SPONSOR: Rep. M. Smith & Sen. McDowell
Reps. Baumbach, Bentz, Bolden, Brady, Carson, Gray, Heffernan, Hudson, Jaques, J. Johnson, Q. Johnson, Keeley, Kenton, Longhurst, Mitchell, Mulrooney, Osienski, Paradee, Potter, Schwartzkopf, B. Short, D. Short, Spiegelman, Viola, Wilson, Yearick; Sens. Henry, Sokola, Walsh

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 310
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2
AND
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE CERTIFICATION OF ADOPTION OF SUSTAINABILITY AND TRANSPARENCY STANDARDS BY DELAWARE ENTITIES.

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

Section 1. Amend Subtitle II of Title 6 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows.

CHAPTER 50E.

CERTIFICATION OF ADOPTION OF TRANSPARENCY AND SUSTAINABILITY STANDARDS BY DELAWARE BUSINESS ENTITIES.

§ 5000E Purpose.

The intent of this chapter is to support Delaware business entities in their global sustainability efforts. This chapter is enabling legislation that permits a Delaware entity to signal its commitment to global sustainability. This chapter does not purport to prescribe which sustainability standards an entity chooses to adopt. Thus, a Delaware entity is free to choose standards promulgated or developed by any entity.

§ 5001E Definitions.

As used in this chapter only, the following terms shall have the following meanings:

(1) "Acknowledged" shall mean, with respect to any document or instrument required to be executed by an Authorized Person pursuant to this chapter, the Authorized Person executing such document or instrument has certified, under penalty of perjury, that the information set forth in such document or instrument is accurate and complete to the best of such Authorized Person's actual knowledge after due inquiry.

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(2) “Assessment Measures” shall mean, with respect to any Entity, the policies, procedures or practices adopted by such Entity to adduce objective factual information to assess the Entity’s performance in meeting its Standards, including any procedures for internal or external verification of such information.

(3) “Authorized Person” means, with respect to any Entity, any person or entity who has been duly authorized in accordance with the Organizational Documents of the Entity and the laws of this State (whether statutory, common law or otherwise) under which the Entity is incorporated, formed or organized to execute such documents and instruments and make such acknowledgments as are required by this chapter.

(4) “Certification of Adoption of Transparency and Sustainability Standards” shall mean a certificate, issued by the Secretary of State, attesting that a Reporting Entity has filed with the Secretary of State a Standards Statement pursuant to this chapter. Such certificate shall state on its face that the State of Delaware has not reviewed the contents or implementation of the matters referenced in the Standards Statement, nor verified any Reports made by the Reporting Entity.”

(5) “Control,” including the terms “controlling,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of equity or other voting securities, by contract or otherwise.

(6) “Entity” means any (A) corporation (stock or nonstock), partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), limited liability company, or statutory trust validly existing under the applicable laws of this State, or (B) any association of the kind commonly known as a joint-stock association or joint-stock company, and any unincorporated association, trust or other enterprise having members or having outstanding shares of stock or other evidences of financial or beneficial interest therein, the internal affairs of which are governed by the laws of this State and which has not otherwise been dissolved (whether voluntarily or by any order or decree of any court of competent jurisdiction) or otherwise terminated.

(7) “Governing Body” shall mean the board of directors or equivalent governing body, person or entity having the power to manage and direct the business and affairs of the Entity, and shall include any duly authorized and empowered committee of the board of directors or equivalent governing body.

(8) “Non-Reporting Entity” shall mean any person or entity (including any Entity) that is not a Reporting Entity.

(9) “Organizational Documents” shall mean the certificate of incorporation, bylaws, partnership agreement, limited liability company agreement, articles of association or other agreement, document or instrument containing the provisions by which an entity is formed or organized and by which its internal affairs are governed, in each case as amended, modified, supplemented and/or restated and in effect as of any date of determination.

(10) "Provider" shall mean, as to any Entity, any Third Party that is engaged to provide professional consulting services or advice to assist entities or enterprises in measuring, managing or reporting the impact of their business and operations on issues of social and environmental impact.

(11) "Report" shall mean a report with respect to a Reporting Period for a Reporting Entity containing the following:

a. a summary of the Standards and Assessment Measures in effect during the applicable Reporting Period, which summary shall include the Third Party Criteria and any other source used to develop the Entity's Standards and Assessment Measures and the process by which they were identified, developed and approved by the Entity;

b. a summary of the actions or activities by which the Entity has sought to meet the Standards during the applicable reporting period, including engagement with and disclosure to stakeholders, if any;

c. the most recent available objective and factual information developed pursuant to the Assessment Measures, if any, with respect to the Entity's performance in meeting its Standards during the Reporting Period, and an assessment by the Governing Body whether the Entity has been successful in meeting the Standards. and in the case of any failure to meet such Standards, a summary of any additional efforts the Governing Body has determined the Entity will undertake to improve its performance in respect thereof, or its determination not to undertake such additional efforts;

d. (i) the identity of any Provider assisting the Entity in measuring, managing or reporting the impact of the Entity's business and operations in light of its Standards; or (ii) a statement that the Entity has not engaged the services of any Provider for such purposes;

e. a summary of any changes to the Standards, Assessment Measures or Reporting Period, the process by which such changes were identified, developed and approved by the Entity, and the Third Party Criteria used to develop any changes to the Standards;

f. a summary of the actions or activities planned for the next succeeding Reporting Period with respect to measuring, managing and reporting with respect to the Standards if such actions and activities are materially different from those described for the applicable Reporting Period; and

Notwithstanding the foregoing, no Entity shall be required to include in any Report any information that such Entity determines in good faith is subject to an attorney-client or other applicable privilege or would result in the disclosure of trade secrets or other competitively sensitive information.

(12) "Reporting Entity" shall mean an Entity that has been issued a Certificate of Adoption of Transparency and Sustainability Standards and that has not become and continues to be a Non-Reporting Entity pursuant to Section 5004E of this subtitle.

(13) “Reporting Period” shall mean a period of one year, the initial such period to begin not more than one year following the filing of the Standards Statement, and subsequent Reporting Periods to begin on the day following the last date of the prior Reporting Period, unless a Governing Body elects to shorten the duration of a Reporting Period that has not begun in order to change the start date for subsequent Reporting Periods.

(14) “Standards” shall mean, with respect to an Entity, the principles, guidelines or standards adopted by the Entity to assess and report the impacts of its activities on society and the environment, which principles, guidelines or standards shall be based on or derived from Third Party Criteria.

(15) “Standards Statement” shall mean the filing described in § 5003E of this chapter.”

(16) “Third Party” means, with respect to any Entity, any person or entity other than any person or entity that controls, is controlled by or under common control with such Entity, including any governmental or non-governmental organization that provides services, standards, or criteria with respect to measuring, managing or reporting the social and environmental impact of businesses or other enterprises.

(17) “Third Party Criteria” shall mean any principles, guidelines or standards developed and maintained by a Third Party (including a Provider) that are used to assist businesses or other enterprises in measuring, managing or reporting the social and environmental impact of businesses or other entities.

§ 5002E Certificate of Adoption of Transparency and Sustainability Standards.

(1) The Secretary of State shall issue a Certificate of Adoption of Transparency and Sustainability Standards to any Entity if the Secretary of State shall have determined that the following conditions have been satisfied:

a. such Entity shall have executed and acknowledged, and delivered to the Secretary of State, a Standards Statement;

b. such Entity shall have paid all fees and costs assessed by the Secretary of State; and

c. such Entity remains a Reporting Entity, and if such Entity is registered or formed with the Secretary of State, it is in good standing upon the records of the Secretary of State.

(2) Each Reporting Entity shall, for all purposes of the laws of this State, be authorized and permitted to disclose, publicly or privately, that it is a Reporting Entity.

§ 5003E Statement of Adoption of Transparency and Sustainability Standards. If the Governing Body of an Entity has adopted resolutions setting forth the Entity’s Standards and Assessment Measures, the Entity may file a Standards Statement that:

(1) Acknowledges that the Governing Body of the Entity has adopted resolutions setting forth the Entity’s Standards and Assessment Measures;

(2) Identifies an internet link on the principal website maintained by or on behalf of the Entity at which the Standards and Assessment Measures, the Third Party Criteria used to develop the Standards, a description of the process by

which such Standards were identified, developed and approved and any Report filed or to be filed by the Entity are and will be readily available at no cost and without the requirement of the provision of any information, and will remain available for so long as the Entity remains a Reporting Entity (the "Website");

(3) Acknowledges that the Entity has agreed to acknowledge and deliver to the Secretary of State, within 30 days after a request therefor by the Secretary of State, its most recent Report; and

(4) Acknowledges that the Entity has committed to:

a. use the Assessment Measures to assess the Entity's performance in meeting its Standards;

b. review and assess its Standards and Assessment Measures from time to time, and make such changes thereto as the Governing Body in good faith determines are necessary or advisable in furtherance of meeting the Entity's Standards; and

c. prepare and make readily available to the public at no cost and without the requirement of the provision of any information (by posting on the Website at the identified internet link) a copy of its Report within 90 days of the end of each Reporting Period; and

(5) Sets forth the address within the State of Delaware to which the Secretary of State shall mail any notices; and

(6) Is acknowledged by an Authorized Person.

§ 5004E Reporting Entity Status: Renewal Statement.

(1) A Renewal Statement shall be submitted to the Secretary of State between October 1st and December 31st of each year. A Reporting Entity shall become a Non-Reporting Entity on January 1 of the following year if the Reporting Entity shall have failed to submit the Renewal Statement to the Secretary of State in accordance with this chapter without the need for further action by the Secretary of State. A Reporting Entity's Renewal Statement shall:

a. Acknowledge that any changes since its most recent filing of a Renewal Statement or Restoration Statement, or, if no Renewal Statement or Restoration Statement has been filed, since the filing of its Standards Statement, to its address within the State of Delaware or Standards and Assessment Measures, and a description of the process by which such changes were identified, developed and approved by the Entity and the Third Party Criteria used to develop any changes to the Standards are available on the Website;

b. Acknowledge that, for the most recent Reporting Period for which a Report was required to be made available on or prior to October 1, if any, a Report was made available on the website in accordance with this chapter within the time period provided for in § 5003E(4)c;

c. provide an internet link to the Report for the most recent Reporting Period, if any, on the Website and

d. be acknowledged by an Authorized Person.

(2) No Standards Statement shall be accepted by the Secretary of State for an entity if it has become a Non-Reporting Entity pursuant to paragraph (1) of this Section 5004E within the prior year.

(3) On or before September 1 of each year, the Secretary of State shall mail to each Reporting Entity at its address as specified in § 5003E (5), a notice specifying that the Renewal Statement together with applicable fees shall be due on October 1 of the current year and stating that the Reporting Entity shall become a Non-Reporting Entity on January 1 of the following year if such Renewal Statement is not filed.

§ 5005E Restoration Statement.

(1) If any Reporting Entity shall become a Non-Reporting Entity for failure to file a Renewal Statement, it may, at any time during the calendar year following such failure, file a Restoration Statement. The Restoration Statement shall:

a. Acknowledge that any changes since its most recent filing of a Renewal Statement or Restoration Statement, or, if no Renewal Statement or Restoration Statement has been filed, since the filing of its Standards Statement, to its address within the State of Delaware or Standards and Assessment Measures, and a description of the process by which such changes were identified, developed and approved by the Entity and the Third Party Criteria used to develop any changes to the Standards are available on the Website;

b. acknowledge that a Report for the all Reporting Periods ended more than 90 days prior to filing the Restoration Statement have been made available on the Website in accordance with this Chapter;

c. provide an internet link on the Website to the Report for the most recent Reporting Period and any other Reporting Period for which an internet link has not been previously provided in a Renewal Statement or Restoration Statement; and

d. be acknowledged by an Authorized Person

(2) Any Non-Reporting Entity that files a Restoration Statement shall thereupon automatically become a Reporting Entity, without the need for further action by the Secretary of State.

§ 5006E Limitation of Liability.

Neither the failure by an Entity to satisfy any of its Standards, nor the selection of specific Assessment Measures, nor any other action taken by or on behalf of the Entity pursuant to this chapter or any omission to take any action required by this chapter to seek, obtain or maintain status as a Reporting Entity, shall, in and of itself, create any right of action on the part of any person or entity or otherwise give rise to any claim for breach of any fiduciary or similar duty owed to any person or entity.

§ 5007E Fees.

No document required to be filed under this chapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of Delaware:

(1) Upon the receipt of a statement under § 5003E of this Chapter or a Renewal Statement under 5004E of this chapter, a fee in the amount of up to $200.

(2) For issuing a Certificate of Adoption and Availability of Transparency and Sustainability Standards Reporting, a fee in the amount of $50.

(3) Upon receipt of a Restoration Statement under § 5005E of this chapter, a fee in the amount of $5,000.

(4) For certifying copies of any instrument on file as provided by this chapter, a fee in the amount of $50 for each copy certified.

(5) The Secretary of State may issue photocopies or electronic image copies of instruments on file as provided for by this chapter, as well as instruments, documents and other papers not on file, and for all such photocopies or electronic image copies which are not certified by the Secretary of State, a fee of $10 shall be paid for the first page and $2.00 for each additional page. Notwithstanding Delaware's Freedom of Information Act (Chapter 100 of Title 29) or other provision of law granting access to public records, the Secretary of State upon request shall issue only photocopies or electronic image copies of public records in exchange for the fees described in this section, and in no case shall the Secretary of State be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form other than photocopies or electronic image copies of such public records in exchange, as applicable, for the fees described in this section or § 2318 of Title 29 for each such record associated with a file number.

(6) For issuing any certificate of the Secretary of State, including a certificate of non-reporting status, other than a certification of a copy under (a)(3) of this section, a fee in the amount of $50.

§ 5008E Short Title.

This chapter shall be known and may be identified and referred to as the “Certification of Adoption of Transparency and Sustainability Standards Act”.

Section 2. This Act takes effect on October 1, 2018.