



SPONSOR: Sen. Vaughn & Rep. Valihura  
Rep. M Marshall & Sen. Amick

DELAWARE STATE SENATE  
143rd GENERAL ASSEMBLY  
SENATE BILL NO. 322

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 of the Delaware Code, by deleting subdivision (ii) thereof in its entirety and by  
2 substituting in lieu thereof the following:

3 “(ii) shall be such as to distinguish it upon the records in the office of the Division of Corporations in the  
4 Department of State from the names that are reserved on such records and from the names on such records of each other  
5 corporation, partnership, limited partnership, limited liability company or statutory trust organized or registered as a  
6 domestic or foreign corporation, partnership, limited partnership, limited liability company or statutory trust under the laws  
7 of this State, except with the written consent of the person who has reserved such name or such other foreign corporation  
8 or domestic or foreign partnership, limited partnership, limited liability company or statutory trust, executed,  
9 acknowledged and filed with the Secretary of State in accordance with § 103 of this title and”.

10 Section 2. Amend § 102, Title 8 of the Delaware Code, by inserting therein a new subsection (e) to read as follows:

11 “(e) The exclusive right to the use of a name that is available for use by a domestic or foreign corporation may be  
12 reserved by or on behalf of:

13 (1) Any person intending to incorporate or organize a corporation with that name under this chapter or  
14 contemplating such incorporation or organization;

15 (2) Any domestic corporation or any foreign corporation qualified to do business in the State of  
16 Delaware, in either case, intending to change its name or contemplating such a change;

17 (3) Any foreign corporation intending to qualify to do business in the State of Delaware and adopt that  
18 name or contemplating such qualification and adoption; and

19 (4) Any person intending to organize a foreign corporation and have it qualify to do business in the State  
20 of Delaware and adopt that name or contemplating such organization, qualification and adoption.

21           The reservation of a specified name may be made by filing with the Secretary of State an application, executed by  
22 the applicant, certifying that the reservation is made by or on behalf of a domestic corporation, foreign corporation or other person  
23 described in subsection (e)(1)-(4) above, and specifying the name to be reserved and the name and address of the applicant. If the  
24 Secretary of State finds that the name is available for use by a domestic or foreign corporation, the Secretary shall reserve the name  
25 for the use of the applicant for a period of 120 days. The same applicant may renew for successive 120-day periods a reservation of  
26 a specified name by filing with the Secretary of State, prior to the expiration of such reservation (or renewal thereof), an application  
27 for renewal of such reservation, executed by the applicant, certifying that the reservation is renewed by or on behalf of a domestic  
28 corporation, foreign corporation or other person described in subsection (e)(1)-(4) above and specifying the name reservation to be  
29 renewed and the name and address of the applicant. The right to the exclusive use of a reserved name may be transferred to any  
30 other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name  
31 was reserved, specifying the name reservation to be transferred and the name and address of the transferee. The reservation of a  
32 specified name may be cancelled by filing with the Secretary of State a notice of cancellation, executed by the applicant or  
33 transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee. Unless the  
34 Secretary of State finds that any application, application for renewal, notice of transfer, or notice of cancellation filed with the  
35 Secretary of State as required by this subsection does not conform to law, upon receipt of all filing fees required by law the  
36 Secretary of State shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation  
37 thereon of the action taken by the Secretary of State. A fee as set forth in § 391 of this title shall be paid at the time of the  
38 reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or  
39 cancellation of any such reservation.”.

40           Section 3. Amend § 141(b), Title 8 of the Delaware Code, by inserting the following sentences immediately following the  
41 sixth sentence thereof:

42           “A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date  
43 or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the  
44 director failing to receive a specified vote for reelection as a director may provide that it is irrevocable.”.

45           Section 4. Amend § 141(d), Title 8 of the Delaware Code, by deleting the first sentence thereof in its entirety and by  
46 substituting in lieu thereof the following:

47           “The directors of any corporation organized under this chapter may, by the certificate of incorporation or by an  
48 initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes; the term of office of  
49 those of the first class to expire at the first annual meeting held after such classification becomes effective; of the second

50 class 1 year thereafter; of the third class 2 years thereafter; and at each annual election held after such classification  
51 becomes effective, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire. The  
52 certificate of incorporation or bylaw provision dividing the directors into classes may authorize the board of directors to  
53 assign members of the board already in office to such classes at the time such classification becomes effective.”.

54 Section 5. Amend § 216, Title 8 of the Delaware Code, by inserting at the end thereof (and not at the end of paragraph (4)  
55 thereof) a new sentence to read as follows:

56 “A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of  
57 directors shall not be further amended or repealed by the board of directors.”.

58 Section 6. Amend § 371(c), Title 8 of the Delaware Code, by deleting said subsection in its entirety and by substituting in  
59 lieu thereof the following:

60 “(c) The certificate of the Secretary of State, under seal of office, of the filing of the certificates required by  
61 subsection (b) of this section, shall be delivered to the registered agent upon the payment to the Secretary of State of the  
62 fee prescribed for such certificates, and the certificate shall be prima facie evidence of the right of the corporation to do  
63 business in this State; provided, that the Secretary of State shall not issue such certificate unless the name of the  
64 corporation is such as to distinguish it upon the records in the office of the Division of Corporations in the Department of  
65 State from the names that are reserved on such records and from the names on such records of each other corporation,  
66 partnership, limited partnership, limited liability company or statutory trust organized or registered as a domestic or foreign  
67 corporation, partnership, limited partnership, limited liability company or statutory trust under the laws of this State, except  
68 with the written consent of the person who has reserved such name or such other corporation, partnership, limited  
69 partnership, limited liability company or statutory trust, executed, acknowledged and filed with the Secretary of State in  
70 accordance with § 103 of this title. If the name of the foreign corporation conflicts with the name of a corporation,  
71 partnership, limited partnership, limited liability company or statutory trust organized under the laws of this State, or a  
72 name reserved for a corporation, partnership, limited partnership, limited liability company or statutory trust to be  
73 organized under the laws of this State, or a name reserved or registered as that of a foreign corporation, partnership, limited  
74 partnership, limited liability company or statutory trust under the laws of this State, the foreign corporation may qualify to  
75 do business if it adopts an assumed name which shall be used when doing business in this State as long as the assumed  
76 name is authorized for use by this section.”.

77 Section 7. Amend § 391(a)(24), Title 8 of the Delaware Code, by deleting the phrase “via telephone, mail or hand  
78 delivery” therefrom, by substituting in lieu thereof the phrase “application, an application for renewal of a corporate name

79 reservation, or a notice of transfer or cancellation of a corporate name reservation”, by deleting the term “\$10” therefrom, and by  
80 substituting in lieu thereof the phrase “up to \$75”.

81 Section 8. Sections 1 through 7 of this Act shall become effective on August 1, 2006.

82 Section 9. Amend § 132(a), Title 8 of the Delaware Code, by deleting said subsection in its entirety and by substituting in  
83 lieu thereof the following:

84 “(a) Every corporation shall have and maintain in this State a registered agent, which agent may be any of

85 (1) the corporation itself,

86 (2) an individual resident in this State,

87 (3) a domestic corporation (other than the corporation itself), a domestic partnership (whether general  
88 (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic limited  
89 liability company or a domestic statutory trust, or

90 (4) a foreign corporation, a foreign partnership (whether general (including a limited liability  
91 partnership) or limited (including a limited liability limited partnership)), a foreign limited liability company or a foreign  
92 statutory trust.”.

93 Section 10. Amend § 132, Title 8 of the Delaware Code, by redesignating subsection (b) thereof as subsection (h) and by  
94 inserting therein new subsections (b), (c), (d), (e), (f), and (g) to read as follows:

95 “(b) Every registered agent shall:

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

99 (2) if a foreign entity, be authorized to transact business in this State;

100 (3) accept service of process and other communications directed to the corporations for which it serves  
101 as registered agent and forward same to the corporation to which the service or communication is directed; and

102 (4) forward to the corporations for which it serves as registered agent the annual report required by §  
103 502 of this title or an electronic notification of same in a form satisfactory to the Secretary of State (“Secretary”).

104 (c) Any registered agent who at any time serves as registered agent for more than fifty entities (a “Commercial  
105 Registered Agent”), whether domestic or foreign, shall satisfy and comply with the following qualifications.

106 (1) A natural person serving as a Commercial Registered Agent shall:

107 a. maintain a principal residence or a principal place of business in this State;

108                                   b. maintain a Delaware business license;  
109                                   c. be generally present at a designated location within this State during normal business hours  
110 to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (b); and  
111                                   d. provide the Secretary upon request with such information identifying and enabling  
112 communication with such Commercial Registered Agent as the Secretary shall require;

113                                   (2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a  
114 limited liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited  
115 liability company, or a domestic or foreign statutory trust serving as a Commercial Registered Agent shall:

116                                   a. have a business office within this State which is generally open during normal business hours  
117 to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (b);

118                                   b. maintain a Delaware business license;  
119                                   c. have generally present at such office during normal business hours an officer, director or  
120 managing agent who is a natural person; and

121                                   d. provide the Secretary upon request with such information identifying and enabling  
122 communication with such Commercial Registered Agent as the Secretary shall require.

123                                   (3) For purposes of this subsection and subsection (f)(2)a., a Commercial Registered Agent shall also  
124 include any registered agent which has an officer, director or managing agent in common with any other registered agent  
125 or agents if such registered agents at any time during such common service as officer, director or managing agent  
126 collectively served as registered agents for more than fifty entities, whether domestic or foreign.

127                                   (d) Every corporation formed under the laws of this State or qualified to do business in this State shall provide to  
128 its registered agent and update from time to time as necessary the name, business address and business telephone number  
129 of a natural person who is an officer, director, employee, or designated agent of the corporation, who is then authorized to  
130 receive communications from the registered agent. Such person shall be deemed the communications contact for the  
131 corporation. Every registered agent shall retain (in paper or electronic form) the above information concerning the current  
132 communications contact for each corporation for which he, she or it serves as a registered agent. If the corporation fails to  
133 provide the registered agent with a current communications contact, the registered agent may resign as the registered agent  
134 for such corporation pursuant to Section 136 of this title.

135                                   (e) The Secretary is authorized to issue such rules and regulations as may be necessary or appropriate to carry out  
136 the enforcement of subsections (b), (c) and (d) of this section, and to take actions reasonable and necessary to assure

137 registered agents' compliance with subsections (b), (c) and (d). Such actions may include refusal to file documents  
138 submitted by a registered agent.

139 (f) Upon application of the Secretary, the Court of Chancery may enjoin any person or entity from serving as a  
140 registered agent or as an officer, director or managing agent of a registered agent.

141 (1) Upon the filing of a complaint by the Secretary pursuant to this section, the Court may make such  
142 orders respecting such proceeding as it deems appropriate, and may enter such orders granting interim or final relief as it  
143 deems proper under the circumstances.

144 (2) Any one or more of the following grounds shall be a sufficient basis to grant an injunction pursuant  
145 to this section.

146 a. With respect to any registered agent who at any time within one year immediately prior to  
147 the filing of the Secretary's complaint is a Commercial Registered Agent, failure after notice and warning to comply with  
148 the qualifications set forth in subsection (b) and/or the requirements of subsection (c) or (d) above;

149 b. The person serving as a registered agent, or any person who is an officer, director or  
150 managing agent of an entity registered agent, has been convicted of a felony or any crime which includes an element of  
151 dishonesty or fraud or involves moral turpitude;

152 c. The registered agent has engaged in conduct in connection with acting as a registered agent  
153 that is intended to or likely to deceive or defraud the public.

154 (3) With respect to any order the Court enters pursuant to this section with respect to an entity that has  
155 acted as a registered agent, the Court may also direct such order to any person who has served as an officer, director, or  
156 managing agent of such registered agent. Any person who, on or after January 1, 2007, serves as an officer, director, or  
157 managing agent of an entity acting as a registered agent in this State shall be deemed thereby to have consented to the  
158 appointment of such registered agent as agent upon whom service of process may be made in any action brought pursuant  
159 to this section, and service as an officer, director, or managing agent of an entity acting as a registered agent in this State  
160 shall be a signification of the consent of such person that any process when so served shall be of the same legal force and  
161 validity as if served upon such person within this State, and such appointment of the registered agent shall be irrevocable.

162 (4) Upon the entry of an order by the Court enjoining any person or entity from acting as a registered  
163 agent, the Secretary shall mail or deliver notice of such order to each affected corporation at the address of its principal  
164 place of business as specified in its most recent franchise tax report or other record of the Secretary. If such corporation is  
165 a domestic corporation and fails to obtain and designate a new registered agent within thirty (30) days after such notice is

166 given, the Secretary shall declare the charter of such corporation forfeited. If such corporation is a foreign corporation, and  
167 fails to obtain and designate a new registered agent within thirty (30) days after such notice is given, the Secretary shall  
168 forfeit its qualification to do business in this State. If the Court enjoins a person or entity from acting as a registered agent  
169 as provided in this section and no new registered agent shall have been obtained and designated in the time and manner  
170 aforesaid, service of legal process against the corporation for which the registered agent had been acting shall thereafter be  
171 upon the Secretary in accordance with Section 321 of this title. The Court of Chancery may, upon application of the  
172 Secretary on notice to the former registered agent, enter such orders as it deems appropriate to give the Secretary access to  
173 information in the former registered agent's possession in order to facilitate communication with the corporations the  
174 former registered agent served.

175 (g) The Secretary is authorized to make a list of registered agents available to the public, and to establish such  
176 qualifications and issue such rules and regulations with respect to such listing as the Secretary deems necessary or  
177 appropriate.”.

178 Section 11. Amend § 312(b), Title 8 of the Delaware Code, by deleting the phrase “inoperative by law for nonpayment of  
179 taxes and any corporation whose certificate of incorporation has been forfeited pursuant to § 136(b) of” and by substituting in lieu  
180 thereof the phrase “forfeited or void pursuant to”.

181 Section 12. Amend § 312(d), Title 8 of the Delaware Code, by deleting paragraph (5) thereof in its entirety and by  
182 substituting in lieu thereof the following:

183 “(5) The date when the certificate of incorporation would expire, if such is the case, or such other facts as may  
184 show that the certificate of incorporation has become forfeited or void pursuant to this title, or that the validity of any  
185 renewal has been brought into question;”.

186 Section 13. Amend § 312(e), Title 8 of the Delaware Code, by deleting said subsection in its entirety and by substituting  
187 in lieu thereof the following:

188 “(e) Upon the filing of the certificate in accordance with § 103 of this title the corporation shall be renewed and  
189 revived with the same force and effect as if its certificate of incorporation had not been forfeited or void pursuant to this  
190 title, or had not expired by limitation. Such reinstatement shall validate all contracts, acts, matters and things made, done  
191 and performed within the scope of its certificate of incorporation by the corporation, its officers and agents during the time  
192 when its certificate of incorporation was forfeited or void pursuant to this title, or after its expiration by limitation, with the  
193 same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full  
194 force and effect. All real and personal property, rights and credits, which belonged to the corporation at the time its

195 certificate of incorporation became forfeited or void pursuant to this title, or expired by limitation and which were not  
196 disposed of prior to the time of its revival or renewal shall be vested in the corporation, after its revival and renewal, as  
197 fully and amply as they were held by the corporation at and before the time its certificate of incorporation became forfeited  
198 or void pursuant to this title, or expired by limitation, and the corporation after its renewal and revival shall be as  
199 exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its  
200 officers and agents prior to its reinstatement, as if its certificate of incorporation had at all times remained in full force and  
201 effect.”.

202 Section 14. Amend § 312(f), Title 8 of the Delaware Code, by deleting said subsection in its entirety and by substituting in  
203 lieu thereof the following:

204 “(f) If, since the certificate of incorporation became forfeited or void pursuant to this title, or expired by  
205 limitation, any other corporation organized under the laws of this State shall have adopted the same name as the  
206 corporation sought to be renewed or revived or shall have adopted a name so nearly similar thereto as not to distinguish it  
207 from the corporation to be renewed or revived or any foreign corporation qualified in accordance with § 371 of this title  
208 shall have adopted the same name as the corporation sought to be renewed or revived or shall have adopted a name so  
209 nearly similar thereto as not to distinguish it from the corporation to be renewed or revived, then in such case the  
210 corporation to be renewed or revived shall not be renewed under the same name which it bore when its certificate of  
211 incorporation became forfeited or void pursuant to this title, or expired but shall adopt or be renewed under some other  
212 name and in such case the certificate to be filed under the provisions of this section shall set forth the name borne by the  
213 corporation at the time its certificate of incorporation became forfeited or void pursuant to this title, or expired and the new  
214 name under which the corporation is to be renewed or revived.”.

215 Section 15. Amend § 312(g), Title 8 of the Delaware Code, by deleting said subsection in its entirety and by substituting  
216 in lieu thereof the following:

217 “(g) Any corporation that renews or revives its certificate of incorporation under this chapter shall pay to this  
218 State a sum equal to all franchise taxes, penalties and interest thereon due at the time its certificate of incorporation became  
219 forfeited or void pursuant to this title, or expired by limitation or otherwise; provided, however, that any corporation that  
220 renews or revives its certificate of incorporation under this chapter whose certificate of incorporation has been forfeited,  
221 void or expired for more than 5 years shall, in lieu of the payment of the franchise taxes and penalties otherwise required  
222 by this subsection, pay a sum equal to 3 times the amount of the annual franchise tax that would be due and payable by  
223 such corporation for the year in which the renewal or revival is effected, computed at the then current rate of taxation. No



224 payment made pursuant to this subsection shall reduce the amount of franchise tax due under Chapter 5 of this title for the  
225 year in which the renewal or revival is effected.”.

226 Section 16. Amend § 312(i), Title 8 of the Delaware Code, by deleting from the first sentence thereof the phrase “§ 136(b)  
227 of” and the phrase “or was inoperative or void,”.

228 Section 17. Sections 9 through 16 of this Act shall become effective on January 1, 2007.

229 Section 18. Amend § 502(a), Title 8 of the Delaware Code, by deleting said subsection in its entirety and by substituting  
230 in lieu thereof the following:

231 “(a) Annually on or before the 1<sup>st</sup> day in March, every corporation now existing or hereafter incorporated under  
232 Chapter 1 of this title or which has accepted the Constitution of this State, shall make an annual franchise tax report to the  
233 Secretary of State. The report shall be made on a form designated by the Secretary of State and shall be signed by the  
234 corporation’s president, secretary, treasurer or other proper officer duly authorized so to act, or by any of its directors, or  
235 by any incorporator in the event its board of directors shall not have been elected. The fact that an individual’s name is  
236 signed on the report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the  
237 corporation; however, the official title or position of the individual signing the corporate report shall be designated. The  
238 report shall contain the following information: (1) The location of its registered office in this State, stated with the degree  
239 of particularity required by paragraph (2) of subsection (a) of § 102 of this title; (2) the name of the agent upon whom  
240 service of process against the corporation may be served; (3) the location (city, town, street and number of same, if number  
241 there be) of the principal place of business of the corporation; (4) the names and addresses of all the directors as of the  
242 filing date of the report and the name and address of the officer who signs the report; (5) the number of shares and the par  
243 value per share of each class of capital stock having a par value and the number of shares of each class of stock without par  
244 value which the corporation is authorized to issue; (6) if exempt from taxation for any cause, the specific facts entitling the  
245 corporation to exemption from taxation and, (7) such additional information, schedules and attachments as the Secretary  
246 shall require to ascertain the franchise tax due to the State.”.

247 Section 19. Amend § 502(c), Title 8 of the Delaware Code, by deleting from the second sentence thereof the phrase “the  
248 part of any corporation to file the” and by substituting in lieu thereof the phrase “the part of any corporation to file a complete”.

249 Section 20. Amend § 502, Title 8 of the Delaware Code, by deleting subsection (e) thereof in its entirety.

250 Section 21. Amend § 502, Title 8 of the Delaware Code, by deleting subsections (f) and (g) thereof in their entirety and by  
251 substituting in lieu thereof the following:

252                   “(e) The Secretary of State shall safely keep all reports returned in such manner as they may be open to the  
253 inspection of all persons pursuant to the provisions set forth in Chapter 100 of Title 29. Any tax information provided  
254 pursuant to subsection (a)(7) of this section, contained on annual franchise tax reports filed after tax year 2006 shall not be  
255 deemed public.

256                   (f) The Secretary of State shall not issue certificates of good standing that pertain to any corporation that has an  
257 unpaid franchise tax balance due to the State or does not have on file a completed annual franchise tax report for the  
258 relevant time period.”.

259                   Section 22. Amend § 503(b), Title 8 of the Delaware Code, by inserting the phrase “the number of shares of each class of  
260 stock actually issued, if any, and” immediately after the phrase “a statement setting forth”.

261                   Section 23. Amend Title 8 of the Delaware Code by deleting § 510 thereof in its entirety and by substituting in lieu thereof  
262 the following:

263                   “§ 510. Failure to pay tax or file a complete annual report for 1 year; charter void; extension of time.  
264 If any corporation, accepting the Constitution of this State and coming under Chapter 1 of this title, or any corporation  
265 which has heretofore filed or may hereafter file a certificate of incorporation under said chapter, neglects or refuses for 1  
266 year to pay the State any franchise tax or taxes, which has or have been, or shall be assessed against it, or which it is  
267 required to pay under this chapter, or shall neglect or refuse to file a complete annual franchise tax report, the charter of the  
268 corporation shall be void, and all powers conferred by law upon the corporation are declared inoperative, unless the  
269 Secretary of State, for good cause shown, shall have given further time for payment of the tax or taxes or the completion of  
270 an annual franchise tax report, in which case a certificate thereof shall be filed in the office of the Secretary of State stating  
271 the reason therefor. On or before the last day of November in each year, the Secretary of State shall notify each  
272 corporation which has neglected or refused to pay the franchise tax or taxes assessed against it or becoming due during the  
273 year or has refused or neglected to file a complete annual franchise tax report, that the charter of the corporation shall  
274 become void unless such taxes are paid and such complete annual franchise tax report is filed on or before March 1 of the  
275 following year.”.

276                   Section 24. Amend § 511, Title 8 of the Delaware Code, by inserting the phrase “or to file a complete annual franchise tax  
277 report,” immediately after the phrase “due by them”.

278                   Section 25. Amend § 514, Title 8 of the Delaware Code, by inserting the phrase “or file a completed annual franchise tax  
279 report” immediately after the word “tax” and immediately after the word “taxes”.

280                   Section 26. Amend § 517, Title 8 of the Delaware Code, by deleting the phrase “for nonpayment of taxes”.

Section 27. Sections 18 through 26 of this Act shall become effective on January 1, 2008.

### SYNOPSIS

Section 1 Amends § 102(a)(1) to provide that the name of a Delaware corporation must be such as to distinguish it from the names (whether reserved or of record) of each other domestic or foreign corporation, partnership, limited partnership, limited liability company or statutory trust upon the records in the office of the Division of Corporations in the Department of State, except with the written consent of the person who has reserved such name or such other corporation, partnership, limited partnership, limited liability company or statutory trust.

Section 2 Amends § 102 to add new subsection (e), which clarifies who may reserve a name that is available for use by a domestic or foreign corporation and provides the procedures to be followed by the applicant and the Secretary of State to reserve such name.

Section 3 Amends § 141(b) to add a new provision that a resignation may be made effective upon the happening of a future event or events, coupled with authority granted in the same section to make certain resignations irrevocable. By permitting a corporation to enforce a director resignation conditioned upon the director failing to achieve a specified vote for reelection, e.g., more votes for than against, coupled with board acceptance of the resignation, these provisions permit corporations and individual directors to agree voluntarily, and give effect in a manner subsequently enforceable by the corporation, to voting standards for the election of directors which differ from the plurality default standard in Section 216. The new provisions of Section 141(b) do not, however, address whether resignations submitted in other contexts may be made irrevocable.

Section 4 Amends the first sentence of § 141(d) to clarify that the classified terms of directors commence after the classification of the board of directors becomes effective, thereby expressly permitting certificate of incorporation or bylaw provisions that provide for classification effective at a point in time after such provisions are adopted. The new sentence added to Section 141(d) permits the certificate of incorporation or bylaw provision that divides the directors into classes to include language authorizing the board of directors to assign members of the board already in office to the board classes at the time such classification becomes effective.

Section 5 Amends § 216 to provide that a bylaw adopted by a vote of stockholders that prescribes the required vote for the election of directors may not be altered or repealed by the board of directors. This amendment does not address any other situation in which the board of directors amends a bylaw adopted by stockholder vote.

Section 6 Amends § 371 to provide that before a foreign corporation shall have the right to do business in Delaware, the name of such foreign corporation must be such as to distinguish it from the names (whether reserved or of record) of each other domestic or foreign corporation, partnership, limited partnership, limited liability company or statutory trust upon the records in the office of the Division of Corporations in the Department of State, except with the written consent of the person who has reserved such name or such other corporation, partnership, limited partnership, limited liability company or statutory trust.

Section 7 Amends § 391 to provide that a fee of up to \$75 shall be collected by and paid to the Secretary of State for accepting a corporate name reservation application as well as an application for renewal of a corporate name reservation or a notice of transfer or cancellation of a corporate name reservation.

Section 8 provides that the proposed amendments set forth in Sections 1 through 7 of this Act shall become effective on August 1, 2006.

Sections 9 and 10 Amend § 132 to expand the types of entities that may serve as registered agents; prescribe the duties of a registered agent; require that persons or entities serving as registered agent for more than 50 business entities be generally open during normal business hours and have a natural person present to operate such office and communicate with the Secretary of State on request; require Delaware corporations to provide registered agents with a designated natural person to receive communications from the registered agent and require the registered agent to maintain in its records the identity of such persons; authorize the Secretary of State to issue regulations to enforce these provisions; authorize the Secretary of State to bring a lawsuit in the Court of Chancery to enjoin from acting as a registered agent, or as an officer, or director, or managing agent of a registered agent, any person or entity who fails to comply with the statutory requirements, who has been convicted of a felony or any crime involving dishonesty, fraud or moral turpitude, or who has used the office of registered agent in a manner intended to defraud the public; and authorize the Secretary of State to make a list of registered agents available to the public.

Sections 11 through 16 are technical Amendments to § 312 to make it consistent with revisions to §§ 132, 502, 503, 510, 511, 514, and 517.

Section 17 provides that the proposed Amendments set forth in Sections 9 through 16 of this Act shall become effective on January 1, 2007.

Sections 18 through 26 Amend §§ 502, 503, 510, 511, 514, and 517 to require Delaware corporations to file a complete annual franchise tax report including, among other things, the names and addresses of all of the corporation's directors as of the filing date of the report and the name and address of the officer who signs the report, and require the Secretary of State to declare void the charter of any corporation that fails to file a complete annual franchise tax report.

Section 27 provides that the proposed Amendments set forth in Sections 18 through 26 of this Act shall become effective

on January 1, 2008.

Author: Senator Vaughn