



SPONSOR: Sen Sharp and  
Rep. Hebner

DELAWARE STATE SENATE

134TH GENERAL ASSEMBLY

SENATE BILL NO.

**452 JUN 71988**

AN ACT TO AMEND CHAPTER 1, TITLE 8, OF THE DELAWARE CODE TO AMEND THE GENERAL CORPORATION LAW AND CHAPTER 23, TITLE 29 OF THE DELAWARE CODE, TO ESTABLISH A SECRETARY OF STATE SPECIAL OPERATIONS FUND AND FEES FOR REMOTE ACCESS TO ELECTRONIC FILES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE: (Two-thirds of all members elected to each House thereof concurring therein):

1 Section 1. Amend subsection (1) of § 102(a), of Subchapter I, Chapter 1, Title 8,  
2 Delaware Code, by adding after "the names of other corporations" the following: "or  
3 limited partnerships", adding after "registered as a foreign corporation" the following:  
4 "or foreign limited partnership", and adding after "laws of this State" the following:  
5 "except with the written consent of such other foreign corporation or domestic or foreign  
6 limited partnership, executed, acknowledged, and filed with the Secretary of State in  
7 accordance with section 103 of this title."

8 Section 2. Amend § 103, Subchapter I, Chapter 1, Title 8, Delaware Code, by adding new  
9 subsections (g) and (h) reading as follows:

10 "(g) Notwithstanding that any instrument authorized to be filed with the Secretary  
11 of State under any provision of this title is when filed inaccurately, defectively or  
12 erroneously executed, sealed or acknowledged, or otherwise defective in any respect, the  
13 Secretary of State shall have no liability to any person for the preclearance for  
14 filing, the acceptance for filing, or the filing and indexing of such instrument by the  
15 Secretary of State.

16 "(h) Any signature on any instrument authorized to be filed with the Secretary of  
17 State under any provision of this title may be a facsimile."

18 Section 3. Amend Subchapter VIII, Chapter 1, Title 8, Delaware Code, by deleting § 246  
19 in its entirety.

1 Section 4. Amend clause (3) of § 254(c) of Subchapter IX, Chapter 1, Title 8, Delaware  
2 Code, by deleting the clause in its entirety and substituting in lieu thereof the following:

3 "(3) the manner of converting the shares of stock of each stock corporation, the  
4 interests of members of each non-stock corporation, and the shares, memberships or  
5 financial or beneficial interests in each of the joint-stock associations into shares or  
6 other securities of a stock corporation or membership interests of a non-stock  
7 corporation surviving or resulting from such merger or consolidation, and, if any shares  
8 of any such stock corporation, any membership interests of any such non-stock  
9 corporation, or any shares, memberships, or financial or beneficial interests in any  
10 such joint-stock association are not to be converted solely into shares or other  
11 securities of the stock corporation or membership interests of the non-stock corporation  
12 surviving or resulting from such merger or consolidation, the cash, property, rights or  
13 securities of any other corporation or entity which the holders of shares of any such  
14 stock corporation, membership interests of any such non-stock corporation, or shares,  
15 memberships or financial or beneficial interests of any such joint-stock association are  
16 to receive in exchange for, or upon conversion of such shares, membership interests, or  
17 shares, memberships or financial or beneficial interests, and the surrender of any  
18 certificates evidencing them, which cash, property, rights or securities of any other  
19 corporation or entity may be in addition to or in lieu of shares or other securities of  
20 the stock corporation or membership interests of the non-stock corporation surviving or  
21 resulting from such merger or consolidation; and".

22 Section 5. Amend the first sentence of subsection (d) of § 254 of Subchapter IX,  
23 Chapter 1, Title 8, Delaware Code, by adding after "agreement" the following: "required by  
24 subsection (c) of this section".

25 Section 6. Amend subsection (e) of § 254 of Subchapter IX, Chapter 1, Title 8, Delaware  
26 Code, by adding after "251(e)," the following: "251(f),".

27 Section 7. Amend clause (4) of § 257(b) of Subchapter IX, Chapter 1, Title 8, Delaware  
28 Code, by deleting the clause in its entirety and substituting in lieu thereof the following:

29 "(4) the manner of converting the shares of stock of a stock corporation and the  
30 interests of the members of a non-stock corporation into shares or other securities  
31 of a stock corporation or membership interests of a non-stock corporation surviving  
32 or resulting from such merger or consolidation, and, if any shares of any such  
33 stock corporation or membership interests of any such non-stock corporation are not  
34 to be converted solely into shares or other securities of the stock corporation or

1 membership interests of the non-stock corporation surviving or resulting from such  
2 merger or consolidation, the cash, property, rights or securities of any other  
3 corporation or entity which the holders of shares of any such stock corporation or  
4 membership interests of any such non-stock corporation are to receive in exchange  
5 for, or upon conversion of such shares or membership interests, and the surrender  
6 of any certificates evidencing them, which cash, property, rights or securities of  
7 any other corporation or entity may be in addition to or in lieu of shares or other  
8 securities of any stock corporation or membership interests of any non-stock  
9 corporation surviving or resulting from such merger or consolidation;".

10 Section 8. Amend the first sentence of subsection (c) of § 257 of Subchapter IX,  
11 Chapter 1, Title 8, Delaware Code, by adding after "agreement" the following: "required by  
12 subsection (b) of this section".

13 Section 9. Amend subsection (b) of § 262 of Subchapter IX, Chapter 1, Title 8, Delaware  
14 Code, by deleting the word "or" after "257" and substituting therefor the following: ",",  
15 and by adding after "258" the following: "or 263".

16 Section 10. Amend Subchapter IX, Chapter 1, Title 8, Delaware Code, by adding a new  
17 § 263 reading as follows:

18 "§ 263. Merger or consolidation of domestic corporation and limited partnership.

19 (a) Any 1 or more corporations of this State may merge or consolidate with 1  
20 or more limited partnerships, except a limited partnership formed under the  
21 laws of a state which forbids such merger or consolidation. Such corporation  
22 or corporations and such 1 or more limited partnerships may merge with or into  
23 a corporation, which may be any 1 of such corporations, or they may merge with  
24 or into a limited partnership, which may be any 1 of such limited partnerships,  
25 or they may consolidate into a new corporation or limited partnership formed by  
26 the consolidation, which shall be a corporation or limited partnership of this  
27 State or any other state which permits such merger or consolidation, pursuant  
28 to an agreement of merger or consolidation, as the case may be, complying and  
29 approved in accordance with this section.

(b) Each such corporation and limited partnership shall enter into a written agreement of merger or consolidation. The agreement shall state: (1) the terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner of converting the shares of stock of each such corporation and the partnership interests of each such limited partnership into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation, and if any shares of any such corporation or any partnership interests of any such limited partnership are not to be converted solely into shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation, the cash, property, rights or securities of any other corporation or entity which the holders of such shares or partnership interests are to receive in exchange for, or upon conversion of such shares or partnership interests and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares, partnership interests or other securities of the entity surviving or resulting from such merger or consolidation; and (4) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or limited partnership. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation.

(c) The agreement required by subsection (b) shall be adopted, approved, certified, executed and acknowledged by each of the corporations in the same manner as is provided in § 251 of this title and, in the case of the limited partnerships, in accordance with their limited partnership agreements and in accordance with the laws of the state under which they are formed, as the case may be. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this State when and as provided in § 251 of this title with respect to the merger or consolidation of corporations of this

1 State. In lieu of filing and recording the agreement of merger or  
2 consolidation, the surviving or resulting corporation or limited partnership  
3 may file a certificate of merger or consolidation, executed in accordance with  
4 § 103 of this title, if the surviving or resulting entity is a corporation, or  
5 by a general partner, if the surviving or resulting entity is a limited  
6 partnership, which states: (1) the name and state of domicile of each of the  
7 constituent entities; (2) that an agreement of merger or consolidation has been  
8 approved, adopted, certified, executed and acknowledged by each of the  
9 constituent entities in accordance with this subsection; (3) the name of the  
10 surviving or resulting corporation or limited partnership; (4) in the case of a  
11 merger in which a corporation is the surviving entity, such amendments or  
12 changes in the certificate of incorporation of the surviving corporation as are  
13 desired to be effected by the merger, or, if no such amendments or changes are  
14 desired, a statement that the certificate of incorporation of the surviving  
15 corporation shall be its certificate of incorporation; (5) in the case of a  
16 consolidation in which a corporation is the resulting entity, that the  
17 certificate of incorporation of the resulting corporation shall be as is set  
18 forth in an attachment to the certificate; (6) that the executed agreement of  
19 consolidation or merger is on file at the principal place of business of the  
20 surviving corporation or limited partnership and the address thereof; (7) that  
21 a copy of the agreement of consolidation or merger will be furnished by the  
22 surviving or resulting entity, on request and without cost, to any stockholder  
23 of any constituent corporation or any partner of any constituent limited  
24 partnership; and (8) the agreement, if any, required by subsection (d) of this  
25 section.

26 (d) If the entity surviving or resulting from the merger or consolidation is  
27 to be governed by the laws of the District of Columbia or any state other than  
28 this State, it shall agree that it may be served with process in this State in  
29 any proceeding for enforcement of any obligation of any constituent corporation  
30 or limited partnership of this State, as well as for enforcement of any  
31 obligation of the surviving or resulting corporation or limited partnership

1 arising from the merger or consolidation, including any suit or other  
2 proceeding to enforce the right of any stockholders as determined in appraisal  
3 proceedings pursuant to the provisions of § 262 of this title, and shall  
4 irrevocably appoint the Secretary of State as its agent to accept service of  
5 process in any such suit or other proceedings and shall specify the address to  
6 which a copy of such process shall be mailed by the Secretary of State. In the  
7 event of such service upon the Secretary of State in accordance with this  
8 subsection, the Secretary of State shall forthwith notify such surviving or  
9 resulting corporation or limited partnership thereof by letter, certified mail,  
10 return receipt requested, directed to such surviving or resulting corporation  
11 or limited partnership at its address so specified, unless such surviving or  
12 resulting corporation or limited partnership shall have designated in writing  
13 to the Secretary of State a different address for such purpose, in which case  
14 it shall be mailed to the last address so designated. Such letter shall  
15 enclose a copy of the process and any other papers served on the Secretary of  
16 State pursuant to this subsection. It shall be the duty of the plaintiff in  
17 the event of such service to serve process and any other papers in duplicate,  
18 to notify the Secretary of State that service is being effected pursuant to  
19 this subsection and to pay the Secretary of State the sum of \$25.00 for the use  
20 of the State, which sum shall be taxed as part of the costs in the proceeding,  
21 if the plaintiff shall prevail therein. The Secretary of State shall maintain  
22 an alphabetical record of any such service setting forth the name of the  
23 plaintiff and the defendant, the title, docket number and nature of the  
24 proceeding in which process has been served upon him, the fact that service has  
25 been effected pursuant to this subsection, the return date thereof, and the day  
26 and hour service was made. The Secretary of State shall not be required to  
27 retain such information longer than five years from his receipt of the service  
28 of process.

29 (e) Sections 251(d), 251(e), 251(f), 259 through 261 and 328 of this title  
30 shall, insofar as they are applicable, apply to mergers or consolidations  
31 between corporations and limited partnerships."

32 Section 11. Amend subsection (1) of §312(d) of Subchapter XII, Chapter 1, Title 8,  
33 Delaware Code, by adding after "of this section" the following: ", and the date of filing  
34 of its original certificate of incorporation with the Secretary of State".



1 Section 12. Amend subsection (c) of § 371 of Subchapter XV, Chapter 1, Title 8,  
2 Delaware Code, by adding after "the names of other corporations" the following: "or  
3 limited partnerships", by adding after "registered as a foreign corporation" the  
4 following: "or foreign limited partnership", and by adding after "such other corporation"  
5 the following: "or limited partnership".

6 Section 13. Amend subsection (4) of §391(a) of Subchapter XVII, Chapter 1, Title 8,  
7 Delaware Code, by adding to the end thereof the following: "The foregoing tax shall be in  
8 addition to any tax or fee required under any other law of this State to be paid by any  
9 constituent entity that is not a corporation in connection with the filing of the  
10 certificate of merger or consolidation."

11 Section 14. Amend § 391, Subchapter XVII, Chapter 1, Title 8, Delaware Code, by adding  
12 a new subsection (i) reading as follows:

13 "(i) A domestic corporation or a foreign corporation registered to do business in  
14 this State that files with the Secretary of State any instrument or certificate, and in  
15 connection therewith, neglects, refuses or fails to pay any fee or tax under chapter 1  
16 or chapter 6 of this title shall, after written demand therefor by the Secretary of  
17 State by mail addressed to such domestic corporation or foreign corporation in care of  
18 its registered agent in this State, cease to be in good standing as a domestic  
19 corporation or registered as a foreign corporation in this State on the 90th day  
20 following the date of mailing of such demand, unless such fee or tax and, if applicable,  
21 the fee provided for in subsection (g) are paid in full prior to the 90th day following  
22 the date of mailing of such demand. A domestic corporation that has ceased to be in  
23 good standing or a foreign corporation that has ceased to be registered by reason of the  
24 neglect, refusal or failure to pay any such fee or tax shall be restored to and have the  
25 status of a domestic corporation in good standing or a foreign corporation that is  
26 registered in this State upon the payment of the fee or tax which such domestic  
27 corporation or foreign corporation neglected, refused or failed to pay together with the  
28 fee provided for in subsection (g), if applicable. The Secretary of State shall not  
29 accept for filing any instrument authorized to be filed with the Secretary of State  
30 under any provision of this title in respect of any domestic corporation that is not

1 in good standing or any foreign corporation that has ceased to be registered by  
2 reason of the neglect, refusal or failure to pay any such fee or tax, and shall  
3 not issue any certificate of good standing with respect to such domestic  
4 corporation or foreign corporation, unless and until such domestic corporation  
5 or foreign corporation shall have been restored to and have the status of a  
6 domestic corporation in good standing or a foreign corporation duly registered  
7 in this State.".

8 Section 15. Amend subsection (a) of §2311, Chapter 23, Title 29 of the Delaware Code by  
9 adding after "Title 8" the following: "and §2318 of Title 29".

10 Section 16. Amend subsection (b) of §2311, Chapter 23, Title 29 of the Delaware Code by  
11 deleting the word "seven" immediately before the word "appropriated",

12 Section 17. Amend §2311, Chapter 23, Title 29 of the Delaware Code by deleting  
13 subsection (e) in its entirety and substituting in lieu thereof new subsections (e) and (f)  
14 to read as follows:

15 "(e) There is hereby created, within the office of the Secretary of State, a  
16 special fund to be designated as the Secretary of State Special Operations Fund. Funds  
17 deposited in said Special Operations Fund shall be used to maintain and improve the  
18 capability to perform the operations, functions, and duties of the Secretary of State,  
19 including but not limited to maintaining and improving the statewide communications  
20 network maintained by the Secretary of State, creating, maintaining and improving  
21 electronic files, creating, maintaining and improving the ability to provide remote  
22 access to electronic files maintained by the Secretary of State, and funding  
23 appropriated positions relating to such activities.

24 "(f) All fees which are by law payable to the Secretary of State pursuant to 29  
25 Del. C. §2318 shall be deposited in the State Treasury to the credit of said Secretary  
26 of State Special Operations Fund. No other fees or taxes collected by the Secretary of  
27 State shall be deposited in said fund".

28 Section 18. Amend Chapter 23, Title 29 of the Delaware Code by adding a new §2318 to  
29 read as follows:

30 "§2318. Remote access to electronic files.

31 (a) The Secretary of State may, in his discretion, permit persons remote access  
32 to electronic files maintained by the Secretary of State, and may from time to  
33 time make, amend, alter and rescind rules and regulations governing remote  
34 access to such electronic files.



1 (b) The Secretary of State shall establish, and may from time to time amend or  
2 alter, a schedule of fees and charges payable to the Secretary of State by, and  
3 shall collect such fees and charges for the use of the State from, persons  
4 permitted remote access to electronic files."

5 Section 19. Except for Section 10, which shall become effective December 1, 1988, this  
6 bill shall become effective upon enactment.

#### SYNOPSIS

Sections 1 through 14 of this Act make various technical amendments to the General Corporation Law, including amendments to (1) coordinate corporate and limited partnership name reservations, (2) relieve the Secretary of State of liability in connection with the acceptance for filing of corporate documents, (3) permit the Secretary of State to accept facsimile signatures, (4) conform certain requirements of merger agreements involving joint-stock associations and non-stock corporations with those of merger agreements involving stock corporations, (5) authorize mergers of corporations with limited partnerships, and (6) allow the Secretary of State to suspend service to corporations that fail to pay filing fees in connection with documents accepted for filing.

Sections 15 through 18 of this Act authorize the Secretary of State to permit remote access to electronic files maintained by the Secretary of State, to regulate such access, to charge fees for such access, and to place such fees in a separate account.

Author: Sen. Sharp



SPONSOR: Sen. Sharp

DELAWARE STATE SENATE

134TH GENERAL ASSEMBLY

SENATE AMENDMENT NO. \_\_\_\_\_

TO

SENATE BILL NO. 452

1 " JUN 9 1988

1 AMEND Senate Bill No. 452 in lines 20 and 21 on page 3 by striking the words ", except a  
2 limited partnership formed under the laws of a state which forbids", and substituting in  
3 lieu thereof the following:

4 "Of this State or of any other state or states of the United States, or of the  
5 District of Columbia, unless the laws of such other state or states or the District  
6 of Columbia forbid".

7 FURTHER AMEND Senate Bill No. 452 in line 27 on page 3 by inserting after the words "any  
8 other state" the following:

9 "of the United States, or the District of Columbia,".

#### SYNOPSIS

This amendment makes clear that a Delaware corporation may not merge into a foreign jurisdiction other than a state of the United States or the District of Columbia.

Author: Senator Sharp



SPONSOR: Sen. Bair

DELAWARE STATE SENATE

134TH GENERAL ASSEMBLY

SENATE AMENDMENT NO. 2 JUN 14 1988

TO

SENATE BILL NO. 452

1 AMEND Senate Bill No. 452 on page 8 by striking lines 12 and 13 in their  
2 entirety and by inserting in lieu thereof the following:

3 "Section 17. Amend §2311, Chapter 23, Title 29 of the Delaware Code  
4 by adding new subsections (f) and (g)".

5 FURTHER AMEND Senate Bill NO. 452 on page 8 by renumbering "(e)" on line 15  
6 as "(f)" and "(f)" on line 24 as "(g)".

7 FURTHER AMEND Senate Bill NO. 452 on page 9 at line 4 by inserting between  
8 the word "files" and the period thereafter the following:

9 ", such schedule not to exceed \$10 for each fee or charge".

#### Synopsis

This Amendment keeps the body of the Bill within the boundaries of the Title, and places a cap on the fees to be charged.

AUTHOR: Sen. Bair