



SPONSOR: Sen. Sharp & Rep. Wagner;
Sens. Adams, Vaughn & Winslow;
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DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 173

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(12), Chapter 18, Title 6 of the Delaware Code by deleting the words "and whether
2 domestic or foreign", by deleting "limited liability company, foreign limited liability company," and by inserting at the
3 end of the sentence ", in each case, whether domestic or foreign, and a limited liability company or foreign limited
4 liability company".

5 Section 2. Amend § 18-102(3), Chapter 18, Title 6 of the Delaware Code by inserting ", partnership" after the
6 first, third and fourth appearances of the word "corporation" therein, by inserting ", foreign business trust, foreign
7 partnership" after the first appearance of the words "foreign limited partnership" therein, by inserting the words "on such
8 records" after both appearances of the words "from the name" therein, and by deleting the phrase ", limited liability
9 partnership" in all three places where it appears therein.

10 Section 3. Amend § 18-104, Chapter 18, Title 6 of the Delaware Code by deleting existing subsections (b), (c)
11 and (d) thereof in their entirety and by substituting in lieu thereof the following subsections (b), (c) and (d):

12 "(b) A registered agent may change the address of the registered office of the limited
13 liability company(ies) for which it is registered agent to another address in the State of
14 Delaware by paying a fee as set forth in § 18-1105(a)(2) of this title and filing with the
15 Secretary of State a certificate, executed by such registered agent, setting forth the address at
16 which such registered agent has maintained the registered office for each of the limited liability
17 companies for which it is a registered agent, and further certifying to the new address to which

each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited liability companies for which it is a registered agent. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered office in the State of Delaware of each of the limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed and the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and shall pay a fee as set forth in § 18-1105(a)(2) of this title. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the certificate under his or her hand and seal of office. A change of name of any person acting as a registered agent of a limited liability company as a result of a merger or consolidation of the registered agent, with or into another person which succeeds to its assets and liabilities by operation of law, shall be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby and each such limited liability company shall not be required to take any further action with respect thereto, to amend its certificate of formation under § 18-202 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

(c) The registered agent of 1 or more limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in § 18-1105(a)(2) of this title and filing a certificate with the Secretary of State, stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a

statement of each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office in the State of Delaware. The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the limited liability companies so ratifying and approving such change and setting out the names of such limited liability companies. Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 18-202 of this title.

(d) The registered agent of one or more limited liability companies may resign without appointing a successor registered agent by paying a fee as set forth in § 18-1105(a)(2) of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to each affected limited liability company at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the limited liability company at its address last known to the registered agent and shall set forth the date of such notice. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the certificate of formation of such limited liability company shall be deemed to be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process

74 against each limited liability company for which the resigned registered agent had been acting
75 shall thereafter be upon the Secretary of State in accordance with § 18-105 of this title."

76 Section 4. Amend § 18-206(a), Chapter 18, Title 6 of the Delaware Code by inserting "any corrected certificate,"
77 immediately following "restated certificate," in the first sentence thereof and by inserting "the corrected certificate,"
78 immediately following "restated certificate," in the first sentence of subsection (1) thereof.

79 Section 5. Amend § 18-206(a), Chapter 18, Title 6 of the Delaware Code by deleting from the first sentence
80 thereof "amendment of a certificate of merger or consolidation, termination of a merger or consolidation" and by
81 substituting in lieu thereof "amendment of a certificate with a future effective date or time, termination of a certificate
82 with a future effective date or time" and by deleting from subsection (1) thereof "the certificate of amendment of a
83 certificate of merger or consolidation, the certificate of termination of a merger or consolidation" and by substituting in
84 lieu thereof " the certificate of amendment of a certificate with a future effective date or time, the certificate of termination
85 of a certificate with a future effective date or time".

86 Section 6. Amend § 18-206(b), Chapter 18, Title 6 of the Delaware Code by inserting ", corrected certificate"
87 immediately following the word "correction" in the first sentence thereof and by inserting ", corrected" immediately
88 following the word "amended" in the first sentence thereof.

89 Section 7. Amend § 18-206(b), Chapter 18, Title 6 of the Delaware Code by deleting "Upon the filing of a
90 certificate of amendment of a certificate of merger or consolidation, the certificate of merger or consolidation identified in
91 the certificate of amendment of a certificate of merger or consolidation is amended. Upon the filing of a certificate of
92 termination of a merger or consolidation, the certificate of merger or consolidation identified in the certificate of
93 termination of a merger or consolidation is terminated."

94 Section 8. Amend § 18-206, Chapter 18, Title 6 of the Delaware Code by relettering subsections (c) and (d)
95 thereof as (d) and (e), respectively, and by adding a new subsection (c) thereto as follows:

96 "(c) If any certificate filed in accordance with this chapter provides for a future
97 effective date or time and if, prior to such future effective date or time set forth in such
98 certificate, the transaction is terminated or its terms are amended to change the future effective
99 date or time or any other matter described in such certificate so as to make such certificate false
100 or inaccurate in any respect, such certificate shall, prior to the future effective date or time set
101 forth in such certificate, be terminated or amended by the filing of a certificate of termination

or certificate of amendment of such certificate, executed in accordance with §18-204 of this chapter, which shall identify the certificate which has been terminated or amended and shall state that the certificate has been terminated or the manner in which it has been amended.

Upon the filing of a certificate of amendment of a certificate with a future effective date or time, the certificate identified in such certificate of amendment is amended. Upon the filing of a certificate of termination of a certificate with a future effective date or time, the certificate identified in such certificate of termination is terminated."

Section 9. Amend newly designated § 18-206(d), Chapter 18, Title 6 of the Delaware Code by inserting "a corrected certificate," immediately following "restated certificate,".

Section 10. Amend newly designated § 18-206(d), Chapter 18, Title 6 of the Delaware Code by deleting "a certificate of amendment of a certificate of merger or consolidation, a certificate of termination of a merger or consolidation" and by substituting in lieu thereof "a certificate of amendment of a certificate with a future effective date or time, a certificate of termination of a certificate with a future effective date or time".

Section 11. Amend § 18-209(d), Chapter 18, Title 6 of the Delaware Code by deleting the following:

"If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is amended to change the future effective date or time, or if an agreement of merger or consolidation permits a certificate of merger or consolidation to be amended to change the future effective date or time without an amendment to the agreement of merger or consolidation, or if an agreement of merger or consolidation is amended to change any other matter described in the certificate of merger or consolidation so as to make the certificate of merger or consolidation false in any material respect, as permitted by subsection (b) of this section prior to the future effective date or time, the certificate of merger or consolidation shall be amended by the filing of a certificate of amendment of a certificate of merger or consolidation which shall identify the certificate of merger or consolidation and the agreement of merger or consolidation, if applicable, which has been amended and shall state that the agreement of merger or consolidation, if applicable, has been amended and shall set forth the amendment to the certificate of merger or consolidation. If a certificate of merger or consolidation provides for a future effective date or time and if an

130 agreement of merger or consolidation is terminated as permitted by subsection (b) of this
131 section prior to the future effective date or time, the certificate of merger or consolidation shall
132 be terminated by the filing of a certificate of termination of a merger or consolidation which
133 shall identify the certificate of merger or consolidation and the agreement of merger or
134 consolidation which has been terminated and shall state that the agreement of merger or
135 consolidation has been terminated."

136 Section 12. Amend § 18-212, Chapter 18, Title 6 of the Delaware Code by adding at the end thereof a new
137 subsection (j) reading as follows:

138 "(j) In connection with a domestication hereunder, rights or securities of, or interests
139 in, the non-United States entity that is to be domesticated as a domestic limited liability
140 company may be exchanged for or converted into cash, property, rights or securities of, or
141 interests in, such domestic limited liability company or, in addition to or in lieu thereof, may be
142 exchanged for or converted into cash, property, rights or securities of, or interests in, another
143 domestic limited liability company or other entity."

144 Section 13. Amend § 18-213, Chapter 18, Title 6 of the Delaware Code by adding at the end thereof a new
145 subsection (f) reading as follows:

146 "(f) In connection with a transfer or domestication of a domestic limited liability
147 company to or in another jurisdiction pursuant to subsection (a) of this section, rights or
148 securities of, or interests in, such limited liability company may be exchanged for or converted
149 into cash, property, rights or securities of, or interests in, the business form in which the limited
150 liability company will exist in such other jurisdiction as a consequence of the transfer or
151 domestication or, in addition to or in lieu thereof, may be exchanged for or converted into cash,
152 property, rights or securities of, or interests in, another business form."

153 Section 14. Amend § 18-302(d), Chapter 18, Title 6 of the Delaware Code by inserting ", consented to or
154 approved" after the words "voted on" in the first sentence thereof, by deleting the "." at the end of the second sentence
155 thereof and by adding the following to the end of the second sentence thereof:

156 ", and such proxy may be granted in writing, by means of electronic transmission or as
157 otherwise permitted by applicable law. Unless otherwise provided in a limited liability

company agreement, a consent transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be deemed to be written and signed for purposes of this subsection (d). For purposes of this subsection (d), 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 15. Amend § 18-305, Chapter 18, Title 6 of the Delaware Code by adding at the end thereof a new subsection (g) reading as follows:

"(g) The rights of a member or manager to obtain information as provided in this section may be restricted in an original limited liability company agreement or in any subsequent amendment approved or adopted by all of the members and in compliance with any applicable requirements of the limited liability company agreement. The provisions of this subsection shall not be construed to limit the ability to impose restrictions on the rights of a member or manager to obtain information by any other means permitted under this section."

Section 16. Amend § 18-306, Chapter 18, Title 6 of the Delaware Code by inserting at the end thereof the following additional sentence:

"Such specified penalties or specified consequences may include and take the form of any penalty or consequence set forth in § 18-502(c) of this chapter."

Section 17. Amend § 18-404(d), Chapter 18, Title 6 of the Delaware Code by inserting ", consented to or approved" after the words "voted on" in the first sentence thereof, by deleting the "." at the end of the second sentence thereof and by adding the following to the end of the second sentence thereof:

", and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a limited liability company agreement, a consent transmitted by electronic transmission by a manager or by a person or persons authorized to act for a manager shall be deemed to be written and signed for purposes of this subsection (d). For purposes of this subsection (d), 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 18. Amend § 18-702(c), Chapter 18, Title 6 of the Delaware Code by deleting the words "A limited liability company agreement may provide that" and by substituting in lieu thereof "Unless otherwise provided in a limited liability company agreement," and by adding a new sentence at the end thereof as follows "A limited liability company agreement may provide for the assignment or transfer of any limited liability company interest represented by such a certificate and make other provisions with respect to such certificates."

Section 19. Amend § 18-1105(a)(3), Chapter 18, Title 6 of the Delaware Code by deleting "a certificate of amendment of a certificate of merger or consolidation under § 18-209(d) of this title, a certificate of termination of a merger or consolidation under § 18-209(d) of this title" and by substituting in lieu thereof "a certificate of amendment of a certificate with a future effective date or time under § 18-206(c) of this title, a certificate of termination of a certificate with a future effective date or time under § 18-206(c) of this title".

Section 20. This Act shall become effective August 1, 2001.

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 amendments of the Act.

Section 1. This section amends § 18-101(12) of the Act to confirm the broad scope of the defined term "person."

Section 2. This section amends § 18-102(3) of the Act to clarify the intended meaning of the section.

Section 3. This section amends § 18-104(b), § 18-104(c) and § 18-104(d) of the Act to clarify the procedures relating to the change in the address of a registered office, the change in the name of a registered agent and the resignation of a registered agent.

Section 4, Section 6 and Section 9. These sections amend § 18-206 of the Act to expressly refer to corrected certificates.

Section 5, Section 7, Section 8, Section 10, Section 11 and Section 19. These sections amend § 18-206, § 18-209(d) and § 18-1105(a)(3) of the Act to provide for the amendment or termination, prior to an effective time or date, of any certificate with a future effective date or time (including a certificate of merger or consolidation) that may be filed pursuant to the Act.

Section 12. This section amends § 18-212 of the Act to confirm the flexibility permitted in connection with a domestication of a non-United States entity as a domestic limited liability company.

Section 13. This section amends § 18-213 of the Act to confirm the flexibility permitted in connection with a transfer or domestication of a domestic limited liability company.

Section 14 and Section 17. These sections amend § 18-302(d) and § 18-404(d) of the Act to clarify the ability to act by written consent, to clarify that proxies may be granted by any legally permissible means, including by electronic transmission, and to provide that written consents may be delivered by electronic transmission. These sections also provide a definition for the term "electronic transmission."

Section 15. This section amends § 18-305 of the Act to permit a limited liability company agreement to further restrict the rights of a member or manager to obtain information.

Section 16. This section amends § 18-306 of the Act to clarify the flexibility permitted in connection with providing for specified penalties or specified consequences in a limited liability company agreement.

Section 18. This section amends § 18-702(c) of the Act to permit greater flexibility with respect to certificating a limited liability company interest.

Section 20. This section provides that the proposed amendments of the Act shall become effective on August 1, 2001.

Author: Senator Sharp