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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 116

AN ACT TO AMEND CHAPTER 17, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

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

Section 1. Amend § 17-106, Chapter 17, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-106. Nature of business permitted; powers.

(e) Any act or transaction that may be taken by or in respect of a limited partnership under this chapter or a limited 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 (e). 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 (e) 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 (e) 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 (e) 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 limited partnership, any partner or any person claiming to be

substantially and adversely affected by a ratification or waiver pursuant to this subsection (e) (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 (e), and in any such application, the limited partnership shall be named as a party and service of the application upon the registered agent of the limited partnership shall be deemed to be service upon the limited partnership, 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 2. Amend § 17-220, Chapter 17, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-220. Division of a limited partnership.

(a) As used in this section and §§ 17-203; and 17-301 ~~and 17-1203~~:

Section 3. Amend § 17-305, Chapter 17, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-305. Access to and confidentiality of information; records.

(a) Each limited partner, in person or by attorney or other agent, has the right, subject to such reasonable standards (including standards governing what information (including books, records and other documents) ~~is~~ ~~are~~ to be furnished, at what time and location and at whose expense) as may be set forth in the partnership agreement or otherwise established by the general partners, to obtain from the general partners from time to time upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner:

(c) A limited partnership may maintain its books, records and other documents in other than paper form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into paper form within a reasonable time.

(e) Any action to enforce any right arising under this section shall be brought in the Court of Chancery. If a general partner refuses to permit a limited partner, or attorney or other agent acting for the limited partner, to obtain from the general partner the information described in subsection (a) of this section or does not reply to the 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 limited partner 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 seeking such information is entitled to the information sought. The Court of Chancery may summarily order the general partner to permit the limited partner to obtain the information described in subsection (a) of this section and to make copies or abstracts therefrom, or the Court of Chancery may summarily order the general partner to furnish to the limited partner the information described in subsection (a) of this section on the condition that the limited partner first pay to the limited partnership the reasonable cost of obtaining and furnishing such information and on such other conditions as the Court of Chancery deems appropriate. When a limited partner seeks to obtain the information described in subsection (a) of this section, the limited partner shall first establish: (1) that the limited partner has complied with the provisions of this section respecting the form and manner of making demand for obtaining such information, and (2) that the information the limited partner seeks is reasonably related to the limited partner's interest as a limited partner. The Court of Chancery may, in its discretion, prescribe any limitations or conditions with reference to the obtaining of 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 limited partner is entitled to obtain information under this chapter or a partnership agreement for a purpose reasonably related to the limited partner's interest as a limited partner or other stated purpose, the limited partner's right shall be to obtain such information as is necessary and essential to achieving that purpose. The rights of a limited 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. The provisions of this subsection shall not be construed to limit the ability to ~~impose restrictions on~~ expand or restrict the rights of a limited partner to obtain information by any other means permitted ~~under this chapter by~~ law.

Section 4. Amend § 17-403, Chapter 17, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-403. General powers and liabilities.

(c) Unless otherwise provided in the partnership agreement, a general partner of a limited partnership has the power and authority to delegate to 1 or more other persons any or all of the general partner's rights, powers and duties to manage and control the business and affairs of the limited partnership, which delegation may be made irrespective of

82 whether the general partner has a conflict of interest with respect to the matter as to which its rights, powers or duties are
83 being delegated, and the person or persons to whom any such rights, powers or duties are being delegated shall not be
84 deemed conflicted solely by reason of the conflict of interest of the general partner. Any such delegation may be to agents,
85 officers, and employees of the general partner or the limited partnership and by a management agreement or another
86 agreement with, or otherwise to, other persons, including a committee of 1 or more persons. Unless otherwise provided in
87 the partnership agreement, such delegation by a general partner of a limited partnership shall be irrevocable if it states that
88 it is irrevocable. Unless otherwise provided in the partnership agreement, such delegation by a general partner of a limited
89 partnership shall not cause the general partner to cease to be a general partner of the limited partnership or cause the person
90 to whom any such rights, powers and duties have been delegated to be a general partner of the limited partnership. No other
91 provision of this chapter or other law shall be construed to restrict a general partner's power and authority to delegate any
92 or all of its rights, powers, and duties to manage and control the business and affairs of the limited partnership.

93 Section 5. Amend § 17-1201, Chapter 17, Title 6 of the Delaware Code by making deletions as shown by strike
94 through and insertions as shown by underline as follows:

95 § 17-1201. Law applicable to statutory public benefit limited partnerships; how formed.

96 This subchapter applies to all statutory public benefit limited partnerships, as defined in § 17-1202(a) of this title.
97 If a limited partnership is formed as or elects to become a statutory public benefit limited partnership ~~under this subchapter~~
98 in the manner prescribed in this ~~subchapter~~ section, it shall be subject in all respects to the provisions of this chapter, except
99 to the extent this subchapter imposes additional or different requirements, in which case such additional or different
100 requirements shall apply, and notwithstanding § 17-1101 of this title or any other provision of this title, such additional or
101 different requirements imposed by this subchapter may not be altered in the partnership agreement. If a limited partnership
102 is not formed as a statutory public benefit limited partnership, it may become a statutory public benefit limited partnership
103 in the manner specified in its partnership agreement or by amending its partnership agreement and certificate of limited
104 partnership to comply with the requirements of this subchapter.

105 Section 6. Amend § 17-1202, Chapter 17, Title 6 of the Delaware Code by making deletions as shown by strike
106 through and insertions as shown by underline as follows:

107 § 17-1202. Statutory public benefit limited partnership defined; contents of certificate of limited partnership and
108 partnership agreement.

109 (a) A "statutory public benefit limited partnership" is a for-profit limited partnership formed under and subject to
110 the requirements of this chapter that is intended to produce a public benefit or public benefits and to operate in a responsible
111 and sustainable manner. To that end, a statutory public benefit limited partnership shall be managed in a manner that

balances the partners' pecuniary interests, the best interests of those materially affected by the limited partnership's conduct, and the public benefit or public benefits set forth in its partnership agreement and in its certificate of limited partnership. A statutory public benefit limited partnership shall state in its partnership agreement and in the heading of its certificate of limited partnership that it is a statutory public benefit limited partnership and shall set forth in its partnership agreement and in its certificate of limited partnership 1 or more specific public benefits to be promoted by the limited partnership ~~in its certificate of limited partnership. The partnership agreement. In the event of any inconsistency between~~ the public benefit or benefits to be promoted by the limited partnership as set forth in its partnership agreement and in its certificate of limited partnership, the partnership agreement shall control as among the partners and other persons who are party to or otherwise bound by the partnership agreement. A general partner who becomes aware that the specific public benefit or benefits to be promoted by the limited partnership as set forth in its partnership agreement are inaccurately set forth in its certificate of limited partnership, shall promptly amend the certificate of limited partnership. Any provision in the partnership agreement or certificate of limited partnership of a statutory public benefit limited partnership may not contain any provision that is inconsistent with this subchapter shall not be effective to the extent of such inconsistency.

Section 7. Amend § 17-1203, Chapter 17, Title 6 of the Delaware Code by repealing § 17-1203 in its entirety and inserting in lieu thereof the insertions as shown by underline as follows:

§ 17-1203. [Reserved]

Section 8. Amend § 17-1204, Chapter 17, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-1204. Duties of general partners or other persons.

(a) The general partners or other persons with authority to manage or direct the business and affairs of a statutory public benefit limited partnership shall manage or direct the business and affairs of the statutory public benefit limited partnership in a manner that balances the pecuniary interests of the partners, the best interests of those materially affected by the limited partnership's conduct, and the specific public benefit or public benefits set forth in its partnership agreement and certificate of limited partnership. Unless otherwise provided in a partnership agreement, no general partner or other person with authority to manage or direct the business and affairs of the statutory public benefit limited partnership shall have any liability for monetary damages for the failure to manage or direct the business and affairs of the statutory public benefit limited partnership as provided in this subsection.

(b) A general partner of a statutory public benefit limited partnership or any other person with authority to manage or direct the business and affairs of the statutory public benefit limited partnership shall not, by virtue of the public benefit provisions or § 17-1202(a) of this title, have any duty to any person on account of any interest of such person in the public

benefit or public benefits set forth in its partnership agreement and certificate of limited partnership or on account of any interest materially affected by the limited partnership's conduct and, with respect to a decision implicating the balance requirement in subsection (a) of this section, will be deemed to satisfy such person's fiduciary duties to limited partners and the limited partnership if such person's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

Section 9. Amend § 17-1205, Chapter 17, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 17-1205. Periodic statements and third-party certification.

A statutory public benefit limited partnership shall no less than biennially provide its limited partners with a statement as to the limited partnership's promotion of the public benefit or public benefits set forth in its partnership agreement and certificate of limited partnership and as to the best interests of those materially affected by the limited partnership's conduct. The statement shall include:

Section 10. This Act shall become effective August 1, 2021.

SYNOPSIS

This bill continues the practice of amending periodically the Delaware Revised Uniform Limited 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 17-106 of the Act to add subsection (e) to provide a safe harbor procedure for ratifying acts or transactions that may be taken by or in respect of a limited partnership under the Act or a limited 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 (e) 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 (e) confirms that void or voidable actions may be ratified or requirements may be waived by other means permitted by law, and accordingly, new subsection (e) 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 2. This section amends Section 17-220 of the Act to make a conforming change.

Section 3. This section amends Section 17-305 of the Act to make certain clarifying and conforming changes, and to provide that when a limited partner is entitled to obtain information for a stated purpose (whether pursuant to Section 17-305 or a partnership agreement), the limited 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. The first sentence of subsection (f) is intended to (i) change current law, as set forth in *Murfey v. WHC Ventures, LLC*, 236 A.3d 337 (Del. 2020), that the "necessary and essential" test does not apply by default to a limited partner's contractual right to obtain information from a limited partnership for a stated purpose, and (ii) clarify that the "necessary and essential" test applies to a limited partner's right under Section 17-305(a) of the Act to obtain information from a limited partnership for a purpose reasonably related to the limited partner's interest as a limited partner.

Section 4. This section amends Section 17-403(c) of the Act to provide that a general 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 general partner. The amendments to Section 17-403(c) 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 5. This section amends Section 17-1201 of the Act to clarify the effect of subchapter XII of the Act and to provide for the manner in which a limited partnership may become a statutory public benefit limited partnership.

Section 6. This section amends Section 17-1202(a) of the Act to provide that a partnership agreement of a statutory public benefit limited partnership must state that the limited partnership is a statutory public benefit limited partnership and must set forth the specific public benefit or benefits to be promoted by the limited partnership, to provide that the partnership agreement shall control as among the partners and other persons who are party to or otherwise bound by the partnership agreement in the event of any inconsistency between the public benefit(s) as set forth in such agreement and the certificate of limited partnership, to require amendment of the certificate of limited partnership of a statutory public benefit limited partnership in specified circumstances, and to clarify the effect of subchapter XII of the Act.

Section 7. This section repeals Section 17-1203 of the Act.

Section 8. This section amends Section 17-1204 of the Act to make conforming changes.

Section 9. This section amends Section 17-1205 of the Act to make a conforming change.

Section 10. This section provides that the proposed amendments to the Act shall become effective August 1, 2021.

Author: Senator Brown