

CHAPTER 273  
FORMERLY  
HOUSE BILL NO. 342

AN ACT TO AMEND TITLE 8 OF THE 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):

Section 1. Amend § 254(d)(1), Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(1) The name, ~~and~~ state of domicile and type of entity of each of the constituent entities;

Section 2. Amend § 263(c)(1), Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(1) The name, ~~and~~ state of domicile and type of entity of each of the constituent entities;

Section 3. Amend § 265(c)(2), Title 8 of the Delaware Code by making insertions as shown by underlining as follows:

(2) The name and type of entity of the other entity immediately prior to the filing of the certificate of conversion to corporation; and

Section 4. Amend § 267(a), Title 8 of the Delaware Code by making insertions as shown by underlining as follows:

(a) In any case in which: (1) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(i) of this title), of which class there are outstanding shares that, absent this subsection, would be entitled to vote on such merger, is owned by an entity, (2) 1 or more of such corporations is a corporation of this State, and (3) any entity or corporation that is not an entity or corporation of this State is an entity or corporation of any other state or the District of Columbia, the laws of which do not forbid such merger, the entity having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations by (a) authorizing such merger in accordance with such entity's governing documents and the laws of the jurisdiction under which such entity is formed or organized and (b) acknowledging and filing with the Secretary of State, in accordance with § 103 of this title, a certificate of such ownership and merger certifying (i) that such merger was authorized in accordance with such entity's governing documents and the laws of the jurisdiction under which such entity is formed or organized, such certificate executed in accordance with such entity's governing documents and in accordance with the laws of the jurisdiction under which such entity is formed or organized and (ii) the type of entity of each constituent entity to the merger; provided, however, that in case the entity shall not own all the outstanding stock of all the corporations, parties to a merger as aforesaid, (A) the certificate of ownership and merger shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving constituent party upon surrender of each share of the corporation or corporations not owned by the entity, or the cancellation of some or all of such shares and (B) such terms and conditions of the merger may not result in a holder of stock in a corporation becoming a general partner in a surviving entity that is a partnership (other than a limited liability partnership or a limited liability limited partnership). Any of the terms of the merger may be made dependent upon facts ascertainable outside of the certificate of ownership and merger, provided that the manner in which such facts shall operate upon the terms of the merger is clearly and expressly set forth in the certificate of ownership and merger. The term "facts," as used in the preceding sentence, includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the entity. If the surviving constituent party exists under the laws of the District of Columbia or any state or jurisdiction other than this State, (1) § 252(d) of this title shall also apply to a merger under this section; if the surviving constituent party is the entity, the word "corporation" where applicable, as used in § 252(d) of this title, shall be deemed to include an entity as defined herein; and (2) the terms and conditions of the merger shall obligate the surviving constituent party to provide the agreement, and take the actions, required by § 252(d) of this title.

Section 5. Amend § 311(a)(4), Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(4) At the meeting a vote of the stockholders shall be taken on a resolution to revoke the dissolution. If a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution shall be voted for the resolution, a certificate of revocation of dissolution shall be executed, and acknowledged in accordance with § 103 of this title, which shall state:

a. The name of the corporation;

b. The address (which shall be stated in accordance with § 131(c) of this title) of the corporation's registered office in this State, and the name of its registered agent at such address;

~~b.~~ c. The names and respective addresses of its officers;

~~e.~~ d. The names and respective addresses of its directors;

~~d.~~ e. That a majority of the stock of the corporation which was outstanding and entitled to vote upon a dissolution at the time of its dissolution have voted in favor of a resolution to revoke the dissolution; or, if it be the fact, that, in lieu of a meeting and vote of stockholders, the stockholders have given their written consent to the revocation in accordance with § 228 of this title.

Section 6. Amend § 312(d)(2), Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(2) The address (which shall ~~include the street, city and county~~ be stated in accordance with § 131(c) of this title) of the corporation's registered office in this State and the name of its registered agent at such address;

Section 7. Amend § 377(a) and (b), Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(a) Any foreign corporation, which has qualified to do business in this State, may change its registered agent and substitute another registered agent by filing a certificate with the Secretary of State, acknowledged in accordance with § 103 of this title, setting forth:

(1) The name and address of its registered agent designated in this State upon whom process directed to said corporation may be served; and

(2) A revocation of all previous appointments of agent for such purposes.

Such registered agent shall ~~be either an individual residing in this State when appointed or a corporation authorized to transact business in this State~~ comply with § 371(b)(2)(i) of this title.

(b) Any individual or ~~corporation~~ entity designated by a foreign corporation as its registered agent for service of process may resign by filing with the Secretary of State a signed statement that the registered agent is unwilling to continue to act as the registered agent of the corporation for service of process, including in the statement the post-office address of the main or headquarters office of the foreign corporation, but such resignation shall not become effective until 30 days after the statement is filed. The statement shall be acknowledged by the registered agent and shall contain a representation that written notice of resignation was given to the corporation at least 30 days prior to the filing of the statement by mailing or delivering such notice to the corporation at its address given in the statement.

Section 8. Amend § 377, Title 8 of the Delaware Code by making insertions as shown by underlining as follows:

(d) A foreign corporation whose qualification to do business in this State has been forfeited pursuant to § 132(f)(4) or § 136(b) of this title may be reinstated by filing a certificate of reinstatement with the Secretary of State, acknowledged in accordance with § 103 of this title, setting forth:

(1) the name of the foreign corporation;

(2) the effective date of the forfeiture; and

(3) the name and address of the foreign corporation's registered agent required to be maintained by § 132 of this title.

(e) Upon the filing of a certificate of reinstatement in accordance with subsection (d) of this section, the qualification of the foreign corporation to do business in this State shall be reinstated with the same force and effect as if it had not been forfeited pursuant to this title.

Section 9. Amend § 381(a), Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(a) Any foreign corporation which shall have qualified to do business in this State under § 371 of this title, may surrender its authority to do business in this State and may withdraw therefrom by filing with the Secretary of State:

(1) A certificate executed in accordance with § 103 of this title, stating that it surrenders its authority to transact business in the state and withdraws therefrom; and stating the address to which the Secretary of State may mail any process against the corporation that may be served upon the Secretary of State, or

~~(2) A copy of a certificate of dissolution issued by the proper official of the State or other jurisdiction of its incorporation, certified to be a true copy under the hand and official seal of the official, together with a certificate, which shall be executed in accordance with paragraph (a)(1) of this section, stating the address to which the Secretary of State may mail any process against the corporation that may be served upon the Secretary of State; or~~

~~(2)~~ (2) A copy of an order or decree of dissolution made by any court of competent jurisdiction or other competent authority of the State or other jurisdiction of its incorporation, certified to be a true copy under the hand of the clerk of the court or other official body, and the official seal of the court or official body or clerk thereof, together with a certificate executed in accordance with paragraph (a)(1) of this section, stating the address to which the Secretary of State may mail any process against the corporation that may be served upon the Secretary of State.

Section 10. Amend § 381(b), Title 8 of the Delaware Code by making deletions as shown by strike through as follows:

(b) The Secretary of State shall, upon payment to the Secretary of State of the fees prescribed in § 391 of this title, issue a sufficient number of certificates, under the Secretary of State's hand and official seal, evidencing the surrender of the authority of the corporation to do business in this State and its withdrawal therefrom. One of the certificates shall be furnished to the corporation withdrawing and surrendering its right to do business in this State; ~~1 certificate shall be delivered to the agent of the corporation designated as such immediately prior to the withdrawal.~~

Section 11. Amend § 390(b)(5), Title 8 of the Delaware Code by making insertions as shown by underlining as follows:

(5) In the case of a certificate of transfer, (i) that the existence of the corporation as a corporation of this State shall cease when the certificate of transfer becomes effective, and (ii) the agreement of the corporation that it

may be served with process in this State in any proceeding for enforcement of any obligation of the corporation arising while it was a corporation of this State which shall also irrevocably appoint the Secretary of State as its agent to accept service of process in any such proceeding and specify the address (which may not be that of the corporation's registered agent without the written consent of the corporation's registered agent, such consent to be filed along with the certificate of transfer) to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such corporation that has transferred out of the State of Delaware by letter, directed to such corporation that has transferred out of the State of Delaware at the address so specified, unless such corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process.

Section 12. Amend § 391, Title 8 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

~~§ 391. Taxes and fees~~ Amounts payable to Secretary of State upon filing certificate or other paper.

(a) The following ~~taxes and~~ fees and penalties shall be collected by and paid to the Secretary of State, for the use of the State:

(1) Upon the receipt for filing of an original certificate of incorporation, the ~~tax fee~~ shall be computed on the basis of \$0.02 for each share of authorized capital stock having par value up to and including 20,000 shares, \$0.01 for each share in excess of 20,000 shares up to and including 200,000 shares, and 2/5 of a \$0.01 for each share in excess of 200,000 shares; \$0.01 for each share of authorized capital stock without par value up to and including 20,000 shares, 1/2 of \$0.01 for each share in excess of 20,000 shares up to and including 2,000,000 shares, and 2/5 of \$0.01 for each share in excess of 2,000,000 shares. In no case shall the amount paid be less than \$15. For the purpose of computing the ~~tax fee~~ on par value stock each \$100 unit of the authorized capital stock shall be counted as 1 ~~taxable~~ assessable share.

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

(3) Upon the receipt for filing of a certificate of amendment of certificate of incorporation before payment of capital and not involving an increase of authorized capital stock, or an amendment to the certificate of incorporation not involving an increase of authorized capital stock, or a restated certificate of incorporation not involving an increase of authorized capital stock, or a certificate of retirement of stock, the ~~tax fee~~ to be paid shall be \$30. For all other certificates relating to corporations, not otherwise provided for, the ~~tax fee~~ to be paid shall be \$5.00. In the case of exempt corporations no ~~tax fee~~ shall be paid under this paragraph.

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

(5) Upon the receipt for filing of a certificate of dissolution, there shall be paid to and collected by the Secretary of State a ~~tax fee~~ of:

a. Forty dollars (\$40); or

b. Ten dollars (\$10) in the case of a certificate of dissolution which certifies that:

1. The corporation has no assets and has ceased transacting business; and
2. The corporation, for each year since its incorporation in this State, has been required to pay only the minimum franchise tax then prescribed by § 503 of this title; and
3. The corporation has paid all franchise taxes and fees due to or assessable by this State through the end of the year in which said certificate of dissolution is filed.

(6) Upon the receipt for filing of a certificate of reinstatement of a foreign corporation or a certificate ~~or other paper~~ of surrender and withdrawal from the State by a foreign corporation, there shall be collected by and paid to the Secretary of State a ~~tax fee~~ of \$10.

(7) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee of \$115 in each case shall be paid to the Secretary of State. The fee in the case of a certificate of incorporation filed as required by § 102 of this title shall be \$25. For entering information from each instrument into the Delaware Corporation Information System in accordance with § 103(c)(8) of this title, the fee shall be \$5.00.

a. A certificate of dissolution which meets the criteria stated in paragraph (a)(5)b. of this section shall not be subject to such fee; and

b. A certificate of incorporation filed in accordance with § 102 of this title shall be subject to a fee of \$25.

(8) For receiving and filing and/or indexing the annual report of a foreign corporation doing business in this State, a fee of \$125 shall be paid. In the event of neglect, refusal or failure on the part of any foreign corporation to file the annual report with the Secretary of State on or before June 30 each year, the corporation shall pay a penalty of \$125.

(9) For recording and indexing articles of association and other papers required by this chapter to be recorded by the Secretary of State, a fee computed on the basis of \$0.01 a line shall be paid.

(10) For certifying copies of any paper on file provided by this chapter, a fee of \$50 shall be paid for each copy certified. In addition, a fee of \$2.00 per page shall be paid in each instance where the Secretary of State provides the copies of the document to be certified.

(11) For issuing any certificate of the Secretary of State other than a certification of a copy under paragraph (a)(10) of this section, or a certificate that recites all of a corporation's filings with the Secretary of State, a fee of \$50 shall be paid for each certificate. For issuing any certificate of the Secretary of State that recites all of a corporation's filings with the Secretary of State, a fee of \$175 shall be paid for each certificate.

(12) For filing in the office of the Secretary of State any certificate of change of location or change of registered agent, as provided in § 133 of this title, there shall be collected by and paid to the Secretary of State a fee of \$50, provided that no fee shall be charged pursuant to § 103(c)(6) and (c)(7) of this title.

(13) For filing in the office of the Secretary of State any certificate of change of address or change of name of registered agent, as provided in § 134 of this title, there shall be collected by and paid to the Secretary of State a fee of \$50, plus the same fees for receiving, filing, indexing, copying and certifying the same as are charged in the case of filing a certificate of incorporation.

(14) For filing in the office of the Secretary of State any certificate of resignation of a registered agent and appointment of a successor, as provided in § 135 of this title, there shall be collected by and paid to the Secretary of State a fee of \$50.

(15) For filing in the office of the Secretary of State, any certificate of resignation of a registered agent without appointment of a successor, as provided in §§ 136 and 377 of this title, there shall be collected by and paid to the Secretary of State a fee of \$2.00 for each corporation whose registered agent has resigned by such certificate.

(16) For preparing and providing a written report of a record search, a fee of \$50 shall be paid.

(17) For preclearance of any document for filing, a fee of \$250 shall be paid.

(18) For receiving and filing and/or indexing an annual franchise tax report of a corporation provided for by § 502 of this title, a fee of \$25 shall be paid by exempt corporations and a fee of \$50 shall be paid by all other corporations.

(19) For receiving and filing and/or indexing by the Secretary of State of a certificate of domestication and certificate of incorporation prescribed in § 388(d) of this title, a fee of \$165, plus the ~~tax and~~ fee payable upon the receipt for filing of an original certificate of incorporation, shall be paid.

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

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

(22) Except as provided in this section, the fees of the Secretary of State shall be as provided for in § 2315 of Title 29.

(23) In the case of exempt corporations, the total fees payable to the Secretary of State upon the filing of a Certificate of Change of Registered Agent and/or Registered Office or a Certificate of Revival shall be \$5.00 and such filings shall be exempt from any fees or assessments pursuant to the requirements of § 103(c)(6) and (c)(7) of this title.

(24) For accepting a corporate name reservation application, an application for renewal of a corporate name reservation, or a notice of transfer or cancellation of a corporate name reservation, there shall be collected by and paid to the Secretary of State a fee of up to \$75.

(25) For receiving and filing and/or indexing by the Secretary of State of a certificate of transfer or a certificate of continuance prescribed in § 390 of this title, a fee of \$1,000 shall be paid.

(26) For receiving and filing and/or indexing by the Secretary of State of a certificate of conversion and certificate of incorporation prescribed in § 265 of this title, a fee of \$115, plus the ~~tax and~~ fee payable upon the receipt for filing of an original certificate of incorporation, shall be paid.

(27) For receiving and filing and/or indexing by the Secretary of State of a certificate of conversion prescribed in § 266 of this title, a fee of \$165 shall be paid.

(b)(1) For the purpose of computing the ~~tax fee~~ prescribed in paragraphs (a)(1), (2) and (4) of this section the authorized capital stock of a corporation shall be considered to be the total number of shares which the corporation is authorized to issue, whether or not the total number of shares that may be outstanding at any one time be limited to a less number.

(2) For the purpose of computing the ~~tax fee~~ prescribed in paragraphs (a)(2) and (3) of this section, a certificate of amendment of certificate of incorporation, or an amended certificate of incorporation before payment of capital, or a restated certificate of incorporation, shall be considered as increasing the authorized capital stock of a corporation provided it involves an increase in the number of shares, or an increase in the par value of shares, or a change of shares with par value into shares without par value, or a change of shares without par value into shares with par value, or any combination of 2 or more of the above changes, and provided further that the ~~tax fee~~ computed at the rates set forth in paragraph (a)(1) of this section upon the total authorized capital stock of the corporation including the proposed change or changes exceeds the ~~tax fee~~ so computed upon the total authorized stock of the corporation excluding such change or changes.

(c) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies which are not certified by the Secretary of State, a fee of \$10 shall be paid for the first page and \$2.00 for each additional page. The Secretary of State may also issue microfiche copies of instruments on file as well as instruments, documents and other papers not on file, and for each such microfiche a fee of \$2.00 shall be paid therefor. Notwithstanding Delaware's Freedom of Information Act [Chapter 100 of Title 29] or other provision of this Code granting access to public records, the Secretary of State shall issue only photocopies, microfiche or electronic image copies of records in exchange for the fees described above.

(d) No fees for the use of the State shall be charged or collected from any corporation incorporated for the drainage and reclamation of lowlands or for the amendment or renewal of the charter of such corporation.

(e) The Secretary of State may in the Secretary of State's discretion permit the extension of credit for the ~~taxes or~~ fees required by this section upon such terms as the Secretary of State shall deem to be appropriate.

(f) The Secretary of State shall retain from the revenue collected from the ~~taxes or~~ fees required by this section a sum sufficient to provide at all times a fund of at least \$500, but not more than \$1,500, from which the Secretary of State may refund any payment made pursuant to this section to the extent that it exceeds the ~~taxes or~~ fees required by this section. The fund shall be deposited in the financial institution which is the legal depository of state moneys to the credit of the Secretary of State and shall be disbursable on order of the Secretary of State.

(g) The Secretary of State may in the Secretary of State's discretion charge a fee of \$60 for each check received for payment of any fee or tax under Chapter 1 or Chapter 6 of this title that is returned due to insufficient funds or as the result of a stop payment order.

(h) In addition to those fees charged under subsections (a) and (c) of this section, there shall be collected by and paid to the Secretary of State the following:

(1) For all services described in subsection (a) of this section that are requested to be completed within 30 minutes on the same day as the day of the request, an additional sum of up to \$7,500 and for all services described in subsections (a) and (c) of this section that are requested to be completed within 1 hour on the same day as the day of the request, an additional sum of up to \$1,000 and for all services described in subsections (a) and (c) of this section that are requested to be completed within 2 hours on the same day as the day of the request, an additional sum of up to \$500; and

(2) For all services described in subsections (a) and (c) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to \$300; and

(3) For all services described in subsections (a) and (c) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to \$150.

The Secretary of State shall establish (and may from time to time alter or amend) a schedule of specific fees payable pursuant to this subsection.

(i) A domestic corporation or a foreign corporation registered to do business in this State that files with the Secretary of State any instrument or certificate, and in connection therewith, neglects, refuses or fails to pay any fee or tax under Chapter 1 or Chapter 6 of this title shall, after written demand therefor by the Secretary of State by mail addressed to such domestic corporation or foreign corporation in care of its registered agent in this State, cease to be in good standing as a domestic corporation or registered as a foreign corporation in this State on the ninetieth day following the date of mailing of such demand, unless such fee or tax and, if applicable, the fee provided for in subsection (g) of this section are paid in full prior to the ninetieth day following the date of mailing of such demand. A domestic corporation that has ceased to be in good standing or a foreign corporation that has ceased to be registered by reason of the neglect, refusal or failure to pay any such fee or tax shall be restored to and have the status of a domestic corporation in good standing or a foreign corporation that is registered in this State upon the payment of the fee or tax which such domestic corporation or foreign corporation neglected, refused or failed to pay together with the fee provided for in subsection (g) of this section, if applicable. The Secretary of State shall not accept for filing any instrument authorized to be filed with the Secretary of State under this title in respect of any domestic corporation that is not in good standing or any foreign corporation that has ceased to be registered by reason of the neglect, refusal or failure to pay any such fee or tax, and shall not issue any certificate of good standing with respect to such domestic corporation or foreign corporation, unless and until such domestic corporation or foreign corporation shall have been restored to and have the status of a domestic corporation in good standing or a foreign corporation duly registered in this State.

(j) As used in this section, the term "exempt corporation" shall have the meaning given to it in § 501(b) of this title.

Section 13. Sections 1 through 7 and 9 through 12 shall be effective August 1, 2012. Section 8 shall be effective August 1, 2013.

Approved June 29, 2012