

Legislation

Delaware State Senate

129TH GENERAL ASSEMBLY

FIRST SESSION — 1977

Senate Bill No. 341

June 28, 1977

AN ACT TO AMEND CHAPTER 31, TITLE 10 OF THE DELAWARE CODE RELATING TO SERVICE OF PROCESS ON NON-RESIDENT DIRECTORS, TRUSTEES OR MEMBERS OF THE GOVERNING BODY OF DELAWARE CORPORATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 31, of Title 10, Delaware Code by adding thereto a new section to be designated as §3114 which new section shall read as follows:

“§3114. *Service of Process on Non-resident Directors, Trustees or Members of the Governing Body of Delaware Corporations*

(a) Every non-resident of this State who after September 1, 1977 accepts election or appointment as a director, trustee or member of the governing body of a corporation organized under the laws of this State or who after June 30, 1978 serves in such capacity and every resident of this State who so accepts election or appointment or serves in such capacity and thereafter removes his residence from this State shall, by such acceptance or by such service, be deemed thereby to have consented to the appointment of the registered agent of such corporation (or, if there is none, the Secretary of State) as his agent upon whom service of process may be made in all civil actions or proceedings brought in this State, by or on behalf of, or against such corporation, in which such director, trustee or member is a necessary or

proper party, or in any action or proceeding against such director, trustee or member for violation of his duty in such capacity, whether or not he continues to serve as such director, trustee or member at the time suit is commenced. Such acceptance or service as such director, trustee or member shall be a signification of the consent of such director, trustee or member that any process when so served shall be of the same legal force and validity as if served upon such director, trustee or member within this State and such appointment of the registered agent (or, if there is none, the Secretary of State) shall be irrevocable.

(b) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of State) with one copy of such process in the manner provided by law for service of writs of summons. In addition, the Prothonotary or the Register in Chancery of the Court in which the civil action or proceeding is pending shall, within seven (7) days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this Section, addressed to such director, trustee or member at the corporation's principal place of business and at his residence address as the same appears on the records of the Secretary of State, or, if no such residence address appears, at his address last known to the party desiring to make such service.

(c) In any action in which any such director, trustee or member has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Prothonotary or the Register in Chancery as provided in Subsection (b); however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such director, trustee or member reasonable opportunity to defend the action.

(d) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This Section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon non-residents.

(e) The Court of Chancery and the Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement the provisions of this Section and are not inconsistent with this Section."

Section 2. This Act shall apply only to causes of action or claims arising or accruing subsequent to the effective date of this Act.

Section 3. If any provisions of this Section or amendments hereto, or the application hereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this Section or such amendments as can be given effect without the invalid provisions or application, and to this end the provisions of this Section are declared to be severable.

Section 4. This Act shall become effective on September 1, 1977.

SYNOPSIS

The purpose and intent of this legislation is to fill a void in enforcement and interpretation of Delaware corporation laws created by the decision of the United States Supreme Court on June 24, 1977 in *Schaffer v. Heitner*. In that case the Court struck down 10 *Del. C.* §366 which until now has frequently been the only means whereby nonresident corporate directors of Delaware Corporations could be brought before the courts of this State to answer for their conduct in managing the affairs of the corporation. Indeed, under 10 *Del. C.* §366, the Courts of this State often provided the only forum where nonresident corporate directors of Delaware corporations from different states could be joined in the same law suit for such purposes. The Supreme Court did note that Delaware's interest in regulating the affairs of corporations governed by Delaware law could be promoted by enactment of a statute subjecting non-resident corporate directors to the jurisdiction of the Delaware courts.

Delaware has a substantial interest in defining, regulating and enforcing the fiduciary obligations which directors of Delaware corporations owe to such corporations and the shareholders who elected them. In promoting that interest it is essential that Delaware afford a convenient and available forum for supervising the affairs of Delaware corporations and the conduct of directors of Delaware corporations. This legislation is designed to accomplish that objective. The legislation is modeled after similar statutes in Connecticut, North Carolina and South Carolina, which were cited as examples by the Supreme Court in the *Heitner* case and in Michigan.

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