SPONSOR: Sen. Brown & Sen. Townsend & Rep. Lynn
Sens. Gay, Hansen, S. McBride, Pettyjohn; Reps. Brady, Bush, Griffith, Mitchell

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 115

AN ACT TO AMEND 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:

Section 1. Amend § 15-103, Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 15-103. Effect of partnership agreement; nonwaivable provisions.

(c) Notwithstanding anything to the contrary contained in this section, §§ 15-201(a), 15-203 and 15-501 of this title may be modified only to the extent provided in a statement of partnership existence or a statement of qualification and in a partnership agreement. Unless otherwise provided in a partnership agreement, the provisions of this chapter apply to a partnership that has a statement of partnership existence or a statement of qualification and a partnership agreement that has modified §§ 15-201(a), 15-203 and 15-501 of this title.

Section 2. Amend § 15-202, Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 15-202. Formation of partnership; powers.

(g) Any act or transaction that may be taken by or in respect of a partnership under this chapter or a partnership agreement, but that is void or voidable when taken, may be ratified (or the failure to comply with any requirements of the partnership agreement making such act or transaction void or voidable may be waived) by the partners or other persons whose approval would be required under the partnership agreement (i) for such act or transaction to be validly taken, or (ii) to amend the partnership agreement in a manner that would permit such act or transaction to be validly taken, in each case at the time of such ratification or waiver; provided, that if the void or voidable act or transaction was the issuance or assignment of any partnership interests, the partnership interests purportedly issued or assigned shall be deemed not to have been issued or assigned for purposes of determining whether the void or voidable act or transaction was ratified or waived pursuant to this subsection (g). Any act or transaction ratified, or with respect to which the failure to comply with any requirements of the partnership agreement is waived, pursuant to this subsection (g) shall be deemed validly taken at the time of such act or transaction. If an amendment to the partnership agreement to permit any such act or transaction to be

validly taken would require notice to any partners or other persons under the partnership agreement and the ratification or waiver of such act or transaction is effectuated pursuant to this subsection (g) by the partners or other persons whose approval would be required to amend the partnership agreement, notice of such ratification or waiver shall be given following such ratification or waiver to the partners or other persons who would have been entitled to notice of such an amendment and who have not otherwise received notice of, or participated in, such ratification or waiver. The provisions of this subsection (g) shall not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act by other means permitted by law. Upon application of the partnership which is formed under the laws of the State of Delaware or doing business in the State of Delaware, any partner of such a partnership or any person claiming to be substantially and adversely affected by a ratification or waiver pursuant to this subsection (g) (excluding any harm that would have resulted if such act or transaction had been valid when taken), the Court of Chancery may hear and determine the validity and effectiveness of the ratification of, or waiver with respect to, any void or voidable act or transaction effectuated pursuant to this subsection (g), and in any such application, the partnership shall be named as a party, and no other party need be joined in order for the Court to adjudicate the validity and effectiveness of the ratification or waiver, and the Court may make such order respecting further or other notice of such application as it deems proper under these circumstances; provided, that nothing herein limits or affects the right to serve process in any other manner now or hereafter provided by law, and this sentence is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

Section 3. Amend § 15-401, Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 15-401. Partner's rights and duties.

(l) A partner has the power and authority to delegate to 1 or more other persons any or all of the partner's rights, powers and duties to manage and control the business and affairs of the partnership, which delegation may be made irrespective of whether the partner has a conflict of interest with respect to the matter as to which its rights, powers or duties are being delegated, and the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the partner. Any such delegation may be to agents, officers and employees of the partner or the partnership, and by a management agreement or other agreement with, or otherwise to, other persons, including a committee of 1 or more persons. Such delegation by a partner shall be irrevocable if it states that it is irrevocable. Such delegation by a partner shall not cause the partner to cease to be a partner of the partnership or cause the person to whom any such rights, powers and duties have been delegated to be a partner of the partnership. No other

provision of this chapter or other law shall be construed to restrict a partner's power and authority to delegate any or all of its rights, powers and duties to manage and control the business and affairs of the partnership.

Section 4. Amend § 15-403, Chapter 15, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 15-403. Partner's rights and duties with respect to information.

(a) Each partner and the partnership shall provide partners, former partners and the legal representative of a deceased partner or partner under a legal disability and their agents and attorneys, access to the books and records of the partnership and other information concerning the partnership's business and affairs (in the case of former partners, only with respect to the period during which they were partners) upon reasonable demand, for any purpose reasonably related to the partner's interest as a partner in the partnership. The right of access shall include access to:

(1) True and full information regarding the status of the business and financial condition of the partnership;

(2) Promptly after becoming available, a copy of the partnership's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each partner;

(4) A copy of any statement and written partnership agreement and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the statement or the partnership agreement and any amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and which each partner has agreed to contribute in the future, and the date on which each partner became a partner; and

(6) Other information regarding the affairs of the partnership as is just and reasonable.

The right of access includes the right to examine and make extracts from books and records and other information concerning the partnership's business and affairs. The partnership agreement may provide for, and in the absence of such provision in the partnership agreement, the partnership or the partner from whom access is sought may impose, reasonable standards (including standards governing what information ~~and documents are~~ (including books, records and other documents) is to be furnished at what time and location and at whose expense) with respect to exercise of the right of access.

(e) Any action to enforce any right arising under this section shall be brought in the Court of Chancery. If the partnership or a partner refuses to permit access as described in subsection (a) of this section or does not reply to a demand

that has been made within 5 business days (or such shorter or longer period of time as is provided for in a partnership agreement but not longer than 30 business days) after the demand has been made, the demanding partner, former partner, or legal representative of a deceased partner or partner under a legal disability may apply to the Court of Chancery for an order to compel such disclosure. The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person making the demand is entitled to the books and records or other information concerning the partnership's business and affairs sought. The Court of Chancery may summarily order the partnership or partner to permit the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability and their agents and attorneys to provide access to the information described in subsection (a) of this section and to make copies or extracts therefrom; or the Court of Chancery may summarily order the partnership or partner to furnish to the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability and their agents and attorneys the information described in subsection (a) of this section on the condition that the partner, former partner or legal representative of a deceased partner or partner under a legal disability first pay to the partnership or to the partner from whom access is sought the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court of Chancery deems appropriate. When a demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability seeks to obtain access to information described in subsection (a) of this section, the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability shall first establish (1) that the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability has complied with the provisions of this section respecting the form and manner of making demand for obtaining access to such information and (2) that the information the demanding partner, former partner or legal representative of a deceased partner or partner under a legal disability seeks is reasonably related to the partner's interest as a partner in the partnership. The Court of Chancery may, in its discretion, prescribe any limitations or conditions with reference to the access to information, or award such other or further relief as the Court of Chancery may deem just and proper. The Court of Chancery may order books, records and other documents ~~and records~~, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within the State of Delaware and kept in the State of Delaware upon such terms and conditions as the order may prescribe.

(f) If a partner is entitled to obtain information under this chapter or a partnership agreement for a purpose reasonably related to the partner's interest as a partner or other stated purpose, the partner's right shall be to obtain such information as is necessary and essential to achieving that purpose. The rights of a partner to obtain information as provided in this section may be expanded or restricted in an original partnership agreement or in any subsequent amendment approved or adopted by all of the partners or in compliance with any applicable requirements of the partnership agreement.

Section 2. This Act shall become effective August 1, 2021.

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 15-103 of the Act to confirm and clarify the effect of modifications provided in a statement of partnership existence or a statement of qualification and in a partnership agreement as contemplated by Sections 15-201(a), 15-203, and 15-501. Notwithstanding any modifications provided, such as, that a partnership is not a separate legal entity, all other provisions of this chapter, including Section 15-801, continue to apply, unless the partnership agreement provides that such other provisions do not apply.

Section 2. This section amends Section 15-202 of the Act to add subsection (g) to provide a safe harbor procedure for ratifying acts or transactions that may be taken by or in respect of a partnership under the Act or a partnership agreement that are void or voidable and waiving failures to comply with requirements of a partnership agreement that make such acts and transactions void or voidable. New subsection (g) is intended to provide a rule different from the rule applied in Composecure, L.L.C. v. Cardux, LLC, 206 A.3d 807 (Del. 2018), and Absalom Absalom Trust v. Saint Gervais LLC, 2019 WL 2655787 (Del. Ch. June 27, 2019), that acts or transactions determined to be void generally may not be ratified. The penultimate sentence of new subsection (g) confirms that void or voidable actions may be ratified or requirements may be waived by other means permitted by law, and accordingly, new subsection (g) is not intended to preempt or restrict other valid means of ratifying acts or transactions or waiving requirements or to impair the effectiveness of any valid ratification or waiver previously effected.

Section 3. This section amends Section 15-401(l) of the Act to provide that a partner may delegate any of its rights, powers or duties irrespective of whether it has a conflict of interest with respect to the matter as to which such rights, powers or duties are being delegated, and that the person or persons to whom any such rights, powers or duties are being delegated shall not be deemed conflicted solely by reason of the conflict of interest of the partner. The amendments to Section 15-401(l) create a different rule than the rule applied in cases such as Wenske v. Bluebell Creameries, Inc., 214 A.3d 958 (Del. Ch. 2019), that a conflicted principal is legally disabled from delegating authority over the subject matter as to which the principal is conflicted even to an independent delegatee.

Section 4. This section amends Section 15-403 of the Act to make certain clarifying and conforming changes, and to provide that when a partner is entitled to obtain information for a stated purpose (whether pursuant to Section 15-403 or a partnership agreement), the partner's right shall be to obtain such information as is necessary and essential to achieving that purpose, unless such right has been expanded or restricted in the partnership agreement. To the extent current law is that the "necessary and essential" test does not apply by default to (i) a partner's right under Section 15-403(a) of the Act to obtain information from a partnership for a purpose reasonably related to the partner's interest as a partner, or (ii) a partner's right under a partnership agreement to obtain information from a partnership for a stated purpose, the first sentence of subsection (f) is intended to change that law.

Section 5. This section provides that the proposed amendments to the Act shall become effective August 1, 2021.

Author: Senator Brown