



SPONSOR: Sen. Sharp & Rep. Hebner

DELAWARE STATE SENATE

136th GENERAL ASSEMBLY

141 MAY 15 1991

SENATE BILL NO. _____

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO A PROCEDURE FOR PROVIDING FOR CLAIMS AGAINST A DISSOLVED CORPORATION AND TO CERTAIN FEES AND CHARGES PAYABLE TO THE SECRETARY OF STATE.

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 §281(b), Title 8, Delaware Code by inserting the number
2 "(1)" between the words "title" and "shall" in the first sentence thereof, and
3 by deleting the phrase "and all claims which" from the first sentence thereof
4 and inserting in lieu thereof the phrase ", and (1) shall make such provision
5 as".

6 Section 2. Amend §312(g), Title 8, Delaware Code by deleting the word
7 "twice" from the first sentence thereof and inserting in lieu thereof the
8 words "three times".

9 Section 3. Amend §391(a)(2), Title 8, Delaware Code by striking said
10 subparagraph in its entirety and substituting in lieu thereof the following:

11 "(2) Upon the receipt for filing of a certificate of amendment of
12 certificate of incorporation, or a certificate of amendment of certificate
13 of incorporation before payment of capital, or a restated certificate of
14 incorporation, increasing the authorized capital stock of a corporation,
15 the tax shall be an amount equal to the difference between the tax computed
16 at the foregoing rates upon the total authorized capital stock of the
17 corporation including the proposed increase, and the tax computed at the
18 foregoing rates upon the total authorized capital stock excluding the
19 proposed increase. In no case shall the amount paid be less than \$30."

20 Section 4. Amend §391(a)(4), Title 8, Delaware Code by striking said
21 subparagraph in its entirety and substituting in lieu thereof the following:

22 "(4) Upon the receipt for filing of a certificate of merger or

1 consolidation of 2 or more corporations, the tax shall be an amount equal
2 to the difference between the tax computed at the foregoing rates upon the
3 total authorized capital stock of the corporation created by the merger or
4 consolidation, and the tax so computed upon the aggregate amount of the
5 total authorized capital stock of the constituent corporations. In no case
6 shall the amount paid be less than \$75. The foregoing tax shall be in
7 addition to any tax or fee required under any other law of this State to be
8 paid by any constituent entity that is not a corporation in connection with
9 the filing of the certificate of merger or consolidation."

10 Section 5. Any corporation of this State that filed a certificate of the
11 type contemplated by §391(a)(2) and/or §391(a)(4) during the period of time
12 from June 18, 1990 through the effective date of this bill which
13 corporation is still in existence under the laws of the State and in good
14 standing with the State may apply to the Secretary of State for a credit
15 against future franchise taxes owing to the State equal to the difference
16 between the tax paid in connection with said filing and the tax calculated
17 under §391(a)(2) and/or §391(a)(4), as the case may be, as amended by this
18 bill. All corporations seeking a credit must apply for the credit prior to
19 April 1, 1992.

SYNOPSIS

The amendment of §281(b) will reconcile §280(c)(2) and §281(b) by requiring a dissolved corporation or successor entity to comply with the same standard (i.e., an amount "which will be reasonably likely to be sufficient") in making provision for unknown or likely claims.

This bill increases the tax to be paid by a Delaware corporation that renews or revives its certificate of incorporation whose certificate of incorporation has been forfeited, voided or expired for more than 5 years.

This bill decreases the fees for filing particular corporate filings with the Secretary of State and grants certain corporations the right to apply for a credit for portions of fees paid from the period June 18, 1990 to the effective date of this bill.

Author: Sen. Sharp