.

The indemnification and advancement of expenses provided by or granted pursuant to this subchapter shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a representative of the corporation and shall inure to the benefit of the heirs and personal representative of that person. A right to indemnification or to advancement of expenses arising under a provision of the articles or bylaws may not be eliminated or impaired by an amendment to or repeal of the provision after the occurrence of an act that is the subject of the threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of the act explicitly authorizes the elimination or impairment after an act has occurred.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

SUBCHAPTER E
MEMBERS

Sec.

5751. Classes and qualifications of membership.
5752. Organization on a stock share basis.
5753. Membership certificates.
5754. Members grouped in local units.
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5756. Quorum.
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5761. (Reserved).
5762. Voting by corporations.
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5765. Judges of election.
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5767. Appointment of custodian of corporation on deadlock or other cause.
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5770. Voting powers and other rights of certain securityholders and other entities.

Enactment. Subchapter E was added as Subchapter D December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter E December 19, 1990, P.L.834, No.198, effective immediately.

§ 5751. Classes and qualifications of membership.

(a) General rule.--Membership in a nonprofit corporation shall be of the classes, and shall be governed by the rules of admission, retention, suspension and expulsion, prescribed in bylaws adopted by the members, except that the rules shall be reasonable, germane to the purpose or purposes of the corporation and equally enforced as to all members of the same class. Unless otherwise provided by a bylaw adopted by the members:

(1) There shall be one class of members whose voting and other rights and interests shall be equal.

(2) If there is only one class of members, the members shall have all the rights of members generally in a nonprofit corporation.

(b) Corporations without voting members.--Where the articles provide that the corporation shall have no members, as such, or where a nonprofit corporation has under its bylaws or in fact no members entitled to vote on a matter, any provision of this subpart or any other provision of law requiring notice to, the presence of, or the vote, consent or other action by members of the corporation in connection with the matter shall be satisfied by notice to, the presence of, or the vote, consent or other action by the board of directors or other body of the corporation.

(c) Membership status.--Regardless of whether a nonprofit corporation designates or refers to a person as a member of the corporation, the person is not a member of the corporation for purposes of this subpart unless the person satisfies the definition of "member" in section 5103(a) (relating to definitions).
(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5751 is referred to in section 5504 of this title.

§ 5752. Organization on a stock share basis.

(a) General rule.--A nonprofit corporation may be organized upon either a nonstock basis or, if so provided in its articles, upon a stock share basis.

(b) Form of certificates; uncertificated shares.--The shares of nonprofit corporations organized upon a stock share basis shall be of the denominations provided in the bylaws and shall be represented by share certificates unless the articles provide that any or all classes and series of shares, or any part thereof, shall be uncertificated shares. A provision of the articles providing for uncertificated shares shall not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Except as otherwise expressly provided by law, the rights and obligations of the holders of shares represented by certificates and the rights and obligations of the holders of uncertificated shares of the same class and series shall be identical. The fact that the corporation is a nonprofit corporation shall be noted conspicuously on the face of each certificate. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice stating:

(1) That the corporation is a nonprofit corporation incorporated under the laws of this Commonwealth.

(2) The name of the registered owner.

(3) The denomination and class of shares and the designation of the series, if any, of the shares issued or transferred.

(c) Rights of shareholders.--Unless otherwise provided in a bylaw adopted by the members, each share shall entitle the holder thereof to one vote. No dividends shall be directly or indirectly paid on the shares, nor shall the shareholders be entitled to any portion of the earnings of the corporation derived through increment of value upon its property, or otherwise incidentally made, until the dissolution of the corporation.

(d) Transferability of shares.--Unless otherwise provided in the bylaws, the shares shall not be transferable by operation of law or otherwise.

(e) Power to cancel shares.--A nonprofit corporation shall have power to exclude from further membership any shareholder who fails to comply with the reasonable and lawful bylaws of the corporation, and may cancel the shares of any offending member without liability for an accounting except as may be provided in the bylaws.

(f) Applicability of the Uniform Commercial Code.--The provisions of 13 Pa.C.S. Div. 8 (relating to investment securities) shall not apply in any manner to the shares of a nonprofit corporation.

(g) Cross reference.--See the definition of "member" in section 5103 (relating to definitions).

(Nov. 1, 1979, P.L.255, No.86, eff. Jan. 1, 1980; July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5752 is referred to in sections 5504, 5541 of this title.

§ 5753. Membership certificates.

A nonprofit corporation organized upon a nonstock basis shall not issue shares of stock, but membership in the corporation may be evidenced by certificates of membership. The fact that the corporation is a nonprofit corporation shall be noted conspicuously on the face of each certificate.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5754. Members grouped in local units.

(a) General rule.--The bylaws of a nonprofit corporation may provide that the members of the corporation shall be grouped in incorporated or unincorporated local units formed upon the basis of territorial areas, or other basis as may be determined in the bylaws, for the purpose of election of delegates or representatives to represent the members of the local units at any regular or special meetings of the corporation. Unless otherwise provided in a bylaw adopted by the members, each local unit participating in a representative capacity by means of one or more delegates or otherwise at a meeting of the corporation shall have a number of votes equal to the total membership of the local unit.

(b) Voting at meetings of delegates.--The requirements of this subpart for action by or the consent of a specified number or percentage of the members shall be satisfied by action by or the consent of that number or percentage of votes of delegates or representatives of members selected pursuant to this section.

(c) Calling and holding meetings of delegates.--The provisions of this subpart relating to the manner of the calling and holding of and the taking of action at meetings of members shall be applicable to meetings of delegates or representatives of members.

(d) Incorporation of local units.--A local unit of an incorporated or unincorporated parent body that is incorporated or organized for a purpose or purposes not involving pecuniary profit, incidental or otherwise, to its members may be incorporated under this subpart by an incorporated parent body or by the members of the local unit.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5754 is referred to in section 5504 of this title.

§ 5755. Time of holding meetings of members.

(a) Regular meetings.--The bylaws of a nonprofit corporation may provide for the number and the time of meetings of members. Except as otherwise provided in a bylaw adopted by the members, at least one meeting of the members that are entitled to vote for the election of directors shall be held in each calendar year for the election of directors at the time provided in or fixed pursuant to authority granted by the bylaws. Failure to hold the annual or other regular meeting at the designated time shall not work a dissolution of the corporation or affect otherwise valid corporate acts. If the annual or other regular meeting is not called and held within six months after the designated time, any member may call the meeting at any time thereafter.

(b) Special meetings.--Special meetings of the members may be called at any time by:

(1) the board of directors;

(2) members entitled to cast at least 10% of the votes that all members are entitled to cast at the particular meeting;

(3) such officers or other persons as may be provided in the bylaws; or

(4) the provisions provided in section 5725(c.1) (relating to selection of directors).

(b.1) Duties of secretary.--At any time, upon written request of any person who has called a special meeting, it shall be the duty of the secretary to fix the time of the meeting which, if the meeting is called pursuant to a statutory right, shall be held within any period specified by this subpart or, if no period is specified, not more than 60 days after the receipt of the request. If the secretary neglects or refuses to fix the time of the meeting, the person or persons calling the meeting may do so.

(c) Adjournments.--Adjournments of any regular or special meeting may be taken but any meeting at which directors are to be elected shall be adjourned for no longer than from day to day, or for longer periods not exceeding 15 days each, as the members present and entitled to vote shall direct, until the directors have been elected.

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

(e) Cross reference.--See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5755 is referred to in sections 5504, 5509, 6145 of this title.

§ 5756. Quorum.

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

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

(i) the presence of members entitled to cast at least a majority of the votes that all members are entitled to cast on the matter; and

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

(2) The members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

(3) If a meeting cannot be organized because a quorum has not attended, those present may, except as otherwise

provided in this subpart, adjourn the meeting to a time and place they may determine.

(b) Exceptions.--Notwithstanding any contrary provision in the articles or bylaws, those members entitled to vote who attend a meeting of members:

(1) At which directors are to be elected that has been previously adjourned for lack of a quorum, although less than a quorum as fixed in this section or in the bylaws, shall nevertheless constitute a quorum for the purpose of electing directors.

(2) That has been previously adjourned for one or more periods aggregating at least 15 days because of an absence of a quorum, although less than a quorum as fixed in this section or in the bylaws, shall nevertheless constitute a quorum for the purpose of acting upon any matter set forth in the notice of the meeting if the notice states that those members who attend the adjourned meeting shall nevertheless constitute a quorum for the purpose of acting upon the matter.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a)(1) and (b)(1).

2013 Amendment. Act 67 amended subsecs. (a)(1) and (3) and (b).

Cross References. Section 5756 is referred to in section 5504 of this title; sections 3309, 4309, 5309 of Title 68 (Real and Personal Property).

§ 5757. Action by members.

(a) General rule.--Except as otherwise provided in this title or in a bylaw adopted by the members, whenever any corporate action is to be taken by vote of the members of a nonprofit corporation, it shall be authorized upon receiving the affirmative vote of a majority of the votes cast by the members entitled to vote thereon and, if any members are entitled to vote thereon as a class, upon receiving the affirmative vote of a majority of the votes cast by the members entitled to vote as a class.

(b) Changes in required vote.--Whenever a provision of this title requires a specified number or percentage of votes of members or of a class of members for the taking of any action, a nonprofit corporation may prescribe in a bylaw adopted by the members that a higher number or percentage of votes shall be required for the action. The number or percentage of members necessary to call a special meeting of members or to petition for the proposal of an amendment of articles under this subpart may not be increased under this subsection. See sections 5504(d) (relating to adoption, amendment and contents of bylaws) and 5914(d) (relating to adoption of amendments).

(c) Expenses.--Unless otherwise restricted in the articles, the corporation shall pay the reasonable expenses of solicitation of votes, proxies or consents of members by or on behalf of the board of directors or its nominees for election to the board, including solicitation by professional proxy solicitors and otherwise, and may pay the reasonable expenses of a solicitation by or on behalf of other persons.

(d) Cross reference.--See section 322 (relating to approval by nonprofit corporation).

(July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

Cross References. Section 5757 is referred to in sections 322, 5504 of this title.

§ 5758. Voting rights of members.

(a) General rule.--Unless otherwise provided in a bylaw adopted by the members, every member of a nonprofit corporation shall be entitled to one vote.

(b) Procedures.--The following apply to voting by the members:

(1) The manner of voting on any matter, including changes in the articles or bylaws, may be by ballot, mail or any reasonable means provided in a bylaw adopted by the members.

(2) If a bylaw adopted by the members provides a fair and reasonable procedure for the nomination of candidates for any office, only candidates who have been duly nominated in accordance therewith shall be eligible for election.

(3) Unless otherwise provided in a bylaw adopted by the members, in elections for directors at a meeting of members held at a geographic location, voting shall be by ballot. The members do not have the right to vote by ballot at a meeting that is not held at a geographic location pursuant to section 5708(c) (relating to use of conference telephone or other electronic technology).

(4) The candidates for election as directors receiving the highest number of votes from each class or group of classes, if any, of members entitled to elect directors separately up to the number of directors to be elected by such class or group of classes shall be elected. If at any meeting of members directors of more than one class are to be elected, each class of directors shall be elected in a separate election.

(c) Cumulative voting.--If a bylaw adopted by the members so provides, in each election of directors of a nonprofit corporation every member entitled to vote shall have the right to multiply the number of votes to which he may be entitled by the total number of directors to be elected in the same election by the members or the class of members to which he belongs, and he may cast the whole number of his votes for one candidate or he may distribute them among any two or more candidates.

(d) Sale of votes.--No member shall sell his vote or issue a proxy for money or anything of value.

(e) Voting lists.--Upon request of a member, the membership register shall be produced at any regular or special meeting of the corporation. If at any meeting the right of a person to vote is challenged, the presiding officer shall require the membership register to be produced as evidence of the right of the person challenged to vote, and all persons who appear by the membership register to be members entitled to vote may vote. See section 6145 (relating to applicability of certain safeguards to foreign corporations).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5758 is referred to in sections 5504, 6145 of this title.

§ 5759. Voting and other action by proxy.

(a) General rule.--Voting by members of a nonprofit corporation shall be only in person unless a bylaw adopted by the members provides for voting by proxy. Unless otherwise restricted by a bylaw adopted by the members:

(1) The presence of, or vote or other action at a meeting of members, or the expression of consent or dissent to corporate action, by a proxy of a member pursuant to a bylaw shall constitute the presence of, or vote or action by, or consent or dissent of the member for the purposes of this subpart.

(2) Where two or more proxies of a member are present, the corporation shall, unless otherwise expressly provided in the proxy, accept as the vote or other action of all the members or shares represented thereby the vote cast or other action taken by a majority of them, and, if a majority of the proxies cannot agree whether the memberships or shares represented shall be voted or upon the manner of voting the memberships or shares or taking the other action, the voting of the memberships or shares or right to take other action shall be divided equally among those persons.

(b) Execution and filing.--Every proxy shall be executed or authenticated by the member or by the member's duly authorized attorney-in-fact and filed with or transmitted to the secretary of the corporation or its designated agent. A member or the member's duly authorized attorney-in-fact may execute or authenticate a writing or transmit an electronic message authorizing another person to act for the member by proxy. A telegram, telex, cablegram, datagram, e-mail, Internet communication or other means of electronic transmission from a member or attorney-in-fact, or a photographic, facsimile or similar reproduction of a writing executed by a member or attorney-in-fact:

(1) may be treated as properly executed or authenticated for purposes of this subsection; and

(2) shall be so treated if it sets forth or utilizes a confidential and unique identification number or other mark furnished by the corporation to the member for the purposes of a particular meeting or transaction.

(c) Revocation.--A proxy shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until notice thereof has been given to the secretary of the corporation or its designated agent in writing or by electronic transmission. An unrevoked proxy shall not be valid after 11 months from the date of its execution, authentication or transmission unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, notice of the death or incapacity is given to the secretary of the corporation or its designated agent. See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5759 is referred to in sections 5504, 6145 of this title.

§ 5760. (Reserved).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5760 to section 5762 and added section 5760 (Reserved).

§ 5761. (Reserved).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5761 to section 5763 and added section 5761 (Reserved).

§ 5762. Voting by corporations.

(a) Voting in nonprofit corporation matters.--Unless otherwise provided in a bylaw of a nonprofit corporation adopted by the members, any other domestic or foreign corporation for profit or not-for-profit that is a member of the nonprofit corporation may vote by any of its officers or agents, or by proxy appointed by any officer or agent, unless some other person, by resolution of the board of directors of the other corporation or a provision of its articles or bylaws, a copy of which resolution or provision certified to be correct by one of its officers has been filed with the secretary of the nonprofit corporation, is appointed its general or special proxy in which case that person shall be entitled to vote as the proxy.

(b) Voting by nonprofit corporations.--Shares of or memberships in a domestic or foreign corporation for profit or not-for-profit other than a nonprofit corporation, standing in the name of a shareholder or member that is a nonprofit corporation, may be voted by the persons and in the manner provided for in the case of nonprofit corporations by subsection (a) unless the laws of the jurisdiction in which the issuer of the shares or memberships is incorporated require the shares or memberships to be voted by some other person or persons or in some other manner in which case, to the extent that those laws are inconsistent with this subsection, this subsection shall not apply.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5762 to section 5765 and renumbered and amended former section 5760 to section 5762.

Cross References . Section 5762 is referred to in section 5504 of this title.

§ 5763. Determination of members of record.

(a) Fixing record date.--Unless otherwise restricted in the bylaws, the board of directors of a nonprofit corporation may fix a time prior to the date of any meeting of members as a record date for the determination of the members entitled to notice of, or to vote at, the meeting, which time, except in the case of an adjourned meeting, shall not be more than 90 days prior to the date of the meeting of members. Only members of record on the date fixed shall be so entitled notwithstanding any increase or other change in membership on the books of the corporation after any record date fixed as provided in this subsection. Unless otherwise provided in the bylaws, the board of directors may similarly fix a record date for the determination of members of record for any other purpose. A record date may not precede the date on which the board acts to fix that record date. The members of record shall be determined as of the close of business on the record date unless the board fixes a different time of day for that determination. When a determination of members of record has been made as provided in this section for purposes of a meeting, the determination shall apply to any adjournment thereof unless otherwise restricted in the bylaws or unless the board fixes a new record date for the adjourned meeting.

(b) Determination when no record date fixed.--Unless otherwise provided in the bylaws, if a record date is not fixed:

(1) The close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day immediately preceding the day on which the meeting is held shall be the record date for

determining members entitled to notice of or to vote at a meeting of members.

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

(i) express consent or dissent to corporate action without a meeting, when prior action by the board of directors or other body is not necessary;

(ii) call a special meeting of the members; or

(iii) propose an amendment of the articles.

(3) The record date for determining members for any other purpose shall be at the close of business on the day on which the board of directors or other body adopts the resolution relating thereto.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 5763 is referred to in section 5509 of this title.

§ 5764. (Reserved).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5764 to section 5767 and added section 5764 (Reserved).

§ 5764.1. Actions by members to enforce a secondary right (Repealed).

2001 Repeal. Section 5764.1 was repealed June 22, 2001, P.L.418, No.34, effective in 60 days.

§ 5765. Judges of election.

(a) General rule.--Unless otherwise provided in a bylaw adopted by the members:

(1) In advance of any meeting of members of a nonprofit corporation, the board of directors or other body may appoint judges of election, who need not be members, to act at the meeting or any adjournment thereof. If judges of election are not so appointed, the presiding officer of the meeting may, and on the request of any member shall, appoint judges of election at the meeting. The number of judges shall be one or three. A person who is a candidate for office to be filled at the meeting shall not act as a judge.

(2) In case any person appointed as judge fails to appear or fails or refuses to act, the vacancy may be filled by appointment made by the board of directors or other body in advance of the convening of the meeting, or at the meeting by the presiding officer thereof.

(3) The judges of election shall determine the number of members of record and the voting power of each, the members present at the meeting, the existence of a quorum, the authenticity, validity and effect of proxies, if voting by proxy is permitted under the bylaws, receive votes or ballots, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes, determine the result and perform the acts as may be proper to conduct the election or vote with fairness to all members. The judges of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three judges of election, the decision, act or certificate of a majority shall be effective in all respects as the decision, act or certificate of all.

(4) On request of the presiding officer of the meeting, or of any member, the judges shall make a report in writing of any challenge or question or matter determined by them, and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated therein.

(b) Cross reference.--See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5765 to section 5768 and renumbered and amended former section 5762 to section 5765.

Cross References. Section 5765 is referred to in sections 5504, 6145 of this title.

§ 5766. Consent of members in lieu of meeting.

(a) Unanimous consent.--Unless otherwise restricted in the bylaws, any action required or permitted to be taken at a meeting of the members or of a class of members of a nonprofit corporation may be taken without a meeting if a consent or consents to the action in record form are signed, before, on or after the effective time of the action by all of the members who would be entitled to vote at a meeting for that purpose. The consent or consents must be filed with the minutes of the proceedings of the members.

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

(c) Notice of action by partial consent.--Unless the bylaws require notice before an action pursuant to subsection (b) takes effect, prompt notice that an action has been taken shall be given to each member entitled to vote on the action that has not consented.

(d) Escrowing of consents.--A consent may provide, or a person signing a consent, whether or not then a member, may instruct in record form that the consent will be effective at a future time, including a time determined upon the happening of an event. In the case of a consent signed by a person not a member at the time of signing, the consent is effective at the stated effective time if the person who signed the consent is a member at the effective time and did not revoke the consent in record form prior to the effective time. A consent is effective at the stated effective time, even if one or more signers are no longer members at the effective time if consents by members entitled to cast the required number of votes have not been revoked before the effective time.

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

(July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a) and added subsecs. (d) and (e).

2014 Amendment. Act 172 amended subsec. (c).

2013 Amendment. Act 67 renumbered and amended former section 5766 to section 5769 and renumbered and amended former section 5763 to section 5766.

Cross References. Section 5766 is referred to in section 5504 of this title.

§ 5767. Appointment of custodian of corporation on deadlock or other cause.

(a) General rule.--Upon application of any member, the court may appoint one or more persons to be custodians of and for any nonprofit corporation when it appears that:

(1) at any meeting for the election of directors or members of an other body, the members are so divided that they have failed to elect successors to those whose terms have expired or would have expired upon the qualification of their successors; or

(2) any of the conditions specified in section 5981 (relating to proceedings upon application of member or director), other than that it is beneficial to the interest of the members that the corporation be wound up and dissolved, exist with respect to the corporation.

(a.1) Exception.--The court shall not appoint a custodian to resolve a deadlock if the members by agreement or otherwise have provided for the appointment of a provisional director or member of an other body or other means for the resolution of the deadlock, but the court shall enforce the remedy so provided, if appropriate.

(b) Power and title of custodian.--A custodian appointed under this section shall have all the power and title of a receiver appointed under Subchapter G of Chapter 59 (relating to involuntary liquidation and dissolution), but the authority of the custodian shall be to continue the business of the corporation and not to liquidate its affairs and distribute its assets except when the court shall otherwise order.

(c) Cross reference.--See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5767 to section 5770 and renumbered and amended former section 5764 to section 5767.

Cross References. Section 5767 is referred to in section 6145 of this title.

§ 5768. Reduction of membership below stated number.

Whenever the membership of a nonprofit corporation having a stated number of members is reduced below that number by death, withdrawal or otherwise, the corporation shall not on that account be dissolved, but it shall be lawful for the surviving or continuing members to continue the corporate existence unless otherwise restricted in the bylaws.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5765 to section 5768.

§ 5769. Termination and transfer of membership.

(a) General rule.--Membership in a nonprofit corporation shall be terminated in the manner provided in a bylaw adopted by the members. If membership in any such corporation is limited to persons who are members in good standing in another corporation, or in any lodge, church, club, society or other

entity or organization, the bylaws shall in each case define the limitations and may provide that failure on the part of a member to keep himself in good standing in the other entity or organization shall be sufficient cause for terminating the membership of the member in the corporation requiring such eligibility.

(b) Expulsion.--

(1) A member shall not be expelled from any nonprofit corporation without notice, trial and conviction, the form of which shall be prescribed by the bylaws.

(2) Paragraph (1) shall not apply to termination of membership pursuant to section 5544 (relating to dues and assessments).

(3) See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).

(c) Effect of termination of membership.--Unless otherwise provided in the bylaws, the right of a member of a nonprofit corporation to vote, and his right, title and interest in or to the corporation or its property, shall cease upon termination of membership.

(d) Transfer of membership.--Unless otherwise provided in the bylaws, a member may not transfer his membership or any right arising therefrom. The adoption of an amendment to the articles or bylaws of a nonprofit corporation that changes the identity of some or all of the members or the criteria for membership does not constitute a transfer for purposes of this subsection.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5766 to section 5769.

Cross References. Section 5769 is referred to in sections 5504, 6145 of this title.

§ 5770. Voting powers and other rights of certain securityholders and other entities.

The power to vote in respect to the corporate affairs and management of a membership corporation and other membership rights as may be provided in a bylaw adopted by the members may be conferred upon:

(1) Registered holders of obligations issued or to be issued by the corporation.

(2) The United States of America, the Commonwealth, a state, or any political subdivision of any of the foregoing, or any entity prohibited by law from becoming a member of a corporation.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 renumbered and amended former section 5767 to section 5770.

Cross References. Section 5770 is referred to in sections 5103, 5504 of this title.

SUBCHAPTER F
DERIVATIVE ACTIONS

Sec.

5781. Derivative action.
5782. Eligible member plaintiffs and security for costs.
5783. Special litigation committee.

5784. Proceeds and expenses.

Subchapter Heading. The heading of Subchapter E (Reserved) was amended December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter F December 19, 1990, P.L.834, No.198, effective immediately.

§ 5781. Derivative action.

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

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

(i) (Deleted by amendment).

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

(A) the board determines that:

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

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

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

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

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

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

(2) demand is excused under subsection (b);

(3) the action is maintained for the limited purpose of seeking court review under section 5783(f); or

(4) the court has allowed the action to continue under the control of the plaintiff under section 5783(f)(3)(ii).

(b) Prior demand excused.--

(1) A demand under subsection (a)(1) is excused only if the plaintiff makes a specific showing that immediate and irreparable harm to the nonprofit corporation would otherwise result.

(2) If demand is excused under paragraph (1), demand shall be made promptly after commencement of the action.

(c) Contents of demand.--A demand under this section must be in record form and give notice with reasonable specificity of:

(1) the material facts relied upon to support each of the claims made in the demand against each proposed defendant; and

(2) in the case of a derivative action commenced by a member, the basis on which the person making the demand has standing under section 5782.

(d) Additional claims.--If a derivative action is commenced after a demand has been made under this section and includes a claim that was not fairly subsumed under the demand, a new demand must be made with respect to that claim. The new demand

shall not relate back to the date of the original demand for purposes of subsection (e).

(e) Statute of limitations.--The making of a demand tolls any applicable statute of limitations with respect to a claim asserted in the demand until the earlier of the date:

(1) the plaintiff making the demand is notified either:

(i) that the board of directors has decided not to bring an action and not to appoint a special litigation committee; or

(ii) of a determination under section 5783(e) after the appointment of a special litigation committee under section 5783; or

(2) the plaintiff commences an action asserting the claim.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days; July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (a)(1).

2022 Amendment. Act 122 amended subsecs. (a)(1) intro. par. and (i), (b) and (c).

2016 Amendment. Act 170 added section 5781.

§ 5782. Eligible member plaintiffs and security for costs.

(a) General rule.--Except as provided in subsection (b), in any action or proceeding brought by one or more members of a nonprofit corporation to enforce rights that the plaintiff claims could be, but have not been, asserted by the corporation, each plaintiff has standing to commence and maintain the derivative action if the plaintiff:

(1) was a member of the corporation at the time of the transaction or conduct of which the plaintiff complains; and

(2) continues to be a member until the time of judgment, unless the failure to do so is the result of corporate action that:

(i) was done merely to eliminate derivative claims; or

(ii) has the effect of a reorganization that does not affect the plaintiff's ownership of the enterprise.

(b) Exception.--Any member who, except for the provisions of subsection (a), would be entitled to maintain the action or proceeding and who does not meet such requirements may, nevertheless in the discretion of the court, be allowed to maintain the action or proceeding on preliminary showing to the court, by application and upon such verified statements and depositions as may be required by the court, that there is a strong prima facie case in favor of the claim asserted on behalf of the corporation and that without the action serious injustice will result.

(c) Security for costs.--In any action or proceeding instituted or maintained by less than the smaller of 50 members of any class or 5% of the members of any class of the corporation, the corporation in whose right the action or proceeding is brought shall be entitled at any stage of the proceedings to require the plaintiffs to give security for the reasonable expenses, including attorney fees, that may be incurred by the corporation in connection therewith or for which it may become liable pursuant to section 5743 (relating to mandatory indemnification), but only insofar as relates to actions by or in the right of the corporation, to which security the corporation shall have recourse in such amount as the court determines upon the termination of the action or proceeding. The amount of security may from time to time be increased or

decreased in the discretion of the court upon showing that the security provided has or is likely to become inadequate or excessive. The security may be denied or limited by the court if the court finds after an evidentiary hearing that undue hardship on plaintiffs and serious injustice would result.

(d) Failure to maintain ownership.--If a plaintiff loses the right to maintain a derivative action under subsection (a)(2), the court may entertain a motion to substitute the corporation as the named plaintiff.

(e) Cross reference.--See section 6146 (relating to provisions applicable to all foreign corporations).

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a), relettered former subsec. (d) to subsec. (e) and added present subsec. (d).

2016 Amendment. Act 170 amended the section heading and subsec. (c).

2001 Amendment. Act 34 added section 5782.

Cross References. Section 5782 is referred to in sections 5781, 6146 of this title.

§ 5783. Special litigation committee.

(a) General rule.--If a nonprofit corporation or the board of directors receives a demand to bring an action to enforce a right of the corporation, or if a derivative action is commenced before demand has been made on the corporation or the board, the board may appoint a special litigation committee to investigate the claims asserted in the demand or action and to determine on behalf of the corporation or recommend to the board whether pursuing any of the claims asserted is in the best interests of the corporation. The corporation must deliver a notice in record form to the person making the demand, or to the plaintiff if a derivative action has been commenced, promptly after the appointment of a committee under this section notifying the person making the demand or the plaintiff that a committee has been appointed and identifying by name the members of the committee.

(b) Discovery stay.--If the board of directors appoints a special litigation committee and an action is commenced before a determination has been made under subsection (e):

(1) On motion by the nonprofit corporation, or the committee made in the name of the corporation, the court shall stay discovery for the time reasonably necessary to permit the committee to complete its investigation, except for good cause shown.

(2) The time for the defendants to plead shall be tolled until the process provided for under subsection (f) has been completed.

(c) Composition of committee.--A special litigation committee shall be composed of two or more individuals who:

(1) are not interested in the claims asserted in the demand or action;

(2) are capable as a group of objective judgment in the circumstances; and

(3) may, but need not, be members, directors or members of an other body.

(c.1) Committee members who are not directors or members of an other body.--A member of a special litigation committee who is not a director or member of an other body, when acting as a member of the committee, is subject to the liabilities

imposed, and entitled to the rights and immunities conferred by Subchapters B (relating to fiduciary duty) and D (relating to indemnification) and other provisions of law upon directors of a corporation.

(d) Appointment of committee.--A special litigation committee may be appointed:

(1) by a majority of the directors not named as actual or potential parties in the demand or action; or

(2) if all the directors are named as actual or potential parties in the demand or action, by a majority of:

(i) the members of an other body not named as parties in the proceeding if the other body has the authority to appoint a special litigation committee; or

(ii) the directors so named.

(e) Determination.--After appropriate investigation by a special litigation committee, the committee may determine, or the committee may recommend to the board of directors that the board determine that it is in the best interests of the nonprofit corporation that:

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

(2) an action based on some or all of the claims asserted in the demand be brought by the corporation;

(3) some or all of the claims asserted in the demand be settled on terms determined or recommended by the committee;

(4) an action not be brought based on any of the claims asserted in the demand;

(5) an action already commenced continue under the control of:

(i) the plaintiff;

(ii) the corporation; or

(iii) the committee;

(6) some or all the claims asserted in an action already commenced be settled on terms determined or recommended by the committee; or

(7) an action already commenced be dismissed.

(f) Court review and action.--If a special litigation committee is appointed and a derivative action is commenced before or after the committee makes a determination under subsection (e) or the board of directors determines under subsection (e) to accept the recommendation of the committee:

(1) The nonprofit corporation or the committee shall file with the court after a determination is made under subsection (e) a statement of the determination and a report of the committee supporting the determination. The corporation or the committee shall serve each party with a copy of the determination and report. If the corporation or the committee moves to file the report under seal, the report shall be served on the parties subject to an appropriate stipulation agreed to by the parties or a protective order issued by the court.

(2) The corporation or the committee shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).

(3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made

its determination or recommendation in good faith, independently and with reasonable care. The plaintiff has the burden of proving that the committee did not meet those qualifications or act in the required manner. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee or the board. Otherwise, the court shall:

(i) dissolve any stay of discovery entered under subsection (b);

(ii) allow the action to continue under the control of the plaintiff; and

(iii) permit the defendants to file preliminary objections, other appropriate pleadings and motions.

(g) Attorney General.--Nothing in this section limits the rights, powers and duties of the Attorney General under other applicable law with respect to a nonprofit corporation.

(h) Interest of a defendant.--The fact that a person is named as a defendant does not make the person interested in the claims asserted in a demand or action for purposes of subsection (c)(1) if the claims against the person:

(1) are based only on an allegation that the person approved of or acquiesced in the transaction or conduct that is the subject of the claims; and

(2) do not otherwise allege with particularity facts that, if true, raise a significant prospect that the person would be adjudged liable.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a), (b)(1), (e) intro. par., (3) and (6) and (f) and added subsecs. (c.1) and (h).

2016 Amendment. Act 170 added section 5783.

Cross References. Section 5783 is referred to in section 5781 of this title.

§ 5784. Proceeds and expenses.

(a) Proceeds.--Except as provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong to the nonprofit corporation and not to the plaintiff; and

(2) if the plaintiff or its counsel receives any proceeds, the proceeds shall be remitted immediately to the corporation.

(b) Expenses.--If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the nonprofit corporation, but in no event shall the attorney fees awarded exceed a reasonable proportion of the value of the relief, including nonpecuniary relief, obtained by the plaintiff for the corporation.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 added section 5784.

SUBCHAPTER G
JUDICIAL SUPERVISION OF CORPORATE ACTION

Sec.

5791. Corporate action subject to subchapter.
5792. Proceedings prior to corporate action.
5793. Review of contested corporate action.

Enactment. Subchapter G was added as Subchapter F December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and was relettered to Subchapter G December 19, 1990, P.L.834, No.198, effective immediately.

Cross References. Subchapter G is referred to in section 5726 of this title.

§ 5791. Corporate action subject to subchapter.

(a) General rule.--This subchapter shall apply to, and the term "corporate action" in this subchapter shall mean any of the following actions:

(1) The election, appointment, designation or other selection and the suspension, removal or expulsion of members, directors, members of an other body or officers of a nonprofit corporation.

(2) The taking of any action on any matter that is required under this subpart or under any other provision of law to be, or that under the bylaws may be, submitted for action to the members, directors, members of an other body or officers of a nonprofit corporation.

(b) Cross reference.--See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5792. Proceedings prior to corporate action.

(a) General rule.--Where under applicable law or the bylaws of a nonprofit corporation there has been a failure to hold a meeting to take corporate action and the failure has continued for 30 days after the designated or appropriate date, the court may summarily order a meeting to be held upon the application of any person entitled, either alone or in conjunction with other persons similarly seeking relief under this section, to call a meeting to consider the corporate action in issue.

(b) Conduct of meeting.--The court may determine the right to vote at the meeting of persons claiming that right, may appoint a master to hold the meeting under such orders and powers as the court deems proper and may take any action required to give due notice of the meeting and to convene and conduct the meeting in the interests of justice.

(c) Cross reference.--See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5792 is referred to in section 5793 of this title.

§ 5793. Review of contested corporate action.

(a) General rule.--Upon application of any person aggrieved by any corporate action, the court may hear and determine the validity of the corporate action.

(b) Powers and procedures.--By entering an appropriate order, the court may enforce the production of any books, papers and records of the corporation and other relevant evidence that may relate to the issue. The court shall provide for notice of the pendency of the proceedings under this section to all persons affected thereby. If it is determined that no valid corporate action has been taken, the court may order a meeting to be held in accordance with section 5792 (relating to proceedings prior to corporate action).

(c) Cross reference.--See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

CHAPTER 59
AMENDMENTS, SALE OF ASSETS AND DISSOLUTION

Subchapter

A. Preliminary Provisions
B. Amendment of Articles
C. Sale of Assets
D. (Reserved)
E. Conversion (Repealed)
F. Voluntary Dissolution and Winding Up
G. Involuntary Liquidation and Dissolution
H. Postdissolution Provision for Liabilities

Enactment. Chapter 59 was added as Chapter 79 November 15, 1972, P.L.1063, No.271, effective in 90 days. Chapter 79 was renumbered to Chapter 59 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.
Chapter Heading. The heading of Chapter 59 was amended October 22, 2014, P.L.2640, No.172, effective July 1, 2015.
Cross References. Chapter 59 is referred to in sections 5547, 5704, 6145 of this title.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

5901. Omission of certain provisions from filed plans (Deleted by amendment).
5902. Statement of termination.
5903. Bankruptcy or insolvency proceedings.
5904. (Reserved).
5905. Proposal of fundamental transactions.

Enactment. The heading of Subchapter A was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and the remaining provisions were added December 19, 1990, P.L.834, No.198, effective immediately.

§ 5901. Omission of certain provisions from filed plans (Deleted by amendment).

2014 Amendment. Section 5901 was deleted by amendment October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5902. Statement of termination.

(a) General rule.--If articles of amendment have been filed in the department prior to the termination of the amendment pursuant to provisions therefor set forth in the resolution or petition relating to the amendment, the termination shall not be effective unless the corporation shall, prior to the time the amendment or plan is to become effective, file in the department a statement of termination. The statement of termination shall be executed by the corporation that filed the amendment and shall set forth:
(1) A copy of the articles of amendment.

(2) A statement that the amendment has been terminated in accordance with the provisions therefor set forth therein.

(b) Cross references.--See sections 134 (relating to docketing statement) and 138 (relating to statement of correction).

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (a).

Cross References. Section 5902 is referred to in section 5914 of this title.

§ 5903. Bankruptcy or insolvency proceedings.

(a) General rule.--Unless otherwise provided in the bylaws, whenever a nonprofit corporation is insolvent or in financial difficulty, the board of directors may, by resolution and without the consent of the members, authorize and designate the officers of the corporation to execute a deed of assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or file an answer consenting to the appointment of a receiver upon a complaint in the nature of an equity action filed by creditors or members, or, if insolvent, file an answer to an involuntary petition in bankruptcy admitting the insolvency of the corporation and its willingness to be adjudged a debtor on that ground.

(b) Bankruptcy proceedings.--If authorized pursuant to subsection (a), a nonprofit corporation may participate in proceedings under and in the manner provided by Title 11 of the United States Code (relating to bankruptcy) notwithstanding any contrary provision of its articles or bylaws or this subpart, other than sections 103 (relating to subordination of title to regulatory laws) and 5107 (relating to subordination of subpart to canon law). The corporation shall have full power and authority to put into effect and carry out a plan of reorganization or arrangement and the decrees and orders of the court, or judge or referee relative thereto, and may take any proceeding and do any act provided in the plan or arrangement or directed by such decrees and orders, without further action by its directors or members. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the trustees or receivers of the corporation appointed in the bankruptcy proceedings, or a majority thereof, or, if none be appointed and acting, by designated officers of the corporation, or by a master or other representative appointed by the court or judge or referee, with the effect as if exercised and taken by unanimous action of the directors and members of the corporation. Without limiting the generality or effect of the foregoing, the corporation may:

(1) alter, amend or repeal its bylaws;

(2) constitute or reconstitute and classify or reclassify its board of directors and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office;

(3) amend its articles of incorporation, including without limitation for the purpose of altering, amending or repealing any provision of the articles or bylaws notwithstanding any provision therein that the articles or bylaws may be altered, amended or repealed only under certain conditions or only upon receiving the approval of a specified number or percentage of votes of members or of a class of members;

(4) be dissolved, transfer all or part of its assets, merge, consolidate, divide or convert to a business corporation, as permitted by this chapter;

(5) authorize and fix the terms, manner and conditions of the issuance of obligations; or

(6) lease its property and franchises to any person.

(c) Cross reference.--See the definition of "officer" in section 5103 (relating to definitions).

(June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsecs. (a) and (b) intro. par.

§ 5904. (Reserved).

§ 5905. Proposal of fundamental transactions.

Where any provision of this chapter requires that an amendment of the articles or the dissolution of a nonprofit corporation be proposed or approved by action of the board of directors, that requirement shall be construed to authorize and be satisfied by the written agreement or consent of all of the members of the corporation entitled to vote thereon.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

SUBCHAPTER B
AMENDMENT OF ARTICLES

Sec.

5911. Amendment of articles authorized.
5912. Proposal of amendments.
5913. Notice of meeting of members.
5914. Adoption of amendments.
5915. Articles of amendment.
5916. Filing and effectiveness of articles of amendment.

Subchapter Heading. The heading of Subchapter B was amended December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Subchapter B is referred to in sections 7106, 7107 of this title.

§ 5911. Amendment of articles authorized.

(a) General rule.--A nonprofit corporation, in the manner provided in this subchapter, may amend its articles for one or more of the following purposes:

(1) To adopt a new name, subject to the restrictions provided in this subpart.

(2) To modify any provision of the articles relating to its term of existence.

(3) To change, add to or diminish its purposes or to set forth different or additional purposes.

(4) To restate the articles in their entirety.

(5) To make any and as many other changes as desired.

(b) Exceptions.--An amendment adopted under this section shall not amend articles in such a way that as so amended they would not be authorized by this subpart as original articles of incorporation except that:

(1) Restated articles shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), state the address of the current instead of the initial registered office of the corporation in this Commonwealth and need not state the names and addresses of the incorporators.

(2) The corporation shall not be required to revise any other provision of its articles if the provision is valid

and operative immediately prior to the delivery of the amendment to the department for filing.

(c) Amendments pursuant to other provisions.--Amendments to the articles authorized pursuant to Chapter 2 (relating to entities generally) or 3 (relating to entity transactions) or set forth in statements or certificates permitted or required to be delivered to the department for filing by sections 108 (relating to change in location or status of registered office provided by agent) and 138 (relating to statement of correction) or by this subpart need not be proposed or adopted in the manner provided in this subchapter, except to the extent that the provisions of this subchapter have been incorporated into Chapter 2 or 3 or into the provisions authorizing such statements or certificates.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) and added subsec. (c).

§ 5912. Proposal of amendments.

(a) General rule.--Every amendment of the articles of a nonprofit corporation shall be proposed:

(1) by the adoption by the board of directors or other body of a resolution setting forth the proposed amendment;

(2) unless otherwise provided in the articles, by petition of members entitled to cast at least 10% of the votes that all members are entitled to cast thereon, setting forth the proposed amendment, which petition shall be directed to the board of directors and filed with the secretary of the corporation; or

(3) by such other method as may be provided in the bylaws.

(b) Submission to members.--Except where the approval of the members is unnecessary under this subchapter, the board of directors or other body shall direct that the proposed amendment be submitted to a vote of the members entitled to vote thereon. An amendment proposed pursuant to subsection (a)(2) shall be submitted to a vote either at the next annual meeting held not earlier than 120 days after the amendment is proposed or at a special meeting of the members called for that purpose by the members.

(c) Form of amendment.--The resolution or petition shall contain the language of the proposed amendment of the articles:

(1) by setting forth the existing text of the articles or the provision thereof that is proposed to be amended, with brackets around language that is to be deleted and underscoring under language that is to be added or otherwise clearly showing the changes to be made; or

(2) by providing that the articles shall be amended so as to read as therein set forth in full, or that any provision thereof be amended so as to read as therein set forth in full, or that the matter stated in the resolution or petition be added to or stricken from the articles.

(d) Terms of amendment.--The resolution or petition may set forth the manner and basis of reclassifying the memberships in or shares of the corporation. Any of the terms of a plan of reclassification or other action contained in an amendment may be made dependent upon facts ascertainable outside of the amendment if the manner in which the facts will operate upon the terms of the amendment is set forth in the amendment. Such facts may include, without limitation, actions or events within

the control of or determinations made by the corporation or a representative of the corporation.
(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (b) and (c)(1).

Cross References. Section 5912 is referred to in section 5914 of this title.

§ 5913. Notice of meeting of members.

(a) General rule.--Notice in record form of the meeting of members of a nonprofit corporation that will act on the proposed amendment shall be given to each member of record entitled to vote thereon. The notice shall include a copy of the proposed amendment or a summary of the changes to be effected thereby.

(b) Cross reference.--See Subchapter A of Chapter 57 (relating to notice and meetings generally).
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5914. Adoption of amendments.

(a) General rule.--Unless a bylaw adopted by the members or a specific provision of this subpart requires a greater vote, a proposed amendment of the articles of a nonprofit corporation shall be adopted upon receiving the affirmative vote of the members present entitled to cast at least a majority of the votes that all members present are entitled to cast thereon, and if any class of members is entitled to vote thereon as a class, the affirmative vote of the members present of such class entitled to cast at least a majority of the votes that all members present of such class are entitled to cast thereon. Any number of amendments may be submitted to the members and voted upon by them at one meeting.

(a.1) Adoption by board of directors or other body.--Unless otherwise restricted in the bylaws, an amendment of articles shall not require the approval of the members of the corporation if:

(1) the amendment is to provide for perpetual existence;

(2) to the extent the amendment has not been approved by the members, it restates without change all of the operative provisions of the articles as theretofore amended or as amended thereby; or

(3) the amendment accomplishes any combination of purposes specified in this subsection.

Whenever a provision of this subpart authorizes the board of directors or other body to take any action without the approval of the members and provides that a statement, certificate, plan or other document relating to such action shall be filed in the department and shall operate as an amendment of the articles, the board upon taking such action may, in lieu of filing the statement, certificate, plan or other document, amend the articles under this subsection without the approval of the members to reflect the taking of such action. The amendment shall be deemed adopted by the corporation when it has been adopted by the board of directors or other body in the manner provided by subsection (b).

(b) Adoption in absence of voting members.--If the corporation has no members entitled to vote thereon, or no members entitled to vote thereon other than persons who also constitute the board of directors or other body, the amendment shall be deemed adopted by the corporation when it has been adopted by the board of directors or other body pursuant to section 5912 (relating to proposal of amendments).

(c) Termination of proposal.--Prior to the time when an amendment becomes effective, the amendment may be terminated

pursuant to provisions for amendment, if any, set forth in the resolution or petition. If articles of amendment have been filed in the department prior to the termination, a statement under section 5902 (relating to statement of termination) shall be filed in the department.

(d) Amendment of voting provisions.--Unless otherwise provided in the articles, whenever the articles require for the taking of any action by the members or a class of members a specific number or percentage of votes, the provision of the articles setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes of the members or of the class of members.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5914 is referred to in section 5757 of this title.

§ 5915. Articles of amendment.

Upon the adoption of an amendment by a nonprofit corporation, as provided in this subchapter, articles of amendment shall be executed by the corporation and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(2) The statute under which the corporation was incorporated and the date of incorporation.

(3) If the amendment is to be effective on a specified date, the hour, if any, and the month, day and year of the effective date.

(4) The manner in which the amendment was adopted by the corporation.

(5) The amendment adopted by the corporation, which shall be set forth in full.

(6) If the amendment effects a restatement of the articles, a statement that the restated articles supersede the original articles and all amendments thereto.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5915 is referred to in section 7106 of this title.

§ 5916. Filing and effectiveness of articles of amendment.

(a) Filing.--The articles of amendment of a nonprofit corporation shall be filed in the Department of State. See section 134 (relating to docketing statement).

(b) Effectiveness.--Upon the filing of the articles of amendment in the department or upon the effective date specified in the articles of amendment, whichever is later, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly. An amendment shall not affect any existing cause of action in favor of or against the corporation, or any pending action or proceeding to which the corporation is a party, or the existing rights of persons other than members or, except as otherwise provided by order, if any, obtained pursuant to section 5547(b) (relating to nondiversion of certain property) divert any property subject to such section from the purpose or purposes to which it was committed. If the corporate name is changed by the amendment, an action brought

by or against the corporation under its former name shall not be abated for that reason.
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

SUBCHAPTER C
SALE OF ASSETS

Sec.
5921. Merger and consolidation authorized (Repealed).
5922. Plan of merger or consolidation (Repealed).
5923. Notice of meeting of members (Repealed).
5924. Adoption of plan (Repealed).
5925. Authorization by foreign corporations (Repealed).
5926. Articles of merger or consolidation (Repealed).
5927. Filing of articles of merger or consolidation (Repealed).
5928. Effective date of merger or consolidation (Repealed).
5929. Effect of merger or consolidation (Repealed).
5930. Voluntary transfer of corporate assets.

Subchapter Heading. The heading of Subchapter C was amended October 22, 2014, P.L.2640, No.172, effective July 1,2015.

§ 5921. Merger and consolidation authorized (Repealed).

2014 Repeal. Section 5921 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5922. Plan of merger or consolidation (Repealed).

2014 Repeal. Section 5922 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5923. Notice of meeting of members (Repealed).

2014 Repeal. Section 5923 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5924. Adoption of plan (Repealed).

2014 Repeal. Section 5924 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5925. Authorization by foreign corporations (Repealed).

2014 Repeal. Section 5925 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5926. Articles of merger or consolidation (Repealed).

2014 Repeal. Section 5926 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5927. Filing of articles of merger or consolidation (Repealed).

2014 Repeal. Section 5927 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5928. Effective date of merger or consolidation (Repealed).

2014 Repeal. Section 5928 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5929. Effect of merger or consolidation (Repealed).

2014 Repeal. Section 5929 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5930. Voluntary transfer of corporate assets.

(a) General rule.--A sale, lease, exchange or other disposition of all, or substantially all, of the property and assets, with or without goodwill, of a nonprofit corporation, if not made pursuant to Subchapter F of Chapter 3 (relating to division), may be made only pursuant to a plan of asset transfer. The property or assets of a direct or indirect subsidiary corporation that is controlled by a parent corporation shall also be deemed the property or assets of the parent corporation for purposes of this subsection. The plan of asset transfer shall set forth the terms and consideration of the sale, lease, exchange or other disposition or may authorize the board of directors or other body to fix any or all of the terms and conditions, including the consideration to be received by the corporation. Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. The plan of asset transfer shall be proposed and adopted, and may be amended after its adoption and terminated, by a nonprofit corporation in the manner provided in this subchapter for the proposal, adoption, amendment and termination of a plan of merger. A copy or summary of the plan shall be included in, or enclosed with, the notice of the meeting at which members will act on the plan. In order to make effective any plan so adopted, it shall not be necessary to file any articles or other document in the department, but the corporation shall comply with the requirements of section 5547(b) (relating to nondiversion of certain property).

(b) Exceptions.--Subsection (a) shall not apply to a sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a nonprofit corporation:

(1) that directly or indirectly owns all of the outstanding shares or other ownership interest of another corporation to the other corporation;

(2) if made in connection with the dissolution or liquidation of the corporation, which transaction shall be governed by the provisions of Subchapter F (relating to voluntary dissolution and winding up) or G of Chapter 19 (relating to involuntary liquidation and dissolution), as appropriate; or

(3) if made in connection with a transaction pursuant to which all the assets sold, leased, exchanged or otherwise disposed of are simultaneously leased back to the corporation.

(c) Mortgage.--A mortgage, pledge or grant of a security interest or dedication of property to the repayment of indebtedness, with or without recourse, shall not be deemed a sale, lease, exchange or other disposition for the purposes of this section.

(d) Restrictions.--This section shall not be construed to authorize the conversion or exchange of property or assets in fraud of corporate creditors or in violation of law.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (a).

Cross References. Section 5930 is referred to in section 5546 of this title.

SUBCHAPTER D
(Reserved)

Sec.
5951. Division authorized (Repealed).
5952. Proposal and adoption of plan of division (Repealed).
5953. Division without member approval (Repealed).
5954. Articles of division (Repealed).
5955. Filing of articles of division (Repealed).
5956. Effective date of division (Repealed).
5957. Effect of division (Repealed).

Subchapter Heading. The heading of Subchapter D was amended October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5951. Division authorized (Repealed).

2014 Repeal. Section 5951 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5952. Proposal and adoption of plan of division (Repealed).

2014 Repeal. Section 5952 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5953. Division without member approval (Repealed).

2014 Repeal. Section 5953 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5954. Articles of division (Repealed).

2014 Repeal. Section 5954 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5955. Filing of articles of division (Repealed).

2014 Repeal. Section 5955 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5956. Effective date of division (Repealed).

2014 Repeal. Section 5956 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 5957. Effect of division (Repealed).

2014 Repeal. Section 5957 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER E
CONVERSION
(Repealed)

2014 Repeal. Subchapter E (§§ 5961 - 5966) was added November 15, 1972, P.L.1063, No.271, and repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER F
VOLUNTARY DISSOLUTION AND WINDING UP

Sec.
5971. Voluntary dissolution by members or incorporators.
5972. Proposal of voluntary dissolution.
5973. Notice of meeting of members.
5974. Adoption of proposal.

5974.1. Articles of election to dissolve (Repealed).
5974.2. Articles rescinding election to dissolve (Repealed).
5975. Predissolution provision for liabilities.
5976. Judicial supervision of proceedings.
5977. Articles of dissolution.
5978. Winding up of corporation after dissolution.
5979. Survival of remedies and rights after dissolution.
5980. Dissolution by domestication (Repealed).

Subchapter Heading. Subchapter F was relettered from Subchapter E December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 5971. Voluntary dissolution by members or incorporators.

(a) General rule.--The members or incorporators of a nonprofit corporation that has not commenced business may effect the dissolution of the corporation by filing articles of dissolution in the Department of State. The articles of dissolution shall be executed in the name of the corporation by a majority of the members or incorporators, and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(2) The statute under which the corporation was incorporated and the date of incorporation.

(3) That the corporation has not received any property in trust, or otherwise commenced business.

(4) That the amount, if any, actually paid in on subscriptions for memberships, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(5) That all liabilities of the corporation have been discharged or that adequate provision has been made therefor.

(6) That a majority of the members or incorporators elect that the corporation be dissolved.

(b) Filing.--The articles of dissolution shall be filed in the Department of State. See section 134 (relating to docketing statement).

(c) Effect.--Upon the filing of the articles of dissolution, the existence of the corporation shall cease.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5971 is referred to in section 139 of this title.

§ 5972. Proposal of voluntary dissolution.

(a) General rule.--Any nonprofit corporation that has commenced business may dissolve voluntarily in the manner provided in this subchapter and wind up its affairs in the manner provided in section 5975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities). Voluntary dissolution shall be proposed by:

(1) the adoption by the board of directors or other body of a resolution recommending that the corporation be dissolved voluntarily;

(2) petition of members entitled to cast at least 10% of the votes that all members are entitled to cast thereon,

setting forth a resolution recommending that the corporation be dissolved voluntarily, which petition shall be directed to the board of directors and filed with the secretary of the corporation; or

(3) such other method for proposing or adopting a resolution recommending that the corporation be dissolved voluntarily as may be provided in the bylaws.

The resolution shall contain a statement either that the dissolution shall proceed under section 5975 or that the dissolution shall proceed under Subchapter H.

(b) Submission to members.--The board of directors or other body or the petitioning members shall direct that the resolution recommending dissolution be submitted to a vote of the members of the corporation entitled to vote thereon at a regular or special meeting of the members.

(c) Cross reference.--See section 5974(e) (relating to amendment of winding-up election).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (b).

1992 Amendment. Act 169 amended subsec. (a) and added subsec. (c).

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5972 is referred to in sections 5974, 5975 of this title.

§ 5973. Notice of meeting of members.

(a) General rule.--Notice in record form of the meeting of members that will consider the resolution recommending dissolution of the nonprofit corporation shall be given to each member of record entitled to vote thereon. The purpose of the meeting shall be stated in the notice.

(b) Cross reference.--See Subchapter A of Chapter 57 (relating to notice and meetings generally).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (a).

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5974. Adoption of proposal.

(a) General rule.--The resolution shall be adopted upon receiving the affirmative vote of a majority of the votes cast by all members of the nonprofit corporation entitled to vote thereon and, if any class of members is entitled to vote thereon as a class, the affirmative vote of a majority of the votes cast in each class vote.

(b) Adoption in absence of voting members.--If the corporation has no members entitled to vote on the question of the advisability of voluntarily dissolving the corporation, the resolution shall be deemed adopted by the corporation when it has been adopted by the board of directors or other body pursuant to section 5972 (relating to proposal of voluntary dissolution).

(c) Termination of proposal.--Prior to the time when articles of dissolution are filed in the Department of State, the proposal may be terminated pursuant to provisions therefor, if any, set forth in the resolution.

(d) Action rescinding election to dissolve.--Prior to the time when articles of dissolution are filed in the department, any nonprofit corporation may rescind its election to dissolve in the same manner and by the same procedure as that provided in this subchapter for the election of a corporation to dissolve voluntarily.

(e) Amendment of winding-up election.--If the resolution with respect to voluntary dissolution so provides, an election to proceed under section 5975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities) may be reversed by the board of directors prior to the time when articles of dissolution are filed in the department, notwithstanding the adoption by the members of the proposal for voluntary dissolution.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 added subsec. (e).

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5974 is referred to in sections 5972, 5975 of this title.

§ 5974.1. Articles of election to dissolve (Repealed).

1990 Repeal. Section 5974.1 was repealed December 19, 1990, P.L.834, No.198, effective immediately.

§ 5974.2. Articles rescinding election to dissolve (Repealed).

1990 Repeal. Section 5974.2 was repealed December 19, 1990, P.L.834, No.198, effective immediately.

§ 5975. Predissolution provision for liabilities.

(a) Powers of board.--The board of directors or other body of a nonprofit corporation that has elected to proceed under this section shall have full power to wind up and settle the affairs of the corporation in accordance with this section prior to filing articles of dissolution in accordance with section 5977 (relating to articles of dissolution).

(b) Notice to creditors and taxing authorities.--After the approval by the members or the board of directors or other body pursuant to section 5974(b) (relating to adoption in absence of voting members) that the corporation dissolve voluntarily, the corporation shall immediately cause notice of the winding up proceedings to be officially published and to be mailed by certified or registered mail to each known creditor and claimant and to each municipal corporation in which it has a place of business in this Commonwealth.

(c) Winding up and distribution.--The corporation shall, as speedily as possible, proceed to collect all sums due it, convert into cash all corporate assets the conversion of which into cash is required to discharge its liabilities and, out of the assets of the corporation, discharge or make adequate provision for the discharge of all liabilities of the corporation, according to their respective priorities. Except as otherwise provided in a bylaw adopted by the members or in this subpart or by any other provision of law, any surplus remaining after paying or providing for all liabilities of the corporation shall be distributed to the shareholders, if any, pro rata, or if there be no shareholders, among the members per capita. See section 5972(a) (relating to proposal of voluntary dissolution).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (c).

Cross References. Section 5975 is referred to in sections 5504, 5972, 5974, 5976, 5977, 5978, 5979, 5985, 5997, 6129 of this title.

§ 5976. Judicial supervision of proceedings.

(a) General rule.--A nonprofit corporation that has elected to proceed under section 5975 (relating to predissolution provision for liabilities), at any time during the winding up proceedings, may apply to the court to have the proceedings continued under the supervision of the court and thereafter the proceedings shall continue under the supervision of the court as provided in Subchapter G (relating to involuntary liquidation and dissolution).

(b) Distribution of property committed to charitable purposes.--If the assets of the corporation include any property committed to charitable purposes, the board of directors or other body shall apply to the court for an order pursuant to section 5547(b) (relating to nondiversion of certain property) specifying the disposition of the property.

(c) Religious assets.--In entering a decree providing for the distribution of the assets of a corporation organized for the support of public worship, the court shall, by its decree, provide for the disposition of the assets of the corporation, either by:

(1) vesting title thereto in such other corporation as may, by its articles, be organized for the purpose of holding title to the real estate held for public worship, according to the formularies of the church or religious organization to which the dissolved corporation was in allegiance;

(2) authorizing the sale of such assets by a master or trustee appointed for that purpose and the vesting of the proceeds, upon the confirmation of such sale, in such body as may be directed by the court, to be held in trust for carrying out the intent and purpose of public worship; or

(3) vesting the title to such assets in any incorporated or unincorporated body designated by the petitioners for the same uses and trusts as the assets were theretofore held by the dissolved corporation.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (a).

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 5977. Articles of dissolution.

(a) General rule.--Articles of dissolution and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the department when:

(1) all liabilities of the nonprofit corporation have been discharged, or adequate provision has been made therefor, in accordance with section 5975 (relating to predissolution provision for liabilities), and all of the remaining assets of the corporation have been distributed as provided in section 5975 or in case its assets are not sufficient to discharge its liabilities, when all the assets

have been fairly and equitably applied, as far as they will go, to the payment of such liabilities; or

(2) an election to proceed under Subchapter H (relating to postdissolution provision for liabilities) has been made.

(b) Contents of articles.--The articles of dissolution shall be executed by the corporation and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(2) The statute under which the corporation was incorporated and the date of incorporation.

(3) The names and respective addresses, including street and number, if any, of its directors and officers.

(4) The manner in which the proposal to dissolve voluntarily was adopted by the corporation.

(5) A statement that:

(i) all liabilities of the corporation have been discharged or that adequate provision has been made therefor;

(ii) the assets of the corporation are not sufficient to discharge its liabilities, and that all the assets of the corporation have been fairly and equitably applied, as far as they will go, to the payment of such liabilities; or

(iii) the corporation has elected to proceed under Subchapter H.

(6) A statement:

(i) that all the remaining assets of the corporation, if any, have been distributed as provided in the Nonprofit Corporation Law of 1988; or

(ii) that the corporation has elected to proceed under Subchapter H and that any remaining assets of the corporation will be distributed as provided in that subchapter.

(7) In the case of a corporation that has not elected to proceed under Subchapter H, a statement that no actions or proceedings are pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment or decree that may be obtained against the corporation in each pending action or proceeding.

(8) In the case of a corporation that has not elected to proceed under Subchapter H, a statement that notice of the winding-up proceedings of the corporation was mailed by certified or registered mail to each known creditor and claimant and to each municipal corporation in which the corporation has a place of business in this Commonwealth.

(c) Effect.--Upon the filing of the articles of dissolution in the department, the existence of the corporation shall cease.

(d) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (a).

2001 Amendment. Act 34 amended subsec. (b)(5), (7) and (8) and added subsec. (d).

1992 Amendment. Act 169 amended subsecs. (a) and (b).

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5977 is referred to in sections 5975, 5989, 5991.1, 5992 of this title.

§ 5978. Winding up of corporation after dissolution.

(a) Winding up and distribution.--Every nonprofit corporation that is dissolved by expiration of its period of duration or otherwise shall, nevertheless, continue to exist for the purpose of winding up its affairs, prosecuting and defending actions or proceedings by or against it, collecting and discharging obligations, disposing of and conveying its property and collecting and dividing its assets, but not for the purpose of continuing business except insofar as necessary for the winding up of the corporation. The board of directors or other body of the corporation may continue as such and shall have full power to wind up the affairs of the corporation.

(b) Standard of care of directors, members of an other body and officers.--The dissolution of the corporation shall not subject its directors, members of an other body or officers to standards of conduct different from those prescribed by or pursuant to Chapter 57 (relating to officers, directors and members). Directors and members of an other body of a dissolved corporation who have complied with section 5975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities) and governing persons of a successor entity who have complied with Subchapter H shall not be personally liable to the creditors or claimants of the dissolved corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (b).

Cross References. Section 5978 is referred to in section 5979 of this title.

§ 5979. Survival of remedies and rights after dissolution.

(a) General rule.--The dissolution of a nonprofit corporation, either under this subchapter or under Subchapter G (relating to involuntary liquidation and dissolution) or by expiration of its period of duration or otherwise, shall not eliminate nor impair any remedy available to or against the corporation or its directors, members of an other body, officers or members for any right or claim existing, or liability incurred, prior to the dissolution, if an action thereon is brought on behalf of:

(1) the corporation within the time otherwise limited by law; or

(2) any other person before or within two years after the date of the dissolution or within the time otherwise limited by this subpart or other provision of law, whichever is less. See sections 5987 (relating to proofs of claims), 5993 (relating to acceptance or rejection of matured claims) and 5994 (relating to disposition of unmatured claims).

(b) Rights and assets.--The dissolution of a nonprofit corporation shall not affect the limited liability of a member of the corporation theretofore existing with respect to transactions occurring or acts or omissions done or omitted in the name of or by the corporation except that, subject to subsection (d) and sections 5992(d) (relating to notice to claimants) and 5993(b) (relating to acceptance or rejection of matured claims), if applicable, each member shall be liable for his pro rata portion of the unpaid liabilities of the

corporation up to the amount of the net assets of the corporation distributed to the member in connection with the dissolution. Should any property right of a corporation be discovered, or the corporation be named as a defendant in an action or proceeding, at any time after the dissolution of the corporation, the surviving member or members of the board of directors or other body that wound up the affairs of the corporation, or a receiver appointed by the court, shall have authority to enforce the property right and to collect and divide the assets so discovered among the persons entitled thereto and to prosecute or defend actions or proceedings in the corporate name of the corporation. Any assets so collected shall be distributed and disposed of in accordance with the applicable order of court, if any, and otherwise in accordance with this subchapter.

(c) Liability of members.--A member of a dissolved nonprofit corporation, the assets of which were distributed under section 5975(c) (relating to winding up and distribution) or 5997 (relating to payments and distributions), shall not be liable for any claim against the corporation in an amount in excess of the member's pro rata share of the claim or the amount so distributed to the member, whichever is less. The aggregate liability of any member of a dissolved corporation for claims against the dissolved corporation shall not exceed the amount distributed to the member in dissolution.

(d) Limitation of actions.--A member of a dissolved corporation, the assets of which were distributed under section 5975(c) or 5997(a) through (c), shall not be liable for any claim against the corporation on which an action is not commenced prior to the expiration of the period specified in subsection (a)(2).

(e) Conduct of actions.--An action or proceeding may be prosecuted against and defended by a dissolved corporation in its corporate name.

(f) Late-filed action or proceeding.--The following apply to an action or proceeding commenced against a dissolved corporation after the expiration of the period specified in subsection (a)(2):

(1) Any judgment against a dissolved corporation in the action or proceeding shall be void.

(2) The dissolved corporation may, but need not, appear and raise as a defense the expiration of the period specified in subsection (a)(2) and any other reasonably related matters in response to the action or proceeding.

(3) Any person who was a director, member of an other body, officer or member of the dissolved corporation when the dissolution became effective or any governing person of any successor entity acting pursuant to Subchapter H (relating to postdissolution provision for liabilities), and any successor-in-interest to any of those persons, may, but need not, act on behalf of the dissolved corporation in taking the actions described in paragraph (2) and shall not thereby be deemed to be deprived of the operation of subsections (c) and (d) or of section 5978(b) (relating to winding up of corporation after dissolution) or otherwise be responsible for any obligations of the dissolved corporation.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) and added subsec. (f).

2013 Amendment. Act 67 amended subsec. (a) and added subsec. (e).

1992 Amendment. Act 169 amended subsec. (b) and added subsecs. (c) and (d).

1990 Amendment. Act 198 reenacted and amended the entire section.

Cross References. Section 5979 is referred to in sections 5987, 5993, 5994, 5995 of this title.

§ 5980. Dissolution by domestication (Repealed).

2014 Repeal. Section 5980 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER G
INVOLUNTARY LIQUIDATION AND DISSOLUTION

Sec.

5981. Proceedings upon application of member or director.
5982. Proceedings upon application of creditor.
5983. Proceedings upon petition of superior religious organization.
5984. Appointment of receiver pendente lite and other interim powers.
5985. Liquidating receiver.
5986. Qualifications of receivers.
5987. Proofs of claims.
5988. Discontinuance of proceedings; reorganization.
5989. Articles of involuntary dissolution.

Subchapter Heading. Subchapter G was relettered from Subchapter F December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Subchapter G is referred to in sections 5767, 5976, 5979 of this title.

§ 5981. Proceedings upon application of member or director.

Upon application filed by a member or director of a nonprofit corporation, the court may entertain proceedings for the involuntary winding up and dissolution of the corporation when any of the following occur:

(1) The objects of the corporation have wholly failed, or are entirely abandoned, or their accomplishment is impracticable.

(2) The acts of the directors, or those in control of the corporation, are illegal, oppressive or fraudulent and it is beneficial to the interests of the members that the corporation be wound up and dissolved.

(3) The corporate assets are being misapplied or wasted and it is beneficial to the interests of the members that the corporation be wound up and dissolved.

(4) The directors or other body are deadlocked in the direction of the management of the business and affairs of the corporation and the members are unable to break the deadlock and irreparable injury to the corporation is being suffered or is threatened by reason thereof. The court shall not appoint a receiver or grant other similar relief under this paragraph if the members by agreement or otherwise have provided for appointment of a provisional director or member of an other body or other means for the resolution of a

deadlock, but the court shall enforce the remedy provided by the members, if appropriate.
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5981 is referred to in section 5767 of this title.

§ 5982. Proceedings upon application of creditor.

Upon application filed by a creditor of a nonprofit corporation whose claim has either been reduced to judgment and an execution thereon returned unsatisfied or whose claim is admitted by the corporation, the court may entertain proceedings for the involuntary winding up and dissolution of the corporation when, in either case, it is made to appear that the corporation is unable to discharge its liabilities in the regular course of business, as they mature, or is unable to afford reasonable security to those who may deal with it.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5983. Proceedings upon petition of superior religious organization.

The court may, in the case of any nonprofit corporation organized for the support of public worship, upon application of the diocesan convention, presbytery, synod, conference, council, or other supervising or controlling organization of which the corporation is a member or with which it is in allegiance and to which it is subordinate, entertain proceedings for the involuntary winding up and dissolution of the corporation when it is made to appear that by reason of shifting population, withdrawal of membership or any other cause whatsoever, the corporation has ceased to support public worship within the intent and meaning of its articles and the dissolution of the corporation may be effected without prejudice to the public welfare and the interests of the members of the corporation.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5984. Appointment of receiver pendente lite and other interim powers.

Upon the filing of an application under this subchapter, the court may issue injunctions, appoint a receiver pendente lite with such powers and duties as the court from time to time may direct and proceed as may be requisite to preserve the corporate assets wherever situated and carry on the business of the corporation until a full hearing can be had.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5985. Liquidating receiver.

Upon a hearing, after such notice as the court may direct to be given to all parties to the proceeding, and to any other parties in interest designated by the court, the court may appoint a liquidating receiver with authority to collect the assets of the corporation. The liquidating receiver shall have authority, subject to the order of the court, to dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation, or the proceeds resulting from a disposition thereof, shall be applied to the expenses of the liquidation and to the payment of the liabilities of the corporation, and any remaining assets or proceeds shall be distributed by the court in the manner provided by section 5975(c) (relating to winding up and distribution). The court may direct that any or all of the provisions of Subchapter H (relating to postdissolution provision for liabilities) shall apply. The order appointing the liquidating receiver shall state his powers and duties. The

powers and duties may be increased or diminished at any time during the proceedings. A receiver of a corporation appointed under this section shall have authority to sue and defend in all courts in his own name as receiver of the corporation. The court appointing the receiver shall have exclusive jurisdiction of the corporation and its property wherever situated.
(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

§ 5986. Qualifications of receivers.

A receiver shall in all cases be a natural person of full age or a corporation authorized to act as receiver, which corporation, if so authorized, may be a domestic corporation for profit or not-for-profit or a foreign corporation for profit or not-for-profit authorized to do business in this Commonwealth, and shall give such bond, if any, as the court may direct, with such sureties, if any, as the court may require.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5987. Proofs of claims.

(a) General rule.--In a proceeding under this subchapter, the court may require all creditors of the nonprofit corporation to file with the office of the clerk of the court of common pleas, or with the receiver, in such form as the court may prescribe, verified proofs of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall not be less than 120 days from the date of the order, as the last day for filing of claims and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to or after the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants who do not file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

(b) Cross reference.--See section 5979 (relating to survival of remedies and rights after dissolution).
(July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 5987 is referred to in section 5979 of this title.

§ 5988. Discontinuance of proceedings; reorganization.

The proceedings under this subchapter may be discontinued at any time if it is established that cause for liquidation no longer exists, in which event the court shall dismiss the proceedings and direct the receiver to redeliver to the nonprofit corporation all its remaining property and assets.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

§ 5989. Articles of involuntary dissolution.

(a) General rule.--In a proceeding under this subchapter, the court shall enter an order dissolving the nonprofit corporation when the order, if any, obtained pursuant to section 5547(b) (relating to nondiversion of certain property) has been entered and when the costs and expenses of the proceeding, and all liabilities of the corporation have been discharged, and all of its remaining assets have been distributed to the persons entitled thereto, or, in case its assets are not sufficient to discharge such costs, expenses and liabilities, when all the assets have been applied, as far as they will go, to the payment of such costs, expenses and liabilities. See section 139(b) (relating to tax clearance in judicial proceedings).

(b) Filing.--After entry of an order of dissolution, the office of the clerk of the court of common pleas shall prepare and execute articles of dissolution substantially in the form

provided by section 5977 (relating to articles of dissolution), attach thereto a certified copy of the order and transmit the articles and attached order to the Department of State. The department shall not charge a fee in connection with the filing of articles of dissolution under this section. See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(c) Effect.--Upon the filing of the articles of dissolution in the department, the existence of the corporation shall cease. (Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsecs. (a) and (b).

1990 Amendment. Act 198 reenacted and amended the entire section.

SUBCHAPTER H
POSTDISSOLUTION PROVISION FOR LIABILITIES

Sec.
5991. Definitions.
5991.1. Authority of board of directors.
5992. Notice to claimants.
5993. Acceptance or rejection of matured claims.
5994. Disposition of unmatured claims.
5995. Court proceedings.
5996. No revival or waiver.
5997. Payments and distributions.
5998. Liability of members (Repealed).

Enactment. The heading of Subchapter H was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989, and the remaining provisions were added December 19, 1990, P.L.834, No.198, effective immediately.

Subchapter Heading. The heading of Subchapter H was amended December 18, 1992, P.L.1333, No.169, effective in 60 days.

Cross References. Subchapter H is referred to in sections 5972, 5974, 5977, 5978, 5979, 5985 of this title.

§ 5991. Definitions.

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

"Contractual claims." Excludes contingent contractual claims based on any implied warranty as to any product manufactured, sold, distributed or handled by the dissolved corporation.

"Priority." Does not refer either to the order of payments set forth in section 5997(a)(1) through (4) (relating to payments and distributions) or to the relative times at which any claims mature or are reduced to judgment.

"Successor entity." Includes any trust, receivership or other legal entity governed by the laws of this Commonwealth or any other jurisdiction to which the remaining assets of a dissolved nonprofit corporation are transferred subject to its liabilities and which exists solely for the purposes of prosecuting and defending actions, by or against the corporation, enabling the corporation to settle and close its business, to dispose of and convey the property of the corporation, to discharge the liabilities of the corporation, and to distribute to the members of the corporation any

remaining assets, but not for the purpose of continuing the business for which the corporation was incorporated.
(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

§ 5991.1. Authority of board of directors.

(a) General rule.--The board of directors or other body of a nonprofit corporation that has elected to proceed under this subchapter shall have full power to wind up and settle the affairs of the corporation in accordance with this subchapter both prior to and after the filing of articles of dissolution in accordance with section 5977 (relating to articles of dissolution).

(b) Winding up.--The corporation shall, as speedily as possible, proceed to comply with the requirements of this subchapter while simultaneously collecting all sums due it and converting into cash all corporate assets, the conversion of which into cash is required to make adequate provision for its liabilities.
(June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 added section 5991.1.

§ 5992. Notice to claimants.

(a) General rule.--After a nonprofit corporation that has elected to proceed under this subchapter has been dissolved in accordance with section 5977 (relating to articles of dissolution), the corporation or any successor entity shall give notice of the dissolution requesting all persons having a claim against the corporation to present their claims against the corporation in accordance with the notice. The notice shall state:

(1) That all claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim.

(2) The mailing address to which a claim must be sent.

(3) The deadline, which shall be not less than 60 days after the date the notice is given, by which the corporation or successor entity must receive the claim.

(4) That the claim will be barred if not received by the deadline.

(5) That the corporation or a successor entity may make distribution to other claimants and the members of the corporation or persons interested as having been such without further notice to the claimant.

(b) Unmatured contractual claims.--The corporation or successor entity electing to follow the procedures specified in this subchapter shall also give notice of the dissolution of the corporation to persons with contractual claims contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured and shall request that such persons present their claims in accordance with the terms of the notice. The notice shall be in substantially the form specified in subsection (a).

(c) Publication and service of notices.--

(1) The notices required by this section shall be officially published at least once a week for two consecutive weeks.

(2) Concurrently with or preceding the publication, the corporation or successor entity shall send a copy of the notice by certified or registered mail, return receipt requested, to each:

(i) known creditor or claimant;

(ii) holder of a claim described in subsection (b); and

(iii) municipal corporation in which a place of business of the corporation in this Commonwealth was located at the time of filing the articles of dissolution in the department.

(d) Claims barred.--A claim against a dissolved corporation is barred if a claimant who was given written notice under subsection (c)(2) does not deliver the claim to the dissolved corporation or successor entity by the deadline.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (c)(2).

Cross References. Section 5992 is referred to in sections 5979, 5993, 5994, 5995 of this title.

§ 5993. Acceptance or rejection of matured claims.

(a) Notice.--A dissolved nonprofit corporation or successor entity may reject, in whole or in part, any matured claim made by a claimant pursuant to section 5992 (relating to notice to claimants) by sending notice of the rejection by certified or registered mail, return receipt requested, to the claimant within 90 days after receipt of the claim and, in all events, at least 30 days before the expiration of the two-year period specified in section 5979(a)(2) (relating to survival of remedies and rights after dissolution). A notice sent pursuant to this section shall include or be accompanied by a copy of this subchapter and of section 5979.

(b) Claims barred.--A claim against a dissolved corporation is barred if a claimant whose claim is rejected by the dissolved corporation or successor entity does not commence an action in the court to enforce the claim within 90 days after mailing of the rejection notice.

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

Cross References. Section 5993 is referred to in sections 5979, 5997 of this title.

§ 5994. Disposition of unmatured claims.

(a) Contractual claims.--The dissolved nonprofit corporation or successor entity shall offer any claimant whose contractual claim made pursuant to section 5992 (relating to notice to claimants) is contingent, conditional or unmatured, such security as the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall send the offer to the claimant by certified or registered mail, return receipt requested, within 90 days after receipt of the claim and, in all events, at least 30 days before the expiration of the two-year period specified in section 5979(a)(2) (relating to survival of remedies and rights after dissolution). A notice sent pursuant to this section shall include or be accompanied by a copy of this subchapter and of section 5979. If the claimant offered the security does not deliver to the corporation or successor entity a written notice rejecting the offer within 60 days after mailing of the offer for security, the claimant shall be deemed to have accepted the security as the sole source from which to satisfy his claim against the corporation.

(b) Other claims.--Except as provided in section 5997(d) (relating to liability of directors), the holder of any other claim may bring an action against the dissolved corporation or

its directors, members of an other body, officers or members within the time limited by section 5979(a).
(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

Cross References. Section 5994 is referred to in sections 5979, 5995, 5997 of this title.

§ 5995. Court proceedings.

(a) General rule.--A dissolved nonprofit corporation or successor entity that has given notice in accordance with section 5992 (relating to notice to claimants) shall file an application with the court for a determination of the amount and form of security:

(1) that will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to section 5994 (relating to disposition of unmatured claims); and

(2) that will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen but that, based on the facts known to the corporation or successor entity, are likely to arise or to become known to the corporation or successor entity prior to the expiration of the two-year period specified in section 5979(a)(2) (relating to survival of remedies and rights after dissolution).

(b) Guardian ad litem.--The court may appoint a guardian ad litem in respect of any proceeding brought under this subchapter. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the applicant in the proceeding unless otherwise ordered by the court.
(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

Cross References. Section 5995 is referred to in section 5997 of this title.

§ 5996. No revival or waiver.

The giving of any notice or making of any offer under this subchapter shall not revive any claim then barred or constitute acknowledgment by the dissolved nonprofit corporation or successor entity that any person to whom the notice is sent is a proper claimant and shall not operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person to whom the notice is sent.

§ 5997. Payments and distributions.

(a) General rule.--A dissolved nonprofit corporation or successor entity that has elected to proceed under this subchapter shall:

(1) Pay the claims made and not rejected under section 5993 (relating to acceptance or rejection of matured claims).

(2) Post the security offered and not rejected under section 5994 (relating to disposition of unmatured claims).

(3) Post security ordered by the court in any proceeding under section 5995 (relating to court proceedings).

(4) Pay or make provision for all other claims that are mature, known and uncontested or that have been finally determined to be owing by the corporation or the successor entity.

(b) Disposition.--The claims and liabilities shall be paid in full and any provision for payment shall be made in full if there are sufficient assets. If there are insufficient assets, the claims and liabilities shall be paid or provided for in order of their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any

remaining assets shall be distributed as provided in the last sentence of section 5975(c) (relating to winding up and distribution), except that the distribution shall not be made less than 60 days after the last notice of rejection, if any, was given under section 5993.

(c) Evaluation of other liabilities.--In the absence of actual fraud, the judgment of the board of directors or other body of the dissolved corporation or the governing persons of the successor entity as to the provision made for the payment of all claims under subsection (a)(4) shall be conclusive.

(d) Liability of directors.--(Deleted by amendment).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 deleted subsec. (d).

1992 Amendment. Act 169 amended subsecs. (a) and (c), deleted former subsec. (d) and relettered subsec. (e) to subsec. (d).

Cross References. Section 5997 is referred to in sections 5979, 5991, 5994 of this title.

§ 5998. Liability of members (Repealed).

1992 Repeal. Section 5998 was repealed December 18, 1992, P.L.1333, No.169, effective in 60 days.

ARTICLE C
FOREIGN NONPROFIT CORPORATIONS

Chapter

61. Foreign Nonprofit Corporations

Article Heading. The heading of Article C was amended December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

CHAPTER 61
FOREIGN NONPROFIT CORPORATIONS

Subchapter

A. Preliminary Provisions
B. Qualification
C. Powers, Duties and Liabilities
D. Domestication (Repealed)

Enactment. Chapter 61 was added as Chapter 81 November 15, 1972, P.L.1063, No.271, effective in 90 days. Chapter 81 was renumbered to Chapter 61 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Chapter Heading. The heading of Chapter 61 was amended December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 61 is referred to in section 5103 of this title.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

6101. Application of article.
6102. Foreign domiciliary corporations.

6103. Acquisition of foreign domiciliary corporation status.
6104. Termination of foreign domiciliary corporation status.

Subchapter Heading. The heading of Subchapter A was amended December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 6101. Application of article.

(a) General rule.--Except as otherwise provided in this section or in subsequent provisions of this article, this article shall apply to and the words "corporation" or "foreign nonprofit corporation" in this article shall include every foreign corporation not-for-profit.

(b) Government entities.--This article shall also apply to and the words "corporation," "foreign corporation" and "foreign nonprofit corporation" shall include a government or other sovereign (other than the Commonwealth) and any governmental corporation, agency or other entity thereof.

(c) Admitted foreign fraternal benefit society exclusion.--This article shall not apply to any foreign corporation not-for-profit qualified to do business in this Commonwealth under section 2455 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.
(Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 amended subsec. (c).

1990 Amendment. Act 198 reenacted and amended the entire section.

§ 6102. Foreign domiciliary corporations.

A foreign nonprofit corporation is a foreign domiciliary corporation if it is a corporation:

(1) which derived more than one-half of its revenues for the preceding three fiscal years, or such portion thereof as the corporation was in existence, from sources in this Commonwealth and was at any time during that period doing business in this Commonwealth on the basis of the most minimal contacts with this Commonwealth permitted under the Constitution of the United States; or

(2) at least a majority of the bona fide members of which are residents of this Commonwealth.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 6102.

Cross References. Section 6102 is referred to in sections 5103, 6103, 6104 of this title.

§ 6103. Acquisition of foreign domiciliary corporation status.

(a) General rule.--A foreign nonprofit corporation shall become a foreign domiciliary corporation under section 6102 (relating to foreign domiciliary corporations) on the first day of the month following the month in which the corporation first has knowledge that either test has been met or upon entry of an order by any court of competent jurisdiction declaring that either test has been met.

(b) Newly incorporated corporations.--Where the test or tests under section 6102 are met at the time of the admission of the first members of the corporation and continuously thereafter, foreign domiciliary corporation status when established shall be retroactive to the incorporation of the corporation.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 6103.

§ 6104. Termination of foreign domiciliary corporation status.

A foreign domiciliary corporation shall cease to have that status on the first day of the month following the month in which the corporation first has knowledge that it no longer meets either test under section 6102 (relating to foreign domiciliary corporations) or upon entry of an order of any court of competent jurisdiction declaring that the corporation no longer meets either test.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 6104.

SUBCHAPTER B
QUALIFICATION

Sec.

6121. Admission of foreign corporations (Repealed).
6122. Excluded activities (Repealed).
6123. Requirements for foreign corporation names (Repealed).
6124. Advertisement of registration to do business.
6125. Issuance of certificate of authority (Repealed).
6126. Amended certificate of authority (Repealed).
6127. Merger, consolidation or division of qualified foreign corporations (Repealed).
6128. Revocation of certificate of authority (Repealed).
6129. Advertisement of termination of registration to do business.
6130. Change of address after withdrawal (Repealed).
6131. Registration of name (Repealed).

Subchapter Heading. The heading of Subchapter B was carried without amendment December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Subchapter B is referred to in section 412 of this title.

§ 6121. Admission of foreign corporations (Repealed).

2014 Repeal. Section 6121 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6122. Excluded activities (Repealed).

2014 Repeal. Section 6122 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6123. Requirements for foreign corporation names (Repealed).

2014 Repeal. Section 6123 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6124. Advertisement of registration to do business.

(a) General rule.--(Deleted by amendment).

(b) Advertisement.--A foreign nonprofit corporation shall officially publish notice of its intention to register to do business or its registration to do business in this Commonwealth under Chapter 4 (relating to foreign associations). The notice may appear prior to or after the day on which a registration statement is delivered to the department for filing and shall set forth:

(1) A statement that the corporation will register or has registered to do business in this Commonwealth under Chapter 4.

(2) The name of the corporation and its jurisdiction of formation.

(3) The address, including street and number, if any, of its principal office under the laws of its jurisdiction of formation.

(4) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its proposed registered office in this Commonwealth.

(c) (Reserved).

(d) (Reserved).

(Apr. 28, 1978, P.L.202, No.53, eff. 60 days; Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

Cross References. Section 6124 is referred to in section 412 of this title.

§ 6125. Issuance of certificate of authority (Repealed).

2014 Repeal. Section 6125 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6126. Amended certificate of authority (Repealed).

2014 Repeal. Section 6126 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6127. Merger, consolidation or division of qualified foreign corporations (Repealed).

2014 Repeal. Section 6127 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6128. Revocation of certificate of authority (Repealed).

2014 Repeal. Section 6128 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6129. Advertisement of termination of registration to do business.

(a) General rule.--(Deleted by amendment).

(b) Advertisement.--A registered foreign nonprofit corporation shall, before filing a statement of withdrawal under section 415 (relating to voluntary withdrawal of registration), officially publish and mail a notice of its intention to withdraw from doing business in this Commonwealth in a manner similar to that required by section 5975(b) (relating to notice to creditors and taxing authorities). The notice shall set forth:

(1) The name of the corporation and its jurisdiction of formation.

(2) The address, including street and number, if any, of its principal office under the laws of its jurisdiction of formation.

(3) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its last registered office in this Commonwealth.

(c) (Reserved).

(d) (Reserved).

(Apr. 28, 1978, P.L.202, No.53, eff. 60 days; Oct. 5, 1980, P.L.693, No.142, eff. 60 days; Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

§ 6130. Change of address after withdrawal (Repealed).

2014 Repeal. Section 6130 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6131. Registration of name (Repealed).

2014 Repeal. Section 6131 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER C
POWERS, DUTIES AND LIABILITIES

Sec.

6141. Penalty for doing business without certificate of authority (Repealed).
6142. General powers and duties of qualified foreign corporations (Repealed).
6143. General powers and duties of nonqualified foreign corporations (Repealed).
6144. Registered office of qualified foreign corporations (Repealed).
6145. Applicability of certain safeguards to foreign domiciliary corporations.
6146. Provisions applicable to all foreign corporations.

Subchapter Heading. The heading of Subchapter C was carried without amendment December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 6141. Penalty for doing business without certificate of authority (Repealed).

2014 Repeal. Section 6141 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6142. General powers and duties of qualified foreign corporations (Repealed).

2014 Repeal. Section 6142 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6143. General powers and duties of nonqualified foreign corporations (Repealed).

2014 Repeal. Section 6143 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6144. Registered office of qualified foreign corporations (Repealed).

2014 Repeal. Section 6144 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 6145. Applicability of certain safeguards to foreign domiciliary corporations.

(a) Application.--(Deleted by amendment).

(b) Internal affairs doctrine not applicable.--The General Assembly hereby finds and determines that foreign domiciliary corporations substantially affect this Commonwealth. The courts of this Commonwealth shall not dismiss or stay any action or proceeding brought by a member or representative of a foreign domiciliary corporation, as such, against the corporation or any one or more of the members or representatives thereof, as such, on the ground that the corporation is a foreign corporation not-for-profit or that the cause of action relates to the internal affairs thereof, but every such action shall proceed with like effect as if the corporation were a domestic

corporation. Except as provided in subsection (c), the court having jurisdiction of the action or proceeding shall apply the law of the jurisdiction under which the foreign domiciliary corporation was incorporated.

(c) Minimum safeguards.--The following provisions of this subpart shall be applicable to foreign domiciliary corporations, except that nothing in this subsection shall require the filing of any document in the department as a prerequisite to the validity of any corporate action or the doing of any corporate action by the foreign domiciliary corporation which is impossible under the laws of its domiciliary jurisdiction:

Section 5504(b) (relating to adoption and contents of bylaws).

Section 5508 (relating to corporate records; inspection by members).

Section 5554 (relating to annual report of directors or other body).

Section 5743 (relating to mandatory indemnification).

Section 5755 (relating to time of holding meetings of members).

Section 5758(e) (relating to voting rights of members).

Section 5759(c) (relating to voting and other action by proxy).

Section 5765 (relating to judges of election).

Section 5767 (relating to appointment of custodian of corporation on deadlock or other cause).

Section 5769(b) (relating to termination and transfer of membership).

Chapter 59 (relating to fundamental changes).

For the purposes of this subsection, corporate action shall not be deemed to be impossible under the laws of the domiciliary jurisdiction of a foreign corporation merely because prohibited or restricted by the terms of the articles, certificate of incorporation, bylaws or other organic law of the corporation, but the court may require the corporation to amend such organic law so as to be consistent with the minimum safeguards prescribed by this subsection.

(d) Section exclusive.--The provisions of this subpart, other than the provisions of this section, shall not be construed to regulate the incorporation or internal affairs of a foreign corporation not-for-profit.

(Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Dec. 19, 1990, P.L.834, No.198, eff. imd.; July 9, 2013, P.L.476, No.67, eff. 60 days)

Cross References. Section 6145 is referred to in sections 5504, 5554, 5743, 5755, 5758, 5759, 5765, 5767, 5769, 5791, 5792, 5793 of this title.

§ 6146. Provisions applicable to all foreign corporations.

The following provisions of this subpart shall, except as otherwise provided in this section, be applicable to every foreign corporation not-for-profit, whether or not required to register under Chapter 4 (relating to foreign associations):

Section 5503 (relating to defense of ultra vires) as to contracts and conveyances governed by the laws of this Commonwealth and conveyances affecting real property situated in this Commonwealth.

Section 5506 (relating to form of execution of instruments) as to instruments or other documents governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 5510 (relating to certain specifically authorized debt terms) as to obligations (as defined in the section) governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 5782 (relating to eligible member plaintiffs and security for costs) as to any derivative action brought in a court of this Commonwealth.

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 6146 is referred to in sections 5503, 5506, 5510, 5782 of this title.

SUBCHAPTER D
DOMESTICATION
(Repealed)

2014 Repeal. Subchapter D (§§ 6161 - 6162) was added December 21, 1988, P.L.1444, No.177, and repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBPART D
COOPERATIVE CORPORATIONS

Article

A. Cooperative Corporations Generally
B. Domestic Cooperative Corporation Ancillaries

Enactment. Subpart D was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

ARTICLE A
COOPERATIVE CORPORATIONS GENERALLY

Chapter

71. Cooperative Corporations Generally

CHAPTER 71
COOPERATIVE CORPORATIONS GENERALLY

Subchapter

A. General Provisions
B. Membership and Corporate Finance
C. Cooperative Contracts

Enactment. Chapter 71 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Prior Provisions. Former Chapter 71, which related to general provisions for corporations not-for-profit, was added November 15, 1972, P.L.1063, No.271, and renumbered to Chapter 51 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 71 is referred to in section 7504 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.
7101. Short title of subpart.
7102. Cooperative corporations generally.
7103. Use of term "cooperative" in corporate name.
7104. Election of an existing business corporation to become a cooperative corporation.
7105. Termination of status as a cooperative corporation for profit.
7106. Election of an existing nonprofit corporation to become a cooperative corporation.
7107. Termination of nonprofit cooperative corporation status.

Cross References. Subchapter A is referred to in section 7302 of this title.

§ 7101. Short title of subpart.

This subpart shall be known and may be cited as the Cooperative Corporation Law of 1988.

§ 7102. Cooperative corporations generally.

(a) General rule.--Any corporation incorporated under this part may be organized on the cooperative principle by setting forth in its articles a common bond of membership among its shareholders or members by reason of occupation, residence or otherwise and that it is a cooperative corporation.

(b) Applicable law.--A corporation incorporated under this subpart shall be governed by the applicable provisions of this subpart and, to the extent not inconsistent with this subpart:

(1) Subpart B (relating to business corporations) if its articles state that it is incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise, to its shareholders or members or if its articles are silent on the subject.

(2) Subpart C (relating to nonprofit corporations) if:

(i) its articles state that it is incorporated for a purpose or purposes not involving pecuniary profit; or

(ii) it is subject to Chapter 73 (relating to electric cooperative corporations).

(c) Credit unions.--This subpart shall not apply to a credit union, whether proposed or existing, except as otherwise provided by Title 17 (relating to credit unions).

(d) Workers' cooperative corporations.--Except as otherwise expressly provided in Chapter 77 (relating to workers' cooperative corporations), only Chapters 1 (relating to general provisions), 5 (relating to corporations) and 77 shall apply to a corporation subject to Chapter 77. A cooperative corporation may be incorporated under this chapter notwithstanding the fact that its corporate purposes consist of or include a purpose or purposes within the scope of Chapter 77.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

Cross References. Section 7102 is referred to in sections 7104, 7105, 7106, 7107 of this title.

§ 7103. Use of term "cooperative" in corporate name.

(a) General rule.--Except as otherwise provided by statute:

(1) The corporate name of a cooperative corporation shall contain the term "cooperative" or an abbreviation thereof.

(2) The name of an association shall not contain the term "cooperative" or an abbreviation thereof unless the association is a cooperative corporation.

(b) Cross reference.--See section 7307 (relating to prohibition on use of words "electric cooperative").
(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (b).
Cross References. Section 7103 is referred to in sections 7105, 7107 of this title.

§ 7104. Election of an existing business corporation to become a cooperative corporation.

(a) General rule.--Any business corporation not organized on the cooperative principle may become a cooperative corporation for profit under this chapter by:

(1) Adopting a plan of conversion:

(i) providing for the redemption by the corporation of all of its shares, whether or not redeemable by the terms of its articles, if the corporation is to be organized as a nonstock corporation; and

(ii) adjusting its affairs so as to comply with the requirements of this chapter applicable to cooperative corporations.

(2) Filing articles of amendment which shall contain, in addition to the requirements of section 1915 (relating to articles of amendment):

(i) A statement that the corporation elects to become a cooperative corporation.

(ii) The provisions required by section 7102(a) (relating to cooperative corporations generally) to be set forth in the articles of a cooperative corporation.

(iii) If the corporation is to be a nonstock corporation, a statement that the corporation is organized on a nonstock basis.

(iv) Such other changes, if any, that may be desired in the articles.

(b) Procedure.--The plan of conversion of the corporation into a cooperative corporation (which plan shall include the amendment of the articles required by subsection (a)) shall be adopted in accordance with the requirements of Subchapter B of Chapter 19 (relating to amendment of articles) except that:

(1) The holders of shares of every class shall be entitled to vote on the plan regardless of any limitations stated in the articles or bylaws on the voting rights of any class.

(2) The plan must be approved by two-thirds of the votes cast by all shares of each class.

(3) If any shareholder of a business corporation that adopts a plan of conversion into a cooperative corporation objects to the plan of conversion and complies with the provisions of Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided. There shall be included in or enclosed with the notice of the meeting of shareholders called to act upon the plan of conversion a copy or a summary of the plan and a copy of Subchapter D of Chapter 15 and of this subsection.

(4) The plan shall not impose any additional liability upon any existing patron of the business of the corporation, whether or not that person becomes a member of the corporation pursuant to the plan, unless the patron expressly assumes such liability.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 added section 7104.

Cross References. Section 7104 is referred to in sections 351, 1571 of this title.

§ 7105. Termination of status as a cooperative corporation for profit.

(a) General rule.--A cooperative corporation for profit may terminate its status as such and cease to be subject to this chapter by:

(1) Adopting a plan of conversion:

(i) providing for the issue of appropriate shares to its members if it is organized as a nonstock corporation and is not to continue as such; and

(ii) adjusting its affairs so as to comply with the requirements of this subpart applicable to business corporations that are not cooperative corporations.

(2) Amending its articles to delete therefrom the additional provisions required or permitted by:

(i) sections 2102(a)(1) (relating to formation of nonstock corporations) and 2103 (relating to contents of articles and other documents of nonstock corporations) to be stated in the articles of a nonstock corporation if it is organized as a nonstock corporation and is not to continue as such;

(ii) section 7102(a) (relating to cooperative corporations generally) to be stated in the articles of a cooperative corporation; and

(iii) section 7103 (relating to use of term "cooperative" in corporate name).

(b) Procedure.--The plan of conversion (which plan shall include the amendment of the articles required by this section) shall be adopted in accordance with Subchapter B of Chapter 19 (relating to amendment of articles) except that:

(1) The members of every class shall be entitled to vote on the plan regardless of any limitations stated in the articles or bylaws, or in a document evidencing membership, on the voting rights of any class.

(2) The plan must be approved by a majority of the votes cast by the members of each class.

(c) Increased vote requirements.--The bylaws of a cooperative corporation for profit adopted by the shareholders or members may provide that, on any amendment to terminate its status as a cooperative corporation, a vote greater than that specified in subsection (b) shall be required. If the bylaws contain such a provision, that provision shall not be amended, repealed or modified by any vote less than that required to terminate the status of the corporation as a cooperative corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 added section 7105.

Cross References. Section 7105 is referred to in section 351 of this title.

§ 7106. Election of an existing nonprofit corporation to become a cooperative corporation.

(a) General rule.--Any nonprofit corporation not organized on the cooperative principle may become a nonprofit cooperative corporation under this chapter by:

(1) Adopting a plan of conversion adjusting its affairs so as to comply with the requirements of this chapter applicable to cooperative corporations.

(2) Filing articles of amendment which shall contain, in addition to the requirements of section 5915 (relating to articles of amendment):

(i) A statement that the corporation elects to become a cooperative corporation.

(ii) The provisions required by section 7102(a) (relating to cooperative corporations generally) to be set forth in the articles of a cooperative corporation.

(iii) Such other changes, if any, that may be desired in the articles.

(b) Procedure.--The plan of conversion of the corporation into a cooperative corporation (which plan shall include the amendment of the articles required by subsection (a)) shall be adopted in accordance with the requirements of Subchapter B of Chapter 59 (relating to amendment of articles) except that:

(1) The members of every class shall be entitled to vote on the plan regardless of any limitations stated in the articles or bylaws, or in a document evidencing membership, on the voting rights of any class.

(2) The plan must be approved by two-thirds of the votes cast by the members of each class.

(3) The plan shall not impose any additional liability upon any existing patron of the business of the corporation, whether or not that person becomes a member of the corporation pursuant to the plan, unless the patron expressly assumes such liability.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 added section 7106.

Cross References. Section 7106 is referred to in section 351 of this title.

§ 7107. Termination of nonprofit cooperative corporation status.

(a) General rule.--A nonprofit cooperative corporation may terminate its status as such and cease to be subject to this chapter by:

(1) Adopting a plan of conversion adjusting its affairs so as to comply with the requirements of this subpart applicable to nonprofit corporations that are not cooperative corporations.

(2) Amending its articles to delete therefrom the additional provisions required or permitted by:

(i) section 7102(a) (relating to cooperative corporations generally) to be stated in the articles of a cooperative corporation; and

(ii) section 7103 (relating to use of term "cooperative" in corporate name).

(b) Procedure.--The plan of conversion (which plan shall include the amendment of the articles required by this section) shall be adopted in accordance with Subchapter B of Chapter 59 (relating to amendment of articles) except that:

(1) The members of every class shall be entitled to vote on the plan regardless of any limitations stated in the articles or bylaws, or in a document evidencing membership, on the voting rights of any class.

(2) The plan must be approved by a majority of the votes cast by the members of each class.

(c) Increased vote requirements.--The bylaws of a nonprofit cooperative corporation adopted by the members may provide that, on any amendment to terminate its status as a cooperative corporation, a vote greater than that specified in subsection (b) shall be required. If the bylaws contain such a provision, that provision shall not be amended, repealed or modified by any vote less than that required to terminate the status of the corporation as a cooperative corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 added section 7107.

Cross References. Section 7107 is referred to in section 351 of this title.

SUBCHAPTER B
MEMBERSHIP AND CORPORATE FINANCE

Sec.
7111. Voting rights.
7112. Distributions.

§ 7111. Voting rights.

Except as otherwise provided by statute, each member of a cooperative corporation shall have one vote, unless the corporation is organized on the basis of interests in real property or market shares or similar divisions of useful property or cooperative activity, in which case the articles or a bylaw adopted by the members may provide for voting on the basis of apartment units or market shares or other similar units of useful property or cooperative activity.

§ 7112. Distributions.

Notwithstanding section 5551 (relating to dividends prohibited; compensation and certain payments authorized), a cooperative corporation may make patronage rebates or other distributions to its members or patrons in conformity with the purposes for which it is incorporated. A patronage rebate or dividend that is, or is equivalent to, a reduction in the charge made by a cooperative corporation to a member for goods or services shall not constitute a dividend or distribution within the meaning of this part or any other provision of law.

SUBCHAPTER C
COOPERATIVE CONTRACTS

Sec.
7121. Cooperative contracts generally.
7122. Notice of cooperative contracts.
7123. Filing procedures.
7124. Relief against breach or threatened breach of contract; penalty for interference.
7125. Action for civil penalty for inducing breach or spreading false reports.

Cross References. Subchapter C is referred to in section 7302 of this title.

§ 7121. Cooperative contracts generally.

(a) General rule.--A contract between a cooperative corporation and any member, whether contained in the bylaws or a separate writing, may require the member to:

(1) Sell, market or deliver to or through the corporation or any facilities furnished by it, all or any specified part of products produced or to be produced either by the member or under the control of the member.

(2) Authorize the corporation or any facilities furnished by it to act for the member in any manner with respect to all or any specified part of products produced or to be produced either by the member or under the control of the member.

(3) Buy or procure from or through the corporation or any facilities furnished by it, all or any specified part of goods or services to be bought or procured by the member.

(4) Authorize the corporation or any facilities furnished by it to act for the member in any manner in the procurement of goods or the procurement or performance of services.

(b) Damages for breach.--A contract authorized by subsection (a) may fix and require liquidated damages to be paid by the member to the cooperative corporation in the event of breach of the contract by the member. Liquidated damages may be a percentage of the value or a specific amount per unit of the products, goods or services involved in or the subject of the breach, or a specific sum.

(c) Collective action.--Two or more cooperative corporations may contract and act in association, corporate or otherwise, to perform collectively any of their powers, purposes or contracts.

(d) Definition.--A contract described in subsection (a) is referred to in this subchapter as a "cooperative contract," and, unless the context otherwise requires, the term means the original cooperative contract and any amendments.

Cross References. Section 7121 is referred to in section 7123 of this title.

§ 7122. Notice of cooperative contracts.

(a) General rule.--A cooperative corporation may file any cooperative contract in the manner provided in section 7123 (relating to filing procedures) for the purpose of providing notice of its existence and contents as provided in subsection (b). If the corporation has substantially uniform cooperative contracts with more than one member, it may, in lieu of filing the original contracts, file:

(1) A true copy of the uniform contract; and

(2) A list or lists of the names and addresses of members who have executed the contract and the effective date of the contract as to each such member.

(b) Effect of filing.--Filing pursuant to section 7123 shall operate as constructive notice to all persons of the existence and contents of the cooperative contract. Any right, title, interest or lien created as to the products covered by the contract subsequent to such filing while such filing is in effect is subject to the right, title or interest of the cooperative corporation under the contract. If the member creates any mortgage upon or other security interest in any such products subsequent to the filing of the contract and if the member and the mortgagee or secured party jointly notify the corporation in writing of the existence and amount of the mortgage or other security interest, all payments which after such notice become due from the corporation to that member by reason of the sale or other handling of those products by the corporation shall be paid by the corporation to the mortgagee or other secured interest until the amount of the mortgage or the sum due the secured party has been paid, and the balance thereafter shall be paid to the member.

§ 7123. Filing procedures.

(a) Place and method of filing.--The proper place to file a cooperative contract authorized by section 7121(a)(1) or (2) (relating to cooperative contracts generally) is in the Department of State. Subchapter B of Chapter 1 (relating to functions and powers of Department of State) shall not apply to a filing under this subchapter.

(b) Amendments.--A cooperative contract that has been filed under this section may be amended by filing a writing signed by both the cooperative corporation and the member. The filing of an amendment does not extend the period of effectiveness of a filing of a cooperative contract.

(c) Sufficiency of name of member.--Where a member so changes his name or in the case of an association its name, identity or corporate structure that a filing of a cooperative contract becomes seriously misleading, the filing is not effective more than four months after the change, unless a new filing is made before the expiration of that time.

(d) Effect of minor errors.--A filing substantially complying with the requirements of this subchapter is effective even though it contains minor errors that are not seriously misleading.

(e) What constitutes filing.--Presentation for filing of a cooperative contract and tender of the filing fee to or acceptance of the contract by the department constitutes filing under this subchapter.

(f) Duration of effectiveness of filing in general.--The filing of a cooperative contract shall be effective for a period of five years from the date of filing or the duration of the contract, whichever is less. The effectiveness of a cooperative contract filing lapses on the expiration of such period unless a continuation statement is filed prior to the lapse.

(g) Continuation statement.--A continuation statement may be filed by the cooperative corporation within six months prior to the expiration of the five-year period specified in subsection (f). Any such continuation statement must be signed by the corporation, identify the original cooperative contract filing by file number and state that the original contract is still effective. Upon timely filing of the continuation statement, the effectiveness of the original filing shall be continued for five years after the last date to which the filing was effective whereupon it shall lapse in the same manner as provided in subsection (f) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original filing.

(h) Duties of department.--The department shall mark each cooperative contract with a file number and with the date and hour of filing and shall hold the contract or a microfilm or other photographic copy thereof for public inspection. In addition, the department shall index the contract according to the name of the cooperative corporation and the name or names of the members who are parties thereto and shall note in the index the file number and the address of the corporation and the address or addresses of the members.

(i) Termination.--When a cooperative contract filed under this subchapter has been terminated in any manner, the cooperative corporation shall give, upon demand, a termination statement to the member party to the contract, who may file the statement with the department. A cooperative corporation may file at any time a termination statement listing the names of all persons whose contracts have been terminated in any manner other than by expiration of their term. Upon presentation to the department of a termination statement, it shall be noted in the index. If the termination statement has been filed in duplicate, the department shall return one copy of the termination statement to the member or corporation stamped to show the date and time of receipt thereof.

(j) Marking copy of filings.--If the person filing any cooperative contract, continuation statement or termination statement furnishes the department a copy thereof, the department upon request shall note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(k) Furnishing certificates and copies.--Upon request of any person, the department shall issue a certificate showing whether there is on file on the date and hour stated therein, any presently effective cooperative contract filing naming a particular member and, if there is, giving the date and hour of filing of each such contract, the file number thereof and the name and address of the cooperative corporation.

(l) Retention of microfilm or other copies in lieu of originals; admissibility of copies in evidence; duties of department.--In lieu of retaining the originals of any or all papers filed with it under this subchapter, the department may make microfilm, photographic, photostatic or other copies of them which accurately reproduce such originals and may thereafter dispose of the originals so copied, and any copy so made shall be admissible in evidence in any proceeding with the same effect as though it were an original.

(m) Illegible filings.--The duties of the department prescribed in this subchapter shall relate only to clearly legible papers filed with it or submitted to it for filing. The department shall promptly return to the person submitting the same any paper that is not clearly legible.

Cross References. Section 7123 is referred to in section 7122 of this title.

§ 7124. Relief against breach or threatened breach of contract; penalty for interference.

(a) Relief against member.--In the event of a breach or threatened breach of a cooperative contract, the cooperative corporation shall be entitled to an injunction to prevent the breach or any further breach thereof, and to a decree of specific performance thereof. Upon showing the breach or threatened breach and upon filing a sufficient bond, the corporation shall be entitled to a preliminary or special injunction.

(b) Relief against third parties.--Any person who, with knowledge that a cooperative contract exists, induces or attempts to induce any member to breach the contract, or who in any manner aids a breach of the contract, shall be liable to the cooperative corporation for damages caused by such interference. The corporation shall also be entitled to an injunction to prevent any interference or further interference with the contract.

Cross References. Section 7124 is referred to in section 7125 of this title.

§ 7125. Action for civil penalty for inducing breach or spreading false reports.

In addition to the remedies provided in section 7124(b) (relating to relief against third parties), any person who knowingly and maliciously induces or attempts to induce any member of a cooperative corporation to breach a cooperative contract or who knowingly and maliciously spreads any false report about the finances or management of a cooperative corporation shall be liable, in a civil action, to the corporation aggrieved, in the amount of $500 for each offense.

ARTICLE B
DOMESTIC COOPERATIVE CORPORATION
ANCILLARIES

Chapter
73. Electric Cooperative Corporations
74. Generation Choice for Customers of Electric Cooperatives (Expired)
75. Cooperative Agricultural Associations
77. Workers' Cooperative Corporations
79. Fundamental Changes (Transferred)

CHAPTER 73
ELECTRIC COOPERATIVE CORPORATIONS

Subchapter
A. Preliminary Provisions
B. Powers, Duties and Safeguards
C. Unincorporated Area Certified Territory

Enactment. Chapter 73 was added December 19, 1990, P.L.834, No.198, effective immediately.

Prior Provisions. Former Chapter 73, which related to the same subject matter, was added December 21, 1988, P.L.1444, No.177, and repealed December 19, 1990, P.L.834, No.198, effective immediately.

Cross References. Chapter 73 is referred to in sections 318, 7102 of this title; section 1402 of Title 8 (Boroughs and Incorporated Towns); section 202 of Title 26 (Eminent Domain); section 311 of Title 54 (Names); section 102 of Title 75 (Vehicles).

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.
7301. Short titles.
7302. Application of chapter.
7303. Definitions.
7304. Number and qualifications of incorporators.
7305. Purpose.
7306. Articles of incorporation.
7307. Prohibition on use of words "electric cooperative."
7308. Liberal construction.

Cross References. Subchapter A is referred to in section 24A02 of Title 8 (Boroughs and Incorporated Towns).

§ 7301. Short titles.

(a) Short title of chapter.--This chapter shall be known and may be cited as the Electric Cooperative Law of 1990.

(b) Short title of Subchapter C.--Subchapter C shall be known and may be cited as the Unincorporated Area Certified Territory Law of 1990.

§ 7302. Application of chapter.

(a) General rule.--This chapter shall apply to and, unless the context clearly indicates otherwise, the term "corporation" or "electric cooperative corporation" in this chapter shall mean a corporation incorporated under:

(1) the act of June 21, 1937 (P.L.1969, No.389), known as the Electric Cooperative Corporation Act; or

(2) this chapter.

(b) Provisions complete in themselves.--The provisions of this chapter, as supplemented by or pursuant to Subchapters A (relating to general provisions) and C (relating to cooperative contracts) of Chapter 71, are complete in themselves and shall be controlling. The provisions of any other law of this Commonwealth, except as provided in Part V of Title 1 (relating to statutory construction) and in this chapter, shall not apply to a corporation subject to this chapter.

Cross References. Section 7302 is referred to in section 7308 of this title; section 8201 of Title 68 (Real and Personal Property); section 9004 of Title 75 (Vehicles).

§ 7303. Definitions.

The following words and phrases when used in this subchapter and Subchapter B (relating to powers, duties and safeguards) shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Acquire." Construct or acquire by purchase, lease, devise, gift or other mode of acquisition.

"Board." A board of directors of a corporation.

"Federal agency." Includes the United States of America and any department, administration, commission, board, bureau, office, establishment, agency, authority or instrumentality of the United States of America, heretofore or hereafter created.

"Member." The incorporators of a corporation and each person thereafter lawfully admitted to membership therein.

"Obligations." Includes bonds, notes, debentures, interim certificates or receipts and all other evidences of indebtedness issued by a corporation, whether secured or unsecured.

"Person." Includes any Federal agency, State or political subdivision thereof or any body politic.

"Rural area." Any area, not included within the boundaries of any incorporated or unincorporated city, town, village or borough, having a population in excess of 2,500 inhabitants, including both the farm and nonfarm population thereof.

§ 7304. Number and qualifications of incorporators.

Three or more natural persons of full age who are residents of this Commonwealth may incorporate an electric cooperative corporation.

§ 7305. Purpose.

Nonprofit cooperative corporations may be organized under this chapter for the purpose of engaging in rural electrification by any one or more of the following methods:

(1) Furnishing of electric energy to persons in rural areas who are not receiving central station service.

(2) Assisting in the wiring of the premises of persons in rural areas or the acquisition, supply or installation of electrical or plumbing equipment therein.

(3) Furnishing of electric energy, wiring facilities, electrical or plumbing equipment or services to any other corporation or to the members thereof.

§ 7306. Articles of incorporation.

(a) General rule.--The articles of incorporation shall state:

(1) The name of the corporation, which shall include the words "Electric Cooperative" and the word "Corporation," "Incorporated," "Inc." or "Company" and shall not be confusingly similar to the name of any other corporation.

(2) The purpose for which the corporation is formed.

(3) The names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of members or until their successors are elected and qualify.

(4) The number of directors, not less than three, to be elected at the annual meetings of members.

(5) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(6) The period of duration of the corporation, which may be perpetual.

(7) The terms and conditions upon which persons will be admitted to membership and retain membership in the corporation, but, if expressly so stated, the determination of these matters may be reserved to the directors by the bylaws.

(8) Any provisions, not inconsistent with law, which the incorporators choose to insert for the regulation of the business and affairs of the corporation.

(b) Cross references.--See section 134 (relating to docketing statement) and Subchapter A of Chapter 53 (relating to incorporation generally).

§ 7307. Prohibition on use of words "electric cooperative."

The words "electric cooperative" shall not be used in the corporate name of any domestic or foreign corporation for profit or not-for-profit other than a corporation existing under this chapter.

Cross References. Section 7307 is referred to in section 7103 of this title.

§ 7308. Liberal construction.

All of the provisions of law applicable to electric cooperative corporations shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things. See section 7302(b) (relating to provisions complete in themselves).

SUBCHAPTER B
POWERS, DUTIES AND SAFEGUARDS

Sec.

7321. Special powers and limitations.
7322. Bylaws.
7323. Exemption of members from liability for debts of corporation.
7324. Qualifications of members.
7325. Annual meeting of members.
7326. Voting by members.
7327. Certificates of membership.
7328. Quorum of members.
7329. Directors.
7330. Nonprofit operation.
7331. Merger, division or sale of assets.
7332. Dissolution.
7333. License fee; exemption from excise taxes.
7334. Exemption from jurisdiction of Public Utility Commission.
7335. Limited exemption from Securities Act.

Cross References. Subchapter B is referred to in section 7303 of this title; section 24A02 of Title 8 (Boroughs and Incorporated Towns).

§ 7321. Special powers and limitations.

(a) General rule.--Each electric cooperative corporation shall have power (in addition to or limitation of the powers conferred by section 5502 (relating to general powers)):

(1) To generate, manufacture, purchase, acquire and accumulate electric energy and to transmit, distribute, sell, furnish and dispose of such electric energy to its members only; and to construct, erect, purchase, lease as lessee and, in any manner, acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus and transmission and distribution lines or systems necessary, convenient or useful.

(2) To assist its members only to wire their premises and install therein electrical and plumbing fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character and, in connection therewith and for those purposes, to purchase, acquire, lease, sell, distribute, install and repair electrical and plumbing fixtures, machinery, supplies, apparatus and equipment of any and all kinds and character and to receive, acquire, endorse, pledge, hypothecate and dispose of notes, bonds and other evidences of indebtedness.

(3) To furnish to other corporations organized under this chapter, or to the members thereof, electric energy, wiring facilities, electrical and plumbing equipment and services convenient or useful.

(4) In connection with the acquisition, construction, improvement, operation or maintenance of its lines, to use any highway or any right-of-way, easement or other similar property right owned or held by the Commonwealth or any political subdivision thereof.

(5) To have and exercise the power of eminent domain for the purpose and in the manner provided by the condemnation laws of this Commonwealth relating to public utility corporations for acquiring private property for public use, such right to be paramount except as to property of the Commonwealth or of any political subdivision thereof or any public utility corporation, other than one engaged in furnishing electric energy to the public, except that the right of eminent domain shall exist in order to cross the lines of any public utility not furnishing electric energy if the crossing is effected in such manner as not to interfere with the service lines or the service of the public utility.

(6) To fix, regulate and collect rates, fees, rents or other charges for electric energy and any other facilities, supplies, equipment or services furnished by the corporation.

(7) To accept gifts or grants of money, services or property, real or personal.

(8) To do and perform, either for itself or its members or for any other corporation, or for the members thereof, any and all acts and things and to have and exercise any and all powers as may be necessary, convenient or appropriate to effectuate the purpose for which the corporation is incorporated.

(b) Enumeration unnecessary.--It shall not be necessary to set forth in the articles of the corporation the powers enumerated in this chapter.

§ 7322. Bylaws.

The power to make, alter or repeal the bylaws of an electric cooperative corporation shall be vested in the board of directors. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation, not inconsistent with law or the articles.

§ 7323. Exemption of members from liability for debts of corporation.

A member shall not be liable for the debts of an electric cooperative corporation to an amount exceeding the sums remaining unpaid on his membership fee, but nothing in this chapter shall be construed to relieve any member from the payment of any debt due by him to the corporation.

§ 7324. Qualifications of members.

All persons in rural areas proposed to be served by an electric cooperative corporation, who are not receiving central station service, shall be eligible for membership in the corporation. No person other than the incorporators shall be, become or remain a member of the corporation unless the person uses or agrees to use electric energy or, as the case may be, the facilities, supplies, equipment and services furnished by the corporation. A corporation existing under this chapter may become a member of another such corporation and may avail itself fully of the facilities and services thereof.

§ 7325. Annual meeting of members.

(a) Time of annual meeting.--An annual meeting of the members of an electric cooperative corporation shall be held at such time as may be provided in the bylaws.

(b) Call of special meetings.--Special meetings of the members may be called by:

(1) the president;

(2) the board of directors;

(3) petition signed by not less than one-tenth of all of the members; or

(4) such other officers or persons as may be provided in the bylaws.

(c) Notice of meetings.--Written notice of every meeting of members shall be delivered not less than ten nor more than 30 days before the date of the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mails in a sealed envelope, addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

§ 7326. Voting by members.

Each member present shall be entitled to one and only one vote on each matter submitted to a vote at a meeting of members of an electric cooperative corporation, but voting by proxy or by mail may be provided for in the bylaws.

§ 7327. Certificates of membership.

When a member of an electric cooperative corporation has paid the membership fee in full, a certificate of membership shall be issued to the member. Memberships in the corporation and the certificates shall be nontransferable. The certificate of membership shall be surrendered to the corporation upon the resignation, expulsion or death of the member.

§ 7328. Quorum of members.

Unless otherwise provided in the bylaws, a majority of the members present, in person or represented by proxy, shall constitute a quorum for the transaction of business at a meeting of members of an electric cooperative corporation, but, if voting by mail is provided for in the bylaws, members so voting shall be counted as if present.

§ 7329. Directors.

(a) General rule.--The business and affairs of an electric cooperative corporation shall be managed under the direction of a board of not less than three directors who shall be natural persons of full age. All directors shall be members.

(b) Vacancies.--Any vacancy occurring in the board and any directorship to be filled shall be filled, as provided in the bylaws, by persons who shall serve until directors may be regularly elected.

§ 7330. Nonprofit operation.

(a) General rule.--Each electric cooperative corporation shall be operated without profit to its members, but the rates, fees, rents or other charges for electric energy and any other facilities, supplies, equipment or services furnished by the corporation shall be sufficient at all times:

(1) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal of and interest on the obligations issued or assumed by the corporation in the performance of the purpose for which it was organized.

(2) For the creation of reserves.

(b) Disposition of revenues.--The revenues of the corporation shall be devoted, first, to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations and, thereafter, to such reserves for improvement, new construction, depreciation and contingencies as the board may, from time to time, prescribe.

(c) Patronage distributions.--Revenues not required for the purposes set forth in subsection (b) shall be returned, from time to time, to the members on a pro rata basis, according to the amount of business done with each during the period, either in cash, in abatement of current charges for electric energy or otherwise, as the board determines, but the return may be made by way of general rate reduction to members if the board so elects.

§ 7331. Merger, division or sale of assets.

(a) Merger or division.--Any two or more electric cooperative corporations may merge or divide but only if the surviving or resulting corporation is a corporation existing under this chapter. Every merger or division shall be proposed by the adoption by the board of directors of a resolution approving the plan of merger or division and directing that the plan be submitted to a vote of the members entitled to vote thereon at a regular or special meeting of the members.

(b) Sale of assets.--An electric cooperative corporation may sell, lease, lease-sell, exchange or otherwise dispose of all or substantially all of its assets only when authorized by the affirmative vote of two-thirds of all the members of the corporation.

(1) The plan of asset transfer shall set forth the terms and conditions of the sale, lease, exchange or other disposition or may authorize the board of directors to fix any or all of the terms and conditions, including the consideration to be received by the corporation therefor.

(2) Prior to submission for consideration by the members of the corporation, the board of directors of the corporation shall first give all other domestic electric cooperative corporations an opportunity to submit competing proposals. Such opportunity shall be in the form of a written notice to such corporations, which notice shall be attached to a copy of the proposal which the corporation has already received. Such corporations shall be given not less than 30

days during which to submit competing proposals, and the actual minimum period within which proposals are to be submitted shall be stated in the written notice given to them.

(3) Within 30 days after expiration of the notice period set by the board of directors under paragraph (2), written notice of the special meeting to consider and take action on the plan of asset transfer and expressing in detail each of the proposals shall be given to each member of the corporation. The special meeting shall not be held sooner than 30 days after the giving of such notice to the members.

(4) After a plan of asset transfer has been authorized by the members, the board of directors, in its discretion, may abandon the sale, lease, lease-sale, exchange or other disposition, subject to the rights of third parties under any contracts relating thereto, without further action or approval by the members.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended the heading and subsec. (a).

§ 7332. Dissolution.

An electric cooperative corporation may dissolve only when authorized by the affirmative vote of two-thirds of all the members of the corporation. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged upon dissolution shall be distributed pro rata among the members of the corporation at the time of the filing of the certificate of dissolution.

§ 7333. License fee; exemption from excise taxes.

Electric cooperative corporations subject to this chapter shall pay annually, on or before July 1, to the Department of Revenue a fee of $10 for each 100 members or fraction thereof but shall be exempt from all other State taxes of whatsoever kind or nature.

§ 7334. Exemption from jurisdiction of Public Utility Commission.

Except as provided in Subchapter C (relating to unincorporated area certified territory), all electric cooperative corporations subject to this chapter shall be exempt in any and all respects from the jurisdiction and control of the Pennsylvania Public Utility Commission.

§ 7335. Limited exemption from Securities Act.

Whenever any electric cooperative corporation subject to this chapter has borrowed money from any Federal agency, the obligations issued to secure the payment of the money shall be exempt from the provisions of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, nor shall the provisions of that act apply to the issuance of membership certificates.

SUBCHAPTER C
UNINCORPORATED AREA CERTIFIED TERRITORY

Sec.

7351. Application of subchapter.
7352. Definitions.
7353. Geographical areas.
7354. Boundaries of certified territories; hearings.
7355. Obligations and rights within certified territory; new electric-consuming facilities.

7356. Borderline service.
7357. Effect of incorporation, annexation or consolidation.
7358. Enforcement of compliance by commission.
7359. Expenses.

Cross References. Subchapter C is referred to in sections 7301, 7334 of this title.

§ 7351. Application of subchapter.

(a) General rule.--This subchapter shall apply only to the establishment of boundaries of certified territory between retail electric suppliers where one supplier is an electric cooperative corporation and the other supplier is subject to the jurisdiction of the Pennsylvania Public Utility Commission for rates, terms and conditions for electric service.

(b) Municipal corporations.--Nothing contained in this subchapter shall in any respect affect any of the rights, privileges or obligations of any municipal corporation furnishing retail electric service.

§ 7352. Definitions.

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

"Certified territory." An unincorporated area as certified pursuant to section 7354 (relating to boundaries of certified territories; hearings).

"Commission." The Pennsylvania Public Utility Commission of the Commonwealth.

"Electric-consuming facilities." Everything that utilizes electric energy from a central station source.

"Existing distribution line." An electric line of a design voltage of 35 kV phase to phase or less which on July 30, 1975:

(1) was located in an unincorporated area; and

(2) was or had been used for retail electric service.

"Hearing." A hearing by the commission pursuant to reasonable notice to all affected retail electric suppliers.

"Retail electric service." Electric service furnished to a consumer for ultimate consumption, but not including wholesale electric energy furnished by an electric supplier to another electric supplier for resale.

"Retail electric supplier." Any person, exclusive of a municipal corporation, engaged in the furnishing of retail electric service. The term shall apply only to a retail electric supplier which is an electric cooperative corporation and to a retail electric supplier which is subject to the jurisdiction of the commission for rates, terms and conditions for electric service and has a mutual boundary in an unincorporated area with an electric cooperative corporation.

"Unincorporated area." A geographical area outside the corporate limits of cities and boroughs.

§ 7353. Geographical areas.

It is hereby declared to be in the public interest that, to encourage the orderly development of retail electric service in unincorporated areas, to avoid wasteful duplication of distribution facilities, to avoid unnecessary encumbering of the landscape of the Commonwealth, to prevent the waste of materials and natural resources, to minimize inconvenience, diminished efficiency and higher costs in serving the consumer and otherwise for the public convenience and necessity, the Commonwealth is divided into geographical areas, establishing the unincorporated areas within which each retail electric supplier is to provide retail electric service on an exclusive basis.

Cross References. Section 7353 is referred to in section 7354 of this title.

§ 7354. Boundaries of certified territories; hearings.

(a) Exclusive territories.--Except as otherwise provided in this section, a retail electric supplier shall not furnish retail electric service in the certified territory of another retail electric supplier.

(b) Establishment of boundaries.--Except as otherwise provided in this section, the boundaries of the certified territory of each retail electric supplier in any unincorporated area are hereby set as a line or lines substantially equidistant between its existing distribution lines and the nearest existing distribution lines of any other retail electric supplier in every direction with the result that there is hereby certified to each retail electric supplier such unincorporated area which in its entirety is located substantially in closer proximity to one of its existing distribution lines than the nearest existing distribution line of any other retail electric supplier.

(c) Maps of certified territories.--On or before July 30, 1976, or, when requested in writing by a retail electric supplier and for good cause shown, such further time as the Pennsylvania Public Utility Commission may fix by order, each retail electric supplier shall file with the commission a map or maps showing all of its existing distribution lines as of July 30, 1975. The commission shall prepare or order to be prepared and filed in the manner and form prescribed by the commission within six months thereafter a map or maps of uniform scale to show, accurately and clearly, the boundaries of the certified territory of each retail electric supplier as established under subsection (a) and shall issue such map or maps of certified territory to each retail electric supplier.

(d) Commission certification of service territories.--In each unincorporated area, where the commission determines that the existing distribution lines of two or more retail electric suppliers are so intertwined or located that subsection (a) cannot reasonably be applied, the commission shall, after hearing, certify the service territory or territories for the retail electric suppliers so as to promote the legislative policy stated in section 7353 (relating to geographical areas).

(e) Examination and correction of maps.--Each retail electric supplier shall have the right to examine the maps of other retail electric suppliers filed with the commission pursuant to this subchapter, and, if any errors are observed, any retail electric supplier may informally petition the commission for a conference of the affected parties to resolve the alleged error. The petitioner shall serve a copy of the petition by certified mail on the retail electric supplier whose map is alleged to contain the error. The commission shall arrange a conference as promptly as practicable after receipt of the petition and shall give notice thereof to all retail electric suppliers affected by the alleged error. If the alleged error is not corrected to the satisfaction of any affected retail electric supplier, the supplier may petition the commission for a hearing, and the hearing shall be granted by the commission as promptly as practicable. Upon completion by the commission of a map or maps showing the boundaries of the certified territory of a retail electric supplier as established under subsection (a), other retail electric suppliers shall have the right to examine the map or maps and, if any errors exist in location of boundary lines, any retail electric

supplier aggrieved thereby may informally petition the commission for a conference to resolve the issue of the alleged incorrect location of boundary. The procedure shall be as specified in this section for resolution of alleged errors in the maps supplied by any retail electric supplier.

(f) Adjustment of certified territories.--After the initial establishment of the certified territory of each retail electric supplier, two or more retail electric suppliers may, from time to time, jointly apply to the commission for adjustment of their adjoining certified territories, and, if the commission finds that the adjustment is consistent with the purposes of this subchapter and its standards, the commission shall approve the adjustment and, to the extent required, shall prepare or cause to be prepared revised maps in accordance with subsection (c) to reflect the adjustment.

Cross References. Section 7354 is referred to in sections 7352, 7355, 7359 of this title.

§ 7355. Obligations and rights within certified territory; new electric-consuming facilities.

(a) Service within certified territory.--Except as otherwise provided in this section, each retail electric supplier shall be obligated (upon receipt of an application in accordance with its tariffs, rules, regulations or bylaws) and shall have the exclusive right to furnish retail electric service to all electric-consuming facilities located within its certified territory and shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric-consuming facilities located within the certified territory of another retail electric supplier. Any retail electric supplier may extend its facilities through the certified territory of another retail electric supplier if the extension is necessary for the supplier to connect any of its facilities or to serve its consumers within its own certified territory, but any such extension shall not be deemed to be an existing distribution line.

(b) Service to new electric-consuming facilities.--Except as provided in subsections (c) and (e), any new electric-consuming facility located in an unincorporated area which has not as yet been included in a map issued by the Pennsylvania Public Utility Commission pursuant to section 7354(c) (relating to maps of certified territories) or certified pursuant to section 7354(d) (relating to commission certification of service territories) shall be furnished retail electric service by the retail electric supplier which has an existing distribution line in closer proximity to the electric-consuming facility than is the nearest existing distribution line of any other retail electric supplier. Any disputes under this subsection shall be resolved by the commission.

(c) Correction of inadequate service.--If the commission, after hearing, determines that the retail electric service being furnished or proposed to be furnished by a retail electric supplier to an electric-consuming facility is inadequate and is not likely to be made adequate, the commission may authorize another retail electric supplier to furnish retail electric service to that facility.

(d) Electric-consuming facilities served by another retail electric supplier.--Except as provided in subsection (c), no retail electric supplier shall furnish, make available, render or extend retail electric service to any electric-consuming facility to which the service is being lawfully furnished by

another retail electric supplier on July 30, 1975, or to which retail electric service is lawfully commenced thereafter in accordance with this section by another retail electric supplier.

(e) Extension of service.--The provisions of this subchapter shall not preclude any retail electric supplier from extending its service after July 30, 1975, to its own property and facilities, but any facilities involved in the extension shall not be deemed an existing distribution line.

§ 7356. Borderline service.

Notwithstanding the establishment of certified territories pursuant to this subchapter and the obligations and rights to furnish service within the territory, a retail electric supplier may request another retail electric supplier to render service to one or more electric-consuming facilities where, in the judgment of the requesting retail electric supplier, it would be more economical or otherwise in the public interest for the other retail electric supplier to do so and to enter into a contract for that purpose with the other retail electric supplier.

§ 7357. Effect of incorporation, annexation or consolidation.

After July 30, 1975, the inclusion by incorporation, consolidation or annexation of any part of the certified territory of a retail electric supplier within the boundaries of any city or borough shall not in any respect impair or affect the rights of the retail electric supplier to continue and extend electric service at retail throughout any part of its certified territory.

§ 7358. Enforcement of compliance by commission.

Upon proceedings brought by an interested person or by action of the Pennsylvania Public Utility Commission, the commission shall have the jurisdiction to enforce compliance with this subchapter and shall have jurisdiction to prohibit the furnishing of retail electric service by any retail electric supplier except in its certified territory or territories or where lawfully serving and, in connection with the enforcement and prohibition, to exercise all powers granted by this subchapter or otherwise to the commission.

§ 7359. Expenses.

(a) General rule.--The expenses of the Pennsylvania Public Utility Commission in administering this subchapter shall be assessed by the commission against the affected retail electric suppliers on the following basis:

(1) Expenses which relate to the preparation or review of maps to establish the certified territory of a single retail electric supplier in any county or other area where there is no other retail electric supplier shall be assessed solely to such single retail electric supplier.

(2) Expenses which relate to the preparation or review of maps to establish the certified territories of two or more retail electric suppliers in any county or other area where there are two or more retail electric suppliers shall be assessed in equal shares among such retail electric suppliers.

(3) Expenses which relate to the consideration and disposition of alleged errors pursuant to section 7354(e) (relating to examination and correction of maps) and the consideration and disposition of proposed adjustments pursuant to section 7354(f) (relating to adjustment of certified territories) shall be assessed in equal shares among the retail electric suppliers affected thereby.

(4) Expenses which relate to the enforcement by the commission of compliance with this subchapter shall be assessed in equal shares against the retail electric supplier or suppliers to which an order of enforcement is directed. If the enforcement proceedings were initiated by a retail electric supplier or suppliers and if no order of enforcement is issued by the commission, the expenses shall be assessed in equal shares against the retail electric supplier or suppliers initiating the proceedings.

(5) Any other expenses of the commission shall be assessed by the commission in equal shares among the retail electric suppliers that are subject to this subchapter.

(b) Estimated expenses.--The commission may, if it deems such action appropriate, assess expenses on the basis of estimates made by it with appropriate adjustment or credit after final determination of the expenses.

CHAPTER 74
GENERATION CHOICE FOR CUSTOMERS
OF ELECTRIC COOPERATIVES
(Expired)

2014 Expiration. Chapter 74 (§§ 7401 - 7411) was added December 3, 1996, P.L.802, No.138, effective January 1, 1997 and expired December 31, 2014. See Act 172 of 2014.

CHAPTER 75
COOPERATIVE AGRICULTURAL ASSOCIATIONS

Subchapter
A. Preliminary Provisions
B. Powers, Duties and Safeguards

Enactment. Chapter 75 was added December 19, 1990, P.L.834, No.198, effective in four months.

Prior Provisions. Former Chapter 75, which related to the same subject matter, was added December 21, 1988, P.L.1444, No.177, and repealed December 19, 1990, P.L.834, No.198, effective immediately.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.
7501. Short title of chapter.
7502. Application of chapter.
7503. Definitions.
7504. Policy.
7505. Number and qualifications of incorporators.
7506. Purposes.
7507. Articles of incorporation.

Subchapter Heading. The heading of Subchapter A was carried without amendment December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 7501. Short title of chapter.

This chapter shall be known and may be cited as the Cooperative Agricultural Association Law of 1990.

§ 7502. Application of chapter.

(a) General rule.--Except as otherwise provided in subsections (b) and (c), this chapter applies to and the word "association" in this chapter means a corporation with or without capital stock incorporated under any of the following:

(1) The act of June 12, 1919 (P.L.466, No.238), relating to cooperative agricultural associations without capital stock.

(2) The act of April 30, 1929 (P.L.885, No.394), relating to cooperative agricultural associations with capital stock.

(3) The act of June 12, 1968 (P.L.173, No.94), known as the Cooperative Agricultural Association Act.

(4) This chapter.

(b) Acceptance of chapter.--Any other domestic corporation for profit or corporation not-for-profit incorporated under any prior statute relating to cooperative corporations may become an association subject to this chapter by filing in the Department of State a certificate of election of cooperative agricultural association status which shall be executed by the corporation and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(2) The statute under which the corporation was incorporated and the date of incorporation.

(3) A statement that the members or shareholders of the corporation have elected, by a majority vote of the members or shareholders present and voting at a meeting called for that purpose at which a quorum is present, to accept the provisions of this chapter for the government and regulation of the affairs of the corporation.

(c) Foreign corporations.--This chapter shall apply to and the word "association" in this chapter shall include a foreign corporation for profit or corporation not-for-profit incorporated with or without capital stock under any general or special statute as a cooperative agricultural association for the mutual benefit of its members, shareholders, patrons and producers. A foreign association shall not transact business as an association in this Commonwealth unless permitted to do so by this chapter, and any violation of this provision may be enjoined upon the application of any domestic association or qualified foreign association.

§ 7503. Definitions.

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

"Agricultural products." Includes all livestock and livestock products, dairy and dairy products, poultry and poultry products, horticultural, floricultural and viticultural products, forestry and forestry products, seeds, nuts, mushrooms and bee products and any and all kinds of farm products.

"Board." The board of directors of an association.

"Delegate." A member elected in the manner provided by section 7531(b) (relating to election by districts) to represent a local group of members and having the powers and duties specified in the bylaws.

"Department." The Department of Agriculture of the Commonwealth.

"Engaging in agriculture." Includes engaging in dairying, livestock raising, poultry raising, furbearing animal raising,

horticulture, floriculture, viticulture, forestry, beekeeping, seed growing, nut growing, mushroom growing and engaging in any and all kinds of farming and other allied occupations.

"Member." The holder of a membership in an association without capital stock or the holder of voting shares in an association organized with capital stock.

"Patron." A person using the facilities of an association for the marketing of agricultural products or a person using the facilities of an association for the purchase of supplies or the rendering of services.

"Producer." A person engaging in agriculture.

"Supplies." Includes any and all types of supplies, machinery and equipment used or consumed by persons engaging in agriculture.

§ 7504. Policy.

(a) General rule.--It is the policy of this Commonwealth, as one means of improving the economic position of agriculture, to encourage the organization of producers of agricultural products into effective cooperative agricultural associations under the control of the producers for their mutual benefit, and to that end this chapter shall be liberally construed. Where applicable to this chapter and to Chapter 71 (relating to cooperative corporations generally), Subparts B (relating to business corporations) and C (relating to nonprofit corporations) of Part II shall be construed, wherever possible, consistent with law applicable to cooperative agricultural associations in general.

(b) Associations not in restraint of trade.--

(1) No association complying with this chapter shall be deemed to be a conspiracy, or a combination in restraint of trade, or an illegal monopoly, or be deemed to have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor shall the contracts between the association and its producers, or any agreements authorized in this chapter, be construed as an unlawful restraint of trade, or as a part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

(2) An association may acquire, exchange, interpret and disseminate past, present and prospective crop, market, statistical, economic and other similar information relating to the business of the association either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

(3) An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surplus to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus of agricultural products.

§ 7505. Number and qualifications of incorporators.

Five or more individuals of full age engaging in agriculture or two or more cooperative agricultural associations may incorporate an association. If an association is incorporated by individuals, at least three of the individuals shall be residents of this Commonwealth. If an association is incorporated by cooperative agricultural associations, at least one of the associations shall be a domestic association.

§ 7506. Purposes.

An association may be incorporated under this chapter for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

(1) Producing, assembling, marketing, buying, selling, bargaining or contracting for agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing such products, or manufacturing or marketing the by-products thereof.

(2) Manufacturing, processing, storing, transporting, delivering, handling, buying for or furnishing supplies to its members and patrons.

(3) Performing or furnishing business, educational, recreational or other services, including the services of labor, buildings, machinery, equipment, trucks, trailers and tankers, or any other services connected with the purposes set forth in paragraphs (1) and (2) on a cooperative basis.

(4) Financing any of the activities set forth in paragraphs (1) through (3).

§ 7507. Articles of incorporation.

Articles of incorporation of an association incorporated under this chapter shall comply with the applicable provisions of this part except that, if organized without capital stock, the articles shall state whether the property rights and interests of each member are equal or unequal and, if unequal, the priorities of those rights and interests.

SUBCHAPTER B
POWERS, DUTIES AND SAFEGUARDS

Sec.

7521. Special powers and limitations.
7522. Records of salary or other payments.
7523. Members.
7524. Issuance of shares.
7525. Sale, transfer or redemption of shares.
7526. Termination of membership.
7527. Voting by proxy or mail.
7528. Meetings.
7529. Fundamental changes.
7530. Bylaws.
7531. Directors.
7532. Removal of directors.
7533. Officers.
7534. Marketing arrangements.
7535. Patronage distributions.
7536. Audit of operations.
7537. Contract assignments to association.
7538. Exemption from tax on capital stock and indebtedness.

Subchapter Heading. The heading of Subchapter B was carried without amendment December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 7521. Special powers and limitations.

(a) General rule.--Each association shall have power (in addition to or limitation of the powers conferred by section 1502 (relating to general powers) or 5502 (relating to general powers)):

(1) To act as agent, broker or attorney-in-fact for its members and patrons and for any subsidiary or affiliated person.

(2) To hold chapter for its members and patrons and for subsidiary and affiliated persons to property handled or managed by the association on their behalf.

(3) In furtherance of association purposes, to make loans or advances to its members and patrons or to subsidiary and affiliated persons or their members.

(4) To establish and accumulate reserves and surplus to capital and such other funds as may be authorized by the articles of association or the bylaws.

(5) To issue membership certificates and to foster membership in the association and to solicit patrons by advertising or by educational or other lawful means.

(6) To issue and to sell common and preferred stock.

(7) To own shares of the capital stock of, to hold membership in and to hold bonds or other obligations of other persons engaged in any related activity or engaged in producing, manufacturing, warehousing or marketing any of the products handled by the association or engaged in financing its activities or those of its members.

(8) To deal in products of and handle machinery, equipment, supplies and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled or performed for or on behalf of its members.

(b) Enumeration unnecessary.--It shall not be necessary to set forth in the articles of the association the powers enumerated in this chapter.

§ 7522. Records of salary or other payments.

Every association shall keep a record of all salaries, per diem payments or other remuneration paid to each officer and director by the association in addition to remuneration received for agricultural commodities marketed through the association.

§ 7523. Members.

An association shall admit to membership only persons who are engaging in agriculture, including both tenants and landlords receiving a share of the crop, and cooperative agricultural associations of such producers who agree to patronize the association in accordance with the uniform terms prescribed by it, and only such persons shall be regarded as eligible members of an association. The bylaws may prescribe additional qualifications for membership but shall not enlarge the class eligible for membership specified in this section.

§ 7524. Issuance of shares.

(a) General rule.--Every association without capital stock shall issue a certificate of membership to each member. Every association with capital stock shall issue a certificate of common shares to each member certifying the number of shares of stock held by him. An association shall issue common shares or a membership certificate only to persons eligible for membership upon such terms and conditions as shall be provided in the bylaws. Fractional shares may be issued.

(b) Voting rights.--Each eligible member shall be entitled to only one vote on each question that may be presented at any meeting of the members regardless of the number of shares or amount of membership capital owned by him.

(c) Preferred stock.--An association may issue preferred shares to any person upon such terms and conditions as shall be provided in the bylaws. The preferred shares shall carry no voting rights other than as provided by section 7529(a)(3) (relating to fundamental changes).

(d) Consideration.--No association shall issue a certificate of membership, and no certificate for common shares shall be issued until fully paid for, but promissory notes may be accepted by the association as full or partial payment. The association shall hold the membership certificate or shares as security for the payment of the note, but such retention as security shall not affect the right of the member to vote and hold office.

(e) Evidence of equity in assets.--The association may, from time to time, issue to any patron a certificate or other evidence of the equity of the patron in any fund, capital investment or other asset of the association. The certificate or other evidence of equity may bear interest at a rate not in excess of two points under the average treasury bill rate for the 12 months preceding the date on which the payment is made and may be transferred only to the association or to such other person as may be approved by the association.

(f) Dividends.--Dividends may be paid on any shares and dividends on preferred shares may be cumulative if so provided in the articles. An association shall have a lien on all of its issued shares and dividends declared or accrued thereon for all indebtedness of the holders thereof to the association if provision therefor is stated on the face of the share certificate.

§ 7525. Sale, transfer or redemption of shares.

(a) General rule.--The common shares of an association may be transferred only with the consent of the association and on the books of the association and then only to persons eligible to own shares in the association. No purported assignment or transfer of the shares shall pass to any ineligible person any right or privilege on account of the shares or any vote or voice in the management or affairs of the association.

(b) Redemption or conversion.--In the event a holder of common shares has done no business with an association for a period of 12 months or in the event the board of directors of an association finds that any of the common shares has come into the hands of any person who is not eligible for membership or that the holder thereof has ceased to be an eligible member, the holder shall have no rights or privileges on account of the shares or vote or voice in the management or the affairs of the association (other than the right to participate in accordance with law in case of dissolution and to receive the book or par value of the shares, whichever is less, in the event of its sale or transfer as provided in this subsection), and the association shall have the right at its option:

(1) to redeem the shares at their book or par value, whichever is less;

(2) to require the transfer of any such shares at such book or par value, whichever is less, to any person eligible to hold the shares; or

(3) to require the holder of any such shares to convert the shares into preferred shares of equal value.

In exercising its right to redeem or to require the transfer or conversion of shares, if the holder fails to deliver the certificate evidencing the shares for cancellation or transfer, an association may cancel the certificate on its books and issue a new certificate for common or preferred shares, as the case may be, to the party entitled thereto.

(c) Preferred shares.--The preferred shares of an association may be transferred only on the books of the association, and the bylaws may provide that the association

shall have the option, at any time, to redeem the preferred shares at par value, plus declared or accrued dividends.

(d) Notice on certificates.--Any restriction or option which an association places upon the transfer or sale of any of its outstanding shares and any association option retained thereon shall be printed on each share certificate.

(e) Force majeure.--A member shall not lose his membership in the association under this section by his failure to do business with it if the failure is due to an act of God unless the period of time involved is at least 24 months.

§ 7526. Termination of membership.

(a) General rule.--Under the terms and conditions prescribed in the bylaws, a member of an association without capital stock shall lose his membership and his right to vote if he ceases to belong to the class eligible for membership or has done no business with an association for a period of 12 months.

(b) Valuation of and payment for membership.--After a member has notified an association without capital stock of his withdrawal or after the adoption of a resolution by the board terminating his membership, the board shall appraise the value in money of his membership interest in the association and shall determine and fix the manner in which the association shall pay him the value of his interest unless the member, with the consent of the association, transfers his certificate of membership. Certificates of membership in an association without capital stock shall not be transferred without the consent of the association.

(c) Force majeure.--A member shall not lose his membership in the association under this section by his failure to do business with it if the failure is due to an act of God unless the period of time involved is at least 24 months.

§ 7527. Voting by proxy or mail.

(a) General rule.--Unless otherwise provided in the bylaws, no member may vote by proxy or by mail. No unrevoked proxy shall be valid more than 11 months from the date of its execution. If voting by mail is permitted, absent members may, under rules prescribed by the bylaws, be permitted to vote on specific questions by written ballot prepared by the association and sent by mail to or deposited with the secretary or other designated officer of the association.

(b) Action on marketing programs.--Except for day-to-day operating decisions relating to existing programs, no association shall vote for its members on any new programs or substantially modified proposals other than those regulated by Federal or State agencies affecting existing marketing or marketing development programs or amendments thereto unless it has either first obtained approval of the delegates or conducted a mail poll of its membership, and in such later event apprised the members of their rights to cast a vote and method of voting under the program and notified its membership of the results and its intentions at least five days prior to casting its vote. If proxy voting is allowed by the bylaws of the association, the proxy shall be valid only for the particular date and the specific issue for which the vote is called.

§ 7528. Meetings.

There shall be at least one meeting of members or delegates each year. Annual and special membership or delegate meetings shall be governed by the bylaws.

§ 7529. Fundamental changes.

(a) General rule.--An association, by action of its members or delegates, may amend its articles of incorporation in the

manner provided by the applicable provisions of this part except that:

(1) No amendment shall be adopted without the affirmative vote of two-thirds of the members or delegates voting thereon.

(2) No amendment affecting the priority or preferential rights of any outstanding stock shall be adopted without the affirmative vote of two-thirds of the holders of the outstanding stock affected.

(3) Any association not having capital stock may convert into an association with capital stock by amending its articles to set forth a description of the shares of each class which are to be issued and a statement of the voting rights, preferences, limitations and relative rights granted to or imposed upon the shares of each class but only if the conversion is proposed by three-fourths of the board of directors.

(b) Procedure.--Written notice shall, not less than 15 days before the meeting of members or delegates called for the purpose of considering the proposed amendment or any other fundamental change, be given to each member or shareholder of record. A notice of an amendment under subsection (a)(3) shall set forth, in addition to the information otherwise required by the appropriate provisions of this part, a complete description of the shares proposed to be issued upon the conversion and the manner of carrying the conversion into effect.

(c) Post-approval report.--Whenever an amendment of the articles of an association is approved, the association shall notify each member within 30 days after the filing of articles of amendment by sending to each member a copy of the filed amendment and, in the case of a conversion, a complete description of the shares issued by the association.

Cross References. Section 7529 is referred to in section 7524 of this title.

§ 7530. Bylaws.

(a) General rule.--The bylaws may provide for the following matters:

(1) The time, place and manner of calling and conducting meetings of the members or delegates and the number of members or delegates (which may be less than a majority) that shall constitute a quorum.

(2) The manner of voting and the conditions upon which members or delegates may vote at general and special meetings.

(3) Subject to any provision thereon in the articles of association and in this chapter, the number, qualifications, eligibility requirements, manner of nomination, duties and terms of office of directors and officers, the time of their election and mode and manner of giving notice thereof.

(4) The time, place and manner for calling and holding meetings of the directors and any executive committee and the number that shall constitute a quorum.

(5) Rules consistent with law and the articles of association for the management of the association, the establishment of any election districts, the making of contracts, the issuance, redemption and transfer of shares, the relative rights, duties, interests and preferences of members and shareholders and the mode, manner and effect of expulsion of a member.

(6) Any other provisions deemed necessary or proper to carry out the purposes of the association.

(7) Penalties for violations of the bylaws.

(b) Procedure.--Bylaws authorized to be made by the board of directors may be amended or repealed and new bylaws may be adopted by the members or delegates. Delegates may prescribe that any bylaw made by them shall not be amended or repealed by the directors, and members may provide that any bylaw made by them shall not be amended or repealed by either the directors or the delegates. The association shall notify each member of a proposed change in the bylaws by sending to each member, at least 15 days prior to any vote on the proposed change, a copy of the proposed bylaw along with the time, date, place and manner of voting for the proposed changes. Members may amend or repeal bylaws adopted by the directors or the delegates by filing with the secretary of the association a petition signed by 25% of the voting membership and setting forth the text of the proposed change. The secretary shall call a special meeting or special vote of the association within 30 days of the receipt of the petition. When a special meeting is called, at least 10% of the voting membership shall be present to change the bylaws. Whenever a proposed bylaw change is approved, the association shall mail each member a copy of the approved bylaw within 30 days of the approval.

§ 7531. Directors.

(a) General rule.--The business and affairs of the association shall be managed under the direction of a board of not less than five directors who shall be natural persons of full age. All directors shall be members. The first directors shall serve until the first annual meeting of the association at which time their successors shall be elected by the members of the association. Thereafter, a director shall hold office for a term of not less than one year nor more than three years and until his successor has been elected and qualified. Every election for a director shall be by secret ballot. A director may succeed himself.

(b) Election by districts.--The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such case, the bylaws shall specify or the board of directors shall determine the number of directors to be elected by each district and the manner and method of dividing the directors and of districting and redistricting of the territory in which the association has members. The board of directors may use such standards as are reasonable for assigning directors and districting and redistricting the territory in which the association has members. The bylaws or the board of directors may provide for dividing districts into locals and for the election of district delegates at local meetings of members. The bylaws shall prescribe the procedures by which districts shall elect directors. The board of directors shall hear and decide any controversy arising out of a district election and its decisions shall be incontestable except for fraud. In any case in which the election of directors is by districts, the board shall fill a vacancy with a person who resides in or is a member of a local in the district in which the vacancy exists.

(c) Classified board.--If the bylaws so provide, the directors of an association may be classified in respect to the time for which they severally hold office. In such case, each class shall be as nearly equal in number as possible, the term

of office of at least one class shall expire in each year, and the members of a class shall not be elected for a shorter period than one year or for a longer period than three years. If, at any meeting, directors of more than one class are to be elected, each class of directors to be elected shall be elected in a separate election.

(d) Educational program.--The Department of Agriculture, in cooperation with the College of Agriculture of The Pennsylvania State University, shall develop and implement an educational program relating to the powers, duties, functions and responsibilities of directors of associations. The Secretary of Agriculture shall appoint an advisory council consisting of nine individuals, including members and directors of associations, two association managers and other interested individuals, who shall advise the department on the development of the educational program. Two members of the advisory council shall be managers of associations. In addition, the department shall furnish to each association director, free of charge, when first elected as a director, an updated copy of this chapter and annually thereafter any amendments or replacements thereof.

Cross References. Section 7531 is referred to in section 7503 of this title.

§ 7532. Removal of directors.

A director may be removed from office by the affirmative vote of not less than a majority of the members present and voting at any regular or special meeting called for that purpose or, where the bylaws provide for the election of directors by districts, by the affirmative vote of not less than a majority of the members or delegates residing in or representing the district from which he was elected. The bylaws shall provide for the filing of charges, the giving of notice thereof, an opportunity to be heard and the procedures under which a director may be removed.

§ 7533. Officers.

The board shall elect a president, a secretary and a treasurer and may elect one or more vice presidents and any other officers as may be authorized in the bylaws. The president and at least one of the vice presidents must be members. Any two of the offices of vice president, secretary and treasurer may be combined in one person.

§ 7534. Marketing arrangements.

(a) General rule.--An association and its members may make and execute contracts requiring the members to obtain all or any part of specific services from the association or to sell or deliver all or any part of their specified agricultural products to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products sold or delivered by its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary overhead costs, expenses, valuation reserves, interest, dividends on common and preferred shares and such deductions for capital and other purposes as may be specified in the contract or bylaws of an association. Each marketing or service contract shall contain a provision which shall specify a reasonable period in each year during which any contracting member of an association, upon giving notice as prescribed in the contract, may terminate the contract.

(b) Enforcement.--The bylaws or the marketing or service contract may provide:

(1) For applying patronage refunds or savings allocated to any member or other patron toward the payment for liquidated damages specified in the contract to be paid to an association by the member or other patron upon the breach by him of any provision of the marketing or service contract.

(2) That the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association. Any such provision shall be valid and enforceable in the courts of this Commonwealth.

(3) That the association shall have the option to redeem the voting shares at book value or par value, whichever is lower, plus declared dividends, or the membership certificate, whenever any contract between the association and a member has been canceled in accordance with the terms or conditions of the contract or by reason of breach of the contract by the member.

(c) Injunction.--In the event of any such breach or threatened breach of the marketing contract by a member, the association shall be entitled to an injunction to prevent further breach of the contract and to specific performance thereof. Pending the adjudication of the action, and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member. The right to an injunction shall be in addition to the remedy provided in subsection (b).

(d) Inducing breach; spreading false reports.--Any person who knowingly induces any member of an association to breach his marketing contract with the association shall be liable to the association for the full amount of damages sustained by it by reason of the breach, and any person who maliciously and knowingly spreads false reports about the finances or management of the association shall be liable to the association in an action for the actual damage which it may sustain by reason of the false reports and punitive damages. The association shall be entitled to an injunction against any such person to prevent further injury to the association. In any action brought by an association pursuant to this subsection, the association shall be entitled to, in addition to any other recovery or remedy, reasonable attorney fees involved in such matter.
(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 amended subsec. (a).

§ 7535. Patronage distributions.

(a) General rule.--The net proceeds or savings of an association shall be apportioned, distributed and paid periodically on the basis of patronage to those persons entitled to receive them, at such times and in such manner as the bylaws shall provide. The bylaws may provide that the net proceeds or savings may be restricted to members or may be made at the same or a different rate for member and nonmember patrons. The bylaws may contain any reasonable provisions for the apportionment and charging of net losses except that no member shall thereby become liable for the debts of the association beyond any money or other property delivered by the member to the association. The bylaws may provide that any distribution to a nonmember eligible for membership may be credited to the nonmember until the amount thereof equals the value of a membership certificate or a common share of an association.

(b) Method of disbursement.--The apportionment, distribution and payment of net proceeds or savings required by subsection (a) may be in cash, credits, capital shares, certificates of

indebtedness, revolving fund certificates, letters of advice or other securities or certificates issued by an association or by any affiliated domestic or foreign association. Apportionment and distribution of its net proceeds or savings or losses may be separately determined for, and be based upon the patronage of, single or multiple pools or particular departments of an association, or as to particular commodities, supplies or services, or such apportionment and distribution may be based upon classification of patronage according to the type thereof.

(c) Minimum participation.--An association may provide in its bylaws the minimum amount of any single annual patronage transaction which shall be taken into account for the purpose of participation in allocation and distribution of net proceeds or savings or net losses under this section.

(d) Method of accounting.--For the purposes of this section, net proceeds or savings or net losses shall be computed in accordance with generally accepted accounting principles applicable to cooperative associations, and after deducting from gross proceeds or savings all costs and expenses of operation and any dividends paid upon capital stock and interest paid upon certificates or other evidence of equity in any fund, capital investment or other assets of an association.

§ 7536. Audit of operations.

(a) General rule.--At the close of each fiscal year, a complete certified audit of the operations of the association shall be made by a qualified certified public accountant or by a qualified public accountant, employed by the board of directors, the written report of whom shall include the balance sheet, operating statement, commissions, salaries and other remunerations of managers and officers and other proper information and shall be submitted to the members at the next regular meeting. Within six months after the expiration of the fiscal year for which made, the secretary of the association shall file a copy of the certified audit in the Department of Agriculture upon a form prescribed by the department. The secretary of the association shall also include in the yearly audit report to the department a list of the current officers and directors and their addresses.

(b) Exceptions.--The annual audit of an association with annual gross sales of $100,000 or less may be performed by an audit committee of three or more members of the association appointed by the board, at least one of whom shall be a member of the board of directors. The members of the committee need not be certified public accountants or public accountants.

(c) Enforcement.--Any association which fails, within 120 days from the close of the fiscal year, to file with the department the certified audit required by subsection (a) shall be notified by certified mail by the department that the certified audit must be filed within 60 days from the date of mailing of the notice and that, upon failure to file the certified audit within the time so limited, the department will file in the Department of State a statement of dissolution under this subsection. If the certified audit is not filed in the department within such 60-day period, the department shall file in the Department of State, with respect to each such defaulting association, a statement of dissolution which shall identify the association. Upon the filing of the statement, the articles of the association shall be deemed forfeited for failure to comply with the provisions of this section. However, the forfeiture shall not prejudice the rights of creditors and members in and to any property or assets of or belonging to the

association. The department shall annually, on or before April 1 of each year, furnish each existing association and make public a listing of the status of existing associations. Any association which has so automatically forfeited its articles shall be reinstated as an association under this chapter if the unfiled certified audit is submitted to the department within 90 days after such automatic forfeiture or within any extension thereof granted by the department, which shall thereupon file in the Department of State with respect to the association a notice of withdrawal of statement of dissolution stating that the association has complied with the provisions of this subsection. In such event, no statement of revival or new articles of incorporation need be filed in the Department of State, and the association shall resume its status as a subsisting corporation. The department shall review such yearly certified audits and issue such reports and recommendations to each member of the board of directors of the association as the department deems necessary.

(d) Confidentiality.--No person shall, without the consent or authorization of the association, except for official purposes or in obedience to judicial process, make or permit any disclosure whereby any information contained in a certified audit may be identified as having been furnished by the association. No person shall knowingly exercise or attempt to exercise any powers, privileges or franchises for an association, given by this chapter, while the articles of the association are forfeit unless that person is, and discloses that he is, acting to reinstate the good standing of the association under this chapter or is acting to wind up the affairs of the association. A person violating the prohibitions set forth in this subsection commits a misdemeanor of the third degree.

(e) Withdrawal.--A certified audit shall not be withdrawn without the approval of the board of directors.

§ 7537. Contract assignments to association.

If any contract authorized by a cooperative contains an assignment to the association of any part or all of funds due or to become due the member during the life of the contract for any product produced or to be produced by him or for any services performed or to be performed in producing any product, any person who accepts or receives the product from the member is bound by the assignment after receiving written notice from the association and the member of the amount and duration of the assignment. However, as to any seasonal crop, if no funds are paid or become payable by any person under such an assignment for a period of two consecutive years during the life of the contract, thereafter the assignment shall not be binding upon any person who receives or accepts the product from the member until the assignment is reaffirmed by the member in writing and written notice thereof is given by the association or the member. Any such reaffirmation shall continue to be effective during the life of the contract until another lapse of two consecutive years occurs.

§ 7538. Exemption from tax on capital stock and indebtedness.

No State or local tax shall be levied or placed upon the capital stock of an association or upon any scrip, bonds, certificates or other evidences of indebtedness issued by such association. The association shall not be required to file in the Department of Revenue, or with any other State or local official of this Commonwealth, the reports relative to such taxes as are or may be required of corporations not exempt from the payment of such taxes.

CHAPTER 77
WORKERS' COOPERATIVE CORPORATIONS

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Enactment. Chapter 77 was added December 21, 1988, P.L.1444, No.177, effective in 180 days.

Prior Provisions. Former Chapter 77, which related to officers, directors and members of nonprofit corporations, was added November 15, 1972, P.L.1063, No.271, and renumbered to Chapter 57 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 77 is referred to in section 7102 of this title.

§ 7701. Short title of chapter.

This chapter shall be known and may be cited as the Workers' Cooperative Corporation Law of 1988.
(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 renumbered section 7701 to section 7702 and added a new section 7701, retroactive to June 19, 1989.

§ 7702. Definitions.

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

"Bureau." (Deleted by amendment).

"Corporation." A corporation for profit which has elected to be governed by this chapter.

"Member." An individual who patronizes a corporation by the contribution of labor and who has been accepted for membership in and owns a membership share issued by the corporation.

"Patronage." The number of hours of work performed as a member of a corporation.

"Patronage allocation." The share of net earnings or losses with respect to a period of time paid or credited to a member on the basis of the ratio which the member's patronage during the period involved bears to total patronage by all members during that period.

"Written notice of allocation." A written instrument which discloses to a member the stated dollar amount of the member's patronage allocation and the terms of payment of that amount by the corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended the def. of "corporation" and deleted the def. of "bureau."

1990 Amendment. Act 198 renumbered section 7701 to section 7702 and renumbered former section 7702 to section 7703, retroactive to June 19, 1989.

§ 7703. Corporations.

(a) Members and purpose.--Corporations, productive and distributive, may be incorporated under this chapter, upon compliance with its requirements, by five or more farmers, mechanics, laborers or other persons who have incorporated themselves together by written articles under section 7704 (relating to articles of incorporation) for the purpose of carrying on agricultural, horticultural, mining, quarrying, building, mechanical, manufacturing or commercial business; for the purpose of manufacturing, cultivating, raising, trading or dealing in goods, wares, merchandise, chattels, grains, vegetables, roots, fruits and other produce or animals; or for the purpose of buying, selling, holding, leasing or improving lands, tenements or buildings.

(b) Name.--

(1) The name of the corporation must comply with section 202 (relating to requirements for names generally).

(2) The two last words of the name shall be "cooperative corporation," but it shall be unlawful to use in the name either the words "society" or "company." A violation of this paragraph by a corporation formed under this chapter renders each member personally liable for all debts of the corporation.

(c) Business office.--A corporation must have a regular business office.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (b)(1).

1990 Amendment. Act 198 renumbered section 7702 to section 7703 and renumbered former section 7703 to section 7704 and amended subsec. (a), retroactive to June 19, 1989.

Cross References. Section 7703 is referred to in section 7720 of this title.

§ 7704. Articles of incorporation.

(a) Advertisement.--The incorporators shall advertise their intention to file or the corporation shall advertise the filing of articles of incorporation with the department one time in two newspapers of general circulation, one of which shall be a newspaper designated by the rules of court for the publication of legal notices, or in two newspapers of general circulation published in the county in which the initial registered office of the corporation is to be located. If there is only one

newspaper of general circulation published in a county, advertisements in that newspaper shall be sufficient. Advertisements may appear prior to or after the day the articles of incorporation are filed with the department and shall set forth briefly:

(1) The name of the proposed corporation.

(2) A statement that the corporation is to be or has been organized under this chapter.

(3) The purpose of the corporation.

(4) The time of filing the articles with the department.

(b) Filing of articles.--The articles of incorporation shall be filed in the department. Upon the filing of the articles of incorporation, the corporation's existence begins. See section 134 (relating to docketing statement).

(c) Evidence of incorporation.--The articles of incorporation as filed in the department are conclusive evidence of the fact that the corporation has been incorporated; but proceedings may be instituted by the Commonwealth to dissolve, wind up and terminate a corporation which should not have been incorporated or which has been incorporated by means of fraud or misrepresentation or without substantial good faith compliance with the conditions prescribed by this chapter as precedent to incorporation.

(d) Content of articles.--The articles of incorporation shall be signed by the persons originally associating themselves together and shall state:

(1) The name of the corporation.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its initial registered office in this Commonwealth.

(3) A brief statement:

(i) of the purpose or purposes for which the corporation is incorporated, which may consist of a statement that the corporation has unlimited powers to engage in any lawful act concerning any business for which corporations may be incorporated under this chapter; and

(ii) that the corporation is incorporated under this chapter.

(4) A description of the capital stock of each class which is to be issued; a statement of the preferences, qualifications, limitations, restrictions and special or relative rights granted to or imposed upon the shares of each class of capital stock; the total authorized capital stock; the number of shares into which the capital stock is divided; and the par value of each share of capital stock.

(5) The amount of capital that will be actually paid in before commencing business.

(6) The terms on which individuals may become members.

(7) The number of directors, which may not be less than five, constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of the members or until their successors are elected and take office.

(8) Other matters as may be deemed proper and necessary.

(9) The term of its existence, which shall be either perpetual or for a fixed term of years.

(10) The name and post office address of each of the incorporators; a statement of the number of shares subscribed to by each, which must be at least one; and the class of shares to which each subscribes.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (d) intro. par. and (1).

1990 Amendment. Act 198 renumbered section 7703 to section 7704, deleted the heading of former section 7704, amended subsecs. (b) and (c) and added subsec. (d), retroactive to June 19, 1989.

Cross References. Section 7704 is referred to in section 7703 of this title.

§ 7705. Capital stock.

(a) Issuance and redemption.--A corporation shall issue as capital stock a class of voting common stock designated as membership shares only to those individuals who fulfill all requirements for member status upon terms and conditions provided in the articles of incorporation. Each member may own only one membership share, and only members may own membership shares. A member is entitled to one vote per membership share on each question that may be presented at any meeting of the members, regardless of the number of shares of stock or membership capital owned by the member. Membership shares shall be issued for a fee determined by the board of directors. Except as otherwise provided in this chapter, a membership share entitles a member to the rights and obligations of a stockholder of a corporation organized under this title. Upon voluntary or involuntary termination of a member's work in the corporation, the membership share shall be transferred back to the corporation at the time of the termination. The redemption price of a membership share shall be determined solely by reference to the member's internal capital account under section 7706 (relating to internal capital accounts and net worth).

(b) Voting power.--No capital stock other than membership shares shall be granted voting power in a corporation except as provided in section 7720 (relating to amendments of articles) and the articles of incorporation.

(c) Preferred stock.--A corporation may issue as capital stock a class of nonvoting preferred stock upon terms and conditions provided in the articles of incorporation. Preferred stock shall be freely transferable.

(d) Payment for stock.--No corporation may issue a membership share, and no certificate of stock may be issued until fully paid for, except that promissory notes may be accepted by the corporation as full or partial payment if the promissory note requires payment by regular payroll deductions commencing on the date of the member's acceptance for membership in the corporation. The corporation shall hold the membership share or stock as security for the payment of the note, but retention as security shall not affect the member's right to vote and hold office.

(e) Fractional shares and scrip.--Fractional shares of and scrip for common and preferred stock may not be issued by the corporation.

(f) Form of certificates.--Certificates representing shares, membership shares and evidences of a person's equity in a fund, capital investment or other asset of the corporation shall be signed by the president, vice president, treasurer or assistant treasurer and the secretary or an assistant secretary of the corporation. Facsimiles of signatures are acceptable. These certificates may be sealed with the seal of the corporation or a facsimile.

(g) Dividend and lien.--Dividends may be paid on preferred stock and may be cumulative if the articles of incorporation so provide. A corporation shall have a lien on all of its outstanding preferred stock and dividends declared or accrued for all indebtedness of the holders to the corporation if provision for a lien is stated on the face of the certificate of stock.

(h) Status of membership.--A membership is not a security as defined in section 102 of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972. Sale, redemption and other transactions with respect to membership shares are not governed by the Pennsylvania Securities Act of 1972, except that Part IV of that act, relating to fraudulent and prohibited practices, applies.

(i) Sale, transfer and redemption of stock.--The sale, transfer and redemption of stock in the corporation other than membership shares is subject to the Pennsylvania Securities Act of 1972.

(j) Issuance without other first offer.--Unless otherwise provided in the articles of incorporation, a corporation may issue shares without first offering them to shareholders of any class.

§ 7706. Internal capital accounts and net worth.

(a) Purpose of accounts.--A corporation shall establish through its bylaws a system of internal capital accounts to reflect the book value of the corporation and to determine the redemption price of membership shares and written notices of allocation.

(b) Types of accounts.--Internal capital accounts shall be of two types: individual internal capital accounts, one for each member, and a nonindividuated, collective internal capital account, which shall be called the collective reserve account.

(c) Net worth.--The net worth of the corporation shall be reflected in:

(1) The internal capital accounts.

(2) The sum of the par value of all outstanding stock with par value, other than membership shares.

(3) The stated value of evidences of equity in a fund, capital investment or other asset of the corporation.

(d) Procedure.--A corporation shall credit the paid-in membership fee and additional paid-in capital of a member to the member's individual internal capital account and shall also record the apportionment of retained net earnings or net losses to the member's account in accordance with patronage, by appropriately crediting or debiting the member's account. The collective reserve account shall reflect paid-in capital, retained net earnings and net losses not allocated to the capital accounts or members or not attributable to funds under subsection (c)(1) and (3).

(e) Adjustment of balance.--The balances in all of the individual internal capital accounts and the collective reserve account, if any, shall be adjusted at the end of each accounting period so that the sum of these balances and of the amounts under subsection (c)(2) and (3) is equal to the net worth of the corporation.

(f) Use of funds.--Moneys allocated to the internal capital accounts may be used for corporate purposes as determined by the board of directors.

Cross References. Section 7706 is referred to in section 7705 of this title.

§ 7707. Voting.

No stockholder or member may vote by proxy or by mail.

§ 7708. Acceptance and termination of membership.

The articles of incorporation shall establish qualifications and the method of acceptance and termination of members. No person may be accepted as a member unless employed by the corporation on a full-time or part-time basis.

§ 7709. Power to buy, sell or trade.

A corporation may buy from, sell to and trade or deal with its members or other persons.

§ 7710. Individual liability of members.

Neither members of a corporation nor the estates of members shall be individually liable for the debts of the corporation.

§ 7711. Corporate powers.

Each corporation has the following powers:

(1) To exist for the period of time set forth in its articles of incorporation unless sooner dissolved by operation of law or under this chapter.

(2) To maintain and defend judicial proceedings by the name specified in the articles of incorporation.

(3) To adopt and use a common seal and alter the same.

(4) To hold, purchase, lease and transfer real and personal property as necessary or proper to effect the purposes of the corporation.

(5) To elect a board of directors, which has the power to appoint officers, agents and employees as necessary; to prescribe their duties; to require bonds of them; and to dismiss them in accordance with the bylaws.

(6) To make bylaws.

(7) To make contracts and to assist or join with persons to effect the activities authorized by its articles of incorporation and conducive to or expedient for the interest or benefit of the corporation and to exercise powers necessary or proper for the accomplishment of the purposes of the corporation.

(8) To borrow money necessary to the conduct of its operations; to issue notes, bonds and other evidence of indebtedness; and to give security in the form of mortgage or otherwise.

(9) In furtherance of corporation purposes, to make loans or advances to its members and patrons or to subsidiary and affiliated persons or their members and to purchase or acquire, endorse, discount or sell evidence of debt, obligation or security.

(10) To establish and accumulate a collective reserve account, surplus of capital and other funds authorized by the articles of incorporation or the bylaws.

(11) To foster membership in the corporation and to solicit patrons by advertising or by educational or other means.

(12) To issue and to sell common and preferred stock.

(13) To own shares of the capital stock of, to hold membership in and to hold bonds or other obligations of other workers' corporations and to exercise all the rights of ownership, including the right to vote.

(14) To pay pensions and to establish pension plans, pension trusts and other incentive plans for its directors, officers and employees.

(15) To indemnify, under section 7718 (relating to indemnity), a director or officer or former director or officer of the corporation or a person who may have served at its request as a director or officer of another

corporation in which it holds membership or owns shares of capital stock or of which it is a creditor.

(16) To make contributions and donations for the public welfare or for religious, charitable, scientific or educational purposes.

(17) To merge or consolidate with other workers' cooperative corporations.

(18) To dissolve and wind up.

(19) To exercise incidental powers as necessary or proper in the conduct of its operations.

§ 7712. Investment of capital stock in other corporations.

If the articles permit, a corporation may, by a majority vote of its members at a meeting specially convened, authorize the directors to invest, in the name of the corporation, an amount of its internal capital accounts, including both individual capital accounts and the collective reserve accounts, in the capital stock of any other domestic, foreign or alien workers' cooperative corporations. The corporation may, by a majority vote of its members at a meeting specially convened, permit an investment in the nonvoting preferred stock of the corporation by any other domestic, foreign or alien workers' cooperative corporation.

§ 7713. Meetings.

After the organization of a corporation, the incorporators shall hold an organizational meeting at a time and place fixed by the board of directors and shall adopt a set of bylaws. Not less than ten days' written notice of the meeting shall be given to each incorporator. Thereafter, there shall be at least one meeting of members each year. Annual and special membership meetings shall be governed by the corporation's bylaws. The bylaws shall provide for the giving of notice to members of each meeting of the corporation. For all meetings of the corporation, notice as provided in this section need not be given to members or other stockholders to whom the notice may be required by this chapter if a written waiver of the notice is executed before or after the meeting by each individual and is filed with the records of the meeting.

§ 7714. Records.

(a) Records requirement.--A corporation shall keep at its registered office or principal place of business a record of the proceedings of the members and of the directors and the original or a copy of its bylaws, including amendments to date, certified by the secretary of the corporation, and shall keep at its registered office or principal place of business or at the office of its transfer agent or registrar a share register giving the names of the members, their respective addresses and the number and classes of shares held by each. A corporation shall keep at its registered office or principal place of business appropriate, complete and accurate books or records of account, including a record of all salaries, per diem payments and other remunerations paid to each officer and director by the corporation and remuneration received for the corporation's business transactions.

(b) Examination and copies.--A member, upon written demand, has a right to examine during the usual hours for business, for any proper purpose, the share register, books or records of account and records of the proceedings of the members and directors and to make copies or extracts. A proper purpose is a purpose reasonably related to the member's interest as a stockholder. If an attorney or other agent is the person who seeks the right of inspection, the demand shall be accompanied by a power of attorney or other writing which authorizes the

attorney or other agent to act on behalf of the member. The demand shall be directed to the corporation at its registered office in this Commonwealth or at its principal place of business.

(c) Remedy to compel inspection.--

(1) If the corporation refuses to permit an inspection sought by a member under subsection (b) or does not reply to the demand within five business days after the demand has been made, the member may apply to the court of common pleas of the county in which the registered office of the corporation is located for an order to compel inspection. The court of common pleas has exclusive original jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the corporation to permit the member to inspect the material and to make copies or extracts. The court may order the corporation to furnish to the member a list of its members as of a specific date on condition that the member first pay to the corporation the reasonable cost of obtaining and furnishing the list and on other conditions as the court deems appropriate.

(2) If the member seeks to inspect the books and records of the corporation, other than its register or list of members, the member must first establish both of the following:

(i) That the member has complied with the provisions of this section respecting the form and manner of making demand for inspection of the document.

(ii) That the inspection sought is for a proper purpose.

(3) If the member seeks to inspect the share register or list of members of the corporation and the member has complied with the provisions of this subsection respecting the form and manner of making demand for inspection of the documents, the burden of proof is on the corporation to establish that the inspection the member seeks is for an improper purpose. The court may, at its discretion, prescribe limitations or conditions with reference to the inspection or award other relief as the court deems just and proper. The court may order books, documents and records, pertinent extracts or authenticated copies to be brought within this Commonwealth and kept in this Commonwealth upon terms and conditions as it prescribes.

§ 7715. Audit.

(a) Procedure.--At the close of each fiscal year, a complete certified audit of the operations of the corporation shall be made by a qualified certified public accountant employed by the board of directors, a written report of which shall include the balance sheet, operating statement, commissions, salaries and other remunerations of directors, officers and employees and other proper information. The audit shall be submitted to the members at the next regular meeting. The annual audit of a corporation with annual gross sales of $100,000 or less may be performed by an audit committee of three or more members of the corporation appointed by the board of directors; however, one of the three members must be a member of the board of directors. The members of the committee need not be certified public accountants or public accountants.

(b) Withdrawal of audit and improper audits.--A certified audit may not be withdrawn without approval of the board of directors. The board of directors may seek legal recourse if the audit is conducted improperly.

§ 7716. Directors and officers.

(a) Directors.--

(1) The business of the corporation shall be managed by a board of not less than five directors, who shall be natural persons. At least a majority of the board must be members. The first directors shall serve until the first annual meeting of the corporation, at which time their successors shall be elected by the members of the corporation. Thereafter, a director shall hold office for a term of not less than one year nor more than three years and until a successor is elected and qualified. In an election for directors, a member has the right to cast the number of votes equal to the number of directors to be elected; and the member may cast the whole number of votes for one director or may distribute them among several candidates. An election for a director shall be by secret ballot. A director may be elected to successive terms.

(2) Except as otherwise provided in the bylaws:

(i) A director shall be elected for a term of at least one year, except that the first directors shall serve only until the first annual meeting.

(ii) Vacancies in the board of directors, including vacancies resulting from an increase in the number of directors, shall be filled by a majority of the remaining members of the board, though less than a quorum. A person so elected shall be a director until a successor is elected by the members, who shall make such an election at the next annual meeting of the members or at a special meeting for that purpose.

(iii) The meetings of the board of directors may be held at a place determined by a majority of the directors.

(iv) A quorum for the transaction of business consists of a majority of the directors in office; and, of those present, at least a majority must be members of the corporation. The acts of a majority of the directors present at a meeting at which a quorum is present are the acts of the board of directors.

(v) The board of directors may, by resolution adopted by a majority of the board, appoint two or more directors as an executive committee, which, to the extent provided in the resolution, shall have and exercise the authority of the board of directors.

(vi) An action taken at a meeting of the directors or members of the executive committee may be taken without a meeting, if consent in writing setting forth the action taken is signed by all of the directors or all of the members of the executive committee, as the case may be. The consent shall be filed with the secretary of the corporation.

(vii) Each director shall be provided with an updated copy of the articles of the corporation along with proposed amendments.

(3) If the bylaws so provide, the directors of a corporation may be classified in respect to the time for which they shall hold office. In this case each class shall be as nearly equal in number as possible; the term of office of at least one class shall expire in each year; and the members of a class shall not be elected for a shorter period than one year or for a longer period than three years. If, at a meeting, directors of more than one class are to be

elected, each class of directors shall be elected in a separate election.

(4) A director may be removed from office by the affirmative vote of not less than a majority of the members present and voting at a regular meeting or a special meeting called for that purpose. A director may be removed from office for cause by a vote of not less than a majority of the directors then in office, but this removal may be reversed by a vote by a majority of the members present and voting at a special meeting called for that purpose. The bylaws shall provide for the filing of charges of cause, the giving of notice of the charges, an opportunity to be heard and the procedures under which a director may be removed.

(b) Officers.--

(1) The board shall elect a president, a secretary and a treasurer, and may elect one or more vice presidents, and other officers as authorized in the bylaws. Officers must be members. Any two of the offices of vice president, secretary and treasurer may be held by one person.

(2) An officer may be removed by the affirmative vote of a majority of the directors if, in their judgment, the best interest of the corporation will be served by removal.

§ 7717. Patronage distributions.

(a) Procedure.--Net earnings of a corporation may be apportioned, distributed and paid periodically on the basis of patronage to those persons entitled to receive them, at a time and in a manner as the bylaws provide. The distributions shall be designated as patronage allocations.

(b) Method of payment.--The apportionment, distribution and payment of net earnings under subsection (a) may be in cash or written notices of allocation issued by the corporation.

(c) Minimum transaction amount.--A corporation may provide in its bylaws the minimum amount of a single patronage transaction, which shall be taken into account for the purpose of participation in allocation and distribution of net earnings under this section.

(d) Periodic redemption.--The bylaws of a workers' cooperative corporation shall provide for periodic redemption of written notices of allocation.

(e) Interest.--The bylaws may provide for the corporation to pay or credit interest on the balance of each member's internal capital account.

(f) Termination redemption.--The articles of incorporation shall provide for the recall and redemption of the membership share upon the voluntary or involuntary termination of membership in the corporation. The price of the redemption shall be equal to the sum of the membership fee and any other capital paid in by the member, adjusted by the amount of interest accrued and by distributions of net earnings as provided in the bylaws. No redemption may be made which would render the corporation insolvent.

(g) Net earnings.--For purposes of this section, net earnings shall be computed in accordance with generally accepted accounting principles.

§ 7718. Indemnity.

(a) Mandatory.--A corporation shall indemnify a person acting as a director, officer, employee or agent of the corporation or acting at the request of the corporation as a director, officer, employee or agent of another person against legal expenses, including attorney fees, reasonably incurred in a civil or criminal action in which the person to be indemnified is successful.

(b) Discretionary.--A corporation may indemnify a person acting as a director, officer, employee or agent of the corporation or acting at the request of the corporation as a director, officer, employee or agent of another person against liability and legal expenses, including attorney fees, judgments, fines and settlements, reasonably incurred in a civil or criminal action if the person to be indemnified was unsuccessful but acted in good faith and in a manner that the person reasonably believed to be in or not opposed to the best interests of the corporation and, in a criminal action, had no reasonable cause to believe the conduct was unlawful. The adverse determination of an action does not, of itself, create a presumption that the person to be indemnified did not act in good faith, did not act in a manner that the person reasonably believed to be in or not opposed to the best interest of the corporation or had reasonable cause to believe the conduct was unlawful.

(c) Interest of corporation.--This section applies even if the action is on behalf of or inures to the benefit of the corporation unless the liability for which indemnification is sought is based on negligence in the performance of a duty owed to the corporation.

Cross References. Section 7718 is referred to in section 7711 of this title.

§ 7719. Unlawful dividends.

(a) Insolvency.--For shares of the corporation other than membership shares, the board of directors may declare and the corporation may pay dividends on its outstanding shares except when the corporation is insolvent or the payment would render the corporation insolvent. If a dividend is paid, the directors under whose administration the payment was made, except those who have caused their dissent to be entered on the minutes of the meeting at which the action was authorized and those who, being absent at the time, have promptly filed their written objection with the secretary of the corporation upon learning of the action, shall be jointly and severally liable to the corporation in an amount equal to the amount of the unlawful dividend.

(b) Reliance on financial statements.--A director is not liable under this section if the director relied and acted in good faith upon financial statements of the corporation represented to be correct by the president of the corporation or by the officer having charge of the corporation's books of account or upon written reports, issued by an independent public or certified public accountant, which fairly purports to reflect the financial condition of the corporation.

(c) Liability to corporation.--If an unlawful dividend is paid, each stockholder is liable to the corporation in an amount equal to the amount of the unlawful dividend to the stockholder. An action to enforce this liability must be brought within two years from the date of the receipt of the dividend.

§ 7720. Amendments of articles.

(a) Purpose and voting.--A corporation may amend its articles of incorporation for any purpose authorized by this chapter, including an increase in the amount of its authorized capital stock, by the affirmative vote of two-thirds of its members voting at a general meeting or at the special meeting called for that purpose. No amendment affecting the priority or preferential rights of outstanding stock may be adopted until the consent of the holders of that stock is obtained by a vote at a special meeting called for that purpose. In such a vote

each stockholder whose rights are affected shall have only one vote per share, and the margin necessary for the adoption of the amendment is a majority of the outstanding shares in that class of stock unless a greater vote is required by the articles of incorporation. If an amendment affects the right of more than one class of stock, then the consent of each class of stockholder affected shall be obtained by voting in the manner described in this subsection.

(b) Delivery and filing.--Amendments to the articles of incorporation shall be filed in the department. Upon the filing of amendments to the articles, they shall become effective. See section 134 (relating to docketing statement).

(c) Notice of vote.--Each member and, if required by subsection (a), each stockholder shall be notified by the corporation at least 15 days before a vote is taken to amend the articles of incorporation under subsection (a). Notification for proposed amendments to the articles of incorporation shall include a copy of the proposed amendment; a statement of its purpose and effect; and the time, date, place and manner in which the vote will be taken on the proposed amendment. Notice for all meetings provided for in this subsection need not be given to members or other stockholders under subsection (a) if a written waiver of the notice is executed before or after the meeting by each individual entitled to notice and is filed with the records of the meeting.

(d) Notice of approval.--If an amendment to the articles of incorporation is approved, the corporation shall notify each member within 30 days of the approval by sending a copy of the approved amendment to the articles.

(e) Advertisement.--Before or after an amendment has been adopted by the shareholders, the corporation shall advertise its intention to file or the filing of amendments to the articles with the department in a manner similar to that prescribed in section 7703 (relating to articles of incorporation). Advertisements may appear prior to or after the day upon which the articles of amendment are presented to the department and shall set forth briefly:

(1) The name and location of the registered office of the corporation.

(2) A statement that the amendments to the articles are to be or were filed under this chapter.

(3) The nature and character of the amendments.

(4) The time when the amendments to the articles are to be or were filed under this chapter.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (b), retroactive to June 19, 1989.

References in Text. Section 7703, referred to in this section, was renumbered to section 7704 by Act 198 of 1990.

Cross References. Section 7720 is referred to in section 7705 of this title.

§ 7721. Bylaws.

(a) Adoption, amendment and repeal.--The corporation, before commencing business, shall adopt bylaws not inconsistent with law or its articles of incorporation. The bylaws may be amended in the manner provided by law, the articles of incorporation and the bylaws. The power to amend or repeal the bylaws of a corporation is in the members only, except to the extent that the articles of incorporation require that both the members and the board of directors approve a change. The corporation shall notify each member of a proposed change in the bylaws by sending

to each member, at least 15 days prior to a vote on the proposed change, a copy of the proposed change along with the time, date, place and manner of voting for the proposed changes. If a proposed bylaw change is approved, the corporation shall mail each member a copy of the approved change within 30 days of the approval.

(b) Content.--The bylaws may provide for the following matters:

(1) The time, place and manner of calling and conducting meetings of the members and the number of members that constitute a quorum.

(2) The manner of voting and the conditions upon which members may vote at general or special meetings.

(3) Subject to provision in the articles of incorporation and in this chapter, the number, qualifications, eligibility requirements, manner of nomination, duties and terms of office of directors and officers; the time of their election; and mode and manner of giving notice of election.

(4) The time, place and manner for calling and holding meetings of the directors and executive committees and the number that constitutes a quorum.

(5) Rules consistent with law and the articles of incorporation for the management of the corporation; the making of contracts; the issuance, redemption and transfer of stock; the relative rights, duties, interests and preferences of members and stockholders; and the mode, manner and effect of termination of a member.

(6) Any other provisions deemed necessary or proper to carry out the purposes of the corporation.

(7) Penalties for violations of the bylaws.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (b), retroactive to June 19, 1989.

§ 7722. Benefits bestowed on associations by compliance with this chapter.

A cooperative association, whether incorporated or unincorporated, shall be entitled to all the benefits of this chapter by complying with its provisions; may, by a vote of the majority of the members of the cooperative association taken according to its existing articles of association or bylaws, determine to avail itself of the provisions of this chapter and to assume a corporate name and the powers under a corporate name; and may, by a like vote, transfer to the corporation formed under this chapter all its property. Upon transfer of the property, the corporation to which the property is transferred shall take it in the same manner, to the same extent and with the same effect as the property was previously owned and held by the corporation transferring the property and may, in its corporate name, sue for and collect debts, subscriptions and other benefits belonging to the original association. A corporation taking property under this section shall take it subject to liens and trusts, legal and equitable, to which the property was subject before transfer and shall be liable for all obligations of the previous association to the extent of the value of the property at the time of taking.

§ 7723. Dissolution.

(a) General rule.--A corporation may dissolve and wind up; may merge with other corporations; and may sell to, lease to or exchange with other corporations all or substantially all of its property and assets. Except as otherwise provided in

this chapter, these actions are governed by Chapter 3 (relating to entity transactions) and Subchapter C of Chapter 19 (relating to merger liabilities and sale of assets). A workers' cooperative corporation which has not revoked its election to be governed by this chapter may not merge with one or more corporations organized under any law other than this chapter. If a member objects to a corporation's merger, the member may terminate membership in the corporation. The price of redemption of the member's interest shall be the amount in the member's individual capital account on terms and conditions as the law, the articles of incorporation and the bylaws provide.

(b) Distribution of assets.--Upon dissolution, the assets of a corporation shall be distributed in accordance with the articles of incorporation or bylaws. The recipients of the distributed assets shall be limited to the following:

(1) Each individual who is or was a member of the corporation or the individual's estate on the basis of the ratio of the member's patronage to the total patronage of all members during the existence of the corporation.

(2) Holders of shares of stock in the corporation other than membership shares.

(3) Other corporations which are incorporated under this chapter or which meet the requirements of incorporation under this chapter.

(4) Charitable institutions in support of the cooperative movement.

(c) Security interests and indebtedness.--A mortgage, pledge or creation of a security interest is not a sale within the meaning of this section. Unless otherwise provided in the articles of incorporation or bylaws, a corporation may create or increase its indebtedness in the manner, to the extent, for the purpose, upon terms and conditions and upon security as authorized by resolution adopted by its board of directors. In this case no authorization or consent of the members is required.

(Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (a).

§ 7724. Conversion to a corporation governed by the Business Corporation Law.

(a) Amendment of articles.--A corporation may revoke its election to be governed by this chapter by filing an adopted amendment to its articles of incorporation with the department.

(b) Conversion of shares and accounts.--When a corporation revokes its election under subsection (a), the amendment to the articles of incorporation shall provide for the conversion of membership shares and internal capital accounts to securities or other property in a manner consistent with this title.

§ 7725. Savings provisions.

(a) General rule.--In relation to a corporation existing on the effective date of this chapter, the provisions of this chapter do not impair or affect an act done; offense committed; right accruing or accrued; or liability, penalty, forfeiture or punishment incurred prior to the effective date of this chapter.

(b) Contracts.--This chapter does not impair or affect a contract entered into by a corporation prior to the effective date of this chapter.

§ 7726. Applicability.

(a) General rule.--This chapter shall apply to domestic corporations incorporated under this chapter.

(b) Existing corporations.--This chapter shall apply to existing domestic corporations incorporated under or subject to any prior law of the Commonwealth concerning incorporation and regulation of corporations, whether cooperative or noncooperative, by the filing with the department of a certificate executed under the seal of the corporation, signed by two authorized officers of the corporation and setting forth:

(1) The name of the corporation.

(2) The statute by or under which it was created or formed.

(3) A statement that the members or stockholders of the corporation have elected, by a majority vote of the members or stockholders present at a meeting called for such purpose at which a quorum is present, to accept the provisions of this chapter for the government and regulation of the affairs of the corporation.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.)

1990 Amendment. Act 198 amended subsec. (a), retroactive to June 19, 1989.

CHAPTER 79
FUNDAMENTAL CHANGES
(Transferred)

Subchapter

A. Amendment of Articles (Transferred)
B. Merger, Consolidation and Sale of Assets (Transferred)
C. Division (Transferred)
D. Conversion (Transferred)
E. Voluntary Dissolution and Winding Up (Transferred)
F. Involuntary Liquidation and Dissolution (Transferred)

Transfer. Chapter 79 was renumbered to Chapter 59 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Prior Provisions. Chapter 79 was added November 15, 1972, P.L.1063, No.271, effective in 90 days.

SUBCHAPTER A
AMENDMENT OF ARTICLES
(Transferred)

Transfer. Subchapter A (§§ 7901 - 7906) was renumbered to Subchapter A of Chapter 59 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

SUBCHAPTER B
MERGER, CONSOLIDATION AND SALE OF ASSETS
(Transferred)

Transfer. Subchapter B (§§ 7921 - 7930) was renumbered to Subchapter B of Chapter 59 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

SUBCHAPTER C
DIVISION
(Transferred)

Transfer. Subchapter C (§§ 7941 - 7946) was renumbered to Subchapter C of Chapter 59 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

SUBCHAPTER D
CONVERSION
(Transferred)

Transfer. Subchapter D (§§ 7951 - 7956) was renumbered to Subchapter D of Chapter 59 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

SUBCHAPTER E
VOLUNTARY DISSOLUTION AND WINDING UP
(Transferred)

Transfer. Subchapter E (§§ 7961 - 7971) was renumbered to Subchapter E of Chapter 59 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

SUBCHAPTER F
INVOLUNTARY LIQUIDATION AND DISSOLUTION
(Transferred)

Transfer. Subchapter F (§§ 7981 - 7990) was renumbered to Subchapter F of Chapter 59 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

PART III
PARTNERSHIPS AND LIMITED
LIABILITY COMPANIES

Chapter

81. General Provisions
82. Limited Liability Partnerships and Limited Liability Limited Partnerships
83. General Partnerships (Repealed)
84. General Partnerships
85. Limited Partnerships (Repealed)
86. Limited Partnerships
87. Electing Partnerships
88. Limited Liability Companies
89. Limited Liability Companies

Enactment. Part III was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Part Heading. The heading of Part III was amended December 7, 1994, P.L.703, No.106, effective in 60 days.

Prior Provisions. Former Part III, which related to corporations not-for-profit, was added November 15, 1972, P.L.1063, No.271, and renumbered to Subpart C of Part II December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

CHAPTER 81
GENERAL PROVISIONS

Sec.

8101. Short title of part.
8102. Interchangeability of partnership, limited liability company and corporate forms of organization.
8103. Continuation of certain limited partnerships and limited liability companies (Repealed).
8104. Reserved power of General Assembly.
8105. Ownership of certain professional partnerships and limited liability companies.
8106. Failure to observe formalities.

Enactment. Chapter 81 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Prior Provisions. Former Chapter 81, which related to foreign corporations not-for-profit, was added November 15, 1972, P.L.1063, No.271, and renumbered to Chapter 61 December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 81 is referred to in sections 8415, 8615, 8815 of this title.

§ 8101. Short title of part.

This part shall be known and may be cited as the Partnership Code.

§ 8102. Interchangeability of partnership, limited liability company and corporate forms of organization.

(a) General rule.--Subject to any restrictions on a specific line of business made applicable by section 103 (relating to subordination of title to regulatory laws):

(1) Any business that may be conducted in a corporate form may also be conducted as a partnership or a limited liability company.

(2) A domestic or foreign partnership or limited liability company may exercise any right, power, franchise or privilege that a domestic or foreign corporation engaged in the same line of business might exercise under the laws of this Commonwealth, including powers conferred by section 1511 (relating to additional powers of certain public utility corporations) or other provisions of law granting the right to a duly authorized corporation to take or occupy property and make compensation therefor.

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

(1) Affect any law relating to the taxation of partnerships, limited liability companies or corporations.

(2) Authorize acting as a banking institution, credit union or insurer unless the laws relating thereto or this part expressly permit the conduct of the regulated business in partnership or limited liability company form. See sections 8620(b) (relating to characteristics of limited partnership) and 8818(b) (relating to characteristics of limited liability company).

(3) Except as otherwise provided by law, permit a partnership to provide full limited liability for all of the investors therein or otherwise fail to preserve the intrinsic differences between the partnership and corporate forms.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 7, 1994, P.L.703, No.106, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 8102 is referred to in sections 8620, 8818, 8819 of this title.

§ 8103. Continuation of certain limited partnerships and limited liability companies (Repealed).

2001 Repeal. Section 8103 was repealed June 22, 2001, P.L.418, No.34, effective in 60 days.

§ 8104. Reserved power of General Assembly.

All present and future common or statutory law with respect to the formation, organization or regulation of partnerships, limited partnerships, electing partnerships or limited liability companies or prescribing powers, rights, duties or liabilities of such associations or their general or limited partners, members, managers, officers, agents or other representatives may be revoked, amended or repealed.
(Dec. 7, 1994, P.L.703, No.106, eff. 60 days)

1994 Amendment. Act 106 added section 8104.

§ 8105. Ownership of certain professional partnerships and limited liability companies.

(a) General rule.--Except as otherwise provided by statute, rule or regulation applicable to a particular profession, all of the ultimate beneficial owners of the interests in a general partnership, limited partnership, electing partnership or limited liability company, and all of the governors of the entity, must be licensed persons in the profession the entity practices if the entity renders any of the following professional services:

(1) chiropractic;
(2) dentistry;
(3) law;
(4) medicine and surgery;
(5) optometry;
(6) osteopathic medicine and surgery;
(7) podiatric medicine;
(8) public accounting;
(9) psychology; or
(10) veterinary medicine.

(b) Transitional provision.--Subsection (a) shall not apply to a person that holds only a transferable interest that was acquired before February 21, 2017.
(Dec. 7, 1994, P.L.703, No.106, eff. 60 days; June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 8105 is referred to in section 8834 of this title.

§ 8106. Failure to observe formalities.

The failure of a limited liability partnership, limited partnership, limited liability limited partnership, electing partnership or limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a partner, member or manager of the entity for a debt, obligation or other liability of the entity.
(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 added section 8106.

CHAPTER 82
LIMITED LIABILITY PARTNERSHIPS AND LIMITED LIABILITY LIMITED PARTNERSHIPS

Subchapter

A. Domestic Limited Liability Partnerships and Limited Liability Limited Partnerships

B. Foreign Registered Limited Liability Partnerships (Repealed)
C. Annual Registration
D. Distributions
E. Dissolution

Enactment. Chapter 82 was added December 7, 1994, P.L.703, No.106, effective in 60 days.

Chapter Heading. The heading of Chapter 82 was amended November 21, 2016, P.L.1328, No.170, effective in 90 days.

Cross References. Chapter 82 is referred to in sections 102, 8415, 8615 of this title.

SUBCHAPTER A
DOMESTIC LIMITED LIABILITY PARTNERSHIPS AND LIMITED LIABILITY LIMITED PARTNERSHIPS

Sec.
8201. Scope.
8202. Definitions.
8203. Name (Repealed).
8204. Limitation on liability of partners.
8205. Liability of withdrawing partner (Repealed).
8206. Insurance (Repealed).
8207. Extraterritorial application of subchapter.

Subchapter Heading. The heading of Subchapter A was amended November 21, 2016, P.L.1328, No.170, effective in 90 days.

§ 8201. Scope.

(a) Application of subchapter.--This subchapter applies to a general or limited partnership whose internal affairs are governed by or that is formed under the laws of this Commonwealth and that registers under this section. Any partnership that desires to register under this subchapter or to amend or terminate its registration shall deliver to the Department of State for filing a statement of registration, amendment or termination, as the case may be, which shall be signed by a general partner and shall set forth:

(1) The name of the partnership.

(2) Either:

(i) the address of the principal place of business of the partnership, in the case of a general partnership; or

(ii) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the partnership, in the case of a limited partnership.

(3) A statement that the partnership registers under this subchapter or that the registration of the partnership under this subchapter shall be amended or terminated, as the case may be. If the statement relates to an amendment, the amendment shall restate in full the statement of registration.

(4) A statement that:

(i) the registration, amendment or termination has been authorized by at least a majority in interest of the partners; and

(ii) in the case of a termination, the termination has also been authorized by all of the general partners.

(b) Effect of filing.--Upon the filing of the statement of registration, amendment or termination in the department, the registration under this subchapter shall be effective, amended or terminated, as the case may be. The effectiveness, amendment or termination of the registration of a partnership under this subchapter shall not be deemed to cause a dissolution of the partnership.

(c) Effect of registration.--As long as the registration under this subchapter is in effect, the partnership shall be governed by the provisions of this subchapter and, to the extent not inconsistent with this subchapter, Chapter 84 (relating to general partnerships) or 86 (relating to limited partnerships). Without limiting the generality of the foregoing, a domestic or foreign limited liability partnership or limited liability limited partnership shall be treated the same as if it were not registered under this subchapter for purposes of:

(1) determining whether it is a permissible form of entity in which to conduct the practice of a profession; or

(2) the imposition by the Commonwealth or any political subdivision of any tax or license fee on or with respect to any income, property, privilege, transaction, subject or occupation.

(d) Continuation of registration.--If a limited liability partnership or limited liability limited partnership is dissolved and its business is continued without liquidation of the partnership affairs, the registration under this subchapter of the dissolved partnership shall continue to be applicable to the partnership continuing the business, and it shall not be necessary to make a new filing under this section until such time, if any, as the registration is to be amended or terminated.

(e) Prohibited termination.--A registration under this subchapter may not be terminated while the partnership is a debtor in bankruptcy. See section 8221(f) (relating to annual registration).

(f) Alternative procedure.--In lieu of filing a statement of registration as provided in subsection (a), a limited partnership may register as a limited liability limited partnership by including in its certificate of limited partnership, either originally or by amendment, the statements required by subsection (a)(3) and (4). To terminate its registration, a limited partnership that uses the procedure authorized by this subsection shall amend its certificate of limited partnership to delete the statements required by this subsection.

(g) Constructive notice.--Registration under this section shall constitute constructive notice that the partnership is a limited liability partnership or limited liability limited partnership and that the partners are entitled to the protections from liability provided by this subchapter.

(h) Approval of termination.--In addition to any required approvals under the partnership agreement, the termination of a statement of registration must be approved by the affirmative vote or consent of all the general partners.

(i) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 8201 is referred to in sections 335, 336, 355, 356, 366, 367, 375, 376, 383, 8221, 8421, 8613, 8620 of this title.

§ 8202. Definitions.

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

"Distribution." A direct or indirect transfer of money or other property or incurrence of indebtedness by a limited liability partnership to a person on account of a transferable interest or in a person's capacity as a partner. The term:

(1) includes:

(i) a redemption or other purchase by a partnership of a transferable interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the partnership's business or to have access to records or other information concerning the partnership's business; and

(2) does not include:

(i) amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program;

(ii) the making of, or payment or performance on, a guaranty or similar arrangement by a partnership for the benefit of any or all of its partners;

(iii) a direct or indirect allocation or transfer effected under Chapter 3 (relating to entity transactions) with the approval of the partners; or

(iv) a direct or indirect transfer of:

(A) a governance or transferable interest; or

(B) options, rights or warrants to acquire a governance or transferable interest.

"Foreign registered limited liability partnership." (Deleted by amendment).

"Partner." Includes a person who is or was a partner in a limited liability partnership or a general partner in a limited liability limited partnership at any time while the registration of the partnership under this subchapter is or was in effect.

"Registered limited liability partnership" or **"domestic registered limited liability partnership."** (Deleted by amendment).

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 8202 is referred to in section 8231 of this title.

§ 8203. Name (Repealed).

2014 Repeal. Section 8203 was repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

§ 8204. Limitation on liability of partners.

(a) General rule.--Except as provided in subsection (b), a partner in a limited liability partnership or limited liability limited partnership shall not be liable directly or indirectly, whether by way of indemnification, contribution or otherwise, under an order of court or in any other manner for any debts, obligations or other liabilities of, or chargeable to, the partnership, whether sounding in contract or tort or otherwise,

that arise while the registration of the partnership under this subchapter is in effect.

(b) Exceptions.--

(1) (Repealed).

(2) Subsection (a) shall not affect the liability of a partner:

(i) Individually for any negligent or wrongful acts or misconduct committed by the partner.

(ii) For any debts, obligations or other liabilities of the partnership:

(A) (Deleted by amendment)

(B) as to which the partner has agreed in record form to be liable; or

(C) that:

(I) arose before February 21, 2017; and

(II) did not arise from any negligent or wrongful acts or misconduct committed by a partner or other representative of the partnership.

(iii) To the extent expressly undertaken in the partnership agreement or the certificate of limited partnership.

(3) Subsection (a) shall not affect in any way:

(i) the liability of the partnership itself for all its debts, obligations and other liabilities;

(ii) the availability of the entire assets of the partnership to satisfy its debts, obligations and other liabilities; or

(iii) any obligation undertaken by a partner in record form to individually indemnify another partner of the partnership or to individually contribute toward a liability of another partner.

(c) Continuation of limited liability.--Neither the termination of the registration of a partnership under this subchapter nor the dissolution, winding up or termination of the partnership shall affect the limitation on the liability of a partner in the partnership under this section with respect to debts, obligations and other liabilities that arose while the registration under this subchapter was in effect.

(d) Proper parties.--A partner in a limited liability partnership or limited liability limited partnership is not a proper party to an action or proceeding by or against the partnership, the object of which is to recover damages or enforce debts, obligations or other liabilities for which the partner is not liable.

(e) Cross reference.--See section 103 (relating to subordination of title to regulatory laws).

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 8204 is referred to in sections 8436, 8644 of this title.

§ 8205. Liability of withdrawing partner (Repealed).

2016 Repeal. Section 8205 was repealed November 21, 2016, P.L.1328, No.170, effective in 90 days.

§ 8206. Insurance (Repealed).

2001 Repeal. Section 8206 was repealed June 22, 2001, P.L.418, No.34, effective in 60 days.

§ 8207. Extraterritorial application of subchapter.

(a) Legislative intent.--(Deleted by amendment).

(b) Basis for determining liability of partners.--The liability of partners in a domestic limited liability partnership or domestic limited liability limited partnership shall at all times be determined under Chapters 84 (relating to general partnerships) and 86 (relating to limited partnerships) as modified by the provisions of this subchapter.

(c) Conflict of laws.--The personal liability of a partner of a domestic limited liability partnership or domestic limited liability limited partnership to any person or in any action or proceeding for the debts, obligations or other liabilities of the partnership or for the acts or omissions of other partners or representatives of the partnership shall be governed solely and exclusively by the laws of this Commonwealth. Whenever a conflict arises between the laws of this Commonwealth and the laws of any other state with regard to the liability of partners of a domestic limited liability partnership or domestic limited liability limited partnership for the debts, obligations and other liabilities of the partnership or for the acts or omissions of the other partners or representatives of the partnership, the laws of this Commonwealth shall govern in determining such liability.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

SUBCHAPTER B
FOREIGN REGISTERED
LIMITED LIABILITY PARTNERSHIPS
(Repealed)

2016 Repeal. Subchapter B (§ 8211) was added December 7, 1994, P.L.703, No.106, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days.

SUBCHAPTER C
ANNUAL REGISTRATION

Sec.

8221. Annual registration.

§ 8221. Annual registration.

(a) General rule.--Every domestic limited liability partnership or limited liability limited partnership in existence on December 31 of any year and every foreign limited liability partnership or limited liability limited partnership that is registered to do business in this Commonwealth on December 31 of any year shall deliver to the Department of State for filing with respect to that year, and on or before April 15 of the following year, a certificate of annual registration on a form provided by the department, signed by a general partner and accompanied by the annual registration fee prescribed by subsection (b). The department shall not charge a fee other than the annual registration fee for filing the certificate of annual registration.

(b) Annual registration fee.--

(1) The annual registration fee to be paid when filing a certificate of annual registration shall be equal to a base fee of $200 times the number of persons who were general partners of the partnership on December 31 of the year with respect to which the certificate of annual registration is being filed and who:

(i) in the case of a natural person, had his principal residence on that date in this Commonwealth; or

(ii) in the case of any other person, was incorporated or otherwise organized or existing on that date under the laws of this Commonwealth.

(2) The base fee of $200 shall be increased on December 31, 1997, and December 31 of every third year thereafter by the percentage increase in the Consumer Price Index for Urban Workers during the most recent three calendar years for which that index is available on the date of adjustment. Each adjustment under this paragraph shall be rounded up to the nearest $10.

(c) Notice of annual registration.--Not later than February 1 of each year, the department shall give notice to every partnership required to file a certificate of annual registration with respect to the preceding year of the requirement to file the certificate. The notice shall state the amount of the base fee payable under subsection (b)(1), as adjusted pursuant to subsection (b)(2), if applicable, and shall be accompanied by the form of certificate of annual registration to be filed. Failure by the department to give notice to any party, or failure by any party to receive notice, of the annual registration requirement shall not relieve the party of the obligation to file the certificate of annual registration.

(d) Credit to Corporation Bureau Restricted Account.--The annual registration fee shall not be deemed to be an amount received by the department under Subchapter C of Chapter 1 for purposes of section 155 (relating to disposition of funds), except that $25 of the fee shall be credited to the Corporation Bureau Restricted Account.

(e) Failure to file or pay annual fee.--

(1) Failure to file the certificate of annual registration required by this section for five consecutive years shall result in the automatic termination of:

(i) the status of the limited liability partnership or limited liability limited partnership as such, if it is a domestic partnership; or

(ii) the registration of the limited liability partnership or limited liability limited partnership, if it is a foreign partnership.

(1.1) Any annual registration fee that is not paid when due shall be a lien in the manner provided in this subsection from the time the annual registration fee is due and payable. If a certificate of annual registration is not filed within 30 days after the date on which it is due, the department shall assess a penalty of $500 against the partnership, which shall also be a lien in the manner provided in this subsection. The imposition of that penalty shall not be construed to relieve the partnership from liability for any other penalty or interest provided for under other applicable law.

(2) If the annual registration fee paid by a partnership is subsequently determined to be less than should have been paid because it was based on an incorrect number of general partners or was otherwise incorrectly computed, that fact shall not affect the existence, status or foreign registration of the partnership, but the amount of the additional annual registration fee that should have been paid shall be a lien in the manner provided in this subsection from the time the incorrect payment is discovered by the department.

(3) The annual registration fee shall bear simple interest from the date that it becomes due and payable until paid. The interest rate shall be that provided for in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, with respect to unpaid taxes. The penalty provided for in paragraph (1) shall not bear interest. The payment of interest shall not relieve the partnership from liability for any other penalty or interest provided for under other applicable law.

(4) The lien created by this subsection shall attach to all of the property and proceeds thereof of the partnership in which a security interest can be perfected in whole or in part by filing in the department under 13 Pa.C.S. Div. 9 (relating to secured transactions; sales of accounts, contract rights and chattel paper), whether the property and proceeds are owned by the partnership at the time the annual registration fee or any penalty or interest becomes due and payable or whether the property and proceeds are acquired thereafter. Except as otherwise provided by statute, the lien created by this subsection shall have priority over all other liens, security interests or other charges, except liens for taxes or other charges due the Commonwealth. The lien created by this subsection shall be entered on the records of the department and indexed in the same manner as a financing statement filed under 13 Pa.C.S. Div. 9. At the time an annual registration fee, penalty or interest that has resulted in the creation of a lien under this subsection is paid, the department shall terminate the lien with respect to that annual registration fee, penalty or interest without requiring a separate filing by the partnership for that purpose.

(5) If the annual registration fee paid by a partnership is subsequently determined to be more than should have been paid for any reason, no refund of the additional fee shall be made.

(6) Termination of the status or foreign registration of a partnership under this section, whether voluntarily or involuntarily, shall not release it from the obligation to pay any accrued fees, penalties and interest and shall not release the lien created by this subsection.

(f) Exception for bankrupt partnerships.--A partnership that would otherwise be required to pay the annual registration fee set forth in subsection (b) shall not be required to pay that fee with respect to any year during any part of which the partnership is a debtor in bankruptcy. The partnership shall, instead, indicate on its certificate of annual registration for that year that it is exempt from payment of the annual registration fee pursuant to this subsection. If the partnership fails to file timely a certificate of annual registration, a lien shall be entered on the records of the department pursuant to subsection (e) which shall not be removed until the partnership files a certificate of annual registration indicating its entitlement to an exemption from payment of the annual registration fee as provided in this subsection. See section 8201(e) (relating to scope).

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

References in Text. Division 9 of Title 13, referred to in subsec. (e), was repealed and added by the act of June 8, 2001 (P.L.123, No.18). Present Division 9 relates to secured transactions.

Cross References. Section 8221 is referred to in section 8201 of this title.

SUBCHAPTER D
DISTRIBUTIONS

Sec.
8231. Limitations on distributions by limited liability partnership.
8232. Liability for improper distributions by limited liability partnership.

Enactment. Subchapter D was added November 21, 2016, P.L.1328, No.170, effective in 90 days.

§ 8231. Limitations on distributions by limited liability partnership.

(a) General rule.--A domestic limited liability partnership may not make a distribution, including a distribution under section 8486 (relating to disposition of assets in winding up and required contributions), if after the distribution:

(1) the partnership would not be able to pay its debts as they become due in the ordinary course of the partnership's business; or

(2) the partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

(b) Valuation.--A domestic limited liability partnership may base a determination that a distribution is not prohibited under subsection (a)(2) on:

(1) the book values of the assets and liabilities of the partnership, as reflected on its books and records;

(2) a valuation that takes into consideration unrealized appreciation and depreciation or other changes in value of the assets and liabilities of the partnership;

(3) the current value of the assets and liabilities of the partnership, either valued separately or valued in segments or as an entirety as a going concern; or

(4) any other method that is reasonable in the circumstances.

(c) Excluded liabilities.--In determining whether a distribution is prohibited under subsection (a)(2), the partnership need not consider obligations and liabilities unless they are required to be reflected on a balance sheet, not including the notes to the balance sheet, prepared on the basis of generally accepted accounting principles, or other such accounting practices and principles as are used generally by the partnership in the maintenance of its books and records and as are reasonable in the circumstances.

(d) Measuring date of distribution.--Except as provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) as of the date specified by the partnership when it authorizes the distribution if the distribution occurs within 125 days of the earlier of the date so specified or the date of authorization; or

(2) as of the date of distribution in all other cases.

(e) Date of redemption.--In the case of a distribution as described in paragraph (1) of the definition of "distribution" in section 8202 (relating to definitions), the distribution is deemed to occur as of the earlier of the date money or other property is transferred or debt is incurred by the partnership, or the date the person entitled to the distribution ceases to own the interest or right being acquired by the partnership in return for the distribution.

(f) Status of distribution debt.--The indebtedness of a domestic limited liability partnership to a partner or transferee incurred by reason of a distribution made in accordance with this section shall be at least on a parity with the partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(g) Certain subordinated debt.--The indebtedness of a domestic limited liability partnership, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that a payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(h) Distributions in winding up.--In measuring the effect of a distribution under section 8486, the liabilities of a dissolved domestic limited liability partnership do not include any claim that has been barred under section 8241 (relating to known claims against dissolved limited liability partnership) or 8242 (relating to other claims against dissolved limited liability partnership) or for which security has been provided under section 8243 (relating to court proceedings).

(i) Cross references.--See sections 8415(d)(1) (relating to contents of partnership agreement) and 8447 (relating to standards of conduct for partners).

Cross References. Section 8231 is referred to in sections 8232, 8415 of this title.

§ 8232. Liability for improper distributions by limited liability partnership.

(a) General rule.--If a partner of a limited liability partnership consents to a distribution made in violation of section 8231 (relating to limitations on distributions by limited liability partnership) and in consenting to the distribution fails to comply with section 8447 (relating to standards of conduct for partners), the partner is personally liable to the partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of section 8231.

(b) Recipients.--A person that receives a distribution knowing that the distribution violated section 8231 is personally liable to the limited liability partnership, but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 8231.

(c) Contribution.--A person against which an action is commenced because the person is liable under subsection (a) may:

(1) join any other person that is liable under subsection (a) and seek to enforce a right of contribution from the person; and

(2) join any person that received a distribution in violation of subsection (b) and seek to enforce a right of contribution from the person in the amount the person received in violation of subsection (b).

(d) Statute of repose.--An action under this section is barred unless commenced within two years after the distribution.

Cross References. Section 8232 is referred to in section 8441 of this title.

SUBCHAPTER E
DISSOLUTION

Enactment. Subchapter E was added November 21, 2016, P.L.1328, No.170, effective in 90 days.

Sec.

8241. Known claims against dissolved limited liability partnership.
8242. Other claims against dissolved limited liability partnership.
8243. Court proceedings.
8244. Liability of partner when claim against partnership barred.

Enactment. Subchapter E was added November 21, 2016, P.L.1328, No.170, effective in 90 days.

§ 8241. Known claims against dissolved limited liability partnership.

(a) General rule.--Except as provided in subsection (d), a dissolved limited liability partnership may give notice of a known claim under subsection (b), which has the effect provided in subsection (c).

(b) Notice.--A dissolved limited liability partnership may notify in record form its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant;

(4) state that the claim will be barred if not received by the deadline; and

(5) unless the partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on section 8436 (relating to partner's liability).

(c) Claims barred.--A claim against a dissolved limited liability partnership is barred if the requirements of subsection (b) are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the partnership:

(i) the partnership causes the claimant to receive a notice in record form stating that the claim is rejected and will be barred unless the claimant commences

an action against the partnership to enforce the claim within 90 days after the claimant receives the notice; and

(ii) the claimant does not commence the required action within 90 days after the claimant receives the notice.

(d) Later arising claims.--This section shall not apply to a claim based on an event occurring after the date of dissolution or a liability that on that date is contingent.

Cross References. Section 8241 is referred to in sections 8231, 8242, 8243 of this title.

§ 8242. Other claims against dissolved limited liability partnership.

(a) Permissive notice.--A dissolved limited liability partnership may publish notice of its dissolution and request persons having claims against the partnership to present them in accordance with the notice.

(b) Notice procedure.--A notice under subsection (a) must:

(1) be officially published one time;

(2) describe the information required to be contained in a claim, state that the claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state that a claim against the partnership is barred unless an action to enforce the claim is commenced within two years after publication of the notice; and

(4) unless the partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on section 8436 (relating to partner's liability).

(c) Claims barred.--If a dissolved limited liability partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the partnership within two years after the publication date of the notice:

(1) a claimant that did not receive notice in record form under section 8241 (relating to known claims against dissolved limited liability partnership);

(2) a claimant whose claim was timely sent to the partnership but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the date of dissolution.

(d) Claims not barred.--A claim not barred under this section or section 8241 may be enforced:

(1) against a dissolved limited liability partnership, to the extent of its undistributed assets;

(2) except as provided in section 8243 (relating to court proceedings), if assets of the partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the partnership's assets distributed to the partner or transferee after dissolution, whichever is less, except that a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution; and

(3) against any person liable on the claim under sections 8436, 8473 (relating to liability of person dissociated as partner to other persons) and 8485 (relating to liability after dissolution).

Cross References. Section 8242 is referred to in sections 8231, 8243 of this title.

§ 8243. Court proceedings.

(a) Determination of security.--A dissolved limited liability partnership that has published a notice under section 8242 (relating to other claims against dissolved limited liability partnership) may file an application with the court of common pleas embracing the county where the partnership's principal office is located or, if the principal office is not located in this Commonwealth, where its registered office is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the partnership and:

(1) at the time of the application:

(i) are contingent; or

(ii) have not been made known to the partnership; or

(2) are based on an event occurring after the date of dissolution.

(b) When security not required.--Security is not required for any claim that is or is reasonably anticipated to be barred under section 8241 (relating to known claims against dissolved limited liability partnership).

(c) Notice.--Within 10 days after the filing of an application under subsection (a), the dissolved limited liability partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the partnership.

(d) Guardian ad litem.--In any proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability partnership.

(e) Effect on contingent claims.--A dissolved limited liability partnership that provides security in the amount and form ordered by the court under subsection (a) satisfies the partnership's obligations with respect to claims that are contingent, have not been made known to the partnership or are based on an event occurring after the date of dissolution. The claims may not be enforced against a partner or transferee on account of assets received in liquidation.

Cross References. Section 8243 is referred to in sections 8231, 8242 of this title.

§ 8244. Liability of partner when claim against partnership barred.

If a claim against a dissolved limited liability partnership is barred under this subchapter, any corresponding claim under sections 8436 (relating to partner's liability), 8473 (relating to liability of person dissociated as partner to other persons) and 8485 (relating to liability after dissolution) is also barred.

CHAPTER 83
GENERAL PARTNERSHIPS
(Repealed)

2016 Repeal. Chapter 83 (Subchapters A - F) was added December 21, 1988, P.L.1444, No.177, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days. The subject matter is now contained in Chapter 84 of this title.

CHAPTER 84
GENERAL PARTNERSHIPS

Subchapter

A. General Provisions
B. Nature of Partnership
C. Relations of Partners to Persons Dealing with Partnership
D. Relations of Partners to Each Other and to Partnership
E. Transferable Interests and Rights of Transferees and Creditors
F. Dissociation
G. Dissociation as Partner if Business Not Wound Up
H. Dissolution and Winding Up

Enactment. Chapter 84 was added November 21, 2016, P.L.1328, No.170, effective in 90 days.

Cross References. Chapter 84 is referred to in sections 8201, 8207, 8701 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

8411. Short title and application of chapter.
8412. Definitions.
8413. Knowledge and notice.
8414. Governing law.
8415. Contents of partnership agreement.
8416. Application of partnership agreement.
8417. Amendment and effect of partnership agreement.
8418. Signing of filed documents.
8419. Liability of general partner or other person for false or missing information in filed document.

§ 8411. Short title and application of chapter.

(a) Short title.--This chapter shall be known and may be cited as the Pennsylvania Uniform Partnership Act of 2016.

(b) Initial application.--Before April 1, 2017, this chapter governs only:

(1) a partnership formed on or after February 21, 2017; and

(2) except as provided in subsection (d), a partnership formed before February 21, 2017, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(c) Full effective date.--Except as provided under subsection (d), on and after April 1, 2017, this chapter governs all partnerships.

(d) Liabilities to third parties.--With respect to a partnership that elects under subsection (b)(2) to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the partnership's partners to third parties apply:

(1) before April 1, 2017, to:

(i) a third party that had not done business with the partnership in the year before the election took effect; and

(ii) a third party that had done business with the partnership in the year before the election took effect only if the third party knows or has been notified of the election; and

(2) on and after April 1, 2017, to all third parties, except that those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph (1)(ii).

(e) References to withdrawal.--A reference in a partnership agreement to the withdrawal of a partner shall be deemed to be a reference to the dissociation of the partner.

(f) Cross reference.--See section 8415(c)(5) (relating to contents of partnership agreement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 relettered former subsec. (e) to subsec. (f) and added present subsec. (e).

Cross References. Section 8411 is referred to in sections 8412, 8415 of this title.

§ 8412. Definitions.

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

"Business." Includes every trade, occupation and profession.

"Contribution." Property or a benefit described in section 8443 (relating to form of contribution) which is provided by a person to a partnership to become a partner or in the person's capacity as a partner.

"Distribution." A transfer of money or other property from a partnership to a person on account of a transferable interest or in a person's capacity as a partner. The term:

(1) includes:

(i) a redemption or other purchase by a partnership of a transferable interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the partnership's business or have access to records or other information concerning the partnership's business; and

(2) does not include:

(i) amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program;

(ii) the making of, or payment or performance on, a guaranty or similar arrangement by a partnership for the benefit of any or all of its partners;

(iii) a direct or indirect allocation or transfer effected under Chapter 3 (relating to entity transactions) with the approval of the partners; or

(iv) a direct or indirect transfer of:

(A) a governance or transferable interest; or

(B) options, rights or warrants to acquire a governance or transferable interest.

"Partner." A person that:

(1) has become a partner in a partnership under section 8442 (relating to becoming partner) or was a partner in a partnership when the partnership became subject to this chapter under section 8411 (relating to short title and application of chapter); and

(2) has not dissociated as a partner under section 8461 (relating to events causing dissociation).

"Partnership." An association of two or more persons to carry on as co-owners a business for profit formed under this chapter or that becomes subject to this chapter under Chapter 3 (relating to entity transactions) or section 8411 (relating to short title and application of chapter). The term includes a limited liability partnership or an electing partnership that is not also a limited partnership.

"Partnership agreement." The agreement, whether or not referred to as a partnership agreement and whether oral, implied, in record form or in any combination thereof, of all the partners of a partnership concerning the matters described in section 8415(a) (relating to contents of partnership agreement). The term includes the agreement as amended or restated.

"Partnership at will." A partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

"Transferable interest." The right, as initially owned by a person in the person's capacity as a partner, to receive distributions from a partnership, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

"Transferee." A person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

(b) Index of definitions.--The following is a nonexclusive list of definitions in section 102 (relating to definitions) that apply to this chapter:

"Act" or **"action."**
"Court."
"Debtor in bankruptcy."
"Department."
"Jurisdiction."
"Jurisdiction of formation."
"Obligation."
"Principal office."
"Professional services."
"Property."
"Record form."
"Sign."
"Transfer."

Cross References. Section 8412 is referred to in section 102 of this title.

§ 8413. Knowledge and notice.

(a) Knowledge.--A person knows a fact if the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under subsection (d)(1) or law other than this chapter.

(b) Notice.--A person has notice of a fact if the person:

(1) has reason to know the fact from all the facts known to the person at the time in question; or

(2) is deemed to have notice of the fact under subsection (d)(2).

(c) Notification.--Except as provided under section 113(b) (relating to delivery of document), a person notifies another person of a fact by taking steps reasonably required to inform

the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(d) Constructive knowledge or notice.--A person not a partner is deemed:

(1) to know of a limitation on authority to transfer real property as provided in section 8433(g) (relating to certificate of partnership authority); and

(2) to have notice of:

(i) a person's dissociation as a partner 90 days after a certificate of dissociation under section 8474 (relating to certificate of dissociation) becomes effective;

(ii) the dissolution of the partnership 90 days after a certificate of dissolution under section 8482(b)(2)(i) (relating to winding up and filing of certificates) is effective;

(iii) the termination of the partnership 90 days after a certificate of termination under section 8482(b)(2)(vi) is effective; and

(iv) participation in a merger, interest exchange, conversion, division or domestication, 90 days after a statement of merger, interest exchange, conversion, division or domestication under Chapter 3 (relating to entity transactions) is effective.

(e) Effect of partner's knowledge or notice.--A partner's knowledge or notice of a fact relating to the partnership is effective immediately as knowledge of or notice to the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Cross References. Section 8413 is referred to in sections 8433, 8474, 8702, 8705 of this title.

§ 8414. Governing law.

(a) General rule.--The internal affairs of a partnership and the liability of a partner as a partner for the debts, obligations or other liabilities of the partnership are governed by:

(1) in the case of a limited liability partnership, the laws of this Commonwealth; and

(2) in the case of a partnership that is not a limited liability partnership, the laws of:

(i) the jurisdiction chosen by a provision of the partnership agreement in record form; or

(ii) the jurisdiction in which the partnership has its principal office if there is no choice of law under subparagraph (i).

(b) Enforceability of chosen law.--A choice of law under subsection (a)(2)(i) is enforceable even though:

(1) The chosen jurisdiction has no substantial relationship to the partners or the partnership and there is no other reasonable basis for the parties' choice.

(2) Application of the chosen law would be contrary to a fundamental policy of a jurisdiction that has a materially greater interest in the determination of the particular issue than does the jurisdiction whose law has been chosen.

(c) Cross reference.--See section 8415(c)(6) (relating to contents of partnership agreement).

Cross References. Section 8414 is referred to in section 8415 of this title.

§ 8415. Contents of partnership agreement.

(a) Scope of partnership agreement.--Except as provided in subsections (c) and (d), the partnership agreement governs:

(1) relations among the partners as partners and between the partners and the partnership;

(2) the rights and duties under this title of a person in the capacity of a partner;

(3) the business of the partnership and the conduct of that business;

(4) the means and conditions for amending the partnership agreement; and

(5) the means and conditions for approving a transaction under Chapter 3 (relating to entity transactions).

(b) Title applies generally.--To the extent the partnership agreement does not provide for a matter described in subsection (a), this title governs the matter.

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

(1) Vary a provision of Chapter 1 (relating to general provisions) or Subchapter A of Chapter 2 (relating to names).

(2) Vary the right of a partner to approve a merger, interest exchange, conversion or division under section 333(a)(2) (relating to approval of merger), 343(a)(2) (relating to approval of interest exchange), 353(a)(3) (relating to approval of conversion) or 363(a)(2) (relating to approval of division).

(3) Vary the required contents of a plan of merger under section 332(a) (relating to plan of merger), plan of interest exchange under section 342(a) (relating to plan of interest exchange), plan of conversion under section 352(a) (relating to plan of conversion), plan of division under section 362(a) (relating to plan of division) or plan of domestication under section 372(a) (relating to plan of domestication).

(4) Vary a provision of Chapter 81 (relating to general provisions) or 82 (relating to limited liability partnerships and limited liability limited partnerships), except as provided in subsection (d).

(5) Vary the provisions of section 8411(b), (c) and (d) (relating to short title and application of chapter).

(6) Vary the law applicable under section 8414(a)(1) (relating to governing law).

(7) Vary any requirement, procedure or other provision of this title pertaining to:

(i) registered offices; or

(ii) the department, including provisions pertaining to documents authorized or required to be delivered to the department for filing under this title.

(8) Vary the provisions of section 8437 (relating to actions by and against partnership and partners).

(9) Unreasonably restrict the duties and rights under section 8446 (relating to rights to information), except as provided in subsection (d).

(10) Eliminate the duty of loyalty provided for under section 8447(b)(1)(i) or (ii) or (2) (relating to standards of conduct for partners) or the duty of care, except as provided in subsection (d).

(11) Vary the contractual obligation of good faith and fair dealing under section 8447(d), except as provided under subsection (d).

(12) Unreasonably restrict the right of a person to maintain an action under section 8448(b) (relating to actions by partnership and partners).

(13) Provide indemnification or exoneration in violation of the limitations in sections 8441(m) (relating to partner's rights and duties) and 8447(i).

(14) Vary the power of a person to dissociate as a partner under section 8462(a) (relating to power to dissociate as partner and wrongful dissociation), except to require that the notice under section 8461(1) (relating to events causing dissociation) be in record form.

(15) Vary the causes of dissolution specified in section 8481(a)(4) or (5) (relating to events causing dissolution).

(16) Vary the requirement to wind up the partnership's business as specified in section 8482(a), (b)(1) and (d) (relating to winding up and filing of certificates).

(17) Except as provided in section 8417(b) (relating to amendment and effect of partnership agreement), restrict the rights under this title of a person other than a partner.

(d) Permitted terms.--Subject to subsection (c)(13), the following rules apply:

(1) The partnership agreement may:

(i) specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts;

(ii) alter the prohibition in section 8231(a)(2) (relating to limitations on distributions by limited liability partnership) so that the prohibition requires only that the partnership's total assets not be less than the sum of its total liabilities; and

(iii) impose reasonable restrictions on the availability and use of information obtained under section 8446 and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

(2) To the extent the partnership agreement expressly relieves a partner of a responsibility that the partner would otherwise have under this title and imposes the responsibility on one or more other partners, the agreement also may eliminate or limit any fiduciary duty of the partner relieved of the responsibility which would have pertained to the responsibility.

(3) If not manifestly unreasonable, the partnership agreement may:

(i) alter the aspects of the duty of loyalty stated in section 8447(b)(1)(i) or (ii) or (2);

(ii) prescribe the standards by which the performance of the contractual obligation of good faith and fair dealing under section 8447(d) is to be measured;

(iii) identify specific types or categories of activities that do not violate the duty of loyalty;

(iv) alter the duty of care; and

(v) alter or eliminate any other fiduciary duty.

(e) Determination of manifest unreasonableness.--The court shall decide as a matter of law whether a term of a partnership agreement is manifestly unreasonable under subsection (d)(3). The court:

(1) shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes and business of the partnership, it is readily apparent that:

(i) the objective of the term is unreasonable; or

(ii) the term is an unreasonable means to achieve the term's objective.

(July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (c)(2).

Cross References. Section 8415 is referred to in sections 8231, 8411, 8412, 8414, 8417, 8437, 8446, 8447, 8448, 8462, 8481, 8482 of this title.

§ 8416. Application of partnership agreement.

(a) Partnership bound.--A partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the agreement.

(b) Deemed assent.--A person that becomes a partner is deemed to assent to the partnership agreement.

(c) Preformation agreement.--Two or more persons intending to become the initial partners of a partnership may make an agreement providing that upon the formation of the partnership the agreement will become the partnership agreement.

(d) Cross reference.--See section 8422(a) (relating to formation of partnership).

Cross References. Section 8416 is referred to in section 8422 of this title.

§ 8417. Amendment and effect of partnership agreement.

(a) Approval of amendments.--A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition. See section 8441(j) (relating to partner's rights and duties).

(b) Obligations to nonpartners.--The obligations of a partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Except as provided in section 8445(d) (relating to sharing of and right to distribution before dissolution) or in a court order issued under section 8454(b)(2) (relating to charging order) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

(1) is effective with regard to any debt, obligation or other liability of the partnership or its partners to the person in the person's capacity as a transferee or person dissociated as a partner; and

(2) is not effective to the extent the amendment:

(i) imposes a new debt, obligation or other liability on the transferee or person dissociated as a partner; or

(ii) prejudices the rights under section 8471 (relating to purchase of interest of person dissociated as partner) of a person that dissociated as a partner before the amendment was made.

(c) Provisions in filed documents.--If a document delivered by a partnership to the department for filing becomes effective and contains a provision that would be ineffective under section 8415(c) or (d)(3) (relating to contents of partnership agreement) if contained in the partnership agreement, the provision is ineffective in the document.

(d) Conflicts with partnership agreement.--Subject to subsection (c), if a document delivered by a partnership to the

department for filing becomes effective and conflicts with a provision of the partnership agreement:

(1) the agreement prevails as to partners, persons dissociated as partners and transferees; and

(2) the document prevails as to other persons to the extent they reasonably rely on the document.

(e) Prohibition of oral amendments.--If a provision of a partnership agreement in record form provides that the partnership agreement cannot be amended, modified or rescinded except in record form, an oral agreement, amendment, modification or rescission shall not be enforceable.

Cross References. Section 8417 is referred to in section 8415 of this title.

§ 8418. Signing of filed documents.

(a) Required signatures.--Except as provided in this title, a document delivered to the department for filing under this title relating to a partnership must be signed as follows:

(1) Except as provided under paragraphs (2) and (3), a document signed on behalf of a partnership must be signed by a person authorized by the partnership.

(2) A document filed on behalf of a dissolved partnership that has no partner must be signed by the person winding up the partnership's business under section 8482(c) (relating to winding up and filing of certificates) or a person appointed under section 8482(d) to wind up the business.

(3) A certificate of denial by a person under section 8434 (relating to certificate of denial) must be signed by that person.

(4) Any other document delivered on behalf of a person to the department for filing must be signed by that person.

(b) Cross reference.--See section 142 (relating to effect of signing filings).

Cross References. Section 8418 is referred to in sections 8433, 8434, 8474, 8482 of this title.

§ 8419. Liability of general partner or other person for false or missing information in filed document.

(a) General rule.--If a document delivered to the department for filing under this title and filed by the department contains a materially false statement or fails to state a material fact required to be stated, a person that suffers loss by reasonable reliance on the statement or failure to state a material fact may recover damages for the loss from:

(1) a person that signed the document or caused another to sign it on the person's behalf and knew there was false or missing information in the document at the time it was signed; and

(2) subject to subsection (b), a partner if:

(i) the document was delivered for filing on behalf of the partnership; and

(ii) the partner knew or had notice there was false or missing information for a reasonably sufficient time before the document was relied upon so that, before the reliance, the partner reasonably could have:

(A) filed a petition under section 144 (relating to signing and filing pursuant to judicial order); or

(B) delivered to the department for filing a statement of correction under section 138 (relating to statement of correction) or a statement of

abandonment under section 141 (relating to abandonment of filing before effectiveness).

(b) Partner relieved of responsibility.--To the extent the partnership agreement expressly relieves a partner of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the partnership to the department for filing under this title and imposes that responsibility on one or more other partners, the liability stated in subsection (a)(2) applies to those other partners and not to the partner that the partnership agreement relieves of the responsibility.

(c) Cross reference.--See section 143 (relating to liability for inaccurate information in filing).

SUBCHAPTER B
NATURE OF PARTNERSHIP

Sec.
8421. Partnership as entity.
8422. Formation of partnership.
8423. Partnership property.
8424. When property is partnership property.

§ 8421. Partnership as entity.

(a) General rule.--A partnership is an entity distinct from its partners.

(b) Limited liability partnership.--A partnership is the same entity regardless of whether the partnership has a statement of registration in effect under section 8201 (relating to scope).

§ 8422. Formation of partnership.

(a) General rule.--Except as provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) Excluded associations.--An association formed under a statute other than this chapter, a predecessor statute or a comparable statute of another jurisdiction is not a partnership under this chapter.

(c) Rules for determining formation of partnership.--In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a deceased or retired partner or a beneficiary, representative or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, rights to income, proceeds or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

(d) Cross reference.--See section 8416(c) (relating to application of partnership agreement).

Cross References. Section 8422 is referred to in sections 102, 8416, 8442 of this title.

§ 8423. Partnership property.

Property owned by a partnership is partnership property and is not owned by the partners individually.

§ 8424. When property is partnership property.

(a) General rule.--Property is owned by a partnership and not by the partners individually if the property is acquired in the name of:

(1) the partnership by a transfer to:

(i) the partnership in its name; or

(ii) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property purchased with partnership assets.--Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(c) Property acquired in name of partner.--Property acquired in the name of one or more of the partners is presumed to be separate property owned by the individual partner or partners, even if used for partnership purposes, if the property is acquired without:

(1) an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership; and

(2) use of partnership assets.

SUBCHAPTER C
RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

Sec.

8431. Partner agent of partnership.
8432. Transfer of partnership property.
8433. Certificate of partnership authority.
8434. Certificate of denial.
8435. Partnership liable for partner's actionable conduct.
8436. Partner's liability.
8437. Actions by and against partnership and partners.
8438. Liability of purported partner.

§ 8431. Partner agent of partnership.

Subject to the effect of a certificate of partnership authority under section 8433 (relating to certificate of partnership authority), the following rules apply:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the signing of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner did not have authority to act for the partnership in the particular matter and the person with which the partner was dealing knew or had notice that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership's business or business of the kind carried on by the partnership binds the partnership only if the partner had actual authority to take the action.

Cross References. Section 8431 is referred to in sections 8432, 8472, 8484 of this title.

§ 8432. Transfer of partnership property.

(a) General rule.--Partnership property may be transferred as follows:

(1) Subject to the effect of a certificate of partnership authority under section 8433 (relating to certificate of partnership authority), partnership property held in the name of the partnership may be transferred by an instrument of transfer signed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer signed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer signed by the persons in whose name the property is held.

(b) Recovery of property by partnership.--A partnership may recover partnership property from a transferee only if it proves that the signing of the instrument of initial transfer did not bind the partnership under section 8431 (relating to partner agent of partnership) and:

(1) as to a subsequent transferee who gave value for property transferred under subsection (a)(1) or (2), proves that the subsequent transferee knew or had notice that the person who signed the instrument of initial transfer lacked authority to bind the partnership; or

(2) as to a transferee who gave value for property transferred under subsection (a)(3), proves that the transferee knew or had notice that the property was partnership property and that the person who signed the instrument of initial transfer lacked authority to bind the partnership.

(c) Subsequent transferees.--A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property

under subsection (b) from any earlier transferee of the property.

(d) Sole partner.--If one person holds all the interests in a partnership, all the partnership property vests in that person. The person may sign a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

§ 8433. Certificate of partnership authority.

(a) General rule.--A partnership may deliver to the department for filing a certificate of partnership authority. The certificate:

(1) must include the name of the partnership and:

(i) if the partnership is not a registered foreign limited liability partnership, the street and mailing addresses of its principal office; or

(ii) if the partnership is a registered foreign limited liability partnership, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office;

(2) with respect to any position that exists in or with respect to the partnership, may state the authority, or limitations on the authority, of all persons holding the position to:

(i) sign an instrument transferring real property held in the name of the partnership; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the partnership; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(i) sign an instrument transferring real property held in the name of the partnership; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the partnership.

(b) Amendment or cancellation.--To amend or cancel a certificate of authority filed by the department, a partnership must deliver to the department for filing an amendment or cancellation stating:

(1) the name of the partnership;

(2) if the partnership is not a registered foreign limited liability partnership, the street and mailing addresses of the partnership's principal office;

(3) if the partnership is a registered foreign limited liability partnership, subject to section 109, the address, including street and number, if any, of its registered office;

(4) the date the certificate being affected became effective; and

(5) the contents of the amendment or a statement that the certificate is canceled.

(c) Effect of certificate.--A certificate of authority:

(1) affects only the power of a person to bind a partnership to persons that are not partners; and

(2) is not binding on the department for purposes of the administration of this title or any other provision of law.

(d) Effect of limitation on authority.--Subject to subsection (c) and section 8413(d)(1) (relating to knowledge and notice), and except as provided in subsections (f), (g) and (h), a limitation on the authority of a person or a position contained in an effective certificate of authority is not by

itself evidence of any person's knowledge or notice of the limitation.

(e) Authority not relating to real property.--A grant of authority not pertaining to transfers of real property and contained in an effective certificate of authority is conclusive in favor of a person that gives value in reliance on the grant, unless when the person gives value:

(1) the person has knowledge to the contrary;

(2) the certificate has been canceled or restrictively amended under subsection (b); or

(3) a limitation on the grant is contained in another certificate of authority that became effective after the certificate containing the grant became effective.

(f) Authority relating to real property.--An effective certificate of authority that grants authority to transfer real property held in the name of the partnership, a certified copy of which certificate is recorded in the office of the recorder of deeds for the county in which the real property is located, is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the certificate has been canceled or restrictively amended under subsection (b), and a certified copy of the cancellation or restrictive amendment has been recorded in the office of the recorder of deeds for the county in which the real property is located; or

(2) a limitation on the grant is contained in another certificate of authority that became effective after the certificate containing the grant became effective and a certified copy of the later-effective certificate is recorded in the office of the recorder of deeds for the county in which the real property is located.

(g) Constructive knowledge of limitation.--Subject to subsection (c), if a certified copy of an effective certificate containing a limitation on the authority to transfer real property held in the name of a partnership is recorded in the office of the recorder of deeds for the county in which real property is located, all persons are deemed to know of the limitation.

(h) Effect of certificate of dissolution.--Subject to subsection (i), an effective certificate of dissolution is a cancellation of any filed certificate of authority for the purposes of subsection (f) and is a limitation on authority for purposes of subsection (g).

(i) Post-dissolution certificate of authority.--After a certificate of dissolution becomes effective, a partnership may deliver to the department for filing and, if appropriate, may record a certificate of authority that is designated as a post-dissolution certificate of authority. The certificate operates as provided in subsections (f) and (g).

(j) Cancellation by operation of law.--Unless canceled earlier, an effective certificate of authority is canceled by operation of law five years after the date on which the certificate, or its most recent amendment, becomes effective. The cancellation is effective without recording under subsection (f) or (g).

(k) Effect of certificate of denial.--An effective certificate of denial under section 8434 (relating to certificate of denial):

(1) operates as a restrictive amendment under this section and a certified copy may be recorded as provided in subsection (f)(1) by the partnership or the person that

delivered the certificate of denial to the department for filing; and

(2) affects only the authority of a person to bind a partnership with respect to persons that are not partners.

(l) Foreign partnerships.--A foreign partnership, regardless of whether it is registered to do business in this Commonwealth, may deliver a certificate of authority to the department for filing and may record a copy as provided in this section in the same manner and with the same effect is if it were a domestic partnership.

(m) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8418 (relating to signing of filed documents).

Section 8482 (relating to winding up and filing of certificates).

Cross References. Section 8433 is referred to in sections 8413, 8431, 8432, 8474 of this title.

§ 8434. Certificate of denial.

(a) General rule.--A person named in a filed certificate of authority granting that person authority may deliver to the department for filing a certificate of denial that:

(1) provides the name of the partnership and:

(i) if the partnership is not a registered foreign limited liability partnership, the street and mailing addresses of its principal office; or

(ii) if the partnership is a registered foreign limited liability partnership, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office;

(2) states the caption of the certificate of authority to which the certificate of denial pertains; and

(3) denies the grant of authority.

(b) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8418 (relating to signing of filed documents).

Cross References. Section 8434 is referred to in sections 8418, 8433, 8636 of this title.

§ 8435. Partnership liable for partner's actionable conduct.

(a) General rule.--A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with the actual or apparent authority of the partnership.

(b) Misapplication of property.--If, in the course of the partnership's business or while acting with actual or apparent authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner and the money or property is misapplied by a partner, the partnership is liable for the loss.

§ 8436. Partner's liability.

(a) General rule.--Except as provided in subsection (b) or section 8204 (relating to limitation on liability of partners), all partners are jointly and severally liable for all debts, obligations and other liabilities of the partnership unless otherwise agreed by the claimant or provided by law.

(b) Preexisting liabilities.--A person that becomes a partner is not personally liable for a debt, obligation or other liability of the partnership incurred before the person became a partner.

Cross References. Section 8436 is referred to in sections 8241, 8242, 8244, 8437 of this title.

§ 8437. Actions by and against partnership and partners.

(a) Partnership as party.--A partnership may sue and be sued in the name of the partnership.

(b) Partner as party.--To the extent not inconsistent with section 8436 (relating to partner's liability), a partner may be joined in an action against the partnership or named in a separate action.

(c) Judgment against partnership only.--A judgment against a partnership:

(1) is not by itself a judgment against a partner; and

(2) except as provided in subsection (d), may not be satisfied from a partner's assets.

(d) Judgment against partnership and partner.--If there is a judgment against a partnership and a partner on the same claim, the judgment creditor may levy execution against the assets of the partner if both of the following apply:

(1) The partner is personally liable for the claim under section 8436.

(2) One of the following subparagraphs applies:

(i) A writ of execution on the judgment against the partnership has been returned unsatisfied in whole or in part.

(ii) The partnership is a debtor in bankruptcy.

(iii) The partner has agreed that the creditor need not exhaust partnership assets.

(iv) A court grants permission to levy execution based on a finding that:

(A) partnership assets subject to execution are clearly insufficient to satisfy the judgment;

(B) exhaustion of partnership assets is excessively burdensome; or

(C) the grant of permission is an appropriate exercise of the court's equitable powers.

(v) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) Liability for representations.--This section also applies to any debt, liability or other obligation of a partnership which results from a representation by a partner or purported partner under section 8438 (relating to liability of purported partner).

(f) Cross reference.--See section 8415(c)(8) (relating to contents of partnership agreement).

Cross References. Section 8437 is referred to in section 8415 of this title.

§ 8438. Liability of purported partner.

(a) General rule.--If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more

persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is jointly and severally liable, with any other person consenting to the representation, with respect to that liability.

(b) Authority of purported partner.--If a person is represented in the manner described in subsection (a) to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner with respect to persons who enter into transactions in reliance upon the representation. If all the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) Effect of certificate of partnership authority.--A person is not liable as a partner merely because the person is named by another as a partner in a certificate of partnership authority.

(d) No effect of failure to disclaim authority.--A person does not continue to be liable as a partner merely because of a failure to file a certificate of dissociation or to amend a certificate of partnership authority to indicate the person's dissociation as a partner.

(e) Nonliability of persons not partners.--Except as provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

Cross References. Section 8438 is referred to in section 8437 of this title.

SUBCHAPTER D
RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

Sec.

8441. Partner's rights and duties.
8442. Becoming a partner.
8443. Form of contribution.
8444. Liability for contribution.
8445. Sharing of and right to distribution before dissolution.
8446. Rights to information.
8447. Standards of conduct for partners.
8448. Actions by partnership and partners.
8449. Continuation of partnership beyond definite term or particular undertaking.

§ 8441. Partner's rights and duties.

(a) Distributions.--Each partner is entitled to share in distributions as provided in section 8445 (relating to sharing of and right to distribution before dissolution).

(b) Reimbursement.--A partnership shall reimburse a partner for:

(1) Any payment made by the partner in the course of the partner's activities on behalf of the partnership, if the partner complied with this section and section 8447 (relating to standards of conduct for partners) in making the payment.

(2) An advance to the partnership beyond the amount of capital the partner agreed to contribute.

(c) Indemnification.--A partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation or other liability incurred by the person by reason of the person's former or present capacity as partner, if the claim, demand, debt, obligation or other liability does not arise from the person's breach of this section or section 8232 (relating to liability for improper distributions by limited liability partnership) or 8447.

(d) Advances.--In the ordinary course of its business, a partnership may advance expenses, including attorney fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified under subsection (c).

(e) Insurance.--A partnership may purchase and maintain insurance on behalf of a partner against liability asserted against or incurred by the partner in that capacity or arising from that status even if, under subsection (m), the partnership agreement could not eliminate or limit the person's liability to the partnership for the conduct giving rise to the liability.

(f) Loan to partnership.--A payment or advance made by a partner which gives rise to a partnership obligation under subsection (b) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(g) Management rights.--Each partner has equal rights in the management and conduct of the partnership's business.

(h) Rights to property.--A partner may use or possess partnership property only on behalf of the partnership.

(i) Compensation for services.--A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(j) Required approvals by partners.--A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the affirmative vote or consent of all the partners.

(k) Nonexclusivity.--The rights provided by subsections (b), (c), (d) and (e) shall not be deemed exclusive of any other rights to which a person seeking reimbursement, indemnification, advancement of expenses or insurance may be entitled under the partnership agreement, vote of partners, contract or otherwise, both as to action in his official capacity and as to action in another capacity while holding that position. Section 8447(f) shall be applicable to a vote, contract or other action under this subsection. A partnership may create a fund of any nature, which may, but need not be, under the control of a trustee, or

otherwise secure or insure in any manner its indemnification obligations, whether arising under this section or otherwise.

(l) Grounds.--Indemnification under subsection (k) may be granted for any action taken and may be made whether or not the partnership would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the partnership. Indemnification under subsection (k) is declared to be consistent with the public policy of this Commonwealth.

(m) Limitation.--Indemnification under this section shall not be made in any case where the act giving rise to the claim for indemnification is determined by a court to constitute recklessness, willful misconduct or a knowing violation of law. (Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a).

Cross References. Section 8441 is referred to in sections 8415, 8417, 8486 of this title.

§ 8442. Becoming a partner.

(a) Upon formation.--Upon formation of a partnership, a person becomes a partner under section 8422(a) (relating to formation of partnership).

(b) After formation.--After formation of a partnership, a person becomes a partner:

(1) as provided in the partnership agreement;

(2) as a result of a transaction effective under Chapter 3 (relating to entity transactions); or

(3) with the affirmative vote or consent of all the partners.

(c) Noneconomic partners.--A person may become a partner without:

(1) acquiring a transferable interest; or

(2) making or being obligated to make a contribution to the partnership.

(d) Nature of interest.--The interest of a partner in a partnership is personal property.

Cross References. Section 8442 is referred to in section 8412 of this title.

§ 8443. Form of contribution.

A contribution may consist of:

(1) property transferred to, services performed for or another benefit provided to the partnership;

(2) an agreement to transfer property to, perform services for or provide another benefit to the partnership; or

(3) any combination of items listed in paragraphs (1) and (2).

Cross References. Section 8443 is referred to in section 8412 of this title.

§ 8444. Liability for contribution.

(a) Obligation not excused.--A person's obligation to make a contribution to a partnership is not excused by the person's death, disability, termination or other inability to perform personally.

(b) Substitute payment.--If a person does not fulfill an obligation to make a contribution other than money, the person is obligated, at the option of the partnership, to contribute money equal to the value, as stated in the records of the

partnership, of the part of the contribution which has not been made.

(c) Compromise of obligation.--The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the partners. If a creditor of a limited liability partnership extends credit or otherwise acts in reliance on an obligation described under subsection (a) without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

§ 8445. Sharing of and right to distribution before dissolution.

(a) Distributions before dissolution.--Any distribution made by a partnership before its dissolution and winding up shall be in equal shares among partners and persons dissociated as partners whose interests in the partnership have not been purchased under section 8471 (relating to purchase of interest of person dissociated as partner), except as provided in section 8453(b) (relating to transfer of transferable interest) or to the extent necessary to comply with a charging order in effect under section 8454 (relating to charging order).

(b) No right to distribution.--Subject to section 8471, a person has a right to a distribution before the dissolution and winding up of a partnership only if the partnership decides to make an interim distribution.

(c) Form of distribution.--A person does not have a right to demand or receive a distribution from a partnership in any form other than money. Except as provided in section 8486 (relating to disposition of assets in winding up and required contributions), a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) Status as creditor.--If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the partnership with respect to the distribution. The partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as partner on whose account the distribution is made.

Cross References. Section 8445 is referred to in sections 8417, 8441 of this title.

§ 8446. Rights to information.

(a) Location of records.--A partnership shall keep its books and records, if any, at its principal office.

(b) Right to inspection.--On reasonable notice, a partner may inspect and copy during regular business hours, at a reasonable location specified by the partnership, any record maintained by the partnership regarding the partnership's business, financial condition and other circumstances.

(c) Material information.--The partnership shall furnish to each partner, without demand, any information concerning the partnership's business, financial condition and other circumstances which the partnership knows and is material to the proper exercise of the partner's rights and duties under the partnership agreement or this title, except to the extent the partnership can establish that it reasonably believes the member already knows the information.

(d) Duty of partners.--The duty to furnish information under subsection (c) also applies to each partner to the extent the

partner knows any of the information described in subsection (c).

(e) Rights after dissociation.--Subject to subsection (j), within 10 days after receipt by a partnership of a demand made in record form, a person dissociated as a partner may have access to information to which the person was entitled while a partner if:

(1) the information pertains to the period during which the person was a partner;

(2) the person seeks the information in good faith; and

(3) the information is material to the person's rights and duties under the partnership agreement or this title.

(f) Partnership response to demand.--Within 10 days after receiving a demand under subsection (e), the partnership shall, in record form, inform the person that made the demand of:

(1) the information that the partnership will provide in response to the demand and when and where the partnership will provide the information; and

(2) the partnership's reasons for declining, if the partnership declines to provide any demanded information.

(g) Costs of copying.--A partnership may charge a person that makes a demand under this section the reasonable costs of copying.

(h) Exercise of rights.--A partner or person dissociated as a partner may exercise the rights under this section through an agent or, in the case of an incapacitated person, a guardian. Any restriction or condition imposed by the partnership agreement or under subsection (j) applies both to the agent or guardian and to the partner or person dissociated as a partner.

(i) No rights of transferee.--Subject to section 8455 (relating to power of personal representative of deceased partner), the rights under this section do not extend to a person as transferee.

(j) Reasonable restrictions permitted.--In addition to any restriction or condition stated in its partnership agreement, a partnership, as a matter within the ordinary course of its business, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the partnership has the burden of proving reasonableness.

(k) Enforcement of right to information.--If the partnership, or a partner or agent thereof, refuses to permit an inspection sought by a partner or person dissociated as a partner or attorney or other agent acting for the partner or person dissociated as a partner pursuant to subsection (b) or (e), or does not reply to the demand made under either of those subsections within 10 days after the demand has been received, the partner or person dissociated as a partner may file an action in the court for an order to compel the inspection. The court is vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the partnership to permit the partner or person dissociated as a partner to inspect the information and to make copies or extracts therefrom.

(l) Cross reference.--See section 8415 (relating to contents of partnership agreement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 relettered former subsec. (k) to subsec. (l) and added present subsec. (k).

Cross References. Section 8446 is referred to in sections 8415, 8455 of this title.

§ 8447. Standards of conduct for partners.

(a) General rule.--A partner owes to the partnership and the other partners the duties of loyalty and care stated in subsections (b) and (c).

(b) Duty of loyalty.--The fiduciary duty of loyalty of a partner includes the duties:

(1) to account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner:

(i) in the conduct or winding up of the partnership's business;

(ii) from a use by the partner of the partnership's property; or

(iii) from the appropriation of a partnership opportunity;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a person having an interest adverse to the partnership; and

(3) to refrain from competing with the partnership in the conduct of the partnership's business before the dissolution of the partnership.

(c) Duty of care.--The duty of care of a partner in the conduct or winding up of the partnership business is to refrain from engaging in gross negligence, recklessness, willful misconduct or a knowing violation of law.

(d) Good faith and fair dealing.--A partner shall discharge the duties and obligations under this title or under the partnership agreement and exercise any rights consistent with the contractual obligation of good faith and fair dealing.

(e) Self-serving conduct.--A partner does not violate a duty or obligation under this title or under the partnership agreement solely because the partner's conduct furthers the partner's own interest.

(f) Authorization or ratification.--All the partners may authorize or ratify, after disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty of a partner.

(g) Fairness as a defense.--It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the partnership at the time it was authorized or ratified under subsection (f).

(h) Rights and obligations in approved transaction.--If a partner enters into a transaction with the partnership which otherwise would be prohibited under subsection (b)(2), but the transaction is authorized or ratified as provided under subsection (f) or the partnership agreement, the partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

(i) Exoneration.--The partnership agreement may provide that a partner shall not be personally liable for monetary damages to the partnership or the other partners for a breach of subsection (c), except that a partner may not be exonerated for an act that constitutes recklessness, willful misconduct or a knowing violation of law.

(j) Cross reference.--See section 8415 (relating to contents of partnership agreement).

Cross References. Section 8447 is referred to in sections 8231, 8232, 8415, 8441, 8461, 8463 of this title.

§ 8448. Actions by partnership and partners.

(a) Action by partnership.--A partnership may maintain an action against a partner for either of the following that causes or threatens harm to the partnership:

(1) a breach of the partnership agreement; or

(2) the violation of a duty to the partnership.

(b) Action by partner.--A partner may maintain an action against the partnership or another partner, with or without an accounting as to partnership business, to enforce the partner's rights and protect the partner's interests, including rights and interests under the partnership agreement or this title or arising independently of the partnership relationship.

(c) Claims not revived.--A right to an accounting on dissolution and winding up does not revive a claim barred by law.

(d) Cross reference.--See section 8415(c)(12)(relating to contents of partnership agreement).

Cross References. Section 8448 is referred to in sections 8415, 8471 of this title.

§ 8449. Continuation of partnership beyond definite term or particular undertaking.

(a) Effect of continuation.--If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) Presumed agreement to continue partnership.--If the partners, or those partners who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

SUBCHAPTER E
TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

Sec.

8451. Partner not co-owner of partnership property.
8452. Nature of transferable interest.
8453. Transfer of transferable interest.
8454. Charging order.
8455. Power of personal representative of deceased partner.

§ 8451. Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

§ 8452. Nature of transferable interest.

(a) Personal property.--A transferable interest is personal property.

(b) Only right that may be transferred.--A person may not transfer to a person not a partner any rights in a partnership other than a transferable interest.

§ 8453. Transfer of transferable interest.

(a) General rule.--A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause the dissociation of the transferor as a partner or a dissolution and winding up of the partnership's business; and

(3) subject to section 8455 (relating to power of personal representative of deceased partner), does not entitle the transferee to:

(i) participate in the management or conduct of the partnership's business; or

(ii) except as provided in subsection (c), have access to records or other information concerning the partnership's business.

(b) Rights of transferee.--A transferee has the right to:

(1) receive, in accordance with the terms of the transfer:

(i) distributions to which the transferor would otherwise be entitled; and

(ii) allocations of income, gain, loss, deduction or credit or similar item which would otherwise be made to the transferor; and

(2) seek under section 8481(a)(5) (relating to events causing dissolution) a judicial determination that it is equitable to wind up the partnership business.

(c) Right to account on dissolution.--In a dissolution and winding up of a partnership, a transferee is entitled to an account of the partnership's transactions only from the date of dissolution.

(d) Recognition of transferee's rights.--A partnership need not give effect to a transferee's rights under this section until the partnership knows or has notice of the transfer.

(e) Transfer restrictions.--A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

(f) Rights retained by transferor.--Except as provided in section 8461(4)(ii) (relating to events causing dissociation), if a partner transfers a transferable interest, the transferor retains the rights of a partner other than the transferable interest transferred and retains all the duties and obligations of a partner.

Cross References. Section 8453 is referred to in sections 8445, 8454, 8455 of this title.

§ 8454. Charging order.

(a) General rule.--On application by a judgment creditor of a partner or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(b) Available relief.--To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Foreclosure.--Upon a showing that distributions under a charging order will not pay the judgment debt within a

reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner and is subject to section 8453 (relating to transfer of transferable interest).

(d) Satisfaction of judgment.--At any time before foreclosure under subsection (c), the partner or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) Purchase of rights.--At any time before foreclosure under subsection (c), a partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) Exemption laws preserved.--This chapter shall not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.

(g) Exclusive remedy.--This section provides the exclusive remedy by which a person seeking, in the capacity of a judgment creditor, to enforce a judgment against a partner or transferee may satisfy the judgment from the judgment debtor's transferable interest.

Cross References. Section 8454 is referred to in sections 8417, 8445, 8461, 8486 of this title.

§ 8455. Power of personal representative of deceased partner.

If a partner dies, the deceased partner's personal representative may exercise:

(1) the rights of a transferee provided in section 8453(c) (relating to transfer of transferable interest); and

(2) for purposes of settling the estate, the rights the deceased partner had under section 8446 (relating to rights to information).

Cross References. Section 8455 is referred to in sections 8446, 8453 of this title.

SUBCHAPTER F
DISSOCIATION

Sec.

8461. Events causing dissociation.
8462. Power to dissociate as partner and wrongful dissociation.
8463. Effects of dissociation.

§ 8461. Events causing dissociation.

A person is dissociated as a partner when any of the following occurs:

(1) The partnership knows or has notice of the person's express will to withdraw as a partner, except that, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on that later date.

(2) An event stated in the partnership agreement as causing the person's dissociation occurs.

(3) The person is expelled as a partner pursuant to the partnership agreement.

(4) The person is expelled as a partner by the affirmative vote or consent of all the other partners if:

(i) it is unlawful to carry on the partnership business with the person as a partner;

(ii) there has been a transfer of all of the person's transferable interest in the partnership, other than:

(A) a transfer for security purposes; or

(B) a charging order in effect under section 8454 (relating to charging order) which has not been foreclosed;

(iii) the person is an association and:

(A) the partnership notifies the person that the person will be expelled as a partner because:

(I) the person has filed a certificate of dissolution or the equivalent;

(II) the person has been administratively dissolved;

(III) the person's charter or the equivalent has been revoked; or

(IV) the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(B) within 90 days after the notification:

(I) the certificate of dissolution or the equivalent has not been withdrawn, rescinded or revoked;

(II) the person has not been reinstated;

(III) the person's charter or the equivalent has not been reinstated; or

(IV) the person's right to conduct business has not been reinstated; or

(iv) the person is an unincorporated association that has been dissolved and whose activities and affairs are being wound up.

(5) On application by the partnership or another partner, the person is expelled as a partner by judicial order because the person:

(i) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's business;

(ii) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under section 8447 (relating to standards of conduct for partners); or

(iii) has engaged or is engaging in conduct relating to the partnership's business which makes it not reasonably practicable to carry on the business with the person as a partner.

(6) The person:

(i) becomes a debtor in bankruptcy;

(ii) makes an assignment for the benefit of creditors; or

(iii) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the person or of all or substantially all the person's property.

(7) In the case of an individual:

(i) the individual dies;

(ii) a guardian for the individual is appointed; or

(iii) a court orders that the individual has otherwise become incapable of performing the individual's duties as a partner under this title or the partnership agreement.

(8) In the case of a person that is a testamentary or inter vivos trust or is acting as a partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the partnership is distributed.

(9) In the case of a person that is an estate or is acting as a partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the partnership is distributed.

(10) In the case of a person that is not an individual, the existence of the person terminates.

(11) The partnership participates in a merger under Chapter 3 (relating to entity transactions) and:

(i) the partnership is not the surviving entity; or

(ii) otherwise as a result of the merger, the person ceases to be a partner.

(12) The partnership participates in an interest exchange under Chapter 3 and, as a result of the interest exchange, the person ceases to be a partner.

(13) The partnership participates in a conversion under Chapter 3.

(14) The partnership participates in a division under Chapter 3 and:

(i) the partnership is not a resulting association; or

(ii) as a result of the division, the person ceases to be a partner.

(15) The partnership participates in a domestication under Chapter 3 and, as a result of the domestication, the person ceases to be a partner.

(16) The partnership dissolves and completes winding up.

Cross References. Section 8461 is referred to in sections 8412, 8415, 8453, 8462, 8481 of this title.

§ 8462. Power to dissociate as partner and wrongful dissociation.

(a) Power to dissociate.--A person has the power to dissociate as a partner at any time, rightfully or wrongfully, by withdrawing as a partner by express will under section 8461(1) (relating to events causing dissociation).

(b) Wrongful dissociation.--A person's dissociation as a partner is wrongful only if the dissociation:

(1) is in breach of an express provision of the partnership agreement; or

(2) in the case of a partnership for a definite term or particular undertaking, occurs before the expiration of the term or the completion of the undertaking and:

(i) the person withdraws as a partner by express will, unless the withdrawal follows within 90 days after another person's dissociation by death or otherwise under section 8461(6), (7), (8), (9) or (10) or wrongful dissociation under this subsection;

(ii) the person is expelled as a partner by judicial order under section 8461(5);

(iii) the person is dissociated under section 8461(6); or

(iv) in the case of a person that is not a trust other than a business or statutory trust, an estate or an individual, the person is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) Damages for wrongful dissociation.--A person that wrongfully dissociates as a partner is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation or other liability of the partner to the partnership or the other partners.

(d) Cross reference.--See section 8415(c)(14) (relating to contents of partnership agreement).

Cross References. Section 8462 is referred to in sections 8415, 8471, 8481 of this title.

§ 8463. Effects of dissociation.

(a) Effects on partnership.--If a person's dissociation results in a dissolution and winding up of the partnership business, Subchapter H (relating to dissolution and winding up) applies; otherwise, Subchapter G (relating to dissociation as partner if business not wound up) applies.

(b) Effects on person dissociated as partner.--If a person is dissociated as a partner:

(1) The person's right to participate in the management and conduct of the partnership's business terminates, except as provided under section 8482(c) (relating to winding up and filing of certificates).

(2) The person's duties and obligations under section 8447 (relating to standards of conduct for partners) end with regard to matters arising and events occurring after the person's dissociation, except to the extent the partner participates in winding up the partnership's business under section 8482.

(3) Any transferable interest owned by the person in the person's capacity as a general partner immediately before dissociation that is not subsequently purchased from the person or canceled or exchanged in a transaction under Chapter 3 (relating to entity transactions) is owned by the person solely as a transferee.

(c) Existing obligations not discharged.--A person's dissociation does not of itself discharge the person from any debt, obligation or other liability to the partnership or the other partners which the person incurred while a partner.

SUBCHAPTER G
DISSOCIATION AS PARTNER
IF BUSINESS NOT WOUND UP

Sec.

8471. Purchase of interest of person dissociated as partner.
8472. Power to bind and liability of person dissociated as partner.
8473. Liability of person dissociated as partner to other persons.
8474. Certificate of dissociation.
8475. Continued use of partnership name.

Cross References. Subchapter G is referred to in section 8463 of this title.

§ 8471. Purchase of interest of person dissociated as partner.

(a) Right to buyout.--If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership business under section 8481 (relating to events causing dissolution), the partnership shall cause the person's interest in the partnership to be purchased for a buyout price determined under subsection (b).

(b) Buyout price.--The buyout price of the interest of a person dissociated as a partner is the amount that would have been distributable to the person under section 8486(b) (relating to disposition of assets in winding up and required contributions) if, on the date of dissociation, the assets of the partnership were sold and the partnership was wound up, with the sale price equal to the greater of:

(1) the liquidation value; or

(2) the value based on a sale of the entire business as a going concern without the person.

(c) Interest and offsets.--Interest accrues on the buyout price from the date of dissociation to the date of payment, except that damages for wrongful dissociation under section 8462(b) (relating to power to dissociate as partner and wrongful dissociation) and all other amounts owing, whether or not presently due, from the person dissociated as a partner to the partnership must be offset against the buyout price.

(d) Indemnification.--A partnership shall defend, indemnify and hold harmless a person dissociated as a partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the person under section 8472 (relating to power to bind and liability of person dissociated as partner).

(e) Payment of partnership's estimate.--If an agreement for the purchase of the interest of a person dissociated as a partner is not reached within 120 days after a demand in record form for payment, the partnership shall pay, or cause to be paid, in money to the person the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) Buyout of deferred payment.--If a deferred payment is authorized under subsection (h), the partnership may tender an offer in record form to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment and the other terms and conditions of the obligation.

(g) Information accompanying payment.--The payment or tender required by subsection (e) or (f) must be accompanied by the following:

(1) a statement of partnership assets and liabilities as of the date of dissociation;

(2) the latest available partnership balance sheet and income statement, if any;

(3) an explanation of how the estimated amount of the payment was calculated; and

(4) notice in record form that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the notice, the person dissociated as a partner commences an action to determine the buyout price, any offsets under subsection (c) or other terms of the obligation to purchase.

(h) Deferred payment on wrongful dissociation.--A person that wrongfully dissociates as a partner before the expiration of a definite term or the completion of a particular undertaking

is not entitled to payment of any part of the buyout price until the expiration of the term or completion of the undertaking, unless the person establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) Right to bring action.--A person dissociated as a partner may maintain an action against the partnership, under section 8448(b) (relating to actions by partnership and partners), to determine the buyout price of that person's interest, any offsets under subsection (c) or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after demand in record form for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the person's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g).

Cross References. Section 8471 is referred to in sections 8417, 8445 of this title.

§ 8472. Power to bind and liability of person dissociated as partner.

(a) When partnership bound.--After a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership business and before the partnership is merged or divided out of existence, converted or domesticated under Chapter 3 (relating to entity transactions), or dissolved, the partnership is bound by an act of the person only if:

(1) the act would have bound the partnership under section 8431 (relating to partner agent of partnership) before dissociation; and

(2) at the time the other party enters into the transaction:

(i) less than two years have passed since the dissociation; and

(ii) the other party does not know or have notice of the dissociation and reasonably believes that the person is a partner.

(b) Liability of person dissociated as partner.--If a partnership is bound under subsection (a), the person dissociated as a partner which caused the partnership to be bound is liable:

(1) to the partnership for any damage caused to the partnership arising from the obligation incurred under subsection (a); and

(2) if a partner or another person dissociated as a partner is liable for the obligation, to the partner or other person for any damage caused to the partner or other person arising from the liability.

Cross References. Section 8472 is referred to in section 8471 of this title.

§ 8473. Liability of person dissociated as partner to other persons.

(a) General rule.--Except as provided in subsection (b), a person dissociated as a partner is not liable for a partnership obligation incurred after dissociation.

(b) Exception.--A person that is dissociated as a partner is liable on a transaction entered into by the partnership after the dissociation only if:

(1) a partner would be liable on the transaction; and

(2) at the time the other party enters into the transaction:

(i) less than two years have passed since the dissociation; and

(ii) the other party does not have knowledge or notice of the dissociation and reasonably believes that the person is a partner.

(c) Constructive release by creditor.--A person dissociated as a partner is released from liability for a debt, obligation or other liability of the partnership if the partnership's creditor, with knowledge or notice of the person's dissociation but without the person's consent, agrees to a material alteration in the nature or time of payment of the debt, obligation or other liability. The release from liability under this subsection applies whether the liability arises directly or indirectly, by way of contribution or otherwise, but only if the liability arises solely by reason of having been a partner.

Cross References. Section 8473 is referred to in sections 8242, 8244, 8486 of this title.

§ 8474. Certificate of dissociation.

(a) Right to file certificate.--A person dissociated as a partner or the partnership may deliver to the department for filing a certificate of dissociation stating:

(1) the name of the partnership;

(2) if the partnership is a limited liability partnership, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office; and

(3) the name of the person and that the person has dissociated from the partnership.

(b) Effect of certificate.--A certificate of dissociation is a limitation on the authority of a person dissociated as a partner for the purposes of section 8433 (relating to certificate of partnership authority).

(c) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8413(d)(2) (relating to knowledge and notice).

Section 8418 (relating to signing of filed documents).

Cross References. Section 8474 is referred to in section 8413 of this title.

§ 8475. Continued use of partnership name.

Continued use of a partnership name, or the name of a person dissociated as a partner as part of the partnership name, by

partners continuing the business does not of itself make the person dissociated as a partner liable for an obligation of the partners or the partnership continuing the business.

SUBCHAPTER H
DISSOLUTION AND WINDING UP

Sec.
8481. Events causing dissolution.
8482. Winding up and filing of certificates.
8483. (Reserved).
8484. Power to bind partnership after dissolution.
8485. Liability after dissolution.
8486. Disposition of assets in winding up and required contributions.

Cross References. Subchapter H is referred to in section 8463 of this title.

§ 8481. Events causing dissolution.

(a) General rule.--A partnership is dissolved, and its business shall be wound up, upon the occurrence of any of the following:

(1) In a partnership at will, the partnership knows or has notice of a person's express will to withdraw as a partner, other than a partner that has dissociated under section 8461(2), (3), (4), (5), (6), (7), (8), (9) or (10) (relating to events causing dissociation), except that, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on the later date.

(2) In a partnership for a definite term or particular undertaking:

(i) within 90 days after a person's dissociation by death or otherwise under section 8461(6), (7), (8), (9) or (10) or wrongful dissociation under section 8462(b) (relating to power to dissociate as partner and wrongful dissociation), the affirmative vote or consent of at least half of the remaining partners to wind up the partnership business, for which purpose a person's rightful dissociation under section 8462(b)(2)(i) constitutes that partner's consent to wind up the partnership business;

(ii) the affirmative vote or consent of all the partners to wind up the partnership business; or

(iii) the expiration of the term or the completion of the undertaking.

(3) An event or circumstance that the partnership agreement states causes dissolution.

(4) On application by a partner, the entry by the court of an order dissolving the partnership on the grounds that:

(i) the conduct of all or substantially all the partnership's business is unlawful;

(ii) the economic purpose of the partnership is likely to be unreasonably frustrated;

(iii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(iv) it is otherwise not reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

(5) On application by a transferee, the entry by the court of an order dissolving the partnership on the grounds that it is equitable to wind up the partnership business:

(i) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(ii) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

(6) The passage of 90 consecutive days during which the partnership does not have at least two partners.

(b) Cross reference.--See section 8415(c)(15) (relating to contents of partnership agreement).

Cross References. Section 8481 is referred to in sections 8415, 8453, 8471 of this title.

§ 8482. Winding up and filing of certificates.

(a) General rule.--A dissolved partnership shall wind up its business and the partnership continues after dissolution only for the purpose of winding up.

(b) Conduct of winding up.--In winding up its business, the partnership:

(1) shall discharge the partnership's debts, obligations and other liabilities, settle and close the partnership's business, and marshal and distribute the assets of the partnership; and

(2) may:

(i) deliver to the department for filing a certificate of dissolution stating:

(A) the name of the partnership;

(B) if the partnership is a limited liability partnership, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office; and

(C) that the partnership is dissolved;

(ii) preserve the partnership business and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal or administrative;

(iv) transfer the partnership's property;

(v) settle disputes by mediation or arbitration;

(vi) deliver to the department for filing the certificates, if any, required by section 139 (relating to tax clearance of certain fundamental transactions) and a certificate of termination stating:

(A) the name of the partnership;

(B) if the partnership is a limited liability partnership, subject to section 109, the address, including street and number, if any, of its registered office; and

(C) that the partnership is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(c) Participation after dissociation.--A person whose dissociation as a partner resulted in dissolution may participate in winding up as if still a partner, unless the dissociation was wrongful.

(d) Conduct of winding up when no partner.--If a dissolved partnership does not have a partner and no person has the right to participate in winding up under subsection (c), the personal representative or guardian of the last person to have been a partner may wind up the partnership's business. If the personal representative or guardian does not exercise that right, a person to wind up the partnership's business may be appointed by the affirmative vote or consent of transferees owning a majority of the rights to receive distributions at the time the consent is to be effective. A person appointed under this subsection has the powers of a partner under section 8484 (relating to power to bind partnership after dissolution) but is not liable for the debts, obligations and other liabilities of the partnership solely by reason of having or exercising those powers or otherwise acting to wind up the partnership's business.

(e) Judicial supervision.--On the application of any partner or person entitled under subsection (c) to participate in winding up, a court may order judicial supervision of the winding up of a dissolved partnership, including the appointment of a person to wind up the partnership's business, if:

(1) the partnership does not have a partner and within a reasonable time following the dissolution no person has been appointed under subsection (d); or

(2) the applicant establishes other good cause.

(f) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8415(c)(16) (relating to contents of partnership agreement).

Section 8418 (relating to signing of filed documents).

Cross References. Section 8482 is referred to in sections 139, 8413, 8415, 8418, 8433, 8463, 8485 of this title.

§ 8483. (Reserved).

§ 8484. Power to bind partnership after dissolution.

(a) Power of partner.--A partnership is bound by a partner's act after dissolution which:

(1) is appropriate for winding up the partnership business; or

(2) would have bound the partnership under section 8431 (relating to partner agent of partnership) before dissolution if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

(b) Power of person dissociated as partner.--A person dissociated as a partner binds a partnership through an act occurring after dissolution if:

(1) at the time the other party enters into the transaction:

(i) less than two years have passed since the dissociation; and

(ii) the other party does not know or have notice of the dissociation and reasonably believes that the person is a partner; and

(2) the act:

(i) is appropriate for winding up the partnership's business; or

(ii) would have bound the partnership under section 8431 before dissolution and the other party does not know or have notice of the dissolution at the time the other party enters into the transaction.

Cross References. Section 8484 is referred to in sections 8482, 8485 of this title.

§ 8485. Liability after dissolution.

(a) Liability of partner.--If a partner having knowledge of the dissolution causes a partnership to incur an obligation under section 8484(a)(2) (relating to power to bind partnership after dissolution) by an act that is not appropriate for winding up the partnership business, the partner is liable:

(1) to the partnership for any damage caused to the partnership arising from the obligation; and

(2) if another partner or person dissociated as a partner is liable for the obligation, to that other partner or person for any damage caused to that other partner or person arising from the liability.

(b) Liability of person dissociated as partner.--Except as provided under subsection (c), if a person dissociated as a partner causes a partnership to incur an obligation under section 8484(b), the person is liable:

(1) to the partnership for any damage caused to the partnership arising from the obligation; and

(2) if a partner or another person dissociated as a partner is liable for the obligation, to the partner or other person for any damage caused to the partner or other person arising from the obligation.

(c) Exception in winding up.--A person dissociated as a partner is not liable under subsection (b) if:

(1) section 8482(c) (relating to winding up and filing of certificates) permits the person to participate in winding up; and

(2) the act that causes the partnership to be bound under section 8484(b) is appropriate for winding up the partnership's business.

Cross References. Section 8485 is referred to in sections 8242, 8244 of this title.

§ 8486. Disposition of assets in winding up and required contributions.

(a) Creditors.--In winding up its business, a partnership shall apply its assets, including the contributions required by this section, to discharge the partnership's obligations to creditors, including partners that are creditors.

(b) Surplus.--After a partnership complies with subsection (a), any surplus shall be distributed in the following order, subject to any charging order in effect under section 8454 (relating to charging order):

(1) to each owner of a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) among owners of transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership.

(c) Insufficient assets.--If a partnership's assets are insufficient to satisfy all its obligations under subsection (a), with respect to each unsatisfied obligation incurred when the partnership was not a limited liability partnership, the following rules apply:

(1) Each person that was a partner when the obligation was incurred and that has not been released from the obligation under section 8473(c) (relating to liability of person dissociated as partner to other persons) shall contribute to the partnership for the purpose of enabling the partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions when the obligation was incurred.

(2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the partnership, the other persons required to contribute under paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions when the obligation was incurred.

(3) If a person does not make the additional contribution required under paragraph (2), further additional contributions are determined and due in the same manner as provided in that paragraph.

(d) Recovery of additional contributions.--A person that makes an additional contribution under subsection (c)(2) or (3) may recover from any person whose failure to contribute under subsection (c)(1) or (2) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection shall not exceed the amount the person failed to contribute.

(e) Distributions when surplus insufficient.--If a partnership does not have sufficient surplus to comply with subsection (b)(1), the following shall apply:

(1) If the partnership has been a limited liability partnership at any time during its existence, any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(2) If the partnership has never been a limited liability partnership, the partners and any person whose dissociation resulted in dissolution shall contribute to the partnership funds sufficient to cause the insufficiency under subsection (b)(1) to be allocated consistently with section 8441(a) (relating to partner's rights and duties).

(f) Form of payment.--All distributions made under subsections (b) and (c) must be paid in money.

Cross References. Section 8486 is referred to in sections 8231, 8445, 8471 of this title.

CHAPTER 85
LIMITED PARTNERSHIPS
(Repealed)

2016 Repeal. Chapter 85 (Subchapters A - L) was added December 21, 1988, P.L.1444, No.177, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days. The subject matter is now contained in Chapter 86 of this title.

CHAPTER 86
LIMITED PARTNERSHIPS

Subchapter

A. General Provisions
B. Formation and Filings
C. Limited Partners
D. General Partners
E. Contributions and Distributions
F. Dissociation
G. Transferable Interests and Rights of Transferees and Creditors
H. Dissolution and Winding Up
I. Actions by Partners

Enactment. Chapter 86 was added November 21, 2016, P.L.1328, No.170, effective in 90 days.

Cross References. Chapter 86 is referred to in sections 8201, 8207, 8701, 8997 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

8611. Short title and application of chapter.
8612. Definitions.
8613. Knowledge and notice.
8614. Governing law.
8615. Contents of partnership agreement.
8616. Application of partnership agreement.
8617. Amendment and effect of partnership agreement.
8618. Required information.
8619. Dual capacity.
8620. Characteristics of limited partnership.

§ 8611. Short title and application of chapter.

(a) Short title.--This chapter may be cited as the Pennsylvania Uniform Limited Partnership Act of 2016.

(b) Initial application.--Before April 1, 2017, this chapter governs only:

(1) a limited partnership formed on or after February 21, 2017; and

(2) except as provided under subsections (c) and (d), a limited partnership formed before February 21, 2017, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(c) Full effective date.--Except as provided in subsections (d) and (e), on and after April 1, 2017, this chapter governs all limited partnerships.

(d) Transitional provisions.--With respect to a limited partnership formed before February 21, 2017, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(1) Section 8620(c) (relating to characteristics of limited partnership) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before February 21, 2017.

(2) Sections 8661 (relating to dissociation as limited partner) and 8662 (relating to effects of dissociation as limited partner) do not apply and a limited partner has the same right and power to dissociate from the limited

partnership, with the same consequences, as existed immediately before February 21, 2017.

(3) Section 8663(a)(4) (relating to dissociation as general partner) shall not apply.

(4) Section 8663(a)(5) shall not apply and the court has the same power to expel a general partner as the court had immediately before February 21, 2017.

(5) Section 8681(a)(3) (relating to events causing dissolution) shall not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before February 21, 2017.

(e) Liabilities to third parties.--With respect to a limited partnership that elects under subsection (b)(2) to be subject to this chapter, after the election takes effect, the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:

(1) before April 1, 2017, to:

(i) a third party that had not done business with the limited partnership in the year before the election took effect; and

(ii) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has been notified of the election; and

(2) on and after April 1, 2017, to all third parties, except that those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph (1)(ii).

(f) References to withdrawal.--A reference in the organic rules of a limited partnership to the withdrawal of a general partner or limited partner shall be deemed to be a reference to the dissociation of the partner.

(g) Cross reference.--See section 8615 (relating to contents of partnership agreement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 relettered former subsec. (f) to subsec. (g) and added present subsec. (f).

Cross References. Section 8611 is referred to in sections 8612, 8615, 8620, 8661, 8662, 8663, 8681 of this title.

§ 8612. Definitions.

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

"Certificate of limited partnership." The certificate required by section 8621 (relating to formation of limited partnership and certificate of limited partnership). The term includes the certificate as amended or restated.

"Contribution." Property or a benefit described in section 8651 (relating to form of contribution) which is provided by a person to a limited partnership to become a partner or in the person's capacity as a partner.

"Distribution." A direct or indirect transfer of money or other property or incurrence of indebtedness by a limited partnership to a person on account of a transferable interest or in the person's capacity as a partner. The term:

(1) Includes:

(i) a redemption or other purchase by a limited partnership of a transferable interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the

partnership's activities and affairs or to have access to records or other information concerning the partnership's activities and affairs.

(2) Does not include:

(i) amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program;

(ii) the making of, or payment or performance on, a guaranty or similar arrangement by a partnership for the benefit of any or all of its partners;

(iii) a direct or indirect allocation or transfer effected under Chapter 3 (relating to entity transactions) with the approval of the members; or

(iv) a direct or indirect transfer of:

(A) a governance or transferable interest; or

(B) options, rights or warrants to acquire a governance or transferable interest.

"General partner." A person that:

(1) has become a general partner under section 8641 (relating to becoming a general partner) or was a general partner in a partnership when the partnership became subject to this chapter under section 8611 (relating to short title and application of chapter); and

(2) has not dissociated as a general partner under section 8663 (relating to dissociation as general partner).

"Limited partner." A person that:

(1) has become a limited partner under section 8631 (relating to becoming a limited partner) or was a limited partner in a limited partnership when the partnership became subject to this chapter under section 8611 (relating to short title and application of chapter); and

(2) has not dissociated as a limited partner under section 8661 (relating to dissociation as limited partner).

"Limited partnership." An association formed under this chapter or which becomes subject to this chapter under Chapter 3 (relating to entity transactions) or section 8611 (relating to short title and application of chapter). The term includes a limited liability limited partnership or an electing partnership that is also a limited partnership.

"Partner." A limited partner or general partner.

"Partnership agreement." The agreement, whether or not referred to as a partnership agreement and whether oral, implied, in record form or in any combination thereof, of all the partners of a limited partnership concerning the matters described under section 8615(a) (relating to contents of partnership agreement). The term includes the agreement as amended or restated.

"Required information." The information that a limited partnership is required to maintain under section 8618 (relating to required information).

"Transferable interest." The right, as initially owned by a person in the person's capacity as a partner, to receive distributions from a limited partnership, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

"Transferee." A person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner. The term includes a person that owns a transferable interest under section 8662(a)(3) (relating to

effects of dissociation as limited partner) or 8665(a)(4) (relating to effects of dissociation as general partner).

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

"Act" or **"action."**
"Court."
"Debtor in bankruptcy."
"Department."
"Jurisdiction."
"Jurisdiction of formation."
"Obligation."
"Professional services."
"Property."
"Record form."
"Sign."
"Transfer."

Cross References. Section 8612 is referred to in sections 102, 8654 of this title.

§ 8613. Knowledge and notice.

(a) Knowledge.--A person knows a fact if the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under law other than this chapter.

(b) Notice.--A person has notice of a fact if the person:

(1) has reason to know the fact from all the facts known to the person at the time in question; or

(2) is deemed to have notice of the fact under subsection (c) or (d).

(c) Effect of certificate.--A certificate of limited partnership on file in the department is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as provided under subsection (d) and section 8201(g) (relating to scope), the certificate is not notice of any other fact.

(d) Constructive notice.--A person not a partner is deemed to have notice of:

(1) another person's dissociation as a general partner 90 days after an amendment to the certificate of limited partnership which states that the other person has dissociated becomes effective or 90 days after a certificate of dissociation pertaining to the other person becomes effective, whichever occurs first;

(2) a limited partnership's:

(i) dissolution 90 days after an amendment to the certificate of limited partnership stating that the limited partnership is dissolved is effective;

(ii) termination 90 days after a certificate of termination under section 8682(e) (relating to winding up and filing of certificates) is effective; and

(iii) participation in a merger, interest exchange, conversion, division or domestication, 90 days after a statement of merger, interest exchange, conversion, division or domestication under Chapter 3 (relating to entity transactions) is effective.

(e) Notification.--Except as provided in section 113(b) (relating to delivery of document), a person notifies another person of a fact by taking steps reasonably required to inform

the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(f) Effect of partner's knowledge or notice.--A general partner's knowledge or notice of a fact relating to the limited partnership is effective immediately as knowledge of or notice to the partnership, except in the case of a fraud on the partnership committed by or with the consent of the general partner. A limited partner's knowledge or notice of a fact relating to the partnership is not effective as knowledge of or notice to the partnership.

§ 8614. Governing law.

(a) General rule.--The laws of this Commonwealth govern:

(1) the internal affairs of a limited partnership; and

(2) the liability of a partner as partner for the debts, obligations or other liabilities of a limited partnership.

(b) Cross reference.--See section 8615(c)(6) (relating to contents of partnership agreement).

Cross References. Section 8614 is referred to in section 8615 of this title.

§ 8615. Contents of partnership agreement.

(a) Scope of partnership agreement.--Except as provided under subsections (c) and (d), the partnership agreement governs:

(1) relations among the partners as partners and between the partners and the limited partnership;

(2) the rights and duties under this title of a person in the capacity of a partner;

(3) the activities and affairs of the partnership and the conduct of those activities and affairs;

(4) the means and conditions for amending the partnership agreement; and

(5) the means and conditions for approving a transaction under Chapter 3 (relating to entity transactions).

(b) Title applies generally.--To the extent the partnership agreement does not provide for a matter described in subsection (a), this title governs the matter.

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

(1) Vary a provision of Chapter 1 (relating to general provisions) or Subchapter A of Chapter 2 (relating to names).

(2) Vary the right of a partner to approve a merger, interest exchange, conversion or division under section 333(a)(2) (relating to approval of merger), 343(a)(2) (relating to approval of interest exchange), 353(a)(3) (relating to approval of conversion) or 363(a)(2) (relating to approval of division).

(3) Vary the required contents of a plan of merger under section 332(a) (relating to plan of merger), plan of interest exchange under section 342(a) (relating to plan of interest exchange), plan of conversion under section 352(a) (relating to plan of conversion), plan of division under section 362(a) (relating to plan of division) or plan of domestication under section 372(a) (relating to plan of domestication).

(4) Vary a provision of Chapter 81 (relating to general provisions) or 82 (relating to limited liability partnerships and limited liability limited partnerships).

(5) Vary the provisions of section 8611(b), (c), (d) and (e) (relating to short title and application of chapter).

(6) Vary the law applicable under section 8614 (relating to governing law).

(7) Vary any requirement, procedure or other provision of this title pertaining to:

(i) registered offices; or

(ii) the department, including provisions pertaining to documents authorized or required to be delivered to the department for filing under this title.

(8) Vary a limited partnership's capacity under section 8620(d) (relating to characteristics of limited partnership) to sue and be sued in its own name.

(9) Vary a provision of section 8620(e).

(10) Eliminate the duty of loyalty provided for in section 8649(b)(1)(i) or (ii) or (2) (relating to standards of conduct for general partners) or the duty of care, except as provided in subsection (d).

(11) Vary the contractual obligation of good faith and fair dealing under sections 8635(a) (relating to limited duties of limited partners) and 8649(d), except as provided in subsection (d).

(12) Provide indemnification or exoneration in violation of the limitations in sections 8648(g) (relating to reimbursement, indemnification, advancement and insurance) and 8649(i).

(13) Vary the information required under section 8618 (relating to required information) or unreasonably restrict the duties and rights under section 8634 (relating to limited partner rights to information) or 8647 (relating to general partner rights to information), except as provided under subsection (d).

(14) Vary the power of a person to dissociate as a general partner under section 8664(a) (relating to power to dissociate as general partner and wrongful dissociation), except to require that the notice under section 8663(a)(1) (relating to dissociation as general partner) be in record form.

(15) Vary the causes of dissolution specified in section 8681(a)(6) (relating to events causing dissolution).

(16) Vary the requirements to wind up the partnership's activities and affairs specified in section 8682(a), (b)(1), (d) and (e) (relating to winding up and filing of certificates).

(17) Unreasonably restrict the right of a partner to maintain an action under Subchapter I (relating to actions by partners).

(18) Vary the provisions of section 8694 (relating to special litigation committee), except that the partnership agreement may provide that the partnership may not have a special litigation committee.

(19) Except as provided in section 8617(b) (relating to amendment and effect of partnership agreement), restrict the rights under this title of a person other than a partner.

(d) Rules.--Subject to subsection (c)(12), the following rules apply:

(1) The partnership agreement may:

(i) specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts;

(ii) alter the prohibition in section 8654(a)(2) (relating to limitations on distributions) so that the prohibition requires only that the partnership's total

assets not be less than the sum of its total liabilities; and

(iii) impose reasonable restrictions on the availability and use of information obtained under section 8618, 8634 or 8647 and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

(2) To the extent the partnership agreement expressly relieves a partner of a responsibility that the partner would otherwise have under this title and imposes the responsibility on one or more other partners, the agreement also may eliminate or limit any fiduciary duty of the partner relieved of the responsibility which would have pertained to the responsibility.

(3) If not manifestly unreasonable, the partnership agreement may:

(i) alter the aspects of the duty of loyalty stated in section 8649(b)(1)(i) or (ii) or (2);

(ii) identify specific types or categories of activities that do not violate the duty of loyalty;

(iii) alter the duty of care;

(iv) alter or eliminate any other fiduciary duty; and

(v) prescribe the standards by which the performance of the contractual obligation of good faith and fair dealing is to be measured.

(e) Determination of manifest unreasonableness.--A court shall decide as a matter of law whether a term of a partnership agreement is manifestly unreasonable under subsection (d)(3). The court:

(1) shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes, activities and affairs of the limited partnership, it is readily apparent that:

(i) the objective of the term is unreasonable; or

(ii) the term is an unreasonable means to achieve the term's objective.

(July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (c)(2).

Cross References. Section 8615 is referred to in sections 8611, 8612, 8614, 8617, 8618, 8620, 8621, 8625, 8634, 8635, 8647, 8649, 8654, 8664, 8681, 8682, 8691, 8692, 8694, 8695 of this title.

§ 8616. Application of partnership agreement.

(a) Partnership bound.--A limited partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the agreement.

(b) Deemed assent.--A person that becomes a partner is deemed to assent to the partnership agreement.

(c) Preformation agreement.--Two or more persons intending to become the initial partners of a limited partnership may make an agreement providing that upon the formation of the partnership the agreement will become the partnership agreement.

(d) Cross reference.--See section 8621 (relating to formation of limited partnership and certificate of limited partnership).

§ 8617. Amendment and effect of partnership agreement.

(a) Approval of amendments.--A partnership agreement may specify that its amendment requires the approval of a person

that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) Obligations to nonpartners.--The obligations of a limited partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Except as provided in section 8653(d) (relating to sharing of and right to distributions before dissolution) or in a court order issued under section 8673(b)(2) (relating to charging order) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

(1) is effective with regard to any debt, obligation or other liability of the partnership or its partners to the person in the person's capacity as a transferee or person dissociated as a partner; and

(2) is not effective to the extent the amendment imposes a new debt, obligation or other liability on the transferee or person dissociated as a partner.

(c) Provisions in filed documents.--If a document delivered by a limited partnership to the department for filing becomes effective and contains a provision that would be ineffective under section 8615(c) or (d)(3) (relating to contents of partnership agreement) if contained in the partnership agreement, the provision is ineffective in the document.

(d) Conflicts with partnership agreement.--Subject to subsection (c):

(1) If a provision of the certificate of limited partnership conflicts with a provision of the partnership agreement, the provision of the certificate prevails.

(2) If a document other than its certificate of limited partnership that has been delivered by a limited partnership to the department for filing becomes effective and conflicts with a provision of the partnership agreement:

(i) the agreement prevails as to partners, persons dissociated as partners and transferees; and

(ii) the document prevails as to other persons to the extent they reasonably rely on the document.

(e) Prohibition of oral amendments.--If a provision of a partnership agreement in record form provides that the partnership agreement cannot be amended, modified or rescinded except in record form, an oral agreement, amendment, modification or rescission shall not be enforceable.

(f) Voting requirements.--A partnership agreement may provide in record form that, whenever a provision of this title requires the vote or consent of a specified number or percentage of partners or of a class of partners for the taking of any action, a higher number or percentage of votes or consents shall be required for the action. Except as otherwise provided in the partnership agreement, whenever the partnership agreement requires for the taking of any action by the partners or a class of partners a specific number or percentage of votes or consents, the provision of the partnership agreement setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes or consents of the partners or the class of partners.

Cross References. Section 8617 is referred to in section 8615 of this title.

§ 8618. Required information.

(a) General rule.--A limited partnership shall maintain at its principal office the following information:

(1) A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order.

(2) A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment or restatement has been signed.

(3) A copy of any filed certificate or statement of merger, interest exchange, conversion, division or domestication.

(4) A copy of the partnership's Federal, State and local income tax returns and reports, if any, for the three most recent years.

(5) A copy of any provisions of the partnership agreement in record form and any amendment made in record form to any partnership agreement.

(6) A copy of any financial statement of the partnership for the three most recent years.

(7) A copy of any record made by the partnership during the past three years of any consent given by or vote taken of any partner under this title or the partnership agreement.

(8) Unless contained in a provision of the partnership agreement in record form, a record stating:

(i) a description and statement of the agreed value of contributions other than money made and agreed to be made by each partner;

(ii) the times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(iii) for any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(iv) any events upon the happening of which the partnership is to be dissolved and its activities and affairs wound up.

(b) Cross reference.--See section 8615 (relating to contents of partnership agreement).

Cross References. Section 8618 is referred to in sections 8612, 8615 of this title.

§ 8619. Dual capacity.

A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties and obligations provided by this title and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties and restrictions under this title and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties and restrictions under this title and the partnership agreement for limited partners.

§ 8620. Characteristics of limited partnership.

(a) Separate entity.--A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether:

(1) its certificate of limited partnership states that the limited partnership is a limited liability limited partnership; or

(2) it has a statement of registration in effect under section 8201 (relating to scope).

(b) Purpose.--A limited partnership may have any lawful purpose, other than acting as a banking institution, credit union or insurer, regardless of whether the purpose is for profit. See section 8102 (relating to interchangeability of partnership, limited liability company and corporate forms of organization).

(c) Duration.--A limited partnership has perpetual duration.

(d) Powers.--A limited partnership has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

(e) Restrictions on nonprofit limited partnerships.--If a limited partnership has a purpose that is not for profit:

(1) Its purpose must be stated in the certificate of limited partnership.

(2) The partnership shall not distribute any part of its income or profits to its partners, but it may pay compensation in a reasonable amount to those persons for services rendered.

(3) The partnership may confer benefits on partners or nonpartners in conformity with its purposes, may repay capital contributions and may redeem evidences of indebtedness, except when the partnership is currently insolvent or would thereby be made insolvent or rendered unable to carry on its purposes, or when the fair value of the assets of the partnership remaining after the conferring of benefits, payment or redemption would be insufficient to meet its liabilities. The partnership may make distributions of money or property to partners upon dissolution or final liquidation as permitted by this chapter.

(4) If the partnership is organized for a charitable purpose, it may take, receive and hold real and personal property as may be given, devised to, or otherwise vested in the partnership, in trust, for the purpose or purposes set forth in its certificate of limited partnership. The general partners shall, as trustees of the property, be held to the same degree of responsibility and accountability as other trustees, unless:

(i) a lesser degree or a particular degree of responsibility and accountability is prescribed in the trust instrument; or

(ii) the general partners are under the control of the limited partners or third persons who retain the right to direct, and do direct, the actions of the general partners as to the use of the trust property from time to time.

(5) Property of the partnership committed to charitable purposes shall not, by any proceeding under Chapter 3 (relating to entity transactions) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the partnership obtains from the court an order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.

(f) Cross references.--See sections 8611(d) (relating to short title and application of chapter) and 8615 (relating to contents of partnership agreement).

Cross References. Section 8620 is referred to in sections 8102, 8611, 8615, 8621 of this title.

SUBCHAPTER B
FORMATION AND FILINGS

Sec.
8621. Formation of limited partnership and certificate of limited partnership.
8622. Amendment or restatement of certificate of limited partnership.
8623. Signing of filed documents.
8624. Liability of general partner for false or missing information in filed document.
8625. Registered office.

§ 8621. Formation of limited partnership and certificate of limited partnership.

(a) Formation.--To form a limited partnership, a person must deliver a certificate of limited partnership to the department for filing.

(b) Required contents of certificate.--A certificate of limited partnership must state:

(1) the name of the limited partnership, which must comply with Subchapter A of Chapter 2 (relating to names);

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

(3) the name and address of each general partner.

(c) Optional contents of certificate.--A certificate of limited partnership may contain statements as to matters other than those required under subsection (b), but may not vary or otherwise affect the provisions specified in section 8615(c) and (d) (relating to contents of partnership agreement) in a manner inconsistent with that section.

(d) Time of formation.--A limited partnership is formed when:

(1) the certificate of limited partnership becomes effective;

(2) at least two persons have become partners;

(3) at least one person has become a general partner; and

(4) at least one person has become a limited partner.

(e) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8620 (relating to characteristics of limited partnership).

Section 8623 (relating to signing of filed documents).

Cross References. Section 8621 is referred to in sections 8612, 8616 of this title.

§ 8622. Amendment or restatement of certificate of limited partnership.

(a) General rule.--A certificate of limited partnership may be amended or restated at any time.

(b) Required contents of certificate of amendment.--To amend its certificate of limited partnership, a limited partnership

must deliver to the department for filing a certificate of amendment that states:

(1) the name of the partnership;

(2) the date of filing of its initial certificate;

(3) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office; and

(4) the amendment.

(c) Restatement.--To restate its certificate of limited partnership, a limited partnership must deliver to the department for filing a certificate of amendment that:

(1) is designated as a restatement; and

(2) includes a statement that the restated certificate supersedes the original certificate and all amendments.

(d) Required amendments.--A limited partnership shall promptly deliver to the department for filing an amendment to its certificate of limited partnership to reflect:

(1) the admission of a new general partner;

(2) the dissociation of a person as a general partner; or

(3) the appointment of a person to wind up the partnership's activities and affairs under section 8682(c) or (d) (relating to winding up and filing of certificates).

(e) Obligation to correct.--If a general partner knows that any information in a filed certificate of limited partnership is inaccurate, the general partner shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the department for filing:

(i) a certificate of change of registered office under section 8625 (relating to registered office);

(ii) a statement of correction under section 138 (relating to statement of correction); or

(iii) a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness).

(f) Amendment of voting provisions.--Except as provided in the certificate of limited partnership, whenever the certificate requires for the taking of any action by the partners or a class of partners a specific number or percentage of votes or consents, the provision of the certificate setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes or consents of the partners or of the class of partners.

(g) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8623 (relating to signing of filed documents).

Cross References. Section 8622 is referred to in section 8624 of this title.

§ 8623. Signing of filed documents.

(a) Required signatures.--Except as provided in this title, a document delivered to the department for filing under this title relating to a limited partnership must be signed as follows:

(1) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(2) An amendment to the certificate of limited partnership deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

(3) An amendment to the certificate of limited partnership designating as general partner a person admitted under section 8681(a)(3)(ii) (relating to events causing dissolution) following the dissociation of a limited partnership's last general partner must be signed by the person admitted as a general partner.

(4) An amendment to the certificate of limited partnership required by section 8682(c) (relating to winding up and filing of certificates) following the appointment of a person to wind up the dissolved limited partnership's activities and affairs must be signed by that person.

(5) Any other amendment to the certificate of limited partnership must be signed by:

(i) at least one general partner listed in the certificate;

(ii) each person designated in the amendment as a new general partner; and

(iii) each person that the amendment indicates has dissociated as a general partner, unless:

(A) the person is deceased or a guardian has been appointed for the person and the amendment so states; or

(B) the person has previously delivered to the department for filing a certificate of dissociation.

(6) A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other paragraph of this subsection, the certificate must be signed in a manner that satisfies that paragraph.

(7) A certificate of termination must be signed by all general partners listed in the certificate of limited partnership or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed under section 8682(c) or (d) to wind up the dissolved limited partnership's activities and affairs.

(8) Any other document delivered by a limited partnership to the department for filing must be signed by at least one general partner listed in the certificate of limited partnership.

(9) A statement by a person under section 8665(a)(3) (relating to effects of dissociation as general partner) stating that the person has dissociated as a general partner must be signed by that person.

(10) A certificate of negation by a person under section 8636 (relating to person erroneously believing self to be limited partner) must be signed by that person.

(11) Any other document delivered on behalf of a person to the department for filing must be signed by that person.

(b) Cross reference.--See section 142 (relating to effect of signing filings).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (a)(3).

Cross References. Section 8623 is referred to in sections 8621, 8622, 8625, 8636, 8665, 8681.1, 8682 of this title.

§ 8624. Liability of general partner for false or missing information in filed document.

(a) General rule.--If a document delivered to the department for filing under this title and filed by the department contains a materially false statement or fails to state a material fact required to be stated, a person that suffers loss by reasonable reliance on the statement or failure to state a material fact may recover damages for the loss from a general partner if:

(1) the document was delivered for filing on behalf of the limited partnership; and

(2) the general partner knew or had notice there was false or missing information in the document for a reasonably sufficient time before the document was relied upon so that, before the reliance, the general partner reasonably could have:

(i) effected an amendment under section 8622 (relating to amendment or restatement of certificate of limited partnership);

(ii) filed a petition under section 144 (relating to signing and filing pursuant to judicial order); or

(iii) delivered to the department for filing:

(A) a certificate of change of registered office under section 8625 (relating to registered office);

(B) a statement of correction under section 138 (relating to statement of correction); or

(C) a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness).

(b) Cross references.--See sections 142 (relating to effect of signing filings) and 143 (relating to liability for inaccurate information in filing).

§ 8625. Registered office.

(a) General rule.--Every limited partnership shall have and continuously maintain in this Commonwealth a registered office which may, but need not, be the same as its place of business.

(b) Change of registered office.--After formation, a change in the location of the registered office may be effected at any time by the limited partnership. Before the change becomes effective, the limited partnership shall amend its certificate of limited partnership under the provisions of this chapter to reflect the change, include the change in an annual report under section 146 (relating to annual report) or deliver to the department for filing a certificate of change of registered office setting forth:

(1) The name of the limited partnership.

(2) The address, including street and number, if any, of its then registered office.

(3) The address, including street and number, if any, to which the registered office is to be changed.

(c) Alternative procedure.--A limited partnership may satisfy the requirements of this chapter concerning the maintenance of a registered office in this Commonwealth by setting forth in any document filed by the department under any provision of this title that permits or requires the statement of the address of its then registered office, in lieu of that address, the statement authorized by section 109(a) (relating to name of commercial registered office provider in lieu of registered address).

(d) Effect of statement.--A statement regarding the registered office of a limited partnership set forth in a document filed in the department pursuant to this section shall operate as an amendment of the certificate of limited partnership.

(e) Cross references.--See:

Section 108 (relating to change in location or status of registered office provided by agent).
Section 134 (relating to docketing statement).
Section 135 (relating to requirements to be met by filed documents).
Section 136(c) (relating to processing of documents by Department of State).
Section 8615(c)(6) (relating to contents of partnership agreement).
Section 8623 (relating to signing of filed documents).
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) and relettered former subsec. (d) to subsec. (e) and added present subsec. (d).

Cross References. Section 8625 is referred to in sections 8622, 8624 of this title.

SUBCHAPTER C
LIMITED PARTNERS

Sec.
8631. Becoming a limited partner.
8632. No agency power of limited partner as limited partner.
8633. No liability as limited partner for limited partnership obligations.
8634. Limited partner rights to information.
8635. Limited duties of limited partners.
8636. Person erroneously believing self to be limited partner.

§ 8631. Becoming a limited partner.

(a) Upon formation.--Upon formation of a limited partnership, a person becomes a limited partner as agreed among the persons that are to be the initial partners.

(b) After formation.--After formation, a person becomes a limited partner:

(1) as provided in the partnership agreement;

(2) as the result of a transaction effective under Chapter 3 (relating to entity transactions);

(3) with the affirmative vote or consent of all the partners; or

(4) as provided in section 8681(a)(4) or (5) (relating to events causing dissolution).

(c) Noneconomic limited partners.--A person may become a limited partner without:

(1) acquiring a transferable interest; or

(2) making or being obligated to make a contribution to the limited partnership.

(d) Nature of interest.--The interest of a limited partner in a limited partnership is personal property.

Cross References. Section 8631 is referred to in section 8612 of this title.

§ 8632. No agency power of limited partner as limited partner.

(a) General rule.--A limited partner is not an agent of a limited partnership solely by reason of being a limited partner.

(b) Creation of partnership liability.--A person's status as a limited partner does not prevent or restrict law other than this chapter from imposing liability on a limited partnership because of the person's conduct.

§ 8633. No liability as limited partner for limited partnership obligations.

A debt, obligation or other liability of a limited partnership is not the debt, obligation or other liability of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the partnership. This subsection applies regardless of the dissolution, winding up or termination of the partnership.

§ 8634. Limited partner rights to information.

(a) Right to required information.--Within 10 days after receipt by a limited partnership of a demand made in record form, a limited partner may inspect and copy required information during regular business hours in the partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

(b) Right to other information.--During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may inspect and copy information, other than the required information, regarding the activities, affairs, financial condition and other circumstances of the partnership if:

(1) the limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(2) the limited partner makes a demand in record form received by the partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(3) the information sought is directly connected to the limited partner's purpose.

(c) Rights of person dissociated as limited partner.--Subject to subsection (h), on demand made in record form received by a limited partnership, a person dissociated as a limited partner may have access to information to which the person was entitled while a limited partner if:

(1) the information pertains to the period during which the person was a limited partner;

(2) in seeking the information the person complies with section 8635(a) (relating to limited duties of limited partners) as if still a limited partner; and

(3) the person satisfies the requirements imposed on a limited partner by subsection (b).

(d) Required response to demand.--Within 10 days after receiving a demand under subsection (b) or (c), the limited partnership shall inform in record form the person that made the demand of:

(1) what information the partnership will provide in response to the demand and when and where the partnership will provide the information; and

(2) the partnership's reasons for declining, if the partnership declines to provide any demanded information.

(e) Copying costs.--A limited partnership may charge a person that makes a demand under this section the reasonable costs of copying.

(f) Rights of agent or guardian.--A limited partner or person dissociated as a limited partner may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a guardian. Any restriction or condition imposed by the partnership agreement or under

subsection (h) applies both to the agent or guardian and to the limited partner or person dissociated as a limited partner.

(g) No rights of transferee.--Subject to section 8674 (relating to power of personal representative of deceased partner), the rights under this section do not extend to a person as transferee.

(h) Limitations on access.--In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the partnership has the burden of proving reasonableness.

(i) Enforcement of right to information.--If the limited partnership, or a general partner or agent thereof, refuses to permit an inspection sought by a limited partner or person dissociated as a limited partner or attorney or other agent acting for the limited partner or person dissociated as a limited partner pursuant to subsection (a), (b) or (c), or does not reply to the demand made under any of those subsections within 10 days after the demand has been received, the limited partner may file an action in the court for an order to compel the inspection. The court is vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the limited partnership to permit the limited partner to inspect the information and to make copies or extracts therefrom.

(j) Cross reference.--See section 8615 (relating to contents of partnership agreement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 relettered former subsec. (i) to subsec. (j) and added present subsec. (i).

Cross References. Section 8634 is referred to in sections 8615, 8662, 8674 of this title.

§ 8635. Limited duties of limited partners.

(a) Good faith and fair dealing.--A limited partner shall discharge any duties to the limited partnership and the other partners under the partnership agreement and exercise any rights under this title or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.

(b) No other duties.--Except as provided under subsection (a), a limited partner does not have any duty to the limited partnership or to any other partner solely by reason of acting as a limited partner.

(c) Transactions with limited partnership.--If a limited partner enters into a transaction with a limited partnership, the limited partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

(d) Cross reference.--See section 8615(c)(11) (relating to contents of partnership agreement).

Cross References. Section 8635 is referred to in sections 8615, 8634, 8661, 8662 of this title.

§ 8636. Person erroneously believing self to be limited partner.

(a) Right to correct.--Except as provided in subsection (b), a person that makes an investment in a business enterprise

and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

(1) causes an appropriate certificate of limited partnership, amendment or statement of correction to be signed and delivered to the department for filing;

(2) if a certificate of limited partnership is on file in the department, withdraws from future participation as an owner in the enterprise by delivering to the department for filing a certificate of negation under this section stating:

(i) the name of the limited partnership;

(ii) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the partnership's registered office;

(iii) the name of the person delivering the certificate to the department for filing; and

(iv) that the person is not a general partner; or

(3) files a certificate of denial under section 8434 (relating to certificate of denial) as if the enterprise were a general partnership.

(b) Liability before correction.--A person that makes an investment described in subsection (a) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the department files a certificate of negation, certificate of limited partnership, amendment or statement of correction to show that the person is not a general partner.

(c) Right to withdraw.--If a person makes a diligent effort in good faith to comply with subsection (a)(1) and is unable to cause the appropriate certificate of limited partnership, amendment or statement of correction to be signed and delivered to the department for filing, the person has the right to withdraw from the enterprise under subsection (a)(2) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

(d) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8623 (relating to signing of filed documents).

Cross References. Section 8636 is referred to in section 8623 of this title.

SUBCHAPTER D
GENERAL PARTNERS

Sec.

8641. Becoming a general partner.
8642. General partner agent of limited partnership.
8643. Limited partnership liable for general partner's actionable conduct.
8644. General partner's liability.

8645. Actions by and against partnership and partners.
8646. Management rights.
8647. General partner rights to information.
8648. Reimbursement, indemnification, advancement and insurance.
8649. Standards of conduct for general partners.

§ 8641. Becoming a general partner.

(a) Admission on formation.--On formation of a limited partnership, a person becomes a general partner as agreed among the persons that are to be the initial partners.

(b) Admission after formation.--After formation of a limited partnership, a person becomes a general partner:

(1) as provided in the partnership agreement;

(2) as the result of a transaction effective under Chapter 3 (relating to entity transactions);

(3) with the affirmative vote or consent of all the partners; or

(4) under section 8681(a)(3)(ii) or (5) (relating to events causing dissolution) following the dissociation of a limited partnership's last general partner.

(c) Noneconomic general partners.--A person may become a general partner without:

(1) acquiring a transferable interest; or

(2) making or being obligated to make a contribution to the partnership.

(d) Nature of interest.--The interest of a general partner in a limited partnership is personal property.

Cross References. Section 8641 is referred to in section 8612 of this title.

§ 8642. General partner agent of limited partnership.

(a) General rule.--Each general partner is an agent of the limited partnership for the purposes of its activities and affairs. An act of a general partner, including the signing of a document in record form in the partnership's name, for apparently carrying on in the ordinary course the partnership's activities and affairs, or activities and affairs of the kind carried on by the partnership, binds the partnership, unless the general partner did not have authority to act for the partnership in the particular matter and the person with which the general partner was dealing knew or had notice that the general partner lacked authority.

(b) Act outside of ordinary course.--An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities and affairs, or activities and affairs of the kind carried on by the partnership, binds the partnership only if the partner had actual authority to take the action.

Cross References. Section 8642 is referred to in sections 8666, 8684 of this title.

§ 8643. Limited partnership liable for general partner's actionable conduct.

(a) General rule.--A limited partnership is liable for loss or injury caused to a person or for a penalty incurred as a result of a wrongful act, or other actionable conduct, of a general partner acting in the ordinary course of activities and affairs of the partnership or with the actual or apparent authority of the partnership.

(b) Misapplication of property.--If, in the course of a limited partnership's activities and affairs or while acting with actual or apparent authority of the partnership, a general

partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the partnership is liable for the loss.

§ 8644. General partner's liability.

(a) General rule.--Except as provided under subsection (b) or section 8204 (relating to limitation on liability of partners), all general partners are liable jointly and severally for all debts, obligations and other liabilities of the limited partnership unless otherwise agreed by the claimant or provided by law.

(b) Preexisting obligations.--A person that becomes a general partner is not personally liable for a debt, obligation or other liability of the limited partnership incurred before the person became a general partner.

Cross References. Section 8644 is referred to in sections 8645, 8667, 8686, 8687, 8689 of this title.

§ 8645. Actions by and against partnership and partners.

(a) General partner as party.--To the extent not inconsistent with section 8644 (relating to general partner's liability), a general partner may be joined in an action against the limited partnership or named in a separate action.

(b) Judgment against partnership only.--A judgment against a partnership:

(1) is not by itself a judgment against a partner; and

(2) except as set forth in subsection (c), may not be satisfied from a partner's assets.

(c) Judgment against partnership and partner.--If there is a judgment against a partnership and a partner on the same claim, the judgment creditor may levy execution against the assets of the partner if both of the following paragraphs apply:

(1) The partner is personally liable for the claim under section 8644.

(2) One of the following subparagraphs applies:

(i) A writ of execution on the judgment against the partnership has been returned unsatisfied in whole or in part.

(ii) The partnership is a debtor in bankruptcy.

(iii) The partner has agreed that the creditor need not exhaust partnership assets.

(iv) A court grants permission to levy execution based on a finding that:

(A) partnership assets subject to execution are clearly insufficient to satisfy the judgment;

(B) exhaustion of partnership assets is excessively burdensome; or

(C) the grant of permission is an appropriate exercise of the court's equitable powers.

(v) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

§ 8646. Management rights.

(a) General rule.--Each general partner has equal rights in the management and conduct of the limited partnership's activities and affairs. Except as provided in this title, any matter relating to the activities and affairs of the partnership is decided exclusively by the general partner or, if there is more than one general partner, by a majority of the general partners.

(b) Actions requiring unanimous approval.--The affirmative vote or consent of all the partners is required to:

(1) amend the partnership agreement; and

(2) amend the certificate of limited partnership to delete a statement that the limited partnership is a limited liability limited partnership.

(c) Reimbursement of advance.--A limited partnership shall reimburse a general partner for an advance to the partnership beyond the amount of capital the general partner agreed to contribute.

(d) Status of advance.--A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection (c) or section 8648(a) (relating to reimbursement, indemnification, advancement and insurance) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(e) No right to remuneration.--A general partner is not entitled to remuneration for services performed for the limited partnership.

(f) Sale of assets.--A sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a limited partnership that is not made in the usual and regular course of the activities and affairs of the partnership must be approved by:

(1) all the general partners; and

(2) limited partners owning the rights to receive a majority of the distributions as limited partners.

(g) Cross reference.--See section 324 (relating to approval by limited partnership).

Cross References. Section 8646 is referred to in section 8648 of this title.

§ 8647. General partner rights to information.

(a) Right to required information.--A general partner may inspect and copy required information during regular business hours in the limited partnership's principal office.

(b) Right to other information.--On reasonable notice, a general partner may inspect and copy during regular business hours, at a reasonable location specified by the limited partnership, any other records maintained by the partnership in addition to the required information regarding the partnership's activities, affairs, financial condition and other circumstances.

(c) Obligation of limited partnership.--A limited partnership shall furnish to each general partner, without demand, any information concerning the partnership's activities, affairs, financial condition and other circumstances which the partnership knows and is material to the proper exercise of the general partner's rights and duties under the partnership agreement or this title, except to the extent the partnership can establish that it reasonably believes the general partner already knows the information.

(d) Obligation of general partner.--The duty to furnish information under subsection (c) also applies to each general partner to the extent the general partner knows any of the information described in subsection (b).

(e) Rights of person dissociated as general partner.--Subject to subsection (j), within 10 days after receipt by a limited partnership of a demand made in record form, a person dissociated as a general partner may have access to the information and records described under subsections (a) and (b) at the locations specified under subsections (a) and (b) if:

(1) the information or record pertains to the period during which the person was a general partner;

(2) in seeking the information or record, the person complies with section 8649(d) (relating to standards of conduct for general partners) as if still a general partner; and

(3) all of the following apply:

(i) the person seeks the information for a purpose reasonably related to the partner's interest as a former general partner;

(ii) the person makes a demand in record form received by the partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(iii) the information sought is directly connected to the person's purpose.

(f) Required response to demand.--Within 10 days after receiving a demand under subsection (e), the limited partnership shall, in record form, inform the person that made the demand of:

(1) what information the partnership will provide in response to the demand and when and where the partnership will provide the information; and

(2) the partnership's reasons for declining, if the partnership declines to provide any demanded information.

(g) Copying costs.--A limited partnership may charge a person that makes a demand under this section the reasonable costs of copying.

(h) Rights of agent or guardian.--A general partner or person dissociated as a general partner may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a guardian. Any restriction or condition imposed by the partnership agreement or under subsection (j) applies both to the agent or guardian and to the general partner or person dissociated as a general partner.

(i) No rights of transferee.--The rights under this section do not extend to a person as transferee, except that if:

(1) a general partner dies, section 8674 (relating to power of personal representative of deceased partner) applies; and

(2) an individual dissociates as a general partner under section 8663(a)(7)(ii) or (iii) (relating to dissociation as general partner), the personal representative of the individual may exercise the rights under subsection (d) of a person dissociated as a general partner.

(j) Limitations on access.--In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the partnership has the burden of proving reasonableness.

(k) Enforcement of right to information.--If the limited partnership, or a general partner or agent thereof, refuses to permit an inspection sought by a general partner or person dissociated as a general partner or attorney or other agent acting for the general partner or person dissociated as a general partner pursuant to subsection (a), (b) or (e), or does not reply to the demand made under any of those subsections within 10 days after the demand has been received, the general partner may file an action in the court for an order to compel

the inspection. The court is vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the limited partnership to permit the general partner to inspect the information and to make copies or extracts therefrom.

(l) Cross reference.--See section 8615 (relating to contents of partnership agreement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 relettered former subsec. (k) to subsec. (l) and added present subsec. (k).

Cross References. Section 8647 is referred to in sections 8615, 8665 of this title.

§ 8648. Reimbursement, indemnification, advancement and insurance.

(a) Reimbursement.--A limited partnership shall reimburse a general partner for any payment made by the general partner in the course of the general partner's activities on behalf of the partnership, if the general partner complied with sections 8646 (relating to management rights), 8649 (relating to standards of conduct for general partners) and 8654 (relating to limitations on distributions) in making the payment.

(b) Indemnification.--A limited partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation or other liability incurred by the person by reason of the person's former or present capacity as a general partner, if the claim, demand, debt, obligation or other liability does not arise from the person's breach of section 8646, 8649 or 8654.

(c) Advancement.--In the ordinary course of its activities and affairs, a limited partnership may advance expenses, including attorney fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a general partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified.

(d) Insurance.--A limited partnership may purchase and maintain insurance on behalf of a general partner against liability asserted against or incurred by the general partner in that capacity or arising from that status even if, under subsection (g), the partnership agreement could not eliminate or limit the person's liability to the partnership for the conduct giving rise to the liability.

(e) Nonexclusivity.--The rights provided under subsections (a), (b), (c) and (d) shall not be deemed exclusive of any other rights to which a person seeking reimbursement, indemnification, advancement of expenses or insurance may be entitled under the partnership agreement, vote of partners, contract or otherwise, both as to action in his official capacity and as to action in another capacity while holding that position. Section 8649(f) shall be applicable to a vote, contract or other action under this subsection. A limited partnership may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under this section or otherwise.

(f) Grounds.--Indemnification under subsection (e) may be granted for any action taken and may be made whether or not the limited partnership would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or

in the right of the partnership. Indemnification under subsection (e) is declared to be consistent with the public policy of the Commonwealth.

(g) Limitation.--Indemnification under this section shall not be made in any case where the act giving rise to the claim for indemnification is determined by a court to constitute recklessness, willful misconduct or a knowing violation of law.

Cross References. Section 8648 is referred to in sections 8615, 8646, 8693, 8694 of this title.

§ 8649. Standards of conduct for general partners.

(a) General rule.--A general partner owes to the limited partnership and, subject to section 8691 (relating to direct action by partner), the other partners the duties of loyalty and care stated in subsections (b) and (c).

(b) Duty of loyalty.--The fiduciary duty of loyalty of a general partner includes the duties:

(1) to account to the limited partnership and hold as trustee for it any property, profit or benefit derived by the general partner:

(i) in the conduct or winding up of the partnership's activities and affairs;

(ii) from a use by the general partner of the partnership's property; or

(iii) from the appropriation of a partnership opportunity;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership's activities and affairs as or on behalf of a person having an interest adverse to the partnership; and

(3) to refrain from competing with the partnership in the conduct or winding up of the partnership's activities and affairs.

(c) Duty of care.--The duty of care of a general partner in the conduct or winding up of the limited partnership's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct or knowing violation of law.

(d) Good faith and fair dealing.--A general partner shall discharge the duties and obligations under this title or under the partnership agreement and exercise any rights consistent with the contractual obligation of good faith and fair dealing.

(e) Self-serving conduct.--A general partner does not violate a duty or obligation under this title or under the partnership agreement solely because the general partner's conduct furthers the general partner's own interest.

(f) Authorization or ratification.--All the partners of a limited partnership may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty of a general partner.

(g) Fairness as a defense.--It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited partnership at the time it is authorized or ratified under subsection (f).

(h) Rights and obligations in approved transactions.--If a general partner enters into a transaction with the limited partnership which otherwise would be prohibited by subsection (b)(2) and the transaction is authorized or ratified as provided in subsection (f) or the partnership agreement, the general

partner's rights and obligations arising from the transaction are the same as those of a person that is not a general partner.

(i) Exoneration.--The partnership agreement may provide that a general partner shall not be personally liable for monetary damages to the partnership or the other partner for a breach of subsection (c), except that a general partner may not be exonerated for an act that constitutes recklessness, willful misconduct or a knowing violation of law.

(j) Cross reference.--See section 8615 (relating to contents of partnership agreement).

Cross References. Section 8649 is referred to in sections 8615, 8647, 8648, 8654, 8655, 8663, 8665, 8694 of this title.

SUBCHAPTER E
CONTRIBUTIONS AND DISTRIBUTIONS

Sec.
8651. Form of contribution.
8652. Liability for contribution.
8653. Sharing of and right to distributions before dissolution.
8654. Limitations on distributions.
8655. Liability for improper distributions.

§ 8651. Form of contribution.

A contribution may consist of:

(1) property transferred to, services performed for or another benefit provided to the limited partnership;

(2) an agreement to transfer property to, perform services for or provide another benefit to the partnership; or

(3) any combination of items listed in paragraphs (1) and (2).

Cross References. Section 8651 is referred to in section 8612 of this title.

§ 8652. Liability for contribution.

(a) Obligation not excused.--A person's obligation to make a contribution to a limited partnership is not excused by the person's death, disability, termination or other inability to perform personally.

(b) Substitute payment.--If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited partnership to contribute money equal to the value, as stated in the required information, of the part of the contribution which has not been made.

(c) Compromise of obligation.--The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the partners. If a creditor of a limited partnership extends credit or otherwise acts in reliance on an obligation described in subsection (a) without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

§ 8653. Sharing of and right to distributions before dissolution.

(a) General rule.--Any distribution made by a limited partnership before its dissolution and winding up must be shared among the partners and persons dissociated as partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from

each partner, except as provided in section 8672(b) (relating to transfer of transferable interest) or to the extent necessary to comply with a charging order in effect under section 8673 (relating to charging order).

(b) No entitlement to distribution.--A person has a right to a distribution before the dissolution and winding up of a limited partnership only if the partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) Distribution in kind.--A person does not have a right to demand or receive a distribution from a limited partnership in any form other than money. Except as provided under section 8690(f) (relating to disposition of assets in winding up and required contributions), a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) Status as creditor.--If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution, except that the partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as a partner on whose account the distribution is made.

Cross References. Section 8653 is referred to in section 8617 of this title.

§ 8654. Limitations on distributions.

(a) General rule.--A limited partnership may not make a distribution, including a distribution under section 8690 (relating to disposition of assets in winding up and required contributions), if after the distribution:

(1) the partnership would not be able to pay its debts as they become due in the ordinary course of the partnership's activities and affairs; or

(2) the partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

(b) Valuation.--A limited partnership may base a determination that a distribution is not prohibited under subsection (a)(2) on:

(1) the book values of the assets and liabilities of the partnership, as reflected on its books and records;

(2) a valuation that takes into consideration unrealized appreciation and depreciation or other changes in value of the assets and liabilities of the partnership;

(3) the current value of the assets and liabilities of the partnership, either valued separately or valued in segments or as an entirety as a going concern; or

(4) any other method that is reasonable in the circumstances.

(c) Excluded liabilities.--In determining whether a distribution is prohibited by subsection (a)(2), the limited partnership need not consider obligations and liabilities unless they are required to be reflected on a balance sheet, not including the notes to the balance sheet, prepared on the basis of generally accepted accounting principles or other such

accounting practices and principles as are used generally by the partnership in the maintenance of its books and records and as are reasonable in the circumstances.

(d) Measuring date of distribution.--Except as provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) as of the date specified by the limited partnership when it authorizes the distribution if the distribution occurs within 125 days of the earlier of the date so specified or the date of authorization; or

(2) as of the date of distribution in all other cases.

(e) Date of redemption.--In the case of a distribution described in paragraph (1) of the definition of "distribution" in section 8612 (relating to definitions), the distribution is deemed to occur as of the earlier of the date money or other property is transferred or debt is incurred by the limited partnership or the date the person entitled to the distribution ceases to own the interest or right being acquired by the partnership in return for the distribution.

(f) Status of distribution debt.--The indebtedness of a limited partnership to a partner or transferee incurred by reason of a distribution made in accordance with this section shall be at least on a parity with the partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(g) Certain subordinated debt.--The indebtedness of a limited partnership, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(h) Distributions in winding up.--In measuring the effect of a distribution under section 8690, the liabilities of a dissolved limited partnership do not include any claim that has been barred under section 8686 (relating to known claims against dissolved limited partnership) or 8687 (relating to other claims against dissolved limited partnership), or for which security has been provided under section 8688 (relating to court proceedings).

(i) Cross references.--See sections 8615(d)(1)(ii) (relating to contents of partnership agreement) and 8649 (relating to standards of conduct for general partners).

Cross References. Section 8654 is referred to in sections 8615, 8648, 8655 of this title.

§ 8655. Liability for improper distributions.

(a) General rule.--If a general partner consents to a distribution made in violation of section 8654 (relating to limitations on distributions) and in consenting to the distribution fails to comply with section 8649 (relating to standards of conduct for general partners), the general partner is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of section 8654.

(b) Recipients.--A person that receives a distribution knowing that the distribution violated section 8654 is personally liable to the limited partnership but only to the extent that the distribution received by the person exceeded

the amount that could have been properly paid under section 8654.

(c) Contribution.--A general partner against which an action is commenced because the general partner is liable under subsection (a) may:

(1) join any other person that is liable under subsection (a) or otherwise seek to enforce a right of contribution from the person; and

(2) join any person that received a distribution in violation of subsection (b) or otherwise seek to enforce a right of contribution from the person in the amount the person received in violation of subsection (b).

(d) Statute of repose.--An action under this section is barred unless commenced within two years after the distribution.

SUBCHAPTER F
DISSOCIATION

Sec.

8661. Dissociation as limited partner.
8662. Effects of dissociation as limited partner.
8663. Dissociation as general partner.
8664. Power to dissociate as general partner and wrongful dissociation.
8665. Effects of dissociation as general partner.
8666. Power to bind and liability of person dissociated as general partner.
8667. Liability of person dissociated as general partner to other persons.

§ 8661. Dissociation as limited partner.

(a) No right to dissociate.--A person does not have a right to dissociate as a limited partner before the completion of the winding up of the limited partnership.

(b) Events causing dissociation.--A person is dissociated as a limited partner when any of the following apply:

(1) The limited partnership knows or has notice of the person's express will to withdraw as a limited partner rightfully or wrongfully, except that, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on that later date.

(2) An event stated in the partnership agreement as causing the person's dissociation as a limited partner occurs.

(3) The person is expelled as a limited partner pursuant to the partnership agreement.

(4) The person is expelled as a limited partner by the affirmative vote or consent of all the other partners if:

(i) it is unlawful to carry on the partnership's activities and affairs with the person as a limited partner;

(ii) there has been a transfer of all the person's transferable interest in the partnership, other than:

(A) a transfer for security purposes; or

(B) a charging order in effect under section 8673 (relating to charging order) which has not been foreclosed;

(iii) the person is an entity and:

(A) the partnership notifies the person that it will be expelled as a limited partner because:

(I) the person has filed a certificate of dissolution or the equivalent;

(II) the person has been administratively dissolved;

(III) the person's charter or the equivalent has been revoked; or

(IV) the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(B) within 90 days after the notification:

(I) the certificate of dissolution or the equivalent has not been withdrawn, rescinded or revoked;

(II) the person has not been reinstated;

(III) the person's charter or the equivalent has not been reinstated; or

(IV) the person's right to conduct business has not been reinstated; or

(iv) the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up.

(5) On application by the partnership or a partner in a direct action under section 8691 (relating to direct action by partner), the person is expelled as a limited partner by judicial order because the person:

(i) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's activities and affairs;

(ii) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or the contractual obligation of good faith and fair dealing under section 8635(a) (relating to limited duties of limited partners); or

(iii) has engaged or is engaging in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a limited partner.

(6) In the case of an individual, the individual dies.

(7) In the case of a person that is a testamentary or inter vivos trust or is acting as a limited partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited partnership is distributed.

(8) In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed.

(9) In the case of a person that is not an individual, the existence of the person terminates.

(10) The partnership participates in a merger under Chapter 3 (relating to entity transactions) and:

(i) the partnership is not the surviving entity; or

(ii) otherwise as a result of the merger, the person ceases to be a limited partner.

(11) The partnership participates in an interest exchange under Chapter 3 and, as a result of the interest exchange, the person ceases to be a limited partner.

(12) The partnership participates in a conversion under Chapter 3.

(13) The partnership participates in a division under Chapter 3 and:

(i) the partnership is not a resulting association; or

(ii) as a result of the division, the person ceases to be a partner.

(14) The partnership participates in a domestication under Chapter 3 and, as a result of the domestication, the person ceases to be a limited partner.

(15) The partnership dissolves and completes winding up.

(c) Cross reference.--See section 8611(d) (relating to short title and application of chapter).

Cross References. Section 8661 is referred to in sections 8611, 8612, 8672 of this title.

§ 8662. Effects of dissociation as limited partner.

(a) General rule.--If a person is dissociated as a limited partner:

(1) subject to section 8674 (relating to power of personal representative of deceased partner), the person does not have further rights as a limited partner;

(2) the person's contractual obligation of good faith and fair dealing as a limited partner under section 8635(a) (relating to limited duties of limited partners) ends with regard to matters arising and events occurring after the person's dissociation except as provided in section 8634(c) (relating to limited partner rights to information); and

(3) subject to section 8674 and Chapter 3 (relating to entity transactions), any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person solely as a transferee.

(b) Existing obligations not discharged.--A person's dissociation as a limited partner does not of itself discharge the person from any debt, obligation or other liability to the limited partnership or the other partners which the person incurred while a limited partner.

(c) Cross reference.--See section 8611(d) (relating to short title and application of chapter).

Cross References. Section 8662 is referred to in sections 8611, 8612 of this title.

§ 8663. Dissociation as general partner.

(a) General rule.--A person is dissociated as a general partner when any of the following occurs:

(1) The limited partnership knows or has notice of the person's express will to withdraw as a general partner rightfully or wrongfully, except that, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on that later date.

(2) An event stated in the partnership agreement as causing the person's dissociation as a general partner occurs.

(3) The person is expelled as a general partner pursuant to the partnership agreement.

(4) The person is expelled as a general partner by the affirmative vote or consent of all the other partners if:

(i) it is unlawful to carry on the partnership's activities and affairs with the person as a general partner;

(ii) there has been a transfer of all the person's transferable interest in the partnership, other than:

(A) a transfer for security purposes; or

(B) a charging order in effect under section 8673 (relating to charging order) which has not been foreclosed;

(iii) the person is an entity and:

(A) the partnership notifies the person that it will be expelled as a general partner because:

(I) the person has filed a certificate of dissolution or the equivalent;

(II) the person has been administratively dissolved;

(III) the person's charter or the equivalent has been revoked; or

(IV) the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(B) within 90 days after the notification:

(I) the certificate of dissolution or the equivalent has not been withdrawn, rescinded or revoked;

(II) the person has not been reinstated;

(III) the person's charter or the equivalent has not been reinstated; or

(IV) the person's right to conduct business has not been reinstated; or

(iv) the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up.

(5) On application by the partnership or a partner in a direct action under section 8691 (relating to direct action by partner), the person is expelled as a general partner by judicial order because the person:

(i) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's activities and affairs;

(ii) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under section 8649 (relating to standards of conduct for general partners); or

(iii) has engaged or is engaging in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs of the partnership with the person as a general partner.

(6) The person:

(i) becomes a debtor in bankruptcy;

(ii) executes an assignment for the benefit of creditors; or

(iii) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the person or of all or substantially all the person's property.

(7) In the case of an individual:

(i) the individual dies;

(ii) a guardian for the individual is appointed; or

(iii) a court orders that the individual has otherwise become incapable of performing the individual's duties as a general partner under this title or the partnership agreement.

(8) In the case of a person that is a testamentary or inter vivos trust or is acting as a general partner by virtue of being a trustee of the trust, the trust's entire transferable interest in the limited partnership is distributed.

(9) In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed.

(10) In the case of a person that is not an individual, the existence of the person terminates.

(11) The partnership participates in a merger under Chapter 3 (relating to entity transactions) and:

(i) the partnership is not the surviving entity; or

(ii) otherwise as a result of the merger, the person ceases to be a general partner.

(12) The partnership participates in an interest exchange under Chapter 3 and, as a result of the interest exchange, the person ceases to be a general partner.

(13) The partnership participates in a conversion under Chapter 3.

(14) The partnership participates in a division under Chapter 3 and:

(i) the partnership is not a resulting association; or

(ii) as a result of the division, the person ceases to be a partner.

(15) The partnership participates in a domestication under Chapter 3 and, as a result of the domestication, the person ceases to be a general partner.

(16) The partnership dissolves and completes winding up.

(b) Cross reference.--See section 8611(d) (relating to short title and application of chapter).

Cross References. Section 8663 is referred to in sections 8611, 8612, 8615, 8647, 8664, 8672 of this title.

§ 8664. Power to dissociate as general partner and wrongful dissociation.

(a) Power to dissociate.--A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by withdrawing as a general partner by express will under section 8663(a)(1) (relating to dissociation as general partner).

(b) Wrongful dissociation.--A person's dissociation as a general partner is wrongful only if the dissociation:

(1) is in breach of an express provision of the partnership agreement; or

(2) occurs before the completion of the winding up of the limited partnership, and:

(i) the person withdraws as a general partner by express will;

(ii) the person is expelled as a general partner by judicial order under section 8663(a)(5);

(iii) the person is dissociated as a general partner under section 8663(a)(6); or

(iv) the person is expelled or otherwise dissociated as a general partner because its existence terminated, except that this subparagraph does not apply to a person that is:

(A) a trust that is not a business or statutory trust;
(B) an estate; or
(C) an individual.

(c) Damages for wrongful dissociation.--A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 8691 (relating to direct action by partner), to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation or other liability of the general partner to the partnership or the other partners.

(d) Cross reference.--See section 8615 (relating to contents of partnership agreement).

Cross References. Section 8664 is referred to in section 8615 of this title.

§ 8665. Effects of dissociation as general partner.

(a) General rule.--If a person is dissociated as a general partner:

(1) The person's right to participate as a general partner in the management and conduct of the limited partnership's activities and affairs terminates.

(2) The person's duties and obligations as a general partner under section 8649 (relating to standards of conduct for general partners) end with regard to matters arising and events occurring after the person's dissociation except as provided in section 8647(e)(2) (relating to general partner rights to information).

(3) The person may deliver to the department for filing a certificate of dissociation stating:

(i) the name of the partnership;

(ii) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the partnership; and

(iii) the name of the person and that the person has dissociated as a general partner.

(4) At the request of the limited partnership, the person shall sign an amendment to the certificate of limited partnership which states that the person has dissociated as a general partner.

(5) Subject to section 8674 (relating to power of personal representative of deceased partner) and Chapter 3 (relating to entity transactions), any transferable interest owned by the person in the person's capacity as a general partner immediately before dissociation is owned by the person solely as a transferee.

(b) Existing obligations not discharged.--A person's dissociation as a general partner does not of itself discharge the person from any debt, obligation or other liability to the limited partnership or the other partners which the person incurred while a general partner.

(c) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8623 (relating to signing of filed documents).

Cross References. Section 8665 is referred to in sections 8612, 8623 of this title.

§ 8666. Power to bind and liability of person dissociated as general partner.

(a) Power to bind.--After a person is dissociated as a general partner and before the limited partnership is merged or divided out of existence, converted or domesticated under Chapter 3 (relating to entity transactions) or dissolved, the partnership is bound by an act of the person only if:

(1) the act would have bound the partnership under section 8642 (relating to general partner agent of limited partnership) before the dissociation; and

(2) at the time the other party enters into the transaction:

(i) less than two years have passed since the dissociation; and

(ii) the other party does not know or have notice of the dissociation and reasonably believes that the person is a general partner.

(b) Liability.--If a limited partnership is bound under subsection (a), the person dissociated as a general partner which caused the partnership to be bound is liable:

(1) to the partnership for any damage caused to the partnership arising from the obligation incurred under subsection (a); and

(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

§ 8667. Liability of person dissociated as general partner to other persons.

(a) General rule.--A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for a debt, obligation or other liability of the limited partnership incurred before dissociation. Except as provided in subsections (b) and (c), the person is not liable for a partnership obligation incurred after dissociation.

(b) Obligations incurred after dissolution.--A person whose dissociation as a general partner results in a dissolution and winding up of the limited partnership's activities and affairs is liable on an obligation incurred by the partnership under section 8685 (relating to general partner liability after dissolution) to the same extent as a general partner under section 8644 (relating to general partner's liability).

(c) When partnership not dissolved.--A person that is dissociated as a general partner without the dissociation resulting in a dissolution and winding up of the limited partnership's activities and affairs is liable on a transaction entered into by the partnership after the dissociation only if a general partner would be liable on the transaction, but at the time the other party enters into the transaction:

(1) less than two years have passed since the dissociation; and

(2) the other party does not have knowledge or notice of the dissociation and reasonably believes that the person is a general partner.

(d) Constructive release by creditor.--A person dissociated as a general partner is released from liability for a debt, obligation or other liability of the limited partnership if the partnership's creditor, with knowledge or notice of the person's dissociation as a general partner and without the person's consent, agrees to a material alteration in the nature or time

of payment of the debt, obligation or other liability. The release from liability under this subsection applies whether the liability arises directly or indirectly, by way of contribution or otherwise, but only if the liability arises solely by reason of having been a general partner.

Cross References. Section 8667 is referred to in sections 8687, 8689, 8690 of this title.

SUBCHAPTER G
TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

Sec.
8671. Nature of transferable interest.
8672. Transfer of transferable interest.
8673. Charging order.
8674. Power of personal representative of deceased partner.

§ 8671. Nature of transferable interest.

(a) Personal property.--A transferable interest is personal property.

(b) Only right that may be transferred.--A person may not transfer to a person not a partner any rights in a limited partnership other than a transferable interest.

§ 8672. Transfer of transferable interest.

(a) General rule.--A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause the dissociation of the transferor as a partner or a dissolution and winding up of the limited partnership's activities and affairs; and

(3) subject to section 8674 (relating to power of personal representative of deceased partner), does not entitle the transferee to:

(i) participate in the management or conduct of the partnership's activities and affairs; or

(ii) except as provided under subsection (c), have access to required information, records or other information concerning the partnership's activities and affairs.

(b) Right to distributions.--A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) Right to account on dissolution.--In a dissolution and winding up of a limited partnership, a transferee is entitled to an account of the partnership's transactions only from the date of dissolution.

(d) Certificate of interest.--A transferable interest may be evidenced by a certificate of the interest issued by a limited partnership in record form, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) Recognition of transferee's rights.--A limited partnership need not give effect to a transferee's rights under this section until the partnership knows or has notice of the transfer.

(f) Transfer restrictions.--A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

(g) Rights retained by transferor.--Except as provided under sections 8661(b)(4)(ii) (relating to dissociation as limited partner) and 8663(a)(4)(ii) (relating to dissociation as general partner), if a general or limited partner transfers a transferable interest, the transferor retains the rights of a general or limited partner other than the transferable interest transferred and retains all the duties and obligations of a general or limited partner.

Cross References. Section 8672 is referred to in sections 8653, 8673, 8674 of this title.

§ 8673. Charging order.

(a) General rule.--On application by a judgment creditor of a partner or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(b) Available relief.--To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Foreclosure.--Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner and is subject to section 8672 (relating to transfer of transferable interest).

(d) Satisfaction of judgment.--At any time before foreclosure under subsection (c), the partner or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) Purchase of rights.--At any time before foreclosure under subsection (c), a limited partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) Exemption laws preserved.--This chapter shall not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.

(g) Exclusive remedy.--This section provides the exclusive remedy by which a person seeking, in the capacity of a judgment creditor, to enforce a judgment against a partner or transferee may satisfy the judgment from the judgment debtor's transferable interest.

Cross References. Section 8673 is referred to in sections 8617, 8653, 8661, 8663, 8690 of this title.

§ 8674. Power of personal representative of deceased partner.

If a partner dies, the personal representative of the deceased partner may exercise:

(1) the rights of a transferee provided in section 8672(c) (relating to transfer of transferable interest); and

(2) for the purposes of settling the estate, the rights of a current limited partner under section 8634 (relating to limited partner rights to information).

Cross References. Section 8674 is referred to in sections 8634, 8647, 8662, 8665, 8672 of this title.

SUBCHAPTER H
DISSOLUTION AND WINDING UP

Sec.

8681. Events causing dissolution.
8681.1. Voluntary termination by partners.
8682. Winding up and filing of certificates.
8683. (Reserved).
8684. Power to bind partnership after dissolution.
8685. General partner liability after dissolution.
8686. Known claims against dissolved limited partnership.
8687. Other claims against dissolved limited partnership.
8688. Court proceedings.
8689. General partner liability when claim against limited partnership barred.
8690. Disposition of assets in winding up and required contributions.

§ 8681. Events causing dissolution.

(a) General rule.--A limited partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the partnership agreement states causes dissolution;

(2) the affirmative vote or consent of:

(i) all general partners; and

(ii) limited partners owning the rights to receive a majority of the distributions as limited partners at the time the vote or consent is to be effective;

(3) after the dissociation of a person as a general partner:

(i) if the partnership has at least one remaining general partner, the affirmative vote or consent to dissolve the partnership within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the vote or consent is to be effective; or

(ii) if the partnership does not have a remaining general partner, the passage of 180 days after the dissociation, unless before the end of the period:

(A) consent to continue the activities and affairs of the partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(B) at least one person is admitted as a general partner in accordance with the consent;

(4) the passage of 180 consecutive days after the dissociation of the partnership's last limited partner, unless before the end of the period the partnership admits at least one limited partner;

(5) the passage of 180 consecutive days during which the partnership has only one partner, unless before the end of the period:

(i) the partnership admits at least one person as a partner;

(ii) if the previously sole remaining partner is only a general partner, the partnership admits a person as a limited partner; and

(iii) if the previously sole remaining partner is only a limited partner, the partnership admits a person as a general partner; or

(6) on application by a partner, the entry by the court of an order dissolving the partnership on the grounds that:

(i) the conduct of all or substantially all the partnership's activities and affairs is unlawful;

(ii) it is not reasonably practicable to carry on the partnership's activities and affairs in conformity with the certificate of limited partnership and partnership agreement; or

(iii) the general partners have acted, are acting or will act in a manner that is illegal or fraudulent.

(b) Multiple deadlines.--If an event occurs that imposes a deadline on a limited partnership under subsection (a) and before the partnership has met the requirements of the deadline, another event occurs that imposes a different deadline on the partnership under subsection (a):

(1) the occurrence of the second event does not affect the deadline caused by the first event; and

(2) the partnership's meeting of the requirements of the first deadline does not extend the second deadline.

(c) Cross references.--See sections 8611(d) (relating to short title and application of chapter) and 8615(c)(15) (relating to contents of partnership agreement).

Cross References. Section 8681 is referred to in sections 8611, 8615, 8623, 8631, 8641 of this title.

§ 8681.1. Voluntary termination by partners.

(a) General rule.--The general partners of a limited partnership that has never transacted business or held assets other than money received as capital contributions may effect the termination of the partnership by delivering to the department for filing a certificate of termination stating:

(1) the name of the partnership;

(2) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the partnership;

(3) that the partnership has never transacted business or held assets other than money received as capital contributions;

(4) that the amounts, if any, actually paid in as contributions, less any part disbursed for necessary expenses, have been returned to those entitled to the return of the amounts;

(5) that all liabilities of the partnership have been discharged or that adequate provision has been made for those liabilities; and

(6) that a majority of the general partners elect that the partnership be terminated.

(b) Effect.--Upon the filing of the certificate of termination, the existence of the limited partnership shall cease.

(c) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8623 (relating to signing of filed documents).

Cross References. Section 8681.1 is referred to in section 139 of this title.

§ 8682. Winding up and filing of certificates.

(a) General rule.--A dissolved limited partnership shall wind up its activities and affairs and the partnership continues after dissolution only for the purpose of winding up.

(b) Conduct of winding up.--In winding up its activities and affairs, the limited partnership:

(1) shall discharge the partnership's debts, obligations and other liabilities, settle and close the partnership's activities and affairs and marshal and distribute the assets of the partnership; and

(2) may:

(i) amend its certificate of limited partnership to state that the partnership is dissolved;

(ii) preserve the partnership activities, affairs and property as a going concern for a reasonable time;

(iii) prosecute, defend and settle actions and proceedings, whether civil, criminal or administrative;

(iv) transfer the partnership's property;

(v) participate in, agree to participate in and settle disputes by mediation, arbitration or alternative dispute resolution proceedings; and

(vi) perform other acts necessary or appropriate to the winding up.

(c) Conduct of winding up when no general partner.--If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved partnership's activities and affairs may be appointed by the affirmative vote or consent of limited partners owning the rights to receive a majority of the distributions as limited partners at the time the vote or consent is to be effective. A person appointed under this subsection:

(1) has the powers of a general partner under section 8684 (relating to power to bind partnership after dissolution) but is not liable for the debts, obligations and other liabilities of the partnership solely by reason of having or exercising those powers or otherwise acting to wind up the dissolved partnership's activities and affairs; and

(2) shall deliver promptly to the department for filing an amendment to the partnership's certificate of limited partnership stating:

(i) that the partnership does not have a general partner;

(ii) the name and address of the person; and

(iii) that the person has been appointed under this subsection to wind up the partnership.

(d) Judicial supervision.--On the application of a partner or person entitled under subsection (c) to participate in winding up, the court may order judicial supervision of the winding up of a dissolved limited partnership, including the appointment of a person to wind up the partnership's activities and affairs, if:

(1) the partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed under subsection (c); or

(2) the applicant establishes other good cause.

(e) Certificate of termination.--When all debts, obligations and other liabilities of the limited partnership have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the partnership have been distributed to the partners, a certificate of termination shall be delivered to the department for filing along with the certificates required by section 139 (relating to tax clearance of certain fundamental transactions). The certificate of termination shall set forth:

(1) The name of the limited partnership.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the partnership.

(3) That all debts, obligations and other liabilities of the partnership have been paid and discharged or that adequate provision has been made therefor.

(4) That all the remaining property and assets of the partnership have been distributed among its partners in accordance with their respective rights and interests.

(5) That there are no actions pending against the partnership in any court or that adequate provision has been made for the satisfaction of any judgment that may be entered against it in any pending action.

(6) That the partnership is terminated.

(f) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8615(c)(16) (relating to contents of partnership agreement).

Section 8623 (relating to signing of filed documents).

Cross References. Section 8682 is referred to in sections 8613, 8615, 8622, 8623 of this title.

§ 8683. (Reserved).

§ 8684. Power to bind partnership after dissolution.

(a) Power of general partner.--A limited partnership is bound by a general partner's act after dissolution which:

(1) is appropriate for winding up the partnership's activities and affairs; or

(2) would have bound the partnership under section 8642 (relating to general partner agent of limited partnership) before dissolution if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

(b) Power of person dissociated as general partner.--A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(1) at the time the other party enters into the transaction:

(i) less than two years have passed since the dissociation; and

(ii) the other party does not know or have notice of the dissociation and reasonably believes that the person is a general partner; and

(2) the act:

(i) is appropriate for winding up the partnership's activities and affairs; or

(ii) would have bound the partnership under section 8642 before dissolution and at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

Cross References. Section 8684 is referred to in sections 8682, 8685 of this title.

§ 8685. General partner liability after dissolution.

(a) Liability of general partner.--If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section 8684(a) (relating to power to bind partnership after dissolution) by an act that is not appropriate for winding up the partnership's activities and affairs, the general partner is liable:

(1) to the partnership for any damage caused to the partnership arising from the obligation; and

(2) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(b) Liability of person dissociated as general partner.--If a person dissociated as a general partner causes a limited partnership to incur an obligation under section 8684(b), the person is liable:

(1) to the partnership for any damage caused to the partnership arising from the obligation; and

(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the obligation.

Cross References. Section 8685 is referred to in section 8667 of this title.

§ 8686. Known claims against dissolved limited partnership.

(a) General rule.--Except as provided under subsection (d), a dissolved limited partnership may give notice of a known claim under subsection (b) which has the effect provided in subsection (c).

(b) Required notice.--A dissolved limited partnership may notify in record form its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant;

(4) state that the claim will be barred if not received by the deadline; and

(5) unless the partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 8644 (relating to general partner's liability).

(c) Claims barred.--A claim against a dissolved limited partnership is barred if the requirements of subsection (b) are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the partnership:

(i) the partnership causes the claimant to receive a notice in record form stating that the claim is rejected and will be barred unless the claimant commences an action against the partnership to enforce the claim within 90 days after the claimant receives the notice; and

(ii) the claimant fails to commence the required action no later than 90 days after the claimant receives the notice.

(d) Later arising claims.--This section shall not apply to a claim based on an event occurring after the date of dissolution or a liability that on that date is contingent.

Cross References. Section 8686 is referred to in sections 8654, 8687, 8689 of this title.

§ 8687. Other claims against dissolved limited partnership.

(a) Permissive notice.--A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the partnership to present them in accordance with the notice.

(b) Notice procedure.--A notice under subsection (a) must:

(1) be officially published one time;

(2) describe the information required to be contained in a claim, state that the claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state that a claim against the partnership is barred unless an action to enforce the claim is commenced within two years after publication of the notice; and

(4) unless the partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 8644 (relating to general partner's liability).

(c) Claims barred.--If a dissolved limited partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the partnership within two years after the publication date of the notice:

(1) a claimant that did not receive notice in record form under section 8686 (relating to known claims against dissolved limited partnership);

(2) a claimant whose claim was timely sent to the partnership but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the date of dissolution.

(d) Claims not barred.--A claim not barred under this section or section 8686 may be enforced:

(1) against the dissolved limited partnership, to the extent of its undistributed assets;

(2) except as provided under section 8688 (relating to court proceedings), if assets of the partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the partnership's assets distributed to

the partner or transferee after dissolution, whichever is less, except that a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution; and

(3) against any person liable on the claim under sections 8644 and 8667 (relating to liability of person dissociated as general partner to other persons).

Cross References. Section 8687 is referred to in sections 8654, 8688, 8689 of this title.

§ 8688. Court proceedings.

(a) Determination of security.--A dissolved limited partnership that has officially published a notice under section 8687 (relating to other claims against dissolved limited partnership) may file an application with the court of common pleas embracing the county where the partnership's principal office is located or, if the principal office is not located in this Commonwealth, where its registered office is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the partnership and:

(1) at the time of the application:

(i) are contingent; or

(ii) have not been made known to the partnership; or

(2) are based on an event occurring after the date of dissolution.

(b) When security not required.--Security is not required for any claim that is or is reasonably anticipated to be barred under section 8687.

(c) Notice.--Within 10 days after the filing of an application under subsection (a), the dissolved limited partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the partnership.

(d) Guardian ad litem.--In a proceeding brought under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited partnership.

(e) Effect on contingent claims.--A dissolved limited partnership that provides security in the amount and form ordered by the court under subsection (a) satisfies the partnership's obligations with respect to claims that are contingent, have not been made known to the partnership or are based on an event occurring after the date of dissolution. The claims may not be enforced against a partner or transferee on account of assets received in liquidation.

Cross References. Section 8688 is referred to in sections 8654, 8687, 8689 of this title.

§ 8689. General partner liability when claim against limited partnership barred.

If a claim against a dissolved limited partnership is barred under section 8686 (relating to known claims against dissolved limited partnership), 8687 (relating to other claims against dissolved limited partnership) or 8688 (relating to court proceedings), any corresponding claim under section 8644 (relating to general partner's liability) or 8667 (relating to liability of person dissociated as general partner to other persons) is also barred.

§ 8690. Disposition of assets in winding up and required contributions.

(a) Creditors.--In winding up its activities and affairs, a limited partnership shall apply its assets, including the contributions required by this section, to discharge the partnership's obligations to creditors, including partners that are creditors.

(b) Surplus.--After a limited partnership complies with subsection (a), any surplus shall be distributed in the following order, subject to any charging order in effect under section 8673 (relating to charging order):

(1) to each owner of a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) among owners of transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership.

(c) Insufficient assets.--If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (a), with respect to each unsatisfied obligation incurred when the partnership was not a limited liability limited partnership, the following rules apply:

(1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 8667 (relating to liability of person dissociated as general partner to other persons) shall contribute to the partnership for the purpose of enabling the partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of a general partner in effect for each of those persons when the obligation was incurred.

(2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the partnership, the other persons required to contribute by paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of a general partner in effect for each of those other persons when the obligation was incurred.

(3) If a person does not make the additional contribution required by paragraph (2), further additional contributions are determined and due in the same manner as provided in that paragraph.

(d) Recovery of additional contributions.--A person that makes an additional contribution under subsection (c)(2) or (3) may recover from any person whose failure to contribute under subsection (c)(1) or (2) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(e) Distribution when surplus insufficient.--If a limited partnership does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(f) Form of payment.--All distributions made under subsections (b) and (c) must be paid in money.

Cross References. Section 8690 is referred to in sections 8653, 8654 of this title.

SUBCHAPTER I
ACTIONS BY PARTNERS

Sec.
8691. Direct action by partner.
8692. Derivative action.
8693. Eligible partner plaintiffs and security for costs.
8694. Special litigation committee.
8695. Proceeds and expenses.

Cross References. Subchapter I is referred to in section 8615 of this title.

§ 8691. Direct action by partner.

(a) General rule.--Subject to subsection (b), a partner may maintain a direct action against another partner or the limited partnership, with or without an accounting as to the partnership's activities and affairs, to enforce the partner's rights and protect the partner's interests, including rights and interests under the partnership agreement or this title or arising independently of the partnership relationship.

(b) Required injury.--A partner maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(c) Claims not revived.--A right to an accounting on a dissolution and winding up does not revive a claim barred by law.

(d) Cross reference.--See section 8615(c)(17) (relating to contents of partnership agreement).

Cross References. Section 8691 is referred to in sections 8649, 8661, 8663, 8664 of this title.

§ 8692. Derivative action.

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

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

(i) (Deleted by amendment).

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

(A) the general partners determine that:

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

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

(B) the general partners do not notify the party that made the demand within 60 days after the demand was made that the general partners have appointed a special litigation committee or have made a

determination described under either clause (A)(I) or (II); or

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

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

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

(2) demand is excused under subsection (b);

(3) the action is maintained for the limited purpose of seeking court review under section 8694(f); or

(4) the court has allowed the action to continue under the control of the plaintiff under section 8694(f)(3)(ii).

(b) Prior demand excused.--

(1) A demand under subsection (a)(1) is excused only if the plaintiff makes a specific showing that immediate and irreparable harm to the limited partnership would otherwise result.

(2) If demand is excused under paragraph (1), demand shall be made promptly after commencement of the action.

(c) Contents of demand.--A demand under this section must be in record form and give notice with reasonable specificity of:

(1) the material facts relied upon to support each of the claims made in the demand against each proposed defendant; and

(2) in the case of a derivative action commenced by a partner, the basis on which the person making the demand has standing under section 8693.

(d) Additional claims.--If a derivative action is commenced after a demand has been made under this section and includes a claim that was not fairly subsumed under the demand, a new demand must be made with respect to that claim. The new demand shall not relate back to the date of the original demand for purposes of subsection (e).

(e) Statute of limitations.--The making of a demand tolls any applicable statute of limitations with respect to a claim asserted in the demand until the earlier of the date:

(1) the partner making the demand is notified either:

(i) that the general partners have decided not to bring an action and not to appoint a special litigation committee; or

(ii) of a determination under section 8694(e) after the appointment of a special litigation committee under section 8694; or

(2) the plaintiff commences an action asserting the claim.

(f) Cross reference.--See section 8615(c)(17) (relating to contents of partnership agreement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days; July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (a)(1).

2022 Amendment. Act 122 amended subsecs. (a) intro. par., (1) intro. par. and (i), (b)(1) and (c).

§ 8693. Eligible partner plaintiffs and security for costs.

(a) General rule.--Except as provided in subsection (b), in any action or proceeding brought by one or more partners of a limited partnership to enforce rights that the plaintiff claims could be, but have not been, asserted by the partnership, each plaintiff has standing to commence and maintain a derivative action only if the plaintiff:

(1) was a partner at the time of the transaction or conduct of which the plaintiff complains, or that the plaintiff's interest as a partner devolved upon the plaintiff by operation of law from a person who was a partner at that time; and

(2) continues to be a partner until the time of judgment, unless the failure to do so is the result of partnership action that:

(i) was done merely to eliminate derivative claims; or

(ii) has the effect of a reorganization that does not affect the plaintiff's ownership of the business enterprise.

(b) Exception.--Any partner that, except for the provisions of subsection (a), would be entitled to maintain the action or proceeding and that does not meet such requirements may, nevertheless in the discretion of the court, be allowed to maintain the action or proceeding on preliminary showing to the court, by application and upon such verified statements and depositions as may be required by the court, that there is a strong prima facie case in favor of the claim asserted on behalf of the limited partnership and that without the action serious injustice will result.

(c) Security for costs.--In any action or proceeding instituted or maintained by partners holding transferable interests entitled to receive less than 5% of any distribution by a limited partnership, unless the transferable interests held by the partners have an aggregate fair market value in excess of $200,000, the partnership in whose right the action or proceeding is brought shall be entitled at any stage of the proceedings to require the plaintiffs to give security for the reasonable expenses, including attorneys' fees, that may be incurred by the partnership in connection therewith or for which it may become liable pursuant to section 8648(b) (relating to reimbursement, indemnification, advancement and insurance) to which security the partnership shall have recourse in such amount as the court determines upon the termination of the action or proceeding. The amount of security may, from time to time, be increased or decreased in the discretion of the court upon showing that the security provided has or is likely to become inadequate or excessive. The security may be denied or limited by the court if the court finds after an evidentiary hearing that undue hardship on plaintiffs and serious injustice would result.

(d) Failure to maintain ownership.--If a plaintiff loses the right to maintain a derivative action under subsection (a)(2), the court may entertain a motion by the limited partnership to substitute the partnership as the named plaintiff.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 8693 is referred to in section 8692 of this title.

§ 8694. Special litigation committee.

(a) General rule.--If a limited partnership or the general partners receive a demand to bring an action to enforce a right of the partnership, or if a derivative action is commenced before demand has been made on the partnership or the general partners, the general partners may appoint a special litigation committee to investigate the claims asserted in the demand or action and to determine on behalf of the limited partnership or recommend to the general partners whether pursuing any of

the claims asserted is in the best interests of the partnership. The partnership must deliver a notice in record form to the person making the demand, or to the plaintiff if a derivative action has been commenced, promptly after the appointment of the committee under this section notifying the person making the demand or the plaintiff that a committee has been appointed and identifying by name the members of the committee.

(b) Discovery stay.--If the general partners appoint a special litigation committee and an action is commenced before a determination has been made under subsection (e):

(1) On motion by the limited partnership, or the committee made in the name of the partnership, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation, except for good cause shown.

(2) The time for the defendants to plead shall be tolled until the process provided for under subsection (f) has been completed.

(c) Composition of committee.--A special litigation committee shall be composed of two or more individuals who:

(1) are not interested in the claims asserted in the demand or action;

(2) are capable as a group of objective judgment in the circumstances; and

(3) may, but need not, be general or limited partners.

(c.1) Committee members who are not general partners.--A member of a special litigation committee who is not a general partner, when acting as a member of the committee, is subject to the liabilities imposed, and entitled to the rights and immunities conferred, by sections 8648 (relating to reimbursement, indemnification, advancement and insurance) and 8649 (relating to standards of conduct for general partners).

(d) Appointment of committee.--A special litigation committee may be appointed:

(1) by a majority of the general partners not named as actual or potential parties in the demand or action; or

(2) if all general partners are named as actual or potential parties in the demand or action, by a majority of the general partners so named.

(e) Determination.--After appropriate investigation by a special litigation committee, the committee may determine, or the committee may recommend to the general partners that the general partners determine, that it is in the best interests of the limited partnership that:

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

(2) an action based on some or all of the claims asserted in the demand be brought by the partnership;

(3) some or all of the claims asserted in the demand be settled on terms determined or recommended by the committee;

(4) an action not be brought based on any of the claims asserted in the demand;

(5) an action already commenced continue under the control of:

(i) the plaintiff;

(ii) the limited partnership; or

(iii) the committee;

(6) some or all of the claims asserted in an action already commenced be settled on terms determined or recommended by the committee; or

(7) an action already commenced be dismissed.

(f) Court review and action.--If a special litigation committee is appointed and a derivative action is commenced before or after either the committee makes a determination under subsection (e) or the general partners determine under that subsection to accept the recommendation of the committee:

(1) The limited partnership or the committee shall file with the court after a determination is made under subsection (e) a statement of the determination and a report of the committee supporting the determination. The partnership or the committee shall serve each party with a copy of the determination and report. If the partnership or the committee moves to file the report under seal, the report shall be served on the parties subject to an appropriate stipulation agreed to by the parties or a protective order issued by the court.

(2) The partnership or the committee shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).

(3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made its determination or recommendation in good faith, independently and with reasonable care. The plaintiff has the burden of proving that the committee did not meet those qualifications or act in the required manner. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee or the general partners. Otherwise, the court shall:

(i) dissolve any stay of discovery entered under subsection (b);

(ii) allow the action to continue under the control of the plaintiff; and

(iii) permit the defendants to file preliminary objections and other appropriate motions and pleadings.

(g) Attorney General.--Nothing in this section shall limit the rights, powers and duties of the Attorney General under other applicable law with respect to a limited partnership organized for a charitable purpose.

(h) Interest of a defendant.--The fact that a person is named as a defendant does not make the person interested in the claims asserted in a demand or action for purposes of subsection (c)(1) if the claims against the person:

(1) are based only on an allegation that the person approved of or acquiesced in the transaction or conduct that is the subject of the claims; and

(2) do not otherwise allege with particularity facts that, if true, raise a significant prospect that the person would be adjudged liable.

(i) Cross reference.--See section 8615(c)(18) (relating to contents of partnership agreement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a), (b)(1), (e) intro. par., (3) and (6) and (f), added subsec. (c.1) and relettered former subsec. (h) to subsec. (i) and added present subsec. (h).

Cross References. Section 8694 is referred to in sections 8615, 8692 of this title.

§ 8695. Proceeds and expenses.

(a) Proceeds.--Except as provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong to the limited partnership and not to the plaintiff; and

(2) if the plaintiff or its counsel receives any proceeds, the proceeds shall be remitted immediately to the partnership.

(b) Expenses.--If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited partnership, but in no event shall the attorney fees awarded exceed a reasonable proportion of the value of the relief, including nonpecuniary relief, obtained by the plaintiff for the limited partnership.

(c) Cross reference.--See section 8615(c)(7) (relating to contents of partnership agreement).

CHAPTER 87
ELECTING PARTNERSHIPS

Sec.

8701. Scope and definition.
8702. Centralized management.
8703. Continuity of life.
8704. Free transferability of interests.
8705. Limited liability in certain cases.
8706. One person as both partner and employee.
8707. Modification by agreement.
8708. Taxation of electing partnerships.

Enactment. Chapter 87 was added December 21, 1988, P.L.1444, No.177.

Effective Date. Section 304(a)(7) of Act 177 of 1988 provided that the amendments to Chapter 87 shall take effect immediately and shall be retroactive to July 10, 1981.

Cross References. Chapter 87 is referred to in section 9302 of this title.

§ 8701. Scope and definition.

(a) Application of chapter.--This chapter applies to a general or limited partnership formed under the laws of this Commonwealth that elects to be governed by this chapter. Any partnership that desires to elect to be governed by this chapter, or to amend or terminate the election, shall deliver to the Department of State for filing a statement of election, amendment or termination, as the case may be, which shall be signed by a general partner and shall set forth:

(1) The name of the partnership.

(2) The location of the principal place of business.

(3) The name of each general partner of the partnership as of the date of the statement.

(4) A statement that the partnership elects to be governed by this chapter or that the election to be governed by this chapter shall be amended or terminated, as the case may be.

(5) If the election is to be made or terminated, a statement that the election or termination has been authorized by at least a majority in interest of the partners.

(a.1) Effective date and time.--Subject to section 136(c) (relating to processing of documents by Department of State), upon the filing of the statement of election, amendment or termination in the department, the election to be governed by this chapter shall be effective, amended or terminated, as the case may be.

(b) Effect of election.--As long as an election under subsection (a) is in effect, the partnership shall be governed by the provisions of this chapter and, to the extent not inconsistent with this chapter, Chapter 84 (relating to general partnerships) or, if a limited partnership, Chapter 86 (relating to limited partnerships).

(c) Definition.--As used in this chapter, the term "electing partnership" means a partnership as to which an election under subsection (a) is in effect.

(d) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 8701 is referred to in sections 102, 8703 of this title.

§ 8702. Centralized management.

The business and affairs of every electing partnership shall be managed by one-third or less, but not less than one, of the partners selected for that purpose in the manner provided by any agreement between the partners, and no other partner shall have a right to participate in the management of the partnership. A partner of an electing partnership shall be an agent of the partnership only to the extent that an employee of the partnership would be under like circumstances. In making such a determination, the court may consider among other things whether a person dealing with the partnership has knowledge, as defined in section 8413(a) (relating to knowledge and notice), that this section is applicable to the partnership.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

§ 8703. Continuity of life.

An electing partnership shall not be dissolved by the death, dissolution, insanity, retirement, resignation or expulsion of a partner or by the bankruptcy of a partner or the partnership. Changes in the composition of the partnership shall be evidenced by the prompt filing of a statement of amendment under section 8701(a) (relating to application of chapter). If fewer than two partners who are not bankrupt or insane remain, the court shall appoint a custodian of the partnership property for the purpose of continuing its business or, upon cause shown, winding up its affairs.

§ 8704. Free transferability of interests.

The agreement between the partners of an electing partnership may provide that the property rights of a partner in the partnership shall be evidenced by shares of one or more classes or series. In that event, the transfer of all of the shares by a partner shall operate to terminate his membership in the partnership, and the transfer of any share by a partner shall operate to make the transferee a member of the partnership without the consent of any other partner. The transfer of certificates and the shares represented thereby may be regulated

by the agreement between the partners if the agreement is not inconsistent with 13 Pa.C.S. Div. 8 (relating to investment securities).

§ 8705. Limited liability in certain cases.

(a) General rule.--The liability of a partner of an electing partnership for the debts and obligations of the partnership shall be satisfied out of partnership assets alone if the debt or obligation arises from a transaction or occurrence in which the person dealing with the partnership has notice, as defined in section 8413(b) (relating to knowledge and notice), that this section is applicable to the partnership.

(b) Exceptions.--Subsection (a) does not apply:

(1) Unless otherwise agreed by the obligee, to a debt or obligation arising prior to the time a partnership becomes an electing partnership.

(2) To a transaction or occurrence involving the furnishing or sale of any goods or services by the partnership.

(c) Professional relationship unaffected.--Subsection (a) shall not afford the partners of an electing partnership providing professional services with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).

(Dec. 7, 1994, P.L.703, No.106, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 8705 is referred to in section 8707 of this title.

§ 8706. One person as both partner and employee.

(a) General rule.--A person may be a partner in and an employee of the same electing partnership at the same time.

(b) Effect.--A person who is a partner and also, at the same time, an employee shall in his capacity as an employee have such rights and duties with respect to the employing partnership as may be agreed between employer and employee generally.

§ 8707. Modification by agreement.

(a) General rule.--The provisions of this chapter are intended to permit an electing partnership to qualify for taxation as an association under the United States Internal Revenue Code and to permit partners of an electing partnership to be employed by, and compensated as employees of, the association. The agreement between the partners of an electing partnership may effect any change in the form of organization of the partnership in addition to or in contravention of the changes authorized by this chapter that may be necessary to accomplish those purposes but only to the extent necessary to accomplish those purposes.

(b) Exception.--A provision adopted under subsection (a) shall not modify section 8705 (relating to limited liability in certain cases).

§ 8708. Taxation of electing partnerships.

For the purposes of the imposition by the Commonwealth or any political subdivision of any tax or license fee on or with respect to any property, privilege, transaction, subject or occupation, a partnership as to which an election under this chapter is in effect shall be deemed to be a corporation organized and existing under Subpart B of Part II (relating to business corporations).

(Dec. 18, 1992, P.L.1333, No.169, eff. 60 days)

1992 Amendment. Act 169 added section 8708.

CHAPTER 88
LIMITED LIABILITY COMPANIES

Subchapter

A. General Provisions
B. Formation and Filings
C. Relations of Members and Managers to Persons Dealing with Limited Liability Company
D. Relations of Members to Each Other and to Limited Liability Company
E. Transferable Interests and Rights of Transferees and Creditors
F. Dissociation
G. Dissolution and Winding Up
H. Actions by Members
I. Benefit Companies

Enactment. Chapter 88 was added November 21, 2016, P.L.1328, No.170, effective in 90 days.

Cross References. Chapter 88 is referred to in sections 325, 8995 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

8811. Short title and application of chapter.
8812. Definitions.
8813. Knowledge and notice.
8814. Governing law.
8815. Contents of operating agreement.
8816. Application of operating agreement.
8817. Amendment and effect of operating agreement.
8818. Characteristics of limited liability company.
8819. Powers.

§ 8811. Short title and application of chapter.

(a) Short title.--This chapter may be cited as the Pennsylvania Uniform Limited Liability Company Act of 2016.

(b) Initial application.--Before April 1, 2017, this chapter governs only:

(1) a limited liability company formed on or after February 21, 2017; and

(2) except as provided in subsection (c), a limited liability company formed before February 21, 2017, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.

(c) Full effective date.--Except as provided in subsection (d), on and after April 1, 2017, this chapter governs all limited liability companies.

(d) Certificates of membership interest.--For purposes of applying this chapter to a limited liability company formed before February 21, 2017, language in the company's certificate of organization authorizing the issuance of certificates of membership interest operates as if that language were in the operating agreement.

(e) Cross reference.--See section 8815(c)(5) (relating to contents of operating agreement).

Cross References. Section 8811 is referred to in sections 8812, 8815 of this title.

§ 8812. Definitions.

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

"Certificate of organization." The certificate required by section 8821 (relating to formation of limited liability company and certificate of organization). The term includes the certificate as amended or restated.

"Contribution." Property or a benefit described under section 8842 (relating to form of contribution) which is provided by a person to a limited liability company to become a member or in the capacity of a person as a member.

"Distribution." A direct or indirect transfer of money or other property or incurrence of indebtedness by a limited liability company to a person on account of a transferable interest or in the person's capacity as a member. The term:

(1) includes:

(i) a redemption or other purchase by a limited liability company of a transferable interest; and

(ii) a transfer to a member in return for the member's relinquishment of any right to participate as a member in the management or conduct of the company's activities and affairs or to have access to records or other information concerning the company's activities and affairs; and

(2) does not include:

(i) amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program;

(ii) the making of, or payment or performance on, a guaranty or similar arrangement by a company for the benefit of any or all of its members;

(iii) a direct or indirect allocation or transfer effected under Chapter 3 (relating to entity transactions) with the approval of the members; or

(iv) a direct or indirect transfer of:

(A) a governance or transferable interest; or

(B) options, rights or warrants to acquire a governance or transferable interest.

"Limited liability company." An association formed under this chapter or which becomes subject to this chapter under Chapter 3 or section 8811 (relating to short title and application of chapter).

"Manager." A person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated under section 8847(c) (relating to management of limited liability company).

"Manager-managed limited liability company." A limited liability company that qualifies as such under section 8847(a).

"Member." A person that:

(1) has become a member of a limited liability company under section 8841 (relating to becoming a member) or was a member in a company when the company became subject to this chapter under section 8811(b); and

(2) has not dissociated as a member under section 8861 (relating to events causing dissociation).

"Member-managed limited liability company." A limited liability company that is not a manager-managed limited liability company.

"Operating agreement." The agreement, whether or not referred to as an operating agreement and whether oral, implied, in record form or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning matters described in section 8815(a) (relating to contents of operating agreement). The term includes the agreement as amended or restated.

"Organizer." A person that acts under section 8821 to form a limited liability company.

"Professional company." A limited liability company that renders one or more professional services.

"Transferable interest." The right, as initially owned by a person in the person's capacity as a member, to receive distributions from a limited liability company, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

"Transferee." A person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under section 8863(a)(3) (relating to effects of dissociation).

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

"Act" or **"action."**
"Debtor in bankruptcy."
"Department."
"Jurisdiction of formation."
"Principal office."
"Professional services."
"Property."
"Record form."
"Sign."
"Transfer."

Cross References. Section 8812 is referred to in sections 102, 8845 of this title.

§ 8813. Knowledge and notice.

(a) Knowledge.--A person knows a fact if the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under subsection (d) or law other than this chapter.

(b) Notice.--A person has notice of a fact if the person has reason to know the fact from all the facts known to the person at the time in question.

(c) Constructive notice.--A person not a member or manager is deemed to have notice of:

(1) the dissolution of a limited liability company 90 days after a certificate of dissolution under section 8872(b)(2)(i) (relating to winding up and filing of certificates) is effective;

(2) the termination of a company 90 days after a certificate of termination under section 8872(f) is effective; and

(3) the participation of a company in a merger, interest exchange, conversion, division or domestication, 90 days after a statement of merger, interest exchange, conversion,

division or domestication under Chapter 3 (relating to entity transactions) becomes effective.

(d) Notification.--Except as provided under section 113(b) (relating to delivery of document), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(e) Transfer of real property.--A person not a member or manager is deemed to know of a limitation on authority to transfer real property as provided under section 8832(g) (relating to certificate of authority).

(f) Effect of manager's knowledge or notice.--If the certificate of organization of a limited liability company provides that it is manager-managed, a manager's knowledge or notice of a fact relating to the company is effective immediately as knowledge of or notice to the company, except in the case of a fraud on the company committed by or with the consent of the manager.

§ 8814. Governing law.

(a) General rule.--The law of this Commonwealth governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member and of a manager as manager for the debts, obligations or other liabilities of a limited liability company.

(b) Cross reference.--See section 8815(c)(6) (relating to contents of operating agreement).

Cross References. Section 8814 is referred to in section 8815 of this title.

§ 8815. Contents of operating agreement.

(a) Scope of operating agreement.--Except as provided under subsections (c) and (d), the operating agreement governs:

(1) relations among the members as members and between the members and the limited liability company;

(2) the rights and duties under this title of a person in the capacity of a member or manager;

(3) the activities and affairs of the company and the conduct of those activities and affairs;

(4) the means and conditions for amending the operating agreement; and

(5) the means and conditions for approving a transaction under Chapter 3 (relating to entity transactions).

(b) Title applies generally.--To the extent the operating agreement does not provide for a matter described in subsection (a), this title governs the matter.

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

(1) Vary a provision of Chapter 1 (relating to general provisions) or Subchapter A of Chapter 2 (relating to names).

(2) Vary the right of a member to approve a merger, interest exchange, conversion or division under section 333(a)(2) (relating to approval of merger), 343(a)(2) (relating to approval of interest exchange), 353(a)(3) (relating to approval of conversion) or 363(a)(2) (relating to approval of division).

(3) Vary the required contents of a plan of merger under section 332(a) (relating to plan of merger), plan of interest exchange under section 342(a) (relating to plan of interest exchange), plan of conversion under section 352(a) (relating to plan of conversion), plan of division under section 362(a)

(relating to plan of division) or plan of domestication under section 372(a) (relating to plan of domestication).

(4) Vary a provision of Chapter 81 (relating to general provisions).

(5) Vary the provisions of section 8811(b), (c) and (d) (relating to short title and application of chapter).

(6) Vary the law applicable under section 8814 (relating to governing law).

(7) Vary a provision of section 8818(d) (relating to characteristics of limited liability company).

(8) Vary a provision of section 8819 (relating to powers).

(9) Vary any requirement, procedure or other provision of this title pertaining to:

(i) registered offices; or

(ii) the department, including provisions pertaining to documents authorized or required to be delivered to the department for filing under this title.

(10) Provide indemnification or exoneration in violation of the limitations in sections 8848(g) (relating to reimbursement, indemnification, advancement and insurance), 8849.1(j) (relating to standards of conduct for members) and 8849.2(h) (relating to standards of conduct for managers).

(11) Eliminate the duty of loyalty provided for in section 8849.1(b)(1)(i) or (ii) or (2) or the duty of care of a member in a member-managed company, except as provided in subsection (d).

(12) Eliminate the duty of loyalty provided for in section 8849.2(b)(1)(i) or (ii) or (2) or the duty of care of a manager, except as provided in subsection (d).

(13) Vary the contractual obligation of good faith and fair dealing under section 8849.1(d) or 8849.2(d), except as provided in subsection (d).

(14) Restrict the duties and rights under section 8850 (relating to rights to information), except as provided in subsection (d).

(15) Vary the causes of dissolution specified in section 8871(a)(4) (relating to events causing dissolution).

(16) Vary the requirements to wind up the company's activities and affairs specified in section 8872(a), (b)(1), (e) and (f) (relating to winding up and filing of certificates).

(17) Unreasonably restrict the right of a member to maintain an action under Subchapter H (relating to actions by members).

(18) Vary the provisions of section 8884 (relating to special litigation committee), except that the operating agreement may provide that the company may not have a special litigation committee.

(19) Vary a provision of Subchapter I (relating to benefit companies).

(20) Except as provided in section 8817(b) (relating to amendment and effect of operating agreement), restrict the rights under this title of a person other than a member or manager.

(d) Permitted terms.--Subject to subsection (c)(10), the following rules apply:

(1) The operating agreement may:

(i) specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more

disinterested and independent persons after full disclosure of all material facts;

(ii) alter the prohibition stated in section 8845(a)(2) (relating to limitations on distributions) so that the prohibition requires only that the company's total assets not be less than the sum of its total liabilities; and

(iii) impose reasonable restrictions on the availability and use of information obtained under section 8850 and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

(2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this title and imposes the responsibility on one or more other members, the operating agreement also may eliminate or limit any fiduciary duty of the member relieved of the responsibility that would have pertained to the responsibility.

(3) If not manifestly unreasonable, the operating agreement may:

(i) alter the aspects of the duty of loyalty stated under section 8849.1(b)(1)(i) or (ii) or (2) or 8849.2(b)(1)(i) or (ii) or (2);

(ii) prescribe the standards, if not manifestly unreasonable, by which the performance of the contractual obligation of good faith and fair dealing under section 8849.1(d) or 8849.2(d) is to be measured;

(iii) identify specific types or categories of activities that do not violate the duty of loyalty;

(iv) alter the duty of care; and

(v) alter or eliminate any other fiduciary duty.

(e) Determination of manifest unreasonableness.--The court shall decide as a matter of law whether a term of an operating agreement is manifestly unreasonable under subsection (d)(3). The court:

(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes, activities and affairs of the limited liability company, it is readily apparent that:

(i) the objective of the term is unreasonable; or

(ii) the term is an unreasonable means to achieve the term's objective.

(July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (c)(2).

Cross References. Section 8815 is referred to in sections 8811, 8812, 8814, 8817, 8818, 8819, 8821, 8825, 8845, 8849.1, 8849.2, 8850, 8871, 8872, 8881, 8882, 8884, 8885, 8891 of this title.

§ 8816. Application of operating agreement.

(a) Company bound.--A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the agreement.

(b) Deemed assent.--A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(c) Preformation agreement.--Two or more persons intending to become the initial members of a limited liability company

may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

§ 8817. Amendment and effect of operating agreement.

(a) Approval of amendments.--An operating agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition. See section 8847(b)(6) and (c)(3)(iii) (relating to management of limited liability company).

(b) Obligations to nonmembers.--The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or a person dissociated as a member are governed by the operating agreement. Except as provided in section 8844(d) (relating to sharing of and right to distributions before dissolution) or in a court order issued under section 8853(b)(2) (relating to charging order) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:

(1) is effective with regard to any debt, obligation or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or person dissociated as a member; and

(2) is not effective to the extent the amendment imposes a new debt, obligation or other liability on the transferee or person dissociated as a member.

(c) Provisions in filed documents.--If a document delivered by a limited liability company to the department for filing contains a provision that would be ineffective under section 8815(c) or (d)(3) (relating to contents of operating agreement) if contained in the operating agreement, the provision is ineffective in the document.

(d) Conflicts with operating agreement.--Subject to subsection (c):

(1) If a provision of the certificate of organization conflicts with a provision of the operating agreement, the provision of the certificate prevails.

(2) If a document other than its certificate of organization has been delivered by the company to the department for filing and conflicts with a provision of the operating agreement:

(i) the operating agreement prevails as to members, dissociated members, transferees and managers; and

(ii) the document prevails as to other persons to the extent they reasonably rely on the document.

(e) Prohibition of oral amendments.--If a provision of an operating agreement in record form provides that the operating agreement cannot be amended, modified or rescinded except in record form, an oral agreement, amendment, modification or rescission shall not be enforceable.

Cross References. Section 8817 is referred to in section 8815 of this title.

§ 8818. Characteristics of limited liability company.

(a) Separate entity.--A limited liability company is an entity distinct from its member or members.

(b) Purpose.--A limited liability company may have any lawful purpose other than acting as an insurer, regardless of whether the purpose is for profit. Nothing under this section shall prohibit the organization of an insurance agency licensed in this Commonwealth as a limited liability company. See section 8102 (relating to interchangeability of partnership, limited liability company and corporate forms of organization).

(c) Duration.--A limited liability company has perpetual duration.

(d) Restrictions on nonprofit companies.--If a limited liability company has a purpose that is not for profit:

(1) Its purpose must be stated in the certificate of organization.

(2) The company shall not distribute any part of its income or profits to its members, managers or officers, except that it may pay compensation in a reasonable amount to those persons for services rendered.

(3) The company may confer benefits on members or nonmembers in conformity with its purposes, may repay capital contributions and may redeem evidences of indebtedness, except when the company is currently insolvent or would thereby be made insolvent or rendered unable to carry on its purposes, or when the fair value of the assets of the company remaining after the conferring of benefits, payment or redemption would be insufficient to meet its liabilities. The company may make distributions of money or property to members upon dissolution or final liquidation as permitted by this chapter.

(4) If the company is organized for a charitable purpose, it may take, receive and hold real and personal property as may be given, devised to or otherwise vested in the company, in trust, for the purpose or purposes set forth in its certificate of organization. The members, if it is member managed, or the managers, if it is manager managed, shall, as trustees of the property, be held to the same degree of responsibility and accountability as other trustees, unless:

(i) a lesser degree or a particular degree of responsibility and accountability is prescribed in the trust instrument;

(ii) if the company is member managed, the members remain under the control of third persons who retain the right to direct, and do direct, the actions of the members as to the use of the trust property from time to time; or

(iii) if the company is manager managed, the managers remain under the control of the members or third persons who retain the right to direct, and do direct, the actions of the managers as to the use of the trust property from time to time.

(5) Property of the company committed to charitable purposes shall not, by any proceeding under Chapter 3 (relating to entity transactions) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the company obtains from the court an order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.

(e) Cross reference.--See section 8815(c)(7) (relating to contents of operating agreement).

Cross References. Section 8818 is referred to in sections 8102, 8815, 8821, 8894 of this title.

§ 8819. Powers.

(a) General rule.--A limited liability company has the power to do all things necessary or convenient to carry on its activities and affairs.

(b) Capacity to sue and be sued.--A limited liability company has the capacity to sue and be sued in its own name.

(c) Certain specifically authorized debt terms.--A limited liability company shall be subject to section 1510 (relating to certain specifically authorized debt terms) to the same extent as if it were a business corporation.

(d) Cross references.--See sections 8102 (relating to interchangeability of partnership, limited liability company and corporate forms of organization) and 8815(c)(8) (relating to contents of operating agreement).

Cross References. Section 8819 is referred to in section 8815 of this title.

SUBCHAPTER B
FORMATION AND FILINGS

Sec.

8821. Formation of limited liability company and certificate of organization.
8822. Amendment or restatement of certificate of organization.
8823. Signing of filed documents.
8824. Liability of member, manager or other person for false or missing information in filed document.
8825. Registered office.

§ 8821. Formation of limited liability company and certificate of organization.

(a) Formation.--One or more associations or individuals 18 years of age or older may act as organizers to form a limited liability company by delivering to the department for filing a certificate of organization.

(b) Required contents of certificate.--A certificate of organization must state:

(1) the name of the limited liability company, which must comply with Subchapter A of Chapter 2 (relating to names); and

(2) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the company's registered office.

(c) Optional contents of certificate.--A certificate of organization may contain statements as to matters other than those required by subsection (b), but may not vary or otherwise affect the provisions specified under section 8815(c) and (d) (relating to contents of operating agreement) in a manner inconsistent with that section.

(d) Substitute certificate of authority.--A statement in a certificate of organization with respect to a matter described in section 8832(a)(2) or (3) (relating to certificate of authority) is effective as a certificate of authority and the statement is subject to the provisions of section 8832 in the same manner as a certificate of authority.

(e) Effect of certificate of organization.--A provision of the certificate of organization shall be deemed to be a provision of the operating agreement for purposes of any provision of this title that refers to a rule as set forth in the operating agreement.

(f) Time of formation.--A limited liability company is formed when its certificate of organization becomes effective.

(g) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8818(d)(1) (relating to characteristics of limited liability company).

Section 8823 (relating to signing of filed documents).

Section 8893(a) (relating to benefit company status).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a) and (g).

Cross References. Section 8821 is referred to in sections 8812, 8893 of this title.

§ 8822. Amendment or restatement of certificate of organization.

(a) General rule.--A certificate of organization may be amended or restated at any time.

(b) Required contents of certificate of amendment.--To amend its certificate of organization, a limited liability company must deliver to the department for filing a certificate of amendment that states:

(1) the name of the company;

(2) the date of filing of its initial certificate of organization;

(3) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office; and

(4) the amendment.

(c) Restatement.--To restate its certificate of organization, a limited liability company must deliver to the department for filing a certificate of amendment that:

(1) is designated as a restatement; and

(2) includes a statement that the restated certificate supersedes the original certificate and all previous amendments.

(d) Obligation to correct.--If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization is inaccurate, the member or manager shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the department for filing a statement of correction under section 138 (relating to statement of correction) or a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness).

(e) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8823 (relating to signing of filed documents).

Cross References. Section 8822 is referred to in sections 8824, 8847 of this title.

§ 8823. Signing of filed documents.

(a) Required signatures.--Except as provided in this title, a document delivered to the department for filing under this title relating to a limited liability company must be signed as follows:

(1) Except as provided in paragraphs (2) and (3), a document signed on behalf of a limited liability company must be signed by a person authorized by the company.

(2) A company's initial certificate of organization must be signed by each organizer.

(3) A document delivered on behalf of a dissolved company that has no member must be signed by the person winding up the company's activities and affairs under section 8872(c) (relating to winding up and filing of certificates) or a person appointed under section 8872(d) to wind up the activities and affairs.

(4) A certificate of denial by a person under section 8833 (relating to certificate of denial) must be signed by that person.

(5) Any other document delivered on behalf of a person to the department for filing must be signed by that person.

(b) Cross reference.--See section 142 (relating to effect of signing filings).

Cross References. Section 8823 is referred to in sections 8821, 8822, 8825, 8832, 8833, 8872 of this title.

§ 8824. Liability of member, manager or other person for false or missing information in filed document.

(a) General rule.--If a document delivered to the department for filing under this title and filed by the department contains a materially false statement or fails to state a material fact required to be stated, a person that suffers loss by reasonable reliance on the statement or failure to state a material fact may recover damages for the loss from:

(1) a person that signed the document or caused another to sign it on the person's behalf and knew there was false or missing information in the document at the time it was signed; and

(2) subject to subsection (b), a member of a member-managed limited liability company or a manager of a manager-managed limited liability company if:

(i) the document was delivered for filing on behalf of the company; and

(ii) the member or manager knew or had notice there was false or missing information for a reasonably sufficient time before the document was relied upon so that, before the reliance, the member or manager reasonably could have:

(A) effected an amendment under section 8822 (relating to amendment or restatement of certificate of organization);

(B) filed a petition under section 144 (relating to signing and filing pursuant to judicial order); or

(C) delivered to the department for filing a statement of correction under section 138 (relating to statement of correction) or a statement of withdrawal under section 141 (relating to abandonment of filing before effectiveness).

(b) Substitute responsibility.--To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in documents delivered

on behalf of the company to the department for filing under this chapter and imposes that responsibility on one or more other members, the liability stated under subsection (a)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

§ 8825. Registered office.

(a) General rule.--Every limited liability company shall have and continuously maintain in this Commonwealth a registered office which may, but need not, be the same as its place of business.

(b) Change of registered office.--After organization, a change in the location of the registered office may be effected at any time by the company. Before the change becomes effective, the company shall amend its certificate of organization under the provisions of this chapter to reflect the change, include the change in an annual report under section 146 (relating to annual report) or file with the department a certificate of change of registered office setting forth:

(1) The name of the company.

(2) The address, including street and number, if any, of its then-registered office.

(3) The address, including street and number, if any, to which the registered office is to be changed.

(c) Alternative procedure.--A limited liability company may satisfy the requirements of this chapter concerning the maintenance of a registered office in this Commonwealth by setting forth in any document filed in the department under any provision of this chapter that permits or requires the statement of the address of its then-registered office, in lieu of that address, the statement authorized under section 109(a) (relating to name of commercial registered office provider in lieu of registered address).

(d) Effect of statement.--A statement regarding the registered office of a limited liability company set forth in a document filed in the department pursuant to this section shall operate as an amendment of the certificate of organization.

(e) Cross references.--See:

Section 108 (relating to change in location or status of registered office provided by agent).

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8815(c)(7) (relating to contents of operating agreement).

Section 8823 (relating to signing of filed documents).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) and relettered former subsec. (d) to subsec. (e) and added present subsec. (d).

SUBCHAPTER C
RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

Sec.

8831. Status of member or manager as agent.
8832. Certificate of authority.

8833. Certificate of denial.
8834. Liability of members and managers.
8835. Taxation of limited liability companies.

§ 8831. Status of member or manager as agent.

(a) No agency power of member as member.--A member is not an agent of a limited liability company solely by reason of being a member.

(b) Agency power of manager.--If the certificate of organization states that the company is manager managed, the act of a manager for apparently carrying on in the usual way the business of the company binds the company unless the manager so acting has in fact no authority to act for the company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager does not have that authority.

(c) Liability of company under other law.--A person's status as a member or manager does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.

§ 8832. Certificate of authority.

(a) General rule.--A limited liability company may deliver to the department for filing a certificate of authority signed by the company. The certificate:

(1) must include the name of the company and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(i) transfer real property held in the name of the company, including signing an instrument of transfer; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(i) transfer real property held in the name of the company, including signing an instrument of transfer; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the company.

(b) Amendment or cancellation.--To amend or cancel a certificate of authority filed by the department, a limited liability company must deliver to the department for filing an amendment or cancellation that states:

(1) the name of the company;

(2) subject to section 109, the address, including street and number, if any, of the company's registered office;

(3) the date the certificate being affected became effective; and

(4) the contents of the amendment or a statement that the certificate is canceled.

(c) Effect.--A certificate of authority:

(1) supersedes any inconsistent provision of the certificate of organization in effect at the time the certificate of authority becomes effective;

(2) affects only the power of a person to bind a limited liability company with respect to persons that are not members; and

(3) is not binding on the department for purposes of the administration of this title or any other provision of law.

(d) Certificate not evidence of knowledge or notice.--Except as provided in subsections (e), (f), (g) and (h), a limitation on the authority of a person or a position contained in an effective certificate of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(e) Authority not pertaining to real property.--A grant of authority not pertaining to transfers of real property and contained in an effective certificate of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the certificate has been canceled or restrictively amended under subsection (b); or

(3) a limitation on the grant is contained in another certificate of authority that became effective after the certificate containing the grant became effective.

(f) Authority to transfer real property.--An effective certificate of authority or certificate of organization that grants authority to transfer real property held in the name of a limited liability company, a certified copy of which certificate is recorded in the office of the recorder of deeds for the county in which the property is located, is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the certificate has been canceled or restrictively amended under subsection (b), and a certified copy of the cancellation or restrictive amendment has been recorded in the office of the recorder of deeds; or

(2) a limitation on the grant is contained in another certificate of authority that became effective after the certificate containing the grant became effective, and a certified copy of the later-effective certificate is recorded in the office of the recorder of deeds.

(g) Effect of recorded certificate.--If a certified copy of an effective certificate containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office of the recorder of deeds for the county in which the real property is located, all persons are deemed to know of the limitation.

(h) Effect of dissolution or termination of company.--An effective certificate of dissolution does not cancel a filed certificate of authority for the purposes of subsection (f) and is a limitation on authority for the purposes of subsection (g). An effective certificate of termination cancels a filed certificate of authority.

(i) Automatic cancellation.--Unless earlier canceled, an effective certificate of authority that names an individual as having authority is canceled by operation of law five years after the date on which the certificate, or its most recent amendment, becomes effective. The cancellation operates without need for any recording under subsection (f) or (g).

(j) Effect of certificate of denial.--An effective certificate of denial:

(1) operates as a restrictive amendment under this section, and a certified copy may be recorded as provided

in subsection (f)(1) by the limited liability company or the person that delivered the certificate of denial to the department for filing;

(2) affects only the authority of a person to bind the company with respect to persons that are not members; and

(3) supersedes any inconsistent provision of the certificate of organization in effect at the time the certificate of denial becomes effective.

(k) Foreign companies.--A foreign limited liability company may deliver a certificate of authority to the department for filing and may record a copy as provided in this section in the same manner and with the same effect as if it were a domestic company and regardless of whether the foreign company is registered to do business in this Commonwealth under Chapter 4 (relating to foreign associations).

(l) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8823 (relating to signing of filed documents).

Cross References. Section 8832 is referred to in sections 8813, 8821, 8833 of this title.

§ 8833. Certificate of denial.

(a) General rule.--A person named in a filed certificate of authority granting that person authority may deliver to the department for filing a certificate of denial that:

(1) states:

(i) the name of the limited liability company;

(ii) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the company; and

(iii) the date the certificate of authority to which the certificate of denial pertains was filed; and

(2) denies the grant of authority.

(b) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8823 (relating to signing of filed documents).

Section 8832(j) (relating to certificate of authority).

Cross References. Section 8833 is referred to in section 8823 of this title.

§ 8834. Liability of members and managers.

(a) General rule.--A debt, obligation or other liability of a limited liability company is solely the debt, obligation or other liability of the company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the company solely by reason of being or acting as a member or manager. This subsection applies regardless of:

(1) whether the company has a single member or multiple members; and

(2) the dissolution, winding up or termination of the company.

(b) Professional relationship unaffected.--Subsection (a) shall not afford members of a professional company with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).

(c) Disciplinary jurisdiction unaffected.--A professional company shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other government unit regulating the profession in which the company is engaged. The court, department, board or other government unit may require that a company include in its certificate of organization or operating agreement provisions that conform to any rule or regulation promulgated before, on or after the effective date of this section for the purpose of enforcing the ethics of a profession. This chapter shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.

(d) Rendering professional services.--

(1) Except as provided by a statute, rule or regulation applicable to a particular profession, a professional company may lawfully render professional services only through licensed persons. The company may employ persons not so licensed except that those persons shall not render any professional services rendered or to be rendered by it.

(2) Paragraph (1) shall not be interpreted to preclude the use of clerks, secretaries, nurses, administrators, bookkeepers, technicians and other assistants or paraprofessionals who are not usually and ordinarily considered by law, custom and practice to be rendering the professional service or services for which the professional company was organized nor to preclude the use of any other person who performs all of the person's employment under the direct supervision and control of a licensed person. A person shall not under the guise of employment render professional services unless duly licensed or admitted to practice as required by law.

(3) Notwithstanding any other provision of law, a professional company may charge for the professional services rendered by it, may collect those charges and may compensate those who render the professional services.

(e) Medical professional liability.--A professional company shall be deemed to be a partnership for purposes of section 744 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

(f) Cross reference.--See section 8105 (relating to ownership of certain professional partnerships and limited liability companies).

Cross References. Section 8834 is referred to in section 8872 of this title.

§ 8835. Taxation of limited liability companies.

(a) General rule.--For the purposes of the imposition by the Commonwealth of any tax or license fee on or with respect to any income, property, privilege, transaction, subject or occupation, other than the corporate net income tax, capital stock and foreign franchise tax and personal income tax, a domestic or foreign limited liability company shall be deemed

to be a corporation organized and existing under Part II (relating to corporations), and a member of the company, as such, shall be deemed to be a shareholder of a corporation.

(b) Financial institutions.--For purposes of the bank shares tax and the mutual thrift institutions tax, a bank, bank and trust company, trust company, savings bank, building and loan association, savings and loan association or savings institution that is a domestic or foreign limited liability company shall be considered an "institution" as defined by Article VII or Article XV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(c) Political subdivisions.--Nothing in this section shall impair or preempt the ability of a political subdivision to levy, assess or collect any applicable taxes or license fees authorized under the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, on any limited liability company.

Cross References. Section 8835 is referred to in sections 8995, 8997 of this title.

SUBCHAPTER D
RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

Sec.

8841. Becoming a member.
8842. Form of contribution.
8843. Liability for contributions.
8844. Sharing of and right to distributions before dissolution.
8845. Limitations on distributions.
8846. Liability for improper distributions.
8847. Management of limited liability company.
8848. Reimbursement, indemnification, advancement and insurance.
8849. (Reserved).
8849.1. Standards of conduct for members.
8849.2. Standards of conduct for managers.
8850. Rights to information.

§ 8841. Becoming a member.

(a) Single initial member.--If a limited liability company is initially to have only one member, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If the initial member and the organizer are different persons, the organizer acts on behalf of the initial member.

(b) Multiple initial members.--If a limited liability company is initially to have more than one member, those persons become members as agreed by those persons and the organizer before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) Powers and authority of organizer.--Until a limited liability company has its first member, the organizer is deemed to be a manager of the company.

(d) Admission after formation.--After formation of a limited liability company, a person becomes a member:

(1) by action of the organizer if the company does not have any members;

(2) as provided in the operating agreement;

(3) as the result of a transaction effective under Chapter 3 (relating to entity transactions);

(4) with the affirmative vote or consent of all the members; or

(5) as provided in section 8871(a)(3) (relating to events causing dissolution).

(e) Noneconomic members.--A person may become a member without:

(1) acquiring a transferable interest; or

(2) making or being obligated to make a contribution to the limited liability company.

(f) Nature of interest.--The interest of a member in a limited liability company is personal property.

Cross References. Section 8841 is referred to in section 8812 of this title.

§ 8842. Form of contribution.

A contribution may consist of:

(1) property transferred to, services performed for or another benefit provided to the limited liability company;

(2) an agreement to transfer property to, perform services for or provide another benefit to the company; or

(3) any combination of items listed in paragraphs (1) and (2).

Cross References. Section 8842 is referred to in section 8812 of this title.

§ 8843. Liability for contributions.

(a) Obligation not excused.--A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, termination or other inability to perform personally.

(b) Substitute payment.--If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value, as stated in the records of the company, of the part of the contribution which has not been made.

(c) Compromise of obligation.--The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the members. If a creditor of a limited liability company extends credit or otherwise acts in reliance on an obligation described under subsection (a) without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

§ 8844. Sharing of and right to distributions before dissolution.

(a) General rule.--Any distribution made by a limited liability company before its dissolution and winding up shall be in equal shares among members and persons dissociated as members, except as provided in section 8852(b) (relating to transfer of transferable interest) or to the extent necessary to comply with a charging order in effect under section 8853 (relating to charging order).

(b) No entitlement to distribution.--Except as provided under subsection (e), a person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution.

(c) Distribution in kind.--A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as provided in

section 8877(d) (relating to disposition of assets in winding up), a limited liability company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) Status as creditor.--If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution, except that the company's obligation to make a distribution is subject to offset for any amount owed to the company by the member or transferee on whose account the distribution is made.

(e) Distribution upon event of dissociation.--Upon the effectiveness of a transaction under Chapter 3 (relating to entity transactions) or an amendment of the certificate of organization or operating agreement that results in either case in an event of dissociation but does not result in the dissolution of the limited liability company, the dissociating member may elect in record form to receive in lieu of the property that the person would be entitled to receive pursuant to the terms of the transaction or amendment:

(1) any distribution to which the member is entitled under the operating agreement on the terms provided in the operating agreement; and

(2) within a reasonable time after dissociation, the fair value of the interest of the member in the company as of the date of dissociation based upon the right of the member to share in distributions from the company.

Cross References. Section 8844 is referred to in sections 8817, 8863 of this title.

§ 8845. Limitations on distributions.

(a) General rule.--A limited liability company may not make a distribution, including a distribution under section 8877 (relating to disposition of assets in winding up), if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities and affairs; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

(b) Valuation.--A limited liability company may base a determination that a distribution is not prohibited under subsection (a)(2) on:

(1) the book values of the assets and liabilities of the company, as reflected on its books and records;

(2) a valuation that takes into consideration unrealized appreciation and depreciation or other changes in value of the assets and liabilities of the company;

(3) the current value of the assets and liabilities of the company, either valued separately or valued in segments or as an entirety as a going concern; or

(4) any other method that is reasonable in the circumstances.

(c) Excluded liabilities.--In determining whether a distribution is prohibited under subsection (a)(2), the company

need not consider obligations and liabilities unless they are required to be reflected on a balance sheet, not including the notes to the balance sheet, prepared on the basis of generally accepted accounting principles, or such other accounting practices and principles as are used generally by the company in the maintenance of its books and records and as are reasonable in the circumstances.

(d) Measuring date of distribution.--Except as provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) as of the date specified by the company when it authorizes the distribution if the distribution occurs within 125 days of the earlier of the date so specified or the date of authorization; or

(2) as of the date of distribution in all other cases.

(e) Date of redemption.--In the case of a distribution described under paragraph (1) of the definition of "distribution" in section 8812 (relating to definitions), the distribution is deemed to occur as of the earlier of the date money or other property is transferred or debt is incurred by the company or the date the person entitled to the distribution ceases to own the interest or right being acquired by the company in return for the distribution.

(f) Status of distribution debt.--The indebtedness of a limited liability company to a member or transferee incurred by reason of a distribution made in accordance with this section shall be at least on a parity with the company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(g) Certain subordinated debt.--The indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(h) Distributions in winding up.--In measuring the effect of a distribution under section 8877, the liabilities of a dissolved limited liability company do not include any claim that has been barred under section 8874 (relating to known claims against dissolved limited liability company) or 8875 (relating to other claims against dissolved limited liability company), or for which security has been provided under section 8876 (relating to court proceedings).

(i) Cross references.--See:

Section 8815(d)(1)(ii) (relating to contents of operating agreement).

Section 8849.1 (relating to standards of conduct for members).

Section 8849.2 (relating to standards of conduct for managers).

Cross References. Section 8845 is referred to in sections 8815, 8846, 8848 of this title.

§ 8846. Liability for improper distributions.

(a) General rule.--Except as provided in subsection (b), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of section 8845 (relating to limitations on distributions) and in consenting to the

distribution fails to comply with section 8849.1 (relating to standards of conduct for members) or 8849.2 (relating to standards of conduct for managers), the member or manager is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of section 8845.

(b) Members without authority.--To the extent the operating agreement of a member-managed limited liability company relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) Recipients.--A person that receives a distribution knowing that the distribution violated section 8845 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 8845.

(d) Contribution.--A person against which an action is commenced because the person is liable under subsection (a) may:

(1) join any other person that is liable under subsection (a) or otherwise seek to enforce a right of contribution from the person; and

(2) join any person that is liable under subsection (c) or otherwise seek to enforce a right of contribution from the person in the amount the person is liable for under subsection (c).

(e) Statute of repose.--An action under this section is barred unless commenced within two years after the distribution.

§ 8847. Management of limited liability company.

(a) Determination of management of company.--A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(i) the company is or will be manager managed;

(ii) the company is or will be managed by managers; or

(iii) management of the company is or will be vested in managers; or

(2) includes words of similar import.

(b) Member-managed company.--In a member-managed limited liability company, the following rules apply:

(1) Except as expressly provided in this title, the management and conduct of the company are vested in the members.

(2) Each member has equal rights in the management and conduct of the company's activities and affairs.

(3) A difference arising among members as to a matter in the ordinary course of the activities and affairs of the company may be decided by a majority of the members.

(4) Except as provided under section 325 (relating to approval by limited liability company) with respect to a transaction under Chapter 3 (relating to entity transactions), an act outside the ordinary course of the activities and affairs of the company may be undertaken only with the affirmative vote or consent of all members.

(5) Except as provided under section 8822(d) (relating to amendment or restatement of certificate of organization), the certificate of organization may be amended only with the affirmative vote or consent of all members.

(6) The operating agreement may be amended only with the affirmative vote or consent of all members.

(c) Manager-managed company.--In a manager-managed limited liability company, the following rules apply:

(1) Except as expressly provided in this title, any matter relating to the activities and affairs of the company is decided exclusively by the manager, or, if there is more than one manager, by a majority of the managers.

(2) Each manager has equal rights in the management and conduct of the company's activities and affairs.

(3) The affirmative vote or consent of all members is required:

(i) except as provided under section 325 with respect to a transaction under Chapter 3, to undertake any act outside the ordinary course of the company's activities and affairs;

(ii) except as provided under section 8822(d), to amend the certificate of organization; or

(iii) to amend the operating agreement.

(4) A manager may be chosen at any time by the affirmative vote or consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the affirmative vote or consent of a majority of the members without notice or cause.

(5) A person need not be a member to be a manager, except that the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(6) A person's ceasing to be a manager does not discharge any debt, obligation or other liability to the limited liability company or members which the person incurred while a manager.

(d) Action by consent or proxy.--An action requiring the vote or consent of members under this title may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent or otherwise act for the member by signing an appointing document in record form, personally or by the member's agent.

(e) Effect of dissolution.--The dissolution of a limited liability company does not affect the applicability of this section, except that a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(f) Reimbursement of advances.--A limited liability company shall reimburse a member for an advance to the company beyond the amount of capital the member agreed to contribute.

(g) Interest on advance.--A payment or advance made by a member which gives rise to an obligation of the limited liability company under subsection (f) or section 8848(a) (relating to reimbursement, indemnification, advancement and insurance) constitutes a loan to the company which accrues interest from the date of the payment or advance.

(h) No remuneration for services.--A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

(i) Increased vote requirements.--Whenever the certificate of organization or operating agreement requires for the taking of any action by the members or a class of members a specific number or percentage of votes or consents, the provision of the certificate or agreement setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes or consents of the members or the class of members. This subsection does not apply to a provision setting forth the right of members to act by unanimous consent in lieu of a meeting.

(j) Exception.--None of the following shall be considered an amendment of the certificate of organization for purposes of the voting rules in subsections (b)(6) and (c)(3)(iii):

(1) a restatement of all the operative provisions of the certificate of organization without change;

(2) a change in the name or registered office of the limited liability company; or

(3) any combination of the foregoing purposes.

(k) Approval of minor amendments.--Unless otherwise provided in record form in the operating agreement, an amendment described in subsection (j) may be made by the affirmative vote or consent of a majority of the managers or, in the case of a member-managed limited liability company, of a majority of the members.

Cross References. Section 8847 is referred to in sections 8812, 8817, 8848, 8872 of this title.

§ 8848. Reimbursement, indemnification, advancement and insurance.

(a) Reimbursement.--A limited liability company shall reimburse a member of a member-managed company or manager of a manager-managed company for any payment made by the member or in the course of the member's or manager's activities on behalf of the company, if the member or manager complied with the applicable provisions of sections 8847 (relating to management of limited liability company), 8849.1 (relating to standards of conduct for members) and 8849.2 (relating to standards of conduct for managers) in making the payment.

(b) Indemnification.--A limited liability company shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation or other liability incurred by the person by reason of the person's former or present capacity as a member or manager, if the claim, demand, debt, obligation or other liability does not arise from the person's breach of section 8845 (relating to limitations on distributions), 8847, 8849.1 or 8849.2.

(c) Advancement.--In the ordinary course of its activities and affairs, a limited liability company may advance expenses, including attorney fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager, if the person promises to repay the company if the person ultimately is determined not to be entitled to be indemnified.

(d) Insurance.--A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under subsection (g), the operating agreement could not provide indemnification against the liability or eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

(e) Nonexclusivity.--The rights provided by subsections (a), (b), (c) and (d) shall not be deemed exclusive of any other rights to which a person seeking reimbursement, indemnification, advancement of expenses or insurance may be entitled under the operating agreement, vote of members or disinterested managers, contract or otherwise, both as to action in his official capacity and as to action in another capacity while holding that position. Sections 8849.1(f) and 8849.2(e) shall be applicable to a vote, contract or other action under this subsection. A limited liability company may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under this section or otherwise.

(f) Grounds.--Indemnification under subsection (e) may be granted for any action taken and may be made whether or not the limited liability company would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the company. Indemnification under subsection (e) is declared to be consistent with the public policy of the Commonwealth.

(g) Limitation.--Indemnification under this section shall not be made in any case where the act giving rise to the claim for indemnification is determined by a court to constitute recklessness, willful misconduct or a knowing violation of law.

Cross References. Section 8848 is referred to in sections 8815, 8847, 8883, 8884 of this title.

§ 8849. (Reserved).

§ 8849.1. Standards of conduct for members.

(a) General rule.--A member of a member-managed limited liability company owes to the company and, subject to section 8881(b) (relating to direct action by member), the other members the duties of loyalty and care stated under subsections (b) and (c).

(b) Duty of loyalty.--The fiduciary duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit or benefit derived by the member:

(i) in the conduct or winding up of the company's activities and affairs;

(ii) from a use by the member of the company's property; or

(iii) from the appropriation of a company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities and affairs as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities and affairs before the dissolution of the company.

(c) Duty of care.--The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the company's activities and affairs is to refrain from engaging in gross negligence, recklessness, willful misconduct or knowing violation of law.

(d) Good faith and fair dealing.--A member shall discharge the duties and obligations under this title or under the

operating agreement and exercise any rights consistent with the contractual obligation of good faith and fair dealing.

(e) Self-serving conduct.--A member does not violate a duty or obligation under this title or under the operating agreement solely because the member's conduct furthers the member's own interest.

(f) Authorization or ratification.--All the members of a member-managed limited liability company may authorize or ratify, after disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty of a member.

(g) Fairness as a defense.--It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company at the time it is authorized or ratified under subsection (f).

(h) Rights and obligations in approved transaction.--If a member enters into a transaction with the limited liability company which otherwise would be prohibited under subsection (b)(2), and the transaction is authorized or ratified as provided under subsection (f) or the operating agreement, the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.

(i) Duties of members in manager-managed company.--Subject to subsection (d), a member does not have any duty to a manager-managed limited liability company or to any other member of the company solely by reason of being or acting as a member.

(j) Exoneration.--The operating agreement may provide that a member in a member-managed limited liability company shall not be personally liable for monetary damages to the company or the other members for a breach of subsection (c), except that a member may not be exonerated for an act that constitutes recklessness, willful misconduct or a knowing violation of law.

(k) Cross reference.--See section 8815 (relating to contents of operating agreement).

Cross References. Section 8849.1 is referred to in sections 8815, 8845, 8846, 8848, 8861, 8863, 8895 of this title.

§ 8849.2. Standards of conduct for managers.

(a) General rule.--A manager of a manager-managed limited liability company owes to the company and, subject to section 8881(b) (relating to direct action by member), the members the duties of loyalty and care stated under subsections (b) and (c).

(b) Duty of loyalty.--The fiduciary duty of loyalty of a manager in a manager-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit or benefit derived by the manager:

(i) in the conduct or winding up of the company's activities and affairs;

(ii) from a use by the manager of the company's property; or

(iii) from the appropriation of a company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities and affairs as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities and affairs until completion of the winding up of the company.

(c) Duty of care.--The duty of care of a manager of a manager-managed limited liability company in the conduct or winding up of the company's activities and affairs is to refrain from engaging in gross negligence, recklessness, willful misconduct or knowing violation of law.

(d) Good faith and fair dealing.--A manager of a manager-managed limited liability company shall discharge the duties and obligations under this title or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) Ratification of breach of duty of loyalty.--All the members, or a majority of disinterested managers, of a manager-managed limited liability company may authorize or ratify, after disclosure of all material facts, a specific act or transaction by a manager that otherwise would violate the duty of loyalty.

(f) Fairness as a defense.--It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(g) Manager's rights in approved transaction.--If a manager enters into a transaction with the limited liability company which otherwise would be prohibited by subsection (b)(2), and the transaction is approved or ratified as provided by subsection (e) or the operating agreement, the manager's rights and obligations arising from the transaction are the same as those of a person that is not a manager.

(h) Exoneration.--The operating agreement may provide that a manager in a manager-managed limited liability company shall not be personally liable for monetary damages to the company or the members for a breach of subsection (c), except that a manager may not be exonerated for an act that constitutes recklessness, willful misconduct or a knowing violation of law.

(i) Cross reference.--See section 8815 (relating to contents of operating agreement).

Cross References. Section 8849.2 is referred to in sections 8815, 8845, 8846, 8848, 8884, 8896 of this title.

§ 8850. Rights to information.

(a) In member-managed company.--In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, affairs, financial condition and other circumstances.

(2) The company shall furnish to each member, without demand, any information concerning the company's activities, affairs, financial condition and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this title, except to the extent the company can establish that it reasonably believes the member already knows the information.

(3) The duty to furnish information under paragraph (2) also applies to each member to the extent the member knows any of the information described in paragraph (2).

(b) In manager-managed company.--In a manager-managed limited liability company, the following rules apply:

(1) The informational rights stated in subsection (a) and the duty stated in subsection (a)(3) apply to the managers and not the members.

(2) During regular business hours and at a reasonable location specified by the company, a member may inspect and copy full information regarding the activities, affairs, financial condition and other circumstances of the company as is just and reasonable if:

(i) the member seeks the information for a purpose reasonably related to the member's interest as a member;

(ii) the member makes a demand in record form received by the company describing with reasonable particularity the information sought and the purpose for seeking the information; and

(iii) the information sought is directly connected to the member's purpose.

(3) Within 10 days after receiving a demand under paragraph (2)(ii), the company shall, in record form, inform the member that made the demand of:

(i) the information that the company will provide in response to the demand and when and where the company will provide the information; and

(ii) the company's reasons for declining, if the company declines to provide any demanded information.

(c) Rights of person dissociated as member.--Subject to subsection (h), within 10 days after receipt by a limited liability company of a demand made in record form, a person dissociated as a member may have access to information to which the person was entitled while a member if:

(1) the information pertains to the period during which the person was a member;

(2) the person seeks the information in good faith; and

(3) the person satisfies the requirements imposed on a member under subsection (b)(2).

(d) Response of company.--A limited liability company shall respond to a demand made under subsection (c) in the manner provided in subsection (b)(3).

(e) Copying costs.--A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying.

(f) Rights of agent or guardian.--A member or person dissociated as a member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a guardian. Any restriction or condition imposed by the operating agreement or under subsection (h) applies both to the agent or guardian and the member or person dissociated as a member.

(g) No rights of transferee.--Subject to section 8854 (relating to power of personal representative of deceased member), the rights under this section do not extend to a person as transferee.

(h) Limitations on access.--In addition to any restriction or condition stated in the operating agreement, a limited liability company, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

(i) Enforcement of right to information.--If a limited liability company, or a manager, member or agent thereof, refuses to permit an inspection sought by a person or attorney or other agent acting for the person pursuant to this section, or does not reply to the demand made under this section within 10 days after the demand has been received, the person seeking inspection may file an action in the court for an order to compel the inspection. The court is vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the company to permit the person to inspect the information and to make copies or extracts therefrom.

(j) Cross reference.--See section 8815 (relating to contents of operating agreement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 relettered former subsec. (i) to subsec. (j) and added present subsec. (i)

Cross References. Section 8850 is referred to in sections 8815, 8854 of this title.

SUBCHAPTER E
TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

Sec.

8851. Nature of transferable interest.
8852. Transfer of transferable interest.
8853. Charging order.
8854. Power of personal representative of deceased member.

§ 8851. Nature of transferable interest.

(a) Personal property.--A transferable interest is personal property.

(b) Only right that may be transferred.--A person may not transfer to a person not a member any rights in a limited liability company other than a transferable interest.

§ 8852. Transfer of transferable interest.

(a) General rule.--Subject to section 8853(f) (relating to charging order), a transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause the dissociation of the transferor as a member or a dissolution and winding up of the limited liability company's activities and affairs; and

(3) subject to section 8854 (relating to power of personal representative of deceased member), does not entitle the transferee to:

(i) participate in the management or conduct of the company's activities and affairs; or

(ii) except as provided in subsection (c), have access to records or other information concerning the company's activities and affairs.

(b) Right to distributions.--A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) Right to account on dissolution.--In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(d) Certificate of interest.--A transferable interest may be evidenced by a certificate of the interest issued by the

limited liability company in record form and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) Recognition of transferee's rights.--A limited liability company need not give effect to a transferee's rights under this section until the company knows or has notice of the transfer.

(f) Transfer restrictions.--A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

(g) Rights retained by transferor.--Except as provided in section 8861(5)(ii) (relating to events causing dissociation), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

Cross References. Section 8852 is referred to in sections 8844, 8853, 8854 of this title.

§ 8853. Charging order.

(a) General rule.--On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. Except as provided in subsection (f), a charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(b) Available relief.--To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Foreclosure.--Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. Except as provided in subsection (f), the purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to section 8852 (relating to transfer of transferable interest).

(d) Satisfaction of judgment.--At any time before foreclosure under subsection (c), the member or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) Purchase of rights.--At any time before foreclosure under subsection (c), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) Foreclosure against sole member.--If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:

(1) the court shall confirm the sale;
(2) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;
(3) the purchaser thereby becomes a member; and
(4) the person whose interest was subject to the foreclosed charging order is dissociated as a member.

(g) Exemption laws preserved.--This chapter shall not deprive any member or transferee of the benefit of any exemption laws applicable to the transferable interest of the member or transferee.

(h) Exclusive remedy.--This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Cross References. Section 8853 is referred to in sections 8817, 8844, 8852, 8861, 8877 of this title.

§ 8854. Power of personal representative of deceased member.

If a member dies, the deceased member's personal representative may exercise:

(1) the rights of a transferee provided in section 8852(c) (relating to transfer of transferable interest); and
(2) for the purposes of settling the estate, the rights the deceased member had under section 8850 (relating to rights to information).

Cross References. Section 8854 is referred to in sections 8850, 8852, 8863 of this title.

SUBCHAPTER F
DISSOCIATION

Sec.

8861. Events causing dissociation.
8862. Power to dissociate and wrongful dissociation.
8863. Effects of dissociation.

§ 8861. Events causing dissociation.

A person is dissociated as a member when any of the following occurs:

(1) The limited liability company knows or has notice of the person's express will to withdraw as a member, except that if the person specified a withdrawal date later than the date the company knew or had notice, on that later date.
(2) An event stated in the operating agreement as causing the person's dissociation occurs.
(3) The person's entire interest is transferred in a foreclosure sale under section 8853(f) (relating to charging order).
(4) The person is expelled as a member pursuant to the operating agreement.
(5) The person is expelled as a member by the affirmative vote or consent of all the other members if:
(i) it is unlawful to carry on the company's activities and affairs with the person as a member;
(ii) there has been a transfer of all the person's transferable interest in the company, other than:
(A) a transfer for security purposes; or
(B) a charging order in effect under section 8853 which has not been foreclosed;
(iii) the person is an entity and:

(A) the company notifies the person that it will be expelled as a member because:

(I) the person has filed a certificate of dissolution or the equivalent;

(II) the person has been administratively dissolved;

(III) the person's charter or its equivalent has been revoked; or

(IV) the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(B) within 90 days after the notification:

(I) the certificate of dissolution or the equivalent has not been withdrawn, rescinded or revoked;

(II) the person has not been reinstated;

(III) the person's charter or the equivalent has not been reinstated; or

(IV) the person's right to conduct business has not been reinstated; or

(iv) the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up.

(6) On application by the company or a member in a direct action under section 8881 (relating to direct action by member), the person is expelled as a member by judicial order because the person:

(i) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the company's activities and affairs;

(ii) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement or a duty or obligation under section 8849.1 (relating to standards of conduct for members); or

(iii) has engaged or is engaging in conduct relating to the company's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a member.

(7) In the case of an individual:

(i) the individual dies; or

(ii) in a member-managed limited liability company:

(A) a guardian for the individual is appointed; or

(B) a court orders that the individual has otherwise become incapable of performing the individual's duties as a member under this title or the operating agreement.

(8) In a member-managed limited liability company, the person:

(i) becomes a debtor in bankruptcy;

(ii) executes an assignment for the benefit of creditors; or

(iii) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the person or of all or substantially all the person's property.

(9) In the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the company is distributed.

(10) In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed.

(11) In the case of a person that is not an individual, the existence of the person terminates.

(12) The company participates in a merger under Chapter 3 (relating to entity transactions) and:

(i) the company is not the surviving entity; or

(ii) otherwise as a result of the merger, the person ceases to be a member.

(13) The company participates in an interest exchange under Chapter 3 and, as a result of the interest exchange, the person ceases to be a member.

(14) The company participates in a conversion under Chapter 3.

(15) The company participates in a division under Chapter 3 and:

(i) the company is not a resulting association; or

(ii) as a result of the division, the person ceases to be a member.

(16) The company participates in a domestication under Chapter 3 and, as a result of the domestication, the person ceases to be a member.

(17) The company dissolves and completes winding up.

Cross References. Section 8861 is referred to in sections 8812, 8852, 8862 of this title.

§ 8862. Power to dissociate and wrongful dissociation.

(a) Power to dissociate.--A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under section 8861(1) (relating to events causing dissociation).

(b) Wrongful dissociation.--A person's dissociation as a member is wrongful only if the dissociation:

(1) is in breach of an express provision of the operating agreement; or

(2) occurs before the completion of the winding up of the limited liability company and:

(i) the person withdraws as a member by express will;

(ii) the person is expelled as a member by judicial order under section 8861(6);

(iii) the person is dissociated under section 8861(8); or

(iv) the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated, except that this subparagraph does not apply to a person that is:

(A) a trust that is not a business or statutory trust;

(B) an estate; or

(C) an individual.

(c) Damages for wrongful dissociation.--A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 8881 (relating to direct action by member), to the other members for damages caused by the dissociation. The liability is in addition to any debt, obligation or other liability of the member to the company or the other members.

§ 8863. Effects of dissociation.

(a) General rule.--If a person is dissociated as a member:

(1) the person's rights as a member terminate;

(2) if the company is member-managed, the person's duties and obligations under section 8849.1 (relating to standards of conduct for members) as a member end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to sections 8844(e) (relating to sharing of and right to distributions before dissolution) and 8854 (relating to power of personal representative of deceased member) and Chapter 3 (relating to entity transactions), any transferable interest owned by the person in the person's capacity as a member immediately before dissociation as a member is owned by the person solely as a transferee.

(b) Existing obligations not discharged.--A person's dissociation as a member does not of itself discharge the person from any debt, obligation or other liability to the company or the other members which the person incurred while a member.

Cross References. Section 8863 is referred to in section 8812 of this title.

SUBCHAPTER G
DISSOLUTION AND WINDING UP

Sec.

8871. Events causing dissolution.
8872. Winding up and filing of certificates.
8873. (Reserved).
8874. Known claims against dissolved limited liability company.
8875. Other claims against dissolved limited liability company.
8876. Court proceedings.
8877. Disposition of assets in winding up.
8878. Voluntary termination by members or organizers.

§ 8871. Events causing dissolution.

(a) General rule.--A limited liability company is dissolved, and its activities and affairs shall be wound up, upon the occurrence of any of the following:

(1) An event or circumstance that the operating agreement states causes dissolution.

(2) The consent of all the members.

(3) The passage of 180 consecutive days after the company ceases to have any members unless before the end of the period:

(i) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(ii) at least one person becomes a member in accordance with the consent.

(4) On application by a member, the entry by the court of an order dissolving the company on the grounds that:

(i) the conduct of all or substantially all the company's activities and affairs is unlawful;

(ii) it is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement; or

(iii) the managers or those members in control of the company:

(A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(B) have acted or are acting in a manner that is oppressive and was, is or will be directly harmful to the applicant.

(b) Other remedies.--In a proceeding brought under subsection (a)(4)(iii)(B), the court may order a remedy other than dissolution.

(c) Cross reference.--See section 8815(c)(15) (relating to contents of operating agreement).

Cross References. Section 8871 is referred to in sections 8815, 8841, 8872 of this title.

§ 8872. Winding up and filing of certificates.

(a) General rule.--A dissolved limited liability company shall wind up its activities and affairs, and the company continues after dissolution only for the purpose of winding up.

(b) Conduct of winding up.--In winding up its activities and affairs, a limited liability company:

(1) shall discharge the company's debts, obligations and other liabilities, settle and close the company's activities and affairs and marshal and distribute the assets of the company; and

(2) may:

(i) deliver to the department for filing a certificate of dissolution stating:

(A) the name of the company;

(B) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the company; and

(C) that the company is dissolved;

(ii) preserve the company's activities, affairs and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal or administrative;

(iv) transfer the company's property;

(v) settle disputes by mediation or arbitration; and

(vi) perform other acts necessary or appropriate to the winding up.

(c) Conduct of winding up when no members.--If a dissolved limited liability company has no members, the personal representative, guardian or other person authorized to act on behalf of the last person to have been a member may wind up the activities and affairs of the company. If the person does so, the person has the powers of a sole manager under section 8847(c) (relating to management of limited liability company) and is deemed to be a manager for the purposes of section 8834(a) (relating to liability of members and managers).

(d) Action by transferees.--If the personal representative, guardian or other person authorized to act under subsection (c) declines or fails to wind up the company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under section 8847(c) and is deemed to be a manager for the purposes of section 8834(a); and

(2) shall promptly deliver to the department for filing an amendment to the company's certificate of organization stating:

(i) that the company has no members;
(ii) the name and street and mailing addresses of the person; and
(iii) that the person has been appointed under this subsection to wind up the company.

(e) Judicial supervision.--The court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities and affairs:

(1) on the application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(i) the company does not have any members;

(ii) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(iii) within a reasonable time following the dissolution a person has not been appointed under subsection (c); or

(3) in connection with a proceeding under section 8871(a)(4) (relating to events causing dissolution).

(f) Certificate of termination.--When all debts, obligations and other liabilities of the limited liability company have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the company have been distributed to the members, a certificate of termination shall be delivered to the department for filing along with the certificates required by section 139 (relating to tax clearance of certain fundamental transactions). The certificate of termination shall set forth:

(1) The name of the limited liability company.

(2) Subject to section 109, the address, including street and number, if any, of the registered office of the company.

(3) That all debts, obligations and other liabilities of the company have been paid and discharged or that adequate provision has been made therefor.

(4) That all the remaining property and assets of the company have been distributed among its members in accordance with their respective rights and interests.

(5) That there are no actions pending against the company in any court or that adequate provision has been made for the satisfaction of any judgment that may be entered against it in any pending action.

(6) That the company is terminated.

(g) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8815(c)(16) (relating to contents of operating agreement).

Section 8823 (relating to signing of filed documents).

Cross References. Section 8872 is referred to in sections 139, 8813, 8815, 8823 of this title.

§ 8873. (Reserved).

§ 8874. Known claims against dissolved limited liability company.

(a) General rule.--Except as provided in subsection (d), a dissolved limited liability company may give notice of a known

claim under subsection (b), which has the effect provided in subsection (c).

(b) Required notice.--A dissolved limited liability company may notify in record form its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

(c) Claims barred.--A claim against a dissolved limited liability company is barred if the requirements of subsection (b) are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the company:

(i) the company causes the claimant to receive a notice in record form stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within 90 days after the claimant receives the notice; and

(ii) the claimant does not commence the required action within 90 days after the complainant receives the notice.

(d) Later arising claims.--This section shall not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Cross References. Section 8874 is referred to in sections 8845, 8875 of this title.

§ 8875. Other claims against dissolved limited liability company.

(a) Permissive notice.--A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) Notice procedure.--A notice under subsection (a) must:

(1) be officially published one time;

(2) describe the information required to be contained in a claim, state that the claim must be in writing and provide a mailing address to which the claim is to be sent; and

(3) state that a claim against the limited liability company is barred unless an action to enforce the claim is commenced within two years after publication of the notice.

(c) Claims barred.--If a dissolved limited liability company publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the company within two years after the publication date of the notice:

(1) a claimant that did not receive notice in record form under section 8874 (relating to known claims against dissolved limited liability company);

(2) a claimant whose claim was timely sent to the company but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) Claims not barred.--A claim not barred under this section or section 8874 may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) except as provided in section 8876 (relating to court proceedings), if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the company's assets distributed to the member or transferee after dissolution, whichever is less, except that a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution.

Cross References. Section 8875 is referred to in sections 8845, 8876 of this title.

§ 8876. Court proceedings.

(a) Determination of security.--A dissolved limited liability company that has officially published a notice under section 8875 (relating to other claims against dissolved limited liability company) may file an application with the court for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the company and:

(1) at the time of application:

(i) are contingent; or

(ii) have not been made known to the company; or

(2) are based on an event occurring after the effective date of dissolution.

(b) When security not required.--Security is not required for any claim that is or is reasonably anticipated to be barred under section 8875(c).

(c) Notice.--Within 10 days after the filing of an application under subsection (a), the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the company.

(d) Guardian ad litem.--In any proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability company.

(e) Effect on contingent claims.--A dissolved limited liability company that provides security in the amount and form ordered by the court under subsection (a) satisfies the company's obligations with respect to claims that are contingent, have not been made known to the company or are based on an event occurring after the effective date of dissolution. The claims may not be enforced against a member or transferee that received assets in liquidation.

Cross References. Section 8876 is referred to in sections 8845, 8875 of this title.

§ 8877. Disposition of assets in winding up.

(a) Creditors.--In winding up its activities and affairs, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) Surplus.--After a limited liability company complies with subsection (a), any surplus shall be distributed in the following order, subject to any charging order in effect under section 8853 (relating to charging order):

(1) to each owner of a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) among owners of transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the company.

(c) Insufficient assets.--If a limited liability company does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(d) Form of payment.--All distributions made under subsections (b) and (c) must be paid in money.

Cross References. Section 8877 is referred to in sections 8844, 8845 of this title.

§ 8878. Voluntary termination by members or organizers.

(a) General rule.--The members or organizers of a limited liability company that has never transacted business or held assets other than money received as capital contributions may effect the termination of the company by delivering to the department for filing a certificate of termination signed by an organizer or a member and stating:

(1) the name of the company;

(2) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the company;

(3) that the company has never transacted business or held assets other than money received as capital contributions;

(4) that the amounts, if any, actually paid in as capital contributions, less any part disbursed for necessary expenses, have been returned to those entitled to the return of the amounts;

(5) that all liabilities of the company have been discharged or that adequate provision has been made for those liabilities; and

(6) that a majority of the organizers or a majority in interest of the members elect that the company be terminated.

(b) Effect.--Upon the filing of the certificate of termination, the existence of the limited liability company shall cease.

(c) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Cross References. Section 8878 is referred to in section 139 of this title.

SUBCHAPTER H
ACTIONS BY MEMBERS

Sec.
8881. Direct action by member.
8882. Derivative action.
8883. Eligible plaintiffs and security for costs.
8884. Special litigation committee.
8885. Proceeds and expenses.

Cross References. Subchapter H is referred to in sections 8815, 8897 of this title.

§ 8881. Direct action by member.

(a) General rule.--Subject to subsection (b), a member may maintain a direct action against another member, a manager or the limited liability company to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement or this title or arising independently of the membership relationship.

(b) Required injury.--A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

(c) Cross reference.--See section 8815(c)(17) (relating to contents of operating agreement).

Cross References. Section 8881 is referred to in sections 8849.1, 8849.2, 8861, 8862 of this title.

§ 8882. Derivative action.

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

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

(i) (Deleted by amendment).

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

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

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

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

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

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

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

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

(2) demand is excused under subsection (b);

(3) the action is maintained for the limited purpose of seeking court review under section 8884(f); or

(4) the court has allowed the action to continue under the control of the plaintiff under section 8884(f)(3)(ii).

(b) Prior demand excused.--

(1) A demand under subsection (a)(1) is excused only if the plaintiff makes a specific showing that immediate and irreparable harm to the limited liability company would otherwise result.

(2) If demand is excused under paragraph (1), demand should be made promptly after commencement of the action.

(c) Contents of demand.--A demand under this section must be in record form and give notice with reasonable specificity of:

(1) the material facts relied upon to support each of the claims made in the demand against each proposed defendant; and

(2) in the case of a derivative action commenced by a member or manager, the basis on which the person making the demand has standing under section 8883.

(d) Additional claims.--If a derivative action is commenced after a demand has been made under this section and includes a claim that was not fairly subsumed under the demand, a new demand must be made with respect to that claim. The new demand shall not relate back to the date of the original demand for purposes of subsection (e).

(e) Statute of limitations.--The making of a demand tolls any applicable statute of limitations with respect to a claim asserted in the demand until the earlier of the date:

(1) the plaintiff making the demand is notified either:

(i) that the managers or members have decided not to bring an action and not to appoint a special litigation committee; or

(ii) of a determination under section 8884(e) after the appointment of a special litigation committee under section 8884; or

(2) the plaintiff commences an action asserting the claim.

(f) Cross reference.--See section 8815(c)(17) (relating to contents of operating agreement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days; July 15, 2024, P.L.728, No.59, eff. 60 days)

2024 Amendment. Act 59 amended subsec. (a)(1).

2022 Amendment. Act 122 amended subsecs. (a) intro. par., (1) intro. par. and (i), (b)(1) and (c).

§ 8883. Eligible plaintiffs and security for costs.

(a) General rule.--Except as provided in subsection (b), in any action or proceeding brought by one or more members or managers of a limited liability company to enforce rights that the plaintiff claims could be, but have not been, asserted by the company, each plaintiff has standing to commence and maintain the derivative action if the plaintiff:

(1) was a member or manager of the company at the time of the transaction or conduct of which the plaintiff complains, or that the plaintiff's status as a member or manager devolved upon the plaintiff by operation of law from a person who was a member or manager at that time; and

(2) continues to be a member or manager until the time of judgment, unless the failure to do so is the result of company action that:

(i) was done merely to eliminate derivative claims; or

(ii) has the effect of a reorganization that does not affect the plaintiff's ownership of the business enterprise.

(b) Exception.--Any member or manager that, except for the provisions of subsection (a), would be entitled to maintain the action or proceeding and who does not meet such requirements may, nevertheless in the discretion of the court, be allowed to maintain the action or proceeding on preliminary showing to the court, by application and upon such verified statements and depositions as may be required by the court, that there is a strong prima facie case in favor of the claim asserted on behalf of the company and that without the action serious injustice will result.

(c) Security for costs.--In any action or proceeding instituted or maintained by members holding transferable interests entitled to receive less than 5% of any distribution by a limited liability company, unless the transferable interests held by the members have an aggregate fair market value in excess of $200,000, the company in whose right the action or proceeding is brought shall be entitled at any stage of the proceedings to require the plaintiffs to give security for the reasonable expenses, including attorney fees, that may be incurred by the company in connection therewith or for which it may become liable pursuant to section 8848(b) (relating to reimbursement, indemnification, advancement and insurance) to which security the company shall have recourse in such amount as the court determines upon the termination of the action or proceeding. The amount of security may, from time to time, be increased or decreased in the discretion of the court upon showing that the security provided has or may become inadequate or excessive. The security may be denied or limited by the court if the court finds after an evidentiary hearing that undue hardship on plaintiffs and serious injustice would result.

(d) Failure to maintain ownership.--If a plaintiff loses the right to maintain a derivative action under subsection (a)(2), the court may entertain a motion by the limited liability company to substitute the limited liability company as the named plaintiff.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

Cross References. Section 8883 is referred to in section 8882 of this title.

§ 8884. Special litigation committee.

(a) General rule.--If a limited liability company or its members or managers receive a demand to bring an action to enforce a right of the company, or if a derivative action is commenced before demand has been made on the company or its members or managers, the members in a member-managed limited liability company, or the managers in a manager-managed limited liability company, may appoint a special litigation committee to investigate the claims asserted in the demand or action and to determine on behalf of the company or recommend to the managers or members whether pursuing any of the claims asserted is in the best interests of the company. The company must deliver a notice in record form to the person making the demand, or to the plaintiff if a derivative action has been commenced, promptly after the appointment of a committee under this section notifying the person making the demand or the plaintiff that a committee has been appointed and identifying by name the members

of the committee. A committee may not be appointed under this section if:

(1) every member of the company is also a manager of the company; or

(2) the company is member-managed and every member is actively involved in the management of the company.

(b) Discovery stay.--If the members or managers appoint a special litigation committee and an action is commenced before a determination has been made under subsection (e):

(1) On motion by the limited liability company, or the committee made in the name of the company, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation, except for good cause shown.

(2) The time for the defendants to plead shall be tolled until the process provided for under subsection (f) has been completed.

(c) Composition of committee.--A special litigation committee shall be composed of two or more individuals who:

(1) are not interested in the claims asserted in the demand;

(2) are capable as a group of objective judgment in the circumstances; and

(3) may, but need not, be members or managers.

(c.1) Committee members who are not managers.--A member of a special litigation committee who is not a manager, when acting as a member of the committee, is subject to the liabilities imposed, and entitled to the rights and immunities conferred, by sections 8848 (relating to reimbursement, indemnification, advancement and insurance) and 8849.2 (relating to standards of conduct for managers).

(d) Appointment of committee.--A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(i) by a majority of the members not named as actual or potential parties in the demand or action; and

(ii) if all members are named as actual or potential parties in the demand or action, by a majority of the members so named; or

(2) in a manager-managed limited liability company:

(i) by a majority of the managers not named as actual or potential parties in the demand or action; and

(ii) if all managers are named as actual or potential parties in the demand or action, by a majority of the managers so named.

(e) Determination.--After appropriate investigation by a special litigation committee, the committee may determine, or the committee may recommend to the managers or members that they determine, that it is in the best interests of the limited liability company that:

(1) an action based on some or all of the claims asserted in the demand not be brought by the company but that the company not object to an action being brought by the party that made the demand:

(2) an action based on some or all of the claims asserted in the demand be brought by the company;

(3) some or all of the claims asserted in the demand be settled on terms determined or recommended by the committee;

(4) an action not be brought based on any of the claims asserted in the demand;

(5) an action already commenced continue under the control of:

(i) the plaintiff;

(ii) the company; or

(iii) the committee;

(6) some or all of the claims asserted in an action already commenced be settled on terms determined or recommended by the committee; or

(7) an action already commenced be dismissed.

(f) Court review and action.--If a special litigation committee is appointed and a derivative action is commenced either before or after either the committee makes a determination under subsection (e) or the members or managers determine under that subsection to accept the recommendation of the committee:

(1) The limited liability company or the committee shall file with the court after a determination is made under subsection (e) a statement of the determination and a report of the committee supporting the determination. The company or the committee shall serve each party with a copy of the determination and report. If the company or the committee moves to file the report under seal, the report shall be served on the parties subject to an appropriate stipulation agreed to by the parties or a protective order issued by the court.

(2) The company or the committee shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).

(3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made its determination or recommendation in good faith, independently and with reasonable care. The plaintiff has the burden of proving that the committee did not meet those qualifications or act in the required manner. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee or the members or managers. Otherwise, the court shall:

(i) dissolve any stay of discovery entered under subsection (b);

(ii) allow the action to continue under the control of the plaintiff; and

(iii) permit the defendants to file preliminary objections and other appropriate motions and pleadings.

(g) Attorney General.--Nothing in this section shall limit the rights, powers and duties of the Attorney General under other applicable law with respect to a limited liability company organized for a charitable purpose.

(h) Interest of a defendant.--The fact that a person is named as a defendant does not make the person interested in the claims asserted in a demand or action for purposes of subsection (c)(1) if the claims against the person:

(1) are based only on an allegation that the person approved of or acquiesced in the transaction or conduct that is the subject of the claims; and

(2) do not otherwise allege with particularity facts that, if true, raise a significant prospect that the person would be adjudged liable.

(i) Cross reference.--See section 8815(c)(18) (relating to contents of operating agreement).

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a), (b)(1), (e) intro. par., (3) and (6) and (f), added subsec. (c.1) and relettered former subsec. (h) to subsec. (i) and added present subsec. (h).

Cross References. Section 8884 is referred to in sections 8815, 8882 of this title.

§ 8885. Proceeds and expenses.

(a) Proceeds.--Except as provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong to the limited liability company and not to the plaintiff; and

(2) if the plaintiff or its counsel receives any proceeds, the proceeds shall be remitted immediately to the company.

(b) Expenses.--If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company, but in no event shall the attorney fees awarded exceed a reasonable proportion of the value of the relief, including nonpecuniary relief, obtained by the plaintiff for the company.

(c) Cross reference.--See section 8815(c)(13) (relating to contents of operating agreement).

SUBCHAPTER I
BENEFIT COMPANIES

Sec.

8891. Application and effect of subchapter.
8892. Definitions.
8893. Benefit company status.
8894. Purposes.
8895. Standard of conduct for members.
8896. Standard of conduct for managers and officers.
8897. Right of action.
8898. Annual benefit report.

Cross References. Subchapter I is referred to in section 8815 of this title.

§ 8891. Application and effect of subchapter.

(a) General rule.--This subchapter shall apply to all benefit companies.

(b) Limited application of subchapter.--The existence of a provision of this subchapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a limited liability company that is not a benefit company. This subchapter shall not affect any statute or rule of law that is or would be applicable to a limited liability company that is not a benefit company.

(c) Laws applicable to benefit companies.--Except as otherwise provided in this subchapter, the provisions of Part I (relating to preliminary provisions) and this chapter shall apply generally to benefit companies. The provisions of this

subchapter shall control over inconsistent provisions of this title.

(d) Organic rules may not be inconsistent.--See section 8815(c)(19) (relating to contents of operating agreement).

§ 8892. Definitions.

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

"Benefit company." A limited liability company that is subject to this subchapter.

"Benefit enforcement proceeding." A claim or action for:

(1) failure to pursue or create the general public benefit purpose of the benefit company or any specific public benefit purpose set forth in its certificate of organization; or

(2) violation of any obligation, duty or standard of conduct under this subchapter.

"General public benefit." A material positive impact on society and the environment, taken as a whole and assessed against a third-party standard, from the business and operations of a benefit company.

"Independent." When a person has no material relationship with a benefit company or any of its subsidiaries. A material relationship between an individual and a benefit company or any of its subsidiaries will be conclusively presumed to exist if:

(1) the person is or has been within the last three years an employee of the benefit company or any of its subsidiaries;

(2) an immediate family member of the person is or has been within the last three years an executive officer of the benefit company or any of its subsidiaries; or

(3) the person, or an association of which the person is a governor or officer or in which the person owns beneficially or of record 5% or more of the outstanding interests, owns beneficially or of record 5% or more of the outstanding interests of the benefit company. The percentage of ownership in an association shall be calculated as if all outstanding rights to acquire interests in the association had been exercised.

"Minimum status vote." As follows:

(1) In the case of a limited liability company, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The members of every class or series must be entitled, as a class, to vote on the action regardless of a limitation stated in the certificate of organization or operating agreement on the voting rights of any class or series.

(ii) The action must be approved by a vote of the members of each class or series entitled to cast at least two-thirds of the votes that all members of the class or series are entitled to cast on the action.

(2) In the case of a domestic association other than a limited liability company, in addition to any other required approval, vote or consent, the satisfaction of the following conditions:

(i) The holders of every class or series of interest in the association that are entitled to receive a distribution of any kind from the association must be entitled as a class to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.

(ii) The action must be approved by vote or consent of the holders described in subparagraph (i) entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.

"Specific public benefit." The term shall have the meaning specified in section 3302 (relating to definitions).

"Subsidiary." The term shall have the meaning specified in section 3302.

"Third-party standard." A standard for defining, reporting and assessing overall social and environmental performance which is:

(1) Comprehensive in that it assesses the effect of the business and its operations upon the interests listed in section 8895(a)(1)(ii), (iii), (iv) and (v) (relating to standard of conduct for members).

(2) Developed by an organization that is independent of the benefit company and satisfies the following requirements:

(i) Not more than one-third of the members of the governing body of the organization are representatives of any of the following:

(A) An association of businesses operating in a specific industry the performance of whose members is measured by the standard.

(B) Businesses from a specific industry or an association of businesses in that industry.

(C) Businesses whose performance is assessed against the standard.

(ii) The organization is not materially financed by an association or business described in subparagraph (i).

(3) Credible because the standard is developed by a person that both:

(i) Has access to necessary expertise to assess overall social and environmental performance.

(ii) Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.

(4) Transparent because the following information is publicly available:

(i) About the standard:

(A) The criteria considered when measuring the overall social and environmental performance of a business.

(B) The relative weightings, if any, of those criteria.

(ii) About the development and revision of the standard:

(A) The identity of the directors, officers, material owners and the governing body of the organization that developed and controls revisions to the standard.

(B) The process by which revisions to the standard and changes to the membership of the governing body are made.

(C) An accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

§ 8893. Benefit company status.

(a) Formation of benefit company.--A benefit company shall be formed in accordance with section 8821 (relating to formation of limited liability company and certificate of organization) except that its certificate of organization shall also state that it is a benefit company.

(b) Election of benefit company status.--An existing limited liability company may elect to become a benefit company by amending its certificate of organization so that it contains, in addition to the requirements of section 8821, a statement that the company is a benefit company. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(c) Election of status in a fundamental transaction.--If an association that is not a benefit company is a party to a merger or division or is the exchanging association in an interest exchange, and the surviving, new or any resulting association in the merger, division or interest exchange is to be a benefit company, then the plan of merger, division or interest exchange shall not be effective unless it is adopted by the association by at least the minimum status vote.

(d) Termination of benefit company status.--A benefit company may terminate its status as a benefit company and cease to be subject to this subchapter by amending its certificate of organization to delete the provision required by subsection (a) or (b) to be stated in the certificate of organization of a benefit company. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(e) Termination of status in a fundamental transaction.--If a plan would have the effect of terminating the status of a limited liability company as a benefit company, the plan shall not be effective unless it is adopted by at least the minimum status vote. Any sale, lease, exchange or other disposition of all or substantially all of the assets of a benefit company, unless the transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum status vote.

Cross References. Section 8893 is referred to in section 8821 of this title.

§ 8894. Purposes.

(a) General public benefit purpose.--A benefit company shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under section 8818(b) (relating to characteristics of limited liability company).

(b) Optional specific public benefit purpose.--The certificate of organization of a benefit company may identify one or more specific public benefits that it is the purpose of the benefit company to create in addition to its purposes under subsection (a) and section 8818(b). The identification of a specific public benefit does not limit the obligation of a benefit company to create general public benefit.

(c) Effect of purposes.--The creation of general and specific public benefit as provided in subsections (a) and (b) is in the best interests of the benefit company.

(d) Amendment.--A benefit company may amend its certificate of organization to add, amend or delete the identification of a specific public benefit that it is the purpose of the benefit company to create. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(e) Professional companies.--A professional company that is a benefit company does not violate a restriction on its

permissible purposes or activities by having the purpose to create general public benefit or a specific public benefit.

§ 8895. Standard of conduct for members.

(a) Consideration of interests.--The members of a member-managed limited liability company that is a benefit company, when discharging their duties under this title or under the operating agreement:

(1) shall consider the effects of any action upon:

(i) the members of the benefit company;

(ii) the employees and work force of the benefit company and its subsidiaries and suppliers;

(iii) the interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit company;

(iv) community and societal considerations, including those of any community in which offices or facilities of the benefit company or its subsidiaries or suppliers are located;

(v) the local and global environment;

(vi) the short-term and long-term interests of the benefit company, including benefits that may accrue to the benefit company from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit company; and

(vii) the ability of the benefit company to accomplish its general public benefit purpose and any specific public benefit purpose; and

(2) may consider any other pertinent factors or the interests of any other group that they deem appropriate; but

(3) shall not be required to give priority to any matter referred to in paragraph (1) or (2) over any other such matter or to regard any such matter as dominant or controlling unless the benefit company has stated in its certificate of organization its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in the certificate.

(b) Coordination with other provisions of law.--The consideration of matters in the manner required under subsection (a) shall not constitute a violation of section 8849.1 (relating to standards of conduct for members).

(c) Exoneration from personal liability.--Regardless of whether the operating agreement of a member-managed benefit company includes a provision eliminating or limiting the personal liability of a member:

(1) A member shall not be personally liable for monetary damages for any action taken as a member of the benefit company in the course of performing the duties specified in subsection (a) unless the action constitutes self-dealing, willful misconduct or recklessness.

(2) A member shall not be personally liable for monetary damages for failure of the benefit company to pursue or create general public benefit or a specific public benefit.

(d) Limitation on standing.--A member of a member-managed limited liability company that is a benefit company does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of the benefit company arising from the status of the person as a beneficiary.

(e) Ownership of interest.--A member's ownership, directly or indirectly, of an interest in a benefit company does not alone create a conflict of interest on the part of the member

with respect to the member's performance of the duties of a member under subsection (a), except to the extent the ownership would create a conflict of interest if the limited liability company were not a benefit company.
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsecs. (a)(3), (b) and (c) and added subsec. (e).

Cross References. Section 8895 is referred to in sections 8892, 8896 of this title.

§ 8896. Standard of conduct for managers and officers.

(a) Managers.--Each manager of a manager-managed limited liability company that is a benefit company shall consider the interests and factors described in section 8895(a) (relating to standard of conduct for members) when discharging his or her duties under this title and under the operating agreement.

(b) Officers.--If a benefit company has a person serving in the capacity of an officer, the person shall consider the interests and factors described in section 8895(a) when discharging the person's duties under this title and under the operating agreement if:

(1) the officer has discretion to act with respect to a matter; and

(2) it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit company of general public benefit or a specific public benefit identified in the certificate of organization of the benefit company.

(c) Coordination with other provisions of law.--The consideration of interests and factors by a manager in the manner described in subsection (a) shall not constitute a violation of section 8849.2 (relating to standards of conduct for managers).

(d) Exoneration from personal liability.--Regardless of whether the operating agreement of a manager-managed benefit company includes a provision eliminating or limiting the personal liability of a manager or officer:

(1) A manager or officer shall not be personally liable, as such, for monetary damages for any action taken as a manager or officer in the course of performing the duties specified in subsection (a) or (b) unless the action constitutes self-dealing, willful misconduct or recklessness.

(2) A manager or officer shall not be personally liable for monetary damages for failure of the benefit company to pursue or create general public benefit or a specific public benefit.

(e) Limitation on standing.--A manager or officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit company arising from the status of the person as a beneficiary.

(f) Ownership of interest.--The ownership by a manager or officer, directly or indirectly, of an interest in a benefit company does not alone create a conflict of interest on the part of the manager or officer with respect to the performance by the manager or officer of the duties of a manager or officer under subsection (a) or (b), except to the extent the ownership would create a conflict of interest if the limited liability company were not a benefit company.
(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (d) and added subsec. (f).

§ 8897. Right of action.

(a) Limitations.--

(1) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit company or its members, managers or officers with respect to:

(i) failure to pursue or create general public benefit or a specific public benefit set forth in its certificate of organization; or

(ii) violation of a duty or standard of conduct under this subchapter.

(2) A benefit company shall not be liable for monetary damages under this subchapter for any failure of the benefit company to pursue or create general public benefit or a specific public benefit.

(b) Parties with standing.--A benefit enforcement proceeding may be commenced or maintained only:

(1) directly by the benefit company; or

(2) derivatively by:

(i) a member that owned at least 2% of the total number of interests of a class or series outstanding at the time of the act complained of;

(ii) a manager of a manager-managed limited liability company;

(iii) a person or group of persons that owns beneficially or of record 5% or more of the interests in an association of which the benefit company is a subsidiary at the time of the act complained of; or

(iv) such other persons as may be specified in the certificate of organization or operating agreement of the benefit company.

(c) Cross reference.--The provisions of Subchapter H (relating to actions by members) shall apply to derivative actions under this section.

§ 8898. Annual benefit report.

(a) Contents.--A benefit company must deliver to each member an annual benefit report, including:

(1) A narrative description of:

(i) the ways in which the benefit company pursued general public benefit during the year and the extent to which general public benefit was created;

(ii) the ways in which the benefit company pursued any specific public benefit that the certificate of organization states is the purpose of the benefit company to create and the extent to which that specific public benefit was created;

(iii) any circumstances that have hindered the creation by the benefit company of general or specific public benefit; and

(iv) the process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

(2) An assessment of the overall social and environmental performance of the benefit company against a third-party standard applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application. The assessment does not need to be audited or certified by a third-party standards provider.

(3) A statement of any connection between the organization that established the third-party standard, or its directors, officers or any holder of 5% or more of the governance interests in the organization, and the benefit company or its members, managers or officers or any holder of 5% or more of the outstanding interests in the benefit company, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(b) Timing of report.--A benefit company shall annually send a benefit report to each member either:

(1) within 120 days following the end of the fiscal year of the benefit company; or

(2) at the same time that the benefit company delivers any other annual report to its members.

(c) Internet website posting.--A benefit company must post all of its benefit reports on the public portion of its Internet website, if any, except that any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(d) Availability of copies.--If a benefit company does not have an Internet website, the benefit company shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, but any financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(e) Filing of report.--Concurrently with the delivery of the benefit report to members pursuant to subsection (b), the benefit company must deliver a copy of the benefit report to the department for filing, except that any financial or proprietary information included in the benefit report may be omitted from the benefit report as filed under this section. The department shall charge a fee of $70 for filing a benefit report.

CHAPTER 89
LIMITED LIABILITY COMPANIES

Subchapter

A. Preliminary Provisions (Repealed)
B. Organization (Repealed)
C. Powers, Duties and Safeguards (Repealed)
D. Financial Provisions (Repealed)
E. Management and Members (Repealed)
F. Amendment of Certificate (Repealed)
G. Mergers and Consolidations (Repealed)
H. Division (Repealed)
I. Dissolution (Repealed)
J. Foreign Companies (Repealed)
K. Actions (Repealed)
L. Restricted Professional Companies

Enactment. Chapter 89 was added December 7, 1994, P.L.703, No.106, effective in 60 days.

SUBCHAPTER A
PRELIMINARY PROVISIONS
(Repealed)

2016 Repeal. Subchapter A (§§ 8901 - 8908) was added December 7, 1994, P.L.703, No.106, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days.

SUBCHAPTER B
ORGANIZATION
(Repealed)

2016 Repeal. Subchapter B (§§ 8911 - 8916) was added December 7, 1994, P.L.703, No.106, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days.

SUBCHAPTER C
POWERS, DUTIES AND SAFEGUARDS
(Repealed)

2016 Repeal. Subchapter C (§§ 8921 - 8926) was added December 7, 1994, P.L. 703, No.106, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days.

SUBCHAPTER D
FINANCIAL PROVISIONS
(Repealed)

2016 Repeal. Subchapter D (§§ 8931 - 8935) was added December 7, 1994, P.L.703, No.106, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days.

SUBCHAPTER E
MANAGEMENT AND MEMBERS
(Repealed)

2016 Repeal. Subchapter E (§§ 8941 - 8948) was added December 7, 1994, P.L.703, No.106, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days.

SUBCHAPTER F
AMENDMENT OF CERTIFICATE
(Repealed)

2016 Repeal. Subchapter F (§ 8951) was added December 7, 1994, P.L.703, No.106, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days.

SUBCHAPTER G
MERGERS AND CONSOLIDATIONS
(Repealed)

2014 Repeal. Subchapter G (§§ 8956 - 8959) was added December 7, 1994, P.L.703, No.106, and repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER H
DIVISION
(Repealed)

2014 Repeal. Subchapter H (§§ 8961 - 8965) was added December 7, 1994, P.L.703, No.106, and repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER I
DISSOLUTION
(Repealed)

2016 Repeal. Subchapter I (§§ 8971 - 8978) was added December 7, 1994, P.L.703, No.106, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days.

SUBCHAPTER J
FOREIGN COMPANIES
(Repealed)

2014 Repeal. Subchapter J (§§ 8981 - 8982) was added December 7, 1994, P.L.703, No.106, and repealed October 22, 2014, P.L.2640, No.172, effective July 1, 2015.

SUBCHAPTER K
ACTIONS
(Repealed)

2016 Repeal. Subchapter K (§§ 8991 - 8993) was added December 7, 1994, P.L.703, No.106, and repealed November 21, 2016, P.L.1328, No.170, effective in 90 days.

SUBCHAPTER L
RESTRICTED PROFESSIONAL COMPANIES

Sec.
8995. Application and effect of subchapter.
8996. Restrictions.
8997. Taxation of restricted professional companies.
8998. Annual registration.

§ 8995. Application and effect of subchapter.

(a) General rule.--This subchapter shall be applicable to a limited liability company that is a restricted professional company.

(b) Application to limited liability companies generally.--Except as provided in section 8997 (relating to taxation of restricted professional companies), the existence of a provision of this subchapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a limited liability company that is not a restricted professional company. This subchapter shall not affect any statute or rule of law that is or would be applicable to a limited liability company that is not a restricted professional company.

(c) Laws applicable to restricted professional companies.--Except as otherwise provided in this subchapter, Chapter 88 (relating to limited liability companies) shall be generally applicable to all restricted professional companies. The specific provisions of this subchapter shall control over the general provisions of Chapter 88.

(d) Election of restricted professional company status.--At the time an existing limited liability company that has previously conducted a business not involving the rendering of a restricted professional service begins to render one or more restricted professional services, the company shall amend its certificate of organization to include a statement that it is a restricted professional company. For purposes of sections 8835 (relating to taxation of limited liability companies) and 8997, the company shall be deemed to have become a restricted professional company on the first day of the taxable year of the company following the taxable year in which the amendment of its certificate of organization required by this subsection is filed.

(e) Termination of restricted professional company status.--Except as provided in this subsection, the status of a restricted professional company as such shall terminate, and the company shall cease to be subject to this subchapter, at such time as it ceases to render any restricted professional services. Upon ceasing to render any restricted professional services, the company shall amend its certificate of organization to delete the statement required by subsection (d). For purposes of sections 8835 and 8997, the company shall be deemed to have ceased being a restricted professional company on the first day of the taxable year of the company following the taxable year in which it ceased to render any restricted professional services.

(f) Indication of status.--The certificate of organization of a domestic restricted professional company or the foreign registration statement of a foreign restricted professional company shall contain a statement that the entity is a restricted professional company and include a brief description of the restricted professional service or services to be rendered by the company.

(g) Definition.--For purposes of this subchapter, the following term has the meaning indicated:

"Restricted professional company." A domestic or foreign limited liability company that renders one or more restricted professional services in this Commonwealth.

(Nov. 21, 2016, P.L.1328, No.170, eff. 90 days; Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 added subsecs. (f) and (g).

2016 Amendment. Act 170 amended subsecs. (c), (d) and (e).

§ 8996. Restrictions.

(a) Purposes of restricted professional companies.--A restricted professional company shall not engage in any business other than conducting the practice of the restricted professional service or services for which it was specifically organized, except that a restricted professional company may:

(1) Own real and personal property necessary for or appropriate or desirable in the fulfillment or rendering of its specific restricted professional service or services and it may invest its funds in real estate, mortgages, stocks, bonds or any other type of investment.

(2) Be a partner, shareholder, member or other owner of a partnership, corporation, limited liability company or other association engaged in the business of rendering the restricted professional service or services for which the restricted professional company was organized.

(b) Ownership and governance of restricted professional companies.--Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, all of the

ultimate beneficial owners of membership interests in and all of the managers, if any, of a restricted professional company shall be licensed persons.

(c) Rendering restricted professional services.--

(1) A restricted professional company may lawfully render restricted professional services only through licensed persons. The company may employ persons not so licensed but those persons shall not render any restricted professional services rendered or to be rendered by it.

(2) Paragraph (1) shall not be interpreted to preclude the use of clerks, secretaries, nurses, administrators, bookkeepers, technicians and other assistants or paraprofessionals who are not usually and ordinarily considered by law, custom and practice to be rendering the restricted professional service or services for which the restricted professional company was organized nor to preclude the use of any other person who performs all his employment under the direct supervision and control of a licensed person. A person shall not under the guise of employment render restricted professional services unless duly licensed or admitted to practice as required by law.

(3) Notwithstanding any other provision of law, a restricted professional company may charge for the restricted professional services rendered by it, may collect those charges and may compensate those who render the restricted professional services.

(d) Application.--For purposes of applying subsection (a):

(1) The practice of the restricted professional service of public accounting shall be deemed to include:

(i) the provision of one or more kinds of services involving the use of accounting or auditing skills, including, without limitation, the issuance of reports on financial statements;

(ii) the provision of one or more kinds of management advisory, financial advisory or consulting services; and

(iii) the preparation of tax returns or the furnishing of advice on tax matters.

(2) A restricted professional company shall not engage in the conduct of the business of or own directly or indirectly any equity interest in:

(i) A clinical laboratory as defined in section 2 of the act of September 26, 1951 (P.L.1539, No.389), known as The Clinical Laboratory Act.

(ii) A blood bank as defined in section 3 of the act of December 6, 1972 (P.L.1614, No.335), known as the Pennsylvania Blood Bank Act.

(iii) A health care facility as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

(iv) An ambulatory service facility as defined in section 3 of the act of July 8, 1986 (P.L.408, No.89), known as the Health Care Cost Containment Act.

(v) A kidney treatment center or a hemodialysis center.

(3) The practice of the restricted professional service of law shall be deemed to include the following activities when conducted incidental to the practice of law:

(i) serving as an attorney-in-fact, guardian, custodian, executor, personal representative, trustee or fiduciary;

(ii) serving as a director or trustee of a corporation for profit or not-for-profit, manager of a limited liability company or a similar position with any other form of association;

(iii) testifying, teaching, lecturing or writing about any topic related to the law;

(iv) serving as a master, receiver, arbitrator or similar official;

(v) providing actuarial, insurance, investment, estate and trust administration, tax return preparation, financial and other similar services and advice; and

(vi) conducting intellectual property and other real and personal property title searches and providing other title insurance agency services.

(June 22, 2001, P.L.418, No.34, eff. 60 days)

2001 Amendment. Act 34 amended subsec. (b) and added subsec. (d)(3).

Cross References. Section 8996 is referred to in sections 8997, 8998 of this title.

§ 8997. Taxation of restricted professional companies.

(a) General rule.--Except as provided in subsection (b), for the purposes of the imposition by the Commonwealth or any political subdivision of any tax or license fee on or with respect to any income, property, privilege, transaction, subject or occupation other than the corporate net income tax, capital stock and foreign franchise tax and personal income tax, a domestic or registered foreign restricted professional company shall be deemed to be a limited partnership organized and existing under Chapter 86 (relating to limited partnerships), and a member of such a company, as such, shall be deemed a limited partner of a limited partnership.

(b) Exception.--A domestic or qualified foreign restricted professional company shall be subject to section 8835(a) (relating to taxation of limited liability companies), instead of subsection (a), for the whole of any taxable year of the company during any part of which the company has:

(1) engaged in any business not permitted by section 8996(a) (relating to purposes of restricted professional companies);

(2) (Repealed);

(3) been a member of a limited liability company.

(July 6, 2006, P.L.319, No.67, eff. imd.; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

1997 Partial Repeal. Section 35.1(b) of Act 7 of 1997 provided that section 8997 is repealed insofar as it is inconsistent with Act 7.

Cross References. Section 8997 is referred to in section 8995 of this title.

§ 8998. Annual registration.

(a) General rule.--Every domestic restricted professional company in existence on December 31 of any year and every qualified foreign restricted professional company that is registered to do business in this Commonwealth on December 31 of any year shall file in the Department of State with respect to that year, and on or before April 15 of the following year, a certificate of annual registration on a form provided by the department, executed by the company and accompanied by the annual registration fee prescribed by subsection (b). The department shall not charge a fee other than the annual registration fee for filing the certificate of annual

registration. The certificate of annual registration shall include a statement by the company as to whether or not it engaged in any business not permitted by section 8996(a) (relating to purposes of restricted professional companies) during the year with respect to which the certificate is being filed.

(b) Annual registration fee.--

(1) The annual registration fee to be paid when filing a certificate of annual registration shall be equal to a base fee of $300 times the number of persons who:

(i) were members of the company on December 31 of the year with respect to which the certificate of annual registration is being filed;

(ii) were licensed persons; and

(iii) had their principal residence at the time in this Commonwealth.

(2) The base fee of $300 shall be increased on December 31, 1997, and December 31 of every third year thereafter by the percentage increase in the Consumer Price Index for Urban Workers during the most recent three calendar years for which that index is available on the date of adjustment. Each adjustment under this paragraph shall be rounded up to the nearest $10.

(c) Notice of annual registration.--Not later than February 1 of each year, the department shall give notice to every restricted professional company required to file a certificate of annual registration with respect to the preceding year of the requirement to file the certificate. The notice shall state the amount of the base fee payable under subsection (b)(1), as adjusted pursuant to subsection (b)(2), if applicable, and shall be accompanied by the form of certificate to be filed. Failure by the department to give notice to any party or failure by any party to receive notice of the annual registration requirement shall not relieve the party of the obligation to file the certificate.

(d) Credit to Corporation Bureau Restricted Account.--The annual registration fee shall not be deemed to be an amount received by the department under Subchapter C of Chapter 1 (relating to Corporation Bureau and UCC fees) for purposes of section 155 (relating to disposition of funds), except that $25 of the fee shall be credited to the Corporation Bureau Restricted Account.

(e) Functions of Department of State.--The department shall send to the Department of Revenue a copy of any certificate that discloses the conduct of any business not permitted by section 8996(a).

(f) Annual fee to be lien.--

(1) Failure to file the certificate of annual registration required by this section shall not affect the existence or status of the restricted professional company as such, but the annual registration fee that would have been payable shall be a lien in the manner provided in this subsection from the time the annual registration fee is due and payable. If a certificate of annual registration is not filed within 30 days after the date on which it is due, the department shall assess a penalty of $500 against the company, which shall also be a lien in the manner provided in this subsection. The imposition of that penalty shall not be construed to relieve the company from liability for any other penalty or interest provided for under other applicable law.

(2) If the annual registration fee paid by a restricted professional company is subsequently determined to be less than should have been paid because it was based on an incorrect number of members or was otherwise incorrectly computed, that fact shall not affect the existence or status of the restricted professional company as such, but the amount of the additional annual registration fee that should have been paid shall be a lien in the manner provided in this subsection from the time the incorrect payment is discovered by the department.

(3) The annual registration fee shall bear simple interest from the date that it becomes due and payable until paid. The interest rate shall be that provided for in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, with respect to unpaid taxes. The penalty provided for in paragraph (1) shall not bear interest. The payment of interest shall not relieve the restricted professional company from liability for any other penalty or interest provided for under other applicable law.

(4) The lien created by this subsection shall attach to all of the property and proceeds thereof of the restricted professional company in which a security interest can be perfected, in whole or in part, by filing in the department under 13 Pa.C.S. Div. 9 (relating to secured transactions; sales of accounts, contract rights and chattel paper), whether the property and proceeds are owned by the company at the time the annual registration fee or any penalty or interest becomes due and payable or whether the property and proceeds are acquired thereafter. Except as otherwise provided by statute, the lien created by this subsection shall have priority over all other liens, security interests or other charges, except liens for taxes or other charges due the Commonwealth. The lien created by this subsection shall be entered on the records of the department and indexed in the same manner as a financing statement filed under 13 Pa.C.S. Div. 9. At the time an annual registration fee, penalty or interest that has resulted in the creation of a lien under this subsection is paid, the department shall terminate the lien with respect to that annual registration fee, penalty or interest without requiring a separate filing by the company for that purpose.

(5) If the annual registration fee paid by a restricted professional company is subsequently determined to be more than should have been paid for any reason, no refund of the additional fee shall be made.

(g) Cross reference.--See 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(June 22, 2001, P.L.418, No.34, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

2016 Amendment. Act 170 amended subsec. (g).

2001 Amendment. Act 34 amended subsec. (f).

References in Text. Division 9 of Title 13, referred to in subsec. (f), was repealed and added by the act of June 8, 2001 (P.L.123, No.18). Present Division 9 relates to secured transactions.

PART IV
UNINCORPORATED ASSOCIATIONS

Chapter

91. Unincorporated Nonprofit Associations
93. Professional Associations

Enactment. Part IV was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Prior Provisions. Former Part IV (Reserved) was added November 15, 1972, P.L.1063, No.271, and repealed December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

CHAPTER 91
UNINCORPORATED NONPROFIT ASSOCIATIONS

Sec.

9101. Customary parliamentary law applicable (Repealed).
9102. Funeral and similar benefits (Repealed).
9103. Nontransferable membership interests (Repealed).
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9133. Reimbursement, indemnification and advancement of expenses.
9134. Dissolution.
9135. Winding up.
9136. Subordination of chapter to canon law.

Enactment. Chapter 91 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Chapter Heading. The heading of Chapter 91 was amended July 9, 2013, P.L.476, No.67, effective in 60 days.

§ 9101. Customary parliamentary law applicable (Repealed).

2013 Repeal. Section 9101 was repealed July 9, 2013, P.L.476, No.67, effective in 60 days.

§ 9102. Funeral and similar benefits (Repealed).

2013 Repeal. Section 9102 was repealed July 9, 2013, P.L.476, No.67, effective in 60 days.

§ 9103. Nontransferable membership interests (Repealed).

2013 Repeal. Section 9103 was repealed July 9, 2013, P.L.476, No.67, effective in 60 days.

§ 9111. Short title and application of chapter.

(a) Short title.--This chapter shall be known and may be cited as the Pennsylvania Uniform Unincorporated Nonprofit Association Law.

(b) Transitional provisions concerning property.--

(1) If, before September 9, 2013, an interest in property was by the terms of a transfer purportedly transferred to a nonprofit association but under the law of this Commonwealth the interest did not vest in the nonprofit association, or in one or more persons on behalf of the nonprofit association under paragraph (2), on September 9, 2013, the interest vests in the nonprofit association, unless the parties to the transfer have treated the transfer as ineffective.

(2) If, before September 9, 2013, an interest in property was by the terms of a transfer purportedly transferred to a nonprofit association but the interest was vested in one or more persons to hold the interest for the nonprofit association, its members or both, on or after September 9, 2013, the persons or their successors in interest may transfer the interest to the nonprofit association in its name, or the nonprofit association may require that the interest be transferred to it in its name.

(c) Savings provisions.--

(1) This chapter supplements the law of this Commonwealth that applies to nonprofit associations operating in this Commonwealth, but, if a conflict exists between this chapter and another statute, the other statute applies.

(2) Nothing in this chapter shall be deemed to repeal or supersede any provision in section 7 of the act of April 26, 1855 (P.L.328, No.347), entitled "An act relating to Corporations and to Estates held for Corporate, Religious and Charitable uses."

(d) Cross reference.--See section 5331 (relating to incorporation of unincorporated associations).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9111.

§ 9112. Definitions.

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

"Established practices." The practices used by a nonprofit association without material change during:

(1) the most recent five years of its existence; or

(2) if it has existed for less than five years, its entire existence.

"Governing principles." The agreements, whether oral, in record form or implied from its established practices, that govern the purpose or operation of a nonprofit association and the rights and obligations of its members and managers. The term includes any amendment or restatement of the agreements constituting the governing principles.

"Manager." A person that is responsible, alone or in concert with others, for the management of a nonprofit association.

"Member." A person that, under the governing principles, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policies and activities of the nonprofit association.

"Nonprofit association." An unincorporated organization consisting of two or more members joined together under an agreement that is oral, in record form or implied from conduct for one or more common, nonprofit purposes. The term does not include:

(1) a trust;

(2) a marriage, domestic partnership, common law domestic relationship, civil union or other domestic living arrangement;

(3) an organization formed under any other statute that governs the organization and operation of unincorporated associations;

(4) a joint tenancy, tenancy in common or tenancy by the entireties, even if the co-owners share use of the property for a nonprofit purpose; or

(5) a relationship under an agreement in record form that expressly provides that the relationship between the parties does not create a nonprofit association.

"Property." Includes:

(1) real property;

(2) personal property which is tangible or intangible;

(3) mixed real and personal property; and

(4) a right or interest in property.

"Transfer." (Deleted by amendment).

(July 9, 2013, P.L.476, No.67, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 deleted the def. of "transfer."

2013 Amendment. Act 67 added section 9112.

Cross References. Section 9112 is referred to in section 102 of this title.

§ 9113. Governing law.

(a) Operations.--Except as provided in subsection (b), the law of this Commonwealth governs the operation in this Commonwealth of a nonprofit association formed or operating in this Commonwealth.

(b) Internal affairs.--Unless the governing principles specify a different jurisdiction, the law of the jurisdiction in which a nonprofit association has its main place of activities governs the internal affairs of the nonprofit association.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9113.

§ 9114. Entity status.

(a) Legal entity.--A nonprofit association is a legal entity distinct from its members and managers.

(b) Perpetual duration.--A nonprofit association has perpetual duration unless the governing principles specify otherwise.

(c) Powers.--A nonprofit association has the same powers as an individual to do all things necessary or convenient to carry on its purposes.

(d) Profits.--A nonprofit association may engage in profit-making activities, but profits from any activities must be used or set aside for the nonprofit purposes of the nonprofit association.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9114.

§ 9115. Ownership and transfer of property.

(a) General rule.--A nonprofit association may acquire, hold or transfer, in its name, an interest in property.

(b) Testamentary and fiduciary dispositions.--A nonprofit association may be a beneficiary of a trust or contract, a legatee or a devisee.

(c) Authority to take and hold trust property.--Every nonprofit association organized for a charitable purpose or purposes may take, receive and hold real and personal property as may be given, devised to or otherwise vested in the nonprofit association, in trust, for the purpose or purposes set forth in its governing principles. The managers of the nonprofit association shall, as trustees of the property, be held to the same degree of responsibility and accountability as other trustees, unless a lesser degree or a particular degree of responsibility and accountability is prescribed in the trust instrument, or unless the managers remain under the control of the members of the nonprofit association or third persons who retain the right to direct, and do direct, the actions of the managers as to the use of the trust property from time to time.

(d) Nondiversion of certain property.--Property of a nonprofit association committed to charitable purposes shall not, by any proceeding under Chapter 3 (relating to entity transactions) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the nonprofit association obtains from the court an order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.

(July 9, 2013, P.L.476, No.67, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

§ 9116. Statement of authority as to real property.

(a) General rule.--An interest in real property held in the name of a nonprofit association may be transferred by a person authorized to do so in a statement of authority recorded by the nonprofit association in the office of the recorder of deeds for the county in which a transfer of the property would be recorded.

(b) Contents of statement.--The statement of authority must set forth:

(1) the name of the nonprofit association;

(2) the address in this Commonwealth, including the street and number, if any, of the nonprofit association or, if the nonprofit association does not have an address in this Commonwealth, its address outside of this Commonwealth;

(3) that the association is a nonprofit association; and

(4) the name, title or position of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(c) Execution.--A statement of authority must be executed in the same manner as a deed by a person other than the person authorized in the statement to transfer the interest.

(d) Recording fee.--The recorder of deeds may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property, but the mere recording of a statement of authority does not constitute a transfer of an interest in the real property for the purpose of the taxation of real property transfers.

(e) Changes.--A document amending, revoking or canceling a statement of authority or stating that the statement is unauthorized or erroneous must meet the requirements for executing and recording an original statement.

(f) Cancellation by operation of law.--Unless canceled earlier, a recorded statement of authority and its most recent amendment expire five years after the date of the most recent recording.

(g) Effect of filing.--If the record title to real property is in the name of a nonprofit association and a statement of authority is recorded in the office of the recorder of deeds for the county in which a transfer of the property would be recorded, the authority of the person named in the statement to transfer is conclusive in favor of a person that gives value without notice that the person lacks authority.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9116.

§ 9117. Liability.

(a) Scope.--

(1) A debt, obligation or other liability of a nonprofit association, whether arising in contract, tort or otherwise, is solely the debt, obligation or other liability of the nonprofit association.

(2) A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the nonprofit association solely by reason of being or acting as a member or manager.

(3) This subsection applies regardless of the dissolution of the nonprofit association.

(b) Liability for conduct.--A person's status as a member or manager does not prevent or restrict law other than this chapter from imposing liability on the person or the nonprofit association because of the person's conduct.

(c) Agents.--A person that makes a contract or incurs an obligation on behalf of a nonprofit association after September 9, 2013, is not liable for performance or breach of the contract or other obligation if the fact that the person was acting for the nonprofit association was disclosed to, was known by or reasonably should have been known by the other party to the contract or to the party owed performance.

(d) Observation of formalities.--The failure of a nonprofit association to observe formalities relating to the exercise of its powers or the management of its activities and affairs is not a ground for imposing liability on a member or manager of the nonprofit association for a debt, obligation or other liability of the nonprofit association.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9117.

§ 9118. Assertion and defense of claims.

(a) General rule.--A nonprofit association may sue or be sued in its own name.

(b) Permissible claims.--A member or manager may assert a claim the member or manager has against the nonprofit association. A nonprofit association may assert a claim it has against a member or manager.

(c) Representational status.--A nonprofit association may assert a claim in its name on behalf of its members if one or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes and neither the claim asserted nor the relief requested requires the participation of a member.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9118.

§ 9119. Effect of judgment or order.

A judgment or order against a nonprofit association is not by itself a judgment or order against a member or manager.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9119.

§ 9120. Appointment of agent to receive service of process.

(a) Statement.--A nonprofit association may deliver to the department for filing a statement appointing an agent to receive service of process.

(b) Contents.--A statement appointing an agent to receive service of process must state:

(1) the name of the nonprofit association;

(2) the address, if any, in this Commonwealth; and

(3) the name of the person in this Commonwealth authorized to receive service of process and the person's address, including street and number, in this Commonwealth.

(c) Signature and effect.--

(1) A statement appointing an agent to receive service of process must be signed by:

(i) a person authorized to manage the affairs of the nonprofit association; and

(ii) the person appointed as the agent.

(2) The signing of the statement is an affirmation:

(i) by the person authorized to manage the affairs of the nonprofit association that the person has that authority; and

(ii) by the person appointed as agent that the person consents to act as agent.

(d) Amendment or cancellation.--An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for signature of an original statement. An agent may resign by delivering a resignation to the department for filing and giving notice to the nonprofit association.

(e) Rejection of statement.--A statement appointing an agent to receive service of process may not be rejected for filing because the name of the nonprofit association signing the statement is not distinguishable on the records of the department from the name of another association appearing in those records. The filing of such a statement does not make the name of the nonprofit association signing the statement unavailable for use by another association.

(f) Effectiveness.--A statement appointing an agent to receive service of process:

(1) takes effect on filing by the department; and

(2) is effective for five years after the date of filing unless canceled or terminated earlier.

(g) Duty of agent.--The only duty under this chapter of an agent to receive service of process is to forward to the nonprofit association at the address most recently supplied to the agent by the nonprofit association any process, notice or demand pertaining to the nonprofit association which is served or received by the agent.

(h) Cross reference.--See section 135 (relating to requirements to be met by filed documents).
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9120.

§ 9121. Action or proceeding not abated by change of members or managers.

An action or proceeding against a nonprofit association does not abate merely because of a change in its members or managers.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9121.

§ 9122. Member not agent.

A member is not an agent of the nonprofit association solely by reason of being a member.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9122.

§ 9123. Approval by members.

(a) General rule.--Except as provided in the governing principles, a nonprofit association must have the approval of its members to:

(1) admit, suspend, dismiss or expel a member;

(2) select or dismiss a manager;

(3) adopt, amend or repeal the governing principles;

(4) transfer all, or substantially all, of the property of the nonprofit association, with or without its goodwill, outside the ordinary course of its activities;

(5) dissolve under section 9134 (relating to dissolution);

(6) undertake any other act outside the ordinary course of the activities of the nonprofit association; or

(7) determine the policy and purposes of the nonprofit association.

(b) Other actions.--A nonprofit association must have the approval of the members to do any other act or exercise a right that the governing principles require to be approved by members.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9123.

Cross References. Section 9123 is referred to in section 9128 of this title.

§ 9124. Action by members.

(a) General rule.--Except as provided in the governing principles:

(1) approval of a matter by the members requires the affirmative vote of at least a majority of the votes cast at a meeting of members; and

(2) each member is entitled to one vote on each matter that is submitted for approval by the members.

(b) Procedural matters.--The governing principles may provide for the:

(1) calling, location and timing of member meetings;

(2) notice and quorum requirements for member meetings;

(3) conduct of member meetings;

(4) taking of action by the members by consent without a meeting or by ballot;

(5) participation by members in a meeting of the members by telephone or other means of electronic communication; and

(6) taking of action by members by proxy.

(c) Absence of governing principles.--If the governing principles do not provide for a matter described in subsection (b), customary usages and principles of parliamentary law and procedure apply.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9124.

§ 9125. Duties of member.

(a) No fiduciary duties generally.--A member does not have a fiduciary duty to a nonprofit association or to another member solely by being a member.

(b) Discharge of duties and exercise of rights.--A member shall, consistent with the governing principles and the contractual obligation of good faith and fair dealing:

(1) discharge duties under the governing principles to the nonprofit association and the other members; and

(2) exercise any rights under the governing principles and this chapter.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9125.

§ 9126. Membership.

(a) Admission, suspension, dismissal and expulsion of member.--

(1) A person becomes a member and may be suspended, dismissed or expelled in accordance with the governing principles. If there are no applicable governing principles, a person may become a member or be suspended, dismissed or expelled only with the approval of the members. A person may not be admitted as a member without the person's consent.

(2) Except as provided in the governing principles, the suspension, dismissal or expulsion of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees or other obligation incurred or commitment made by the member before the suspension, dismissal or expulsion.

(b) Resignation of member.--

(1) A member may resign as a member in accordance with the governing principles. In the absence of applicable governing principles, a member may resign at any time.

(2) Except as provided in the governing principles, resignation of a member does not relieve the member from any unpaid capital contribution, dues, assessments, fees or other obligation incurred or commitment made by the member before resignation.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9126.

§ 9127. Member's interest not transferable.

(a) General rule.--Except as set forth in subsection (b) or the governing principles, a member's interest or any right under the governing principles is not transferable.

(b) Certain nonprofit associations formed prior to effective date.--

(1) This subsection applies to a nonprofit association:

(i) which was formed before September 9, 2013;

(ii) which was formed for the purpose of encouraging lawful associational activity among agricultural and industrial workers through the organization of a nonprofit association for mutual benefit insurance, saving or other lawful objects; and

(iii) in which the persons that organized the nonprofit association derive benefits from the preservation and continuance of the membership and interest among persons engaged in a common calling, labor or enterprise.

(2) For a nonprofit association subject to paragraph (1), the following apply:

(i) Except as set forth in subparagraph (ii), a member's interest or any right under the governing principles is transferable.

(ii) A member's interest or any right under the governing principles is nontransferable if the governing principles so provide.

(c) Assignments and pledges.--No legal or equitable right or interest shall pass as a result of an attempted transfer in violation of:

(1) subsection (a); or

(2) a transfer restriction under subsection (b)(2)(ii).

(d) Knowledge of nontransferability.--Whenever the interest of a member in a nonprofit association is evidenced by a certificate, an endorsement on the certificate that the certificate is nontransferable shall be conclusive evidence that the person to whom any attempted transfer of the certificate is made has knowledge of the nontransferable character of the interest of the member.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9127.

§ 9128. Selection and management rights of managers.

Except as provided in this chapter or the governing principles:

(1) if there is no manager selected and serving, all members are managers;

(2) only the members may select a manager;

(3) a manager may be a member or a nonmember;

(4) each manager has equal rights in the management and conduct of the activities of the nonprofit association;

(5) all matters relating to the activities of the nonprofit association are decided by its managers except for matters reserved for approval by the members in section 9123 (relating to approval by members); and

(6) a difference among the managers is decided by a majority of the managers.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9128.

§ 9129. Duties of managers.

(a) Duty of care.--

(1) A manager shall manage the nonprofit association:

(i) in good faith;

(ii) in a manner the manager reasonably believes to be in the best interests of the nonprofit association; and

(iii) with such care, including reasonable inquiry, as a prudent person would reasonably exercise in a similar position and under similar circumstances.

(2) A manager may rely in good faith on any opinion, report, statement or other information provided by another person that the manager reasonably believes is a competent and reliable source for the information.

(b) Conflicts of interest.--

(1) A manager owes a fiduciary duty of loyalty to the nonprofit association with respect to the responsibilities of the manager.

(2) After full disclosure of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty by a manager may be authorized or ratified by a majority of the members that are not interested directly or indirectly in the act or transaction.

(c) Presumption.--A manager that makes a judgment in good faith satisfies the duties specified in subsection (a) if the manager:

(1) is not interested, directly or indirectly, in the subject of the judgment and is otherwise able to exercise independent judgment;

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

(3) believes that the judgment is in or not opposed to the best interests of the nonprofit association.

(d) Limitation of liability.--

(1) Except as set forth in paragraph (2), the governing principles in record form may provide that a manager shall not be personally liable, as a manager, for monetary damages for any action taken unless:

(i) the manager has breached or failed to perform the manager's duties under this chapter; and

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

(2) Paragraph (1) shall not apply to:

(i) the responsibility or liability of a manager under a criminal statute; or

(ii) the liability of the manager for the payment of taxes under Federal, State or local law.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9129.

§ 9130. Action by managers.

(a) General rule.--Except as provided in the governing principles:

(1) approval of a matter by the managers requires the affirmative vote of at least a majority of the votes cast at a meeting of managers; and

(2) each manager is entitled to one vote on each matter that is submitted for approval by the managers.

(b) Procedural matters.--The governing principles may provide for the:

(1) delegation to a manager of authority to act without a meeting of the managers;

(2) creation and authority of committees of the managers;

(3) calling, location and timing of meetings of the managers or a committee of the managers;

(4) notice and quorum requirements for meetings of the managers or a committee of the managers;

(5) conduct of meetings of the managers or a committee of the managers;

(6) taking of action by the managers or a committee of the managers by consent without a meeting or by ballot;

(7) participation by managers in a meeting of the managers or a committee of the managers by telephone or other means of electronic communication; and

(8) taking of action by a manager by proxy.

(c) Absence of governing principles.--If the governing principles do not provide for a matter described in subsection (b), customary usages and principles of parliamentary law and procedure apply.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9130.

§ 9131. Right of member or manager to information.

(a) Inspection.--On reasonable notice, a member or manager of a nonprofit association may inspect and copy, at a reasonable time and location specified by the nonprofit association, any record maintained by the nonprofit association regarding its activities, financial condition and other circumstances, to the extent the information is material to the rights and duties of the member or manager under the governing principles.

(b) Restrictions.--A nonprofit association may impose reasonable restrictions on access to and use of information to be furnished under this section, including designating the information confidential and imposing on the recipient obligations of nondisclosure and safeguarding.

(c) Costs.--A nonprofit association may charge a person that makes a demand under this section reasonable copying costs.

(d) Former member or manager.--A former member or manager is entitled to information to which the member or manager was entitled while a member or manager if:

(1) the information pertains to the period during which the person was a member or manager;

(2) the former member or manager seeks the information in good faith; and

(3) the former member or manager satisfies subsections (a), (b) and (c).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9131.

§ 9132. Distributions prohibited; compensation and other permitted payments.

(a) General rule.--Except as provided in subsection (b), a nonprofit association may not pay dividends or make distributions to a member or manager.

(b) Permitted payments.--A nonprofit association may:

(1) pay reasonable compensation or reimburse reasonable expenses to a member or manager for services rendered;

(2) confer benefits on or make contributions to a member or manager in conformity with its nonprofit purposes;

(3) repurchase a membership and repay a capital contribution made by a member to the extent authorized by its governing principles;

(4) repay indebtedness to a member or manager; and

(5) make distributions of property to members upon winding up and termination to the extent permitted by section 9135 (relating to winding up).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9132.

§ 9133. Reimbursement, indemnification and advancement of expenses.

(a) Reimbursement.--Except as provided in the governing principles, a nonprofit association shall reimburse a member or manager for authorized expenses reasonably incurred in the course of the activities of the member or manager on behalf of the nonprofit association.

(b) Indemnification and advancement of expenses.--

(1) A nonprofit association is subject to Ch. 57 Subch. D (relating to indemnification).

(2) For purposes of applying Ch. 57 Subch. D, references to the "articles" or "bylaws," "directors" and "members" shall mean the "governing principles," "managers" and "members," respectively.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9133.

§ 9134. Dissolution.

(a) General rule.--A nonprofit association may be dissolved as follows:

(1) if the governing principles provide a time or method for dissolution, at that time or by that method;

(2) if the governing principles do not provide a time or method for dissolution, upon approval by the members;

(3) if no member can be located and the operations of the nonprofit association have been discontinued for at least three years, by:

(i) the managers; or

(ii) if the nonprofit association has no current manager, its last manager;

(4) by court order; or

(5) under law other than this chapter.

(b) Continuation during winding up.--After dissolution, a nonprofit association continues in existence until its activities have been wound up under section 9135 (relating to winding up).

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9134.

Cross References. Section 9134 is referred to in section 9123 of this title.

§ 9135. Winding up.

Winding up of a nonprofit association must proceed in accordance with the following rules:

(1) All known debts and liabilities shall be paid or adequately provided for.

(2) Any property subject to a condition requiring return to the person designated by the donor shall be transferred to that person.

(3) Any property subject to a trust shall be distributed in accordance with the trust agreement.

(4) Any property committed to a charitable purpose shall be distributed in accordance with that purpose unless the nonprofit association obtains a court order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.

(5) Any remaining property shall be distributed as follows:

(i) Distribution shall be made:

(A) in accordance with the governing principles of the nonprofit association; or

(B) in the absence of applicable governing principles, to the members of the nonprofit association:

(I) per capita; or

(II) as the members direct.

(ii) If subparagraph (i) does not apply, distribution shall be made under Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9135.

Cross References. Section 9135 is referred to in sections 9132, 9134 of this title.

§ 9136. Subordination of chapter to canon law.

If and to the extent canon law or similar principles applicable to a nonprofit association organized for religious

purposes sets forth provisions relating to the government and regulation of the affairs of the nonprofit association that are inconsistent with the provisions of this chapter on the same subject, the provisions of canon law or similar principles shall control except to the extent prohibited by the Constitution of the United States or the Constitution of Pennsylvania.
(July 9, 2013, P.L.476, No.67, eff. 60 days)

2013 Amendment. Act 67 added section 9136.

CHAPTER 93
PROFESSIONAL ASSOCIATIONS

Sec.
9301. Short title of chapter.
9302. Application of chapter.
9303. Definitions.
9304. Purpose of association.
9305. Articles of association.
9306. Board of governors.
9307. Bylaws.
9308. Employees.
9309. Compensation.
9310. Distribution of excess earnings.
9311. Interests of associates.
9312. Transfer of interests.
9313. Redemption of interests.
9314. Term of existence.
9315. Name.
9316. Voting of associates.
9317. Liability of associates.
9318. Professional disqualifications.
9319. Dissolution.

Enactment. Chapter 93 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

Cross References. Chapter 93 is referred to in section 2905 of this title.

§ 9301. Short title of chapter.

This chapter shall be known and may be cited as the Professional Association Act of 1988.

§ 9302. Application of chapter.

(a) General rule.--This chapter shall apply to and the word "association" in this chapter shall mean a professional association organized under the act of August 7, 1961 (P.L.941, No.416), known as the Professional Association Act, which has not:

(1) Reorganized as an electing partnership under Chapter 87 (relating to electing partnerships).

(2) Elected to become a professional corporation in the manner provided by section 2905 (relating to election of professional associations to become professional corporations).

(3) Converted to a limited liability company under Subchapter E of Chapter 3 (relating to conversion).

(b) No new associations.--An association may not be originally organized under this chapter.
(Dec. 7, 1994, P.L.703, No.106, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

References in Text. The act of August 7, 1961, P.L.941, No.416, known as the Professional Association Act, referred to in subsec. (a), was repealed December 21, 1988, P.L.1444, No.177.

Cross References. Section 9302 is referred to in section 102 of this title.

§ 9303. Definitions.

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

"Associates." The members of any association.

"Profession." Includes all occupations legally or traditionally designated as professions in which members by law (apart from Chapter 29 (relating to professional corporations)), tradition or ethics are forbidden to incorporate for the purpose of rendering professional services, including, but not limited to, architects, attorneys at law, certified public accountants, chiropractors, dentists, osteopaths, physicians and surgeons.

"Professional service." Any type of service which can be rendered by the member of any profession within the purview of that profession.

§ 9304. Purpose of association.

An association may be organized only for the purpose of rendering the one specific kind of professional service its associates are authorized to render, and it shall not engage in any business other than rendering the professional service for which it was organized. The professional services shall be rendered subject to rules and regulations of the professional licensing boards with particular reference to manner of practice, number of locations of practice and professional conduct as well as any other matter which may properly come within the jurisdiction of the professional licensing boards. However, it may invest its funds in real estate, mortgages, shares, bonds or any other type of investment, and it may own real and personal property necessary or appropriate for rendering its professional service.

§ 9305. Articles of association.

(a) General rule.--The articles of association shall contain the name of the association, the names and addresses of all of the associates, the address of the principal office of the association and a general purpose clause of the association. One copy of the articles of association, fully executed, shall be filed with the office of the clerk of the court of common pleas of the county in which the association has its principal office.

(b) Amended articles of association.--Amended articles of association shall be filed in the Department of State by the association within 30 days of any change in its membership or principal office address.

(c) Statement of summary of record.--The association shall be subject to section 1311 (relating to filing of statement of summary of record by certain corporations) to the same extent as if it were a business corporation except that any subsistence certificate issued by the department thereunder shall state that the association is a professional association duly existing under the laws of this Commonwealth.

(d) Cross reference.--See section 134 (relating to docketing statement).

§ 9306. Board of governors.

The associates shall elect a board of governors which shall manage all of the affairs of the association. The membership of the board of governors shall consist of one or more persons

who may but need not be associates. The board shall elect a chairman, a secretary, a treasurer and any other officers it deems necessary for the successful management of the association.

§ 9307. Bylaws.

The associates shall adopt bylaws to regulate the affairs of the association. The bylaws shall provide for:

(1) The method of election of the members of the board of governors.

(2) The number of members of the board of governors.

(3) The method of election of officers of the board of governors.

(4) The dates of the regular meetings of the associates which shall occur at least once each year.

(5) The dates of the regular meetings of the board of governors which shall occur at least once each year.

(6) A method for determining the values of the respective interests of the associates.

(7) The method of amending the bylaws.

(8) The term of existence of the association.

(9) Such other provisions as the associates may deem necessary for the successful regulation of the affairs of the association.

§ 9308. Employees.

The board of governors may engage such employees as it deems necessary for the operation of the association. An employee shall not be engaged to render professional services unless he is duly licensed or otherwise legally authorized to render the professional services in this Commonwealth except that the association may engage agents or employees who are not duly licensed or otherwise legally authorized to render professional services to render services of a nonprofessional nature. An associate may be an employee of the association.

§ 9309. Compensation.

The board of governors shall have the right to establish the amount and method of compensation of all of the employees.

§ 9310. Distribution of excess earnings.

The board of governors may establish what portion of excess earnings of the association shall be distributed among the associates. Any distribution of excess earnings of the association shall be made to each associate according to his proportionate ownership in the association.

§ 9311. Interests of associates.

The portion of ownership of each associate in an association shall be evidenced by an ownership certificate.

§ 9312. Transfer of interests.

Any associate or the personal representative of his estate may transfer, in whole or in part, his interest in an association only to a transferee who is licensed or otherwise legally authorized to render the same kind of professional service which the association was organized to render. If any restrictions are imposed on the right to transfer, the restrictions shall be specifically set forth in the bylaws of the association, and reference to the restriction shall be set forth either generally or specifically on any certificates which evidence ownership in the association.

Cross References. Section 9312 is referred to in section 9318 of this title.

§ 9313. Redemption of interests.

An association may, upon agreement with any associate (including any associate who has been expelled) or the personal

representative of his estate, redeem the interest in the association of the associate or his estate.

§ 9314. Term of existence.

An association may be organized for any term of years or its existence may be perpetual. Neither death, bankruptcy, resignation, expulsion, insanity, retirement nor transfer or redemption of the interest of any associate shall cause its dissolution.

§ 9315. Name.

The associates may adopt any name for their association which is not contrary to law or the ethics of their profession.

§ 9316. Voting of associates.

At any meeting of the associates of an association, each associate shall have the right to vote according to his proportionate ownership in the association.

§ 9317. Liability of associates.

(a) Joint and several liability.--All of the associates of an association are liable, jointly and severally, for:

(1) The torts of any agent or employee of the association committed while the agent or employee is acting within the ordinary course of operation of the association.

(2) The misapplication by any associate of any money or property of a third person if the money or property was received by the association in the ordinary course of its operation.

(b) Joint liability.--All of the associates of an association are liable, jointly, for all debts and legal obligations of the association other than those chargeable under subsection (a).

§ 9318. Professional disqualifications.

If any agent or employee of the association engaged for the purpose of rendering professional services or any associate becomes legally disqualified to render professional services, the agency or employment shall be immediately terminated upon disqualification and, in the case of an associate, the associate shall be immediately expelled from the association. The expelled associate shall have the right to transfer his interest in the association in accordance with section 9312 (relating to transfer of interests).

§ 9319. Dissolution.

(a) General rule.--An association shall be dissolved only upon the occurrence of one of the following:

(1) Expiration of the term of existence as provided in the bylaws of the association but not until articles of dissolution have been filed as provided in subsection (c).

(2) Upon vote of a majority (or such percentage as may be provided in the bylaws but in no event less than a simple majority) of the associates, voting according to their proportionate shares of ownership, to dissolve prior to the expiration of the term of existence of the association.

(b) Procedure.--If a special meeting is called for the purpose of voting to dissolve an association, notice shall be given to each of the associates at his address of record with the association of the time, place and purpose of the meeting, by first class mail, at least ten days prior to the meeting unless a greater period is required by the bylaws.

(c) Articles of dissolution.--The association shall file articles of dissolution substantially as provided by section 1977 (relating to articles of dissolution).

(d) Effect of dissolution.--Upon dissolution, all debts and obligations of the association shall be satisfied and, if any property of the association remains, it shall be divided among

the associates proportionally according to their ownership in the association. If all of the debts and legal obligations of the association have not been satisfied at the time of dissolution, all of the associates shall remain jointly and severally liable until all the debts and obligations are satisfied.

PART V
BUSINESS TRUSTS

Chapter
95. Business Trusts

Enactment. Part V was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.
Prior Provisions. Former Part V (Reserved) was added November 15, 1972, P.L.1063, No.271, and repealed December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

CHAPTER 95
BUSINESS TRUSTS

Sec.
9501. Application and effect of chapter.
9502. Creation, status and termination of business trusts.
9503. Documentation of trust.
9504. Registered office.
9505. Trustees.
9506. Liability of trustees and beneficiaries.
9507. Foreign business trusts.

Enactment. Chapter 95 was added December 21, 1988, P.L.1444, No.177, effective October 1, 1989.
Cross References. Chapter 95 is referred to in sections 102, 327 of this title; section 711 of Title 20 (Decedents, Estates and Fiduciaries).

§ 9501. Application and effect of chapter.

(a) General rule.--

(1) Unless the context clearly indicates otherwise, this chapter shall apply to and the words "business trust" in this chapter shall mean an association organized as a trust:

(i) Whose deed of trust or other organic document has been filed in the department and is in effect under this chapter.

(ii) Whose deed of trust or other organic document states, by amendment or otherwise, that the trust exists subject to the provisions of this chapter, in the case of a business trust heretofore established under the laws of this Commonwealth or heretofore or hereafter established under the laws of any other jurisdiction.

(2) The words "business trust" in this chapter shall not include:

(i) A trust contemplated by section 1768 (relating to voting trusts and other agreements among shareholders) or any similar provision of law.

(ii) A trust for creditors.

(iii) A mortgage, deed of trust or other indenture or similar instrument or agreement under which debt securities are outstanding or to be issued.

(iv) A trust for the benefit of one or more investors with respect to a lease of real or personal property, unless the instrument creating the trust is filed under this chapter.

(b) No franchise.--This chapter shall not confer on a business trust the power to engage in any activity that may be undertaken only in corporate form.

(c) Effect on taxation.--This chapter is enacted to codify and clarify certain common law principles applicable to business trusts and is not intended to affect the liability of any business trust to any tax. A trust that is subject to this chapter shall not be deemed to be organized or created by or under this or any other statute or to have the benefit of any state franchise for the purpose of existing law relating to taxation.

(d) Multistate application.--It is the intent of the General Assembly in enacting this chapter that the legal existence of business trusts organized in this Commonwealth be recognized outside the boundaries of this Commonwealth and that, subject to any reasonable requirement of registration, a domestic business trust transacting business outside this Commonwealth be granted protection of full faith and credit under the Constitution of the United States.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 7, 1994, P.L.703, No.106, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

1994 Partial Repeal. Section 42(c) of Act 48 of 1994 provided that subsection (c) is repealed to the extent that it would affect any tax imposed under Articles III, IV and VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, for any taxable year beginning on or after January 1, 1995.

§ 9502. Creation, status and termination of business trusts.

(a) Creation.-- Except as provided in the instrument, the trustee has the power:

(1) To receive title to, hold, buy, sell, exchange, transfer and convey real and personal property for the use of the business trust.

(2) To take, receive, invest or disburse the receipts, earnings, rents, profits or returns from the trust estate.

(3) To carry on and conduct any lawful business designated in the deed or other instrument of trust, and generally to do any lawful act in relation to such trust property that any individual owning the same absolutely might do.

(4) To merge with another business trust or other association, to divide or to engage in any other fundamental or other transaction contemplated by the deed or other instrument of trust.

(b) Term.--Except as otherwise provided in the instrument, a business trust shall have perpetual existence.

(c) Separate entity.--A business trust is a separate legal entity. Except as otherwise provided in the instrument, title to real and personal property may be held in the name of the trust, without in any manner diminishing the rights, powers and duties of the trustees as provided in subsection (a).

(d) Termination.--Except as otherwise provided in the instrument:

(1) The business trust may not be terminated, dissolved or revoked by a beneficial owner or other person.

(2) The death, incapacity, dissolution, termination or bankruptcy of a beneficial owner or a trustee shall not result in the termination, dissolution or revocation of the business trust.

(e) Contents of instrument.--The instrument may contain any provision for the regulation of the internal affairs of the business trust included in the instrument by the settlor, the trustee or the beneficiaries in accordance with the applicable procedures for the adoption or amendment of the instrument.
(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (a) intro. par.

§ 9503. Documentation of trust.

(a) General rule.--A business trust shall not be valid unless created by deed of trust or other written instrument subscribed by one or more individuals, associations or other entities. The trustees of a business trust shall promptly cause the instrument or any amendment thereof, except an amendment solely effecting or reflecting the substitution of or other change in the trustees, to be filed in the Department of State.

(b) Definition of "instrument".--The term "instrument," as used in this chapter, shall mean the original deed of trust or other written instrument, all amendments thereof and any other statements or certificates permitted or required to be filed in the department by sections 108 (relating to change in location or status of registered office provided by agent) and 138 (relating to statement of correction), Chapter 3 (relating to entity transactions) or this chapter. If an amendment of the instrument or a statement filed under Chapter 3 restates an instrument in its entirety, thenceforth the "instrument" shall not include any prior documents, and any certificate issued by the department with respect thereto shall so state.

(c) Amendment.--The instrument may be amended in the manner and to the extent provided therein or by the trustee or a majority of the trustees, if not otherwise provided therein. The amendment shall be evidenced by a written instrument subscribed by one or more authorized persons on behalf of the business trust. The instrument of amendment, if required by subsection (a), shall be filed in the department and:

(1) if the original deed of trust or other instrument was filed in the department under subsection (a), shall become effective upon filing or such later date and time, if any, as may be set forth in the instrument of amendment; or

(2) in any other case, shall become effective as set forth in the instrument of amendment.

(d) Duration.--The instrument creating a business trust shall specify the period of its duration, which may be perpetual. The rule against perpetuities or analogous principles shall not be applicable to a business trust.

(d.1) Bearer certificates prohibited.--A business trust may not issue a certificate of beneficial interest in bearer form. This subsection may not be varied by the instrument or other documentation of the business trust.

(e) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).
(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days; July 9, 2013, P.L.476, No.67,

eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 amended subsec. (b).

2013 Amendment . Act 67 amended subsec. (e) and added subsec. (d.1).

2001 Amendment. Act 34 amended subsec. (a).

1990 Amendment. Act 198 amended subsecs. (a), (c) and (d).

§ 9504. Registered office.

(a) General rule.--The instrument shall set forth, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the business trust in this Commonwealth.

(b) Change.--The registered office of a business trust may be changed by an amendment of the instrument or by including the change in an annual report under section 146 (relating to annual report).

(c) Alternative procedure.--A business trust may satisfy the requirements of this chapter concerning the maintenance of a registered office in this Commonwealth by setting forth in any document filed in the department pursuant to any provisions of this title that permits or requires the statement of the address of its then registered office, in lieu of that address, the statement authorized by section 109(a) (relating to name of commercial registered office provider in lieu of registered address).

(d) Effect of statement.--A statement regarding the registered office of a business trust set forth in a document filed in the department pursuant to this section shall operate as an amendment of the instrument.

(Nov. 3, 2022, P.L.1791, No.122, eff. 60 days)

2022 Amendment. Act 122 amended subsec. (b) and added subsec. (d).

§ 9505. Trustees.

(a) Succession of trustees.--An instrument may provide for the succession of title to any trust property not titled in the name of the trust to a successor trustee, in case of the death, resignation, removal or incapacity of any trustee. In the case of any such succession, the title to such trust property shall at once vest in the succeeding trustee.

(b) Nature of service.--Service as the trustee of a business trust by an association that is not a banking institution shall not be deemed to constitute acting as a fiduciary for purposes of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

(Dec. 19, 1990, P.L.834, No.198, eff. imd.; June 22, 2001, P.L.418, No.34, eff. 60 days)

§ 9506. Liability of trustees and beneficiaries.

(a) General rule.--

(1) Except as otherwise provided in the instrument, the beneficiaries of a business trust shall be entitled to the same limitation of personal liability as is extended to shareholders in a domestic business corporation.

(2) Except as otherwise provided in the instrument, the trustees of a trust, as such, shall not be personally liable to any person for any act or obligation of the trust or any other trustee.

(3) An obligation of a trust based upon a writing may be limited to a specific fund or other identified pool or group of assets of the trust.

(b) Standards and immunities.--Except as otherwise provided in the instrument governing the trust, the provisions of Subchapters B (relating to fiduciary duty) and D (relating to indemnification) of Chapter 17 shall be applicable to representatives of a business trust.

(c) Certain specifically authorized debt terms.--A business trust shall be subject to section 1510 (relating to certain specifically authorized debt terms) to the same extent as if it were a business corporation.

(d) Professional relationship unaffected.--Subsection (a) shall not afford trustees or beneficiaries of a business trust providing professional services with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).

(e) Disciplinary jurisdiction unaffected.--A business trust providing professional services shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other government unit regulating the profession in which the business trust is engaged. The court, department, board or other government unit may require that a business trust include in its instrument provisions that conform to any rule or regulation heretofore or hereafter promulgated for the purpose of enforcing the ethics of a profession. This chapter shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.

(f) Permissible beneficiaries.--Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, all of the ultimate beneficial owners of interests in a business trust that renders one or more restricted professional services shall be licensed persons in the profession the trust practices if the trust renders any of the following professional services: chiropractic, dentistry, law, medicine and surgery, optometry, osteopathic medicine and surgery, podiatric medicine, public accounting, psychology or veterinary medicine.

(g) Conflict of laws.--The personal liability of a trustee or beneficiary of a business trust to any person or in any action or proceeding for the debts, obligations or liabilities of the trust or for the acts or omissions of other trustees, beneficiaries, employees or agents of the trust shall be governed solely and exclusively by this chapter and the laws of this Commonwealth. Whenever a conflict arises between the laws of this Commonwealth and the laws of any other state with respect to the liability of trustees or beneficiaries of a trust organized and existing under this chapter for the debts, obligations and liabilities of the trust or for the acts or omissions of the other trustees, beneficiaries, employees or agents of the trust, the laws of this Commonwealth shall govern in determining such liability.

(h) Medical professional liability.--A business trust shall be deemed to be a professional corporation for purposes of section 744 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

(i) Failure to observe formalities.--The failure of a business trust to observe formalities relating to the exercise

of its powers or management of its activities and affairs is not a ground for imposing liability on a beneficiary or trustee of the trust for a debt, obligation or other liability of the trust.
(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 7, 1994, P.L.703, No.106, eff. 60 days; June 22, 2001, P.L.411, No.34, eff. 60 days; Nov. 21, 2016, P.L.1328, No.170, eff. 90 days)

Cross References. Section 9506 is referred to in section 9507 of this title.

§ 9507. Foreign business trusts.

(a) General rule.--(Deleted by amendment).

(b) Provision applicable to all foreign business trusts.--Section 9506(c) (relating to certain specifically authorized debt terms) shall be applicable to any obligation, as defined in section 1510 (relating to certain specifically authorized debt terms), of a business trust organized under any laws other than those of this Commonwealth, whether or not required to qualify in this Commonwealth, executed or effected in this Commonwealth or affecting real property situated in this Commonwealth.
(Dec. 19, 1990, P.L.834, No.198, eff. imd.; Dec. 7, 1994, P.L.703, No.106, eff. 60 days; Oct. 22, 2014, P.L.2640, No.172, eff. July 1, 2015)

2014 Amendment. Act 172 deleted subsec. (a).

Cross References. Section 9507 is referred to in section 412 of this title.

APPENDIX TO TITLE 15
CORPORATIONS AND UNINCORPORATED ASSOCIATIONS

Supplementary Provisions of Amendatory Statutes

1972, NOVEMBER 15, P.L.1063, NO.271

§ 2. Contents of articles of Young Men's Christian Associations (Repealed).

2013 Repeal. Section 2 was repealed July 9, 2013, P.L.476, No.67, effective 60 days.

Explanatory Note. Section 215 of the Nonprofit Corporation Law of 1933 required that the articles of incorporation contain the names and addresses of members of a board of trustees and a prescribed statement of purpose.

§ 3. Incorporation and requirements of educational corporations (Repealed).

1990 Repeal. Section 3 was repealed December 19, 1990, P.L.834, No.198, effective immediately.

§ 4. Articles of amendment, merger or consolidation of educational corporations (Repealed).

1990 Repeal. Section 4 was repealed December 19, 1990, P.L.834, No.198, effective immediately.

§ 7. Fee for change of registered office by agent (Repealed).

1988 Repeal. Section 7 was repealed December 21, 1988, P.L.1444, No.177, effective October 1, 1989.

§ 8. Registration of corporation with Department of State (Repealed).

1990 Repeal. Section 8 was repealed December 19, 1990, P.L.834, No.198, effective immediately.

1988, DECEMBER 21, P.L.1444, NO.177

§ 101. Short title of act.

This act shall be known and may be cited as the General Association Act of 1988.

§ 104. Legislative findings as to acceptance of Constitution of Pennsylvania.

(a) General rule.--The General Assembly finds and determines as follows for the purpose of section 3B of the act of May 5, 1933 (P.L.289, No.105), known as the Nonprofit Corporation Law of 1933, as amended by the act of January 18, 1966 (1965 P.L.1406, No.520), section 3B of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law of 1933, as amended by the act of January 18, 1966 (1965 P.L.1305, No.519), and sections 3 and 5 of the act of January 18, 1966 (1965 P.L.1443, No.521) (referred to collectively in this section as the Registry Acts of 1966);

(1) The corporation incorporated by the act of February 24, 1846 (P.L.56, No.47), is subject to the Constitution of Pennsylvania by reason of the enactment and acceptance of the act of April 8, 1867 (P.L.916, No.836).

(2) The corporation incorporated by the act signed March 27, 1855 (1857 P.L.729, No.732), is subject to the Constitution of Pennsylvania by reason of having its charter enrolled under the act of April 16, 1845 (P.L.532, No.348), after the enactment of the act of May 3, 1855 (P.L.423, No.448).

(3) The Cedar Grove Cemetery Association, incorporated pursuant to the act of April 6, 1791 (3 Sm.L.20, Ch.1536, 14 Stat. 50), referred to as the Corporation Act of 1791, as supplemented by the act of October 13, 1840 (1841 P.L.1, No.258), is subject to the Constitution of Pennsylvania by reason of the reserved power contained in the proviso to section 3 of the act of April 6, 1791 (3 Sm.L.20, Ch.1536, 14 Stat. 50).

(4) The corporation incorporated by the act of May 11, 1751 (1 Sm.L. 208, Ch.390, 5 Stat. 128), is subject to the Constitution of Pennsylvania by reason of the acceptance of the benefits of laws passed by the General Assembly after 1873 governing the affairs of corporations, as evidenced by a written acknowledgment of that fact filed by the corporation in the Department of State on December 17, 1981.

(5) As reported by the Department of State, no corporations, other than those mentioned in paragraphs (1) through (4), filed in the Department of State under the Registry Acts of 1966 on or before January 1, 1967, a

certificate declining to accept the provisions of the Constitution of Pennsylvania.

(6) All corporations incorporated prior to October 14, 1857, under the authority of the Commonwealth or of the late Proprietaries of the Province of Pennsylvania are now subject to the Constitution of Pennsylvania and the general legislative jurisdiction of the General Assembly.

(b) Proceedings to challenge findings.--Unless a person adversely affected by the findings set forth in subsection (a) commences a declaratory judgment proceeding against the Commonwealth under 42 Pa.C.S. Ch. 75 Subch. C (relating to declaratory judgments) challenging such findings and determinations within one year after the enactment of this act, the findings and determinations shall be final and conclusive. In any such proceeding, the Commonwealth may assert any proper ground, whether or not specified in this section, in support of the determination that the objecting corporation is subject to the Constitution of Pennsylvania and the general legislative jurisdiction of the General Assembly.

§ 105. Additional filing fee (Repealed).

1990 Repeal. Section 105 was repealed December 19, 1990, P.L.834, No.198, effective immediately.

§ 106. Taxation of electing partnerships (Repealed).

1992 Repeal. Section 106 was repealed December 18, 1992, P.L.1333, No.169, effective in 60 days.

§ 107. Prior law transitional provision.

(a) General rule.--A business corporation as defined in 15 Pa.C.S. § 1103 (relating to definitions) that was incorporated prior to the enactment of this act and that desires to continue in effect any of the provisions of prior law contained in paragraph (2) may file in the Department of State, prior to the general effective date of this act, a statement with respect to continuation of procedure executed by the corporation in the manner provided by 15 Pa.C.S. § 1108 (relating to execution of documents) setting forth:

(1) The name of the corporation.

(2) One or more of the following paragraphs, in haec verba:

> The entire board of directors, or a class of the board, where the board is classified with respect to the power to elect directors, or any individual director may be removed from office without assigning any cause by the vote of shareholders entitled to cast at least a majority of the votes which all shareholders would be entitled to cast at any annual election of directors or of such class of directors. The preceding sentence shall be interpreted in the same manner as the first sentence of section 405 of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law of 1933, as amended by the act of July 20, 1968 (P.L.459, No.216).
>
> Special meetings of the shareholders may be called at any time by the president, or the board of directors, or shareholders entitled to cast at least one-fifth of the votes which all shareholders are entitled to cast at the particular meeting, or by such other officers or persons as may be provided in the articles or bylaws. The preceding sentence shall be interpreted in the same

manner as the first sentence of subsection C of section 501 of the Business Corporation Law of 1933, as amended by the act of August 27, 1963 (P.L.1355, No.534).

Every amendment to the articles shall be proposed by either the board of directors by the adoption of a resolution setting forth the proposed amendment or by petition of shareholders entitled to cast at least ten percent of the votes which all shareholders are entitled to cast thereon, setting forth the proposed amendment, which petition shall be directed to, and filed with, the board of directors. The preceding sentence shall be interpreted in the same manner as the first sentence of section 802 of the Business Corporation Law of 1933, as amended by the act of August 27, 1963 (P.L.1355, No.534).

(3) A statement that the filing of the statement with respect to continuation of procedure was authorized by the board of directors.

(b) Alternative procedure.--A qualified shareholder of a registered corporation as defined in 15 Pa.C.S. § 2502 (relating to registered corporation status) who desires to continue to enjoy the benefits of any of the provisions of prior law described in subsection (a)(2) may file in the Department of State, prior to the general effective date of this act, a statement with respect to continuation of procedure executed by the qualified shareholder setting forth:

(1) The name of the corporation.

(2) One or more of the following paragraphs, in haec verba:

On the petition of a qualified shareholder, as defined in section 107(f) of the General Association Act of 1988, which petition shall be directed to, and filed with the board of directors, the entire board of directors, or a class of the board, where the board is classified with respect to the power to elect directors (which term includes directors elected for terms of more than one year and directors elected by holders of specified classes or series of shares), or any individual director may be removed from office without assigning any cause by the vote of shareholders entitled to cast at least a majority of the votes which all shareholders would be entitled to cast at any annual election of directors or of such class of directors.

Special meetings of the shareholders may be called at any time by a qualified shareholder as defined in section 107(f) of the General Association Act of 1988.

Every amendment to the articles shall be proposed by either the board of directors by the adoption of a resolution setting forth the proposed amendment or by petition of any qualified shareholder as defined in section 107(f) of the General Association Act of 1988, setting forth the proposed amendment, which petition shall be directed to, and filed with, the board of directors.

(3) A statement that the person executing the statement is a qualified shareholder of the corporation as defined in section 107(f) of the General Association Act of 1988.

(c) Effect of filing.--Upon filing in the Department of State, the statement with respect to continuation of procedure shall operate as an amendment of the articles of the corporation effective as of the general effective date of this act. A provision of the articles set forth in a statement with respect to continuation of procedure may be amended or stricken in the

manner provided by law and the articles of incorporation. For the purposes of 15 Pa.C.S. § 1103, the statement shall be a part of the "articles" as therein defined. The filing of a statement with respect to continuation of procedure as permitted by this section shall not be void or voidable by reason of the participation of one or more directors who are affiliated with any shareholder.

(d) Discretionary action or inaction.--A director or qualified shareholder shall not be held liable for taking or omitting to take any action permitted by subsection (a) or (b) respectively, it being the intention of this section that any such director or qualified shareholder may exercise absolute discretion in taking or omitting to take any such action.

(e) Statement of correction.--The provisions of 15 Pa.C.S. § 138 (relating to statement of correction) shall be applicable to a filing under this section. The corporation shall be deemed a person adversely affected by any filing under subsection (b) that is erroneously executed.

(f) Definition.--As used in this section, the term "qualified shareholder" means a shareholder who:

(1) on January 1, 1980, and continuously thereafter to the date of the exercise of any power conferred upon a qualified shareholder by this section or the articles; or

(2) if the corporation was incorporated after January 1, 1980, and before the date of enactment of this act within one year after the incorporation of the corporation and continuously thereafter to the date of the exercise of any power conferred upon a qualified shareholder by this section or the articles;

held (together with its affiliates or associates as defined in 15 Pa.C.S. § 2552 (relating to definitions)) sufficient shares of a corporation to be entitled under the first sentence of subsection C of section 501 of the Business Corporation Law of 1933 to call a special meeting of shareholders of the corporation.

§ 206. Conforming cross references in unconsolidated statutes.

(a) Business Corporation Law of 1933.--References in the following acts and parts of acts enacted prior to July 1, 1971 (see 1 Pa.C.S. § 1937 (relating to references to statutes and regulations)) to the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law of 1933, shall be deemed to be a reference to 15 Pa.C.S. Pt. II Subpt. B, known as the Business Corporation Law of 1988, and all such acts and parts of acts are repealed to the extent inconsistent with this subsection:

Sections 3, 7 and 13 of the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act.

Section 8(b) of the act of January 14, 1952 (1951 P.L.1898, No.522), known as the Funeral Director Law.

Sections 4 and 8 of the act of December 1, 1959 (P.L.1647, No.606), known as the Business Development Credit Corporation Law.

Sections 1204, 1207 and 1222 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

(b) Section 202B of the Business Corporation Law of 1933.--References in the following act enacted prior to July 1, 1971 (see 1 Pa.C.S. § 1937 (relating to references to statutes and regulations)) to section 202B of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law of 1933, shall be deemed to be a reference to 15 Pa.C.S. § 1303(b) (relating to duplicate use of names) and such act is repealed to the extent inconsistent with this subsection:

section 802 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

(c) Article VIII of the Business Corporation Law of 1933.--References in the following act enacted prior to July 1, 1971 (see 1 Pa.C.S. § 1937 (relating to references to statutes and regulations)) to Article VIII of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law of 1933, shall be deemed to be a reference to 15 Pa.C.S. Ch. 19 Subchs. A (relating to preliminary provisions) and B (relating to amendment of articles) and such act is repealed to the extent inconsistent with this subsection: section 9.1 of the act of December 1, 1959 (P.L.1647, No.606), known as the Business Development Credit Corporation Act.

(d) Article IX of the Business Corporation Law of 1933.--References in the following act enacted prior to July 1, 1971 (see 1 Pa.C.S. § 1937 (relating to references to statutes and regulations)) to Article IX of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law of 1933, shall be deemed to be a reference to 15 Pa.C.S. Ch. 19 Subchs. A (relating to preliminary provisions) and C (relating to merger, consolidation, share exchanges and sale of assets) and such act is repealed to the extent inconsistent with this subsection: section 751(a) of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

(e) Professional Corporation Law.--References in the following acts and parts of acts enacted prior to July 1, 1971 (see 1 Pa.C.S. § 1937 (relating to references to statutes and regulations)) to the act of July 9, 1970 (P.L.461, No.160), known as the Professional Corporation Law, shall be deemed to be a reference to 15 Pa.C.S. Ch. 29 (relating to professional corporations) and all such acts and parts of acts are repealed to the extent inconsistent with this subsection:

Sections 2, 8.4 and 8.6 of the act of May 26, 1947 (P.L.318, No.140), known as The C.P.A. Law.

Section 8(d) of the act of January 14, 1952 (1951 P.L.1898, No.522), known as the Funeral Director Law.

§ 301. Transitional provisions (Repealed).

1990 Repeal. Section 301 was repealed December 19, 1990, P.L.834, No.198, effective immediately.

§ 303. Preparation of act for printing.

In editing and preparing this act for printing in the Laws of Pennsylvania, or pursuant to 1 Pa.C.S. Ch. 5 (relating to official publication of the Consolidated Statutes), the Director of the Legislative Reference Bureau shall insert the date of enactment, pamphlet law page number and act number of this act in the appropriate blanks of the enrolled bill version of this act, without obtaining the approvals or marking the notations required under 1 Pa.C.S. § 1105 (relating to editing statutes for printing).

§ 304. Effective date and applicability.

(a) Effective date.--This act shall take effect October 1, 1989, except that:

(1) Sections 101, 104, 301, 303 and 304 shall take effect immediately.

(2) The following provisions of Title 15 and as much of the act as may be necessary to make those provisions operative shall take effect immediately and shall be retroactive to January 27, 1987, insofar as relates to the

implementation of 42 Pa.C.S. Ch. 83 Subch. F (relating to corporate directors' liability): 15 Pa.C.S. § 1102(b) (relating to coordination with other laws), 15 Pa.C.S. § 1310(a) (relating to organization meeting), 15 Pa.C.S. § 1504(c) (relating to bylaw provisions in articles), 15 Pa.C.S. § 1757(a) (relating to action by shareholders), 15 Pa.C.S. § 1762(c) (relating to controlled shares) and 15 Pa.C.S. § 1766 (relating to consent of shareholders in lieu of meeting).

(3) The amendment to 54 Pa.C.S. § 311(b)(1) (relating to use of corporate designators) shall take effect immediately and shall be retroactive to March 16, 1983.

(4) Section 138 (relating to statement of correction) of Title 15 shall take effect immediately and shall be retroactive to January 1, 1980, insofar as relates to filings under the Business Corporation Law of 1933. With respect to matters covered by this paragraph, the one-year period of the last sentence of 15 Pa.C.S. § 138(c) shall run from the later of the date of enactment of this act or the date upon which such filing was or is made by or with respect to a corporation subject to the Business Corporation Law of 1933.

(5) Section 302(e), insofar as it repeals 59 Pa.C.S. Ch. 5 (relating to limited partnerships), and section 103, insofar as it enacts 15 Pa.C.S. § 8502(a) (relating to applicability of chapter to existing limited partnerships), shall take effect 90 days after the Governor publishes a proclamation in the Pennsylvania Bulletin stating that the Governor has found that the United States Internal Revenue Service has determined that 15 Pa.C.S. Ch. 85 (relating to limited partnerships) corresponds to the Uniform Limited Partnership Act for purposes of 26 C.F.R. § 301.7701-2. The Governor shall issue such a proclamation upon being furnished with a copy of a ruling by the Internal Revenue Service to that effect. Delay in the repeal of 59 Pa.C.S. Ch. 5 and enactment of 15 Pa.C.S. § 8502(a) shall not postpone the effective date of 15 Pa.C.S. Ch. 85, and pending repeal of 59 Pa.C.S. Ch. 5, persons may utilize either statute at their election, which shall be expressed in the partnership agreement, for the government and regulation of the affairs of the limited partnership. A partnership agreement that fails to identify expressly the statute applicable to the partnership shall be deemed to contain an election to be governed by 59 Pa.C.S. Ch. 5. On the effective date of the repeal of 59 Pa.C.S. Ch. 5, any partnership then governed by that chapter shall thereafter be governed by 15 Pa.C.S. Ch. 85.

(6) (Repealed).

(7) The amendments to 15 Pa.C.S. Ch. 87 (relating to electing partnerships) shall take effect immediately and shall be retroactive to July 10, 1981.

(8) Section 103, insofar as it enacts 15 Pa.C.S. Ch. 77 (relating to workers' cooperative corporations), shall take effect in 180 days.

(b) Applicability.--(Repealed).

1994 Proclamation. The proclamation of the Governor referred to in section 304(a)(5) was published in the Pennsylvania Bulletin on June 18, 1994, at 24 Pa.B. 3001 and is set forth in full in this appendix.

1990 Repeal. Subsections (a)(6) and (b) were repealed December 19, 1990, P.L.834, No.198, effective immediately.

References in Text. 42 Pa.C.S. Ch. 83 Subch. F (relating to corporate directors' liability), referred to in subsec. (a), was repealed by the act of December 19, 1990, P.L.834, No.198. The subject matter is now contained in Subchapter B of Chapter 5, Subchapter B of Chapter 17 and Subchapter B of Chapter 57 of Title 15.

1990, APRIL 27, P.L.129, NO.36

§ 7. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of this act, and the application of such provision to other persons and circumstances, shall not be affected thereby.

Explanatory Note. Act 36 added or amended sections 102, 511, 512, 1103, 1721, 2502 and 2542 and Subchapters G, H, I and J of Chapter 25 of Title 15.

§ 8. Construction of law.

(a) Effect on pension system trustees.--Nothing contained in this amendatory act shall be deemed to affect, modify or change in any manner whatsoever the rights, obligations or duties of, or the standards pertaining to, any trustee of any Commonwealth or municipal pension system or the actions, activities or investment strategies of any such trustee with respect to any assets of any such pension system.

(b) Liability of directors.--A director shall not be held liable for taking or omitting to take any action permitted by 15 Pa.C.S. § 511(g) (relating to standard of care and justifiable reliance), 1721(j) (relating to board of directors), 2561(b)(2) (relating to application and effect of subchapter) or 2571(b)(2) (relating to application and effect of subchapter), it being the intention of this act that any such director may exercise absolute discretion in taking or omitting to take any such action.

(c) Effect on control transactions.--Other than section 5, nothing contained in this amendatory act shall be construed as having, or be deemed to have, any effect on the existing practice under 15 Pa.C.S. Ch. 25 Subch. E (relating to control transactions) or the interpretation, construction, scope or applicability of 15 Pa.C.S. Ch. 25 Subch. E or as expressing any agreement or disagreement with any court interpretation relating to 15 Pa.C.S. Ch. 25 Subch. E. Further, nothing in this amendatory act shall be construed as having, or be deemed to have, any effect on the interpretation, construction, scope or applicability of any provision of this title, specifically including 15 Pa.C.S. §§ 511(b) and (c) and 1721(c) and (d), that are not explicitly amended by this amendatory act.

1990, DECEMBER 19, P.L.834, NO.198

§ 101. Short title.

This act shall be known and may be cited as the GAA Amendments Act of 1990.

2008 Partial Repeal. Section 10(3) of Act 62 of 2008 provided that Act 198 is repealed insofar as it is inconsistent with Act 62.

§ 201. Definition of term "insurance corporation."

As used in this division, the term "insurance corporation" means any domestic insurance company of any of the classes described in section 201 or 701(3) of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, or incorporated under the acts of April 28, 1903 (P.L.329, No.259), April 20, 1927 (P.L.317, No.190), June 24, 1939 (P.L.686, No.320), June 20, 1947 (P.L.687, No.298), June 28, 1951 (P.L.941, No.184), July 15, 1957 (P.L.929, No.401), or any similar act relating to the incorporation or reincorporation of limited life insurance companies. The term does not include any of the following:

(1) A hospital plan corporation subject to 40 Pa.C.S. Ch. 61 (relating to hospital plan corporations).

(2) A professional health service corporation subject to 40 Pa.C.S. Ch. 63 (relating to professional health services plan corporations).

(3) A fraternal benefit society subject to the act of July 29, 1977 (P.L.105, No.38), known as the Fraternal Benefit Society Code.

(4) A health maintenance organization subject to the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act.

§ 202. Corporate powers.

(a) General rule.--No insurance corporation shall transact any other business other than that specified in its original or amended articles of incorporation or charter or authorized by statute regulating the business of the corporation.

(b) Ancillary activities.--With the prior approval of the Insurance Department, an insurance corporation may, independently of its insurance business and in addition to authority conferred by any other statute regulating the business of the corporation, provide services of the kinds it performs in the normal conduct of the business for which it is incorporated, including, but not limited to, consultative, administrative, investment, actuarial, loss prevention, data processing, accounting, claims and collection services. The Insurance Department shall take into account the effect of the provision of such services on the insurance business of the corporation and the risks inherent in the provision of such services by the corporation.

(c) Subsidiaries.--Subsections (a) and (b) shall not affect the power of an insurance corporation to hold, own and control subsidiaries engaged in other businesses as authorized by law.

§ 203. Authorization to do business.

No insurance corporation incorporated after June 19, 1991, shall have power to engage in the business of insurance until it shall have received a certificate from the Insurance Department authorizing the corporation to commence business.

§ 204. Amendment of articles.

(a) General rule.--Any amendment of the articles of incorporation or charter of any insurance corporation that may be effected only by action or with the approval of the shareholders or members (other than an amendment authorizing or creating a new class or series of shares or increasing the authorized number of any previously authorized class or series of shares) shall become effective only if approved by the

Insurance Department. See 15 Pa.C.S. § 103 (relating to subordination of title to regulatory laws).

(b) Amendments not requiring approval of Insurance Department.--The Department of State shall forward to the Insurance Department a copy of any amendment of the articles of incorporation or charter of any insurance corporation that becomes effective without the approval of the Insurance Department.

(c) Reduction in capital stock.--The capital stock of an insurance corporation shall not be reduced below the minimum amount of capital stock required by law for the formation of the corporation.

§ 205. Other fundamental transactions.

(a) General rule.--Any plan of merger, consolidation, exchange, asset transfer, division or conversion of any insurance corporation, any recapitalization or voluntary dissolution of any insurance corporation or any issuance of shares by any insurance corporation in exchange for shares of another insurance company shall become effective only if approved by the Insurance Department. See 15 Pa.C.S. § 103 (relating to subordination of title to regulatory laws).

(b) Standards.--A share exchange or similar transaction shall be approved if it is in accordance with law and the terms and conditions are fair. A reduction in capital stock shall be approved if it is in accordance with law and consistent with the interests of the policyholders and creditors. A merger or consolidation of a title insurance company or the acquisition of substantially all the assets or stock of a title insurance company or abstract company by a title insurance company shall be approved if it is in accordance with law, not inequitable to the shareholders of any title insurance or abstract company involved and will not substantially reduce the security of and service to be rendered to policyholders of the domestic title insurance company in this Commonwealth or elsewhere. Any other transaction subject to subsection (a) shall be approved if it is in accordance with law and not injurious to the interests of the policyholders and creditors.

(c) Approval of compensation.--No director, officer, agent or employee of any title insurance company or abstract company party to any merger, consolidation or acquisition subject to subsection (a) shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in the terms of the transaction submitted to the Insurance Department for approval.

(d) Transactions with foreign corporations.--Any foreign insurance company participating in or resulting from any transaction subject to subsection (a) shall engage in the transaction only with the approval of the insurance supervising officials of the jurisdiction in which such foreign insurance company is incorporated or is to be incorporated. A change in domicile of an insurance corporation to another jurisdiction may be effected only with the consent of the Insurance Department. A foreign insurance company that is a surviving or resulting corporation in any transaction subject to subsection (a) shall not be deemed to hold a certificate of authority to do an insurance business within this Commonwealth solely by reason of the approval by the Insurance Department and consummation of the transaction.

(e) Mergers of stock and mutual insurance companies.--A mutual insurance company shall not merge or consolidate with an insurance corporation organized on a stock share basis.

(f) Dissolution of mutual companies.--Assets of mutual life insurance companies, derived from a health and accident business, other than those properly credited to the members or policyholders on policies covering such business, and the assets of mutual companies, other than mutual life companies, which may not be properly credited to policyholders and members, shall be escheated to the Commonwealth upon the dissolution of such companies.

(g) Definition.--As used in this section, the term "recapitalization" includes any reduction in stated capital and excludes any new or additional share authorization for which approval by the Insurance Department is not required by section 204.

§ 206. Increases in capital stock.

Within 30 days after any increase in the capital stock of an insurance corporation, the corporation shall report the increase to the Insurance Department on a form for that purpose prescribed by regulation by the department.

§ 207. Administrative procedure.

(a) General rule.--Every application for a certificate of authority or other approval by the Insurance Department under this division shall be made to the department in writing and shall be in such form as the procedural regulations of the department may require.

(b) Standards for approval.--A certificate of authority or other approval under this division shall be issued by order of the department only if and when the department shall find and determine that the application complies with the provisions of this division and the procedural regulations of the department thereunder.

(c) Procedure before department.--For the purpose of enabling the department to make the finding or determination required by subsection (b), the department shall afford reasonable notice and opportunity for hearing, which shall be public, and, before or after any such hearing, it may make such inquiries, audits and investigations, and may require the submission of such supplemental studies and information, as it may deem necessary or proper to enable it to reach a finding or determination. The department, in granting a certificate of authority or other approval, may impose such conditions as it may deem to be just and reasonable. In every case the department shall make a finding or determination in writing, stating whether or not the application has been approved, and, if it has been approved in part only, specifying the part which has been approved and the part which has been denied. Any holder of a certificate of authority or other approval, exercising the authority conferred thereby, shall be deemed to have waived any and all objections to the terms and conditions of such certificate or other approval.

(d) Judicial review.--Orders of the department upon an application for a certificate of authority or other approval under this section shall be subject to judicial review in the manner and within the time provided or prescribed by law.

§ 208. Existing powers preserved.

Nothing in this act shall impair the power of any insurance corporation to transact business to the same extent as if this act had not been enacted.

§ 309. Conforming cross references in unconsolidated statutes.

(a) Insurance Company Law.--References in the following act enacted prior to July 1, 1971 (see 1 Pa.C.S. § 1937 (relating to references to statutes and regulations)), to section 337.5 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, shall be deemed to be a reference to section 205 of this act and 15 Pa.C.S. § 1924(b)(1)(ii), and such act is repealed to the extent inconsistent with this subsection: section 337.6 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

(b) Professional Association Act.--References in the following act enacted prior to July 1, 1971 (see 1 Pa.C.S. § 1937 (relating to references to statutes and regulations)), to the act of August 7, 1961 (P.L.941, No.416), known as the Professional Association Act, shall be deemed to be a reference to 15 Pa.C.S. Ch. 93 (relating to professional associations), and such act is repealed to the extent inconsistent with this subsection: sections 2, 8.4 and 8.6 of the act of May 26, 1947 (P.L.318, No.140), known as The C.P.A. Law.

(c) Electric Cooperative Corporation Act.--References in the following act enacted prior to July 1, 1971 (see 1 Pa.C.S. § 1937 (relating to references to statutes and regulations)), to the act of June 21, 1937 (P.L.1969, No.389), known as the Electric Cooperative Corporation Act, shall be deemed to be a reference to 15 Pa.C.S. Ch. 73 Subchs. A (relating to preliminary provisions) and B (relating to powers, duties and safeguards), and such act is repealed to the extent inconsistent with this subsection: sections 2471.1(b) and 2471.2(k) of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, added by section 1 of the act of December 30, 1982 (P.L.1465, No.333).

§ 402. Preparation of act for printing.

In editing and preparing this act for printing in the Laws of Pennsylvania, or pursuant to 1 Pa.C.S. Ch. 5 (relating to official publication of the consolidated statutes), the Director of the Legislative Reference Bureau shall insert the date of enactment, pamphlet law page number and act number of this act in the appropriate blanks of the enrolled bill version of this act, without obtaining the approvals or marking the notations required under 1 Pa.C.S. § 1105 (relating to editing statutes for printing).

§ 403. Transitional provision (Repealed).

1992 Repeal. Section 403 was repealed December 18, 1992, P.L.1333, No.169, effective in 60 days.

§ 404. Effective dates and applicability.

(a) Effective dates.--This act shall take effect immediately, except that:

(1) Subchapter C of Chapter 1 of Title 15 (relating to Corporation Bureau and UCC fees) shall take effect on the first day of the month following the month of enactment of this act.

(2) 15 Pa.C.S. § 1702(c) and the amendments to 15 Pa.C.S. §§ 1906 and 1924(b) shall be retroactive to October 1, 1989.

(3) The amendments to 15 Pa.C.S. § 5758(b) shall be retroactive to February 13, 1972.

(4) 15 Pa.C.S. §§ 135(c)(2) and 1901(a)(2) and Chapter 75 of Title 15 and section 401(a), insofar as it repeals the act of June 12, 1968 (P.L.173, No.94), known as the Cooperative Agricultural Association Act, shall take effect in four months.

(5) The amendments to Chapter 77 of Title 15 shall be retroactive to June 19, 1989.

(6) The amendments to 15 Pa.C.S. § 8562(b) shall take effect in four months and shall not apply to any certificate of partnership interest issued or issuable on the effective date of such amendments.

(7) Title 17 (relating to credit unions) and section 401(d) of this act shall take effect in two months.

(8) The expansion of the scope of Subpart B of Part II of Title 15 to include insurance corporations as defined in section 201 and all related changes in law affecting insurance corporations, including the repeals provided in section 401(b), shall take effect in six months.

(b) Applicability.--The provisions of Title 15 that are derived from former 42 Pa.C.S. Ch. 83 Subch. F (relating to corporate directors' liability):

(1) shall not be construed to repeal or otherwise affect or impair 15 Pa.C.S. § 1728 (relating to interested directors or officers; quorum) or 2538 (relating to approval of transactions with interested shareholders) or 42 Pa.C.S. § 8332.2 (relating to officer, director, or trustee of nonprofit organization negligence standard); and

(2) shall not apply to:

(i) any actions filed prior to January 27, 1987, nor to any breach of performance of duty or any failure of performance of duty by any director or officer of a business corporation occurring prior to that date; or

(ii) any actions filed against or any breach of performance of duty or any failure of performance of duty by any director or officer of any other domestic corporation for profit or not-for-profit occurring prior to the date that such corporation first became or becomes subject to former 42 Pa.C.S. Ch. 83 Subch. F or 15 Pa.C.S. Ch. 5 Subch. B (relating to indemnification and corporate directors' liability).

2001 Partial Repeal. Section 4(2) of Act 34 of 2001 provided that subsec. (b) is repealed insofar as it applies to sections 1745 and 5745 of Title 15.

1992, DECEMBER 18, P.L.1333, NO.169

§ 1. Short title.

This act shall be known and may be cited as the GAA Amendments Act of 1992.

1994, JUNE 18, 24 Pa.B. 3001

PROCLAMATION

Proclamation pursuant to section 304(a)(5) of the General Association Act of 1988

WHEREAS, Section 304(a)(5) of the act of December 21, 1988 (P.L.1444, No.177), known as the General Association Act of 1988, 15 P.S. 20304(a)(5), provides that section 302(e) of the act, insofar as it repeals 59 Pa.C.S. Ch. 5 (relating to limited partnerships), and section 103, insofar as it enacts 15 Pa.C.S. § 8502(a) (relating to applicability of chapter to existing limited partnerships), shall take effect 90 days after the Governor publishes a proclamation in the Pennsylvania Bulletin stating that the Governor has found that the United States Internal Revenue Service has determined that 15 Pa.C.S. Ch.85 (relating to limited partnerships) corresponds to the Uniform Limited Partnership Act for purposes of 26 C.F.R. § 301.7701-2; and

WHEREAS, The General Association Act of 1988 provides further that the Governor shall issue such a proclamation upon being furnished with a copy of a ruling by the Internal Revenue Service to that effect; and

WHEREAS, I have received a copy of Revenue Ruling 94-10, published in Volume 1994-6 of the February 7, 1994, issue of the Internal Revenue Bulletin at page 12; and

WHEREAS, Said Revenue Ruling provides as follows:

> In Rev. Rul. 94-2, 1994-1 I.R.B. 8, the Internal Revenue Service listed the states whose revised uniform limited partnership acts the Service had examined and determined correspond to the Uniform Limited Partnership Act (ULPA) for purposes of § 301.7701-2 of the Procedure and Administration Regulations.
>
> The Service has determined that Pennsylvania has enacted legislation that, as of its effective date with amendments, corresponds to ULPA for purposes of § 301.7701-2:
>
> 15 Pa. Cons. Stat. Ann. sections 8501 through 8594, and section 8103 (Purdon Supp. 1993) effective October 1, 1989, with amendments effective through November 20, 1993.

NOW THEREFORE, I, Robert P. Casey, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and section 304(a)(5) of the act of December 21, 1988 (P.L.1444, No.177), known as the General Association Act of 1988, do hereby find that the Internal Revenue Service has determined that 15 Pa.C.S. Ch.85 (relating to limited partnerships) corresponds to the Uniform Limited Partnership Act for purposes of 26 C.F.R. § 301.7701-2.

Further, I hereby proclaim in accordance with law that, accordingly, section 302(e) of the act, insofar as it repeals 59 Pa.C.S. Ch.5 (relating to limited partnerships), and section 103 of the act, insofar as it enacts 15 Pa.C.S. § 8502(a) (relating to applicability of chapter to existing limited partnerships), shall take effect 90 days after the date of publication of this proclamation.

GIVEN under my hand and the Great Seal of the Commonwealth this seventh day of June, in the year of our Lord, one thousand nine-hundred and ninety-four and of the Commonwealth, the two-hundred and eighteenth.

Robert P. Casey
Governor

1994, DECEMBER 7, P.L.703, NO.106

§ 1. Short title.
This act shall be known and may be cited as the Limited Liability Company Act.

2001, JUNE 22, P.L.418, NO.34

§ 1. Short title.
This act shall be known and may be cited as the GAA Amendments Act of 2001.

2013, JULY 9, P.L.476, NO.67

§ 55. Publication of notice.
When the Department of State is ready to provide expedited services under the addition of 15 Pa.C.S. § 153(a)(16), it shall transmit notice of that fact to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

Explanatory Note. Act 67 amended, reenacted, added, deleted or repealed sections 102, 107, 111, 131, 133, 134, 135, 136, 152, 153, 155, 156, 1103, 1104, 1306, 1504, 1523, 1527, 1528, 1529, 1552, 1575, 1704, 1705, 1727, 1756, 1759, 1764, 1766, 1906, 1907, 1908, 1911, 1913, 1922, 1923, 1931, 1957, 1973, 1978, 2522, 2528, 2529, 2545, 3133, 3135, 3322, 3325, 3331, 4127, 5103, 5104, 5105, 5106, 5107, 5108, 5109, 5302, 5306, 5307, 5308, 5309, 5310, 5331, 5501, 5504, 5509, 5511, 5541, 5542, 5543, 5544, 5546, 5547, 5548, 5550, 5551, 5552, 5553, 5554, 5585, 5586, 5587, 5588, 5589, 5702, 5704, 5705, 5708, 5722, 5723, 5724, 5725, 5726, 5727, 5728, 5729, 5730, 5731, 5733, 5746, 5751, 5752, 5753, 5754, 5755, 5756, 5757, 5759, 5760, 5761, 5762, 5763, 5764, 5765, 5766, 5767, 5768, 5769, 5770, 5791, 5792, 5793, 5911, 5913, 5914, 5921, 5923, 5924, 5925, 5926, 5928, 5930, 5951, 5956, 5957, 5972, 5973, 5975, 5976, 5977, 5978, 5979, 5980, 5981, 5982, 5983, 5984, 5986, 5987, 5988, 5992, 5997, 6101, 6102, 6103, 6104, 6122, 6123, 6141, 6142, 6143, 6145, 8911 and 8925, the heading of Chapter 91 and sections 9101, 9102, 9103, 9111, 9112, 9113, 9114, 9115, 9116, 9117, 9118, 9119, 9120, 9121, 9122, 9123, 9124, 9125, 9126, 9127, 9128, 9129, 9130, 9131, 9132, 9133, 9134, 9135, 9136 and 9503 of Title 15 and sections 101 and 501 of Title 54.

§ 56. Restoration of provisions.
Notwithstanding 1 Pa.C.S. § 1957, it is declared to be the intent of the act of December 21, 1988 (P.L.1444, No.177), known as the General Association Act of 1988, the act of December 19, 1990 (P.L.834, No.198), known as the GAA Amendments Act of 1990, the act of December 18, 1992 (P.L.1333, No.169), known as the GAA Amendments Act of 1992, the act of June 22, 2001 (P.L.418, No.34), known as the GAA Amendments Act of 2001, and this act cumulatively to restore all provisions of 15 Pa.C.S. added by the act of November 15, 1972 (P.L.1063, No.271), entitled "An act amending the act of November 25, 1970 (No.230), entitled 'An act codifying and compiling a part of the law of the Commonwealth,' adding provisions relating to burial grounds,

corporations, including corporations not-for-profit, educational institutions, private police, certain charitable or eleemosynary institutions, certain nonprofit insurers, service of process on certain nonresident persons, names, prescribing penalties and making repeals," to their status prior to the partial repeal effected by section 905 of the former act of July 29, 1977 (P.L.105, No.38), known as the Fraternal Benefit Society Code, except as otherwise expressly provided by such provisions as reenacted and amended by the General Association Act of 1988, the GAA Amendments Act of 1990, the GAA Amendments Act of 1992, the GAA Amendments Act of 2001 and this act.

§ 57. Retroactivity.

Section 56 of this act shall apply retroactively to January 30, 1978.

2014, OCTOBER 22, P.L.2640, NO.172

§ 1. Short title.

This act shall be known and may be cited as the Association Transactions Act.

Explanatory Note. Act 172 amended, added, deleted or repealed sections 102, 109, 112, 113, 133, 135, 136, 138, 139, 141, 142, 143, 144, 145, 152 and 153, the heading of Subchapter D of Chapter 1, sections 161 and 162, Chapters 2, 3 and 4, sections 1103, 1105, 1106, 1303, 1304, 1305, 1306, 1341, 1571, 1575, 1704, 1757, 1766, 1901, 1902, 1904, 1905, 1906 and 1908, the heading of Subchapter C of Chapter 19, sections 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931 and 1932, Subchapters D and E of Chapter 19, sections 1980, 2101, 2121, 2301, 2501, 2521, 2538, 2539, 2701, 2721, 2901, 2921, 3101, 3301, 3304, 4122, 4123, 4124, 4125, 4126, 4127, 4128, 4129, 4130, 4131, 4141, 4142, 4143 and 4144, Subchapter D of Chapter 41, sections 5103, 5106, 5303, 5304, 5305, 5341, 5704, 5757 and 5766, the heading of Chapter 59, sections 5901, 5902 and 5905, the heading of Subchapter C of Chapter 59, sections 5921, 5922, 5923, 5924, 5925, 5926, 5927, 5928, 5929 and 5930, the heading of Subchapter D of Chapter 59, sections 5951, 5952, 5953, 5954, 5955, 5956 and 5957, Subchapter E of Chapter 59, sections 5980, 6121, 6122, 6123, 6124, 6125, 6126, 6127, 6128, 6129, 6130, 6131, 6141, 6142, 6143 and 6144, Subchapter D of Chapter 61, sections 7411, 7702, 7703, 7704, 7723, 8203, 8211, 8503, 8505, 8513 and 8514, Subchapter F of Chapter 85, section 8571, Subchapters J and K of Chapter 85, sections 8903, 8905 and 8908, Subchapters G, H and J of Chapter 89 and sections 9112, 9302, 9502, 9503 and 9507 of Title 15 and sections 302, 303, 311, 501, 502 and 503 of Title 54.

§ 1.1. Legislative findings and declarations.

The General Assembly finds and declares as follows:

(1) It is necessary to modernize the laws of this Commonwealth on the organization and governance of corporations and other associations in order to make the Commonwealth competitive with other states in attracting business organizations.

(2) This act is designed to amend 15 Pa.C.S. Pt. I to integrate the law on corporations and other associations by enacting provisions applicable to all forms of associations and authorizing transactions involving any form of association.

(3) It is also necessary to modernize the law on those subjects in order to improve the functioning of the Bureau of Corporations and Charitable Organizations, which administers that law.

(4) This act is designed to amend 15 Pa.C.S. Pt. I to integrate the law on entity names, entity transactions and registration of foreign entities into a single coherent body of law that can be efficiently administered by the Bureau of Corporations and Charitable Organizations and easily used and understood by the citizens of this Commonwealth.