

LAWS OF DELAWARE
VOLUME 85
CHAPTER 48
153rd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 95

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 § 102, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 102. Contents of certificate of incorporation.

(f) The certificate of incorporation may not contain any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this ~~title~~, title, or in connection with any other claim that a stockholder, acting in its capacity as a stockholder or in the right of the corporation, has brought in an action, suit or proceeding.

Section 2. Amend § 103, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 103. Execution, acknowledgment, filing, recording and effective date of original certificate of incorporation and other instruments; exceptions.

(f) Whenever any instrument authorized to be filed with the Secretary of State under any provision of this title, has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, sealed or acknowledged, the instrument may be corrected or nullified by filing with the Secretary of State a certificate of correction of the instrument which shall be executed, acknowledged and filed in accordance with this section. ~~The~~ If the instrument is to be corrected, the certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. If the instrument is to be nullified, the certificate of correction shall specify the inaccuracy or defect with respect to the instrument and shall provide for the nullification of the instrument. In lieu of filing a certificate of correction the instrument may be corrected by filing with the Secretary of State a corrected instrument which shall be executed, acknowledged and filed in accordance with this section. The corrected instrument shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected, and shall set forth the entire instrument in corrected form. An instrument corrected or nullified in accordance with this section shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction or nullification and as to those persons the instrument as corrected or nullified shall be effective from the filing date.

Section 3. Amend § 109, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 109. Bylaws.

(b) The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees. The bylaws may not contain any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this ~~title~~, title, or in connection with any other claim that a stockholder, acting in its capacity as a stockholder or in the right of the corporation, has brought in an action, suit or proceeding.

Section 4. Amend § 115, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 115. Forum selection provisions.

(a) The certificate of incorporation or the bylaws may require, consistent with applicable jurisdictional requirements, that any or all internal corporate claims shall be brought solely and exclusively in any or all of the courts in this State, and no provision of the certificate of incorporation or the bylaws may prohibit bringing such claims in the courts of this State.

(b) "Internal corporate claims" means claims, including claims in the right of the corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which this title confers jurisdiction upon the Court of Chancery.

(c) With respect to claims that are not internal corporate claims, the certificate of incorporation or bylaws may require stockholders, when acting in their capacity as stockholders or in the right of the corporation, to bring any or all such claims only in 1 or more prescribed forums or venues, if such claims relate to the business of the corporation, the conduct of its affairs, or the rights or powers of the corporation or its stockholders, directors or officers; provided that such requirement is consistent with applicable jurisdictional requirements and allows a stockholder to bring such claims in at least 1 court in this State that has jurisdiction over such claims.

Section 5. Amend § 131, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 131. Registered office in ~~State; principal office or place of business in State.~~ State.

(a) Every corporation shall have and maintain in this State a registered office which may, but need not be, ~~the same as its~~ a place of business, the corporation's business in this State.

(b) ~~Whenever the term "corporation's principal office or place of business in this State" or "principal office or place of business of the corporation in this State," or other term of like import, is or has been used in a corporation's certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation's registered office required by this section; and it shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with this section. As used in this title, "registered office" means the address of the registered agent located in this State being appointed to accept service of process and otherwise perform the duties of a registered agent.~~

Section 6. Amend § 132, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 132. Registered agent in State; resident agent.

(b)(1) Every registered agent for a domestic corporation or a foreign corporation shall:

(1)~~a.~~ If an entity, maintain a business office in this State which is generally open, or if an individual, be generally present at a designated location in this State, at sufficiently frequent times to accept service of process and otherwise perform the functions of a registered agent;

(2)~~b.~~ If a foreign entity, be authorized to transact business in this State;

(3)~~c.~~ Accept service of process and other communications directed to the corporations for which it serves as registered agent and forward same to the corporation to which the service or communication is directed;

(4)~~d.~~ Forward to the corporations for which it serves as registered agent the annual report required by § 502 of this title or an electronic notification of same in a form satisfactory to the Secretary of State ("Secretary"); and

(5)~~e.~~ Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes.

(2) A registered agent may not perform its duties or functions solely through the use of a virtual office, the retention by the agent of a mail forwarding service, or both. For purposes of this paragraph (b)(2), "virtual office" means the performance of duties or functions solely through the internet or solely through other means of remote communication.

Section 7. Amend § 155, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 155. Fractions of shares.

A corporation may, but shall not be required to, issue fractions of a share. If it does not issue fractions of a share, it shall (1) arrange for the disposition of fractional interests by those entitled thereto, (2) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined or (3) issue scrip or warrants in registered form (either represented by a certificate or uncertificated) ~~or in bearer form (represented by a certificate)~~ which shall entitle the holder to receive a full share upon the surrender of such scrip or warrants aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip or warrants to be issued subject to the conditions that they shall become void if not exchanged for certificates representing the full shares or uncertificated full shares before a specified date, or subject to the conditions that the

shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip or warrants, or subject to any other conditions which the board of directors may impose.

Section 8. Amend § 252, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 252. Merger or consolidation of domestic and foreign corporations; service of process upon surviving or resulting corporation.

(c) The agreement shall be adopted, approved, certified, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is organized, and, in the case of a corporation of this State, in the same manner as is provided in § 251 of this title. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 251 of this title with respect to the merger or consolidation of corporations of this State. In lieu of filing the agreement of merger or consolidation, the surviving or resulting corporation may file a certificate of merger or consolidation, executed in accordance with § 103 of this title, which states:

(7) That a copy of the agreement of consolidation or merger will be furnished by the surviving or resulting corporation, on request and without cost, to any stockholder of any constituent corporation; and

(8) ~~If the corporation surviving or resulting from the merger or consolidation is a corporation of this State, the authorized capital stock of each constituent corporation which is not a corporation of this State; and [Repealed.]~~

(9) The agreement, if any, required by subsection (d) of this section.

Section 9. Amend § 311, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 311. Revocation of voluntary dissolution; restoration of expired certificate of incorporation.

(a) At any time prior to the expiration of 3 years following the dissolution of a corporation pursuant to § 275 of this title or such longer period as the Court of Chancery may have directed pursuant to § 278 of this title, or at any time prior to the expiration of 3 years following the expiration of the time limited for the corporation's existence as provided in its certificate of incorporation or such longer period as the Court of Chancery may have directed pursuant to § 278 of this title, a corporation may revoke the dissolution theretofore effected by it or restore its certificate of incorporation after it has expired by its own limitation in the following manner:

(4) At the meeting a vote of the stockholders shall be taken on a resolution to revoke the dissolution in the case of a dissolution or to restore the certificate of incorporation in the case of an expiration by limitation. 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, in the case of a revocation of dissolution, or which was outstanding and entitled to vote upon an amendment to the certificate of incorporation to change the period of the corporation's duration at the time of its expiration by limitation, in the case of a restoration, shall be voted for the resolution, a certificate of revocation of dissolution or a certificate of restoration shall be executed, acknowledged and filed in accordance with § 103 of this title, which shall be specifically designated as a certificate of revocation of dissolution or a certificate of restoration in its heading and 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;

c. The names and respective addresses of its officers;

d. The names and respective addresses of its directors;

e. The date of filing of the corporation's original certificate of incorporation with the Secretary of State;

f. The date of filing of the corporation's certificate of dissolution with the Secretary of State;

~~e. g.~~ g. 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, in the case of a revocation of dissolution, or that a majority of the stock of the corporation which was outstanding and entitled to vote upon an amendment to the certificate of incorporation to change the period of the corporation's duration at the time of its expiration by limitation, in the case of a restoration, have voted in favor of a resolution to restore the certificate of incorporation; 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 or restoration in accordance with § 228 of this title; and

f. h. In the case of a restoration, the new specified date limiting the duration of the corporation's existence or that the corporation shall have perpetual existence.

Section 10. Amend § 312, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 312. Revival of certificate of incorporation.

(g) Any corporation that revives its certificate of incorporation under this chapter shall pay to this State a sum equal to all franchise taxes, penalties and interest thereon due at the time its certificate of incorporation became forfeited or void pursuant to this title; provided, however, that any corporation that revives its certificate of incorporation under this chapter whose certificate of incorporation has been forfeited or void for more than 5 years shall, in lieu of the payment of the franchise taxes and penalties otherwise required by this subsection, pay a sum equal to 3 times the amount of the annual franchise tax that would be due and payable by such corporation for the year in which the revival is effected, computed at the then current rate of taxation. No payment made pursuant to this subsection shall reduce the amount of franchise tax due under Chapter 5 of this title for the year in which the revival is effected. If the filing of a certificate of validation under § 204 of this title relates to a time during which the corporation's certificate of incorporation had been forfeited or void, the annual reports and annual franchise taxes that would have been required to be filed and paid during the period in which the corporation's certificate of incorporation had been forfeited or void, including interest thereon, are required to be filed and paid at the time of the filing of such certificate of validation.

Section 11. Amend § 377, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 377. Change of registered ~~agent~~, agent; reinstatement of qualification to do business.

(e) Upon the filing of a certificate of reinstatement in accordance with subsection (d) of this section, and the filing of all annual reports and the payment of all required fees that would have been required to be filed and paid during the time the foreign corporation's qualification to do business in this State had been forfeited, 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 12. Amend § 502, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 502. Annual franchise tax report; contents; failure to file and pay tax; duties of Secretary of State.

(a) Annually on or before March 1, every corporation now existing or hereafter incorporated under Chapter 1 of this title or which has accepted the Constitution of this State, shall make an annual franchise tax report to the Secretary of State. The report shall be made on a form designated by the Secretary of State and shall be signed by the corporation's president, secretary, treasurer or other proper officer duly authorized so to act, or by any of its directors, or if filing an initial report by any incorporator in the event its board of directors shall not have been elected. The fact that an individual's name is signed on the report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the corporation; however, the official title or position of the individual signing the corporate report shall be designated. The report shall contain the following information:

(1) The location of its registered office in this State, which shall include the street, number, city and postal code;

(2) The name of the agent upon whom service of process against the corporation may be served;

(3) The nature of the business of the corporation;

~~(3)~~(4) The location of the principal place of business of the corporation, which shall include the street, number, city, state or foreign country (provided that, unless a corporation maintains its principal place of business in this State and serves as its own registered agent, for purposes of this subsection, the principal place of business address shall not be the address of the registered office of the corporation in this State); State and shall not be the address of any other registered agent);

~~(4)~~(5) The names and addresses of all the directors as of the filing date of the report and the name and address of the officer who signs the report; provided, that other than an initial report, all reports shall list a director or directors excepting any report filed in conjunction with a certificate of dissolution filed by an incorporator pursuant to § 274 of this title or a certificate of dissolution filed pursuant to § 275(c) of this title;

~~(5)~~(6) The number of shares and the par value per share of each class of capital stock having a par value and the number of shares of each class of stock without par value which the corporation is authorized to issue; and

~~(6) [Repealed.]~~

(7) Such additional information, schedules and attachments as the Secretary shall require to ascertain the franchise tax due to the State.

Section 13. Amend § 503, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 503. Rates and computation of franchise tax.

(e) In case a corporation shall have changed during the taxable year the amount of its authorized capital stock, the total annual franchise tax payable at the foregoing rates shall be arrived at by adding together the franchise taxes calculated as above set forth as prorated for the several periods of the year during which each distinct authorized amount of capital stock was in effect. The filing of a certificate of validation ~~pursuant to under~~ § 204 of this title shall not reduce the annual franchise tax and interest due for any period prior to the filing of such certificate of ~~validation~~ validation, and shall not entitle the corporation to a refund, and any calculation of additional annual franchise tax and interest due for any period prior to the filing of such certificate of validation shall be calculated at the current rates in effect ~~pursuant to under~~ this section.

~~(h) All corporations as defined in this section which are regulated investment companies as defined by § 851 of the federal Internal Revenue Code [26 U.S.C. § 851], shall pay to the Secretary of State as an annual franchise tax, a tax computed either under paragraph (a)(1) or (a)(2) of this section, or a tax at the rate of \$400 per annum for each \$1,000,000, or fraction thereof in excess of \$1,000,000, of the average gross assets thereof during the taxable year, whichever be the least, provided that in no case shall the tax on any corporation for a full taxable year under this subsection be more than \$100,000. The average assets for the purposes of this section shall be taken to be the mean of the gross assets on January 1 and December 31 of the taxable year. Any corporation electing to pay a tax under this subsection shall show on its annual franchise tax report that the corporation is a regulated investment company as above defined, and the amount of its assets on January 1 and December 31 of the taxable year, and the mean thereof. The Secretary of State may investigate the facts set forth in the report and if it should be found that the corporation so electing to pay under this subsection shall not be a regulated investment company, as above defined, shall assess upon the corporation a tax under paragraphs (a)(1) and (a)(2) of this section, whichever be the lesser. [Repealed.]~~

Section 14. Amend § 505, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 505. Review and refund; jurisdiction and power of the Secretary of State; appeal.

(a) If any corporation claims that the annual franchise tax or any penalties or interest were erroneously or illegally fixed or paid with respect to a calendar year, the corporation may, not later than March 1 of the second calendar year following the close of such calendar year, petition the Secretary of State for a reduction or refund of such tax, penalties or interest. No refund shall be granted in connection with the filing of a certificate of correction under § 103(f) of this title or the filing of a certificate of validation under § 204 of this title.

Section 15. Sections 1 through 12 and Section 14 of this Act take effect on August 1, 2025.

Section 16. Section 503(h) of Title 8, as contained in Section 13 of this Act, takes effect for tax years beginning on or after January 1, 2026. Section 503(e) of Title 8, as contained in Section 13 of this Act, takes effect on August 1, 2025.

Approved June 30, 2025