



SPONSOR: Reps. Burris, Petrilli, Cain,
Bennett, Brady and Sens. Adams,
Knox

HOUSE OF REPRESENTATIVES

131ST GENERAL ASSEMBLY

HOUSE BILL NO. _____

16

JAN 15 1981

AN ACT TO AMEND CHAPTER 1, TITLE 8, DELAWARE CODE, RELATING TO THE
GENERAL CORPORATION LAW.

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 Section 145 of the Delaware General Corporation Law by adding
2 a new subsection (i) to read as follows:

3 "(i) For purposes of this Section, references to 'other enterprises' shall include
4 employee benefit plans; references to 'fines' shall include any excise taxes assessed
5 on a person with respect to an employee benefit plan; and references to 'serving at
6 the request of the corporation' shall include any service as a director, officer,
7 employee or agent of the corporation which imposes duties on, or involves services
8 by, such director, officer, employee, or agent with respect to an employee benefit
9 plan, its participants, or beneficiaries; and a person who acted in good faith and in
10 a manner he reasonably believed to be in the interest of the participants and
11 beneficiaries of an employee benefit plan shall be deemed to have acted in a
12 manner 'not opposed to the best interests of the corporation' as referred to in this
13 Section."

14 Section 2. Amend Section 203(a) (1) of Title 8, Delaware Code by deleting the first
15 sentence thereof and inserting in lieu thereof the following:

16 "Not less than 20 nor more than 60 days before the date the tender offer is to
17 be made, the offeror shall deliver personally or by registered or certified mail to
18 the corporation whose equity securities are to be subject to the tender offer, at its

1 registered office in this State or at its principal place of business, a written statement
2 of the offeror's intention to make the tender offer."

3 Section 3. Amend Section 203(a) (2) of Title 8, Delaware Code by deleting
4 therefrom the words "...for an additional period of".

5 Section 4. Amend Section 211(c) of Title 8, Delaware Code, by deleting the third
6 sentence thereof and inserting in lieu thereof a new third sentence to read as follows:

7 "If there be a failure to hold the annual meeting for a period of thirty days
8 after the date designated therefor, or if no date has been designated, for a period
9 of thirteen months after the organization of the corporation or after its last annual
10 meeting, the Court of Chancery may summarily order a meeting to be held upon
11 the application of any stockholder or director."

12 Section 5. Amend Section 215(a) of Title 8, Delaware Code by inserting therein the
13 words "and 216" so that Section 215(a) reads as follows:

14 (a) The provisions of Sections 211-214, and 216 of this Title shall not apply to
15 corporations not authorized to issue stock.

16 Section 6. Amend Section 215(c) of Title 8, Delaware Code by adding a second
17 sentence thereto, to read as follows:

18 "In the absence of such specification in the certificate of incorporation or
19 by-laws of a non-stock corporation, one-third of the members of such corporation
20 shall constitute a quorum at a meeting of such members, and the affirmative vote
21 of a majority of such members present in person or represented by proxy at the
22 meeting and entitled to vote on the subject matter shall be the act of the
23 members, unless the vote of a greater number is required by this chapter, the
24 certificate of incorporation or by-laws."

25 Section 7. Amend Section 216 of Title 8, Delaware Code by deleting all of Section
26 216 and inserting in lieu thereof a new Section 216 to read as follows:

27 "§216. QUORUM AND REQUIRED VOTE FOR STOCK CORPORATIONS.

28 Subject to this chapter in respect of the vote that shall be required for a
29 specified action, the certificate of incorporation or by-laws of any corporation
30 authorized to issue stock may specify the number of shares and/or the amount of
31 other securities having voting power the holders of which shall be present or
32 represented by proxy at any meeting in order to constitute a quorum for, and the
33 votes that shall be necessary for, the transaction of any business. In the absence of
34 such specification in the certificate of incorporation or by-laws of the corporation,

(i) a majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum at a meeting of stockholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting; (ii) the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders; and, (iii) where a separate vote by class is required, the affirmative vote of the majority of shares of such class present in person or represented by proxy at the meeting shall be the act of such class."

Section 8. Amend Section 218(a) of Title 8, Delaware Code by deleting all of the second sentence thereof, which begins with the words "The validity of a voting trust..."

Section 9. Amend Section 220 of Title 8, Delaware Code by changing the Title thereof to read "Inspection of Books and Records" and by adding a new subsection (d) to read as follows:

"(d) Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to his position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the stock list and to make copies or extracts therefrom. The court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the court may deem just and proper."

Section 10. Amend Section 223 of Title 8, Delaware Code by deleting the first sentence of Section 223 (a) and inserting in lieu thereof the following sentence:

"Unless otherwise provided in the certificate of incorporation or by-laws:

(1) vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director;

(2) whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected."

1 Section 11. Amend Section 225 of Title 8, Delaware Code by deleting the first
2 sentence thereof and inserting in lieu thereof a new first sentence to read as follows:

3 "Upon application of any stockholder or director, or any member of a
4 corporation without capital stock, the Court of Chancery may hear and determine
5 the validity of any election of any director, member of the governing body, or
6 officer of any corporation, and the right of any person to hold such office, and, in
7 case any such office is claimed by more than one person, may determine the person
8 entitled thereto; and to that end make such order or decree in any such case as
9 may be just and proper, with power to enforce the production of any books, papers
10 and records of the corporation relating to the issue."

11 Section 12. Amend Section 242(c) (2) of Title 8, Delaware Code, by deleting the
12 last sentence thereof and inserting in lieu thereof a new sentence to read as follows:

13 "The number of authorized shares of any such class or classes of stock may be
14 increased or decreased (but not below the number of shares thereof then
15 outstanding) by the affirmative vote of the holders of a majority of the stock of
16 the corporation entitled to vote irrespective of the provisions of this paragraph (c)
17 (2), if so provided in the original certificate of incorporation, in any amendment
18 thereto which created such class or classes of stock or which was adopted prior to
19 the issuance of any shares of such class or classes of stock, or in any amendment
20 thereto which was authorized by a resolution or resolutions adopted by the
21 affirmative vote of the holders of a majority of such class or classes of stock."

22 Section 13. Amend Title 8, Delaware Code, Section 253, by changing subsection (d)
23 thereof to read as follows:

24 "(d) In the event all of the stock of a subsidiary Delaware corporation party to
25 a merger effected under this Section is not owned by the parent corporation
26 immediately prior to the merger, the stockholders of the subsidiary Delaware
27 corporation party to the merger shall have appraisal rights as set forth in Section
28 262 of this Title."

29 Section 14. Amend Title 8 Delaware Code, Section 262 by deleting such section in
30 its entirety and inserting in lieu thereof a new Section to read as follows:

31 "(a) Any stockholder who has complied with the provisions of subsection (d) of
32 this Section and has neither voted in favor of the merger or consolidation nor
33 consented thereto in writing pursuant to Section 228 of this Chapter shall be
34 entitled to an appraisal by the Court of Chancery of the fair value of his shares of

1 stock under the circumstances described in subsections (b) and (c). As used in this
2 Section, the word 'stockholder' means a holder of record of stock in a stock
3 corporation and also a member of record of a non-stock corporation; the words
4 'stock' and 'share' mean and include what is ordinarily meant by those words and
5 also membership or membership interest of a member of a non-stock corporation.

6 (b) Appraisal rights shall be available for the shares of any class or series of
7 stock of a constituent corporation in a merger to be effected pursuant to Sections
8 251, 252, 254, 257 or 258 of this Chapter;

9 (1) provided, however, that no appraisal rights under this Section shall be
10 available for the shares of any class or series of stock which, at the record date
11 fixed to determine the stockholders entitled to receive notice of and to vote at the
12 meeting of stockholders to act upon the agreement of merger or consolidation,
13 were either (i) listed on a national securities exchange or (ii) held of record by
14 more than 2,000 stockholders; and further provided that no appraisal rights shall be
15 available for any shares of stock of the constituent corporation surviving a merger
16 if the merger did not require for its approval the vote of the stockholders of the
17 surviving corporation as provided in subsection (f) of Section 251 of this Chapter.

18 (2) Notwithstanding the provisions of subsection (b) (1) of this Section,
19 appraisal rights under this Section shall be available for the shares of any class or
20 series of stock of a constituent corporation if the holders thereof are required by
21 the terms of an agreement of merger or consolidation pursuant to Sections 251,
22 252, 254, 257 and 258 of this Chapter to accept for such stock anything except (i)
23 shares of stock of the corporation surviving or resulting from such merger or
24 consolidation; (ii) shares of stock of any other corporation which at the effective
25 date of the merger of consolidation will be either listed on a national securities
26 exchange or held of record by more than 2,000 stockholders; (iii) each in lieu of
27 fractional shares of the corporations described in the foregoing clauses (i) and (ii);
28 or (iv) any combination of the shares of stock and cash in lieu of fractional shares
29 described in the foregoing clauses (i), (ii) and (iii) of this subsection.

30 (3) In the event all of the stock of a subsidiary Delaware corporation
31 party to a merger effected under Section 253 of this chapter is not owned by the
32 parent corporation immediately prior to the merger, appraisal rights shall be
33 available for the shares of the subsidiary Delaware corporation.

1 (c) Any corporation may provide in its certificate of incorporation that
2 appraisal rights under this Section shall be available for the shares of any class or
3 series of its stock as a result of an amendment to its certificate of incorporation,
4 any merger or consolidation in which the corporation is a constituent corporation
5 or the sale of all or substantially all of the assets of the corporation. In such
6 event, the procedures of this Section, including those set forth in subsections (d)
7 and (e), shall apply as nearly as is practicable.

8 (d) Appraisal rights shall be perfected as follows:

9 (1) If a proposed merger or consolidation for which appraisal rights
10 are provided under this Section is to be submitted for approval at a meeting of
11 stockholders, the corporation, not less than 20 days prior to the meeting, shall
12 notify each of its stockholders entitled to such appraisal rights that appraisal rights
13 are available for any or all of the shares of the constituent corporations, and shall
14 include in such notice a copy of this Section. Each stockholder electing to demand
15 the appraisal of his shares shall deliver to the corporation, before the taking of the
16 vote on the merger or consolidation, a written demand for appraisal of his shares.
17 Such demand will be sufficient if it reasonably informs the corporation of the
18 identity of the stockholder and that the stockholder intends thereby to demand the
19 appraisal of his shares; provided, however, that such demand must be in addition to
20 and separate from any proxy or vote against the merger. Within 10 days after the
21 effective date of such merger or consolidation, the surviving corporation shall
22 notify each stockholder of each constituent corporation who has complied with the
23 provisions of this subsection and has not voted in favor of or consented to the
24 merger or consolidation of the date that the merger or consolidation has become
25 effective; or

26 (2) If the merger or consolidation was approved pursuant to Section
27 228 or Section 253 of this Chapter, the surviving corporation, either before the
28 effective date of the merger or within 10 days thereafter, shall notify each of the
29 stockholders entitled to appraisal rights of the effective date of the merger or
30 consolidation and that appraisal rights are available for any or all of the shares of
31 the constituent corporation, and shall include in such notice a copy of this Section.
32 The notice shall be sent by certified or registered mail, return receipt requested,
33 addressed to the stockholder at his address as it appears on the records of the
34 corporation. Any stockholder entitled to appraisal rights may, within 20 days after
35 the date of mailing of the notice, demand in writing from the surviving corporation

1 the appraisal of his shares. Such demand will be sufficient if it reasonably informs
2 the corporation of the identity of the stockholder and that the stockholder intends
3 to demand the appraisal of his shares.

4 (e) Within 120 days after the effective date of the merger or
5 consolidation, the corporation or any stockholder who has complied with the
6 provisions of subsections (a) and (d) hereof and who is otherwise entitled to
7 appraisal rights, may file a petition in the Court of Chancery demanding a
8 determination of the value of the stock of all such stockholders. Notwithstanding
9 the foregoing, at any time within 60 days after the effective date of the merger or
10 consolidation, any stockholder shall have the right to withdraw his demand for
11 appraisal and to accept the terms offered upon the merger or consolidation. Within
12 120 days after the effective date of the merger or consolidation, any stockholder
13 who has complied with the requirements of subsections (a) and (d) hereof, upon
14 written request, shall be entitled to receive from the corporation surviving the
15 merger or consolidation a statement setting forth the aggregate number of shares
16 not voted in favor of the merger and with respect to which demands for appraisal
17 have been received and the aggregate number of holders of such shares. Such
18 written statement shall be mailed to the stockholder within 10 days after his
19 written request for such a statement is received by the corporation or within 10
20 days after expiration of the period for delivery of demands for appraisal under
21 subsection (d) hereof, whichever is later.

22 (f) Upon the filing of any such petition by a stockholder, service of a copy
23 thereof shall be made upon the corporation, which shall within 20 days after such
24 service file in the office of the Register in Chancery in which the petition was
25 filed a duly verified list containing the names and addresses of all stockholders who
26 have demanded payment for their shares and with whom agreements as to the value
27 of their shares have not been reached by the corporation. If the petition shall be
28 filed by the corporation, the petition shall be accompanied by such a duly verified
29 list. The Register in Chancery, if so ordered by the Court, shall give notice of the
30 time and place fixed for the hearing of such petition by registered or certified mail
31 to the corporation and to the stockholders shown on the list at the addresses
32 therein stated. Such notice shall also be given by one or more publications at least
33 one week before the day of the hearing, in a newspaper of general circulation
34 published in the City of Wilmington, Delaware or such publication as the Court
35 deems advisable. The forms of the notices by mail and by publication shall be
36 approved by the Court, and the costs thereof shall be borne by the corporation.

1 (g) At the hearing on such petition, the Court shall determine the
2 stockholders who have complied with the provisions of this Section and who have
3 become entitled to appraisal rights. The Court may require the stockholders who
4 have demanded an appraisal for their shares to submit their certificates of stock to
5 the Register in Chancery for notation thereon of the pendency of the appraisal
6 proceedings; and if any stockholder fails to comply with such direction, the Court
7 may dismiss the proceedings as to such stockholder.

8 (h) After determining the stockholders entitled to an appraisal, the Court
9 shall appraise the shares, determining their fair value exclusive of any element of
10 value arising from the accomplishment or expectation of the merger, together with
11 a fair rate of interest, if any, to be paid upon the amount determined to be the fair
12 value. In determining such fair value, the Court shall take into account all
13 relevant factors. In determining the fair rate of interest, the Court may consider
14 all relevant factors, including the rate of interest which the corporation would
15 have had to pay to borrow money during the pendency of the proceeding. Upon
16 application by the corporation or by any stockholder entitled to participate in the
17 appraisal proceeding, the Court may, in its discretion, permit discovery or other
18 pretrial proceedings and may proceed to trial upon the appraisal prior to the final
19 determination of the stockholder entitled to an appraisal. Any stockholder whose
20 name appears on the list filed by the corporation pursuant to subsection (f) of this
21 Section and who has submitted his certificates of stock to the Register in
22 Chancery, if such is required, may participate fully in all proceedings until it is
23 finally determined that he is not entitled to appraisal rights under this Section.

24 (i) The Court shall direct the payment of the fair value of the shares,
25 together with interest, if any, by the surviving or resulting corporation to the
26 stockholders entitled thereto upon the surrender to the corporation of the
27 certificates representing such stock. The Court's decree may be enforced as other
28 decrees of the Court of Chancery may be enforced, whether such surviving or
29 resulting corporation be a corporation of this State or of any other state.

30 (j) The costs of the proceeding may be determined by the Court and taxed
31 upon the parties as the Court deems equitable in the circumstances. Upon
32 application of a stockholder, the Court may order all or a portion of the expenses
33 incurred by any stockholder in connection with the appraisal proceeding, including,
34 without limitation, reasonable attorney's fees and the fees and expenses of experts,
35 to be charged pro rata against the value of all of the shares entitled to an appraisal.

1 (k) From and after the effective date of the merger or consolidation, no
2 stockholder who has demanded his appraisal rights as provided in subsection (d) of
3 this Section shall be entitled to vote such stock for any purpose or to receive
4 payment of dividends or other distributions on the stock (except dividends or other
5 distributions payable to stockholders of record at a date which is prior to the
6 effective date of the merger or consolidation); provided, however, that if no
7 petition for an appraisal shall be filed within the time provided in subsection (e) of
8 this Section, or if such stockholder shall deliver to the corporation a written
9 withdrawal of his demand for an appraisal and an acceptance of the merger or
10 consolidation, either within 60 days after the effective date of the merger or
11 consolidation as provided in subsection (e) of this Section or thereafter with the
12 written approval of the corporation, then the right of such stockholder to an
13 appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in
14 the Court of Chancery shall be dismissed as to any stockholder without the
15 approval of the Court, and such approval may be conditioned upon such terms as
16 the Court deems just.

17 (1) The shares of the surviving or resulting corporation into which
18 the shares of such objecting stockholders would have been converted had they
19 assented to the merger or consolidation shall have the status of authorized and
20 unissued shares of the surviving or resulting corporation."

21 Section 15. Amend Section 377 of Title 8, Delaware Code by deleting Subsection
22 377(a) and inserting in lieu thereof a new Subsection 377(a) to read as follows:

23 "(a) Any foreign corporation, which has qualified to do business in this
24 State may change its registered agent and substitute another registered agent by
25 filing a certificate with the Secretary of State, acknowledged in accordance with
26 Section 103 of this title, setting forth (1) the name and address of its registered
27 agent designated in this State upon whom process directed to said corporation may
28 be served, and (2) a revocation of all previous appointments of agent for such
29 purposes. Such registered agent shall be either an individual residing in this State
30 when appointed or a corporation authorized to transact business in this State."

31 Section 16. The amendments enacted by this bill become effective March 1, 1981.

SYNOPSIS

Commentary on §145

Section 145 has been amended by adding a new subsection (i) to make explicit that

indemnification is available to a director, officer or employee of a corporation who is acting as a fiduciary of an employee benefit plan, and that the indemnification may cover excise taxes assessed with respect to serving in such capacity.

Commentary on §203

The amendment to the first sentence of §203(a) (1) merely adds the phrase "personally or by registered or certified mail" to make it clear how the required statement is to be delivered by the offeror. The change in §203(a) (2) deletes the phrase "for an additional period of" and is intended to remove any ambiguity in the section. When a tender offer is amended in certain respects the section might be read as requiring the offer to remain open for a period of 10 days in addition to the 20-day period required for the original offer. The amendment makes it clear that any amended offer may close 20 days after the date of the original offer if at least 10 days have also elapsed since date of the date of amendment.

Commentary on §§211, 220 and 225

The proposed amendment to §220 is designed to codify the common law right of a director of a Delaware corporation to examine the stock list, books and records and to permit the director to obtain summary relief in the Court of Chancery to enforce his right. Pursuant to the present case law, it is not clear whether the Court of Chancery has jurisdiction over such an action by a director. The amendment is not intended to effect any substantive changes in the directors' rights to inspect such corporate records.

The second and third amendments to Sections 211(c) and 225 are to permit a director as well as a stockholder to bring an action in the Delaware Court of Chancery to require the holding of an annual meeting, to determine the validity of any election and the right of a person to hold office. At the present time, the relevant case law does not permit a director to bring such an action in the Court of Chancery; it is limited to stockholders.

Commentary on §215

This section has been amended to provide in subsection (a) that the provisions of §216 respecting the minimum for a quorum and other voting provisions for stock corporations shall not apply to a non-stock corporation. A new provision is added in subsection (c) to provide for quorum and voting rules for the meetings of members of a non-stock corporation.

Commentary on §216

The new second sentence of §216 provides rules for the quorum and voting requirements of shareholders in the case of stock corporations. The rules are expressly made subject to some other specific statutory requirement and to the provisions of the corporation's certificate of incorporation and by-laws.

Commentary on §218

The second sentence of §218(a) has been deleted as a redundancy. See Section 218(d). No substantive change is effected.

Commentary on §223

This change adds a new clause numbered (2) to the end of the first sentence of §223(a) and is designed to clarify the right of the directors elected by a separate class or series of stock to fill any vacancy or newly-created directorship of that class, rather than to permit such vacancies to be filled by the vote of the entire board.

Commentary on §242

The sentence is the same except for the addition of two new provisions.

The first is contained in the parenthetical phrase which is added merely to make it clear that outstanding shares may not be wiped out by decreasing the authorized number of shares and it follows the language found in Section 151 (g). The second added phrase, "irrespective of the provisions of this paragraph (c) (2)" is designed to make it clear that the words "entitled to vote" do not apply to shares which have no vote other than the class vote granted by Section 242(c). The last added phrase, "or which was adopted prior to the issuance of any shares of such class or classes of stock," is designed to make it clear that

such an amendment may be effected even though it is adopted after the original certificate of incorporation has been adopted but before the amendment which creates the class or classes of stock. The language of the statute as it stands leaves a gap and it does not cover the situation where the original certificate of incorporation may be amended before the adoption of an amendment creating the new class or classes of shares.

Commentary on §253(d)

This revision to this subsection transfers the provision granting appraisal rights from Section 253 to the general appraisal section in a proposed new Section 262(b) (3). No substantive change in the statute is effected by the transfer of this provision.

Commentary on §262

Subsection (a). No substantive change has been made in subsection (a). The language has been revised to clarify the circumstances under which shareholders are entitled to appraisal. The concept of "fair value" as set forth in subsection (a) has been modified in subsection (h) hereinbelow. (See commentary to subsection (h).)

Subsections (b) (1) and (2). Former subsections (k) and (l) have been moved to new subsection (b) and rewritten to set forth an affirmative statement as to when appraisal rights are available. Other than this new declaration, there have been no substantive changes made to former subsections (k) and (l).

Subsections (b) (3). As noted in the commentary to section 253(d), no substantive change has been made by moving the grant of appraisal rights in a short-form merger from Section 253 to subsection (b) (3). It was done for the sake of uniformity so that the grant of all appraisal rights will be contained in this one Section of the corporation law.

Subsection (c). This subsection gives a Delaware corporation the option to grant appraisal rights to stockholders in connection with transactions other than mergers. It permits a corporation to provide in its certificate of incorporation that appraisal rights are available in connection with a sale of assets, charter amendments, or a merger or consolidation where appraisal rights would otherwise have been denied because of the provisions of the present subsection (k). This amendment expands the permissive authority found in the present subsection (k) which permits a Delaware corporation to grant appraisal rights in its charter in connection with a merger even where they would not otherwise be available under the statute. On the other hand, the amendment does not go as far as other jurisdictions in making appraisal rights mandatory in sales of assets and other similar transactions.

The amendment will also remove any doubt about the jurisdiction of the Court of Chancery to determine appraisal rights granted by a corporate charter. By specifically recognizing the corporate power to grant appraisal rights, the statutory grant of Chancery jurisdiction in §262(a) will apply.

Subsection (d). No substantive changes have been made in subsection (b). Several revisions in language were made. One addition to the subsection is set forth in the last two sentences of subsection (d) (2). Those sentences provide that a dissenting shareholder is entitled to receive from the corporation, upon demand, a simple statement providing the shareholder with the number of shares which have demanded appraisal and the number of holders of such shares. Names, addresses or other identification of the holders is not required. This statement will permit the dissenting shareholder to learn how many shares might qualify for appraisal and might be expected to share the costs of the proceeding.

Subsection (f). No significant substantive changes have been made in subsection (f). The time within which the verified list is to be filed has been changed from 10 to 20 days so it will be due on the same date as its answer to the petition (20 days after service).

It has been the uniform practice of the Register in Chancery not to give notice by mail to the shareholders on the list of dissenters of the time and the place of the hearing unless so directed by an order of the Court. The proposed amendment gives effect to this practice by requiring the Register to give notice by mail only upon an order of the Court.

Finally, the publication requirements have been modified to permit the Court to give notice by publication in newspapers other than the Wilmington papers. A requirement that the corporation pay the costs of notice has been reinstated in the statute, having been deleted in the 1973 revision to §262.

Subsection (g). Only clarifying language changes have been made in former subsection (e). No substantive revisions have been made.

Subsection (h). It is proposed that former subsection (f) be amended to provide that the Court, in determining the rate of interest, may receive and consider relevant evidence thereon at the same hearing during which it receives evidence on the fair value. [It can be argued that the statute now contemplates a determination as to fair value followed by a later hearing during which the Court would receive evidence on the rate of interest.] Also, the standard to be followed in determining the rate of interest has been broadened to permit the Court to award to the dissenting shareholders a rate of interest based on all relevant facts, including the cost of borrowing by the corporation.

Subsection (i). No change of substance has been made to former subsection (g).

Subsection (j). As noted above, the provisions concerning interest have been relocated by moving them from proposed subsection (j) to new subsection (h).

Subsection (k). The only change to former subsection (i) is one which should have been made when the statute was last amended in 1976. The change merely provides that after the effective date of the merger, rather than after the filing of his demand, the dissenting shareholder is to be treated as a creditor of the corporation.

Subsection (l). No changes have been made to present subsection (j).

Commentary on §377

This change in subsection (a) makes clear what must be set forth in the certificate which must be filed by a foreign corporation to change its registered agent. The provision as it presently stands makes a reference to §371 which does not clearly define what such a certificate for a change of registered agent must contain.



SPONSOR: Sen. Sharp

DELAWARE STATE SENATE

131ST GENERAL ASSEMBLY

SENATE AMENDMENT NO. _____

APR 30 1981

TO

HOUSE BILL NO. 16

1 Amend House Bill 16 by striking section 16 thereof in its
2 entirety and substituting in lieu thereof the following:
3 ""Section 16, this act shall become effective 30 days after
4 it becomes law."

SYNOPSIS

This amendment changes the effective date of the act.
Author - Harry K. F. Terry

SD/HKFT/CMM