CHAPTER 50

AN ACT TO AMEND CHAPTER 1 OF TITLE 8 OF THE DELAWARE CODE, ENTITLED "GENERAL CORPORATION LAW OF THE STATE OF DELAWARE", BY A GENERAL REVISION OF THAT CHAPTER TO BE EFFECTED BY REPEALING THE PRESENT CHAPTER IN ITS ENTIRETY AND SUBSTITUTING THEREFOR A NEW CHAPTER.

Be it enacted by the General Assembly of the State of Delaware, two-thirds of all the members elected to each House of the General Assembly concurring therein:

Section 1. Title 8 of the Delaware Code is amended by repealing Chapter 1 thereof in its entirety and substituting therefor a new Chapter 1 to read, from beginning to end, as follows:

TITLE 8

CORPORATIONS

CHAPTER 1. GENERAL CORPORATION LAW

SUBCHAPTER I. FORMATION

Sec.

§ 101. Incorporators; how corporation formed; purposes

(a) Any person, partnership, association or corporation, singly or jointly with others, and without regard to his or their residence, domicile or state of incorporation, may incorporate or organize a corporation under this chapter by filing with the Secretary of State a certificate of incorporation which shall be executed, acknowledged, filed and recorded in accordance with section 103 of this title.

(b) A corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes, except as may otherwise be provided by the constitution or other law of this State.

(c) Corporations for constructing, maintaining and operating public utilities, whether in or outside of this State, may be organized under this chapter, but corporations for constructing, maintaining and operating public utilities within this State shall be subject to, in addition to the provisions of this chapter, the special provisions and requirements of Title 26 applicable to such corporations.

§ 102. Certificate of incorporation; contents

(a) The certificate of incorporation shall set forth—

(1) The name of the corporation which shall contain one of the words "association", "company", "corporation", "club", "foundation", "fund", "incorporated", "institute", "society", "union", "syndicate" or "limited", or one of the abbreviations ["co.", "corp.", "inc.", "ltd."] or words or abbreviations of like import in other languages (provided they are written in Roman characters or letters), and which shall be such as to distinguish it upon the records in the office of the Secretary of State from the names of other corporations organized, reserved or registered as a foreign corporation under the laws of this State;

(2) The address (which shall include the street, number, city and county) of the corporation's registered office in this State, and the name of its registered agent at such address;

(3) The nature of the business or purposes to be conducted or promoted. It shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any.

(4) If the corporation is to be authorized to issue only one class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than one class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class that are to have a par value and the par value of each share of each such class, the number of shares of each class that are to be without par value, and a statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, which are permitted by section 151 of this title in respect of any class or classes of stock or any series of any class of stock of the corporation and the fixing of which by the certificate of incorporation is desired, and an express grant of such authority as it may then be desired to grant to the board of directors to fix by resolution or resolutions any thereof that may be desired but which shall not be fixed by the certificate of incorporation. The foregoing provisions of this paragraph shall not apply to corporations which are not organized for profit and which are not to have authority to issue capital stock. In the case of such corporations, the fact that they are not to have authority to issue capital stock shall be stated in the certificate of incorporation. The conditions of membership of such corporations shall likewise be stated in the certificate of incorporation or the certificate may provide that the conditions of membership shall be stated in the by-laws.

(5) The name and mailing address of the incorporator or incorporators;

(6) If the powers of the incorporator or incorporators are to terminate upon the filing of the certificate of incorporation, the names and mailing addresses of the persons who are to serve as directors until the first annual meeting of stockholders or until their successors are elected and qualify.

(b) In addition to the matters required to be set forth in the certificate of incorporation by subsection (a) of this section, the certificate of incorporation may also contain any or all of the following matters—

(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 members of a non-stock 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 by-laws may instead be stated in the certificate of incorporation;

(2) The following provisions, in haec verba, 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 stockholders 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 stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of section 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 the provisions of section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders 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 stockholders or class of stockholders 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 stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation;"

(3) Such provisions as may be desired granting to the stockholders, or any class of them, the pre-emptive right to subscribe to any or all additional issues of stock of the corporation of any or all classes; otherwise, no stockholders shall have any pre-emptive right to subscribe to an additional issue of stock. This paragraph (3) shall not apply to any corporation whose certificate of incorporation, as in effect on the effective date of this Act, does not contain a provision limiting or denying to its stockholders the pre-emptive right to subscribe to any additional issues of its stock.

(4) Provisions requiring for any corporate action, the vote of a larger portion of the stock or of any class or series thereof, or of any other securities having voting power, or a larger number of the directors, than is required by this chapter;

(5) A provision limiting the duration of the corporation's existence to a specified date; otherwise, the corporation shall have perpetual existence;

(6) A provision imposing personal liability for the debts of the corporation on its stockholders or members to a specified extent and upon specified conditions; otherwise, the stockholders or members of a corporation shall not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own conduct or acts;

(c) It shall not be necessary to set forth in the certificate of incorporation any of the powers conferred on corporations by this chapter.

§ 103. Execution, acknowledgment, filing, recording and effective date of original certificate of incorporation and other instruments; exceptions

(a) Whenever any provision of this chapter requires any instrument to be filed with the Secretary of State or in accordance with this section or chapter, such instrument shall be executed as follows:

(1) The certificate of incorporation, and any other instrument to be filed before the election of the initial board of directors if the initial directors were not named in the certificate of incorporation, shall be signed by the incorporator or incorporators.

(2) All other instruments shall have the corporate seal affixed thereto and shall be signed—

(i) By the chairman or vice-chairman of the board of directors, or by the president, or by a vice president, and by the secretary or an assistant secretary (or by such officers as may be duly authorized to exercise the duties, respectively, ordinarily exercised by the president or vice president and by the secretary or assistant secretary of a corporation); or

(ii) If it shall appear from the instrument that there are no such officers, then by a majority of the directors or by such directors as may be designated by the board; or

(iii) If it shall appear from the instrument that there are no such officers or directors, then by the holders of record, or such of them as may be designated by the holders of record, of a majority of all outstanding shares of stock; or

(iv) By the holders of record of all outstanding shares of stock.

(b) Whenever any provision of this chapter requires any instrument to be acknowledged, such requirement means that:

(1) The person signing the instrument shall acknowledge that it is his act and deed and that the facts stated therein are true, and

(2) The instrument shall be acknowledged before a person who is authorized by the laws of the place of execution to take acknowledg-

ment of deeds and who, if he has a seal of office, shall affix it to the instrument.

(c) Whenever any provision of this chapter requires any instrument to be filed with the Secretary of State or in accordance with this section or chapter, such requirement means that:

(1) The original signed instrument, together with a duplicate copy which may be either a signed or conformed copy, shall be delivered to the office of the Secretary of State.

(2) All taxes and fees authorized by law to be collected by the Secretary of State in connection with the filing of the instrument shall be tendered to the Secretary of State.

(3) Upon delivery of the instrument, and upon tender of the required taxes and fees, the Secretary of State shall certify that the instrument has been filed in his office by endorsing upon the original signed instrument the word "Filed", and the date and hour of its filing. This endorsement is the "filing date" of the instrument, and is conclusive of the date and time of its filing in the absence of actual fraud. The Secretary of State shall thereupon file and index the endorsed instrument.

(4) The Secretary of State shall compare the duplicate copy with the original signed instrument, and if he finds that they are identical, he shall certify the duplicate copy by making upon it the same endorsement which is required to appear upon the original, together with a further endorsement that the duplicate copy is a true copy of the original signed instrument.

(5) The duplicate copy of the instrument so certified by the Secretary of State shall be recorded in the office of the Recorder of the county in which the corporation's registered office in this State is, or is to be, located.

(6) The Recorder of the county shall, upon receipt of the certified copy of the instrument, record and index it in a book kept for that purpose.

(d) Any instrument filed in accordance with subsection (c) of this section shall be effective upon its filing date. However, if the instrument is not recorded in accordance with paragraph (5) of subsection (c) within 20 days after its filing date, it shall become ineffective upon the expiration of such 20 day period and shall not again become effective until it has been so recorded. Any instrument may provide that it is not to become effective until a specified date subsequent to its filing date and recording, but such date shall not be later than 90 days after its filing date.

(e) If another section of this chapter specifically prescribes a manner of executing, acknowledging, filing or recording a specified instrument or a time when such instrument shall become effective which

differs from the corresponding provisions of this section, then the provisions of such other section shall govern.

§ 104. Certificate of incorporation; definition

The term "certificate of incorporation", as used in this chapter, unless the context requires otherwise, includes not only the original certificate of incorporation filed to create a corporation but also all other certificates, agreements of merger or consolidation, plans of reorganization, or other instruments, howsoever designated, which are filed pursuant to sections 102, 133–136, 151, 241–245, 251–258, 303, or any other section of this title, and which have the effect of amending or supplementing in some respect a corporation's original certificate of incorporation.

§ 105. Certificate of incorporation and other certificates; evidence

A copy of a certificate of incorporation, or of a composite or restated certificate of incorporation, or of any other certificate which has been filed in the office of the Secretary of State as required by any provision of this title shall, when duly certified by the Secretary of State and accompanied by the certificate of the recorder of the county in which it has been recorded under his hand and the seal of his office stating the fact and record of its recording in his office, be received in all courts, public offices, and official bodies as prima facie evidence of:

(a) due execution, acknowledgment, filing and recording of the instrument;

(b) observance and performance of all acts and conditions necessary to have been observed and performed precedent to the instrument becoming effective; and of

(c) any other facts required or permitted by law to be stated in the instrument.

§ 106. Commencement of corporate existence

Upon the filing with the Secretary of State of the certificate of incorporation, executed and acknowledged in accordance with section 103, the incorporator or incorporators who signed the certificate, and his or their successors and assigns, shall, from the date of such filing, be and constitute a body corporate, by the name set forth in the certificate, subject to the provisions of section 103(d) of this title and subject to dissolution or other termination of its existence as provided in this chapter.

§ 107. Powers of incorporators

If the persons who are to serve as directors until the first annual meeting of stockholders have not been named in the certificate of in-

corporation, the incorporator or incorporators, until the directors are elected, shall manage the affairs of the corporation and may do whatever is necessary and proper to perfect the organization of the corporation, including the adoption of the original by-laws of the corporation and the election of directors.

§ 108. Organization meeting of incorporators or directors named in certificate of incorporation

(a) After the filing of the certificate of incorporation an organization meeting of the incorporator or incorporators, or of the board of directors if the initial directors were named in the certificate of incorporation, shall be held, either within or without this State, at the call of a majority of the incorporators or directors, as the case may be, for the purposes of adopting by-laws, electing directors (if the meeting is of the incorporators) to serve or hold office until the first annual meeting of stockholders or until their successors are elected and qualify, electing officers if the meeting is of the directors, doing any other or further acts to perfect the organization of the corporation, and transacting such other business as may come before the meeting.

(b) The persons calling the meeting shall give to each other incorporator or director, as the case may be, at least two days written notice thereof by any usual means of communication, which notice shall state the time, place and purposes of the meeting as fixed by the persons calling it. Notice of the meeting need not be given to anyone who attends the meeting or who signs a waiver of notice either before or after the meeting.

(c) Any action permitted to be taken at the organization meeting of the incorporators or directors, as the case may be, may be taken without a meeting if each incorporator or director, where there is more than one, or the sole incorporator or director where there is only one, signs an instrument which states the action so taken.

§ 109. By-laws

(a) The original by-laws of a corporation may be adopted by the incorporators or by the initial directors if they were named in the certificate of incorporation. Thereafter, the power to make, alter or repeal by-laws shall be in the stockholders or, in the case of a non-stock corporation, in its members; but any corporation may, in its certificate of incorporation, confer that power upon the directors or, in the case of a non-stock corporation, upon its governing body by whatever name designated.

(b) The by-laws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees.

§ 110. Emergency by-laws and other powers in emergency

The board of directors of any corporation may adopt emergency by-laws, subject to repeal or change by action of the stockholders, which shall notwithstanding any different provision elsewhere in this chapter or in Chapters 3 and 5 of Title 26, or in Chapter 7 of Title 5, or in the certificate of incorporation or by-laws, be operative during any emergency resulting from an attack on the United States or on a locality in which the corporation conducts its business or customarily holds meetings of its board of directors or its stockholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the board of directors or a standing committee thereof cannot readily be convened for action. The emergency by-laws may make any provision that may be practical and necessary for the circumstances of the emergency, including provisions that:

(i) A meeting of the board of directors or a committee thereof may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency by-laws;

(ii) The director or directors in attendance at the meeting, or any greater number fixed by the emergency by-laws, shall constitute a quorum; and

(iii) The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time (not longer than reasonably necessary after the termination of the emergency) as may be provided in the emergency by-laws or in the resolution approving the list, shall, to the extent required to provide a quorum at any meeting of the board of directors, be deemed directors for such meeting.

The board of directors, either before or during any such emergency, may provide, and from time to time modify, lines of succession in the event that during such emergency any or all officers or agents of the corporation shall for any reason be rendered incapable of discharging their duties.

The board of directors, either before or during any such emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers so to do.

No officer, director or employee acting in accordance with any emergency by-laws shall be liable except for willful misconduct.

To the extent not inconsistent with any emergency by-laws so adopted, the by-laws of the corporation shall remain in effect during any emergency and upon its termination the emergency by-laws shall cease to be operative.

Unless otherwise provided in emergency by-laws, notice of any meeting of the board of directors during such an emergency may be given

only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publication or radio.

To the extent required to constitute a quorum at any meeting of the board of directors during such an emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency by-laws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

Nothing contained in this section shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of this title which have been or may be adopted by corporations created under the provisions of this chapter.

SUBCHAPTER II. POWERS

Sec.

§ 121. General powers

(a) In addition to the powers enumerated in Section 122 of this title, every corporation, its officers, directors, and stockholders shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its certificate of incorporation, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation.

(b) Every corporation shall be governed by the provisions and be subject to the restrictions and liabilities contained in this chapter.

§ 122. Specific powers

Every corporation created under this chapter shall have power to—

(1) Have perpetual succession by its corporate name, unless a limited period of duration is stated in its certificate of incorporation;

(2) Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitrative or other proceeding, in its corporate name;

(3) Have a corporate seal, which may be altered at pleasure, and use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(4) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated;

(5) Appoint such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation;

(6) Adopt, amend and repeal by-laws;

(7) Wind up and dissolve itself in the manner provided in this chapter;

(8) Conduct its business, carry on its operations, and have offices and exercise its powers within or without this State;

(9) Make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war or other national emergency in aid thereof;

(10) Be an incorporator, promoter, or manager of other corporations of any type or kind;

(11) Participate with others in any corporation, partnership, limited partnership, joint venture, or other association of any kind, or in any transaction, undertaking or arrangement which the participating corporation would have power to conduct by itself, whether or not such participation involves sharing or delegation of control with or to others.

(12) In time of war or other national emergency, to do any lawful business in aid thereof, notwithstanding the business or purposes set forth in its certificate of incorporation, at the request or direction of any apparently authorized governmental authority;

(13) Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income;

(14) Lend money for its corporate purposes, invest and reinvest its funds, and take, hold and deal with real and personal property as security for the payment of funds so loaned or invested.

(15) Pay pensions and establish and carry out pension, profit sharing, stock option, stock purchase, stock bonus, retirement, benefit, incentive and compensation plans, trusts and provisions for any or all of its directors, officers, and employees, and for any or all of the directors, officers, and employees of its subsidiaries;

(16) Provide insurance for its benefit on the life of any of its directors, officers, or employees, or on the life of any stockholder for

the purpose of acquiring at his death shares of its stock owned by such stockholder.

§ 123. Powers respecting securities of other corporations or entities

Any corporation organized under the laws of this State may guarantee, purchase, take, receive, subscribe for or otherwise acquire; own, hold, use or otherwise employ; sell, lease, exchange, transfer, or otherwise dispose of; mortgage, lend, pledge or otherwise deal in and with, bonds and other obligations of, or shares or other securities or interests in, or issued by, any other domestic or foreign corporation, partnership, association, or individual, or by any government or agency or instrumentality thereof. A corporation while owner of any such securities may exercise all the rights, powers and privileges of ownership, including the right to vote.

§ 124. Lack of corporate capacity or power; effect; ultra vires

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a stockholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, such compensation as may be equitable for the loss or damage sustained by any of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through stockholders in a representative suit, against an incumbent or former officer or director of the corporation, for loss or damage due to his unauthorized act.

(3) In a proceeding by the Attorney General to dissolve the corporation, or to enjoin the corporation from the transaction of unauthorized business.

§ 125. Conferring academic or honorary degrees

No corporation organized after April 18, 1945, shall have power to confer academic or honorary degrees unless the certificate of in-

corporation or an amendment thereof shall so provide and unless the certificate of incorporation or an amendment thereof prior to its being filed in the office of the Secretary of State shall have endorsed thereon the approval of the State Board of Education of this State. No corporation organized before April 18, 1945, any provision in its certificate of incorporation to the contrary notwithstanding, shall possess the power aforesaid without first filing in the office of the Secretary of State, a certificate of amendment so providing, the filing of which certificate of amendment in the office of the Secretary of State shall be subject to prior approval of the State Board of Education, evidenced as hereinabove provided. Approval shall be granted only when it appears to the reasonable satisfaction of the State Board of Education, that the corporation is engaged in conducting a bona fide institution of higher learning, giving instructions in arts and letters, science, or the professions, or that the corporation proposes, in good faith, to engage in that field and has or will have the resources, including personnel, requisite for the conduct of an institution of higher learning.

§ 126. Banking power denied

(a) No corporation organized under this chapter shall possess the power of issuing bills, notes, or other evidences of debt for circulation as money, or the power of carrying on the business of receiving deposits of money, or the business of buying gold and silver bullion or foreign coins.

(b) Corporations organized under this chapter to buy, sell and otherwise deal in notes, open accounts and other similar evidences of debt, or to loan money and to take notes, open accounts and other similar evidences of debt as collateral security therefor, shall not be deemed to be engaging in the business of banking.

SUBCHAPTER III. REGISTERED OFFICE AND REGISTERED AGENT

Sec.

§ 131. Registered office in State; principal office or place of business in State

(a) Every corporation shall have and maintain in this State a registered office which may, but need not be, the same as its place of business.

(b) Whenever the term "corporation's principal office or place of business in this State" or "principal office or place of business of the corporation in this State", or other term of like import, is or has been used in a corporation's certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation's registered office required by this section; and it shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with this section.

§ 132. Registered agent in State; resident agent

(a) Every corporation shall have and maintain in this State a registered agent, which agent may be either an individual resident in this State whose business office is identical with the corporation's registered office, or a domestic corporation (which may be itself), or a foreign corporation authorized to transact business in this State, having a business office identical with such registered office.

(b) Whenever the term "resident agent" or "resident agent in charge of a corporation's principal office or place of business in this State", or other term of like import which refers to a corporation's agent required by statute to be located in this State, is or has been used in a corporation's certificate of incorporation, or in any other document, or in any statute, it shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation's registered agent required by this section; and it shall not be necessary for any corporation to amend its certificate of incorporation or any other document to comply with this section.

§ 133. Change of location of registered office; change of registered agent

Any corporation may, by resolution of its board of directors, change the location of its registered office in this State to any other place in this State. By like resolution, the registered agent of a corporation may be changed to any other person or corporation including itself. In either such case, the resolution shall be as detailed in its statement as is required by section 102(a) (2) of this title. Upon the adoption of such a resolution, a certificate certifying the change shall be executed, acknowledged, and filed in accordance with section 103 of this title; and a certified copy shall be recorded in the office of the Recorder for the county in which the new office is located; and, if such new office is located in a county other than that in which the former of-

fice was located, a certified copy of such certificate shall also be recorded in the office of the Recorder for the county in which such former office was located.

§ 134. Change of address of registered agent

A registered agent may change the address of the registered office of the corporation or corporations for which he is registered agent to another address in this State by filing with the Secretary of State a certificate, executed and acknowledged by such registered agent, setting forth the names of all the corporations represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such corporations, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the corporations recited in the certificate. Upon the filing of such certificate, the Secretary of State shall furnish a certified copy of the same under his hand and seal of office, and the certified copy shall be recorded in the office of the Recorder of the county where the registered office of the corporation is located in this State, and thereafter, or until further change of address, as authorized by law, the registered office in this State of each of the corporations recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate. If the location of such office shall be changed from one county to another county, a certified copy of such certificate shall also be recorded in the office of the Recorder for the county in which such office was formerly located.

§ 135. Resignation of registered agent coupled with appointment of successor

The registered agent of one or more corporations may resign and appoint a successor registered agent by filing a certificate with the Secretary of State, stating the name and address of the successor agent, in accordance with section 102(a) (2) of this title. There shall be attached to such certificate a statement of each affected corporation ratifying and approving such change of registered agent. Each such statement shall be executed and acknowledged in accordance with section 103 of this title. Upon such filing, the successor registered agent shall become the registered agent of such corporations as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such corporation's registered office in this state. The Secretary of State shall then issue his certificate that the successor registered agent has become the registered agent of the corporations so ratifying and approving such change, and setting out the names of such corporations. The certificate of the Secretary of State

shall be recorded in accordance with section 103 of this title, and the Recorder shall forthwith make a note of the change of registered office and registered agent on the margin of the record of the certificates of incorporation of those corporations which have ratified and approved such change. If the location of such office shall be changed from one county to another county, a certified copy of such certificate shall also be recorded in the office of the Recorder for the county in which such office will thereafter be located.

§ 136. Resignation of registered agent not coupled with appointment of successor

(a) The registered agent of one or more corporations may resign without appointing a successor by filing a certificate with the Secretary of State; but such resignation shall not become effective until 60 days after the certificate is filed. There shall be attached to such certificate, in duplicate, an affidavit of such registered agent, if an individual, or of the president or secretary thereof, if a corporation, that at least 30 days prior to the date of the filing of said certificate, due notice was sent by registered mail to the corporation for which such registered agent was acting, at the principal office thereof outside the State, if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such corporation, of the resignation of such registered agent.

(b) Upon the filing of such certificate of resignation with the Secretary of State, the Secretary of State shall then notify the Recorder for the county in which the certificate of incorporation of such corporation is recorded of the resignation of its registered agent as set forth in such certificate and the Recorder shall forthwith make a note of the resignation of such registered agent on the margin of the record of the certificate of incorporation of such corporation.

(c) After receipt of the notice of the resignation of its registered agent, provided for in subsection (a) of this section, the corporation for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning in the same manner as provided in section 133 of this title for change of registered agent. If such corporation, being a corporation of this State, fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 60 days after the filing by the registered agent of the certificate of resignation, the Secretary of State shall declare the charter of such corporation forfeited. If such corporation, being a foreign corporation, fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 60 days after the filing by the registered agent of the certificate of resignation, the Secretary of State shall forfeit its authority to do business in this State.

(d) After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the corporation for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with section 321 of this title.

SUBCHAPTER IV. DIRECTORS AND OFFICERS

Sec.

§ 141. Board of directors; powers; number, qualifications, terms and quorum; committees; classes of directors; non-profit corporations; reliance upon books; action without meeting, etc.

(a) The business of every corporation organized under this chapter shall be managed by a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.

(b) The number of directors which shall constitute the whole board shall be fixed by, or in the manner provided in, the by-laws, unless the certificate of incorporation requires that a change in the number of directors shall be made only by amendment of the certificate; but in no case shall the number be less than three, except that in cases where all the shares of a corporation are owned beneficially and of record by either one or two stockholders, the number of directors may be less than three but not less than the number of stockholders. Directors need not be stockholders unless so required by the certificate of incorporation or the by-laws. Each director shall hold office until his successor is elected and qualified or until his earlier resignation or removal. A majority of the total number of directors shall constitute a quorum for the transaction of business unless the certificate of incorporation or the by-laws require a greater number. Unless the certificate of incorporation provides otherwise, the by-laws may provide that a number less than a majority shall constitute a quorum which in no case shall be less than one-third of the total number of directors nor less than two directors, except that when a board of one director is authorized under the provisions of this section, then one director shall

constitute a quorum. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the certificate of incorporation or the by-laws shall require a vote of a greater number.

(c) The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of two or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution or in the by-laws of the corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; provided, however, the by-laws may provide that in the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member.

(d) The directors of any corporation organized under this chapter may, by the certificate of incorporation or by an initial by-law, or by a by-law adopted by a vote of the stockholders, be divided into one, two or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire.

(e) A member of the board of directors or governing body of any corporation organized under this chapter, or a member of any committee designated by the board of directors or governing body shall, in the performance of his duties, be fully protected in relying in good faith upon the books of account or reports made to the corporation by any of its officers, or by an independent certified public accountant, or by an appraiser selected with reasonable care by the board of directors or by any such committee, or in relying in good faith upon other records of the corporation.

(f) Unless otherwise restricted by the certificate of incorporation or by-laws, any action required or permitted to be taken at any meeting of the board of directors, or governing body, or of any committee thereof may be taken without a meeting if all members of the board or governing body or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board, governing body, or committee.

(g) Unless otherwise restricted by the certificate of incorporation or by-laws, the board of directors or governing body of any corporation organized under this chapter may hold its meetings, and have an office or offices, outside of this State.

(h) Except for the provisions of subsections (e), (f) and (g) of this section, the provisions of this section shall not apply to corporations not for profit for which it is desired to have no capital stock. The business of every such corporation organized under this chapter shall be managed as provided in its certificate of incorporation.

§ 142. Officers; selection, term, duties; failure to elect; vacancies; non-stock corporations

(a) Every corporation organized under this chapter shall have a president, secretary and treasurer, who shall be chosen as the by-laws may direct, and shall hold their offices until their successors are chosen and qualified. The secretary shall record all the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him. Any number of offices may be held by the same person unless the certificate of incorporation or by-laws otherwise provide.

(b) The corporation may have such other officers and agents as are desired, who shall be chosen in such manner and hold their offices for such terms as are prescribed by the by-laws or determined by the board of directors or other governing body.

(c) The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

(d) A failure to elect annually a president, secretary, treasurer or other officers shall not dissolve a corporation.

(e) Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise, shall be filled as the by-laws provide. In the absence of such provision, the vacancy shall be filled by the board of directors or other governing body.

(f) A corporation not for profit, without capital stock, may elect such officers as its certificate of incorporation or by-laws may specify, who shall exercise the respective duties ordinarily exercised by the president, secretary, treasurer and other officers commonly elected by a stock corporation.

§ 143. Loans to employees and officers; guaranty of obligations of employees and officers

Any corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the

directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of any corporation at common law or under any statute.

§ 144. Interested directors; quorum

(a) No contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if;

(1) The material facts as to his interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by a vote sufficient for such purpose without counting the vote of the interested director or directors; or

(2) The material facts as to his interest and as to the contract or transaction are disclosed or are known to the shareholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the shareholders; or

(3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee thereof, or the shareholders.

(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes the contract or transaction.

§ 145. Indemnification of officers, directors, employees and agents; insurance

(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint ventu

trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (1) by the

board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

(e) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the manner provided in subsection (d) upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

(f) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

SUBCHAPTER V. STOCK AND DIVIDENDS

Sec.

§ 151. Classes and series of stock; rights, etc.

(a) Every corporation may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the certificate of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation. The power to increase or decrease or otherwise adjust the capital stock as provided in this chapter shall apply to all or any such classes of stock.

(b) Any preferred or special stock may be made subject to redemption at such time or times and at such price or prices and may be issued in such series, with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(c) The holders of preferred or special stock of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or non-cumulative as shall be so stated and expressed.

When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as elsewhere in this chapter provided.

(d) The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(e) Any preferred or special stock of any class or of any series thereof may be made convertible into, or exchangeable for, shares of any other class or classes of stock, or of any series thereof, of the corporation at such price or prices or at such rates of exchange and with such adjustments as shall be stated in the certificate of incorporation or in the resolution or resolutions providing for the issue of such stocks adopted by the board of directors as hereinabove provided.

(f) If any corporation shall be authorized to issue more than one class of stock or more than one series of any class, the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in section 202 of this title, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

(g) Before any corporation shall issue any shares of stock of any class or of any series of any class of which the voting powers, designations, preferences and relative, participating, optional or other rights if any, or the qualifications, limitations or restrictions thereof, if any shall not have been set forth in the certificate of incorporation or in any amendment thereto but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the certificate of incorporation or any amendment thereto, a certificate setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series shall be executed, acknowledged, filed and recorded in accordance with section 103 of this title. Unless otherwise pro

vided in any such resolution or resolutions, the number of shares of stock of any such class or series so set forth in such resolution or resolutions may be increased or decreased (but not below the number of shares thereof then outstanding) by a certificate likewise executed, acknowledged, filed and recorded setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased, the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions.

§ 152. Issuance of stock; lawful consideration

Subscriptions to, or the purchase price of, the capital stock of any corporation organized under any law of this State may be paid for, wholly or partly, by cash, by labor done, by personal property, or by real property or leases thereof; and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, nor shall the holder thereof be liable for any further payments under the provisions of this chapter. In the absence of actual fraud in the transaction, the judgment of the directors, as to the value of such labor, property, real estate or leases thereof, shall be conclusive.

§ 153. Consideration for stock

(a) Shares of stock with par value may be issued for such consideration, expressed in dollars, not less than the par value thereof, as is fixed from time to time by the board of directors, or by the stockholders if the certificate of incorporation so provides.

(b) Shares of stock without par value may be issued for such consideration, expressed in dollars, as is fixed from time to time by the board of directors, or by the stockholders if the certificate of incorporation so provides.

(c) Treasury shares may be disposed of by the corporation for such consideration, expressed in dollars, as may be fixed from time to time by the board of directors, or by the stockholders if the certificate of incorporation so provides.

(d) If the certificate of incorporation reserves to the stockholders the right to fix the consideration for the issue of any shares, the stockholders shall, unless the certificate requires a greater vote, do so by a vote of the holders of a majority of the shares of stock entitled to vote thereon.

§ 154. Determination of amount of capital; capital, surplus and net assets defined

Any corporation may, by resolution of its board of directors, determine that only a part of the consideration which shall be received by

the corporation for any of the shares of its capital stock which it shall issue from time to time shall be capital; but, in case any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares. In each such case the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined (1) at the time of issue of any shares of the capital stock of the corporation issued for cash or (2) within 60 days after the issue of any shares of the capital stock of the corporation issued for property other than cash what part of the consideration for such shares shall be capital, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The capital of the corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net assets of the corporation in excess of the amount so determined to be capital be transferred to the capital account. The board of directors may direct that the portion of such net assets so transferred shall be treated as capital in respect of any shares of the corporation of any designated class or classes. The excess, if any, at any given time, of the net assets of the corporation over the amount so determined to be capital shall be surplus. Net assets means the amount by which total assets exceed total liabilities. Capital and surplus are not liabilities for this purpose.

§ 155. Fractions of shares, scrip and warrants

A corporation may, but shall not be required to (1) issue fraction of a share; (2) pay in cash the fair value of fractions of a share a of the time when those entitled to receive such fractions are dete mined; or (3) issue scrip or fractional warrants in registered bearer form over the manual or facsimile signature of an offic of the corporation or of its agent, exchangeable as therein provid for full shares, but such scrip or fractional warrants shall not enti the holder to any rights of a shareholder except as therein provid Such scrip or fractional warrants may be issued subject to the con tion that it shall become void if not exchanged for certificates rep senting full shares before a specified date, or subject to the condit that the shares for which such scrip or fractional warrants are changeable may be sold by the corporation and the proceeds ther distributed to the holders of such scrip or fractional warrants, subject to any other conditions which the board may determine.

§ 156. Partly paid shares

Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

§ 157. Rights and options respecting stock

Subject to any provisions in the certificate of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as shall be approved by the board of directors. The terms upon which, including the time or times, which may be limited or unlimited in duration, at or within which, and the price or prices at which any such shares may be purchased from the corporation upon the exercise of any such right or option, shall be such as shall be stated in the certificate of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof shall be conclusive. In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided in section 153 of this title.

§ 158. Stock certificates

Every holder of stock in a corporation shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice-chairman of the board of directors, or the president or a vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation certifying the number of shares owned by him in such corporation. If such certificate is countersigned (1) by a transfer agent other than the corporation or its employee, or, (2) by a registrar other than the

corporation or its employee, the signatures of the officers of the corporation may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of issue.

§ 159. Shares of stock; personal property, transfer and taxation

The shares of stock in every corporation shall be deemed personal property and transferable as provided in Article 8 of Title 5A. No stock or bonds issued by any corporation organized under this chapter shall be taxed by this State when the same shall be owned by nonresidents of this State, or by foreign corporations. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the corporation for transfer, both the transferor and transferee request the corporation to do so.

§ 160. Corporation's powers respecting ownership, etc. of its own stock

Every corporation may purchase, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of, pledge, use and otherwise deal in and with its own shares; but no corporation shall use its funds or property for the purchase of its own shares of capital stock when the capital of the corporation is impaired or when such use would cause any impairment of the capital of the corporation, except that it may purchase or redeem out of capital its own shares of preferred or special stock in accordance with section 243 of this title. Shares of its own capital stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held by the corporation, shall neither be entitled to vote nor counted for quorum purposes. Nothing in this section shall be construed as limiting the right of the corporation to vote its own stock held by it in a fiduciary capacity.

§ 161. Issuance of additional stock; when and by whom

The directors may, at any time and from time to time, if all of the shares of capital stock which the corporation is authorized by its certificate of incorporation to issue have not been issued, subscribed for or otherwise committed to be issued, issue or take subscriptions for additional shares of its capital stock up to the amount authorized in its certificate of incorporation.

§ 162. Liability of stockholder or subscriber for stock not paid in full

(a) When the whole of the consideration payable for shares of a corporation has not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of or subscriber for such shares shall be bound to pay on each share held or subscribed for by him the sum necessary to complete the amount of the unpaid balance of the consideration for which such shares were issued or to be issued by the corporation.

(b) The amounts which shall be payable as provided in subsection (a) of this section may be recovered as provided in section 325 of this title, after a writ of execution against the corporation has been returned unsatisfied as provided in that section.

(c) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable for any unpaid portion of such consideration, but the transferor shall remain liable therefor.

(d) No person holding shares in any corporation as collateral security shall be personally liable as a stockholder but the person pledging such shares shall be considered the holder thereof and shall be so liable. No executor, administrator, guardian, trustee or other fiduciary shall be personally liable as a stockholder, but the estate or funds held by such executor, administrator, guardian, trustee or other fiduciary in such fiduciary capacity shall be liable.

(e) No liability under this section or under section 325 of this title shall be asserted more than six years after the issuance of the stock or the date of the subscription upon which the assessment is sought.

(f) In any action by a receiver or trustee of an insolvent corporation or by a judgment creditor to obtain an assessment under this section, any stockholder or subscriber for stock of the insolvent corporation may appear and contest the claim or claims of such receiver or trustee.

§ 163. Payment for stock not paid in full

The capital stock of a corporation shall be paid for in such amounts and at such times as the directors may require. The directors may, from time to time, demand payment, in respect of each share of stock not fully paid, of such sum of money as the necessities of the business may, in the judgment of the board of Directors, require, not exceeding in the whole the balance remaining unpaid on said stock, and such sum so demanded shall be paid to the corporation at such times and by such installments as the directors shall direct. The directors shall give written notice of the time and place of such payments, which notice shall be mailed at least 30 days before the time for such pay-

ment, to each holder of or subscriber for stock which is not fully paid at his last known postoffice address.

§ 164. Failure to pay for stock; remedies

When any stockholder fails to pay any installment or call upon his stock which may have been properly demanded by the directors, at the time when such payment is due, the directors may collect the amount of any such installment or call or any balance thereof remaining unpaid, from the said stockholder by an action at law, or they shall sell at public sale such part of the shares of such delinquent stockholder as will pay all demands then due from him with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement at least one week before the sale, in a newspaper of the county in this State where such corporation's registered office is located, and such notice shall be mailed by the corporation to such delinquent stockholder at his last known postoffice address, at least 20 days before such sale. If no bidder can be had to pay the amount due on the stock, and if the amount is not collected by an action at law, which may be brought within the county where the corporation has its registered office, within one year from the date of the bringing of such action at law, the said stock and the amount previously paid in by the delinquent on the stock shall be forfeited to the corporation.

§ 165. Revocability of pre-incorporation subscriptions

Unless otherwise provided by the terms of the subscription, a subscription for stock of a corporation to be formed shall be irrevocable except with the consent of all other subscribers or the corporation, fo a period of six months from its date.

§ 166. Formalities required of stock subscriptions

A subscription for stock of a corporation, whether made before o after the formation of a corporation, shall not be enforceable agains a subscriber, unless in writing and signed by the subscriber or by h agent.

§ 167. Lost, stolen or destroyed stock certificates; issuance of ne certificate

A corporation may issue a new certificate of stock in the place any certificate theretofore issued by it, alleged to have been lost, stol or destroyed, and the corporation may require the owner of the lo stolen or destroyed certificate, or his legal representative, to give t corporation a bond sufficient to indemnify it against any claim th

may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

§ 168. Judicial proceedings to compel issuance of new certificate

(a) If a corporation refuses to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost, stolen or destroyed, the owner of the lost, stolen or destroyed certificate or his legal representatives, may apply to the Court of Chancery for an order requiring the corporation to show cause why it should not issue a new certificate of stock in place of the one so lost, stolen or destroyed. Such application shall be by a complaint which shall state the name of the corporation, the number and date of the certificate, if known or ascertainable by the plaintiff, the number of shares of stock represented thereby and to whom issued, and a statement of the circumstances attending such loss, theft or destruction. Thereupon the court shall make an order requiring the corporation to show cause at a time and place therein designated, why it should not issue a new certificate of stock in place of the one described in the complaint. A copy of the complaint and order shall be served upon the corporation at least five days before the time designated in the order.

(b) If, upon hearing, the court is satisfied that the plaintiff is the lawful owner of the number of shares of capital stock, or any part thereof, described in the complaint, and that the certificate therefor has been lost, stolen or destroyed, and no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring the corporation to issue and deliver to the plaintiff a new certificate for such shares. In its order the court shall direct that, prior to the issuance and delivery to the plaintiff of such new certificate, the plaintiff give the corporation a bond in such form and with such security as to the court appears sufficient to indemnify the corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate. No corporation which has issued a certificate pursuant to an order of the court entered hereunder shall be liable in an amount in excess of the amount specified in such bond.

§ 169. Situs of ownership of stock

For all purposes of title, action, attachment, garnishment and jurisdiction of all courts held in this State, but not for the purpose of taxation, the situs of the ownership of the capital stock of all corporations existing under the laws of this State, whether organized under this chapter or otherwise, shall be regarded as in this State.

§ 170. Dividends; payment; wasting asset corporations

(a) The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either (1) out of its surplus, as defined in and computed in accordance with sections 154, 242, 243 and 244 of this title, or (2) in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. If the capital of the corporation, computed in accordance with sections 154, 242, 243 and 244 of this title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired.

(b) Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or formed primarily for the liquidation of specific assets) may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation.

§ 171. Special Purpose reserves

The directors of a corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

§ 172. Liability of directors as to dividends or stock redemption

A director shall be fully protected in relying in good faith upon the books of account of the corporation or statements prepared by any of its officers or by independent public accountants as to the value and amount of the assets, liabilities and/or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed.

§ 173. Declaration and payment of dividends

No corporation shall pay dividends except in accordance with the provisions of this chapter. Dividends may be paid in cash, in pro

erty, or in shares of the corporation's capital stock, in the case of shares with par value at par, and in the case of shares without par value at such price as may be fixed by the board of directors.

§ 174. Liability of directors for unlawful payment of dividend or unlawful stock purchase or redemption; exoneration from liability; contribution among directors; subrogation

(a) In case of any willful or negligent violation of the provisions of sections 160, 173 or 243 of this title, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within six years after paying such unlawful dividend or after such unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued. Any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after he has notice of the same.

(b) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the unlawful dividend, stock purchase or stock redemption.

(c) Any director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by him as a result of such claim, to be subrogated to the rights of the corporation against stockholders who received the dividend on, or assets for the sale or redemption of, their stock with knowledge of facts indicating that such dividend, stock purchase or redemption was unlawful under this chapter, in proportion to the amounts received by such stockholders respectively.

SUBCHAPTER VI. STOCK TRANSFERS

Sec.

§ 201. Transfer of stock and stock certificate

Except as otherwise provided in this chapter, the transfer of stock and the certificates of stock which represent the stock shall be governed by Article 8 of Title 5A.

§ 170. Dividends; payment; wasting asset corporations

(a) The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either (1) out of its surplus, as defined in and computed in accordance with sections 154, 242, 243 and 244 of this title, or (2) in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. If the capital of the corporation, computed in accordance with sections 154, 242, 243 and 244 of this title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired.

(b) Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or formed primarily for the liquidation of specific assets) may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation.

§ 171. Special Purpose reserves

The directors of a corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

§ 172. Liability of directors as to dividends or stock redemption

A director shall be fully protected in relying in good faith upon the books of account of the corporation or statements prepared by any of its officers or by independent public accountants as to the value and amount of the assets, liabilities and/or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed.

§ 173. Declaration and payment of dividends

No corporation shall pay dividends except in accordance with the provisions of this chapter. Dividends may be paid in cash, in prop-

erty, or in shares of the corporation's capital stock, in the case of shares with par value at par, and in the case of shares without par value at such price as may be fixed by the board of directors.

§ 174. Liability of directors for unlawful payment of dividend or unlawful stock purchase or redemption; exoneration from liability; contribution among directors; subrogation

(a) In case of any willful or negligent violation of the provisions of sections 160, 173 or 243 of this title, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within six years after paying such unlawful dividend or after such unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued. Any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after he has notice of the same.

(b) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the unlawful dividend, stock purchase or stock redemption.

(c) Any director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by him as a result of such claim, to be subrogated to the rights of the corporation against stockholders who received the dividend on, or assets for the sale or redemption of, their stock with knowledge of facts indicating that such dividend, stock purchase or redemption was unlawful under this chapter, in proportion to the amounts received by such stockholders respectively.

SUBCHAPTER VI. STOCK TRANSFERS

Sec.
201. Transfer of stock and stock certificate.
202. Restriction on transfer of securities.

§ 201. Transfer of stock and stock certificate

Except as otherwise provided in this chapter, the transfer of stock and the certificates of stock which represent the stock shall be governed by Article 8 of Title 5A.

§ 170. Dividends; payment; wasting asset corporations

(a) The directors of every corporation, subject to any restrictions contained in its certificate of incorporation, may declare and pay dividends upon the shares of its capital stock either (1) out of its surplus, as defined in and computed in accordance with sections 154, 242, 243 and 244 of this title, or (2) in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. If the capital of the corporation, computed in accordance with sections 154, 242, 243 and 244 of this title, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the directors of such corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired.

(b) Subject to any restrictions contained in its certificate of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (including but not limited to a corporation engaged in the exploitation of natural resources or other wasting assets, including patents, or formed primarily for the liquidation of specific assets) may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation.

§ 171. Special Purpose reserves

The directors of a corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

§ 172. Liability of directors as to dividends or stock redemption

A director shall be fully protected in relying in good faith upon the books of account of the corporation or statements prepared by any of its officers or by independent public accountants as to the value and amount of the assets, liabilities and/or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid, or with which the corporation's stock might properly be purchased or redeemed.

§ 173. Declaration and payment of dividends

No corporation shall pay dividends except in accordance with the provisions of this chapter. Dividends may be paid in cash, in prop-

erty, or in shares of the corporation's capital stock, in the case of shares with par value at par, and in the case of shares without par value at such price as may be fixed by the board of directors.

§ 174. Liability of directors for unlawful payment of dividend or unlawful stock purchase or redemption; exoneration from liability; contribution among directors; subrogation

(a) In case of any willful or negligent violation of the provisions of sections 160, 173 or 243 of this title, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within six years after paying such unlawful dividend or after such unlawful stock purchase or redemption, to the corporation, and to its creditors in the event of its dissolution or insolvency, to the full amount of the dividend unlawfully paid, or to the full amount unlawfully paid for the purchase or redemption of the corporation's stock, with interest from the time such liability accrued. Any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered on the books containing the minutes of the proceedings of the directors at the time the same was done, or immediately after he has notice of the same.

(b) Any director against whom a claim is successfully asserted under this section shall be entitled to contribution from the other directors who voted for or concurred in the unlawful dividend, stock purchase or stock redemption.

(c) Any director against whom a claim is successfully asserted under this section shall be entitled, to the extent of the amount paid by him as a result of such claim, to be subrogated to the rights of the corporation against stockholders who received the dividend on, or assets for the sale or redemption of, their stock with knowledge of facts indicating that such dividend, stock purchase or redemption was unlawful under this chapter, in proportion to the amounts received by such stockholders respectively.

SUBCHAPTER VI. STOCK TRANSFERS

Sec.
201. Transfer of stock and stock certificate.
202. Restriction on transfer of securities.

§ 201. Transfer of stock and stock certificate

Except as otherwise provided in this chapter, the transfer of stock and the certificates of stock which represent the stock shall be governed by Article 8 of Title 5A.

§ 202. Restriction on transfer of securities

(a) A written restriction on the transfer or registration of transfer of a security of a corporation, if permitted by this section and noted conspicuously on the security, may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the security, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(b) A restriction on the transfer or registration of transfer of securities of a corporation may be imposed either by the certificate of incorporation or by the by-laws or by an agreement among any number of security holders or among such holders and the corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

(c) A restriction on the transfer of securities of a corporation is permitted by this section if it:

(1) Obligates the holder of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

(2) Obligates the corporation or any holder of securities of the corporation or any other person or any combination of the foregoing, to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

(3) Requires the directors or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities; or

(4) Prohibits the transfer of the restricted securities to designated persons or classes of persons, and such designation is not manifestly unreasonable.

(d) Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under subchapter S of the United States Internal Revenue Code is conclusively presumed to be for a reasonable purpose.

(e) Any other lawful restriction on transfer or registration of transfer of securities is permitted by this section.

SUBCHAPTER VII. MEETINGS, ELECTIONS, VOTING AND NOTICE

Sec.

§ 211. Meetings of stockholders

(a) Meetings of stockholders may be held at such place, either within or without this State, as may be designated by or in the manner provided in the by-laws or, if not so designated, at the registered office of the corporation in this State.

(b) An annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the by-laws. Any other proper business, notice of which was given in the notice of the meeting, may be transacted at the annual meeting.

(c) A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation except as may be otherwise specifically provided in this chapter. If the annual meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient. If there be a failure to hold the annual meeting for a period of thirty days after the date designated therefor, or if no date has

been designated, for a period of thirteen months after the organization of the corporation or after its last annual meeting, the Court of Chancery may summarily order a meeting to be held upon the application of any stockholder. The shares of stock represented at such meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the certificate of incorporation or by-laws to the contrary. The Court of Chancery may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date for determination of stockholders entitled to vote, and the form of notice of such meeting.

(d) Special meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the by-laws.

(e) All elections of directors shall be by written ballot, unless otherwise provided in the certificate of incorporation.

§ 212. Voting rights of stockholders; proxies; limitations

(a) Unless otherwise provided in the certificate of incorporation and subject to the provisions of section 213 of this title, each stockholder shall at every meeting of the stockholders be entitled to one vote for each share of the capital stock held by such stockholder.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

(c) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

§ 213. Fixing date for determination of stockholders of record

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action.

(b) If no record date is fixed:

(1) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(2) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

(c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

§ 214. Cumulative voting

The certificate of incorporation of any corporation may provide that at all elections of directors of the corporation, each stockholder shall be entitled to as many votes as shall equal the number of votes which (except for such provision as to cumulative voting) he would be entitled to cast for the election of directors with respect to his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or for any two or more of them as he may see fit.

§ 215. Voting rights of members of non-stock corporations; quorum; proxies

(a) The provisions of sections 211–214 of this title shall not apply to corporations not authorized to issue stock.

(b) Unless otherwise provided in the certificate of incorporation of a non-stock corporation, each member shall be entitled at every meeting of members to one vote in person or by proxy, but no proxy shall be voted on after three years from its date, unless the proxy provides for a longer period.

(c) Unless otherwise provided in this chapter, the certificate of incorporation or by-laws of a non-stock corporation may specify the number of members having voting power who shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business.

(d) If the election of the governing body of any non-stock corporation shall not be held on the day designated by the by-laws, 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 corpora-

tion, 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 by-laws of the corporation to the contrary.

§ 216. Quorum and required vote

Subject to the provisions of this chapter in respect of the vote that shall be required for a specified action, the certificate of incorporation or by-laws of any corporation may specify the number of shares and/or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business.

§ 217. Voting rights of fiduciaries, pledgors and joint owners of stock

(a) Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he has expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon.

(b) If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

(1) If only one votes, his act binds all;

(2) If more than one vote, the act of the majority so voting binds all;

(3) If more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or any person voting the shares, or a beneficiary, if any, may apply to the Court of Chancery or such other court as may have jurisdiction to appoint an additional person to act with the persons so voting the shares, which shall then be voted as determined by a majority of such persons and the person appointed by the Court. If the instrument so filed shows that any such tenancy is held in unequal

interests, a majority or even-split for the purpose of this subsection shall be a majority or even-split in interest.

§ 218. Voting trusts and other voting agreements

(a) One or more stockholders may by agreement in writing deposit capital stock of an original issue with or transfer capital stock to any person or persons, or corporation or corporations authorized to act as trustee, for the purpose of vesting in such person or persons, corporation or corporations, who may be designated voting trustee, or voting trustees, the right to vote thereon for any period of time determined by such agreement, not exceeding ten years, upon the terms and conditions stated in such agreement. The validity of a voting trust agreement, otherwise lawful, shall not be affected during a period of ten years from the date when it was created or last extended as provided in subsection (b) by the fact that under its terms it will or may last beyond such ten-year period. The agreement may contain any other lawful provisions not inconsistent with such purpose. After the filing of a copy of the agreement in the registered office of the corporation in this State, which copy shall be open to the inspection of any stockholder of the corporation or any beneficiary of the trust under the agreement daily during business hours, certificates of stock shall be issued to the voting trustee or trustees to represent any stock of an original issue so deposited with him or them, and any certificates of stock so transferred to the voting trustee or trustees shall be surrendered and cancelled and new certificates therefor shall be issued to the voting trustee or trustees. In the certificate so issued it shall be stated that they are issued pursuant to such agreement, and that fact shall also be stated in the stock ledger of the corporation. The voting trustee or trustees may vote the stock so issued or transferred during the period specified in the agreement. Stock standing in the name of the voting trustee or trustees may be voted either in person or by proxy, and in voting the stock, the voting trustee or trustees shall incur no responsibility as stockholder, trustee or otherwise, except for his or their own individual malfeasance. In any case where two or more persons are designated as voting trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing the trustees, the right to vote the stock and the manner of voting it at the meeting shall be determined by a majority of the trustees, or if they be equally divided as to the right and manner of voting the stock in any particular case, the vote of the stock in such case shall be divided equally among the trustees.

(b) At any time within two years prior to the time of expiration of any voting trust agreement as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement may, by written agreement and with the written consent of the voting trustee or trustees, extend the duration

of the voting trust agreement for an additional period not exceeding ten years from the expiration date of the trust as originally fixed or as last extended, as provided in this subsection. The voting trustee or trustees shall, prior to the time of expiration of any such voting trust agreement, as originally fixed or as previously extended, as the case may be, file in the registered office of the corporation in this State a copy of such extension agreement and of his or their consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement; but no such extension agreement shall affect the rights or obligations of persons not parties thereto.

(c) An agreement between two or more stockholders, if in writing and signed by the parties thereto, may provide that in exercising any voting rights, the shares held by them shall be voted as provided by the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them. No such agreement shall be effective for a term of more than ten years, but the parties may extend its duration for as many additional periods, each not to exceed ten years, as they may desire. The validity of such agreement, otherwise lawful, shall not be affected during a period of ten years from the date when it was created or last extended by the fact that under its terms it will or may last beyond such ten-year period.

(d) This section shall not be deemed to invalidate any voting or other agreement among stockholders or any irrevocable proxy which is not otherwise illegal.

§ 219. List of stockholders entitled to vote; penalty for refusal to produce; stock ledger

(a) The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

(b) Upon the willful neglect or refusal of the directors to produce such a list at any meeting for the election of directors, they shall be ineligible for election to any office at such meeting.

(c) The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by

this section or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

§ 220. Stockholder's right of inspection

(a) As used in this section, "stockholder" means a stockholder of record.

(b) Any stockholder, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in this State or at its principal place of business.

(c) If the corporation, or an officer or agent thereof, refuses to permit an inspection sought by a stockholder or attorney or other agent acting for the stockholder pursuant to sub-section (b) or does not reply to the demand within five business days after the demand has been made, the stockholder may apply to the Court of Chancery for an order to compel such inspection. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking inspection is entitled to the inspection sought. The court may summarily order the corporation to permit the stockholder to inspect the corporation's stock ledger, an existing list of stockholders, and its other books and records, and to make copies or extracts therefrom; or the Court may order the corporation to furnish to the stockholder a list of its stockholders as of a specific date on condition that the stockholder first pay to the corporation the reasonable cost of obtaining and furnishing such list and on such other conditions as the Court deems appropriate. Where the stockholder seeks to inspect the corporation's books and records, other than its stock ledger or list of stockholders, he shall first establish (1) that he has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents; and (2) that the inspection he seeks is for a proper purpose. Where the stockholder seeks to inspect the corporation's stock ledger or list of stockholders and he has complied with the provisions of this section respecting the form and manner of making demand for inspection of such documents, the burden of proof shall be upon the corporation to establish that the inspection he 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 or further relief as the court may deem just and proper. The court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this State and kept in this State upon such terms and conditions as the order may prescribe.

§ 221. Voting, inspection and other rights of bondholders and debenture holders

Every corporation may in its certificate of incorporation confer upon the holders of any bonds, debentures, or other obligations issued or to be issued by the corporation the power to vote in respect to the corporate affairs and management of the corporation to the extent and in the manner provided in the certificate of incorporation, and may confer upon such holders of bonds, debentures or other obligations the same right of inspection of its books, accounts and other records, and also any other rights, which the stockholders of the corporation have or may have by reason of the provisions of this chapter or of its certificate of incorporation.

§ 222. Notice of meetings and adjourned meetings

(a) Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

(b) Unless otherwise provided in this chapter, the written notice of any meeting shall be given not less than ten nor more than fifty days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(c) When a meeting is adjourned to another time or place, unless the by-laws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

§ 223. Vacancies and newly created directorships

(a) Unless otherwise provided in the certificate of incorporation or by-laws, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or the by-laws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in section 211 of this title.

(b) In the case of a corporation the directors of which are divided into classes, any directors chosen under subsection (a) of this section shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified.

(c) If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of section 211 of this title as far as applicable.

(d) Unless otherwise provided in the certificate of incorporation or by-laws, when one or more directors shall resign from the board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

§ 224. Form of records

Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, micro-photographs, or any other information storage device; provided that the records so kept can be converted into clearly legible form within a reasonable time. Any corporation shall

so convert any records so kept upon the request of any person entitled to inspect the same. Where records are kept in such manner, the cards, tapes, photographs, micro-photographs or other information storage device shall be admissible in evidence, and shall be accepted for all other purposes, to the same extent as an original written record of the same information would have been.

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

Upon application of any stockholder, or any member of a corporation without capital stock, the Court of Chancery may hear and determine the validity of any election of any director, member of the governing body, or officer of any corporation, and the right of any person to hold such office, and, in case any such office is claimed by more than one person, may determine the person entitled thereto; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation relating to the issue. In case it should be determined that no valid election has been held, the Court of Chancery may order an election to be held in accordance with sections 211 or 215 of this title. 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 person whose title to office is contested and upon the person, if any, claiming such office; and the registered agent shall forward immediately a copy of the application to the corporation and to the person whose title to office is contested and to the person, if any, claiming such office, in a postpaid, sealed, registered letter addressed to such corporation and such person at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant stockholder. The Court may make such order respecting further or other notice of such application as it deems proper under the circumstances.

§ 226. Appointment of custodian or receiver of corporation on deadlock or for other cause

(a) The Court of Chancery, upon application of any stockholder, may appoint one or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of and for any corporation when:

(1) At any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or

(2) The business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required

vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division; or

(3) The corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

(b) A custodian appointed under this section shall have all the powers and title of a receiver appointed under section 291 of this title, but the authority of the custodian is to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the Court shall otherwise order and except in cases arising under subparagraph (a) (3) of this section or section 352(a) (2) of this title.

§ 227. Powers of court in elections of directors

(a) The Court of Chancery, in any proceeding instituted under sections 211, 215 or 225 of this title may determine the right and power of persons claiming to own stock, or in the case of a corporation without capital stock, of the persons claiming to be members, to vote at any meeting of the stockholders or members.

(b) The Court of Chancery may appoint a master to hold any election provided for in sections 211, 215 or 225 of this title under such orders and powers as it deems proper; and it may punish any officer or director for contempt in case of disobedience of any order made by the Court; and, in case of disobedience by a corporation of any order made by the Court, may enter a decree against such corporation for a penalty of not more than $5,000.

§ 228. Consent of stockholders in lieu of meeting

Whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, by any provision of this chapter, the meeting and vote of stockholders may be dispensed with: (1) if all of the stockholders who would have been entitled to vote upon the action if such meeting were held shall consent in writing to such corporate action being taken; or (2) if the certificate of incorporation authorizes the action to be taken with the written consent of the holders of less than all of the stock who would have been entitled to vote upon the action if a meeting were held, then on the written consent of the stockholders having not less than such percentage of the total number of votes as may be authorized in the certificate of incorporation; provided that in no case shall the written consent be by the holders of stock having less than the minimum percentage of the total vote required by statute for the proposed corporate action, and provided that prompt notice must be given to all stockholders of the taking of corporate action without a meeting and by less than unanimous writ-

ten consent. Nothing herein contained shall be construed to alter or modify the provisions of section 271 of this title. In the event that the action which is consented to is such as would have required the filing of a certificate under any of the other sections of this chapter, if such action had been voted upon by the stockholders at a meeting thereof, the certificate filed under such other section shall state that written consent has been given in accordance with the provisions of this section, in lieu of stating that the stockholders have voted upon the corporate action in question if such last mentioned statement is required thereby.

§ 229. Waiver of notice

Whenever notice is required to be given under any provision of this chapter or of the certificate of incorporation or by-laws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the certificate of incorporation or the by-laws.

§ 230. Exception to requirements of notice

Whenever notice is required to be given, under any provision of this chapter or of the certificate of incorporation or by-laws of any corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this title, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

SUBCHAPTER VIII. AMENDMENT OF CERTIFICATE OF INCORPORATION; CHANGES IN CAPITAL AND CAPITAL STOCK

Sec.

§ 241. Amendment of certificate of incorporation before receipt of payment for stock

(a) Before a corporation has received any payment for any of its stock, it may amend its certificate of incorporation at any time or times, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of filing the amendment.

(b) The amendment of a certificate of incorporation authorized by this section shall be adopted by a majority of the incorporators, if directors were not named in the original certificate of incorporation or have not yet been elected, or, if directors were named in the original certificate of incorporation or have been elected and have qualified, by a majority of the directors. A certificate setting forth the amendment and certifying that the corporation has not received any payment for any of its stock and that the amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged, filed and recorded in accordance with section 103 of this title. Upon such filing, the corporation's certificate of incorporation shall be deemed to be amended accordingly as of the date on which the original certificate of incorporation became effective.

§ 242. Amendment of certificate of incorporation after receipt of payment for stock; non-stock corporations

(a) After a corporation has received payment for any of its capital stock, it may amend its certificate of incorporation, from time to time, in any and as many respects as may be desired, so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment; and, if a change in stock or the rights of stockholders, or an exchange, reclassification or cancellation of stock or rights of stockholders is to be

made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. In particular, and without limitation upon such general power of amendment, a corporation may amend its certificate of incorporation, from time to time, so as:

(1) To change its corporate name; or

(2) To change, substitute, enlarge or diminish the nature of its business or its corporate powers and purposes; or

(3) To increase or decrease its authorized capital stock or to reclassify the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares; or

(4) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared; or

(5) To create new classes of stock having rights and preferences either prior and superior or subordinate and inferior to the stock of any class then authorized, whether issued or unissued; or

(6) To change the period of its duration.

Any or all such changes or alterations may be effected by one certificate of amendment.

(b) Whenever issued shares having par value are changed into the same or a greater or lesser number of shares without par value, whether of the same or of a different class or classes of stock, the aggregate amount of the capital of the corporation represented by such shares without par value shall be the same as the aggregate amount of capital represented by the shares so changed; and whenever issued shares without par value are changed into other shares without par value to a greater or lesser number, whether of the same or of a different class or classes, the amount of capital represented by the new shares in the aggregate shall be the same as the aggregate amount of capital represented by the shares so changed.

(c) The certificate of amendment of any certificate of incorporation effecting any change in the issued shares of the corporation shall set forth that the capital of the corporation will not be reduced under or by reason of the amendment.

(d) Every amendment authorized by subsection (a) of this section shall be made and effected in the following manner—

(1) If the corporation has capital stock, its board of directors shall adopt a resolution setting forth the amendment proposed, declaring its advisability, and either calling a special meeting of the stockholders entitled to vote in respect thereof for the consideration of such amendment or directing that the amendment proposed be considered at the next annual meeting of the stockholders. Such special or annual

meeting shall be called and held upon notice in accordance with section 222 of this title. The notice shall set forth such amendment in full or a brief summary of the changes to be effected thereby, as the directors shall deem advisable. At the meeting a vote of the stockholders entitled to vote, by ballot, in person or by proxy, shall be taken for and against the proposed amendment. If the holders of a majority of the stock entitled to vote (or of each class of stock when such vote is to be taken by classes) have voted in favor of the amendment, a certificate setting forth the amendment and certifying that such amendment has been duly adopted in accordance with the provisions of this section shall be executed, acknowledged, filed, and recorded, and shall become effective in accordance with section 103 of this title.

(2) If any proposed amendment would alter or change the preferences, special rights or powers given to any one or more classes of stock by the certificate of incorporation, so as to affect such class or classes of stock adversely, or would increase or decrease the number of authorized shares of any class or classes of stock, or would increase or decrease the par value thereof, then the holders of the stock of each class of stock so affected by the amendment shall be entitled to vote as a class upon such amendment, whether by the terms of the certificate of incorporation such class be entitled to vote or not; and the affirmative vote of a majority in interest of each such class of stock so affected by the amendment shall be necessary to the adoption thereof, in addition to the affirmative vote of a majority of all stock which would be entitled to vote on an amendment not requiring a class vote. The number of authorized shares of any such class or classes of stock may be increased or decreased by the affirmative vote of the holders of a majority of the stock of the corporation entitled to vote, if so provided in the original certificate of incorporation or in any amendment thereto which created such class or classes of stock or in any amendment thereto which was authorized by a resolution or resolutions adopted by the affirmative vote of the holders of a majority of such class or classes of stock.

(3) If the corporation has no capital stock, then the governing body thereof shall adopt a resolution setting forth the amendment proposed and declaring its advisability. If at a subsequent meeting, held, on notice stating the purpose thereof, not earlier than 15 days and not later than 60 days from the meeting at which such resolution has been passed, a majority of all the members of the governing body, shall vote in favor of such amendment, a certificate thereof shall be executed, acknowledged, filed, recorded, and shall become effective in accordance with section 103 of this title. The certificate of incorporation of any such corporation without capital stock may contain a provision requiring any amendment thereto to be approved by a specified number or percentage of the members or of any specified class of members of such corporation in which event only one meeting of the governing body thereof shall be necessary, and such proposed amendment shall be submitted to the members or to any specified class of members of

such corporation without capital stock in the same manner, so far as applicable, as is provided in this section for an amendment to the certificate of incorporation of a stock corporation; and in the event of the adoption thereof, a certificate evidencing such amendment shall be executed, filed, acknowledged, recorded and shall become effective in accordance with section 103 of this title.

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

§ 243. Redemption, purchase or retirement of preferred or special stock

(a) Whenever any corporation has issued any preferred or special shares it may, subject to the provisions of the certificate of incorporation—

(1) Redeem all or any part of such shares, if subject to redemption, at such time or times, at such price or prices, and otherwise as shall be stated in the certificate of incorporation or

(2) At any time or from time to time purchase all or any part of such shares, but in the case of shares subject to redemption, at not exceeding the price or prices at which such shares may be redeemed, or

(3) At any time or from time to time, by resolution of the board of directors, retire any such shares redeemed or purchased out of surplus, as defined in section 154 of this title.

(b) The corporation may apply to such redemption or purchase an amount of its capital which shall not be greater than the sum of—

(1) That part of the consideration received for such shares which shall be capital pursuant to the provisions of section 154 of this title and that part of surplus which shall have been transferred and treated as capital in respect of such shares pursuant to the provisions of that section and

(2) Any amounts by which the capital of the corporation shall have been increased by other transfers from surplus in accordance with the provisions of that section, except those transfers, if any, which shall have been made in respect of other preferred or special shares.

(c) Whenever, upon the conversion or exchange of preferred or special shares into or for other shares of the corporation, the amount of capital represented by such preferred or special shares exceeds the total aggregate par or stated value represented by such other shares, the corporation by resolution of the board of directors may as herein provided reduce its capital at any time thereafter by all or any part of such excess. No such redemption or purchase, however, shall be made

out of capital, and there shall be no such reduction of capital after such conversion or exchange, unless the assets of the corporation remaining after such redemption, purchase or reduction shall be sufficient to pay any debts of the corporation, the payment of which shall not have been otherwise provided for.

(d) Any such shares so redeemed or purchased by the application of capital or otherwise retired pursuant to the provisions of this section, shall, upon the filing of the certificate required by this section, and any such shares of the corporation surrendered to it on the conversion or exchange thereof into or for other shares of the corporation shall, after such conversion or exchange, have the status of authorized and unissued shares of the class of stock to which such shares belong; but if the certificate of incorporation prohibits the reissue of such shares, the authorized capital stock of the corporation of the class to which such shares belong shall, upon such redemption, purchase, retirement, conversion or exchange, be deemed to be, and shall, upon such filing, be reduced to the extent of the aggregate par value of the shares so redeemed, purchased, retired, converted or exchanged or, if such shares are without par value, to the extent of the total number of such shares.

(e) Whenever any capital of the corporation is applied to the redemption or the purchase of shares or any shares are retired pursuant to the provisions of this section, or whenever following the conversion or exchange of preferred or special shares of the corporation the capital of the corporation is to be reduced as herein provided, a certificate thereof shall be executed, acknowledged, filed and recorded, and shall become effective in accordance with section 103 of this title. Upon such certificate becoming effective, the capital of the corporation shall be deemed to be and shall thereby be reduced by the amount thereof so applied to such redemption or purchase or the amount thereof represented by the shares so redeemed or purchased, whichever shall be greater, or, in the case of shares redeemed or purchased out of surplus and so retired, by the amount of capital represented by the shares so retired, or, following the conversion or exchange of preferred or special shares of the corporation, by the amount specified by resolution of the board of directors of the corporation as aforesaid, without the necessity of any other proceedings under any other section of this chapter.

(f) If the certificate of incorporation prohibits the reissue of the shares so redeemed, purchased, retired or surrendered to the corporation on the conversion or exchange thereof into other shares of the corporation, the filing of such certificate containing a recital of such fact shall constitute an amendment to the certificate of incorporation effecting a reduction in the authorized capital stock of the corporation to the extent of the aggregate par value of the shares so redeemed, purchased, retired, or surrendered on conversion or exchange, or, if such shares are without par value, to the extent of the total number of such shares subject to the provisions of section 103(d) of this title. If the

shares so redeemed, purchased, retired, or surrendered on conversion or exchange constitute all the outstanding shares of any particular class and the reissue thereof is so prohibited, the filing of such certificate, containing a recital of such fact, shall constitute an amendment to the certificate of incorporation effecting a reduction in the authorized capital stock of the corporation by the elimination therefrom of all reference to the particular class of stock, subject to the provisions of section 103(d) of this title.

(g) Nothing in this section shall be construed as limiting the exercise of the rights given by section 160 of this title, or as in any way affecting the right of any corporation to resell any of its shares theretofore purchased or redeemed out of surplus for such consideration as shall be fixed from time to time by the board of directors.

(h) Whenever any corporation operated as an investment company shall be obligated, pursuant to its certificate of incorporation, to redeem or repurchase any of its shares at the option of the shareholder, the provisions of this section shall be applicable to all shares redeemed or repurchased pursuant to any method authorized under its certificate of incorporation for the purpose of effecting redemption or repurchases of its shares at the option of the shareholder; and such shares may be retired, the capital of the corporation reduced, and such shares restored to the status of authorized and unissued shares, by compliance with the provisions of this section.

(i) Shares which have been called for redemption shall not be deemed to be outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been sent to holders thereof and a sum sufficient to redeem such shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

§ 244. Reduction of capital

(a) Any corporation may reduce its capital at any time in one or more of the following manners:

(1) By retiring or reducing the outstanding shares of any class.

(2) By purchasing shares of any class for retirement either by lot or pro rata from all holders of shares of the class.

(3) By purchasing shares for retirement from time to time in the open market or at private sale, in both cases at not exceeding such price or prices as may be fixed or approved by the stockholders entitled to vote upon the reduction of capital to be effected in that manner.

(4) By the exchange by the holders of outstanding shares of any class of stock, with or without par value, for the same or a greater or lesser number of shares of the same or of a different class or classes of stock, with or without par value, the effect of which is to work a reduction in capital.

(5) By reducing the par value of the shares of any class of stock having par value in conjunction with appropriate action under section 242 of this title.

(6) By reducing the amount of capital represented by shares of stock having par value by an amount not greater than such amount exceeds the aggregate par value of such shares or the amount of capital represented by shares of stock having no par value.

(7) By retransferring to surplus all or any part of the amount by which capital shall have been increased by the transfer thereto from surplus pursuant to the provisions of section 154 of this title if such transfer shall not have been made in respect of any designated class or classes of stock.

(8) By retiring shares owned by the corporation. If such reduction of capital be effected by retiring shares, then, if the consent or resolution of stockholders referred to in subsection (b) shall so provide, an amount not exceeding that part of the capital of the corporation represented by such shares may be charged against or paid out of the capital of the corporation in respect of such shares.

No reduction of capital, however, shall be made unless the assets of the corporation remaining after such reduction are sufficient to pay any debts, the payment of which shall not have been otherwise provided for, and the certificate of reduction required by subsection (b) shall so state.

(b) Any reduction of capital may be effected by resolution of the directors of the corporation supplemented by a resolution adopted by the holders of record of a majority of the shares of the corporation having voting power at a meeting of the stockholders held upon notice given in accordance with section 222 of this title. A certificate stating that such resolutions have been adopted and specifying the manner in and the extent to which the capital of the corporation is to be reduced shall be executed, acknowledged, filed and recorded in accordance with section 103 of this title.

(c) If such reduction of capital shall have been effected by retiring or reducing the issued shares of any class, whether or not already owned by the corporation, in any of the manners permitted by subsection (a) and if the certificate of incorporation does not prohibit the reissue thereof, such shares shall, upon the filing of such certificate and subject to the provisions of section 103(d) of this title, have the status of authorized and unissued shares of the class of stock to which such shares belong.

(d) If the certificate of incorporation prohibits the reissue of such shares, the filing and recording of the certificate required by subsection (b), containing a recital of such fact, shall constitute an amendment to the certificate of incorporation effecting a reduction of the authorized capital stock of the corporation to the extent of the aggregate par value of such shares, or, if such shares are without par

value, to the extent of the total number of such shares, subject to the provisions of section 103(d) of this title. If such shares constitute all the outstanding shares of any particular class and the reissue is so prohibited, the filing of such certificate containing a recital of such fact shall constitute an amendment of the certificate of incorporation effecting a reduction in the authorized capital stock of the corporation by the elimination therefrom of all reference to the particular class of stock, subject to the provisions of section 103(d) of this title.

(e) When any corporation shall decrease the amount of its capital as provided in this section, notice of the reduction of capital shall be published at least once in a newspaper published in the county in which the registered office of the corporation is located within fifteen days after the filing of the certificate as provided in this section, and in default thereof the directors of the corporation shall be jointly and severally liable to any creditors of the corporation who shall suffer loss by reason of the noncompliance with the provisions of this section, and the stockholders shall be similarly liable up to the amount of such sums as they may respectively receive of the amount so reduced. No such decrease of capital shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted.

§ 245. Restated certificate of incorporation

(a) A corporation may, whenever desired, integrate into a single instrument all of the provisions of its certificate of incorporation which are then in effect and operative as a result of there having theretofore been filed with the Secretary of State one or more certificates or other instruments pursuant to any of the sections referred to in section 104 of this title, and it may at the same time also further amend its certificate of incorporation by adopting a restated certificate of incorporation.

(b) If the restated certificate of incorporation merely restates and integrates but does not further amend the certificate of incorporation, as theretofore amended or supplemented by any instrument that was filed pursuant to any of the sections mentioned in section 104 of this title, it may be adopted by the board of directors without a vote of the stockholders, or it may be proposed by the directors and submitted by them to the stockholders for adoption, in which case the procedure and vote required by section 242 of this title for amendment of the certificate of incorporation shall be applicable. If the restated certificate of amendment restates and integrates and also further amends in any respect the certificate of incorporation, as theretofore amended or supplemented, it shall be proposed by the directors and adopted by the stockholders in the manner and by the vote prescribed by section 242 of this title.

(c) A restated certificate of incorporation shall be specifically designated as such in its heading. It shall state, either in its heading or

in an introductory paragraph, the corporation's present name, and, if it has been changed, the name under which it was originally incorporated, and the date of filing of its original certificate of incorporation with the Secretary of State. A restated certificate shall also state that it was duly adopted by the directors or stockholders, as the case may be, in accordance with the provisions of this section. If it was adopted by the board of directors without a vote of the stockholders it shall state that it only restates and integrates and does not further amend the provisions of the corporation's certificate of incorporation as theretofore amended or supplemented, and that there is no discrepancy between those provisions and the provisions of the restated certificate. A restated certificate of incorporation may omit such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors, and the original subscribers for shares; and such omission shall not be deemed a further amendment.

(d) A restated certificate of incorporation shall be executed, acknowledged, filed and recorded in accordance with section 103 of this title. Upon its filing with the Secretary of State, the corporation's original certificate of incorporation, as theretofore amended or supplemented, shall be superseded; and thenceforth the restated certificate, including any further amendments or changes made thereby, shall be the certificate of incorporation of the corporation.

(e) Any amendment or change effected in connection with the restatement and integration of the certificate of incorporation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

§ 246. Composite certificate of incorporation

The Secretary of State shall prepare and furnish upon request a certified composite certificate of incorporation which shall contain only such provisions of a corporation's certificate of incorporation which are then in effect and operative as a result of there having theretofore been filed with the Secretary of State one or more certificates or other instruments pursuant to any of the sections referred to in section 104 of this title. The Secretary of State shall make in each case such reasonable charge therefor as he deems proper. A composite certificate of incorporation shall not be filed by the Secretary of State as a corporate instrument, nor shall it be recorded in the office of any recorder in this State, unless it is accompanied by a certificate of the corporation, executed and acknowledged in accordance with section 103 of this title, stating that the filing and recording of the composite certificate have been duly authorized by the corporation's board of directors. The filing by a corporation of a composite certificate of incorporation shall not have the effect of superseding its original certificate of incorporation, as theretofore amended or supplemented.

SUBCHAPTER IX. MERGER OR CONSOLIDATION

Sec.

§ 251. Merger or consolidation of domestic corporations

(a) Any two or more corporations existing under the laws of this State may merge into a single corporation, which may be any one of the constituent corporations or 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.

(b) The board of directors of each 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 of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and, if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the amount of cash or securities of any other corporation which is to be paid or delivered to the holders of such shares in exchange for or upon the surrender of such shares, which cash or securities of any other

corporation may be in addition to the shares or other securities of the surviving or resulting corporation into which any of the shares of any of the constituent corporations are to be converted; and (5) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares of the surviving or resulting corporation. The agreement so adopted shall be executed in accordance with section 103 of this title.

(c) The agreement required by subsection (b) shall be submitted to the stockholders of each constituent corporation at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each stockholder of each such corporation at his address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement, each share entitling the holder thereof to one vote. If two-thirds of the total number of the outstanding shares of the capital stock of each such corporation shall be voted for the adoption of the agreement, then that fact shall be certified on the agreement by the secretary or assistant secretary of each such corporation, under the seal thereof. The agreement so adopted and certified shall be executed, acknowledged and filed, and shall become effective, in accordance with section 103 of this title. It shall be recorded in the offices of the Recorders of the counties of this State in which any of the constituent corporations shall have its original certificate of incorporation recorded; or if any of the constituent corporations shall have been specially created by a public act of the Legislature, then the agreement shall be recorded in the county where such corporation had its principal place of business in this State.

(d) Any agreement of merger or consolidation may contain a provision that at any time prior to the filing of the agreement with the Secretary of State, the agreement may be terminated by the board of directors of any constituent corporation notwithstanding approval of the agreement by the stockholders of all or any of the constituent corporations.

(e) In the case of a merger, the certificate of incorporation of the surviving corporation shall automatically be amended to the extent, if any, that changes in the certificate of incorporation are set forth in the agreement of merger.

(f) Notwithstanding the requirements of subsection (c), unless required by its certificate of incorporation, no vote of stockholders of a constituent corporation surviving a merger shall be necessary to authorize a merger if (1) the agreement of merger does not change the name or authorized shares of any class or otherwise amend the certificate of incorporation of the surviving corporation, and (2) the authorized unissued shares or the treasury shares of any class of the

surviving corporation to be issued or delivered under the plan of merger do not exceed 15 per cent of the shares of the surviving corporation of the same class outstanding immediately prior to the effective date of the merger. If an agreement of merger is adopted by the constituent corporation surviving the merger, by action of its board of directors and without any vote of its stockholders, pursuant to this subsection, then that fact shall be certified on the agreement by the secretary or assistant secretary of that corporation, under its seal.

§ 252. Merger or consolidation of domestic and foreign corporations; service of process upon surviving or resulting corporation

(a) Any one or more corporations of this State may merge or consolidate with one or more other corporations of any other state or states of the United States, if the laws of such other state or states permit such merger or consolidation. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations existing under the laws of this State if the surviving or resulting corporation will be a corporation of this State, and if the laws under which the other corporation or corporations are formed permit such merger or consolidation.

(b) All the constituent corporations shall enter into 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) the manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and if any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the amount of cash or securities of any other corporation which is to be paid or delivered to the holders of such shares in exchange for or upon the surrender of such shares, which cash or securities of any other corporation may be in addition to the shares or other securities of the surviving or resulting corporation into which any shares of any of the constituent corporations are to be converted; and (4) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares of the surviving or resulting corporation. There shall also be set forth in the agreement such other matters or provisions as shall be required to be set forth in certificates 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.

(c) The agreement shall be adopted, approved, executed and acknowledged by each of the constituent corporations in accordance with the laws under which it is formed, and, in the case of a Delaware corporation, in the same manner as is provided in section 251 of this title. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this State when and as provided in section 251 of this title with respect to the merger or consolidation of corporations of this State.

(d) If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any state other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholder as determined in appraisal proceedings pursuant to the provisions of section 262 of this title, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Service of such process shall be made by personally delivering to and leaving with the Secretary of State duplicate copies of such process. The Secretary of State shall forthwith send by registered mail one of such copies to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall thereafter have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated.

(e) The provisions of subsection (d) of section 251 of this title shall apply to any merger or consolidation under this section; the provisions of subsection (e) of section 251 shall apply to a merger under this section in which the surviving corporation is a corporation of this State; the provisions of subsection (f) of section 251 shall apply to any merger under this section.

§ 253. Merger of parent corporation and subsidiary or subsidiaries

(a) In any case in which at least 90 per cent of the outstanding shares of each class of the stock of a corporation or corporations is owned by another corporation and one of such corporations is a corporation of this State and the other or others are corporations of this State or of any other state or states which permit such a merger, the corporation having such stock ownership may either merge such other corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and one or more of such other

corporations, into one of such other corporations by executing, acknowledging and filing, in accordance with section 103 of this title, a certificate of such ownership and merger setting forth a copy of the resolution of its board of directors to so merge and the date of the adoption thereof; provided, however, that in case the parent corporation shall not own all the outstanding stock of all the subsidiary corporations, parties to a merger as aforesaid, the resolution of the board of directors of the parent corporation shall state the terms and conditions of the merger, including the securities, cash or other property to be issued, paid or delivered by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation. If the parent corporation be not the surviving corporation, the resolution shall include provision for the pro rata issuance of stock of the surviving corporation to the holders of the stock of the parent corporation on surrender of the certificates therefor, and the certificate of ownership and merger shall state that the proposed merger has been approved by the holders of a majority of the stock of the parent corporation at a meeting of its stockholders duly called and held after 20 days' notice of the purpose of the meeting mailed to each of its stockholders at his address as it appears on the records of the corporation. A certified copy of the certificate shall be recorded in the offices of the Recorder of the counties of this State in which any of the constituent corporations shall have its original certificate of incorporation recorded. If the surviving corporation exists under the laws of any state other than this State, the provisions of section 252(d) of this title shall also apply to a merger under this section.

(b) If the surviving corporation is a Delaware corporation, it may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted by the directors of the parent corporation and set forth in the certificate of ownership and merger, and upon the effective date of the merger, the name of the corporation shall be so changed.

(c) Any merger which effects any changes other than those herein specifically authorized with respect to the parent corporation shall be accomplished under the provisions of sections 251 or 252 of this title. The provisions of section 262 of this title shall not apply to any merger effected under this section, except as provided in subsection (d) of this section.

(d) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under this section is not owned by the parent corporation immediately prior to the merger, the surviving corporation shall, within 10 days after the effective date of the merger, notify each stockholder of such Delaware corporation that the merger has become effective. The notice shall be sent by registered mail, return receipt requested, addressed to the stockholder at his address as it appears on the records of the corporation. Any such stockholder may, within 20 days after the date of mailing of the notice, demand in

writing from the surviving corporation payment of the value of his stock exclusive of any element of value arising from the expectation or accomplishment of the merger. If during a period of 30 days after such period of 20 days the surviving corporation and any such objecting stockholder fail to agree as to the value of such stock, any such stockholder or the corporation may file a petition in the Court of Chancery as provided in subsection (c) of section 262 of this title and thereupon the parties shall have the rights and duties and follow the procedure set forth in subsections (d) to (j) inclusive of section 262.

(e) A merger may be effected under this section although one or more of the corporations parties to the merger is a corporation organized under the laws of a jurisdiction other than one of the United States; provided that the laws of such jurisdiction permit such a merger; and provided further that the surviving or resulting corporation shall be a corporation of this State.

(f) The provisions of section 251(d) of this title shall apply to a merger under this section and the provisions of section 251(e) shall apply to a merger under this section in which the surviving corporation is a corporation of this State.

§ 254. Merger or consolidation of domestic corporation and joint-stock or other association

(a) The term "joint-stock association", as used in this section, includes any association of the kind commonly known as joint-stock association or joint-stock company and any unincorporated association, trust or enterprise having outstanding shares of stock or other evidences of financial or beneficial interest therein, whether formed by agreement or under statutory authority or otherwise, but does not include a corporation. The term "stockholder", as used in this section, includes every member of such joint-stock association or holder of a share of stock or other evidence of financial or beneficial interest therein.

(b) Any one or more corporations of this State may merge or consolidate with one or more joint-stock associations, except a joint-stock association formed under the laws of a state which forbids such merger or consolidation. Such corporation or corporations and such one or more joint-stock associations may merge into a single corporation, which may be any one of such corporations, or they may consolidate into a new corporation formed by the consolidation, which shall be a corporation of this State, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(c) Each such corporation and joint-stock association shall enter into a written 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) the manner of converting the shares of each of the corporations and the shares of

each of the joint-stock associations or financial or beneficial interests therein into shares or other securities of the corporation surviving or resulting from such merger or consolidation and if any shares of any of the corporations or any shares of any of the joint-stock associations, or any of the financial or beneficial interests therein, are not to be converted solely into shares or other securities of the surviving or resulting corporation, the amount of cash or securities of any other corporation which is to be paid or delivered in exchange for or upon the surrender of such shares or interests, which cash or securities of any other corporation may be in addition to the shares or other securities of the surviving or resulting corporation into which any of such shares or interests are to be converted; and (4) such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares of the surviving or resulting corporation. There shall also be set forth in the agreement such other matters or provisions as shall then be required to be set forth in certificates of incorporation by the laws of this State and that can be stated in the case of such merger or consolidation.

(d) The agreement shall be adopted, approved, executed and acknowledged by each of the corporations in the same manner as is provided in section 251 of this title, and in the case of the joint-stock associations in accordance with their articles of association or other instrument containing the provisions by which they are organized or regulated or in accordance with the laws of the state under which they are formed, as the case may be. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this State when and as provided in section 251 of this title with respect to the merger or consolidation of corporations of this State.

(e) The provisions of sections 251(d), 251(e), 259 through 262 and 328 of this title shall, insofar as they are applicable, apply to mergers or consolidations between corporations and joint-stock associations the word "corporation" where applicable, as used in those sections being deemed to include joint-stock associations as defined herein The personal liability, if any, of any stockholder of a joint-stock association existing at the time of such merger or consolidation shall not thereby be extinguished, shall remain personal to such stockholder and shall not become the liability of any subsequent transferee of any share of stock in such surviving or resulting corporation or of any other stockholder of such surviving or resulting corporation.

§ 255. Merger or consolidation of domestic non-stock, non-profit corporations

(a) Any two or more non-stock, non-profit corporations of this State may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into new non-stock, non-profit corporation formed by the consolidation, pursuant to an agree

ment of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) The governing body of each 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 for non-stock, non-profit corporations 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 of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from the merger or consolidation; and (5) such other details or provisions as are deemed desirable.

(c) The agreement shall be submitted to the members of each constituent corporation who have the right to vote for the election of the members of the governing body of their corporation, at an annual or special meeting thereof for the purpose of acting on the agreement. Due notice of the time, place and purpose of the meeting shall be mailed to each member of each such corporation who has the right to vote for the election of the members of the governing body of his corporation, at his address as it appears on the records of the corporation, at least 20 days prior to the date of the meeting. At the meeting the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the agreement, each member who has the right to vote for the election of the members of the governing body of his corporation being entitled to one vote. If the votes of two-thirds of the total number of members of each such corporation who have the voting power above mentioned shall be for the adoption of the agreement, then that fact shall be certified on the agreement by the officer of each such corporation performing the duties ordinarily performed by the secretary or assistant secretary of a corporation, under the seal of each such corporation. The agreement so adopted and certified shall be executed, acknowledged and filed, and shall become effective, in accordance with section 103 of this title. It shall be recorded in the offices of the Recorders of the counties of this State in which any of the constituent corporations shall have its original certificate of incorporation recorded; or if any of the constituent corporations shall have been specially created by public act of the Legislature, then the agreement shall be recorded in the county where such corporation had its principal place of business in this State.

(d) If, under the provisions of the certificate of incorporation of any one or more of the constituent corporations, there shall be no members who have the right to vote for the election of the members of the governing body of the corporation other than the members of that body themselves, the agreement duly entered into as provided in subsection

(b) of this section shall be submitted to the members of the governing body of such corporation or corporations, at a meeting thereof. Notice of the meeting shall be mailed to the members of the governing body in the same manner as is provided in the case of a meeting of the members of a corporation. If at the meeting two-thirds of the total number of members of the governing body shall vote by ballot, in person, for the adoption of the agreement, that fact shall be certified on the agreement in the same manner as is provided in the case of the adoption of the agreement by the vote of the members of a corporation and thereafter the same procedure shall be followed to consummate the merger or consolidation.

(e) The provisions of section 251(e) shall apply to a merger under this section.

§ 256. Merger or consolidation of domestic and foreign non-stock, non-profit corporations; service of process upon surviving or resulting corporation

(a) Any one or more non-stock, non-profit corporations of this State may merge or consolidate with one or more other non-stock, non-profit corporations of any other state or states of the United States, if the laws of such other state or states permit such merger or consolidation. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new non-stock, non-profit corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. In addition, any one or more non-stock, non-profit corporations organized under the laws of any jurisdiction other than one of the United States may merge or consolidate with one or more corporations of this State if the surviving or resulting corporation will be a corporation of this State, and if the laws under which the other corporation or corporations are formed permit such merger or consolidation.

(b) All the constituent corporations shall enter into 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) the manner of converting the memberships of each of the constituent corporations into memberships of the corporation surviving or resulting from such merger or consolidation; (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.

(c) The agreement shall be adopted, approved, executed and acknowledged by each of the constituent corporations in accordance with

the laws under which it is formed and, in the case of a Delaware corporation, in the same manner as is provided in section 255 of this title. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this State when and as provided in section 255 of this title with respect to the merger of non-stock, non-profit corporations of this State.

(d) If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of any state other than this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Service of such process shall be made by personally delivering to and leaving with the Secretary of State duplicate copies of such process. The Secretary of State shall forthwith send by registered mail one of such copies to such surviving or resulting corporation at its address so specified, unless such surviving or resulting corporation shall thereafter have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated.

(e) The provisions of section 251(e) shall apply to a merger under this section if the corporation surviving the merger is a corporation of this State.

§ 257. Merger or consolidation of domestic stock and non-stock corporations

(a) Any one or more non-stock corporations of this State, whether or not organized for profit, may merge or consolidate with one 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 one 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 non-stock corporation.

(b) The board of directors of each stock corporation which desires to merge or consolidate and the governing body of each non-stock 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 of converting the shares of stock of a stock corporation and the interests of members of a non-stock corporation into shares or other securities of a stock corporation surviving or resulting from such merger or consolidation or of any other corporation or into cash or other consideration, or of converting the shares of stockholders in a stock corporation and the interests of members of a non-stock corporation into membership interests of a non-stock corporation surviving or resulting from such merger or consolidation, or into cash or other property, as the case may be; and (5) such other details or provisions as are deemed desirable. In such merger or consolidation the interests of members of a constituent non-stock corporation may be treated in various ways so as to convert such 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 non-voting, or into creditor interests or any other interests of value equivalent to their membership interests in their non-stock corporation. The voting rights of members of a constituent non-stock 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 non-stock 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 non-stock corporations received by stockholders of a constituent stock corporation, and the voting or non-voting shares of a stock corporation may be converted into voting or non-voting regular, life, general, special or other type of membership, however designated, creditor interests or participating interests, in the non-stock corporation surviving or resulting from such merger or consolidation of a stock corporation and a non-stock corporation.

(c) The agreement, in the case of each constituent stock corporation, shall be adopted, approved, executed and acknowledged by each constituent corporation in the same manner as is provided in section 251 of this title and, in the case of each constituent non-stock corporation, shall be adopted, approved, executed and acknowledged by each of said constituent corporations in the same manner as is provided in section 255 of this title. The agreement shall be filed and recorded and shall become effective for all purposes of the laws of this State when and as provided in section 251 of this title with respect to the merger of stock corporations of this State.

(d) The provisions of section 251(e) shall apply to a merger under this section; if the surviving corporation is a corporation of this State; the provisions of section 251(d) shall apply to any constituent stock corporation participating in a merger or consolidation under this sec-

tion; and the provisions of section 251(f) shall apply to any constituent stock corporation participating in a merger under this section.

§ 258. Merger or consolidation of domestic and foreign stock and non-stock corporations

(a) Any one or more corporations of this State, whether stock or non-stock corporations and whether or not organized for profit, may merge or consolidate with one or more other corporations of any other state or states of the United States, whether stock or non-stock corporations and whether or not organized for profit, if the laws under which the other corporation or corporations are formed shall permit such merger or consolidation. The constituent corporations may merge into a single corporation, which may be any one of the constituent corporations, or they may consolidate into a new corporation formed by the consolidation, which may be a corporation of the state of incorporation of any one of the constituent corporations, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section. The surviving or new corporation may be either a stock corporation or a membership corporation, as shall be specified in the agreement of merger required by subsection (b) of this section.

(b) The method and procedure to be followed by the constituent corporations so merging or consolidating shall be as prescribed in section 257 of this title in the case of Delaware corporations. The agreement of merger or consolidation shall also set forth such other matters or provisions as shall then be required to be set forth in certificates of incorporation by the laws of the state which are stated in the agreement to be the laws which shall govern the surviving or resulting corporation and that can be stated in the case of a merger or consolidation. The agreement, in the case of foreign corporations, shall be adopted, approved, executed and acknowledged by each of the constituent foreign corporations in accordance with the laws under which each is formed.

(c) The requirements of section 252(d) of this title as to the appointment of the Secretary of State to receive process and the manner of serving the same in the event the surviving or new corporation is to be governed by the laws of any other state shall also apply to mergers or consolidations effected under the provisions of this section. The provisions of section 251(e) shall apply to mergers effected under the provisions of this section if the surviving corporation is a corporation of this State; the provisions of section 251(d) shall apply to any constituent stock corporation participating in a merger or consolidation under this section; and the provisions of section 251(f) shall apply to any constituent stock corporation participating in a merger under this section.

§ 259. Status, rights, liabilities, etc. of constituent and surviving or resulting corporations following merger or consolidation

(a) When an agreement of merger or consolidation and the merger or consolidation effected thereby shall have become effective under this chapter, for all purposes of the laws of this State the separate existence of all the constituent corporations, or of all such constituent corporations except the one into which the other or others of such constituent corporations have been merged, as the case may be, shall cease and the constituent corporations shall become a new corporation, or be merged into one of such corporations, as the case may be, in accordance with the provisions of said agreement, possessing all the rights, privileges, powers and franchises as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated; and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the corporation surviving or resulting from such merger or consolidation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the surviving or resulting corporation as they were of the several and respective constituent corporations, and the title to any real estate vested by deed or otherwise, under the laws of this State, in any of such constituent corporations, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of said constituent corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said surviving or resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

(b) In the case of a merger of banks or trust companies, without any order or action on the part of any court or otherwise, all appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, trustee of estates of persons mentally ill and in every other fiduciary capacity, shall be automatically vested in the corporation resulting from or surviving such merger; provided, however, that any party in interest shall have the right to apply to an appropriate court or tribunal for a determination as to whether the surviving corporation shall continue to serve in the same fiduciary capacity as the merged corporation, or whether a new and different fiduciary should be appointed.

§ 260. Powers of corporation surviving or resulting from merger or consolidation; issuance of stock, bonds or other indebtedness

When two or more corporations are merged or consolidated, the corporation surviving or resulting from the merger may issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make, or obligations it will be required to assume, in order to effect the merger or consolidation. For the purpose of securing the payment of any such bonds and obligations, it shall be lawful for the surviving or resulting corporation to mortgage its corporate franchise, rights, privileges and property, real, personal or mixed. The surviving or resulting corporation may issue certificates of its capital stock and other securities to the stockholders of the constituent corporations in exchange or payment for the original shares, in such amount as shall be necessary in accordance with the terms of the agreement of merger or consolidation in order to effect such merger or consolidation in the manner and on the terms specified in the agreement.

§ 261. Effect of merger upon pending actions

Any action or proceeding, whether civil, criminal or administrative, pending by or against any corporation which is a party to a merger or consolidation shall be prosecuted as if such merger or consolidation had not taken place, or the corporation surviving or resulting from such merger or consolidation may be substituted in such action or proceeding.

§ 262. Payment for stock or membership of person objecting to merger or consolidation

(a) When used in this section, the word "stockholder" means a holder of record of stock in a stock corporation and also a member of record of a non-stock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a non-stock corporation.

(b) The corporation surviving or resulting from any merger or consolidation shall within 10 days after the effective date of the merger or consolidation, notify each stockholder of any corporation of this State so merging or consolidating, who objected thereto in writing and whose shares were not voted in favor of the merger, and who filed such written objection with the corporation before the taking of the vote on the merger or consolidation, that the merger or consolidation has become effective. The notice shall be sent by registered or certified mail, return receipt requested, addressed to the stockholder at his address as it appears on the records of the corporation. If any such

stockholder shall within 20 days after the date of mailing of the notice demand in writing, from the corporation surviving or resulting from the merger or consolidation, payment of the value of his stock, the surviving or resulting corporation shall, within 30 days after the expiration of the period of 20 days, pay to him the value of his stock on the effective date of the merger or consolidation, exclusive of any element of value arising from the expectation or accomplishment of the merger or consolidation.

(c) If during a period of 30 days following the period of 20 days provided for in subsection (b) of this section, the corporation and any such objecting stockholder fail to agree upon the value of such stock, any such stockholder, or the corporation surviving or resulting from the merger or consolidation, may, by petition filed in the Court of Chancery within four months after the expiration of the period of 30 days, demand a determination of the value of the stock of all such objecting stockholders by an appraiser to be appointed by the Court.

(d) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the corporation, which shall within ten days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the corporation. If the petition shall be filed by the corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the corporation and to the stockholders shown upon the list at the addresses therein stated, and notice shall also be given by publishing a notice at least once at least one week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware. The Court may direct such additional publication of notice as it deems advisable. The forms of the notices by mail and by publication shall be approved by the Court.

(e) After the hearing on such petition the Court shall determine the stockholders who have complied with the provisions of this section and become entitled to the valuation of and payment for their shares, and shall appoint an appraiser to determine such value. Such appraiser may examine any of the books and records of the corporation or corporations the stock of which he is charged with the duty of valuing, and he shall make a determination of the value of the shares upon such investigation as to him seems proper. The appraiser shall also afford a reasonable opportunity to the parties interested to submit to him pertinent evidence on the value of the shares. The appraiser, also, shall have such powers and authority as may be conferred upon masters by the rules of the Court of Chancery or by the order of his appointment.

(f) The appraiser shall determine the value of the stock of the stockholders adjudged by the Court of Chancery to be entitled to payment

therefor and shall file his report respecting such value in the office of the Register in Chancery and notice of the filing of such report shall be given by the Register in Chancery to the parties in interest. Such report shall be subject to exceptions to be heard before the Court both upon the law and facts. The Court shall by its decree determine the value of the stock of the stockholders entitled to payment therefor and shall direct the payment of such value, together with interest, if any, as hereinafter provided, to the stockholders entitled thereto by the surviving or resulting corporation upon the transfer to it of the certificates representing such stock, which decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any other state.

(g) At the time of appointing the appraiser or at any time thereafter the Court may require the stockholders who demanded payment for their shares to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings, and if any stockholder fails to comply with such direction the Court may dismiss the proceedings as to such stockholder.

(h) The cost of any such appraisal, including a reasonable fee to and the reasonable expenses of the appraiser, but exclusive of fees of counsel or of experts retained by any party, may on application of any party in interest be determined by the Court and taxed upon the parties to such appraisal or any of them as appears to be equitable, except that the cost of giving the notice by publication and by registered mail hereinabove provided for shall be paid by the corporation. The Court may, on application of any party in interest, determine the amount of interest, if any, to be paid upon the value of the stock of the stockholders entitled thereto.

(i) Any stockholder who has demanded payment of his stock as herein provided shall not thereafter be entitled to vote such stock for any purpose or be entitled to the payment of dividends or other distribution on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation) unless the appointment of an appraiser shall not be applied for within the time herein provided, or the proceeding be dismissed as to such stockholder, or unless such stockholder shall with the written approval of the corporation deliver to the corporation a written withdrawal of his objections to and an acceptance of the merger or consolidation, in any of which cases the right of such stockholder to payment for his stock shall cease.

(j) The shares of the surviving or resulting corporation into which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

(k) This section shall not apply to the shares of any class of stock which, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders at which the agreement of merger or consolidation is to be acted on, were either (1) registered on a national securities exchange, or (2) held of record by not less than 2,000 stockholders, unless the certificate of incorporation of the corporation issuing such stock shall otherwise provide; nor shall this section apply to any of the shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation, as provided in subsection (f) of section 251 of this title. This subsection shall not be applicable to stockholders of a corporation whose stock in a constituent corporation was not converted by the merger or consolidation solely into stock of the corporation resulting from or surviving a merger pursuant to sections 251 or 252 of this title.

SUBCHAPTER X. SALE OF ASSETS, DISSOLUTION AND WINDING UP

Sec.

§ 271. Sale, lease or exchange of assets; consideration; procedure

(a) Every corporation may at any meeting of its board of directors sell, lease, or exchange all or substantially all of its property and assets, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or other property, including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors deems expedient and for the best interests of the corporation, when and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding

having voting power at a stockholders' meeting duly called upon at least 20 days notice containing notice of the proposed sale, lease or exchange, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding.

(b) Notwithstanding stockholder authorization or consent to a proposed sale, lease or exchange of a corporation's property and assets, the board of directors may abandon such proposed sale, lease or exchange without further action by the stockholders, subject to the rights, if any, of third parties under any contract relating thereto.

§ 272. Mortgage or pledge of assets

The authorization or consent of stockholders to the mortgage or pledge of a corporation's property and assets shall not be necessary, except to the extent that the certificate of incorporation otherwise provides.

§ 273. Dissolution of joint venture corporation having two stockholders

(a) If the stockholders of a corporation of this State, having only two stockholders each of which own 50% of the stock therein, shall be engaged in the prosecution of a joint venture and if such stockholders shall be unable to agree upon the desirability of discontinuing such joint venture and disposing of the assets used in such venture, either stockholder may file with the Court of Chancery a petition stating that it desires to discontinue such joint venture and to dispose of the assets used in such venture in accordance with a plan to be agreed upon by both stockholders or that, if no such plan shall be agreed upon by both stockholders, the corporation be dissolved. Such petition shall have attached thereto a copy of the proposed plan of discontinuance and distribution and a certificate stating that copies of such petition and plan have been transmitted in writing to the other stockholder and to the directors and officers of such corporation. The petition and certificate shall be executed and acknowledged in accordance with section 103 of this title.

(b) Unless both stockholders file with the Court of Chancery (i) within three months of the date of the filing of such petition, a certificate similarly executed and acknowledged stating that they have agreed on such plan, or a modification thereof, and (ii) within one year from the date of the filing of such petition, a certificate similarly executed and acknowledged stating that the distribution provided by such plan has been completed, the Court of Chancery may dissolve such corporation and may by appointment of one or more trustees or receivers with all the powers and title of a trustee or receiver appointed under section 279 of this title, administer and wind up its affairs. Either or both of the above periods may be extended by agreement of the stockholders, evidenced by a certificate similarly executed, acknowledged and filed with the Court of Chancery prior to the expiration of such period.

§ 274. Dissolution before beginning business

Before beginning the business for which corporation was organized, a majority of the incorporators, or, if directors were named in the certificate of incorporation or have been elected, a majority of the directors, may surrender all of the corporation's 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 directors, stating that the business or activity for which the corporation was organized has not been begun; that no part of the capital of the corporation has been paid or, if some capital has been paid, that the amount actually paid in for the corporation's shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto; that all issued stock certificates, if any, have been surrendered and cancelled; and that all rights and franchises of the corporation are surrendered. Upon the filing of such certificate in accordance with section 103 of this title, the corporation shall be dissolved.

§ 275. Dissolution; procedure

(a) If it should be deemed advisable in the judgment of the board of directors of any corporation that it should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice to be mailed to each stockholder having voting power of the adoption of the resolution and of a meeting of such stockholders to take action upon the resolution so adopted by the board.

(b) At the meeting a vote of the stockholders having voting power shall be taken for and against the proposed dissolution. If holders of two-thirds of the voting stock shall vote for the proposed dissolution, a certificate stating that the dissolution has been authorized in accordance with the provisions of this section and setting forth the names and residences of the directors and officers shall be executed, acknowledged and filed in accordance with section 103 of this title. The Secretary of State, upon being satisfied that the requirements of this section have been complied with, shall issue his certificate that the certificate has been filed, and thereupon, the corporation shall be dissolved and the certificate of the Secretary of State shall be recorded in the office of the Recorder in the county in which the corporation maintained its registered office in this State.

§ 276. Dissolution of non-profit, non-stock corporation; procedure

Whenever it shall be desired to dissolve any corporation not for profit and having no capital stock, the governing body shall perform all the acts necessary for dissolution which are required by section 275 of this title to be performed by the board of directors of a corporation having capital stock. If the members of a corporation not for profit and having no capital stock are entitled to vote for the election of

members of its governing body, they shall perform all the acts necessary for dissolution which are required by section 275 of this title to be performed by the stockholders of a corporation having capital stock. 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 corporation not for profit or having no capital stock shall conform as nearly as may be to the proceedings prescribed by section 275 of this title for the dissolution of corporations having capital stock.

§ 277. Payment of franchise taxes before dissolution

No corporation shall be dissolved under this chapter until all franchise taxes due to or assessable by the State have been paid by the corporation.

§ 278. Continuation of corporation after dissolution for purposes of suit and winding up affairs

All corporations, whether they expire by their own limitation or are otherwise dissolved, shall nevertheless be continued, for the term of three years from such expiration or dissolution or for such longer period as the Court of Chancery shall in its discretion direct, bodies corporate for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to their stockholders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit, or proceeding begun by or against the corporation either prior to or within three years after the date of its expiration or dissolution, the corporation shall, for the purpose of such actions, suits or proceedings, be continued bodies corporate beyond the three-year period and until any judgments, orders, or decrees therein shall be fully executed, without the necessity for any special direction to that effect by the Court of Chancery.

§ 279. Trustees or receivers for dissolved corporations; appointment; powers

When any corporation organized under this chapter shall be dissolved in any manner whatever, the Court of Chancery, on application of any creditor or stockholder of the corporation, or on application of any one, who, in the Court's discretion, shows good cause therefor, at any time, may either appoint one or more of the directors of the corporation to be trustees, or appoint one or more persons to be receivers, of and for the corporation, to take charge of the corporation's property,

and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers may be continued as long as the Court of Chancery shall think necessary for the purposes aforesaid.

§ 280. Jurisdiction of court

The Court of Chancery shall have jurisdiction of the application prescribed in section 279 of this title and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

§ 281. Duties of trustees or receivers; payment and distribution to creditors and stockholders

The trustees or receivers of a dissolved corporation, after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose. If there shall be any balance remaining after the payment of the debts and necessary expenses, they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation or their legal representatives.

§ 282. Abatement of pending actions; substitution of dissolutior trustees or receivers

If any corporation becomes dissolved in any manner whatever be fore final judgment obtained in any action pending or commenced i any court of this State against the corporation, the action shall no abate by reason thereof, but the dissolution of the corporation bein suggested upon the record, and the names of the trustees or receiver of the corporation being entered upon the record, and notice thereo served upon the trustees or receivers, or if such service be impractica ble upon the counsel of record in such case, the action shall proceed t final judgment against the trustees or receivers in the name of the cor poration.

§ 283. Revocation or forfeiture of charter; proceedings

(a) The Court of Chancery shall have jurisdiction to revoke or fo feit the charter of any corporation for abuse, mis-use or non-use of it

corporate powers, privileges or franchises. The Attorney General shall, upon his own motion or upon the relation of a proper party, proceed for this purpose by complaint in the County in which the registered office of the corporation is located.

(b) The Court of Chancery shall have power, by appointment of receivers or otherwise, to administer and wind up the affairs of any corporation whose charter shall be revoked or forfeited by any court under any section of this title or otherwise, and to make such orders and decrees with respect thereto as shall be just and equitable respecting its affairs and assets and the rights of its stockholders and creditors.

(c) No proceeding shall be instituted under this section for non-use of any corporation's powers, privileges or franchises during the first two years after its incorporation.

§ 284. Dissolution or forfeiture of charter by decree of court; filing

Whenever any corporation is dissolved or its charter forfeited by decree or judgment of the Court of Chancery, the decree or judgment shall be forthwith filed by the Register in Chancery of the county in which the decree or judgment was entered, in the office of the Secretary of State, and a note thereof shall be made by the Secretary of State on the corporation's charter or certificate of incorporation and on the index thereof and shall be published by him in the next volume of laws, which he shall cause to be published.

SUBCHAPTER XI. INSOLVENCY; RECEIVERS AND TRUSTEES

Sec.

§ 291. Receivers for insolvent corporations; appointment and powers

Whenever a corporation shall be insolvent, the Court of Chancery, on the application of any creditor or stockholder thereof, may,

at any time, appoint one or more persons to be receivers of and for the corporation, to take charge of its assets, estate, effects, business and affairs, and to collect the outstanding debts, claims, and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by the corporation and which may be necessary or proper. The powers of the receivers shall be such and shall continue so long as the court shall deem necessary.

§ 292. Title to property; filing order of appointment; exception

(a) Trustees or receivers appointed by the Court of Chancery of and for any corporation, and their respective survivors and successors, shall, upon their appointment and qualification or upon the death, resignation or discharge of any co-trustee or co-receiver, be vested by operation of law and without any act or deed, with the title of the corporation to all of its property, real, personal or mixed of whatsoever nature, kind, class or description, and wheresoever situate, except real estate situate outside this State.

(b) Trustees or receivers appointed by the Court of Chancery shall, within 20 days from the date of their qualification, file in the office of the Recorder in each county in this State, in which any real estate belonging to the corporation may be situated, a certified copy of the order of their appointment and evidence of their qualification.

(c) This section shall not apply to receivers appointed pendente lite.

§ 293. Notices to stockholders and creditors

All notices required to be given to stockholders and creditors in any action in which a receiver or trustee for a corporation was appointed shall be given by the Register in Chancery, unless otherwise ordered by the Court of Chancery.

§ 294. Receivers or trustees; inventory; list of debts and report

Trustees or receivers shall, as soon as convenient, file in the office of the Register in Chancery of the county in which the proceeding is pending, a full and complete itemized inventory of all the assets of the corporation which shall show their nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained. They shall make a report to the Court of their proceedings, whenever and as often as the Court shall direct.

§ 295. Creditors' proofs of claims; when barred; notice

All creditors shall make proof under oath of their respective claim against the corporation, and cause the same to be filed in the office o

the Register in Chancery of the county in which the proceeding is pending within six months from the date of the appointment of a trustee or receiver for the corporation, or sooner if the Court shall so order and direct. All creditors and claimants failing to do so, within the time limited by this section, or the time prescribed by the order of the Court, may, by direction of the Court, be barred from participating in the distribution of the assets of the corporation. The Court may also prescribe what notice, by publication or otherwise, shall be given to the creditors of the time fixed for the filing and making proof of claims.

§ 296. Adjudication of claims; appeal

(a) The Register in Chancery, immediately upon the expiration of the time fixed for the filing of claims, in compliance with the provisions of section 295 of this title, shall notify the trustee or receiver of the filing of the claims, and the trustee or receiver, within 30 days after receiving the notice, shall inspect the claims, and if the trustee or receiver or any creditor shall not be satisfied with the validity or correctness of the same, or any of them, the trustee or receiver shall forthwith notify the creditors whose claims are disputed of his decision. The trustee or receiver shall require all creditors whose claims are disputed to submit themselves to such examination in relation to their claims as the trustee or receiver shall direct, and the creditors shall produce such books and papers relating to their claims as shall be required. The trustee or receiver shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

(b) Every creditor or claimant who shall have received notice from the receiver or trustee that his claim has been disallowed in whole or in part may appeal to the Court of Chancery within 30 days thereafter. The Court, after hearing, shall determine the rights of the parties.

§ 297. Sale of perishable or deteriorating property

Whenever the property of a corporation is at the time of the appointment of a receiver or trustee encumbered with liens of any character, and the validity, extent or legality of any lien is disputed or brought in question, and the property of the corporation is of a character which will deteriorate in value pending the litigation respecting the lien, the Court of Chancery may order the receiver or trustee to sell the property of the corporation, clear of all encumbrances, at public or private sale, for the best price that can be obtained therefor, and pay the net proceeds arising from the sale thereof after deducting the costs of the sale into the court, there to remain subject to the order of the Court, and to be disposed of as the Court shall direct.

§ 298. Compensation, costs and expenses of receiver or trustee

The Court of Chancery, before making distribution of the assets of a corporation among the creditors or stockholders thereof, shall allow a reasonable compensation to the receiver or trustee for his services, and the costs and expenses incurred in and about the execution of his trust, and the costs of the proceedings in the Court, to be first paid out of the assets.

§ 299. Substitution of trustee or receiver as party; abatement of actions

A trustee or receiver, upon application by him in the court in which any suit is pending, shall be substituted as party plaintiff in the place of the corporation in any suit or proceeding which was so pending at the time of his appointment. No action against a trustee or receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor or against the corporation in case no new trustee or receiver is appointed.

§ 300. Employee's lien for wages when corporation insolvent

Whenever any corporation of this State, or any foreign corporation doing business in this State, shall become insolvent, the employees doing labor or service of whatever character in the regular employ of the corporation, shall have a lien upon the assets thereof for the amount of the wages due to them, not exceeding two months' wages respectively, which shall be paid prior to any other debt or debts of the corporation. The word "employee" shall not be construed to include any of the officers of the corporation.

§ 301. Discontinuance of liquidation

The liquidation of the assets and business of an insolvent corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the Court of Chancery in its discretion, and subject to such condition as it may deem appropriate, may dismiss the proceedings and direct the receiver or trustee to redeliver to the corporation all of its remaining property and assets.

§ 302. Compromise or arrangement between corporation and creditors or stockholders

(a) Whenever the provision permitted by section 102(b) (2) of this title is included in the original certificate of incorporation of any corporation, all persons who become creditors or stockholders thereof shall be deemed to have become such creditors or stockholders subject in all respects to that provision and the same shall be absolutely

binding upon them. Whenever that provision is inserted in the certificate of incorporation of any such corporation by an amendment of its certificate all persons who become creditors or stockholders of such corporation after such amendment shall be deemed to have become such creditors or stockholders subject in all respects to that provision and the same shall be absolutely binding upon them.

(b) The Court of Chancery may administer and enforce any compromise or arrangement made pursuant to the provision contained in section 102(b) (2) of this title and may restrain, pendente lite, all actions and proceedings against any corporation with respect to which the Court shall have begun the administration and enforcement of that provision and may appoint a temporary receiver for such corporation and may grant the receiver such powers as it deems proper, and may make and enforce such rules as it deems necessary for the exercise of such jurisdiction.

§ 303. Reorganization under a statute of the United States; effectuation

(a) Any corporation of this State, a plan of reorganization of which, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, has been or shall be confirmed by the decree or order of a court of competent jurisdiction, may put into effect and carry out the plan and the decrees and orders of the court or judge relative thereto and may take any proceeding and do any act provided in the plan or directed by such decrees and orders, without further action by its directors or stockholders. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the trustee or trustees of such corporation appointed in the reorganization proceedings (or a majority thereof), or if none be appointed and acting, by designated officers of the corporation, or by a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and stockholders of the corporation.

(b) Such corporation may, in the manner provided in subsection (a) of this section, but without limiting the generality or effect of the foregoing, alter, amend, or repeal its by-laws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its certificate of incorporation, and make any change in its capital or capital stock, or any other amendment, change, or alteration, or provision, authorized by this chapter; be dissolved, transfer all or part of its assets, merge or consolidate as permitted by this chapter, in which case, however, no stockholder shall have any statutory right of appraisal of his stock; change the location of its registered office, change its registered agent, and remove or appoint any agent to receive

service of process; authorize and fix the terms, manner and conditions of, the issuance of bonds, debentures or other obligations, whether or not convertible into stock of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for stock of any class; or lease its property and franchises to any corporation, if permitted by law.

(c) A certificate of any amendment, change or alteration, or of dissolution, or any agreement of merger or consolidation, made by such corporation pursuant to the foregoing provisions, shall be filed with the Secretary of State and recorded in accordance with section 103 of this title, and, subject to subsection (d) of said section 103, shall thereupon become effective in accordance with its terms and the provisions hereof. Such certificate, agreement of merger or other instrument shall be made, executed and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees appointed in the reorganization proceedings (or a majority thereof), or, if none be appointed and acting, by the officers of the corporation, or by a master or other representative appointed by the court or judge, and shall certify that provision for the making of such certificate, agreement or instrument is contained in a decree or order of a court or judge having jurisdiction of a proceeding under such applicable statute of the United States for the reorganization of such corporation.

(d) The provisions of this section shall cease to apply to such corporation upon the entry of a final decree in the reorganization proceedings closing the case and discharging the trustee or trustees, if any.

(e) On filing any certificate, agreement, report or other paper made or executed pursuant to the provisions of this section, there shall be paid to the Secretary of State for the use of the State the same fees as are payable by corporations not in reorganization upon the filing of like certificates, agreements, reports or other papers.

SUBCHAPTER XII. RENEWAL, REVIVAL, EXTENSION AND RESTORATION OF CERTIFICATE OF INCORPORATION OR CHARTER

Sec.

§ 311. Revocation of voluntary dissolution

(a) At any time prior to the expiration of three years following the dissolution of a corporation pursuant to section 275 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 section 278 of this title, a corporation may revoke the dissolution theretofore effected by it in the following manner—

(1) The board of directors shall adopt a resolution recommending that the dissolution be revoked and directing that the question of the revocation be submitted to a vote at a special meeting of stockholders.

(2) Notice of the special meeting of stockholders shall be given in accordance with section 222 of this title to each stockholder whose shares were entitled to vote before the corporation was dissolved.

(3) At the meeting a vote of the stockholders entitled to vote thereat shall be taken on a resolution to revoke the dissolution, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of all of the stock which had voting power at the time of the dissolution.

(4) Upon the adoption of the resolution, a certificate of revocation of dissolution shall be executed and acknowledged in accordance with section 103 of this title, which shall state:

(i) the name of the corporation;

(ii) the names and respective addresses of its officers;

(iii) the names and respective addresses of its directors;

(iv) that the holders of at least two-thirds of all of the stock of the corporation having voting power at the time of its dissolution have voted in favor of a resolution to revoke the dissolution; or, if it be the fact, that, in lieu of a meeting and vote of stockholders, the stockholders have given their written consent to the revocation in accordance with section 228 of this title.

(b) Upon the filing in the office of the Secretary of State of the certificate of revocation of dissolution, the Secretary of State, upon being satisfied that the requirements of this section have been complied with, shall issue his certificate that the dissolution has been revoked, and the certificate of the Secretary of State shall be recorded in the office of the Recorder of the county in which the registered office of the corporation was maintained. Upon the issuance of such certificate by the Secretary of State, the revocation of the dissolution shall become effective and the corporation may again carry on its business, subject, if the certificate should not be recorded, to section 103(d) of this title.

(c) If after the dissolution became effective any other corporation organized under the laws of this State shall have adopted the same name as the corporation, or shall have adopted a name so nearly similar thereto as not to distinguish it from the corporation, or any foreign corporation shall have qualified to do business in this State under the same name as the corporation or under a name so nearly similar thereto as not to distinguish it from the corporation, then, in such case, the corporation shall not be reinstated under the same name

which it bore when its dissolution became effective, but shall adopt and be reinstated under some other name, and in such case the certificate to be filed under the provisions of this section shall set forth the name borne by the corporation at the time its dissolution became effective and the new name under which the corporation is to be reinstated.

(d) Nothing in this section shall be construed to affect the jurisdiction or power of the Court of Chancery under sections 279 or 280 of this title.

§ 312. Renewal, revival, extension and restoration of certificate of incorporation

(a) As used in this section, the term "certificate of incorporation" includes the charter of a corporation organized under any special act or any law of this State.

(b) Any corporation may, at any time before the expiration of the time limited for its existence and any corporation whose certificate of incorporation has become inoperative by law for non-payment of taxes and any corporation whose certificate of incorporation has expired by reason of failure to renew it or whose certificate of incorporation has been renewed, but, through failure to comply strictly with the provisions of this chapter, the validity of whose renewal has been brought into question, may at any time procure an extension, restoration, renewal or revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto.

(c) The extension, restoration, renewal or revival of the certificate of incorporation may be procured by executing, acknowledging, filing and recording a certificate in accordance with section 103 of this title.

(d) The certificate required by subsection (c) shall state—

(1) The name of the corporation, which shall be the existing name of the corporation or the name it bore when its certificate of incorporation expired, except as provided in subsection (f) of this section;

(2) The address (which shall include the street, city and county) of the corporation's registered office in this State and the name of its registered agent at such address;

(3) Whether or not the renewal, restoration or revival is to be perpetual and if not perpetual the time for which the renewal, restoration or revival is to continue and, in case of renewal before the expiration of the time limited for its existence, the date when the renewal is to commence, which shall be prior to the date of the expiration of the old certificate of incorporation which it is desired to renew;

(4) That the corporation desiring to be renewed or revived and so renewing or reviving its certificate of incorporation was organized under the laws of this State;

(5) The date when the certificate of incorporation would expire, if such is the case, or such other facts as may show that the certificate of incorporation has become inoperative or void or that the validity of any renewal has been brought into question;

(6) That the certificate for renewal or revival is filed by authority of those who were directors or members of the governing body of the corporation at the time its certificate of incorporation expired or who were elected directors or members of the governing body of the corporation as provided in subsection (h) of this section.

(e) Upon the filing of the certificate in accordance with section 103 of this title the corporation shall be renewed and revived with the same force and effect as if its certificate of incorporation had not become inoperative and void or had not expired by limitation. Such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its certificate of incorporation by the corporation, its officers and agents during the time when its certificate of incorporation was inoperative or void or after its expiration by limitation, with the same force and effect and to all intents and purposes as if the certificate of incorporation had at all times remained in full force and effect. All real and personal property, rights and credits, which belonged to the corporation at the time its certificate of incorporation became inoperative or void, or expired by limitation and which were not disposed of prior to the time of its revival or renewal shall be vested in the corporation, after its revival and renewal, as fully and amply as they were held by the corporation at and before the time its certificate of incorporation became inoperative or void or expired by limitation, and the corporation after its renewal and revival shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its officers and agents prior to its reinstatement, as if its certificate of incorporation had at all times remained in full force and effect.

(f) If, since the certificate of incorporation became inoperative or void for non-payment of taxes or expired by limitation, any other corporation organized under the laws of this State shall have adopted the same name as the corporation sought to be renewed or revived or shall have adopted a name so nearly similar thereto as not to distinguish it from the corporation to be renewed or revived or any foreign corporation qualified in accordance with section 371 of this title shall have adopted the same name as the corporation sought to be renewed or revived or shall have adopted a name so nearly similar thereto as not to distinguish it from the corporation to be renewed or revived, then in such case the corporation to be renewed or revived shall not be renewed under the same name which it bore when its certificate of incorporation became inoperative or void or ex-

pired but shall adopt or be renewed under some other name and in suc
case the certificate to be filed under the provisions of this sectio
shall set forth the name borne by the corporation at the time its ce
tificate of incorporation became inoperative or void or expired an
the new name under which the corporation is to be renewed or r
vived.

(g) Any corporation seeking to renew or revive its certificate
incorporation under the provisions of this chapter shall pay to th
State a sum equal to all franchise taxes and penalties thereon due
the time its certificate of incorporation became inoperative and voi
for nonpayment of taxes, or expired by limitation or otherwise.

(h) If a sufficient number of the last acting officers of any co
poration desiring to renew or revive its certificate of incorporation a
not available by reason of death, unknown address or refusal or negle
to act, the directors of the corporation or those remaining on the boar
even if only one, may elect successors to such officers. In any ca
where there shall be no directors of the corporation available f
the purposes aforesaid, the stockholders may elect a full board
directors, as provided by the by-laws of the corporation, and t
board shall then elect such officers as are provided by law, by the ce
tificate of incorporation or by the by-laws to carry on the business a
affairs of the corporation. A special meeting of the stockholders f
the purposes of electing directors may be called by any officer,
rector or stockholder upon notice given in accordance with section 2
of this title.

(i) After a renewal or revival of the certificate of incorporation
the corporation shall have been effected (except where a special me
ing of stockholders has been called in accordance with the provisio
of subsection (h), the officers who signed the certificate of renewal
revival shall, jointly, forthwith call a special meeting of the sto
holders of the corporation upon notice given in accordance with s
tion 222 of this title, and at the special meeting the stockholders sh
elect a full board of directors, which board shall then elect such
ficers as are provided by law, by the certificate of incorporation or
by-laws to carry on the business and affairs of the corporation.

(j) Whenever it shall be desired to renew or revive the certific
of incorporation of any corporation organized under this chapter
for profit and having no capital stock, the governing body shall p
form all the acts necessary for the renewal or revival of the char
of the corporation which are performed by the board of directors
the case of a corporation having capital stock. The members of
corporation not for profit and having no capital stock who are entit
to vote for the election of members of its governing body, sh
perform all the acts necessary for the renewal or revival of the
tificate of incorporation of the corporation which are performed
the stockholders in the case of a corporation having capital stock.
all other respects, the procedure for the renewal or revival of the

tificate of incorporation of a corporation not for profit or having no capital stock shall conform, as nearly as may be applicable, to the procedure prescribed in this section for the renewal or revival of the certificate of incorporation of a corporation having capital stock.

§ 313. Renewal, etc. of certificate of incorporation or charter of religious, charitable, educational, etc. corporations

(a) Every religious corporation, and every purely charitable or educational association, and every company, association or society, which by its certificate of incorporation, had, at the time its certificate of incorporation or charter became void by operation of law, 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, whose certificate of incorporation or charter has become inoperative and void, by operation of section 510 of this title for failure to file annual reports required, and for failure to pay taxes or penalties from which it would have been exempt if the reports had been filed, shall be deemed to have filed all the reports and be relieved of all the taxes and penalties, upon satisfactory proof submitted to the Secretary of State of its right to be classified under any of the classifications set out in this subsection, and upon filing with the Secretary of State a certificate of renewal and revival in manner and form as required by section 312 of this title.

(b) Upon the filing by the corporation of the proof of classification as required in subsection (a) of this section, and the filing of the certificate of renewal and revival, and payment of the filing fee as required in said subsection, the Secretary of State shall issue a certificate that the corporation's certificate of incorporation or charter has been renewed and revived as of the date of the certificate, and upon the recording of the certificate of the Secretary of State in the office of the Recorder for the county in which the original certificate of incorporation or charter of the corporation was recorded, the corporation shall be renewed and revived with the same force and effect as is provided in subsection (e) of section 312 of this title for other corporations.

(c) Nothing contained in this section relieves any corporation of any of the classifications set out in subsection (a) of this section from filing the annual report required by section 502 of this title.

§ 314. Status of corporation

Any corporation desiring to renew, extend and continue its corporate existence, shall upon complying with the provisions of sections 312 or 313 of this title, and with the provisions of section 2 of Article IX of the Constitution of this State, be and continue for the time stated in its certificate of renewal, a corporation and shall, in addition to the

rights, privileges and immunities conferred by its charter, possess and enjoy all the benefits of this chapter, which are applicable to the nature of its business, and shall be subject to the restrictions and liabilities by this chapter imposed on such corporations.

SUBCHAPTER XIII. SUITS AGAINST CORPORATIONS, DIRECTORS, OFFICERS OR STOCKHOLDERS

Sec.

§ 321. Service of process on corporations

(a) Service of legal process upon any corporation of this State shall be made by delivering a copy personally to any officer or director of the corporation in this State, or the registered agent of the corporation in this State, or by leaving it at the dwelling house or usual place of abode in this State of any officer, director or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the corporation in this State. If the registered agent be a corporation, service of process upon it as such agent may be made by serving, in this State, a copy thereof on the president, vice-president, secretary, assistant secretary, or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any officer, director or registered agent, or at the registered office or other place of business of the corporation in this State, to be effective must be delivered thereat at least six days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in his return thereto. Process returnable forthwith must be delivered personally to the officer, director or registered agent.

(b) In case the officer whose duty it is to serve legal process, cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the corporation upon the Secretary of State, and the service

shall be as effectual to all intents and purposes as if made in any of the ways provided for in subsection (a). Within two business days after service upon the Secretary of State, it shall be the duty of the Secretary of State to notify the corporation thereof by letter directed to the corporation at its last registered office, in which letter shall be enclosed a copy of the process or other papers served. It shall be the duty of the plaintiff in any action in which the process shall be issued, to pay to the Secretary of State, for use of the State, the sum of $5, which sum shall be taxed as a part of the costs in the action if the plaintiff shall prevail therein. The Secretary of State shall alphabetically enter in the "process book" the name of the plaintiff and defendant, the title of the action in which process has been served upon him, the text of the process so served and the return day thereof, and the day and hour when the service was made.

(c) Service upon corporations may also be made in accordance with section 3111 of Title 10 or any other statute or rule of court.

§ 322. Failure of corporation to obey order of Court; appointment of receiver

Whenever any corporation shall refuse, fail or neglect to obey any order or decree of any court of this State within the time fixed by the court for its observance, such refusal, failure or neglect shall be a sufficient ground for the appointment of a receiver of the corporation by the Court of Chancery. If the corporation be a foreign corporation, such refusal, failure, or neglect shall be a sufficient ground for the appointment of a receiver of the assets of the corporation within this State.

§ 323. Failure of corporation to obey writ of mandamus; quo warranto proceedings for forfeiture of charter

If any corporation fails to obey the mandate of any peremptory writ of mandamus issued by a court of competent jurisdiction of this State for a period of 30 days after the serving of the writ upon the corporation in any manner as provided by the laws of this State for the service of writs, any party in interest in the proceeding in which the writ of mandamus issued may either himself or through his or its attorney file a statement of such fact with the Attorney General of this State, and it shall thereupon be the duty of the Attorney General to forthwith commence proceedings of quo warranto against the corporation in a court of competent jurisdiction, and the court, upon competent proof of such state of facts and proper proceedings had in such proceeding in quo warranto, shall decree the charter of the corporation forfeited.

§ 324. Attachment of shares of stock or any option, right or interest therein; procedure; sale; title upon sale; proceeds

(a) The shares of any person in any corporation with all the rights thereto belonging, or any person's option to acquire the shares,

or his right or interest in the shares, may be attached for debt, or other demands. So many of the shares, or so much of the option, right or interest therein may be sold at public sale to the highest bidder, as shall be sufficient to satisfy the debt, or other demand, interest and costs, upon an order issued therefor by the court from which the attachment process issued, and after such notice as is required for sales upon execution process. If the debtor lives out of the county, a copy of the order shall be sent by registered or certified mail, return receipt requested, to his last known address, and shall also be published in a newspaper published in the county of his last known residence, if there be any, ten days before the sale; and if the debtor be a non-resident of this State shall be mailed as aforesaid and published at least twice for two successive weeks, the last publication to be at least 10 days before the sale, in a newspaper published in the county where the attachment process issued.

(b) When shares of stock, or any option to acquire such or any right or interest in such, shall be so attached, a certified copy of the process shall be left in this state with any officer or director, or with the registered agent of the corporation, who shall give the person serving the process a certificate of the number of shares held or owned by the debtor in the corporation, with the number or other marks distinguishing the same, or in case the debtor appears on the books of the corporation to have an option to acquire shares of stock or any right or interest in any shares of stock of the corporation there shall be given the person serving the process a certificate setting forth any such option, right or interest in the shares of the corporation in the language and form in which the option, right or interest appears on the books of the corporation, anything in the certificate of incorporation or by-laws of the corporation to the contrary notwithstanding. Service upon a corporate registered agent may be made in the manner provided in section 321 of this title.

(c) If the shares of stock or any of them or the option to acquire shares or any such right or interest in shares, or any part of them, be sold as provided in subsection (a) of this section, any assignment, or transfer thereof, by the debtor, after attachment so laid, shall be void. If, after sale made and confirmed, a certified copy of the order of sale and return be left with any officer or director or with the registered agent of the corporation, the purchaser shall be thereby entitled to the shares or any option to acquire shares or any right or interest in shares so purchased, and all income, or dividends which may have been declared, or become payable thereon since the attachment laid. Such sale, returned and confirmed, shall transfer the shares or the option to acquire shares or any right or interest in shares sold to the purchaser, as fully as if the debtor, or defendant, had transferred the same to him according to the certificate of incorporation or by-laws of the corporation, anything in the certificate of incorporation or by-laws to the contrary notwithstanding. No order of sale shall be issued until after final judgment shall have been rendered in any

case. The court which issued the levy and confirmed the sale shall have the power to make an order compelling the corporation, the shares of which were sold, to issue new certificates to the purchaser at the sale and to cancel the registration of the shares attached on the books of the corporation upon the giving of an open end bond by such purchaser adequate to protect such corporation.

(d) The money arising from the sale of the shares or from the sale of the option or right or interest shall be applied and paid, by the public official receiving the same, as by law is directed as to the sale of personal property in cases of attachment.

§ 325. Actions against officers, directors or stockholders to enforce liability of corporation; unsatisfied judgment against corporation

(a) When the officers, directors or stockholders of any corporation shall be liable by the provisions of this chapter to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action, at law or in equity, against any one or more of them, and the complaint shall state the claim against the corporation, and the ground on which the plaintiff expects to charge the defendants personally.

(b) No suit shall be brought against any officer, director, or stockholder for any debt of a corporation of which he is an officer, director or stockholder, until judgment be obtained therefor against the corporation and execution thereon returned unsatisfied.

§ 326. Action by officer, director or stockholder against corporation for corporate debt paid

When any officer, director or stockholder shall pay any debt of a corporation for which he is made liable by the provisions of this chapter, he may recover the amount so paid in an action against the corporation for money paid for its use, and in such action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.

§ 327. Stockholder's derivative action; allegation of stock ownership

In any derivative suit instituted by a stockholder of a corporation, it shall be averred in the complaint that the plaintiff was a stockholder of the corporation at the time of the transaction of which he complains or that his stock thereafter devolved upon him by operation of law.

§ 328. Liability of corporation, etc., impairment by certain transactions

The liability of a corporation of this State, or the stockholders, directors or officers thereof, or the rights or remedies of the creditors

thereof, or of persons doing or transacting business with the corporation, shall not in any way be lessened or impaired by the sale of its assets, or by the increase or decrease in the capital stock of the corporation, or by its merger or consolidation with one or more corporations or by any change or amendment in its certificate of incorporation.

§ 329. Defective organization of corporation as defense

(a) No corporation of this State and no person sued by any such corporation shall be permitted to assert the want of legal organization as a defense to any claim.

(b) This section shall not be construed to prevent judicial inquiry into the regularity or validity of the organization of a corporation, or its lawful possession of any corporate power it may assert in any other suit or proceeding where its corporate existence or the power to exercise the corporate rights it asserts is challenged, and evidence tending to sustain the challenge shall be admissible in any such suit or proceeding.

§ 330. Usury; pleading by corporation

No corporation shall plead any statute against usury in any court of law or equity in any suit instituted to enforce the payment of any bond, note or other evidence of indebtedness issued or assumed by it

SUBCHAPTER XIV. CLOSE CORPORATIONS; SPECIAL PROVISIONS

Sec.

§ 341. Law applicable to close corporation

(a) This subchapter applies to all close corporations, as defined in section 342 of this title. Unless a corporation elects to become a close corporation under this subchapter in the manner prescribed in this subchapter, it shall be subject in all respects to the provisions of this chapter, except the provisions of this subchapter.

(b) All provisions of this chapter shall be applicable to all close corporations, as defined in section 342 of this title, except insofar as this subchapter otherwise provides.

§ 342. Close corporation defined; contents of certificate of incorporation

(a) A close corporation is a corporation organized under this chapter whose certificate of incorporation contains the provisions required by section 102 of this title and, in addition, provides that:

(1) All of the corporation's issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding thirty; and

(2) All of the issued stock of all classes shall be subject to one or more of the restrictions on transfer permitted by section 202 of this title; and

(3) The corporation shall make no offering of any of its stock of any class which would constitute a "public offering" within the meaning of the United States Securities Act of 1933, as it may be amended from time to time.

(b) The certificate of incorporation of a close corporation may set forth the qualifications of stockholders, either by specifying classes of persons who shall be entitled to be holders of record of stock of any class, or by specifying classes of persons who shall not be entitled to be holders of stock of any class or both.

(c) For purposes of determining the number of holders of record of the stock of a close corporation, stock which is held in joint or common tenancy or by the entireties shall be treated as held by one stockholder.

§ 343. Formation of a close corporation

A close corporation shall be formed in accordance with sections 101, 102 and 103 of this title, except that:

(a) Its certificate of incorporation shall contain a heading stating the name of the corporation and that it is a close corporation, and

(b) Its certificate of incorporation shall contain the provisions required by section 342 of this title.

§ 344. Election of existing corporation to become a close corporation

Any corporation organized under this chapter may become a close corporation under this subchapter by executing, acknowledging, filing and recording, in accordance with section 103 of this title, a certificate of amendment of its certificate of incorporation which shall contain a statement that it elects to become a close corporation, the provisions required by section 342 of this title to appear in the certificate of incorporation of a close corporation, and a heading stating the name of the corporation and that it is a close corporation. Such amendment shall be adopted in accordance with the requirements of section 242 of this title, except that it must be approved by a vote of the holders of record of at least two-thirds of the shares of each class of stock of the corporation which are outstanding.

§ 345. Limitations on continuation of close corporation status

A close corporation continues to be such and to be subject to this subchapter until:

(a) It files with the Secretary of State a certificate of amendment deleting from its certificate of incorporation the provisions required or permitted by section 342 of this title to be stated in the certificate of incorporation to qualify it as a close corporation, or

(b) Any one of the provisions or conditions required or permitted by section 342 of this title to be stated in a certificate of incorporation to qualify a corporation as a close corporation has in fact been breached and neither the corporation nor any of its stockholders take the steps required by section 348 of this title to prevent such loss of status or to remedy such breach.

§ 346. Voluntary termination of close corporation status by amendment of certificate of incorporation; vote required

(a) A corporation may voluntarily terminate its status as a close corporation and cease to be subject to this subchapter by amending its certificate of incorporation to delete therefrom the additional provisions required or permitted by section 342 of this title to be stated in the certificate of incorporation of a close corporation. Any such amendment shall be adopted and shall become effective in accordance with section 242 of this title, except that it must be approved by a vote of the holders of record of at least two-thirds of the shares of each class of stock of the corporation which are outstanding.

(b) The certificate of incorporation of a close corporation may provide that on any amendment to terminate its status as a close corporation, a vote greater than two-thirds or a vote of all shares of a class shall be required; and if the certificate of incorporation contains such a provision, that provision shall not be amended, repealed or modified by any vote less than that required to terminate the corporation's status as a close corporation.

§ 347. Issuance or transfer of stock of a close corporation in breach of qualifying conditions

(a) If stock of a close corporation is issued or transferred to any person who is not entitled under any provision of the certificate of incorporation permitted by section 342(b) of this title to be a holder of record of stock of such corporation, and if the certificate for such stock conspicuously notes the qualifications of the persons entitled to be holders of record thereof, such person is conclusively presumed to have notice of the fact of his ineligibility to be a stockholder.

(b) If the certificate of incorporation of a close corporation states the number of persons, not in excess of thirty, who are entitled to be holders of record of its stock, and if the certificate for such stock conspicuously states such number, and if the issuance or transfer of stock to any person would cause the stock to be held by more than such number of persons, the person to whom such stock is issued or transferred is conclusively presumed to have notice of this fact.

(c) If a stock certificate of any close corporation conspicuously notes the fact of a restriction on transfer of stock of the corporation, and the restriction is one which is permitted by section 202 of this title, the transferee of the stock is conclusively presumed to have notice of the fact that he has acquired stock in violation of the restriction, if such acquisition violates the restriction.

(d) Whenever any person to whom stock of a close corporation has been issued or transferred has, or is conclusively presumed under this section to have, notice either (i) that he is a person not eligible to be a holder of stock of the corporation, or (ii) that transfer of stock to him would cause the stock of the corporation to be held by more than the number of persons permitted by its certificate of incorporation to hold stock of the corporation, or (iii) that the transfer of stock is in violation of a restriction on transfer of stock, the corporation may, at its option, refuse to register transfer of the stock into the name of the transferee.

(e) The provisions of subsection (d) shall not be applicable if the transfer of stock, even though otherwise contrary to subsections (a), (b) or (c), has been consented to by all the stockholders of the close corporation, or if the close corporation has amended its certificate of incorporation in accordance with section 346 of this title.

(f) The term "transfer", as used in this section, is not limited to a transfer for value.

(g) The provisions of this section do not in any way impair any rights of a transferee regarding any right to rescind the transaction or to recover under any applicable warranty express or implied.

§ 348. Involuntary termination of close corporation status; proceeding to prevent loss of status

(a) If any event occurs as a result of which one or more of the provisions or conditions included in a close corporation's certificate of

incorporation pursuant to section 342 of this title to qualify it as a close corporation has been breached, the corporation's status as a close corporation under this subchapter shall terminate unless

(1) within thirty days after the occurrence of the event, or within thirty days after the event has been discovered, whichever is later, the corporation files with the Secretary of State a certificate, executed and acknowledged in accordance with section 103 of this title, stating that a specified provision or condition included in its certificate of incorporation pursuant to section 342 of this title to qualify it as a close corporation has ceased to be applicable, and furnishes a copy of such certificate to each stockholder, and

(2) the corporation concurrently with the filing of such certificate takes such steps as are necessary to correct the situation which threatens its status as a close corporation, including, without limitation, the refusal to register the transfer of stock which has been wrongfully transferred as provided by section 347 of this title, or a proceeding under subsection (b) of this section.

(b) The Court of Chancery, upon the suit of the corporation or any stockholder, shall have jurisdiction to issue all orders necessary to prevent the corporation from losing its status as a close corporation, or to restore its status as a close corporation by enjoining or setting aside any act or threatened act on the part of the corporation or a stockholder which would be inconsistent with any of the provisions or conditions required or permitted by section 342 of this title to be stated in the certificate of incorporation of a close corporation, unless it is an act approved in accordance with section 346 of this title. The Court of Chancery may enjoin or set aside any transfer or threatened transfer of stock of a close corporation which is contrary to the terms of its certificate of incorporation or of any transfer restriction permitted by section 202 of this title, and may enjoin any public offering, as defined in section 342 of this title, or threatened public offering of stock of the close corporation.

§ 349. Corporate option where a restriction on transfer of a security is held invalid

If a restriction on transfer of a security of a close corporation is held not to be authorized by section 202 of this title, the corporation shall nevertheless have an option, for a period of thirty days after the judgment setting aside the restriction becomes final, to acquire the restricted security at a price which is agreed upon by the parties, or if no agreement is reached as to price, then at the fair value as determined by the Court of Chancery. In order to determine fair value, the Court may appoint an appraiser to receive evidence and report to the Court his findings and recommendation as to fair value. The appraiser shall have such powers and shall proceed, so far as applicable, in the same manner as appraisers appointed under section 262 of this title.

§ 350. Agreements restricting discretion of directors

A written agreement among the stockholders of a close corporation holding a majority of the outstanding stock entitled to vote, whether solely among themselves or with a party not a stockholder, is not invalid, as between the parties to the agreement, on the ground that it so relates to the conduct of the business and affairs of the corporation as to restrict or interfere with the discretion or powers of the board of directors. The effect of any such agreement shall be to relieve the directors and impose upon the stockholders who are parties to the agreement the liability for managerial acts or omissions which is imposed on directors to the extent and so long as the discretion or powers of the board in its management of corporate affairs is controlled by such agreement.

§ 351. Management by stockholders

The certificate of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. So long as this provision continues in effect,

(1) No meeting of stockholders need be called to elect directors;

(2) Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for purposes of applying provisions of this chapter; and

(3) The stockholders of the corporation shall be subject to all liabilities of directors.

Such a provision may be inserted in the certificate of incorporation by amendment if all incorporators and subscribers or all holders of record of all of the outstanding stock, whether or not having voting power, authorize such a provision. An amendment to the certificate of incorporation to delete such a provision shall be adopted by a vote of the holders of a majority of all outstanding stock of the corporation, whether or not otherwise entitled to vote. If the certificate of incorporation contains a provision authorized by this section, the existence of such provision shall be noted conspicuously on the face or back of every stock certificate issued by such corporation.

§ 352. Appointment of custodian for close corporation

(a) In addition to the provisions of section 226 of this title respecting the appointment of a custodian for any corporation, the Court of Chancery, upon application of any stockholder, may appoint one or more persons to be custodians, and, if the corporation is insolvent, to be receivers, of any close corporation when:

(1) Pursuant to section 351 of this title the business and affairs of the corporation are managed by the stockholders and they are so divided that the business of the corporation is suffering or is threat-

ened with irreparable injury and any remedy with respect to such deadlock provided in the certificate of incorporation or by-laws or in any written agreement of the stockholders has failed; or

(2) The petitioning stockholder has the right to the dissolution of the corporation under a provision of the certificate of incorporation permitted by section 355 of this title.

(b) In lieu of appointing a custodian for a close corporation under this section or section 226 of this title the Court of Chancery may appoint a provisional director, whose powers and status shall be as provided in section 353 of this title if the Court determines that it would be in the best interest of the corporation. Such appointment shall not preclude any subsequent order of the Court appointing a custodian for such corporation.

§ 353. Appointment of a provisional director in certain cases

(a) Notwithstanding any contrary provision of the certificate of incorporation or the by-laws or agreement of the stockholders, the Court of Chancery may appoint a provisional director for a close corporation if the directors are so divided respecting the management of the corporation's business and affairs that the votes required for action by the board of directors cannot be obtained with the consequence that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally.

(b) An application for relief under this section must be filed (1) by at least one-half of the number of directors then in office, (2) by the holders of at least one-third of all stock then entitled to elect directors, or, (3) if there be more than one class of stock then entitled to elect one or more directors, by the holders of two-thirds of the stock of any such class; but the certificate of incorporation of a close corporation may provide that a lesser proportion of the directors or of the stockholders or of a class of stockholders may apply for relief under this section.

(c) A provisional director shall be an impartial person who is neither a stockholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be determined by the Court of Chancery. A provisional director is not a receiver of the corporation and does not have the title and powers of a custodian or receiver appointed under sections 226 and 291 of this title. A provisional director shall have all the rights and powers of a duly elected director of the corporation, including the right to notice of and to vote at meetings of directors, until such time as he shall be removed by order of the Court of Chancery or by the holders of a majority of all shares then entitled to vote to elect directors or by the holders of two-thirds of the shares of that class or voting shares which filed the application for appointment of a provisional director. His compensation shall be determined by agreement between him and the corporation subject to approval of the Court or

Chancery, which may fix his compensation in the absence of agreement or in the event of disagreement between the provisional director and the corporation.

(d) Even though the requirements of subsection (b) of this section relating to the number of directors or stockholders who may petition for appointment of a provisional director are not satisfied, the Court of Chancery may nevertheless appoint a provisional director if permitted by subsection (b) of section 352 of this title.

§ 354. Operating corporation as partnership

No written agreement among stockholders of a close corporation, nor any provision of the certificate of incorporation or of the by-laws of the corporation, which agreement or provision relates to any phase of the affairs of such corporation, including but not limited to the management of its business or declaration and payment of dividends or other division of profits or the election of directors or officers or the employment of stockholders by the corporation or the arbitration of disputes, shall be invalid on the ground that it is an attempt by the parties to the agreement or by the stockholders of the corporation to treat the corporation as if it were a partnership or to arrange relations among the stockholders or between the stockholders and the corporation in a manner that would be appropriate only among partners.

§ 355. Stockholders' option to dissolve corporation

(a) The certificate of incorporation of any close corporation may include a provision granting to any stockholder, or to the holders of any specified number or percentage of shares of any class of stock, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the stockholders exercising such option shall given written notice thereof to all other stockholders. After the expiration of 30 days following the sending of such notice, the dissolution of the corporation shall proceed as if the required number of stockholders having voting power had consented in writing to dissolution of the corporation as provided by section 228 of this title.

(b) If the certificate of incorporation as originally filed does not contain a provision authorized by subsection (a), the certificate may be amended to include such provision if adopted by the affirmative vote of the holders of all the outstanding stock, whether or not entitled to vote, unless the certificate of incorporation specifically authorizes such an amendment by a vote which shall be not less than two-thirds of all the outstanding stock whether or not entitled to vote.

(c) Each stock certificate in any corporation whose certificate of incorporation authorizes dissolution as permitted by this section shall

conspicuously note on the face thereof the existence of the provision. Unless noted conspicuously on the face of the stock certificate, the provision is ineffective.

§ 356. Effect of this subchapter on other laws

The provisions of this subchapter shall not be deemed to repeal any statute or rule of law which is or would be applicable to any corporation which is organized under the provisions of this chapter but is not a close corporation.

SUBCHAPTER XV. FOREIGN CORPORATIONS

Sec.

§ 371. Definition; qualification to do business in State; procedure

(a) As used in this chapter, the words "foreign corporation" mean a corporation organized under the laws of any jurisdiction other than this State.

(b) No foreign corporation shall do any business in this State, through or by branch offices, agents or representatives located in this State, until it shall have filed in the office of the Secretary of State of this State a certified copy of its charter and the name and address of its registered agent in this State, which agent shall be either an individual resident in this State when appointed or another corporation authorized to transact business in this State, together with a sworn statement, as of a date not earlier than six months prior to the filing date, of the assets and liabilities of the corporation, and shall have paid to the Secretary of State, for the use of the State, $50.

(c) The certificate of the Secretary of State, under his seal of office, of the filing of the charter shall be delivered to the registered

agent upon the payment to the Secretary of State of the usual fees for making certified copies, and the certificate shall be prima facie evidence of the right of the corporation to do business in this State.

§ 372. Additional requirements in case of amendment of charter, merger or consolidation

Every foreign corporation admitted to do business in this State which shall amend its charter or shall be a party to a merger or consolidation shall, within 30 days after the time the amendment or merger or consolidation becomes effective, file with the Secretary of State of this State a copy of the amendment or a copy of the articles of merger or consolidation, duly certified by the proper officer of the jurisdiction in which the corporation shall have been incorporated or under the laws of which the merger or consolidation was effected.

§ 373. Exceptions to requirements

(a) No foreign corporation shall be required to comply with the provisions of sections 371 and 372 of this title, under any of the following conditions:

(1) If it is in the mail order or a similar business, merely receiving orders by mail or otherwise in pursuance of letters, circulars, catalogs, or other forms of advertising, or solicitation, accepting the orders outside this State, and filling them with goods shipped into this State;

(2) If it employs salesmen, either resident or traveling, to solicit orders in this State, either by display of samples or otherwise (whether or not maintaining sales offices in this State), all orders being subject to approval at the offices of the corporation without this State, and all goods applicable to the orders being shipped in pursuance thereof from without this State to the vendee or to the seller or his agent for delivery to the vendee, and if any samples kept within this State are for display or advertising purposes only, and no sales, repairs, or replacements are made from stock on hand in this State;

(3) If it sells, by contract consummated outside this State, and agrees, by the contract, to deliver into this State, machinery, plants or equipment, the construction, erection or installation of which within this State requires the supervision of technical engineers or skilled employes performing services not generally available, and as a part of the contract of sale agrees to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;

(4) If its business operations within this State, although not falling within the terms of paragraphs (1), (2), and (3) of this section or any of them, are nevertheless wholly interstate in character;

(5) If it is an insurance company doing business in this State.

(b) The provisions of this section shall have no application to the question of whether any foreign corporation is subject to service of

process and suit in this State under section 382 of this title or any other law of this State.

§ 374. Annual report

On or before the 30th day of June in each year, a foreign corporation doing business in this State shall file a report with the Secretary of State. The report shall be made on behalf of the corporation by its president, secretary, treasurer, or other officer duly authorized so to act, or by any two of its directors, or by any two of its incorporators in the event its board of directors shall not have been elected. The fact that an individual's name is signed on a certification attached to a corporate report shall be prima facie evidence that such individual is authorized to certify the report on behalf of the corporation; however, the official title or position of the individual signing the corporate report shall be designated. The report shall be on a calendar year basis and shall state the address (which shall include the street, number, city and county) of its registered office in this State; the name of its registered agent at such address upon whom service of process against the corporation may be served; the address (which shall include the street, number, city, state or foreign country) of the main or headquarters place of business of the corporation without this State; the names and addresses of all the directors and officers of the corporation and when the term of each expires; the date appointed for the next annual meeting of the stockholders for the election of directors; the number of shares of each class of its capital stock which it is authorized to issue, if any, and the par value thereof when applicable; and the number of shares of each class of the capital stock actually issued, if any; the amount of capital invested in real estate and other property in this State, and the tax paid thereon; and, if exempt from taxation in this State for any cause, the specific facts entitling the corporation to such exemption from taxation.

§ 375. Failure to file report

Upon the failure, neglect or refusal of any foreign corporation to file an annual report as required by section 374 of this title, the Secretary of State shall investigate the reasons therefor and shall terminate the right of the foreign corporation to do business within this State upon failure of the corporation to file an annual report within any two-year period.

§ 376. Service of process upon qualified foreign corporations

All process issued out of any court of this State, all orders made by any court of this State, all rules and notices of any kind required to be served on any foreign corporation which has qualified to do business in this State may be served on the registered agent of the corporation designated in accordance with section 371 of this title, or, if

there be no such agent, then on any officer, director or other agent of the corporation then in this State.

§ 377. Change of registered agent upon whom process may be served

(a) Any foreign corporation, which has qualified to do business in this State, by filing a certificate of the same kind and nature, and executed as required by section 371 of this title, may change its registered agent and substitute another registered agent, who qualifies under said section 371, for the purposes of this subchapter.

(b) Any individual or corporation designated by a foreign corporation as its registered agent for service of process may resign by filing with the Secretary of State a signed statement that he or it is unwilling to continue to act as the registered agent of the corporation for service of process, including in the statement the post office address of the main or headquarters office of the foreign corporation. Upon the expiration of 30 days after the filing of the statement with the Secretary of State, the capacity of the individual or corporation, as registered agent, shall terminate. Upon the filing of the statement, the Secretary of State forthwith shall give written notice to the corporation by mail of the filing of the statement, which notice shall be addressed to the corporation at the post office address given in the statement and also, if different, to the corporation at its post office address given in the corporation's last annual report filed pursuant to section 374 of this title.

(c) If any agent designated and certified as required by section 371 of this title shall die or remove from this State, or resign, then the foreign corporation for which the agent had been so designated and certified shall, within ten days after the death, removal or resignation of its agent, substitute, designate and certify to the Secretary of State, the name of another registered agent for the purposes of this subchapter, and all process, orders, rules and notices mentioned in section 376 of this title may be served on or given to the substituted agent with like effect as is prescribed in that section.

§ 378. Violations and penalties

Any foreign corporation doing business of any kind in this State without first having complied with any section of this subchapter applicable to it, shall be fined not less than $200 nor more than $500 for each such offense. Any agent of any foreign corporation that shall do any business in this State for any foreign corporation before the foreign corporation has complied with any section of this subchapter applicable to it, shall be fined not less than $100 nor more than $500 for each such offense.

§ 379. Banking powers denied

(a) No foreign corporation shall, within the limits of this State, by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidence of debt, of receiving deposits, of buying gold or silver bullion or foreign coin, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt upon loan for circulation as money, anything in its charter or articles of incorporation to the contrary thereof notwithstanding.

(b) All certificates issued by the Secretary of State under section 371 of this title shall expressly set forth the limitations and restrictions contained in this section.

§ 380. Foreign corporation as fiduciary in this State

A corporation organized and doing business under the laws of any state of the United States other than Delaware, duly authorized by its certificate of incorporation or by-laws so to act, may be appointed by any last will and testament, or codicil, or other testamentary writing, probated within this State, as executor, guardian, trustee, or other fiduciary, and may act as such within this State, when and to the extent that the laws of the state in which the foreign corporation is organized confer like powers upon corporations organized and doing business under the laws of this State.

§ 381. Withdrawal of foreign corporation from State; procedure; service of process on Secretary of State

(a) Any foreign corporation which shall have qualified to do business in this State under the provisions of section 371 of this title, may surrender its authority to do business in this State and may withdraw therefrom by filing with the Secretary of State:

(1) A certificate signed by its president or a vice-president and under its corporate seal, attested by its secretary or an assistant secretary, stating that it surrenders its authority to transact business in the State of Delaware and withdraws therefrom; and stating the address to which the Secretary of State may mail any process against the corporation that may be served upon him; or

(2) A copy of a certificate of dissolution issued by the proper official of the state or other jurisdiction of its incorporation, certified to be a true copy under the hand and official seal of the official, together with a certificate, which shall be executed in accordance with paragraph (1) of this subsection, stating the address to which the Secretary of State may mail any process against the corporation that may be served upon him; or

(3) A copy of an order or decree of dissolution made by any court of competent jurisdiction or other competent authority of the state or other jurisdiction of its incorporation, certified to be a true

copy under the hand of the clerk of the court or other official body, and the official seal of the court or official body or clerk thereof, together with a certificate executed in accordance with paragraph (1) of this subsection, stating the address to which the Secretary of State may mail any process against the corporation that may be served upon him.

(b) The Secretary of State shall, upon payment to him of the fees prescribed in section 391 of this title, issue a sufficient number of certificates, under his hand and official seal, evidencing the surrender of the authority of the corporation to do business in this State and its withdrawal therefrom. One of the certificates shall be furnished to the corporation withdrawing and surrendering its right to do business in this State; one certificate shall be delivered to the agent of the corporation designated as such immediately prior to the withdrawal.

(c) Upon the issuance of the certificates by the Secretary of State, the appointment of the registered agent of the corporation in this State, upon whom process against the corporation may be served, shall be revoked, and the corporation shall be deemed to have consented that service of process in any action, suit or proceeding based upon any cause of action arising in this State, during the time the corporation was authorized to transact business in this State, may thereafter be made by service upon the Secretary of State.

(d) In the event of service upon the Secretary of State, it shall be the duty of the Secretary of State forthwith to notify the corporation thereof by registered or certified mail, return receipt requested, directed to the corporation at the address stated in the certificate which was filed with the Secretary of State pursuant to subsection (a) of this section, accompanied by a copy of the process or other papers served upon him. It shall be the duty of the plaintiff in any action, suit or proceeding to serve process or other papers in duplicate and to pay to the Secretary of State the sum of $5, for the use of the State, which sum shall be taxed as part of the costs in the action, suit or proceeding, if the plaintiff shall prevail therein. The Secretary of State shall enter alphabetically in the process book, kept for that purpose, the name of plaintiff and defendant, the title and docket number of the cause in which process has been served upon him, the return day thereof, and the day and hour when the service was made.

§ 382. Service of process on non-qualifying foreign corporations

(a) Any foreign corporation which shall transact business in this State without having qualified to do business under section 371 of this title shall be deemed to have thereby appointed and constituted the Secretary of State of this State, its agent for the acceptance of legal process in any civil action, suit, or proceeding against it in any State or Federal Court in this State arising or growing out of any

business transacted by it within this State. The transaction of business in this State by such corporation shall be a signification of the agreement of such corporation that any such process when so served shall be of the same legal force and validity as if served upon an authorized officer or agent personally within this State.

(b) The provisions of section 373 of this title shall not apply in determining whether any foreign corporation is transacting business in this State within the meaning of this section; and "the transaction of business" or "business transacted in this State," by any such foreign corporation, whenever those words are used in this section, shall mean the course or practice of carrying on any business activities in this State, including, without limiting the generality of the foregoing, the solicitation of business or orders in this State. The provisions of this section shall not apply to any insurance company doing business in this State.

(c) In the event of service upon the Secretary of State, it shall be the duty of the Secretary of State forthwith to notify the corporation thereof by registered or certified mail, return receipt requested, directed to the corporation at the address furnished to the Secretary of State by the plaintiff in such action, suit, or proceeding, accompanied by a copy of the process or other papers served upon him. It shall be the duty of the plaintiff in any action, suit, or proceeding to serve process or other papers in duplicate and to pay to the Secretary of State the sum of $5 for the use of the State, which sum shall be taxed as part of the costs in the action, suit, or proceeding, if the plaintiff shall prevail therein. The Secretary of State shall enter alphabetically in the process book, kept for that purpose, the name of the plaintiff and defendant, the title and docket number of the cause in which process has been served upon him, the return date thereof, and the day and hour when the service was made.

§ 383. Actions by and against unqualified foreign corporations

(a) A foreign corporation which is required to comply with the provisions of sections 371 and 372 of this title and which has done business in this State without authority shall not maintain any action or special proceeding in this State unless and until such corporation has been authorized to do business in this State and has paid to the State all fees, penalties and franchise taxes for the years or parts thereof during which it did business in this State without authority. This prohibition shall apply to any successor in interest of such foreign corporation.

(b) The failure of a foreign corporation to obtain authority to do business in this State shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in this State.

§ 384. Foreign corporations doing business without having qualified; injunctions

The Court of Chancery shall have jurisdiction to enjoin any foreign corporation, or any agent thereof, from transacting any business in this State if such corporation has failed to comply with any section of this subchapter applicable to it or if such corporation has secured a certificate of the Secretary of State under section 371 of this title on the basis of false or misleading representations. The Attorney General shall, upon his own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such corporation is doing business.

SUBCHAPTER XVI. MISCELLANEOUS PROVISIONS

Sec.

§ 391. Taxes and fees payable to Secretary of State upon filing certificate or other paper

(a) The following taxes and fees shall be collected by and paid to the Secretary of State, for the use of the State, upon the receipt for filing of any certificate or other paper relating to corporations in the office of the Secretary of State—

(1) Upon the receipt for filing of an original certificate of incorporation, the tax shall be computed on the basis of one cent for each share of authorized capital stock having par value up to and including 20,000 shares, one-half of a cent for each share in excess of 20,000 shares up to and including 200,000 shares, and one-fifth of a cent for each share in excess of 200,000 shares; one-half of a cent for each share of authorized capital stock without par value up to and including 20,000 shares, one-fourth of a cent for each share in excess of 20,000 shares up to and including 2,000,000 shares, and one-fifth of a cent for each share in excess of 2,000,000 shares. In no case shall the amount paid be less than $10. For the purpose of computing the tax on par value stock each $100 unit of the authorized capital stock shall be counted as one taxable share.

(2) Upon the receipt for filing of a certificate of amendment of certificate of incorporation, or an amended certificate of incorpora-

tion before payment of capital, or a restated certificate of incorporation, increasing the authorized capital stock of a corporation, the tax shall be an amount equal to the difference between the tax computed at the foregoing rates upon the total authorized capital stock of the corporation including the proposed increase, and the tax computed at the foregoing rates upon the total authorized capital stock excluding the proposed increase. In no case shall the amount paid be less than $10.

(3) Upon the receipt for filing of an amended certificate of incorporation before payment of capital and not involving an increase of authorized capital stock, or an amendment to the certificate of incorporation not involving an increase of authorized capital stock, or a restated certificate of incorporation not involving an increase of authorized capital stock, or a composite certificate of incorporation, or a certificate of reduction of capital, or a certificate of retirement of preferred stock, the tax to be paid shall be $10. For all other certificates relating to corporations, not otherwise provided for, the tax to be paid shall be $5. In case of corporations created solely for religious or charitable purposes no tax shall be paid.

(4). Upon the receipt for filing of a certificate of merger or consolidation of two or more corporations, the tax shall be an amount equal to the difference between the tax computed at the foregoing rates upon the total authorized capital stock of the corporation created by the merger or consolidation, and the tax so computed upon the aggregate amount of the total authorized capital stock of the constituent corporations. In no case shall the amount paid be less than $20.

(5) Upon the receipt for filing of a certificate of dissolution, there shall be collected by and paid to the Secretary of State a tax of $10; a fee of $5 in each case for filing and/or indexing the certificate and the affidavit; a fee of $5 for certifying to and/or copying the certificate.

(6) Upon the receipt for filing of a certificate or other paper of surrender and withdrawal from the State by a foreign corporation, there shall be collected by and paid to the Secretary of State a tax of $10; a fee of $2 for filing and/or indexing the certificate or other paper; a fee of $5 for certifying to and/or copying the certificate or other paper; and a fee of $1 for the Prothonotary in each county of the State, to be paid over by the Secretary of State to each Prothonotary upon the issuance by the Secretary of State of certificates of surrender and withdrawal.

(7) For receiving and filing and/or indexing any certificate, affidavit, agreement, report or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee of $5 in each case shall be paid.

(8) For receiving and filing and/or indexing the annual report of a foreign corporation doing business in this State, a fee of $25 shall be paid.

(9) For recording and indexing articles of association and other papers required by this chapter to be recorded by the Secretary of State, a fee computed on the basis of one cent a line shall be paid.

(10) For certifying to and/or copying any certificate of incorporation, or any certificate of amendment to certificate of incorporation, or any restated certificate of incorporation, or any composite certificate of incorporation, or any certificate of merger or consolidation, a fee shall be paid computed on the basis of $2 for affixing the seal of the office and sixty cents per page of 30 lines, or any part thereof, for original copies, and $2 for affixing the seal of the office and thirty cents per page for each duplicate copy thereof. In no case shall the fee to be paid be less than $6.

(11) For filing in the office of the Secretary of State any certificate of change of registered agent or change of location of the registered office of a corporation, as provided in section 133 of this title, there shall be collected by and paid to the Secretary of State a fee of $5.

(12) For filing in the office of the Secretary of State, any certificate of change of address of registered agent, as provided in section 134 of this title, there shall be collected by and paid to the Secretary of State a fee of $50, plus the same fees for receiving, filing, indexing, copying and certifying the same as are charged in the case of filing a certificate of incorporation.

(13) For filing in the office of the Secretary of State any certificate of resignation of a registered agent and appointment of a successor, as provided in section 135 of this title, there shall be collected by and paid to the Secretary of State a fee of $50 and a further fee of $2 for each corporation whose registered agent is changed by such certificate.

(14) For filing in the office of the Secretary of State any certificate of resignation of a registered agent without appointment of a successor, as provided in section 136 of this title, there shall be collected by and paid to the Secretary of State a fee of $2.50 for each corporation whose registered agent has resigned by such certificate.

(15) For certifying to and/or copying any other form of certificate provided for in this chapter, a fee shall be paid computed on the basis of the provisions of section 2316 of Title 29.

(b) For the purpose of computing the taxes prescribed in subsection (a), (1, 2 and 4) of this section the authorized capital stock of a corporation shall be considered to be the total number of shares which the corporation is authorized to issue, whether or not the total number of shares that may be outstanding at any one time be limited to a less number.

(c) The Secretary of State may issue and shall collect and receive the fees prescribed in this section on photocopies of instruments furnished by his office as well as for original copies thereof.

(d) No fees for the use of the State shall be charged or collected from any corporation incorporated for the drainage and reclamation

of lowlands or for the amendment or renewal of the charter of such corporation.

§ 392. Improperly recorded certificates or other documents; effect

In case any certificate or other document of any kind required by any of the provisions of this chapter to be recorded in the office of any of the Recorders of the several counties of this State shall have heretofore been, or shall hereafter be, recorded in the office of the Recorder of a county of this State other than the county in which the certificate or other document is required to be recorded, the subsequent recording of the document in the Recorder's office in which the certificate or other document should have been recorded shall validate and confirm all acts done under or pursuant to the certificate or document, with like force and effect as if the certificate or document had been originally recorded as required by the provisions of this chapter.

§ 393. Rights, liabilities and duties under prior statutes

All rights, privileges and immunities vested or accrued by and under any laws enacted prior to the adoption or amendment of this chapter, all suits pending, all rights of action conferred, and all duties, restrictions, liabilities and penalties imposed or required by and under laws enacted prior to the adoption or amendment of this chapter, shall not be impaired, diminished or affected by this chapter.

§ 394. Reserved power of State to amend or repeal chapter; chapter part of corporation's charter or certificate of incorporation

This chapter may be amended or repealed, at the pleasure of the Legislature, but any amendment or repeal shall not take away or impair any remedy under this chapter against any corporation or its officers for any liability which shall have been previously incurred. This chapter and all amendments thereof shall be a part of the charter or certificate of incorporation of every corporation except so far as the same are inapplicable and inappropriate to the objects of the corporation.

§ 395. Corporations using "trust" in name, advertisements and otherwise; restrictions; violations and penalties; exceptions

(a) Every corporation of this State using the word "trust" as part of its name shall be under the supervision of the State Bank Commissioner of this State and shall make not less than two reports during each year to the Commissioner, according to the form which shall be prescribed by him, verified by the oaths or affirmations of the president or vice-president, and the treasurer or secretary of the corporation, and attested by the signatures of at least three directors.

(b) No corporation of this State shall use the word "trust" as part of its name, except corporations reporting to and under the supervision of the State Bank Commissioner of this State. The name of

any corporation shall not be amended so as to include the word "trust" unless the corporation shall report to and be under the supervision of the Commissioner.

(c) No person, firm, association of persons, or corporation of this State, except only corporations reporting to and under the supervision of the State Bank Commissioner of this State, shall advertise or put forth any sign as a trust company, or in any way solicit or receive deposits or transact business as a trust company, or use the word "trust" as a part of his, their or its name.

(d) Any violation of subsection (c) of this section shall constitute a misdemeanor and the offender shall be fined not exceeding $500 for each offense.

(e) Nothing contained in this section shall be construed to prevent any individual, as such, from acting in any trust capacity, as allowed by law. The prohibition contained in this section against the use of the word "trust" in the corporate name of any corporation organized under this chapter shall not apply to any corporation which has, from a date prior to January 1, 1941, been continuously and actively engaged in any business, other than the business of selling stock or other intangible property represented as securities or investments, under a name including the word "trust" as a part of its corporate name, but nothing contained in this subsection shall permit any corporation to engage in any banking or trust company business, as such business is defined in the banking laws of this State.

§ 396. Publication of chapter by Secretary of State; distribution

The Secretary of State may have printed, from time to time as he deems necessary, pamphlet copies of this chapter, and he shall dispose of the copies to persons and corporations desiring the same for a sum not exceeding the cost of printing. The money received from the sale of the copies shall be disposed of as are other fees of the office of the Secretary of State. Nothing in this section shall prevent the free distribution of single pamphlet copies of this chapter by the Secretary of State, for the printing of which provision is made from time to time by joint resolution of the General Assembly.

§ 397. Penalty for unauthorized publication of chapter

Whoever prints or publishes the provisions of this chapter without the authority of the Secretary of State of this State, shall be fined not more than $500 or imprisoned not more than 3 months, or both.

§ 398. Short title

This chapter shall be known and may be identified and referred to as the "General Corporation Law of the State of Delaware."

Approved July 3, 1967