

No. 1992-169

## AN ACT

SB 1083

Amending Titles 1 (General Provisions), 15 (Corporations and Unincorporated Associations) and 54 (Names) of the Pennsylvania Consolidated Statutes, relating to associations; making revisions, corrections and additions; and making repeals.

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

## Section 1. Short title.

This act shall be known and may be cited as the GAA Amendments Act of 1992.

## Section 2. Amendment of Title 1.

The introductory paragraph and the definition of "person" in section 1991 of Title 1 of the Pennsylvania Consolidated Statutes are amended to read:

## § 1991. Definitions.

The following words and phrases, when used in any statute finally enacted on or after September 1, 1937, unless the context clearly indicates otherwise, shall have the meanings [ascribed] *given* to them in this section:

\* \* \*

"Person." Includes a corporation, partnership, [and association, as well as a] *business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.*

\* \* \*

## Section 3. Amendment of Title 15.

As much of Title 15 as is hereinafter set forth is amended or added to read:

## § 102. Definitions.

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:

\* \* \*

"Association." A corporation, a partnership, *a business trust* or two or more persons associated in a common enterprise or undertaking. The term does not include 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).

\* \* \*

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

\* \* \*

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

*“Limited liability company.” A limited liability company as defined in section 8902 (relating to definitions).*

\* \* \*

§ 103. Subordination of title to regulatory laws.

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

\* \* \*

§ 136. Processing of documents by Department of State.

\* \* \*

(b) Immediate certified copy.—

\* \* \*

(2) If the duplicate copy is delivered by hand to the office of the department at the seat of government at least four hours before the close of business on any day not a holiday and relates to a matter other than a label or other mark requiring examination under Title 54 (relating to names)[, and] *or the reservation or registration of a name under this title and*, in the case of a document that creates a new association [or], effects or reflects a change in name *or qualifies a foreign association to do business in this Commonwealth, if the duplicate copy* is accompanied by evidence that the proposed name has been reserved *or registered* by or on behalf of the applicant, the department before the close of business on that day shall either:

(i) Certify the duplicate copy as required by this subsection and make such certified copy available at the office of the department to or upon the order of the person who delivered it to the department.

(ii) Make available at the office of the department to or upon the order of the person who delivered it to the department a brief statement in writing of the reasons of the department for refusing to certify such duplicate copy.

See section 153(a)(10) (relating to certification fees).

\* \* \*

§ 153. Fee schedule.

(a) General rule.—The fees of the Corporation Bureau of the Department of State, including fees for the public acts and transactions of the Sec-

retary of the Commonwealth administered through the bureau, and, except as otherwise provided by law, of filing officers under Title 13 (relating to commercial code), shall be as follows:

\* \* \*

(10) Certification fees:

\* \* \*

(ii) For certifying a duplicate copy of a document pursuant to section 136(b)(2) (relating to immediate certified copy) *or, if that certification cannot be made at the time of original examination, for the original examination and rejection by the bureau of a document submitted under that procedure, plus an additional fee for each reexamination or certification, as the case may be, by the bureau of a previously rejected document submitted under that procedure.....*

52

\* \* \*

§ 162. Contingent domestication of certain [foreign] alien associations.

\* \* \*

§ 1103. 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 this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

\* \* \*

*“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.*

*“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. [A guarantee issued by] 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*

*effected under Chapter 19 (relating to fundamental changes) with the approval of the shareholders shall [not] constitute a distribution [until such time as a valid demand for payment under the guarantee is made upon the corporation] for the purposes of this subpart.*

\* \* \*

“Professional corporation.” A business corporation that [has elected to become] *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.

\* \* \*

“Registered office.” That office maintained by a corporation in this Commonwealth[, the address of which is filed with the Department of State] *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).

\* \* \*

§ 1110. Annual report information.

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.

§ 1304. Required name changes by senior corporations.

(a) Adoption of new name upon reactivation.—Where a corporate name is made available on the basis that the corporation or other association that formerly registered the name has failed to file in the Department of Revenue [or in the Department of State] a report or a return required by law or where the corporation or other association has filed in the Department of Revenue a certificate of out of existence, the corporation or other association shall cease to have by virtue of its prior registration any right to the use of the name. The corporation or other association, upon withdrawal of the certificate of out of existence or upon the removal of its delinquency in the filing of the required reports or returns, shall make inquiry with the Department of State with regard to the availability of its name and, if the name has been made available to another domestic or foreign corporation for profit or not-for-profit or other association by virtue of these conditions, shall adopt a new name in accordance with law before resuming its activities.

\* \* \*

§ 1306. Articles of incorporation.

\* \* \*

(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 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) concern-

ing 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. **[Except as otherwise expressly provided in Chapter 25 (relating to registered corporations), the articles may not vary any provision of that chapter.]**

\* \* \*

§ 1504. Adoption, amendment and contents of bylaws.

\* \* \*

(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).

\* \* \*

(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).*

§ 1524. Payment for shares.

(a) General rule.—Consideration for shares, unless otherwise restricted in the bylaws:

(1) May consist of money, obligations (including an obligation of a shareholder), services performed whether or not contracted for, contracts for services to be performed, shares or other securities or obligations of the issuing business corporation, or any other tangible or intangible property *or benefit to the corporation*. If shares are issued for other than money, the value of the consideration shall be determined by or in the manner provided by the board of directors.

(2) Shall be *provided or* paid to or as ordered by the corporation.

\* \* \*

§ 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 [section 1530(b) (relating to preexisting preemptive rights) or 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.

\* \* \*

§ 1528. Shares represented by certificates and uncertificated shares.

\* \* \*

(f) Uncertificated shares.—The articles may provide that any or all classes and series of shares, or any part thereof, shall be uncertificated shares except that such a provision shall not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates by subsections (c) and (d). Except as otherwise expressly provided by law, the rights and obligations of the holders of shares represented by certificates and the rights and obligations of the holders of uncertificated shares of the same class and series shall be identical. *See section 2321(a) (relating to uncertificated shares prohibited).*

§ 1530. Preemptive rights of shareholders.

\* \* \*

(b) Cross [reference] *references*.—See [section] *sections* 1525(e) (relating to shares subject to preemptive rights) and 2321(b) (relating to preemptive rights).

§ 1554. Financial reports to shareholders.

(a) General rule.—[Unless] *Except as otherwise provided in subsection (d) or unless* otherwise agreed between a business corporation and a shareholder, every corporation shall furnish to its shareholders annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income and expenses for the fiscal year. The financial statements shall be prepared on the basis of generally accepted accounting principles, if the corporation prepares financial statements for the fiscal year on that basis for any purpose, and may be consolidated statements of the corporation and one or more of its subsidiaries. The financial statements shall be mailed by the corporation to each of its shareholders entitled thereto within 120 days after the close of each fiscal year and, after the mailing and upon written request, shall be mailed by the corporation to any shareholder or beneficial owner entitled thereto to whom a copy of the most recent annual financial statements has not previously been mailed. Statements that are audited or reviewed by a public accountant shall be accompanied by the report of the accountant; in other cases, each copy shall be accompanied by a statement of the person in charge of the financial records of the corporation:

(1) Stating his reasonable belief as to whether or not the financial statements were prepared in accordance with generally accepted accounting principles and, if not, describing the basis of presentation.

(2) Describing any material respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

\* \* \*

(d) *Exception*.—*Subsection (a) shall not apply to a corporation that is required by law to file financial statements at least once a year in a public office.*

[(d)] (e) Certain provisions of articles ineffective.—This section may not be relaxed by any provision of the articles.

[(e)] (f) Cross references.—See section 2511 (relating to financial reports to shareholders) and 42 Pa.C.S. § 2503(7) (relating to right of participants to receive counsel fees).

§ 1573. Record and beneficial holders and owners.

(a) Record holders of shares.—A record holder of shares of a business corporation may assert dissenters rights as to fewer than all of the shares registered in his name only if he dissents with respect to all the shares *of the same class or series* beneficially owned by any one person and discloses the name and address of the person or persons on whose behalf he dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

\* \* \*

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

\* \* \*

(b) Notice.—Written notice 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 **[called to] that will** consider 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.

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.

\* \* \*

## § 1713. Personal liability of directors.

\* \* \*

(b) Exceptions.—

**[(1)]** Subsection (a) shall not apply to:

**[(i)] (1)** the responsibility or liability of a director pursuant to any criminal statute; or

**[(ii)] (2)** the liability of a director for the payment of taxes pursuant to Federal, State or local law.

**[(2)] The articles may not provide greater exoneration from liability for directors than that permitted by this section.]**

\* \* \*

## § 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 supercedes any provision of this subchapter. The **[penultimate] last** sentence of section 1306(b) (relating to other provisions authorized) shall not apply to this subchapter.

## § 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**[, by resolution adopted by a majority of the directors in office,]** 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 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 requiring approval of shareholders under this subpart.

(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 of the board of directors to another committee of the board.

**[(2)] (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 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 constitute a quorum, may unanimously appoint another director to act at the meeting in the place of the absent or disqualified member.

\* \* \*

§ 1742. Derivative *and corporate* actions.

\* \* \*

§ 1743. Mandatory indemnification.

To the extent that a representative 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 shall be indemnified against expenses (including [attorneys'] attorney fees) actually and reasonably incurred by him in connection therewith.

§ 1744. Procedure for effecting indemnification.

Unless ordered by a court, any indemnification under section 1741 (relating to third-party actions) or 1742 (relating to derivative *and corporate* actions) shall be made by the business corporation only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstances because he has met the applicable standard of conduct set forth in those sections. The determination shall be made:

- (1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action or proceeding;
- (2) if such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or
- (3) by the shareholders.

§ 1756. Quorum.

\* \* \*

(b) Exceptions.—Unless otherwise provided in a bylaw adopted by the shareholders, *those shareholders entitled to vote who attend a meeting of shareholders:*

- (1) [Those shareholders entitled to vote who attend a meeting called for the election of directors] *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) [Those shareholders entitled to vote who attend a meeting of shareholders that] *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.

\* \* \*

§ 1766. Consent of shareholders in lieu of meeting.

\* \* \*

(b) **Partial written consent.**—If the [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 written consent 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 be filed with the secretary of the corporation. **[The action]**

(c) **Effectiveness of action by partial written consent.**—*An action taken pursuant to subsection (b) shall not become effective until after at least ten days' written notice of the action has been given to each shareholder entitled to vote thereon who has not consented thereto. This subsection may not be relaxed by any provision of the articles.*

(d) **Cross reference.**—See section 2524 (relating to consent of shareholders in lieu of meeting).

§ 1913. Notice of meeting of shareholders.

(a) **General rule.**—Written notice of the meeting of shareholders of a business corporation **[called for the purpose of considering] that will act on** the proposed amendment shall be given to each shareholder entitled to vote thereon. 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 and, if Subchapter D of Chapter 15 (relating to dissenters rights) is applicable, a copy of that subchapter.

\* \* \*

§ 1922. Plan of merger or consolidation.

(a) **Preparation of plan.**—A plan of merger or consolidation, as the case may be, shall be prepared, setting forth:

\* \* \*

(3) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the surviving or new corporation, as the case may be, and, if any of the shares of any of the corporations that are parties to the **[plan] merger or consolidation** are not to be converted solely into shares or other securities or obligations of the surviving or new corporation, the shares or other securities or obligations of any other person or cash, property or rights that the holders of such shares are to receive in exchange for, or upon conversion of, such shares, and the surrender of any certificates evidencing them, which securities or obligations, if any, of any other person or cash, property or rights may be in addition to or in lieu of the shares or other securities or obligations of the surviving or new corporation.

\* \* \*

(d) **Party to plan or transaction.**—A corporation, partnership, business trust or other association that approves a plan in its capacity as a shareholder or creditor of a merging or consolidating corporation, or that furnishes all or a part of the consideration contemplated by a plan, does not thereby become a party to the plan *or the merger or consolidation* for the purposes of this subchapter.

§ 1923. Notice of meeting of shareholders.

(a) **General rule.**—Written notice of the meeting of shareholders **[called for the purpose of considering]** *that will act on* the proposed plan shall 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 **[plan] merger or consolidation**. There shall be included in, or enclosed with, the notice a copy of the proposed plan or a summary thereof and, if Subchapter D of Chapter 15 (relating to dissenters rights) is applicable to the holders of shares of any class or series, a copy of that subchapter and of section 1930 (relating to dissenters rights) shall be furnished to the holders of shares of that class or series.

\* \* \*

§ 1924. Adoption of plan.

(a) **General rule.**—The plan of merger or consolidation shall be adopted upon receiving the affirmative vote of a majority of the votes cast by all shareholders entitled to vote thereon of each of the domestic business corporations that is a party to the **[plan] merger or consolidation** 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 corporation that is a party to a **[plan] merger or consolidation** that effects 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 (relating to amendment of articles). A proposed plan of merger or consolidation 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 plan to the shareholders for action.

(b) **Adoption by board of directors.**—

(1) Unless otherwise required by its bylaws, a plan of merger or consolidation shall not require the approval of the shareholders of a constituent domestic business corporation if:

\* \* \*

(ii) immediately prior to the adoption of the plan and at all times thereafter prior to its effective date, another corporation that is a party to the **[plan] merger or consolidation** owns directly or indirectly **[90%]** **80%** or more of the outstanding shares of each class of the constituent corporation; or

\* \* \*

*(d) Cross reference.—See section 2539 (relating to adoption of plan of merger by board of directors).*

§ 1926. Articles of merger or consolidation.

Upon the adoption of the plan of merger or consolidation by the corporations desiring to merge or consolidate, as provided in this subchapter, articles of merger or articles of consolidation, as the case may be, shall, except as provided by section 1924(b)(3) (relating to adoption by board of directors), be executed by each corporation and shall, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), set forth:

\* \* \*

(2) The name and address, including street and number, if any, of the registered office of each other domestic business corporation and qualified foreign business corporation that is a party to the **[plan] merger or consolidation**.

\* \* \*

(4) The manner in which the plan was adopted by each domestic corporation and, if one or more foreign corporations are parties to the **[plan] merger or consolidation**, the fact that the plan was authorized, adopted or approved, as the case may be, by each of the foreign corporations in accordance with the laws of the jurisdiction in which it is incorporated.

\* \* \*

§ 1929. Effect of merger or consolidation.

(a) Single surviving or new corporation.—Upon the merger or consolidation becoming effective, the several corporations parties to the **[plan of]** merger or consolidation shall be a single corporation which, in the case of a merger, shall be the corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation. The separate existence of all corporations parties to the **[plan of]** merger or consolidation shall cease, except that of the surviving corporation, in the case of a merger. The surviving or new corporation, as the case may be, if it is a domestic business corporation, shall not thereby acquire authority to engage in any business or exercise any right that a corporation may not be incorporated under this subpart to engage in or exercise.

(b) Property rights.—All the property, real, personal and mixed, and franchises of each of the corporations parties to the **[plan of]** merger or consolidation, and all debts due on whatever account to any of them, including subscriptions for shares and other choses in action belonging to any of them, shall be deemed to be transferred to and vested in the surviving or new corporation, as the case may be, without further action, and the title to any real estate, or any interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the merger or consolidation. The surviving or new corporation shall thenceforth be responsible for all the liabilities of each of the corporations so merged or consolidated. Liens upon the property of the merging or consolidating corporations shall not be impaired by the merger or consolidation and any claim existing or action or

proceeding pending by or against any of the corporations may be prosecuted to judgment as if the merger or consolidation had not taken place or the surviving or new corporation may be proceeded against or substituted in its place.

\* \* \*

§ 1930. Dissenters rights.

(a) General rule.—If any shareholder of a domestic business corporation that [becomes] *is to be* a party to a *merger or consolidation pursuant to* a plan of merger or consolidation objects to the plan of merger or consolidation and complies with the provisions of Subchapter D of Chapter 15 (relating to dissenters rights), the shareholder shall be entitled to the rights and remedies of dissenting shareholders therein provided, if any. See also section 1906(c) (relating to dissenters [right] rights upon special treatment).

(b) Plans adopted by directors only.—Except as otherwise provided pursuant to section 1571(c) (relating to grant of optional dissenters rights), Subchapter D of Chapter 15 shall not apply to any of the shares of a corporation that is a party to a [plan of] merger or consolidation pursuant to section 1924(b)(1)(i) (relating to adoption by board of directors).

\* \* \*

§ 1931. Share exchanges.

\* \* \*

(c) Proposal and adoption.—The plan of exchange shall be proposed and adopted and may be *amended after its adoption and* terminated by the exchanging corporation in the manner provided by this subchapter for the proposal, adoption, *amendment* and termination of a plan of merger except section 1924(b) (relating to adoption by board of directors). There shall be included in, or enclosed with, the notice of the meeting of shareholders 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 (d). The holders of any class of shares to be acquired pursuant to the plan of exchange shall be entitled to vote as a class on the plan if they would have been entitled to vote on a plan of merger that affects the class in substantially the same manner as the plan of exchange.

\* \* \*

§ 1932. Voluntary transfer of corporate assets.

\* \* \*

(b) Shareholder approval required.—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 D (relating to division), may be made only pursuant to a plan of asset transfer. The property or assets of a direct or indirect subsidiary corporation that is controlled by a parent corporation shall *also* be deemed the property or assets of the parent corporation for the purposes of this subsection and of subsection (c). 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. Any of the terms of the plan may be made dependent upon facts ascertainable outside of the plan if the manner in which the facts will operate upon the terms of the plan is set forth in the plan. The plan of asset transfer shall be proposed and adopted, and may be *amended after its adoption and* terminated, by a business corporation in the manner provided in this subchapter for the proposal, adoption, *amendment* and termination of a plan of merger, except section 1924(b) (relating to adoption by board of directors). There shall be included in, or enclosed with, the notice of the meeting of the shareholders 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). 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.

\* \* \*

§ 1952. Proposal and adoption of plan of division.

\* \* \*

(c) Proposal and adoption.—Except as otherwise provided in section 1953 (relating to division without shareholder approval), the plan of division shall be proposed and adopted, and may be *amended after its adoption and* terminated, by a domestic business corporation in the manner provided for the proposal, adoption, *amendment* and termination of a plan of merger in Subchapter C (relating to merger, consolidation, share exchanges and sale of assets), except section 1924(b) (relating to adoption by board of directors), or, if the dividing corporation is a foreign business corporation, in accordance with the laws of the jurisdiction in which it is incorporated. There shall be included in, or enclosed with, the notice of the meeting of shareholders 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 (d).

\* \* \*

§ 1957. Effect of division.

\* \* \*

(b) Property rights.—

- (1) (i) All the property, real, personal and mixed, and franchises of the dividing corporation, and all debts due on whatever account to it, including subscriptions for shares and other choses in action belonging to it, shall (except as otherwise provided in paragraph (2)), to the extent transfers of assets are contemplated by the plan of division, be deemed without further action to be transferred to and vested in the resulting corporations on such a manner and basis and with such effect as is specified in the plan, or per capita among the resulting corporations, as tenants in common, if no specification is made in the plan, and the title to any real estate, or interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the division.  
[The]

(ii) *Upon the division becoming effective, the resulting corporations shall each thenceforth be responsible as separate and distinct corporations only for such liabilities as each corporation may undertake or incur in its own name but shall be liable [inter se] for the liabilities of the dividing corporation in the manner and on the basis [specified in the plan of division] provided in subparagraphs (iv) and (v).*

(iii) Liens upon the property of the dividing corporation shall not be impaired by the division.

(iv) One or more, but less than all, of the resulting corporations shall be free of the liabilities of the dividing corporation to the extent, if any, specified in the plan, if no fraud of corporate creditors, or of minority shareholders or shareholders without voting rights or violation of law shall be effected thereby, and if all applicable provisions of 13 Pa.C.S. Div. 6 (relating to bulk transfers) and all other applicable provisions of law are complied with. [Otherwise,]

(v) *If the conditions in subparagraph (iv) for freeing one or more of the resulting corporations from the liabilities of the dividing corporation are not satisfied, the [liability] liabilities of the dividing corporation shall not be affected by the division nor shall the rights of creditors thereof or of any person dealing with the corporation be impaired by the division and[, except as otherwise provided in this section,] any claim existing or action or proceeding pending by or against the corporation may be prosecuted to judgment as if the division had not taken place, or the resulting corporations may be proceeded against or substituted in its place as joint and several obligors on such liability, regardless of any provision of the plan of division apportioning the liabilities of the dividing corporation.*

(2) (i) The transfer 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 corporation (including property owned by a foreign business corporation dividing solely under the law of another jurisdiction) to a new corporation resulting from the division shall not be effective until one of the following documents is filed in the office for the recording of deeds of the county, or each of them, in which the tract or parcel is situated:

(A) A deed, lease or other instrument of confirmation describing the tract or parcel.

(B) A duly executed duplicate original copy of the articles of division.

(C) A copy of the articles of division certified by the Department of State.

(D) A declaration of acquisition setting forth the value of real estate holdings in such county of the corporation as an acquired company.

(ii) The provisions of 75 Pa.C.S. § 1114 (relating to transfer of vehicle by operation of law) shall not be applicable to a transfer of ownership of any motor vehicle, trailer or semitrailer from a dividing corpo-

ration to a new corporation under this section or under a similar law of any other jurisdiction but any such transfer shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

\* \* \*

§ 1962. Proposal and adoption of plan of conversion.

\* \* \*

(b) Proposal and adoption.—The plan of conversion shall be proposed and adopted, and may be *amended after its adoption and* terminated, by the business corporation in the manner provided for the proposal, adoption, *amendment* and termination of a plan of merger in Subchapter C (relating to merger, consolidation, share exchanges and sale of assets), except section 1924(b) (relating to adoption by board of directors). There shall be included in, or enclosed with, the notice of meeting of shareholders of the business corporation [**called to**] *that will* act upon the plan a copy or a summary of the plan and of Subchapter D of Chapter 15 (relating to dissenters rights) and of subsection (c).

\* \* \*

§ 1972. Proposal of voluntary dissolution.

(a) General rule.—Any business corporation that has commenced business may [**elect to**] dissolve voluntarily *in the manner provided in this subchapter* and wind up its affairs in the manner provided in [**this subchapter**] *section 1975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities)*. Voluntary dissolution shall be proposed by the adoption by the board of directors of a resolution recommending that the corporation be dissolved voluntarily. *The resolution shall contain a statement either that the dissolution shall proceed under section 1975 or that the dissolution shall proceed under Subchapter H.*

\* \* \*

(c) *Cross reference.*—*See section 1974(d) (relating to amendment of winding-up election).*

§ 1973. Notice of meeting of shareholders.

(a) General rule.—Written notice of the meeting of shareholders [**called for the purpose of considering**] *that will consider* the advisability of voluntarily dissolving a business corporation shall be given to each shareholder of record entitled to vote thereon and the purpose shall be included in the notice of the meeting.

\* \* \*

§ 1974. Adoption of proposal.

\* \* \*

(d) *Amendment of winding-up election.*—*If the resolution with respect to voluntary dissolution so provides, an election to proceed under section 1975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities) may be reversed by the board of directors prior to the time when articles of dissolution are filed in the department, notwithstanding the adoption by the shareholders of the proposal for voluntary dissolution.*



§ 1975. [Winding up in voluntary dissolution proceedings] *Predissolution provision for liabilities.*

(a) Powers of board.—The board of directors of a business corporation shall have full power to wind up and settle the affairs of a business corporation [in the event of a voluntary dissolution proceeding] *in accordance with this section prior to filing articles of dissolution in accordance with section 1977 (relating to articles of dissolution).*

\* \* \*

§ 1977. Articles of dissolution.

(a) [Preparation of articles.—When] *General rule.—Articles of dissolution and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State when:*

(1) all liabilities of the business corporation have been discharged, or adequate provision has been made therefor, *in accordance with section 1975 (relating to predissolution provision for liabilities)*, and all of the remaining assets of the corporation have been distributed as provided in [this subchapter,] *section 1975* (or in case its assets are not sufficient to discharge its liabilities, when all the assets have been fairly and equitably applied, as far as they will go, to the payment of such liabilities[,]); *or*

(2) *an election to proceed under Subchapter H (relating to post-dissolution provision for liabilities) has been made.*

*See section 134 (relating to docketing statement).*

(b) *Contents of articles.—The* articles of dissolution shall be executed by the corporation and shall set forth:

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

(2) The statute under which the corporation was incorporated and the date of incorporation.

(3) The names and respective addresses, including street and number, if any, of its directors and officers.

(4) The manner in which the proposal to dissolve voluntarily was adopted by the corporation.

(5) A statement:

(i) that all liabilities of the corporation have been discharged or that adequate provision has been made therefor; or

(ii) that the assets of the corporation are not sufficient to discharge its liabilities, and that all the assets of the corporation have been fairly and equitably applied, as far as they will go, to the payment of such liabilities.

An election by the corporation to proceed under Subchapter H [(relating to postdissolution claims)] shall constitute the making of adequate provision for the liabilities of the corporation, *including any judgment or decree that may be obtained against the corporation in any pending action or proceeding.*

(6) A statement:

(i) that all the remaining assets of the corporation, if any, have been distributed as provided in the Business Corporation Law of 1988; or

(ii) that the corporation has elected to proceed under Subchapter H and that any remaining assets of the corporation will be distributed as provided in that subchapter.

(7) A statement that no actions or proceedings are pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment or decree that may be obtained against the corporation in each pending action or proceeding.

(8) A statement that notice of the winding-up proceedings of the corporation was mailed by certified or registered mail to each known creditor and claimant and to each municipal corporation in which the registered office or principal place of business of the corporation in this Commonwealth is located.

**(b) Filing.**—The articles of dissolution and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State. See section 134 (relating to docketing statement).]

\* \* \*

§ 1978. Winding up of corporation [upon the expiration of its period of duration.] after dissolution.

**(a) Winding up and distribution.**—Every business corporation that is dissolved by expiration of its period of duration *or otherwise* shall, nevertheless, continue to exist for the purpose of winding up its affairs, prosecuting and defending actions or proceedings by or against it, collecting and discharging obligations, disposing of and conveying its property and collecting and dividing its assets, but not for the purpose of continuing business except insofar as necessary for the winding up of the corporation. The board of directors of the corporation [shall] *may* continue as such and shall have full power to wind up the affairs of the corporation.

**(b) Standard of care of directors and officers.**—*The dissolution of the corporation shall not subject its directors or officers to standards of conduct different from those prescribed by or pursuant to Chapter 17 (relating to officers, directors and shareholders).*

§ 1979. Survival of remedies and rights after dissolution.

\* \* \*

**(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 [section 1998 (relating to liability of shareholders)] *subsection (d) and sections 1992(d) (relating to claims barred) and 1993(b) (relating to claims barred)*, 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 discov-

ered after the dissolution of the corporation, the surviving member or members of the board of directors that wound up the affairs of the corporation, or a receiver appointed by the court, shall have authority to enforce the property right and to collect and divide the assets so discovered among the persons entitled thereto and to prosecute actions or proceedings in the corporate name of the corporation. Any assets so collected shall be distributed and disposed of in accordance with the applicable order of court, if any, and otherwise in accordance with this subchapter.

*(c) Liability of shareholders.—A shareholder of a dissolved business corporation, the assets of which were distributed under section 1975(c) (relating to winding up and distribution) or 1997 (relating to payments and distributions), shall not be liable for any claim against the corporation in an amount in excess of the shareholder's pro rata share of the claim or the amount so distributed to the shareholder, whichever is less. The aggregate liability of any shareholder of a dissolved corporation for claims against the dissolved corporation shall not exceed the amount distributed to the shareholder in dissolution.*

*(d) Limitation of actions.—A shareholder of a dissolved corporation, the assets of which were distributed under section 1975(c) or 1997(a) through (c), shall not be liable for any claim against the corporation on which an action is not commenced prior to the expiration of the period specified in subsection (a)(2).*

§ 1985. Liquidating receiver.

Upon a hearing, after such notice as the court may direct to be given to all parties to the proceeding and to any other parties in interest designated by the court, the court may appoint a liquidating receiver with authority to collect the assets of the corporation. The liquidating receiver shall have authority, subject to the order of the court, to dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation, or the proceeds resulting from a disposition thereof, shall be applied to the expenses of the liquidation and to the payment of the liabilities of the corporation and any remaining assets or proceeds shall be distributed by the court in the manner provided by section 1975(c) (relating to winding up and distribution). The court may direct that any or all of the provisions of Subchapter H (relating to post-dissolution [claims] provision for liabilities) shall apply. The order appointing the liquidating receiver shall state his powers and duties. The powers and duties may be increased or diminished at any time during the proceedings. A receiver of a corporation appointed under this section shall have authority to sue and defend in all courts in his own name as receiver of the corporation. The court appointing the receiver shall have exclusive jurisdiction of the corporation and its property wherever situated.

SUBCHAPTER H  
POSTDISSOLUTION [CLAIMS] PROVISION FOR LIABILITIES

§ 1991. [Definition of successor entity] *Definitions.*

[As used in this subchapter, the term "successor entity" includes] *The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:*

*"Contractual claims."* Excludes contingent contractual claims based on any implied warranty as to any product manufactured, sold, distributed or handled by the dissolved corporation.

*"Priority."* Does not refer either to the order of payments set forth in section 1997(a)(1) through (4) (relating to payments and distributions) or to the relative times at which any claims mature or are reduced to judgment.

*"Successor entity."* Includes any trust, receivership or other legal entity governed by the laws of this Commonwealth or any other jurisdiction to which the remaining assets of a dissolved business corporation are transferred subject to its liabilities and which exists solely for the purposes of prosecuting and defending actions, by or against the corporation, enabling the corporation to settle and close its business, to dispose of and convey the property of the corporation, to discharge the liabilities of the corporation, and to distribute to the shareholders of the corporation any remaining assets, but not for the purpose of continuing the business for which the corporation was incorporated.

§ 1992. Notice to claimants.

(a) General rule.—After a business corporation *that has elected to proceed under this subchapter* has been dissolved in accordance with [the procedures set forth in this chapter] *section 1977 (relating to articles of dissolution)*, the corporation or any successor entity [may] *shall* give notice of the dissolution requesting all persons having a claim against the corporation to present their claims against the corporation in accordance with the notice. The notice shall state:

(1) That all claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim.

(2) The mailing address to which a claim must be sent.

(3) The [date by which a claim must be received by the corporation or successor entity, which date] *deadline, which shall be not less than 60 days after the date the notice is given[.], by which the corporation or successor entity must receive the claim.*

(4) *That the claim will be barred if not received by the deadline.*

[(4)] (5) That the corporation or a successor entity may make distribution to other claimants and the shareholders of the corporation or persons interested as having been such without further notice to the claimant.

(b) Unmatured *contractual* claims.—The corporation or successor entity electing to follow the procedures specified in [subsection (a)] *this subchapter* shall also give notice of the dissolution of the corporation to persons with *contractual* claims contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and shall request that such persons present their claims in accordance with the terms of the notice. The notice shall be in substantially the form specified in subsection (a).

(c) Publication and service of notices.—

(1) The notices required by this section shall be officially published at least once a week for two consecutive weeks and, in the case of a corporation having \$10,000,000 or more in total assets at the time of its dissolution, at least once in all editions of a daily newspaper with a national circulation.

(2) Concurrently with or preceding the publication, the corporation or successor entity shall **[mail] send** a copy of the notice by **[registered or]** certified *or registered* mail, return receipt requested, to each **[known claimant of the corporation.]**:

(i) *known creditor or claimant;*

(ii) *holder of a claim described in subsection (b); and*

(iii) *municipal corporation in which the registered office or principal place of business of the corporation in this Commonwealth was located at the time of filing the articles of dissolution in the department.*

(d) *Claims barred.—A claim against a dissolved corporation is barred if a claimant who was given written notice under subsection (c)(2) does not deliver the claim to the dissolved corporation or successor entity by the deadline.*

§ 1993. Acceptance or rejection of matured claims.

(a) *Notice.—A dissolved business corporation or successor entity may reject, in whole or in part, any matured claim made by a claimant pursuant to section 1992 (relating to notice to claimants) by [mailing] sending notice of the rejection by [registered or] certified or registered mail, return receipt requested, to the claimant within 90 days after receipt of the claim and, in all events, at least 30 days before the expiration of the two-year period specified in section 1979(a)(2) (relating to survival of remedies and rights after dissolution). A notice sent pursuant to this section shall include or be accompanied by a copy of this subchapter and of section 1979.*

(b) *Claims barred.—A claim against a dissolved corporation is barred if a claimant whose claim is rejected by the dissolved corporation or successor entity does not commence an action in the court to enforce the claim within 90 days after mailing of the rejection notice.*

§ 1994. Disposition of unmatured claims.

(a) *Contractual claims.—The dissolved business corporation or successor entity shall offer any claimant whose contractual claim made pursuant to section 1992 (relating to notice to claimants) is contingent, conditional or unmatured, such security as the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall [mail] send the offer to the claimant by [registered or] certified or registered mail, return receipt requested, within 90 days after receipt of the claim and, in all events, at least 30 days before the expiration of the two-year period specified in section 1979(a)(2) (relating to survival of remedies and rights after dissolution). A notice sent pursuant to this section shall include or be accompanied by a copy of this subchapter and of section 1979. If the claimant offered the security does not deliver to the corporation or successor entity a written notice rejecting the offer within 60*

days after mailing of the offer for security, the claimant shall be deemed to have accepted the security as the sole source from which to satisfy his claim against the corporation.

*(b) Other claims.—Except as provided in section 1997(d) (relating to liability of directors), the holder of any other claim may bring an action against the dissolved corporation or its directors, officers or shareholders within the time limited by section 1979(a).*

§ 1995. Court proceedings.

(a) General rule.—A dissolved business corporation or successor entity that has given notice in accordance with section 1992 (relating to notice to claimants) shall file an application with the court for a determination of the amount and form of security:

(1) that will be sufficient to provide compensation to[

(1) **Claimants whose matured claims are known to the corporation or successor entity but whose identities are unknown.**

(2) **Any] any** claimant who has rejected the offer for security made pursuant to section 1994 (relating to disposition of unmatured claims); **and**

(2) *that will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen but that, based on the facts known to the corporation or successor entity, are likely to arise or to become known to the corporation or successor entity prior to the expiration of the two-year period specified in section 1979(a)(2) (relating to survival of remedies and rights after dissolution).*

(b) Guardian ad litem.—The court [shall] *may* appoint a guardian ad litem [to represent all claimants whose identities are unknown in any proceeding brought under this subchapter] *in respect of any proceeding brought under this subchapter*. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the applicant in the proceeding unless otherwise ordered by the court.

§ 1997. Payments and distributions.

(a) General rule.—A dissolved business corporation or successor entity that has elected to proceed under [the preceding provisions of] this subchapter shall:

(1) Pay the claims made and not rejected under section 1993 (relating to acceptance or rejection of matured claims).

(2) Post the security offered and not rejected under section 1994 (relating to disposition of unmatured claims).

(3) Post security ordered by the court in any proceeding under section 1995 (relating to court proceedings).

(4) Pay or make provision for all other [liabilities of] *claims that are mature, known and uncontested or that have been finally determined to be owing* by the corporation or the successor entity.

\* \* \*

(c) Evaluation of other liabilities.—In the absence of actual fraud, the judgment of the board of directors of the dissolved corporation or the gov-

erning persons of the successor entity as to the provision made for the payment of all [liabilities] *claims* under subsection (a)(4) shall be conclusive.

**[(d) Disposition in absence of claims procedure.—A dissolved corporation or successor entity that has not followed the procedures in the preceding provisions of this subchapter shall pay or make reasonable provision to pay all claims and liabilities, including all contingent, conditional or unmatured claims known to the corporation or the successor entity and all claims that are known to the corporation or the successor entity but for which the identity of the claimant is unknown. The claims shall be paid in full and any such provision for payment made shall be made in full if there are sufficient assets. If there are insufficient assets, the claims and liabilities shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining assets shall be distributed to the shareholders of the dissolved corporation.]**

**(e) [(d) Liability of directors.—Directors of a dissolved corporation or governing persons of a successor entity that has complied with this section shall not be personally liable to the claimants of the dissolved corporation. § 2123. Evidence of membership; liability of members.]**

**(a) General rule.—Every member of record of a nonstock corporation shall be entitled to a written document evidencing his membership in the corporation. The document shall [set forth the rights and liabilities of membership] state:**

**(1) *That the corporation is a nonstock corporation incorporated under the laws of this Commonwealth, unless the name of the corporation contains the word “mutual.”***

**(2) *The name of the person to whom issued.***

**(3) *The class of membership, if any, held by the member.***

**(b) Notice of variations in rights.—If the membership of the corporation is divided into classes, the document shall set forth (or shall state that the corporation will furnish to any member, upon request and without charge[,]) a full or summary statement of the *special* rights and liabilities of membership [and, if the membership of the corporation is divided into classes,] of *each class* and the variations in the rights and liabilities of membership between classes. If a membership is not fully paid or if the member is otherwise liable to assessment, the document evidencing the membership shall so state.**

**[(b)] (c) Liability.—A subscriber to the minimum guaranteed capital of or member of a nonstock corporation shall not be under any liability to the corporation or any creditor thereof other than the obligations of complying with the terms of the subscription to the minimum guaranteed capital, if any, and with the terms of the document evidencing his membership. Otherwise, the members of a nonstock corporation shall not be personally liable for the debts, liabilities or obligations of the corporation.**

**[(c)] (d) Dissenters rights.—The document evidencing membership shall constitute a share certificate for the purposes of Subchapter D of Chapter 15 (relating to dissenters rights).**

§ 2501. Application and effect of chapter.

\* \* \*

(c) Effect of a contrary provision of the articles.—

(1) The articles of a registered corporation may provide either expressly or by necessary implication that any one or more of the provisions of Subchapters B (relating to powers, duties and safeguards), C (relating to directors and shareholders) and D (relating to fundamental changes generally) shall not be applicable in whole or in part to the corporation.

(2) *The articles of a registered corporation may provide that any one or more of the provisions of Subchapter E (relating to control transactions) and following of this chapter shall not be applicable in whole or in part to the corporation only if, to the extent and in the manner, expressly permitted by the subchapter the applicability of which is so affected. Where any provision of Subchapter E and following of this chapter permits the applicability of a subchapter to be varied by a provision of the articles, the applicability may be varied by an amendment of the articles only if, to the extent and in the manner, expressly permitted by the subchapter the applicability of which is so affected.*

(d) *Rights cumulative.—The rights, remedies, prohibitions and requirements provided in Subchapter E and following of this chapter shall be in addition to and not in lieu of any other rights, remedies, prohibitions or requirements provided by this subpart, the articles or bylaws of the corporation, any securities, option rights or obligations of the corporation or otherwise.*

§ 2538. Approval of transactions with interested shareholders.

\* \* \*

(b) Exceptions.—Subsection (a) shall not apply to a transaction:

(1) that has been approved by a majority vote of the board of directors without counting the vote of directors who:

(i) are directors or officers of, or have a material equity interest in, the interested shareholder; or

(ii) were nominated for election as a director by the interested shareholder, and first elected as a director, within 24 months of the date of the vote on the proposed transaction; [or]

(2) in which the consideration to be received by the shareholders for shares of any class of which shares are owned by the interested shareholder is not less than the highest amount paid by the interested shareholder in acquiring shares of the same class[.]; or

(3) *effected pursuant to section 1924(b)(1)(ii) (relating to adoption by board of directors).*

\* \* \*

§ 2539. Adoption of plan of merger by board of directors.

*Section 1924(b)(1)(ii) (relating to adoption by board of directors) shall be applicable to a plan relating to a merger or consolidation to which a registered corporation described in section 2502(1)(i) (relating to registered corporation status) is a party only if the plan:*



*(1) has been approved by the board of directors of the registered corporation; and*

*(2) is consistent with the requirements, if applicable, of Subchapter F (relating to business combinations).*

§ 2541. Application and effect of subchapter.

\* \* \*

**[(d) Rights cumulative.—The rights and remedies provided in this subchapter shall be in addition to, and not in lieu of, any other rights or remedies provided by this subpart, the articles or bylaws of the corporation, any securities, option rights or obligations of the corporation or otherwise.]**

§ 2551. Application and effect of subchapter.

\* \* \*

**(c) [Rights cumulative.—The rights and remedies provided in this subchapter shall be in addition to, and not in lieu of, any other rights or remedies provided by this subpart, the articles or bylaws of the corporation, any securities, option rights or obligations of the corporation or otherwise.**

**(d)] Continuing applicability.—A registered corporation that is organized under the laws of this Commonwealth shall not cease to be subject to this subchapter by reason of events occurring or actions taken while the corporation is subject to the provisions of this subchapter. See section 4146 (relating to provisions applicable to all foreign corporations).**

§ 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:

\* \* \*

**["Exchange Act." The term shall have the meaning specified in section 2552 (relating to definitions).]**

\* \* \*

§ 2902. Definitions.

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

\* \* \*

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

\* \* \*

§ 2921. Corporate name.

\* \* \*

**(b) Additional names permitted.—The provisions of [the first sentence of] section 1303(a) (relating to corporate name) shall not prohibit the use of a name of a professional corporation if the name contains and is restricted to the name or the last name of one or more of the present, prospective or**

former shareholders or of individuals who were associated with a predecessor or whose individual name or names appeared in the name of the predecessor. The name may also contain:

- (1) the word "and" or any symbol or substitute therefor;
- (2) the word "associates";
- (3) the term "P.C."; or
- (4) any or all of the words or terms in paragraphs (1), (2) and (3).

§ 2923. Issuance and retention of shares.

\* \* \*

(c) **Interstate application.**—Where **[the activities in this Commonwealth of]** a person who is a licensed person under the laws of another jurisdiction **engages in activities in this Commonwealth that** would be unlawful unless that person were also a licensed person under the laws of this Commonwealth, shares of a professional corporation shall not be issued to or retained by or on behalf of him unless he is also a licensed person under the laws of this Commonwealth. Except as provided in the preceding sentence, this chapter shall not be construed to require that any proportion or number of the holders or beneficial owners of a professional corporation who are licensed persons shall be licensed persons under the laws of this Commonwealth.

§ 2925. Professional relationship retained.

\* \* \*

(b) **[Liability] Professional liability** unaffected.—Any officer, shareholder, employee or agent of a professional corporation shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control while rendering professional services on behalf of the corporation to the person for whom the professional services were being rendered.

(c) **Liability of corporation.**—The professional corporation shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, employees or agents while they are engaged on behalf of the corporation in rendering professional services.

(d) **Liability of shareholders.**—Unless otherwise provided in its articles, shares of a professional corporation shall be nonassessable and a holder or owner of shares of a professional corporation shall not be under any liability to the professional corporation **[or any creditor thereof]** with respect to the shares. **A holder or owner of shares of a professional corporation shall not be under any liability to any creditor thereof except as provided in subsection (b).**

**[(c)] (e) Disciplinary jurisdiction** unaffected.—A professional corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other government unit regulating the profession in which the corporation is engaged. The court, department, board or other government unit may require that a professional corporation include in its articles provisions that conform to any rule or regulation heretofore or hereafter promulgated for

the purpose of enforcing the ethics of a profession, but, unless otherwise provided by statute, a rule or regulation shall not require the issuance by the corporation of assessable shares or require the inclusion of any provision in the articles that is inconsistent with the provisions of Article B (relating to domestic business corporations generally) as modified by this chapter. This chapter shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.

§ 4146. Provisions applicable to all foreign corporations.

The following provisions of this subpart shall, except as otherwise provided in this section, be applicable to every foreign corporation for profit, whether or not required to procure a certificate of authority under this chapter:

\* \* \*

Subchapter F of Chapter 25 (relating to business combinations), to the extent provided in section [2551(d)] 2551(c) (relating to continuing applicability).

§ 5103. 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 this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

\* \* \*

*“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.*

\* \* \*

*“Registered office.” That office maintained by a corporation in this Commonwealth[, the address of which is filed in the Department of State or which was recorded in the office of the recorder of deeds in the manner formerly required by statute.] 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).*

\* \* \*

§ 5110. Annual report.

\* \* \*

(b) Application.—This section shall apply to every:

(1) domestic nonprofit corporation that has been incorporated after December 31, 1972[, or];

(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

[(2)] (4) qualified foreign nonprofit corporation.

\* \* \*

§ 5704. Place and notice of meetings of members.

\* \* \*

(b) Notice.—Written notice 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 [called to] *that will consider a fundamental change under Chapter 59 (relating to fundamental changes); 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.

\* \* \*

§ 5742. Derivative *and corporate* actions.

\* \* \*

§ 5743. Mandatory indemnification.

(a) *General rule.*—To the extent that a representative 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 shall be indemnified against expenses (including [attorneys'] *attorney* fees) actually and reasonably incurred by him in connection therewith.

(b) *Cross reference.*—*See section 6145 (relating to applicability of certain safeguards to foreign corporations).*

§ 5744. Procedure for effecting indemnification.

Unless ordered by a court, any indemnification under section 5741 (relating to third-party actions) or 5742 (relating to derivative *and corporate* actions) shall be made by the nonprofit corporation only as authorized in the specific case upon a determination that indemnification of the representative is proper in the circumstances because he has met the applicable standard of conduct set forth in those sections. The determination shall be made:

(1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action or proceeding;

(2) if such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested directors so directs, by independent legal counsel in a written opinion;

(3) by such other body as may be provided in the bylaws; or

(4) by the members.

§ 5972. Proposal of voluntary dissolution.

(a) General rule.—Any nonprofit corporation that has commenced business may [elect to] dissolve voluntarily[,] *in the manner provided in this subchapter* and wind up its affairs in the manner provided in [this subchapter.] *section 5975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities).* Voluntary dissolution shall be proposed by:

(1) the adoption by the board of directors or other body of a resolution recommending that the corporation be dissolved voluntarily;

(2) petition of members entitled to cast at least 10% of the votes that all members are entitled to cast thereon, setting forth a resolution recommending that the corporation be dissolved voluntarily, which petition shall be directed to the board of directors and filed with the secretary of the corporation; or

(3) such other method *for proposing or adopting a resolution recommending that the corporation be dissolved voluntarily* as may be provided in the bylaws.

*The resolution shall contain a statement either that the dissolution shall proceed under section 5975 or that the dissolution shall proceed under Subchapter H.*

\* \* \*

(c) *Cross reference.—See section 5974(e) (relating to amendment of winding-up election).*

§ 5973. Notice of meeting of members.

(a) General rule.—Written notice of the meeting of members [called for the purpose of considering] *that will consider* the advisability of voluntarily dissolving [the] *a nonprofit* corporation shall be given to each member of record entitled to vote thereon and the purpose shall be included in the notice of the meeting.

\* \* \*

§ 5974. Adoption of proposal.

\* \* \*

(e) *Amendment of winding-up election.—If the resolution with respect to voluntary dissolution so provides, an election to proceed under section 5975 (relating to predissolution provision for liabilities) or Subchapter H (relating to postdissolution provision for liabilities) may be reversed by the board of directors prior to the time when articles of dissolution are filed in the department, notwithstanding the adoption by the members of the proposal for voluntary dissolution.*

§ 5975. **[Winding up in voluntary dissolution proceedings] *Predissolution provision for liabilities.***

(a) Powers of board.—The board of directors or other body of a non-profit corporation shall have full power to wind up and settle the affairs of a non-profit corporation ~~[in the event of a voluntary dissolution proceeding.]~~ *in accordance with this section prior to filing articles of dissolution in accordance with section 5977 (relating to articles of dissolution).*

\* \* \*

§ 5977. Articles of dissolution.

(a) **[Preparation of articles.—When] *General rule.—Articles of dissolution and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State when:***

(1) all liabilities of the nonprofit corporation have been discharged, or adequate provision has been made therefor, *in accordance with section 5975 (relating to predissolution provision for liabilities)*, and all of the remaining assets of the corporation have been distributed as provided in ~~[this subchapter,] section 5975~~ or in case its assets are not sufficient to discharge its liabilities, when all the assets have been fairly and equitably applied, as far as they will go, to the payment of such liabilities~~[,];~~ *or*

(2) *an election to proceed under Subchapter H (relating to post-dissolution provision for liabilities) has been made.*

*See section 134 (relating to docketing statement).*

(b) ***Contents of articles.—The articles of dissolution shall be executed by the corporation and shall set forth:***

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

(2) The statute under which the corporation was incorporated and the date of incorporation.

(3) The names and respective addresses, including street and number, if any, of its directors and officers.

(4) The manner in which the proposal to dissolve voluntarily was adopted by the corporation.

(5) A statement:

(i) that all liabilities of the corporation have been discharged or that adequate provision has been made therefor; or

(ii) that the assets of the corporation are not sufficient to discharge its liabilities, and that all the assets of the corporation have been fairly and equitably applied, as far as they will go, to the payment of such liabilities.

An election by the corporation to proceed under Subchapter H ***[(relating to postdissolution claims)]*** shall constitute the making of adequate provision for the liabilities of the corporation, *including any judgment or decree that may be obtained against the corporation in any pending action or proceeding.*

(6) A statement:

(i) that all the remaining assets of the corporation, if any, have been distributed as provided in the Nonprofit Corporation Law of 1988; or

(ii) that the corporation has elected to proceed under Subchapter H and that any remaining assets of the corporation will be distributed as provided in that subchapter.

(7) A statement that no actions or proceedings are pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment or decree that may be obtained against the corporation in each pending action or proceeding.

(8) A statement that notice of the winding-up proceedings of the corporation was mailed by certified or registered mail to each known creditor and claimant and to each municipal corporation in which the registered office or principal place of business of the corporation in this Commonwealth is located.

**[(b) Filing.—The articles of dissolution and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the Department of State. See section 134 (relating to docketing statement).]**

\* \* \*

§ 5978. Winding up of corporation [upon the expiration of its period of duration] *after dissolution*.

(a) *Winding up and distribution*.—Every nonprofit corporation that is dissolved by expiration of its period of duration *or otherwise* shall, nevertheless, continue to exist for the purpose of winding up its affairs, prosecuting and defending actions or proceedings by or against it, collecting and discharging obligations, disposing of and conveying its property and collecting and dividing its assets, but not for the purpose of continuing business except insofar as necessary for the winding up of the corporation. The board of directors or other body of the corporation [shall] *may* continue as such and shall have full power to wind up the affairs of the corporation.

(b) *Standard of care of directors, members of an other body and officers*.—*The dissolution of the corporation shall not subject its directors, members of an other body or officers to standards of conduct different from those prescribed by or pursuant to Chapter 57 (relating to officers, directors and members).*

§ 5979. Survival of remedies and rights after dissolution.

\* \* \*

(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 [section 5998 (relating to liability of members)] *subsection (d) and sections 5992(d) (relating to claims barred) and 5993(b) (relating to claims barred)*, 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 dissolu-

tion. Should any property right of a corporation be discovered 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 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).*

§ 5985. Liquidating receiver.

Upon a hearing [**and proof of the issues**], after such notice as the court may direct to be given to all parties to the proceeding, and to any other parties in interest designated by the court, the court may appoint a liquidating receiver with authority to collect the assets of the corporation[, **including all amounts owing to the corporation by members on account of any unpaid portion of the consideration for memberships. Such**]. *The* liquidating receiver shall have authority, subject to the order of the court, to dispose of all or any part of the assets of the corporation *wherever situated*, either at public or private sale. The assets of the corporation, or the proceeds resulting from a disposition thereof, shall be applied to the expenses of [**such**] *the* liquidation and to the payment of the liabilities of the corporation, and any remaining assets or proceeds shall be distributed by the court in the manner provided by [**Subchapter F (relating to voluntary dissolution and winding up).**] *section 5975(c) (relating to winding up and distribution).* *The court may direct that any or all of the provisions of Subchapter H (relating to post-dissolution provision for liabilities) shall apply.* The order appointing [**such**] *the* liquidating receiver shall state his powers and duties. [**Such**] *The* powers and duties may be increased or diminished at any time during the proceedings. A receiver of a corporation appointed under this section shall have authority to sue and defend in all courts in his own name as receiver of [**such**] *the* corporation. The court appointing [**such receiver may issue writs in favor of such receiver to the sheriff of any county in this Commonwealth for service.**] *the receiver shall have exclusive jurisdiction of the corporation and its property wherever situated.*



SUBCHAPTER H  
POSTDISSOLUTION [CLAIMS] *PROVISION FOR LIABILITIES*

§ 5991. [Definition of successor entity] *Definitions.*

[As used in this subchapter, the term “successor entity” includes] *The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:*

*“Contractual claims.” Excludes contingent contractual claims based on any implied warranty as to any product manufactured, sold, distributed or handled by the dissolved corporation.*

*“Priority.” Does not refer either to the order of payments set forth in section 5997(a)(1) through (4) (relating to payments and distributions) or to the relative times at which any claims mature or are reduced to judgment.*

*“Successor entity.” Includes any trust, receivership or other legal entity governed by the laws of this Commonwealth or any other jurisdiction to which the remaining assets of a dissolved nonprofit corporation are transferred subject to its liabilities and which exists solely for the purposes of prosecuting and defending actions, by or against the corporation, enabling the corporation to settle and close its business, to dispose of and convey the property of the corporation, to discharge the liabilities of the corporation, and to distribute to the members of the corporation any remaining assets, but not for the purpose of continuing the business for which the corporation was incorporated.*

§ 5992. Notice to claimants.

(a) General rule.—After a nonprofit corporation *that has elected to proceed under this subchapter* has been dissolved in accordance with [the procedures set forth in this chapter] *section 5977 (relating to articles of dissolution)*, the corporation or any successor entity [may] *shall* give notice of the dissolution requesting all persons having a claim against the corporation to present their claims against the corporation in accordance with the notice. The notice shall state:

(1) That all claims must be presented in writing and must contain sufficient information reasonably to inform the corporation or successor entity of the identity of the claimant and the substance of the claim.

(2) The mailing address to which a claim must be sent.

(3) The [date by which a claim must be received by the corporation or successor entity, which date] *deadline, which shall be not less than 60 days after the date the notice is given[.], by which the corporation or successor entity must receive the claim.*

(4) *That the claim will be barred if not received by the deadline.*

[(4)] (5) That the corporation or a successor entity may make distribution to other claimants and the members of the corporation or persons interested as having been such without further notice to the claimant.

(b) Unmatured *contractual* claims.—The corporation or successor entity electing to follow the procedures specified in [subsection (a)] *this subchapter* shall also give notice of the dissolution of the corporation to persons with

**contractual** claims contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured and shall request that such persons present their claims in accordance with the terms of the notice. The notice shall be in substantially the form specified in subsection (a).

(c) Publication and service of notices.—

(1) The notices required by this section shall be officially published at least once a week for two consecutive weeks.

(2) Concurrently with or preceding the publication, the corporation or successor entity shall [mail] send a copy of the notice by [registered or] certified or registered mail, return receipt requested, to each [known claimant of the corporation.]:

(i) *known creditor or claimant;*

(ii) *holder of a claim described in subsection (b); and*

(iii) *municipal corporation in which the registered office or principal place of business of the corporation in this Commonwealth was located at the time of filing the articles of dissolution in the department.*

(d) **Claims barred.**—*A claim against a dissolved corporation is barred if a claimant who was given written notice under subsection (c)(2) does not deliver the claim to the dissolved corporation or successor entity by the deadline.*

§ 5993. Acceptance or rejection of matured claims.

(a) **Notice.**—A dissolved nonprofit corporation or successor entity may reject, in whole or in part, any matured claim made by a claimant pursuant to section 5992 (relating to notice to claimants) by [mailing] sending notice of the rejection by [registered or] certified or registered mail, return receipt requested, to the claimant within 90 days after receipt of the claim and, in all events, at least 30 days before the expiration of the two-year period specified in section 5979(a)(2) (relating to survival of remedies and rights after dissolution). A notice sent pursuant to this section shall include or be accompanied by a copy of this subchapter and of section 5979.

(b) **Claims barred.**—*A claim against a dissolved corporation is barred if a claimant whose claim is rejected by the dissolved corporation or successor entity does not commence an action in the court to enforce the claim within 90 days after mailing of the rejection notice.*

§ 5994. Disposition of unmatured claims.

(a) **Contractual claims.**—The dissolved nonprofit corporation or successor entity shall offer any claimant whose **contractual** claim made pursuant to section 5992 (relating to notice to claimants) is contingent, conditional or unmatured, such security as the corporation or successor entity determines is sufficient to provide compensation to the claimant if the claim matures. The corporation or successor entity shall [mail] send the offer to the claimant by [registered or] certified or registered mail, return receipt requested, within 90 days after receipt of the claim and, in all events, at least 30 days before the expiration of the two-year period specified in section 5979(a)(2) (relating to survival of remedies and rights after dissolution). A notice sent pursuant to this section shall include or be accompanied by a copy of this subchapter and of section 5979. If the claimant offered the security does not deliver to the

corporation or successor entity a written notice rejecting the offer within 60 days after mailing of the offer for security, the claimant shall be deemed to have accepted the security as the sole source from which to satisfy his claim against the corporation.

**(b) Other claims.**—*Except as provided in section 5997(d) (relating to liability of directors), the holder of any other claim may bring an action against the dissolved corporation or its directors, members of an other body, officers or members within the time limited by section 5979(a).*

§ 5995. Court proceedings.

(a) General rule.—A dissolved nonprofit corporation or successor entity that has given notice in accordance with section 5992 (relating to notice to claimants) shall file an application with the court for a determination of the amount and form of security:

(1) that will be sufficient to provide compensation to[:

(1) **Claimants whose matured claims are known to the corporation or successor entity but whose identities are unknown.**

(2) **Any] any claimant who has rejected the offer for security made pursuant to section 5994 (relating to disposition of unmatured claims)[.]; and**

**(2) that will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen but that, based on the facts known to the corporation or successor entity, are likely to arise or to become known to the corporation or successor entity prior to the expiration of the two-year period specified in section 5979(a)(2) (relating to survival of remedies and rights after dissolution).**

(b) Guardian ad litem.—The court [shall] *may* appoint a guardian ad litem [to represent all claimants whose identities are unknown in any proceeding brought under this subchapter] *in respect of any proceeding brought under this subchapter*. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the applicant in the proceeding unless otherwise ordered by the court.

§ 5997. Payments and distributions.

(a) General rule.—A dissolved nonprofit corporation or successor entity that has elected to proceed under [the preceding provisions of] this subchapter shall:

(1) Pay the claims made and not rejected under section 5993 (relating to acceptance or rejection of matured claims).

(2) Post the security offered and not rejected under section 5994 (relating to disposition of unmatured claims).

(3) Post security ordered by the court in any proceeding under section 5995 (relating to court proceedings).

(4) Pay or make provision for all other [liabilities of] **claims that are mature, known and uncontested or that have been finally determined to be owing by** the corporation or the successor entity.

\* \* \*

(c) Evaluation of other liabilities.—In the absence of actual fraud, the judgment of the board of directors or other body of the dissolved corporation or the governing persons of the successor entity as to the provision made for the payment of all [liabilities] *claims* under subsection (a)(4) shall be conclusive.

**(d) Disposition in absence of claims procedure.—A dissolved corporation or successor entity that has not followed the procedures in the preceding provisions of this subchapter shall pay or make reasonable provision to pay all claims and liabilities, including all contingent, conditional or unmatured claims known to the corporation or the successor entity and all claims that are known to the corporation or the successor entity but for which the identity of the claimant is unknown. The claims shall be paid in full and any such provision for payment made shall be made in full if there are sufficient assets. If there are insufficient assets, the claims and liabilities shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining assets shall be distributed as provided in the last sentence of section 5975(c).**

(e) *(d)* Liability of directors.—Directors or members of an other body of a dissolved corporation or governing persons of a successor entity that has complied with this section shall not be personally liable to the claimants of the dissolved corporation.

#### § 7534. Marketing arrangements.

(a) General rule.—An association and its members may make and execute contracts requiring the members to obtain all or any part of specific services from the association or to sell or deliver all or any part of their specified agricultural products to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products sold or delivered by its members, with or without taking [chapter] *title* thereto, and pay over to its members the resale price, after deducting all necessary overhead costs, expenses, valuation reserves, interest, dividends on common and preferred shares and such deductions for capital and other purposes as may be specified in the contract or bylaws of an association. Each marketing or service contract shall contain a provision which shall specify a reasonable period in each year during which any contracting member of an association, upon giving notice as prescribed in the contract, may terminate the contract.

\* \* \*

#### § 8513. Cancellation of certificate.

(a) General rule.—A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the limited partnership or at any other time there are no limited partners. [A] *The* certificate of cancellation [shall be filed in the Department of State and] shall set forth:

- (1) The name of the limited partnership.
- (2) The date of filing of its original certificate of limited partnership.
- (3) The reason for filing the certificate of cancellation.

(4) The effective date (which shall be a date certain) of cancellation if it is not to be effective upon the filing of the certificate.

(5) Any other information the general partners filing the certificate determine.

**(b) Filing.**—*The certificate of cancellation and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the department.*

**[(b)] (c)** Effectiveness of certificate of cancellation.—Upon the filing of the certificate of cancellation in the department or upon the effective date specified in the certificate of cancellation, whichever is later, the certificate of cancellation shall become effective and the certificate of limited partnership shall be canceled.

**[(c)] (d)** Cross references.—See sections 134 (relating to docketing statement) and 8514 (relating to execution of certificates).

§ 8586. Cancellation of registration.

\* \* \*

**(b) Filing.**—*The certificate of cancellation of registration and the certificates or statement required by section 139 (relating to tax clearance of certain fundamental transactions) shall be filed in the department.*

**[(b)] (c)** Effect of filing.—Upon the filing of the certificate of cancellation of registration, the authority of the foreign limited partnership to do business in this Commonwealth shall cease. The termination of authority shall not affect any action pending at the time thereof or affect any right of action arising with respect to the foreign limited partnership before the filing of the certificate of cancellation of registration. Process against the foreign limited partnership in an action upon any liability incurred before the filing of the certificate of cancellation of registration may be served as provided in 42 Pa.C.S. Ch. 53 (relating to bases of jurisdiction and interstate and international procedure) or as otherwise provided or prescribed by law.

**[(c)] (d)** Cross references.—See sections 134 (relating to docketing statement) and 8514 (relating to execution of certificates).

§ 8708. *Taxation of electing partnerships.*

*For the purposes of the imposition by the Commonwealth or any political subdivision of any tax or license fee on or with respect to any property, privilege, transaction, subject or occupation, a partnership as to which an election under this chapter is in effect shall be deemed to be a corporation organized and existing under Subpart B of Part II (relating to business corporations).*

Section 4. Amendment of Title 54.

As much of Title 54 as is hereinafter set forth is amended to read:

§ 321. Decennial filings required.

\* \* \*

**(b)** Requirement satisfied by other filings.—Subsection (a) shall not apply to a registrant which during the preceding ten years has made any filing with the department under this chapter *other than a report required by subsection (a).*

\* \* \*

§ 502. Certain additions to register.

(a) **[Corporations.—] 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. § 4131 (relating to registration of name) or 6131 (relating to registration of name) 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.*

\* \* \*

(d) *Annual renewal.—A person who has in effect a registration of a corporate 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.*

**[(d)] (e)** Cross reference.—See 15 Pa.C.S. § 134 (relating to docketing statement).

§ 503. Decennial filings required.

\* \* \*

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

(1) a corporation or other association which during the preceding ten years has made any filing in the department, a permanent record of which is retained by the department, *other than a report required by subsection (a)*; or

(2) a corporation whose name is registered pursuant to section 501(a)(4) (relating to register established).

\* \* \*

§ 1314. Decennial filings required.

\* \* \*

(b) Requirement satisfied by other filings.—Subsection (a) shall not apply to a registrant which during the preceding ten years has made any filing with the department under this chapter *other than a report required by subsection (a)*.

\* \* \*

§ 1515. Decennial filings required.

\* \* \*

(b) Requirement satisfied by other filings.—Subsection (a) shall not apply to a registrant which during the preceding ten years has made any filing with the department under this chapter *other than a report required by subsection (a)*.

\* \* \*

**Section 5. Repeals.**

The following acts and parts of acts are repealed:

Act of May 3, 1855 (P.L.423, No.448), entitled "An act relating to corporations."

Act of May 24, 1921 (P.L.1071, No.394), entitled "An act requiring banks, banking corporations, copartnerships, or associations, cooperative banking associations, trust, safe deposit, real estate, mortgage, title insurance, guaranty, surety, and indemnity companies, savings institutions, savings banks, provident institutions, building and loan associations, lodges and societies, to file of record names of persons authorized to make entries on records of mortgages; imposing certain duties on recorders of deeds; and declaring certain entries void."

Act of April 18, 1935 (P.L.43, No.21), entitled "An act to permit certain cooperative associations to give chattel mortgages, on rotating stocks of goods or inventories, to secure loans from banks for cooperatives, organized under the Farm Credit Act of one thousand nine hundred thirty-three, or from Federal intermediate credit banks, organized under the Agricultural Credits Act of one thousand nine hundred twenty-three."

Act of July 17, 1935 (P.L.1139, No.364), entitled "An act relating to the recording of certificates of incorporation of domestic corporations, incorporated prior to July third, one thousand nine hundred and thirty-three; validating acts done, and transfers and conveyances made to or by corporations before the recording of their certificates, or of certified copies thereof; permitting the recording of such certificates or copies thereof; and making certified copies of the record of certified copies of certificates competent evidence for all purposes."

Act of May 18, 1937 (P.L.704, No.181), known as the Limited Dividend Housing Company Law.

Section 1412 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

Section 512 of the act of December 14, 1967 (P.L.746, No.345), known as the Savings Association Code of 1967.

Section 106 of the act of December 21, 1988 (P.L.1444, No.177), known as the General Association Act of 1988.

Section 403 of the act of December 19, 1990 (P.L.834, No.198), known as the GAA Amendments Act of 1990.

15 Pa.C.S. §§ 1952(e) (relating to restrictions on certain distributions), 1998 (relating to liability of shareholders) and 5998 (relating to liability of members).

**Section 6. Suspension.**

15 Pa.C.S. § 8103 (relating to continuation of certain limited partnerships) is suspended retroactive to December 19, 1990. The suspension of that section shall continue until such time, if any, as the Governor publishes a proclamation in the Pennsylvania Bulletin stating that the Governor has found that the Internal Revenue Service has published a revenue ruling to the effect that a provision of State law, a certificate of limited partnership or a partnership agreement that permits not less than a majority in interest of the

partners of a limited partnership to elect to continue the business of the partnership or to appoint one or more replacement general partners following an event of withdrawal by a sole remaining general partner will not cause the partnership to have the characteristic of continuity of life. The Governor shall issue such proclamation upon being furnished with a copy of a ruling by the Internal Revenue Service to that, or similar, effect. The proclamation shall also state the suspension of 15 Pa.C.S. § 8103 shall be lifted, and that the section shall be deemed effective, as of the date of publication of the proclamation.

**Section 7. Retroactivity.**

(a) The amendment of 15 Pa.C.S. § 136 (relating to processing of documents by Department of State) shall be retroactive to December 19, 1990.

(b) The amendment of the definition of "distribution" in 15 Pa.C.S. § 1103 (relating to definitions) and 15 Pa.C.S. § 1504(d) (relating to amendment of voting provisions) shall be retroactive to October 1, 1989.

**Section 8. Effective date.**

This act shall take effect in 60 days.

**APPROVED—**The 18th day of December, A. D. 1992.

**ROBERT P. CASEY**