

APR 22 1974

GENERAL CORPORATION LAW COMMITTEE

Of The

DELAWARE STATE BAR ASSOCIATION

Commentary On Legislative Proposals
For The 127th General Assembly
Second Session, 1974

These 1974 legislative proposals of the General Corporation Law Committee of the Delaware State Bar Association are summarized in the commentary set forth below. These amendments are part of a continuous process of review and modernization of the Delaware General Corporation Law. The preeminence of the Delaware General Corporation Law is usually attributed to this continuous modernization process as well as the clarity, fairness and flexibility of the substantive statutory law coupled with the sound body of judicial precedent and the outstanding quality of the Delaware Courts.

Following the comprehensive revision of the Delaware General Corporation Law in 1967, the continuous modernization and revision process resulted in further improvements and amendments in 1968, 1969, 1970, 1971 and 1973. The proposals presented for this 1974 Session of the General Assembly have been under study by the Committee for many months. The effect of these amendments are set forth in the commentary under the individual sections. For the most part, they make explicit many matters which are, by interpretation and opinion, the existing law. Some of the provisions are designed to settle areas of uncertainty; a few are new provisions; which are, however, by no means revolutionary.

Section 1. This amendment to §109 makes it clear that stockholders always have the power to make, alter or repeal by-laws, even though the directors may also be delegated such power. There has been some uncertainty that a delegation to the board of directors by the certificate of incorporation pursuant to §109 would divest the stockholders of their power to make, alter or repeal by-laws. In order to prevent the directors from "undoing" a specific by-law provision enacted by the stockholders, this amendment provides that the board may repeal or alter stockholder-adopted by-laws only if the certificate of incorporation expressly so provides.

Section 2. This amendment to §141(a) makes explicit the present law that the duty of directors to "manage" the corporation may be carried out by officers and employees under the direction of the board. Thus, the directors' role usually is formulating policy and directing officers to conduct the day-to-day operations.

Section 3. This amendment to §141(b) is also declaratory of the present law—that there may be qualifications for directors as long as they are not unreasonably or inequitably imposed.

Section 4. This amendment to §141(d) specifies that directors specially elected by, for example, preferred stockholders whose dividends are in default, may be added to the three classes of a classified board. This amendment would eliminate concern that such directors must have terms coinciding with existing classes so as not to constitute a "fourth class" and thereby be beyond the "one, two or three classes" authorized by §141(d). This amendment is designed to clarify the manner whereby a classified board elected to staggered terms may be enlarged by another category of directors elected pursuant to special provisions in the certificate of incorporation.

Section 5. This new §141(k) provides for removal of directors with or without cause by the stockholders with certain exceptions in the case of classified boards, corporations having cumulative voting and directors specially elected by a class of stockholders. Delaware is in the minority of states having no specific statute governing the circumstances under which and the procedure by which removal of a director or the entire board can be effected. The 1967 revision acknowledges that a director's term can be terminated by removal, but left the other questions unanswered. This amendment is patterned in large part on Section 39 of the Model Business Corporation Act. In the case of directors elected for a term of years in a classified board, removal may only be with cause, thus codifying the rationale of Essential Enterprises Corp. v. Automatic Steel Products, Inc., 39 Del. Ch. 93, 159 A.2d 288 (Ch. 1960). Procedures for removal with cause are not spelled out in this amendment. See, Campbell v. Loew, Inc., 36 Del. Ch. 563, 572, 134 A.2d 852, 858 (Ch. 1957). By implication, therefore, removal or suspension with or without cause by action of the board of directors would not be valid even if authorized by the certificate of incorporation. Removal by stockholders may be effected by consent under §228 in lieu of a meeting.

Section 6. This amendment to §142 permits the designation and duties of officers to be in a resolution of the board, not confining that power to the by-laws, provided the resolution is not inconsistent with the by-laws. A minor wording change is made in the second sentence. The third sentence is unchanged.

Section 7. This amendment to §145(h) makes it clear that if a constituent corporation in a merger did not have the power to indemnify, the merged Delaware corporation which survives would not have the power to indemnify.

Section 8. This new §152 is completely rewritten, setting forth the implementation of a constitutional requirement regarding the quality of the consideration to be received for the issuance of stock and expressly providing that the constitutional quality of consideration is only necessary for the par value or stated value of the stock provided there is a binding agreement such as a promissory note for the surplus. Specifically, the respective subsections of the new §152 are designed to provide the following:

(a) The first sentence is the equivalent of the Constitutional requirement. Article IX, Section 3. The second sentence is verbatim, the second sentence of former §152.

(b) Subsection (b) expressly provides that stock will be deemed to be fully paid and non-assessable if (i) the par value or stated value allocated to capital is paid in full by consideration of the quality required by subsection (a) (i.e., the Constitution); and (ii) the balance or "surplus" consideration is supported by a binding obligation (e.g., a promissory note) of the purchaser; and (iii) the board of directors has not determined that the stock is to be issued as partly paid shares pursuant to Section 156.

Thus the constitutional requirement is satisfied, since that provision was designed to be a "protection" for creditors by requiring that the capital of the corporation be of constitutional quality. Since the capital need not be more than par value or stated value and would not be more than that allocated under §154, the "excess" would be surplus and need not be of constitutional quality unless the directors so require. See, Lofland v. Cahall, 13 Del. Ch. 384, 118 A. 1 (1922); Sohland v. Baker, 15 Del. Ch. 431, 141 A. 277 (1927); Highlights for Children, Inc. v. Crown, 227 A.2d 118 (Del. Ch. 1966). Even though the stock is not subject to call, the binding obligation is, in all events, enforceable by the corporation against the purchaser whether or not the purchaser has received (and perhaps sold) fully paid and non-assessable shares. Thus, §156 would not apply because the shares are fully paid and §§162 and 163 would not apply because the whole consideration (e.g., the cash for "the capital" and the note for "the surplus") has been paid in.

Section 9. This amendment to §160 makes explicit the existing Delaware law that a Delaware corporation may exchange a debt security for its stock as long as its capital is not impaired.

Section 10. This amendment to §173 spells out clearly the procedure for handling stock dividends on the books of the corporation and distinguishes stock dividends from stock splits.

Section 11. This amendment to §245(d) expressly provides that if a certificate of incorporation is restated it does not have any effect on the original date of the incorporation. Only the last words are new in this amendment.

Section 12. This amendment to §251(b) and similar amendments to §§252(b), 254(c), 255(b), 256(b) and 257(b), make clear that the terms of the merger including the exchange ratio may be made dependent upon facts ascertainable outside of the merger agreement, so long that it is made clear in the agreement, which must be submitted to stockholders, the precise way that these outside facts will affect the exchange ratio or other terms of the merger.

Section 13. This amendment to §251(c) and similar amendments to §§252(c), 254(d), 255(c), 256(c) and 257(c) provides for a short form to be filed instead of the entire merger agreement at the election of the surviving or resulting corporation. This amendment accomplishes two objectives; (1) it reduces the bulk in the Corporation Department files and the Recorder's Office; and (2) it provides for the occasional case where a non-public corporation desires to keep confidential the consideration paid, its earnings or other confidential information, insofar as the public record is concerned. The stockholders, who are the persons entitled to the information, will continue to have the entire merger agreement submitted to them for a vote and will have the right to obtain from the corporation a copy of the merger agreement.

Section 14. This amendment to §251(f) eliminates the need for stockholders vote in case of a merger where no stock has been issued. This eliminates the need to issue one share of stock for the purpose of voting that share of stock under our present law, thus avoiding an artificial exercise involved in certain mergers, such as downstream mergers into a Delaware subsidiary, often to effect a change of corporate domicile.

Sections 15-24. See comment on §§12 and 13.

GENERAL CORPORATION LAW COMMITTEE

Dated: April 15, 1974

BY E. Norman Veasey
E. Norman Veasey, Chairman

APR 22 1974

SPONSOR _____

COMMITTEE _____

HOUSE OF REPRESENTATIVES

127TH GENERAL ASSEMBLY

SECOND SESSION - 1974

HOUSE BILL NO. _____

AN ACT TO AMEND CHAPTER 1, TITLE 8, DELAWARE CODE, RELATING TO
THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE
(Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Section 109 of Title 8, Delaware Code, by
striking the present subsection (a) thereof and inserting in lieu thereof
a new subsection (a) to read as follows:

"(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 entitled to vote, or, in the case of a non-
stock corporation, in its members who are entitled to vote;

provided, however, any corporation may, in its certificate of incorporation, confer such power upon the directors or its governing body, as the case may be. The fact that such power has been conferred upon the directors or governing body, as the case may be, shall not divest or limit the stockholders or members of the power or limit the power to make, alter or repeal by-laws. Unless the certificate of incorporation expressly provides otherwise, a by-law enacted by such stockholders or members may not be altered or repealed by the directors or the governing body."

Section 2. Amend Section 141 of Title 8, Delaware Code, by striking the first sentence of subsection (a) thereof in its entirety and inserting in lieu thereof a new first sentence to read as follows:

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

Section 3. Amend Section 141 of Title 8, Delaware Code, by inserting in subsection (b) thereof a new sentence immediately following the third sentence thereof to read as follows:

"The certificate of incorporation or by-laws may prescribe other qualifications for directors."

Section 4. Amend Section 141 of Title 8, Delaware Code, by inserting in subsection (d) thereof two new sentences following the last sentence of the present section to read as follows:

"The certificate of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for such term, and have such voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the certificate of incorporation may be greater than or less than those of any other director or class of directors."

Section 5. Amend Section 141, Title 8, Delaware Code, by adding a new subsection (k) to read in its entirety as follows:

"(k) Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

(1) Unless the certificate of incorporation otherwise provides, in the case of a corpora-

tion whose board is classified as provided in subsection (d) of this section, shareholders may effect such removal only for cause; or

(ii) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part.

Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the certificate of incorporation, the provisions of this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole."

Section 6. Amend Section 142, Title 8, Delaware Code, by deleting subsection (a) thereof in its entirety and inserting in lieu thereof

a new subsection (a) to read as follows:

"(a) Every corporation organized under this chapter shall have such officers with such titles and duties as shall be stated in the by-laws or in a resolution of the board of directors which is not inconsistent with the by-laws and as may be necessary to enable it to sign instruments and stock certificates which comply with sections 103(a)(2) and 158 of this chapter. One of the officers shall have the duty to record the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose. Any number of offices may be held by the same person unless the certificate of incorporation or by-laws otherwise provide."

Section 7. Amend Section 145, Title 8, Delaware Code, by deleting subsection (h) thereof in its entirety and by inserting in lieu thereof a new subsection (h) to read as follows:

"(h) For the purposes of this section, references to 'the corporation' include any constituted corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees

or agents as well as the resulting or surviving corporation; so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such a constituent corporation if its separate existence had continued."

Section 8. Amend Section 152, Title 8, Delaware Code, by striking said section in its entirety and by inserting in lieu thereof a new Section 152 to read in its entirety as follows:

"§152. Issuance of stock, lawful consideration;
fully paid stock

"(a) No corporation shall issue stock, except for money paid, labor done, personal property, real estate or leases of real estate actually acquired by such corporation. 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.

"(b) The subscription or purchase price of stock to be issued or sold by the corporation, determined pursuant to subsection (a) of Section 153 of this chapter, shall be paid in such manner as the board of directors shall determine; the stock so issued shall be deemed to be fully paid and non-assessable, provided:

"(i) that portion of the subscription or purchase price allocated to capital pursuant to Section 154 (which portion may not be less than the par value in the case of par value stock or the stated value in the case of no par value stock), has been paid in full by the kind of consideration required by subsection (a) of this section; and

"(ii) a binding obligation has been given by the subscriber or purchaser for the balance, if any, of the subscription or purchase price; and

"(iii) the board of directors has not issued such stock as partly paid shares pursuant to Section 156 of this chapter."

Section 9. Amend Section 160, Title 8, Delaware Code, by adding the following sentence to subpart 1 of subsection (a) thereof:

"Nothing in this subsection shall invalidate or otherwise affect a note, debenture or other obligation of a corporation given by it as consideration for its acquisition by purchase, redemption or exchange of its shares of stock if at the time such note, debenture or obligation was delivered by the corporation its capital was not then impaired or did not thereby become impaired."

Section 10. Amend Section 173, Title 8, Delaware Code, by striking said section in its entirety and inserting a new section to read as follows:

"§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 property, or in shares of the corporation's capital stock. If the dividend is to be paid in shares of the corporation's theretofore unissued capital stock the board of directors shall, by resolution, direct that there be transferred from surplus to the capital account in respect of such shares an amount which is not less than the aggregate par value of par value shares being declared as a dividend and, in the

case of shares without par value being declared as a dividend, such amount as shall be determined by the board of directors. No transfer from surplus to capital shall be necessary if shares are being distributed by a corporation pursuant to a split-up or division of its stock rather than as payment of a dividend declared payable in stock of the corporation."

Section 11. Amend Section 245, Title 8, Delaware Code, by striking said subsection (d) thereof as it appears therein and inserting a new subsection (d) in lieu thereof to read as follows:

"(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 whose original date of incorporation shall remain unchanged."

Section 12. Amend Section 251, Title 8, Delaware Code, by inserting in subsection (b) thereof a new sentence at the end of said subsection, to read as follows:

"Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation."

Section 13. Amend Section 251, Title 8, Delaware Code, by inserting in subsection (c) thereof a new sentence at the end of said subsection to read as follows:

"The surviving or resulting corporation may, in lieu of filing the full agreement of merger or consolidation, file a certificate of merger or consolidation, executed in accordance with §103, which states (1) the names and states of incorporation of the parties to the merger or consolidation, (2) that an agreement of merger or consolidation between the parties has been executed and approved in accordance with the requirements of §251, (3) the identity of the surviving or resulting corporation, (4) such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger or consolidation, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of one of the constituent corporations shall be

the certificate of incorporation of the surviving or resulting corporation, (5) that the agreement of consolidation or merger is on file at the principal place of business of the corporation, and (6) that a copy of the agreement of consolidation or merger will be furnished, on request, to any stockholder."

Section 14. Amend Section 251, Title 8, Delaware Code, by inserting in subsection (f) thereof a new sentence at the end of the first sentence thereof to read as follows:

"No vote of stockholders of a constituent corporation shall be necessary to authorize a merger or consolidation if no shares of the stock of such corporation shall have been issued prior to the adoption by the board of directors of the resolution approving the agreement of merger or consolidation."

Section 15. Amend Section 252, Title 8, Delaware Code, by inserting in subsection (b) thereof a new sentence at the end of said subsection, to read as follows:

"Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and

expressly set forth in the agreement of merger or consolidation."

Section 16. Amend Section 252, Title 8, Delaware Code, by inserting in subsection (c) thereof a new sentence at the end of said subsection, to read as follows:

"The surviving or resulting corporation may, in lieu of filing the full agreement of merger or consolidation, file a certificate of merger or consolidation, executed in accordance with §103, which states (1) the names and states of incorporation of the parties to the merger or consolidation, (2) that an agreement of merger or consolidation between the parties has been executed and approved in accordance with the requirements of §252, (3) the identity of the surviving or resulting corporation, (4) such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger or consolidation, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of one of the constituent corporations shall be the certificate of incorporation of the surviving or resulting corporation, (5) the authorized capital stock of each foreign corporation which is a party to the merger or consolidation, (6) that the agreement of consolidation or merger is on file at the principal place of business of the corporation, (7) that a copy of the agreement

of consolidation or merger will be furnished, on request, to any stockholder, and (8) if the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this State, that such surviving or resulting corporation agrees 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 8 Del.C. §262, and that such surviving or resulting corporation irrevocably appoints 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."

Section 17. Amend Section 254, Title 8, Delaware Code, by inserting in subsection (c) thereof a new sentence at the end of said subsection, to read as follows:

"Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate

upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation."

Section 18. Amend Section 254, Title 8, Delaware Code, by inserting in subsection (d) thereof a new sentence at the end of said subsection to read as follows:

"The surviving or resulting corporation may, in lieu of filing the full agreement of merger or consolidation, file a certificate of merger or consolidation, executed in accordance with §103, which states (1) the names and states of incorporation of the parties to the merger or consolidation, (2) that an agreement of merger or consolidation between the parties has been executed and approved in accordance with the requirements of §254, (3) the identity of the surviving or resulting corporation, (4) such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger or consolidation, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of one of the constituent corporations shall be the certificate of incorporation of the surviving or resulting corporation, (5) that the agreement of consolidation or merger is on file at the principal place of business of the corporation, and (6) that a copy of the agreement of

consolidation or merger will be furnished, on request, to any stockholder."

Section 19. Amend Section 255; Title 8, Delaware Code, by inserting in subsection (b) thereof a new sentence at the end of said subsection, to read as follows:

"Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation."

Section 20. Amend Section 255, Title 8, Delaware Code, by inserting in subsection (c) thereof a new sentence at the end of said subsection to read as follows:

"The surviving or resulting corporation may, in lieu of filing the full agreement of merger or consolidation, file a certificate of merger or consolidation, executed in accordance with §103, which states (1) the names and states of incorporation of the parties to the merger or consolidation, (2) that an agreement of merger or consolidation between the parties has been executed and approved in accordance with the requirements of §255, (3) the identity of the surviving or resulting corporation, (4) such amend-

ments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger or consolidation, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of one of the constituent corporations shall be the certificate of incorporation of the surviving or resulting corporation, (5) that the agreement of consolidation or merger is on file at the principal place of business of the corporation, and (6) that a copy of the agreement of consolidation or merger will be furnished, on request, to any stockholder."

Section 21. Amend Section 256, Title 8, Delaware Code, by inserting in subsection (b) thereof a new sentence at the end of said subsection, to read as follows:

"Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation."

Section 22. Amend Section 256, Title 8, Delaware Code, by inserting in subsection (c) thereof a new sentence at the end of said subsection, to read as follows:

"The surviving or resulting corporation may, in lieu of filing the full agreement of merger or consolidation, file a certificate of merger or consolidation, executed in accordance with §103, which states (1) the names and states of incorporation of the parties to the merger or consolidation, (2) that an agreement of merger or consolidation between the parties has been executed and approved in accordance with the requirements of §256, (3) the identity of the surviving or resulting corporation, (4) such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger or consolidation, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of one of the constituent corporations shall be the certificate of incorporation of the surviving or resulting corporation, (5) the authorized capital stock of each foreign corporation which is a party to the merger or consolidation, (6) that the agreement of consolidation or merger is on file at the principal place of business of the corporation, (7) that a copy of the agreement of consolidation or merger will be furnished, on request, to any stockholder, and (8) if the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this State, that such surviving or resulting corporation

agrees 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 8 Del.C. §262, and that such surviving or resulting corporation irrevocably appoints 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."

Section 23. Amend Section 257, Title 8, Delaware Code, by inserting in subsection (b) thereof a new sentence at the end of said subsection to read as follows:

"Any of the terms of the agreement of merger or consolidation may be made dependent upon facts ascertainable outside of such agreement, provided that the manner in which such facts shall operate upon the terms of the agreement is clearly and expressly set forth in the agreement of merger or consolidation."

Section 24. Amend Section 257, Title 8, Delaware Code,

by inserting in subsection (c) thereof a new sentence at the end of said subsection to read as follows:

"The surviving or resulting corporation may, in lieu of filing the full agreement of merger or consolidation, file a certificate of merger or consolidation, executed in accordance with §103, which states (1) the names and states of incorporation of the parties to the merger or consolidation, (2) that an agreement of merger or consolidation between the parties has been executed and approved in accordance with the requirements of §257, (3) the identity of the surviving or resulting corporation, (4) such amendments or changes in the certificate of incorporation of the surviving corporation as are desired to be effected by the merger or consolidation, or, if no such amendments or changes are desired, a statement that the certificate of incorporation of one of the constituent corporations shall be the certificate of incorporation of the surviving or resulting corporation, (5) that the agreement of consolidation or merger is on file at the principal place of business of the corporation, and (6) that a copy of the agreement of consolidation or merger will be furnished, on request, to any stockholder."

Section 25. This Act shall take effect on July 1, 1974.

Section 26. All rights, privileges and immunities vested or

accrued by and under any laws enacted prior to the adoption or amendment of this Act, 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 Act, shall not be impaired, diminished or affected by this Act.