#77.121 5/27/76

Memorandum 76-65

Subject: Study 77.121 - Nonprofit Corporations (Division)

Attached to this memorandum is a draft of a procedure for dividing a nonprofit corporation into two or more nonprofit corporations, which the staff has drafted in response to a Commission decision made at the May meeting. A copy of the Pennsylvania division statute is attached as an exhibit.

Division accomplishes the reverse of merger and consolidation. One corporation may split into two or more new corporations or the dividing corporation may survive the division and split off one or more new corporations. The staff draft of the division chapter is based on the Pennsylvania law and on Chapter 11 (Merger and Consolidation). Unfortunately, we have not been able to find any background information on or any cases discussing the Pennsylvania law.

Several policy questions are discussed in the remainder of this memorandum under the headings of particular sections.

§ 6210. Division of nonprofit corporations authorized

This section has been drafted to reflect the Commission's tentative decision at the May meeting to restrict the division of a nonprofit corporation organized for charitable purposes to situations where all the resulting nonprofit corporations are also organized for charitable purposes. (See the language in brackets.) However, the staff suggests that there may be some advantage to permitting a nonprofit corporation organized for charitable purposes to split off its activities that result in taxable unrelated business income by forming a nonprofit corporation which is not organized for charitable purposes. Of course, the assets which are impressed with a charitable trust by virtue of their being held by the charitable corporation would necessarily be held on charitable trust by the new nonprofit corporation resulting from the division. If this sort of division were permitted, the Attorney General would be required to receive notice. Division of a corporation organized for charitable purposes, in the manner outlined, is analogous to the division of a nonprofit corporation holding assets on charitable trust where the resulting corporations may be a new nonprofit corpora-

tion organized for charitable purposes (or the dividing nonprofit corporation may survive the division and amend its articles to become a nonprofit corporation organized for charitable purposes) and another new nonprofit corporation neither organized for charitable purposes nor holding assets on charitable trust.

§ 6220. Approval of plan of division by board and members

Rather than repeating the procedural detail concerning approval and signing of the plan of division, Article 2 (commencing with Section 6220) incorporates the procedure for the approval and signing of an agreement of merger or consolidation.

§ 6241. Franchise Tax Board certificate of satisfaction

Pennsylvania law does not require the dividing nonprofit corporation to satisfy its tax liabilities before dividing but makes the resulting nonprofit corporations liable. This is consistent with the Pennsylvania treatment of tax liabilities in the case of a merger or consolidation where the surviving or consolidated corporation is made liable and the constituent corporations are not required to settle before the merger or consolidation. The rule is different in mergers and consolidations under California law, however, so the draft follows this state's approach and requires satisfaction of the Franchise Tax Board before the division may take place.

§ 6242. Notice to Attorney General

Under Pennsylvania law, there is court supervision of significant changes in the structure or purpose of nonprofit corporations. Our approach has been to provide for notice to the Attorney General where a corporation holding assets on charitable trust or a corporation organized for charitable purposes is involved in major changes. Section 6242 is consistent with this approach.

§ 6245. Effect of division on bequest, gift, devise, etc.

This section is analogous to Section 6146 which is applicable after a merger or consolidation and provides that a bequest to a constituent nonprofit corporation inures to the surviving or consolidated nonprofit corporation. However, since division results in two or more nonprofit corporations, rather than one, the section requires some refinement.

Section 6245 permits the plan of division to specify the manner of disposition of bequests to the dividing nonprofit corporation. If the plan is silent, and if the dividing nonprofit corporation survives the division, the bequest should go to the surviving nonprofit corporation. If the plan is silent on the disposition of bequests, and if the dividing nonprofit corporation does not survive the division, the bequest should go to the new nonprofit corporations as tenants in common.

Respectfully submitted,

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Memorandum 76-65

EXHIBIT I

Pennsylvania Nonprofit Corporation Law of 1972

SUBCHAPTER C

DIVISION

Sec.
7941. Division authorized.
7942. Proposal and adoption of plan of division.
7943. Articles of division.
7944. Filing of articles of division.
7945. Effective date of division.
7946. Effect of division.

§ 7941. Division authorized

(a) Division of domestic corporation.—Any domestic nonprofit corporation may, in the manner provided in this subchapter, be divided into two or more domestic nonprofit corporations incorporated or to be incorporated under this article, or into one or more such domestic nonprofit corporations and one or more foreign corporations not-for-profit to be incorporated under the laws of another jurisdiction or jurisdictions, or into two or more of such foreign corporations not-for-profit, if the law or laws of such other jurisdictions authorized such division.

(b) Division of foreign corporation.—Any foreign corporation not-for-profit may, in the manner provided in this subchapter, be divided into one or more domestic nonprofit corporations to be incorporated under this article and one or more foreign corporations not-for-profit incorporated or to be incorporated under the laws of another jurisdiction or jurisdictions, or into two or more of such domestic nonprofit corporations, if such foreign corporation not-for-profit is authorized under the laws of the jurisdiction under which it is incorporated to effect such division.

(c) Surviving and new corporations.—The corporation effecting a division, if it shall survive the division, is hereinafter designated as the surviving corporation. All corporations originally incorporated by a division are hereinafter designated as new corporations. The surviving corporation, if any, and the new corporation or corporations are hereinafter collectively designated as the resulting corporations.

§ 7942. Proposal and adoption of plan of division

(a) Preparation of plan.—A plan of division shall be prepared, setting forth:

(1) The terms and conditions of the division, including the manner and basis of:

(i) the reclassification of the membership interests or shares or obligations of the surviving corporation, if there be one; and

(ii) the disposition of the membership interests or shares and obligations, if any, of the new corporation or corporations resulting from the division.

(2) The mode of carrying the division into effect.

(3) A statement that the dividing nonprofit corporation will, or will not, survive the division.

(4) Any changes desired to be made in the articles of the surviving corporation, if there be one, including a restatement of the articles.

(5) The articles of incorporation required by subsection (b) of this section.

(6) Such other details and provisions as are deemed desirable.

(b) Articles of new corporations.—There shall be included in or annexed to the plan of division:

(1) Articles of incorporation, which shall contain all of the statements required by this article to be set forth in restated articles, for each of the new domestic nonprofit corporations, if any, resulting from the division.

(2) Articles of incorporation, certificates of incorporation, or other charter documents for each of the new foreign corporations not-for-profit, if any, resulting from the division.

(c) Proposal and adoption.—The plan of division shall be proposed and adopted, and may be terminated, by a domestic nonprofit corporation in the manner provided for the proposal, adoption and termination of a plan of merger in Subchapter II of this chapter (relating to merger, consolidation and sale of assets) or, if the dividing corporation is a foreign corporation not-for-profit, in accordance with the laws of the jurisdiction in which it is incorporated.

(d) Special requirements.—If any provision of the bylaws of a dividing domestic nonprofit corporation adopted before January 1, 1972 shall require for the adoption of a plan of merger or consolidation or a plan involving the sale, lease or exchange of all or substantially all of the property and assets of the corporation a specific number of percentage of votes of directors, members, or members of an other body or other special procedures, the plan of division shall not be adopted without such number or percentage of votes or compliance with such other special procedures.

§ 7943. Articles of division

Upon the adoption of a plan of division by the corporation desiring to divide, as provided in this subchapter, articles of division shall be executed under the seal of the corporation by two duly authorized officers thereof, and shall set forth:

(1) The name and the location of the registered office, including street and number, if any, of the dividing domestic corporation, or, in the case of a dividing foreign corporation, the name of such corporation and its domiciliary jurisdiction, together with either:

(i) if a qualified foreign corporation, the address, including street and number, if any, of its registered office in this Commonwealth; or

(ii) if a nonqualified foreign corporation, the address, including street and number, if any, of its principal office under the laws of such domiciliary jurisdiction.

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

(3) A statement that the dividing corporation will, or will not, survive the division.

(4) The name and the address, including street and number, if any, of the registered office of each new domestic nonprofit corporation or qualified foreign corporation resulting from the division.

(5) If the plan is to be effective on a specified date, the hour, if any, and the month, day and year of such effective date.

(6) The manner in which the plan was adopted by the corporation.

(7) The plan of division.

§ 7944. Filing of articles of division

The articles of division shall be filed in the Department of State. No certificate from any department evidencing the payment of taxes and charges shall be required.

§ 7945. Effective date of division

Upon the filing of articles of division in the Department of State, or upon the effective date specified in the plan of division, whichever is later, the division shall become effective. The division of a domestic nonprofit corporation into one or more foreign corporations not-for-profit or the division of a foreign corporation not-for-profit shall be effective according to the laws of the jurisdictions where such foreign corporations are or are to be incorporated, but not until articles of division have been adopted and filed, as provided in this subchapter.

§ 7946. Effect of division

(a) Multiple resulting corporations.—Upon the division becoming effective the dividing corporation shall be subdivided into the distinct and independent resulting corporations named in the plan of division and, if the dividing corporation is not to survive the division, the existence of the dividing corporation shall cease. The resulting corporations, if they are domestic corporations, shall not thereby acquire authority to engage in any business or exercise any right which a corporation may not be incorporated under this article to engage in or exercise. Any resulting foreign corporation which is stated in the articles of division to be a qualified foreign corporation shall be a qualified foreign corporation under this part and the articles of division shall be deemed to be the application for a certificate of authority and the certificate of authority issued thereon of such corporation.

(b) Property rights.—Except as otherwise provided by order, if any, obtained pursuant to section 75-B(b) of this title (relating to nondiversion of certain property), 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 membership and other choses in action belonging to it, shall be taken and deemed without further act or deed 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 of division, or per capita among the resulting corporations, as tenants in common, if no such specification is made in the plan. The resulting corporations shall each thenceforth be responsible as separate and distinct corporations only for such liabilities and obligations as each corporation may undertake or incur in its own name, but shall be liable inter se for the debts and liabilities of the dividing corporation in the manner and on the basis specified in the plan of division. No liens upon the property of the dividing corporation shall be impaired by the division. One or more, but less than all, of the resulting corporations shall be free of all the liabilities and obligations of the dividing corporation to the extent, if any, specified in the plan, if no fraud of corporate creditors or members without voting rights and if no violation of law shall be effected thereby, and if all applicable provisions of Article 6 of the Uniform Commercial Code[1] (relating to bulk transfers) and all other applicable provisions of law are complied with. Otherwise, the liability of the dividing corporation, or of its members, directors, or officers, shall not be affected by the division, nor shall the rights of the creditors thereof or of any person dealing with such corporation be impaired by such division, and, except as otherwise provided in this section, any claim existing or action or proceeding pending by or against such corporation may be prosecuted to judgment as if such 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 debts and liabilities of the dividing corporation.

(c) Taxes.—Any taxes, penalties and public accounts of the Commonwealth, claimed against the dividing corporation, but not settled, assessed or determined prior to such division, shall be settled, assessed or determined against any of the resulting corporations, and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of all such corporations. The Department of Revenue may, upon the application of the dividing corporation, release one or more, but less than all, of the resulting corporations from liability for all taxes, penalties and public accounts of the dividing corporation due the Commonwealth or any other taxing authority for periods prior to the effective date of the division, if the Department of Revenue is satisfied that the public revenues will be adequately secured.

(d) Articles of surviving corporation.—The articles of incorporation of the surviving corporation, if there be one, shall be deemed to be amended to the extent, if any, that changes in its articles are stated in the plan of division.

(e) Articles of new corporations.—The statements which are set forth in the plan of division with respect to each new domestic corporation and which are required or permitted to be set forth in restated articles of incorporation of corporations incorporated under this article, shall be deemed to be the articles of incorporation of each such new corporation.

(f) Directors and officers.—Unless otherwise provided in the plan, the directors and officers of the dividing corporation shall be the initial directors and officers of each of the resulting corporations.

(g) Automatic designation of agent for process.—If any of the resulting corporations is a nonqualified foreign corporation, the articles of division shall constitute a designation of the Department of State and any successor agency as the true and lawful attorney of such corporation upon whom may be served all lawful process in any action or proceeding against it for enforcement against it of any obligation of the dividing corporation for which it may be liable or any obligation arising from the division proceedings, and an agreement that the service of process upon the Department of State or its successor shall be of the same legal force and validity as if served on such corporation and that the authority for such service of process shall continue in force as long as any of the aforesaid obligations remain outstanding in this Commonwealth.

CHAPTER 12. DIVISION

Article 1. Plan of Division

§ 6210. Division of nonprofit corporations authorized

6210. (a) A nonprofit corporation may be divided into two or more nonprofit corporations as provided in this chapter.

[(b) A nonprofit corporation organized for charitable purposes may divide only into two or more nonprofit corporations organized for charitable purposes.]

Comment. Section 6210 is new. Prior law did not provide for division of corporations. Chapter 12 is based in large part on Sections 7941-7946 of the Pennsylvania Nonprofit Corporation Law of 1972. Pa. Stat. Ann., Tit. 15, §§ 7941-7946 (Supp. 1975). [Subdivision (b) makes clear that corporations organized for charitable purposes may not divide so as to create a noncharitable nonprofit corporation.]

§ 6211. Definitions

6211. As used in this chapter:

(a) "Disappearing nonprofit corporation" means a dividing nonprofit corporation that does not remain in existence after the division is effective.

(b) "Dividing nonprofit corporation" means a nonprofit corporation which initiates the division procedure.

(c) "New nonprofit corporation" means a nonprofit corporation which is incorporated as a consequence of a division.

(d) "Resulting nonprofit corporation" means a nonprofit corporation in existence after the division is effective and includes the new nonprofit corporation and the surviving nonprofit corporation, if any.

(e) "Surviving nonprofit corporation" means a dividing nonprofit corporation that remains in existence after the division is effective.

Comment. Section 6211 defines several terms used in this chapter. Subdivisions (c), (d), and (e) are derived from the Pennsylvania Nonprofit Corporation Law of 1972, Pa. Stat. Ann., Tit. 15, § 7941(c) (Supp. 1975).

§ 6212. Plan of division

6212. (a) A plan of division shall be prepared which states the following:

(1) The terms and conditions of the division.

(2) A statement whether the dividing nonprofit corporation will survive the division.

(3) If the dividing nonprofit corporation will survive the division, the amendments to the articles of such nonprofit corporation to be effected by the division, if any.

(4) The name of the dividing nonprofit corporation and the names of the resulting nonprofit corporations.

(5) The manner of converting memberships and obligations of the dividing nonprofit corporation into memberships and obligations of the resulting nonprofit corporations.

(6) The articles required by subdivision (b).

(7) Other details and provisions as are desired, if any.

(b) Articles of each new nonprofit corporation, which contain the matters required to be stated in the articles by Section 5250, shall be included in or attached to the plan of division.

Comment. Section 6212 is based on portions of the Pennsylvania Nonprofit Corporation Law of 1972, Pa. Stat. Ann., Tit. 15, §§ 7942, 7943 (Supp. 1975). Compare Sections 6111 (contents of agreement of merger or consolidation) and 6113 (articles of consolidated nonprofit corporation).

968/854 § 6213

§ 6213. Amendment of articles by plan of division

6213. If the plan of division provides for an amendment to the articles of the dividing nonprofit corporation which is to survive the division, such amendment is subject to the provisions of Sections 5910, 5911, and 5932.

Comment. Section 6213 is analogous to Section 6112 (amendment of articles by agreement of merger). Compare Pa. Stat. Ann., Tit. 15, § 7946(d) (Supp. 1975).

968/856 § 6214

§ 6214. Articles of new nonprofit corporations

6214. The matters required to be stated by subdivision (b) of Section 6212 shall be the articles of the new nonprofit corporation.

Comment. Section 6214 is based on the Pennsylvania Nonprofit Corporation Law of 1972, Pa. Stat. Ann., Tit. 15, § 7946(c) (Supp. 1975), and is analogous to Section 6113 (articles of consolidated nonprofit corporation).

Article 2. Approval of Plan of Division by Board and Members

§ 6220. Approval of plan of division by board and members

6220. The board shall approve and sign and the members shall approve the plan of division in the manner prescribed for the approval and signing of an agreement of merger pursuant to Article 2 (commencing with Section 6120) of Chapter 11.

Comment. Section 6220 makes applicable to division the provisions of Sections 6120-6123 relating to approval and signing of agreements of merger and consolidation. Compare Pa. Stat. Ann., Tit. 15, § 7942(c) (Supp. 1975).

§ 6221. Execution of certificate of approval; contents

6221. (a) After the plan of division has been approved by the board and members of the dividing nonprofit corporation, the officers shall execute an officers' certificate of approval.

(b) The officers' certificate of approval shall set forth the following:

(1) A statement that the plan of division was approved by the board.

(2) A statement that the plan of division was approved by the vote of the members which equaled or exceeded that required.

Comment. Section 6221 is analogous to Section 6124 (certificate of approval of merger or consolidation).

§ 6222. Notice of approval of plan of division

6222. When the plan of division has been approved by the board and the members of the dividing nonprofit corporation, notice of the approval shall be given each member in the manner provided for giving notice of meetings.

Comment. Section 6222 corresponds to Section 6125 (notice of approval of agreement of merger or consolidation).

Article 3. Amendment and Abandonment of Plan of Division

§ 6230. Amendment and abandonment of plan of division

6230. The plan of division may be amended or abandoned in the manner provided in Article 3 (commencing with Section 6130) of Chapter 11 relating to merger and consolidation.

Comment. Section 6230 incorporates the amendment and abandonment provisions applicable to mergers and consolidations. Compare Pa. Stat. Ann., Tit. 15, § 7942(c) (Supp. 1975).

Article 4. Filing Plan of Division and Certificate; Effect of Filing

§ 6240. Filing copy of plan of division and officers' certificate

6240. (a) A copy of the plan of division and the officers' certificate of approval shall be filed.

(b) Except as provided in Sections 6241 and 6242, and subject to Section 14831, the division is effective upon filing the copy of the plan of division and the officers' certificate of approval.

(c) The Secretary of State may certify a copy of the plan of division separate from the officers' certificate attached thereto.

Comment. Section 6240 is analogous to Section 6140 (filing copy of agreement of merger or consolidation). Compare Pa. Stat. Ann., Tit. 15, § 7944 (Supp. 1975).

§ 6241. Franchise Tax Board certificate of satisfaction

6241. A dividing nonprofit corporation which is not a surviving nonprofit corporation and which is subject to the Bank and Corporation Tax Law shall file a certificate of satisfaction of the Franchise Tax Board to the effect that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The plan of division shall not be filed by the Secretary of State until such certificate of satisfaction is filed.

Comment. Section 6241 is similar to Section 6141.

§ 6242. Notice to Attorney General; assets held on charitable trust or by charitable corporation

6242. Where a dividing nonprofit corporation holds assets on a charitable trust or is organized for charitable purposes, a copy of the plan of division shall be filed with the Attorney General before the plan is filed with the Secretary of State or, if the plan is filed with a delayed effective date pursuant to Section 14831, before such date. An officers' certificate of such filing with the Attorney General, where required, shall be filed with the Secretary of State. The plan shall not be filed by the Secretary of State until such officers' certificate is filed.

Comment. Section 6242 is analogous to Section 6142. See the Comment to Section 6142.

§ 6243. Effect of division

6243. On the effective date of a division:

(a) The dividing nonprofit corporation is divided into the distinct and independent resulting nonprofit corporations named in the plan of division.

(b) If the dividing nonprofit corporation is not to be a surviving nonprofit corporation, the existence of the dividing nonprofit corporation ceases.

(c) The resulting nonprofit corporations succeed, without other transfer, to the rights and property of the dividing nonprofit corporation in accordance with the plan of division or, if the plan does not

specify the distribution of rights and property, as tenants in common.

(d) The resulting nonprofit corporations are subject to all the debts and liabilities of the dividing nonprofit corporation in the manner specified in the plan of division or, if no such specification is made, as joint and several obligors. One or more, but not all, of the resulting nonprofit corporations shall be free of all debts and liabilities of the dividing nonprofit corporation to the extent, if any, specified in the plan and if all other applicable provisions of law are complied with.

Comment. Section 6243 is derived from the Pennsylvania Nonprofit Corporation Law of 1972, Pa. Stat. Ann., Tit. 15, § 7946(a), (b) (Supp. 1975). Subdivision (d) of Section 6243 permits less than all of the resulting nonprofit corporations to be free from debts and liabilities of the dividing nonprofit corporation so long as other laws, such as those relating to fraudulent conveyances (Civil Code §§ 3439-3440.1) and bulk transfers (Com. Code §§ 6101-6111), are complied with.

§ 6244. Rights of creditors and liens preserved

6244. Rights of creditors against, and liens upon the property of, a dividing nonprofit corporation are preserved unimpaired. A lien upon the property of a dividing nonprofit corporation is limited to the property affected thereby immediately prior to the time the division becomes effective.

Comment. Section 6244 is analogous to Section 6145. Compare Pa. Stat. Ann., Tit. 15, § 7946(b) (Supp. 1975).

§ 6245. Effect of division on bequest, devise, gift, etc.

6245. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, which is made to a dividing nonprofit corporation and which is to take effect or remain payable after the division, inures to the resulting nonprofit corporations pursuant to the terms of the plan of division or, if the plan of division does not provide for the manner of disposition thereof, to the surviving nonprofit corporation, if any, or, if there is no surviving nonprofit corporation, to the new nonprofit corporations as tenants in common.

Comment. Section 6245 is analogous to Section 6146.

§ 6246. Effect on pending actions or proceedings

6246. (a) An action or proceeding pending by or against a dividing nonprofit corporation may be prosecuted to judgment which binds the resulting nonprofit corporations.

(b) The resulting nonprofit corporations may be proceeded against or substituted in place of the dividing nonprofit corporation regardless of any provision in the plan of division apportioning the debts and liabilities of the dividing nonprofit corporation.

Comment. Section 6246 is derived from the Pennsylvania Nonprofit Corporation Law of 1972, Pa. Stat. Ann., Tit. 15, § 7946(b) (Supp. 1975), and is similar to Section 6147.

§ 6247. Evidentiary effect of agreement

6247. A copy of a plan of division, certified on or after its effective date by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the division is effected who has custody thereof, has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the division, the existence on the effective date of the resulting nonprofit corporations, and the performance of the conditions necessary to the adoption of any amendment to the articles of the surviving nonprofit corporation contained in the plan.

Comment. Section 6247 corresponds to Section 6148.

§ 6248. Effect of recording plan

6248. Where a division takes place under the laws of this state or under the laws of a state or place providing substantially that the making and filing of the plan of division vests in the new nonprofit corporation the designated real property of the dividing nonprofit corporation, the filing for record in the office of the county recorder of a county in this state in which real property of the dividing nonprofit corporation is located of either (1) a certificate prescribed by the Secretary of State or (2) a copy of the plan of division, certified by the Secretary of State or authorized public official of the state or place pursuant to the laws of which the division is effected, evidences

record ownership in the new nonprofit corporation of the designated interest of the dividing nonprofit corporation in the real property located in that county.

Comment. Section 6248 is similar to Section 6149.

968/871 § 6250

Article 5. Division Involving Foreign Nonprofit Corporations

§ 6250. Division involving foreign nonprofit corporations authorized

6250. (a) A foreign nonprofit corporation may be divided into one or more domestic nonprofit corporations and one or more foreign nonprofit corporations or into two or more domestic nonprofit corporations if the foreign nonprofit corporation is authorized by the laws under which it is formed to effect such division.

(b) A domestic nonprofit corporation may be divided into one or more domestic nonprofit corporations and one or more foreign nonprofit corporations or into two or more foreign nonprofit corporations if the laws of the foreign jurisdiction authorize such division.

Comment. Section 6250 is based on the Pennsylvania Nonprofit Corporation Law of 1972, Pa. Stat. Ann., Tit. 15, § 7941 (Supp. 1975). Compare Article 5 (commencing with Section 6150) of Chapter 11 (mergers and consolidations involving foreign nonprofit corporations).

968/872 § 6251

§ 6251. Law controlling division

6251. (a) If the dividing nonprofit corporation is a domestic non-

profit corporation, the division shall be effected pursuant to this chapter.

(b) If the dividing nonprofit corporation is a foreign nonprofit corporation, the division proceedings may be in accordance with the laws of the state or place of incorporation of the dividing nonprofit corporation. A plan of division which satisfies the requirements of Section 6212 shall be filed in order to incorporate a domestic resulting nonprofit corporation.

Comment. Section 6251 is analogous to Section 6153 (law controlling merger or consolidation). Compare Pa. Stat. Ann., Tit. 15, § 7942(c) (Supp. 1975).

968/873

968/873 § 6260

Article 6. Action to Enjoin Division

§ 6260. Limitation on action to test validity of division

6260. Except as provided in Section 6261, no member of a nonprofit corporation has a right at law or in equity to attack the validity of a division or to have the division set aside or rescinded except in an action to test whether the number of memberships required to approve the plan of division have been legally voted in favor thereof.

Comment. Section 6260 is analogous to Section 6160.

968/874 § 6261

§ 6261. Action to enjoin or rescind division

6261. An action to enjoin or rescind a division which is manifestly unfair to the property rights of a member or a class of members may

be brought by a member whose rights are or will be affected and who holds a membership that satisfies both of the following requirements:

(a) The membership was held of record on the date for the determination of memberships entitled to be voted on the plan of division.

(b) The membership was not voted in favor of the plan of division.

Comment. Section 6261 is analogous to Section 6161.

§ 6262. Limitation on action

6262. No action pursuant to Section 6261 to enjoin or rescind a division may be commenced more than 60 days after the effective date of the division.

Comment. Section 6262 is analogous to Section 6162.