**AMENDMENTS TO THE**

**PENNSYLVANIA CONSOLIDATED STATUTES**

**WITH COMMITTEE COMMENTS**

PREPARED BY THE

TITLE 15 / BUSINESS ASSOCIATIONS COMMITTEE

OF THE

SECTION ON BUSINESS LAW

OF THE

PENNSYLVANIA BAR ASSOCIATION

To Accompany H.B. 2057 (P.N. 2364)

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**PENNSYLVANIA BAR ASSOCIATION**

**SECTION ON BUSINESS LAW**

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**Introductory Note**

The amendments to Titles 15 and 54 of the Pennsylvania Consolidated Statutes proposed by House Bill 2057 are shown in this document by underlining text to be added and **[bracketing text to be deleted]**.

The Committee Comments in this document are intended to form part of the legislative history of the sections of Title 15 being amended and to be citable as such under 1 Pa.C.S. § 1939.

This document does not identify the changes that have been made in the text of the Committee Comments. Instead, the Committee Comments in this document supersede the prior Committee Comments. For each section of Title 15 for which an amendment has been proposed, the Committee has taken the opportunity to review that section’s attendant Committee Comment generally and to revise it as appropriate. The Committee believes that the full updated Committee Comment should satisfy the test of 1 Pa.C.S. § 1939 because the changes in the Committee Comment that do not have a corresponding change in the statutory text are based on the assumption that the General Assembly should be deemed to have concluded that an amendment of the statutory text is unnecessary if the interpretation in the Committee Comment is correct.

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**TITLE 15**

**CORPORATIONS AND UNINCORPORATED ASSOCIATIONS**

**PART I**

**PRELIMINARY PROVISIONS**

**Chapter 1**

**General Provisions**

**Subchapter A**

**Preliminary Provisions**

**§ 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, or 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) any 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." **[Subject]** 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 section 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:

**[(1)]** (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

**[(2)]** (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 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) and an unsworn declaration subject to 42 Pa.C.S. Ch. 62 (relating to uniform unsworn declarations act).

(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.

**Amended Committee Comment (2021):**

The definitions in this section apply to all of Title 15. As the introductory paragraph to this section states, it is necessary to consider the context in which a defined term is used in Title 15.

**“Association.”** This is the generic term that encompasses all of the various types of organizations subject to Title 15. It includes the following types of organizations formed under Pennsylvania law whose internal affairs are largely governed by statutes outside of Title 15 because those organization are subject to this chapter and, in some instances portions of Chapters 2, 3, and 4:

* banks (*see* the Banking Code of 1965, 7 P.S. § 101, *et seq*.);
* credit unions (*see* Title 17); and
* fraternal benefit societies (*see* 40 P.S. § 991.2401, *et seq*.).

Subparagraph (2)(i) was added by the GAA Amendments Act of 1990 and makes clear that trusts subject to the jurisdiction of the orphans’ court are not subject to the provisions of Title 15. Thus, such trusts are not authorized to be a party to a transaction under Chapter 3. A related provision is found in 20 Pa.C.S. § 711(3), as amended by the General Association Act of 1988, which excludes from the definition of an inter vivos trust subject to the jurisdiction of the orphans’ court “a business trust, including a trust subject to 15 Pa.C.S. Ch. 95 (relating to business trusts); and . . . similar trusts or fiduciary relationships.” The Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-102(10)(B)(ii) excludes from the definition of an entity “a trust with a predominately donative purpose or a charitable trust.” Those types of trusts are included within the types of trusts excluded from the definition of “association,” but the definition also excludes other types of trusts that are within the jurisdiction of the Orphan’s Court. Paragraphs (2) through (4) were added in 2014 by the Association Transactions Act and were patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-102(10)(B).

The definition of “association” in this section was made generally applicable to all of Pennsylvania’s statutory law by an amendment to the general definitional section of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1991, which was made by the Limited Liability Company Act, act of December 7, 1994 (P.L. 703, No. 106). However, because the prior definition excluded from the concept of an association “a partnership or limited partnership,” the prior definition was continued with respect to statutes finally enacted before the date of enactment of the Limited Liability Company Act in order to avoid an unintended change in the law. For example, section 1633 of the Pennsylvania Election Code, 25 P.S. § 3253, prohibits political contributions by corporations or unincorporated associations; but since the prior definition of “association” in 1 Pa.C.S. § 1991 excluded partnerships, contributions from partnership funds were not prohibited. By continuing the prior definition of “association” in effect with respect to preexisting statutes, no change in the law was made; and, in the example given, political contributions from partnership funds continue to be permissible, although section 1633 was subsequently amended to prohibit contributions from partnership funds made from funds of a partner that is a corporation.

**“Business trust.”** Pennsylvania business trusts are included within the scope of Title 15 by Chapter 95, but 15 Pa.C.S. § 9501(c) provides that a Pennsylvania business trust will not be viewed as organized or incorporated by or under any statutory laws of this Commonwealth so as to subject it to any tax imposed on associations so organized or incorporated. The purpose of 15 Pa.C.S. § 9501(c) was to preserve the tax-exempt status of business trusts at the time that provision was first enacted in 1988. However, 15 Pa.C.S. § 9501(c) was subsequently repealed by Section 42(c) of Act 1994-48 to the extent that 15 Pa.C.S. § 9501(c) would affect any tax imposed under Articles III, IV and VI of the Tax Reform Code of 1971 for any taxable year beginning on or after January 1, 1995.

**“Charitable purposes.”** This definition was transferred in 2016 from 15 Pa.C.S. § 5103, where it was only applicable to nonprofit corporations, to section 102 so that it would apply to other forms of associations such as limited partnerships and limited liability companies which may be organized for a nonprofit purpose.

**“Conversion.”** The term “conversion” does not include a transaction in which an association changes the jurisdiction in which it is organized but does not change to a different type of entity; that type of transaction is referred to in Title 15 as a “domestication.” *See* the Committee Comment to section 102(c). A “conversion” also does not include a transaction in which an entity changes from one form of an entity to another form of the same entity, such as an election to be a statutory close corporation under 15 Pa.C.S. § 2305.

**“Electronic.”** This definition is patterned after the definition of the same term in Uniform Electronic Transactions Act § 2(5). While not all of the technologies listed are technically “electronic” in nature (e.g., optical fiber technology), the term was chosen in the Uniform Electronic Transactions Act as the most descriptive term available to describe current technologies. The term should be construed broadly to include developing technologies arguably within any aspect of the definition. But the use of electronic technology will not always be in “record form” as defined in section 102. An unrecorded telephone conversation between two people will involve electronic technology, but will not be in “record form” because the conversation will not later be “retrievable” as required by the definition of “record form.” A message on voicemail, however, will be in record form if the voicemail message is retrievable and capable of reproduction in perceivable form.

**“Entity.”** The term is limited to those forms of associations whose organic laws appear in Title 15. Thus, “entity” has a narrower scope than “association” as defined in section 102. It is important to observe the distinction between the terms “association” and “entity” because they affect the scope of Chapters 2, 3, and 4. The provisions of Chapters 5 and following apply only to domestic entities, but Chapters 2, 3, and 4 apply more broadly to foreign associations and in some instances to domestic entities.

The Model Entity Transactions Act (2007) (Last Amended 2013) includes in its definition of “entity” a broad catch-all provision clarifying that the term:

(A) includes:

\* \* \*

(x) any other person that has:

(I) a legal existence separate from any interest holder of that person; or

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

(B) does not include:

(i) an individual;

(ii) a trust with a predominantly donative purpose or a charitable trust;

(iii) an association or relationship that is not listed in paragraph (A) and is not a partnership under the rules stated in [Section 202(c) of the Uniform Partnership Act (1997) (Last Amended 2011)] [Section 7 of the Uniform Partnership Act (1914)] or a similar provision of the law of any other jurisdiction;

(iv) a decedent’s estate; or

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

Consistent with the limited scope of the term “entity” in Title 15, that clarification of the scope of the category of “entities” has been omitted from the definition of “entity” in section 102. But a similar provision has been included in the definition of “association.”

Inter vivos and testamentary trusts are excluded from the definition of “association” in section 102 and are not included in the definition of “entity.” Those types of trusts are thus not able to engage in transactions under Chapter 3. Trusts that carry on a business, however, such as a Massachusetts trust, real estate investment trust, Illinois land trust, Delaware statutory trust organized under 12 Del. Code Ch. 38, or other common law or statutory business trusts are “entities” and eligible to be parties to transactions under Chapter 3.

Limited liability partnerships and limited liability limited partnerships are “entities” because they are general partnerships and limited partnerships, respectively, that have made the additional required election claiming LLP or LLLP status. An LLP or LLLP is not, therefore, a separate type of entity from the underlying general or limited partnership that has elected LLP or LLLP status. Thus, for example, the election of a general partnership to become a limited liability partnership is not a conversion subject to 15 Pa.C.S. Subch. 3E. Similarly, electing partnerships are also “entities” because they are also general or limited partnerships, and the election of electing partnership status is not a conversion.

**“Filing entity.”** Whether an entity is a filing entity is determined by reference to whether its legal existence requires the filing of a document with the Department of State or a similar office in another jurisdiction. While the definition refers to the “formation” of an entity, it is intended to encompass corporations which are “incorporated” and limited liability companies which are “organized.”

The term does not include a limited liability partnership because an election filed by a general partnership claiming that status is not required to form the entity. A limited liability limited partnership, on the other hand, is a filing entity because the formation of the underlying limited partnership requires the filing of a certificate of limited partnership.

**“Foreign entity.”** The term “foreign entity” includes any non-domestic entity of any type. Where a foreign entity is a filing entity, the internal affairs of the entity will be governed by the laws of the jurisdiction of filing. The jurisdiction whose laws will govern the internal affairs of a nonfiling foreign entity will be determined by other factors. It is a factual question whether a general partnership whose internal affairs are governed by the Uniform Partnership Act (1914) (“UPA”) is a domestic or foreign partnership. A UPA partnership will likely be deemed to be a domestic entity where the greatest nexus of contacts are found. The domestic or foreign characterization of a partnership under the Uniform Partnership Act (1997) (Last Amended 2013) (“RUPA”) that has not registered as a limited liability partnership will be governed by RUPA § 106(a) (“the law of the jurisdiction in which a partnership has its chief executive office”), except that 15 Pa.C.S. § 8414 honors a choice of law provision in a partnership agreement if the choice of law is in record form.

**“Governance interest.”** A governance interest is typically only part of the interest that a person will hold in an unincorporated association and is usually coupled with a transferable interest (or economic rights). However, memberships in some unincorporated nonprofit associations consist solely of governance interests and in others may not include either governance interests or distributional interests. In some unincorporated business associations, there is a more limited right to transfer governance interests than there is to transfer distributional interests. An interest holder in such an unincorporated business association who transfers only a distributional interest and retains the governance interest will also retain the status of an interest holder.

Governors of an association have the kinds of rights listed in the definition of “governance interest” by reason of their position with the association. For a governor to have a “governance interest” requires that the governor also have those rights for a reason other than the governor’s status as such. A manager who is not a member in a limited liability company, for example, will not have a governance interest, but a manager who is a member will have a governance interest arising from the ownership of a membership interest.

**“Governor.”** This term has been chosen to provide a way of referring to a person who has the authority under an association’s organic law to make management decisions regarding the association that is different from any of the existing terms used in connection with particular types of associations. Depending on the type of association or its organic rules, the governors of an association may have the power to act on their own authority, or they may be organized as a board or similar group and only have the power to act collectively, and then only through a designated agent. A person having only the power to bind the association pursuant to the instruction of the governors is not a governor. Under the organic rules, particularly those of unincorporated associations, most or all of the management decisions may be reserved to the members or partners.

The term “other body” refers to a person or group, other than the board of directors or a committee thereof, that is vested with powers that otherwise would be exercised by the members, delegates, or board of directors of a corporation-not-for-profit. *See* 15 Pa.C.S. §§ 5103 (“other body”) and 5734.

Cooperative corporations are treated as either corporations for profit or corporations not-for-profit. *See* 15 Pa.C.S. § 7102. Thus paragraphs (1) and (2) of the definition of “governor” include directors of cooperative corporations.

**“Interest.”** In the usual case, the interest held by an interest holder in an unincorporated entity will include both a governance interest and a distributional interest (or economic rights). Members in unincorporated nonprofit associations generally do not have any transferable interest because they do not receive distributions, but they nonetheless may hold a governance interest in which case they would have the status of interest holders.

**“Interest holder.”** This chapter does not refer to “equity” interests or “equity” owners or holders because the term “equity” could be confusing in the case of a nonprofit entity whose members do not have an interest in the assets or results of operations of the entity but only have a right to vote on its internal affairs.

**“Interest exchange.”** An interest exchange was formerly known as a “share exchange” because that form of transaction was only available for business corporations. *See* former 15 Pa.C.S. § 1931. A transitional rule with respect to the use of the former term “share exchange” is provided in 15 Pa.C.S. § 341(e). The consideration that may be provided to the interest holders whose interests are being acquired in an exchange may consist in whole or part of interests in a third party that is not one of the two parties to the exchange itself.

**“Licensed person.”** This definition was added by the Limited Liability Company Act which patterned it after the definition of the same term formerly found in 15 Pa.C.S. § 2902. In general, a person who is licensed to practice a profession in a jurisdiction other than Pennsylvania is permitted to own an equity interest in a Pennsylvania professional practice. *See, e.g.*, the use of the term “licensed person” in 15 Pa.C.S. §§ 2923, 8105 and 9506(f). Being such an equity owner, however, does not exempt the person from the requirement of being licensed in Pennsylvania if he or she practices in Pennsylvania.

**“Merger.”** The term means a transaction in which two or more domestic entities or foreign associations are combined into a single entity pursuant to a filing with the Department of State or an office performing similar functions in another jurisdiction. The term “merger” includes the transaction formerly known under Pennsylvania law as a consolidation in which a new entity results from the combination of two or more pre-existing entities.

**“Obligation.”** This definition is an example of the breadth involved in the use of the term “includes” in Title 15 definitions. In addition to a secured or unsecured note or other form of indebtedness, the term also includes, for example, a secured or unsecured undertaking, guarantee, lease obligation, or duty to pay or perform.

**“Officially publish.”** To qualify as a newspaper for publishing corporate and other association notices, general circulation in a county is sufficient, whether or not the place of publication is in the county.

**“Private organic rules.”** The term private “organic rules” is intended to include all governing rules of an association that are binding on all of the holders of an interest in the association, whether or not those rules are in record form, except for the provisions of the association’s public organic document, if any. Thus the term includes oral partnership agreements and oral operating agreements among LLC members. Because the term includes all of the governing rules that are binding on the interest holders, it includes any amendment or restatement of those rules.

**“Profession.”** This definition was added by the GAA Amendments Act of 2001 which patterned it generally after the definition of the same term formerly found in 15 Pa.C.S. § 2902. Instead of defining professions with reference to the need to obtain authorization from the Supreme Court of Pennsylvania or the Department of State as this definition does, professions were described in the source provision as:

“. . . all personal services that prior to the enactment of the act of July 9, 1970 (P.L. 461, No. 160), known as the Professional Corporation Law, could not lawfully be rendered by means of a corporation. By way of example, and without limiting the generality of the foregoing, the term includes for the purposes of [Chapter 29] personal services rendered as an architect, chiropractor, dentist, funeral director, osteopath, podiatrist, physician, professional engineer, veterinarian, certified public accountant or surgeon and, except as otherwise prescribed by general rules, an attorney at law.”

The Committee decided that the quoted language was too indefinite and that the new definition would provide greater certainty.

**“Property.”** The term “property” is intended to have as broad a meaning as possible. The last clause of the definition confirms that it includes, among other things, contract rights and choses in action.

**“Public organic record.”** A “public organic record” is a document the filing of which as a public record is required to form, organize, incorporate, or otherwise create an association. The term does not include a statement of registration as a limited liability partnership filed under 15 Pa.C.S. § 8201 because that statement does not create a new association. Similarly, the term does not include a statement of authority filed under Subchapter 91B by an unincorporated nonprofit association or a statement appointing an agent filed under Subchapter 91B.

**“Receipt.”** This definition was added in 2014 by the Association Transactions Act which patterned it after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-102(40). *See* 15 Pa.C.S. § 112 with respect to what actual receipt means in the case of an electronic transmission. *See* 15 Pa.C.S. § 113 with respect to what constitutes delivery of a notice or other communication.

**“Recklessness.”** The definition of “recklessness” was added in 2021 and was patterned after the definition of the same term in the Crimes Code, 18 Pa.C.S. § 302(b)(3). Title 15 prohibits associations from exonerating persons from, or indemnifying them against, recklessness. *See, e.g*., 15 Pa.C.S. §§ 1713 and 1746 (business corporations), 8441 and 8447 (general partnerships), 8648 and 8649 (limited partnerships), and 8848, 8849.1, and 8849.2 (limited liability companies).

Following the approach in the Crimes Code, the definition of “recklessness” for purposes of Title 15 does not include a “reason to know” or “should have known” standard. Conscious disregard of risk and consideration of circumstances “known to” a person are necessary elements to establishing recklessness for purposes of Title 15. The definition of “recklessness” thus rejects the holding in *In re: Nine West LBO Securities Litigation,* Case No. 20-2941 (S.D.N.Y. Dec. 4, 2020) (interpreting the Pennsylvania Business Corporation Law), that directors may be found to have acted recklessly if they ignored facts they had reason to know. The Committee believes that the definition of recklessness is a confirmation of existing law and practice.

**“Record form.”** This definition was patterned after the definition of “record” in the Electronic Transactions Act, 73 P.S. § 2260.103. It was added by the GAA Amendments Act of 2013 to provide a way of referring generally to records of an association and other documents that includes both paper documents and also documents that are created or maintained in electronic form. In addition to paper documents, which are included in the reference to “inscribed on a tangible medium,” any other form of record or document is acceptable so long as it is in a form that permits its retrieval in a tangible and reasonably legible form. One important effect of the use of the term is to validate records and documents that are kept in a form other than on paper. Although a number of sections of Title 15 refer expressly to “written” documents or “written” provisions of agreements or other documents, 15 Pa.C.S. § 107(b) provides that those references will be satisfied by a document or provision in record form.

Title 15 does not include a separate definition of what constitutes a “record.” It is intended that the concept of a “record” will be applied expansively. 15 Pa.C.S. § 107(a) makes clear that “shareholder or membership records, books of account and minute books” are part of an association’s records. The term “record” also includes, without limitation, contracts, leases, proxies, and certifications.

**“Restricted professional services.”** A limited liability company that practices one of the professional services listed in this definition is treated differently in some respects than a limited liability company that practices some other profession. The unofficial citations for the definitions of the various types of restricted professional services are as follows:

“chiropractic” 63 P.S. § 625.102

“dentistry” 63 P.S. § 121 (“practice of dentistry”)

“medicine and surgery” 63 P.S. § 422.2

“optometry” 63 P.S. § 244.2 (“practice of optometry”)

“osteopathic medicine and surgery” 63 P.S. § 271.2

“podiatric medicine” 63 P.S. § 42.2

“public accounting” 63 P.S. § 9.2

“psychology” 63 P.S. § 1202 (“practice of psychology”)

“veterinary medicine” 63 P.S. § 485.3(9)

**“Sign.”** This definition was added by the GAA Amendments Act of 2013 and is the standard definition developed by the Uniform Law Commission for this concept. The definition is also intended to apply to other forms of the verb, such as “signed,” and noun forms, such as “signature.”

Title 15 has historically used the term “execute” to refer to the authentication of documents being filed with the Department of State. As opportunities arise, the Committee intends to propose substituting “sign” for “execute.” In the meantime, section 102 defines “execute” to be synonymous with “sign.”

**“Type.”** The term “type” is used to distinguish different legal forms of associations. It is sometimes difficult to decide whether one is dealing with a different form of association or a variation of the same form. For example, a limited partnership, although it has been defined as a partnership, is a different type of association from a general partnership, while a limited liability partnership is not a different type of association from a general partnership nor is a limited liability limited partnership a different type of association from a limited partnership. Similarly, nonstock corporations, statutory close corporations, registered corporations, management corporations, professional corporations, and insurance corporations are all forms of business corporations and are not a separate “type” of association from a business corporation.

**“Unincorporated nonprofit association.”** The definition of this term in 15 Pa.C.S. § 9112 includes both domestic and foreign unincorporated nonprofit associations.

**“Verified.”** In addition to a declaration given under oath, such as in a sworn statement, verification, certificate, or affidavit, a document in record form that complies with 18 Pa.C.S. § 4904 or 42 Pa.C.S. Ch. 62 is also treated as “verified” for purposes of Title 15.

Section 102(c). Section 102c) was added in 2021 to recognize the fact that other jurisdictions may authorize transactions substantially similar to those in Chapter 3, but may refer to them by different names. For example, Delaware permits a foreign corporation to become a domestic corporation in a transaction denominated a “conversion” in 8 Del. Code § 265.

**§ 107. Form of records.**

(a) General rule. – Information maintained **[by]** 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.

**Amended Committee Comment (2021):**

When this section was originally enacted in 1972 as former 15 Pa.C.S. § 111, it referred to records kept “in the form of punch cards, magnetic storage media, photographs, microphotographs or [on] any other information storage device if the records so kept can be converted into reasonably legible written form within a reasonable time.” The requirement that records be convertible into reasonably legible written form has been supplied by the definition of “record form” in 15 Pa.C.S. § 102. The listing of punch cards, magnetic storage media, etc. was intended to validate the use of information storage technologies that were considered the state of the art at the time. It is no longer necessary to refer to specific technologies in this section because the definition of “record form” will include any technology that meets the requirement of being retrievable in perceivable form.

Section 107(a) was amended in 2021 to add a reference to information “administered” by or on behalf of an association to make clear that section 107(a) accommodates the use of distributed ledger, or blockchain, technology. Section 107(a) was also amended in 2021 to add the reference to information maintained or administered in the regular course of an association’s “activities,” to reflect the fact that nonprofit associations are often thought of as conducting “activities” rather than “business.”

Section 107(b) is a transitional provision that makes the definition of “record form” generally applicable to all of Title 15. It is intended that as individual sections are amended with regard to other issues, use of the terms “written” or “writing” will be changed to “record form.”

Compare 42 Pa.C.S. § 6109, which is limited to pictorial reproductions which show any marginalia.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“record form”

**Subchapter B**

**Functions and Powers of Department of State**

**§ 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. — Whenever a decennial filing is required by Title 54 to be made in the department, the department shall, not earlier than the November 1 prior to the commencement of the decennial year wherever practicable, give notice by mail to the registrant or other party of the decennial filing requirement, which notice shall be accompanied by appropriate application blanks or forms. Failure by the department to give notice to any party, or failure by any party to receive notice, of a decennial filing requirement shall not relieve any party of the obligation to make the decennial filing.]**

**Amended Committee Comment (2021):**

Former section 132(d) required the department to give notice in November of the year before a decennial filing was due. Former section 132(d) was deleted in 2021 when the decennial filing system was eliminated.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“department”

The term “this title” used in this section is defined in 15 Pa.C.S. § 131 to include Titles 17 and 54.

**§ 136. Processing of documents by Department of State.**

(a) Filing of documents. – **[If]** 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.

**Amended Committee Comment (2021):**

The system in section 136 of delivering duplicate copies of papers to the department, with one copy immediately stamped and returned, has been applicable since 1973 to filings under the Nonprofit Corporation Law. It was extended to the rest of Title 15 in 1988. The prior practice under which the department routinely issued certificates of incorporation, merger, consolidation, amendment, etc. was eliminated in 1988.

Prior to its repeal by the GAA Amendments Act of 2013, former section 136(b)(2) provided for expedited processing of filings on request and payment of an additional fee. Expedited processing of filings is now available under 15 Pa.C.S. § 153(a)(15).

Section 136(c) was amended in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-203. Prior to the 2014 amendment, section 136(c) provided that documents were effective upon filing unless a specific document was authorized to include a delayed effective date or time by another provision of Title 15. A statutory provision authorizing a delayed effective date or time for a specific document is no longer necessary, and any document delivered to the department for filing may contain a delayed effective date or time. Provisions stating that a document may include a delayed effective date or time nonetheless have been retained in a number of sections of Title 15 as a reminder that a delayed effective date or time is permitted, but the absence of such a provision with respect to a specific document no longer means that the document may not include a delayed effective date or time.

Section 136(e) was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-201(b).

Section 136(f) was added in 2021 and gives the department authority to reject a document if the department reasonably believes the document should be rejected for one of the reasons described in section 136(f). If the department rejects a document under section 136(f), the rejection may be challenged in court under 15 Pa.C.S. § 137.

Rules on what constitutes delivery of documents to and by the department are set forth in 15 Pa.C.S. § 113(b) and (c).

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“department”

“record form”

The term “this title” used in this section is defined in 15 Pa.C.S. § 131 to include Titles 17 and 54.

**§ 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 or fails to make available a certified duplicate copy within the time provided by section 136(b) (relating to immediate certified copy):**

**(1) the original document or copies thereof;**

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

**(3) any other papers relating thereto;]**

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 **[in]** 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 **[in]** 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.

(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.

**Amended Committee Comment (2021):**

Section 137(a) is patterned after 23 Pa.C.S. § 1308, which is intended, among other things, to provide an expeditious procedure for obtaining judicial review of a marriage license application under the exigent circumstances of impending birth of issue of the proposed marriage. *Cf. H. and W. Application for Marriage License*, 5 Pa. D. & C. 2d 791 (O.C. Phila. Cty. 1956). Since corporate transactions frequently must be accomplished on an assured timetable which will not admit of delay for normal judicial review procedures, the marriage law summary review procedure was adopted as an appropriate model for judicial review of corporate filings, particularly in light of the very narrow basis remaining on which the Department of State could predicate a valid rejection of a tendered document. This procedure has been preserved by Pennsylvania Rule of Appellate Procedure 5102(b)(5).

References in this section to the “court” are to the Commonwealth Court, which is vested with jurisdiction of appeals from the Department of State, 42 Pa.C.S. § 761(a)(1), and not to the “court” as defined in 15 Pa.C.S. § 102.

The term “this title” used in this section is defined in 15 Pa.C.S. § 131 to include Titles 17 and 54. Section 137(c)(2), however, makes the procedures of this section inapplicable to the registration of a label or mark under Title 54.

**§ 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) **[The]** Either:

(i) the inaccuracy or defect to be corrected **[.]**; or

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

(4) **[The portion of the document requiring correction in corrected form or, if]** If the document was erroneously executed, a statement that the original document shall be deemed reexecuted or **[stricken from the records of the department]** not effective ab initio, as the case may be.

(b) Effect of filing.—

(1) The **[corrected document]** correction shall be effective:

(i) Upon filing **[in]** 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 **[the original public organic record of an association to be stricken from the records of the department, but]** 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 **[may be corrected under this section]** 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).

**Amended Committee Comment (2021):**

The purpose of section 138(b)(2) is to keep the procedure of this section from being used as an alternative to the dissolution process.

The cross reference to 15 Pa.C.S. § 135 in section 138(d) reflects a change in style by the Committee. Similar cross references will be added throughout Title 15 as the opportunity arises. In the meantime, no contrary implication is intended with respect to sections lacking that cross reference and 15 Pa.C.S. § 135 will continue to be applicable to all filings under Title 15.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“court”

“department”

“domestic association”

“foreign association”

“public organic record”

“record form”

The term “this title” used in this section is defined in 15 Pa.C.S. § 131 to include Titles 17 (relating to credit unions) and 54 (relating to names).

**§ 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 or a domestic or foreign nonfiling 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 or a domestic or foreign nonfiling 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 or domestic and foreign nonfiling 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.

**Amended Committee Comment (2021):**

**Section 139(b) and (c)(1) –** Section 139(b) and (c)(1) were added by the GAA Amendments Act of 2001 for the purpose of calling attention to the tax clearance procedure in judicial dissolution proceedings that was already the law. Section 139(b) is patterned after section 32 of the act of June 1, 1889 (P.L. 420, No. 332) (72 P.S. § 3323), which provides that:

No corporation, company, joint-stock association, association or limited partnership made taxable by this act, shall hereafter be dissolved by the decree of any court of common pleas, nor shall any judicial sale be valid or a distribution of the proceeds thereof be made, until all taxes due the commonwealth have been fully paid into the state treasury, and the certificate of the auditor general, state treasurer and attorney general to this effect filed in the proper court, with the proceedings for dissolution or sale.

Prior to the enactment of section 139(b) and (c)(1), there was confusion about the requirements for tax clearance certificates in connection with judicial dissolutions because of the express statements in 15 Pa.C.S. §§ 1989(b) and 5989(b) that tax clearance certificates were not required when articles of dissolution were filed by the clerk of a court of common pleas after an order was entered dissolving a business corporation or a nonprofit corporation. Because the requirement of section 32 of the 1889 Act that tax clearance certificates were to be filed with the court was not widely known, many people assumed that tax clearance certificates were not required at all in connection with judicial dissolutions. To call attention to the need to file tax clearance certificates with the court in connection with a judicial dissolution, the GAA Amendments Act of 2001 enacted section 139(b) and (c)(1), repealed the statements in 15 Pa.C.S. §§ 1989(b) and 5989(b) that tax clearance certificates were not required to be filed in the Department of State, and added cross references to section 139(b) in 15 Pa.C.S. §§ 1989 and 5989.

In the case of general partnerships, limited partnerships and limited liability companies, 15 Pa.C.S. §§ 8481(a)(5), 8681(a)(6), and 8871(a)(4), respectively, provide that a court may order dissolution of the association on application of a partner or a member under certain circumstances. However, unlike a judicial dissolution of a corporation or business trust, where the order dissolving the association comes at the end of the dissolution and winding up process, a judicial decree dissolving a limited partnership or limited liability company only commences the winding up process. Following an order dissolving a general partnership, limited partnership or limited liability company, the winding up process may or may not be conducted under judicial supervision pursuant to 15 Pa.C.S. §§ 8482(e), 8682(d), and 8872(e). Section 139(b)(2) provides that if a court supervises the winding up proceedings, the required tax clearance certificates are to be filed with the court. By implication, if the winding up is not supervised by the court, the general rule in section 139(a) will continue to apply to the dissolution of a limited partnership or a limited liability company and tax clearance certificates must be filed with the Department of State along with the dissolution filing.

Section 139(b)(2) expands on the rule in section 32 of the 1889 Act to the extent that section 139(b)(2) requires the submission of tax clearance certificates in connection with the judicial supervision of the distribution of the assets of a general partnership. Tax clearance certificates are not required, however, where the partners of a general partnership wind up its affairs without judicial supervision.

**Section 139(c)(2) through (6) –** Tax clearance certificates are not required in connection with the filing of a certificate of dissolution by a general partnership under 15 Pa.C.S. § 8482(b)(2)(i) or a limited liability company under 15 Pa.C.S. § 8872(b)(2)(i) because those filings are made after the entity has dissolved but before its winding up has been completed. When a certificate of termination is filed by a general partnership under 15 Pa.C.S. § 8482(b)(2)(vi) or a limited liability company under 15 Pa.C.S. § 8872(b)(2)(vi), tax clearance certificates are required because those filings mark the termination of the existence of the entity.

Tax clearance certificates are not required in connection with the filing of articles of dissolution under 15 P.C.S. §§ 1971 and 5971, or a certificate of termination under 15 Pa.C.S. §§ 8681.1 (limited partnerships) and 8878 (limited liability companies) because those documents are filed in situations where an entity is dissolved before it has commenced business and the filed document must state under the penalties of perjury that the entity has never transacted business or held assets other than money received in connection with its initial capitalization.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“business corporation”

“business trust”

“conversion”

“court”

“domestic association”

“domestication”

“electing partnership”

“general partnership”

“limited liability company”

“limited partnership”

“nonfiling association”

“nonprofit corporation”

“nonregistered foreign association”

“registered foreign association”

**§ 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 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. – During the first five years ending after (insert the effective date of this section), the department annually must deliver notice to each association required to file an annual report under this section of the annual report filing requirement. 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 takes effect on [insert the date that is one year after the effective date of the act).

**Committee Comment (2021):**

Section 146 was added in 2021 and was patterned after Uniform Business Organizations Code (2011) (Last Amended 2013), § 1-213. Section 146(a)(4) is derived from former 15 Pa.C.S. §§ 1110 and 5110.

If an entity or association fails to file an annual report, it will be subject to (i) administrative dissolution under Subchapter 3H if it is a domestic filing entity, (ii) administrative cancellation under Subchapter 3H of it is a domestic limited liability partnership or electing partnership; or (iii) administrative termination of its registration under 15 Pa.C.S. § 419 if it is a foreign association.

The rejection of an annual report by the department may be challenged in court in a summary proceeding under 15 Pa.C.S. § 137, but it will almost invariably be easier to correct and resubmit the annual report.

Section 146(e) provides an alternative way of changing the registered office of an entity or association instead of amending its public organic document or using another applicable procedure under Title 15, such as 15 Pa.C.S. §§ 413 (foreign associations), 1507 (business corporations), 5507 (nonprofit corporations), 8625 (limited partnerships), 8825 (limited liability companies), and 9504 (business trusts).

If an annual report is rejected under section 146(d), a corrected annual report may be resubmitted as provided in the regulations of the department. If an annual report is correct when filed, but the information in the report changes, section 146(f) provides a means to correct the information. The procedure in section 146(f) is optional, and no inference should be drawn from the failure of an association to correct information that was correct when an annual report was filed.

Pursuant to section 146(h), the requirement to file an annual report under section 146 is delayed until the first anniversary of the enactment of section 146. The purpose of that delay is to give the department time to develop the necessary procedures to administer the provisions of section 146, 15 Pa.C.S. Subch. 3H (administrative dissolution), and 15 Pa.C.S. § 419(a)(3) (termination of registration). After section 146 has taken effect, section 146(g) requires the department to give notice for the next five years of the annual report requirement to assist the public in becoming familiar with the new annual report requirement.

The filing fee for annual reports is set forth in 15 Pa.C.S. §153(a)(18).

The following terms used in this section are defined in 15 Pa.C.S. § 102.

“association”

“corporation for profit”

“corporation not-for-profit”

“department”

“domestic filing entity”

“electing partnership”

“entity”

“foreign association”

“governor”

“jurisdiction of formation”

“limited liability partnership”

“limited partnership”

“principal office”

“public organic record”

“registered foreign association”

**Subchapter C**

**Corporation Bureau and UCC Fees**

**§ 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 **[Corporation Bureau of the department]** 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).

**Amended Committee Comment (2021):**

The term “bureau” used in this section is defined in 15 Pa.C.S. § 102.

**§ 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 service of process 70

(ii) Resignation of appointed agent 40

(iii) Amendment or cancellation of statement appointing an agent 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) Any other 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 office by agent 5

(ii) Each statement or certificate of change of registered office 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 additional fee of 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 certain order 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 30

(iii) Annual report not delivered to the bureau electronically 50

(19) Reinstatement of domestic association:

(i) Application for reinstatement delivered to the bureau electronically 70

(ii) Application for reinstatement not delivered to the bureau electronically 80

(iii) Additional fee required by section 383(a)(4)(ii) (relating to reinstatement) for each annual report not previously paid 30

(20) Statement of validation:

(i) Statement of validation, any filing fee referred to in section 227(c) (relating to filings), plus 125

(ii) (Reserved).

(b) Daily listings. — The bureau may provide listings or copies **[or microfilm]**, 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 1, 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 the subsection shall apply to the equivalent county officials.

Amended Committee Comment (2021):

Section 153(a) describes the fees payable to the Department of State under section 153 as “nonrefundable” to make clear that if the department rejects a document delivered to it for filing the department will not return the fee paid. In effect, the fees payable to the department under section 153 are “processing” fees rather than “filing” fees because they are required in connection with the processing of a document without regard to whether the document is filed. The addition of the term “nonrefundable” by the GAA Amendments Act of 2013 was not intended to abrogate the bureau’s regulation at 19 Pa.Code § 11.12(d), which permits a limited time for resubmission of rejected documents without the payment of an additional fee in order to retain as the filing date the day the document was originally delivered to the department.

The fees specified in section 153(a)(15) for expedited processing of a filing are in addition to the basic fee prescribed in section 153 for the type of filing involved. Every time a filing is submitted with a request that it receive expedited processing, the appropriate fee under section 153(a)(15) will be payable as an extra charge for the expedited handling, even if a document is resubmitted within the time period permitted under 19 Pa.Code § 11.12(d). Thus, for example, if articles of incorporation are submitted under the three-hour expedited procedure, the initial filing fee will be $425. If the articles are rejected for filing and not timely resubmitted, the Department of State will keep the full $425. If the articles are timely resubmitted under the bureau’s regulation at 19 Pa. Code § 11.12(d) and again under the three-hour expedited procedure, they must be accompanied by payment of a $300 fee for the expedited processing but not the basic filing fee of $125.

Section 153(a)(18)(i) provides an exemption from the otherwise applicable filing fees for annual reports for nonprofit entities. If a limited partnership or limited liability company has a not for profit purpose, 15 Pa.C.S. §§ 8620(e)(1) and 8818(d)(1) require it to state that purpose in its certificate of limited partnership or certificate or organization. If such a statement has not been included in the relevant document, the entity will be subject to the normal filing fees for an annual report.

The term “ancillary transaction” used in this section is defined in 15 Pa.C.S. § 152.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“bureau”

“business trust”

“department”

“division”

“domestic corporation”

“electing partnership”

“foreign association”

“limited liability company”

“limited liability limited partnership”

“limited liability partnership

“limited partnership”

“merger”

“nonprofit corporation”

“registered foreign association”

“unincorporated nonprofit association”

**Chapter 2**

**Entities Generally**

**Subchapter A**

**Names**

**§ 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 **[or the name of an association registered at any time under 54 Pa.C.S. Ch. 5 (relating to corporate and other association names)])]**, unless the covered association **[or other 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. **[; or]**

(iv) **[had the registration of its name under 54 Pa.C.S. Ch. 5 terminated.]** (repealed)

(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) or 209 (relating to registration of name of nonregistered foreign 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.

**Amended Committee Comment (2021):**

Section 202 was added in 2014 by the Association Transactions Act. Section 202(a) through (e) is a generalization of former 15 Pa.C.S. § 1303. Section 202(f) is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-301(f).

The requirement in section 202(b) that a name be distinguishable on the records of the department is discussed in the Committee Comment to 15 Pa.C.S. § 135.

Under section 202(b)(1.1), during the period when an association is subject to administrative dissolution or cancellation under 15 Pa.C.S. Subch. 3H, the name of an association is not protected and may be appropriated by another association.

Chapter 3 of Title 54, which is referred to in section 202(b)(2), does not provide that the registration of a fictitious name blocks the appropriation of that name. *See* 54 Pa.C.S. §§ 311(a)(6) and 332.

Except as expressly provided in section 202(c)(1)(ii), use of the word “trust” in the name of an association is prohibited when it implies that an association is a trust company or bank and trust company. In general, use of “trust” other than in the phrase “trust company” will be permissible.

Section 202(c)(2)(ii) was found to be unconstitutional in *Kalman v. Cortes*, 723 F. Supp.2d 766 (E.D. Pa. 2010).

Section 202(f) permits a court to approve the use of a name even though it is not distinguishable from another name that already appears on the records of the department. The order of the court establishing the right of the association to use the name is to be delivered to the department “for filing” so that the publicly available records in the department will show the reason the association was allowed to use the name.

Rules on what constitutes delivery of documents to and by the department are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 201:

“covered association”

“proper name”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“cooperative corporation”

“credit union”

“department”

“division”

“domestic corporation for profit”

“domestic corporation not-for-profit”

“domestic insurance corporation”

“foreign corporation for profit”

“foreign corporation not-for-profit”

“jurisdiction of formation”

“merger”

“nonprofit corporation”

“property”

The term “court of competent jurisdiction” used in section 202(d) and the term “court having jurisdiction” used in section 202(e) are not intended to refer exclusively to the “court” as defined in 15 Pa.C.S. § 102.

The term “administrative department” used in section 202(e)(1) is not intended to refer exclusively to the “department” as defined in 15 Pa.C.S. § 102.

**§ 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 **[if the association]**:

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

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

(b) Adoption of new name on **[reactivation]** 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.

**Amended Committee Comment (2021):**

Section 207 was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1304.

The requirement in section 207(b) that a name be distinguishable upon the records of the department is discussed in the Committee Comment to 15 Pa.C.S. § 135.

The following terms used in this section are defined in 15 Pa.C.S. § 201:

“covered association”

“proper name”

The term “court having jurisdiction” used in section 207(c) is not intended to refer exclusively to the “court” as defined in 15 Pa.C.S. § 102.

The term “administrative department” used in section 207(c)(1) is not intended to refer exclusively to the “department” as defined in 15 Pa.C.S. § 102.

**§ 209. Registration of name of nonregistered foreign association.**

(a) General rule. – A nonregistered foreign association may register **[its name under 54 Pa.C.S. Ch. 5 (relating to corporate and other association names) if the name]** 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 **[a registration of its]** 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).

**Amended Committee Comment (2021):**

Section 209 was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 4131.

Rules on what constitutes delivery of documents to and by the department are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“department”

“foreign association”

“nonregistered foreign association”

“principal office”

“record form”

“registered foreign association”

“sign”

**Subchapter B**

**[(Reserved)]**

**Ratification of Defective Entity Actions**

Section

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.

**§ 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” means any 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.” Any 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 of the entity 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 any 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 or a plan of asset transfer pursuant to section 1932 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 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, means 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.

**Committee Comment (2021):**

Section 221 was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision) § 1.45. The Model Act provisions have been generalized to apply to all types of entities, including the Model Act provisions on overissuances of shares. Overissuances are less common in the case of entities that are not business corporations because those types of entities often issue interests based on percentages of ownership. Subchapter 2B will apply, however, in cases where an entity has created ownership interests denominated as “units,” “shares,” or some similar term, and has fixed a maximum number that may be issued.

The definitions of “entity action,” “defective entity action,” and “failure of authorization” are intentionally broad so as to permit ratification of any entity action purportedly taken that would have been within the powers granted to that form of entity under Title 15.

The term “defective entity action” includes an “overissue” of interests by a domestic entity and other defects in issuances that could cause interests to be treated as void. For purposes of determining which interests are overissued, only those interests issued in excess of the number of interests permitted to be issued are deemed overissued interests. If it cannot be determined from the records of the entity which interests were issued before others, all interests included in an issuance that is or results in an overissue are overissued interests.

Subchapter 2B permits ratification of an entity action where there has been a “failure of authorization.” In some cases, it will be clear that there was a failure of authorization, for example, where shares of a corporation are issued in excess of the authorized shares at the time. In other cases, the records of an entity may be less clear but there is some question as to the proper authorization of an entity action. Subchapter 2B provides a means in either situation to achieve certainty that the entity action is valid.

When Subchapter 2B refers to “this title” the reference is to the text of Title 15 as in effect at the time. Thus, for example, when 15 Pa.C.S. § 227 requires that a document be delivered to the department for filing following the ratification of a defective entity action when a filing is required by Title 15, a filing must be made only if required by the text of Title 15 in effect at the time. But section 221 defines “applicable rule” more broadly because the relevant law for purposes of Subchapter 2B may be a statute that has been supplied by current Title 15. For example, if there is a suspected failure of authorization of a merger by a business corporation in 1980, the question will be whether there was a failure of authorization under the 1933 BCL, as in effect in 1980, rather than Title 15 at the time the failure of authorization is an issue.

The “validation effective time” is the later of the time at which a defective entity action has been ratified by the entity or any required statement of validation becomes effective. Before the validation effective time can occur, the governors of the entity must always approve the ratification. If the interest holders of the entity are not required to approve the defective entity action, only ratification by the governors of the entity is required. If ratification by the interest holders is required, action by the governors approving the ratification is required first and then the governors must submit the ratification to the interest holders. *See* 15 Pa.C.S. § 223.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“business corporation”

“domestic entity”

“entity”

“governor”

“interest holder”

“organic law”

“organic rules”

“property”

**§ 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.

**Committee Comment (2021):**

Section 222 was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision) § 1.46(b).

Subchapter 2B provides a statutory ratification procedure for entity actions that may not have been properly authorized and interests that may have been otherwise improperly issued. The statutory ratification procedure is designed to supplement common law ratification. Entity actions ratified under Subchapter 2B remain subject to equitable review.

Examples of defective entity actions subject to ratification include the failure of an incorporator to validly appoint an initial board of directors, entity actions taken in the absence of authorization by the governors, or the failure to obtain the requisite interest holder approval of an entity action. The ratification procedure is intended to be available only where there is objective evidence that an entity action was defectively implemented. For example, Subchapter 2B permits ratification of interests previously issued but subsequently determined to have been issued improperly. It does not permit an entity to issue interests retroactively as of an earlier date, however, where there is no objective evidence that those interests had previously been issued. Objective evidence may include tax filings, resolutions, issuance of certificates, subscription or purchase agreements, entries in a ledger, or other correspondence indicating that interests were issued or intended to have been issued.

Subchapter 2B is not the exclusive means by which a defective entity action may be ratified. Thus, the general common law doctrine of ratification continues to be an effective mode of ratification. In addition, ratification under Subchapter 2B is distinct from correction of an already filed document under 15 Pa.C.S. § 138. An entity that chooses to ratify or validate a defective entity action in a manner other than Subchapter 2B does not bear any presumption that the defective entity action should have been ratified or validated under Subchapter 2B.

The following terms used in this section are defined in 15 Pa.C.S. 221:

“defective entity action”

“entity action”

**§ 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 of the entity 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.

**Committee Comment (2021):**

Section 223 was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision) § 1.47.

The governors that are required to approve a ratification under section 223(a) are the governors at the time the governors act to approve the ratification. The information required by section 223(a)(1) regarding the listing of putative interests may be satisfied by attaching a table, including a capitalization table, listing the putative interests. It may not always be possible to identify the exact date of a defective action. 15 Pa.C.S. § 221 permits the “date of the defective entity action” to be an approximate date if the exact date cannot be determined. Nonetheless, when ratification under this Subchapter 2B is effective, it will relate back to the actual date when the defective entity action was taken. *See* 15 Pa.C.S. § 226(b).

If a defective entity action only required approval by the interest holders and not the governors on the date of the defective entity action, the governors must still approve ratification before the question of ratification can be submitted to the interest holders under section 223(c).

Section 223(b) permits the ratification of the initial election of governors by the persons who are acting as the current governors, even though it may not be possible to confirm that the persons currently acting as the governors have been validly appointed or elected.

Section 223(c) requires action by interest holders if that is required by any provision of an applicable rule, the organic rules, a resolution of the governors or any plan or agreement to which the entity is a party either at the time of the of the action under this Subchapter 2B or at the time of the defective entity action. If interest holder approval has been obtained at some point, it does not need to be sought again. Thus, for example, if a corporation received shareholder approval of an amendment to its articles but, for some reason, failed to file the amendment with the department and subsequently took some action not permitted by the articles without the amendment, shareholder approval would not need to be sought again and it will be sufficient for the governors to act under section 223(a).

The following terms used in this section are defined in 15 Pa.C.S. 221:

“applicable rule”

“defective entity action”

“failure of authorization”

“governance agreement”

“plan”

“plan agreement”

“previous entity”

“putative interests”

“ratifying entity”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“entity”

“governor”

“interest holder”

“organic rules”

**§ 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 a notice 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) 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 overissue is also required.

**Committee Comment (2021):**

Section 224 was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision) § 1.48.

Section 224(e)(1) reverses the rule in the Model Act as it applies to certain shares of a registered corporation described in 15 Pa.C.S. § 2502(1) and provides that those shares are entitled to vote on the ratification action and are counted for quorum purposes even though they are putative interests. The Committee concluded that the rule in the Model Act would be unnecessarily difficult to administer in the case of those shares of a registered corporation and could inappropriately disenfranchise a large portion of the outstanding shares. Section 224(e)(2), however, retains the Model Act approach in all other cases. The terms used in section 224(e)(1)(ii) have specialized meanings that are found in Exchange Act § 3 [15 U.S.C. § 78c(23)(A)] (“clearing agency”); SEC “Proxy Plumbing” Release No. 34-62495 at pp. 16-17 (“fungible bulk”); and 13 Pa.C.S. § 8102(a) (“securities intermediary”).

For matters other than the election of governors, the quorum and voting requirements applicable to interest holder approval of ratification are the quorum and voting requirements applicable to the entity action being ratified at the time of ratification. For example, if the defective entity action being ratified is an amendment to the articles of a corporation, whether in connection with an overissue or otherwise, the vote required would be determined by 15 Pa.C.S. § 1914 (relating to adoption of amendments) at the time of the ratification action.

A vote ratifying the election of directors may be either for the entire slate of directors or for each individual director.

The following terms used in this section are defined in 15 Pa.C.S. 221:

“defective entity action”

“entity action”

“overissue”

“putative interests”

“valid interests”

“validation effective time”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“business corporation”

“entity”

“governor”

“interest”

“interest holder”

“organic rules”

“registered corporation”

**§ 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 section 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 the giving of the 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. – A notice given by a registered corporation under this section may be given by means of a publicly available filing with the United States Securities and Exchange Commission.

**Committee Comment (2021):**

Section 225 was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision) § 1.49.

Unlike under the Model Act, notice under section 225 is optional. A domestic entity that ratifies a defective entity action under this Subchapter 2B in a circumstance where notice is not required should consider giving notice under section 225 because the notice triggers the 120-day time limitation on claims under 15 Pa.C.S. § 228(c).

The following terms used in this section are defined in 15 Pa.C.S. 221:

“defective entity action”

“putative interests”

“ratifying entity”

“valid interests”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“domestic entity”

“governor”

“interest holder”

“registered corporation”

**§ 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.

**Committee Comment (2021):**

Section 226 was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision) § 1.50.

Section 226(a) does not distinguish between void and voidable actions. Instead it provides that any defective entity action that is ratified in accordance with 15 Pa.C.S. § 223 or validated under 15 Pa.C.S. § 224 shall not be void or voidable.

Ratification is effective as of the validation effective time and is not dependent on the expiration of the 120-day time limitation under 15 Pa.C.S. § 228(c) in which an action challenging the ratification must be brought. When ratification is effective, section 226(b) makes clear that the ratification relates back to the date when the defective entity action was taken. Section 226(b) does not use the term “date of defective entity action” because the definition of that term reflects the possibility that the entity only will be able to identify that date approximately. Notwithstanding the fact that the date of the defective entity action may be approximate, the substantive rule in section 226(b) is that ratification relates back to the actual date of which the defective entity action was taken, even if that date cannot be identified precisely.

Subchapter 2B does not contain a provision similar to 15 Pa.C.S. §§ 138(b)(1) and 146(f) which protect parties who have relied on provisions in documents on file with the department that are subsequently corrected. In the vast majority of cases, Subchapter 2B will be used to bring the records on file with the department or found in an entity’s records into conformance with what the actual practice of the entity has been. Thus, it will be unlikely that a party will have relied to its detriment on a defect that is inconsistent with the practice of the entity. In the rare instance where a party can prove it justifiably relied on a defective entity action, the courts will be able to construct a common law remedy.

The effect of section 226(b)(2) is to permit an overissue to be remedied by the adoption of an amendment to the organic rules or other appropriate entity action that has the effect of authorizing, designating or creating interests of a series or class, such that the putative interests that resulted in the overissue are deemed to be validly issued from the date of original issuance. It permits an entity to remedy an overissue even if it cannot specifically identify the putative interests. This provision enables a corporation, for example, to cure an overissue occurring when shares have been duly authorized but are issued before articles of amendment are filed.

The ratification of a defective entity action has the additional effect under section 226(b)(3) of ratifying entity actions that are defective solely as a result of the original defective entity action. For example, an overissue of shares by a corporation that results in subsequent director elections being invalid calls into question all actions by the invalidly elected board members. The ratification of the overissue, however, cures any subsequent defects.

The following terms used in this section are defined in 15 Pa.C.S. 221:

“defective entity action”

“entity action”

“failure of authorization”

“putative interests”

“validation effective time”

The following terms used in this section are defined in 15 Pa.C.S. 102:

“court”

“department”

“interest”

**§ 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 to 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.

**Committee Comment (2021):**

Section 227 was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision) § 1.51.

Section 227 requires that the statement of validation must have attached (i) any filing that is or would have been required under this title to effect the defective entity action (if no filing was previously made) or (ii) a corrected filing (if correction of a previous filing is required). If a filing was previously made and does not need to be corrected, the statement of validation must identify the previous filing. These requirements are intended to provide a clear public record of the actions relating to the ratification.

The following terms used in this section are defined in 15 Pa.C.S. 221:

“date of the defective entity action”

“defective entity action”

“failure of authorization”

“previous entity”

“putative interests”

“ratifying entity”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“department”

“entity”

“governor”

“interest holder”

**§ 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 entity 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:

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

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

(iii) 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.

**Committee Comment (2021):**

Section 228 was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision) § 1.52.

Like Model Act § 1.52 and 8 Del. Code § 205, section 228 authorizes judicial review of a defective entity action that has not been ratified under Subchapter 2B.

In determining the validity of a ratification or a defective entity action that has not been ratified, the court may consider any factors or considerations it deems proper under the circumstances. These may include whether the person originally taking the defective entity action believed that the action complied with applicable requirements, whether the entity has treated the defective entity action as a valid action, whether any person has acted in reliance on the public record that the defective entity action was valid, and whether any person will be or was harmed by the ratification of the defective entity action. *See* 8 Del. Code § 205(d) for a similar list of things that may be considered by the court.

The following terms used in this section are defined in 15 Pa.C.S. 221:

“defective entity action”

“previous entity”

“putative interests”

“ratifying entity”

“validation effective time”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“governor”

“interest”

“interest holder”

**§ 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 subsection (b) shall be suspended until the final resolution of the action, and, to the extent that relief is obtained, subsection (a) and subsection (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 subsections (c)(1) and (c)(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 (insert the effective date of this act):

(1) the operation of subsections (a) and (b) is suspended until (insert the first anniversary of the effective date of this act), 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 (insert the first anniversary of the effective date of this act);

(3) any action pending on (insert the effective date of this act), 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 (insert the effective date of this act) is not affected by this section; and

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

**Committee Comment (2021):**

Section 229 was added in 2021, and is not found in the provisions of the Model Business Corporation Act that were the source of the other provisions of Subchapter 2B.

Subject to the limited exceptions in section 229(f), section 229 operates as a statute of repose for defective entity actions, and for subsequent actions taken in reliance thereon or resulting therefrom. The basic rule is that after the passing of the earliest applicable period, the defective entity action and the related subsequent actions will be valid and not void or voidable on the grounds of a failure of authorization of the first defective entity action (other than overissues) or on the basis of there having been an overissue, unless an application described in section 229(d) has been initiated. To the extent that relief is obtained pursuant to an application described in section 229(d), the effect of section 229(a) and (b) will be limited.

The applicable periods provided in section 229(c) are separately available regardless of any non-satisfaction of any one of the periods. Thus, for example, if a defective entity action is taken by a registered corporation but no filing described in section 229(c)(1) occurs, section 229(c)(2) and (c)(3) remain available as potential applicable periods for the defective entity action taken by the corporation. As noted in the introductory portion of section 229(e), the fact that one or more of the time periods specified in section 229(c) has or has not expired will not affect the availability of relief under other provisions of Title 15 or other applicable law. Because, as is the case generally under 1 Pa.C.S. § 1902, the singular includes the plural, the commencement of an applicable period may occur upon the happening of the last of two or more events that collectively satisfy the requirements of one of the paragraphs in section 229(c).

The disclosures referred to in section 229(c)(1) and (c)(2)(ii) and (iii) refer to disclosure of the relevant action or existence of the putative interests, and need not include disclosure of its or their defective nature. The fact that the entity or other person making the disclosure asserts directly or indirectly that the action or the interests are valid should not render the disclosure insufficient to trigger the applicable period.

Section 229(d) is not intended to provide the substantive grounds for declaring or otherwise establishing that a defective entity action is void or, if voidable, whether it should be voided, or to suggest whether or when such relief is available, or to whom such relief is available. Section 229(d) also leaves it as a matter to be decided in connection with the award of relief whether any relief is to be available only for the person or persons seeking relief, for a class, or on a general basis for all purposes, subject to the applicable procedural law governing the forum providing the relief. *See also* 15 Pa.C.S. § 104 (relating to equitable remedies). Moreover, if the applicable limitations or laches period for obtaining relief under applicable law has expired, nothing in section 229(d) is intended to revive the ability to obtain such relief.

Section 229(e) preserves the possibility of obtaining relief relating to a defective entity action other than under Subchapter 2B if the relief is sought on a basis other than the reasons described in section 229(e)(1) through (3). For example, section 229(e) preserves possible relief under other provisions of Title 15, such as for breach of fiduciary duty. In addition, section 229(e) preserves the possibility of obtaining relief under law other than Title 15. For example, section 229 is not intended to preclude an action for breach of contract relating to or arising out of the formerly defective entity action or the taking of that action, or to preclude action challenging an entity action under any applicable voidable transaction law, even if the form of relief is described under that law as “voiding” the transfer, so long as the action under that other applicable law does not depend on a lack of entity authorization under Title 15.

Section 229(f) makes clear that the applicable periods in section 229(c) will function similarly to a statute of repose, so long as the requirements of section 229(c) are satisfied and none of the limited grounds set forth in section 229(f) is established. As section 229(e) makes clear, however, section 229 does not preclude the possibility of relief based on other grounds, including any relief available under other provisions of Title 15 or other applicable law predicated on any lack of disclosure, failure to notify, or concealment.

Section 229(g) addresses the difficulty of establishing, potentially years after an event, that action was taken in reliance on an earlier event or that disclosures that appear to have been made were in fact made. It does that by creating a presumption that 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. To rebut the presumption, there must be a showing of clear and convincing evidence demonstrating a lack of such reliance. For purposes of section 229(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.

Section 229(h) provides a method to allow an entity’s organic rules to be amended to reflect the validity of overissued interests, once they have become no longer subject to being declared void or voidable under section 229(a) or (b). The most prevalent use of section 229(h) will be by corporations that issued shares not validly available for issuance under their articles of incorporation, but section 229(h) can also be used by other forms of entities when there is a question whether interests were validly issued. Section 229(h)(1) is intended to apply in the case of an overissue described in paragraph (1)(i) or (2)(i) of the definition of “overissue” in 15 Pa.C.S. § 221, and section 229(h)(2) is intended to apply to cases described in paragraph (1)(ii) (2)(ii) of that definition.

In conjunction with, or as an alternative to, section 229(h)(1), a corporation may elect to restore shares owned by it to the status of authorized but unissued shares of the relevant class pursuant to 15 Pa.C.S. § 1552, so long as the total number of authorized shares of the class or series set forth in the articles is sufficient to cover the eventual number of issued shares (including formerly putative interests). The forms of amendment contemplated by section 229(h)(2) will depend on the particular circumstances that had caused a corporation to lack the authority to issue the shares in the first instance. For example, if the corporation had purported to issue a series of preferred shares described in a statement with respect to shares, but the terms of the shares exceeded a limitation on permitted terms of such shares in the main articles, the portion of the articles authorizing the creation and issuance of shares might be amended to include an authorization to create and issue shares set forth in the statement with respect to shares filed on the relevant date.

As provided in 15 Pa.C.S. § 1914(c)(vi), an amendment adopted pursuant to section 229(h) does not require action by the shareholders.

Section 229(i) makes clear that section 229 is intended to apply with retroactive effect to old defective entity actions, subject to an exception preserving relief pursuant to actions pending on the effective date of the section and subject to an opportunity to preserve other claims for relief under applicable law by initiating an action within a one-year period after the effective date of section 229. Section 229 is not intended to affect final judgements that have become non-appealable before the effective date of section 229.

The following terms used in this section are defined in 15 Pa.C.S. 221:

“date of the defective entity action”

“defective entity action”

“entity action”

“failure of authorization”

“overissue”

“putative interests”

“valid interests”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“business corporation”

“domestic entity”

“entity”

“governor”

“interest”

“interest holder”

“organic rules”

“public organic record”

“record form”

“registered corporation”

The term “court” in the catchline to section 229(d) is not a reference to the “court” as defined in 15 Pa.C.S. § 102 and, because the term “court” is not used in the text of section 229(d), the catchline is not a limitation on where judicial relief may be sought under section 229(d).

**Chapter 3**

**Entity Transactions**

**Subchapter A**

**Preliminary Provisions**

**§ 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.” A transaction authorized by Subchapter E (relating to conversion).]** (Repealed.)

“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.” A transaction authorized by Subchapter F (relating to division).]** (Repealed.)

“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.” A transaction authorized by Subchapter G (relating to domestication).]** (Repealed.)

**[“Interest exchange.” A transaction authorized by Subchapter D (relating to interest exchange).]** (Repealed.)

“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.” 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.]** (Repealed.)

“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 holder.”

“Interest exchange.”

“Merger.”

“Obligation.”

“Organic law.”

“Organic rules.”

“Private organic rules.”

“Property.”

“Public organic record.”

“Record form.”

“Registered foreign association.”

“Representative.”

“Sign.”

“Transfer.”

“Type.”

**Amended Committee Comment (2021):**

Section 312 was added in 2014 by the Association Transactions Act. Section 312(a) is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 102.

**“Acquired association.”** This definition recognizes that an interest exchange may involve only the acquisition of a particular “class” or “series” of interests in a domestic entity or foreign association. Because the interests of members in an unincorporated business organization often tend to be distinctive, it may be that each member’s interest will comprise a separate class or series.

**“Interest holder liability.”** This term is used to describe the liability of an interest holder, by virtue of being an interest holder, for liabilities of the association. The term includes only personal liability of an interest holder for a liability of the association imposed on the interest holder either by statute or by the organic rules to the extent authorized pursuant to the organic law. Liabilities that an interest holder incurs in any other fashion are not interest holder liabilities for purposes of this chapter. Thus, for example, if a state’s business corporation law makes shareholders personally liable for unpaid wages because of their status as shareholders, that liability would be an “interest holder liability.” If, on the other hand, a shareholder were to guarantee payment of an obligation of a corporation, that liability would not be an “interest holder liability” because it is a direct liability and not based on the status of being a shareholder. Similarly, the liability to return an improper distribution is not an interest holder liability because it is a direct liability of the interest holder.

**“Merging association.”** The term “merging association” refers to each domestic entity, domestic banking institution, and foreign association that is in existence immediately before a merger and is a party to the merger. It will include the surviving association if the surviving association exists before the merger becomes effective. It does not include an association that provides consideration to be received by interest holders if that association is not a party to the merger.

**“Protected agreement.”** The term “protected agreement” refers to protected governance agreements or evidences of indebtedness and related agreements binding on a domestic entity or foreign association immediately before the effectiveness of a plan that are unpaid or executory in whole or in part on the effective date of this chapter. Thus a revolving line of credit from a bank to a domestic entity or foreign association would constitute a protected agreement even if advances were not made until after the effective date of this chapter.

**“Protected governance agreement.”** The term “protected governance agreement” refers to the organic rules of a domestic entity or foreign association or agreements binding on those persons that are in effect on the effective date of this chapter.

**“Registered office.”** A domestic banking corporation is not required to maintain a registered office address in Pennsylvania, instead its articles of incorporation are required to state the location and post office address of its principal place of business. *See* 7 P.S. § 1004(b)((ii). The effect of the definition of “registered office” is that when this chapter requires a statement of merger or statement of conversion to state the registered office of a domestic banking corporation, the address that should be used is that of its principal place of business.

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

**[(a) Antitakeover provisions. –]** A transaction under this chapter to which a **[registered]** 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 any provision of Subchapter B of Chapter 17 (relating to fiduciary duty) unless , in addition to satisfying 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 corporation subject to]** the provision**[.**

**(b) Transitional provision. –**

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

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

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

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

**(i) is abandoned; or**

**(ii) takes effect.**

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

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.

**Amended Committee Comment (2021):**

Section 313 was added in 2014 by the Association Transactions Act and subsequently amended in 2021. Section 313 was derived from former 15 Pa.C.S. § 1924(b)(5) and is patterned in part after Model Entity Transactions Act (2007) (Last Amended 2013) § 103(c).

Section 313 protects the application of the fiduciary duty provisions in Chapter 17B and the antitakeover statutes in Chapter 25 from being affected by a transaction under this chapter by requiring that the transaction be approved in a manner that would be sufficient to approve changing the application of the fiduciary duty or antitakeover provision, if the corporation is to survive the transaction. If a transaction is approved in that manner, there is no policy reason to prohibit the application of the fiduciary duty or antitakeover provision from being varied by a transaction under this chapter. If the application of a provision cannot be varied by action of a corporation subject to it, then a transaction under this chapter in which the corporation survives will be permissible only if the provision continues to apply after the transaction or the transaction itself is permissible under the provision. Any limitations on the ability of a corporation to opt out of an antitakeover provision are also intended to be preserved. For example, the 18 month delay on opting out of 15 Pa.C.S. Subch. 25F imposed by 15 Pa.C.S. § 2551(b)(3) will also apply in a transaction under this chapter.

The last sentence of section 313(2) is intended to make clear that a transaction, such as a merger in which all shares of a registered corporation are converted into the right to receive cash, will not be affected by section 313 merely because it causes the corporation to cease to be a registered corporation as defined in the applicable provision of 15 Pa.C.S. § 2502. If the corporation will not survive the transaction, then section 313(1) requires only that the transaction receive whatever approvals, if any, are required under the relevant antitakeover provision, such as those in 15 Pa. C.S. § 2555. If the antitakeover provision does not impose any requirements applicable to a transaction in which the corporation does not survive, then section 313 is not intended to affect the ability of the corporation to implement the transaction

Section 313 also reflects a policy decision that action solely by the board of directors to effectuate a transaction as permitted by 15 Pa.C.S. § 321(d) should not affect the application to the corporation of the fiduciary duty and antitakeover provisions of the 1988 BCL. The Committee decided that rather than attempting to analyze and predict all of the ways that a transaction under this chapter could affect the application of 15 Pa.C.S. § 2538 or Subchapters 17B and 25E-J, it would be preferable to adopt simply a general statement of policy on the relationship between those provisions and this chapter.

As one example, 15 Pa.C.S. § 2543(b)(2)(i) provides that a person will not be a controlling person under Subchapter 25E (*i.e.*, a person over the 20% threshold) if it is necessary to take into account shares owned “continuously since January 1, 1983.” Because the effect of a transaction under this chapter may be to convert the shares of the constituent corporation into shares of a holding company (see 15 Pa.C.S. § 321(d)(4)), it could be argued that after such a transaction ownership of shares of the holding company would no longer satisfy the test of 15 Pa.C.S. § 2543(b)(2)(i). That is not intended and the effect of the requirement that a transaction “not impair any right” of a person will be that the holding period for the shares of the constituent corporation will tack to the holding period for the shares of the holding company.

While the provisions of Chapter 25 protected by section 313 are applicable only to registered corporations, the application of section 313 to Chapter 17B applies to all domestic business corporations.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“business corporation”

“registered corporation”

**§ 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 **[a particular subchapter]** this chapter or other law produces a result that could be accomplished in any other manner permitted by a different **[subchapter]** 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 **[any other subchapter or other law]** this chapter.

(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.

**Amended Committee Comment (2021):**

Section 315(a) was added in 2014 by the Association Transactions Act and is patterned in part after Model Entity Transactions Act (2007) (Last Amended 2013) § 106. Section 315(b) was added in 2016 and is patterned after 15 Pa.C.S. § 1907.

Section 315(a) protects a transaction that has the same end result as a second type of transaction, but is not accomplished under the provisions of Title 15 applicable to the second type of transaction, from being recharacterized as the second type of transaction. For example, a sale of assets and transfer of liabilities by two entities to a third entity followed by the liquidation of the two transferring entities does not need to be structured as a merger under Subchapter 3C and should not be recharacterized as a merger, even though the end result of the transaction is essentially the same as if the two entities had merged into the third entity.

Section 315(a) was amended in 2021 to make clear that it applies to both a contractual transaction as described in the preceding paragraph and also to a transaction under another provision of Title 15 or other law. For example, a reclassification of the shares of a corporation pursuant to an amendment of the articles under 15 Pa.C.S. Ch. 19 in which the shares are exchanged for different shares of the corporation should not be recharacterized as an interest exchange under 15 Pa.C.S. Subch. 3D.

Section 315(a) confirms that Pennsylvania law includes what is known under Delaware law as the doctrine of independent legal significance. As stated by the Supreme Court of Delaware in *Orzeck v. Englehart*, 195 A.2d 375, 377 (Del. 1963):

… action taken in accordance with different sections of [the Delaware General Corporation Law] are acts of independent legal significance even though the end result may be the same under different sections. The mere fact that the result of actions taken under one section may be the same as the result of action taken under another section does not require that the legality of the result must be tested by the requirement of the second section.

Section 315(a) also is intended to have the same meaning as 6 Del. Code § 18-1101(h) which provides with respect to limited liability companies:

Action validly taken pursuant to 1 provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy 1 or more requirements prescribed by such other provision.

*See also* 6 Del. Code § 17-1101(h) (same as to limited partnerships) and 12 Del. Code § 3825(c) (same as to statutory trusts).

*See* 15 Pa.C.S. § 1904 which provides a similar rule to section 315(a) with respect to business corporations and should be interpreted consistently with section 315(a).

Section 315(b) rejects, with respect to all fundamental transactions under Chapter 3 involving any type of association, the dictum in *Barter v. Diodoardo*, 771 A.2d 835, 840 (Pa. Super. 2001), that there must be a business purpose for a merger in order to sustain its legality under Pennsylvania law. It is intended that the rule on this subject established in *Weinberger v. UOP, Inc.*, 457 A.2d 701 (Del. 1983), will be applicable instead.

In *Weinberger*, the Supreme Court of Delaware rejected the requirement of an independent business purpose for a merger as that requirement had developed in its previous decisions in *Singer v. Magnavox Co.*, 380 A.2d 969 (Del. 1977), *Tanzer v. International General Industries, Inc.*, 379 A.2d 1121 (Del. 1977), and *Roland Int’l Corp. v. Najjar*, 407 A.2d 1032 (Del. 1979). The valuation standard articulated in *Weinberger* was previously incorporated into the definition of “fair value” in 15 Pa.C.S. § 1572. Section 315(b) confirms that the independent business purpose test rejected by *Weinberger* is also inapplicable in Pennsylvania.

To the extent that the decisions in *In re Jones & Laughlin Steel Corp.*, 412 A.2d 1099 (Pa. 1980), and *Dower v. Mosser Indus., Inc.*, 648 F.2d 183 (3d Cir. 1981), both of which were decided before *Weinberger*, are inconsistent with subsection (b), they may no longer be relied on.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“interests”

**§ 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).

**Amended Committee Comment (2021):**

This section was added in 2014 by the Association Transactions Act and was patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 110. Section 318(a)(1) was derived from 15 Pa.C.S. §§ 7302(b) and 7331. Sections 318(a)(2) and (b) were derived from former 15 Pa.C.S. § 5961(b)(1)(iii).

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“cooperative corporation”

“credit union”

“entity”

“fraternal benefit society”

“health maintenance organization”

“nonprofit corporation”

“type”

**Subchapter B**

**Approval of Entity Transactions**

**§ 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.

**[(f)]** (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 2541 (relating to application and effect of subchapter).

Section 2564(d) (relating to voting rights of shares acquired in a control-share acquisition).

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

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

**Amended Committee Comment (2021):**

1. *In general.*

Section 321 was added in 2014 by the Association Transactions Act. Section 321(a) is substantially a reenactment of former 15 Pa.C.S. § 1922(c). Section 321(b) is substantially a reenactment of 15 Pa.C.S. § 1923(a). Section 321(c) and (d) are substantially a reenactment of former 15 Pa.C.S. § 1924 (a) and (b). Section 321(e) is substantially a reenactment of former 15 Pa.C.S. § 1952(f). Section 321(f) is patterned after 8 Del. Code § 251(h) and Model Business Corporation Act (2016 Revision) § 11.04(j) and (k). Section 321(g) is derived from former 15 Pa.C.S. §§ 1923(b) and 1924(d).

Section 321(b) applies to any meeting “that will act on” a plan to make clear that section 321 applies not just to special meetings called for the express purpose of considering a transaction under Chapter 3, but also to a regularly scheduled annual meeting at which a transaction is to be considered.

The requirement in section 321(b) that a copy of 15 Pa.C.S. Subch. 15D regarding dissenters rights be supplied with the notice of a shareholder meeting does not apply to certain registered corporations. *See* 15 Pa.C.S. § 2512.

A majority of all votes cast on the adoption of a plan satisfies the statutory vote requirements of Chapter 3. In addition to the class vote requirements of 15 Pa.C.S. § 1914, a form of statutory class or group voting may arise under 15 Pa.C.S. § 329. The vote requirements of section 321(c) are modified for certain registered corporations. *See* 15 Pa.C.S. Subch. 25F.

The last sentence of section 321(c) is intended to make clear that the inclusion in management proxy material of a shareholder proposal recommending approval of a plan results only in an advisory vote unless or until the board has embraced the plan by approving it.

2. *Transactions not requiring a shareholder vote.*

Section 321(d)(1)(i) authorizes the board to effect a merger (including a merger where it is a nonsurviving corporation) without shareholder approval if the charter of the corporation and the terms of its previously outstanding shares are unaffected by the merger (except for changes in the articles that the board could effect on its own initiative under 15 Pa.C.S. § 1914) and the shareholders before the merger will be in control of the surviving entity.

The Delaware certificate of ownership and merger procedure is adopted in substance by section 321(d)(1)(ii) and (3) which eliminates the need for the adoption of a plan of merger, or execution of articles of merger, by certain subsidiaries, except that the required level of ownership by the parent in the subsidiary has been reduced from 90% to 80%.

Section 321(d)(4) authorizes the board of directors to effect a merger with a wholly owned indirect subsidiary which has the effect of converting the corporation into a subsidiary of a holding company, and converts the shares owned by the shareholders into shares of the holding company.

3. *Two-step transactions.*

Section 321(f) authorizes a two-step transaction involving the acquisition of a registered corporation to proceed without the shareholder vote that would otherwise be required if the transaction meets the requirements of section 321(f). The first step is an offer to the shareholders to tender their shares in response to which enough shareholders tender so that, upon consummation of the offer, the offering party (and any parent or wholly owned subsidiary) owns or has the right to acquire shares with sufficient voting power to satisfy the shareholder approval that would otherwise be required to approve the plan of merger or interest exchange pursuant to section 321. The second step is a merger or interest exchange providing the remaining shareholders the same consideration as was offered to their class or series in the first step offer. The shareholder action in selling in response to the offer provides the necessary consent for the transaction, in lieu of a shareholder vote, if the other conditions set forth in section 321(f) are met.

The requirements of section 321(f) are intended to ensure that shareholders are not disadvantaged by the absence of a vote, and that they receive the same protections that they would in a transaction approved by a shareholder vote. For example, section 321(a) requires that the board of directors make a recommendation that shareholders tender their shares into the offer. This ensures that there is a corporate action implicated by the offer, and that the same director duties will apply to the recommendation to tender into the offer as to conversion or exchange pursuant to a plan of merger or interest exchange. A two-step transaction under section 321(f) can be done only in the context of a friendly offer because the board of the target must approve the plan of merger and the tender offer.

Under 15 Pa.C.S. § 1731(a)(2)(i), any action that may be taken by the board of directors under section 321 that does not involve submission of a merger to the shareholders may be taken by a duly authorized committee of the board, subject to compliance by the committee with any procedure applicable to action by the full board.

Section 321 is not a comprehensive statement of the procedures that must be followed to approve a plan. The provisions of the Business Corporation Law and the organic rules of the business corporation will apply as appropriate with respect to issues not dealt with in section 321, such as how far in advance of a meeting notice must be given, quorum requirements for meetings, action by consent without a meeting, etc.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”

“acquiring association”

“converted association”

“dividing association”

“domesticated entity”

“merging association”

“new association”

“plan”

“resulting association”

“surviving association”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“business corporation”

“dissenters rights”

“division”

“interest”

“interest exchange”

“merger”

“obligation”

“organic rules”

“property”

“record form”

“registered corporation”

**Subchapter D**

**Interest Exchange**

**§ 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 **[in]** means an interest exchange:

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

(2) 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).

**Amended Committee Comment (2021):**

1. Section 341 was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 301.

2. An interest exchange is the same type of transaction as the share exchange previously provided for in former 15 Pa.C.S. § 1931*.* The effect of an interest exchange is that: (1) the separate existence of the acquired association is not affected; and (2) the acquiring association acquires all of the interests of one or more issued and outstanding classes or series of the acquired association. An interest exchange also allows an indirect acquisition through the use of consideration in the exchange that is not provided by the acquiring association (*e.g.,* consideration from another or related association). Neither share exchanges nor interest exchanges are universally recognized in either corporation or unincorporated entity laws. Where there is no existing statutory authority for an interest exchange, a triangular merger in which the acquiring association forms a new subsidiary and the acquired association is then merged into the new subsidiary can produce the same result. This subchapter allows the interest exchange to be accomplished directly in a single step, rather than indirectly through the triangular merger route.

The “classes or series” referenced in subsection (a) are commonly found in corporation law. Specific provisions authorizing classes and series are less common in unincorporated entity law.

Section 341(a) was amended in 2021 to add the references to “issued and outstanding” interests. The purpose of that amendment was to make clear that an issuance of interests by an association does not involve an interest exchange.

As is the case for other transactions authorized by 15 Pa.C.S. Ch.3, an interest exchange is subject to 15 Pa.C.S. § 315(a) and the policy that a transaction conducted under Chapter 3 should not be recharacterized as some other form of transaction under Chapter 3 or other law.

3. The acquiring association is not required to acquire all of the interests in the acquired association. For example, assume that an LLC with three classes of membership interests enters into an interest exchange with another association. The acquiring association need only acquire all of one or more classes of the LLC membership interests.

4. Section 341(b) allows a foreign association to be the acquired association in an interest exchange with a domestic entity if the interest exchange is authorized by the organic law of the foreign association. If a foreign association is the acquiring association in an interest exchange with a domestic entity, the foreign law is not required to authorize the interest exchange because the foreign association is simply providing the consideration for the transaction and the transaction does not affect the capital structure of the foreign association. The foreign law may be relevant to the transaction, however, if it applies to the payment of the consideration in the transaction. For example, if the foreign association is a business corporation and the foreign law includes the provision in section 6.21 of the Model Business Corporation Act that requires shareholder approval of the issuance of more than 20% of a corporation’s shares, the corporation will need to obtain shareholder approval if it is using more than 20% of its shares as the consideration in an interest exchange.

5. Section 341(c) provides a transitional rule applicable to protected agreements (defined in 15 Pa.C.S. § 312) when an interest exchange takes place. Because the concept of an interest exchange is new for associations other than business corporations, a person contracting with an association or loaning it money who drafted and negotiated special rights relating to the transaction before the enactment of this subchapter should not be charged with the consequences of not having dealt with the concept of an interest exchange in the context of those special rights. Section 341(c) accordingly provides a transitional rule that is intended to protect such special rights as to third parties. If, for example, a domestic entity is a party to a contract that provides that the domestic entity cannot participate in a merger without the consent of the other party to the contract, the requirement to obtain the consent of the other party will also apply to an interest exchange in which the domestic entity is the acquired entity. If the entity fails to obtain the consent, the result will be that the other party will have the same rights it would have had if the domestic entity were to participate in a merger without the required consent.

The transitional rule in section 341(c) ceases to make sense at such time as the provisions of the agreement giving rise to the special rights is first amended after July 1, 2015 (the effective date of Chapter 3) because after that time the provision may be amended to address expressly an interest exchange. The transitional rule will continue to apply, however, if just a provision other than the specific provisions giving rise to the special rights is amended.

6. Additional transitional rules are provided in section 341(e). Prior to the enactment of section 341 in 2014, only business corporations were authorized to participate in an interest exchange and the transaction was referred to as a “share exchange.” Because provisions of the articles or bylaws of some business corporations adopted before 15 Pa.C.S. Subch. 3D became effective may have referred to share exchanges, section 341(e)(1) provides that those references are now to be read as references to interest exchanges. Similarly, section 341(e)(2) provides that a reference to a share exchange in a statute enacted before 15 Pa.C.S. Subch. 3D became effective is to be read as a reference to an interest exchange. An example of such a provision is section 205(b) of Division II of the GAA Amendments Act of 1990, act of December 19, 1990 (P.L. 834, No. 198) (15 P.S. § 21205(b)). Similarly, the reference to a plan of exchange in section 205(a) of that act, 15 P.S. § 21205(a), should be read as a reference to a plan of interest exchange.

7. The following terms used in this section are defined in 15 Pa.C.S. § 312:

“acquired association”

“acquiring association”

“protected agreement”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“business corporation”

“domestic association”

“domestic entity”

“foreign association”

“health maintenance organization”

“hospital plan corporation”

“interest exchange”

“interests”

“jurisdiction of formation”

“merger”

“obligations”

“organic rules”

“professional health services organization”

“property”

**Subchapter E**

**Conversions**

**§ 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) If the converted association 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.]**

(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).

Amended Committee Comment (2021):

Section 355 was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 405. Section 355(b)(1)(iv) is patterned after 6 Del. Code § 18-214(c)(1).

The filing of a statement of conversion makes the transaction a matter of public record. The mandatory requirements for a statement of conversion are set forth in section 355(b) and are similar to the requirements for a statement of merger in 15 Pa.C.S. § 335.

A plan of conversion can be used as a substitute for the statement of conversion so long as the plan satisfies the requirements in section 355(e).

A conversion of a regulated entity may require approval of a government agency before it can become effective. *See* 15 Pa.C.S. § 103.

Rules on what constitutes delivery of documents to and by the Department of State are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“conversion”

“converted association”

“converting association”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“department”

“domestic association”

“domestic banking institution”

“domestic filing association”

“domestic filing entity”

“electing partnership”

“entity”

“foreign association”

“jurisdiction of formation”

“limited liability company”

“limited liability partnership”

“limited liability limited partnership”

“nonregistered foreign association”

“organic law”

“principal office”

“public organic record”

“registered foreign association”

“sign”

“type”

**Subchapter F**

**Division**

**§ 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. – **[If]** Except in the case of a plan of division adopted pursuant to 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.

**Amended Committee Comment (2021):**

Section 363 was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1952(c). Section 363(d) is derived in part from former 15 Pa.C.S. § 1952(g) and (h) and 8577(f) and (g).

Where a foreign association is the dividing association, section 363(b) defers to the laws of the foreign association’s jurisdiction of formation for the requirements for approval of the division by the foreign association. Those laws will include the organic law of the foreign association and other applicable laws, such as this chapter (or any applicable regulatory law) if it has been adopted in the foreign jurisdiction. The laws of the foreign jurisdiction will also control the application of any special approval requirements found in the organic rules of the foreign association.

Section 363(c) is limited to providing dissenters rights for shareholders of a domestic business corporation. Dissenters rights have not been available under Pennsylvania law for interest holders of other types of entities, and the Committee decided that the adoption of Chapter 3 should not change that long-standing approach. A substitute for dissenters rights, however, may be available under 15 Pa.C.S. § 8844(e), which provides that a member of a limited liability company may elect payment under that section in lieu of the consideration payable under the terms of a division.

Section 363(c) was amended in 2021 to eliminate the availability of dissenters rights in the case of a division approved under 15 Pa.C.S. § 364. A shareholder vote on a division is not required under section 364 because a division permitted by section 364 does not involve a substantive change in a shareholder’s ownership, and that same rationale supports not requiring dissenters rights in the case of such a transaction.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“dividing association”

“interest holder liability”

“resulting association”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“business corporation”

“dissenters rights”

“division”

“domestic entity”

“foreign association”

“general partnership”

“governor”

“interest holder”

“jurisdiction of formation”

“limited partnership”

“merger”

“obligations”

“organic rules”

“record form”

“unincorporated nonprofit association”

**§ 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 **[public organic record]** organic rules of the dividing association, except amendments **[which]** that may be made without the approval of the interest holders.

(2) Either:

(i) the dividing association survives the division and all the interests **[and other securities and obligations, if any, of all of]** 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 **[and other securities and obligations, if any, of]** 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 obligations]** of any of the new associations are distributed to any of the interest holders of the dividing limited partnership.

**Amended Committee Comment (2021):**

Section 364 was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1953(a). Former 15 Pa.C.S. § 1953(b) is supplied by 15 Pa.C.S. § 313.

Section 364 was amended in 2021 to delete the requirement that the obligations of all of the new associations must be owned by the dividing association. One of the things that may be allocated in a division is obligations of the dividing association. If section 364 were read to require that all obligations of the new associations must be owned by the dividing association after the division, that would negate some of the usefulness of section 364. What was intended by section 364 before the 2021 amendment was that obligations such as notes or warrants of the new associations must be owned by the dividing association, but not other types of obligations such as obligations to perform under a contract of the dividing association that are allocated to a new association.

The reference in section 364(b)(1) to one “class” is intended to refer to the substance of the interest rather than its label. For example, where a corporation has two series, one of which enjoys rights and preferences characteristic of a preferred stock, and the other of which is a residual security comparable to a common stock, the corporation has two “classes” of shares outstanding for the purposes of section 364(b)(1).

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“dividing association”

“new association”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“division”

“governors”

“interest”

“interest holder”

“jurisdiction of formation”

“limited partnership”

“organic rules”

**§ 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) **[It holds any]** Any property allocated to it **[as the successor to the dividing association, and not by transfer, whether directly or indirectly, or by operation of law.]** 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 resulting associations to which liabilities are allocated are liable for those liabilities as successors to the dividing association, and not by transfer, whether directly, indirectly or by operation of law.]** 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 **[in]** 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.

**Amended Committee Comment (2021):**

Section 367 was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1957.

Section 367 parallels analogous provisions in Subchapters 3C (merger), 3D (interest exchange), 3E (conversion), and 3G (domestication), except for provisions relating to the allocation of property and liabilities which reflect the unique nature of a division.

The term “transfer” is defined in 15 Pa.C.S. § 102 to include an assignment. Thus the statement in section 367(a)(4)(iii) that property vests in a division without transfer means that the allocation of property in a division does not involve an assignment of the property, including by operation of law.

Section 367(a) applies to divisions the holding in *Sante Fe Energy Resources, Inc. v. Manners*, 635 A.2d 648 (Pa. Super. 1993), that in a merger the assets of each merging association vest in the survivor and those assets are neither assigned nor transferred to the surviving association. This means, for example, that if a dividing association is a party to a contract that requires prior consent to its assignment or transfer, a resulting association to which the contract is allocated in the division will be bound by the contract and will be entitled to its benefits without the need to seek consent from the other party to the contract. If such a contract were also specifically to provide that consent is required before the contract will be binding on a successor to a party to the contract, the intention of section 367(a) is that the resulting association will nonetheless be a party to the contract; however in that situation the division will constitute a breach of the contract for which the dividing association (and thus the resulting association as well) may be liable.

The reference in section 367(a)(1)(iv) includes section 367 itself, so that any rights, privileges, immunities, or powers allocated exclusively to a new association as permitted by section 367(a)(3)(vii) would no longer be vested in the dividing association.

If interests in property are allocated to a resulting association as part of a division governed by this Subchapter 3F, title to those interests automatically passes to the resulting association, as between the dividing association and the resulting association. Section 367(f) reflects this concept and also makes it clear that the filing of the statement of division in the Department of State is not constructive notice of the change of record title (as opposed to legal title) to the resulting association, except in the case of a nonprofit corporation. Failure to file a confirmatory instrument in the land records containing appropriate legal descriptions of the property, however, has no impact on the validity and enforceability of the division as between the dividing and the resulting associations.

In most cases, the resulting association will want to file a confirmatory instrument at the time the division is effective in order to protect itself from being trumped by a bona fide purchaser who obtains the real property from the dividing association. There may be situations, however, where the dividing association does not have legal descriptions available for all of its real property at the time of the division and the plan of division will simply state that the dividing association is transferring to the dividing association all of its real estate, *e.g.*, “in the State of Arkansas” or “west of the Mississippi River.”

Similar questions relating to the rights of a bona fide purchaser in other areas, such as title to intellectual property that is protected by a filing in a federal office, may also arise. In those instances as well, confirmatory filings should be considered.

Section 367(j) was added in 2021 and broadens language formerly contained in 15 Pa.C.S. § 368(e). Section 367(j) provides that the limitations on distributions in the organic law of the dividing association do not apply to a division. That rule is an extension of established Pennsylvania policy under the definition of “distribution” in 15 Pa.C.S. § 1103 to apply in all divisions, and not only to those approved by interest holders.

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“dividing association”

“interest holder liability”

“new association”

“resulting association”

The term “acquired association” as used in section 367(f)(4) does not have the meaning provided in 15 Pa.C.S. § 312 because that definition only applies in the case of an interest exchange

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“department”

“dissenters rights”

“division”

“domestic entity”

“electing partnership”

“foreign association”

“governor”

“interest holder”

“interests”

“limited liability limited partnership”

“limited liability partnership”

“nonprofit corporation”

“obligation”

“organic law”

“organic rules”

“private organic rules”

“property”

“public organic record”

“record form”

“registered foreign association”

“transfer”

**§ 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 **[an allocation of property or liabilities]** the allocation of a liability in a division is **[ineffective or voidable pursuant to fraudulent transfer or similar law,]** 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, both of the following apply:

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

(2) The validity and effectiveness of the division are not affected **[thereby.]** 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 **[fraudulent transfer]** voidable transactions law. – In applying **[the law governing fraudulent transfers]** 12 Pa.C.S. Ch. 51 to a division pursuant to subsection (b):

(1) **[The law]** 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 **[law]** chapter.

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

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

(i) The association is treated as a debtor.

(ii) **[The liabilities]** Each liability allocated to the association **[are]** 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. – A direct or indirect allocation of property or liabilities in a division is not a distribution for purposes of the organic law of the dividing association or any of the resulting associations.]** (Repealed.)

(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.

**Amended Committee Comment (2021):**

Section 368 was added in 2014 by the Association Transactions Act and is a generalization of former 15 Pa.C.S. § 1957.

The purpose of section 368 is to set out in detail how liabilities of the dividing association are allocated in a division between the dividing and resulting associations and which of the associations are responsible for those liabilities. The basic rule is that a liability is the responsibility of the association to which it has been allocated, but the resulting associations are jointly and severally liable for any liabilities that are not specifically allocated. The resulting associations will also be jointly and severally liable for all of the liabilities of the dividing association where:

(1) the allocation of a liability of the dividing association is ineffective under the Pennsylvania Uniform Voidable Transactions Act (section 368(b)(1.1)); or

(2) the liability arises from a breach of an obligation of the dividing association caused by the occurrence of the division itself (section 368(c)).

The plan of division may allocate liabilities that may arise under section 368(b) or (c) as desired among the resulting associations, and the plan of division may also provide for contribution among the resulting associations if a liability is reallocated. Such provisions in a plan of division will not effect, however, any joint and several liability of the resulting associations to third parties and a third party may seek payment or performance from any or all of the resulting associations.

The 2021 amendment to section 368(b) makes clear that section 368(b) will impose joint and several liability only pursuant to an action in court that was timely filed under the requirements of 12 Pa.C.S. Ch. 51, and that section 368(b) is not intended to permit a challenge to an allocation of liabilities pursuant to a division to proceed if the time has expired for bringing the claim under that statute.

Prior to the 2021 amendment, section 368(b) provided that an allocation of “property” might be ineffective or voidable. That provision was eliminated as unnecessary and potentially confusing because section 368(d)(2)(iv) specifies how allocations of property affect the application of 12 Pa.C.S. Ch. 51.

With respect to a liability incurred after a division is effective, only the association that undertakes or incurs the liability is liable for that liability, absent an agreement to the contrary.

Section 368(d) specifies that 12 Pa.C.S. Ch. 51 is to be applied to a division as follows:

1. The relevant application of 12 Pa.C.S. Ch. 51 under section 368(d) is with respect to the resulting associations. Thus, section 368(d)(1) provides that the dividing association is part of the analysis only if it survives the division, and then only in its capacity as a resulting association.
2. Each resulting association that is in existence following a division is to be evaluated separately as a debtor (section 368(d)(2)(i)), and each liability allocated to the resulting association is considered as having been incurred by the resulting association (section 368(d)(2)(ii)).
3. One of the reasons under 12 Pa.C.S. Ch. 51 that an obligation incurred by a debtor is voidable is that the debtor incurred the obligation without receiving reasonable equivalent value and (i) the debtor was about to engage in a business for which the remaining assets of the debtor were unreasonably small in relation to the business; or (ii) the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor’s ability to pay as they became due. 12 Pa.C.S. § 5104(a)(2). Because section 3687(d)(2)(iii) provides that the obligations allocated to a resulting association are not received for reasonably equivalent value, the voidability of an allocation of a liability in a division will depend on whether the resulting association (A) will be engaging in business after the division with an unreasonably small amount of remaining assets, or (B) should reasonably believe it will incur debts beyond its ability to pay. Section 368(d)(2)(iv) makes clear that property allocated to the resulting association constitutes remaining assets for this purpose.

Where a dividing association has granted a security interest in after-acquired property, the effect of section 368(f) is that the resulting associations will have the status of “debtors” under UCC Article 9. See 15 Pa.C.S. § 367(g).

The following terms used in this section are defined in 15 Pa.C.S. § 312:

“division”

“dividing association”

“resulting association”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“court”

“obligation”

“property”

**Subchapter G**

**Domestication**

**§ 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 **[domestic]** 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).

**Amended Committee Comment (2021):**

This section was added in 2014 by the Association Transactions Act and is patterned after Model Entity Transactions Act (2007) (Last Amended 2013) § 501.

A domestication under this Subchapter 3G differs from a conversion under 15 Pa.C.S. Subch. 3E in that a domestication requires that the domesticating entity be the same type of entity as the domesticated entity. In a conversion, by contrast, the converting association changes its type. *Cf*. 15 Pa.C.S. § 102(c).

As with a conversion, all rights and privileges, debts and liabilities, and actions or proceedings of a domesticating entity vest unimpaired in the domesticated entity. A domestication is not a sale, transfer, assignment, or conveyance and does not give rise to a claim of reverter or impairment of title.

Subchapter 3G governs the legal effect of a foreign entity domesticating in Pennsylvania. On the other hand, the organic laws of the foreign jurisdiction, and not Subchapter 3G, will govern the legal effect of a domestication of a domestic entity in that jurisdiction. In the latter scenario, Subchapter 3G authorizes the domestication of the domestic entity in the foreign jurisdiction, but Subchapter 3G does not create a right in the domestic entity to be received in the foreign jurisdiction.

Where a foreign entity is domesticating in Pennsylvania, Subchapter 3G does not require that the transaction be authorized by the law of the foreign entity’s jurisdiction of formation. The foreign entity will be able to become a Pennsylvania domestic entity as provided in Subchapter 3G, but the status of the entity in the foreign jurisdiction will be controlled by that laws of that jurisdiction.

Under the former domestication provisions in the Business Corporation Law, a domesticating corporation was not required to surrender its foreign charter, thus permitting it to be incorporated in both the foreign jurisdiction and Pennsylvania at the same time. That policy of permitting dual incorporation is continued in Chapter 3G and generalized to apply to all types of entities. *See* 15 Pa.C.S. § 375(b)(8). 15 Pa.C.S. § 102 defines a “domestic association” as one whose internal affairs are governed by Pennsylvania law without specifying whether Pennsylvania law must be the sole governing law. An entity whose internal affairs are governed both by Pennsylvania law and also the law of another jurisdiction will, thus, be a domestic association for purposes of Title 15. If the internal affairs of an entity are governed by the laws of more than one jurisdiction at the same time, it will no longer be a “registered organization” under the Uniform Commercial Code. *See* 13 Pa.C.S. § 9102.

The term “domesticated entity” used in this section is defined in 15 Pa.C.S. § 312.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“domestic entity”

“domestication”

“foreign entity”

“type”

**Subchapter H**

**Administrative Dissolution or Cancellation**

Section

381. Grounds for administrative dissolution or cancellation.

382. Procedure and effect.

383. Reinstatement.

384. Judicial review of denial of reinstatement.

**§ 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 it is due.

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

**Committee Comment (2021):**

Section 381 was added in 2021 and was patterned after Uniform Business Organizations Code (2011) (Last Amended 2013), § 1-601.

Administrative dissolution or cancellation permits the Department of State to clear its records of “dead wood” and free up names. It also improves the quality of the information available in the records of the department and provides a more realistic picture of which companies are doing business in Pennsylvania.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“department”

“domestic filing entity”

“electing partnership”

“limited liability partnership”

**§ 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.

**Committee Comment (2021):**

Section 382 was added in 2021 and was patterned after Uniform Business Organizations Code (2011) (Last Amended 2013), § 1-602. Section 382(d)(2) was also patterned after 15 Pa.C.S. § 1978.

The failure to file an annual report will usually occur because of oversight or inadvertence and will be corrected promptly when brought to the entity's attention. Section 382(a) and (b) therefore provide a mandatory notice by the Department of State to each entity subject to action under section 382 and a 60-day grace period following the notice before the department takes formal action. The 60-day grace period provides an opportunity for the entity to file its delinquent report and thus avoid administrative dissolution or cancellation of its status as a limited liability partnership or electing partnership.

In most instances, the issue whether the entity is subject to action under section 382 will not be controverted. After action has been taken by the department, the entity may still petition for reinstatement under 15 Pa.C.S. § 383 and, if this is denied, it may appeal to the court under 15 Pa.C.S. § 384.

In the case of a limited liability partnership or electing partnership that is not also a limited partnership, the action by the department will not result in the dissolution of the entity but will cancel its statement of registration or statement of election. This will affect the liability shield applicable to its interest holders, and make its name available for others to use.

A limited partnership that is also a limited liability limited partnership or electing partnership must file an annual report as a filing entity and if such a limited partnership does not file an annual report as required by 15 Pa.C.S. § 381(a), it will be subject to administrative dissolution rather than cancellation of its statement of registration or statement of election.

Rules on what constitutes delivery of documents to and by the department are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“department”

“domestic filing entity”

“electing partnership”

“entity”

“general partnership”

“governor”

“limited liability partnership”

“limited partnership”

“organic law”

“principal office”

“type”

**§ 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).

**Committee Comment (2021):**

Section 383 was added in 2021 and was patterned after Uniform Business Organizations Code (2011) (Last Amended 2013), § 1-603.

Section 383 deals only with reinstatement following administrative dissolution and is separate from 15 Pa.C.S. § 8221 which deals with failure by a limited liability partnership or limited liability limited partnership to pay the required annual registration fee under that section. Those two provisions act independently of each other. Reinstatement under section 383 will not revive the liability shield for general partners under 15 Pa.C.S. § 8221 unless the entity’s delinquency under 15 Pa.C.S. § 8221 is cured; and similarly payment of delinquent annual registration fees under 15 Pa.C.S. § 8221 will not reinstate an entity that has been administratively dissolved under Subchapter 3H absent compliance with section 383.

Sections 383 (a)(1) and (c)(5) will apply if, before an entity is reinstated, another entity has taken the name of the entity seeking reinstatement. The entity that has taken the name may keep the name and the entity seeking reinstatement must choose a new name.

The filing fee that must be paid with an application for reinstatement includes the fee set forth in 15 Pa.C.S. § 153(a)(19)(i) or (ii), as well as the fee set forth in 15 Pa.C.S. § 153(a)(19)(iii) for each delinquent annual report that was not previously paid.

Rules on what constitutes delivery of documents to and by the department or other persons are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“department”

“domestic filing entity”

“electing partnership”

“entity”

“limited liability partnership”

“limited liability limited partnership”

“principal office”

“public organic record”

**§ 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) .

**Committee Comment (2021):**

Section 384 was added in 2021 and was patterned in part after Uniform Business Organizations Code (2011) (Last Amended 2013), § 1-604.

Because the grounds for action by the Department of State under 15 Pa.C.S. § 381 are limited and straight-forward, it is unlikely there will be a dispute about whether an entity has corrected the reasons for the action taken by the department under 15 Pa.C.S. § 382. But in the event an entity disagrees with a determination by the department to deny the entity’s application for reinstatement, section 384 creates a basis for the entity to seek judicial review of the denial of reinstatement.

If the Department of State fails to reinstate an entity within the time provided in 15 Pa.C.S. § 383(b)(1) and also does not deliver to the entity a notice that the application for reinstatement has been rejected, the department’s failure to reinstate the entity effectively constitutes a rejection of the application that may be challenged under 15 Pa.C.S. § 137.

Rules on what constitutes delivery of documents to and by the department are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“department”

“entity”

“record form”

**Chapter 4**

**Foreign Associations**

**Subchapter A**

**General Provisions**

**§ 402. Governing law.**

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

(1) The internal affairs of the association.

(2) **[The]** 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 **[a foreign]** 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.

**Amended Committee Comment (2021):**

Section 402 was added in 2014 by the Association Transactions Act. Section 402(a) through (c) is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-501. Section 402(d) through (f) is substantially a reenactment of former 15 Pa.C.S. § 4142. Section 402(g) was added in 2016. Section 402(h) and (i) were added in 2021.

Section 402(a) provides that the law of the jurisdiction of formation of a foreign association, rather than the law of Pennsylvania, governs both the internal affairs of the association and the liability of its interest holders and governors for the obligations of the association.

Unincorporated associations of certain types are authorized by the law of some states to create series. If series are properly created, a debt, obligation, or liability associated with the property of a particular series is enforceable only against property of that series, and not against the property of the trust generally or any other series thereof. Section 402(a)(3) respects that type of internal shield both in any form of unincorporated association that is authorized to create series and also in a protected cell of a corporation.

Section 402(b) and (c) together make clear that although a foreign association may not be denied registration simply because of a difference between the laws of its jurisdiction of formation and the laws of Pennsylvania, the foreign association may not engage in any activity or exercise any power in Pennsylvania that a domestic entity of the same type may not engage in or exercise. Thus section 402(c) puts a registered foreign association on the same, but no better, footing as a domestic association.

The effect of registration in Pennsylvania of a foreign association is, in effect, to domesticate the association under Pennsylvania law with respect to external matters (as opposed to internal affairs). Thus the association acquires the privileges of a domestic association vis a vis third parties, even in such an exceptional area as the acquisition of the power of eminent domain. *See, e.g. In re Warren Silica Co.*, 21 Pa.Dist. 367 (1911), *Lindsay v. Keystone State Tel. & Tel. Co.*, 9 Del.Co. 295 (1904), *In re Ohio Valley Gas Co.*, 6 Pa.Dist. 200 (1897), *Gralapp v. Mississippi Power Co.*, 194 So.2d 527 (Ala.1967), 29A C.J.S. Eminent Domain § 25 at pp. 242-43 (1965). And the association is subject to the burdens of domestic status, *e.g.* process may be served on it under 42 Pa.C.S. § 5301(a)(2)(i) with respect to any cause of action, including a cause of action not qualifying for service of process under 42 Pa.C.S. § 5322 or another similar long arm statute. Of course, this concept of equality can be superseded by express statutory provision, *e.g.*, in the area of state corporate taxation. Registration under Chapter 4 has no effect on the application of Pennsylvania law to the internal affairs of a foreign association. *But see* 15 Pa.C.S. §§ 4145 and 4146.

It is the intention of section 402 to equalize the rights of licensed foreign insurers to hold and invest in real estate and other property with the rights of nonlicensed foreign insurers, which for many years have had the same investment and property owning powers in Pennsylvania as business corporations generally. Section 402(e), in reverting to the law of insurance regulation, is not intended to make licensed foreign insurers subject to investment restrictions expressly applicable under Pennsylvania insurance regulatory law to domestic insurers.

Section 402(g) extends to all foreign associations the policy in 15 Pa.C.S. § 1510 that a domestic business corporation may not plead usury as a defense. 15 Pa.C.S. § 114 extends the same policy to domestic associations.

Section 402(i) makes clear that a nonregistered foreign association is subject generally to Pennsylvania law. Section 402(h) was previously the rule for corporations in former 15 Pa.C.S. §§ 4143(b) and 6163(b) and for limited partnerships in former 15 Pa.C.S. § 8587(e), but those provisions were inadvertently omitted when section 402 was first enacted in 2014. The substance of those provisions was restored in 2021 and generalized to apply to all foreign associations. Section 402(h) makes clear that with respect to liabilities arising under Pennsylvania law other than Title 15, section 402(a) does not provide governors and interest holders of foreign associations more favorable treatment than that imposed on governors and interest holders of domestic associations.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“domestic association”

“domestic entity”

“foreign association”

“governor”

“insurance corporation”

“interest holder”

“jurisdiction of formation”

“nonregistered foreign association”

“obligation”

“registered foreign association”

“type”

**§ 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, **[or]** 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) **[Owning, without more, property.]** (Repealed.)

(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.

**Amended Committee Comment (2021):**

Section 403 was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-505.

Section 403 does not attempt to formulate an inclusive definition of what constitutes doing business in Pennsylvania. Rather, the concept is defined in a negative fashion by section 403(a) and (b), which state that certain activities do not constitute doing business. In general terms, any conduct more regular, systematic, or extensive than that described in section 403(a) constitutes doing business and requires the foreign association to register to do business. Typical conduct requiring registration includes maintaining an office to conduct local intrastate business, selling personal property not in interstate commerce, entering into contracts relating to the local business or sales, and owning or using real estate for general purposes. But the passive owning of real estate for investment purposes does not constitute doing business. *See* section 403(a)(12). In addition, regular conduct under section 403(a)(7), (8) or (11) does not require registering to do business.

The test of “doing business” defined in a negative way in section 403(a) and (b) applies only to the question whether the association’s contacts with Pennsylvania are such that it must register under this chapter. It is not applicable to other questions such as whether the association is amenable to service of process or liable for state or local taxes. An association that has registered (or is required to register) will generally be subject to suit and state taxation, while an association that is subject to service of process or state taxation will not necessarily be required to register.

The list of activities set forth in section 403(a) is not exhaustive.

*1.*  *Engaging in Litigation*

A foreign association is not “doing business” solely because it resorts to the courts of Pennsylvania to recover an indebtedness, enforce an obligation, recover possession of personal property, obtain the appointment of a receiver, intervene in a pending proceeding, bring a petition to compel arbitration, file an appeal bond, or pursue appellate remedies. Similarly, a foreign association is not required to register merely because it files a complaint with a governmental agency or participates in an administrative proceeding within Pennsylvania.

*2.*  *Internal Affairs of the Corporation*

A foreign association does not “do business” within Pennsylvania under section 403 merely because some of its internal affairs occur within Pennsylvania. Thus, an association may hold meetings of its governors or interest holders in Pennsylvania without first registering. It also may maintain offices or agencies within Pennsylvania relating solely to the transfer, exchange, or registration of its interests without registering. Other activities relating to the internal affairs of the association that do not constitute doing business under section 403 include having officers or representatives who reside within or are physically present in Pennsylvania; while there, the officers or representatives may make executive decisions relating to the internal affairs of the association without imposing on the association the requirement that it register, if these activities are not so regular and systematic as to cause the residence to be viewed as a business office.

*3.*  *Sales through Independent Contractors*

Under section 403(a)(5), a foreign association does not need to register if it sells goods in Pennsylvania through independent contractors. These transactions are viewed as transactions by the independent contractors, not by the association itself even though the association sets some limits or ground rules for its contractors. If these controls are sufficiently pervasive, however, the association may be deemed to be selling for itself in intrastate commerce, and not through the independent contractors and therefore engaged in doing business in Pennsylvania.

*4.*  *Creating, Acquiring, or Collecting Debts*

Section 403(a)(7), (8), and (12) makes clear that foreign lenders (typically banks and nonregistered insurance companies) are not required to register even where they are regularly engaged in the business or making loans in Pennsylvania through resident offices and officers. Section 403(a)(12) was added in 2021 and was previously the rule in former 15 Pa.C.S. § 4143(a) which was inadvertently omitted when section 403 was first enacted in 2014.

*5.*  *Isolated Transactions*

The concept of “doing business” involves regular, repeated, and continuing business contacts of a local nature.

Former 15 Pa.C.S. § 4122(a)(10) included the limitation found in Section 15.01(b)(10) of the Model Business Corporation Act that an isolated transaction be completed within 30 days. The Committee decided to eliminate that requirement and follow the approach of the Uniform Business Organizations Code which does not require a foreign association to register simply because it engages in an isolated transaction that takes longer than 30 days to complete.

*6.*  *Interstate Transactions*

A foreign association is not “doing business” within the meaning of section 403 if it is transacting business in interstate commerce (section 403(a)(11)) or soliciting or obtaining orders that must be accepted outside Pennsylvania before they become contracts (section 403(a)(6)). An association need not register even if it also does work and performs acts within Pennsylvania incidental to the interstate business, *e.g.*, if it takes or enforces a security interest incidental to these transactions. Nor is it required to register merely because it sends traveling salesmen or solicitors into Pennsylvania so long as contracts are not made within Pennsylvania. Similarly, an office may be maintained by an association in Pennsylvania without registering if the office’s functions relate solely to interstate commerce.

Purchases of goods may of course be in interstate commerce as readily as sales. Thus, the purchase of personal property by a foreign association for shipment in interstate commerce out of Pennsylvania does not require the association to register.

*7. Disaster response*

Section 403(a)(13) was added in 2021 and is consistent with the Facilitating Business Rapid Response to State Declared Disaster Act promulgated by the American Legislative Exchange Council in 2013.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“foreign association”

“foreign filing association”

“governor”

“interest holder”

“limited liability partnership”

“obligation”

“property”

“transfer”

**Subchapter B**

**Registration**

§ 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.

Amended Committee Comment (2021):

Section 414 was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-506.

A foreign association must register under its proper name under the laws of its jurisdiction of formation if that name satisfies the requirements of 15 Pa.C.S. § 202. If the proper name is unavailable because it is not distinguishable on the records of the Department of State from a name already in use or reserved or registered, the association may use an alternate name.

Section 414(a)(2) permits a foreign association to do business in Pennsylvania under its proper name, even if the association has registered under an alternate name, if the association adds its jurisdiction of formation whenever it uses its proper name. For example, if the name of a Delaware corporation is “XYZ, Inc.” in its Delaware certificate of incorporation, and that name is not available in Pennsylvania, the corporation may register under the alternate name “XYZ-1, Inc.” if that name is available. After registering, the corporation will have three choices for the name under which it does business in Pennsylvania: (i) the alternate name “XYZ-1, Inc.”; (ii) “XYZ, Inc., Delaware”; or (iii) a fictitious name that the corporation registers under Title 54.

Section 414(d) was added in 2021 and parallels a similar change that was made to 54 Pa.C.S. § 332. Section 414(d) and 54 Pa.C.S. § 332 adopt the policy in 13 Pa.C.S. § 3401(b)(2) that a valid signature on a negotiable instrument includes one using a trade or assumed name. A registered foreign association may do business in Pennsylvania using one of the names described in section 414(a), and section 414(d) confirms that an action taken by a registered foreign association using one of those permitted names has the same force and effect as if the action had been taken in the proper name of the association.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“foreign association”

“foreign filing association”

“jurisdiction of formation”

“limited liability partnership”

“registered foreign association”

**§ 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 **[nonregistered]** 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 **[and the certificates required by section 139 (relating to tax clearance of certain fundamental transactions)]** to the department for filing. The statement shall **[be signed by the dissolved or converted association and]** 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).

**Amended Committee Comment (2021):**

Section 417 was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-509. Section 417(c) and (d) were added in 2021.

When a registered foreign association is a party to one of the transactions listed in section 417(a), there is no further reason for information about it to appear in the records of the department. Section 417 thus requires delivery of a statement of withdrawal for the purpose of removing the association from the rolls of active associations. Section 417(a)(1) applies when a registered foreign association is a nonsurviving party to a merger, regardless of whether the survivor is a registered foreign association or a nonregistered foreign association.

Rules on what constitutes delivery of documents to and by the department are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“department”

“division”

“domestication”

“foreign association”

“jurisdiction of formation”

“limited liability partnership”

“merger”

“nonfiling association”

“registered foreign association”

“sign”

“type”

**§ 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); **[or]**

(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 (insert the date that is the third anniversary of the effective date of the act).

**Amended Committee Comment (2021):**

Section 419 was added in 2014 by the Association Transactions Act and is patterned after Uniform Business Organizations Code (2011) (Last Amended 2013) § 1-511.

Section 419(a)(3) was added in 2021 in connection with the adoption of the requirement that associations file annual reports under 15 Pa.C.S. § 146. Unlike administrative dissolution under 15 Pa.C.S. Subch. 3H which may be cured after it has taken effect by reinstatement under 15 Pa.C.S. § 383, termination under section 419 may be avoided only by action before the termination has taken effect. Once termination of registration is effective as provided in section 419(c)(1), a foreign association must reregister under Subchapter 4B.

Rules on what constitutes delivery of documents to and by the department are set forth in 15 Pa.C.S. § 113.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“department”

“jurisdiction of formation”

“principal office”

“registered foreign association”

**Part II**

**Corporations**

**Subpart A**

**Corporations Generally**

**Chapter 5**

**Corporations**

**Subchapter B**

**Fiduciary Duty and Indemnification**

**§ 511. Application and effect of subchapter.**

(a) General rule. – This subchapter **[shall apply]** applies to and the terms “corporation” or “domestic corporation” in this subchapter **[shall mean a domestic corporation except]** mean:

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

(2) A **[nonprofit corporation as defined in section 5103 (relating to definitions).]** 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 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.

**Committee Comment (2021):**

Section 511(a) was amended in 2021 to make clear that Subchapter 5B applies only to banking institutions, credit unions, and fraternal benefit societies. Those types of corporation are defined in 15 Pa.C.S. § 102.

Subchapter 5B follows closely the provisions of 15 Pa.C.S. Subch. 17B, and the Committee Comments to 15 Pa.C.S. Subch. 17B are generally applicable to Subchapter 5B.

**§ 512. Standard of care [**and**] , 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 **[his duties as]** the duties of a director, including **[his]** duties as a member of any committee of the board upon which **[he]** the director may serve, in good faith, in a manner **[he]** the director reasonably believes to be in the best interests of the corporation and with such care, including **[reasonable inquiry,]** the skill and diligence**[, as]** 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 **[his]** the duties of a director, and in satisfying the requirements of subsection (d), a director **[shall be]** 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 **[he]** 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 **[shall not be]** is not considered to be acting in good faith **[if he has]** under subsection (a.1) if the director has actual knowledge concerning the matter **[in question that would cause his]** that causes the director to believe reliance **[to be]** 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.

**§ 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 **[his office]** 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.

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

**§ 514. [**Notation of dissent**] 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 **[his dissent]** the director’s dissent or abstention or vote against the matter is entered in the minutes of the meeting or unless **[he files his written dissent]** the director delivers to the secretary of the meeting before the adjournment thereof a dissent in record form to the action **[with the secretary of the meeting before the adjournment thereof]** or transmits the dissent **[in writing]** 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 **[his dissent]** the director’s dissent, abstention or vote against if, promptly upon receipt of a copy of such minutes, **[he]** the director notifies the secretary **[in writing]** of the corporation in record form of the asserted omission or inaccuracy.

**§ 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 **[and]** , 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. – **[Absent breach of fiduciary duty, lack of good faith or self-dealing, any act as the board of directors, a committee of the board or an individual director shall be presumed to be in the best interests of the corporation.]** 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 **[provisions]** 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**[, as defined in section 2552 (relating to definitions),]** 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 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).

**§ 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 **[and]** , justifiable reliance and business judgment rule).

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

(c) Cross reference. – See section 511(b) (relating to alternative provisions).

**§ 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 **[and]** , 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** **a shareholder or member, as such,]** 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.

**Subchapter B**

**Provisions Applicable to Particular Types of Corporations**

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

(a) General rule. – **[In any action brought to enforce a secondary right on the part of one or more shareholders or members against any officer or director or former officer or director of a banking institution, because the corporation refuses to enforce rights which may properly be asserted by it, the plaintiff or plaintiffs must aver and it must be made to appear that the plaintiff or each plaintiff was a shareholder or was a member of the corporation at the time of the transaction of which he complains or that his stock or membership devolved upon him by operation of law from a person who was a shareholder or member at that time.]** A banking institution shall be governed by the provisions of Subchapter F of Chapter 17 (relating to derivative actions).

(b) **[Security for costs. – In any such action instituted or maintained by a holder or holders of less than 5% of the outstanding shares of any class of the corporation or voting trust certificates therefor, or by a member or members of a corporation organized without capital stock which has outstanding contracts or accounts with its members if the value of the contracts or accounts held or owned by the member or members instituting or maintaining the suit is less than 5% of the value of all the contracts or accounts outstanding, the corporation in whose right the action is brought shall be entitled, at any stage of the proceedings, to require the plaintiff or plaintiffs to give security for the reasonable expenses, including attorneys’ fees, which may be incurred by the corporation in connection therewith or for which it may become liable pursuant to section 522 (relating to indemnification of authorized representatives) (but only insofar as relates to mandatory indemnification in actions by or in the right of the corporation) to which security the corporation shall have recourse in such amount as the court having jurisdiction shall determine upon the termination of the action. The amount of the security may, from time to time, be increased or decreased in the discretion of the court having jurisdiction of the action 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.]** (Repealed.)

(c) Definitions. – **[As used in this section,]** 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.

**§ 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.

**Subpart B**

**Business Corporations**

**Article A**

**Preliminary Provisions**

**Chapter 11**

**General Provisions**

**§ 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) A savings association.]**

(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.

**Amended Committee Comment (2021)**

In section 1102(a) the cross reference to 15 Pa.C.S. § 101(b) is intended to call attention to the fact that the 1988 BCL applies to corporations “heretofore or hereafter incorporated.”

Formerly, corporations incorporated for a purpose including the furnishing of railroad, water supply, natural or artificial gas or gas transportation, telegraph, electric or hydroelectric, petroleum or petroleum products transportation or telephone services were permitted to incorporate under either the 1933 BCL or statutes enacted in 1849, 1868, 1874 or 1885, as appropriate. These older statutes are now entirely supplied by the 1988 BCL.

Prior to enactment of the GAA Amendments Act of 1990, insurance corporations were excluded from the scope of the 1988 BCL. Those corporations are now subject to the 1988 BCL and, in particular, Chapter 31 which sets forth special rules for domestic insurance corporations.

Under 15 Pa.C.S. § 4101, federally-chartered financial institutions that do not have a place of business in Pennsylvania are treated as foreign business corporations. Subsection (c) of this section excludes only financial institutions that are incorporated under specified Pennsylvania statutes. Thus federally-chartered financial institutions are excluded from the scope of this subpart only by the language of subsection (a), which applies the subpart generally to corporations incorporated under Pennsylvania law.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“banking institution”

“business corporation”

“business development credit corporation”

“credit union”

“directors”

“domestic corporation for profit”

“except as otherwise provided” (*see* “unless otherwise provided”)

“officers”

“shareholder”

**§ 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 **[status of committee action]** 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 **[bylaw provisions in articles]** 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 **[exceptions]** 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 qualify 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."

“Registered corporation.”

"Representative."

**["Savings association" or "domestic savings association."]**

"Sign."

**Amended Committee Comment (2021):**

As the introductory paragraph to section 1103 states, it is necessary to consider the context in which a defined term is used in the 1988 BCL. Section 1103(b) was added by the GAA Amendments Act of 2013 which also transferred most of the listed definitions to 15 Pa.C.S. § 102 so that they would be more generally applicable.

**“Articles.”** Because the docketing statement required by 15 Pa.C.S. § 134 is not listed in this definition along with documents filed under 15 Pa.C.S. §§ 108 and 138, the docketing statement does not become part of the articles. The “articles” include any filing with respect to a corporation authorized by any provision of “this subpart” (*i.e*., the 1988 BCL) and thus the “articles” include, for example, a statement of change of registered office under 15 Pa.C.S. § 1507. The articles also include any statements filed under 15 Pa.C.S. Ch. 3 with respect to a transaction under that chapter (*i.e*., a merger, interest exchange, conversion, division, or domestication). A statement with respect to continuation of procedure filed under Section 107 of the General Association Act of 1988 (15 P.S. § 20107) is made part of the “articles” as defined in this section by Section 107(c) (15 P.S. § 20107(c)).

**“Board of directors.”** Under 15 Pa.C.S. § 1731(c), references in the 1988 BCL to the board of directors include committees of the board. Subject to the provisions of 15 Pa.C.S. § 1731(a) restricting the powers and authority of committees of the board, any action that may be taken by the full board may be taken by a duly authorized committee, subject to compliance by the committee with any procedure applicable to action by the full board.

**“Closely held corporation.”** The reference in this definition to shares “held jointly” is intended to include ownership as either joint tenants with right of survivorship or tenants by the entireties. *See* the Committee Comment to the definition of “statutory close corporation,” below.

**“Dissolve.”** The public policy underlying this definition is that the status of a corporation as validly existing may always be determined from the public record. Until the public record indicates that its corporate existence has been terminated (either by a provision in its articles limiting its period of existence or the filing of another document), a corporation is conclusively presumed to be validly existing. Although this definition provides that the existence of a corporation terminates upon the occurrence of any of the listed events, the existence of a corporation continues in a limited sense beyond that point for purposes of the enforcement of certain rights and claims under 15 Pa.C.S. § 1979.

**“Distribution.”** The term is intended to include all transfers by a corporation of money, indebtedness of the corporation or other property to a shareholder in respect of any shares of the corporation, except for those actions expressly excluded by this definition.

When used as a noun, the term is defined in this section in a restrictive sense for purposes of limitations on distributions. *See, e.g*., 15 Pa.C.S. § 1551. When used as a verb, however, the term is intended to be used in its broadest sense and includes a transaction involving the shares of the corporation. *See, e.g*., the usage in the definition of “reclassification” in this section. *See generally* the Committee Comment to 15 Pa.C.S. § 1551. *See* 15 Pa.C.S. § 7112 which exempts patronage rebates and similar payments by a cooperative corporation from treatment as a distribution.

The last sentence of this definition makes clear that an upstream guarantee will not be deemed a “distribution” for purposes of the 1988 BCL and, thus, among other things, will not be subject to the tests in 15 Pa.C.S. § 1551. This definition, however, is not intended to affect the status or treatment of upstream guaranties under laws other than the 1988 BCL, such as fraudulent transfer or voidable transaction statutes.

The last sentence also makes clear that a transfer of property or other action taken in connection with a fundamental change effected under 15 Pa.C.S. Ch. 3 or Subchapters 19B or 19C with the approval of the shareholders will not be deemed a “distribution.” As in the case of an upstream guarantee, this definition will not affect the application of laws other than the 1988 BCL to transactions effected under Chapter 3 or 19. The GAA Amendments Act of 2013 added the phrase “or allocation of assets or liabilities” in recognition of the fact that some transactions that affect the ownership of assets or responsibility for liabilities of a corporation do not involve a transfer of those assets or liabilities. *See* 15 Pa.C.S. § 367 and the related Committee Comment.

**“Entitled to vote.”** It is not intended that this term implicate procedural, as opposed to substantive, requirements. For example, a shareholder would ordinarily be “entitled to vote” at a meeting of shareholders even if not present in person or by proxy.

**“Fair value.”** A separate definition of this term applies to its usage in 15 Pa.C.S. Subch. 25E. *See* 15 Pa.C.S. § 2542.

**“Foreign registered corporation.”** There is no such defined term. The term “registered corporation” is defined in 15 Pa.C.S. § 2502 to be a subclass of the term domestic business corporation, and it was thought that to introduce the term “foreign registered corporation” would lead to the misapprehension that provisions applicable to “registered corporations” are applicable to “foreign registered corporations.” Instead the phrase “corporation described in section 4102(b)(1)” is used in the 1988 BCL to describe a foreign corporation that, if a domestic business corporation, would be a registered corporation.

**“Officer.”** The definition of “officer” was amended in 2021 to make explicit that an assistant officer is an “officer” for all purposes of Subpart B. That change was intended to be a codification of existing law and practice.

**“Public utility corporation.”** The provision of paragraph (2) is intended to accommodate existing and potential deregulation. For example, if the Federal Communications Commission deregulates interexchange service, facilities for such service would still be entitled to the benefits of 15 Pa.C.S. § 1511.

**“Qualified shareholder.”** This term was defined in Section 107(f) of the General Association Act of 1988 (15 P.S. § 20107(f)) for purposes of that section, and has been omitted from this section in view of its transitional nature.

**“Reclassification.”** This definition was intended as a codification of existing law at the time of its enactment in 1988.

**“Registered office.”** Under 15 Pa.C.S. § 135(c)(1), only an actual street address or rural route box number, and not a post office box number, is acceptable as a registered office address. Whenever a registered office is required to be stated in a filing, 15 Pa.C.S. § 135(c)(2) also requires the filing to state the county in which the registered office is located.

**“Share register.”** The definition of “share register” was added in 2021 and was patterned after 8 Del. Code § 219(c). Because the definition permits the share register to be “administered by or on behalf” of a corporation, the share register may be maintained using distributed ledger, or blockchain, technology.

**“Shareholder.”** In contrast to the prior law, the term as used in the 1988 BCL includes a subscriber to shares. Under 15 Pa.C.S. § 1524(d), a subscriber automatically has all the voting and other rights of the shares for which he or she subscribes unless a subscription agreement defers such rights to a later date, for instance, until the shares are issued and paid for. The status of “shareholder” is generally limited to record owners, *but see* the definition of “shareholder” in 15 Pa.C.S. § 1572. *See* 15 Pa.C.S. § 1763(c) for a procedure under which beneficial owners may be treated as record owners.

**“Shares.”** A separate definition of this term applies to its usage in 15 Pa.C.S. Subch. 25F. *See* 15 Pa.C.S. § 2552.

**“Statutory close corporation.”** In order to reduce the confusion between closely held corporations and corporations that formally elect “close corporation” status under the corporation law, the term “statutory close corporation” has been introduced to identify the latter class of corporations. All statutory close corporations are “closely held corporations” within the meaning of the latter term, regardless of their number of shareholders, but not all “closely held corporations” are statutory close corporations.

**“Voting”** or **“casting a vote.”** Normally in the 1988 BCL, only those persons who indicate an affirmative or negative decision on a matter are treated as voting, so that abstention or a mere absence or failure to vote is not equivalent to a negative decision. This concept is intended to be generally applicable, including cases where the terms “voting” or “casting a vote” do not specifically appear.

**§ 1110. Annual report information. (Repealed.)**

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

**Article B**

**Domestic Business Corporations Generally**

**Chapter 13**

**Incorporation**

**Subchapter A**

**Incorporation Generally**

**§ 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 **[and address, including street and number, if any,]** 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, 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.]** 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.

**Amended Committee Comment (2021):**

New corporations are deemed to have all-purpose charters unless otherwise restricted by the terms of the articles. *See* 15 Pa.C.S. § 1301. Section 204A(3) of the 1933 Business Corporation Law expressly authorized the articles to contain a purpose clause consisting of or including a statement that “the corporation shall have unlimited power to engage in and to do any lawful business for which corporations may be incorporated” under the 1933 BCL. It is intended that such a statement may be included in the articles of a 1988 BCL corporation under section 1306(a)(8)(ii).

The only required reference to stock in original articles of incorporation is the maximum number of shares authorized to be issued (without designation or division between common stock, serial preferred stock, etc., and without statement as to par or no par status). All other terms may be added by statements filed pursuant to action by the board of directors if the board is authorized by the articles to fix those terms. It is intended that the articles may contain a statement that:

The board of directors shall have the full authority permitted by law to divide the authorized and unissued shares into classes or series, or both, and to determine for any such class or series its designation and the number of shares of the class or series and the voting rights, preferences, limitations and special rights, if any, of the shares of the class or series.

The duration of a corporation is perpetual in the absence of a provision in the articles setting forth a limited term, and the board of directors is authorized to amend the articles without shareholder action to provide for perpetual existence. *See* 15 Pa.C.S. § 1914(c)(2).

For rules on when articles of incorporation containing a delayed effective date will be effective, *see* 15 Pa.C.S. 136(c).

The elimination of any required statement as to par value or stated capital is not intended to make those concepts illegal. Corporations may continue to use those concepts, and the provisions of the 1988 BCL will not affect the presentation of such concepts in a corporation’s financial statements for purposes of financial reporting. The last sentence of 15 Pa.C.S. § 1551(a) makes clear that the test of the legality of distributions in 15 Pa.C.S. § 1551 applies without reference to what the articles of a corporation provide as to par value and stated capital.

*See* 15 Pa.C.S. §§ 329 and 1906 and the Committee Comments thereto regarding the implementation of “black hat-white hat” provisions in an amendment of the articles or a plan. Although they would not constitute “special treatment” as defined in 15 Pa.C.S. § 1103, it is intended that similar provisions may be included in articles of incorporation under section 1306(a)(8)(i). Such a provision, for example, might provide for disparate rights of redemption based upon the identities or permissible specified characteristics of the shareholders.

Section 1306(a)(8)(ii) is intended to be applied broadly and to provide the shareholders with the greatest possible latitude in regulating the internal affairs of their corporation. It is specifically intended that section 1306(a)(8)(ii) will be more flexible than the analogous provision of Delaware law which limits the inclusion of provisions in a Delaware certificate of incorporation to those that “are not contrary to the laws of this State.” Delaware GCL § 102(b)(1).

Section 1306(b) is intended as a “safe harbor” provision to make clear that the articles of a Pennsylvania corporation may include provisions that vary or are inconsistent with the otherwise applicable rule under Chapters 3 and 13 through 19. The effect is the same as if each provision of those chapters were introduced by the phrase: “Unless otherwise provided in the articles, . . .” As an historical matter, and for purposes of continuity of language and usage, the Committee chose to continue or insert in a limited number of sections an express reference to an alternative provision in the articles. However, that usage is not intended to undermine the general principle of section 1306(a)(8)(ii) described above.

In the following instances, however, the articles are prohibited from superseding a provision of Chapters 13 through 19:

§ 1508

§ 1512(c)

§ 1527(c)

§ 1528(g)

§ 1553

§ 1554

Subchapter 15D (*see* § 1571(f))

Subchapter 17A (*see* § 1701(b))

Subchapter 17B (*see* § 1718)

§ 1726(a)

§ 1746

§ 1766(c)

§ 1767

The effect of limiting the rule of section 1306(b) to Chapters 3 and 13 through 19 is to exclude article provisions varying the rules of Chapters 21 through 31 from the safe harbor. The Committee concluded that it would not be appropriate to authorize the articles to vary the provisions of Chapters 21 through 31 generally because those chapters are more regulatory in nature than Chapters 3 and 13 through 19. It is not intended, however, that the Delaware rule on the contents of the articles will apply to all the provisions of Chapter 21 through 31, and section 1306(a)(8)(ii) refers specifically to “this subpart” (which encompasses Chapters 21 through 31). For example, there should be nothing objectionable about an articles provision that waives the application of 15 Pa.C.S. § 2324 to a statutory close corporation. *See also* 15 Pa.C.S. §§ 2501(c) and 2701(c).

Section 1306(b)(1) also makes clear that the question of how the articles of incorporation may vary the provisions of Chapters 3 and 13 through 19 is separate from the question of how an agreement between or among shareholders may vary the provisions of those chapters. The validity of a shareholders agreement that varies those chapters should be judged by principles of contract law without any implication that a restriction in Title 15 on what may or may not be varied in the articles also restricts what private parties may agree to by contract.

Section 1306(e) was added by the GAA Amendments Act of 2013. It permits the articles of incorporation to be made dependent on extrinsic facts in the same way as plans adopted under Chapter 3. *See* 15 Pa.C.S. § 316(c). Section 102(d) of the Delaware General Corporation Law similarly permits the certificate of incorporation of a Delaware corporation to be made dependent on extrinsic facts.

Under 15 Pa.C.S. § 1504(c), where any provision of the 1988 BCL permits a rule to be set forth in the bylaws, including a bylaw adopted by the shareholders, a rule on the same subject may be set forth in the articles.

Under 15 Pa.C.S. § 135(c)(1), only an actual street address or rural route box number, and not a post office box number, is acceptable as a registered office address. Articles filed after the effective date of 15 Pa.C.S. § 135(c)(2) must also state the county in which the registered office is located.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“authorized shares”

“board of directors”

“business corporation”

“bylaws”

“directors”

“incorporator”

“issue”

“officer”

“preference”

“registered office”

“relax”

“shareholders”

“shares”

**Chapter 15**

**Corporate Powers, Duties and Safeguards**

**Subchapter A**

**General Provisions**

**§ 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 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)  **[Bylaw provisions in articles.]** 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).

**Amended Committee Comment (2021):**

Under 15 Pa.C.S. § 1310(a), bylaws adopted at the organization meeting, even though adopted by a non-subscriber incorporator, or by the directors, are deemed bylaws adopted by the shareholders for the purposes of the 1988 BCL.

In recognition of the trend to reduce the size and complexity of the filed articles, the 1988 BCL provides expressly that the bylaws rather than the articles may contain provisions on certain voting rights of the corporation’s shares. *See* 15 Pa.C.S. §§ 1521(c) and 1766.

Written notice that a purpose of a meeting of directors is to amend the bylaws does not have to be given.

A majority of all votes cast on the adoption, amendment, or repeal of the bylaws satisfies the statutory requirements of the 1988 BCL, in lieu of the absolute majority required by the 1933 BCL.

The 1933 BCL required shareholder consent to the adoption of a bylaw establishing a fair and reasonable procedure for the nomination of directors. This requirement is not continued in 15 Pa.C.S. § 1758(e) and therefore that provision is not cited in the cross reference table in section 1504(b). The requirement for action by shareholders in adopting bylaws under 15 Pa.C.S. §§ 1756 and 1757 is a continuation of the rule under the 1933 BCL. The remaining references in the table are new, but in most instances the requirement for shareholder approval makes no change in substance since under the 1933 BCL the matter could be resolved only by means of shareholder action amending the articles. *See, e.g.*, 15 Pa.C.S. §§ 1721, 1726 and 1729. The provision of 15 Pa.C.S. 1756(a) limiting the authority to make certain amendments to the shareholders is not applicable to a registered corporation. *See* 15 Pa.C.S. § 2523.

The listing of a particular section in the table in section 1504(b) is not intended to have independent substantive effect. The table has been included in that subsection for purposes of reference and merely collects all those sections that referred to a bylaw adopted by the shareholders at the time of the most recent amendment of section 1504(b). Whether the board of directors can adopt a bylaw on a particular subject is determined by the section of the 1988 BCL dealing with that subject.

Section 1504(b)(b.1) was added in 2021 and is intended as a codification of existing law and practice.

The fact that the board of directors is authorized to amend the bylaws does not mean, of course, that once a provision authorized to be included in the bylaws has been entrenched in the articles pursuant to section 1504(c) the board can alter it.

Section 1504(c) establishes a hierarchy between the articles and bylaws and accords the articles a higher status. A provision of the 1988 BCL that refers to a rule as set forth in the articles will not be satisfied by a provision in the bylaws. A provision in the bylaws on a subject reserved to the articles by the 1988 BCL will be inoperative. On the other hand, a provision of the 1988 BCL that refers to a rule as set forth in the bylaws or a bylaw adopted by the shareholders will be satisfied by a provision in the articles.

The references in section 1504(c) to a bylaw adopted by the shareholders were included to avoid an unintended implication of an amendment in 2006 to 15 Pa.C.S. § 1726(a)(1) which was not prepared by the Committee. 15 Pa.C.S. § 1726(a)(1) provides that if the board of directors is classified into staggered terms by a bylaw adopted by the shareholders then the directors are removable only for cause. The act of February 10, 2006 (P.L. 21, No. 6) amended 15 Pa.C.S. § 1726(a)(1) to make clear that a provision of the articles classifying the board of directors into staggered terms has the same effect as a bylaw adopted by the shareholders. Prior to the 2006 amendment of 15 Pa.C.S. § 1726(a)(1), it was generally thought that the rule of section 1504(c) applied to provisions of the 1988 BCL that referred to either a bylaw generally or specifically to a bylaw adopted by the shareholders. To avoid an argument that other provisions of the 1988 BCL that refer to a rule as set forth in a bylaw adopted by the shareholders, but that do not contain the additional clarification regarding a provision of the articles added to 15 Pa.C.S. § 1726(a)(1), may not be satisfied by a provision of the articles, section 1504(c) now makes clear that a provision of the articles satisfies a requirement for a provision of either the bylaws generally or a bylaw adopted by the shareholders.

Paragraph (d)(2) was added by the GAA Amendments Act of 1992 to make clear that, where a corporation has a bylaw that restates the rule of 15 Pa.C.S. § 1766(a) on action by unanimous consent of the shareholders, the adoption of a bylaw authorizing action by partial written consent does not require a unanimous vote of the shareholders. Section 1504(d)(2) was made retroactive to October 1, 1989 (the general effective date of the 1988 BCL) by Section 7(b) of the GAA Amendments Act of 1992.

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors with respect to the bylaws must be taken by the full board, and not by a committee thereof.

Section 304(a)(2) of the General Association Act of 1988 provided that subsection (c) and as much of the General Association Act of 1988 as may be necessary to make that provision operative was effective retroactive to January 27, 1987, insofar as relates to the implementation of former 42 Pa.C.S. Ch. 83F (relating to corporate directors’ liability).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“bylaws”

“entitled to vote”

“shareholders”

“unless otherwise provided”

The term “amendment” used in this section is not intended to refer to an “amendment” as defined in 15 Pa.C.S. § 1103.

**§ 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 **[shall operate only as regulations among]** are binding on the shareholders, directors and officers of the corporation **[and]** 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 **[bylaws]** bylaw.

**Amended Committee Comment (2021):**

The GAA Amendments Act of 2001 broadened the language of section 1505 to make clear that the bylaws are binding on the directors and officers of the corporation. Prior to that amendment, section 1505 had stated that the bylaws “operate only as regulations among the shareholders.” The fact that directors and officers were bound by the bylaws was implicit in the fiduciary duties of directors and officers under 15 Pa.C.S. § 1712, but the Committee concluded that the principle was important enough to state it expressly. Except as provided in the first clause, all persons other than shareholders, directors or officers that are potentially interested in the internal affairs of a corporation, such as employees or note-holders, are covered by the last clause and will be bound by the bylaws only if they have actual knowledge.

Following the 2001 amendment of section 1505, it provided that the bylaws “operate only as regulations among the shareholders, directors and officers.” In 2021 that wording was changed to the current formulation that the bylaws “are binding on the shareholders, directors and officers of the corporation with respect to its internal affairs” because of a concern that the opinion in *Kirleis v. Dickey, McCamey & Chilcote, P.C.*, 560 F.3d 156 (3d Cir. 2009), could be misread to suggest that a bylaw is not binding on a shareholder unless the shareholder has notice of the bylaw. In *Kirleis*, the Third Circuit held that a bylaw requiring that “[a]ny dispute arising under [the] bylaws” be arbitrated did not apply to civil rights claims by a shareholder against the corporation because the shareholder had never received a copy of the bylaws and had never agreed to be bound by the arbitration provision.

Because the claims by the shareholder plaintiff in *Kirleis* were brought under the Civil Rights Act of 1964, the Fair Labor Standards Act and the Pennsylvania Human Relations Act, the Committee believes there may have been a good argument that the bylaw requiring arbitration did not apply in any event because claims under those statutes would not appear to involve a dispute arising under the bylaws. But since the opinion in *Kirleis* was not decided on that basis, the Committee concluded that section 1505 should be amended to make clear that the bylaws are binding on a shareholder, director, or officer with respect to a corporation’s internal affairs whether or not the person has actual notice of the contents of the bylaws. Thus, for example, a bylaw requiring arbitration of a claim for indemnification under 15 Pa.C.S. Subch. 17D will be binding without regard to whether the parties have actual notice of the bylaw. Similarly, a restriction on transfer of shares in the bylaws, as permitted by 15 Pa.C.S. § 1529, will be binding on a shareholder without regard to whether the shareholder has actual knowledge of the bylaw.

For the protection of shareholders, directors and officers, amendments were also made in 2021 to 15 Pa.C.S. §§ 1508, 1512 and 1732 to give those persons a right to receive a copy of the bylaws on demand.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

"business corporation"

"bylaws"

"directors"

"officers"

"shareholders"

**§ 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 **[either]** 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 **[in location or shall file in]** 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.

**[(d)]** (e) Cross reference. – See section 134 (relating to docketing statement).

**Amended Committee Comment (2021):**

The registered office location survives in the 1988 BCL for only two purposes: to fix the county where a document is to be “officially publish[ed]” as defined in 15 Pa.C.S. § 102, and for venue purposes under Pa.R.Civ.P. No.2179(a)(1). It is not intended that a bare registered office necessarily constitutes the type of operating office contemplated by Pa.R.Civ.P. 424(2). for purposes of service of process. For example, if a corporation fails to pay the renewal fees of an agent for the provision of registered office service, the agent may file a statement of change of registered office by agent under 15 Pa.C.S. § 108, terminating its status as agent, and thereafter the former agent will “no longer have any responsibility with respect to matters tendered to the office” in the name of the corporation. In view of this possibility, it is assumed that a plaintiff will ordinarily make service on the actual principal place of business of the corporation, wherever situated, in order to minimize the risk of due process defects in the validity of any resulting judgment.

The address of a registered office may be changed by including the new location in an annual report filed under 15 Pa.C.S. § 146. An annual report filing is not made part of the “articles” as defined in 15 Pa.C.S. § 1103, but a change in the location of a registered office included in an annual report will nonetheless be part of the articles pursuant to section 1507(d).

Under 15 Pa.C.S. § 135(c)(1), only an actual street address or rural route box number, and not a post office box number, is acceptable as a registered office address.

Under 15 Pa.C.S. § 1731(c), the action authorized by section 1507(b) to be taken by the board of directors may be taken by a duly authorized committee thereof, subject to compliance by the committee with any procedure applicable to action by the full board.

*See also* the Committee Comments to 15 Pa.C.S. §§ 108 and 109.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“department”

“registered office”

**§ 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. **[giving the names and addresses of all shareholders and the number and class of shares held by each. The share register shall be kept at any of the following locations:**

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

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

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

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

(b) Right of inspection by a shareholder. – **[Every shareholder shall, upon written verified demand stating the purpose thereof, have a]** 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 **[records of the proceedings of]** 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 **[writing]** 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 **[shall be directed]** must be delivered to the corporation:

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

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

**[(3)]** (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 **[made,]** received, the shareholder may **[apply to]** file an action in the court for an order to compel the inspection. The court **[shall]** 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 **[the shareholder seeks to inspect the books and records of the corporation, other than its share register or list of shareholders, he shall first establish: (1) That he]** a shareholder has complied with the provisions of this section respecting the form and manner of making demand for inspection **[of the document. (2) That the inspection he seeks is for a proper purpose. Where]** and the shareholder seeks to inspect :

(1) the share register or list of shareholders of the corporation **[and he 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**[.]** ; 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.

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

**Amended Committee Comment (2021):**

In recognition of the fact that in modern practice the books and records of a corporation may be distributed throughout its operating divisions, the GAA Amendments Act of 2001 added the reference to an actual business office in what is now section 1508(b.1)(5)(iii). The Committee also concluded that making actual business offices an alternative to the principal place of business would eliminate the uncertainties that may be involved in picking the one single location that constitutes the principal place of business of a large corporation. Permitting the demand for inspection to be sent in care of the person in charge of an actual business office is consistent with Pa. R.Civ.Pro. 424(2) which permits service of process on any "person for the time being in charge of any regular place of business or activity of the corporation."

Express reference is made to records of incorporators, since they are no longer necessarily also shareholders, see the Committee Comment to 15 Pa.C.S. § 1309. Consents to action without a meeting by the directors or shareholders are required to be filed with the minutes of the meetings of those groups by 15 Pa.C.S. §§ 1727 (directors) and 1766 (shareholders), and thus the minutes that may be inspected under section 1508 include consents as well.

The right to information conferred on shareholders by section 1508 is separate from a director's right to information under 15 Pa.C.S. § 1512. Persons who occupy both positions may pursue their rights under section 1508 and section 1512 either separately or jointly, and if they pursue their rights under only one section they should not be held to have waived their rights under the other section.

The provisions of the 1933 BCL on venue and jurisdiction of the court that were set forth in the source provision for section 1508(c) are now found in 15 Pa.C.S. § 102 (“court”) and 42 Pa.C.S. § 931, respectively. The 2021 amendment to section 1508(c) restores the express statement formerly found in the 1933 BCL regarding the exclusive jurisdiction of the court.

Section 1508(c.3) was added in 2021. Prior to the addition of section 1508(c.3), the Committee Comment to this section had stated that “the Committee believes that the shareholders have an absolute right to be supplied with a copy of the currently effective text of the bylaws without going through the procedures of subsection (b).” The addition of the Committee Comment to the statutory text was part of a series of amendments addressing issues raised by the opinion in *Kirleis v. Dickie, McCamey & Chilcote, P.C.*, 560 F.3d 156 (3d Cir. 2009). *See* the Amended Committee Comment (2021) to 15 Pa.C.S. § 1505. Because a shareholder is not required to have a proper purpose for requesting a copy of the bylaws (unlike with respect to other requests for information under section 1508), section 1508(c.3) makes enforcement of the right to the bylaws available in a summary proceeding instead of under section 1508(c). Unlike a request for inspection of documents under section 1508(b) and (b.1), it is not necessary to state a proper purpose to justify a request to receive a copy of the bylaws under section 1508(c.3). The requirement to make bylaws available in record form may be satisfied by posting them to a website accessible to the shareholders or on the SEC’s EDGAR database. The cross reference in section 1508(f) to 42 Pa.C.S. § 2503(7) and (9) was added as a reminder of the test for the award of counsel fees to a plaintiff shareholder under section 1508. The application of 42 Pa.C.S. § 2503(7) or (9) will depend on the context in which a claim for counsel fees is made. A situation in which a shareholder is forced to bring a summary proceeding under section 1508(c.3) to obtain a copy of the bylaws is by its nature different from a broader request to inspect records.

Section 1508(e) was added in 2021 and was intended as a codification of existing law and practice. Section 1508(e) was patterned after 15 Pa.C.S. §§ 8446(j) (general partnerships), 8634(h) (limited partners), 8647(j) (general partners), and 8850(h) (limited liability companies).

*See* 15 Pa.C.S. § 1554 and the Committee Comment thereto with regard to the right of shareholders to receive financial information.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

"articles"

"business corporation"

“bylaws”

"court"

"directors"

"incorporators"

"officer"

"registered office"

"relax"

“share register”

"shareholders"

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“department”

“receive”

“record form”

“verified”

**§ 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 **[any emergency resulting from an attack on the United States, a nuclear disaster or another catastrophe as a result of which a quorum of the board cannot readily be assembled]** 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 may,]** ; and

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

(c) **[Personnel]** Representatives not liable. – A representative of the corporation:

(1) Acting in accordance with any emergency bylaws **[shall not be liable except for willful misconduct]** 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) **[Shall not be]** Is not liable for any action taken **[by him]** 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 **[so adopted]**, 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 while 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.

**Amended Committee Comment (2021):**

The regular bylaws may prohibit the adoption of emergency bylaws, but it is not intended that the mere existence of a regular bylaw on a given subject (*e.g.*, procedure for calling a meeting of the board) renders ineffective an emergency bylaw on the same subject. Only a regular bylaw stating in substance that the corporation shall have no emergency bylaws, or emergency bylaws on a given subject, will have the effect of prohibiting emergency bylaws generally or on that subject.

Emergency bylaws may be adopted either before an emergency occurs or during an emergency. If they are adopted during an emergency, the provisions of section 1509(e) will apply to the meeting at which the emergency bylaws are adopted. Following that meeting, future board meetings will continue to be subject to section 1509(e) except as otherwise provided in the emergency bylaws.

The last sentence of section 1509(e) was added in 2021 and was patterned after 15 Pa.C.S. § 1725(c) (last sentence).

Section 1509(f) was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision) §§ 2.07(c) and 3.03(c). It was intended as a codification of existing law and practice. Corporate actions to further the ordinary business affairs of the corporation that are taken in accordance with emergency bylaws or otherwise as provided for in section 1509 during an emergency are valid and binding on the corporation. Section 1509(f) does not obviate, however, the need to obtain shareholder approval when required under 15 Pa.C.S. Chs. 3 and 19. Corporate actions that may be taken without shareholder approval under those provisions of 15 Pa.C.S. Subchs. 25E through 25H that a registered corporation is subject to immediately before an emergency also will be presumptively valid when taken in good faith under emergency bylaws or otherwise under section 1509. A representative who takes or participates in a corporate action is protected from liability to the extent provided in section 1509(c).

Section 1509(g) and (h) were added in 2021 and were patterned in part after 8 Del. Code § 110(i). Although section 1509(g) applies generally to shareholder meetings of any type of corporation, section 1509(g)(2) applies only to registered corporations. Similarly, section 1509(h) applies to distributions by any type of corporation, but section 1509(h)(2) applies only to registered corporations. Section 1509(h) does not address other issues that might arise as a result of a previously declared dividend, including the potential consequences that might arise if a board seeks to delay a record date or payment date after the shares have begun trading ex-dividend.

Section 1509 is not intended to limit or eliminate the availability of any powers or emergency actions that are not specifically referred to, or that are practical or necessary in connection with a particular emergency.

Section 1509(i) defines what constitutes an “emergency” and is focused on situations in which a quorum of the board of directors cannot be assembled either at a geographic location or the use of electronic technology. In such a situation, the corporation would be left without its usual governance absent section 1509.

The 1933 BCL contemplated the use of emergency bylaws only in situations involving warlike damage or an attack on the United States or a nuclear or atomic disaster. The definition in section 1509(i) significantly broadens the situations in which emergency bylaws may be operative. Emergency bylaws may now be operative, for example, in emergencies of additional types such as a pandemic or of more limited geographic scope such as a hurricane, earthquake, or flood.

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors with respect to emergency bylaws must be taken by the full board, and not by a committee thereof.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“bylaws”

“director”

“distribution”

“except as otherwise restricted” (*see* “unless otherwise restricted”)

“Exchange Act”

“officers”

“registered corporation”

“shareholders”

“unless otherwise provided”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“act”

“principal office”

“recklessness”

“representative”

**§ 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 **[apply to]** 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 **[the]** 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 **[the]** 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.

**[(c)]** (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).

**Amended Committee Comment (2021):**

Section 1512 was added by the GAA Amendments Act of 2001 and was patterned after § 3.03 of the Principles of Corporate Governance adopted by the American Law Institute (the "Principles"). A similar provision is found in Delaware General Corporation Law § 220(d).

The Comment to § 3.03 of the Principles indicates that it is intended to reconcile two lines of authority pertaining to the rights of directors to receive information about the corporation. One line of cases grants to the director unlimited and absolute access to information about the corporation regardless of the director's intent in requesting the information. The competing line of cases limits a director's access to information based upon the director's intent in requesting the information.

The question of whether a director has an absolute right to information was considered by a Pennsylvania court in *Chappel v. Applied Control Systems, Inc.*, 39 D. & C. 4th (Allegh. Cty. 1998). The Common Pleas Court in that case held that a director may be denied information if the corporation can establish that disclosure would create a substantial likelihood of harm to the corporation. Section 1512 is consistent with the result in that case, and takes the position that directors do not have an unlimited and absolute right to information. The one exception is a director’s right under section 1512(c) to a copy of the currently effective text of the bylaws, which is absolute.

Section 1512(a) presumes that a director has a broad right to inspect and copy corporate books, records and documents and to inspect the physical properties of the corporation in a manner consistent with the director's fiduciary duty. Section 1512(b), however, allows the corporation to deny information where it can establish that the information sought is not reasonably related to the performance of the director's duties. Examples of situations where it may be appropriate to deny access to information include trade secrets, operating information used by the corporation under a secrecy agreement, and a request by an insurgent director to inspect information concerning the incumbents' proxy defense plans.

The Principles provide that a director's right of information extends generally to subsidiaries of the corporation. The similar provision of the Delaware General Corporation Law, on the other hand, does not provide any informational rights with respect to subsidiaries. Section 1512 adopts a middle ground. The Committee decided to limit a director's right to information just to controlled subsidiaries of the corporation incorporated or otherwise organized under Pennsylvania law. Granting information rights with respect to controlled subsidiaries is consistent with other provisions of this subpart, such as 15 Pa.C.S. § 1932(b) which treats the assets of a controlled subsidiary as also the assets of the parent. Obviously, the question of access by a director to information regarding a subsidiary is not an issue if the director is also a director of the subsidiary (or in a similar position with respect to a subsidiary organized in non-corporate form) since the director will have a direct information right with respect to the subsidiary. Where a director does not have a direct information right with respect to a subsidiary and the internal affairs of the subsidiary are governed by the laws of another state, the Committee concluded that the most that Pennsylvania law could do would be to require the Pennsylvania corporation to exercise whatever informational rights it may have under the laws of the other state. In situations where the corporation does not control the subsidiary, regardless of what law governs the internal affairs of the subsidiary, the Committee concluded that it would be inappropriate in all cases to create a broad information right in the directors of the parent and that the issue should be decided on a case-by-case basis.

The director is given the right to seek court ordered inspection on a faster basis than is a shareholder where five business days must expire instead of two in the case of directors. The Principles provide expressly that the court should decide the issue expeditiously and possibly just on the basis of affidavits. Those provisions of the Principles are largely precatory and thus have not been included in section 1512, but it is anticipated that the court will resolve the issue on an appropriately expedited basis.

If a director violates any restrictions in a court order providing for inspection, the resulting sanctions may include contempt in addition to the customary actions for breach of fiduciary duty.

Section 1512(c) was added in 2021. Prior to the addition of section 1512(c), the Committee Comment to section 1512 had stated that “The Committee believes that a director has the same absolute right to access to the bylaws of the corporation as does a shareholder.” The addition to the statutory text of the express right of a director to receive a copy of the bylaws parallels the addition of 15 Pa.C.S. § 1508(c.3) which gives the same right to shareholders. The addition of 15 Pa.C.S. § 1508(c.3) was part of a series of amendments addressing issues raised by the opinion in *Kirleis v. Dickie, McCamey & Chilcote, P.C.*, 560 F.3d 156 (3d Cir. 2009). *See* the Amended Committee Comment (2021) to 15 Pa.C.S. § 1508. The right of a director to receive a copy of the bylaws is a fundamental right that cannot be relaxed in the articles.

Section 1512(d) was added in 2021 and was intended as a codification of existing law and practice. Section 1512(d) was patterned after 15 Pa.C.S. §§ 8446(j) (general partnerships), 8634(h) (limited partners), 8647(j) (general partners), and 8850(h) (limited liability companies). The addition of section 1512(d) was not intended, however, to change the existing duty of confidentiality that directors are subject to simply by virtue of their position as directors.

The right to information conferred on directors by section 1512 is separate from a shareholder's right to information under 15 Pa.C.S. § 1508. Persons who occupy both positions may pursue their rights under section 1512 and section 1508 either separately or jointly, and if they pursue their rights under only one section they should not be held to have waived their rights under the other section.

The cross reference in section 1512(e) to 42 Pa.C.S. § 2503(7) is a reminder that denial by a corporation of a director's right to information may justify awarding counsel fees to the director if it is necessary to seek an order of court compelling inspection.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

"board of directors"

"business corporation"

“bylaws”

"director"

“officer”

“relax”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“receive”

“record form”

**§ 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 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 has the requisite personal and subject matter jurisdiction. If none of the courts of this Commonwealth specified in a provision adopted under subsection (a)(1) 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, “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).

**Committee Comment (2021):**

Section 1513 was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision), § 2.08. The addition of section 1513 should not be read to imply that the articles of incorporation or bylaws could not have specified an exclusive forum for adjudication of claims prior to the enactment of section 1513.

Section 1513 authorizes a provision in the bylaws specifying an exclusive forum for the adjudication of internal corporate claims. An exclusive forum provision may also be included in the articles because 15 Pa.C.S. § 1504(c) provides that any provision that may be included in the bylaws may be included in the articles instead.

An exclusive forum provision adopted under section 1513(a)(1) must specify at least one Pennsylvania court (*i.e*., a state court rather than a federal court). The provision may also include additional identified courts sitting in Pennsylvania or additional identified courts outside of Pennsylvania if the corporation has a reasonable relationship with the jurisdiction where an identified court sits. In addition, the provision may prioritize among the courts where an internal corporate claim may be brought. For example, the provision may specify that the claim must be brought exclusively in a particular court unless that court does not have the requisite personal and subject matter jurisdiction, in which case the claim must be brought in other specified courts.

Section 1513(a)(2) adopts, as a matter of Pennsylvania statutory law, the holding in *Salzberg, et al. v. Sciabacuchi*, No. 346, 2019 (Del. Mar. 18, 2020), that a provision in the certificate of incorporation of a Delaware corporation requiring claims under the Securities Act to be litigated in federal court is facially valid.

The nature of the claims that may be the subject of a forum selection provision under section 1513(a)(1) and (a)(2) is different and a corporation may adopt forum selection provisions under either or both section 1513(a)(1) and also section 1513(a)(2).

Under the last sentence of section 1513(b), an internal corporate claim will always be permitted to be brought in at least one court unless there is no Pennsylvania court that has the requisite personal and subject matter jurisdiction. If the articles of incorporation or the bylaws provide that an internal corporate claim may only be brought in a specified Pennsylvania court and in the federal courts sitting in Pennsylvania, and the specified state court does not have the requisite personal and subject matter jurisdiction, then the claim can be brought in any other Pennsylvania court that does have the requisite jurisdiction or in the federal courts (so long as the federal court has the requisite jurisdiction).

If no Pennsylvania court has the requisite personal and subject matter jurisdiction, and none of the other courts, if any, specified in the provision has the requisite jurisdiction, then the provision will have no effect and the internal corporate claim may be brought in any court that does have the requisite jurisdiction.

Section 1513(c)(3) is broader than the Model Act because the Model Act does not include agreements regarding the governance of the corporation or transfers of its shares. An agreement of the type will be subject to a forum selection provision in the articles or bylaws if it does not contain its own forum selection provision and the agreement is adopted after the forum selection provision has been adopted, because in such a circumstance it is reasonable to assume that the parties were comfortable with the forum selection provision in the articles or bylaws.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“business corporation”

“bylaws”

“director”

“officer”

“Securities Act of 1933”

“shareholder”

“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“transfer”

**Subchapter B**

**Shares and Other Securities**

**§ 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. **[Shares that are not entitled to a preference, even if identified by a class or other designation, shall not be designated as preference or preferred shares.]**

(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)(2)]** 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).

**Amended Committee Comment (2021):**

An amendment of the articles that adds a provision permitting the redemption of any shares by a method that is not pro rata nor by lot nor otherwise equitable or that changes the method for selecting the shares that are subject to such a redemption provision will involve a reclassification of the shares that must be effected in accordance with 15 Pa.C.S. § 1906.

If a corporation has only one class of shares authorized, it is still a class for purposes of section 1521(b)(1).

A redemption constitutes a “distribution” under 15 Pa.C.S. § 1103. Any required redemption that may be provided for pursuant to section 1521(b)(3) must satisfy the requirements of 15 Pa.C.S. § 1551(b) on the legality of distributions. Section 1521(d) has been amended to make explicit the prior understanding that that provision does not prohibit a corporation from making selective or disproportionate purchases, redemptions or other acquisitions of its own shares. The articles or bylaws, or other provisions of this Title, such as section 1521(b)(1)(i) or 15 Pa.C.S. § 2554, however, may prohibit or restrict selective or disproportionate purchases, redemptions or other acquisitions of the corporation’s shares, and the third sentence of section 1521(d) does not affect the possibility of relief on other grounds, such as breach of fiduciary duty, if such relief would otherwise be available.

Section 1521(b)(2) permits the terms of a class or series of shares to be made dependent on facts ascertainable outside of the articles or to be incorporated by reference to another document which must be furnished to shareholders without cost (or in the case of nonshareholders of any corporation except a closely held corporation, at cost). The second sentence of section 1521(b)(2)(i) is intended to authorize, among other things, a provision in the terms of a class or series of shares under which the board of directors or a committee periodically resets the dividend or interest rate of the shares pursuant to a described procedure (such as an auction). Since the term “action” is defined in 15 Pa.C.S. § 102 to include failure to act, the outside facts on which a term of a class or series of shares may be made dependent will include a failure to act.

Under 15 Pa.C.S. § 1504(c), the provisions that section 1521(c) authorizes to be set forth in the bylaws may also be set forth in the articles.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“business corporation”

“bylaw”

“closely held corporation”

“distribution”

“except as otherwise provided” (*see* “unless otherwise provided”)

“issue”

“obligations”

“preference”

“shareholder”

“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“action” (*see* “act”)

“representative”

**§ 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, **[consolidation,]** sale of assets, interest exchange **[of shares]** 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.

**[There shall be no authority under this subsection to include a provision authorized by section 2513 (relating to disparate treatment of certain persons).]** (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 **[pricing of and payment for]** issuance and pricing of, and payment for, shares shall be applicable to **[the pricing of and payment for]** 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, **[deem advantageous to the corporation]** 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.

**Amended Committee Comment (2021):**

Rights and options may be issued under section 1525 for the amount and form of consideration fixed by, or in the manner authorized by, the board of directors, including services already performed, future services or the note or obligation of a shareholder.

In addition to the terms authorized by section 1525(b), conditions commonly referred to as “flip-in” and “flip-over” provisions of shareholder rights plans, may be included in option rights, etc. issued by registered corporations described in 15 Pa.C.S. § 2502(1)(i). *See* 15 Pa.C.S. § 2513. Although section 1525(b.1) makes clear that section 1525(b) does not authorize the inclusion of “flip-in” and “flip-over” conditions in rights, etc. authorized by other corporations, the articles of incorporation may authorize the inclusion of those conditions.

The broad authority of the board of directors under section 1525(b) to fix the terms of the option rights, etc. is intended to include the authority not only to fix substantive terms such as those listed, but also the manner in which the terms are to be implemented or adjusted. Thus, for example, it is intended that the board may provide that certain provisions may be amended only with the approval of certain designated persons or a class of persons. In particular, section 1525(b) validates the type of provision common in shareholder rights plans that requires the approval of directors not affiliated with a major shareholder before certain actions can be taken under, or changes made in, the rights plan.

Under 15 Pa.C.S. § 1731(c), any action that may be taken under this section by the board of directors may be taken by a duly authorized committee thereof, subject to compliance by the committee with any procedure applicable to action by the full board.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“authorized shares”

“board of directors”

“business corporation”

“directors”

“distribution”

“except as otherwise provided” (*see* “unless otherwise provided”)

“issue”

“obligations”

“shareholder”

“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“interest exchange”

“merger”

“registered corporation”

“representatives”

**§ 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 **[by the vote or consent and otherwise]** 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) **[Subchapter S]** Tax and regulatory restrictions.—Any restriction on the transfer of **[the shares]** securities of a business corporation **[for the purpose of maintaining its status as an electing small business corporation under Subchapter S of the Internal Revenue Code of 1986 or a comparable provision under state law]** 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.

**Amended Committee Comment (2021):**

Under 15 Pa.C.S. § 1504(c), any transfer restriction that is authorized to be set forth in the bylaws may also be set forth in the articles.

The last sentence of section 1529(b) was added by the GAA Amendments Act of 2013 and rejects the holding in *Bechtold v. Coleman Realty Co.*, 79 A.2d 661 (Pa. 1951). In that case the Pennsylvania Supreme Court did not permit the repeal of a transfer restriction found in a corporation’s bylaws even though the vote required to amend the bylaws generally was cast in favor of the repeal. The court held that transfer restrictions are “[p]rovisions in the nature of a contract which are evidently designed to vest property rights *inter* *se* among all stockholders. . . . [and] cannot be repealed or changed without the consent of the other parties whose rights are affected.” *Id.* at 663. In *Seven Springs* *Farm, Inc. v. Crocker*, 801 A.2d 1212 (Pa. 2002), the Pennsylvania Supreme Court affirmed a decision by the Pennsylvania Superior Court, *Seven Springs Farm, Inc. v. Crocker,* 748 A.2d 740 (Pa. Super 2000), which distinguished *Bechtold* and permitted the avoidance of a transfer restriction by structuring a transaction as a merger which was approved by a majority vote over the objection of the minority. Consistent with the endorsement of the doctrine of independent legal significance in 15 Pa.C.S. §§ 315 and 1904 and the holdings in *Seven Springs*, section 1529(b) adopts the position that a shareholder who agrees to a transfer restriction either by approving its terms or acquiring shares already subject to the restriction should be bound by all of the provisions applicable to the restriction, including whether it may be amended or repealed by less than unanimous agreement.

The reference in section 1529(b) to a bylaw provision described in section 1529(d)(1)(ii), (2), or (3) adopted by the shareholders of a registered corporation is not intended to limit the ability of the registered corporation to impose limitations or conditions pursuant to 15 Pa.C.S. § 2513 having similar effects as those described in section 1529(d)(1)(ii), (2), or (3).

Section 1529(c)(3.1) and revised section 1529(d) were adopted in 2021 and follow substantially the language of Delaware General Corporation Law § 202(c)(4) and (d).

The reference in section 1529(c)(4) to a “manifestly unreasonable” classification is intended to prohibit references to race, color, etc. *See* 15 Pa.C.S. § 1906.

Section 1529(d) includes restrictions relating to the status of a corporation as a “Pennsylvania S corporation” under section 307 of the Tax Reform Code of 1971, as added by the act of December 23, 1983 (P.L. 370, No. 90), § 4 (72 P.S. § 7307 *et. seq.*).

The scope of section 1529 is broader than the equity securities referred to in 15 Pa.C.S. § 1528. Thus the reference in section 1529(f) to “an equivalent notice with respect to another uncertificated security” includes, for instance, uncertificated debt securities.

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors under section 1529 with respect to the bylaws must be taken by the full board, and not by a committee thereof.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”

“bylaws”

“share”

“shareholders”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“Internal Revenue Code of 1986”

“registered corporation”

“transfer”

**Subchapter C**

**Corporate Finance**

**§ 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).

**Amended Committee Comment (2021):**

The 1933 BCL contained a troublesome provision requiring the filing of an annual statement reducing the authorized number of shares by the number of any converted or exchanged shares, regardless of any contrary provision in the articles, and dealing with the mechanics of canceling treasury or authorized but unissued shares. The 1988 BCL eliminated the concept of a required statement of reduction of authorized shares by providing in section 1552(a) that if the articles provide that acquired shares may not be reissued in any form (*e.g.*, not even as part of a new series), the authorized shares shall be reduced accordingly and permitting the filing of articles of amendment by board action alone under 15 Pa.C.S. § 1914(c)(2) to evidence the reduction. *See* 15 Pa.C.S. § 507.

Section 1552(b) and (c) were added by the GAA Amendments Act of 2013 and were patterned after N.J.S. § 14A: 7-16(8) and (9). They were intended as a codification of existing law and practice. Section 1552(b) authorizes a corporation to grant a security interest in reacquired shares to secure the payment of the repurchase price. Section 1552(c) authorizes share repurchase agreements with payment conditioned upon the solvency of the corporation. It will permit a buyout of a major shareholder at a price which would otherwise render the corporation technically insolvent so long as each payment is deferred until such time as the corporation can make a lawful distribution. *See* 15 Pa.C.S. § 1551(f).

Under 15 Pa.C.S. § 1504(c), the restrictions that section 1552(a) authorizes to be set forth in the bylaws may also be set forth in the articles.

Under 15 Pa.C.S. § 1731(c), any action that may be taken by the board of directors under section 1552 may be taken by a duly authorized committee thereof, subject to compliance by the committee with any procedure applicable to action by the full board.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“authorized shares”

“board” (see “board of directors”)

“business corporation”

“bylaws”

“obligation”

“shares”

“unless otherwise provided”

**§ 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 **[and]** , 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.

**Amended Committee Comment (2021):**

Although the revisions of the financial provisions of the 1988 BCL have simplified and rationalized the rules for determining the validity of distributions (*see* 15 Pa.C.S. § 1551), the possibility remains that a distribution may be made in violation of those rules. Section 1553 provides that directors who fail to meet the standard of conduct of 15 Pa.C.S. § 1712 and vote for or assent to an unlawful distribution are personally liable for the portion of the distribution that exceeds the maximum amount that could have been lawfully distributed. Section 1553(c) provides that a director who is compelled to restore that amount to the corporation is entitled to contribution from every other director who voted for or assented to the distribution. In addition, under section 1553(b) the director may also recover any amounts paid to shareholders who accepted the payments knowing that they were in violation of the statute. A shareholder who receives a payment not knowing of its invalidity is entitled to retain it. Although no attempt has been made to work out in detail the relationship between this right of recoupment from shareholders and the right of contribution from assenting directors, it is expected that a court will equitably apportion the obligations and benefits arising from the application of the principles set forth in this section.

Section 1553(d) refers to the two year statute of limitations on an action upon a statute for a civil penalty or forfeiture, which is the statute applicable to a violation of this section.

Under 15 Pa.C.S. § 1504(c), the restrictions that subsection (a) authorizes to be set forth in the bylaws may also be set forth in the articles.

The following terms used in this section are defined in 15 Pa.C.S. § 1103.

“articles”

“bylaws”

“distribution”

“shareholders”

“voting”

**Subchapter D**

**Dissenters Rights**

**§ 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 such 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).

**Amended Committee Comment (2021):**

The procedures for the exercise of dissenters rights in Subchapter 15D are patterned generally after the dissenters rights provisions of Chapter 13 of the Model Business Corporation Act.

The failure of a dissenter to institute court proceedings under Subchapter 15D within a specified period continues to operate as an acceptance of the valuation proposed by the corporation.

The relationship with the savings provision of the statute (15 Pa.C.S. § 1105) is clarified by expressly providing that the existence of dissenters rights does not bar an injunction against a plan or amendment of articles if the court finds fraud or fundamental unfairness present. *Cf., In re Jones & Laughlin Steel Corp.*, 488 Pa. 524, 412 A.2d 1099 (1980).

The table of sections in section 1571(a) is not intended to have independent substantive effect. It has been included for purposes of reference and merely collects all those sections that at the time the list was last amended provided for dissenters rights.

The first sentence of section 1571(a), however, is intended to have independent substantive effect. It is intended to be read with 15 Pa.C.S. § 1105 to say that statutory dissenters rights are available only where expressly conferred by another statutory provision, and in this sense is a limitation on the creation of additional dissenters rights. In addition, it operates as a limitation on the elimination of dissenters rights because section 1571(f) protects it from being relaxed by a provision in the articles except with respect to a class or series of preferred shares. An articles provision, for example, that purported to make 15 Pa.C.S. § 333 (which confers dissenters rights in the context of mergers) inapplicable to the corporation, although not prohibited by the express terms of § 333, would be ineffective under section 1571(f) as an attempt to relax section 1571(a).

The definition of "shareholder" in 15 Pa.C.S. § 1572 which is referred to in the first sentence of section 1571(a) includes certain beneficial owners. Although that definition is not applicable outside of Subchapter 15D, the effect of the first sentence of section 1571(a) is to confer dissenters rights on the beneficial owners included within the definition of "shareholder" in 15 Pa.C.S. § 1572 wherever the 1988 BCL expressly confers dissenters rights on shareholders.

The GAA Amendments Act of 2001 added the reference in the lead-in paragraph of section 1571 (b)(1) to the date of the first public announcement that a plan has been approved by written consent of the shareholders. Without that reference, the language of section 1571(b)(1) could have been read incorrectly to suggest that the "market-out" in that section 1571(b)(1) was applicable only when a formal shareholders meeting was held to approve a plan.

The GAA Amendments Act of 2001 also added the concept of beneficial ownership in section 1571(b)(1)(ii) and the explanation in section 1571(g) of how that concept is to be applied. The Committee concluded that, with the increasing use of central depositories that hold shares in "street name," the number of record owners is no longer a good indication of the liquidity of the market for a security. 15 Pa.C.S. § 1763(c) provides a procedure that can help a corporation to determine the number of beneficial owners of its shares. The list of nonobjecting beneficial owners that is required to be supplied under Rule 14b-1(b)(3) of the Securities and Exchange Commission will also help a corporation compute whether it has the requisite number of beneficial owners.

The GAA Amendments Act of 2001 repealed former section 1571(b)(2)(i) which provided that the market out would not be applicable, and thus that holders of liquid shares would be entitled to dissenters rights, where shares were converted by a plan into something other than shares and money. Typically, shares of a public company not converted into shares or money will be converted into some form of debt security of the surviving acquired corporation or the acquiring corporation. The Committee concluded that the market for control of public companies is sufficiently liquid and efficient that it was not necessary to provide an exception to the market out in that instance.

The GAA Amendments Act of 2001 added the references to "series" of shares in section 1571(b)(2)(ii) to avoid the possibility that the mere title by which a group of shares is designated will control the substantive result under that provision. Where there are three series of preferred shares, for example, each of the three series will be treated independently; so that if only two series are given class votes on a plan, the third series will have dissenters rights. Likewise, if a class of preferred shares is given a class vote, but the class includes separate series that are not given separate class votes, then the shares of each series will be entitled to dissenters rights; this will be the case even if a majority of the shares of each series votes in favor because the separate class votes of each series were not "required" for the adoption of the plan.

In section 1571(b)(2)(ii) the statutory voting requirement is conformed to the general 1988 BCL approach which excludes abstentions from the negative vote total. Section 1571(b)(3) repeals the "mouse-swallows-the-lion" provision of Section 311F of the 1933 BCL and is further intended to overrule the suggestion in footnote seven of *Terry v. Penn Central Corp.*, 668 F.2d 188, 194 (3d Cir. 1981), that extra-statutory dissenters rights might be made available depending on the relative sizes of the parties to a fundamental transaction. It is intended that no common law dissenters rights of any type shall have survived the enactment of the 1988 BCL. *See also* the last sentence of 15 Pa.C.S. § 1105.

Section 1571(c) permits the bylaws or the board of directors to confer dissenters rights even though they would not be required by the 1988 BCL. Under 15 Pa.C.S. § 1504(c), the provision of the bylaws conferring nonstatutory dissenters rights may also be set forth in the articles. Under 15 Pa.C.S. § 1731(a)(2), the grant of nonstatutory dissenters rights may be made by a duly authorized committee of the board of directors if the transaction is not to be submitted to the shareholders for action, subject to compliance by the committee with any procedure applicable to action by the full board.

The statutes referred to in section 1571(e) include 7 P.S. § 1222 (banks).

In addition to its application in the context of section 1571(a) discussed above, section 1571(f) also protects the procedural provisions of Subchapter 15D from being relaxed in the articles. *Cf.* 15 Pa.C.S. § 1306(b). Section 1571(f) was amended in 2021 to provide an optional exception to the availability of dissenters rights for shares with a preference. The amendment was patterned after Model Business Corporation Act (2016 Revision), § 13.02(c), and makes clear that dissenters rights may be limited or eliminated for a class or series of shares entitled to a preference by a provision of the articles. Such a limitation will not be effective if added by amendment as to shares outstanding prior to the amendment or issuable pursuant to a right that existed prior to the amendment.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”

"articles"

"board of directors"

"business corporation"

"bylaws"

"casting a vote" (*see* "voting")

"entitled to vote"

“Exchange Act”

"issue"

"obligations"

“preference”

"relax"

"shareholder"

"shares"

The following terms used in this section are defined in 15 Pa.C.S. § 1572:

"corporation"

"fair value"

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“dissenters rights”

“property”

**Chapter 17**

**Officers, Directors and Shareholders**

**Subchapter A**

**Notice and Meetings Generally**

**§ 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 **[sending]** delivering a copy thereof:

(i) By first class or express mail, postage prepaid, or courier service, charges prepaid, to **[his]** postal address of the person appearing on the books of the corporation or, in the case of directors, supplied by **[him]** 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 **[his]** the facsimile number or address for email or other electronic communications supplied by **[him]** 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 **[reference]** references. – See **[section]** sections 2522 (relating to adjournment of meetings of shareholders), 2528 (relating to notice of shareholder meetings) and 3133 (relating to notice of meetings of members of mutual insurance companies).

**Amended Committee Comment (2021):**

The ability to give notice by email or other electronic communication was added to section 1702(a) by the GAA Amendments Act of 2001 which also amended 15 Pa.C.S. § 1759 to clarify the ability of shareholders to vote electronically. However, this section differs from 15 Pa.C.S. § 1759 in one important respect. While 15 Pa.C.S. § 1759 permits shareholders to vote using a corporation’s Internet website, it is not adequate under this section to give notice just by posting the notice on the corporation’s Internet website because the introductory clause of section 1702(a) requires the notice to be “delivered.” *See* 15 Pa.C.S. § 113(a). Because the timing of events requiring notice is ordinarily under the control of the corporation, the Committee considered it more appropriate to place the burden on the corporation to communicate with its shareholders rather than requiring shareholders, some of whom may not even have access to the Internet, to constantly monitor a website.

It is intended that the references to electronic communication in section 1702(a)(1)(ii) will be interpreted in a manner consistent with the definition of the term “electronic” in the act of December 16, 1999 (P.L. 971, No. 69), known as the Electronic Transactions Act. Section 103 of that act defines “electronic” as “[r]elating to technology having electrical, digital, magnetic, wireless, optical, electro-magnetic or similar capabilities.” 73 P.S. § 2260.103.

The decision on what method to use for giving notice is under the control of the corporation, and it is not intended that a shareholder have the right to demand that notice be given in a particular fashion.

Section 1702(a)(2) makes clear that a notice may include additional information beyond that required by Title 15 if the required information appears conspicuously at or near the beginning of the notice. Among other things, the express statement of the ability to include additional information makes clear that a corporation may use a notice of a shareholder meeting to comply with the rules of the Securities and Exchange Commission regarding Internet availability of proxy materials. *See* 17 CFR § 240.14a-16.

Section 1702(b) is applicable by analogy to meetings of the board of directors and committees thereof, to the extent notice of such meetings is required by the bylaws.

As originally enacted in 1988, section 1702 required notices to be given by first class mail or other expedited means. Section 1702(c) is a relief provision added by the GAA Amendments Act of 1990 that permits corporations with more than 30 shareholders to give notice by bulk mail if the notice is given at least 20 days in advance, as compared to five or ten days for notice by first class mail (*see* 15 Pa.C.S. § 1704(b)). Section 404(a)(2) of the GAA Amendments Act of 1990 (15 Pa.C.S. § 21404(a)(2)) made section 1702(c) effective retroactive to October 1, 1989. The parenthetical reference to notices for purposes other than a shareholders meeting includes, for example, notice under 15 Pa.C.S. § 2545 that a control transaction has occurred.

The provisions of this section may be restricted in the bylaws. See 15 Pa.C.S. § 1701(a)(2).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board” (see “board of directors”)

“business corporation”

“bylaws”

“closely held corporation”

“shareholders”

“shares”

**§ 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. **[If a meeting of the shareholders is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the shareholders have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the shareholders, pose questions to the directors, make appropriate motions and comment on the business of the meeting, the meeting need not be held at a particular geographic location.]**

(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 **[neglects or refuses to]** 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).

**Amended Committee Comment (2021):**

The provisions of section 1704 generally may be restricted in the bylaws. But note the use of the term “otherwise provided” in the third sentence of section 1704(a). *See* the Committee Comment to 15 Pa.C.S. § 1701.

It is intended that the reference to electronic technology in section 1704(a) will be interpreted in a manner consistent with the definition of the term “electronic” in the act of December 16, 1999 (P.L. 971, No. 69), known as the Electronic Transactions Act, 73 P.S. § 2260.101, et seq. Section 103 of that act defines “electronic” as “[r]elating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.” 73 P.S. § 2260.103.

Section 1704(a) was amended in 2021 to make clear that authority to fix the location of a meeting of shareholders includes the authority to hold the meeting solely by means of electronic technology. The fact that the authority may include a reference to a geographic location, such as, for example, “in the city where the principal office of the corporation is located” or “within or without the Commonwealth of Pennsylvania,” will not restrict the authority choose to hold a meeting solely by means of electronic technology. The use of electronic technology may be restricted as provided in 15 Pa.C.S. § 1708, but to limit the authority under section 1704(a) to hold a meeting solely by means of electronic technology will require an express statement to that effect under 15 Pa.C.S. § 1708.

The requirement in section 1704(b) that notice be “in record form” (which is defined in 15 Pa.C.S. § 102) means that notice may be given by email, fax, and other forms of electronic communication, as well as in tangible written form.

15 Pa.C.S. § 1708(c) imposes requirements for the conduct of meetings held solely by means of electronic technology for the protection of the shareholders. If participation in a meeting by means of the Internet or other electronic technology is made available to the shareholders, but the meeting is also held at a geographic location at which shareholders have the right to attend in person, the requirements in 15 Pa.C.S. § 1708(c) on how an electronic only meeting must be conducted do not apply expressly under that section, but good practice for such a hybrid meeting nonetheless will follow those requirements.

Under 15 Pa.C.S. § 1709, rules for the conduct of an electronic meeting may be established as provided in the bylaws or by the board of directors or the presiding officer of the meeting. Any such rules should be appropriate for an electronic meeting and need not be the same as rules for a meeting held in person.

Under 15 Pa.C.S. § 1504(c), the provisions that section 1704(a) authorizes to be set forth in the bylaws may also be set forth in the articles.

As originally enacted in 1988, section 1704(b)(1) applied to a meeting “called to consider” a fundamental change. The GAA Amendments Act of 1992 amended that provision to make clear that ten days notice is required for any meeting that will consider a fundamental change, including a regularly scheduled meeting. The transactions that may be conducted under Chapter 3 are mergers, interest exchanges, conversions, divisions, and domestications. The transactions that may be conducted under Chapter 19 are amendments to the articles, sales of all or substantially all assets, and dissolution.

The Official Source Note for the amendments to section 1704 made by the GAA Amendments Act of 1990 states that:

“The second sentence of subsection (c) is new and is intended to make clear that State law does not duplicate the disclosure requirements of 18 [sic] CFR § 240.10b-5. Compare Stroud v. Milliken Enterprises, Inc., 552 A.2d 476 (Del. 1989).”

1990 Laws of Pennsylvania at 1065. The Committee believes that the reference to Rule 10b-5 in that Official Source Note was intended to be a generalized reference to the disclosure requirements of the Federal and state securities laws. There is nothing in the second sentence of section 1704(c) that would limit it just to contexts in which Rule 10b-5 is applicable and such a limitation should not be implied from the Official Source Note. The proper interpretation of section 1704(c) is that Title 15 does not duplicate any of the disclosure requirements of the Federal and state securities laws, including without limitation 17 CFR § 240.14a-9 and 70 P.S. § 1-401.

The cross reference in section 1704(e) is a reminder that the “householding” rules of the Securities and Exchange Commission apply to notices of shareholder meetings of registered corporations.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“bylaws”

“entitled to vote”

“shareholders”

“unless otherwise provided”

The term “record form” used in subsection (b) is defined in 15 Pa.C.S. § 102.

**§ 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 **[section]** 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 **[or the expression of consent or dissent to corporate action by a shareholder]** by conference telephone or other electronic **[means, including, without limitation, the Internet, shall constitute the presence of, or vote of action by, or consent or dissent of]** 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).

**Amended Committee Comment (2021):**

Section 1708(a) makes clear that participation in a meeting by conference telephone or other electronic technology constitutes presence in person at the meeting (*e.g.*, for purposes of waiver of notice under 15 Pa.C.S. § 1705(b), *etc*.).

Under the 1933 BCL, the use of conference telephone equipment was permitted only if authorized in the bylaws. The requirement of an enabling bylaw has been omitted, with the result that the use of conference telephone equipment will be permissible unless a corporation restricts its use in the bylaws. A corporation that had not adopted an enabling bylaw under the 1933 BCL will be subject to the new rule unless it has adopted a restrictive bylaw that has the effect of keeping it subject to the prior rule.

Prior to the amendment of section 1708 by the GAA Amendments Act of 2001, section 1708(a) referred to use of “conference telephone or similar communications equipment.” That wording was changed to the current formulation to avoid any question as to whether the audio function of the Internet or other modern electronic technology is “similar communications equipment” to the conference telephone.

Section 1708(b) was added by the GAA Amendments Act of 2001 as part of a series of amendments made by that act designed to validate the use of modern communications technology. Section 1708(b) and (c) make clear that a corporation may conduct a meeting of its shareholders solely by means of the Internet or other electronic technology.

Section 1708(b) differs from section 1708(a) in not requiring that all shareholders be able to hear each other. The board of directors has always been considered a collegial body and the fiduciary duty of directors requires them to consider and debate thoughtfully the affairs of the corporation. The situation of shareholders is different and section 1708(b), like the authorization of proxy voting in 15 Pa.C.S. § 1759, is concerned simply to give the shareholders means to express their consent or dissent. Although the electronic technology that shareholders may use under section 1708(b) need not allow shareholders to hear the other participants in a meeting, shareholders have the option of attending a meeting in person.

Section 1708(c) was moved from 15 Pa.C.S. § 1704(a) in 2021. Section 1708(c) was patterned in part after Delaware General Corporation Law § 211(a)(2). The requirements imposed by section 1708(c) for the conduct of meetings held solely by means of electronic technology are for the protection of the shareholders. If participation in a meeting by means of the Internet or other electronic technology is made available to the shareholders, but the meeting is also held at a geographic location at which shareholders have the right to attend in person, the requirements in 15 Pa.C.S. § 1708(c) will not apply.

It is intended that the references to electronic technology will be interpreted in a manner consistent with the definition of the term “electronic” in 15 Pa.C.S. § 102, which applies to section 1702. Prior to its amendment in 2021, section 1702(b) referred expressly to the Internet but that reference was deleted as unnecessary and clearly included within the scope of the defined term “electronic.”

Under the definition of “except as otherwise provided” in 15 Pa.C.S. § 1103, the bylaws may either relax or restrict the right to participate in a meeting by conference telephone or other electronic technology and thus, for example, may provide that the use of such equipment is prohibited or, alternatively, is a matter of right upon demand.

The provisions of section 1708(a) also apply to meetings of a committee of the board of directors under 15 Pa.C.S. § 1731(c).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“bylaws”

“except as otherwise provided” (*see* “unless otherwise provided”)

“incorporators”

“shareholders”

“voting”

**§ 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 **[action by the presiding officer in adopting rules for and in conducting a meeting shall]** 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.

**Amended Committee Comment (2021):**

This section was added by the GAA Amendments Act of 2001 and was patterned after Section 7.08 of the Revised Model Business Corporation Act.

Section 1709 adds to Pennsylvania corporation law for the first time an express requirement that there be a presiding officer at every meeting of the shareholders. The presiding officer is to be appointed in accordance with the bylaws. Generally, the chair of the board of directors presides over meetings of the shareholders. However, the bylaws could provide that the president, if different than the chair of the board, is to preside at shareholder meetings, or the bylaws could leave the selection of a presiding officer to the board or to the shareholders present at a meeting. If the bylaws designate a presiding officer with reference to the position of a person as an officer, *e.g*. by providing that the chair of the board shall preside at all meetings of the shareholders, the bylaws should provide a means of appointing an alternate if the designated individual is unavailable to serve. The last sentence of subsection (a) is not found in the Revised Model Business Corporation Act and has been added to provide a default rule in the absence of any applicable provision in the bylaws or action by the board.

Subject to any applicable provision in the bylaws or prior action by the board of directors, section 1709(b) gives the presiding officer the authority to determine in what order items of business will be discussed and decided. Inherent in the power of the presiding officer to establish rules for the conduct of a meeting is the authority to require that the order of business be observed and that any discussion or comments from shareholders or their proxies be confined to the item of business under discussion. At the same time, it is also expected that the presiding officer will not misuse the power to determine the order of business and to establish rules for the conduct of the meeting so as to foreclose unfairly the right of shareholders to raise items that are properly a subject for shareholder discussion or action at some point in the meeting prior to adjournment. The presiding officer will have the power, however, to enforce applicable restrictions on the subjects that may be considered at a meeting, such as those in 15 Pa.C.S. § 1504(a) regarding advance notice of bylaw amendments and those in 15 Pa.C.S. § 1704(c) regarding advance notice of the general nature of the business to be conducted at a special meeting. *See also* 15 Pa.C.S. § 1758(e) and the Committee Comment thereto regarding bylaws requiring advance notice of nominations of candidates for election as directors and of shareholder proposals to be considered at shareholder meetings.

Section 1709(b) gives the presiding officer, absent prior action by the board of directors, the authority to establish rules for the conduct of a meeting. Complicated parliamentary rules (such as Robert’s Rules of Order) ordinarily are not appropriate for shareholder meetings. The rules adopted may cover such subjects as maintaining order at the meeting and the safety of those present, limitations on attendance or participation in the meeting to shareholders and properly appointed proxies and such other persons as the presiding officer shall determine, the proper means for obtaining the floor, who shall have the right to address the meeting, the manner in which shareholders will be recognized to speak, time limits per speaker, the number of times a shareholder may address the meeting, and the person to whom questions should be addressed. The presiding officer is entitled to wide latitude in conducting the meeting and, unless inconsistent with a previously prescribed rule, may set requirements, observe practices, and follow customs that facilitate a fair and orderly meeting.

Section 1709(d) assumes that the presiding officer of the meeting will announce when the polls will close for each matter being voted upon. If an announcement is not made, the polls are deemed to have closed upon final adjournment of the meeting. Section 1709(d) makes clear that, once the polls close, no ballots, proxies or votes and no changes thereto may be accepted. This provision is intended to eliminate an area of uncertainty that had developed in the relatively sparse case law dealing with the effect of closing the polls, some of which suggested that, notwithstanding the closing of the polls, votes could be changed up until the time that the judges of election announced the results. *Young v. Jebbett*, 211 N.Y.S. 61 (N.Y. App. Div. 1925); *State ex rel. David v. Dailey*, 168 P.2d 330 (Wash. 1945). Any abuse of the power to close the polls will be subject to judicial review under the standard stated in section 1709(c).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“bylaws”

“except as otherwise provided” (*see* “unless otherwise provided”)

“shareholders”

**Subchapter B**

**Fiduciary Duty**

**§ 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.

Amended Committee Comment (2021):

Section 8(b) of Act 1990-36 provided that a director is not liable for taking or omitting to take any action permitted by 15 Pa.C.S. § 1721(j), the predecessor of section 1711. The intention of Act 1990-36 was that a director may exercise absolute discretion in choosing whether the corporation should be subject to 15 Pa.C.S. § 1715 or 15 Pa.C.S. § 1716.

Section 1711(d) was added in 2021 and was intended as a codification of existing law and practice. The addition of section 1711(d) should not be read to imply that the articles of incorporation or bylaws could not have been amended before the adoption of that subsection to reverse a provision opting out of the application of 15 Pa.C.S. § 1715. The board of directors was authorized to adopt a bylaw opting out of 15 Pa.C.S. § 1715 and such a board adopted bylaw is not subject to the rule in 15 Pa.C.S. § 1504(b) that it can only be changed by the shareholders. Thus, a board adopted bylaw opting out of 15 Pa.C.S. § 1715 can be repealed solely by action of the board. Because the deadlines for opting out of the application of 15 Pa.C.S. § 1715 in the bylaws have passed, a corporation wishing to opt out of 15 Pa.C.S. § 1715 must do so in the articles and within the applicable time period specified in section 1711(b).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“bylaws”

The term “amendment” as used in section 1711(b)(1)(i), (b)(2)(i), and (b)(3)(i) refers to an amendment of the bylaws, and not an amendment as defined in 15 Pa.C.S. § 1103.

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 102.

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

(a) **[Directors]** General rule. – A director of a business corporation shall stand in a fiduciary relation to the corporation and shall perform **[his duties as]** the duties of a director, including **[his]** duties as a member of any committee of the board upon which **[he]** the director may serve, in good faith, in a manner **[he]** the director reasonably believes to be in the best interests of the corporation and with such care, including **[reasonable inquiry,]** the skill and diligence**[, as]** 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 **[his duties]** the duties of a director, and in satisfying the requirements of subsection (d), a director **[shall be]** 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 **[he]** 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 **[shall not be]** is not considered to be acting in good faith **[if he has]** under subsection (a.1) if the director has actual knowledge concerning the matter **[in question that would cause his]** that causes the director to believe reliance **[to be]** is unwarranted.

(c) **[Officers. – Except as otherwise provided in the bylaws, 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.]** (Repealed.)

(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.

Amended Committee Comment (2021):

Section 1712 is the basic statement of the duties of directors, but section 1712 is not the exclusive statement of how a director may satisfy the duties of a director.

Section 1712(a) was amended in 2021 with respect to the duty of reasonable inquiry to address concerns that the decision in *In re: Nine West LBO Securities Litigation*, Case No. 20-2941 (S.D.N.Y. Dec. 4, 2020) (interpreting the Pennsylvania Business Corporation Law), could be read to impose on directors an open-ended duty to inquire into or investigate potential matters beyond those expressly required by statute. To avoid further misinterpretation of the duties of directors, section 1712(a) has been revised to make clear that a director’s obligation of reasonable inquiry (and the corresponding references to being “informed” or performing a “reasonable investigation” in section 1712(d) and in 15 Pa.C.S. § 1715(d)) extends only to issues required by the statutory law of Pennsylvania to be considered and to those factors and interests that the director elects to consider in the discharge of the director’s duties in the flexible manner allowed by 15 Pa.C.S. § 1715(a) or 1716. The Committee believes that the 2021 amendments to Section 1712(a) are a clarification of existing law and practice. An example of issues required by statute to be considered would be the requirements of 15 Pa.C.S. § 1551, if a director is considering approving a distribution. In conducting an inquiry or investigation, a director is entitled to the extent provided under section 1712(a.1)(2) to rely on advice of counsel regarding the existence and scope of statutory requirements. These changes to section 1712(a) complement those being made to section 1717 and similar provisions, which reject judicial attempts to interpret Pennsylvania law to impose on directors a fiduciary duty to persons beyond or inconsistent with the provisions of applicable Pennsylvania statutes.

Section 1712(d) and (e) were added in 2021 as a codification of existing law and practice. They were patterned after the ALI *Principles of Corporate Governance*, § 4.01(c) and (d), and confirm that the business judgment rule applies is Pennsylvania. A different formulation of the business judgment rule as now stated in section 1712(d) was previously found in repealed 15 Pa.C.S. §§ 1715(d) (former first sentence) and former 1716(b).

The Pennsylvania Supreme Court confirmed that the business judgment rule applies in Pennsylvania in *Cuker v. Mikalauskas*, 547 Pa.600, 692 A.2d 1042 (1997). Consistent with the invitation of the Supreme Court in *Cuker* for Pennsylvania courts to adopt provisions of the ALI *Principles of Corporate Governance* in addition to §§ 7.02-7.10 and 7.13, which were expressly adopted in *Cuker*, section 1712 adopts the ALI formulation of the business judgment rule as the applicable statement of the rule in Pennsylvania. The business judgment rule applies to the discharge of the duties of a director under section 1712, but does not apply to contractual obligations of a director or the discharge of duties under other provisions of law.

The general standard of care of directors under section 1712(a) is subject to the business judgment rule in section 1712(d) in situations where section 1712(d) is applicable. When a director satisfies the conditions in section 1712(d) for application of the business judgement rule, section 1712(d) provides expressly that the director has satisfied the duties stated in section 1712, including the duties in section 1712(a).

The requirement of section 1712(d)(1) that the subject of a business judgment not involve “self-dealing” should be interpreted consistently with the usage of the same term in 15 Pa.C.S. § 1713(a)(2).

The standard in section 1712(d)(3) that a director must “rationally believe” a business judgment is in the best interests of the corporation is intended to provide directors with a wide ambit of discretion. The phrase “rationally believes” is intended to permit a significantly wider range of discretion than the term “reasonable,” and to give a director a safe harbor from liability for business judgments that might arguably fall outside the term “reasonable” but are not so removed from the realm of reason when made that the business judgment rule should be unavailable.

In addition to meeting the requirements of section 1712(e), a person alleging that the conduct of a director violated the standard of care must also satisfy the applicable standing requirements in Title 15. *See, e.g*., 15 Pa.C.S. §§ 1782 and 3325.

The provisions of section 1712 are equally applicable to a committee of the board under 15 Pa.C.S. § 1731(c).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”

“director”

“employee”

“officer”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“affiliate”

“associate”

**§ 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 **[his office]** 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.

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

**Amended Committee Comment (2021)**

Section 1713(c) was added in 2021 and was patterned after the penultimate sentence of 8 Del. Code § 102(b)(7).

The articles may not provide greater exoneration from liability for directors than that permitted by this section. *See* 15 Pa.C.S. § 1718.

Under 15 Pa.C.S. § 1504(c), the provision that section 1713(a) authorizes to be set forth in the bylaws may also be set forth in the articles.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”

“director”

“bylaws”

“shareholders”

The terms “act” and “action” used in this section are defined in 15 Pa.C.S. § 102 to include a failure to act.

The term “recklessness” used in this section is defined in 15 Pa.C.S. § 102. The definition is patterned after the Pennsylvania Crimes Code and rejects the holding in *In re: Nine West LBO Securities Litigation* (S.D.N.Y Dec. 4, 2020) that directors may be found to have acted recklessly and are not protected by section 1713 if they ignored facts they had reason to know. Although the definition of “recklessness” rejects the holding in *Nine West* regarding the meaning of recklessness in section 1713, the Committee has not proposed an amendment addressing the part of the opinion in *Nine West* regarding the meaning of “self-dealing” because the Committee believes that the district court in *Nine West* was correct in holding that self-dealing in section 1713 “is limited to those situations where the director stands on both sides of the transaction.”

**§ 1714. [**Notation of dissent**] 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 **[his dissent]** the director’s dissent or abstention or vote against the matter is entered in the minutes of the meeting or unless **[he files his written dissent]** the director delivers to the secretary of the meeting before the adjournment thereof a dissent in record form to the action **[with the secretary of the meeting before the adjournment thereof]** or transmits the dissent **[in writing]** 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 **[his dissent]** the director’s dissent, abstention or vote against if, promptly upon receipt of a copy of such minutes, **[he]** the director notifies the secretary **[in writing]** of the corporation in record form of the asserted omission or inaccuracy.

**Amended Committee Comment (2021):**

If they object or abstain with respect to action taken by the board of directors or a committee of the board of directors, directors must make their position clear in one of the ways described in section 1714. An objection in record form serves the important purpose of forcefully bringing the position of the dissenting director to the attention of the balance of the board of directors. The requirement of an objection in record form also prevents a director from later seeking to avoid responsibility because of secret doubts about the wisdom of the action taken.

Section 1714 was amended in 2021 to make clear that a vote against a matter recorded in the minutes of the meeting satisfies the requirement of a dissent. It is not intended that a separate action beyond a recorded vote is required for there to be a valid dissent. The 2021 amendments were intended as a codification of existing law and practice.

Section 1714 applies only to directors who are present at a meeting. Directors who are not present are not deemed to have assented to any action taken at a meeting in their absence.

The reference to a director being “generally competent to act” means not disqualified by either law or practice. Some directors who have a conflict of interest may be legally competent to act, but may prefer to abstain because good corporate practice encourages a director with an apparent conflict to abstain from voting. Section 1714 does not intend to force a director to go through the formalism of leaving the meeting (which would make this section inapplicable since it only applies to directors who are “present”) or registering a dissent.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

**§ 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 **[and]** , 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. – **[Absent breach of fiduciary duty, lack of good faith or self-dealing, any act as the board of directors, a committee of the board or an individual director shall be presumed to be in the best interests of the corporation.]** 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 **[provisions]** 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**[, as defined in section 2552 (relating to definitions),]** 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).

**Amended Committee Comment (2021):**

Section 1715(d) was amended in 2021 to make clear that the definition of “disinterested director” in section 1715(e) will have the same meaning under both section 1715 and 15 Pa.C.S. § 1728 when a challenge is brought to an action by the directors in the context of an acquisition or proposed acquisition of control of the corporation. The 2021 amendment also deleted the first sentence of section 1715(d) which read “[a]bsent breach of fiduciary duty, lack of good faith or self-dealing, any act as the board of directors, a committee of the board or an individual director shall be presumed to be in the best interests of the corporation,” because that sentence was replaced by the enactment in the same 2021 legislation of 15 Pa.C.S. § 1712(d).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“distribution”

“employees”

“officer”

“shareholders”

“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“action”

“affiliate”

“associate”

**§ 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 **[and]** , justifiable reliance and business judgment rule).

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

(c) Cross reference. – See section 1711 (relating to alternative provisions).

**Amended Committee Comment (2021):**

Former section 1716(b) dealing with the presumption of the business judgment rule was repealed in 2021. Section 1716(b), which read “[a]bsent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a director shall be presumed to be in the best interests of the corporation,” was replaced by the enactment in the same 2021 legislation of 15 Pa.C.S. § 1712(d).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“employees”

The term “action” used in this section is defined in 15 Pa.C.S. § 102 to include a failure to act.

**§ 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 **[and]** , 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 **[a shareholder, as such, 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.

**Amended Committee Comment (2021):**

Since 1990, Title 15 has stated that the fiduciary duties of directors are owed solely to the corporation. *See* act of December 19, 1990 (P.L. 834, No. 198) (adding sections 517, 1717, and 5717); *see also* act of April 27, 1990 (P.L. 129, No. 36) (adding former sections 511(d) and 1721(e)). Nonetheless, several subsequent court decisions, such as *In re Lemington Home for the Aged*, 659 F.3d 282, 291 (3d Cir. 2011), have suggested or held that directors of an insolvent Pennsylvania corporation owe a fiduciary duty directly to creditors. To eliminate any uncertainty created by those decisions, section 1717 was amended in 2021 to state expressly that directors of a corporation do not, as a matter of Pennsylvania law, owe a fiduciary duty directly to creditors, and to reject the contrary language in *Lemington Home* and similar suggestions or holdings that such a duty to creditors exists under Pennsylvania law. The 2021 amendments are intended to remove any concern created by those court decisions that Pennsylvania courts would impose on directors of an insolvent corporation a direct fiduciary duty to creditors and thus might differ on that point from the rule announced in the Delaware Supreme Court’s decision in *North American Catholic Educational Programming Foundation, Inc. v. Gheewalla*, 930 A.2d 92 (Del. 2007).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“shareholder”

**§ 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. **[The last sentence of section 1306(b)]** Section 1306(b)(2) (relating to other provisions authorized) shall not apply to this subchapter.

**Committee Comment (2021):**

This Committee Comment was adopted in 2021 and replaces in its entirety the Draftsmen’s Comment to section 1718. Revising a Draftsmen’s Comment is a departure from the Committee’s usual practice, and no inference should be drawn that the Committee has reviewed the Draftsmen’s Comment to any other section of Title 15 or concluded that other Draftsmen’s Comments correctly reflect the past or current state of the law.

Under section 1718, a provision of the articles may not be inconsistent with a provision of Subchapter 17B, notwithstanding the provisions of 15 Pa.C.S. § 1306. Consequently, an articles or bylaw provision would be ineffective if it purported, for example, to preclude directors from being able to consider the interests of a particular corporate constituency, or of all corporate constituencies other than a particular constituency, or to modify the duties of directors so that they were owed to a corporate constituency other than or in addition to the corporation. Of course, precatory bylaws stating, for example, the intent of the directors always to consider, or always to endeavor to act in the interests of, a particular constituency, but in either event not to the exclusion of other interests or with a particular weight, are not inconsistent with the provisions of Subchapter 17B.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“relax”

**§ 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.

**Committee Comment (2021):**

Section 1719 was added in 2021 and was patterned after 8 Del. Code § 122(17).

Section 1719 authorizes the inclusion of a provision in the articles of incorporation or an action of the board of directors that limits or eliminates, in advance, the duty of a director or other person to bring a business opportunity to the corporation. The limitation or elimination may be blanket in nature and apply to any business opportunities, or it may extend only to one or more specified classes or categories of business opportunities. If such a provision is included in the articles or an action of the board, taking advantage of a business opportunity covered by the provision without offering it to the corporation will not expose the director or other person either to monetary damages or to equitable or any other relief in favor of the corporation.

The actions that the board of directors may take under section 1719 include adoption of a provision of the bylaws that limits or eliminates, in advance, the duty of a director or other person to bring a business opportunity to the corporation. Section 1719 does not authorize, however, the adoption of such a bylaw solely by action of the shareholders. The reason for the difference is that the directors have duties to the corporation when adopting a bylaw.

This type of provision may be useful, for example, in the context of a private equity investor that wishes to have a nominee on the board but conditions its investment on an advance limitation or elimination of the corporate opportunity doctrine because of the uncertainty over the application of the corporate opportunity doctrine inherent when investments are made in multiple enterprises in specific industries. Another example is a joint venture in corporate form where the participants in the joint venture want to be sure that the corporate opportunity doctrine would not apply to their activities outside the joint venture. The focus of the advance limitation or elimination in these situations is on the duty of the director which extends indirectly to the investor. While the advance limitation or elimination may be placed in the articles (or in the bylaws as explained in the previous paragraph), the board might determine to include it in a contract relating to the investment or joint venture.

Officers may be included in a provision of the articles under this section 1719, or the directors may authorize the inclusion of such a provision in employment agreements or other contractual arrangements with officers.

Whether a provision for advance limitation or elimination of the duty to offer business opportunities to the corporation should be a broad “blanket” provision or one more tailored to specific categories or classes of transactions deserves careful consideration given the particular circumstances of the corporation.

Limitation or elimination of the duty of a director or officer to present a business opportunity to the corporation does not limit or eliminate the director’s or officer’s duty not to make unauthorized use of corporate property or information or to compete unfairly with the corporation.

The following words used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“officers”

“shareholders”

**Subchapter C**

**Directors and Officers**

**§ 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 **[subpart]** 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 **[subpart]** 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 **[liabilities]** 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).

**Amended Committee Comment (2021):**

Some form of governance is necessary for every corporation. The board of directors is the traditional form of corporate governance but this section provides it is not the exclusive form. Patterns of management may be tailored to specific needs in connection with family controlled enterprises, wholly or partially owned subsidiaries, or corporate joint ventures without the requirement of electing close corporation status under 15 Pa.C.S. Ch. 23. The persons who perform some or all of the duties of the board of directors may be designated “trustees,” “agents,” “managers” or “managing directors,” and they may be selected in ways other than the traditional election by the shareholders. The last sentence of subsection (a) makes clear that the persons performing the duties of directors are to be treated in all respects as directors while performing those duties.

The language of the 1933 BCL has been changed to recognize that the business and affairs of a corporation may be managed “under the direction of” (*i.e.*, by managers selected by the board), as well as “by” the board of directors (*e.g.*, in closely held, owner-managed businesses).

The effect of this section 1721 was incorrectly ignored by the District Court in *AMP Incorporated v. Allied Signal Inc.*, 1998 U.S. Dist. LEXIS 15617 (E.D. Pa. October 8, 1998). In that case, the District Court held that the powers of a board of directors under 15 Pa.C.S. § 2513 could not be assigned to a committee of three designated persons by a bylaw adopted by the shareholders because shareholders do not have authority to take away the powers given to the board of directors in 15 Pa.C.S. § 2513 and also because the proposed bylaw was an attempt to propose an amendment to the articles of incorporation which could not be done by shareholders.

The committee decided that it was not necessary to propose an amendment to this section 1721 to overrule the holding in *AMP* because the District Court did not refer to this section in its opinion. The result in *AMP* is now the law for registered corporations because of the enactment of 15 Pa.C.S. § 2527. As to all other business corporations, section 1721 should be held to authorize the shareholders to adopt a bylaw transferring such powers of the board as are specified in the bylaw to any designated group of persons whether or not they are directors. Such a bylaw is not an impermissible attempt to amend the articles, although under 15 Pa.C.S. § 1504(c), the provisions that subsection (a) authorizes to be set forth in the bylaws may also be set forth in the articles.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“bylaw”

“directors”

“shareholders”

“unless otherwise provided”

**§ 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 **[reference]** references. – See **[section]** sections 2530 (relating to qualifications of directors) and 3131 (relating to directors).

**Amended Committee Comment (2021):**

Examples of qualifications are eligibility requirements based on residence, shareholdings, age, length of service, experience, expertise, and professional licenses or certifications.

Qualifications may apply to all board members or to a specified percentage or number of directors. An example of a qualification applying to fewer than all directors would be a requirement that at least two directors must have specified business or professional experience or a particular educational degree or background.

15 Pa.C.S. § 2530 limits the qualifications that may be imposed for directors of a registered corporation.

Under 15 Pa.C.S. § 1504(c), the qualifications and restrictions that section 1722(a) authorizes to be set forth in the bylaws may also be set forth in the articles.

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors under section 1722(a) with respect to the bylaws must be taken by the full board, and not by a committee thereof.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”

“bylaws”

“full age”

“shareholder”

“unless otherwise restricted”

**§ 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 **[he]** the director was selected and until **[his]** a successor has been selected and qualified or until **[his]** the director’s earlier death, resignation or removal. **[Any director 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 shall be specified in the notice of resignation.]** Each director shall be selected for the term of office provided in the bylaws, which shall be one year **[and until his successor has been selected and qualified or until his earlier death, resignation or removal,]** 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 of a business corporation 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).

**Amended Committee Comment (2021):**

The last sentence of section 1724(a) was not found in the 1933 BCL. It makes clear that a decrease in the number of directors does not shorten the term of an incumbent director or divest any director of his office. Rather, the incumbent director's term expires at the annual meeting at which his successor would otherwise be elected.

The reference in section 1724(a) to the selection of directors "for the term of office provided in the bylaws" means that the board may be classified as provided in section 1724(b) by a provision in the bylaws. Because section 1724(a) does not require such a bylaw to be adopted by the shareholders, it may be adopted by the board if the bylaws vest the board with the power to change the bylaws. *Cf.* Delaware General Corporation Law § 141(d) (requiring a bylaw classifying the board to be adopted by the stockholders). Under 15 Pa.C.S. § 1726, however, the members of a classified board will be protected from removal without cause only if the bylaw classifying the board has been adopted by the shareholders. As a result, the consequence of classifying a board as it relates to the issue of removal is functionally the same in Pennsylvania as in Delaware. It is no longer necessary to elect the shortest class of a classified board for at least one calendar year.

Although section 1724(a) permits the directors to be classified in the bylaws, if it is desired to classify the directors in a fashion other than as described in section 1724(b)(1)-(3) the classification must be done in the articles.

Section 1724(c) was added in 2021. The first and second sentences were previously found in section 1724(a). The last sentence makes clear that a decision by the board of directors to accept or reject a resignation conditioned on its acceptance by the board is subject to the usual duties of directors under 15 Pa.C.S. Subch. 17B, including the presumptive application of the business judgment rule. If the board accepts a resignation, the board will be able to specify the effective date of its acceptance (and thus of the resignation), subject to a contrary provision in the resignation.

Resignations that are conditioned upon a director failing to receive a specified vote for reelection as a director are typically conditioned upon acceptance by the board of directors. If such a resignation is not conditioned upon acceptance by the board, then the resignation will take effect upon the determination that the director has not been reelected or such later time as is specified in the resignation.

Section 141(b) of the Delaware General Corporation Law includes a provision that “A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable.” The Committee decided that provision should not be included because it implies that a resignation cannot be irrevocable unless it is conditioned upon the director failing to receive a specified vote.

Under 15 Pa.C.S. § 1504(c), the provision that section 1724(a) authorizes to be set forth in the bylaws may also be set forth in the articles.

Under 15 Pa.C.S. § 1731(a)(1)(iii), any action that may be taken by the board of directors under section 1724 with respect to the bylaws must be taken by the full board, and not by a committee thereof.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

"articles"

"board"

"business corporation"

"bylaws"

“directors”

"except as otherwise provided" (see "unless otherwise provided")

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

**§ 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 does 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).

**Amended Committee Comment (2021):**

Section 1725(a) is a limitation only on the method of selection of directors, as such. *See* the Committee Comment to 15 Pa.C.S. § 1721.

The last sentence of section 1725(a) was added by the GAA Amendments Act of 1990 to make clear that the 1988 BCL authorizes directors to be classified in two different ways: as to the length of their term of office (authorized by 15 Pa.C.S. § 1724), and as to the shareholders who elect them (authorized by this section 1725). The two types of classification are not intended to be mutually exclusive and a corporation may use either scheme of classification or a combination of the two as is considered appropriate. Note that the rule of section 1725(b)(2) has been expressly limited to situations where the board has been classified into staggered terms.

The provisions of section 1725(a) are not applicable to management corporations. *See* 15 Pa.C.S. § 2711.

Section 1725(b)(3) was added in 2021 and was patterned in part after 8 Del. Code § 223(a) (last sentence). If the offices of all of the directors are vacant, any officer, shareholder, or fiduciary for a shareholder may call a special meeting of shareholders to elect directors. *See* 15 Pa.C.S. § 1755(b)(4). There is no minimum amount of shares that must be held in order to call a special meeting under section 1725(b)(3). The term “fiduciary” is defined in 1 Pa.C.S. § 1991 to mean “An executor, administrator, guardian, committee, receiver, trustee, assignee for the benefit of creditors, and any other person acting in any similar capacity.”

If all of the powers and duties of directors are exercised by persons other than directors pursuant to 15 Pa.C.S. § 1712 or 2331, then section 1725(b)(3) does not apply

Section 1725(b)(3) is not listed as an exception in 15 Pa.C.S. § 2521 which limits the right of shareholders of a registered corporation described in 15 Pa.C.S. § 2502(1) to call special meetings, and thus shareholders in those corporations will not have the right to call a special meeting under section 1725(b)(3). Any officer of such a corporation, however, will be able to call a special meeting in the unlikely event that the corporation has no directors in office.

Under 15 Pa.C.S. § 1504(c), the provisions that subsections (a) and (c) authorize to be set forth in the bylaws may also be set forth in the articles.

Under 15 Pa.C.S. § 1731(a)(2)(ii) and (iii), any action that may be taken by the board of directors with respect to the filing of vacancies or provisions in the bylaws must be taken by the full board and not by a committee thereof.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“bylaws”

“closely held corporation”

“directors”

“except as otherwise provided” (see “unless otherwise provided”)

“officer”

“shareholders”

“unless otherwise restricted”

**§ 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 **[if]** by a consent or consents to the action in record form **[are]**. Except as provided in subsection (c), the consents must be signed, before, on or after the effective **[date]** time of the action by all of the directors in office **[on the date the first consent is signed]** 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.

**Amended Committee Comment (2021):**

Unlike the case of a shareholders meeting where, under 15 Pa.C.S. §1756(a)(2), the shareholders can continue to do business notwithstanding the withdrawal of enough shareholders to leave less than a quorum, section 1727(a) requires that a quorum be present whenever action is taken by the board of directors. If, for example, four matters are to be considered at a meeting of the board at which a quorum is present at the start of the meeting, but enough directors to destroy the existence of a quorum leave the meeting after two of the matters have been considered, actions properly taken on the first two matters will be valid but the meeting will not be able to act on the last two matters.

A corporation that implements a decision approved by less than all of the directors on the expectation that one or more directors will sign the requisite consents after the decision has been implemented, assumes the risk that unanimous consent cannot be obtained, with the result that ratification will be necessary, or failing ratification, that the corporation will have acted without authority. The reference to consent given after the action has been taken is intended to make clear that a consent may be effective coincident with the effective date of the action.

The corporation must keep a record of all consents under section 1727(b), regardless of their form, because they are required to be filed with the board minutes. A consent may be signed in counterparts, so long as all of the consents are to the same action.

The provisions of section 1727 also apply to meetings of a committee of the board of directors under 15 Pa.C.S. § 1731(c).

Prior to its amendment by the GAA Amendments Act of 2013, section 1727(b) read:

Unless otherwise restricted in the bylaws, any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if, prior or subsequent to the action, a consent or consents thereto by all of the directors in office is filed with the secretary of the corporation.

The 2013 amendments were intended as a clarification of the wording of section 1727 and a confirmation of existing law and practice.

Section 1727(c) was added in 2021 and was intended as a codification of existing law and practice. Section 1727(c) was patterned in part after Delaware General Corporation Law § 141(f). The addition of section 1727(c) should not be read to imply that a consent signed before the adoption of section 1727(c) could not have operated in the manner described in section 1727(c).

A consent may be signed with a delayed effective time by a person who is not a director when the consent is signed, with the expectation that when the consent becomes effective the person at that time will be a director. Section 1727(c) also makes clear that a consent signed with a delayed effective time will become effective at the effective time even if one or more of the directors who signed the consent are not directors at the effective time.

A consent may provide that if it has not taken effect within a certain time, it will no longer be effective. This will allow directors, among other things, to reserve the right to revisit the desirability of an action if the action is delayed unduly because of the failure of a condition precedent.

Under 15 Pa.C.S. § 1504(c), the provisions and restrictions that section 1727 authorizes to be set forth in the bylaws may also be set forth in the articles

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors under section 1727 with respect to the bylaws must be taken by the full board, and not by a committee thereof.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“bylaws”

“directors”

“unless otherwise provided”

“unless otherwise restricted”

“voting”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“act”

“record form”

“signed”

§ 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 **[its]** the corporation’s directors or officers are **[directors]** governors or officers of the other association or have a financial or other interest, **[shall not be]** 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 **[his or their votes are]** 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 **[his]** 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; **[or]**

(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).

Amended Committee Comment (2021):

Shareholders who approve action under section 1728(a)(2) may be “interested” shareholders and thus subject to 15 Pa.C.S. § 2538.

The analogous provision of the Delaware General Corporation Law, 8 Del. Code § 144, provides expressly that action to approve an interested transaction may be taken by a committee of the board instead of the full board. Similar references to committees have not been included in section 1728 because 15 Pa.C.S. § 1731(a)(2) makes clear that a committee may be given the authority of the board to act under section 1728. The only exception is that under 15 Pa.C.S. § 1731(a)(2)(iii) a committee cannot be given the authority of the board to adopt a bylaw under section 1728(c).

Section 1728(d) was added in 2021 and was patterned after ALI Principles of Corporate Governance, § 5.07. It deals with the situation where there are common governors or officers between a business corporation and a non-wholly owned subsidiary, and provides a safe harbor under section 1728(a) in certain situations where the common directors or officers do not personally assert substantive influence over the terms of a contract or transaction.

Section 1728(e) was also added in 2021 and deals with the related situation of a business corporation and a wholly owned subsidiary with common governors or officers. It provides a safe harbor under section 1728(a) that makes clear a contract or transaction between a corporation and a wholly owned affiliate will not be void or voidable solely on the grounds of the presence of common governors or officers.

Section 1728(d) and (e) deal only with the question of common governors or officers in two or more entities. Those provisions do not address a situation in which a director or officer has a “financial or other interest” beyond just the overlapping positions with the entities involved. If a transaction does not satisfy the requirements of section 1728(d) or (e), it will nonetheless not be void or voidable if it is approved as provided in section 1728(a).

Section 1728(f) was added in 2021. Among other things, it is a reminder that, in the context of an acquisition or proposed acquisition of control of the corporation, the same definition of “disinterested director” applies for purposes of both 15 Pa.C.S. § 1715 and section 1728.

Under 15 Pa.C.S. § 1504(c), the restrictions that section 1728(c) authorizes to be set forth in the bylaws may also be set forth in the articles.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“bylaws”

“domestic corporation for profit”

“domestic corporation not-for-profit”

“entitled to vote”

“except as otherwise restricted” (*see* “unless otherwise restricted”)

“foreign corporation for profit”

“foreign corporation not-for-profit”

“officers”

“shareholders”

“vote” (and “cast a vote”)

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“governor”

**§ 1730. Compensation of directors.**

(a) General rule. – Except as otherwise restricted in the bylaws, the board of directors of a business corporation **[shall have]** has the authority to fix the compensation of directors for their services as directors **[and a]** , 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.

**Amended Committee Comment (2021):**

Under 15 Pa.C.S. § 1504(c), the restrictions that section 1730 authorizes to be set forth in the bylaws may also be set forth in the articles.

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors under section 1730 with respect to the bylaws must be taken by the full board, and not by a committee thereof. If not otherwise restricted in the bylaws, however, a duly authorized committee of the board may exercise the power of the board under section 1730 to fix the compensation of directors. *See* 15 Pa.C.S. § 1731(c).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“bylaws”

“except as otherwise restricted” (*see* “unless otherwise restricted”)

“officer”

**§ 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 **[resolution]** 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 **[resolution]** 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 **[any written]** 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 **[he or they]** 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.

**Amended Committee Comment (2021):**

The 1933 BCL provided that a majority of the directors in office was necessary to establish a committee unless otherwise “provided” in the bylaws, thus permitting the bylaws to fix a lower number, *e.g.*, a majority of a quorum. The board had the authority to adopt such a bylaw and, thus, could avoid the required vote by the simple expedient of adopting an appropriate bylaw. As originally enacted, the 1988 BCL mandated as a requirement for the board to establish a committee the vote of directors entitled to cast a majority of the votes that all voting directors in office were entitled to cast. The GAA Amendments Act of 1992 eliminated that special voting requirement, thus permitting the board to establish committees by the same vote required for action by the board generally. The GAA Amendments Act of 1992 also recognized the practice that is sometimes followed of establishing committees in the bylaws which automatically consist of certain designated officers or other persons.

Committees of the board of directors are prohibited from taking action on the issues listed in section 1731(a)(2). Section 1731(a)(2)(i) was amended in 2021 to adopt the approach in Delaware General Corporation Law § 141(c)(2) and permit a committee of the board to act with respect to the election or removal of directors. Section 1731(a)(2)(i) only applies to issues that are required to be submitted to the shareholders by the 1988 BCL or 15 Pa.C.S. Ch.3, and thus a committee may act with respect to issues that are only required to be submitted to the shareholders by a provision of the articles or bylaws of, or an agreement (such as a shareholders’ rights plan or “poison pill”) binding on, the corporation.

The GAA Amendments Act of 2001 added the word “exclusively” in subsection (a)(2)(v) to validate the modern practice of granting concurrent jurisdiction over an issue to more than one committee. If an executive committee, for example, has been delegated the full power of the board in the interim between board meetings, section 1731(a)(2)(v) is intended to permit the executive committee to act on a matter that has been expressly, but not exclusively, delegated to another committee. Thus, in that circumstance, if a compensation or option committee has the nonexclusive power to grant options, the executive committee could also grant an option (as it might wish to do in approving an employment package for a new senior executive). A grant of the full power of the board to an executive committee, of course, will be subject to the restrictions in section 1731(a)(2)(i)-(iv).

Instead of adopting detailed provisions on the organization and procedures of committees, subsection (c) uses the expedient of referring those questions to the provisions of the 1988 BCL applicable to the full board. Thus, for example, an alternate director selected under 15 Pa.C.S. § 1725(c) who has the authority to serve in the absence of a director from a meeting “of the board” would also have the authority to serve at a committee meeting.

The requirement of the 1933 BCL that a committee must be composed of two or more directors has been changed to permit a committee of only one director.

Under 15 Pa.C.S. § 1504(c), the restrictions that subsection (a) authorizes to be set forth in the bylaws may also be set forth in the articles.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“bylaws”

“shareholders”

“unless otherwise restricted”

“voting”

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

**§ 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 **[and assistant 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 **[and assistant 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 **[his]** the officer’s successor has been selected and qualified or until **[his]** 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.

**[(b)]** (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 **[resolutions or orders]** actions of the board of directors.

**[(c) Cross references. – See sections 1110 (relating to annual report information), 1712(c) (relating to officers) and 3132 (relating to officers).]**

(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.

**Amended Committee Comment (2021):**

Unlike under the 1933 BCL, a business corporation is not required to have a president, a secretary and a treasurer, by name, so long as the corporation has persons, regardless of their titles, who act as such.

Explicit references to “assistant officers” in section 1732 have been removed in connection with the amendment in 2021 adding “assistant officer” to the definition of “officer” in 15 Pa.C.S. § 1103. No substantive change is intended.

The provisions on resignations of officers are intended as a codification of existing law and practice.

Section 1732(g) was added in 2021 as part of a series of amendments relating to the effect of the bylaws. *See* the Amended Committee Comment to 15 Pa.C.S. § 1505. The right of an officer to receive a copy of the bylaws is more limited than the similar right of shareholders and directors and is available only to the extent reasonably related to the duties of the officer. *See* 15 Pa.C.S. §§ 1508(c.3), 1512(c). The shareholders in a family-owned business, for example, may not consider it appropriate for non-family members to have access to the bylaws. An officer in general has the status of an agent and the officer’s principal should have the ability to decide what information will be available to the officer. The limitation in section 1732(g) on the scope of an officer’s right to receive a copy of the bylaws does not affect the right of an officer who is also a director or shareholder to receive a copy of the bylaws as provided in sections 1508(c.3) and 1512(c).

Under 15 Pa.C.S. § 1504(c), the provisions that section 1732 (a), (b), (e), and (f) authorize to be set forth in the bylaws may also be set forth in the articles.

Under 15 Pa.C.S. § 1731, any action that may be taken by the board of directors under section 1732, other than with respect to the bylaws, may be taken by a duly authorized committee thereof, subject to compliance by the committee with any procedure applicable to action by the full board.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

"board of directors"

"business corporation"

"bylaws"

"full age"

"officers"

"unless otherwise provided"

"unless otherwise restricted"

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

**§ 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.

**Committee Comment (2021):**

Prior to the enactment of section 1734 in 2021, the duties of officers were set forth in former 15 Pa.C.S. § 1712(c). A bylaw authorized by section 1734(a) that varies the duties of officers may be adopted by the directors. Officers are agents whose duties may be specified by the corporation as their principal. The Committee concluded that the subject matter of section 1734(a) is embraced within the broad function of specifying the duties of officers.

Section 1734(b) and (c), which were added in 2021, permit officers to rely on others in a manner similar to the reliance permitted for directors. What will constitute reliance in good faith by an officer, however, may be different from what is permitted for directors in light of the different position that the officer may occupy. The officer, for example, may have a greater obligation to be familiar with the affairs of the corporation commensurate with the officer’s position, or the bylaws or an employment agreement may impose specific obligations on the officer. A judgment as to the officer’s good faith will need to consider those types of factors.

Section 1734(d) was added in 2021 as a codification of existing law and practice. The Pennsylvania Supreme Court confirmed that the business judgment rule applies in Pennsylvania in *Cuker v. Mikalauskas*, 547 Pa.600, 692 A.2d 1042 (1997). Consistent with the invitation of the Supreme Court in *Cuker* for Pennsylvania courts to adopt provisions of the ALI *Principles of Corporate Governance* in addition to §§ 7.02-7.10 and 7.13, which were expressly adopted in *Cuker*, section 1734(d) adopts the ALI formulation of the business judgment rule as the applicable statement of the rule in Pennsylvania with respect to officers. The business judgment rule applies to the discharge of the duties of an officer under section 1734, but does not apply to contractual obligations of an officer or the discharge of duties under other provisions of law.

The requirement of section 1734(d)(1) that the subject of a business judgment not involve “self-dealing” should be interpreted consistently with the usage of the same term in 15 Pa.C.S. § 1735(a)(2).

The standard in section 1734(d)(3) that an officer must “rationally believe” a business judgment is in the best interests of the corporation is intended to provide officers with a wide ambit of discretion. The phrase “rationally believes” is intended to permit a significantly wider range of discretion than the term “reasonable,” and to give an officer a safe harbor from liability for business judgments that might arguably fall outside the term “reasonable” but are not so removed from the realm of reason when made that liability should be incurred.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

"business corporation"

"bylaws"

“except as provided” (*see* "unless otherwise provided")

“except as restricted” (*see* "unless otherwise restricted")

"employees"

"officers"

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“affiliate”

“associate”

**§ 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).

**Committee Comment (2021):**

The provision of the Judicial Code cited in section 1735(e) provides, in relevant part:

The liability of an individual shall be limited to the extent expressly provided by or pursuant to Title 15 (relating to corporations and unincorporated associations). See 15 Pa.C.S. Ch. 5 Subch. B (relating to fiduciary duty and indemnification), Ch. 17 Subch. B (relating to fiduciary duty) and Ch. 57 Subch. B (relating to fiduciary duty).

The Committee understands that the title of 42 Pa.C.S. § 8332.5 (“corporate representatives”) and the list of statutes cited in the quotation above are not dispositive with respect to the meaning of 42 Pa.C.S. § 8332.5, and further that section 1735 and other provisions of Title 15 such as 15 Pa.C.S. §§ 5733.2 (officers of nonprofit corporations), 8649(h) (general partners of limited partnership), and 8849.2(h) (managers of limited liability company) are also included within the scope of 42 Pa.C.S. § 8332.5.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

"business corporation"

"bylaws"

"officer"

“relax”

“shareholders”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“action”

“recklessness”

**Subchapter D**

**Indemnification**

**§ 1743. Mandatory indemnification.**

(a) General rule – To the extent that a **[representative]** 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, **[he]** the director or officer shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by **[him]** 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 [the effective date of the amendment of subsection (a)].

**Amended Committee Comment (2021):**

Unlike indemnification pursuant to 15 Pa.C.S. §§ 1741 and 1742 which may be restricted in the bylaws, section 1743 creates an absolute right to indemnification against expenses to the extent a director or officer has been successful on the merits or otherwise.

Section 1743(a) was amended in 2021 to follow the approach of section 145(c) of the Delaware General Corporation Law, and make the mandatory statutory indemnification applicable only to present and former directors and officers. Prior to the 2021 amendment, section 1743 applied to any “representative” as defined in 15 Pa.C.S. § 102 of a business corporation. The limitation of the scope of section 1743 does not affect possible rights to indemnification that representatives other than directors and officers may have under common law or under other supplemental indemnification contemplated by 15 Pa.C.S. § 1746. The limitation in scope also only applies prospectively under section 1743(b).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”

“officer”

*See* 15 Pa.C.S. § 1748 regarding the applicability of this section to successor corporations.

**§ 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.

**Amended Committee Comment (2021)**

The last sentence of section 1750 was added in 2021 and was patterned after 8 Del. Code § 145(f). It is intended as a codification of existing law and practice.

*See* 15 Pa.C.S. § 1748 regarding the applicability of section 1750 to successor corporations.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“bylaws”

“unless otherwise provided”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“act”

“representative”

**Subchapter E**

**Shareholders**

**§ 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; **[or]**

(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 **[section]** 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 **[only]** 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 **[of meetings]** 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.

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

**Amended Committee Comment (2021):**

The 1933 BCL unqualifiedly required the secretary to fix the time of a special meeting within 60 days after receipt of the request, even where the right to call the meeting was contained in a nonstatutory source such as the articles. However, preferred stock default provisions which provide for the call of a special meeting to elect preferred stock directors typically permit the time of the meeting to be deferred a stipulated period (frequently longer than 60 days) so as to coincide with the annual meeting. Section 1755(b) has been revised to accommodate this practice by limiting the application of the 60 day limit to meetings called under statutory authority and to reflect the requirements of 15 Pa.C.S. § 2565(a).

Under 15 Pa.C.S. § 1504(c), the provisions that section 1755(a), (b) and (d) authorize to be set forth in the bylaws may also be set forth in the articles.

The provisions of section 1755(a) are modified as to management corporations by 15 Pa.C.S. § 2712.

The provision of section 1755(b) relating to the statutory right of 20% of the shareholders to call a meeting of shareholders is not applicable to a registered corporation. *See* 15 Pa.C.S. § 2521. Section 1755(b) was amended in 2021 to take account of 15 Pa.C.S. § 2565(a).

The provisions of section 1755(c) are modified as to registered corporations by 15 Pa.C.S. § 2522.

Section 1755(d) is not intended to authorize a postponement to a time that would conflict with the provision of section 1755(a) requiring a meeting in each calendar year unless otherwise provided in the articles.

A brief delay in the convening of a meeting is not intended to constitute a postponement of the meeting for purposes of section 1755.

It is assumed that abuses of the procedures for postponing, adjourning and cancelling meetings will be dealt with under any applicable principles of fiduciary duty and the fraud and fundamental unfairness test pursuant to applicable procedures of 15 Pa.C.S. Subch. 17G.

Under 15 Pa.C.S. § 1731(c), the power of the board of directors under section 1755(b) to call a special meeting of the shareholders may be exercised by a duly authorized committee of the board, subject to compliance by the committee with any procedure applicable to action by the full board, but under 15 Pa.C.S. § 1731(a)(2)(i) the full board will ordinarily control the agenda of the meeting. Under 15 Pa.C.S. § 1731(a)(2)(iii), however, any action that may be taken by the board of directors under section 1755 with respect to the bylaws must be taken by the full board, and not by a committee thereof.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“bylaws”

“entitled to vote”

“officers”

“shareholders”

“unless (or “except as”) otherwise provided”

“unless otherwise restricted”

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

**§ 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) **[The]** 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 **[a particular matter to be acted upon at the meeting shall constitute a quorum for the purposes of consideration and action 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 **[such]** a time and place **[as]** 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 **[shareholder]** 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).

**Amended Committee Comment (2021):**

Section 1756(a)(1)(ii) was added in 2021 and was patterned after 8 Del Code § 216(4) and Model Business Corporation Act (2016 Revision), § 7.25(a). It makes clear that the determination of whether a quorum is present at a meeting must be made with respect to both (i) each separate matter to be considered at the meeting and (ii) if any shareholders are entitled to vote as a class on any matter, with respect to each class vote.

Section 1756(a)(4) was added by the GAA Amendments Act of 2001 and is intended to resolve the uncertainty created by so-called “broker non-votes.” Where a nominee holds shares in “street name” and votes the shares on certain issues, but does not vote them on other issues because it has not received instructions from the beneficial owner, the shares will be considered present at the meeting for all purposes. Section 1756(a)(4) was amended in 2021 to make clear that if a nominee record holder holds shares for a number of beneficial owners, and a proxy for that nominee shareholder votes or takes other action only with respect to shares beneficially owned by some beneficial owners, the registered shareholder is thereby treated as present only with respect to the number of shares as to which the proxy or proxies act for those owners.

Section 1756(a)(4) assumes that in virtually every instance written proxies will have been submitted before the start of a meeting, and the person authorized to act as proxy will be present for the entire meeting. In the rare instance that the existence of a proxy becomes known during the course of a meeting, it is intended that the rule of section 1756(a)(4) will apply beginning at the point in the meeting at which the secretary or judges of election learn of the proxy. If there are three items on the agenda of a meeting, for example, and a proxy voting on just the second item is mailed to the secretary before the start of the meeting, the shares covered by the proxy will be deemed to be present for the consideration of all three agenda items. If, on the other hand, a person holding that same proxy arrives at the meeting after the consideration of the first agenda item, the shares will be deemed to be present only for the consideration of the second and third agenda items.

The GAA Amendments Act of 2013 added the reference to “takes other action” in the first clause of section 1756(a)(4) to make clear that if a proxy abstains at the direction of a beneficial owner the shares that are abstaining from voting are considered present for purposes of a quorum. The definition of “voting” in 15 Pa.C.S. § 1103 does not include abstaining from voting and thus prior to the 2013 amendment there was some question as to whether shares present by proxy that abstained from voting were present for purposes of a quorum. Section 1756(a)(4) requires that the voting or other action be taken “on behalf of a shareholder.” A situation where a broker does not vote shares held in street name because the broker has not received instructions from the beneficial owner, a so called “broker non-vote,” is different from the situation where a broker is instructed to abstain. In the case of a broker non-vote, the broker is not acting on behalf of the beneficial owner and thus the shares that are not voted will not count toward a quorum; but where the broker is instructed to abstain, the broker is acting on behalf of the beneficial owner and the shares will be considered present for quorum purposes. However, if a broker votes on a routine matter such as the ratification of auditors, the shares will, by virtue of section 1756(a)(4), be deemed present during the entire meeting for purposes of determining the quorum.

Unless the articles or a bylaw adopted by the shareholders provides otherwise, if due notice of intention to exercise the provisions of section 1756(b)(2) is given, those shareholders who attend a meeting of shareholders that has been adjourned for one or more periods aggregating at least 15 days constitute a quorum to act on the matters included in the notice. It is intended that the notice of the original meeting may contain the notice required by section 1756(b)(2), because under 15 Pa.C.S. § 1702(b) notice of the adjourned meeting may generally be solely by announcement at the meeting at which the adjournment is taken. Therefore the original notice should ordinarily carry the requisite notice concerning the possibility of an adjourned meeting and of action at the meeting by less than a quorum. Under section 1756(b)(1), if such a statement is not included in a notice of meeting at which directors are to be elected, the first adjourned meeting, regardless of the length of the adjournment, will nevertheless be competent to elect directors in the absence of the usual quorum, unless a bylaw adopted by the shareholders provides otherwise.

Under 15 Pa.C.S. § 1504(c), the provisions that section 1756 authorizes to be set forth in the bylaws may also be set forth in the articles.

The board of directors of a registered corporation is authorized to adopt the bylaws referred to in section 1756(a). *See* 15 Pa.C.S. § 2523.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”

“bylaws”

“casts a vote” (*see* “voting”)

“entitled to vote”

“shareholders”

“shares”

“unless otherwise provided”

**§ 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 **[his]** the shareholder’s name on the **[books of the corporation]** 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) **[The]** 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.

**Amended Committee Comment (2021):**

The requirement that any restriction on voting rights adopted under section 1758(a) not be “manifestly unreasonable” is intended to import the standard of 15 Pa.C.S. § 1529(c)(4) and to prohibit restrictions based on race, sex, religion, etc.

The restrictive bylaw referred to in section 1758(b)(1) would be one, *e.g.*, requiring all voting for election of directors to be by ballot. If the term otherwise “provided” had been used, the bylaws could have abolished the use of ballots entirely. Section 1758(b)(1) was amended in 2021 to exempt from the requirement to supply ballots on request by the shareholders a meeting that is held solely by means of the Internet or other electronic technology. In the case of such a meeting, the distribution of ballots is not necessary because 15 Pa.C.S. § 1708(c) requires that the technology for the meeting permit the shareholders to vote on matters submitted to them. Even if the shareholders were to vote to use ballots at a meeting conducted solely by means of electronic technology, the use of ballots could be dispensed with by the board of directors or the presiding officer.

Section 1758(b)(2) was amended in 2021 to permit the bylaws to change the vote required to elect directors, for example from plurality to majority. Prior to that amendment, some corporations had amended their bylaws to provide for a majority vote standard to elect directors. The 2021 amendment was made retroactive as stated in section 1758(b)(2) to remove any question as to whether those bylaws are valid.

Under the 1988 BCL and in conformity with modern practice, dissenters rights do not exist upon the elimination of cumulative voting.

As to section 1758(c)(2), *see* 15 Pa.C.S. § 1106(b)(3).

Under the 1933 BCL, only a bylaw adopted by the shareholders could prescribe the procedure for nominating directors. Section 1758(e) now permits such a bylaw to be adopted by the board of directors. Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board with respect to the bylaws must be taken by the full board and not by a committee thereof.

Advance notice bylaws are permitted if there is reasonable opportunity for shareholders to comply with them in a timely fashion and if the requirements of the bylaws are reasonable in relationship to corporate needs. Among the considerations to be taken into account in determining the reasonableness of an advance notice bylaw authorized by section 1758(e) is whether the time frame within which director nominations or shareholder resolutions must be submitted is consistent with the corporation’s need, if any, to (i) prepare and publish a proxy statement, (ii) verify that a director nominee meets any established qualifications for director and is willing to serve, (iii) determine that a proposed resolution is a proper subject for shareholder action, and (iv) give interested parties adequate opportunity to communicate a recommendation or response with respect to such matters or to solicit proxies. Whether or not an advance notice provision has been adopted, if a publicly traded company receives advance notice of a matter to be raised for a vote at an annual meeting, management may exercise its discretionary proxy authority only in compliance with Rule 14a-4(c)(1) adopted under the Securities Exchange Act of 1934.

The last sentence of section 1758(e) refers only to shareholder proposals in connection with the annual meeting because the business to be conducted at a special meeting of the shareholders is limited by 15 Pa.C.S. § 1704(c) to the business set forth in the notice of the meeting, and thus the shareholders do not have the right to propose other items of business at a special meeting.

Under 15 Pa.C.S. § 1504(c), the provisions that sections 1758(b) and (e) authorize to be set forth in the bylaws may also be set forth in the articles.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“business corporation”

“bylaws”

“entitled to vote”

“share register”

“shareholder”

“shares”

“unless otherwise provided”

“unless otherwise restricted”

**§ 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**[, or to vote at,]** 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 **[record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at 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 **[in writing]** 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**[;**

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

(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 resolution of the board may set forth:]** 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.

**[Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the 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.]**

**Amended Committee Comment (2021):**

Under the 1933 BCL when an adjourned meeting was held more than 50 days after the record date no notice problem arose, since (as in 15 Pa.C.S. § 1702(b)) no notice other than announcement at the meeting needed to be given of the adjournment. It was not clear, however, whether the record date was effective for quorum and voting purposes at the adjourned meeting. Section 1763 proceeds on the assumption that abuses of the record date procedure at adjourned meetings will be dealt with under the procedures of 15 Pa.C.S. Subch. 17G.

Section 1763(a) was amended in 2021 to adopt the Delaware practice of allowing a corporation to set different record dates for determining the shareholders entitled to notice and the shareholders entitled to vote at the same meeting. *See* 8 Del. Code § 213(a). If the board sets only one record date, that date will apply for purposes of determining both shareholders entitled to notice and to vote.

The purpose of section 1763(c) is to facilitate direct communication between the corporation and the beneficial owner by authorizing a procedure for bypassing the intermediate record holder. The adoption of the procedure will be discretionary with each corporation and will require authorization in the articles of incorporation or the bylaws.

Compliance with the procedure by the record holder will also be discretionary and can be accomplished for only a portion of the shares held of record, if, for example, certain of the beneficial owners do not wish to have their names certified to the corporation.

Section 1763(c)(1) permits the procedure to be available only for certain classes of shareholders such as depositories, or broker-dealers and banks, or their nominees although it can also be made available to all shareholders. The reliability of the certification will obviously be a factor in determining the classification.

Section 1763(c)(2) permits the corporation to specify the purpose for which a certification may be made. It is expected that the most common use of the procedure will be for notice of, and voting at, a shareholders’ meeting or for payment of cash dividends. However, the procedure could also be applicable for other purposes.

Section 1763(c)(3) permits the corporation to specify the form of the certification, which may be in record form. The corporation is also given flexibility in the information required so that, in addition to the name, address and number of shares of the beneficial owners, other necessary data such as the taxpayer identification number can be obtained.

Section 1763(c)(4) provides for the fixing of a deadline for receipt of the certification after a record date so that the corporation may schedule its mailings. SEC and stock exchange rules require advance notice of the setting of a record date which will alert the record holders to the necessity of prompt action on or after that date.

Section 1763(c)(5) provides for additional conditions which may become desirable as practice under the procedure develops. For example, in most cases it is expected that a certification will be effective only for a specific record date and that a new certification will be required for a subsequent record date. However, the procedure could provide that a certification as of a certain date shall continue until changed by the certifying holder.

Upon compliance with the procedure the person specified in the certification becomes the “shareholder” in place of the certifying holder for the purpose set forth in the certification. Thus, if a corporation has adopted the procedure for shareholder meetings and dividend payments and one record date is set for both, a record holder will be able to certify for either the purpose of notice and voting at the meeting or the dividend payment or for both.

Under 15 Pa.C.S. § 1504(c), the provisions and restrictions that section 1763 authorizes to be set forth in the bylaws may also be set forth in the articles.

Under 15 Pa.C.S. § 1731, any action that may be taken by the board of directors under section 1763, other than with respect to the bylaws, may be taken by a duly authorized committee thereof, subject to compliance by the committee with any procedure applicable to action by the full board.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“bylaws”

“entitled to vote”

“shareholders”

“shares”

“unless otherwise provided”

“unless otherwise restricted”

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

**§ 1764. Voting lists.**

(a) General rule. – The officer or agent having charge of the **[transfer books for shares]** 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 **[of a nonregistered corporation held at a geographic location]** and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. **[See section 2529 (relating to voting lists).]** 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 transfer book]**, 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 transfer book]** or to vote at any meeting of shareholders.

(c) Electronic meetings. – If a meeting of shareholders **[of a nonregistered corporation]** 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).

**Amended Committee Comment (2021):**

The 1933 BCL required that a voting list be available at the principal place of business of the corporation five days in advance of a meeting. Production of the voting list just at the meeting is sufficient under the 1988 BCL. Only an unsatisfied demand for the production of the list at a meeting may be advanced to impeach the regularity of the meeting, and then only with respect to unfinished business at the time of the demand.

The GAA Amendments Act of 2013 limited the requirement to produce a voting list for inspection by the shareholders just to non-registered corporations. The purpose of producing a voting list at a meeting is to resolve disputes about the identity and right to vote of shareholders. In the case of a registered corporation, 15 Pa.C.S. § 2529 permits the corporation to dispense with providing a voting list at a meeting if the voting list has been furnished to the judges of election. If the judges of election have access to the voting list, which will normally be the case, it was considered unnecessary to require that all shareholders of a registered corporation be given the right to inspect the list at the meeting.

Shareholders of both registered corporations and nonregistered corporations have the right to seek to inspect the share register under 15 Pa.C.S. § 1508.

The second sentence of section 1764(a) and all of section 1764(c) are patterned in part after 8 Del. Code § 219(a). The Delaware statute provides that the list of shareholders may be made available “on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting.” Section 1764(c) is intended to be more flexible than the Delaware statute because section 1764(c) is not limited to an accessible electronic network. Section 1764(c) also does not require that the notice of the meeting include information required to gain access to the list. If any information needed to access the list is not available to a shareholder, the list will not be available in a “reasonably accessible manner.” But the information may be provided in a manner other than inclusion in the notice of the meeting.

The Delaware statute that was the model for section 1764(c) also provides that “In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation.” It was not considered necessary to add that statement to section 1764(c) because a corporation has the inherent power and authority to protect its proprietary information.

The last sentence of section 1764(a) was added in 2021 and was patterned after Model Business Corporation Act (2016 Revision), § 7.20(b). It imposes limitations on the use of a voting list by a shareholder or an agent or attorney of the shareholder.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”

“entitled to vote”

“officer”

“share register”

“shareholders”

“shares”

**§ 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 **[date]** 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 **[consents shall]** 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.

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

**Amended Committee Comment (2021):**

The “act” or “action” referred to in section 1766 is the decision made by the shareholders, for example, to approve a merger. Thus, the notice that is required under section 1766(c) is notice that the action has been taken (*i.e.*, the decision has been made by the shareholders). In the case of action approving a plan under 15 Pa.C.S. Ch. 3, the notice will provide the foundation for an action in equity by a nonconsenting shareholder to enjoin consummation of the corporate decision. Notice that an action will be taken at a future date will not trigger the running of the ten-day period, because such an intention may be too speculative to support equitable review of the action.

The Association Transactions Act limited the circumstances in which notice under section 1766(c) must be given ten days before an action is effective just to approval of transactions under 15 Pa.C.S. Ch. 3. Notice of other actions (such as election of directors or amendment of the articles or bylaws) is also required, but in those cases the notice may be given after the action has become effective.

The consent required by section 1766 may be given by proxy under 15 Pa.C.S. § 1759.

Under 15 Pa.C.S. § 1504(c), the restrictions and provisions that section 1766 authorizes to be set forth in the bylaws may also be set forth in the articles.

In the case of a registered corporation, action by partial consent must be authorized in the articles, rather than the bylaws, and the ten-day mandatory delay period of section 1766(c) is not applicable. *See* 15 Pa.C.S. § 2524(b).

The corporation must keep a record of all consents under section 1766, regardless of their form, because they are required to be “filed” with the secretary of the corporation.

Section 1766(a) was amended by the GAA Amendments Act of 2013 to clarify its wording with respect to when consents may be signed. The changes were patterned after similar changes made to 15 Pa.C.S. § 1727(b) and were intended as a codification of existing law and practice.

Section 1766(d) permits a consent to be signed with a delayed effective time by a person who is not a shareholder when the consent is signed, with the expectation that when the consent becomes effective the person at that time will be a shareholder. A consent signed with a delayed effective time will become effective at the effective time even if one or more of the shareholders who signed the consent are not shareholders at the effective time, unless the consent is revoked as provided in section 1766(d).

Under section 1766(e), the person signing a consent may decide whether the consent will be irrevocable. That is different than the rule for a consent by a director in 15 Pa.C.S. § 1727(c) because prohibiting a director from revoking a consent would be inconsistent with the fiduciary duties of a director. If a consent is silent as to revocation, it will be revocable. A consent that provides it is irrevocable may also limit the time during which it is irrevocable.

Under 15 Pa.C.S. § 1731(a)(2)(iii), any action that may be taken by the board of directors under section 1766 with respect to the bylaws must be taken by the full board, and not by a committee thereof.

Section 304(a)(2) of the General Association Act of 1988 provided that section 1766 and as much of the GAA as necessary to make section 1766 operative was effective retroactive to January 27, 1987, insofar as relates to the implementation of former 42 Pa.C.S. Ch. 83F (relating to corporate directors' liability). *See* 15 P.S. § 20304(a)(2).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“business corporation”

“bylaws”

“entitled to vote”

“relax”

“shareholders”

“shares”

“unless otherwise restricted”

“voting”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“record form”

“signed”

**Subchapter F**

**Derivative Actions**

**§ 1781. Derivative action.**

(a) General rule. – Subject to section 1782 (relating to eligible shareholder plaintiffs and security for costs) and **[subsection (b)]** 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 **[it cause the corporation to]** the corporation bring an action to enforce the right, and:

(i) if a special litigation committee is not appointed under section 1783 (relating to special litigation committee), **[the corporation does not bring the action within a reasonable time; or]** the board determines that:

(A) 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

(B) an action already commenced continue under the control of the plaintiff; 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 **[essential]** 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).

**Amended Committee Comment (2021):**

Section 1781 is patterned in part after American Law Institute, Principles of Corporate Governance: Analysis and Recommendations (1994) (the “ALI Principles”) § 7.03. In *Cuker v. Mikalauskas*, 692 A.2d 1042 (Pa. 1997), the Pennsylvania Supreme Court adopted Sections 7.02 – 7.10 and 7.13 of the ALI Principles and thus filled a void in Pennsylvania statutory law at the time. Subchapter 17F generally follows those sections of the ALI Principles, while elaborating and revising certain portions of those sections of the ALI Principles as they apply to business corporations.

Section 1781(a) and (b) follow Section 7.03 of the ALI Principles in adopting a “universal demand” requirement subject to an exception for irreparable injury. Except in the limited situation described in section 1781(b)(1), a plaintiff must always demand that the board of directors bring an action and allow the corporation to respond as provided in this Subchapter 17F before the plaintiff may commence a derivative action. Section 1781 thus rejects the law as it has developed in Delaware and other states that excuse pre-suit demand in circumstances where it is alleged that demand would be futile.

Section 7.02(c) of the ALI Principles provides that a director has standing to bring a derivative action unless the court finds that the director is unable to represent fairly and adequately the interests of the shareholders; and Section 7.03(a) of the ALI Principles requires a director to make demand in the same manner as a shareholder. Consistent with those sections of the ALI Principles, it is intended that the plaintiffs who are subject to section 1781 will include a director plaintiff.

The rights that may be enforced in a derivative action include the right to seek redress for a wrong to the corporation.

If “immediate and irreparable injury” is shown as required by section 1781(b), that will not excuse the plaintiff altogether from making demand; judicial review will begin with the response of the board. If “immediate and irreparable injury” justifies the commencement of the action without demand and the court grants an injunction to preserve the status quo, section 1781(b) contemplates that the board would still be given an appropriate time to respond and that further inquiry by the court will focus on the response of the board, or a special litigation committee if one is appointed as provided in 15 Pa.C.S. § 1783.

If a derivative action is commenced before demand has been made and the failure to make demand is not excused under section 1781(b), under the ALI Principles the appropriate sanction will not be dismissal of the action, but rather an award of costs against the party or responsible attorney under Section 7.04(d) of the ALI Principles.

Section 1781(c) requires that a demand be in record form, but section 1781 does not prescribe the manner in which the demand must be delivered to the board of directors. The plaintiff should verify that the demand was received to avoid a challenge that demand was not made.

If the board of directors does not appoint a special litigation committee in response to a demand, further action by the board and demanding plaintiff will be subject to ALI Principles §§ 7.04 – 7.10 and 7.13, as modified by Subchapter 17F. Similarly, if the board does appoint a special litigation committee, further action by the board, committee, and plaintiff will also be subject to those sections of the ALI Principles, as modified by Subchapter 17F, including specifically 15 Pa.C.S. § 1783 with respect to special litigation committees.

If a derivative action is commenced after a demand has been made and the action includes a claim that was not fairly subsumed under the original demand, section 1781(d) requires that a new demand must be made with respect to that claim. With respect to the new claim, the tolling of the statute of limitations under section 1781(e) will begin with the date of the new demand and not the date of the original demand.

One of the events that ends the tolling of the statute of limitations under section 1781(e) is notice to the plaintiff that a determination of any type referred to in 15 Pa.C.S. § 1783(e) has been made. Thus, for example, if a determination is made that an action already commenced should continue under the control of the corporation as provided in 15 Pa.C.S. § 1783(e)(5)(ii), the statute of limitations will be tolled until the plaintiff is notified of that determination. Because the statute of limitations would be tolled until a determination were made to allow the plaintiff to continue the action, it follows that the corporation should similarly be entitled to the tolling of the statute of limitations.

The exception in section 1781(g) excludes from Subchapter 17F an action for disgorgement of profits under Subchapter 25H. The requirement of prior demand on the business corporation, the provisions relating to special litigation committees and the other provisions of Subchapter 17F are inappropriate and unnecessary in the context of a disgorgement action under Subchapter 25H.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“relax”

“shareholder”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“record form”

**§ 1782. Eligible shareholder plaintiffs and security for costs.**

(a) General rule. – Except as provided in subsection (b), in any action or proceeding brought **[to enforce a secondary right on the part of]** by one or more shareholders of a business corporation **[against any present or former officer or director of the corporation because the corporation refuses to enforce rights that may properly be asserted by it, each plaintiff must aver and it must be made to appear that each plaintiff]** 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 **[he]** the plaintiff complains, or that **[his]** the plaintiff’s shares or beneficial interest in the shares devolved upon **[him]** 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).

**Amended Committee Comment (2021):**

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) (now subsection (e)) shall not be deemed suspended or affected by Rule No. 1506.

The requirement of continuous ownership in section 1782(a)(2) was added in 2021 and is patterned after ALI, *Principles of Corporate Governance: Analysis and Recommendations* (1994), § 7.02(a)(2), which the Pennsylvania Supreme Court adopted in *Cuker v. Mikalauskas*, 692 A.2d 1042 (Pa. 1997). The Committee has modified the exceptions to the continuous ownership requirement to follow the standards in *Lewis v. Ward*, 852 A.2d 896 (Del. 2004).

Section 1782(d) adopts the holding in *Klein v. Qlik Technologies, Inc.*, 906 F.3d 215 (2d Cir.) (permitting a shareholder plaintiff who has been cashed out in a merger to move to substitute the corporation as named plaintiff) in a modified form. Section 1782(d) permits the corporation to move that the corporation be substituted as the plaintiff.

Section 1782 is applicable to every derivative action brought in a Pennsylvania court against a foreign corporation for profit, whether or not the corporation is required to register to do business in Pennsylvania under 15 Pa.C.S. Ch. 4. See 15 Pa.C.S. § 4146.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“business corporation”

“shareholder”

“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“verified”

**§ 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 **[shall send]** 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 **[business]** 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 **[or the]** may determine, or the committee may recommend to the board of directors **[may]** 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 **[approved]** 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 **[approved]** 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 **[is made]** 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) or (iii), (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.

**Amended Committee Comment (2021):**

Section 1783 is patterned in part after Uniform Limited Liability Company Act (2006) (Last Amended 2013) § 805.

Section 1783 is intended to supersede those provisions of American Law Institute, Principles of Corporate Governance: Analysis and Recommendations (1994) §§ 7.03 – 7.10 and 7.13 that deal with the same subjects as section 1783.

Use of a special litigation committee is optional. The board of directors may decide to respond to a demand or a derivative action without establishing a special litigation committee.

The statement in section 1783(a) that a special litigation committee may “determine on behalf of the corporation … whether pursuing any of the claims asserted is in the best interests of the corporation” means that a committee appointed under section 1783 may be given the authority to act on behalf of the corporation without further action by the full board of directors.

The standard provided in section 1783(f) for judicial review of the determination of a special litigation committee follows *Auerbach v. Bennett*, 393 N.E.2d 994 (N.Y. 1979), rather than *Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del. 1981), because the latter’s reference to a court’s business judgment has generally not been followed in other states. In essence, a special litigation committee is intended to function as a surrogate decision-maker, allowing the corporation to make what is fundamentally a business decision. If a court determines that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee conducted its investigation and made its determination or recommendation in good faith, independently and with reasonable care, it makes no sense to substitute the court’s legal judgment for the business judgment of the committee.

Section 1783(h) was added in 2021 and was patterned after ALI, *Principles of Corporate Governance: Analysis and Recommendations* (1994) § 1.23(c). The fact that a person is named as a defendant does not disqualify the person from serving as a member of a special litigation committee if the tests in section 1783(h) are satisfied. Because section 1783(h) requires that the claim against the person be based only on the person’s approval of or acquiescence in the underlying events, the person may be disqualified for other reasons.

The Committee Comment (2016) to section 1783 included a citation to *Houle v. Low*, 556 N.E.2d 51, 58 (Mass. 1990). The Committee has concluded that the text of section 1783 does not support the citation to that case, and that case should not be taken as relevant authority on the application of section 1783.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“director”

“shareholder”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“receive”

“record form”

**Chapter 19**

**Fundamental Changes**

**Subchapter A**

**Preliminary Provisions**

**§ 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 **[written]** agreement or consent in record form of all of the shareholders of the corporation entitled to vote thereon.

**Amended Committee Comment (2021):**

Section 1905 makes clear that a unanimous vote by the shareholders constitutes the only approval needed for a transaction under this chapter. If that vote is obtained, the separate approval by the board of directors that would otherwise be required under 15 Pa.C.S. §§ 1914(a) (amendments), 1932(b) (asset transfer), or 1974(a) (dissolution) is not required.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“business corporation”

“entitled to vote”

“shareholders”

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

**Subchapter B**

**Amendment of Articles**

**§ 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 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 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 **[filing of the amendment in]** 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 Chapter 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.

**[(c)]** (d) Cross **[reference. – See section 1521(b)(1)(i) (relating to provisions specifically authorized)]** 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).

**Amended Committee Comment (2021):**

Prior to its amendment by the GAA Amendments Act of 2013, section 1911(a)(4) stated that an amendment could provide for special treatment “as authorized by, and subject to the provisions of, section 1906.” While 15 Pa.C.S. § 1906(a)-(c) provides a procedure under which special treatment may be effected, 15 Pa.C.S. § 1906(d)(3) makes clear that the procedures in 15 Pa.C.S. § 1906(a)-(c) are optional and that a corporation may choose not to use those procedures. The 2013 amendment to section 1911(a)(4) was intended to avoid any implication that special treatment may be included in an amendment only if authorized under the procedures in 15 Pa.C.S. § 1906(a)-(c) and to confirm that the provisions of 15 Pa.C.S. § 1906(d) apply to amendments.

Section 1911(b)(2) was intended at the time of its adoption in 1988 as a codification of existing law.

Section 1911(c) is intended to make explicit the previous understanding that changes to the articles, as defined in 15 Pa. C.S. § 1103, authorized by other provisions of Title 15 need not be adopted in the manner specified in 15 Pa. C.S. Subch. 19B, except as required by those other provisions of Title 15. Pursuant to 15 Pa. C.S. §§ 1306(b) and 1522(c), however, the articles may impose additional requirements affecting the ability to adopt, or the manner of adopting, those changes to the articles that, among other possibilities, may replicate those in 15 Pa. C.S. Subch. 19B.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”

“articles”

“business corporation”

“department”

“incorporators”

“reclassification”

“registered office”

“shareholder”

“shares”

“special treatment”

**§ 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; **[or]**

(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**[. 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 pursuant to paragraph (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. See sections 1106(b)(4) (relating to uniform application of subpart) and 2535 (relating to proposal of amendment to articles).]**; 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).

**Amended Committee Comment (2001):**

Section 1912(a) permits an amendment of the articles of incorporation to be proposed in one of three ways:

(i) the board of directors may adopt the language of an amendment and direct that it be submitted to the shareholders, which is the usual way an amendment is proposed;

(ii) in the case of a nonregistered corporation, *see* 15 Pa.C.S. § 2535 (or in the case of a registered corporation, the articles of which have rendered section 2535 inapplicable), 10% or more of the shareholders entitled to vote may propose an amendment unless the articles deny shareholders that right or provide a different ownership threshold; or

(iii) the board may direct the submission of an amendment to the shareholders without adopting the amendment, in which case further action by the board approving the amendment will be required before the amendment can take effect under the last sentence of 15 Pa.C.S. § 1914(a).

If the board of directors submits an amendment to the shareholders without first adopting it, the board should inform the shareholders that, if the shareholders approve the amendment, the board may either not adopt the amendment (in which case the approval of the shareholders will have no effect) or adopt the amendment (in which case the amendment will take effect without being resubmitted to the shareholders).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”

“articles”

“board of directors”

“business corporation”

“entitled to vote”

“reclassification”

“shareholders”

“unless otherwise provided”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“action”

“representative”

Because the term “action” is defined in 15 Pa.C.S. § 102 to include failure to act, the outside facts that section 1912(c) provides may be referred to in a plan will include the fact of a failure to act. For example, a provision in a plan might require that a regulatory agency fail to object before the plan becomes operative.

**§ 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. **[Except as provided in section 1912(a)(2) (relating to proposal of amendments), a proposed]** 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); **[or]**

(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 **[this subsection]** 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).

**Amended Committee Comment (2001):**

A majority of the votes cast on an amendment of the articles satisfies generally the statutory vote requirements of the 1988 BCL, in lieu of the absolute majority required by the 1933 BCL. *But see* 15 Pa.C.S. §§ 2336 and 2538 and Subchs. 25E and F.

The last sentence of section 1914(a) is intended to make clear that the inclusion in management proxy material of a shareholder proposal (other than one under 15 Pa.C.S. § 1912(a)(2)) to amend the articles results only in an advisory vote unless the board embraces the amendment by approving it.

Cumulative voting and preemptive rights are expressly excluded in section 1914(b)(2) from the special rights that cannot be changed without a class vote and thus under the 1988 BCL no statutory voting rights arise in connection with an amendment eliminating cumulative voting or preemptive rights. Statutory dissenters rights are also not available in connection with such an amendment except in the rare instance where cumulative voting or preemptive rights were only partially eliminated in a way that involved special treatment and 15 Pa.C.S. § 1906(c) was applicable.

The exception in the introductory clause of section 1914(b) in favor of Subpart IIB is required in light of section 1914(c) and 15 Pa.C.S. § 1522(b), which permit the board to change certain stock terms if authority to do so is expressly set forth in the articles, and other provisions of the 1988 BCL, such as 15 Pa.C.S. §§ 1311, 1507, 1902, 1903, 2309, 2721 and 2722.

A “determination” by the board of directors under 15 Pa.C.S. § 1522(b) of the number of shares of a class does not constitute the fixing of the “authorized” number of shares so as to trigger the shareholder vote requirement of section 1914(b)(4).

A form of statutory class voting may also arise under 15 Pa.C.S. § 1906(a)(1) and (b).

It was considered appropriate to permit the board of directors to amend the articles of incorporation without shareholder approval as set forth in section 1914(c) because the circumstances and types of amendments involved do not impact the fundamental rights of the shareholders.

Under 15 Pa.C.S. § 1731(a)(2)(i), any action that may be taken by the board of directors under this section which does not involve an amendment submitted to the shareholders may be taken by a duly authorized committee thereof, subject to compliance by the committee with any procedure applicable to action by the full board.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”

“articles”

“authorized shares”

“board of directors”

“business corporation”

“bylaw”

“department”

“distributions”

“entitled to vote”

“preferences”

“shareholders”

“shares”

“unless otherwise provided”

“unless otherwise restricted”

“votes cast” (see “voting”)

**Subchapter C**

**Merger Liabilities and Sale of Assets**

**§ 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 **[sold, leased, exchanged or otherwise disposed of all, or substantially all, of its property and assets, with or without goodwill,]** 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:

**[(1)]** (i) 25% of total assets; and

**[(2)]** (ii) 25% of either:

**[(i)]** (A) income from continuing operations before taxes; or

**[(ii)]** (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.

**Amended Committee Comment (2021):**

The application of the sale of asset procedures and restrictions to parent-subsidiary systems is clarified in section 1932(b)(2).

Because the term “action” is defined in 15 Pa.C.S. § 102 to include failure to act, the outside facts that section 1932(b)(3) provides may be referred to in a plan will include the fact of a failure to act. For example, a provision in a plan might require that a regulatory agency fail to object before the plan becomes operative.

The reference in section 1932(b)(4) to the merger procedures of Chapter 3 is intended to incorporate also the procedural provisions of Title 15 applicable to a transaction governed by the merger provisions of Chapter 3. Because section 1932(b)(4) makes the merger provisions of Chapter 3 applicable only to the transferring corporation, no notice is required by Title 15 to be given to the shareholders of the party to an asset transfer that is the acquiror.

As section 1932(b)(5) makes clear, it is not necessary to file the plan of asset transfer in the Department of State. That provision, of course, does not affect the need to make other types of filings, such as amendments to UCC financing statements, deeds conveying real property, etc.

In sales of assets, dissenters rights are not provided for in transactions that are on terms requiring that the net proceeds of the sale be distributed to the shareholders within one year or to a liquidating trust, or are made in connection with a dissolution or liquidation of the corporation governed by 15 Pa.C.S. Subchs. 19F or G. Dissenters rights conferred by section 1932(c)(1) are subject to the “statutory market” exception of 15 Pa.C.S. § 1571(b)(1), as was the case under the 1933 BCL. Section 1932(c)(1) is not applicable to a registered corporation. *See* 15 Pa.C.S. § 2537. The cross reference to 15 Pa.C.S. § 1906(c) in section 1932(c)(3) is a reminder that dissenters rights may also be available in a transaction that involves special treatment.

References in section 1932(e) to the treatment of security interests and the dedication of property to the repayment of indebtedness are intended as a codification of existing law.

Section 1932(g) was added by the GAA Amendments Act of 2001 and was patterned after Model Business Corporation Act § 12.02(a). The application of this bright-line safe-harbor test should, in most cases, produce a clear result substantially in conformity with the better case law.

If a corporation disposes of assets for the purpose of reinvesting the proceeds of the disposition in substantially the same business in a somewhat different form (for example, by selling the corporation’s only plant for the purpose of buying or building a replacement plant), the disposition and reinvestment should be treated together, so that the transaction should not be deemed to leave the corporation without a significant continuing business activity.

The reference in section 1932(g) to a direct or indirect subsidiary controlled by the corporation has been added to the Model Act provision to conform to the existing policy in section 1932(b)(2) of treating a disposition of assets by such a subsidiary as a disposition by the corporation.

If all or a large part of a corporation’s assets are held for investment, the corporation actively manages those assets, and it has no other significant business, for purposes of section 1932(g) the corporation should be considered to be in the business of investing in such assets, so that a sale of most of those assets without a reinvestment should be considered a sale that would leave the corporation without a significant continuing business activity. In applying the 25% tests of section 1932(g), an issue could arise if a corporation had more than one business activity, one or more of which might be traditional operating activities such as manufacturing or distribution, and another of which might be considered managing investments in other securities or enterprises. If the activity constituting the management of investments is to be a continuing business activity as a result of the active engagement of the management of the corporation in that process, and the 25% tests were met upon the disposition of the other businesses, shareholder approval would not be required.

Section 1932(g)(2) and (3) was added in 2021 and was patterned after 15 Pa.C.S. § 1551(c). Section 1932(g)(2) and (3) makes clear that a determination as to whether the tests in section 1932(g)(1) have been met may be based on financial statements that also may be used to determine if a distribution satisfies the tests in 15 Pa.C.S. § 1551.

Section 1932(g) is not intended to imply that a transaction that does not meet all of the tests in section 1932(g) will necessarily require shareholder approval.

Under 15 Pa.C.S. § 1731(a)(2)(i), any action that may be taken by the board of directors under this section that does not involve the submission of a plan to the shareholders may be taken by a duly authorized committee of the board, subject to compliance by the committee with any procedure applicable to action by the full board.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“bylaws”

“dissolution”

“distribution”

“except as otherwise restricted” (see “unless otherwise restricted”)

“preferences”

“shareholder”

“shares”

“special treatment”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“action”

“merger”

“property”

“representative”

The term “court” used in this section is intended to be broader than the “court” as defined in 15 Pa.C.S. § 102.

**Subchapter F**

**Voluntary Dissolution and Winding Up**

**§ 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 **[claims barred]** notice to claimants) and 1993(b) (relating to **[claims barred]** 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 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 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 the 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, 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 of section 1978(b) (relating to winding up of corporation after dissolution) or otherwise be responsible for any obligations of the dissolved corporation.

**Amended Committee Comment (2021):**

Section 1979(a) applies to the dissolution of a corporation for any reason, including, among other things, dissolution 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 (72 P.S. § 1740). *See* 15 Pa.C.S. § 1341 and the Committee Comment thereto.

Because a corporation that has elected to proceed under 15 Pa.C.S. Subch. 19H is also subject to the provisions of this subchapter, except for 15 Pa.C.S. § 1975, the rules in section 1979 apply to all dissolved business corporations regardless of the manner in which they have chosen to satisfy or make provision for the satisfaction of their liabilities.

The first sentence of section 1979(b) is intended to make clear that between the date of technical dissolution and the running of the two-year statute of limitations on post-dissolution actions relating to the dissolved corporation, shareholders of the corporation have no responsibility for the unpaid liabilities of the corporation beyond the amount of net assets distributed to them in connection with the dissolution and any unpaid subscriptions.

Section 1979(c) and (d) were added by the GAA Amendments Act of 1992 and supply former 15 Pa.C.S. § 1998. While the shareholders will be liable for the full two-year period set forth in subsection (a) to the extent provided in subsections (c) and (d), under certain circumstances the provisions of Subchapter 19H permit the liability of the corporation and the directors to be terminated earlier. *See* 15 Pa.C.S. §§ 1992(d), 1993(d) and 1997(d). Compare 15 Pa.C.S. § 1994(b).

Section 1979(f) was added in 2021 and confirms that the directors, officers, and shareholders of a dissolved corporation, or the governing persons of a successor entity, may act on behalf of the corporation in connection with an action or proceeding that is filed after the expiration of the period of limitation in section 1979(a)(2).

The term “successor entity” used in this section is defined in 15 Pa.C.S. § 1991.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“business corporation”

“dissolution”

“officers”

“shareholder”

The term “court” used in this section is defined in 15 Pa.C.S. § 102.

**Article C**

**Domestic Business Corporation Ancillaries**

**Chapter 21**

**Nonstock Corporations**

**Subchapter A**

**Preliminary Provisions**

**§ 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 **[conversion]** 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 **[conversion]** 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 **[conversion]** election into a nonstock corporation objects to the plan of **[conversion]** 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 **[conversion]** 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.

**Amended Committee Comment (2021):**

Prior to 2021, section 2104 required the corporation to prepare a plan of conversion. The name of the plan was changed in 2021 to a plan of election to avoid any implication that action under section 2104 was also a “conversion” as defined in 15 Pa.C.S. § 102. Compliance with the requirements of section 2104 is all that necessary for a business corporation to become a nonstock corporation.

Dissenters rights conferred by section 2104(b)(3) are not subject to the “statutory market” provisions of 15 Pa.C.S. § 1571(b)(1).

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“business corporation”

“bylaws”

“entitled to vote”

“nonstock corporation”

“shareholder”

“shares”

*See* the definition of “voting” in 15 Pa.C.S. § 1103 with regard to subsection (b)(2).

**§ 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 **[conversion]** 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 **[conversion]** 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.

**Amended Committee Comment (2021):**

Prior to 2021, section 2105 required the corporation to prepare a plan of conversion. The name of the plan was changed in 2021 to a plan of election to avoid any implication that action under section 2105 was also a “conversion” as defined in 15 Pa.C.S. § 102. Compliance with the requirements of section 2105 is all that necessary for a business corporation to terminate its status as a nonstock corporation.

Under 15 Pa.C.S. § 1504(c), the provisions that section 2105 authorizes to be set forth in the bylaws may also be set forth in the articles.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”

“articles”

“business corporation”

“bylaws”

“entitled to vote”

“mutual insurance company”

“nonstock corporation”

“shares”

*See* the definition of “voting” in 15 Pa.C.S. § 1103 with regard to section 2105(a)(2)(ii).

*See* 15 Pa.C.S. § 2101(c) with regard to the terms “members” and “membership” used in this section.

**Chapter 23**

**Statutory Close Corporations**

**Subchapter B**

**Shares**

**§ 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**[, consolidation or share]** or interest exchange that becomes effective pursuant to section 2336 (relating to fundamental changes) or a **[share exchange]** reclassification of existing shares **[for other shares of a different class or series in the corporation]**.

(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 **[kind]** 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.

**Amended Committee Comment (2021):**

Section 2322 sets out a standardized transfer prohibition that automatically applies unless the bylaws provide otherwise. Under 15 Pa.C.S. § 1504(c), an exemption from the provisions of this section may also be set forth in the articles.

Section 2322(b) describes a number of exemptions to the prohibition of subsection (a). Intrashareholder and intrafamily transfers are exempt on the assumption that most “typical” close corporation shareholders would want these transfers to be exempt. Transfers to executors, administrators, trustees, or receivers that result from death, bankruptcy, liquidation, or dissolution of a shareholder are also exempt. In addition, transfers that are in effect merely internal recapitalizations and transfers having the approval of all the shareholders are exempt. Transactions in which the stock is pledged or hypothecated are also exempt when no voting rights are given to the pledgee. In all these situations, however, further attempted transfers by the transferees are subject to the prohibitions unless the subsequent transfer qualifies under one of the exemptions. For example, although a pledge of shares as collateral for a loan is an exempt transaction (unless the pledgee is given the power to vote the shares), a subsequent sale of the pledged stock by the pledgee in a foreclosure proceeding can only be made in accordance with Section 2322(c) through (h) unless the transfer is exempt under Section 2322(b).

A final type of exempt transfer is one made after the corporation ceases to be a statutory close corporation. The automatic elimination of the restrictions on transfer upon termination of the close corporation election is justified on the assumption that in most cases the shareholders would want the prohibition to be ineffective after termination. *But see* the Committee Comment to 15 Pa.C.S. § 2307.

The statutory prohibition can be limited or modified simply by stating in the bylaws that it does not apply or by specifying in the bylaws the changes from the statutory language. For example, if the shareholders wanted all pledges to be subject to the transfer prohibition but otherwise found the statutory prohibition acceptable, the attorney drafting the bylaws may simply provide in the bylaws: “15 Pa.C.S. § 2322(b)(6) does not apply.” All shareholders thus have some automatic basic protection against unwanted transfers plus maximum flexibility to alter or replace the statutory scheme.

If a proposed transfer is not exempt under Section 2322(b), a shareholder may sell his or her shares only if the shareholder obtains an offer from a non-shareholder who meets the requirements of Section 2322(d). These requirements are designed to protect the corporation and other shareholders against serious adverse tax consequences that might result from having the third person as a shareholder. The mere offer by a shareholder to sell his or her shares to the corporation at a price he designates does not trigger the first refusal option and other rights provided by section 2322(b). Any broader rights guaranteeing a market for the shares by the corporation or other shareholders must be provided in a buy-out agreement.

Section 2322(c) requires that any third-party offer submitted to the corporation be a cash offer. An offer based on other consideration, such as shares in another corporation, is not a qualifying offer, and unless the shareholder can convince the third party to make a cash offer, the shareholder has no right to sell or transfer his shares to the third party should the corporation refuse to consent to the transfer or to purchase the offered shares. The decision to exclude noncash offers reflects the fact that most third-party offers are made for cash and that the mechanics of dealing with noncash offers would unduly complicate the statutory framework. If the possibility of receiving noncash offers is considered significant, appropriate language dealing with such offers may be included in the bylaws. Since the corporation cannot match in specie the noncash portion of the third-party offer, some mechanism, such as arbitration, must be set out to resolve any disputes over the adequacy of an offer made by the corporation to purchase the offered shares.

With respect to a proposed transfer to a third party, section 2322(e) encourages the parties to reach an agreement in a reasonably short period of time. The 20-day interval between the last day for holding a shareholders’ meeting to consider the third-party offer and the cutoff date for the notice of acceptance is designated to allow time for the corporation and the other shareholders to contact potential third-party purchasers or shareholders not present at the meeting at which the decision to purchase the shares was taken and to make any necessary arrangements to finance the purchase.

If the corporation does not arrange the purchase of the offered shares, section 2322(h) permits their transfer to the third person only if made within 120 days of the date the shareholder notifies the corporation of the third-party offer. Additionally, the transaction must be consummated on the terms set forth in the notice of the offer. For example, a sale for less than the total price specified in the notice or an installment purchase when a cash sale is specified in the notice would not qualify under section 2322. If the transfer to the third person is not validly made, the offering shareholder remains subject to the provisions of section 2322. Thus the shareholder may make a transfer exempt under section 2322(b) or obtain another qualifying offer from a third person at any time in the future.

If the transfer to the third party occurs, the shares remain subject to the transfer prohibition in section 2322(a) unless the transferee has no notice or knowledge of the restrictions.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“bylaw”

“dissolution”

“entitled to vote”

“reclassification”

“registered office”

“shareholder”

“shares”

“statutory close corporation”

“unless otherwise provided”

The term “transfer” used in this section is defined in 15 Pa.C.S. § 102. Section 2322 is intended to cover every possible type of transaction that might create an interest in corporate shares, including purchase, sale, discount, negotiation, gift, trust, legacy, inheritance, pledge, mortgage, lien, creation of a security interest, hypothecation, bankruptcy, or transfer pursuant to court order.

The following additional terms used in this section are also defined in 15 Pa.C.S. § 102:

“interest exchange”

“merger”

**Subchapter C**

**Powers, Duties and Safeguards**

**§ 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.

[No change to Committee Comment (1988).]

**Chapter 25**

**Registered Corporations**

**Subchapter C**

**Directors and Shareholders**

**§ 2521. Call of special meetings of shareholders.**

(a) General rule. – **[The]** Except as provided in subsections (b) and (c), the shareholders of a registered corporation **[shall not be entitled by statute to]** described in section 2502(1) (relating to registered corporation status) do not have the right to call a special meeting of the shareholders.

(b) Exception. – **[Subsection (a) shall not apply to the call of a special meeting by an]** 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) **[(relating to registered corporation status)]** that gives shareholders the right to call a special meeting of the shareholders and:

(1) is adopted after July 1, 2015, may **[not]** provide that a special meeting may be called **[by less than 25%]** 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.

**Amended Committee Comment (2021):**

Section 2521(a) follows the general approach of the Delaware General Corporation Law which does not confer on the shareholders a statutory right to call a special meeting of shareholders. *Cf.* Delaware General Corporation Law § 211.

Section 2521 does not contain an exception for the right of a shareholder to call a special meeting to elect directors provided in 15 Pa.C.S. § 1725(b)(3) when there are no directors in office. Although a shareholder will not be able to call a special meeting in that situation, in the unlikely event that a registered corporation does not have any directors in office, 15 Pa.C.S. § 1725(b)(3) authorizes any officer to call a special meeting to elect directors.

Section 2521(c) prohibits a provision of the articles of incorporation adopted after July 1, 2015, from permitting shareholders holding fewer than 25% of the votes entitled to be cast at a special meeting from calling a meeting. That rule applies equally to a bylaw because 15 Pa.C.S. § 1504(a) requires the bylaws to be “not inconsistent with law or the articles” and a provision of the bylaws overriding the rule of section 2521(c) would violate that requirement.

With respect to the meaning of the phrase “entitled to cast” in section 2521(c), *see* the definition of “entitled to vote” in 15 Pa.C.S. § 1103.

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“shareholder”

**§ 2522. Adjournment [**of meetings**] 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.

**Amended Committee Comment (2021):**

No provision of the Delaware General Corporation Law is comparable to 15 Pa.C.S. § 1755(c), the provision rendered inoperative by section 2522(a) .

Action by the presiding officer to adjourn or postpone a shareholder meeting will be subject to the requirement of 15 Pa.C.S. § 1709(c) that it be fair to the shareholders.

Section 2522(b) and (c) were added in 2021 and address problems that may arise with shareholder meetings conducted exclusively by use of electronic technology as permitted by 15 Pa.C.S. § 1708(c). If an event were to occur that prevents a virtual meeting from being convened, for example loss of the Internet connection that was to be used to conduct the meeting, section 2522(c) permits the presiding officer for the meeting to postpone the meeting for up to a day. Similarly, if the Internet connection is lost after a virtual meeting has been convened, the corporation would not be able to give notice at the meeting as required by 15 Pa.C.S. § 1702(b) that the meeting was being adjourned. In such situations, section 2522(b) and (c) permit notice of the adjourned or postponed meeting to be given solely by means of a publicly available filing with the U.S. Securities and Exchange Commission.

Under 15 Pa.C.S. § 2501(c) a registered corporation may render section 2522 inapplicable to the corporation by a contrary provision of its articles.

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“bylaws”

“entitled to vote”

“except as otherwise provided” (*see* “unless otherwise provided”)

“shareholders”

**§ 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.

**Amended Committee Comment (2021):**

Section 2524(a) was amended in 2021 to make clear that its focus is just on the shareholders entitled to vote on an action. If less than all of the shareholders of a registered corporation are entitled to vote on a matter, for example because the matter only requires the vote of a class or series of preferred shares, section 2524(a) permits the preferred shares to act by unanimous consent without the consent of the other outstanding shares. In the example given, the preferred shares may approve the action by consent unanimously even though the articles are silent about action by less than unanimous consent. If all of the outstanding shares are entitled to vote on an action, however, the action must be approved by all of the outstanding shares unless the articles authorize action by less than unanimous consent. *Cf*. 15 Pa.C.S. § 1766(b) (permitting less than unanimous consent when authorized in either the bylaws or the articles).

Section 2524(b) conforms to the approach of Delaware General Corporation Law § 228 which does not require a delay in consummating action approved by partial consent of stockholders. Compare 15 Pa.C.S. § 1766.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“entitled to vote”

“shareholders”

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

**§ 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.

**Amended Committee Comment (2021):**

The “householding” rules of the Securities and Exchange Commission provide that a registered corporation is not required to send more than one copy of its annual report or proxy statement to shareholders who share an address and consent to receiving only one copy of those documents. 17 CFR § 240.14a-3(e)(1). Section 2528(a) permits a registered corporation to treat notices of shareholder meetings in the same fashion.

The “notice and access” rules of the Securities and Exchange Commission permit a registered corporation to furnish its proxy statement and annual report to shareholders by posting those materials on an Internet website. 17 CFR § 240.14a-16. Section 2528(b) makes clear that complying with those rules also satisfies the notice requirements of Subpart IIB.

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The term “shareholders” used in this section is defined in 15 Pa.C.S. § 1103.

**§ 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 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.

**Committee Comment (2021):**

Section 2530 was added in 2021 and was patterned in part after Model Business Corporation Act (2016 Revision) § 8.02(b).

Qualifications of directors are dealt with generally in 15 Pa.C.S. § 1722. Section 2530 limits the qualifications that may be imposed under 15 Pa.C.S. § 1722 in the case of registered corporations. Section 2530 prohibits the bylaws of a registered corporation from imposing a qualification of directors that is based on certain past, present, or future actions by a nominee or director, because imposing that type of qualification could limit the ability of the nominee or director to discharge his or her duties as a director. The discharge of duties of a director is provided for generally in 15 Pa.C.S. Ch. 17B. Examples of impermissible qualifications include a requirement that a person may not serve as a director if the person has previously voted to implement a shareholder rights plan or if the person has served on a board of directors that has failed to implement a precatory proposal approved by the shareholders.

Impermissible qualifications include past, present, or future actions relating to either the registered corporation or another association. In the case of a foreign association, the powers or duties of its governors will be provided by the law of the association’s jurisdiction of formation, but a qualification relating to actions as a governor of the foreign association will still be subject to section 2530.

Section 2530(c) makes clear that it does not matter where in the bylaws a qualification of directors is imposed. If advance notice of nominations is required by the bylaws, a provision of the advance notice requirement that has the effect of imposing an impermissible qualification will be invalid under section 2530. However, section 2530(c) also makes clear that failure to comply with an advance notice requirement adopted under 15 Pa.C.S. § 1758(e) does not itself constitute the type of past, present, or future action referred to in section 2530(a) and, thus, that the corporation may require compliance with the advance notice requirement.

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“action”

“association”

“governor”

**Subchapter E**

**Control Transactions**

**§ 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.

**Amended Committee Comment (2021):**

At the time of the adoption of section 2541(e) in 2021, the Committee concluded that the Draftsmen’s Comment to section 2541 should be revised. This Committee Comment replaces in its entirety the Draftsmen’s Comment to section 2541. That is a departure from the Committee’s usual practice, and no inference should be drawn that the Committee has reviewed the Draftsmen’s Comment to any other section of Title 15 or concluded that other Draftsmen’s Comments correctly reflect the past or current state of the law.

Certain corporations that believed the provisions of Subchapter 25E to be in the best interests of the corporation were nevertheless required to exempt themselves from the coverage of Subchapter 25E when it was first enacted because of the view that Subchapter 25E might be inadvertently triggered by events of default or similar contingencies with respect to certain then issued preference shares (a term which includes preferred stock generally – *see* 15 Pa.C.S. § 1103) that would enable the preference shares to elect a majority of the board of directors. This possible interpretation of the applicability of Subchapter 25E was eliminated by the subsequent enactment of 15 Pa.C.S. § 2543(b)(3). Consequently, the presumption that Subchapter 25E should apply to these corporations, even if they had earlier elected not to be subject to the subchapter, was reinstated as provided by section 2541(a)(2), and a new 90-day “opt-out” period (which expired on March 19, 1991) was provided (section 2541(a)(3)) in the event there were other reasons that would cause the corporation to determine that the provisions of Subchapter 25E should not apply to the corporation.

Act No. 1990-36 (which added Subchapters 25G and 25H among other provisions) provided that, other than the amendments specifically added by that act, nothing in that “act shall be construed as having, or be deemed to have, any effect on the existing practice under Subchapter E of Chapter 25 . . . or as expressing any agreement or disagreement with any court interpretation relating to Subchapter E of Chapter 25.”

Former section 2541(d) was deleted by the GAA Amendments Act of 1992 as supplied by 15 Pa.C.S. § 2501(d).

Section 2541(e) has the effect of providing an exemption from Subchapter 25E for a transaction that complies with 15 Pa.C.S. § 321(f) regarding two-step transactions. Voting shares acquired in a two-step transaction under 15 Pa.C.S. § 321(f) are disregarded for purposes of determining if a person or group that acquires shares in the two-step transaction are a controlling person or group. A person or group that already is a controlling person or group cannot “cleanse” their status as such through a two-step transaction under 15 Pa.C.S. § 321(f).

The term “controlling person or group” used in this section is defined in 15 Pa.C.S. § 2543.

The following terms used in this section are defined in 15 Pa.C.S. § 2542:

“control transaction”

“subsidiary”

“voting shares”

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“amendment”

“articles”

“board of directors”

“bylaws”

“shareholders”

“shares”

**Subchapter F**

**Business Combinations**

**§ 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.” A person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified person.]** (Repealed.)

“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.” When used to indicate a relationship with any person:**

**(1) any corporation or organization of which such person is an officer, director or partner or is, directly or indirectly, the beneficial owner 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 or organization;**

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

**(3) any relative or spouse of such person, or any relative of the spouse, who has the same home as such person.]** (Repealed.)

“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.

**Amended Committee Comment (2021):**

Definitions of the terms “affiliate” and “associate” were repealed in 2021 because the definitions were moved to 15 Pa.C.S. § 102 to make them applicable to the use of those terms throughout Title 15.

The term “business combination” used in this section is defined in 15 Pa.C.S. § 2554.

The term “interested shareholder” used in this section is defined in 15 Pa.C.S. § 2553.

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“bylaws”

“dissolution”

“distribution”

“entitled to vote”

“Exchange Act”

“shareholder”

“shares”

“voting”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“affiliate”

“associate”

“property”

**§ 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, **[consolidation, share]** 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, **[consolidation, share]** 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 **[or consolidation]** 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.

**Amended Committee Comment (2021):**

Section 2554 was amended in 2021 to conform its wording to the terminology used in 15 Pa.C.S. Ch. 3. As a result of those changes, the Committee concluded that the Draftsmen’s Comment to section 2554 was no longer needed. Thus, this Committee Comment replaces in its entirety the Draftsmen’s Comment to section 2554. That is a departure from the Committee’s usual practice, and no inference should be drawn that the Committee has reviewed the Draftsmen’s Comment to any other section of Title 15 or concluded that other Draftsmen’s Comments correctly reflect the past or current state of the law.

The term “interested shareholder” used in this section is defined in 15 Pa.C.S. § 2553.

The following terms used in this section are defined in 15 Pa.C.S. § 2552:

“market value”

“shares”

“subsidiary”

“voting shares”

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“dissolution”

“distribution”

“issue”

“reclassification”

“shareholders”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“affiliate”

“associate”

“division”

“interest exchange”

“merger”

“transfer”

**Subchapter G**

**Control-Share Acquisitions**

**§ 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**[, consolidation]** or plan of **[share]** interest exchange effected in compliance with the provisions of this chapter if the corporation is a party to the **[agreement of merger, consolidation or plan of share]** 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 **[a shareholder, as such, 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.

**Committee Comment (2021):**

Section 2561(f) was added in 2021 and was intended as a codification of existing law and practice. The addition of section 2561(f) should not be read to imply that the articles of incorporation or bylaws could not have been amended before the adoption of that subsection to reverse a provision opting out of the application of 15 Pa.C.S. Subch. 25G.

The following terms used in this section are defined in 15 Pa.C.S. § 2562:

“acquiring person”

“affiliate shares”

“control share”

“control-share acquisition”

“disinterested shares’

“existing shares”

“voting shares”

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“bylaws”

“distribution”

“preference”

“Securities Act of 1933”

“shareholders”

“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“affiliate”

“associate”

“interest exchange”

“merger”

“obligation”

“transfer”

The term “child” used in this section is defined in 1 Pa.C.S. § 1991 to include children by birth or adoption.

The term “fiduciary” used in this section is defined in 1 Pa.C.S. § 1991 to mean “An executor, administrator, guardian, committee, receiver, trustee, assignee for the benefit of creditors, and any other person acting in any similar capacity.”

**§ 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.” The terms shall have the meanings 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.]** (Repealed.)

“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 **[effect of distributions]** 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).

**Committee Comment (2021):**

Definitions of the terms “affiliate” and “associate” were repealed in 2021 because the definitions were moved to 15 Pa.C.S. § 102 to make them applicable to the use of those terms throughout Title 15.

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“distribution”

“employee”

“issue”

“officer”

“shareholder”

“shares”

“voting”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“affiliate”

“associate”

“verified”

**§ 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.

**Committee Comment (2021):**

At the time of the adoption of section 2564(d) in 2021, the Committee concluded that the Draftsmen’s Comment to section 2564 should be revised. This Committee Comment replaces in its entirety the Draftsmen’s Comment to section 2564. That is a departure from the Committee’s usual practice, and no inference should be drawn that the Committee has reviewed the Draftsmen’s Comment to any other section of Title 15 or concluded that other Draftsmen’s Comments correctly reflect the past or current state of the law.

Except as provided in section 2564(d), control shares have no voting rights for any purpose whatsoever and at any time, including in any of the votes required under section 2564, unless and until their voting rights are restored pursuant to section 2564. This proscription applies to all control shares regardless of the affiliation or association, or lack thereof, between the beneficial owner of the particular control shares and the beneficial owner of the control shares the voting rights of which are the subject of any shareholder vote under section 2564.

Under section 2564(a), two separate votes are required in order to adopt the resolution restoring voting rights to the control shares. To be adopted, the affirmative vote of “the holders of a majority of the voting power entitled to vote” is required, as opposed to only a majority of the voting power present and voting (*cf*. 15 Pa.C.S. § 1757(a)). The requirement for a separate disinterested share vote is intended to minimize the influence of those with a perceived conflict of interest. Therefore, excluded from this vote are all shares held by any acquiring person, as well as certain shares of management and certain employee stock plans, and certain shares that were bought, in essence, by short-term speculators at the time of or after the (or an earlier) acquiring person’s intentions were publicly announced.

Under section 2564(b), the voting rights of any control shares that are restored pursuant to section 2564 will lapse unless the proposed control-share acquisition (in the event the acquiring person did not already make the control-share acquisition) is not consummated within 90 days after shareholder approval is obtained under section 2564.

Under section 2564(c), the voting rights of control shares are automatically restored in certain circumstances.

Section 2564(d) has the effect of providing an exemption from Subchapter 25G for a transaction that complies with 15 Pa.C.S. § 321(f) regarding two-step transactions. Voting shares acquired in a two-step transaction under 15 Pa.C.S. § 321(f) are disregarded for purposes of determining if the two-step transaction involves a control-share acquisition. A person or group that already owns “control shares” under Subchapter 25G cannot restore the voting rights of their shares by a two-step transaction under 15 Pa.C.S. § 321(f).

The following terms used in this section are defined in 15 Pa.C.S. § 2562:

“acquiring person”

“control-share acquisition”

“control shares”

“disinterested shares”

“voting shares”

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“entitled to vote”

“shareholders”

“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“affiliate”

“associate”

“transfer”

**§ 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), (a.1) 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.

**Committee Comment (2021):**

The following terms used in this section are defined in 15 Pa.C.S. § 2562:

“acquiring person”

“control-share acquisition”

“control shares”

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“board of directors”

“employees”

“shareholder”

The term “record form” used in this section is defined in 15 Pa.C.S. § 102.

**Subchapter H**

**Disgorgement by Certain Controlling Shareholders**

**Following Attempts to Acquire Control**

**§ 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 (5) 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 or record holder of the equity security 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.

(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**[, as defined in section 2552 (relating to definitions),]** of the corporation through his 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.

**Committee Comment (2021):**

Section 2571(e) was added in 2021 and was intended as a codification of existing law and practice. The addition of section 2571(e) should not be read to imply that the articles of incorporation or bylaws could not have been amended before the adoption of that subsection to reverse a provision opting out of the application of 15 Pa.C.S. Subch. 25H.

The following terms used in this section are defined in 15 Pa.C.S. § 2572:

“beneficial owner”

“control”

“controlling person or group”

“equity security”

“proxy solicitation”

“voting shares”

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“bylaws”

“distribution”

“preference”

“shareholders”

“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“affiliate”

“associate”

“transfer”

The term “child” used in this section is defined in 1 Pa.C.S. § 1991 to include children by birth or adoption.

The term “fiduciary” used in this section is defined in 1 Pa.C.S. § 1991 to mean “An executor, administrator, guardian, committee, receiver, trustee, assignee for the benefit of creditors, and any other person acting in any similar capacity.”

**§ 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.” **[Acquisition or disposition]** 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).

**Committee Comment (2021):**

**“Controlling person or group.”** Depending on the particular facts and circumstances with respect to control of a corporation, a person or group that engages in a proxy contest to replace even a minority of the board (*e.g.*, where a staggered board is involved, or a “short slate” contest) may also be a controlling person or group.

**“Equity security.”** The definition of equity security was amended in 2021. It is intended to be broad enough to encompass, among other things, cash-settled total return swaps and other forms of so-called “synthetic securities” and similar arrangements. The purchase or acquisition, and the disposition, sale, settlement or closing out, of such securities or arrangements, is encompassed within the “acquisition” or “disposition” of “equity securities” under this Subchapter 25H.

**“Transfer.”** The definition of the term “transfer” in 15 Pa.C.S. § 102 is expanded by section 2573 for purposes of Subchapter 25H. Although the assets and liabilities of parties to a transaction under Chapter 3 are not transferred in the transaction, equity securities of the parties may be transferred for purposes of Subhapter 25H. For example, in a merger the assets and liabilities of a non-surviving association are not transferred to the surviving association; but if equity securities of a party to the merger are exchanged for other consideration, that exchange will constitute a transfer for purposes of Subchapter 25H. The special definition of “transfer” for purposes of Subchapter 25H is consistent with the policy of 15 Pa.C.S. § 313 that transactions under Chapter 3 should not change the application of Subchapters 25E through 25J.

The term “registered corporation” used in this section is defined in 15 Pa.C.S. § 2502.

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“shareholders”

“shares”

“voting”

**Chapter 33**

**Benefit Corporations**

**Subchapter C**

**Accountability**

**§ 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 **[the interests of any person or group]** any matter referred to in paragraph (1) or (2) over **[the interests of any other person or group]** 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 **[interests and factors]** matters in the manner required under subsection (a)**[:**

**(1) shall not constitute a violation of section 1712 (relating to standard of care and justifiable reliance); and**

**(2) is in addition to the ability of directors to consider interests and factors as provided in section 1715 or 1716.]** 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 **[a knowing violation of law]** 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.

**Amended Committee Comment (2021):**

Section 3321 is at the heart of what it means to be a benefit corporation. By requiring the consideration of interests of constituencies other than the shareholders, section 3321 rejects the holdings in *Dodge v. Ford*, 170 N.W. 668 (Mich. 1919), and *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1 (Del. Ch. 2010), that directors must maximize the financial value of a corporation. Since the adoption by Pennsylvania in 1983 of the first “constituency statute,” the directors of Pennsylvania corporations have been authorized to consider the interests of corporate constituencies other than the shareholders, but the directors have not been required to do so. Section 3321(a) makes it mandatory for the directors of a benefit corporation to consider certain interests and factors that they would otherwise simply be permitted to consider in their discretion under 15 Pa.C.S. §§ 1715 and 1716.

Section 3321(b) makes clear that the provisions of 15 Pa.C.S. § 1715(c)–(e) apply to a benefit corporation unless its articles or bylaws provide that it is subject to 15 Pa.C.S. § 1716. The provisions of 15 Pa.C.S. § 1715(c)–(e), among other things, make inapplicable to Pennsylvania corporations the holdings in *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc*., 506 A.2d 173 (Del. 1986), and *Unocal Corp. v. Mesa Petroleum Co*., 493 A.2d 946 (Del. 1985).

Section 3321(c)(1) was amended in 2021 to conform more closely to 15 Pa.C.S. § 1713 which does not refer to a knowing violation of law. The Committee believes that willful misconduct should include a knowing violation of law and, thus, eliminating the reference to a knowing violation of law is not a substantive change in section 3321. The reference to recklessness was also added in 2021 and conforms to 15 Pa.C.S. § 1713.

Section 3321(d) makes clear that the policy of 15 Pa.C.S. § 1717 to negate any duty of directors to non-shareholder constituents also applies to benefit corporations. *But see* 15 Pa.C.S. § 3325(b)(2)(iv) which permits a benefit corporation to provide in its articles that an identified category of persons may bring a benefit enforcement proceeding. If a benefit corporation were to do so, the identified non-shareholder constituents would be able to allege a breach of duty by the directors to the corporation under this chapter for failing to pursue or create general or specific public benefit, but section 3321(d) would prevent those constituents from alleging a breach of duty to them.

Section 3321(e) was added in 2021 and was patterned in part after 8 Del. Code § 365(c). A decision by a director under section 3321(a) is not subject to attack on the basis that the director owned shares in the benefit corporation and therefore is alleged to have favored the financial interests of the shareholders.

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”

“general public benefit”

“specific public benefit”

“subsidiary”

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles”

“board of directors”

“bylaws”

“employees”

“shareholders”

“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“act”

“recklessness”

**§ 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 171 (relating to directors and officers). Except as set forth in subsection **[(e)(2)(i) or]** (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) Deleted by 2016, Nov. 21, P.L. 1328, No. 170, § 7, effective in 90 days [Feb. 21, 2017].

(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 **[a knowing violation of law]** recklessness.

(g) Professional corporations. – The benefit director of a professional corporation does not need to be independent.

**Amended Committee Comment (2021):**

The statement of the benefit director required by section 3322(c) is an important part of the transparency required under Chapter 33. The perspective of the benefit director on whether the corporation has been successful in creating general or specific public benefit will be an important source of information for the shareholders as to whether the directors have adequately discharged their stewardship of the benefit corporation and its resources.

Section 3322(d) makes clear that the actions of a benefit director are actions of a director of the benefit corporation and are subject to the same standards as actions of directors generally.

Section 3322(f) is patterned after 15 Pa.C.S. § 1713, but unlike that section it does not require the benefit corporation to adopt an implementing bylaw. Instead the liability shield provided by subsection (f) automatically applies to all benefit directors. Section 3322(f) was amended in 2021 to conform more closely to 15 Pa.C.S. § 1713 which does not refer to a knowing violation of law. The Committee believes that willful misconduct should include a knowing violation of law and, thus, that eliminating the reference to a knowing violation of law is not a substantive change in section 3322. The reference to recklessness was also added in 2021 and conforms to 15 Pa.C.S. § 1713.

The GAA Amendments Act of 2013 made the requirement of a benefit director optional for all corporations except registered corporations because of a concern that in smaller, privately-owned businesses finding a person to serve as the benefit director could be disruptive to the governance of the corporation and potentially burdensome. The GAA Amendments Act of 2013 also added subsection (g) to remove an impediment to professional corporations becoming benefit corporations since all of the directors of professional corporations practicing certain professions are required to be licensed individuals and finding an independent director in such a situation is effectively impossible. *See, e.g.,* PA Rule of Professional Conduct 5.4(d)(2) (a lawyer may not practice in a professional corporation if a nonlawyer is a director or officer).

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”

“benefit director”

“benefit officer”

“general public benefit”

“independent”

“specific public benefit”

The following terms used in this section are defined in 15 Pa.C.S. § 1103:

“articles

“board of directors”

“bylaws”

“director”

“officers”

“professional corporation”

“shareholders”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“act”

“recklessness”

“registered corporation”

**§ 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 **[1712(c) (relating to standard of care and justifiable reliance)]** 1732 (relating to officers).

(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]** recklessness.

(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.

**Amended Committee Comment (2021):**

As an agent of the corporation, an officer is generally required to follow the instructions of his or her principal. But in those instances where an officer has discretion to act with a respect to a matter, section 3323(a) requires the officer to consider the interests of the benefit corporation’s constituencies in the same manner as required of the directors by 15 Pa.C.S. § 3321(a).

Section 3323 applies to all of the officers of the benefit corporation and is not limited just to the benefit officer, if any, of the benefit corporation.

Section 3323(c)(1) was amended in 2021 to conform more closely to 15 Pa.C.S. § 1713 which does not refer to a knowing violation of law. The Committee believes that willful misconduct should include a knowing violation of law and, thus, that eliminating the reference to a knowing violation of law is not a substantive change in section 3323. The reference to recklessness was also added in 2021 and conforms to 15 Pa.C.S. § 1713.

Section 3323(d) extends the policy of 15 Pa.C.S. § 1717 to the officers of a benefit corporation. *See* the Committee Comment to 15 Pa.C.S. § 3321(d).

Section 3323(e) was added in 2021 and was patterned in part after 8 Del. Code § 365(c). A decision by an officer under section 3323(a) is not subject to attack on the basis that the officer owned shares in the benefit corporation and therefore is alleged to have favored the financial interests of the shareholders.

The following terms used in this section are defined in 15 Pa.C.S. § 3302:

“benefit corporation”

“general public benefit”

“specific public benefit”

The following terms used in this section are defined in 15 Pa.C.S.§ 1103:

“articles”

“officer”

“shares”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“act”

“recklessness”

**Subpart C**

**Nonprofit Corporations**

**Article B**

**Domestic Nonprofit Corporations Generally**

**Chapter 51**

**General Provisions**

**§ 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." 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.

"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." A plan of reclassification, merger, consolidation, asset transfer, division or conversion.]** (Repealed.)

"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."

“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."

**§ 5110. Annual report.** (Repealed.)

**[(a) General rule. – On or before April 30 of each year, a corporation described in subsection (b) that has effected any change in its officers during the preceding calendar year shall file in the Department of State a statement executed by the corporation and setting forth:**

**(1) The name of the corporation.**

**(2) The post office address, including street and number, if any, of its principal office.**

**(3) The names and titles of the persons who are its principal officers.**

**(b) Application. – This section shall apply to every:**

**(1) domestic nonprofit corporation that has been incorporated after December 31, 1972;**

**(2) domestic nonprofit corporation that has made any filing under the Nonprofit Corporation Law of 1933 in the Department of State as amended by the act of June 19, 1969 (P.L.86, No.31);**

**(3) domestic nonprofit corporation that has filed a statement of summary of record with the Department of State after December 31, 1972; and**

**(4) qualified foreign nonprofit corporation.**

**(c) Separate change in registered office required. – A filing under this section shall not constitute compliance with section 5507(b) (relating to registered office).**

**(d) Fee. – No fee shall be charged for effecting a filing under this section.**

**(e) Cross reference. – See section 134 (relating to docketing statement).]**

**Article B**

**Domestic Nonprofit Corporations Generally**

**Chapter 53**

**Incorporation**

**Subchapter A**

**Incorporation Generally**

**§ 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 **[and address, including street and number, if any,]** 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.

**Amended Committee Comment (2021):**

Section 5306 requires that the articles of incorporation of a nonprofit corporation include much the same information as the articles of incorporation of a business corporation. Compare 15 Pa.C.S. § 1306. However, the ability to include in the articles of incorporation provisions that vary the statutory default rules governing its internal affairs is more limited for nonprofit corporations than it is for business corporations.

Section 5306(a)(11)(ii) permits optional provisions to be included in the articles of incorporation of a nonprofit corporation if they “are not inconsistent with [the NPCL].” In contrast, 15 Pa.C.S. § 1306(a)(8)(ii) permits the articles of incorporation of a business corporation to include optional provisions “whether or not specifically authorized by [the BCL].” 15 Pa.C.S. § 1306(b) explains that business corporations are intended to have the ability to include in their articles of incorporation provisions that “may relax or be inconsistent with and supersede” the provisions of the BCL except in those instances where a section of the BCL provides expressly that it may not be varied by a provision of the articles. Thus, a nonprofit corporation may include in its articles of incorporation optional provisions varying the default rules of the NPCL, but those provisions are subject to the more restrictive test that they must be consistent with or authorized by the NPCL.

Because a nonprofit corporation is limited to including in its articles of incorporation provisions that are not inconsistent with the NPCL, the NPCL does not include the provisions found in the BCL that indicate which provisions of the BCL may not be varied by the articles. Compare, for example, 15 Pa.C.S. §§ 1508 and 5508. Similarly, it is not necessary for the NPCL to include a provision analogous to 15 Pa.C.S. § 1718, which provides that the articles of incorporation of a business corporation may not include a provision inconsistent with 15 Pa.C.S. Subch. 17B, because the articles of incorporation of a nonprofit corporation are subject generally to the restriction that they may not be inconsistent with the NPCL.

**Chapter 55**

**Corporate Powers, Duties and Safeguards**

**Subchapter A**

**General Provisions**

**§ 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) **[Bylaw provisions in articles]** 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).

**§ 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 **[shall operate only as regulations among]** are binding on the members, directors, members of an other body and officers of the corporation**[, and]** 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 **[bylaws]** bylaw.

**§ 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 **[either]** 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 **[in location or shall file in]** 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.

**[(d)]** (e) Cross reference. – See section 134 (relating to docketing statement).

**§ 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**[, giving the names and addresses of all members and the class and other details of the membership of each]**. The corporation shall also keep appropriate, complete and accurate books or records of account. **[The records provided for in this subsection shall be kept at any of the following locations:**

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

**(2) the principal place of business wherever situated; or**

**(3) any actual business office of the corporation.]**

(b) Right of inspection by a member. – **[Every member shall, upon written verified demand stating the purpose thereof, have a]** 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 **[records of the proceedings of]** 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 **[writing]** 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 **[shall be directed]** must be delivered to the corporation:

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

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

**[(3)]** (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 **[made]** received, the member may **[apply to]** file an action in the court for an order to compel the inspection. The court **[shall]** 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, **[he]** the member shall first establish:

(1) that **[he]** 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 **[he]** 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 **[he]** 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.

**[(d)]** (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 participant to receive counsel fees).

**§ 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 **[any emergency resulting from an attack on the United States, a nuclear disaster or another catastrophe as a result of which a quorum of the board cannot readily be assembled]** 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 **[given authorization]** 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) **[Personnel]** Representatives not liable. – A representative of the corporation:

(1) Acting in accordance with any emergency bylaws **[shall not be]** 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) **[Shall not be]** Is not liable for any action taken **[by him]** 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 **[that they are]** not inconsistent with any emergency bylaws **[adopted]**, 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 while 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 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.

**§ 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 **[apply to]** 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 **[the]** 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 **[the]** 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.

**[(c)]** (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).

**§ 5513. Forum selection provisions.**

(a) General rule. – The bylaws may provide 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).

**Subchapter B**

**Financial Matters**

**§ 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 **[fundamental changes]** 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.

**Chapter 57**

**Officers Directors and Members**

**Subchapter A**

**Notice and Meetings Generally**

**§ 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 **[sending]** 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 **[person's]** 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.

**§ 5704. Place and notice of meetings of members.**

(a) Place. – Meetings of members may be held at **[the]** 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. **[If a meeting of members is held by means of the Internet or other electronic communications technology in a fashion pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions to the directors and members of any other body, make appropriate motions and comment on the business of the meeting, the meeting need not be held at a particular geographic location.]**

(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.

**[If the secretary or other authorized person neglects or refuses to give notice of a meeting, the person or persons calling the meeting may do so.]**

(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.

**§ 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 **[section]** 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**[, or the expression of consent or dissent to corporate action, by a member]** by conference telephone or other electronic **[means, including, without limitation, the Internet, shall constitute]** technology constitutes the presence of, or vote or action by, **[or consent or dissent of]** the member for the purposes of this subpart.

(c) Exclusive use of electronic technology. – Unless the bylaws provide expressly that a meeting of the 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 or an other body 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).

**§ 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 **[action by the presiding officer in adopting rules for, and in conducting]** 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.

**Subchapter B**

**Fiduciary Duty**

**§ 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.

**§ 5712. Standard of care [**and**] , justifiable reliance and business judgement rule.**

(a) **[Directors]** General rule. – A director of a nonprofit corporation shall stand in a fiduciary relation to the corporation and shall perform **[his duties as]** the duties of a director, including **[his]** duties as a member of any committee of the board upon which **[he]** the director may serve, in good faith, in a manner **[he]** the director reasonably believes to be in the best interests of the corporation and with such care, including **[reasonable inquiry,]** the skill and diligence**[, as]** 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 **[his duties]** the duties of a director, and in satisfying the requirements of subsection (d), a director **[shall be]** 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 **[he]** 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 **[shall not be]** is not considered to be acting in good faith **[if he has]** under subsection (a.1) if the director has actual knowledge concerning the matter **[in question that would cause his reliance to be]** that causes the director to believe reliance is unwarranted.

(c) **[Officers. – Except as otherwise provided in the bylaws, 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.]** (Repealed.)

(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.

**§ 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] a director 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.

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

**§ 5714. [**Notation of dissent**] 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 **[his]** the director’s dissent, abstention or vote against the matter is entered in the minutes of the meeting or unless **[he files his written dissent]** the director delivers to the secretary of the meeting before the adjournment thereof a dissent in record form to the action **[with the secretary of the meeting before the adjournment thereof]** or transmits the dissent in **[writing]** 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 **[his]** the director’s dissent, abstention or vote against if, promptly upon receipt of a copy of such minutes, **[he]** the director notifies the secretary **[in writing]** of the corporation in record form of the asserted omission or inaccuracy.

**§ 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 **[and]** , 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. – **[Absent breach of fiduciary duty, lack of good faith or self-dealing, any act as the board of directors, a committee of the board or an individual director shall be presumed to be in the best interests of the corporation.]** 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 **[provisions]** 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**[, as defined in section 2552 (relating to definitions),]** 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).

**§ 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 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 5712 (relating to standard of care **[and]** , justifiable reliance and business judgment rule).

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

(c) Cross reference. – See section 5711 (relating to alternative provisions).

**§ 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 **[and]** , 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 **[a member, as such, 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.

**§ 5718. (Reserved.)**

**§ 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.

**Subchapter C**

**Directors, Officers and Members of an Other Body**

**§ 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 **[subpart]** 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 **[subpart]** title shall be exercised or performed to such extent and by such other body as shall be provided in the bylaws.

**§ 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. – **[Any director may resign at any time upon notice in record form to the corporation. The resignation shall be effective upon its receipt by the corporation or at a subsequent time specified in the notice of 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 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.

**§ 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).

**§ 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 a consent or]** by one or more consents to the action in record form **[are]** . Except as provided in subsection (c), the consents must be signed, before, on or after the effective **[date]** time of the action by all of the directors in office **[on the date the last consent is signed]** 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.

**§ 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 **[its]** the corporation’s directors or officers are **[directors]** governors or officers of the other association or have a financial or other interest, **[shall not be]** 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 **[director's or officer's]** 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; **[or]**

(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 non-wholly 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 (compensation of directors).

**§ 5730. Compensation of directors.**

(a) General rule. – Except as otherwise restricted in the bylaws, the board of directors of a nonprofit corporation **[shall have]** has the authority to fix the compensation of directors for their services as directors**[, and a]**, 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.

**§ 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 **[may, by resolution adopted by a majority of the directors in office,]** 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 **[resolution]** 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 **[a resolution]** 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 **[he or they]** 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.

**§ 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 **[and assistant 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 **[and assistant 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 **[his]** the officer’s successor has been selected and qualified or until **[his]** 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.

**[(b)]** (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 **[resolutions or orders]** actions of the board of directors or other body.

**[(c) Nomination of officers. – Unless the bylaws provide otherwise, officers shall be nominated by a nominating committee or from the floor.]**

(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.

**[(d) Cross reference. – See section 5110 (relating to annual report).]**

**§ 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.

**§ 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).

**Subchapter D**

**Indemnification**

**§ 5743. Mandatory indemnification.**

(a) General rule. – To the extent that a **[representative]** 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, **[he]** the director or officer shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by **[him]** 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 [the effective date of the amendment of subsection (a)].

**[(b)]** (c) Cross reference. – See section 6145 (relating to applicability of certain safeguards to foreign corporations).

**§ 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.

**Subchapter E**

**Members**

**§ 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**[, but unless]** . Except as otherwise provided in a bylaw adopted by the members , at least one meeting of the members **[of a corporation that has members, as such,]** 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; **[or]**

(3) **[other]** such officers or other persons as may be provided in the bylaws; or

(4) as 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 **[only]** 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 cancelled by the person or group that called the special meeting. In the case of a postponed or cancelled meeting, prompt notice in record form of the postponement or cancellation must be given to the members entitled to vote at the meeting.

**[(d)]** (e) Cross reference. – See section 6145 (relating to applicability of certain safeguards to foreign domiciliary corporations).

**§ 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) **[The]** 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 **[a particular]** the matter **[to be acted upon at the meeting shall constitute a quorum for the purposes of consideration and action 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 **[election 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.

**§ 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 **[such]** 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**[, and the]** . 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 **[books or records of]** 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 **[books or records]** membership register to be produced as evidence of the right of the person challenged to vote, and all persons who appear by the **[books or records]** membership register to be members entitled to vote may vote. See section 6145 (relating to applicability of certain safeguards to foreign corporations).

**§ 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 **[record date for determining members entitled to notice of or to vote at a meeting of members shall be at 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 **[in writing]** 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. **[;**

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

(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.

**§ 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 **[date]** 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 or consents 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 consent or 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. Notice under this subsection must include the information that a notice of a meeting of members seeking approval of the action would have been required to contain.

(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 unless the consent has been revoked by a signer 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.

**Subchapter F**

**Derivative Actions**

**§ 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 **[it cause the corporation to]** the corporation bring an action to enforce the right, and:

(i) if a special litigation committee is not appointed under section 5783 (relating to special litigation committee), **[the corporation does not bring the action within a reasonable time; or]** the board determines that:

(A) 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

(B) an action already commenced continue under the control of the plaintiff; 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 **[member]** 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 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 **[essential]** 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.

**§ 5782. Eligible member plaintiffs and security for costs.**

(a) General rule. – Except as provided in subsection (b), in any action or proceeding brought **[to enforce a secondary right on the part of]** by one or more members of a nonprofit corporation **[against any present or former officer, director or member of an other body of the corporation because the corporation refuses to enforce rights that may properly be asserted by it]** to enforce rights that the plaintiff claims could be, but have not been, asserted by the corporation, each plaintiff **[must aver and it must be made to appear that 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 **[he]** 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 by the corporation to substitute the corporation as the named plaintiff.

(e) Cross reference. – See section 6146 (relating to provisions applicable to all foreign corporations).

**§ 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 **[shall send]** must deliver a notice in record form to the **[plaintiff]** 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 **[nonprofit]** 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 **[or the]** may determine, or the committee may recommend to the board of directors **[may]** 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 **[approved]** 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 **[approved]** 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 **[is made]** 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.

**Chapter 59**

**Amendments, Sale of Assets and Dissolution**

**Subchapter B**

**Amendment of Articles**

**§ 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 **[filing of the amendment in]** 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 Chapter 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) 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.

**§ 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 **[at a regular or special meeting of the members]**. 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.

**Subchapter F**

**Voluntary Dissolution and Winding Up**

**§ 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 **[claims barred]** notice to claimants) and 5993(b) (relating to **[claims barred]** 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 the 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.

**Subpart IID**

**Cooperative Corporations**

**Article B**

**Domestic Cooperative Corporation Ancillaries**

**Chapter 73**

**Electric Cooperative Corporations**

**Subchapter B**

**Powers, Duties and Safeguards**

**§ 7331. Merger,** [consolidation,] **division or sale of assets.**

(a) Merger**[, consolidation]** or division. – Any two or more electric cooperative corporations may merge**[, consolidate]** or divide but only if the surviving or resulting corporation is a corporation existing under this chapter. Every merger**[, consolidation]** or division shall be proposed by the adoption by the board of directors of a resolution approving the plan of merger**[, consolidation]** 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.

[There is no Committee Comment to 15 Pa.C.S. § 7331.]

**Chapter 84**

**General Partnerships**

**Subchapter A**

**General Provisions**

**§ 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).

**Amended Committee Comment (2021):**

Section 8411(a) is patterned after Uniform Partnership Act (1997) (Last Amended 2013) (“UPA”) § 101. Section 8411(b) through (d) are patterned after UPA § 110.

The Committee Comments to this chapter are intended to form part of the legislative history of the chapter and to be citable as such under 1 Pa.C.S. § 1939. The Committee Comments have been adapted from the commentary to the UPA and are intended to supersede that commentary.

The term “dissociation” was new when it was introduced into Pennsylvania law with the enactment of Chapters 84 and 86. Partnership agreements adopted under prior used the term “withdrawal” to refer to what is now called “dissociation.” Section 8411(e) makes clear that provisions of a partnership agreement adopted prior to April 1, 2017 that relate to the withdrawal of partners are to be read as applying to the dissociation of partners. Section 8411(e) is consistent with 15 Pa.C.S. § 101(c) which provides that “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.”

The following terms used in this section are defined in 15 Pa.C.S. § 8412:

“business”

“partner”

“partnership”

“partnership agreement”

**Subchapter D**

**Relations of Partners to Each Other and to Partnership**

**§ 8441. Partner's rights and duties.**

(a) Distributions **[and losses]**. – 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.

**Amended Committee Comment (2021):**

Section 8441(b) – (j) are patterned after Uniform Partnership Act (1997) (Last Amended 2013) § 401(b) – (k). Sections 8441(k) – (m) are patterned after 15 Pa.C.S. § 1746.

Section 8441 is derived substantially from former 15 Pa.C.S. § 8331 and establishes many of the default rules that govern the relations among partners. All of these rules are, however, subject to contrary agreement of the partners as provided in 15 Pa.C.S. §§ 8415 through 8417.

**Subsection (b) –** Section 8441(b) is derived from former 15 Pa.C.S. § 8331(2), with two changes: (i) deleting “for the preservation of its business or property” as a separate category for reimbursement, because that category is a subset of the category of “payment[s] made … in the course of the partner’s activities on behalf of the partnership”; and (ii) conditioning reimbursement on the partner’s having complied with the duties stated in 15 Pa.C.S. § 8447. Subject only to 15 Pa.C.S. § 8415(c)(13), the partnership agreement can relax this precondition substantially. The agreement can also impose a stricter rule.

**Subsection (c) –** Section 8441(c) provides a default rule requiring indemnification of partners who meet the stated preconditions. Subject only to 15 Pa.C.S. § 8415(c)(13), the partnership agreement can relax these preconditions substantially. The agreement can also impose stricter preconditions.

**Subsection (d) –** Section 8441(d) authorizes but does not require a partnership to provide advances to cover expenses. *Cf. Majkowski v. Am. Imaging Mgmt. Servs., LLC*, 913 A2d 572, 589 (Del. Ch. 2006) (“Because rights to indemnification and advancement differ in important ways, our courts have refused to recognize claims for advancement not granted in specific language clearly suggesting such rights.”). The phrase “hold harmless” likewise does not encompass advances. *Id.* The authorization applies only to those persons eligible for indemnification under subsection (c), but the partnership agreement certainly can authorize a broader scope and also make advances obligatory.

The reference to “ordinary course” pertains to section 8441(j) (stating that any “difference arising … in the ordinary course of business of the partnership may be decided by a majority of the partners”).

**Subsection (e) –** The language of this section 8441(e) is very broad and authorizes a partnership to purchase insurance to cover, *e.g.*, a partner’s intentional misconduct. It is unlikely that such insurance would be available. This authorization comes from the statute, not the partnership agreement, and therefore is not subject to 15 Pa.C.S. § 8415(c)(13).

**Subsection (f) –** Section 8441(f) is derived from former 15 Pa.C.S. § 8331(3).

**Subsection (g) –** Section 8441(g) is derived from former 15 Pa.C.S. § 8331(5). The prior law was interpreted broadly to mean that, absent contrary agreement, each partner had a continuing right to participate in the management of the partnership and to be informed about the partnership business, even if, per the partnership agreement, the partner’s assent to partnership business decisions is not required.

Note also that for some decisions Chapter 84 requires the affirmative vote or consent of all partners. *See, e.g.,* section 8441(j) (“an act outside the ordinary course of business of a partnership and an amendment to the partnership agreement”); 15 Pa.C.S. § 8442(b)(3) (becoming a partner after formation of the partnership).

Section 8441(g) has implications for a partner’s actual authority to act on behalf of the partnership. The actual authority of a partner is a question of agency law and depends fundamentally on the contents of the partnership agreement. If, however, the partnership agreement is silent on the issue, this subsection helps delineate that actual authority. Acting individually:

1. a partner has no actual authority to commit the partnership to any matter for which Chapter 84 requires the affirmative vote or consent of all partners;
2. a partner has the actual authority to commit the partnership to usual and customary matters, unless the partner has reason to know that: (i) other partners might disagree; or (ii) for some other reason consultation with fellow partners is appropriate; and
3. the more serious the matter, the less likely it is that a partner has actual authority to act unilaterally.

The first point follows self-evidently from the language of Chapter 84. Where Chapter 84 requires unanimity, no partner could reasonably believe to the contrary (unless the partnership agreement provided otherwise).

The second point follows because:

* Section 8441(g) serves as the gap-filler manifestation from the partnership to its partners, and does not require partners to act only in concert or after consultation. To the contrary, subject to the partnership agreement, section 8441 (g) expressly provides that “each partner has equal rights in the management and conduct of the partnership’s business.”
* It would be impractical to require collective action on even the smallest of decisions.
* However, to the extent a partner has reason to know of a possible difference of opinion among the partners, section 8441(j) a requires decision by at least “a majority of the partners” and by unanimous consent if the matter is “outside the ordinary course of the business.”

The third point is a matter of common sense. *Cf.* Restatement (Third) of Agency § 3.03, cmt. c (2006) (noting the unreasonableness of believing, without more facts, that an individual has “an unusual degree of unilateral authority over a matter fraught with enduring consequences for the institution” and stating that “[t]he gravity of the matter from the standpoint of the organization is relevant to whether a third party could reasonably believe that the manager has authority to proceed unilaterally”).

Finally, the authority granted by section 8441(g) includes the authority to delegate. Delegation does not relieve the delegating partner or partners of their duties under 15 Pa.C.S. § 8447. However, the fact of delegation is a fact relevant to any breach of duty analysis.

EXAMPLE: A partner personally handles all important paperwork for a partnership. The partner neglects to renew the fire insurance coverage on a building owned by the partnership, despite having received and read a warning notice from the insurance company. The building subsequently burns to the ground and is a total loss. The partner might be liable for breach of the duty of care under 15 Pa.C.S. § 8447(c) (gross negligence).

EXAMPLE: A partner delegates responsibility for insurance renewals to the partnership’s office manager, and that manager neglects to renew the fire insurance coverage on the building. Even assuming that the office manager has been grossly negligent, the partner is not necessarily liable under 15 Pa.C.S. § 8447(c). The office manager’s gross negligence is not automatically attributed to the partner. Under 15 Pa.C.S. § 8447(c), the question is whether the partner was grossly negligent (or worse) in selecting the general manager, delegating insurance renewal matters to the general manager, and supervising the general manager after the delegation.

The partnership agreement may also provide for delegation and, subject to 15 Pa.C.S. § 8415, may modify a partner’s duties under 15 Pa.C.S. § 8447 accordingly.

**Subsection (i) –** Section 8441(i) continues the rule in former 15 Pa.C.S. § 8331(6) that a partner is not entitled to remuneration for services performed, except in winding up the partnership; while expanding the exception to apply to any partner who undertakes winding up. The exception is not intended to apply in the hypothetical winding up that takes place if there is a buyout under Subchapter 84G.

**Subsection (j) –** Section 8441(j) continues with one important clarification the rule in former 15 Pa.C.S. § 8331(8) regarding allocation of management authority among the partners. The prior law required majority consent for ordinary matters and unanimous consent for amending the partnership agreement, but was silent regarding extraordinary matters. Section 8441(j) requires unanimous consent for extraordinary matters.

**Subsections (k)–(m) –** Section 8441(k) – (m) applies to partnerships the basic policies on indemnification by business corporations.

The following terms used in this section are defined in 15 Pa.C.S. § 8412:

“business”

“distribution”

“partner”

“partnership”

“partnership agreement”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“obligation”

“recklessness”

**§ 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 ten 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).

**Amended Committee Comment (2016):**

Section 8446 is patterned in part after Uniform Partnership Act (1997) (Last Amended 2013) § 408.

The rules stated in section 8446 are what might be termed “quasi-default rules”—subject to some change by the partnership agreement. *See* 15 Pa.C.S. § 8415(c)(9) (prohibiting unreasonable restrictions on the information rights stated in this section).

**Subsection (a) –** A general partnership is often a very informal organization. Accordingly, section 8446(a) states a default required location for any books and records a partnership may have but does not require that books and records be kept. Other law may so require, however, including particularly tax law. This subsection applies to any books and records kept to satisfy other law.

**Subsection (b) –** Section 8446(b) states the rule pertaining to information memorialized in “any record maintained by the partnership.”

**Subsection (c) –** The scope of this section 8446(c) includes information not maintained in the records of the partnership.

Section 8446(c) imposes a duty on the partnership, not the partners. However, a partner could be liable in damages if the partner were: (i) to breach a duty under 15 Pa.C.S. § 8447 or the partnership agreement; and (ii) in doing so to cause or suffer the partnership to breach the duty stated in this paragraph.

**Subsections (c) and (d) –** In appropriate circumstances, violation of either or both of the provisions of section 8446 (c) and (d) might cause a court to enjoin or even rescind action taken by the partnership, especially when the violation has interfered with an approval or veto mechanism involving partnership consent

**Subsection (d) –** Section 8446(d) imposes a duty directly on each partner. Therefore, a partner’s violation of section 8446(d) is actionable in damages without need to show a violation of a duty stated in 15 Pa.C.S. § 8447.

**Subsection (e) –** When a partner dies, 15 Pa.C.S. § 8455 provides additional information rights to the legal representative of the deceased partner.

**Subsection (e)(1) –** A person dissociated as a partner has information rights only as to the period during which the person was a partner, extent to the extent that further information is accessible under 15 Pa.C.S. § 8455.

**Subsection (j) –** This provision is a fall-back protection against gaps in the partnership agreement and, for example, allows the partners to protect the partnership from disclosure or other misuses of confidential information even if the partnership agreement has neglected to address this issue.

The reference to “ordinary course” pertains to 15 Pa.C.S. § 8441(j) (stating that any “matter in the ordinary course of business of a partnership may be decided by a majority of the partners”). This approach is necessary, lest a requesting partner have the power to block imposition of a reasonable restriction or condition needed to prevent the requestor from abusing the partnership.

The burden of persuasion under this section 8446(j) contrasts with the burden of persuasion under 15 Pa.C.S. § 8415(c)(9) (prohibiting unreasonable limitations on the information rights provided by this section). Under that provision, as a matter of ordinary procedural law, the burden is on the person making the claim.

**Subsection (k)** – Section 8446(k) was added in 2021 and was patterned after 15 Pa.C.S. § 1512(b) which provides a mechanism for enforcement of inspection rights of corporate directors.

The following terms used in this section are defined in 15 Pa.C.S. § 8412:

“business”

“partner”

“partnership”

“partnership agreement”

“transferee”

The following terms used in this are defined in 15 Pa.C.S. § 102:

“principal office”

“record form”

**Chapter 86**

**Limited Partnerships**

**Subchapter A**

**General Provisions**

**§ 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).

**Amended Committee Comment (2021):**

Section 8611(a) was patterned after Uniform Limited Partnership Act (2001) (Last Amended 2013) (“ULPA”) § 101. Section 8611(b) through (e) was patterned after ULPA § 112. Section 8611(f) was added in 2021 and was intended as a codification of existing law and practice.

The Committee Comments to Chapter 86 are intended to form part of the legislative history of the chapter and to be citable as such under 1 Pa.C.S. § 1939. The Committee Comments have been adapted from the commentary to the ULPA and are intended to supersede that commentary.

The term “dissociation” was new when it was introduced into Pennsylvania law with the enactment of Chapters 84 and 86. Certificates of limited partnership and partnership agreements adopted under prior used the term “withdrawal” to refer to what is now called “dissociation.” Section 8611(f) makes clear that provisions of the organic rules of limited partnerships adopted prior to April 1, 2017 that relate to the withdrawal of partners are to be read as applying to the dissociation of partners. Section 8611(f) is consistent with 15 Pa.C.S. § 101(c) which provides that “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.”

The following terms used in this section are defined in 15 Pa.C.S. § 8612:

“general partner”

“limited partner”

“limited partnership”

“partner”

“partnership agreement”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“organic rules”

**Subchapter B**

**Formation and Filings**

**§ 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 **[that person]** 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).

**Amended Committee Comment (2021)**

This section is patterned after Uniform Limited Partnership Act (2001) (Last Amended 2013) § 204.

As a general rule, section 8623 requires every person that becomes a general partner to sign the certificate of limited partnership or an amendment or restatement thereof. The policy underlying that rule is to require a person becoming a general partner to evidence agreement to become subject to liability as a general partner. Consistent with that policy, section 8623(a)(2) requires all of the general partners to sign an amendment of the certificate that terminates the status of the limited partnership as a limited liability limited partnership.

The department will not check the bona fides of a person purporting to have signed a record in a representative capacity.

The following terms used in this section are defined in 15 Pa.C.S. § 8612:

“certificate of limited partnership”

“general partner”

“limited partnership”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“department”

“limited liability limited partnership”

“sign”

**§ 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 **[in location]**, include the change in an annual report under section 146 (relating to annual report) or **[shall]** 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.

**[(d)]** (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).

**Amended Committee Comment (2021):**

Section 8625 is substantially a reenactment of former 15 Pa.C.S. § 8506.

Under 15 Pa.C.S. § 135(c)(1), only an actual street address or rural route box number, and not a post office box number, is acceptable as a registered office address.

The following terms used in this section are defined in 15 Pa.C.S. § 8612:

“certificate of limited partnership”

“limited partnership”

The term “department” used in this section is defined in 15 Pa.C.S. § 102.

**Subchapter C**

**Limited Partners**

**§ 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 ten 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).

**Amended Committee Comment (2021):**

Section 8634 is patterned after Uniform Limited Partnership Act (2001) (Last Amended 2013) § 304.

Section 8634 balances two countervailing concerns relating to information: the need of limited partners and former limited partners for access versus the limited partnership’s need to protect confidential business data and other intellectual property. The balance must be understood in the context of fiduciary duties. The general partners are obliged through their duties of care and loyalty under 15 Pa.C.S. § 8649 to protect information whose confidentiality is important to the limited partnership or otherwise inappropriate for dissemination. Under 15 Pa.C.S. § 8635(b), in contrast, a limited partner “does not have any [fiduciary] duty to the limited partnership or to any other partner solely by reason of acting as a limited partner.”

Although the rights and duties stated in section 8634 are extensive, they are not necessarily all-inclusive. The statement of fiduciary duties in 15 Pa.C.S. § 8649 is not exhaustive, and some cases characterize owners’ information rights as reflecting a fiduciary duty of those with management power. *E.g. Fate v. Owens*, 27 P.3d 990, 998 (N.M. 2001) (stating that “[a] partner, as a fiduciary, is required to fully disclose material facts and information relating to partnership affairs to the other partners,” including limited partners); *Konover Dev. Corp. v. Zeller*, 635 A.2d 798, 804-05 (Conn. 1994) (stating that “the general partner of a limited partnership has the fiduciary duty of rendering true accounts and full information about anything which affects the partnership”) (quoting *Williams v. Bartlett*, 457 A.2d 290 (Conn. 1983); internal quotations omitted). Also, the rights stated in section 8634 are in addition to whatever discovery rights a party has in a civil suit.

In contrast, the rights of transferees are limited to those stated in section 8634 and 15 Pa.C.S. § 8672(c); general partners do not owe fiduciary duties to transferees.

The rights stated in section 8634 are personal to limited partners and transferees, and are enforceable through a direct action under 15 Pa.C.S. § 8691.

**Subsection (a) –** The phrase “required information” is a defined term in 15 Pa.C.S. § 8612. The broad right of access in section 8634(a) is subject not only to reasonable limitations in the partnership agreement, as provided in 15 Pa.C.S. § 8615(c)(13), but also to the power of the limited partnership to impose reasonable limitations on use under section 8634(h). Unless the partnership agreement provides otherwise, it will be the general partners that have the authority to use that power.

**Subsection (b) –** Section 8634(b) does not itself impose a requirement of good faith on a limited partner seeking information because 15 Pa.C.S. § 8635(a) contains a generally applicable obligation of good faith and fair dealing for limited partners.

**Subsection (c) –** Access under section 8634(c) is limited and subject to conditions.

EXAMPLE: A person dissociated as a limited partner seeks access to information pertaining to the period during which the person was a limited partner and to which the person would have had access while a limited partner. The person makes a bald demand, merely stating a desire to review the information at the limited partnership’s principal office. In particular, the demand does not describe “with reasonable particularity the information sought and the purpose for seeking the information,” as is required under section 8634(b)(2). The limited partnership is not obliged to allow access. The person must first comply with section 8634(c), which incorporates by reference the requirements of section 8634(b).

**Subsection (c)(2) –** The duty of good faith imposed by the requirement in section 8634(c)(2) that the person comply with 15 Pa.C.S. § 8635(a) is needed because a person claiming access under this section 8634(c)(2) is no longer a limited partner and thus no longer subject directly to 15 Pa.C.S. § 8635(a). *See* 15 Pa.C.S. § 8662(a)(2) (dissociation as a limited partner terminates duty of good faith as to subsequent events).

**Subsection (f) –** The rule in the second sentence of section 8634(f) would be the result in any case under the law of agency. It has been stated in section 8634(f) to avoid any argument that a limited partnership may exclude an agent or guardian from exercising rights under section 8634. No negative implication should be drawn from the failure to state in other contexts that agents and guardians are bound by applicable restrictions or conditions.

**Subsection (g) –** Section 8634(g) provides no information rights to a person as transferee. Transferee status brings only the very limited information rights stated in 15 Pa.C.S. § 8672(c). However, a transferee that is a person dissociated as a limited partner has rights in the latter capacity under section 8634(c).

**Subsection (h) –**Section 8634(h) permits the limited partnership – as distinguished from the partnership agreement – to impose use limitations. *See* 15 Pa.C.S. § 8615(c)(13) (providing that the partnership agreement may impose reasonable restrictions). Under 15 Pa.C.S. § 8646(a), it will be the general partners that decide whether the limited partnership will impose use restrictions.

The limited partnership bears the burden of proving the reasonableness of any restriction imposed under this section 8634(h). In determining whether a restriction is reasonable, a court might consider: (i) the danger or other problem the restriction seeks to avoid; (ii) the purpose for which the information is sought; and (iii) whether, in light of both the problem and the purpose, the restriction is reasonably tailored. Restricting use of the names and addresses of limited partners is not per se unreasonable.

**Subsection (i)** – Section 8634(i) was added in 2021 and was patterned after 15 Pa.C.S. § 1512(b) which provides a mechanism for enforcement of inspection rights of corporate directors.

The following terms used in this section are defined in 15 Pa.C.S. § 8612:

“general partner”

“limited partner”

“limited partnership”

“partnership agreement”

“required information”

“transferee”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“principal office”

“receipt”

“receive”

“record form”

**Subchapter D**

**General Partners**

**§ 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 ten 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).

**Amended Committee Comment (2021):**

Section 8647 is patterned after Uniform Limited Partnership Act (2001) (Last Amended 2013) § 407.

**Subsection (a)—**The phrase “required information” is a defined term in 15 Pa.C.S. § 8612. See 15 Pa.C.S. § 8618. The broad right of access in section 8647(a) is subject both to reasonable limitations in the partnership agreement, as permitted by 15 Pa.C.S. § 8615(c)(13), and also the power of the limited partnership to impose reasonable limitations on use under section 8647(j). However, limiting a general partner’s access to this information or any other information would be quite unusual.

**Subsection (c)—**Because a limited partnership is an entity, this provision obligates the partnership. However, the general partners are typically responsible for seeing that the limited partnership fulfills this obligation. For the limited partnership, breaching this obligation is a matter of strict liability (analogous to breaching a contract). In contrast, 15 Pa.C.S. § 8649 provides the standard for evaluating a general partner’s conduct in this context. Section 8647(d) establishes a separate duty for the general partners.

A general partner’s right to information under section 8647(c) is personal to the general partner and enforceable under 15 Pa.C.S. § 8691(a). These rights are in addition to whatever discovery rights a party has in a civil suit.

Section 8647(c) imposes an affirmative duty to volunteer information. However, given the assumption that each general partner will be active in management, the obligation ceases “to the extent the partnership can establish that it reasonably believes the general partner already knows the information.”

EXAMPLE: A limited partnership has two general partners: each of which is regularly engaged in conducting the limited partnership’s activities; both of which are aware of and have regular access to all significant limited partnership records; and neither of which has special responsibility for or knowledge of any particular aspect of those activities or the relevant partnership records. Most likely, neither general partner is obliged to draw the other general partner’s attention to information apparent in the limited partnership’s records.

EXAMPLE: Although a limited partnership has three general partners, one is the managing partner with day-to-day responsibility for running the limited partnership’s activities. The other two meet periodically with the managing general partner, and together with that partner function in a manner analogous to a corporate board of directors. Most likely, the managing general partner has a duty to draw the attention of the other general partners to important information, even if that information would be apparent from a review of the limited partnership’s records.

In any event, the obligation is limited to information which is both material and known by the limited partnership. “Knowledge” is viewed subjectively—*i.e*., actual knowledge. Materiality is viewed objectively. Thus, the duty applies to known, material information, even if the limited partnership does not know that the information is material.

A limited partnership will “know” what its general partners know. Under 15 Pa.C.S. § 8613(f), a general partner’s knowledge of a fact relating to the limited partnership is effective immediately as knowledge of or notice to the partnership. As to others acting or reasonably appearing to act on behalf of the limited partnership, common law agency rules will apply. RESTATEMENT (THIRD) OF AGENCY § 5.03 (2006) (“Imputation of Notice of Fact to Principal”).

Typically a general partner’s duties are continuous, and therefore a general partner’s right to information is not just transaction-specific. Ongoing managerial responsibilities require ongoing information—both periodically and ad hoc when a situation warrants.

**Subsection (d)—**This provision imposes a direct duty on each general partner. The duty is both narrower and more demanding than the duty placed on general partners as the typically responsible parties under section 8647(c). The duty is narrower because the relevant information is confined to “the information [pertaining to records] described in subsection (b),” rather than the wide scope of “any information” delineated by section 8647(c). The duty is more demanding because it applies directly to the general partners, is therefore in the nature of a contractual obligation, and its breach is a matter of strict liability. For example, it is no defense for a general partner under section 8647 to assert that, although the partner failed to furnish required information, the failure did not amount to gross negligence under 15 Pa.C.S. § 8649(c).

As with section 8647(c), a general partner’s right to information under this subsection is personal to the general partner and enforceable under 15 Pa.C.S. § 8691(a). These rights are in addition to whatever discovery rights a party has in a civil suit.

**Subsection (e)(2)—**A duty of good faith is needed here because a person claiming access under this subsection is no longer a general partner and no longer subject to a general partner’s obligation of good faith and fair dealing under 15 Pa.C.S. § 8649(d). *See* 15 Pa.C.S. § 8665(a)(2) (stating that a person’s dissociation as a general partner terminates as to subsequent events the person’s duties under 15 Pa.C.S. § 8649, including the contractual obligation of good faith).

**Subsection (i)—**Section 8647 provides no information rights to a person as transferee. Transferee status brings only the very limited information rights stated in 15 Pa.C.S. § 8672(c). However, a transferee that is a person dissociated as a general partner has rights in the latter capacity under section 8647(e).

“Personal representative” is defined in 1 Pa.C.S. § 1991 as “The executor or administrator of a decedent.” “Executor” is defined in 1 Pa.C.S. § 1991 as “A fiduciary named in a will to execute its provisions and administer the estate of the testator.” “Administrator” is defined in 1 Pa.C.S. § 1991 as “A fiduciary appointed under authority of law by a register of wills or court to administer the estate of a decedent.”

**Subsection (j) —** Section 8647(j) permits the limited partnership – as distinguished from the partnership agreement – to impose use limitations. *See* 15 Pa.C.S. § 8615(d)(1)(iii) (providing that the partnership agreement may “impose reasonable restrictions on the availability and use of information under section … 8647.” Under 15 Pa.C.S. § 8646(a), it will be the general partners that decide whether the limited partnership will impose use restrictions.

The limited partnership bears the burden of proving the reasonableness of any restriction imposed under section 8647(j). In determining whether a restriction is reasonable, a court might consider: (i) the danger or other problem the restriction seeks to avoid; (ii) the purpose for which the information is sought; and (iii) whether, in light of both the problem and the purpose, the restriction is reasonably tailored.

The following terms used in this section are defined in 15 Pa.C.S. § 8612:

“general partner”

“limited partnership”

“partnership agreement”

“required information”

“transferee”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“principal office”

“receipt”

“receive”

“record form”

**Subchapter I**

**Actions by Partners**

**§ 8692. Derivative action.**

(a) General rule. – Subject to section 8693 (relating to eligible partner plaintiffs and security for costs) and subsection (b), a **[partner]** plaintiff may maintain a derivative action to enforce a right of a limited partnership only if:

(1) the **[partner]** plaintiff first makes a demand on the limited partnership or the general partners requesting that **[they cause]** the partnership **[to]** bring an action to enforce the right, and:

(i) if a special litigation committee is not appointed under section 8694 (relating to special litigation committee), the **[partnership does not bring the action within a reasonable time; or]** general partners determine that:

(A) 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

(B) an action already commenced continue under the control of the plaintiff; 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 **[partner]** 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 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 **[essential]** 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).

**Amended Committee Comment (2021):**

Section 8692 is patterned in part after American Law Institute, *Principles of Corporate Governance: Analysis and Recommendations* (1994) (the “ALI Principles”) § 7.03. In *Cuker v. Mikalauskas*, 692 A.2d 1042 (Pa. 1997), the Pennsylvania Supreme Court adopted Sections 7.02 – 7.10 and 7.13 of the ALI Principles and thus filled a void in Pennsylvania statutory law at the time. This subchapter generally follows those sections of the ALI Principles, while elaborating and revising certain portions of those sections of the ALI Principles as they apply to business corporations.

Section 8692(a) and (b) follow Section 7.03 of the ALI Principles in adopting a “universal demand” requirement subject to an exception for irreparable injury. Except in the limited situation described in section 8692(b)(1), a plaintiff must always demand that the general partners bring an action and allow the limited partnership to respond as provided in this subchapter before the plaintiff may commence a derivative action. Section 8692 thus rejects the law as it has developed in Delaware and other states that excuse pre-suit demand in circumstances where it is alleged that demand would be futile.

Section 7.02(c) of the ALI Principles provides that a director has standing to bring a derivative action unless the court finds that the director is unable to represent fairly and adequately the interests of the shareholders; and Section 7.03(a) of the ALI Principles requires a director to make demand in the same manner as a shareholder. Consistent with those sections of the ALI Principles, it is intended that the plaintiffs who are subject to section 8692 will include a general partner.

The rights that may be enforced in a derivative action include the right to seek redress for a wrong to the limited partnership.

If “immediate and irreparable injury” is shown as required by section 8692(b), that will not excuse the plaintiff altogether from making demand; judicial review will begin with the response of the general partners. If “immediate and irreparable injury” justifies the commencement of the action without demand and the court grants an injunction to preserve the status quo, section 8692(b) contemplates that the general partners would still be given an appropriate time to respond and that further inquiry by the court will focus on the response of the general partners, or a special litigation committee if one is appointed as provided in 15 Pa.C.S. § 8694.

If a derivative action is commenced before demand has been made and the failure to make demand is not excused under section 8692(b), under the ALI Principles the appropriate sanction will not be dismissal of the action, but rather an award of costs against the party or responsible attorney under Section 7.04(d) of the ALI Principles.

Section 8692(c) requires that a demand be in record form, but section 8692 does not prescribe the manner in which the demand must be delivered to the general partners. The plaintiff should verify that the demand was received to avoid a challenge that demand was not made.

If the general partners do not appoint a special litigation committee in response to a demand, further action by the general partners and demanding plaintiff will be subject to ALI Principles §§ 7.04 – 7.10 and 7.13, as modified by Subchapter 86I. Similarly, if the general partners do appoint a special litigation committee, further action by the general partners, committee, and plaintiff will also be subject to those sections of the ALI Principles, as modified by Subchapter 86I, including specifically 15 Pa.C.S. § 8694 with respect to special litigation committees.

If a derivative action is commenced after a demand has been made and the action includes a claim that was not fairly subsumed under the original demand, section 8692(d) requires that a new demand must be made with respect to that claim. With respect to the new claim, the tolling of the statute of limitations under section 8692(e) will begin with the date of the new demand and not the date of the original demand.

The following terms used in this section are defined in 15 Pa.C.S. § 8612:

“general partner”

“limited partnership”

“partner”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“record form”

**§ 8693. [**Security**] 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.

**Amended Committee Comment (2021):**

Pa.R.Civ.Pro. 1506(a) imposes a similar requirement to section 8693(a) that a plaintiff must be a partner at the time a derivative suit is commenced and also must have been a partner when the conduct underlying the suit occurred or whose status as a partner devolved on the plaintiff from a person who was a partner at the time the conduct occurred. The rule in Pa.R.Civ.Pro. 1506(a) has been restated in section 8693(a) so that the requirements for a plaintiff to commence and maintain a derivative action can be referenced in 15 Pa.C.S. § 8692(a).

The requirement of continuous ownership in section 8693(a) and (d) was added in 2021 and is similar to the ALI, *Principles of Corporate Governance: Analysis and Recommendations* (1994), § 7.02(a)(2). *See* Committee Comment to 15 Pa.C.S. § 1782.

Section 8693(c) is patterned after 15 Pa.C.S. § 1782(c).

The following terms used in this section are defined in 15 Pa.C.S. § 8612:

“limited partnership”

“partner”

“transferable interest”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“verified”

**§ 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 **[shall send]** 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 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 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 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 the 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 **[or the general partners]** 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 **[approved]** 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 the claims asserted in an action already commenced be settled on terms **[approved]** 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 **[an]** a derivative action is commenced before or after either the committee makes a determination **[is made]** 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, other appropriate pleadings and motions.

(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.

**[(h)]** (i) Cross reference. – See section 8615(c)(18) (relating to contents of partnership agreement).]

**Amended Committee Comment (2021):**

Section 8694 is patterned in part after Uniform Limited Liability Company Act (2006) (Last Amended 2013) § 805.

Section 8694 is intended to supersede those provisions of American Law Institute, *Principles of Corporate Governance: Analysis and Recommendations* (1994) §§ 7.03 – 7.10 and 7.13 that deal with the same subjects as section 8694.

Use of a special litigation committee is optional. The general partners may decide to respond to a demand or a derivative action without establishing a special litigation committee.

The statement in section 8694(a) that a special litigation committee may “determine on behalf of the limited partnership … whether pursuing any of the claims asserted is in the best interests of the partnership” means that a committee appointed under section 8694 may be given the authority to act on behalf of the partnership without further action by the general partners.

The standard provided in section 8694(f) for judicial review of the determination of a special litigation committee follows *Auerbach v. Bennett*, 393 N.E.2d 994 (N.Y. 1979) rather than *Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del. 1981), because the latter’s reference to a court’s business judgment has generally not been followed in other states. In essence, a special litigation committee is intended to function as a surrogate decision-maker, allowing the limited partnership to make what is fundamentally a business decision. If a court determines that the members of the committee met the qualifications required under section 8694(c)(1) and (2) and that the committee conducted its investigation and made its determination or recommendation in good faith, independently and with reasonable care, it makes no sense to substitute the court’s legal judgment for the business judgment of the committee.

The Committee Comment (2016) to section 8694 included a citation to *Houle v. Low*, 556 N.E.2d 51, 58 (Mass. 1990). The Committee has concluded that the text of section 8694 does not support the citation to that case, and that case should not be taken as relevant authority on the application of section 8694.

The following terms used in this section are defined in 15 Pa.C.S. § 8612:

“general partner”

“limited partner”

“limited partnership”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“receive”

“record form”

**Chapter 88**

**Limited Liability Companies**

**Subchapter B**

**Formation and Filings**

**§ 8821. Formation of limited liability company and certificate of organization.**

(a) Formation. – One or more **[persons]** 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).

**Amended Committee Comment (2021):**

Section 8821(a) through (c) are patterned after Uniform Limited Liability Company Act (2006) (Last Amended 2013) (“ULLCA”) § 201. Section 8821(e) is a reenactment of former 15 Pa.C.S. § 8913(8). Section 8821(f) is patterned in part after ULLCA § 201(d).

**Subsection (b) –** Unlike the approach of the prior law, Chapter 88 does not require that the certificate of organization state whether the limited liability company is manager-managed or member-managed. Consistent with the approach of the prior law, however, if the status of a company as manager-managed is stated in the certificate of organization, the managers will have the same statutory apparent authority as under the prior law.

The required contents of the certificate of organization are limited just to the name of the limited liability company and its registered office. Because of the ease of preparing and delivering the certificate for filing, there is no need for a provision like 15 Pa.C.S. § 504 which validates certain defective corporations that were purportedly incorporated without complying fully with the required procedures in effect at the time.

**Subsection (c) –** This provision permits the certificate of organization to contain information beyond that required in section 8821(b). A limited liability company should have good reason, however, before choosing to include additional information in its certificate of organization because the information will be available to the public and there is an increased chance of a conflict between the certificate of organization and the operating agreement. Placing additional information in the certificate of organization does not enable a company to “end run” the provisions of 15 Pa.C.S. § 8815(c) and (d) limiting the power of the operating agreement.

**Subsection (f) –** ULLCA § 201(d) provides that a limited liability company is formed when its certificate of organization has become effective and at least one person has become a member. Under that rule, the existence of a company cannot be determined just from the public record. Section 8821(f) adopts the more straight-forward approach of treating the company has having come into existence when its certificate of organization has become effective without regard to whether at least one person has become a member. The Committee believes that approach will provide greater certainty for persons dealing with a company and will have other benefits such as simplifying legal opinions as to the status of a company.

The following terms used in this section are defined in 15 Pa.C.S. § 8812:

“certificate of organization”

“limited liability company”

“operating agreement”

“organizer”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“association”

“department”

**§ 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 **[in location]**, include the change in an annual report under section 146 (relating to annual report) or **[shall]** 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.

**[(d)]** (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).

**Amended Committee Comment (2021):**

Section 8825 is a reenactment of former 15 Pa.C.S. § 8906. Compare Uniform Limited Liability Company Act (2006) (Last Amended 2013) §§ 115 through 118.

The only purpose of the registered office location of a limited liability company under Chapter 88 is to determine venue in actions involving the company under Pa.R.Civ.Pro. 2179(a)(1) and the definition of “court” in 15 Pa.C.S. 102. For purposes of the Pennsylvania Rules of Civil Procedure, a limited liability company will probably be deemed a “corporation or similar entity” under Pa.R.Civ.Pro. 2176, rather than a “partnership” under Pa.R.C.P. 2126 or an “association” under Pa.R.Civ.Pro. 2151.

It is not intended that a bare registered office necessarily constitutes the type of regular place of business contemplated by Pa.R.Civ.Pro. 424(2) for purposes of service of process. For example, if a company fails to pay the renewal fees of an agent for the provision of registered office service, the agent may file a statement of change of registered office by agent under 15 Pa.C.S. § 108, terminating its status as agent, and thereafter the former agent will “not have any responsibility with respect to matters tendered to the office” in the name of the company. In view of this possibility, it is assumed that a plaintiff will ordinarily make service on the actual principal place of business of the company, wherever situated, in order to minimize the risk of due process defects in the validity of any resulting judgment.

The fee for filing a certificate of change of registered office is set forth in 15 Pa.C.S. § 153(a)(3)(iii).

The following terms used in this section are defined in 15 Pa.C.S. § 8812:

“certificate of organization”

“limited liability company”

The term “department” used in this section is defined in 15 Pa.C.S. § 102.

**Subchapter D**

**Relations of Members to Each Other and to Limited Liability Company**

**§ 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 ten 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).

**Amended Committee Comment (2021):**

Section 8850 is patterned after Uniform Limited Liability Company Act (2006) (Last Amended 2013) § 410.

The rules stated in section 8850 are what might be termed “quasi-default rules”—subject to some change by the operating agreement. *See* 15 Pa.C.S. § 8815(c)(14) (prohibiting unreasonable restrictions on the information rights stated in this section).

Although the rights and duties stated in section 8850 are extensive, they are not necessarily all-inclusive. Some decisions characterize owners’ information rights as reflecting a fiduciary duty of those with management power. *E.g., Bakerman v. Sidney Frank Importing Co., Inc*., No. Civ.A. 1844–N, 2006 WL 3927242 at \*14 (Del.Ch. Oct. 16, 2006) (holding that a manager owed “certain duties to members of the LLC” and stating that “[w]hen fiduciaries communicate with their beneficiaries in the context of asking the beneficiary to make a discretionary decision—such as whether to consent to a sale of substantially all the assets of an LLC—the fiduciary has a duty to disclose all material facts bearing on the decision at issue”) (citing *Loudon v. Archer–Daniels–Midland Co*., 700 A.2d 135, 137 (Del.1997)).

Chapter 88’s statements of fiduciary duties is not exhaustive. *See* the Committee Comments to 15 Pa.C.S. §§ 8849.1(a) and 8849.2(a).

**Subsection (a) –** Section 8850(a)(1) states the rule pertaining to information memorialized in records maintained by the company. Section 8850(a)(2) applies to information not in such a record.

**Subsection (a)(2) and (3) –** In appropriate circumstances, violation of either or both of the provisions of section 8850(a)(2) and (3) might cause a court to enjoin or even rescind action taken by the limited liability company, especially when the violation has interfered with an approval or veto mechanism involving member consent. *E.g., Blue Chip Emerald LLC v. Allied Partners Inc*., 299 A.D.2d 278, 279-280 (N.Y.A.D. 1st Dep’t. 2002) (invoking partnership law precedent as reflecting a duty of full disclosure and holding that “[a]bsent such full disclosure, the transaction is voidable”).

**Subsection (a)(2) –** Section 8850(a)(2) imposes a duty on the limited liability company, not the members who manage the company. However, a member could be liable in damages if the member were to: (i) breach a duty under 15 Pa.C.S. § 8849.1 or the operating agreement; and (ii) in doing so cause or suffer the company to breach the duty stated in this paragraph..

**Subsection (a)(3) –** Section 8850(a)(2) imposes a duty directly on each member. Therefore, a member’s violation of section 8850(a)(2) is actionable in damages without need to show a violation of a duty stated in 15 Pa.C.S. § 8849.1.

**Subsection (b)(1) –** Section 8850(b)(1) is a switching provision. The comments to section 8850 (a)(2) and (3) apply here by analogy.

**Subsection (b)(2) –** Section 8850(b)(2) refers to “information” rather than “records maintained by the company”—compare section 8850(a)—so in some circumstances the company might have an obligation to memorialize information. Such circumstances will likely be rare or at least unusual. Section 8850 generally concerns providing existing information, not creating it. In any event, a member does not trigger the company’s obligation under section 8850(b)(2) merely by satisfying section 8850(b)(2) (i) through (iii). The member must also satisfy the “just and reasonable” requirement.

**Subsection (c)(1) –** A person dissociated as a member has information rights only as to the period during which the person was a member.

**Subsection (h) –** Section 8850(h) is a fall-back protection against gaps in the operating agreement. For example, those managing a limited liability company may protect trade secrets from disclosure or prohibit various misuses of confidential information even if the operating agreement has neglected to address this issue.

The reference to “ordinary course” pertains to 15 Pa.C.S. § 8847(b)(3) (stating that any “difference arising among members [in a member-managed limited liability company] as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members”). As for a manager-managed company, see 15 Pa.C.S. § 8847(c)(1) (“Except as expressly provided in this title, any matter relating to the activities and affairs of the [manager-managed] company is decided exclusively by the manager, or, if there is more than one manager, by a majority of the managers.”). This approach is necessary, lest a requesting member (or manager-member) have the power to block imposition of a reasonable restriction or condition needed to prevent the requestor from abusing the company.

The burden of proof under section 8850(h) contrasts with the burden of proof when someone claims that a term of an operating agreement violates 15 Pa.C.S. § 8815(c)(14). Under 15 Pa.C.S. § 8815(c)(14), as a matter of ordinary procedural law, the burden is on the person making the claim.

**Subsection (i)** – Section 8850(i) was added in 2021 and was patterned after 15 Pa.C.S. § 1512(b) which provides a mechanism for enforcement of inspection rights of corporate directors.

The following terms used in this section are defined in 15 Pa.C.S. § 8812:

“limited liability company”

“manager”

“manager-managed limited liability company”

“member”

“member-managed limited liability company”

“operating agreement”

“transferee”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“receipt”

“receive”

“record form”

**Subchapter H**

**Actions by Members**

**§ 8882. Derivative action.**

(a) General rule. – Subject to section 8883 (relating to eligible plaintiffs and security for costs) and subsection (b), a **[member or manager]** 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 **[they cause]** the company **[to]** bring an action to enforce the right, and:

(i) if a special litigation committee is not appointed under section 8884 (relating to special litigation committee), **[the company does not bring the action within a reasonable time; or]** the members in a member-managed company or managers of a manager-managed company determine that:

(A) 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

(B) an action already commenced continue under the control of the plaintiff; 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 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 **[essential]** 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).

**Amended Committee Comment (2021):**

Section 8882 is patterned in part after American Law Institute, Principles of Corporate Governance: Analysis and Recommendations (1994) (the “ALI Principles”) § 7.03. In *Cuker v. Mikalauskas*, 692 A.2d 1042 (Pa. 1997), the Pennsylvania Supreme Court adopted Sections 7.02 – 7.10 and 7.13 of the ALI Principles and thus filled a void in Pennsylvania statutory law at the time. This subchapter generally follows those sections of the ALI Principles, while elaborating and revising certain portions of those sections of the ALI Principles as they apply to limited liability companies.

Section 8882(a) and (b) follow Section 7.03 of the ALI Principles in adopting a “universal demand” requirement subject to an exception for irreparable injury. Except in the limited situation described in section 8882(b)(1), a plaintiff must always demand that the members or managers bring an action and allow the limited liability company to respond as provided in this subchapter before the plaintiff may commence a derivative action. Section 8882 thus rejects the law as it has developed in Delaware and other states that excuse pre-suit demand in circumstances where it is alleged that demand would be futile.

Section 7.02(c) of the ALI Principles provides that a director has standing to bring a derivative action unless the court finds that the director is unable to represent fairly and adequately the interests of the shareholders; and Section 7.03(a) of the ALI Principles requires a director to make demand in the same manner as a shareholder. Consistent with those sections of the ALI Principles, it is intended that the plaintiffs who are subject to section 8882 will include a manager plaintiff.

The rights that may be enforced in a derivative action include the right to seek redress for a wrong to the limited liability company.

If “immediate and irreparable injury” is shown as required by section 8882(b), that will not excuse the plaintiff altogether from making demand; judicial review will begin with the response of the members or managers. If “immediate and irreparable injury” justifies the commencement of the action without demand and the court grants an injunction to preserve the status quo, section 8882(b) contemplates that the members or managers would still be given an appropriate time to respond and that further inquiry by the court will focus on the response of the members or managers, or a special litigation committee if one is appointed as provided in 15 Pa.C.S. § 8884.

If a derivative action is commenced before demand has been made and the failure to make demand is not excused under section 8882(b), under the ALI Principles the appropriate sanction will not be dismissal of the action, but rather an award of costs against the party or responsible attorney under Section 7.04(d) of the ALI Principles.

Section 8882(c) requires that a demand be in record form, but section 8882 does not prescribe the manner in which the demand must be delivered to the members or managers. The plaintiff should verify that the demand was received to avoid a challenge that demand was not made.

If the members or managers do not appoint a special litigation committee in response to a demand, further action by the members or managers and demanding plaintiff will be subject to ALI Principles §§ 7.04 – 7.10 and 7.13, as modified by Subchapter 88H. Similarly, if the members or managers dos appoint a special litigation committee, further action by the members or managers, committee, and plaintiff will also be subject to those sections of the ALI Principles, as modified by Subchapter 88H, including specifically 15 Pa.C.S. § 8884 with respect to special litigation committees.

If a derivative action is commenced after a demand has been made and the action includes a claim that was not fairly subsumed under the original demand, section 8882(d) requires that a new demand must be made with respect to that claim. With respect to the new claim, the tolling of the statute of limitations under section 8882(e) will begin with the date of the new demand and not the date of the original demand.

The following terms used in this section are defined in 15 Pa.C.S. § 8812:

“limited liability company”

“manager”

“manager-managed limited liability company”

“member”

“member-managed limited liability company”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“record form”

**§ 8883. [**Security**] 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 company as the named plaintiff.

**Amended Committee Comment (2021):**

Pa.R.Civ.Pro. 1506(a) imposes a similar requirement to section 8883(a) that a plaintiff must be a member or manager at the time a derivative suit is commenced and also must have been a member or manager when the conduct underlying the suit occurred or whose status as such devolved on the plaintiff from a person who was a member or manager at the time the conduct occurred. The rule in Pa.R.Civ.Pro. 1506(a) has been restated in section 8883(a) so that the requirements for a plaintiff to commence and maintain a derivative action can be referenced in 15 Pa.C.S. § 8882(a).

The requirement of continuous ownership in section 8883(a) was added in 2021 and is similar to the ALI, *Principles of Corporate Governance: Analysis and Recommendations* (1994), § 7.02(a)(2).

Section 8883(b) is patterned after 15 Pa.C.S. § 1782(c).

The following terms used in this section are defined in 15 Pa.C.S. § 8812:

“limited liability company”

“manager”

“member”

“transferable interest”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“verified”

**§ 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 **[shall send]** 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 **[limited liability]** company, 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 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 **[or the]** may determine, or the committee may recommend to the managers or members **[may]** 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 **[approved]** 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 the claims asserted in an action already commenced be settled on terms **[approved]** 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 **[is made]** 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 member 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, other appropriate pleadings and motions.

(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.

**[(h)]** (i) Cross reference. – See section 8815(c)(18) (relating to contents of operating agreement).

**Amended Committee Comment (2021):**

Section 8884 is patterned in part after Uniform Limited Liability Company Act (2006) (Last Amended 2013) § 805.

Section 8884 is intended to supersede those provisions of American Law Institute, Principles of Corporate Governance: Analysis and Recommendations (1994) §§ 7.03 – 7.10 and 7.13 that deal with the same subjects as section 8884.

Use of a special litigation committee is optional. The members or managers may decide to respond to a demand or a derivative action without establishing a special litigation committee.

The statement in section 8884(a) that a special litigation committee may “determine on behalf of the company … whether pursuing any of the claims asserted is in the best interests of the company” means that a committee appointed under section 8884 may be given the authority to act on behalf of the company without further action by the members or managers.

The standard provided in section 8884(f) for judicial review of the determination of a special litigation committee follows *Auerbach v. Bennett*, 393 N.E.2d 994 (N.Y. 1979) rather than *Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del. 1981), because the latter’s reference to a court’s business judgment has generally not been followed in other states. In essence, a special litigation committee is intended to function as a surrogate decision-maker, allowing the company to make what is fundamentally a business decision. If a court determines that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee conducted its investigation and made its determination or recommendation in good faith, independently and with reasonable care, it makes no sense to substitute the court’s legal judgment for the business judgment of the committee.

The Committee Comment (2016) to section 8884 included a citation to *Houle v. Low*, 556 N.E.2d 51, 58 (Mass. 1990). The Committee has concluded that the text of section 8884 does not support the citation to that case, and that case should not be taken as relevant authority on the application of section 8884.

The following terms used in this section are defined in 15 Pa.C.S. § 8812:

“limited liability company”

“manager”

“manager-managed limited liability company”

“member”

“member-managed limited liability company”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“court”

“receive”

“record form”

**Subchapter I**

**Benefit Companies**

**§ 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 **[the interests of any person or group]** any matter referred to in paragraph (1) or (2) over **[the interests of any other person or group]** 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 **[interests and factors]** 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 **[a member-managed limited liability]** the benefit company 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]** 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.

**Amended Committee Comment (2021):**

Section 8895 is at the heart of what it means for a member-managed limited liability company to be a benefit company. The same requirements apply to manager-managed limited liability companies under 15 Pa.C.S. § 8896.

By requiring the consideration of matters and interests of constituencies other than the members, Section 8895 rejects the holdings in *Dodge v. Ford*, 170 N.W. 668 (Mich. 1919), and *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1 (Del. Ch. 2010), that directors must maximize the financial value of a corporation. Section 8895(a) makes it mandatory for the members of a member-managed benefit company to consider certain interests and factors that they would otherwise simply be permitted to consider in their discretion under 15 Pa.C.S. §§ 8849.1.

The following terms used in this section are defined in 15 Pa.C.S. § 8892:

“benefit company”

“general public benefit”

“specific public benefit”

“subsidiary”

The following terms used in this section are defined in 15 Pa.C.S. § 8812:

“certificate of organization”

“limited liability company”

“member”

“member-managed limited liability company”

“operating agreement”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“act”

“interest”

“recklessness”

**§ 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 **[a knowing violation of law]** 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.

**Amended Committee Comment (2021):**

Section 8896 is at the heart of what it means for a manager-managed limited liability company to be a benefit company. The same requirements apply to member-managed limited liability companies under 15 Pa.C.S. § 8895.

As an agent of a limited liability company, an officer is generally required to follow the instructions of his or her principal. But in those instances where an officer has discretion to act with a respect to a matter, Section 8896(b) requires the officer to consider the interests of the benefit company’s constituencies in the same manner as required of the managers.

The following terms used in this section are defined in 15 Pa.C.S. § 8892:

“benefit company”

“general public benefit”

“specific public benefit”

The following terms used in this section are defined in 15 Pa.C.S.§ 8812:

“certificate of organization”

“manager”

“manager-managed limited liability company”

“operating agreement”

The following terms used in this section are defined in 15 Pa.C.S. § 102:

“act”

“interest”

“recklessness”

**Chapter 89**

**Limited Liability Companies**

**Subchapter L**

**Restricted Professional Companies**

**§ 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 hase the meaning indicated:

“Restricted professional company.” A domestic or foreign limited liability company that renders one or more restricted professional services in this Commonwealth.

**Amended Committee Comment (2021):**

Subchapter 89L sets forth special rules applicable to the class of restricted professional companies.

The following terms used in this section are intended to have the meanings given to them in 15 Pa.C.S. § 8812:

“certificate of organization”

“limited liability company”

The term “restricted professional services” used in this section is defined in 15 Pa.C.S. § 102.

**Part V**

**Business Trusts**

**Chapter 95**

**Business Trusts**

**§ 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 **[location]** 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.

**Amended Committee Comment (2021):**

The term “business trust” used in this section is defined in 15 Pa.C.S. § 9501(a).

The term “instrument” used in this section is defined in 15 Pa.C.S. § 9503(b).

The term “department” used in this section is defined in 15 Pa.C.S. § 102.

**TITLE 54**

**NAMES**

**Chapter 1**

**General Provisions**

**§ 101. Definitions.**

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the **[following words and phrases when used in]** definitions in 15 Pa.C.S. § 102 (relating to definitions) apply to this title **[shall have]**, unless the context clearly indicates otherwise. **[, the meanings given to them in this section:]**

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

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

**"Domestic corporation not-for-profit." A domestic corporation not incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise.**

**"Officially publish." The meaning specified in 15 Pa.C.S. § 1103 (relating to definitions) except that the county of publication shall be as specified in this title.**

**"Qualified foreign corporation." A corporation incorporated under any laws other than those of this Commonwealth that is authorized to do business in this Commonwealth under either 15 Pa.C.S. Ch. 41 (relating to foreign business corporations) or Ch. 61 (relating to foreign nonprofit corporations).**

**"Verified statement." A document filed under this title containing statements of fact and a statement by the signatory that it is made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).]**

**§ 103. Execution of documents.**

(a) General rule. – Any document **[filed in]** delivered to the Department of State for filing under this title by **[a corporation]** an association may be executed on behalf of the **[corporation]** association by any one duly authorized **[officer]** representative thereof. The corporate seal may be affixed and attested, but the affixation and 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 15 Pa.C.S. § 135 (relating to requirements to be met by filed documents).

**Chapter 3**

**Fictitious Names**

**§ 302.  Definitions.**

**[(a) Definitions. –]** The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Business." Any commercial or professional activity.

"Entity." Any individual or any corporation, association, partnership, joint-stock company, business trust, syndicate, joint adventureship or other combination or group of persons, regardless of whether it is organized or formed under the laws of this Commonwealth or any other jurisdiction.

"Fictitious name." Any assumed or fictitious name, style or designation other than the proper name of the entity using such name. The term includes a name assumed by a general partnership, syndicate, joint adventureship or similar combination or group of persons.

"Proper name." When used with respect to an association of a type listed in the following paragraphs, the term means the name set forth in:

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

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

(3) (Deleted by amendment).

(4) the statement of election, for an electing partnership;

(5)-(8) (Deleted by amendment).

(9) the statement of registration of a **[foreign]** registered foreign association under 15 Pa.C.S. § 412(a)(1)(i) (relating to foreign registration statement) or, if that name does not comply with 15 Pa.C.S. § 202 (relating to requirements for names generally), the name set forth in the statement under 15 Pa.C.S. § 412 (a)(1)(ii).

**[(b) Other defined terms. – The definitions in 15 Pa.C.S. § 102 (relating to definitions) apply to this title except to the extent they are inconsistent with the provisions of this title.]**

**§ 311. Registration.**

\* \* \*

(b) Use of **[corporate]** designators. – A fictitious name registered under this chapter:

(1) May not contain a corporate designator such as "corporation," "incorporated" or "limited" or any derivation or abbreviation thereof unless the entity or at least one entity named in the application for registration of fictitious name is a corporation. The use of the word "company" or any derivation or abbreviation thereof by a sole proprietorship, a partnership or a corporation is permissible.

(2) Need not contain **[a corporate]** an association designator, notwithstanding the fact that some or all of the persons interested therein are **[corporations]** assocations. This paragraph shall not be construed to limit or affect any personal liability otherwise existing of **[shareholders of a corporation]** interest holders of an association to persons who deal with the **[corporation]** association without knowledge of its status as such.

\* \* \*

(e) Duplicate use of names. – The fictitious name shall be distinguishable upon the records of the department from:

(1) The name of any domestic filing entity, domestic limited liability limited partnership, domestic electing partnership**[,]** or registered foreign association **[or the name of any corporation or other association registered at any time under Chapter 5 (relating to corporate and other association names)]**, unless such name is available or is made available for use under the provisions or procedures of 15 Pa.C.S. § 202(b)(1) (relating to requirements for names generally).

(2) Deleted by 2000, June 22, P.L. 356, No. 43, § 4.

(3) The name of any administrative department, board or commission or other agency of this Commonwealth.

(4) A name the exclusive right to which is at the time reserved or registered by any other person under 15 Pa.C.S. § 208 (relating to reservation of name) or 209 (relating to registration of name of nonregistered foreign association) or another statute.

\* \* \*

**§ 331.  Contracts** [entered into] **and acts by entity using unregistered fictitious name.**

(a) General rule. – No entity which has failed to register a fictitious name as required by this chapter shall be permitted to maintain any action in any tribunal of this Commonwealth until such entity shall have complied with the provisions of this chapter. Nor shall any action be maintained in any tribunal of this Commonwealth by any successor or assignee of such entity on any right, claim or demand arising out of a transaction with respect to which such entity used such fictitious name until such entity, or an entity which has acquired all or substantially all of its assets, shall have complied with the provisions of this chapter. The failure **[of any]** by itself of an entity to register a fictitious name as required by this chapter shall not impair the validity of any contract or act of **[such entity]** the entity using the fictitious name and shall not prevent **[such]** the entity from defending any action in any tribunal of this Commonwealth.

(b) Civil penalty. – **[Before any entity may institute any action in any tribunal of this Commonwealth on any cause of action arising out of any transaction in respect to which such entity used a fictitious name prior to the date of the registration of such fictitious name, or after the date its registration under this chapter was cancelled or otherwise terminated as to such entity, the entity shall pay to the department for the use of the Commonwealth a civil penalty of $500.]** (Repealed.)

(c) Substantial compliance. – The **[penalties of subsections (a) and (b)]** penalty under subsection (a) shall not be applicable if there has been substantial compliance in good faith with the requirements of this chapter or the corresponding provisions of prior law.

**§ 332. Effect of registration.**

(a) General rule. – Registration of a fictitious name under this chapter imparts no legal right to the registering entity other than that :

(1) the conducting of business by it under a fictitious name shall not result in the penalties provided by section 331 (relating to contracts **[entered into]** and acts by entity using unregistered fictitious name)**[.]**; and

(2) the doing of business by the entity using the registered name has the same force and effect as doing business under the proper name of the entity.

(b) **[Corporate qualification]** Foreign registration unaffected. – The registration required under this chapter is in addition to all other acts required of **[a corporation]** an entity prerequisite to its doing business in this Commonwealth and no provision of this chapter shall be construed as relieving **[a corporation]** an entity of any duty under any other statute.

**Chapter 5**

**Corporate and Other Association Names**

**§ 501. [Register established.]** (Repealed.)

**[(a) General rule. – A register is established by this chapter which shall consist of such of the following names as are not deleted therefrom by operation of section 504 (relating to effect of failure to make filings) or 506 (relating to voluntary termination of registration by corporations and other associations):**

**(1) A name registered prior to February 13, 1973, under the act of May 16, 1923 (P.L. 246, No. 160), relating to registration of certain names.**

**(2) A name registered under section 502 (relating to certain additions to register).**

**(3) In the case of a domestic or registered foreign corporation, a name rendered unavailable for corporate use by other corporations by reason of any filing in the department by such domestic or registered foreign corporation.**

**(4) A name registered under 15 Pa.C.S. § 209 (relating to registration of name of nonregistered foreign association) or any similar provision of law.**

**(5) In the case of a business trust which exists subject to 15 Pa.C.S. Ch. 95 (relating to business trusts), the name of the trust as set forth in the instrument filed in the department under 15 Pa.C.S. § 9503 (relating to documentation of trust).**

**(6) In the case of a limited partnership or limited liability company subject to 15 Pa.C.S. Ch. 86 (relating to limited partnerships) or 88 (relating to limited liability companies), the name of the partnership or company as set forth in the certificate of limited partnership, certificate of organization or statement of registration as a foreign association.**

**(7) Deleted by 2013, July 9, P.L. 476, No. 67, § 53, effective in 60 days [Sept. 9, 2013].**

**(8) In the case of a limited liability partnership subject to 15 Pa.C.S. Ch. 82 (relating to limited liability partnerships and limited liability limited partnerships) that is not also a limited partnership, the name of the partnership as set forth in the statement of registration as a foreign association.**

**(b) Subsequent availability of certain names. – Whenever, by reason of change in name, withdrawal or dissolution of a domestic or registered foreign association, failure to renew a registration of its name by a nonregistered foreign association, or for any other cause, its name is no longer rendered unavailable by the express provisions of Title 15 (relating to corporations and unincorporated associations), such name shall no longer be deemed to be registered under subsection (a)(3) or (4) on the register established by this chapter.]**

**§ 502. [Certain additions to register.]** (Repealed.)

**[(a) Corporation names. —**

**(1) A domestic corporation not-for-profit incorporated prior to May 16, 1923 may register its name with the department under this chapter by effecting the filing specified in 15 Pa.C.S. § 5311 (relating to filing of certificate of summary of record by certain corporations).**

**(2) Any person who is not eligible to make a filing under 15 Pa.C.S. § 209 (relating to registration of name of nonregistered foreign association) may register a corporation name with the department by filing an application for registration of name, executed by the person, which shall set forth:**

**(i) The name of the corporation.**

**(ii) The address, including street and number, if any, of the person who executed the application.**

**(b) Associations generally. – An association other than a corporation may register with the department the name under which it is doing business or operating by filing an application for registration, which shall be executed by the association, and shall set forth:**

**(1) The name to be registered.**

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

**(3) The length of time, if any, during which the name has been used by the applicant.**

**(4) Such other information necessary to the administration of this chapter as the department may specify by regulation.**

**(c) Limitation on names which may be registered. — Notwithstanding subsections (a) and (b), no new name shall be registered or deemed to be registered under this section which is not distinguishable upon the records of the department from any other name then registered or deemed to be registered under this chapter, without the consent of the senior registrant.**

**(d) Annual renewal. – A person who has in effect a registration of a name may renew the registration from year to year by annually 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.**

**(e) Cross reference. – See 15 Pa.C.S. § 134 (relating to docketing statement).]**

**§ 503. [Decennial filings required.]** (Repealed.)

**[(a) General rule. — Except as otherwise provided in this section, every corporation or other association whose name is registered under this chapter shall, during the year 2001 and every tenth year thereafter, file in the department a report, which shall be executed by the corporation or other association, and shall set forth:**

**(1) The name of the corporation or other association.**

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

**(3) A statement that the corporation or other association continues to exist.**

**(4) Such other information necessary to the administration of this chapter as the department may specify by regulation.**

**(b) Exceptions. — Subsection (a) shall not apply to any of the following:**

**(1) A corporation or other association that during the ten years ending on December 31 of the year in which a filing would otherwise be required under subsection (a) has made any filing in the department pursuant to a provision of this title or 15 Pa.C.S. (relating to corporations and unincorporated associations) other than:**

**(i) a report required by subsection (a); or**

**(ii) a filing under 15 Pa.C.S. § 208 (relating to reservation of name) or 209 (relating to registration of name of nonregistered foreign association).**

**(2) A corporation whose name is registered pursuant to section 501(a)(4) (relating to register established).**

**(3) A corporation that has had officer information forwarded to the department by the Department of Revenue during the preceding ten years under 15 Pa.C.S. § 1110 (relating to annual report information).**

**(b.1) Exemption. — (Deleted by amendment).**

**(c) Exemptions. — (Deleted by amendment).**

**(d) Cross references. — See 15 Pa.C.S. §§ 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).]**

**§ 504. [Effect of failure to make filings.]** (Repealed.)

**[On January 1 of the year following the year during which a report is required to be filed under section 503 (relating to decennial filings required), the name of every corporation and association which has failed to comply with such section shall no longer be deemed to be registered under this chapter.]**

**§ 505. [Late filings.]** (Repealed.)

**[A corporation or association which has failed to file the report required by section 503 (relating to decennial filings required) may do so at any later time, which filing shall reinstate the name of the corporation or association on the register established by this chapter unless its name has been appropriated during the period of the delinquency by any other person in the manner provided in this chapter or as otherwise provided by law.]**

**§ 506. [Voluntary termination of registration by corporations and other associations.]** (Repealed.)

**[(a) General rule. – Any corporation or other association which has its name registered under this chapter may terminate such registration by filing in the department a statement of termination of registration of name, which shall be executed by the corporation or other association, and shall set forth:**

**(1) The name of the corporation or other association.**

**(2) The address, including street and number, if any, of the corporation or other association.**

**(3) The date on which and the statute under which the name of the corporation or other association was registered.**

**(4) A statement that the registration of the name of the corporation or other association under this chapter is terminated.**

**(5) Such other information necessary to the administration of this chapter as the department may specify by regulation.**

**(b) Cross reference. – See 15 Pa.C.S. § 134 (relating to docketing statement).]**