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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 276

AN ACT TO AMEND CHAPTER 15, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION,
REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC PARTNERSHIPS AND THE REGISTRATION
AND REGULATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS.

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

1 Section 1. Amend § 15-101, Title 6 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 15-101. Definitions.

4 As used in this chapter unless the context otherwise requires:

5 (14) "Partnership agreement" means the agreement, whether written, oral or implied, among the partners
6 concerning the partnership, including amendments to the partnership agreement. A partnership is not required to
7 execute its partnership agreement. A partnership is bound by its partnership agreement whether or not the partnership
8 executes the partnership agreement. A partnership agreement is not subject to any statute of frauds (including § 2714
9 of this title). partnership agreement may provide rights to any person, including a person who is not a party to the
10 partnership agreement, to the extent set forth therein. A partner of a partnership or a transferee of an economic interest
11 is bound by the partnership agreement whether or not the partner or transferee executes the partnership agreement. A
12 written partnership agreement or another written agreement or writing may consist of 1 or more agreements,
13 instruments or other writings and may include or incorporate one or more schedules, supplements or other writings
14 containing provisions as to the conduct of the business and affairs of the partnership.

15 Section 2. Amend § 15-105, Title 6 of the Delaware Code by making deletions as shown by strike through and
16 insertions as shown by underline as follows:

17 § 15-105. Execution, filing and recording of statements and certificates.

18 (c) A statement or certificate filed by a partnership must be executed by at least 1 partner or by 1 or more
19 authorized persons. Other statements or certificates must be executed by a partner or 1 or more authorized persons or, in the
20 case of a certificate of conversion to partnership or a certificate of partnership domestication, by any person authorized to
21 execute such certificate on behalf of the other entity or non-United States entity, respectively, except that a certificate of

22 merger or consolidation filed by a surviving or resulting other business entity shall be executed by any person authorized to
23 execute such certificate on behalf of such other business entity. The execution of a statement or certificate by a person who
24 is authorized by this chapter to execute such statement or certificate constitutes an oath or affirmation, under the penalties
25 of perjury in the third degree, that, to the best of such person's knowledge and belief, the facts stated therein ~~are~~ shall be
26 true at the time such statement or certificate becomes effective as provided in this chapter. A person who executes a
27 statement or a certificate as an agent or fiduciary need not exhibit evidence of his or her authority as a prerequisite to filing.
28 Any signature on any statement or certificate authorized to be filed with the Secretary of State under any provision of this
29 chapter may be a facsimile, a conformed signature or an electronically transmitted signature. Upon delivery of any
30 statement or certificate, the Secretary of State shall record the date and time of its delivery. Unless the Secretary of State
31 finds that any statement or certificate does not conform to law, upon receipt of all filing fees required by law the Secretary
32 of State shall:

33 (1) Certify that the statement or certificate has been filed with the Secretary of State by endorsing upon the
34 original statement or certificate the word "Filed", and the date and time of the filing. This endorsement is conclusive of
35 the date and time of its filing in the absence of actual fraud. Except as provided in paragraph (c)(5) or (c)(6) of this
36 section, such date and time of filing of a statement or certificate shall be the date and time of delivery of the statement
37 or certificate;

38 (2) File and index the endorsed statement or certificate;

39 (3) Prepare and return to the person who filed it or the person's representative a copy of the signed statement
40 or certificate similarly endorsed, and shall certify such copy as a true copy of the signed statement or certificate; and

41 (4) Cause to be entered such information from the statement or certificate as the Secretary of State deems
42 appropriate into the Delaware Corporation Information System or any system which is a successor thereto in the office
43 of the Secretary of State, and such information and a copy of such statement or certificate shall be permanently
44 maintained as a public record on a suitable medium. The Secretary of State is authorized to grant direct access to such
45 system to registered agents subject to the execution of an operating agreement between the Secretary of State and such
46 registered agent. Any registered agent granted such access shall demonstrate the existence of policies to ensure that
47 information entered into the system accurately reflects the content of statements or certificates in the possession of the
48 registered agent at the time of entry.

49 (5) Upon request made upon or prior to delivery, the Secretary of State may, to the extent deemed practicable,
50 establish as the date and time of filing of a statement or certificate a date and time after its delivery. If the Secretary of
51 State refuses to file any statement or certificate due to an error, omission or other imperfection, the Secretary of State

may hold such statement or certificate in suspension, and in such event, upon delivery of a replacement statement or certificate in proper form for filing and tender of the required fees within 5 business days after notice of such suspension is given to the filer, the Secretary of State shall establish as the date and time of filing of such statement or certificate the date and time that would have been the date and time of filing of the rejected statement or certificate had it been accepted for filing. The Secretary of State shall not issue a certificate of good standing with respect to any partnership with a statement or certificate held in suspension pursuant to this subsection. The Secretary of State may establish as the date and time of filing of a statement or certificate the date and time at which information from such statement or certificate is entered pursuant to paragraph (c)(4) of this section if such statement or certificate is delivered on the same date and within 4 hours after such information is entered.

(6) If:

a. Together with the actual delivery of a statement or certificate and tender of the required fees, there is delivered to the Secretary of State a separate affidavit (which in its heading shall be designated as an affidavit of extraordinary condition) attesting, on the basis of personal knowledge of the affiant or a reliable source of knowledge identified in the affidavit, that an earlier effort to deliver such statement or certificate and tender such fees was made in good faith, specifying the nature, date and time of such good faith effort and requesting that the Secretary of State establish such date and time as the date and time of filing of such statement or certificate; or

b. Upon the actual delivery of a statement or certificate and tender of the required fees, the Secretary of State in his or her discretion provides a written waiver of the requirement for such an affidavit stating that it appears to the Secretary of State that an earlier effort to deliver such statement or certificate and tender such fees was made in good faith and specifying the date and time of such effort; and

c. The Secretary of State determines that an extraordinary condition existed at such date and time, that such earlier effort was unsuccessful as a result of the existence of such extraordinary condition, and that such actual delivery and tender were made within a reasonable period (not to exceed 2 business days) after the cessation of such extraordinary condition, then the Secretary of State may establish such date and time as the date and time of filing of such statement or certificate. No fee shall be paid to the Secretary of State for receiving an affidavit of extraordinary condition. For purposes of this subsection, an extraordinary condition means: any emergency resulting from an attack on, invasion or occupation by foreign military forces of, or disaster, catastrophe, war or other armed conflict, revolution or insurrection or rioting or civil commotion in, the United States or a locality in which the Secretary of State conducts its business or in which the good faith effort to deliver the statement or certificate and tender the required fees is made, or the immediate threat of any of the foregoing; or any

malfunction or outage of the electrical or telephone service to the Secretary of State's office, or weather or other condition in or about a locality in which the Secretary of State conducts its business, as a result of which the Secretary of State's office is not open for the purpose of the filing of statements and certificates under this chapter or such filing cannot be effected without extraordinary effort. The Secretary of State may require such proof as it deems necessary to make the determination required under this paragraph (c)(6)c. of this section, and any such determination shall be conclusive in the absence of actual fraud. If the Secretary of State establishes the date and time of filing of a statement or certificate pursuant to this subsection, the date and time of delivery of the affidavit of extraordinary condition or the date and time of the Secretary of State's written waiver of such affidavit shall be endorsed on such affidavit or waiver and such affidavit or waiver, so endorsed, shall be attached to the filed statement or certificate to which it relates. Such filed statement or certificate shall be effective as of the date and time established as the date and time of filing by the Secretary of State pursuant to this subsection, except as to those persons who are substantially and adversely affected by such establishment and, as to those persons, the statement or certificate shall be effective from the date and time endorsed on the affidavit of extraordinary condition or written waiver attached thereto.

Section 3. Amend § 15-124, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 15-124. Document form, signature and delivery.

(b) Subsection (a) of this section shall not apply to:

(1) A document filed with or submitted to the Secretary of State, the Register in Chancery, or a court or other judicial or governmental body of this State;

(2) A certificate of partnership interest, except that a signature on a certificate of partnership interest may be a manual, facsimile, or electronic signature; and

(3) An act or transaction effected pursuant to § 15-111, § 15-112, § 15-113 or § 15-114 or subchapter XI of this chapter.

The foregoing shall not create any presumption about the lawful means to document a matter addressed by this subsection, or the lawful means to sign or deliver a document addressed by this subsection. A provision of the partnership agreement shall not limit the application of subsection (a) of this section unless the provision expressly restricts one or more of the means of documenting an act or transaction, or of signing or delivering a document, permitted by subsection (a) of this section.

Section 4. Amend § 15-901, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 15-901. Conversion of certain entities to a domestic partnership.

(h) Prior to ~~filing the time~~ a certificate of conversion to partnership ~~with the Secretary of State becomes effective as provided in this chapter~~, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the conversion; provided, that in the event the continuing domestic partnership is not a limited liability partnership, such approval shall include the approval of any person who, at the effective date or time of the conversion, shall be a partner of the partnership.

Section 5. Amend § 15-904, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 15-904. Domestication of non-United States entities.

(g) Prior to the ~~filing of time~~ a certificate of partnership domestication ~~with the Secretary of State becomes effective as provided in this chapter~~, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and a partnership agreement shall be approved by the same authorization required to approve the domestication; provided that, in the event the continuing domestic partnership is not a limited liability partnership, such approval shall include the approval of any person who, at the effective date or time of the domestication, shall be a partner of the partnership.

Section 6. This Act shall become effective August 1, 2022.

SYNOPSIS

This bill continues the practice of amending periodically the Delaware Revised Uniform Partnership Act (the "Act") to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments of the Act.

Section 1. This section amends Section 15-101(14) of the Act. to confirm that a partnership agreement may include or incorporate multiple documents that may govern the business or affairs of the partnership.

Section 2. This section amends Section 15-105(c) of the Act to clarify that the execution of a statement or certificate by a person who is authorized by the Act to execute such statement or certificate constitutes an oath or affirmation that, to the best of such person's knowledge and belief, the facts stated therein shall be true at the time such statement or certificate becomes effective, not at the time such statement or certificate is executed.

Section 3. This section amends Section 15-124(b) to confirm that a signature on a certificate of partnership interest may be a manual, facsimile, or electronic signature.

Section 4. This section amends Section 15-901(h) of the Act to provide that the approval of a conversion to a partnership in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other entity and the conduct of its business or by applicable law, as appropriate, and the approval of the partnership agreement by the same authorization required to approve the conversion, are required to occur prior to the time a certificate of conversion to partnership becomes effective.

Section 5. This section amends Section 15-904(g) of the Act to provide that the approval of a partnership domestication in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and the approval of the partnership agreement by the same authorization required to approve the domestication, are required to occur prior to the time a certificate of partnership domestication becomes effective

Section 6. This section provides that the proposed amendments to the Act shall become effective August 1, 2022.

Author: Senator Gay