



SPONSOR Rep. Dixon;

Sen. Adams

STATE OF DELAWARE
HOUSE OF REPRESENTATIVES
132ND GENERAL ASSEMBLY

HOUSE BILL NO. **514** **APR 10 1984**

AN ACT TO AMEND SUBCHAPTER XV, CHAPTER 1, TITLE 8 OF THE
DELAWARE CODE RELATING TO FOREIGN CORPORATIONS.

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

1 Section 1. Amend §380, Title 8 of the Delaware Code by
2 deleting the section in its entirety and substituting therefor
3 the following:

4 "§380. A corporation organized and doing business
5 under the laws of the District of Columbia or of any state
6 of the United States other than Delaware, duly authorized
7 by its certificate of incorporation or by-laws so to act,
8 may be appointed by any last will and testament or other
9 testamentary writing, probated within this state, or
10 by a deed of trust, mortgage, or other agreement, as
11 executor, guardian, trustee, or other fiduciary, and may
12 act as such within this state, when and to the extent that
13 the laws of the District of Columbia or of the state in
14 which the foreign corporation is organized confer like
15 powers upon corporations organized and doing business
16 under the laws of this state."

SYNOPSIS

This bill responds to reciprocity legislation found
in many other states by permitting out-of-state corporations to
function as trustees in Delaware in any capacity and not just as
trustee under a last will and testament thereby allowing Delaware
chartered corporations to act as trustee in other states in all
capacities and not just as a trustee under a last will and
testament.



SPONSOR Rep. Dixon

STATE OF DELAWARE
HOUSE OF REPRESENTATIVES
132ND GENERAL ASSEMBLY

HOUSE AMENDMENT NO. _____

TO **1**

HOUSE BILL NO. 514

MAY 15 1984

1 AMEND H.B. 514 line 4 by striking said line in its entirety
2 and by substituting in lieu thereof the following:

3 "§380. Foreign corporation as fiduciary in this State.

4 A corporation organized and doing business".

SYNOPSIS

This Amendment corrects an error in drafting wherein the title of §380 was omitted.



STATE OF DELAWARE
HOUSE OF REPRESENTATIVES
132ND GENERAL ASSEMBLY

SPONSOR Rep. Dixon;

Reps. Brady, Buckworth,
Corrozi, Terry

HOUSE BILL NO. 565 MAY 9 1984

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

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

1 Section 1. Amend Chapter 1, Title 8 of the Delaware
2 Code by redesignating present Subchapter XVI as new
3 Subchapter XVII and by designating a new Subchapter XVI to
4 be entitled "Domestication and Transfer of Non-United States
5 Corporations."

6 Section 2. Amend Chapter 1, Title 8, Delaware Code by
7 adding thereto a new Section 388 to read as follows:

8 "\$388. Domestication of non-United States
9 Corporations.

10 (a) As used in this section, the term:

11 (1) 'Corporation' includes any incorporated
12 organization, private law corporation (whether or not
13 organized for business purposes), public law
14 corporation, and partnership, proprietorship, joint
15 venture, foundation, trust, association or similar
16 entity, and

17 (2) 'Non-United States corporation' means any
18 corporation the internal affairs of which are governed

1 by the laws of any jurisdiction other than the United
2 States, any State, the District of Columbia, Puerto
3 Rico, Guam or any possession or territory of the United
4 States.

5 (b) Any non-United States Corporation may become
6 domesticated in this State by filing with the
7 Secretary of State: (i) a certificate of domestication
8 which shall be executed and acknowledged in accordance
9 with subsection (g) and filed and recorded in
10 accordance with §103 of this title, and (ii) a
11 certificate of incorporation, which shall be executed,
12 acknowledged, filed and recorded in accordance with
13 §103 of this title.

14 (c) The certificate of domestication shall certify:

15 (i) the date on which and jurisdiction where the
16 corporation was first formed, incorporated or otherwise
17 came into being, (ii) the name of the corporation
18 immediately prior to the filing of the certificate of
19 domestication and (iii) the jurisdiction that
20 constituted the seat, siege social, or principal
21 place of business or central administration of the
22 corporation, or any other equivalent thereto under
23 applicable law, immediately prior to the filing of the
24 certificate of domestication.

25 (d) Upon filing with the Secretary of State of the
26 certificate of domestication and certificate of
27 incorporation, the corporation shall be domesticated in
28 this State and the corporation shall thereafter be
29 subject to all the provisions of this title, except
30 that notwithstanding §106, the existence of the
31 corporation shall be deemed to have commenced on the
32 date the corporation commenced its existence in the

1 jurisdiction in which the corporation was first formed,
2 incorporated or otherwise came into being.

3 (e) The domestication of any corporation in this State
4 shall not be deemed to affect any obligations or
5 liabilities of the corporation incurred prior to its
6 domestication.

7 (f) The filing of a certificate of domestication shall
8 not affect the choice of law applicable to the
9 corporation, except that from the date the certificate
10 of domestication is filed, the law of the State of
11 Delaware, including the provisions of this title, shall
12 apply to the corporation to the same extent as if the
13 corporation had been incorporated as a corporation of
14 this State on that date.

15 (g) The certificate of domestication shall be signed
16 by any corporation officer, director, trustee, manager,
17 partner or other person performing functions equivalent
18 to those of an officer or director, however named or
19 described, and who is authorized to sign the
20 certificate of domestication on behalf of the
21 corporation.

22 Section 3. Amend Chapter 1, Title 8, Delaware Code by
23 adding thereto a new Section 389 to read as follows:

24 "§389. Temporary transfer of domicile into this
25 State.

26 (a) As used in this section, the term:

27 (1) 'Corporation' and the term 'non-United States
28 corporation' shall have the same meanings as set forth
29 in §388(a) of this title.

30 (2) The terms 'officers' and 'directors' include,
31 in addition to such persons, trustees, managers,
32 partners and all other persons performing functions

1 equivalent to those of officers and directors, however
2 named or described in any relevant instrument.

3 (3) The term 'emergency condition' as used herein
4 shall be deemed to include but not be limited to any of
5 the following: war or other armed conflict; revolution
6 or insurrection; invasion or occupation by foreign
7 military forces; rioting or civil commotion of an
8 extended nature; domination by a foreign power;
9 expropriation, nationalization or confiscation of a
10 material part of the assets or property of the
11 corporation; impairment of the institution of private
12 property (including private property held abroad); the
13 taking of any action under the laws of the United
14 States whereby persons resident in the jurisdiction,
15 the law of which governs the internal affairs of the
16 corporation, might be treated as 'enemies' or otherwise
17 restricted under laws of the United States relating to
18 trading with enemies of the United States; or the
19 immediate threat of any of the foregoing; and such
20 other event which, under the law of the jurisdiction
21 governing the internal affairs of the corporation,
22 permits the corporation to transfer its domicile.

23 (b) Any non-United States corporation may, subject to
24 and upon compliance with the further provisions of this
25 section, transfer its domicile (which term, as used in
26 this section, shall be deemed to refer in addition to
27 the seat, siege social, or principal place of
28 business or central administration of such corporation,
29 or any other equivalent thereto under applicable law)
30 into this State, and may perform the acts described in
31 the further provisions of this section, so long as the
32 law by which the internal affairs of such corporation
33 are governed does not expressly prohibit such transfer.

1 (c) Any corporation that shall propose to transfer its
2 domicile into this State shall submit to the Secretary
3 of State for his review, at least 30 days prior to the
4 proposed transfer of domicile, the following:

5 (1) a copy of its certificate of incorporation
6 and by-laws (or the equivalent thereof under applicable
7 law), certified as true and correct by the appropriate
8 director, officer or government official;

9 (2) a certificate issued by an authorized officer
10 of the jurisdiction the law of which governs the
11 internal affairs of the corporation evidencing its
12 corporate existence;

13 (3) a list indicating the person or persons who,
14 in the event of a transfer pursuant to this section,
15 shall be the authorized officers and directors of the
16 corporation, together with evidence of their authority
17 to act and their respective executed agreements in
18 writing regarding service of process as set out in
19 subsection (j) of this section;

20 (4) a certificate executed by the appropriate
21 officer or director of the corporation, setting forth
22 (i) the name and address of its registered agent in
23 this State, (ii) a general description of the business
24 in which it is engaged, (iii) that the filing of such
25 certificate has been duly authorized by any necessary
26 corporate action and does not violate the certificate
27 of incorporation or by-laws (or equivalents thereof
28 under applicable law) or any material agreement or
29 instrument binding on such corporation, (iv) a list
30 indicating the person or persons authorized to sign the
31 written communications required by subsection (e) of
32 this section, (v) an affirmation that such transfer is
33 not expressly prohibited under the law by which the

1 internal affairs of the corporation are governed, and
2 (vi) an undertaking that any transfer of domicile into
3 this State will take place only in the event of an
4 emergency condition in the jurisdiction the law of
5 which governs the internal affairs of the corporation
6 and that such transfer shall continue only so long as
7 such emergency condition, in the judgment of the
8 corporation's management, so requires; and

9 (5) the examination fee prescribed under §391 of
10 this title.

11 If any of the documents referred to above are not
12 in English, a translation thereof, under oath of the
13 translator, shall be attached thereto. If such
14 documents satisfy the requirements of this section, and
15 if the name of the corporation meets the requirements
16 of §102(a)(1) of this title, the Secretary of State
17 shall notify the corporation that such documents have
18 been accepted for filing, and the records of the
19 Secretary of State shall reflect such acceptance and
20 such notification. In addition, the Secretary of State
21 shall enter the name of the corporation on his reserved
22 list to remain there so long as the corporation is in
23 compliance with the provisions of this section. No
24 document submitted under this subsection shall be
25 available for public inspection pursuant to Title 29,
26 Chapter 100, Delaware Code, until and unless, such
27 corporation effects a transfer of its domicile as
28 provided in this section. The Secretary of State may
29 waive the 30-day period and translation requirement
30 provided for in this subsection, upon request by such
31 corporation supported by facts (including, without
32 limitation, the existence of an emergency condition)
33 justifying such waiver.

1 (d) On or before the 1st day of March in each year,
2 prior to the transfer of its domicile as provided for
3 in subsection (e) below, during any such transfer and,
4 in the event that it desires to continue to be subject
5 to a transfer of domicile under this section, after its
6 domicile has ceased to be in this State, the
7 corporation shall file a certificate executed by an
8 appropriate officer or director of the corporation,
9 certifying that the documents submitted pursuant to
10 this section remain in full force and effect or
11 attaching any amendments or supplements thereto and
12 translated as required above, together with the filing
13 fee prescribed under §391 of this title. In the event
14 that any corporation fails to file the required
15 certificate on or before the 1st day of March in each
16 year, all certificates and filings made pursuant to
17 this section shall become null and void on the 2nd day
18 of March in such year, and any proposed transfer
19 thereafter shall be subject to all of the required
20 submissions and the examination fee set forth in
21 subsection (c) of this section.

22 (e) If the Secretary of State accepts the documents
23 submitted pursuant to subsection (c) for filing, such
24 corporation may transfer its domicile to this State at
25 any time by means of a written communication to such
26 effect addressed to the Secretary of State, signed by
27 one of the persons named on the list filed pursuant to
28 subsection (c)(4)(iv), and confirming that the
29 statements made pursuant to subsection (c)(4) remain
30 true and correct; provided, that if emergency
31 conditions have affected ordinary means of
32 communication, such notification may be made by
33 telegram, telex, telecopy or other form of writing so

1 long as a duly signed duplicate is received by the
2 Secretary of State within 30 days thereafter. The
3 records of the Secretary of State shall reflect the
4 fact of such transfer. Upon the payment to the
5 Secretary of State of the fee prescribed under §391 of
6 this title, the Secretary of State shall certify that
7 the corporation has filed all documents and paid all
8 fees required by this title. Such certificate of the
9 Secretary of State shall be prima facie evidence of
10 transfer by such corporation of its domicile into this
11 State.

12 (f) Except to the extent expressly prohibited by the
13 laws of this State, from and after the time that a
14 non-United States corporation transfers its domicile to
15 this State pursuant to the provisions of this section,
16 the corporation shall have all of the powers which it
17 had immediately prior to such transfer under the law of
18 the jurisdiction governing its internal affairs and the
19 directors and officers designated pursuant to
20 subsection (c)(3), and their successors, may manage the
21 business and affairs of the corporation in accordance
22 with the laws of such jurisdiction. Any such activity
23 conducted pursuant to this section shall not be deemed
24 to be doing business within this State for purposes of
25 §371 of this title. Any reference in this section to
26 the law of the jurisdiction governing the internal
27 affairs of a corporation which has transferred its
28 domicile into this State shall be deemed to be a
29 reference to such law as in effect immediately prior to
30 the transfer of domicile.

31 (g) For purposes of any action in the courts of this
32 State, no corporation which has obtained the
33 certificate of the Secretary of State referred to in

1 subsection (e) shall be deemed to be an 'enemy' person
2 or entity for any purpose, including, without
3 limitation, in relation to any claim of title to its
4 assets, wherever located, or to its ability to
5 institute suit in said courts.

6 (h) The transfer by any corporation of its domicile
7 into this State shall not be deemed to affect any
8 obligations or liabilities of such corporation incurred
9 prior to such transfer.

10 (i) The directors of any corporation which has
11 transferred its domicile into this State may withhold
12 from any stockholder any amounts payable to such
13 stockholder on account of dividends or other
14 distributions, if the directors shall determine that
15 such stockholder will not have the full benefit of such
16 payment, so long as the directors shall make provision
17 for the retention of such withheld payment in escrow or
18 under some similar arrangement for the benefit of such
19 stockholder.

20 (j) All process issued out of any court of this State,
21 all orders made by any court of this State, and all
22 rules and notices of any kind required to be served on
23 any corporation which has transferred its domicile into
24 this State may be served on the corporation pursuant to
25 §321 of this title in the same manner as if such
26 corporation were a corporation of this State. The
27 directors of a corporation which has transferred its
28 domicile into this State shall agree in writing that
29 they will be amenable to service of process by the same
30 means as, and subject to the jurisdiction of, the
31 courts of this State to the same extent as are
32 directors of corporations of this State, and such

1 agreements shall be submitted to the Secretary of State
2 for filing before the respective directors take office.
3 (k) Any corporation which has transferred its domicile
4 into this State may voluntarily return to the
5 jurisdiction the law of which governs its internal
6 affairs by filing with the Secretary of State an
7 application to withdraw from this State. Such
8 application shall be accompanied by a resolution of the
9 directors of the corporation authorizing such
10 withdrawal and by a certificate of the highest
11 diplomatic or consular officer of such jurisdiction
12 accredited to the United States indicating the consent
13 of such jurisdiction to such withdrawal. The
14 application shall also contain, or be accompanied by,
15 the agreement of the corporation that it may be served
16 with process in this State in any proceeding for
17 enforcement of any obligation of the corporation
18 arising prior to its withdrawal from this State, which
19 agreement shall include the appointment of the
20 Secretary of State as the agent of the corporation to
21 accept service of process in any such proceeding and
22 shall specify the address to which a copy of process
23 served upon the Secretary of State shall be mailed.
24 Upon the payment of any fees and taxes owed to this
25 State, the Secretary of State shall file the
26 application and the corporation's domicile shall, as of
27 the time of filing, cease to be in this State.

28 Section 4. Amend §391, Chapter 1, Title 8, Delaware
29 Code by redesignating paragraphs (18) and (19) of subsection
30 (a) thereof as new paragraphs (21) and (22), respectively,
31 and by inserting after paragraph (17) of subsection (a) the
32 following:

1 (18) For receiving and filing and/or indexing by the
2 Secretary of State of a certificate of domestication
3 and certificate of incorporation prescribed in §388(d)
4 of this title, a fee of \$100, plus the tax and fee
5 payable upon the receipt for filing of an original
6 certificate of incorporation, shall be paid.

7 (19) For receiving, reviewing and filing and/or
8 indexing by the Secretary of State of the documents
9 prescribed in §389(c) of this title, a fee of \$10,000
10 shall be paid.

11 (20) For receiving, reviewing and filing and/or
12 indexing by the Secretary of State of the documents
13 prescribed in §389(d) of this title, an annual fee of
14 \$2,500 shall be paid.

15 Section 5. If any provision of this Act or the
16 application thereof to any person or circumstances is held
17 invalid, such invalidity shall not affect other provisions
18 or applications of the Act which can be given effect without
19 the invalid provision or application.

20 Section 6. This Act shall take effect on July 1, 1984.

SYNOPSIS

This Act provides means by which non-United States corporations and other entities may move to Delaware. While the two sections may be regarded as complementary, they have different purposes. Section 388 permits non-United States corporations and other entities to move to Delaware by filing a certificate of domestication, together with a certificate of incorporation, with the Secretary of State. Upon filing these documents the corporation is "domesticated" in Delaware, which means that the corporation becomes a Delaware corporation subject to all the provisions and entitled to all the benefits of Title 8 of the Delaware Code governing corporations. Section 388, like the provisions of the statute dealing with mergers in which a Delaware corporation is the survivor, contemplates the

movement of a corporation or other entity to Delaware on a permanent basis.

Section 389 provides for a non-United States corporation or other entity to move its domicile to Delaware on a temporary basis in the event of an insurrection or other emergency. Once the corporation moves its domicile to Delaware, except to the extent expressly prohibited by Delaware law, it may exercise all of the powers which it had under the laws of its prior host government and the directors and officers may manage the business and affairs of the corporation in accordance with those laws. Section 389 permits an entity which might wish to take advantage of the transfer procedure to keep on file with the Secretary of State the documents necessary to effect a change of domicile. When those documents have been accepted by the Secretary of State, the corporation may trigger a transfer by written communication signed by one of the persons named in the documents on file. When the emergency condition ceases to exist, the corporation may voluntarily return its domicile to the jurisdiction from which it was transferred by filing an application to withdraw from Delaware with the Secretary of State.