



SPONSOR: Sen. Blevins & Rep. George

DELAWARE STATE SENATE  
146th GENERAL ASSEMBLY

SENATE BILL NO. 77

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)(1), Title 8, Delaware Code, by adding the words “or, in the sole discretion of the  
2   Division of Corporations in the Department of State, if the corporation is both a nonprofit nonstock corporation and an  
3   association of professionals,” after “\$10,000,000.”.

4           Section 2. Amend § 102(a)(1), Title 8, Delaware Code, by striking “and (iii)” and substituting in lieu thereof “,  
5   (iii) except as permitted by § 395 of this title, shall not contain the word “trust,” and (iv)”.

6           Section 3. Amend § 102(a)(2), Title 8, Delaware Code, by deleting the words “include the street, number, city and  
7   county” and inserting in lieu thereof the words “be stated in accordance with § 131(c) of this chapter”.

8           Section 4. Amend § 103, Title 8, Delaware Code, by adding the following new subsection (j) to the end thereof:

9           “(j) Notwithstanding any other provision of this chapter, it shall not be necessary for any corporation to amend its  
10   certificate of incorporation, or any other document, that has been filed prior to August 1, 2011, to comply with § 131(c) of  
11   this chapter, provided that any certificate or other document filed under this chapter on or after August 1, 2011 and  
12   changing the address of a registered office shall comply with § 131(c) of this chapter.”

13          Section 5. Amend § 131, Title 8, Delaware Code, by adding the following new subsection (c) to the end thereof:

14          “(c) As contained in any certificate of incorporation or other document filed with the Secretary of State under this  
15   chapter, the address of a registered office shall include the street, number, city, county and postal code.”

16          Section 6. Amend § 145, Title 8, Delaware Code, by replacing the words “such provision” in second sentence of  
17   subsection (f) thereof with the phrase “the certificate of incorporation or the bylaws”.

18          Section 7. Amend § 265(b), Title 8, Delaware Code, by adding the following sentence to the end thereof:

19          “Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary  
20   of State and, if such certificates are not to become effective upon their filing as permitted by § 103(d) of this title, then each  
21   such certificate shall provide for the same effective date or time in accordance with § 103(d) of this title.”

22           Section 8. Amend the title of § 277, Title 8, Delaware Code, by striking the words “dissolution or merger” and  
23 substituting the words “dissolution, merger, transfer or conversion” in lieu thereof.

24           Section 9. Amend § 277, Title 8, Delaware Code, by replacing the entire text thereof with the following:

25           “No corporation shall be dissolved, merged, transferred (without continuing its existence as a corporation of this  
26 State) or converted under this chapter until (a) all franchise taxes due to or assessable by the State including all franchise  
27 taxes due or which would be due or assessable for the entire calendar month during which such dissolution, merger, transfer  
28 or conversion becomes effective have been paid by the corporation and (b) all annual franchise tax reports including a final  
29 annual franchise tax report for the year in which such dissolution, merger, transfer or conversion becomes effective have  
30 been filed by the corporation; notwithstanding the foregoing, if the Secretary of State certifies that an instrument to effect a  
31 dissolution, merger, transfer or conversion has been filed in the Secretary of State’s office, such corporation shall be  
32 dissolved, merged, transferred or converted at the effective time of such instrument.”

33           Section 10. Amend the title of § 313, Title 8, Delaware Code, by striking “religious, charitable, educational, etc.,”  
34 and substituting the word “exempt” in lieu thereof.

35           Section 11. Amend § 313(a), Title 8, Delaware Code, by (i) striking “Every religious corporation, and every  
36 purely charitable or educational association, and every company, association or society, which by its certificate of  
37 incorporation, had, at the time its certificate of incorporation or charter became void by operation of law, for its object the  
38 assistance of sick, needy or disabled members, or the defraying of funeral expenses of deceased members, or to provide for  
39 the wants of the widows and families after death of its members, and any other exempt corporation as defined in § 501(b) of  
40 this title,” and substituting the words “Every exempt corporation” in lieu thereof and (ii) striking the phrase “under any of  
41 the classifications set out in this subsection” and substituting the phrase “as an exempt corporation pursuant to § 501(b) of  
42 this title” in lieu thereof.

43           Section 12. Amend § 313(c), Title 8, Delaware Code, by (i) inserting the sentence “As used in this section, the  
44 term “exempt corporation” shall have the meaning given to it in § 501(b) of this title.” at the beginning thereof, (ii)  
45 inserting the word “exempt” between the word “any” and the word “corporation” and (iii) striking the phrase “of any of the  
46 classifications set out in subsection (a) of this section”.

47           Section 13. Amend § 374, Title 8, Delaware Code, by deleting the words “which shall include the street, number,  
48 city and county” and inserting in lieu thereof the words “in accordance with § 131(c) of this chapter”.

49           Section 14. Amend § 388(b), Title 8, Delaware Code, by adding the following sentence to the end thereof:

50 “Each of the certificates required by this subsection (b) shall be filed simultaneously with the Secretary of State  
51 and, if such certificates are not to become effective upon their filing as permitted by § 103(d) of this title, then each such  
52 certificate shall provide for the same effective date or time in accordance with § 103(d) of this title.”

53 Section 15. Amend § 391(a)(3), Title 8, Delaware Code, by (i) inserting the word “the” after the word “In” in the  
54 last sentence thereof, (ii) inserting the word “exempt” between the word “of” and the word “corporations” in the last  
55 sentence thereof and (iii) striking the words “created solely for religious or charitable purposes” from the last sentence  
56 thereof.

57 Section 16. Amend § 395(a), Title 8, Delaware Code, by (i) striking the word “Every” at the beginning of the first  
58 sentence and substituting in lieu thereof “Except as provided below in subsection (d), every”, and (ii) striking “the Savings  
59 and Loan Holding Company Act, 12 U.S.C. § 1730a et seq.” and substituting in lieu thereof “section 10 of the Home  
60 Owners’ Loan Act, 12 U.S.C. § 1467a et seq.”.

61 Section 17. Amend § 395(b), Title 8, Delaware Code, by (i) striking the word “No” at the beginning of the first  
62 sentence and substituting in lieu thereof “Except as provided below in subsection (d), no”, (ii) striking “the Savings and  
63 Loan Holding Company Act, 12 U.S.C. § 1730a et seq.” and substituting in lieu thereof “section 10 of the Home Owners’  
64 Loan Act, 12 U.S.C. § 1467a et seq.”, and (iii) striking the word “The” at the beginning of the second sentence and  
65 substituting in lieu thereof “Except as provided below in subsection (d), the”.

66 Section 18. Amend § 395(c), Title 8, Delaware Code, by (i) striking “the Savings and Loan Holding Company  
67 Act, 12 U.S.C. § 1730a et seq.” and substituting in lieu thereof “section 10 of the Home Owners’ Loan Act, 12 U.S.C. §  
68 1467a et seq.”, and (ii) striking “, or use the word “trust” as a part of such corporation’s name”.

69 Section 19. Amend § 395, Title 8, Delaware Code, by adding a new subsection (d) to read as follows:

70 “(d) The requirements and restrictions set forth above in subsections (a) and (b) shall not apply to, and shall not be  
71 construed to prevent the use of the word “trust” as part of the name of, a corporation that is not subject to the supervision of  
72 the State Bank Commissioner of this State and that is not regulated under the Bank Holding Company Act of 1956, 12  
73 U.S.C. § 1841 et seq., or section 10 of the Home Owners’ Loan Act, 12 U.S.C. § 1467a et seq., where use of the word  
74 “trust” as part of such corporation’s name clearly (i) does not refer to a trust business, (ii) is not likely to mislead the public  
75 into believing that the nature of the business of the corporation includes activities that fall under the supervision of the State  
76 Bank Commissioner of this State or that are regulated under the Bank Holding Company Act of 1956, 12 U.S.C. § 1841 et  
77 seq., or section 10 of the Home Owners’ Loan Act, 12 U.S.C. § 1467a et seq., and (iii) will not otherwise lead to a pattern  
78 and practice of abuse that might cause harm to the interests of the public or the State, as determined by the Director of the  
79 Division of Corporations and the State Bank Commissioner.”

80           Section 20. Amend § 501(a), Title 8, Delaware Code, by (i) inserting the words “(other than a captive insurance  
81   company licensed under chapter 69 of Title 18)” after the word “kind” in the first sentence thereof, (ii) striking the words  
82   “or building and loan association,” in the second sentence thereof and substituting in lieu thereof the words “, building and  
83   loan association or any captive insurance company licensed under chapter 69 of Title 18,” and (iii) deleting “, or religious  
84   corporation, or purely charitable or educational association, or any company, association or society, which, by its certificate  
85   of incorporation, shall have for its object the assistance of sick, needy or disabled members, or the defraying of funeral  
86   expenses of deceased members, or to provide for the wants of the widows and families after death of its members” in the  
87   second sentence thereof.

88           Section 21. Amend § 501(b)(5), Title 8, Delaware Code, by adding the following phrase between the word  
89   “purposes” and the “;”:

90           “, or is a religious corporation or purely charitable or educational association, or is a company, association or  
91   society, which, by its certificate of incorporation, has for its object the assistance of sick, needy or disabled members, or the  
92   defraying of funeral expenses of deceased members, or to provide for the wants of the widows and families after death of  
93   its members”.

94           Section 22. Sections 1 through 21 shall be effective on August 1, 2011.

#### SYNOPSIS

Section 1. This Section amends Section 102 to give the Division of Corporations the discretion to waive the requirement that a corporation’s name contain certain words or abbreviations thereof (such as “incorporated”), if the corporation is both a nonprofit nonstock corporation and an association of professionals.

Sections 2 and 16 through 19. These sections amend Sections 102 and 395 to give the Director of the Division of Corporations and the State Bank Commissioner the discretion to waive certain requirements and restrictions that apply when a corporation has the word “trust” in its name, provided that the use of the word “trust” is clearly not purporting to refer to a trust business. Section 2 also includes in § 102(a)(1) the restriction on the use of the word “trust” in a corporation’s name so that all statutory name restrictions in Title 8 of the Code are referred to in that section. Sections 16, 17 and 18 also update the statutory reference to the Savings and Loan Holding Company Act, which was moved to section 10 of the Home Owners’ Loan Act.

Section 3. This Section amends Section 102 to clarify that, in a certificate of incorporation filed with the Secretary of State, the address of the registered office of the corporation in Delaware must be stated in accordance with Section 131(c).

Section 4. This Section amends Section 103 to provide that it is not necessary for a Delaware corporation to amend its certificate of incorporation, or any other document, that has been filed with the Secretary of State prior to August 1, 2011, to comply with new Section 131(c), but that any certificate or other document filed on or after August 1, 2011 and changing the address of a registered office must comply with Section 131(c).

Section 5. This Section adds a new subsection (c) to Section 131 providing that, in any certificate of incorporation or other document filed with the Secretary of State, the address of the registered office of the corporation must include the street, number, city, county and postal code.

Section 6. The amendment to Section 145(f) clarifies that a right to indemnification or advancement of expenses under a provision of a certificate of incorporation or bylaw cannot be eliminated or impaired by an amendment to the certificate of incorporation or the bylaws after the occurrence of the act or omission to which indemnification or

advancement of expenses relates, unless the provision contains, at the time of the act or omission, an explicit authorization of such elimination or limitation.

Section 7. This Section amends Section 265 to clarify that the certificate of conversion to corporation and the certificate of incorporation of another entity converting to a Delaware corporation must be filed simultaneously in the office of the Secretary of State and, to the extent such certificates are to have a post-filing effective date or time, such certificates must provide for the same effective date or time.

Sections 8 and 9. These Sections amend Section 277 to clarify that before a corporation is dissolved, merged, transferred (without continuing its existence as a Delaware corporation) or converted under Title 8 of the Delaware Code, such corporation must pay all franchise taxes due to or assessable by the State including all franchise taxes due or which would be due or assessable for the entire calendar month during which such dissolution, merger, transfer or conversion becomes effective and such corporation must file all annual franchise tax reports including a final annual franchise tax report for the year in which such dissolution, merger, transfer or conversion becomes effective. Notwithstanding the foregoing, if the Secretary of State certifies that an instrument to affect a dissolution, merger, transfer or conversion has been filed in the Secretary of State's office, such corporation shall be dissolved, merged, transferred or converted at the effective time of such instrument.

Sections 10 through 12. The amendments to Section 313 are intended to conform Section 313 to Section 501(b) which was amended in 2010 to adopt the definition of "exempt corporation" for those corporations not subject to paying franchise taxes.

Section 13. This Section amends Section 374 to clarify that, in an annual report of a foreign corporation filed with the Secretary of State, the address of the registered office of the foreign corporation in Delaware must be stated in accordance with new Section 131(c).

Section 14. This Section amends Section 388 to clarify that the certificate of corporate domestication and the certificate of incorporation of a non-United States entity domesticating to Delaware as a Delaware corporation must be filed simultaneously with the Secretary of State and, to the extent such certificates are to have a post-filing effective date or time, such certificates must provide for the same effective date or time.

Section 15. The amendments to Section 391 are intended to conform Section 391 to Section 501(b) which was amended in 2010 to adopt the definition of "exempt corporation" for those corporations not subject to paying franchise taxes.

Sections 20 and 21. These Sections amend Section 501 to clarify that captive insurance companies licensed under chapter 69 of Title 18 are not required to pay annual franchise taxes and to clarify that the definition of "exempt corporation" includes a religious corporation or purely charitable or educational association, and a company, association or society, which, by its certificate of incorporation, has 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.

Section 22. This Section provides for an effective date for the amendments of August 1, 2011.

Author: Senator Blevins