COMMITTEE BILL ANALYSIS

Bill: HB 2234

Printer's No.: 3746

Sponsor: Rep. Turzai

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Synopsis: This bill reorganizes significant portions of Title 15, and it provides all business entity types the ability to engage in five fundamental transactions: mergers, interest exchanges, conversions, divisions, and domestications. The bill consolidates provisions related to the registration of foreign business entities that do business in Pennsylvania.

Summary:

The bill deals with two main subjects:

(1) the adoption of provisions from the Uniform Business Organizations Code, which involves amendments to Chapter 1 of Title 15 (Department of State filing procedures), adoption of a new Chapter 2 (names), and adoption of a new Chapter 4 (registration of foreign entities to do business in Pennsylvania); and

(2) the adoption of the Model Entity Transactions Act (as a new Chapter 3) authorizing mergers, interest exchanges, conversions, divisions, and domestications.

Title 15 Reorganization

The reorganizational portions of the bill consolidate provisions in the preliminary chapters of Title 15, which apply to all types of entities, and repeal similar provisions in the individual entity laws, which apply to only one type of entity. These amendments are lengthy, but largely technical.

Entity Transactions
The bill will allow all entity types (business corporations, nonprofit corporations, general partnerships, limited partnerships, limited liability companies, unincorporated nonprofit associations, professional associations, and business trusts) to engage in fundamental transactions, in accordance with provisions governing the approval of the transaction by each type of entity and provisions for each specific type of transaction. Additionally, certain "associations" that were organized under a law other than Title 15 (certain financial institutions, certain insurance licensees, certain foreign businesses, etc.) may engage in certain types of transactions (as used in the bill, the term "association" refers to entities and businesses organized outside of Title 15, while the term "entity" refers to those formed under Title 15 or a parallel law outside of PA). Language is included to prevent the use of entity transactions for the purpose of circumventing regulation or other statutes that may require approval of or notice to another government agency.

Each type of transaction involves the approval of a plan for the transaction by the interest holders in the entity. After approval, a statement of the transaction (or the plan itself) may be filed with the Department of State to make the transaction a public record. Transactions become effective on the date and time of delivery to the department, unless the statement specifies a later date and/or time.

Approval of Transactions

As the result of the differences in governance of the various entity types, each entity type will use its own process for approving transactions:

- **Business corporations** – Approval provisions are based on the current law governing the approval of transactions for business corporations.

- **Nonprofit corporations** – Approval provisions are based on the current law governing the approval of transactions for nonprofit corporations.

- **General partnerships** – The approval is governed by the organic rules of the partnership (*i.e.*, the partnership agreement). If the process is not provided in the organic rules, unanimous approval is required.

- **Limited partnerships** – Unanimous approval of the general partners and majority approval of the limited partners is required, unless the organic rules of the limited partnership provide otherwise.

- **Limited liability companies**:

· Member-managed – Majority approval by the members, or a majority of each class of members, is required, unless the organic rules provide otherwise.

· Manager-managed – The plan is adopted by the managers and submitted to the members for a majority vote, unless the organic rules provide otherwise.

• **Professional associations** – Majority approval of the associates (voting according to their proportional shares of ownership) is required, unless the organic rules provide otherwise.

• **Business trusts –** Approval of all the beneficial owners is required, unless the organic rules provide otherwise.
• **Nonprofit unincorporated associations** – A majority of the votes cast at a meeting of the members is required, unless the governing principles provide otherwise.

Additionally, except for nonprofit corporations, or if prohibited by the organic rules for the entity, a unanimous vote or consent of the entity's interest holders satisfies the approval requirements.

Types of Transactions

Merger:
A merger involves the combination of two or more entities or associations into a surviving association. Domestic entities may merger with foreign associations into a surviving association, and two or more foreign associations may merger into a surviving domestic entity.

In a merger, the property and liabilities of the merging associations vest automatically in the surviving association. The surviving association becomes the owner of all real and personal property of the merged associations and is subject to all debts and obligations of the merging associations. A merger does not give rise to a claim that a contract with a merging association is no longer in effect.

Interest exchange:
An interest exchange involves the acquisition of an interest in one association by another, so that the acquiring association controls the acquired association.

In contrast to a merger, an interest exchange does not by itself affect the separate existence of the parties, vest in the acquiring association the property of the vested association, or render the acquiring association liable for the liabilities of the acquired association. When the interest exchange becomes effective, the interests of the acquired association are exchanged in accordance with the plan, the acquiring association becomes the owner of the acquired association's interests as provided in the plan, and the organic rules of the acquired association are amended as provided in the statement of interest exchange (obviating the need for repetitive filings).

Conversion:
A conversion involves a change in the legal form of a domestic entity or a domestic banking institution. A domestic entity may become a different form of foreign association, if allowed by the laws of the other jurisdiction.

A converted association is the same association as it was before the conversion, but it is of a different legal type. The converted association remains the owner of all real property and remains subject to the same liabilities. The converted association remains a party to all of the contracts to which the converting association was a party. Consistent with the idea that the converted association is the same association as existed before the conversion, albeit in a different form, the existence of the converted association is deemed to have commenced when the converting association first existed.

Division:
A division, which is the opposite of a merger, involves the split of a domestic entity into two or more domestic entities or foreign associations.

The division is effective in the event that the dividing association survives or does not survive the transaction. If interests in property are allocated to a resulting association as part of a division, title to those interests automatically passes to the resulting associations. The liabilities of the dividing entity are allocated among the resulting associations. The filing of the statement of division with the Department is not constructive notice of the change of record title to the resulting associations except in the case of nonprofit corporations.

Domestication:
Domestication involves moving an entity organized under the laws of one state to organization under the laws of another state. The entity must be the same type of entity after the transaction. A domestic entity may organize under the laws of a foreign jurisdiction, if allowed by that jurisdiction's laws. A foreign entity may become a domestic entity. The domesticated entity is the same entity as the domesticating entity. It merely has changed the organic law to which it is subject.

Foreign associations
Provisions for the registration of foreign associations that do business in PA are repealed in the individual entity laws and consolidated in a new preliminary Chapter 4 (which applies broadly). The amendments are largely technical, consolidating changes. However,

a foreign financial institution that is not an interstate bank will be treated like a foreign association that is not a bank, and will be required to register.

Rural Electric Cooperatives
The bill causes the electric choice provisions applicable to rural electric cooperatives to sunset on December 31, 2014. The electric choice provisions of Title 15 have required rural electric cooperatives to notify their members of their ability to choose other electricity suppliers. Because there is a cost associated with this notification and no other suppliers have come into these rural areas to compete, the rural electric cooperatives asked that the electric choice provisions applicable to them be eliminated.

Effective date: The act takes effect in 60 days.

Background: This bill is based on the Model Entity Transactions Act developed by the Uniform Law Commission. A subcommittee of the Pennsylvania Bar Association drafted the bill with input from state agencies and other stakeholders. The House of Representatives passed the bill on June 18, 2014 by a vote of 193-0.