

2006 AMENDMENTS TO THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE

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Introduction

The General Corporation Law of the State of Delaware, 8 *Del. C.* § 101 *et seq.* (the “DGCL”), has been amended in 2006, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2006 amendments to the DGCL were contained in Delaware State Senate Bill No. 322, and became effective August 1, 2006.¹ *See* 75 Del. Laws, c. 306. Among the provisions of the DGCL that have been amended are those concerning: the name of a corporation; resignation of directors; terms and classes of directors; stockholder-adopted bylaws prescribing the vote required for the election of directors; registered agents; and renewal, revival, extension, and restoration of the certificate of incorporation. Other amendments set forth in Senate Bill No. 322 effect changes in regard to the annual franchise tax report that must be filed by a corporation.

Name of a corporation [§§ 102 and 371]. Sections 102(a)(1) and 371(c) of the DGCL require that the name of a Delaware corporation or a foreign corporation registered in Delaware must be distinguishable from the names of other entities organized, registered, or reserved in Delaware. Senate Bill No. 322 made technical amendments in regard to this requirement. Also, a new subsection (e) has been added to Section 102, establishing procedures for the reservation of a corporate name.

Resignation of directors [§ 141]. A sentence inserted into Section 141(b) in 2006 states explicitly that a director may resign effective upon the occurrence of one or more future events. Another newly included sentence provides for the irrevocability of a resignation that by its terms is irrevocable and is conditioned on the director failing to receive a specified vote for reelection. (This provision does not address whether a director resignation tendered in another context may be made irrevocable.) As so amended, Section 141(b) allows for the implementation of policies and other measures that in effect may modify the plurality vote standard for the election of directors, which is applicable as a default matter under Section 216 of the DGCL.

Terms and classes of directors [§ 141]. Section 141(d) of the DGCL has been amended to clarify that the classified terms of the members of a classified board of directors commence after the classification has become effective. This expressly permits provisions in the certificate

¹ The amendments to Sections 132 and 312 of the DGCL contained in Senate Bill No. 322, however, become effective on January 1, 2007. *See* 75 Del. Laws, c. 306, §§ 9-17. Amendments to Sections 502, 503, 510, 511, 514, and 517 of Title 8 of the Delaware Code, relating to the annual corporate franchise tax report and also contained in Senate Bill No. 322, become effective on January 1, 2008. *See* 75 Del. Laws, c. 306, §§ 18-27.

of incorporation or bylaws establishing classification of the board effective at a future time. Further, new language in Section 141(d) permits the board of directors, pursuant to a provision in the certificate of incorporation or bylaws, to assign to classes of the board directors who are already in office when the classification takes effect.

Stockholder-adopted bylaws prescribing the vote required for election of directors [§ 216]. Under Section 216 of the DGCL, absent specification in the certificate of incorporation or bylaws, directors are to be elected by a plurality vote of shares present at a meeting and entitled to vote thereon. A new sentence has been added at the end of Section 216 to provide that a bylaw adopted by the stockholders, prescribing the vote required for the election of directors, may not be amended or repealed by the board of directors. This allows stockholders to implement standards (such as a majority vote requirement) for the election of directors without concern that such action may be thwarted by subsequent amendment or repeal of the bylaw by a board having authority to do so. This 2006 amendment to Section 216 does not, however, address any other stockholder-adopted bylaw which the board may act to amend or repeal.

Registered Agents [§ 132]. Section 132 of the DGCL has been amended in various respects, including the addition of a new subsection (b) that more explicitly sets forth the duties of a registered agent. Another new provision, in Section 132(d), requires that every Delaware corporation and every foreign corporation registered in Delaware must provide to its registered agent contact information for a natural person who is authorized to receive communications from the registered agent. This provision also requires the registered agent to maintain that information in its records. Moreover, pursuant to new subsection (e) of Section 132, the Delaware Secretary of State is now expressly authorized to issue regulations governing registered agents. Pursuant to new subsection (f), the Secretary of State may apply to the Delaware Court of Chancery for an injunction (for cause such as non-compliance with statutory requirements) against any person or entity acting as a registered agent, and the charter of a Delaware corporation or the registration of a foreign corporation will be forfeited if the corporation fails within the prescribed period to obtain and designate a new registered agent after the Court of Chancery has enjoined its registered agent from acting as such.

Renewal, revival, extension, and restoration of certificate of incorporation [§ 312]. Technical amendments have been made to Section 312 of the DGCL, regarding the renewal, revival, extension, and restoration of the certificate of incorporation. The purpose of these changes is to make that Section consistent with the 2006 revisions to Section 132 of the DGCL and to provisions in Chapter 5 of Delaware Code Title 8 dealing with the annual corporate franchise tax report.

Annual franchise tax report [§§ 502, 503, 510, 511, 514, and 517]. The 2006 amendments to Sections 502, 503, 510, 511, 514, and 517 of Title 8 of the Delaware Code effect various changes in regard to the annual corporate franchise tax report filed with the Delaware Secretary of State. These amendments address, among other things, the contents of that report. They also provide generally that if a corporation fails to file a complete annual franchise tax report, its charter shall become void by operation of law.