



SPONSOR: Rep. Griffith & Rep. Dorsey Walker & Sen. Gay &  
Sen. Townsend & Sen. Brown  
Reps. Bush, Cooke, Matthews, Schwartzkopf,  
Spiegelman; Sens. Hansen, Hoffner, S. McBride,  
Pettyjohn, Sokola, Walsh

HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 338

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION,  
OPERATION, AND DISSOLUTION OF DOMESTIC STATUTORY TRUSTS.

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

Section 1. Amend § 3801, Title 12 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

§ 3801. Definitions.

(e) "Governing instrument" means any written instrument (whether referred to as a trust agreement, declaration of  
trust or otherwise) which creates a statutory trust or provides for the governance of the affairs of the statutory trust and the  
conduct of its business. A governing instrument:

(1) May provide that a person shall become a beneficial owner or a trustee if such person (or, in the case of a  
beneficial owner, a representative authorized by such person orally, in writing or by other action such as payment for a  
beneficial interest) complies with the conditions for becoming a beneficial owner or a trustee set forth in the governing  
instrument or any other writing and, in the case of a beneficial owner, acquires a beneficial interest;

(2) May consist of 1 or more agreements, instruments or other writings and may include or incorporate bylaws  
containing provisions relating to the business of the statutory trust, the conduct of its affairs and its rights or powers or  
the rights or powers of its trustees, beneficial owners, agents or employees; and

(3) May contain any provision that is not inconsistent with law or with the information contained in the  
certificate of trust.

A statutory ~~trust~~ trust, including any series thereof, is not required to execute its governing instrument. A statutory  
~~trust~~ trust, including any series thereof, is bound by its governing instrument whether or not the statutory ~~trust~~ trust, or any  
series thereof, executes the governing instrument. A beneficial owner or a trustee is bound by the governing instrument  
whether or not such beneficial owner or trustee executes the governing instrument. A governing instrument is not subject to  
any statute of frauds (including § 2714 of Title 6).

Section 2. Amend § 3806, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3806. Management of statutory trust.

(b) A governing instrument may contain any provision relating to the management of the business and affairs of the statutory trust, and the rights, duties and obligations of the trustees, beneficial owners and other persons, which is not contrary to any provision or requirement of this subchapter and, without limitation:

(9) May provide for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the governing instrument or the satisfaction of conditions, and to the extent the governing instrument provides for the manner in which it may be amended such governing instrument may be amended only in that manner or as otherwise permitted by law, including as permitted by § 3815(f) of this title (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended). Unless otherwise provided in a governing instrument, a supermajority amendment provision shall only apply to provisions of the governing instrument that are expressly included in the governing instrument. As used in this section, “supermajority amendment provision” means any amendment provision set forth in a governing instrument requiring that an amendment to a provision of the governing instrument be adopted by no less than the vote or consent required to take action under such latter provision. If a governing instrument does not provide for the manner in which it may be amended, the governing instrument may be amended with the approval of all of the beneficial owners and trustees or as otherwise permitted by law, including as permitted by § 3815(f) and § 3825(f) of this title; or

Section 3. Amend § 3806, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3806. Management of statutory trust.

(l) Except to the extent otherwise provided in the governing instrument of a statutory trust, trustees of a statutory trust that is registered as an investment company or regulated as a business development company under the Investment Company Act of 1940 (~~15 U.S.C. § 80a-1 et seq.~~) 1940, as amended (15 U.S.C. § 80a-1 et seq.), shall have the same fiduciary duties as directors of private corporations for profit organized under the general corporation law of the State.

Section 4. Amend § 3806, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3806. Management of statutory trust.

(p) Except to the extent otherwise provided in the governing instrument of a statutory trust, the trustees of a statutory trust may authorize any of the beneficial owners of the statutory trust to direct how any securities held, directly or indirectly, by the statutory trust shall be voted on any matter, and a trustee shall have no duties or liabilities with respect to the voting of such securities if the trustees have exercised the standard of care required of the trustees under the governing instrument or this subchapter in connection with authorizing the beneficial owners to direct how such securities will be voted.

Section 5. Amend § 3811, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3811. Execution.

(c) The execution of a certificate by a trustee, or other person authorized pursuant to subsection (a) of this ~~section~~ above, section, constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of the trustee's, or other person authorized pursuant to subsection (a) of this ~~section~~ above, section, knowledge and belief, the facts stated ~~therein are~~ in the certificate shall be true at the time ~~such~~ the certificate becomes effective as provided in this subchapter.

Section 6. Amend § 3815, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3815. Merger and consolidation.

(b) If a statutory trust is merging or consolidating under this section, the statutory trust or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation in the office of the Secretary of State. The certificate of merger or consolidation shall state:

(4) In the case of a merger in which a statutory trust is the surviving ~~person, entity~~, such amendments, if any, to the certificate of trust of the surviving statutory trust to change its name, registered office or registered agent as are desired to be effected by the merger;

Section 7. Amend § 3815, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3815. Merger and consolidation.

(f) An agreement of merger or consolidation approved in accordance with subsection (a) of this section may:

(1) Effect any amendment to the governing instrument of the statutory trust; or

(2) Effect the adoption of a new governing instrument of the statutory ~~trust if it, trust,~~ in either paragraph (f)(1) or (f)(2) of this section, if the statutory trust is the surviving or resulting statutory trust in the merger or consolidation.

Section 8. Amend § 3820, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3820. Conversion of other business entities to a statutory trust.

(g) Prior to ~~filing the time~~ a certificate of conversion to statutory trust ~~with the Office of 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 business entity and the conduct of its business or by applicable law, as appropriate, and a governing instrument shall be approved by the same authorization required to approve the conversion.

Section 9. Amend § 3822, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3822. Domestication of non-United States entities.

(g) Prior to ~~filing the time~~ a certificate of statutory trust domestication ~~with the Office of 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 governing instrument shall be approved by the same authorization required to approve the domestication.

Section 10. Amend § 3827, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3827. Reserved power of State to amend or repeal chapter.

All provisions of this ~~subchapter~~ chapter may be altered from time to time or repealed and all rights of statutory trusts, trustees, beneficial owners and other persons are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to statutory trusts, trustees, beneficial owners and other persons whether or not existing as such at the time of the enactment of any such amendment.

Section 11. Amend § 3828, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3828. Construction and application of chapter and governing instrument.

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this ~~subchapter~~ chapter.

(b) It is the policy of this ~~subchapter~~ chapter to give maximum effect to the principle of freedom of contract and to the enforceability of governing instruments.

(c) Action validly taken pursuant to 1 provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy 1 or more requirements prescribed by such other provision.

(d) A governing instrument 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 12. Amend § 3829, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3829. Short title.

This ~~subchapter~~ chapter may be cited as the “Delaware Statutory Trust Act.”

Section 13. This Act takes effect on August 1, 2024.

#### SYNOPSIS

This Act continues the practice of amending periodically the Delaware Statutory Trust Act (“the Statutory Trust Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of proposed amendments to the Statutory Trust Act:

Section 1 amends § 3801(e) of the Statutory Trust Act to confirm that any series of a statutory trust is bound by the governing instrument of such statutory trust regardless of whether the series executed the governing instrument. This amendment is not intended to imply that other references to “statutory trust” in the Statutory Trust Act do not include series thereof to the extent required by the context.

Section 2 amends § 3806(b)(9) of the Statutory Trust Act to confirm that the governing instrument of a statutory trust may be amended as permitted by § 3825(f).

Section 3 amends § 3806(l) of the Statutory Trust Act to conform the reference to the Investment Company Act of 1940 in this section to other references to the Investment Company Act of 1940 in the Statutory Trust Act.

Section 4 adds a new § 3806(p) to the Statutory Trust Act to confirm that the trustees of a statutory trust may authorize the beneficial owners to direct the voting of securities held by the statutory trust. Many registered investment companies have implemented, or are considering implementing, forms of pass-through voting.

Section 5 amends § 3811(c) of the Statutory Trust Act to conform the language to the analogous provision in the Delaware Limited Liability Company Act.

Section 6 amends § 3815(b)(4) of the Statutory Trust Act to change a reference from “person” to “entity”.

Section 7 amends § 3815(f) of the Statutory Trust Act to confirm that an amendment to a governing instrument or the adoption of a new governing instrument effected pursuant to § 3815(f) of the Statutory Trust Act may be effected only with respect to the governing instrument of the surviving or resulting statutory trust and not with respect to the governing instrument of a constituent statutory trust that is not the surviving or resulting statutory trust.

Section 8 amends § 3820(g) of the Statutory Trust Act to provide that the approval of a conversion to a statutory trust, and the approval of the governing instrument of the statutory trust, are required to occur prior to the time a certificate of conversion to statutory trust becomes effective rather than prior to filing of the certificate of conversion to a statutory trust.

Section 9 amends § 3822(g) of the Statutory Trust Act to provide that the approval of a domestication as a statutory trust, and the approval of the governing instrument of the statutory trust, are required to occur prior to the time a certificate of statutory trust domestication becomes effective rather than prior to filing of the certificate of statutory trust domestication.

Sections 10, 11, and 12 amend §§ 3827, 3828, and 3829 of the Statutory Trust Act to clarify that §§ 3827, 3828, and 3829 apply to all of Chapter 38 of Title 12 of the Delaware Code rather than to only Subchapter I of Chapter 38.

Section 13 provides that the amendments to the Statutory Trust Act take effect on August 1, 2024.