



SPONSOR: Rep. Kowalko & Sen. Ennis
Rep. K. Williams

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 57

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO LIMITED LIABILITY COMPANIES.

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

1 Section 1. Amend Chapter 18, Subchapter XI of Title 6 of the Delaware Code by making deletions as shown by
2 strikethrough and insertions as shown by underline as follows:

3 § 18-1110. Coordination with federal law and national security agencies.

4 (a) The Secretary of State shall neither certify for formation or domestication nor register as a limited liability
5 company any citizen, group, organization, or government of a listed Sanctioned Nation in the Active Sanctions Program of,
6 or any Specially Designated National listed as such by, the Office of Foreign Assets Control (OFAC) of the United States
7 Department of the Treasury when federal law is violated thereby. Registered agents shall refer to and utilize said lists
8 including the List of Foreign Sanctions Evaders and the applicable sanctions in order to avoid filing applications for
9 formation, domestication, or registration of a limited liability company by potential members whose names appear on said
10 lists when the federal sanctions or this law would be violated if the applications were to be approved.

11 (b) The Secretary of State shall provide the link to the OFAC website and its Resource Center and shall provide
12 links to the laws in subsection (c) of this section on the Delaware Department of State's webpage.

13 (c) Registered agents arranging the certification, domestication, or registration of foreign-owned limited liability
14 companies in Delaware shall verify the purpose for which each such company is formed, as stated in the LLC application.
15 All such registered agents shall compare the purpose of such clients' requests to form, domesticate, or register a limited
16 liability company with prohibited or restricted investment and disclosure requirements of all of the following federal laws:

17 (1) The Homeland Security Act of 2002, 6 U.S.C. 101 (4).

18 (2) The Foreign Investment and National Security Act of 2007, P.L. 110-49.

19 (3) The Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. 3501 et seq.

20 (4) 46 U.S.C. 2102(a) – restrictions on foreign ownership of certain vessels.

21 (5) 49 U.S.C. 44101, 44102, 44301 et seq. 44303, 44703, 44711 relating to certain aircraft.

22 (6) 30 U.S.C. 22, 24, 181 and 30 C.F.R. 256.35 related to mining and mineral lands.

(7) 16 U.S.C. 797(c) and 42 U.S.C. 2133(d) related to energy.

(8) 47 U.S.C. 310 (a) and (b) related to the communications industry.

(9) 50 U.S.C. App. 2170 a(a) and a(b) related to government contracting.

(10) 15 U.S.C. 80a-1 et seq The Investment Company Act of 1940.

(11) 50 U.S.C. App. 2170 (a) & (b), (b)(1)(B) and (f) on the C.F.I.U.S..

(12) 31 C.F.R. Part 800 Reg. Pertaining to Mergers, Acquisitions, & Takeovers by Foreign Persons.

(d) A registered agent shall neither file an application for certification of a person, group, organization, or country as a limited liability company nor file an application for domestication or registration of a foreign (non U.S.) limited liability company if the client appears to be avoiding the enforcement of a federal law listed in subsection (c) of this section by becoming a Delaware limited liability company or a foreign one registered in this State.

(e) Registered agents, having foreign clients presumed by a U.S. law listed in subsection (c) of this section or by OFAC to be threatening who wish to make a prohibited investment, shall advise such clients to submit a voluntary request for clearance to the Committee on Foreign Investments in the United States if the client has not already done so. This section may be waived by the Delaware Secretary of State when proof of such clearance is received by the Secretary personally.

Section 2. This Act shall be effective on October 1 following its enactment.

Section 3. The provisions of this Act are severable. Should any provision of this Act be struck down by a court of competent jurisdiction, the remaining provisions shall be enforceable.

SYNOPSIS

To obtain obedience to federal laws protecting national security, with the help of registered agents, this Bill will prevent the use of our Limited Liability Act by persons and nations identified by federal agencies as a threat to this country. The bill also seeks to prevent existing limited liability company owners who are on the lists of prohibited persons or governments, but may have formed a Delaware LLC already, from getting involved in industries in which the federal government has placed restrictions on certain investments. Requiring clearance from the Committee on Foreign Investments in the U.S. for their plans will enable the Secretary to waive this provision when it is received.

Registered agents must be the parties to screen for identified threats because those with a contract with the Department of State enter applications on its computers on a regular basis. CFIUS seldom prevents investments, (two since 1989 to be precise) but it may ask for mitigation in some way to reduce the potential threat involved.

This Act will not impact the ability of almost any applicant to easily form an LLC nor does it require any companies to disclose more information to the Secretary of State in its application for certification than is now required.