



SPONSOR: Sen. Sharp & Rep. Spence ;  
Sens. Vaughn & Winslow; Reps.  
Oberle, Wagner, Plant & Scott

DELAWARE STATE SENATE

140th GENERAL ASSEMBLY

SENATE BILL NO.

AN ACT TO AMEND 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:  
(Three-Fifths of all members elected to each house thereof concurring therein):

1                   Section 1.       Amend § 18-101(7), Chapter 18, Title 6 of the Delaware Code by adding  
2   after the first sentence thereof the following new sentence:

3                   "A limited liability company agreement of a limited liability company  
4                   having only one member shall not be unenforceable by reason of there  
5                   being only one person who is a party to the limited liability company  
6                   agreement."

7                   Section 2.       Amend § 18-106(b), Chapter 18, Title 6 of the Delaware Code by deleting the  
8   words "so far as" and by substituting in lieu thereof the word "including", and by adding the word "as"  
9   following the words "such powers and privileges".

10                  Section 3.       Amend § 18-109(a), Chapter 18, Title 6 of the Delaware Code by adding at the  
11   end of § 18-109(a) the following:

12                  "As used in this subsection (a) and in subsections (b) and (c) of this § 18-  
13                  109, the term 'manager' refers (i) to a person who is a manager as defined  
14                  in § 18-101(10) of this chapter and (ii) to a person who is a member of a  
15                  limited liability company and who, although not a manager as defined in  
16                  § 18-101(10) of this chapter, participates materially in the management

of the limited liability company, *provided, however*, that the power to elect or otherwise select or to participate in the election or selection of a person to be a manager as defined in § 18-101(10) of this chapter shall not, by itself, constitute participation in the management of the limited liability company."

Section 4. Amend § 18-212, Chapter 18, Title 6 of the Delaware Code by adding at the end thereof a new subsection (i) reading as follows:

"(i) When a non-United States entity has become domesticated as a limited liability company pursuant to this section, the limited liability company shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the domesticating non-United States entity. Unless otherwise agreed, or as required under applicable non-Delaware law, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity and shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic limited liability company. If, following domestication, a non-United States entity that has become domesticated as a limited liability company continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the limited liability company and such non-United States entity shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign country or other foreign jurisdiction."

44           Section 5.       Amend § 18-213, Chapter 18, Title 6 of the Delaware Code by adding at the end  
45 of subsection (e) a new sentence reading as follows:

46           "So long as a limited liability company continues to exist as a limited  
47 liability company of the State of Delaware following the filing of a  
48 certificate of transfer and continuance, the continuing domestic limited  
49 liability company and the entity formed, incorporated, created or that  
50 otherwise came into being as a consequence of the transfer of the limited  
51 liability company to, or its domestication in, a foreign country or other  
52 foreign jurisdiction shall, for all purposes of the laws of the State of  
53 Delaware, constitute a single entity formed, incorporated, created or  
54 otherwise having come into being, as applicable, and existing under the  
55 laws of the State of Delaware and the laws of such foreign country or  
56 other foreign jurisdiction."

57           Section 6.       Amend § 18-214(a), Chapter 18, Title 6 of the Delaware Code by adding the  
58 word "corporation," after the words "means a".

59           Section 7.       Amend § 18-214(c)(1), Chapter 18, Title 6 of the Delaware Code by adding the  
60 word "incorporated," after the words "first created,".

61           Section 8.       Amend § 18-214, Chapter 18, Title 6 of the Delaware Code by adding at the end  
62 of subsection (g) thereof a new sentence reading as follows:

63           "When an other entity has been converted to a limited liability company  
64 pursuant to this section, the limited liability company shall, for all  
65 purposes of the laws of the State of Delaware, be deemed to be the same  
66 entity as the converting other entity."

67           Section 9.       Amend § 18-216, Chapter 18, Title 6 of the Delaware Code by adding the word  
68 "corporation," after the words "may convert to a".

69           Section 10.     Amend § 18-302(d), Chapter 18, Title 6 of the Delaware Code by adding the  
70 following words immediately preceding the period at the end of the first sentence thereof: "at which all  
71 interests in the limited liability company entitled to vote thereon were present and voted".

72           Section 11.     Amend § 18-402, Chapter 18, Title 6 of the Delaware Code by deleting the  
73 second sentence of the said section and by substituting in lieu thereof the following new sentence:

74                     "The manager shall also hold the offices and have the responsibilities  
75                     accorded to the manager by or in the manner provided in a limited  
76                     liability company agreement."

77           Section 12.     Amend § 18-604, Chapter 18, Title 6 of the Delaware Code by deleting said  
78 section in its entirety and by substituting in lieu thereof the following:

79                     "Except as provided in this subchapter, upon resignation any resigning  
80                     member is entitled to receive any distribution to which such member is  
81                     entitled under a limited liability company agreement and, if not  
82                     otherwise provided in a limited liability company agreement, such  
83                     member is entitled to receive, within a reasonable time after resignation,  
84                     the fair value of such member's limited liability company interest as of  
85                     the date of resignation based upon such member's right to share in  
86                     distributions from the limited liability company."

87           Section 13.     Amend § 18-801(a)(3), Chapter 18, Title 6 of the Delaware Code by adding the  
88 words "affirmative vote or" after the words "upon the".

89           Section 14.     Amend § 18-801(a), Chapter 18, Title 6 of the Delaware Code by deleting  
90 subsection (4) thereof in its entirety and inserting in lieu thereof the following new subsection (4):

91                     "(4)     At any time there are no members; provided that the  
92                     limited liability company is not dissolved and is not required to be  
93                     wound up if, (i) unless otherwise provided in a limited liability company  
94                     agreement, within 90 days or such other period as is provided for in the  
95                     limited liability company agreement after the occurrence of the event that

terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; provided that a limited liability company agreement may provide that the personal representative of the last remaining member shall be obligated to agree in writing to continue the limited liability company and to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, or, (ii) a member is admitted to the limited liability company in the manner provided for in the limited liability company agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member, within 90 days or such other period as is provided for in the limited liability company agreement after the occurrence of the event that terminated the continued membership of the last remaining member, pursuant to a provision of the limited liability company agreement that specifically provides for the admission of a member to the limited liability company after there is no longer a remaining member of the limited liability company."

Section 15. Amend § 18-801(b), Chapter 18, Title 6 of the Delaware Code by adding a "." after the words "shall be continued without dissolution", and by deleting the remainder of the sentence beginning with the words "unless within 90 days".

Section 16. Amend § 18-1105(a)(3), Chapter 18, Title 6 of the Delaware Code by deleting the words "a certificate of restoration under § 18-1107(i) of this chapter," and by adding immediately preceding the words "a fee in the amount of \$50", the words "and upon the restoration of a domestic limited liability company or a foreign limited liability company under § 18-1107(i),".

Section 17. Amend § 18-1106, Chapter 18, Title 6 of the Delaware Code by adding the following new sentence at the end of said section:

"Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to limited liability companies and members and managers whether or not existing as such at the time of the enactment of any such amendment."

Section 18. Amend § 18-1107(i), Chapter 18, Title 6 of the Delaware Code by deleting the words ", accompanied by a certificate of the limited liability company executed by an authorized person stating that it is paying all sums due hereunder", and by deleting from the last sentence of said section the words "the filing of any such certificate", and by substituting in lieu thereof the word "restoration".

Section 19. This Act shall become effective August 1, 1999, except for Section 3 of this Act which shall become effective January 1, 2000.

#### SYNOPSIS

This bill continues the practice of amending periodically the Delaware Limited Liability Company 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 § 18-101(7) of the Act to confirm the enforceability of a single member limited liability company agreement.

Section 2. This section amends § 18-106(b) of the Act to clarify the intended meaning of the section concerning incidental powers.

Section 3. This section amends § 18-109(a) of the Act to clarify who is deemed to have consented to service of process in Delaware.

Section 4 and Section 5. These sections amend § 18-212 and § 18-213 of the Act dealing with domestication into Delaware of non-United States entities and the transfer or continuance to foreign jurisdictions of Delaware limited liability companies and confirm that a domesticated or transferred entity is the same entity as existed prior to domestication or transfer.

Section 6 through Section 9. These sections amend § 18-214 and § 18-216 of the Act and provide for the conversion of a corporation to a limited liability company and the conversion of a limited liability company to a corporation and confirm that a limited liability company that has been converted continues as the same entity.

Section 10. This section amends § 18-302(d) of the Act to deal with a quorum requirement.

Section 11. This section amends § 18-402 of the Act so as to confirm mechanics relating to managers of limited liability companies.

Section 12. This section amends § 18-604 of the Act to restore language previously deleted from the Act.

- Section 13. This section amends § 18-801(a)(3) of the Act to confirm that dissolution may be approved by a vote in addition to a consent.
- Section 14. This section amends § 18-801(a) of the Act by increasing the flexibility that can be used in connection with the continuation of a limited liability company upon the loss of the last remaining member.
- Section 15. This section amends § 18-801(b) of the Act to delete an unnecessary provision from the Act.
- Section 16. This section amends § 18-1105(a)(3) of the Act to delete a requirement relating to a certificate of restoration.
- Section 17. This section amends § 18-1106 of the Act to confirm the intended retroactive effect of amendments of the Act heretofore, now and hereafter enacted.
- Section 18. This section amends § 18-1107(i) of the Act to delete the requirement of the filing of a certificate of restoration.
- Section 19. This section provides that the proposed amendments of the Act shall become effective on August 1, 1999, except for Section 3 of the Act which shall become effective on January 1, 2000.

Author: Sen. Sharp