



SPONSOR: Sens. Sharp and Vaughn;  
Reps. Spence and Hebner

DELAWARE STATE SENATE  
135TH GENERAL ASSEMBLY

46 7 JUN 12 1990

SENATE BILL NO. \_\_\_\_\_

AN ACT TO AMEND TITLE 8, DELAWARE CODE, RELATING TO THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE.

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 §102(a)(4), Title 8, Delaware Code by deleting the words "which are  
2 not organized for profit and" from the fourth sentence of such subsection.

3 Section 2. Amend §104, Title 8, Delaware Code by deleting therefrom the reference to  
4 "§241-245" and inserting in lieu thereof the reference "§241-243, 245".

5 Section 3. Amend §145(e), Title 8, Delaware Code by deleting from the first sentence  
6 thereof the phrase "a civil or criminal" and inserting in lieu thereof the phrase "any  
7 civil, criminal, administrative or investigative", and by inserting the parenthetical  
8 phrase "(including attorneys' fees)" after the word "expenses" and before the word  
9 "incurred" in the first and second sentences thereof.

10 Section 4. Amend §151(b), Title 8, Delaware Code by deleting that subsection and  
11 inserting in lieu thereof the following:

12 "(b) The stock of any class or series may be made subject to redemption by the  
13 corporation at its option or at the option of the holders of such stock or upon the  
14 happening of a specified event; provided, however, that at the time of such redemption  
15 the corporation shall have outstanding shares of at least one class or series of stock  
16 with full voting powers which shall not be subject to redemption. Notwithstanding the  
17 limitation stated in the foregoing proviso:

18 (1) Any stock of a regulated investment company registered under the  
19 Investment Company Act of 1940, as heretofore or hereafter amended, may be made  
20 subject to redemption by the corporation at its option or at the option of the  
21 holders of such stock.

22 (2) Any stock of a corporation which holds (directly or indirectly) a license

1 or franchise from a governmental agency to conduct its business or is a member of a  
2 national securities exchange, which license, franchise or membership is conditioned  
3 upon some or all of the holders of its stock possessing prescribed qualifications,  
4 may be made subject to redemption by the corporation to the extent necessary to  
5 prevent the loss of such license, franchise or membership or to reinstate it.

6 Any stock which may be made redeemable under this section may be redeemed for cash,  
7 property or rights, including securities of the same or another corporation, at such  
8 time or times, price or prices, or rate or rates, and with such adjustments, as shall be  
9 stated in the certificate of incorporation or in the resolution or resolutions providing  
10 for the issue of such stock adopted by the board of directors pursuant to subsection (a)  
11 of this section."

12 Section 5. Amend §170(a), Title 8, Delaware Code by inserting the phrase ", or to its  
13 members if the corporation is a nonstock corporation organized for profit," in the first  
14 sentence thereof after the words "capital stock" and before the word "either".

15 Section 6. Amend §212, Title 8, Delaware Code by designating subsection "c" thereof as  
16 subsection "e" and by adding new subsections (c) and (d) thereto as follows:

17 "(c) Without limiting the manner in which a stockholder may authorize another  
18 person or persons to act for him as proxy pursuant to subsection (b) of this  
19 section, the following shall constitute a valid means by which a stockholder may  
20 grant such authority:

21 (1) A stockholder may execute a writing authorizing another person or persons  
22 to act for him as proxy. Execution may be accomplished by the stockholder or  
23 his authorized officer, director, employee or agent signing such writing or  
24 causing his or her signature to be affixed to such writing by any reasonable  
25 means including, but not limited to, by facsimile signature.

26 (2) A stockholder may authorize another person or persons to act for him as  
27 proxy by transmitting or authorizing the transmission of a telegram, cablegram,  
28 or other means of electronic transmission to the person who will be the holder  
29 of the proxy or to a proxy solicitation firm, proxy support service  
30 organization or like agent duly authorized by the person who will be the holder  
31 of the proxy to receive such transmission, provided that any such telegram,  
32 cablegram or other means of electronic transmission must either set forth or be  
33 submitted with information from which it can be determined that the telegram,  
34 cablegram or other electronic transmission was authorized by the stockholder.  
35 If it is determined that such telegrams, cablegrams or other electronic

1 transmissions are valid, the inspectors or, if there are no inspectors, such  
2 other persons making that determination shall specify the information upon  
3 which they relied.

4 (d) Any copy, facsimile telecommunication or other reliable reproduction of the  
5 writing or transmission created pursuant to subsection (c) of this section may be  
6 substituted or used in lieu of the original writing or transmission for any and all  
7 purposes for which the original writing or transmission could be used, provided  
8 that such copy, facsimile telecommunication or other reproduction shall be a  
9 complete reproduction of the entire original writing or transmission."

10 Section 7. Amend §228(b), Title 8, Delaware Code by deleting from the first sentence  
11 thereof the word "stockholders" and inserting in lieu thereof the word "members".

12 Section 8. Amend §228(c), Title 8, Delaware Code by inserting the words "or members" in  
13 the first sentence thereof between the word "stockholders" and the word "are".

14 Section 9. Add a new §231 to Title 8, Delaware Code as follows:

15 "§231 Voting Procedures and Inspectors of Elections.

16 (a) The corporation shall, in advance of any meeting of stockholders, appoint  
17 one or more inspectors to act at the meeting and make a written report  
18 thereof. The corporation may designate one or more persons as alternate  
19 inspectors to replace any inspector who fails to act. If no inspector or  
20 alternate is able to act at a meeting of stockholders, the person presiding at  
21 the meeting shall appoint one or more inspectors to act at the meeting. Each  
22 inspector, before entering upon the discharge of his duties, shall take and  
23 sign an oath faithfully to execute the duties of inspector with strict  
24 impartiality and according to the best of his ability.

25 (b) The inspectors shall (i) ascertain the number of shares outstanding and  
26 the voting power of each, (ii) determine the shares represented at a meeting  
27 and the validity of proxies and ballots, (iii) count all votes and ballots,  
28 (iv) determine and retain for a reasonable period a record of the disposition  
29 of any challenges made to any determination by the inspectors, and (v) certify  
30 their determination of the number of shares represented at the meeting, and  
31 their count of all votes and ballots. The inspectors may appoint or retain  
32 other persons or entities to assist the inspectors in the performance of the  
33 duties of the inspectors.

34 (c) The date and time of the opening and the closing of the polls for each  
35 matter upon which the stockholders will vote at a meeting shall be announced at



1 the meeting. No ballot, proxies or votes, nor any revocations thereof or  
2 changes thereto, shall be accepted by the inspectors after the closing of the  
3 polls unless the Court of Chancery upon application by a stockholder shall  
4 determine otherwise.

5 (d) In determining the validity and counting of proxies and ballots, the  
6 inspectors shall be limited to an examination of the proxies, any envelopes  
7 submitted with those proxies, any information provided in accordance with  
8 §212(c)(2), ballots and the regular books and records of the corporation,  
9 except that the inspectors may consider other reliable information for the  
10 limited purpose of reconciling proxies and ballots submitted by or on behalf of  
11 banks, brokers, their nominees or similar persons which represent more votes  
12 than the holder of a proxy is authorized by the record owner to cast or more  
13 votes than the stockholder holds of record. If the inspectors consider other  
14 reliable information for the limited purpose permitted herein, the inspectors  
15 at the time they make their certification pursuant to subsection (b)(v) of this  
16 section shall specify the precise information considered by them including the  
17 person or persons from whom they obtained the information, when the information  
18 was obtained, the means by which the information was obtained and the basis for  
19 the inspectors' belief that such information is accurate and reliable.

20 (e) Unless otherwise provided in the certificate of incorporation or bylaws,  
21 this section shall not apply to a corporation that does not have a class of  
22 voting stock that is (i) listed on a national securities exchange, (ii)  
23 authorized for quotation on an interdealer quotation system of a registered  
24 national securities association, or (iii) held of record by more than 2,000  
25 stockholders."

26 Section 10. Amend §242, Title 8, Delaware Code to add a new subsection (c) thereto as  
27 follows:

28 "(c) The resolution authorizing a proposed amendment to the certificate of  
29 incorporation may provide that at any time prior to the filing of the amendment  
30 with the Secretary of State, notwithstanding authorization of the proposed  
31 amendment by the stockholders of the corporation or by the members of a nonstock  
32 corporation, the board of directors or governing body may abandon such proposed  
33 amendment without further action by the stockholders or members."

34 Section 11. Amend §251(d), Title 8, Delaware Code by inserting the parenthetical phrase  
35 "(or a certificate in lieu thereof)" in the first sentence thereof between the phrase "the

1 agreement" and the phrase "with the Secretary of State".

2 Section 12. Amend §251(f), Title 8, Delaware Code by deleting the third sentence  
3 thereof and inserting the following in lieu thereof:

4 "If an agreement of merger is adopted by the constituent corporation surviving the  
5 merger, by action of its board of directors and without any vote of its stockholders  
6 pursuant to this subsection, the secretary or assistant secretary of that corporation  
7 shall certify on the agreement that the agreement has been adopted pursuant to this  
8 subsection and, (i) if it has been adopted pursuant to the first sentence of this  
9 subsection, that the conditions specified in that sentence have been satisfied, or (ii)  
10 if it has been adopted pursuant to the second sentence of this subsection, that no  
11 shares of stock of such corporation were issued prior to the adoption by the board of  
12 directors of the resolution approving the agreement of merger or consolidation."

13 Section 13. Amend §254(b), Title 8, Delaware Code by deleting that subsection and  
14 inserting in lieu thereof the following:

15 "(b) Any 1 or more corporations of this State may merge or consolidate with 1 or  
16 more joint-stock associations, except a joint-stock association formed under the laws of  
17 a state which forbids such merger or consolidation. Such corporation or corporations  
18 and such 1 or more joint-stock associations may merge into a single corporation, or  
19 joint-stock association, which may be any 1 of such corporations or joint-stock  
20 associations, or they may consolidate into a new corporation or joint-stock association  
21 of this State, pursuant to an agreement of merger or consolidation, as the case may be,  
22 complying and approved in accordance with this section. The surviving or resulting  
23 entity may be organized for profit or not organized for profit and if the surviving or  
24 resulting entity is a corporation, it may be a stock corporation or a nonstock  
25 corporation."

26 Section 14. Amend §254(c), Title 8, Delaware Code by deleting that subsection and  
27 inserting in lieu thereof the following:

28 "(c) Each such corporation and joint-stock association shall enter into a written  
29 agreement of merger or consolidation.. The agreement shall state: (1) the terms and  
30 conditions of the merger or consolidation; (2) the mode of carrying the same into  
31 effect; (3) the manner of converting the shares of stock of each stock corporation, the  
32 interest of members of each nonstock corporation, and the shares, memberships or  
33 financial or beneficial interests in each of the joint-stock associations into shares or  
34 other securities of a stock corporation or membership interests of a nonstock  
35 corporation or into shares, memberships, or financial or beneficial interests of the

1 joint-stock association surviving or resulting from such merger or consolidation, and,  
2 if any shares of any such stock corporation, any membership interests of any such  
3 nonstock corporation, or any shares, memberships or financial or beneficial interests in  
4 any such joint-stock association are not to be converted solely into shares or other  
5 securities of the stock corporation or membership interest of the nonstock corporation  
6 or into shares, memberships, or financial or beneficial interests of the joint-stock  
7 association surviving or resulting from such merger or consolidation, the cash,  
8 property, rights or securities of any other corporation or entity which the holders of  
9 shares of any such stock corporation, membership interests of any such nonstock  
10 corporation, or shares, memberships or financial or beneficial interests of any such  
11 joint-stock association are to receive in exchange for, or upon conversion of such  
12 shares, membership interest or shares, memberships or financial or beneficial interests,  
13 and the surrender of any certificates evidencing them, which cash, property, rights or  
14 securities of any other corporation or entity may be in addition to or in lieu of shares  
15 or other securities of the stock corporation or membership interests of the nonstock  
16 corporation or shares, memberships, or financial or beneficial interests of the  
17 joint-stock association surviving or resulting from such merger or consolidation; and  
18 (4) such other details or provisions as are deemed desirable, including, without  
19 limiting the generality of the foregoing, a provision for the payment of cash in lieu of  
20 the issuance of fractional shares where the surviving or resulting entity is a  
21 corporation. There shall also be set forth in the agreement such other matters or  
22 provisions as shall then be required to be set forth in certificates of incorporation or  
23 documents required to establish and maintain a joint-stock association by the laws of  
24 this State and that can be stated in the case of such merger or consolidation. Any of  
25 the terms of the agreement of merger or consolidation may be made dependent upon facts  
26 ascertainable outside of such agreement, provided that the manner in which such facts  
27 shall operate upon the terms of the agreement is clearly and expressly set forth in the  
28 agreement of merger or consolidation."

29 Section 15. Amend §254(d), Title 8, Delaware Code by deleting the word "The" which  
30 appears as the first word of the second sentence of that subsection and inserting in lieu  
31 thereof the phrase "Where the surviving or resulting entity is a corporation, the"; by  
32 deleting the phrase "the surviving or resulting corporation" from that portion of the third  
33 sentence thereof which appears prior to the colon and inserting in lieu thereof the phrase  
34 "where the surviving or resulting entity is a corporation it"; and by inserting at the end  
35 of such subsection the following sentence: "Where the surviving or resulting entity is a  
36 joint-stock association, the agreement shall be filed and recorded and shall be effective

1 for all purposes when filed in accordance with the laws regulating the creation of  
2 joint-stock associations."

3 Section 16. Amend §254(e), Title 8, Delaware Code by deleting the word "The" which  
4 appears as the first word of the second sentence thereof and inserting in lieu thereof the  
5 phrase "Where the surviving or resulting entity is a corporation, the".

6 Section 17. Amend §254(f), Title 8, Delaware Code by deleting that subsection and  
7 inserting in lieu thereof the following:

8 "(f) Nothing in this section shall be deemed to authorize the merger of a  
9 charitable nonstock corporation or charitable joint-stock association into a stock  
10 corporation or joint-stock association if the charitable status of such nonstock  
11 corporation or joint-stock association would be thereby lost or impaired, but a stock  
12 corporation or joint-stock association may be merged into a charitable nonstock  
13 corporation or charitable joint-stock association which shall continue as the surviving  
14 corporation or joint-stock association."

15 Section 18. Amend §256, Title 8, Delaware Code by deleting from the caption and text  
16 thereof the comma and word ",nonprofit" wherever they so appear.

17 Section 19. Amend §262(d)(1), Title 8, Delaware Code by deleting from the first  
18 sentence thereof the phrase "entitled to such appraisal rights" and inserting in lieu  
19 thereof the phrase "who was such on the record date for such meeting with respect to shares  
20 for which appraisal rights are available pursuant to subsections (b) or (c) hereof".

21 Section 20. Amend §262(d)(2), Title 8, Delaware Code by inserting in the last sentence  
22 thereof the word "thereby" between the words "intends" and "to".

23 Section 21. Amend §280(a)(2), Title 8, Delaware Code by deleting the period at the end  
24 of the first sentence of that subsection and inserting in lieu thereof the following:  
25 ";provided, however, that in the case of a claim filed pursuant to §295 of this title  
26 against a corporation or successor entity for which a receiver or trustee has been  
27 appointed by the Court of Chancery the time period shall be as provided in §296 of this  
28 title, and the 30-day appeal period provided for in §296 shall be applicable." and by  
29 deleting the period at the end of the second sentence of that subsection and inserting in  
30 lieu thereof the following: "and, in the case of a notice sent by a court-appointed  
31 receiver or trustee and as to which a claim has been filed pursuant to §295, copies of §295  
32 and §296 of this title."

33 Section 22. Amend §280(b)(1), Title 8, Delaware Code by inserting the word  
34 "contractual" between the words "with" and "claims" in the first sentence thereof, and by  
35 inserting the following sentence between the first and second sentences thereof:  
36 "Provided, however, that as used in this §280 and in §281 of this title, the term



1 "contractual claims" shall not include any implied warranty as to any product  
2 manufactured, sold, distributed or handled by the dissolved corporation."

3 Section 23. Amend §280(b)(2), Title 8, Delaware Code by inserting the phrase "on a  
4 contract" between the words "claimant" and "whose" in the first sentence thereof.

5 Section 24. Amend §280(c)(2), Title 8, Delaware Code by deleting from the first  
6 sentence thereof the phrase "which will be sufficient to provide compensation to claimants  
7 whose claims are known to the corporation or successor entity but whose identities are  
8 unknown" and inserting in lieu thereof the phrase "which will be reasonably likely to be  
9 sufficient to provide compensation for claims that have not been made known to the  
10 corporation or that have not arisen but that, based on facts known to the corporation or  
11 successor entity, are likely to arise or to become known to the corporation or successor  
12 entity prior to the expiration of applicable statutes of limitation" and by deleting the  
13 second sentence of such subsection and inserting the following in lieu thereof: "The Court  
14 of Chancery may appoint a guardian ad litem in respect of any such proceeding brought under  
15 this subsection."

16 Section 25. Amend §280, Title 8, Delaware Code to add a new subsection (f) thereto as  
17 follows:

18 "(f) The time periods and notice requirements of this section shall, in the case of  
19 a corporation or successor entity for which a receiver or trustee has been  
20 appointed by the Court of Chancery, be subject to variation by, or in the manner  
21 provided in, the Rules of the Court of Chancery."

22 Section 26. Amend §281(a)(4), Title 8, Delaware Code by deleting the phrase  
23 "obligations of" from the first sentence of that subsection and inserting in lieu thereof  
24 the phrase "claims that are mature, known and uncontested or that have been finally  
25 determined to be owing by".

26 Section 27. Amend §281(b), Title 8, Delaware Code by inserting the word "contractual"  
27 between the words "unmatured" and "claims" in the first sentence thereof and by deleting  
28 the phrase "which are known to the dissolved corporation or such successor entity but for  
29 which the identity of the claimant is unknown" from the first sentence of that subsection  
30 and inserting the phrase "which will be reasonably likely to be sufficient to provide  
31 compensation for claims that have not been made known to the corporation or that have not  
32 arisen but that, based on facts known to the corporation or successor entity, are likely to  
33 arise or to become known to the corporation or successor entity prior to the expiration of  
34 applicable statutes of limitation" in lieu thereof.

35 Section 28. Amend §281, Title 8, Delaware Code to add a new subsection (e) thereto as  
36 follows:



1        "(e) The term 'priority', as used in this section, does not refer either to the  
2        order of payments set forth in subparagraphs (1)-(4) of paragraph (a) of this  
3        section or to the relative times at which any claims mature or are reduced to  
4        judgment."

5        Section 29. Amend §502(e), Title 8, Delaware Code by deleting the reference "§283" and  
6        inserting in lieu thereof the reference "§284".

7        Section 30. This Bill shall become effective on July 1, 1990.

#### SYNOPSIS

##### Commentary on Sections 102(a)(4), 170(a) and 256

In recent years various amendments to the General Corporation Law have been made to clarify that Delaware corporations can be set up as nonstock corporations for profit. Thus, in the 1974 amendment to Section 255(b) and (c), the words "nonprofit" were eliminated from the caption of the section, and in the 1987 amendment to Section 255(a) and (b), the words "nonprofit" were eliminated from subsection (a) and the words "whether or not organized for profit" were added. The Commentary to the 1987 amendment which accompanied the proposed amendment to Section 255 states: "In view of Section 257, there is no reason not to permit mergers of domestic nonstock corporations organized for profit." A similar amendment was not presented to Section 256. The 1987 amendment to Section 276 eliminated the word "nonprofit" at several places in the body of subsection (a). The Commentary to the 1987 amendment which accompanied the proposed amendment states that the purposes of these changes was "to make clear that Section 276 applies to all nonstock corporations." The proposed amendments will make the General Corporation Law more consistent in this regard.

##### Commentary on Section 104

The amendment to Section 104 deletes the reference to Section 244 since filings with the Secretary of State are no longer required by Section 244.

##### Commentary on Section 145(e)

The amendments to Section 145(e) codify the decision in Security America Corp. v. Walsh, Case, Coale, Brown & Burke, No. 82-C-2953 (N.D. Ill. 1985) by making it clear that the expenses which a corporation may advance include attorneys' fees. The amendments also make Section 145(e) consistent with Section 145(a) by making clear that a corporation may advance expenses incurred in defending administrative or investigative proceedings as well as civil or criminal proceedings.

##### Commentary on Section 151(b)

Subject to two provisions already present in the statute, this subsection has been amended to permit the redemption of common, as well as preferred, stock so long as at least one class or series of stock with full voting powers is not redeemable. The two provisos are (i) with respect to regulated investment companies and (ii) corporations which hold government licenses or franchises or are members of national securities exchanges. The former proviso has been amended to provide that stock may be made redeemable at the option of the corporation as well as at the option of the holder, and to delete as surplusage limitations already imposed by Section 160. The latter proviso has been amended to provide for the possibility that the license, franchise or membership is held indirectly, rather than directly by the corporation.

##### Commentary on Sections 212 (c) and (d)

The amendment to Section 212 adds to that section two new subsections and renumbers pre-existing subsection (c) as subsection (e). New subsection (c) provides several nonexclusive means for a stockholder to validly grant the power of a proxy to another person. That subsection specifically authorizes the creation of a proxy relationship by telegram, cablegram or other means of electronic transmission provided that the telegram, cablegram or electronic transmission either sets forth or is submitted with information from which it can be determined that the telegram, cablegram or other electronic

transmission was authorized by the stockholder. Also, if such proxies are determined to be valid, the person making that determination must specify the information establishing the proper authorization of such proxies.

New subsection (d) allows for the use of copies or reproductions of proxies for any purpose for which the original could be used provided that the entire proxy is reproduced. Included within this broad authorization is the use of "telecopied" proxies at meetings of the stockholders.

#### Commentary on Sections 228 (b) and (c)

The amendment to Section 228(b) replaces the reference to "stockholders" with a reference to "members" since Section 228(b) deals only with consents of members and not consents of stockholders. The amendment to Section 228(c) adds a reference to members to the existing reference to stockholders since Section 228(c) applies to consents of members as well as consents of stockholders. No substantive change of law is intended.

#### Commentary on Section 231

Section 231 is an entirely new section which sets forth certain provisions relating to voting procedures at meetings of the stockholders. The section is only applicable to corporations which are listed on a national securities exchange, authorized for quotation on an interdealer quotation system or which have shares held of record by more than 2,000 shareholders.

Subsection (a) requires that the corporation appoint inspectors of election for each meeting of the shareholders, and subsection (b) specifies the duties of the inspectors. Subsection (c) requires the announcement at each stockholder meeting of the date and time for the opening and closing of the polls for each matter upon which the stockholders will vote at that meeting. After the polls are closed, the inspectors may not accept any new votes, ballots or proxies and may not accept any revocations or changes to any ballots, proxies or votes.

Subsection (d) specifies the information the inspectors may consider in determining the validity and counting proxies and ballots. This subsection is intended to be a codification of pre-existing common law with two exceptions. One change from the pre-existing common law is that inspectors are permitted to examine "reliable information" other than the proxies, ballots and books and records of the corporation, but only for the limited purpose of reconciling bank and broker "over votes" viz., proxies and ballots which represent more votes than the holder of the proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for that limited purpose, the inspectors must specify the precise information considered by them. The second change is that the inspectors are permitted to consider information submitted with "telegraphic" or "electronic" proxies as authorized by Section 212(c)(2).

#### Commentary on Section 242

The amendment to Section 242 would add a new subsection (c) permitting the board of directors of a stock corporation or governing body of a nonstock corporation to abandon a proposed amendment to the certificate of incorporation, notwithstanding prior stockholder or member approval, provided that such authority was contained in the resolution adopted by the stockholders or members. Similar provisions are found in Sections 251, 271 and 275 of the General Corporation Law.

#### Commentary on Section 251 (d) and (f)

The amendment to Section 251(d) will make the first sentence of Section 251(d) consistent with the second sentence of that subsection, which permits the amendment of a merger agreement by the board of directors of any constituent corporation, notwithstanding prior stockholder approval, at any time prior to the filing of the "agreement with the Secretary of State" or a certificate in lieu thereof. The amendment to Section 251(f) will clarify what must be set forth in a certification accompanying a merger agreement authorized without stockholder vote.

#### Commentary on Section 254(b), (c), (d), (e) and (f)

The amendments to Section 254(b) permit an existing corporation to be merged into an existing corporation to consolidate with an existing joint-stock association into a new joint-stock association.

Section 254(c) has been revised to explain what requirements must be in the written agreement of merger or consolidation where the surviving or new entity is a joint-stock association.

Section 254(d) has been amended to provide that where the surviving or resulting entity

is a joint-stock association, the agreement created pursuant to subsection (c) need only be filed as required by the laws governing joint-stock associations.

Section 254(e) has been amended to provide that where the surviving or resulting entity is a corporation, the liability of a stockholder to the corporation will continue to not become the liability of a subsequent transferee.

Section 254(f) has been redrafted to insure that the current restrictions and benefits involved in a merger between a charitable nonstock corporation and a stock corporation, are extended to include the same restrictions and benefits where the particular entities may be joint-stock associations or charitable joint-stock associations.

#### Commentary on Section 262(d)

The amendment to Section 262(d)(1) clarifies the notice requirement of that subsection in view of the 1987 amendments to Section 262(a) regarding the stockholders entitled to seek appraisal. The amendment to Section 262(d)(2) makes Section 262(d)(2) consistent with Section 262(d)(1) and clarifies that it is the written demand itself which effectuates the stockholder demand and no further action is necessary to complete the demand for appraisal.

#### Commentary on Sections 280 and 281

The amendments to Section 280(a) and new subsection (f) harmonize Section 280 with Sections 295 and 296 and the Rules of the Court of Chancery in cases where a receiver or trustee is appointed by the Court of Chancery. The amendments to Section 280(b) provide that the subsection is intended only to cover contingent contractual claims that are not based on implied product warranties. The amendments to Section 280(c) provide that corporations or successor entities are required to petition the Court of Chancery to determine the amount which will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the corporation or that have not arisen only when the corporation is aware of facts demonstrating that such claims are likely to arise or to become known to the corporations prior to the expiration of applicable statutes of limitation. The amendments also provide that the Court of Chancery has discretion with respect to the appointment of a guardian ad litem. The amendment to Section 281(a) specifies the nature of those obligations not enumerated in Section 281(1) - (3), which a dissolved corporation which has elected to follow the procedures set forth in Section 280 is required to satisfy. Section 281(b) has been changed to require that corporations that do not choose to follow the procedures set forth in Section 281(a) are required to pay or make reasonable provision for the same classes of claims described in the first sentence of Section 280(c)(2), as amended.

#### Commentary on Section 502(e)

The amendment to Section 502(e) is corrective only and changes the existing reference to Section 283 to a reference to Section 284, reflecting the renumbering of Section 283 to 284 in the 1987 amendments to the General Corporation Law.

Author: Sen. Sharp



SPONSOR: Sen. Sharp

DELAWARE STATE SENATE

135TH GENERAL ASSEMBLY

SENATE BILL NO. \_\_\_\_\_

491 JUN 20 1990

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO CERTAIN FEES AND CHARGES PAYABLE TO THE SECRETARY OF STATE.

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

1 Section 1. Amend §391(a)(2), §391(a)(3) and §391(a)(4), Title 8, of the Delaware Code  
2 by striking said subparagraphs in their entireties and substituting in lieu thereof the  
3 following:

4 "(2) Upon the receipt for filing of a certificate of amendment of certificate of  
5 incorporation, or a certificate of amendment of certificate of incorporation before  
6 payment of capital, or a restated certificate of incorporation, increasing the  
7 authorized capital stock of a corporation, the tax shall be an amount equal to the  
8 difference between the tax (computed at the foregoing rates) upon the total authorized  
9 capital stock of the corporation including the proposed increase, and the tax (computed  
10 at the foregoing rates divided by two, unless the authorized capital was established  
11 June 18, 1990, or later in which case the foregoing rates will apply) upon the total  
12 authorized capital stock excluding the proposed increase. In no case shall the amount  
13 paid be less than \$30."

14 "(3) Upon the receipt for filing of a certificate of amendment of certificate of  
15 incorporation before payment of capital and not involving an increase of authorized  
16 capital stock, or an amendment to the certificate of incorporation not involving an  
17 increase of authorized capital stock, or a restated certificate of incorporation not  
18 involving an increase of authorized capital stock, or a certificate of retirement of  
19 stock, the tax to be paid shall be \$30. For all other certificates relating to  
20 corporations, not otherwise provided for, the tax to be paid shall be \$5. In case of  
21 corporations created solely for religious or charitable purposes no tax shall be paid."

22 "(4) Upon the receipt for filing of a certificate of merger or consolidation of 2  
23 or more corporations, the tax shall be an amount equal to the difference between the tax



1 (computed at the foregoing rates) upon the total authorized capital stock of the  
2 corporation created by the merger or consolidation, and the tax (so computed and divided  
3 by two, unless the authorized capital was established June 18, 1990, or later in which  
4 case the foregoing rates will apply) upon the aggregate amount of the total authorized  
5 capital stock of the constituent corporations. In no case shall the amount paid be less  
6 than \$75. The foregoing tax shall be in addition to any tax or fee required under any  
7 other law of this State to be paid by any constituent entity that is not a corporation  
8 in connection with the filing of the certificate of merger or consolidation."

SYNOPSIS

This bill increases the filing fees for particular corporate filings with the Secretary of State.

Author: Sen. Sharp