

2008 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 2008, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2008 amendments to the DGCL were contained in Delaware State Senate Bill No. 244 and Delaware State House Bill No. 519, and became effective on June 26, 2008.¹ *See* 76 Del. Laws, c. 252. These amendments were modest in scope. The newly revised provisions of the DGCL address examination of the list of stockholders entitled to vote at a meeting, application for a judicial determination of the result of a stockholder vote, and annual payments to the State of Delaware.

Examination of stockholder list [§ 219]. Section 219 of the DGCL, among other things, deals with the preparation, production, and examination of the list of stockholders entitled to vote at a meeting. The word “inspected” appeared a single time in subsection (a) of Section 219; the 2008 amendment to that subsection replaced “inspected” with “examined,” to eliminate any suggestion that the words “examined” and “inspected” were intentionally distinct. Subsection (b) of Section 219, which covers situations in which stockholders are denied access to the list of stockholders entitled to vote at a meeting, has been substantially rewritten. The amendments to this provision eliminate the concept of “willful neglect,” allocate to the corporation the burden of proof on an application to compel examination of the stockholder list, and specify that such burden is to establish that the examination sought is for a purpose not germane to the meeting. They also grant broad authority to the Court of Chancery of the State of Delaware to fashion appropriate relief; previously, Section 219(b) established that the sole sanction for a director’s wilful neglect or refusal to produce the stockholder list was ineligibility to stand for election.

Application for determination of result of stockholder vote [§ 225]. Section 225(b) of the DGCL permits an application to the Delaware Court of Chancery for a determination of the result of a stockholder vote on a matter other than the election of directors or officers. Prior to the 2008 amendment to that Section, only a stockholder could make such an application. Senate Bill No. 244 in 2008 amended Section 225(b) to provide that, in addition to a stockholder, the corporation itself may apply for such a judicial determination.²

¹ Amendments to Section 391 of the DGCL and Section 503 of Title 8 of the Delaware Code, relating respectively to the annual report fee for foreign corporations and the rates for computation of annual corporate franchise tax, contained in House Bill No. 519, became effective as of January 1, 2008. *See* 76 Del. Laws, c. 286, §§ 1-5.

² Section 225(b) applies as well to non-stock corporations.

Annual franchise tax [§§ 391 and 503]. Pursuant to the 2008 amendment to Section 391 of the DGCL, the fee associated with a foreign corporation's annual report, filed with the Delaware Secretary of State's office, increased to \$100. The amendments to Section 503 of Title 8 of the Delaware Code adjusted the rates for computation of the annual franchise tax payable by each Delaware corporation. Among these changes is an increase in the minimum annual franchise tax to \$75.