



SPONSOR: Rep. M. Smith & Sen. Townsend
Rep. Wilson; Sen. Delcollo

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 404

AN ACT TO AMEND TITLES 6 AND 8 OF THE DELAWARE CODE RELATING TO REQUIREMENTS FOR REGISTERED AGENTS WITH RESPECT TO ENTITIES AND ENTITY FILINGS WITH THE DEPARTMENT OF STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 132, Title 8 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 132. Registered agent in State; resident agent.

4 (b) Every registered agent for a domestic corporation or a foreign corporation shall:

5 (3) Accept service of process and other communications directed to the corporations for which it serves as
6 registered agent and forward same to the corporation to which the service or communication is directed; ~~and~~

7 (4) Forward to the corporations for which it serves as registered agent the annual report required by § 502 of
8 this title or an electronic notification of same in a form satisfactory to the Secretary of State ("Secretary"); and

9 (5) Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as
10 established by the Secretary pursuant to this section.

11 (c) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial
12 registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications.

13 (1) A natural person serving as a commercial registered agent shall:

14 c. Be generally present at a designated location within this State during normal business hours to accept
15 service of process and otherwise perform the functions of a registered agent as specified in subsection (b) of this
16 section; ~~and~~

17 d. Provide the Secretary upon request with such information identifying and enabling communication
18 with such commercial registered agent as the Secretary shall require; and

19 e. Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as
20 established by the Secretary pursuant to this section;

(2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person; ~~and~~

d. Provide the Secretary upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary shall require; ~~and~~

e. Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as established by the Secretary pursuant to this section.

(d) Every corporation formed under the laws of this State or qualified to do business in this State shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is an officer, director, employee, or designated agent of the corporation, who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the corporation. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each corporation for which he, she or it serves as a registered agent. If the corporation fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such corporation pursuant to § 136 of this title.

(e) The Secretary is fully authorized to issue such requirements, standards, guidelines, rules, and regulations, and procedures, which shall be exempt from Chapter 101 of Title 29 of the Delaware Code, as may be necessary or appropriate to carry out the enforcement of subsections (b), (c) and (d) of this section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (b), (c) and (d) of this section. Such actions may include refusal to file documents submitted by a registered agent; including the refusal to file any documents regarding an entity's formation.

Section 2. Amend § 15-111, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) Every registered agent shall:

(3) Accept service of process and other communications directed to the partnerships for which it serves as registered agent and forward same to the partnership to which the service or communication is directed; ~~and~~

(4) Forward to the partnerships for which it serves as registered agent the statement for the annual tax described in § 15-1208 of this title or an electronic notification of same in a form satisfactory to the Secretary of State; ~~and~~

51 (5) Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as
52 established by the Secretary pursuant to this section.

53 (f) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial
54 registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications.

55 (1) A natural person serving as a commercial registered agent shall:

56 c. Be generally present at a designated location within the State of Delaware during normal business
57 hours to accept service of process and otherwise perform the functions of a registered agent as specified in
58 subsection (e) of this section; ~~and~~

59 d. Provide the Secretary of State upon request with such information identifying and enabling
60 communication with such commercial registered agent as the Secretary of State shall require-; and

61 e. Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as
62 established by the Secretary pursuant to this section.

63 (2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a limited
64 liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited liability
65 company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

66 c. Have generally present at such office during normal business hours an officer, director or managing
67 agent who is a natural person; ~~and~~

68 d. Provide the Secretary of State upon request with such information identifying and enabling
69 communication with such commercial registered agent as the Secretary of State shall require-; and

70 e. Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as
71 established by the Secretary pursuant to this section.

72 (g) Every partnership formed under the laws of the State of Delaware or qualified to do business in the State of
73 Delaware that has and maintains a registered agent pursuant to this section shall provide to its registered agent and update
74 from time to time as necessary the name, business address and business telephone number of a natural person who is a
75 partner, officer, employee or designated agent of the partnership, who is then authorized to receive communications from
76 the registered agent. Such person shall be deemed the communications contact for the partnership. Every registered agent
77 shall retain (in paper or electronic form) the above information concerning the current communications contact for each
78 partnership for which he, she, or it serves as registered agent. If the partnership fails to provide the registered agent with a
79 current communications contact, the registered agent may resign as the registered agent for such partnership pursuant to this
80 section.

(h) The Secretary of State is fully authorized to issue such requirements, standards, guidelines, rules, and regulations, and procedures, which shall be exempt from Chapter 101 of Title 29 of the Delaware Code, as may be necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g) of this section. Such actions may include refusal to file documents submitted by a registered agent, including the refusal to file any documents regarding an entity's formation.

Section 3. Amend § 17-104, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) Every registered agent shall:

(3) Accept service of process and other communications directed to the limited partnerships and foreign limited partnerships for which it serves as registered agent and forward same to the limited partnership or foreign limited partnership to which the service or communication is directed; ~~and~~

(4) Forward to the limited partnerships and foreign limited partnerships for which it serves as registered agent the statement for the annual tax described in § 17-1109 of this title or an electronic notification of same in a form satisfactory to the Secretary of State; ~~and~~

(5) Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as established by the Secretary pursuant to this section.

(f) Any registered agent, who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications.

(1) A natural person serving as a commercial registered agent shall:

c. Be generally present at a designated location within the State of Delaware during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section; ~~and~~

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require; ~~and~~

e. Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as established by the Secretary pursuant to this section.

(2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

111 c. Have generally present at such office during normal business hours an officer, director or managing
112 agent who is a natural person; ~~and~~

113 d. Provide the Secretary of State upon request with such information identifying and enabling
114 communication with such commercial registered agent as the Secretary of State shall require-; and

115 e. Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as
116 established by the Secretary pursuant to this section.

117 (g) Every domestic limited partnership and every foreign limited partnership qualified to do business in the State
118 of Delaware shall provide to its registered agent and update from time to time as necessary the name, business address and
119 business telephone number of a natural person who is a partner, officer, employee, or designated agent of the domestic or
120 foreign limited partnership who is then authorized to receive communications from the registered agent. Such person shall
121 be deemed the communications contact for the domestic or foreign limited partnership. A domestic limited partnership,
122 upon receipt of a request by the communications contact delivered in writing or by electronic transmission, shall provide
123 the communications contact with the name, business address, and business telephone number of a natural person who has
124 access to the record required to be maintained pursuant to § 17-305(g) of this title. Every registered agent shall retain (in
125 paper or electronic form) the above information concerning the current communications contact for each domestic limited
126 partnership and each foreign limited partnership for which he, she, or it serves as registered agent. If the domestic or foreign
127 limited partnership fails to provide the registered agent with a current communications contact, the registered agent may
128 resign as the registered agent for such domestic or foreign limited partnership pursuant to this section. For purposes of this
129 subsection, the term "electronic transmission" means any form of communication not directly involving the physical
130 transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may
131 be directly reproduced in paper form by such a recipient through an automated process.

132 (h) The Secretary of State is fully authorized to issue such requirements, standards, guidelines, rules, and
133 regulations, and procedures, which shall be exempt from Chapter 101 of Title 29 of the Delaware Code, as may be
134 necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this section, and to take actions
135 reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g) of this section. Such
136 actions may include refusal to file documents submitted by a registered agent-, including the refusal to file any documents
137 regarding an entity's formation.

138 Section 4. Amend § 18-104, Title 6 of the Delaware Code by making deletions as shown by strike through and
139 insertions as shown by underline as follows:

140 (e) Every registered agent shall:

(3) Accept service of process and other communications directed to the limited liability companies and foreign limited liability companies for which it serves as registered agent and forward same to the limited liability company or foreign limited liability company to which the service or communication is directed; ~~and~~

(4) Forward to the limited liability companies and foreign limited liability companies for which it serves as registered agent the statement for the annual tax described in § 18-1107 of this title or an electronic notification of same in a form satisfactory to the Secretary of State; ~~and~~

(5) Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as established by the Secretary pursuant to this section.

(f) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications:

(1) A natural person serving as a commercial registered agent shall:

c. Be generally present at a designated location within the State of Delaware during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section; ~~and~~

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require; ~~and~~

e. Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as established by the Secretary pursuant to this section.

(2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person; ~~and~~

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require; ~~and~~

e. Satisfy and adhere to all requirements, standards, guidelines, rules, regulations, and procedures as established by the Secretary pursuant to this section.

(g) Every domestic limited liability company and every foreign limited liability company qualified to do business in the State of Delaware shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a member, manager, officer, employee or designated

171 agent of the domestic or foreign limited liability company who is then authorized to receive communications from the
172 registered agent. Such person shall be deemed the communications contact for the domestic or foreign limited liability
173 company. A domestic limited liability company, upon receipt of a request by the communications contact delivered in
174 writing or by electronic transmission, shall provide the communications contact with the name, business address and
175 business telephone number of a natural person who has access to the record required to be maintained pursuant to § 18-
176 305(h) of this title. Every registered agent shall retain (in paper or electronic form) the above information concerning the
177 current communications contact for each domestic limited liability company and each foreign limited liability company for
178 which that registered agent serves as registered agent. If the domestic or foreign limited liability company fails to provide
179 the registered agent with a current communications contact, the registered agent may resign as the registered agent for such
180 domestic or foreign limited liability company pursuant to this section. For purposes of this subsection, the term "electronic
181 transmission" means any form of communication not directly involving the physical transmission of paper that creates a
182 record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper
183 form by such a recipient through an automated process.

184 (h) The Secretary of State is fully authorized to issue such requirements, standards, guidelines, rules, and
185 regulations, and procedures, which shall be exempt from Chapter 101 of Title 29 of the Delaware Code, as may be
186 necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this section, and to take actions
187 reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g) of this section. Such
188 actions may include refusal to file documents submitted by a registered agent, including the refusal to file any documents
189 regarding an entity's formation.

SYNOPSIS

The purpose of this Act is to clarify that registered agents in Delaware are obligated to comply with requirements, standards, guidelines, rules, regulations, and procedures as issued by the Secretary of State on matters involving filings submitted to the Secretary on behalf of corporations, partnerships, limited partnerships, and limited liability companies. This Act will enable the Secretary of State to adopt requirements, standards, guidelines, rules, regulations, and procedures for commercial registered agents regarding verification of customer entities. This Act also clarifies that such requirements, standards, guidelines, rules, regulations, and procedures which the Secretary issues are exempt from Chapter 101, Title 29 of the Delaware Code.