



SPONSOR: Sen. Sharp

DELAWARE STATE SENATE

137TH GENERAL ASSEMBLY

SENATE BILL NO. 30 0 APR 20 1994

AN ACT TO AMEND CHAPTER 1, TITLE 8, SECTION 136, OF THE DELAWARE CODE RELATING TO RESIGNATION OF CORPORATION REGISTERED AGENTS NOT COUPLED WITH APPOINTMENT OF SUCCESSOR.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Section 136(a), Chapter 1, Title 8, of the Delaware Code
2 by deleting the word "60" in the third line thereof and by replacing it with
3 the word "30."

4 Section 2. Further amend Section 136(a), Chapter 1, Title 8, of the
5 Delaware Code by amending the second sentence of said section to read in full
6 as follows:

7 "There shall be attached to such certificate an affidavit of such
8 registered agent, if an individual, or of an authorized officer thereof if a
9 corporation, stating either (i) that at least 30 days prior to the date of the
10 filing of said certificate, due notice was sent by certified or registered
11 mail to the corporation for which such registered agent was acting, at the
12 principal office thereof outside the State, if known to such registered agent
13 was appointed for such corporation, of the resignation of such registered
14 agent or (ii) that such registered agent has on not less than two separate
15 occasions attempted to send mail by first class mail to the corporation at its
16 principal office outside the State, if known to such registered agent or, if
17 not, to the last known address of the attorney or other individual at whose
18 request such registered agent was appointed for such corporation, and such
19 mail has been returned by the post office as undeliverable, not forwardable,
20 or unclaimed."

21 Section 3. Amend Section 136(c), Chapter 1, Title 8, of the Delaware code
22 by deleting the word "60" in the seventh and eleventh lines thereof and by
23 replacing them with the word "30."

SYNOPSIS

The current law requires a registered agent to send a certified or registered letter to the last address of a corporation it represents 30 days before the agent can resign. This unduly delays the resignation and imposes further cost burden on an agent when the address is no longer valid. This amendment will allow agents to resign without sending a certified or registered letter if previous mail has been returned undelivered. Further, this amendment shortens the waiting time to 30 days before the resignation can become effective and requires the corporation to name a new agent within 30 days.

AUTHOR: Sen. Sharp



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DELAWARE STATE SENATE

137TH GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1

MAY 4 1994

TO

SENATE BILL NO. 300

1 AMEND Senate Bill No. 300 by adding to the enactment clause after the word
2 "Delaware" and before the colon ":" the phrase "(two-thirds of all members
3 elected to each House thereof concurring therein)".

4 FURTHER AMEND Senate Bill No. 300 by adding the following to the end of
5 line 12, page 1 of the Bill:

6 "or, if not, to the last known address of the attorney or other
7 individual at whose request such registered agent".

SYNOPSIS

This amendment adds the proper super majority vote requirement to the Bill and a phrase which was inadvertently deleted from the original Bill.

AUTHOR: Sen. Sharp



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DELAWARE STATE SENATE

137TH GENERAL ASSEMBLY

301 APR 20 1994

SENATE BILL NO. _____

AN ACT TO AMEND CHAPTER 1, TITLE 8, SECTION 371, OF THE DELAWARE CODE RELATING TO QUALIFICATION TO DO BUSINESS IN STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

- 1 Section 1. Amend Section 371(c), Chapter 1, Title 8, of the Delaware Code
2 by adding the following sentence at the end of said section:
3 "If the name of the foreign corporation conflicts with the name of a
4 corporation, limited partnership, limited liability company, registered
5 limited liability partnership, or business trust organized under the laws of
6 this State, or a name reserved for a corporation, limited partnership, limited
7 liability company, registered limited liability partnership, or business trust
8 to be organized under the laws of this State, or a name reserved or registered
9 as that of a foreign corporation, foreign limited partnership, or foreign
10 limited liability company under the laws of this State, the foreign
11 corporation may qualify to do business if it adopts an assumed name which
12 shall be used when doing business in this State as long as the assumed name is
13 authorized for use by this section."

SYNOPSIS

This addition to Section 371(c) would allow a foreign corporation to qualify to do business in this State even though there was a conflict of name. The foreign corporation would use an assumed name which would be distinguished from that of any existing corporation, limited partnership, limited liability company, registered limited liability partnership, or business trust.

AUTHOR: Sen. Sharp



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DELAWARE STATE SENATE

137TH GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1 MAY 4 1934

TO

SENATE BILL NO. 301

1 AMEND Senate Bill No. 301 by adding to the enactment clause after the word
2 "Delaware" and before the colon ":" the phrase "(two-thirds of all members
3 elected to each House thereof concurring therein)".

4 SYNOPSIS

5 This amendment adds the proper super majority vote requirement to the bill.

AUTHOR: Sen. Sharp



SPONSOR: Sen. Sharp

DELAWARE STATE SENATE

137TH GENERAL ASSEMBLY

SENATE BILL NO. 31 4 APR 26 1994

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Section 103(a)(2)(a), Chapter 1, Title 8, of the Delaware
2 Code by deleting same and replacing said subsection with the following.

3 "a. By any authorized officer of the corporation; or"

4 Section 2. Amend Section 103(f), Chapter 1, Title 8, of the Delaware Code
5 by deleting the last sentence of said section and adding the following in lieu
6 thereof:

7 "In lieu of filing a certificate of correction the instrument may be
8 corrected by filing with the Secretary of State a corrected by filing with the
9 Secretary of State a corrected instrument which shall be executed,
10 acknowledged, filed and recorded in accordance with this section. The
11 corrected instrument shall be specifically designated as such in its heading,
12 shall specify the inaccuracy or defect to be corrected, and shall set forth
13 the entire instrument in corrected form. An instrument corrected in
14 accordance with this section shall be effective as of the date the original
15 instrument was filed, except as to those persons who are substantially and
16 adversely affected by the correction and as to those persons the instrument as
17 corrected shall be effective from the filing date."

18 Section 3. Amend Section 103(h), Chapter 1, Title 8, of the Delaware Code
19 by inserting after the word "facsimile" the phrase: ", a conformed signature,
20 or an electronically transmitted signature".

21 Section 4. Amend Section 133, Chapter 1, Title 8, of the Delaware Code, by
22 deleting the following phrase from said section:

1 "; and, if such new office is located in a county other than that in
2 which the former office was located, a certified copy of such certificate
3 shall also be recorded in the office of the recorder for the county in which
4 such former office was located".

5 Section 5. Amend Section 251(c), of Title 8, of the Delaware Code, by
6 deleting the words:

7 "It shall be recorded in the office of the recorder of the county of
8 the county of this State in which the registered office of each such
9 constituent corporation is located."

10 and insert in their place the words:

11 "It shall be recorded in the office of the recorder of deeds of the
12 county of this State in which the registered office of the surviving
13 constituent corporation is located."

SYNOPSIS

The changes to Section 103 allow for: only one signature to execute a document filed with the Secretary of State; a corrected certificate to be filed in lieu of a certificate of correction in order for the instrument to appear in its corrected form; and provide for conformed or electronic signature. The changes to sections 133 and 251 eliminate recording in the previous county when there is a change in the registered agent and provides for recording only in the county of the surviving corporation when there is a merger of two Delaware corporations.

AUTHOR: Sen. Sharp



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DELAWARE STATE SENATE

137TH GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1

MAY 04 1994

TO

SENATE BILL NO. 314

1 AMEND Senate Bill No. 314 by adding to the enactment clause after the word
2 "Delaware" and before the colon ":" the phrase "(two-thirds of all members
3 elected to each House thereof concurring therein)".

4 FURTHER AMEND Senate Bill No. 314 by deleting the phrase "by filing with
5 the Secretary of State a corrected" as found on line 8, page 1 of the Bill.

6 FURTHER AMEND Senate Bill No. 314 by deleting lines 8 and 9 of Page 2 of
7 the Bill and replacing said lines with the following:

8 "this State in which the registered office of each such constituent
9 corporation is located;".

10 FURTHER AMEND Senate Bill No. 314 by deleting line 13, page 2 of the Bill
11 and replacing said line with the following:

12 "constituent corporation is located;".

SYNOPSIS

This amendment adds the proper super majority vote requirement to the Bill and corrects typographical errors.

AUTHOR: Sen. Sharp



SPONSOR: Sen. Sharp

DELAWARE STATE SENATE

137TH GENERAL ASSEMBLY

SENATE BILL NO. _____

323 APR 28 1994

AN ACT TO AMEND CHAPTER 1, TITLE 8, SECTION 145, OF THE DELAWARE CODE, RELATING TO INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS OF DELAWARE CORPORATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-Thirds of all members elected to each house of the General Assembly concurring therein):

1 Section 1. Amend Section 145(d), Chapter 1, Title 8, Delaware Code, by
2 deleting the second sentence thereof in its entirety and inserting in lieu
3 thereof as follows:

4 "Such determination shall be made (1) by a majority vote of the
5 directors who are not parties to such action, suit or proceeding, even
6 though less than a quorum, or (2) if there are no such directors, or if
7 such directors so direct, by independent legal counsel in a written
8 opinion, or (3) by the stockholders."

9 Section 2. Amend Section 145, Chapter 1, Title 8, Delaware Code, by
10 adding new subsection (k) as follows:

11 "(k) The Court of Chancery is hereby vested with exclusive jurisdiction
12 to hear and determine all actions for advancement of expenses or
13 indemnification brought under this section or under any bylaw,
14 agreement, vote of stockholders or disinterested directors, or
15 otherwise. The Court of Chancery may summarily determine a
16 corporation's obligation to advance expenses (including attorneys'
17 fees)."

18 Section 3. This Act shall become effective July 1, 1994, and shall not
19 apply to suits pending as of July 1, 1994.

SYNOPSIS

The amendment to Section 145(d) permits action on indemnification requests by a majority vote of those members of the board who are not parties to such action, suit or proceeding, whether or not they constitute a quorum of the board.

The amendment adding new subsection "(k)" provides the Court of Chancery with exclusive jurisdiction to hear and determine actions brought pursuant to Section 145, including but not limited to actions brought pursuant to charter and bylaw provisions, resolutions and contracts regarding indemnification and advancement. The provision is consistent with a number of other sections of the Delaware General Corporation Law that grant exclusive jurisdiction to the Court of Chancery. The amendment further provides for summary treatment of actions brought pursuant to Section 145 seeking a determination as to whether a corporation is obligated to advance expenses prior to the final disposition of litigation.

Author: Sen. Sharp



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DELAWARE STATE SENATE

137TH GENERAL ASSEMBLY

SENATE BILL NO. _____

324 APR 28 1994

AN ACT TO AMEND CHAPTER 1, TITLE 8, SECTION 262, OF THE DELAWARE CODE, RELATING TO APPRAISAL RIGHTS UNDER 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 of the General Assembly concurring therein):

1 Section 1. Amend Section 262(a), Chapter 1, Title 8, Delaware Code, by
2 deleting the "." at the end of the last sentence thereof and adding the
3 following thereto:

4 "; and the words 'depository receipt' mean a receipt or other
5 instrument issued by a depository representing an interest in one or
6 more shares, or fractions thereof, solely of stock of a corporation,
7 which stock is deposited with the depository."

8 Section 2. Amend Section 262(b)(1), Chapter 1, Title 8, Delaware Code,
9 by deleting the word "which" following the words "class or series of stock"
10 and inserting in lieu thereof the following: ", which stock, or depository
11 receipts in respect thereof".

12 Section 3. Amend Section 262(b)(1) Chapter 1, Title 8, Delaware Code,
13 by deleting the word "stockholders" appearing in clause (ii) thereof and
14 inserting in lieu thereof the word "holders".

15 Section 4. Amend Section 262(b)(2)a., Chapter 1, Title 8, Delaware
16 Code, by deleting the ";" at the end thereof and adding thereto the
17 following: ", or depository receipts in respect thereof;".

18 Section 5. Amend Section 262(b)(2)b., Chapter 1, Title 8, Delaware
19 Code, by deleting the word "which" following the word "corporation" and
20 inserting in lieu thereof the following: ", or depository receipts in respect
21 thereof, which shares of stock or depository receipts".

1 Section 6. Amend Section 262(b)(2)b., Chapter 1, Title 8, Delaware
2 Code, by deleting the word "stockholders" at the end thereof and inserting in
3 lieu thereof the word "holders".

4 Section 7. Amend Section 262(b)(2)c., Chapter 1, Title 8, Delaware
5 Code, by deleting the words "of the corporations" and inserting in lieu
6 thereof the words "or fractional depository receipts".

7 Section 8. Amend Section 262(b)(2)d., Chapter 1, Title 8, Delaware
8 Code, by inserting the following immediately after the words "shares of
9 stock": ", depository receipts".

10 Section 9. Amend Section 262(b)(2)d., Chapter 1, Title 8, Delaware
11 Code, by inserting the following immediately after the words "fractional
12 shares": "or fractional depository receipts".

13 Section 10. This Act shall become effective July 1, 1994, and shall
14 apply only with respect to mergers or consolidations consummated pursuant to
15 an agreement of merger or consolidation entered into after July 1, 1994.

SYNOPSIS

The amendments to Section 262 are intended to broaden the existing "market out" exception to the availability of appraisal rights to include, under comparable circumstances, shares of stock represented by depository receipts that are widely held or publicly traded.

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DELAWARE STATE SENATE

137TH GENERAL ASSEMBLY

SENATE BILL NO. 325 APR 28 1994

AN ACT TO AMEND CHAPTER 1, TITLE 8, SECTION 151, DELAWARE CODE, RELATING TO CLASSES AND SERIES OF STOCK OF DELAWARE CORPORATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-Thirds of all members elected to each house of the General Assembly concurring therein):

1 Section 1. Amend Chapter 1, Title 8, Section 151(a), Delaware Code, by
2 adding a new sentence immediately prior to the final sentence of subparagraph
3 (a) reading as follows:

4 "The term 'facts,' as used in this subsection, includes, but is not
5 limited to, the occurrence of any event, including a determination or
6 action by any person or body, including the corporation."

7 Section 2. This Act shall become effective July 1, 1994.

SYNOPSIS

The amendment to Section 151(a) is intended to make it clear that a "fact" can include an event or determination, including an event or determination within the control of the corporation or a person or body affiliated with the corporation, such as a decision by its board of directors or one of its officers or agents. This amendment is not intended to alter the fiduciary duties of a board of directors in authorizing the issuance of stock with rights that turn on determinations or actions by any person or body, or in making any determination or taking any action constituting a fact under this section.

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