

CHAPTER 95
FORMERLY
SENATE BILL NO. 76

AN ACT TO AMEND CHAPTER 18, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

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

Section 1. Amend § 18-102(3), Chapter 18, Title 6 of the Delaware Code by inserting the word “or” immediately after the words “domestic or foreign corporation, partnership, limited partnership,” in such subsection, by inserting the word “foreign” immediately before the fourth and fifth appearances of the words “limited liability company” in such subsection, and by inserting the words “provided further, that, if on July 31, 2011 a limited liability company is registered (with the consent of another limited liability company) under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of such other domestic limited liability company, it shall not be necessary for any such limited liability company to amend its certificate of formation to comply with this subsection;” immediately after the second “;” in such subsection.

Section 2. Amend § 18-104, Chapter 18, Title 6 of the Delaware Code by adding a new subsection (k) at the end of such section reading as follows: “(k) As contained in any certificate of formation, application for registration as a foreign limited liability company, or other document filed in the office of the Secretary of State under this chapter, the address of a registered agent or registered office shall include the street, number, city and postal code.”.

Section 3. Amend § 18-203, Chapter 18, Title 6 of the Delaware Code by designating all but the final sentence thereof as subsection (a), designating the final sentence thereof as subsection (c), and adding a new subsection (b) immediately prior to the new subsection (c) reading as follows: “(b) A certificate of cancellation that is filed in the office of the Secretary of State prior to the dissolution or the completion of winding up of a limited liability company may be corrected as an erroneously executed certificate of cancellation by filing with the office of the Secretary of State a certificate of correction of such certificate of cancellation in accordance with § 18-211.”.

Section 4. Amend § 18-206(b), Chapter 18, Title 6 of the Delaware Code by inserting a new sentence immediately before the first sentence of such subsection reading as follows: “Notwithstanding any other provision of this chapter, any certificate filed under this chapter shall be effective at the time of its filing with the Secretary of State or at any later date or time (not later than a time on the 180th day after the date of its filing if such date of filing is on or after January 1, 2012) specified in the certificate.”.

Section 5. Amend § 18-206, Chapter 18, Title 6 of the Delaware Code by adding a new subsection (g) at the end of such section reading as follows: “(g) Notwithstanding any other provision of this chapter, it shall not be necessary for any limited liability company or foreign limited liability company to amend its certificate of formation, its application for registration as a foreign limited liability company, or any other document that has been filed in the office of the Secretary of State prior to August 1, 2011, to comply with § 18-104(k) of this chapter; notwithstanding the foregoing, any certificate or other document filed under this chapter on or after August 1, 2011 and changing the address of a registered agent or registered office shall comply with § 18-104(k) of this chapter.”.

Section 6. Amend § 18-212(b), Chapter 18, Title 6 of the Delaware Code by inserting a new sentence at the end of such subsection reading as follows: “Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 18-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 18-206(b) of this title.”.

Section 7. Amend § 18-214(b), Chapter 18, Title 6 of the Delaware Code by inserting a new sentence at the end of such subsection reading as follows: “Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 18-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 18-206(b) of this title.”.

Section 8. Amend § 18-302(d), Chapter 18, Title 6 of the Delaware Code by deleting the words “a consent or consents in writing, setting forth the action so taken, shall be signed by the” in the second sentence thereof and by inserting in lieu thereof the words “consented to, in writing or by electronic transmission, by”.

Section 9. Amend § 18-302(e), Chapter 18, Title 6 of the Delaware Code by inserting two new sentences at the end of such subsection reading as follows: “Unless otherwise provided in a limited liability company agreement, a supermajority amendment provision shall only apply to provisions of the limited liability company agreement that are expressly included in the limited liability company agreement. As used in this section, “supermajority amendment provision” means any amendment provision set forth in a limited liability company agreement requiring that an amendment to a provision of the limited liability company agreement be adopted by no less than the vote or consent required to take action under such latter provision.”.

Section 10. Amend § 18-302, Chapter 18, Title 6 of the Delaware Code by adding a new subsection (f) at the end of such section reading as follows: “(f) If a limited liability company agreement does not provide for the manner in which it may be amended, the limited liability company agreement may be amended with the approval of all of the members or as otherwise permitted by law, including as permitted by § 18-209(f) of this title. This subsection shall only apply to a limited liability company whose original certificate of formation was filed with the Secretary of State on or after January 1, 2012.”.

Section 11. Amend § 18-404(d), Chapter 18, Title 6 of the Delaware Code by deleting the words “a consent or consents in writing, setting forth the action so taken, shall be signed by the” in the second sentence thereof and by inserting in lieu thereof the words “consented to, in writing or by electronic transmission, by”.

Section 12. Amend § 18-1105(a)(2), Chapter 18, Title 6 of the Delaware Code by inserting the words “for each limited liability company whose registered agent has resigned by such certificate” immediately after “\$2.00” in such subsection.

Section 13. Amend § 18-1105(a)(3), Chapter 18, Title 6 of the Delaware Code by inserting the words “(except as otherwise provided in paragraph (11) of this subsection)” immediately after the words “§ 18-202 of this title” in such subsection.

Section 14. Amend § 18-1105(a)(7), Chapter 18, Title 6 of the Delaware Code by inserting the words “for each foreign limited liability company whose registered agent has resigned by such certificate” immediately after “\$2.00” in such subsection.

Section 15. Amend § 18-1105(a)(11), Chapter 18, Title 6 of the Delaware Code by inserting the words “and is specifically captioned as a certificate of amendment changing only the registered office or registered agent” immediately after the words “registered agent” in the second sentence thereof and by inserting “18-” immediately before the words “206(e) of this title” in the second sentence thereof.

Section 16. This Act shall become effective August 1, 2011.

Approved July 07, 2011