



SPONSOR: Sen. Adams & Rep. Wagner ;  
Rep. Valihura

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 362

AN ACT TO AMEND CHAPTER 17, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

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 § 17-101(12), Chapter 17, Title 6 of the Delaware Code by inserting the following  
2 immediately after the first sentence thereof: "A limited partnership is not required to execute its partnership agreement.  
3 A limited partnership is bound by its partnership agreement whether or not the limited partnership executes the  
4 partnership agreement."

5                   Section 2. Amend § 17-106, Chapter 17, Title 6 of the Delaware Code by adding a new subsection (c)  
6 thereto as follows:

7                   "(c) Notwithstanding any provision of this chapter to the contrary,  
8 without limiting the general powers enumerated in subsection (b) above, a limited  
9 partnership shall, subject to such standards and restrictions, if any, as are set forth in  
10 its partnership agreement, have the power and authority to make contracts of guaranty  
11 and suretyship, and enter into interest rate, basis, currency, hedge or other swap  
12 agreements, or cap, floor, put, call, option, exchange or collar agreements, derivative  
13 agreements or other agreements similar to any of the foregoing."

14                  Section 3. Amend § 17-203, Chapter 17, Title 6 of the Delaware Code by deleting subsection (3)  
15 thereof and by renumbering subsections (4) and (5) thereof as subsections (3) and (4), respectively.

16                  Section 4. Amend § 17-206, Chapter 17, Title 6 of the Delaware Code by deleting the word "and"  
17 immediately after the ";" in subsection (a)(2) thereof, by deleting the "." at the end of subsection (a)(3) thereof and  
18 substituting in lieu thereof "; and" and by adding a new subsection (a)(4) thereto as follows:

19                               "(4)     Enter such information from the certificate as the Secretary of State  
20                               deems appropriate into the Delaware Corporation Information System or any system  
21                               which is a successor thereto in the office of the Secretary of State, and such  
22                               information shall be permanently maintained as a public record. A copy of each  
23                               certificate shall be permanently maintained on optical disk or by other suitable  
24                               medium."

25                               Section 5. Amend § 17-212, Chapter 17, Title 6 of the Delaware Code by inserting "any conversion of  
26                               the limited partnership to another business form, any transfer to or domestication in any jurisdiction by the limited  
27                               partnership," immediately following "constituent party to the merger or consolidation," in the first sentence thereof.

28                               Section 6. Amend § 17-214(c), Chapter 17, Title 6 of the Delaware Code by inserting "(i)" between the  
29                               ", " and the word "its" therein and by adding the following immediately prior to the "." at the end thereof:

30                               "and (ii) no limited partner of the limited partnership shall have any liability for the  
31                               obligations of the limited partnership under § 17-303(a) of this title".

32                               Section 7. Amend § 17-301, Chapter 17, Title 6 of the Delaware Code by adding a new subsection (e)  
33                               thereto as follows:

34                               "(e)     Unless otherwise provided in a partnership agreement or another  
35                               agreement, a limited partner shall have no preemptive right to subscribe to any  
36                               additional issue of partnership interests or another interest in a limited partnership."

37                               Section 8. Amend § 17-401, Chapter 17, Title 6 of the Delaware Code by adding a new subsection (c)  
38                               thereto as follows:

39                               "(c)     Unless otherwise provided in a partnership agreement or another  
40                               agreement, a general partner shall have no preemptive right to subscribe to any  
41                               additional issue of partnership interests or another interest in a limited partnership."

42                               Section 9. Amend § 17-403(c), Chapter 17, Title 6 of the Delaware Code by adding the following  
43                               words immediately prior to the "." at the end of the last sentence thereof:

44                               "or cause the person to whom any such rights and powers have been delegated to be a  
45                               general partner of the limited partnership".

46                   Section 10. Amend § 17-904(a), Chapter 17, Title 6 of the Delaware Code by  
47 inserting the words "on such records" immediately following the words "Secretary of State from the  
48 name" therein, by inserting ", partnership" immediately following the words "foreign corporation"  
49 therein, by inserting ", formed" immediately following the words "limited partnership reserved,  
50 registered" therein, and by inserting ", partnership" immediately following the words "the written  
51 consent of the other corporation" therein.

52                   Section 11. Amend § 17-904, Chapter 17, Title 6 of the Delaware Code by deleting existing  
53 subsections (c), (d) and (e) thereof in their entirety and by substituting in lieu thereof the following subsections (c), (d)  
54 and (e):

55                   "(c)     A registered agent may change the address of the registered office of the foreign  
56 limited partnership(s) for which the agent is registered agent to another address in the State of Delaware  
57 by paying a fee as set forth in § 17-1107(a)(7) of this title and filing with the Secretary of State a  
58 certificate, executed by such registered agent, setting forth the address at which such registered agent  
59 has maintained the registered office for each of the foreign limited partnerships for which it is a  
60 registered agent, and further certifying to the new address to which each such registered office will be  
61 changed on a given day, and at which new address such registered agent will thereafter maintain the  
62 registered office for each of the foreign limited partnerships for which it is a registered agent. Upon the  
63 filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of  
64 the same under the Secretary's hand and seal of office, and thereafter, or until further change of address,  
65 as authorized by law, the registered office in the State of Delaware of each of the foreign limited  
66 partnerships for which the agent is a registered agent shall be located at the new address of the  
67 registered agent thereof as given in the certificate. In the event of a change of name of any person  
68 acting as a registered agent of a foreign limited partnership, such registered agent shall file with the  
69 Secretary of State a certificate, executed by such registered agent, setting forth the new name of such  
70 registered agent, the name of such registered agent before it was changed and the address at which such  
71 registered agent has maintained the registered office for each of the foreign limited partnerships for  
72 which it is a registered agent, and shall pay a fee as set forth in § 17-1107(a)(7) of this title. Upon the  
73 filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of

74 the certificate under his or her hand and seal of office. A change of name of any person acting as a  
75 registered agent of a foreign limited partnership as a result of a merger or consolidation of the registered  
76 agent, with or into another person which succeeds to its assets and liabilities by operation of law, shall  
77 be deemed a change of name for purposes of this section. Filing a certificate under this section shall be  
78 deemed to be an amendment of the application of each foreign limited partnership affected thereby and  
79 each such foreign limited partnership shall not be required to take any further action with respect  
80 thereto, to amend its application under § 17-905 of this title. Any registered agent filing a certificate  
81 under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign  
82 limited partnership affected thereby.

83 (d) The registered agent of 1 or more foreign limited partnerships may  
84 resign and appoint a successor registered agent by paying a fee as set forth in § 17-  
85 1107(a)(7) of this title and filing a certificate with the Secretary of State, stating that it  
86 resigns and the name and address of the successor registered agent. There shall be  
87 attached to such certificate a statement of each affected foreign limited partnership  
88 ratifying and approving such change of registered agent. Upon such filing, the  
89 successor registered agent shall become the registered agent of such foreign limited  
90 partnerships as have ratified and approved such substitution and the successor  
91 registered agent's address, as stated in such certificate, shall become the address of  
92 each such foreign limited partnership's registered office in the State of Delaware. The  
93 Secretary of State shall then issue a certificate that the successor registered agent has  
94 become the registered agent of the foreign limited partnerships so ratifying and  
95 approving such change and setting out the names of such foreign limited partnerships.  
96 Filing of such certificate of resignation shall be deemed to be an amendment of the  
97 application of each foreign limited partnership affected thereby and each such foreign  
98 limited partnership shall not be required to take any further action with respect thereto  
99 to amend its application under § 17-905 of this title.

100 (e) The registered agent of one or more foreign limited partnerships  
101 may resign without appointing a successor registered agent by paying a fee as set

102                    forth in § 17-1107(a)(7) of this title and filing a certificate of resignation with the  
103                    Secretary of State, but such resignation shall not become effective until 30 days after  
104                    the certificate is filed. The certificate shall contain a statement that written notice of  
105                    resignation was given to each affected foreign limited partnership at least 30 days  
106                    prior to the filing of the certificate by mailing or delivering such notice to the foreign  
107                    limited partnership at its address last known to the registered agent and shall set forth  
108                    the date of such notice. After receipt of the notice of the resignation of its registered  
109                    agent, the foreign limited partnership for which such registered agent was acting shall  
110                    obtain and designate a new registered agent to take the place of the registered agent so  
111                    resigning. If such foreign limited partnership fails to obtain and designate a new  
112                    registered agent as aforesaid prior to the expiration of the period of 30 days after the  
113                    filing by the registered agent of the certificate of resignation, such foreign limited  
114                    partnership shall not be permitted to do business in the State of Delaware and its  
115                    registration shall be deemed to be cancelled. After the resignation of the registered  
116                    agent shall have become effective as provided in this section and if no new registered  
117                    agent shall have been obtained and designated in the time and manner aforesaid,  
118                    service of legal process against each foreign limited partnership for which the  
119                    resigned registered agent had been acting shall thereafter be upon the Secretary of  
120                    State in accordance with § 17-911 of this title."

121                    Section 12. Amend § 17-1110, Chapter 17, Title 6 of the Delaware Code by deleting  
122                    existing subsection (b) thereof in its entirety and substituting in lieu thereof the following:

123                    "(b) A list of those domestic limited partnerships whose certificates of  
124                    limited partnership were canceled on June 1 of such calendar year pursuant to Section  
125                    17-1110(a) of this title shall be filed in the office of the Secretary of State. On or  
126                    before October 31 of each calendar year, the Secretary of State shall publish such list  
127                    on the Internet or on a similar medium for a period of 1 week and shall advertise the  
128                    website or other address where such list can be accessed in at least 1 newspaper of  
129                    general circulation in the State of Delaware."

SYNOPSIS

This bill continues the practice of amending periodically the Delaware Revised Uniform Limited Partnership 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 § 17-101(12) of the Act to confirm that a limited partnership is bound by its partnership agreement.

Section 2. This section amends § 17-106 of the Act to confirm and clarify the broad powers of a limited partnership.

Section 3. This section amends § 17-203 of the Act to delete the requirement of setting forth the reason for filing a certificate of cancellation in the certificate of cancellation.

Section 4. This section amends § 17-206 of the Act to confirm that all certificates filed with the Secretary of State pursuant to this chapter are permanently maintained as a public record.

Section 5. This section amends § 17-212 of the Act to confirm the ability to provide for contractual appraisal rights in certain circumstances.

Section 6. This section amends § 17-214(c) of the Act to confirm the liability protections afforded to limited partners in a limited liability limited partnership.

Section 7. This section amends § 17-301 of the Act to confirm that a limited partner has no preemptive rights unless otherwise provided in a partnership agreement or another agreement.

Section 8. This section amends § 17-401 of the Act to confirm that a general partner has no preemptive rights unless otherwise provided in a partnership agreement or another agreement.

Section 9. This section amends § 17-403(c) of the Act to confirm that delegation of any rights or powers by a general partner will not cause the delegatee to be a general partner.

Section 10. This section amends § 17-904(a) of the Act to clarify the intended meaning of the section.

Section 11. This section amends § 17-904 of the Act to clarify 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 for foreign limited partnerships. It parallels the amendments previously made for registered agents for domestic limited partnerships.

Section 12. This section amends § 17-1110 of the Act to permit the Delaware Secretary of State to carry out its obligation to provide notice of canceled domestic limited partnerships through the use of electronic communication.

Section 13. This section provides that the proposed amendments of the Act shall become effective on August 1, 2002.

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