

SPONSOR: Sen. Townsend & Rep. Mitchell & Sen. Delcollo &
Sen. Hansen & Sen. Henry & Rep. Lynn &
Rep. M. Smith
Sen. Lavelle; Reps. Brady, J. Johnson, Paradee,
Spiegelman

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 72
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 18, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANIES AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY COMPANIES.

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

Section 1. Amend § 18-101(4), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(4) "Foreign limited liability company" means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction ~~and denominated as such under the laws of such state or foreign country or other foreign jurisdiction~~. When used in this title in reference to a foreign limited liability company, the terms "limited liability company agreement," "limited liability company interest," "manager" or "member" shall mean a limited liability company agreement, limited liability company interest, manager or member, respectively, under the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is formed.

Section 2. Amend § 18-101(11), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(11) "Member" means a person who is admitted to a limited liability company as a member as provided in § 18-301 of this title ~~or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is formed~~.

Section 3. Amend § 18-102(5), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(5) Shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at *12 U.S.C. § 1813*), or a limited liability company regulated under the Bank Holding Company Act of 1956, as amended, *12 U.S.C. § 1841* et seq., or the Home

SD : FM : SDM : 4681490020 Released: 06/30/2017 10:17 PM
LC : MJC : RAY : 4801490116

Owners' Loan Act, as amended, *12 U.S.C. § 1461* et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the limited liability company or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or ~~the~~ this State as determined by the Division of Corporations in the Department of State.

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

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

Section 5. Amend § 18-104(i)(4), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(4) Upon the entry of an order by the Court enjoining any person or entity from acting as a registered agent, the Secretary of State shall mail or deliver notice of such order to each affected domestic or foreign limited liability company:

a. That has specified the address of a place of business in a record of the Secretary of State, to the address specified, or

b. An address of which the Secretary of State has obtained from the domestic or foreign limited liability company's former registered agent, to the address obtained.

If such ~~a limited liability company is~~ a domestic limited liability company ~~and~~ fails to obtain and designate a new registered agent within 30 days after such notice is given, the certificate of formation of such limited liability company shall be canceled. If such ~~a limited liability company is~~ a foreign limited liability company ~~and~~ fails to obtain and designate a new registered agent within 30 days after such notice is given, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be canceled. If any other affected ~~limited liability company is a~~ domestic limited liability company ~~and~~ fails to obtain and designate a new registered agent within 60 days after entry of an order by the Court enjoining such limited liability company's registered agent from acting as a registered agent, the certificate of formation of such limited liability company shall be canceled. If any other affected ~~limited liability company is a~~ foreign limited liability company ~~and~~ fails to obtain and designate a new registered agent within 60 days after entry of an order by the ~~e~~Court enjoining such foreign limited liability company's registered agent from acting as a registered agent, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be canceled. If the Court enjoins a person or entity from acting as a registered agent as provided in this section and no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the domestic or foreign limited liability company for which the registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 18-105 or § 18-911 of this title. The Court of Chancery may, upon application of the Secretary of State on notice to the former registered agent, enter such orders as it deems appropriate to give the Secretary of State access to information in the former registered agent's possession in order to facilitate communication with the domestic and foreign limited liability companies the former registered agent served.

Section 6. Amend § 18-201, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) A certificate of formation substantially complies with § 18-201(a)(2) of this title if it contains the name of the registered agent and the address of the registered office even if the certificate of formation does not expressly designate such person as the registered agent or such address as the registered office or the address of the registered agent.

Section 7. Amend § 18-209(a), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) As used in this section and in § 18-204 of this title, "other business entity" means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust, or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or

limited (including a limited liability limited partnership)), and a foreign limited liability company, but excluding a domestic limited liability company. As used in this section and in §§ 18-210 and 18-301 of this title, "plan of merger" means a writing approved by a domestic limited liability company, in the form of resolutions or otherwise, that states the terms and conditions of a merger under subsection (i) of this section.

Section 8. Amend § 18-212(a), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) As used in this section and in § 18-204 of this title, "non-United States entity" means a foreign limited liability company (other than ~~one~~ 1 formed under the laws of a state) or a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

Section 9. Amend § 18-214(a), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) As used in this section and in § 18-204 of this title, the term "other entity" means a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign limited liability company.

Section 10. Amend § 18-216(a), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) Upon compliance with this section, a domestic limited liability company may convert to a corporation, a statutory trust, a business trust, an association, a real estate investment trust, a common-law trust or any other incorporated or unincorporated business or entity, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a foreign limited liability company.

Section 11. Amend § 18-407, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Unless otherwise provided in the limited liability company agreement, a member or manager of a limited liability company has the power and authority to delegate to 1 or more other persons any or all of the member's or manager's, as the case may be, rights, ~~and~~ powers and duties to manage and control the business and affairs of the limited liability company~~,~~. ~~including to delegate~~ Any such delegation may be to agents, officers and employees of a member or manager or the limited

liability company, and ~~to delegate~~ by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager shall be irrevocable if it states that it is irrevocable. Unless otherwise provided in the limited liability company agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager, as the case may be, of the limited liability company or cause the person to whom any such rights ~~and~~, powers and duties have been delegated to be a member or manager, as the case may be, of the limited liability company. No other provision of this chapter shall be construed to restrict a member's or manager'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 limited liability company.

Section 12. Amend § 18-1107(a), Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) For purposes of any tax imposed by the State of Delaware or any instrumentality, agency or political subdivision of the State of Delaware, a domestic limited liability company ~~formed under this chapter~~ or a foreign limited liability company qualified to do business in the State of Delaware ~~as a foreign limited liability company~~ shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the domestic or foreign limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For purposes of any tax imposed by the State of Delaware or any instrumentality, agency or political subdivision of the State of Delaware, a member or an assignee of a member of a domestic limited liability company ~~formed under this chapter~~ or a foreign limited liability company qualified to do business in the State of Delaware ~~as a foreign limited liability company~~ shall be treated as either a resident or nonresident partner unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as such member or assignee of a member has for federal income tax purposes.

Section 13. This Act shall become effective August 1, 2017.