

1982 and 1983

**DELAWARE CORPORATION LAW AMENDMENTS**

**THE GENERAL CORPORATION LAW OF DELAWARE  
CHAPTER 1, TITLE 8, DELAWARE CODE OF 1953**

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**AMENDMENTS BY THE SECOND REGULAR SESSION OF  
THE 131st AND THE FIRST REGULAR SESSION  
OF THE 132nd GENERAL ASSEMBLIES OF  
THE STATE OF DELAWARE**

This pamphlet contains amendments to the Delaware General Corporation Law enacted by the second regular session of the 131st General Assembly and by the first regular session of the 132nd General Assembly.

The amendments were enacted in Senate Bill No. 635, Ch. 376, Laws of 1982, and in House Bill No. 185, Ch. 112, Laws of 1983. The commentaries which accompany the provisions of House Bill No. 185 were the legislative synopsis which accompanied the bill.

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# DELAWARE CORPORATION LAW AMENDMENTS

Senate Bill No. 635, Ch. 376, Laws of 1982:

**Section 1.** Amend subsection (b) of §391, Title 8, Delaware Code, by redesignating existing subsection (b) as subsection (b) (1) of said section.

**Section 2.** Amend subsection (b) of §391, Title 8, Delaware Code, by adding a paragraph (2) to said subsection to read as follows:

“(2) For the purpose of computing the taxes prescribed in subsection (a) (2) and (3) of this section, a certificate of amendment of certificate of incorporation, or an amended certificate of incorporation before payment of capital, or a restated certificate of incorporation, shall be considered as increasing the authorized capital stock of a corporation provided it involves an increase in the number of shares, or an increase in the par value of shares, or a change of shares with par value into shares without par value, or a change of shares without par value into shares with par value, or any combination of two or more of the above changes, and provided further that the tax computed at the rates set forth in subsection (a) (1) of this section upon the total authorized capital stock of the corporation including the proposed change or changes exceeds the tax so computed upon the total authorized stock of the corporation excluding such change or changes.”

## DELAWARE CORPORATION LAW AMENDMENTS

House Bill No. 185, Ch. 112, Laws of 1983:

**Section 2.\*** Amend Section 103, Title 8, Delaware Code, by deleting the last sentence in subsection (d) thereof and substituting therefor the following:

Any instrument may provide that it is not to become effective until a specified time subsequent to the time it is filed, but such time shall not be later than a time on the 90th day after the date of its filing.

Commentary on Section 103 (d)

*The last sentence of Section 103 (d) has been revised to permit an instrument filed with the Secretary of State to provide that the instrument will become effective at a later time rather than a later date. This allows for both greater precision and greater flexibility in specifying when a filing is to become effective since the word "time" encompasses hours and minutes within a day as well as days. As amended, the Section would permit the specification not only of a later date for effectiveness but also of a specified time either on the filing date or a later date.*

**Section 3.** Amend Section 122, Title 8, Delaware Code, by deleting the semi-colon in paragraph (13) thereof and substituting a comma therefor and by adding thereto the following:

and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of (a) a corporation all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation, or (b) a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, or (c) a corporation all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation.

Commentary on Section 122 (13)

*A clause has been added to Section 122 (13) to clarify the power of interrelated corporations to guarantee payment of, or to pledge assets with respect to, the obligations of their parent, subsidiaries or siblings. The amendment*

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\* Section 1 of H.B. No. 185 does not concern the General Corporation Law.

*deals only with the issues of corporate authority and consideration and does not purport to insulate the board of directors of the guaranteeing corporation from liability for losses suffered by the corporation as a result of guarantees or pledges improvidently made, to which existing case law remains applicable.*

**Section 4.** Amend Section 134, Title 8, Delaware Code, by changing the title thereof to read "Change of address or name of registered agent", by designating the text of existing Section 134 as subsection (a) thereof, and by adding a new subsection (b) thereto as follows:

(b) In the event of a change of name of any person or corporation acting as registered agent in this State, such registered agent shall file with the Secretary of State a certificate, executed and acknowledged by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the names of all the corporations represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such corporations. Upon the filing of such certificate, the Secretary of State shall furnish a certified copy of the same under his hand and seal of office, and the certified copy shall be recorded in the office of the recorder of the county where the registered office of each of the corporations recited in the certificate is located in this State.

**Commentary on Section 134 and 391 (a)**

*Section 134 has been amended to add a new subsection providing a procedure for a registered agent to change its name, and Section 391 (a) has been amended to authorize the Secretary of State to charge a fee upon the filing of a change of name certificate.*

**Section 5.** Amend Section 136, Title 8, Delaware Code, by deleting from the second sentence in subsection (a) thereof the phrase "in duplicate,".

**Commentary on Section 136 (a)**

*The amendment to Section 136 (a) eliminates the requirement that the affidavit submitted by a registered agent to the Secretary of State in support of the registered agent's resignation without appointing a successor be "in duplicate."*

**Section 6.** Amend Section 141, Title 8, Delaware Code, by deleting the final sentence of subsection (c) thereof and substituting therefor the following:

Any such committee, to the extent provided in the resolution of the board of directors, or in the by-laws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and

may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in Section 151 (a) of this title, fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation), adopting an agreement of merger or consolidation under Sections 251 or 252 of this title, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the by-laws of the corporation; and, unless the resolution, by-laws, or certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of this title.

#### Commentary on Section 141 (c)

*The amendments to Section 141 (c) are intended to make clear that a committee of the board of directors may (a) be empowered by a resolution of the board of directors to fix certain of the preferences and rights of stock to be issued pursuant to Section 151 (a) and authority granted in the certificate of incorporation; and (b) adopt certificates of ownership and merger pursuant to Section 253 respecting mergers between a parent and a subsidiary at least 90% of the outstanding stock of each class of which is owned by the parent.*

**Section 7. Amend Section 145, Title 8, Delaware Code, by deleting subsection (e) thereof in its entirety and substituting therefor the following:**

(e) Expenses incurred by an officer or director in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of such director or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this Section. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.



Commentary on Section 145 (e)

*The amendment to Section 145 (e) eliminates the requirement that an employee or agent to whom expenses of defending a civil or criminal action, suit or proceeding are paid by the corporation in advance furnish an undertaking to the corporation to repay such advances. Instead, the board of directors may determine the terms and conditions, if any, that should be imposed in connection with the making of such advances. Existing law with respect to the advance of expenses to directors or officers remains unchanged.*

**Section 8. Amend Section 151, Title 8, Delaware Code, by inserting between the first sentence and second sentence in subsection (a) thereof the following:**

Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the certificate of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors.

Commentary on Section 151 (a) and (g)

*The amendment to Section 151 (a) is similar to the 1974 amendments to Sections 251 (b), 252 (b), 254 (c), 256 (b) and 257 (b), which made clear that merger terms could be made dependant upon facts ascertainable outside of the merger agreement. The present amendment confirms that the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of a class or series of stock, including dividend and conversion rates, may be made dependent upon facts ascertainable outside of the certificate of incorporation or board resolutions providing for the issuance of such class or series of stock, so long as it is made clear in the certificate or board resolution the precise way that these facts will operate on the class or series of stock so issued.*

*Corporations will occasionally decide not to issue a class or series of preferred stock after its authorization or, more frequently, redeem, purchase or otherwise acquire all outstanding shares of a class or series without any intention of issuing any of the unissued shares or of reissuing the reacquired shares. The proposed amendment to Section 151 (g) provides a procedure comparable to that available under Section 243 (b) whereby the board of directors may delete*

*all reference to such class or series from its certificate of incorporation. The proposed amendment also confirms that certificates filed under this Subsection will have the effect contemplated by Section 104.*

**Section 9.** Amend subsection (f) of Section 151, Title 8, Delaware Code, by adding, following the last sentence thereof, the following:

Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section or Sections 156, 202 (a) or 218 (a) or with respect to this Section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

*Commentary on Sections 151 (f), 155, 156, 158, 159, 167, 168, 201, 202 (a), 218 (a), 251 (b), 252 (b), 253 (a), 260, 262 (g) and (i), 324 (c), and 342 (a) (1)*

*The amendments to these sections are intended to authorize corporations to issue "certificateless stock." They are complementary to amendments being proposed to Article 8 of the Uniform Commercial Code, which amendments were proposed by the Permanent Editorial Board of the Uniform Commercial Code and National Conference of Commissioners on Uniform State Laws in an endeavor to solve partially the problems encountered by the large volume of trading in securities and to eliminate some of the paperwork involved in the securities industry. Section 201 provides that if there are any conflicts between this Title and the Uniform Commercial Code, the provisions of this Title govern. Also, any stockholder, even if the holder of certificateless stock, may request that a certificate be issued to him, and the corporation will be obligated to issue a certificate upon demand. Therefore, the rights of existing stockholders, and future stockholders, to obtain a stock certificate if they desire will be preserved. These amendments are not intended to effect any changes of substance with respect to the rights of stockholders or to differentiate between the rights of the holders of certificated and noncertificated shares of stock.*

**Section 10.** Amend subsection (g) of Section 151, Title 8, Delaware Code, by adding, following the last sentence thereof, the following:

When no shares of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series

remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding and that none will be issued may be executed, acknowledged, filed and recorded in accordance with Section 103 of this title and, when such certificate becomes effective, it shall have the effect of eliminating from the certificate of incorporation all reference to such class or series of stock.

When any certificate filed under this subsection becomes effective, it shall have the effect of amending the certificate of incorporation.

#### Commentary on Section 151 (g)

*See Commentary following amendment to Section 151 (a).*

**Section 11.** Amend Section 155, Title 8, Delaware Code, by deleting Section 155 in its entirety and substituting therefor the following:

#### **§ 155. Fractions of Shares**

A corporation may, but shall not be required to, issue fractions of a share. If it does not issue fractions of a share, it shall (1) arrange for the disposition of fractional interests by those entitled thereto, (2) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined or (3) issue scrip or warrants in registered form (either represented by a certificate or uncertificated) or in bearer form (represented by a certificate) which shall entitle the holder to receive a full share upon the surrender of such scrip or warrants aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip or warrants to be issued subject to the conditions that they shall become void if not exchanged for certificates representing the full shares or uncertificated full shares before a specified date, or subject to the conditions that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip or warrants, or subject to any other conditions which the board of directors may impose.

#### Commentary on Section 155

*See Commentary following amendment to Section 151 (f).*



**Section 12. Amend Section 156, Title 8, Delaware Code, by deleting Section 156 in its entirety and substituting therefor the following:**

**§ 156. Partly Paid Shares**

Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

*Commentary on Section 156*

*See Commentary following amendment to Section 151 (f).*

**Section 13. Amend Section 158, Title 8, Delaware Code, by deleting Section 158 in its entirety and substituting therefor the following:**

**§ 158. Stock certificates; uncertificated shares**

The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

### Commentary on Section 158

*See Commentary following amendment to Section 151 (f).*

**Section 14.** Amend Section 159, Title 8, Delaware Code, by deleting Section 159 in its entirety and substituting therefor the following:

§ 159. Shares of stock; personal property,  
transfer and taxation

The shares of stock in every corporation shall be deemed personal property and transferable as provided in Article 8 of Subtitle I of Title 6. No stock or bonds issued by any corporation organized under this chapter shall be taxed by this State when the same shall be owned by non-residents of this State, or by foreign corporations. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of transfer if, when the certificates are presented to the corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and transferee request the corporation to do so.

### Commentary on Section 159

*See Commentary following amendment to Section 151 (f).*

**Section 15.** Amended Section 167, Title 8, Delaware Code, by deleting Section 167 in its entirety and substituting therefor the following:

§ 167. Lost, stolen or destroyed stock  
certificates; issuance of new  
certificate

A corporation may issue a new certificate of stock or uncertificated shares in place of any certificate therefore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen, or destroyed certificate, or his legal representative to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

### Commentary on Section 167

*See Commentary following amendment to Section 151 (f).*

**Section 16. Amended Section 168, Title 8, Delaware Code, by deleting Section 168 in its entirety and substituting therefor the following:**

**§ 168. Judicial proceedings to compel issuance  
of new certificate or uncertificated  
shares**

(a) If a corporation refuses to issue new uncertificated shares or a new certificate of stock in place of a certificate theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost, stolen or destroyed, the owner of the lost, stolen or destroyed certificate or his legal representatives may apply to the Court of Chancery for an order requiring the corporation to show cause why it should not issue new uncertificated shares or a new certificate of stock in place of the certificate so lost, stolen or destroyed. Such application shall be by a complaint which shall state the name of the corporation, the number and date of the certificate, if known or ascertainable by the plaintiff, the number of shares of stock represented thereby and to whom issued, and a statement of the circumstances attending such loss, theft or destruction. Thereupon the court shall make an order requiring the corporation to show cause at a time and place therein designated, why it should not issue new uncertificated shares or a new certificate of stock in place of the one described in the complaint. A copy of the complaint and order shall be served upon the corporation at least five days before the time designated in the order.

(b) If, upon hearing, the court is satisfied that the plaintiff is the lawful owner of the number of shares of capital stock, or any part thereof, described in the complaint, and that the certificate therefor has been lost, stolen or destroyed, and no sufficient cause has been shown why new uncertificated shares or a new certificate should not be issued in place thereof, it shall make an order requiring the corporation to issue and deliver to the plaintiff new uncertificated shares or a new certificate for such shares. In its order the court shall direct that, prior to the issuance and delivery to the plaintiff of such new uncertificated shares or a new certificate, the plaintiff give the corporation a bond in such form and with such security as to the court appears sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new uncertificated shares or new certificate. No corporation which has issued uncertificated shares or a certificate pursuant to an order of the court entered hereunder shall be liable in an amount in excess of the amount specified in such bond.



## Commentary on Section 168

*See Commentary following amendment to Section 151 (f).*

**Section 17.** Amend Section 170, Title 8, Delaware Code, by deleting from subsection (a) thereof each reference to "242" and the comma preceding each such reference.

## Commentary on Section 170 (a)

*This amendment deletes references in Section 170 (a) to computation of surplus in accordance with Section 242 since Section 242 is being amended to eliminate the requirement that an amendment of the certificate of incorporation state that a certificate of reduction of capital will be filed where an amendment effects specified changes.*

**Section 18.** Amend Section 201, Title 8, Delaware Code, by deleting Section 201 in its entirety and substituting therefor the following:

§ 201. Transfer of stock, stock certificates  
and uncertificated stock

Except as otherwise provided in this Chapter, the transfer of stock and the certificates of stock which represent the stock or uncertificated stock shall be governed by Article 8 of Subtitle I of Title 6. To the extent that any provision of this Chapter is inconsistent with any provision of Subtitle I of Title 6, the provisions of this Chapter shall be controlling.

## Commentary on Section 201

*See Commentary following amendment to Section 151 (f).*

**Section 19.** Amend Section 202, Title 8, Delaware Code, by deleting subsection (a) in its entirety and substituting therefor the following:

(a) A written restriction on the transfer or registration of transfer of a security of a corporation, if permitted by this Section and noted conspicuously on the certificate representing the security or, in the case of uncertificated shares, contained in the notice sent pursuant to Section 151 (f) of this Title, may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate representing the security or, in the case of uncertificated shares, contained in the notice sent pursuant to Section 151 (f) of this Title, a restriction, even though permitted by this Section, is ineffective except against a person with actual knowledge of the restriction.



**Section 20.** Amend Section 202, Title 8, Delaware Code, by inserting the words "or of maintaining any other tax advantage to the corporation" following the words "Internal Revenue Code" in subsection (d) thereof.

Commentary on Section 202 (a) and (d)

*The amendment to Section 202 (a) is intended to correct an apparent inconsistency within Section 202. The term "security" was heretofore used in the Section to refer both to the underlying ownership interest and to the indicia of ownership represented by a certificate. The words "certificate representing the" have been inserted before the word "security" where it is obvious that the statutory reference is to the muniment of title only, thus codifying the holding in Joseph E. Seagram & Sons, Inc. v. Conoco, Inc., 519 F. Supp. 506 (D. Del. 1981).*

*At present, Section 202 (d) provides that a restriction on transfer is conclusively presumed to be for a valid purpose if it is intended to allow the corporation to maintain its Subchapter S status. The amendment would recognize that maintaining any favorable tax status is desirable by providing that restrictions designed to maintain any favorable tax status are conclusively presumed to be for a proper purpose.*

**Section 21.** Amend Section 216, Title 8, Delaware Code, by deleting from the second sentence thereof the phrase ", but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting" and inserting said phrase, preceded by a comma, before the period at the end of the first sentence thereof.

Commentary on Section 216

*The amendment to Section 216 makes it clear that the authority granted in Section 216 to specify in the certificate of incorporation or by-laws the number of shares which must be represented at meetings of stockholders in order to constitute a quorum is subject to a minimum limit of one-third of the shares entitled to vote at the meeting. The amendment cures an ambiguity which arose because of the previous placement of the limitation.*

**Section 22.** Amend Section 218, Title 8, Delaware Code, by deleting subsection (a) thereof in its entirety and substituting therefor the following:

(a) One or more stockholders may by agreement in writing deposit capital stock of an original issue with or transfer capital stock to any person or persons, or corporation or corporations authorized to act as trustee, for the purpose of vesting in such person or persons, corporation or corporations, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such

agreement, not exceeding ten years, upon the terms and conditions stated in such agreement. The agreement may contain any other lawful provisions not inconsistent with such purpose. After the filing of a copy of the agreement in the registered office of the corporation in this State, which copy shall be open to the inspection of any stockholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock or uncertificated stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with him or them, and any certificates of stock or uncertificated stock so transferred to the voting trustee or trustees shall be surrendered and cancelled and new certificates or uncertificated stock shall be issued therefore to the voting trustee or trustees. In the certificate so issued, if any, it shall be stated that it is issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or otherwise, except for his or their own individual malfeasance. In any case where two or more persons are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

#### Commentary on Section 218 (a)

*See Commentary following amendment to Section 151 (f).*

**Section 23.** Amend Section 241, Title 8, Delaware Code, by deleting the period at the end of subsection (b) thereof and substituting therefor a comma and by adding the following:

except as to those persons who are substantially and adversely affected by the amendment and as to those persons the amendment shall be effective from the filing date.

#### Commentary on Section 241 (b)

*Since the last sentence of Section 241 (b) contemplates that amendments to a certificate of incorporation adopted by the incorporators or directors before shares are issued will relate back to the date when the original certificate of incorporation became effective, a clause has been added to protect persons substantially and adversely affected by an amendment.*

**Section 24.** Amend Section 242, Title 8, Delaware Code, by deleting subsection (b) thereof in its entirety, by redesignating subsection (c) as subsection (b), and by changing the reference to "this paragraph (c) (2)" in new subsection (b) to "this paragraph (b) (2)."

Commentary on Section 242

*The amendment to Section 242 eliminates the references to a certificate of reduction of capital pursuant to Section 244 (c). The amendment is required since Section 244 (c) is to be eliminated. Certain conforming changes are also made.*

**Section 25.** Amend Section 244, Title 8, Delaware Code, by deleting the last comma in the first sentence of subsection (b) thereof, by substituting a period therefor, and deleting therefrom the phrase ", and the certificate required by subsection (c) of this section shall so state."

**Section 26.** Amend Section 244, Title 8, Delaware Code, by deleting subsection (c) thereof in its entirety.

Commentary on Section 244

*The amendment to Section 244 eliminates the requirement that a certificate be filed with the Secretary of State in order to effect a reduction in capital. The filing requirement has proven not to serve any particular purpose inasmuch as the initial amount of capital and increases to capital are not filed with the Secretary of State. Also, in general, the amount of capital is no longer relied on to any degree by stockholders and creditors in making investment and lending decisions.*

**Section 27.** Amend Section 245, Title 8, Delaware Code, by deleting the period at the end of the last sentence in subsection (b) thereof and by adding thereto the phrase "or, if the corporation has not received any payment for any of its stock, in the manner and by the vote prescribed by Section 241 of this title."

**Section 28.** Amend Section 245, Title 8, Delaware Code, by deleting from the third sentence in subsection (c) thereof the phrase "by the directors or stockholders, as the case may be," and by inserting in the fourth sentence thereof following the words "vote of stockholders" the parenthetical phrase "(unless it was adopted pursuant to the provisions of Section 241 of this title)" followed by a comma thereafter.

**Section 29.** Amend Section 245, Title 8, Delaware Code, by deleting the last sentence of subsection (c) thereof and substituting therefor the following:

A restated certificate of incorporation may omit (a) such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares, and (b) such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective. Any such omissions shall not be deemed a further amendment.

Commentary on Section 245

*The amendments to the last sentence of Section 245 (b) and to the second and third sentences of Section 245 (c) provide that, where a corporation has not issued stock, a restated certificate of incorporation may be adopted by the incorporators or directors.*

*Section 242 permits amendments of the certificate of incorporation but, if such amendments effect a change in stock or the rights of stockholders or an exchange, reclassification or cancellation of stock or rights of stockholders, Section 242 also requires that such provisions as may be necessary to effect such change, exchange, reclassification or cancellation be included in the certificate of amendment amending the certificate of incorporation. While the reason for requiring such provisions to be included in the amendment itself is that otherwise the stockholders would not have voted on the operative provisions, such as the exchange ratio, such provisions are of historical interest only after the effective date of the amendment. The amendment to the last sentence of Section 245 (c) is intended to allow the board of directors to eliminate such provisions in connection with the filing of a restated certificate of incorporation.*

**Section 30.** Amend Section 251, Title 8, Delaware Code, by deleting the word "the" after the words "surrender of" in the second sentence of subsection (b) thereof and substituting therefor the word "any", and by inserting after the word "executed" in the third sentence in subsection (b) the words "and acknowledged".

**Section 31.** Amend Section 251, Title 8, Delaware Code, by deleting from subsection (c) thereof the phrase "in addition to the execution required by subsection (b) of this section be executed, acknowledged, and" and substituting therefor the word "be".



**Section 32.** Amend Section 251, Title 8, Delaware Code, by adding following the final sentence in subsection (d) thereof the following:

Any agreement of merger or consolidation may contain a provision that the boards of directors of the constituent corporations may amend the agreement at any time prior to the filing of the agreement (or a certificate in lieu thereof) with the Secretary of State, provided that an amendment made subsequent to the adoption of the agreement by the stockholders of any constituent corporation shall not (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such constituent corporation, (2) alter or change any term of the certificate of incorporation of the surviving corporation to be effected by the merger or consolidation, or (3) alter or change any of the terms and conditions of the agreement if such alteration or change would adversely affect the holders of any class or series thereof of such constituent corporation.

**Section 33.** Amend Section 251, Title 8, Delaware Code, by deleting from the fourth sentence of subsection (f) thereof the phrase "executed, acknowledged and"

Commentary on Sections 251 (b), (c), (d) and (f); 254 (d); 256 (c) and 257 (c)

The amendments to Section 251 (b), (c), and (f), 254 (d), 256 (c) and 257 are designed to eliminate the requirement of a second execution of an agreement of merger or consolidation following approval by the stockholders of a corporation. The second execution has proven not to be of any substantive effect and to be an unintended pitfall.

The amendment to Section 251 (d) is designed to permit amendments to an agreement of merger or consolidation subsequent to stockholder adoption. The amendment specifically does not permit such a change in the amount and kind of consideration to be received in the merger or in the terms of the certificate of incorporation of the surviving corporation. In addition, no alteration or change in the terms and conditions of the merger or consolidation would be permitted if it would have an adverse effect on stockholders who have already voted on the agreement. The provision is designed to protect holders of all classes of stock of a constituent corporation even if such holders do not have the right to vote on the merger.

**Section 34.** Amend Section 252 (b), Title 8, Delaware Code, by deleting the word "the" after the words "surrender of" in the second sentence of subsection (b) thereof and substituting therefor the word "any".

Commentary on Section 252 (b)

See Commentary following amendment to Section 151 (f).

**Section 35. Amend Section 252, Title 8, Delaware Code, by deleting subsection (d) thereof in its entirety and substituting therefor the following:**

(d) If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to the provisions of Section 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$25.00 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than five years from his receipt of the service of process.

**Commentary on Sections 252 (d); 256 (d); 321 (b); 376 (b); 381 (d) and 382 (c)**

*The amendments to Sections 252 (d), 256 (d), 321 (b), 376 (b), 381 (d) and 382 (c) are intended to make uniform the notification procedure of the Secretary of State in the event of service of process on corporations effected by serving the Secretary of State; to increase and make uniform the fee that must accompany such service in order to provide for the costs of notification and administration; and to clarify the information that the Secretary of State*

must retain and the method and duration of retention of such information. The amendments are being effected to Section 252 (d) (relating to service of process [on] a non-Delaware stock corporation surviving or resulting from a merger or consolidation with a Delaware stock corporation); Section 256 (d) (relating to service of process on non-Delaware non-stock, non-profit corporations surviving or resulting from a merger or consolidation with a Delaware non-stock, non-profit corporation); Section 321 (b) (relating to service of process on Delaware corporations); Section 376 (b) (relating to service of process on foreign corporations qualified to do business in Delaware); Section 381 (d) (relating to service of process on foreign corporations which have withdrawn qualification to do business in Delaware); and Section 382 (c) (relating to service of process on foreign corporations transacting, but not qualified to transact, business in Delaware).

**Section 36.** Amend Section 253, Title 8, Delaware Code, by deleting the word "the" after the words "surrender of" in the second sentence of subsection (a) thereof and substituting therefor the word "any".

Commentary on Section 253 (a)

*See Commentary following amendment to Section 151 (f).*

**Section 37.** Amend Section 253, Title 8, Delaware Code, by adding between the first and second sentences in subsection (c) thereof the following:

References to "agreement of merger" in Sections 251 (d) and 251 (e) of this title shall mean for purposes of this Section 253 (c) the resolution of merger adopted by the board of directors of the parent corporation.

Commentary on Section 253 (c)

*This amendment makes clear that a merger under Section 253 does not require an agreement of merger in addition to board resolutions in order for Subsections (d) and (e) of Section 251 to be applicable.*

**Section 38.** Amend Section 254, Title 8, Delaware Code, by inserting in subsection (d) thereof the word "certified" and a comma thereafter in the first sentence therein following the word "approved" and preceding the word "executed".

Commentary on Section 254 (d)

*See Commentary following amendment to Section 251.*

**Section 39.** Amend Section 255, Title 8, Delaware Code, by deleting subsection (a) thereof in its entirety and substituting therefor the following:

(a) Any two or more non-stock corporations of this State, whether or not organized for profit, may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new non-stock corporation, whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

**Section 40.** Amend Section 255, Title 8, Delaware Code, by deleting from subsection (b) thereof the comma after the word "non-stock" and by deleting the word "non-profit".

**Section 41.** Amend Section 255, Title 8, Delaware Code, by adding thereto a new subsection (f) as follows:

(f) Nothing in this section shall be deemed to authorize the merger of a charitable non-stock corporation into a non-stock corporation if such charitable non-stock corporation would thereby have its charitable status lost or impaired; but a non-stock corporation may be merged into a charitable non-stock corporation which shall continue as the surviving corporation.

Commentary on Section 255 (a), (b) and (f)

*The General Corporation Law of the State of Delaware nowhere authorizes the merger of two or more domestic non-stock corporations unless all constituent corporations are non-profit corporations. In view of Section 257, there is no reason not to permit mergers of domestic non-stock corporations organized for profit. The amendments to Section 255 (a) and (b) will remedy the problem. In addition to deleting the word "non-profit" in Subsections (a) and (b), the phrase "whether or not organized for profit" is inserted in Subsection (a) both for clarity and to be consistent with Sections 257 (a) and 258 (a). New Subsection (f) is consistent with Section 254 (f), 257 (e) and 258 (d). These Subsections exist to protect against the argument that the mere power to merge with a non-charitable corporation causes a charitable corporation to lose its exempt status under federal tax law asserted by the Internal Revenue Service in Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633, 642-46 (8th Cir. 1963), cert. denied, 376 U.S. 969 (1964).*

**Section 42.** Amend Section 256, Title 8, Delaware Code, by inserting following the word "approved" and preceding the word "executed" in subsection (c) thereof the word "certified" and a comma thereafter in the first sentence therein.



*See Commentary following amendment to Section 251.*

**Section 43.** Amend Section 256, Title 8, Delaware Code, by deleting subsection (d) in its entirety and substitute therefor the following:

(d) If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any state other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving or resulting corporation thereof by letter, certified mail, return receipt requested, directed to such corporation at its address so specified, unless such surviving or resulting corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay the Secretary of State the sum of \$25.00 for the use of the State, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than five years from his receipt of the service of process.

*See Commentary following amendment to Section 252(d).*

**Section 44.** Amend Section 257, Title 8, Delaware Code, by inserting in subsection (c) thereof the word "certified" and a comma thereafter in the first sentence therein preceding each reference to the word "executed".

*See Commentary following amendment to Section 251.*

**Section 45.** Amend Section 260, Title 8, Delaware Code, by inserting the words "or uncertificated stock if authorized to do so" in the third sentence therein following the word "stock" and preceding the word "and".

Commentary on Section 260

*See Commentary following amendment to Section 151 (f).*

**Section 46.** Amend Section 262, Title 8, Delaware Code, by inserting in subsection (a) thereof the words "of a corporation of this State" in the first sentence therein following the word "stockholder" and preceding the word "who."

**Section 47.** Amend Section 262, Title 8, Delaware Code, by deleting the phrase "In such event" in subsection (c) thereof and substituting therefor the phrase "If the certificate of incorporation contains such a provision".

**Section 48.** Amend Section 262, Title 8, Delaware Code, by deleting subsection (d) thereof in its entirety and substituting therefor the following:

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this Section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders entitled to such appraisal rights that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this Section. Each stockholder electing to demand the appraisal of his shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of his shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of his shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided.

Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with the provisions of this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to Section 228 or Section 253 of this Chapter, the surviving or resulting

corporation, either before the effective date of the merger or consolidation or within 10 days thereafter, shall notify each of the stockholders entitled to appraisal rights of the effective date of the merger or consolidation and that appraisal rights are available for any or all of the shares of the constituent corporation, and shall include in such notice a copy of this Section. The notice shall be sent by certified or registered mail, return receipt requested, addressed to the stockholder at his address as it appears on the records of the corporation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of the notice, demand in writing from the surviving or resulting corporation the appraisal of his shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends to demand the appraisal of his shares.

**Section 49.** Amend Section 262, Title 8, Delaware Code, by deleting subsection (e) thereof in its entirety and substituting therefor the following:

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with the provisions of subsections (a) and (d) hereof and who is otherwise entitled to appraisal rights, may file a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder shall have the right to withdraw his demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after his written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) hereof, whichever is later.

**Section 50.** Amend Section 262, Title 8, Delaware Code, by inserting the words "surviving or resulting" before each reference to "corporation" in subsection (f) thereof.

*Commentary on Section 262 (a), (c), (d), (e), (f), (h) and (k)*

*The amendments to Section 262 make certain technical and conforming changes in the text of the statute. The amendment to Section 262 (a) makes*

clear that Section 262 affords appraisal rights only to stockholders of Delaware corporations. The amendment to Section 262 (c) clarifies the language of that Subsection to make clear the circumstances in which appraisal rights may be afforded to stockholders by the certificate of incorporation in addition to those rights provided by statute. The amendment to Section 262 (d) clarifies an ambiguity in the statute by stating more explicitly that a stockholder seeking appraisal must make a written demand for appraisal separate and apart from granting a proxy or voting against the merger or consolidation. The amendments to Section 262 (d), (e), (f), (h) and (k) also make technical changes necessary to conform the statute to the intent that it apply to both mergers and consolidations. No substantive changes are intended.

**Section 51.** Amend Section 262, Title 8, Delaware Code, by inserting the words "and who hold stock represented by certificates" in the second sentence of subsection (g) thereof following the word "shares" and preceding the words "to submit".

Commentary on Section 262 (g)

*See Commentary following amendment to Section 151 (f).*

**Section 52.** Amend Section 262, Title 8, Delaware Code, by inserting the words "or consolidation" after the word "merger" in the first sentence in subsection (h) thereof and by inserting the words "surviving or resulting" before each reference to "corporation" therein.

Commentary on Section 262 (h)

*See Commentary following amendment to Section 262 (f).*

**Section 53.** Amend Section 262, Title 8, Delaware Code, by deleting subsection (i) thereof in its entirety and substituting therefor the following:

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and in the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any other state.

Commentary on Section 262 (i)

*See Commentary following amendment to Section 151 (f).*



**Section 54.** Amend Section 262, Title 8, Delaware Code, by inserting the words "surviving or resulting" following the phrase "shall deliver to the" and preceding the word "corporation" in subsection (k) thereof.

Commentary on Section 262 (k)

*See Commentary following amendment to Section 262 (f).*

**Section 55.** Amend Section 271, Title 8, Delaware Code, by deleting Section 271 in its entirety and substituting therefor the following:

§ 271. Sale, lease or exchange of assets;  
consideration; procedure

(a) Every corporation may at any meeting of its board of directors or governing body sell, lease, or exchange all or substantially all of its property and assets, including its goodwill and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property, including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors or governing body deems expedient and for the best interests of the corporation, when and as authorized by a resolution adopted by a majority of the outstanding stock of the corporation entitled to vote thereon or, if the corporation is a non-stock corporation, by a majority of the members having the right to vote for the election of the members of the governing body, at a meeting duly called upon at least 20 days notice. The notice of the meeting shall state that such a resolution will be considered.

(b) Notwithstanding authorization or consent to a proposed sale, lease or exchange of a corporation's property and assets by the stockholders or members, the board of directors or governing body may abandon such proposed sale, lease or exchange without further action by the stockholders or members, subject to the rights, if any, of third parties under any contract relating thereto.

Commentary on Section 271

*Section 271 previously provided a procedure for "every" corporation to sell, lease or exchange all or substantially all of its property or assets only in terms of corporations which have a "board of directors" and "stockholders." The amendment to Section 271 adds provisions for action by the governing body and members of a non-stock corporation so as to make clear the procedure to be followed when a non-stock corporation proposes to sell substantially all of its assets and to negate any implication that such a corporation may not make such sales.*

**Section 56.** Amend Section 312, Title 8, Delaware Code, by deleting subsection (g) thereof in its entirety and substituting therefor the following:

(g) Any corporation that renews or revives its certificate of incorporation under the provisions of this chapter shall pay to this State a sum equal to all franchise taxes, penalties and interest thereon due at the time its certificate of incorporation became forfeited pursuant to Section 136 (c) of this title, inoperative and void for non-payment of taxes, or expired by limitation or otherwise; provided, however, that any corporation that renews or revives its certificate of incorporation under the provisions of this chapter whose certificate of incorporation has been forfeited, void or expired for more than five years shall, in lieu of the payment of the franchise taxes and penalties otherwise required by this subsection (g), pay a sum equal to twice the amount of the annual franchise tax that would be due and payable by such corporation for the year in which the renewal or revival is effected, computed at the then current rate of taxation. No payment made pursuant to this subsection (g) shall reduce the amount of franchise tax due under Chapter 5 of this title for the year in which the renewal or revival is effected.

Commentary on Section 312 (g)

*The amendment to Section 312 (g) changes existing law, which required only that a corporation seeking renewal or revival of its certificate of incorporation pay a sum equal to the franchise taxes and penalties thereon due at the time its certificate of incorporation became forfeited, inoperative or void or expired, by providing that to renew or revive its certificate of incorporation a corporation must now pay either (a) in the case of a corporation whose certificate of incorporation has been forfeited, void or expired for five years or less, a sum equal to all franchise taxes, penalties and interest thereon at the time its certificate of incorporation became forfeited or void or expired, or (b) in the case of a corporation whose certificate of incorporation has been forfeited, void or expired for more than five years, a sum equal to twice the annual franchise tax that would be payable by the corporation for the year in which the renewal or revival is effected at then current rates.*

**Section 57.** Amend Section 321, Title 8, Delaware Code, by deleting subsection (b) thereof and substituting therefor the following:

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the corporation upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the corporation by

letter, certified mail, return receipt requested, directed to the corporation at its principal place of business as it appears on the records relating to such corporation on file with the Secretary of State or, if no such address appears, at its last registered office. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay the Secretary of State the sum of \$25.00 for the use of the State, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than five years from his receipt of the service of process.

Commentary on Section 321 (b)

*See Commentary following amendment to Section 252 (d).*

**Section 58.** Amend Section 324 (c), Title 8, Delaware Code, by inserting the words "or uncertificated shares" in the fourth sentence of subsection (c) thereof following the word "certificates" and preceding the words "to the purchaser".

Commentary on Section 324 (c).

*See Commentary following amendment to Section 151 (f).*

**Section 59.** Amend Section 342, Title 8, Delaware Code, by inserting the words "shall be represented by certificates and" in paragraph (1) of subsection (a) thereof following the word "shares" and preceding the word "shall".

Commentary on Section 342 (a) (1)

*See Commentary following amendment to Section 151 (f).*

**Section 60.** Amend Section 374, Title 8, Delaware Code, by deleting from the second sentence thereof the words "any two of its incorporators" and substituting therefor the words "any incorporator".

Commentary on Section 374

*The amendment to Section 374 authorizes one incorporator to sign the*



*annual report required to be filed by a foreign corporation doing business in Delaware. Prior to the amendment, where directors had not been elected, the statute called for the signature of two incorporators.*

**Section 61.** Amend Section 376, Title 8, Delaware Code, by deleting subsection (b) thereof in its entirety and substituting therefor the following:

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the corporation upon the Secretary of State and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a). In the event of service upon the Secretary of State pursuant to this subsection, the Secretary of State shall forthwith notify the corporation by letter, certified mail, return receipt requested, directed to the corporation at its principal place of business as it appears on the last annual report filed pursuant to section 374 of this chapter or, if no such address appears, at its last registered office. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay the Secretary of State the sum of \$25.00 for the use of the State, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than five years from his receipt of such service.

*Commentary on Section 376 (b)*

*See Commentary following amendment to Section 252 (d).*

**Section 62.** Amend Section 381, Title 8, Delaware Code, by deleting subsection (d) thereof in its entirety and substituting therefor the following:

(d) In the event of service upon the Secretary of State in accordance with subsection (c) of this section, the Secretary of State shall forthwith notify the corporation by letter, certified mail, return receipt requested, directed to the corporation at the address stated in the certificate which was filed by the corporation with the Secretary of State pursuant to subsection (a) of this section. Such letter shall enclose a



copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay the Secretary of State the sum of \$25.00 for the use of the State, which sum shall be taxed as part of the cost of the action, suit or proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which the process has been served upon him, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than five years from his receipt of the service of process.

Commentary on Section 381 (d)

*See Commentary following amendment to Section 252 (d).*

**Section 63.** Amend Section 382, Title 8, Delaware Code, by deleting subsection (d) thereof and substituting therefor the following:

(d) In the event of service upon the Secretary of State in accordance with subsection (a) of this section, the Secretary of State shall forthwith notify the corporation thereof by letter, certified mail, return receipt requested, directed to the corporation at the address furnished to the Secretary of State by the plaintiff in such action, suit or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay the Secretary of State the sum of \$25.00 for the use of the State, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than five years from his receipt of the service of process.

Commentary on Section 382 (c)

*See Commentary following amendment to Section 252 (d).*

Section 64. Amend Title 8, Delaware Code, by adding thereto new Section 385 to read as follows:

No instrument that is required to be filed with the Secretary of State of this State by this Subchapter need be filed with the Recorder of Deeds of any county of this State in order to comply with this Subchapter.

Commentary on Section 385

*Section 385 is new and is intended to codify the existing practice that certificates relating to foreign corporations which must be filed with the Secretary of State under Subchapter XV need not be filed with the Recorder of Deeds of any county of this State.*

Section 65. Amend Section 391, Title 8, Delaware Code, by adding the words "or change of name" in paragraph (12) of subsection (a) thereof following the word "address" and preceding the words "of registered agent."

Commentary on Section 391 (a)

*See Commentary following amendment to Section 134.*

Section 66. Amend Section 391, Title 8, Delaware Code, by deleting subsection (c) thereof and substituting therefor the following:

(c) The Secretary of State may issue photocopies of instruments on file as well as instruments, documents, and other papers not on file, and for all such photocopies which are not certified by him, a fee of \$1 per page shall be paid therefor. The Secretary of State may also issue microfiche copies of instruments on file as well as instruments, documents, and other papers not on file, and for each such microfiche a fee of \$2 shall be paid therefor.

Section 67. Amend Section 391, Title 8, Delaware Code, by adding new subsection (g) thereto to read as follows:

(g) The Secretary of State may in his discretion charge a fee of \$25.00 for each check received for payment of any fee or tax under Chapter 1 or Chapter 6 of this Title that is returned due to insufficient funds or as the result of a stop payment order.

Commentary on Section 391 (c) and (g)

*The amendment to Section 391 (c) is intended to make clear that the Secretary of State may issue photocopies of instruments, documents and other papers not on file as well as photocopies of instruments on file, to allow the*

*Secretary of State to issue microfiche copies of such instruments, documents and other papers as well as photocopies, and to establish the fee to be paid for such microfiche copies. Section 391 (g) is new and is intended to permit the Secretary of State to charge a fee for checks returned due to insufficient funds or as the result of a stop payment order.*

Section 68. Amend Section 395, Title 8, Delaware Code by deleting the words "as that Act" following each reference to "12 U.S.C., Section 1841, et. seq." and substituting therefor the phrase "or the Savings and Loan Holding Company Act, 12 U.S.C. Section 1730a, et seq., as those statutes" and by adding to the final sentence in subsection (b) thereof the phrase "or the Savings and Loan Holding Act."

Commentary on Section 395

*The amendments to Section 395 are intended to provide Delaware corporations regulated under the Savings and Loan Holding Company Act, 12 U.S.C. § 1730 a, et seq., the same opportunity to use the word "trust" in their corporate names as is afforded to corporations regulated under the Bank Holding Company Act of 1956, 12 U.S.C. § 1841, et seq.*

Section 71.\* All rights, privileges and immunities vested or accrued by and under any laws enacted prior to the adoption or amendment of this Act, all suits pending, all rights of action conferred, and all duties, restrictions, liabilities and penalties imposed or required by and under laws enacted prior to the adoption or amendment of this Act, shall not be impaired, diminished or affected by this Act.

Section 72. The provisions of this Act shall become effective on July 1, 1983.

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\* Sections 69 and 70 of H.B. No. 185 do not concern the General Corporation Law.

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2 PEACHTREE ST., N.W.  
2 OLIVER STREET  
208 S. La SALLE STREET  
813 CAREW TOWER  
UNION COMMERCE BLDG.  
REPUBLIC NAT'L BANK BLDG.  
1700 BROADWAY  
615 GRISWOLD STREET  
811 DALLAS AVENUE  
17752 SKYPARK CIRCLE  
800 S. FIGUEROA STREET  
1032 MIDLAND BANK BLDG.  
116 JOHN STREET  
123 SO. BROAD STREET  
3225 NORTH CENTRAL AVENUE  
OLIVER BUILDING  
8751 WEST BROWARD BLVD.  
235 MONTGOMERY STREET  
1218 THIRD AVENUE  
314 NORTH BROADWAY  
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918 - 16th STREET N.W.

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