



SPONSOR: Sen. Sharp & Rep. Wagner;
Sens. Adams, Vaughn & Winslow;
Reps. Valihura & DiLiberto

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 164

AN ACT TO AMEND TITLE 8 OF THE DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

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

1 Section 1. Amend Section 102(a)(1), Title 8, Delaware Code, by deleting clause (ii) thereof in its entirety and
2 substituting in lieu thereof the following:

3 "(ii) shall be such as to distinguish it upon the records in the office of the Division of
4 Corporations in the Department of State from the names on such records of other
5 corporations, partnerships, limited partnerships, limited liability companies or
6 business trusts organized, reserved or registered as a foreign corporation, partnership,
7 limited partnership, limited liability company or business trust under the laws of this
8 State, except with the written consent of such other foreign corporation or domestic or
9 foreign partnership, limited partnership, limited liability company or business trust
10 executed, acknowledged and filed with the Secretary of State in accordance with §
11 103 of this title and".

12 Section 2. Amend Section 134, Title 8, Delaware Code, by deleting existing subsection (a) thereof in its
13 entirety and substituting in lieu thereof the following:

14 "(a) A registered agent may change the address of the registered office of the
15 corporation or corporations for which the agent is a registered agent to another
16 address in this State by filing with the Secretary of State a certificate, executed and
17 acknowledged by such registered agent, setting forth the address at which such
18 registered agent has maintained the registered office for each of the corporations for

19 which it is a registered agent, and further certifying to the new address to which each
20 such registered office will be changed on a given day, and at which new address such
21 registered agent will thereafter maintain the registered office for each of the
22 corporations for which it is a registered agent. Thereafter, or until further change of
23 address, as authorized by law, the registered office in this State of each of the
24 corporations for which the agent is a registered agent shall be located at the new
25 address of the registered agent thereof as given in the certificate."

26 Section 3. Amend Section 134(b), Title 8, Delaware Code, by deleting the words "the names of all the
27 corporations represented by such registered agent", and by deleting the words "such corporations" at the end of
28 such subsection and substituting in lieu thereof the following: "the corporations for which it acts as a registered
29 agent. A change of name of any person or corporation acting as a registered agent as a result of a merger or
30 consolidation of the registered agent, with or into another person or corporation which succeeds to its assets by
31 operation of law, shall be deemed a change of name for purposes of this section."

32 Section 4. Amend Section 157, Title 8, Delaware Code, by adding "(a)" immediately preceding the first
33 paragraph thereof.

34 Section 5. Amend Section 157, Title 8, Delaware Code, by adding "(b)" immediately preceding the second
35 paragraph thereof and by adding to such paragraph, after the words "price or prices", the words "(including a
36 formula by which such price or prices may be determined)".

37 Section 6. Amend Section 157, Title, 8, Delaware Code, by adding a new paragraph following the second
38 paragraph thereof, which new paragraph shall read as follows:

39 "(c) The board of directors may, by a resolution adopted by the board, authorize
40 one or more officers of the corporation to do one or both of the following: (i)
41 designate officers and employees of the corporation or of any of its subsidiaries to be
42 recipients of such rights or options created by the corporation and (ii) determine the
43 number of such rights or options to be received by such officers and employees;
44 provided, however, that the resolution so authorizing such officer or officers shall
45 specify the total number of rights or options such officer or officers may so award.
46 The board of directors may not authorize an officer to designate himself or herself as a
47 recipient of any such rights or options."

48 Section 7. Amend Section 157, Title 8, Delaware Code, to add "(d)" immediately preceding the final paragraph
49 thereof.

50 Section 8. Amend Section 215(a), Title 8, Delaware Code, by adding the following immediately before the "."
51 at the end thereof: ", except that subsection (a) of § 211 and subsections (c) and (d) of § 212 shall apply to such
52 corporations, and, when so applied, all references therein to stockholders and to the board of directors shall be
53 deemed to refer to the members and the governing body of a nonstock corporation, respectively".

54 Section 9. Amend Section 215, Title 8, Delaware Code, by adding a new subsection (e) at the end thereof,
55 which new subsection (e) shall read as follows:

56 "(e) If authorized by the governing body, any requirement of a written ballot
57 shall be satisfied by a ballot submitted by electronic transmission, provided that any
58 such electronic transmission must either set forth or be submitted with information
59 from which it can be determined that the electronic transmission was authorized by
60 the member or proxy holder."

61 Section 10. Amend Section 218(a), Title 8, Delaware Code, by deleting the words "corporation or
62 corporations" each time they appear in the first sentence thereof and substituting each time in lieu thereof the
63 words "entity or entities"; and by adding the words "or entities" after the words "In any case where 2 or more
64 persons" in the last sentence thereof.

65 Section 11. Amend Section 228(d)(1), Title 8, Delaware Code, by adding after the word "stockholder" in each
66 of the five places it appears in the first sentence thereof the words ", member", by adding after the word
67 "stockholders" in each of the two places it appears in the third and last sentences thereof the words "or
68 members", and by adding after the word "directors" in the last sentence thereof the words "or governing body".

69 Section 12. Amend Section 232, Title 8, Delaware Code, by deleting in the title, the phrase "Notice by form of
70 electronic transmission" and by substituting in lieu thereof the phrase "Notice by electronic transmission."

71 Section 13. Amend Section 245(c), Title 8, Delaware Code, by adding after the words "change, exchange,
72 reclassification" and before the words "or cancellation", in both places that they appear, the words ", subdivision,
73 combination".

74 Section 14. Amend Section 251(g)(1), Title 8, Delaware Code, by deleting the word "corporations" and
75 substituting in lieu thereof the word "entities".

76 Section 15. Amend Section 251(g)(3), Title 8, Delaware Code, by deleting the words "each of the constituent
77 corporations to the merger are corporations of this State" and substituting in lieu thereof the words "the
78 constituent corporation are corporations of this State and the direct or indirect wholly-owned subsidiary that is
79 the other constituent entity to the merger is a corporation or limited liability company of this State".

80 Section 16. Amend Section 251(g)(4), Title 8, Delaware Code, by adding after the words "change, exchange,
81 reclassification" and before the words "or cancellation", in both places that they appear, the words ", subdivision,
82 combination".

83 Section 17. Amend Section 251(g)(5), Title 8, Delaware Code, by deleting, after the word "successor", the
84 word "corporation".

85 Section 18. Amend Section 251(g)(7), Title 8, Delaware Code, by deleting the existing text in its entirety and
86 substituting in lieu thereof the following:

87 "(7) the organizational documents of the surviving entity immediately following the
88 effective time of the merger contain provisions identical to the certificate of
89 incorporation of the constituent corporation immediately prior to the effective time of
90 the merger (other than provisions, if any, regarding the incorporator or incorporators,
91 the corporate or entity name, the registered office and agent, the initial board of
92 directors and the initial subscribers for shares, references to members rather than
93 stockholders or shareholders, references to interests, units or the like rather than stock
94 or shares, references to managers, managing members or other members of the
95 governing body rather than directors and such provisions contained in any amendment
96 to the certificate of incorporation as were necessary to effect a change, exchange,
97 reclassification, subdivision, combination or cancellation of stock, if such change,
98 exchange, reclassification, subdivision, combination or cancellation has become
99 effective); provided, however, that (i) if the organizational documents of the surviving
100 entity do not contain the following provisions, they shall be amended in the merger to
101 contain provisions requiring that (A) any act or transaction by or involving the
102 surviving entity, other than the election or removal of directors or managers,
103 managing members or other members of the governing body of the surviving entity,
104 that requires for its adoption under this chapter or its organizational documents the

105 approval of the stockholders or members of the surviving entity shall, by specific
106 reference to this subsection, require, in addition, the approval of the stockholders of
107 the holding company (or any successor by merger), by the same vote as is required by
108 this chapter and/or by the organizational documents of the surviving entity; provided,
109 however, that for purposes of this clause (i)(A), any surviving entity that is not a
110 corporation shall include in such amendment a requirement that the approval of the
111 stockholders of the holding company be obtained for any act or transaction by or
112 involving the surviving entity, other than the election or removal of directors or
113 managers, managing members or other members of the governing body of the
114 surviving entity, which would require the approval of the stockholders of the
115 surviving entity if the surviving entity were a corporation subject to this chapter, (B)
116 any amendment of the organizational documents of a surviving entity that is not a
117 corporation, which amendment would, if adopted by a corporation subject to this
118 chapter, be required to be included in the certificate of incorporation of such
119 corporation, shall, by specific reference to this subsection, require, in addition, the
120 approval of the stockholders of the holding company (or any successor by merger), by
121 the same vote as is required by this chapter and/or by the organizational documents of
122 the surviving entity, and (C) the business and affairs of a surviving entity that is not a
123 corporation shall be managed by or under the direction of a board of directors, board
124 of managers or other governing body consisting of individuals who are subject to the
125 same fiduciary duties applicable to, and who are liable for breach of such duties to the
126 same extent as, directors of a corporation subject to this chapter, and (ii) the
127 organizational documents of the surviving entity may be amended in the merger to
128 reduce the number of classes and shares of capital stock or other equity interests or
129 units that the surviving entity is authorized to issue; and"

130 Section 19. Amend Section 251(g) by deleting the last sentence of the first paragraph and substituting in lieu
131 thereof the following:

132 "Neither subsection (g)(7)(i) of this section nor any provision of a surviving entity's
133 organizational documents required by subsection (g)(7)(i) shall be deemed or

construed to require approval of the stockholders of the holding company to elect or remove directors or managers, managing members or other members of the governing body of the surviving entity. The term 'organizational documents', as used in subsection (g)(7) and in the preceding sentence, shall, when used in reference to a corporation, mean the certificate of incorporation of such corporation and, when used in reference to a limited liability company, mean the limited liability company agreement of such limited liability company."

Section 20. Amend Section 251(g), Title 8, Delaware Code, by deleting the word "and" that appears immediately before the "(ii)" in the second sentence of the second paragraph and by adding at the end of the second sentence of the second paragraph after the words "capital stock of the constituent corporation" and before the "." the words "and (iii) to the extent a stockholder of the constituent corporation immediately prior to the merger had standing to institute or maintain derivative litigation on behalf of the constituent corporation, nothing in this section shall be deemed to limit or extinguish such standing".

Section 21. Amend Section 262(d)(2), Title 8, Delaware Code, by deleting the first sentence and inserting in lieu thereof the following:

"If the merger or consolidation was approved pursuant to § 228 or § 253 of this title, then, either a constituent corporation before the effective date of the merger or consolidation, or the surviving or resulting corporation within ten days thereafter, shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section."

Section 22. Amend Section 263(a), Title 8, Delaware Code, by deleting the word "limited" wherever it currently appears and by inserting after the word "partnerships" the first time it appears the following:

"(whether general (including a limited liability partnership) or limited (including a limited liability limited partnership))".

Section 23. Amend Section 263(b), Title 8, Delaware Code, by deleting the word "limited" wherever it currently appears.

Section 24. Amend Section 263(c), Title 8, Delaware Code, by deleting the word "limited" wherever it currently appears and by adding after the first sentence thereof the following:

"If the surviving or resulting entity is a partnership, in addition to any other approvals, each stockholder of a merging corporation who will become a general partner of the surviving or resulting partnership must approve the agreement of merger or consolidation."

Section 25. Amend Section 263(d), Title 8, Delaware Code, by deleting the word "limited" wherever it currently appears.

Section 26. Amend Section 263(e), Title 8, Delaware Code, by deleting the word "limited" wherever it currently appears.

Section 27. Amend Section 265(a), Title 8, Delaware Code, by deleting the word "limited" before the word "partnership" and by inserting after the word "partnership" the following:

"(whether general (including a limited liability partnership) or limited (including a limited liability limited partnership))".

Section 28. Amend Section 265(c)(4), Title 8, Delaware Code, by deleting the word "limited" before the word "partnership" and by inserting after the word "partnership" the following:

"(whether general (including a limited liability partnership) or limited (including a limited liability limited partnership))".

Section 29. Amend Section 265(f), Title 8, Delaware Code, by deleting the word "limited" before the word "partnership".

Section 30. Amend Section 266(a), Title 8, Delaware Code, by deleting the word "limited" before the word "partnership" and by inserting after the word "partnership" the following:

"(whether general (including a limited liability partnership) or limited (including a limited liability limited partnership))".

Section 31. Amend Section 266(b)(3), Title 8, Delaware Code, by deleting the word "limited" before the word "partnership" and by inserting after the word "partnership" the following:

"(whether general (including a limited liability partnership) or limited (including a limited liability limited partnership))".

Section 32. Amend Section 266(e), Title 8, Delaware Code, by deleting the word "limited" before the word "partnership" and by inserting after the word "partnership" the following:

"(whether general (including a limited liability partnership) or limited (including a limited liability limited partnership))".

Section 33. Amend Section 311(a)(2), Title 8, Delaware Code, by deleting the words "stockholder whose shares were entitled to vote upon a proposed dissolution before the corporation was dissolved" and substituting in lieu thereof the words "of the stockholders".

Section 34. Amend Section 311(a), Title 8, Delaware Code, by renumbering paragraphs (1), (2) and (3) to become paragraphs (2), (3) and (4), and by adding new paragraph (1) as follows:

"(1) For purposes of this section, the term 'stockholders' shall mean the stockholders of record on the date the dissolution became effective."

Section 35. Amend Section 312(i), Title 8, Delaware Code, by deleting the existing text thereof in its entirety and substituting in lieu thereof the following:

"After a renewal or revival of the certificate of incorporation of the corporation shall have been effected, the provisions of § 211(c) of this title shall govern and the period of time the corporation was in dissolution shall be included within the calculation of the 30-day and 13-month periods to which § 211(c) of this title refers. A special meeting of stockholders held in accordance with subsection (h) of this section shall be deemed an annual meeting of stockholders for purposes of § 211(c) of this title."

Section 36. This Act shall become effective July 1, 2001.

SYNOPSIS

Section 1. The Delaware Revised Uniform Partnership Act ("DRUPA") allows (and in some cases requires) partnerships to file various statements with the Secretary of State. Section 15-108 of DRUPA requires names of partnerships filing certificates to be distinguishable on the records of the Secretary of State from the names of other entities. The amendment to Section 102(a)(1) is the reciprocal of Section 15-108 of DRUPA.

Sections 2 and 3. The amendments to Section 134 clarify the procedures relating to changes in the address or name of a registered agent.

Sections 4, 5, 6 and 7. The amendments to Section 157 provide that the board of directors may authorize one or more officers to designate officers and employees of the corporation or of any of its subsidiaries to be issued rights or options of the corporation and to determine the number of rights or options to be issued to those officers and employees. The terms of the rights or options, including the exercise price (which may include a formula by which such price may be determined), must be established by the board of directors. The board of directors must specify the total number of rights or options that may be awarded by an officer, and an officer may not designate himself or herself as a recipient of a right or option.

Section 8. The amendment to Section 215(a) makes the provisions of Sections 211(a) and 212(c) and (d) applicable to nonstock corporations, with the references in such subsections to stockholders and the board of directors

being deemed, when applied to a nonstock corporation, to be references to the members of such corporation and to the governing body of such corporation, respectively.

Section 9. New subsection (e) of Section 215 provides that, in the specified circumstances, any requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission.

Section 10. Under this amendment to Section 218(a), entities other than corporations may also become voting trustees.

Section 11. The amendment to Section 228(d)(1) provides that such subsection applies to consents in lieu of a meeting by members of nonstock corporations.

Section 12. The amendment to Section 232 makes the title of such section "Notice by electronic transmission."

Section 13. The amendment to Section 245(c) brings that section into conformity with Section 242(a) as amended in 1996. See 72 Del. Laws, C.123, §5.

Sections 14, 15, 17, 18 and 19. These amendments to Section 251(g) expand the types of entities that may be used in a holding company reorganization to include limited liability companies of this State. In order to protect the rights of the former corporation's stockholders, the limited liability company will be required to adopt provisions in its organizational documents which impose on the limited liability company and its managers certain duties and requirements applicable to corporations and directors of corporations of this State.

Section 16. The amendment to Section 251(g)(4) brings that subsection into conformity with Section 242(a) as amended in 1996. See 72 Del. Laws, C.123, §5.

Section 20. The amendment to the second paragraph of Section 251(g) is intended to ensure that a holding company reorganization involving a limited liability company of this State does not affect, limit or extinguish the prior standing of a stockholder to institute or maintain derivative litigation on behalf of the constituent corporation, consistent with decisions of the courts of this State preserving such rights in holding company reorganizations involving corporations of this State.

Section 21. The amendment to Section 262(d)(2) clarifies that notice of appraisal rights given after a merger or consolidation is to be given by the surviving or resulting corporation.

Sections 22, 23, 24, 25 and 26. The amendments to Section 263 permit Delaware corporations to merge with general partnerships, as well as limited partnerships. The amendment to Section 263(c) protects any stockholder of a merging corporation who would become a general partner of a surviving or resulting partnership by requiring that the stockholder approve the agreement of merger or consolidation.

Sections 27, 28 and 29. The amendments to Section 265 permit a Delaware general partnership to convert to a Delaware corporation.

Sections 30, 31 and 32. The amendments to Section 266 permit a Delaware corporation to convert to a Delaware general partnership.

Sections 33 and 34. The amendments to Section 311(a) clarify which stockholders are entitled to vote on revocation of dissolution. The intent of the statute is to confer such a vote on those who were the stockholders at the time of dissolution. The current language of the statute, however, could be read to permit a vote by transferees subsequent to dissolution. This amendment removes that potential ambiguity.

Section 35. The amendment to Section 312(i) eliminates the requirement of calling a meeting of stockholders immediately after renewal or revival of the certificate of incorporation. A meeting of stockholders could be ordered to be held under Section 211(c) if the periods for which Section 211(c) provides have passed while the corporation was in dissolution.

Section 36. Section 36 provides for an effective date of July 1, 2001.

Author: Senator Sharp