

CHAPTER 287
FORMERLY
HOUSE BILL NO. 372

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 § 18-101(7), Chapter 18, Title 6 of the Delaware Code by inserting the following sentence after the fifth sentence of this subsection: "A limited liability company agreement is not subject to any statute of frauds (including Section 2714 of this Title).".

Section 2. Amend § 18-105(b), Chapter 18, Title 6 of the Delaware Code by deleting the first two sentences thereof and replacing them with the following five sentences: "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 limited liability company upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the limited liability company by letter, directed to the limited liability company at its address as it appears on the records relating to such limited liability company on file with the Secretary of State or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.".

Section 3. Amend § 18-106, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (d) at the end of such section to read as follows: "(d) Unless otherwise provided in a limited liability company agreement, a limited liability company has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney.".

Section 4. Amend § 18-203, Chapter 18, Title 6 of the Delaware Code by inserting the words "or a certificate of ownership and merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof, and by inserting the words "or a certificate of ownership and merger" immediately after the third occurrence of the word "consolidation" in the first sentence thereof.

Section 5. Amend § 18-204, Chapter 18, Title 6 of the Delaware Code by redesignating subsection "(c)" thereof as subsection "(d)" and inserting a new subsection (c) thereto to read as follows: "(c) For all purposes of the laws of the State of Delaware, a power of attorney with respect to matters relating to the organization, internal affairs or termination of a limited liability company or granted by a person as a member or assignee of a limited liability company interest or by a person seeking to become a member or an assignee of a limited liability company interest shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power. Such irrevocable power of attorney, unless otherwise provided therein, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney with respect to matters relating to the organization, internal affairs or termination of a limited liability company or granted by a person as a member or an assignee of a limited liability company interest or by a person seeking to become a member or an assignee of a limited liability company interest and, in either case, granted to the limited liability company, a manager or member thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power.".

Section 6. Amend § 18-206(a), Chapter 18, Title 6 of the Delaware Code by inserting the words "any certificate of ownership and merger," immediately after the word "consolidation," in the first sentence thereof, and by inserting the words "the certificate of ownership and merger," immediately after the word "consolidation," in the first sentence of subparagraph (1) of the fifth sentence thereof.

Section 7. Amend § 18-206(b), Chapter 18, Title 6 of the Delaware Code by inserting the words "or certificate of ownership and merger" immediately after each occurrence of the word "consolidation" in the second sentence thereof.

Section 8. Amend § 18-206(d), Chapter 18, Title 6 of the Delaware Code by inserting the words "a certificate of ownership and merger," immediately after the word "consolidation,".

Section 9. Amend § 18-209(a), Chapter 18, Title 6 of the Delaware Code by inserting the following sentence at the end thereof: "As used in this section and in §§ 18-210 and 18-301 of this title, "plan of merger" means a writing approved by a domestic limited liability company, in the form of resolutions or otherwise, that states the terms and conditions of a merger under subsection (i) of this section."

Section 10. Amend § 18-209(b), Chapter 18, Title 6 of the Delaware Code by deleting the word "a" immediately before the word "merger" in the second sentence thereof and substituting in lieu thereof the words "an agreement of", by inserting the words "or a plan of merger" immediately after the word "consolidation" in the second sentence thereof, by inserting the words "or a plan of merger" immediately after the first occurrence of the word "consolidation" in the fourth sentence thereof, and by inserting the words "or plan of merger" immediately after the second occurrence of the word "consolidation" in the fourth sentence thereof.

Section 11. Amend § 18-209(c), Chapter 18, Title 6 of the Delaware Code by deleting the word "If" at the beginning of the first sentence thereof, and by substituting in lieu thereof the words "Except in the case of a merger under subsection (i) of this section, if".

Section 12. Amend § 18-209(c)(8), Chapter 18, Title 6 of the Delaware Code by inserting two new sentences immediately after the first sentence thereof worded as follows: "Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate."

Section 13. Amend § 18-209(d), Chapter 18, Title 6 of the Delaware Code by inserting the words "or in the case of a merger under subsection (i) of this section in a certificate of ownership and merger," immediately after the first occurrence of the word "consolidation,", and by inserting the words "or a certificate of ownership and merger" immediately before the "." at the end thereof.

Section 14. Amend § 18-209(e), Chapter 18, Title 6 of the Delaware Code by inserting the words "or a certificate of ownership and merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

Section 15. Amend § 18-209(f), Chapter 18, Title 6 of the Delaware Code by inserting the words "or a plan of merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

Section 16. Amend § 18-209, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (i) at the end of such section to read as follows: " (i) In any case in which (x) at least 90% of the outstanding shares of each class of the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(i) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be entitled to vote on such merger, is owned by a domestic limited liability company, (y) 1 or more of such corporations is a corporation of the State of Delaware, and (z) any corporation that is not a corporation of the State of Delaware is a corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic limited liability company having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited liability company is causing a merger under this subsection, the domestic limited liability company shall file a certificate of ownership and merger executed by 1 or more authorized persons on behalf of the domestic limited liability company in the

office of the Secretary of State. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the domestic limited liability company's limited liability company agreement and this chapter, and if the domestic limited liability company shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic limited liability company or corporation upon surrender of each share of the corporation or corporations not owned by the domestic limited liability company, or the cancellation of some or all of such shares. If a corporation surviving a merger under this subsection is not a corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate such corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of the domestic limited liability company or any obligation of any constituent corporation of the State of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title 8, and to irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving corporation shall 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. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process."

Section 17. Amend § 18-210, Chapter 18, Title 6 of the Delaware Code by inserting the words "or a plan of merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

Section 18. Amend § 18-213(b)(7), Chapter 18, Title 6 of the Delaware Code by inserting two new sentences immediately after the first sentence thereof worded as follows: "Process may be served upon the Secretary of State under subsection (b)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate."

Section 19. Amend § 18-216(e)(7), Chapter 18, Title 6 of the Delaware Code by inserting two new sentences immediately after the first sentence thereof worded as follows: "Process may be served upon the Secretary of State under paragraph (6) of this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate."

Section 20. Amend § 18-301(b), Chapter 18, Title 6 of the Delaware Code by inserting the words "or plan of merger" immediately after the second and third occurrences of the word "consolidation" in the first sentence of subparagraph (3) thereof.

Section 21. Amend § 18-305(f), Chapter 18, Title 6 of the Delaware Code by deleting the reference to "(3)" after the words "subsection (a)" wherever it appears in this subsection and by inserting the following language after the words "5 business days" in the second sentence of this subsection: "(or such shorter or longer period of time as is provided for in a limited liability company agreement but not longer than 30 business days)".

Section 22. Amend § 18-305(g), Chapter 18, Title 6 of the Delaware Code by deleting the word "and" and substituting in lieu thereof the word "or" immediately after the words "adopted by all of the members" in the first sentence thereof and by deleting the word "section" and substituting in lieu thereof the word "chapter" immediately before the "." in the second sentence thereof.

Section 23. Amend § 18-702(a), Chapter 18, Title 6 of the Delaware Code by deleting the words "and upon: (1) The approval" from the second sentence thereof and substituting in lieu thereof the words "or, unless otherwise provided in the limited liability company agreement, upon the affirmative vote or written consent" and by deleting the words "other than the member assigning the limited liability company interest; or (2) Compliance with any procedure provided for in the limited liability company agreement" from the second sentence thereof.

Section 24. Amend § 18-704(a), Chapter 18, Title 6 of the Delaware Code by deleting the words "as provided in a limited liability company agreement and upon", by deleting the words "The approval of all of the members of the limited liability company other than the member assigning limited liability company interest" and substituting in lieu thereof the words "As provided in the limited liability company agreement", and by deleting the words "Compliance with any procedure provided for in the limited liability company agreement" and substituting in lieu thereof "Unless otherwise provided in the limited liability company agreement, upon the affirmative vote or written consent of all of the members of the limited liability company".

Section 25. Amend § 18-902, Chapter 18, Title 6 of the Delaware Code by renumbering subsection "(2)" thereof as subsection "(3)" and inserting a new subsection (2) thereto to read as follows: "(2)A certificate, as of a date not earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its formation evidencing its existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto."

Section 26. Amend § 18-910(b), Chapter 18, Title 6 of the Delaware Code by deleting the first two sentences thereof and replacing them with the following five sentences: "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 foreign limited liability company upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the foreign limited liability company by letter, directed to the foreign limited liability company at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient."

Section 27. Amend § 18-911(a), Chapter 18, Title 6 of the Delaware Code by adding the following two sentences at the end thereof as follows: "Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate."

Section 28. Amend § 18-911(c), Chapter 18, Title 6 of the Delaware Code by deleting the words "certified mail, return receipt requested," in the first sentence thereof and by inserting a new sentence immediately after the first sentence thereof worded as follows: "Such letter shall be sent by a mail or courier

service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient."

Section 29. Amend § 18-1101, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (i) at the end of such section to read as follows: "(i) A limited liability company agreement that provides for the application of Delaware law shall be governed by and construed under the laws of the State of Delaware in accordance with its terms."

Section 30. Amend § 18-1105(a), Chapter 18, Title 6 of the Delaware Code by inserting the words "or a certificate of ownership and merger" immediately after the word "consolidation" in subparagraph (3) thereof.

Section 31. This Act shall become effective August 2, 2010.

Approved June 10, 2010