



SPONSOR: Rep. George & Sen. Blevins ;  
Rep. Kovach  
Reps. Bennett, Carson, Wilson

HOUSE OF REPRESENTATIVES  
145th GENERAL ASSEMBLY

HOUSE BILL NO. 341

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):

1           **Section 1.** Amend § 102(a)(4), Title 8, Delaware Code, by striking said paragraph in its entirety and inserting in  
2    lieu thereof a new paragraph (a)(4) to read as follows:

3           “(4) If the corporation is to be authorized to issue only 1 class of stock, the total number of shares of stock which  
4    the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are  
5    to be without par value. If the corporation is to be authorized to issue more than 1 class of stock, the certificate of  
6    incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to  
7    issue and the number of shares of each class and shall specify each class the shares of which are to be without par value and  
8    each class the shares of which are to have par value and the par value of the shares of each such class. The certificate of  
9    incorporation shall also set forth a statement of the designations and the powers, preferences and rights, and the  
10   qualifications, limitations or restrictions thereof, which are permitted by § 151 of this title in respect of any class or classes  
11   of stock or any series of any class of stock of the corporation and the fixing of which by the certificate of incorporation is  
12   desired, and an express grant of such authority as it may then be desired to grant to the board of directors to fix by  
13   resolution or resolutions any thereof that may be desired but which shall not be fixed by the certificate of incorporation.  
14   The foregoing provisions of this paragraph shall not apply to nonstock corporations. In the case of nonstock corporations,  
15   the fact that they are not authorized to issue capital stock shall be stated in the certificate of incorporation. The conditions of  
16   membership, or other criteria for identifying members, of nonstock corporations shall likewise be stated in the certificate of  
17   incorporation or the bylaws. Nonstock corporations shall have members, but failure to have members shall not affect  
18   otherwise valid corporate acts or work a forfeiture or dissolution of the corporation. Nonstock corporations may provide  
19   for classes or groups of members having relative rights, powers and duties, and may make provision for the future creation  
20   of additional classes or groups of members having such relative rights, powers and duties as may from time to time be  
21   established, including rights, powers and duties senior to existing classes and groups of members. Except as otherwise

provided in this chapter, nonstock corporations may also provide that any member or class or group of members shall have full, limited, or no voting rights or powers, including that any member or class or group of members shall have the right to vote on a specified transaction even if that member or class or group of members does not have the right to vote for the election of the members of the governing body of the corporation. Voting by members of a nonstock corporation may be on a per capita, number, financial interest, class, group, or any other basis set forth. The provisions referred to in the three preceding sentences may be set forth in the certificate of incorporation or the bylaws. If neither the certificate of incorporation nor the bylaws of a nonstock corporation state the conditions of membership, or other criteria for identifying members, the members of the corporation shall be deemed to be those entitled to vote for the election of the members of the governing body pursuant to the certificate of incorporation or bylaws of such corporation or otherwise until thereafter otherwise provided by the certificate of incorporation or the bylaws;”.

**Section 2.** Amend § 102(b)(1), Title 8, Delaware Code, by striking said paragraph in its entirety and substituting in lieu thereof a new paragraph (b)(1) to read as follows:

“(1) Any provision for the management of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors, and the stockholders, or any class of the stockholders, or the governing body, members, or any class or group of members of a nonstock corporation; if such provisions are not contrary to the laws of this State. Any provision which is required or permitted by any section of this chapter to be stated in the bylaws may instead be stated in the certificate of incorporation;”.

**Section 3.** Amend § 102(b)(2), Title 8, Delaware Code, by inserting the following immediately after the phrase “The following provisions, in haec verba,” and before the word “viz”: “(i), for a corporation other than a nonstock corporation,”.

**Section 4.** Further amend § 102(b)(2), Title 8, Delaware Code, by inserting immediately after the phrase “and also on this corporation;” a new subparagraph (ii) to read as follows:

“or (ii), for a nonstock corporation, viz:

“Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its members or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or member thereof or on the application of any receiver or receivers appointed for this corporation under § 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under § 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the members or class of members of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number

representing three fourths in value of the creditors or class of creditors, and/or of the members or class of members of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the members or class of members, of this corporation, as the case may be, and also on this corporation”;

**Section 5.** Amend § 102(b)(6), Title 8, Delaware Code, by striking the phrase “or members” each time it appears in said paragraph.

**Section 6.** Amend § 102(b)(7), Title 8, Delaware Code, by striking the phrase “(x) to a member of the governing body of a corporation which is not authorized to issue capital stock, and (y)” where it appears in the third sentence thereof.

**Section 7.** Amend § 102(d), Title 8, Delaware Code, by striking the phrase “the corporation” where it appears in the first sentence thereof, and substituting in lieu thereof the following: “a corporation other than a nonstock corporation”.

**Section 8.** Amend § 109(a), Title 8, Delaware Code, by striking said subsection in its entirety and by inserting in lieu thereof the following:

“(a) The original or other bylaws of a corporation may be adopted, amended or repealed by the incorporators, by the initial directors of a corporation other than a nonstock corporation or initial members of the governing body of a nonstock corporation if they were named in the certificate of incorporation, or, before a corporation other than a nonstock corporation has received any payment for any of its stock, by its board of directors. After a corporation other than a nonstock corporation has received any payment for any of its stock, the power to adopt, amend or repeal bylaws shall be in the stockholders entitled to vote. In the case of a nonstock corporation, the power to adopt, amend or repeal bylaws shall be in its members entitled to vote. Notwithstanding the foregoing, any corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors or, in the case of a nonstock corporation, upon its governing body. The fact that such power has been so conferred upon the directors or governing body, as the case may be, shall not divest the stockholders or members of the power, nor limit their power to adopt, amend or repeal bylaws.”

**Section 9.** Amend Title 8, Delaware Code, by inserting a new section 114 to read as follows:

“§ 114. Application of chapter to nonstock corporations.

(a) Except as otherwise provided in subsections (b) and (c) of this section, the provisions of this chapter shall apply to nonstock corporations in the manner specified in the following paragraphs (a)(1)–(4) of this section:

(1) All references to stockholders of the corporation shall be deemed to refer to members of the corporation;

(2) All references to the board of directors of the corporation shall be deemed to refer to the governing body of the corporation;

(3) All references to directors or to members of the board of directors of the corporation shall be deemed to refer to members of the governing body of the corporation; and

(4) All references to stock, capital stock, or shares thereof of a corporation authorized to issue capital stock shall be deemed to refer to memberships of a non-profit nonstock corporation and to membership interests of any other nonstock corporation.

(b) Subsection (a) of this section shall not apply to:

(1) §§ 102(a)(4), 102(b)(1), 102(b)(2), 109(a), 114, 141, 154, 215, 228, 230(b), 241, 242, 253, 254, 255, 256, 257, 258, 271, 276, 311, 312, 313, and 390 of this title, which apply to nonstock corporations by their terms;

(2) §§ 151, 152, 153, 155, 156, 157(d), 158, 161, 162, 163, 164, 165, 166, 167, 168, 203, 211, 212, 213, 214, 216, 219, 222, 231, 243, 244, 251, 252, 274, 275, 324, and 391 of this title; and

(3) Subchapter XIV and Subchapter XV of this chapter.

(c) In the case of a non-profit nonstock corporation, subsection (a) of this section shall not apply to:

(1) the sections and Subchapters listed in subsection (b) of this section;

(2) §§ 102(b)(3), 111(a)(2), 111(a)(3), 144(a)(2), 217, 218(a), 218(b), and 262 of this title; and

(3) Subchapter V and Subchapter VI of this chapter.

(d) For purposes of this chapter:

(1) a “nonstock corporation” is any corporation organized under this chapter that is not authorized to issue capital stock;

(2) a “membership interest” is, unless otherwise provided in a nonstock corporation’s certificate of incorporation, a member’s share of the profits and losses of a nonstock corporation, or a member’s right to receive distributions of the nonstock corporation’s assets, or both;

(3) a “non-profit nonstock corporation” is a nonstock corporation that does not have membership interests; and

(4) a “charitable nonstock corporation” is any non-profit nonstock corporation that is exempt from taxation under § 501(c)(3) of the United States Internal Revenue Code, or any successor provisions.”.

**Section 10.** Amend § 141, Title 8, Delaware Code, by striking the word “nonprofit” from the title of said section and substituting in lieu thereof the word “nonstock”.

111           **Section 11.** Amend § 141(j), Title 8, Delaware Code, by striking said subsection in its entirety and substituting in  
112    lieu thereof:

113           “(j) The certificate of incorporation of any nonstock corporation may provide that less than 1/3 of the members of  
114    the governing body may constitute a quorum thereof and may otherwise provide that the business and affairs of the  
115    corporation shall be managed in a manner different from that provided in this section. Except as may be otherwise provided  
116    by the certificate of incorporation, this section shall apply to such a corporation, and when so applied, all references to the  
117    board of directors, to members thereof, and to stockholders shall be deemed to refer to the governing body of the  
118    corporation, the members thereof and the members of the corporation, respectively; and all references to stock, capital  
119    stock, or shares thereof shall be deemed to refer to memberships of a non-profit nonstock corporation and to membership  
120    interests of any other nonstock corporation.”

121           **Section 12.** Amend § 141(k)(1), Title 8, Delaware Code, by striking the term “shareholders” where it appears in  
122    said paragraph and substituting in lieu thereof the term “stockholders”.

123           **Section 13.** Amend § 144(a)(2), Title 8, Delaware Code, by striking the term “shareholders” where it appears in  
124    said paragraph and substituting in lieu thereof the term “stockholders”.

125           **Section 14.** Amend § 144(a)(3), Title 8, Delaware Code, by striking the term “shareholders” where it appears in  
126    said paragraph and substituting in lieu thereof the term “stockholders”.

127           **Section 15.** Amend § 154, Title 8, Delaware Code, by inserting a new sentence at the end of said section to read  
128    as follows: “Notwithstanding anything in this section to the contrary, for purposes of this section and § 160 and § 170 of  
129    this title, the capital of any nonstock corporation shall be deemed to be zero.”.

130           **Section 16.** Amend § 160(a)(1), Title 8, Delaware Code, by inserting the phrase “other than a nonstock  
131    corporation” immediately following the phrase “except that a corporation” in the first sentence thereof.

132           **Section 17.** Amend § 160(a)(3), Title 8, Delaware Code, by striking said paragraph in its entirety and substituting  
133    in lieu thereof the following:

134           “(3) (i) In the case of a corporation other than a nonstock corporation, redeem any of its shares, unless their  
135    redemption is authorized by subsection (b) of § 151 of this title and then only in accordance with such section and the  
136    certificate of incorporation, or (ii) in the case of a nonstock corporation, redeem any of its membership interests, unless  
137    their redemption is authorized by the certificate of incorporation and then only in accordance with the certificate of  
138    incorporation.”.

139           **Section 18.** Amend § 170(a), Title 8, Delaware Code, by striking the phrase “, or to its members if the corporation  
140    is a nonstock corporation,” where it appears in the first sentence of said subsection.

141           **Section 19.** Amend § 215, Title 8, Delaware Code, by striking said section in its entirety and substituting in lieu  
142 thereof the following:

143           “§ 215. Voting rights of members of nonstock corporations; quorum; proxies.

144           (a) Sections 211 through 214 and 216 of this title shall not apply to nonstock corporations, except that § 211(a) and  
145 (d) of this title and § 212(c), (d), and (e) of this title shall apply to such corporations, and, when so applied, all references  
146 therein to stockholders and to the board of directors shall be deemed to refer to the members and the governing body of a  
147 nonstock corporation, respectively; and all references to stock, capital stock, or shares thereof shall be deemed to refer to  
148 memberships of a non-profit nonstock corporation and to membership interests of any other nonstock corporation.

149           (b) Unless otherwise provided in the certificate of incorporation or the bylaws of a nonstock corporation, and  
150 subject to subsection (f) of this section, each member shall be entitled at every meeting of members to 1 vote on each matter  
151 submitted to a vote of members. A member may exercise such voting rights in person or by proxy, but no proxy shall be  
152 voted on after 3 years from its date, unless the proxy provides for a longer period.

153           (c) Unless otherwise provided in this chapter, the certificate of incorporation or bylaws of a nonstock corporation  
154 may specify the number of members having voting power who shall be present or represented by proxy at any meeting in  
155 order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business. In the absence of  
156 such specification in the certificate of incorporation or bylaws of a nonstock corporation:

157           (1) One-third of the members of such corporation shall constitute a quorum at a meeting of such  
158 members;

159           (2) In all matters other than the election of the governing body of such corporation, the affirmative vote  
160 of a majority of such members present in person or represented by proxy at the meeting and entitled to  
161 vote on the subject matter shall be the act of the members, unless the vote of a greater number is required  
162 by this chapter;

163           (3) Members of the governing body shall be elected by a plurality of the votes of the members of the  
164 corporation present in person or represented by proxy at the meeting and entitled to vote thereon; and

165           (4) Where a separate vote by a class or group or classes or groups is required, a majority of the members  
166 of such class or group or classes or groups, present in person or represented by proxy, shall constitute a  
167 quorum entitled to take action with respect to that vote on that matter and, in all matters other than the  
168 election of members of the governing body, the affirmative vote of the majority of the members of such  
169 class or group or classes or groups present in person or represented by proxy at the meeting shall be the  
170 act of such class or group or classes or groups.

(d) If the election of the governing body of any nonstock corporation shall not be held on the day designated by the bylaws, the governing body shall cause the election to be held as soon thereafter as convenient. The failure to hold such an election at the designated time shall not work any forfeiture or dissolution of the corporation, but the Court of Chancery may summarily order such an election to be held upon the application of any member of the corporation. At any election pursuant to such order the persons entitled to vote in such election who shall be present at such meeting, either in person or by proxy, shall constitute a quorum for such meeting, notwithstanding any provision of the certificate of incorporation or the bylaws of the corporation to the contrary.

(e) If authorized by the governing body, any requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or proxy holder.

(f) Except as otherwise provided in the certificate of incorporation, in the bylaws, or by resolution of the governing body, the record date for any meeting or corporate action shall be deemed to be the date of such meeting or corporate action; provided, however, that no record date may precede any action by the governing body fixing such record date.”

**Section 20.** Amend § 220(a), Title 8, Delaware Code, by striking the phrase “, and also a member of a nonstock corporation as reflected on the records of the nonstock corporation” where it appears at the end of paragraph (2).

**Section 21.** Further amend § 220(a), Title 8, Delaware Code, by striking the existing paragraph (1) in its entirety and redesignating the existing paragraphs (2), (3) and (4) as paragraphs (1), (2) and (3), respectively.

**Section 22.** Amend § 220(b), Title 8, Delaware Code, by inserting a comma (“,”) immediately following the phrase “In every instance where the stockholder is other than a record holder of stock in a stock corporation”.

**Section 23.** Amend § 220(d), Title 8, Delaware Code, by striking said subsection in its entirety and inserting in lieu thereof the following:

“(d) Any director shall have the right to examine the corporation’s stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to the director’s position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the list of stockholders and to make copies or extracts therefrom. The burden of proof shall be upon the corporation to establish that the inspection such director seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.”

201           **Section 24.** Amend § 223(a), Title 8, Delaware Code, by inserting “or § 215” immediately following “§ 211”.

202           **Section 25.** Amend § 223(c), Title 8, Delaware Code, by inserting “or § 215” immediately following “§ 211”.

203           **Section 26.** Amend § 225, Title 8, Delaware Code, by striking said section in its entirety and substituting in lieu  
204 thereof the following:

205           “§ 225. Contested election of directors; proceedings to determine validity.

206           (a) Upon application of any stockholder or director, or any officer whose title to office is contested, the Court of  
207 Chancery may hear and determine the validity of any election, appointment, removal or resignation of any director or  
208 officer of any corporation, and the right of any person to hold or continue to hold such office, and, in case any such office is  
209 claimed by more than 1 person, may determine the person entitled thereto; and to that end make such order or decree in any  
210 such case as may be just and proper, with power to enforce the production of any books, papers and records of the  
211 corporation relating to the issue. In case it should be determined that no valid election has been held, the Court of Chancery  
212 may order an election to be held in accordance with § 211 or § 215 of this title. In any such application, service of copies of  
213 the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the  
214 person whose title to office is contested and upon the person, if any, claiming such office; and the registered agent shall  
215 forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to  
216 the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such  
217 person at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant  
218 stockholder. The Court may make such order respecting further or other notice of such application as it deems proper under  
219 the circumstances.

220           (b) Upon application of any stockholder or upon application of the corporation itself, the Court of Chancery may  
221 hear and determine the result of any vote of stockholders upon matters other than the election of directors or officers.  
222 Service of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation,  
223 and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order  
224 respecting notice of the application as it deems proper under the circumstances.

225           (c) If 1 or more directors has been convicted of a felony in connection with the duties of such director or directors  
226 to the corporation, or if there has been a prior judgment on the merits by a court of competent jurisdiction that 1 or more  
227 directors has committed a breach of the duty of loyalty in connection with the duties of such director or directors to that  
228 corporation, then, upon application by the corporation, or derivatively in the right of the corporation by any stockholder, in  
229 a subsequent action brought for such purpose, the Court of Chancery may remove from office such director or directors if  
230 the Court determines that the director or directors did not act in good faith in performing the acts resulting in the prior



conviction or judgment and judicial removal is necessary to avoid irreparable harm to the corporation. In connection with such removal, the Court may make such orders as are necessary to effect such removal. In any such application, service of copies of the application upon the registered agent of the corporation shall be deemed to be service upon the corporation and upon the director or directors whose removal is sought; and the registered agent shall forward immediately a copy of the application to the corporation and to such director or directors, in a postpaid, sealed, registered letter addressed to such corporation and such director or directors at their post office addresses last known to the registered agent or furnished to the registered agent by the applicant. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.”.

**Section 27.** Amend § 226, Title 8, Delaware Code, by inserting a new subsection (c) to read as follows:

“(c) In the case of a charitable nonstock corporation, the applicant shall provide a copy of any application referred to in subsection (a) of this section to the Attorney General of the State of Delaware within one week of its filing with the Court of Chancery.”.

**Section 28.** Amend § 227(a), Title 8, Delaware Code, by striking the phrase “, or in the case of a corporation without capital stock, of the persons claiming to be members,” and by striking the phrase “or members” where it appears at the end of said subsection.

**Section 29.** Amend § 232(d), Title 8, Delaware Code, by striking said subsection in its entirety and substituting the following in lieu thereof:

“(d) [Repealed.]”.

**Section 30.** Amend § 233(c), Title 8, Delaware Code, by striking said subsection in its entirety and substituting the following in lieu thereof:

“(c) [Repealed.]”.

**Section 31.** Amend § 241(b), Title 8, Delaware Code, by inserting the phrase “, or that the corporation has no members, as applicable,” immediately following the phrase “any of its stock” in the second sentence thereof.

**Section 32.** Amend § 241, Title 8, Delaware Code, by inserting a new subsection (c) to read as follows:

“(c) This section will apply to a nonstock corporation before such a corporation has any members; provided, however, that all references to directors shall be deemed to be references to members of the governing body of the corporation.”.

**Section 33.** Amend § 242(a), Title 8, Delaware Code, by inserting the phrase “or after a nonstock corporation has members,” immediately following the phrase “for any of its capital stock,” in the first sentence thereof.

260           **Section 34.** Amend § 242(b)(3), Title 8, Delaware Code, by striking said paragraph in its entirety and substituting  
261 in lieu thereof the following:

262           “(3) If the corporation is a nonstock corporation, then the governing body thereof shall adopt a resolution setting  
263 forth the amendment proposed and declaring its advisability. If a majority of all the members of the governing body shall  
264 vote in favor of such amendment, a certificate thereof shall be executed, acknowledged and filed and shall become effective  
265 in accordance with § 103 of this title. The certificate of incorporation of any nonstock corporation may contain a provision  
266 requiring any amendment thereto to be approved by a specified number or percentage of the members or of any specified  
267 class of members of such corporation in which event such proposed amendment shall be submitted to the members or to  
268 any specified class of members of such corporation in the same manner, so far as applicable, as is provided in this section  
269 for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof by such  
270 members, a certificate evidencing such amendment shall be executed, acknowledged and filed and shall become effective in  
271 accordance with § 103 of this title.”.

272           **Section 35.** Amend § 242(b)(4), Title 8, Delaware Code, by striking said paragraph in its entirety and substituting  
273 the following in lieu thereof:

274           “(4) Whenever the certificate of incorporation shall require for action by the board of directors of a corporation  
275 other than a nonstock corporation or by the governing body of a nonstock corporation, by the holders of any class or series  
276 of shares or by the members, or by the holders of any other securities having voting power the vote of a greater number or  
277 proportion than is required by any section of this title, the provision of the certificate of incorporation requiring such greater  
278 vote shall not be altered, amended or repealed except by such greater vote.”.

279           **Section 36.** Amend § 245(b), Title 8, Delaware Code, by inserting the phrase “, if any,” immediately following  
280 the phrase “the procedure and vote required” in the first sentence thereof.

281           **Section 37.** Amend § 245(c), Title 8, Delaware Code, by inserting the phrase “of this title or without a vote of  
282 members pursuant to § 242(b)(3)” immediately after the phrase “adopted pursuant to § 241” and before the phrase “of this  
283 title)” in the fourth sentence thereof.

284           **Section 38.** Amend § 253(a), Title 8, Delaware Code, by inserting the phrase “or subsection (c) of § 258 of this  
285 title, as applicable,” immediately following the phrase “subsection (d) of § 252 of this title” in the last sentence thereof.

286           **Section 39.** Amend § 253(c), Title 8, Delaware Code, by striking “§ 251 or § 252” in the third sentence thereof  
287 and substituting in lieu thereof “§ 251, § 252, § 257, or § 258”.

288           **Section 40.** Amend § 253, Title 8, Delaware Code, by inserting two new subsections (f) and (g) reading as  
289 follows:

290 “(f) This section shall apply to nonstock corporations if the parent corporation is such a corporation and is the  
291 surviving corporation of the merger; provided, however, that references to the directors of the parent corporation shall be  
292 deemed to be references to members of the governing body of the parent corporation, and references to the board of  
293 directors of the parent corporation shall be deemed to be references to the governing body of the parent corporation.

294 (g) Nothing in this section shall be deemed to authorize the merger of a corporation with a charitable nonstock  
295 corporation, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.”.

296 **Section 41.** Amend § 255, Title 8, Delaware Code, by striking said section in its entirety and substituting in lieu  
297 thereof the following:

298 “§ 255. Merger or consolidation of domestic nonstock corporations.

299 (a) Any 2 or more nonstock corporations of this State, whether or not organized for profit, may merge into a single  
300 corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new nonstock corporation,  
301 whether or not organized for profit, formed by the consolidation, pursuant to an agreement of merger or consolidation, as  
302 the case may be, complying and approved in accordance with this section.

303 (b) Subject to subsection (d) of this section, the governing body of each corporation which desires to merge or  
304 consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The  
305 terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) such other provisions  
306 or facts required or permitted by this chapter to be stated in a certificate of incorporation for nonstock corporations as can  
307 be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require; (4)  
308 the manner, if any, of converting the memberships or membership interests of each of the constituent corporations into  
309 memberships or membership interests of the corporation surviving or resulting from the merger or consolidation, or of  
310 cancelling some or all of such memberships or membership interests; and (5) such other details or provisions as are deemed  
311 desirable. The agreement so adopted shall be executed and acknowledged in accordance with § 103 of this title. Any of the  
312 terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such  
313 agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and  
314 expressly set forth in the agreement of merger or consolidation. The term “facts,” as used in the preceding sentence,  
315 includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body,  
316 including the corporation.

317 (c) Subject to subsection (d) of this section, the agreement shall be submitted to the members of each constituent  
318 corporation, at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time,  
319 place and purpose of the meeting shall be mailed to each member of each such corporation who has the right to vote for the

320 election of the members of the governing body of the corporation and to each other member who is entitled to vote on the  
321 merger under the certificate of incorporation or the bylaws of such corporation, at the member's address as it appears on the  
322 records of the corporation, at least 20 days prior to the date of the meeting. The notice shall contain a copy of the agreement  
323 or a brief summary thereof. At the meeting the agreement shall be considered and a vote, in person or by proxy, taken for  
324 the adoption or rejection of the agreement. If the agreement is adopted by a majority of the members of each such  
325 corporation entitled to vote for the election of the members of the governing body of the corporation and any other  
326 members entitled to vote on the merger under the certificate of incorporation or the bylaws of such corporation, then that  
327 fact shall be certified on the agreement by the officer of each such corporation performing the duties ordinarily performed  
328 by the secretary or assistant secretary of a corporation, provided that such certification on the agreement shall not be  
329 required if a certificate of merger or consolidation is filed in lieu of filing the agreement. If the agreement shall be adopted  
330 and certified by each constituent corporation in accordance with this section, it shall be filed and shall become effective in  
331 accordance with § 103 of this title. The provisions set forth in the last sentence of subsection (c) of § 251 of this title shall  
332 apply to a merger under this section, and the reference therein to "stockholder" shall be deemed to include "member"  
333 hereunder.

334 (d) Notwithstanding subsections (b) or (c) of this section, if, under the certificate of incorporation or the bylaws of  
335 any 1 or more of the constituent corporations, there shall be no members who have the right to vote for the election of the  
336 members of the governing body of the corporation, or for the merger, other than the members of the governing body  
337 themselves, no further action by the governing body or the members of such corporation shall be necessary if the resolution  
338 approving an agreement of merger or consolidation has been adopted by a majority of all the members of the governing  
339 body thereof, and that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption  
340 of the agreement by the vote of the members of a corporation, provided that such certification on the agreement shall not be  
341 required if a certificate of merger or consolidation is filed in lieu of filing the agreement, and thereafter the same procedure  
342 shall be followed to consummate the merger or consolidation.

343 (e) Subsection (d) of § 251 shall apply to a merger under this section; provided, however, that references to the  
344 board of directors, to stockholders, and to shares of a constituent corporation shall be deemed to be references to the  
345 governing body of the corporation, to members of the corporation, and to memberships or membership interests, as  
346 applicable, respectively.

347 (f) Subsection (e) of § 251 shall apply to a merger under this section.

348 (g) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a  
349 nonstock corporation if such charitable nonstock corporation would thereby have its charitable status lost or impaired; but a

nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.”.

**Section 42.** Amend § 256(b), Title 8, Delaware Code, by striking the second sentence thereof and substituting the following in lieu thereof:

“The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner, if any, of converting the memberships or membership interests of each of the constituent corporations into memberships or membership interests of the corporation surviving or resulting from such merger or consolidation or of cancelling some or all of such memberships or membership interests; (4) such other details and provisions as shall be deemed desirable; and (5) such other provisions or facts as shall then be required to be stated in a certificate of incorporation by the laws of the state which are stated in the agreement to be the laws that shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation.”.

**Section 43.** Amend § 256, Title 8, Delaware Code, by inserting two new subsections (f) and (g) reading as follows:

“(f) Subsection (d) of § 251 shall apply to a merger under this section; provided, however, that references to the board of directors, to stockholders, and to shares of a constituent corporation shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests, as applicable, respectively.

(g) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a nonstock corporation, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired; but a nonstock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation.”.

**Section 44.** Amend § 257, Title 8, Delaware Code, by striking said section in its entirety and substituting in lieu thereof the following:

“§ 257. Merger or consolidation of domestic stock and nonstock corporations.

(a) Any 1 or more nonstock corporations of this State, whether or not organized for profit, may merge or consolidate with 1 or more stock corporations of this State, whether or not organized for profit. The constituent corporations may merge into a single corporation, which may be any 1 of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving constituent corporation or the new

corporation may be organized for profit or not organized for profit and may be a stock corporation or a nonstock corporation.

(b) The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each nonstock corporation which desires to merge or consolidate shall adopt a resolution approving an agreement of merger or consolidation. The agreement shall state: (1) The terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) such other provisions or facts required or permitted by this chapter to be stated in a certificate of incorporation as can be stated in the case of a merger or consolidation, stated in such altered form as the circumstances of the case require; (4) the manner, if any, of converting the shares of stock of a stock corporation and the memberships or membership interests of a nonstock corporation into shares or other securities of a stock corporation or memberships or membership interests of a nonstock corporation surviving or resulting from such merger or consolidation or of cancelling some or all of such shares or memberships or membership interests, and, if any shares of any such stock corporation or memberships or membership interests of any such nonstock corporation are not to remain outstanding, to be converted solely into shares or other securities of the stock corporation or memberships or membership interests of the nonstock corporation surviving or resulting from such merger or consolidation or to be cancelled, the cash, property, rights or securities of any other corporation or entity which the holders of shares of any such stock corporation or memberships or membership interests of any such nonstock corporation are to receive in exchange for, or upon conversion of such shares or memberships or membership interests, and the surrender of any certificates evidencing them, which cash, property, rights or securities of any other corporation or entity may be in addition to or in lieu of shares or other securities of any stock corporation or memberships or membership interests of any nonstock corporation surviving or resulting from such merger or consolidation; and (5) such other details or provisions as are deemed desirable. In such merger or consolidation the memberships or membership interests of a constituent nonstock corporation may be treated in various ways so as to convert such memberships or membership interests into interests of value, other than shares of stock, in the surviving or resulting stock corporation or into shares of stock in the surviving or resulting stock corporation, voting or nonvoting, or into creditor interests or any other interests of value equivalent to their memberships or membership interests in their nonstock corporation. The voting rights of members of a constituent nonstock corporation need not be considered an element of value in measuring the reasonable equivalence of the value of the interests received in the surviving or resulting stock corporation by members of a constituent nonstock corporation, nor need the voting rights of shares of stock in a constituent stock corporation be considered as an element of value in measuring the reasonable equivalence of the value of the interests in the surviving or resulting nonstock corporations received by stockholders of a constituent stock corporation, and the voting or nonvoting shares of a stock corporation may be converted into any type of membership or membership interest, however

designated, creditor interests or participating interests, in the nonstock corporation surviving or resulting from such merger or consolidation of a stock corporation and a nonstock corporation. Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation. 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 corporation.

(c) The agreement required by subsection (b) of this section, in the case of each constituent stock corporation, shall be adopted, approved, certified, executed and acknowledged by each constituent corporation in the same manner as is provided in § 251 of this title and, in the case of each constituent nonstock corporation, shall be adopted, approved, certified, executed and acknowledged by each of said constituent corporations in the same manner as is provided in § 255 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 of stock corporations of this State. Insofar as they may be applicable, the provisions set forth in the last sentence of subsection (c) of § 251 of this title shall apply to a merger under this section, and the reference therein to "stockholder" shall be deemed to include "member" hereunder.

(d) Subsection (e) of § 251 of this title shall apply to a merger under this section, if the surviving corporation is a corporation of this State; subsection (d) and the second sentence of subsection (c) of § 251 of this title shall apply to any constituent stock corporation participating in a merger or consolidation under this section; and subsection (f) of § 251 of this title shall apply to any constituent stock corporation participating in a merger under this section.

(e) Subsection (d) of § 251 shall apply to a merger under this section; provided, however, that, for purposes of a constituent nonstock corporation, references to the board of directors, to stockholders, and to shares of a constituent corporation shall be deemed to be references to the governing body of the corporation, to members of the corporation, and to memberships or membership interests, as applicable, respectively.

(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a stock corporation, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a stock corporation may be merged into a charitable nonstock corporation which shall continue as the surviving corporation."

**Section 45.** Amend § 258(a), Title 8, Delaware Code, by striking the term "membership" from the last sentence thereof and substituting in lieu thereof the term "nonstock".

**Section 46.** Amend § 258(c), Title 8, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof the following:

438           “(c) The requirements of subsection (d) of § 252 of this title as to the appointment of the Secretary of State to  
439 receive process and the manner of serving the same in the event the surviving or new corporation is to be governed by the  
440 laws of any other state shall also apply to mergers or consolidations effected under this section. Subsection (e) of § 251 of  
441 this title shall apply to mergers effected under this section if the surviving corporation is a corporation of this State;  
442 subsection (d) of § 251 of this title shall apply to any constituent corporation participating in a merger or consolidation  
443 under this section (provided, however, that for purposes of a constituent nonstock corporation, references to the board of  
444 directors, to stockholders, and to shares shall be deemed to be references to the governing body of the corporation, to  
445 members of the corporation, and to memberships or membership interests of the corporation, as applicable, respectively);  
446 and subsection (f) of § 251 of this title shall apply to any constituent stock corporation participating in a merger under this  
447 section.”.

448           **Section 47.** Amend § 262(a), Title 8, Delaware Code, by striking the last sentence thereof and substituting in lieu  
449 thereof the following:

450           “As used in this section, the word “stockholder” means a holder of record of stock in a corporation; the words  
451 “stock” and “share” mean and include what is ordinarily meant by those words; and the words “depository receipt” mean a  
452 receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely  
453 of stock of a corporation, which stock is deposited with the depository.”.

454           **Section 48.** Amend § 262(b), Title 8, Delaware Code, by inserting “§ 255, § 256,” immediately following “§ 252,  
455 § 254,”.

456           **Section 49.** Amend § 262(b)(2), Title 8, Delaware Code, by inserting “255, 256,” immediately following “§§ 251,  
457 252, 254,”.

458           **Section 50.** Amend § 262(d), Title 8, Delaware Code, by striking § 262(d)(1) in its entirety and substituting in  
459 lieu thereof the following:

460           “(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be  
461 submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify  
462 each of its stockholders who was such on the record date for notice of such meeting (or such members who received notice  
463 in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to  
464 subsection (b) or (c) hereof of this section that appraisal rights are available for any or all of the shares of the constituent  
465 corporations, and shall include in such notice a copy of this section and, if one of the constituent corporations is a nonstock  
466 corporation, a copy of § 114 of this title. Each stockholder electing to demand the appraisal of such stockholder’s shares  
467 shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal



of such stockholder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or" and by inserting the phrase "and, if one of the constituent corporations is a nonstock corporation, a copy of § 114 of this title" immediately following the phrase "shall include in such notice a copy of this section" at the end of the first sentence of § 262(d)(2).

**Section 51.** Amend § 263(c), Title 8, Delaware Code, by striking the first three sentences and substituting in lieu thereof the following:

"The agreement required by subsection (b) of this section shall be adopted, approved, certified, executed and acknowledged by each of the corporations in the same manner as is provided in § 251 or § 255 of this title and, in the case of the partnerships, in accordance with their partnership agreements and in accordance with the laws of the state under which they are formed, as the case may be. If the surviving or resulting entity is a partnership, in addition to any other approvals, each stockholder of a merging corporation who will become a general partner of the surviving or resulting partnership must approve the agreement of merger or consolidation. The agreement shall be filed and shall become effective for all purposes of the laws of this State when and as provided in § 251 or § 255 of this title with respect to the merger or consolidation of corporations of this State."

**Section 52.** Amend § 263(e), Title 8, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof the following:

"(e) Sections 251(c) (second sentence) and (d)-(f), 255(c) (second sentence) and (d)-(f), 259-261 and 328 of this title shall, insofar as they are applicable, apply to mergers or consolidations between corporations and partnerships."

**Section 53.** Amend § 263, Title 8, Delaware Code, by inserting a new subsection (f) reading as follows:

"(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a partnership, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a partnership may be merged into a charitable nonstock corporation which shall continue as the surviving corporation."

**Section 54.** Amend § 264(c), Title 8, Delaware Code, by striking the first two sentences thereof and substituting in lieu thereof the following:

497           “The agreement required by subsection (b) shall be adopted, approved, certified, executed and acknowledged by  
498 each of the corporations in the same manner as is provided in § 251 or § 255 of this title and, in the case of the limited  
499 liability companies, in accordance with their limited liability company agreements and in accordance with the laws of the  
500 state under which they are formed, as the case may be. The agreement shall be filed and shall become effective for all  
501 purposes of the laws of this State when and as provided in § 251 or § 255 of this title with respect to the merger or  
502 consolidation of corporations of this State.”.

503           **Section 55.** Amend § 264(e), Title 8, Delaware Code, by striking said subsection in its entirety and substituting in  
504 lieu thereof the following:

505           “(e) Sections 251(c) (second sentence) and (d)-(f), 255(c) (second sentence) and (d)-(f), 259-261 and 328 of this  
506 title shall, insofar as they are applicable, apply to mergers or consolidations between corporations and limited liability  
507 companies.”.

508           **Section 56.** Amend § 264, Title 8, Delaware Code, by inserting a new subsection (f) reading as follows:

509           “(f) Nothing in this section shall be deemed to authorize the merger of a charitable nonstock corporation into a  
510 limited liability company, if the charitable status of such nonstock corporation would thereby be lost or impaired; but a  
511 limited liability company may be merged into a charitable nonstock corporation which shall continue as the surviving  
512 corporation.”.

513           **Section 57.** Amend § 266, Title 8, Delaware Code, by inserting a new subsection (j) reading as follows:

514           “(j) Nothing in this section shall be deemed to authorize the conversion of a charitable nonstock corporation into  
515 another entity, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.”.

516           **Section 58.** Amend § 271(a), Title 8, Delaware Code, by inserting the phrase “and any other members entitled to  
517 vote thereon under the certificate of incorporation or the bylaws of such corporation” immediately following the phrase  
518 “election of the members of the governing body” in the first sentence thereof.

519           **Section 59.** Amend § 273, Title 8, Delaware Code, by inserting a new subsection (c) reading as follows:

520           “(c) In the case of a charitable nonstock corporation, the petitioner shall provide a copy of any petition referred to  
521 in subsection (a) of this section to the Attorney General of the State of Delaware within one week of its filing with the  
522 Court of Chancery.”.

523           **Section 60.** Amend § 276, Title 8, Delaware Code, by striking said section in its entirety and substituting in lieu  
524 thereof the following:

525           “§ 276. Dissolution of nonstock corporation; procedure.

(a) Whenever it shall be desired to dissolve any nonstock corporation, the governing body shall perform all the acts necessary for dissolution which are required by § 275 of this title to be performed by the board of directors of a corporation having capital stock. If any members of a nonstock corporation are entitled to vote for the election of members of its governing body or are entitled to vote for dissolution under the certificate of incorporation or the bylaws of such corporation, such members shall perform all the acts necessary for dissolution which are contemplated by § 275 of this title to be performed by the stockholders of a corporation having capital stock, including dissolution without action of the members of the governing body if all the members of the corporation entitled to vote thereon shall consent in writing and a certificate of dissolution shall be filed with the Secretary of State pursuant to § 275(d). If there is no member entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the governing body, upon the adoption of a resolution to dissolve by the vote of a majority of members of its governing body then in office. In all other respects, the method and proceedings for the dissolution of a nonstock corporation shall conform as nearly as may be to the proceedings prescribed by § 275 of this title for the dissolution of corporations having capital stock.

(b) If a nonstock corporation has not commenced the business for which the corporation was organized, a majority of the governing body or, if none, a majority of the incorporators may surrender all of the corporation rights and franchises by filing in the office of the Secretary of State a certificate, executed and acknowledged by a majority of the incorporators or governing body, conforming as nearly as may be to the certificate prescribed by § 274 of this title.”.

**Section 61.** Amend § 280, Title 8, Delaware Code, by inserting a new subsection (g) reading as follows:

“(g) In the case of a nonstock corporation, any notice referred to in the last sentence of subsection (a)(3) of this section shall include a copy of § 114 of this title. In the case of a non-profit nonstock corporation, provisions of this section regarding distributions to members shall not apply to the extent that those provisions conflict with any other applicable law or with that corporation’s certificate of incorporation or bylaws.”.

**Section 62.** Amend § 281, Title 8, Delaware Code, by inserting a new subsection (f) reading as follows:

“(f) In the case of a non-profit nonstock corporation, provisions of this section regarding distributions to members shall not apply to the extent that those provisions conflict with any other applicable law or with that corporation’s certificate of incorporation or bylaws.”.

**Section 63.** Amend § 311, Title 8, Delaware Code, by inserting a new subsection (f) reading as follows:

“(f) At any time prior to the expiration of 3 years following the dissolution of a nonstock corporation pursuant to § 276 of this title, or, at any time prior to the expiration of such longer period as the Court of Chancery may have directed pursuant to § 278 of this title, a nonstock corporation may revoke the dissolution theretofore effected by it in a manner analogous to that by which the dissolution was authorized, including (i) if applicable, a vote of the members entitled to

556 vote, if any, on the dissolution and (ii) the filing of a certificate of revocation of dissolution containing information  
557 comparable to that required by subsection (a)(4) of this section. Notwithstanding the foregoing, only subsections (b), (d),  
558 and (e) of this section shall apply to nonstock corporations.”.

559       **Section 64.** Amend § 312(j), Title 8, Delaware Code, by striking said subsection in its entirety and substituting in  
560 lieu thereof the following:

561       “(j) Except as otherwise provided in § 313, whenever it shall be desired to renew or revive the certificate of  
562 incorporation of any nonstock corporation, the governing body shall perform all the acts necessary for the renewal or  
563 revival of the charter of the corporation which are performed by the board of directors in the case of a corporation having  
564 capital stock, and the members of any nonstock corporation who are entitled to vote for the election of members of its  
565 governing body and any other members entitled to vote for dissolution under the certificate of incorporation or the bylaws  
566 of such corporation, shall perform all the acts necessary for the renewal or revival of the certificate of incorporation of the  
567 corporation which are performed by the stockholders in the case of a corporation having capital stock. Except as otherwise  
568 provided in § 313, in all other respects, the procedure for the renewal or revival of the certificate of incorporation of  
569 nonstock corporation shall conform, as nearly as may be applicable, to the procedure prescribed in this section for the  
570 renewal or revival of the certificate of incorporation of a corporation having capital stock; provided, however, that  
571 subsection (i) of this section shall not apply to nonstock corporations.”.

572       **Section 65.** Amend § 313(a), Title 8, Delaware Code, by inserting the phrase “and any other exempt corporation  
573 as defined in § 501(b) of this title,” immediately following the phrase “families after death of its members,”.

574       **Section 66.** Amend § 390, Title 8, Delaware Code, by inserting a new subsection (i) reading as follows:

575       “(i) Whenever it shall be desired to transfer to or domesticate or continue in any foreign jurisdiction any nonstock  
576 corporation, the governing body shall perform all the acts necessary to effect a transfer, domestication or continuance which  
577 are required by this section to be performed by the board of directors of a corporation having capital stock. If the members  
578 of a nonstock corporation are entitled to vote for the election of members of its governing body or are entitled under the  
579 certificate of incorporation or the bylaws of such corporation to vote on such transfer, domestication or continuance or on a  
580 merger, consolidation, or dissolution of the corporation, they, and any other holder of any membership interest in the  
581 corporation, shall perform all the acts necessary to effect a transfer, domestication or continuance which are required by this  
582 section to be performed by the stockholders of a corporation having capital stock. If there is no member entitled to vote  
583 thereon, nor any other holder of any membership interest in the corporation, the transfer, domestication or continuance of  
584 the corporation shall be authorized at a meeting of the governing body, upon the adoption of a resolution to transfer or  
585 domesticate or continue by the vote of a majority of members of its governing body then in office. In all other respects, the

method and proceedings for the transfer, domestication or continuance of a nonstock corporation shall conform as nearly as may be to the proceedings prescribed by this section for the transfer, domestication or continuance of corporations having capital stock. In the case of a charitable nonstock corporation, due notice of the corporation's intent to effect a transfer, domestication or continuance shall be mailed to the Attorney General of the State of Delaware 10 days prior to the date of the proposed transfer, domestication or continuance."

**Section 67.** Amend § 391(j), Title 8, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof the following:

"(j) As used in this section, the term "exempt corporation" shall have the meaning given to it in section 501(b) of Chapter 5 of this title."

**Section 68.** Amend § 501, Title 8, Delaware Code, by striking said section in its entirety and substituting in lieu thereof the following:

"§ 501. Corporations subject to and exempt from franchise tax.

(a) Every telegraph, telephone or cable company, every electric company organized for the production and/or distribution of light, heat or power, every company organized for the purpose of producing and/or distributing steam, heat or power, every company organized for the purpose of the production and/or distribution and/or sale of gas, every parlor, palace or sleeping car company, every express company, every pipeline company, every life insurance company, every other insurance company of whatever kind, and every corporation now existing or hereafter to be incorporated under the laws of this State, shall pay an annual tax, for the use of the State, by way of license for the corporate franchise as prescribed in this chapter. No such tax shall be paid by any exempt corporation, any banking corporation, savings bank or building and loan association, or any corporation for drainage and reclamation of lowlands, or religious corporation, or purely charitable or educational association, or any company, association or society, which, by its certificate of incorporation, shall have for its object the assistance of sick, needy or disabled members, or the defraying of funeral expenses of deceased members, or to provide for the wants of the widows and families after death of its members.

(b) As used in this chapter, the term "exempt corporation" shall be defined as any corporation organized under Chapter 1 of this title that:

- (1) Is exempt from taxation under § 501(c) of the United States Internal Revenue Code [26 U.S.C. § 501(c)] or any similar provisions of the Internal Revenue Code, or any successor provisions;
- (2) Qualifies as a civic organization under § 8110(a)(1) of Title 9 or § 6840(4) of Title 16;
- (3) Qualifies as a charitable/fraternal organization under § 2593(1) of Title 6;
- (4) Is listed in § 8106(a) of Title 9;

(5) Is organized primarily or exclusively for religious or charitable purposes; or

(6) a. Is organized not for profit; and

b. No part of its net earnings inures to the benefit of any member or individual.”.

**Section 69.** Amend § 503(a)(1), Title 8, Delaware Code, by striking said subsection in its entirety and substituting in lieu thereof the following:

“(1) Where a corporation that is not authorized to issue capital stock is not an exempt corporation under § 501(b) of this chapter, \$75; where the authorized capital stock does not exceed 5,000 shares, \$75; where the authorized capital stock exceeds 5,000 shares, but is not more than 10,000 shares, \$150; and the further sum of \$75 on each 10,000 shares or part thereof.”.

**Section 70.** Amend § 505(c), Title 8, Delaware Code, by striking “§ 501” in the second sentence thereof and substituting in lieu thereof “§ 501(a)”.

**Section 71.** Effective Date. Sections 1 through 46, 51 through 60, and 63 through 70 shall be effective on August 1, 2010. Sections 47 through 50 shall be effective only with respect to transactions consummated pursuant to agreements entered into after August 1, 2010 (or, in the case of mergers pursuant to Section 253, resolutions of the board of directors adopted after August 1, 2010), and appraisal proceedings arising out of such transactions. Sections 61 and 62 shall be effective only with respect to dissolutions made effective after August 1, 2010, and the filing of claims arising out of such dissolutions.

#### SYNOPSIS

This bill is a comprehensive set of amendments to many sections of the General Corporation Law of the State of Delaware (“DGCL”), and to Chapter 5 of Title 8, to clarify, fill gaps in, and make consistent the DGCL’s application to corporations that are not authorized to issue capital stock, commonly known as nonstock corporations. For historical reasons, the DGCL has not comprehensively addressed nonstock corporations. Since Delaware now has approximately 18,000 registered nonstock corporations, these amendments will provide clarity and consistency so that these entities and their advisors will have appropriate and necessary statutory guidance. Most notably, new Section 114 of the DGCL is a “translator” provision that sets forth which provisions of the DGCL apply to nonstock corporations generally and which provisions apply to non-profit nonstock corporations specifically. With the exception of amendments to Sections 313, 391, and 501, none of these amendments is intended to affect the DGCL with respect to stock corporations, either directly or by negative implication.

Section 1 amends § 102(a)(4) of the DGCL to allow nonstock corporations to put the conditions of membership, or other criteria for identifying members, in their certificates of incorporation or in their bylaws. This Section further amends § 102(a)(4) to clarify that nonstock corporations shall have members, but the failure to have members shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation. This Section further amends § 102(a)(4) to provide that, until provided otherwise in the corporation’s certificate of incorporation or bylaws, the members of a nonstock corporation that fails to state the conditions of membership in its certificate of incorporation or bylaws shall be deemed to be those entitled to vote for the election of the members of the corporation’s governing body under the corporation’s certificate of incorporation or bylaws or otherwise. This Section further amends § 102(a)(4) to clarify that nonstock corporations may provide for classes or groups of members; that nonstock corporations may provide for full, limited, or no voting rights and powers of members, including that members may be entitled to vote on certain transactions even if they are not entitled to vote for the election of members of the corporation’s governing body; and that voting by members may be made on a per capita, number, financial interest, or any other basis. This Section further amends § 102(a)(4) to provide that provisions regarding classes and voting rights of members may be set forth either in the

corporation's certificate of incorporation or in its bylaws.

Section 2 amends § 102(b)(1) of the DGCL to add language applying to nonstock corporations.

Sections 3 and 4 amend § 102(b)(2) of the DGCL to provide language regarding compromises between the corporation and its creditors and/or between the corporation and its members appropriate for the certificate of incorporation of a nonstock corporation.

Sections 5, 6, 7, and 8 make technical changes to § 102(b)(6), § 102(b)(7), § 102(d), and § 109(a) of the DGCL consistent with the intent of the bill and with the translator provision in new § 114(a).

Section 9 amends the DGCL to add a new § 114. Section 114 has four operative provisions. New § 114(a) provides that, unless otherwise provided in § 114(b) or § 114(c), the provisions of the DGCL generally apply to nonstock corporations and that, for purposes of applying to nonstock corporations, the stock-corporation terms in each applicable section will be translated into nonstock-corporation terms. Section 114(a)(4) provides that members of non-profit nonstock corporations have memberships, while members of other nonstock corporations hold membership interests in the nonstock corporations. New § 114(b) carves out certain provisions of the DGCL from the operation of § 114(a), so the provisions listed in § 114(b) are not translated by § 114(a). Specifically, new § 114(b)(1) lists provisions of the DGCL that apply to nonstock corporations by their terms and therefore require no translation; and § 114(b)(2) and § 114(b)(3) list sections and subchapters of the DGCL that do not apply to nonstock corporations by virtue of the translator provision in § 114(a) (but which may be made otherwise applicable by a different provision). New § 114(c) carves out provisions in addition to those listed in § 114(b) to ensure that those provisions are not applied to non-profit nonstock corporations. New § 114(d) defines the following terms relating to nonstock corporations: "nonstock corporation," "membership interest," "non-profit nonstock corporation," and "charitable nonstock corporation."

Section 144(a)(2) is listed in new § 114(c)(2) in accordance with the concept noted in *Oberly v. Kirby*, 592 A.2d 445, 467–68 (Del. 1991), that the members of a non-profit nonstock corporation may not ratify such interested transactions because they have no financial interest in the corporation.

Because the translator provision in new § 114(a) operates on § 159 for nonstock corporations other than non-profit nonstock corporations, membership interests in nonstock corporations are personal property.

Sections 10, 11, 12, 13, and 14 make technical changes to § 141 and § 144 of the DGCL consistent with the intent of the bill and with the translator provision in new § 114(a).

Section 15 amends § 154 of the DGCL to make clear, for purposes of § 154, § 160, and § 170, that capital in a nonstock corporation is zero.

Sections 16 and 17 amend § 160 of the DGCL to ensure consistency with the amendment to § 154 regarding the capital of a nonstock corporation, and to allow a nonstock corporation to redeem its membership interests if the redemption of such membership interests is authorized by the corporation's certificate of incorporation.

Section 18 amends § 170 of the DGCL to ensure that the translator provision in new § 114(a) operates properly on § 170.

Section 19 amends § 215(a) of the DGCL to apply § 211(d) (regarding special meetings of members) and § 212(e) (regarding irrevocable proxies) to nonstock corporations; this Section further amends § 215(a) to ensure that it translates correctly the provisions to which it refers. This Section amends § 215(b) of the DGCL to ensure consistency with the amendments to § 102(a)(4) allowing the corporation's certificate of incorporation or bylaws to set forth the members' voting rights. This Section further amends § 215(b) to provide that members' voting rights are subject to the record date for any particular meeting. This Section amends the DGCL to add new § 215(c)(4). Consistent with the amendments to § 102(a)(4), new § 215(c)(4) defines the quorum and vote necessary to take action for separate votes of classes or groups of members. This Section also amends the DGCL to add new § 215(f). New § 215(f) provides that, except as otherwise provided in the corporation's certificate of incorporation, in the corporation's bylaws, or by resolution of the corporation's governing body, the record date for meetings of nonstock corporations shall be deemed to be the date of the meeting, so long as no record date precedes the action by the governing body fixing that record date.

Sections 20, 21, 22, 23, 24, 25, and 26 make technical changes to § 220, § 223, and § 225 of the DGCL consistent with the intent of the bill and with the translator provision in new § 114(a).

Section 27 amends the DGCL to add new § 226(c) to provide that, in the case of a charitable nonstock corporation, the applicant must provide a copy of the application referred to in § 226(a) to the Attorney General of the State of Delaware within one week of filing the application with the Court of Chancery.

Sections 28, 29, and 30 make technical changes to § 227, § 232, and § 233 of the DGCL consistent with the intent of the bill and with the translator provision in new § 114(a).

Section 31 and 32 amend § 241 of the DGCL, amending § 241(b) to ensure that § 241 properly applies to nonstock corporations, and adding new § 241(c) to provide that § 241 applies to nonstock corporations before such corporations have any members.

Sections 33, 34, and 35 amend § 242 of the DGCL to ensure that § 242 is consistent with the terms used in the translator provision in new § 114(a), and to clarify that § 242(b)(4) applies to nonstock corporations.

Sections 36 and 37 amend § 245 of the DGCL to clarify that § 245 applies to a nonstock corporation even if no vote of the members of the corporation is required to amend the corporation's certificate of incorporation.

Sections 38, 39, and 40 amend the DGCL to add new § 253(f) and amend § 253 of the DGCL to allow a nonstock corporation that owns 90% of the outstanding shares of each class of stock of a subsidiary otherwise entitled to vote on a merger to effect a short-form merger, so long as the nonstock corporation is the surviving corporation. These Sections also amend the DGCL to add new § 253(g) to provide that nothing in § 253 shall be deemed to authorize the merger of a corporation with a charitable nonstock corporation, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

Section 41 amends § 255 of the DGCL to ensure that § 255 is consistent with the terms used in the translator provision in new § 114(a) and to clarify procedures regarding the execution, acknowledgment, adoption, and certification of the merger agreement. This Section also amends § 255(c) to clarify that members may vote on a merger if, under the corporation's certificate or incorporation or bylaws, they are entitled to vote on the merger or for the election of the members of the governing body. The amendment to § 255(c) further clarifies that the decision to include either a copy or a summary of an agreement of merger or consolidation in a notice of a meeting of the members of a constituent nonstock corporation need not be approved by a specific act of the governing body of the nonstock corporation. The amendment is not intended to define or limit any duty of members of the governing body relating to disclosure to members in connection with the transaction. This Section further amends § 255 to provide that, if no members of the corporation are entitled to vote on the merger other than those who are members of the governing body, only a single vote is required to approve the agreement of merger or consolidation, so long as the resolution approving that agreement of merger or consolidation is approved by a majority of all the members of the governing body. This amendment dispenses with the need for a second vote authorizing a merger and decreases the necessary vote from two-thirds of the members of the governing body to a majority of the members of the governing body. This Section also amends the DGCL to add new § 255(e), which provides that § 251(d), as translated for application to nonstock corporations, shall apply to mergers under § 255.

Sections 42 and 43 amend § 256 of the DGCL to ensure that § 256 is consistent with the terms used in the translator provision in new § 114(a); to add new § 256(f), which provides that § 251(d), as translated for application to nonstock corporations, shall apply to mergers under § 256; and to add new § 256(g) to clarify that nothing in § 256 shall be deemed to authorize the merger of a charitable nonstock corporation into a nonstock corporation, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

Section 44 amends § 257 of the DGCL consistent with the intent of the bill and with the translator provision in new § 114(a). This Section also amends the DGCL to add new § 257(e), which provides that § 251(d), as translated for application to nonstock corporations, shall apply to mergers under § 257.

Sections 45 and 46 amend § 258 of the DGCL consistent with the intent of the bill and with the translator provision in new § 114(a) and to clarify that § 251(d), as translated for application to nonstock corporations, shall apply to mergers under § 258.

Sections 47, 48, 49, and 50 amend § 262 of the DGCL to ensure that the translator provision in new § 114(a) operates properly on § 262, to clarify that § 262 applies to mergers under § 255 and § 256, and to amend § 262(d) to provide notice procedures appropriate for nonstock corporations, including requiring that a copy of new § 114 be provided if one of the constituent corporations is a nonstock corporation. These amendments shall be effective only with respect to transactions consummated pursuant to agreements entered into after August 1, 2010 (or, in the case of mergers pursuant to



Section 253, resolutions of the board of directors adopted after August 1, 2010), and appraisal proceedings arising out of such transactions.

Sections 51, 52, and 53 amend § 263 of the DGCL to ensure that the translator provision in new § 114(a) operates properly on § 263 and to clarify that § 263 applies to nonstock corporations, and add new § 263(f) to clarify that nothing in § 263 shall be deemed to authorize the merger of a charitable nonstock corporation into a partnership, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

Sections 54, 55, and 56 amend § 264 of the DGCL to ensure that the translator provision in new § 114(a) operates properly on § 264 and to clarify that § 264 applies to nonstock corporations, and add new § 264(f) to clarify that nothing in § 264 shall be deemed to authorize the merger of a charitable nonstock corporation into a limited liability company, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

Section 57 amends the DGCL to add new § 266(j) to clarify that nothing in § 266 shall be deemed to authorize the conversion of a charitable nonstock corporation into another entity, if the charitable status of such charitable nonstock corporation would thereby be lost or impaired.

Section 58 amends § 271(a) of the DGCL to clarify that members may vote on a sale, lease or exchange of all or substantially all of its property and assets if, under the corporation's certificate or incorporation or bylaws, they are entitled to vote thereon or for the election of the members of the governing body.

Section 59 amends the DGCL to add new § 273(c) to provide that, in the case of a charitable nonstock corporation, the petitioner must provide a copy of the petition referred to in § 273(a) to the Attorney General of the State of Delaware within one week of filing the petition with the Court of Chancery.

Section 60 amends § 276 of the DGCL to ensure that the translator provision in new § 114(a) operates properly on § 276; to clarify that members may vote for dissolution if, under the corporation's certificate of incorporation or bylaws, they are entitled to vote thereon or for the election of the members of the governing body; and to clarify that members of the corporation may authorize dissolution without action of the members of the governing body if all the members of the corporation entitled to vote thereon shall consent in writing and a certificate of dissolution shall be properly filed with the Secretary of State.

Section 61 amends the DGCL to add new § 280(g) to provide that, in the case of a nonstock corporation, any notice referred to in the last sentence of § 280(a)(3) shall include a copy of new § 114 and to provide that, in the case of a non-profit nonstock corporation, provisions of § 280 regarding distributions to members shall not apply to the extent that those provisions conflict with any other applicable law or with that corporation's certificate of incorporation or bylaws. This amendment shall be effective only with respect to dissolutions made effective after August 1, 2010, and the filing of claims arising out of such dissolutions.

Section 62 amends the DGCL to add new § 281(f) to provide that, in the case of a non-profit nonstock corporation, provisions of § 281 regarding distributions to members shall not apply to the extent that those provisions conflict with any other applicable law or with that corporation's certificate of incorporation or bylaws. This amendment shall be effective only with respect to dissolutions made effective after August 1, 2010, and the filing of claims arising out of such dissolutions.

Section 63 amends the DGCL to add new § 311(f) to provide that, in a procedure analogous to that for a stock corporation, a nonstock corporation can revoke a dissolution effected by it. New § 311(f) provides that the revocation of dissolution will include, if applicable, a vote of the members entitled to vote (if any) on the dissolution and the filing of a certificate of revocation of dissolution containing information comparable to that described in § 311(a)(4).

Section 64 amends § 312(j) of the DGCL to ensure that § 312(j) is consistent with the terms used in the translator provision in new § 114(a); to clarify that members may vote for renewal or revival if, under the corporation's certificate of incorporation or bylaws, they are entitled to vote for dissolution or for the election of the members of the governing body; to clarify that § 312(j) is subject to the provisions of § 313; and to clarify that § 312(i) does not apply to nonstock corporations.

Section 65 amends § 313(a) of the DGCL to provide that § 313 applies to all exempt corporations, as defined under new § 501(b) of Title 8.

Section 66 amends the DGCL to add new § 390(i) to provide that nonstock corporations may transfer to or domesticate or continue in any foreign jurisdiction in a manner analogous to that of a stock corporation and, in the case of a charitable nonstock corporation, that the Attorney General of the State of Delaware must be provided with notice of the corporation's intent to effect a transfer, domestication or continuance 10 days prior to the date of the proposed transfer, domestication or continuance.

Section 67 amends § 391(j) of the DGCL to refer to the definition of "exempt corporation" in new § 501(b) of Title 8.

Section 68 amends § 501 of Chapter 5 of Title 8 to incorporate the definition of "exempt corporation," which has been expanded to include stock corporations, and to clarify that exempt corporations are exempt from the franchise tax.

Section 69 amends § 503(a)(1) of Chapter 5 of Title 8 to provide that the franchise tax applicable to nonstock corporations (except exempt corporations, which are exempt from the franchise tax) is \$75.

Section 70 amends § 505(c) of Chapter 5 of Title 8 to ensure that it is consistent with the amendment of § 501 of Chapter 5 of Title 8.

Section 71 provides that Sections 1 through 46, 51 through 60, and 63 through 70 shall be effective on August 1, 2010; that Sections 47 through 50 shall be effective only with respect to transactions consummated pursuant to agreements entered into after August 1, 2010 (or, in the case of mergers pursuant to Section 253, resolutions of the board of directors adopted after August 1, 2010), and appraisal proceedings arising out of such transactions; and that Sections 61 and 62 shall be effective only with respect to dissolutions made effective after August 1, 2010, and the filing of claims arising out of such dissolutions.