



SPONSOR: Sen. Vaughn & Rep. Wagner &
Rep. Valihura

DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 273

AN ACT TO AMEND 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):

Section 1. Amend § 17-101(12), Chapter 17, Title 6 of the Delaware Code by adding after the end of the third sentence thereof the following new sentence: "A partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent set forth therein."

Section 2. Amend § 17-211(b), Chapter 17, Title 6 of the Delaware Code by inserting "or may be cancelled" immediately before the "." at the end of the third sentence thereof.

Section 3. Amend § 17-211(c), Chapter 17, Title 6 of the Delaware Code by re-designating paragraphs (4), (5), (6), and (7) thereof as paragraphs (5), (6), (7), and (8) respectively, and by inserting new paragraph (4) thereof immediately prior to the newly designated paragraph (5) thereof reading as follows:

"(4) In the case of a merger in which a domestic limited partnership is the surviving entity, such amendments, if any, to the certificate of limited partnership of the surviving domestic limited partnership (and in the case of a surviving domestic limited partnership that is a limited liability limited partnership, to the statement of qualification of such surviving domestic limited partnership filed under Section 15-1001 of the Delaware Revised Uniform Partnership Act) to change its name as are desired to be effected by the merger;"

Section 4. Amend § 17-211(f), Chapter 17, Title 6 of the Delaware Code by inserting the following sentence immediately after the first sentence thereof: "A certificate of merger that sets forth any amendment in accordance with subsection (c)(4) of this section shall be deemed to be an amendment to the certificate of limited partnership (and if applicable to the statement of qualification) of the limited partnership, and the limited partnership shall not be required to take any further action to amend its certificate of limited partnership under § 17-202 of this title (or if applicable its statement of qualification under § 15-105 of this title) with respect to such amendments set forth in the certificate of merger."

Section 5. Amend § 17-215(j), Chapter 17, Title 6 of the Delaware Code by inserting "or may be cancelled" immediately before the "." at the end thereof.

Section 6. Amend § 17-216(f), Chapter 17, Title 6 of the Delaware Code by inserting "or may be cancelled" immediately before the "." at the end thereof.

Section 7. Amend § 17-216, Chapter 17, Title 6 of the Delaware Code by adding at the end thereof a new subsection (g) thereto reading as follows:

"(g) When a limited partnership has transferred or domesticated out of the State of Delaware pursuant to this section, the transferred or domesticated business form shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the limited partnership. When any transfer or domestication of a limited partnership out of the State of Delaware shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the limited partnership that has transferred or domesticated, and all property, real, personal and mixed, and all debts due to such limited partnership, as well as all other things and causes of action belonging to such limited partnership, shall remain vested in the transferred or domesticated business form and shall be the property of such transferred or domesticated business form, and the title to any real property vested by deed or otherwise in such limited partnership shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such limited partnership shall be preserved unimpaired, and all debts, liabilities and duties of the limited partnership that has transferred or domesticated shall remain attached to the transferred or domesticated business form, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the transferred or domesticated business form. The rights, privileges, powers and interests in property of the limited partnership that has transferred or domesticated, as well as the debts, liabilities and duties of such limited partnership, shall not be deemed, as a consequence of the transfer or domestication out of the State of Delaware, to have been transferred to the transferred or domesticated business form for any purpose of the laws of the State of Delaware."

Section 8. Amend § 17-217(i), Chapter 17, Title 6 of the Delaware Code by inserting "or may be cancelled" immediately before the "." at the end thereof.

Section 9. Amend § 17-218(b), Chapter 17, Title 6 of the Delaware Code by inserting "in such separate and distinct records" immediately after "any such series are held" and by inserting "in such separate and distinct records" immediately after "and accounted for" in the first sentence thereof.

Section 10. Amend § 17-219(d), Chapter 17, Title 6 of the Delaware Code by inserting "or may be cancelled" immediately before the "." at the end thereof.

Section 11. Amend § 17-219, Chapter 17, Title 6 of the Delaware Code by adding at the end thereof a new subsection (h) thereto reading as follows:

"(h) When a limited partnership has been converted to another business form pursuant to this section, the other business form shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the limited partnership. When any conversion shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the limited partnership that has converted, and all property, real, personal and mixed, and all debts due to such limited partnership, as well as all other things and causes of action belonging to such limited partnership, shall remain vested in the other business form to which such limited partnership has converted and shall be the property of such other business form, and the title to any real property vested by deed or otherwise in such limited partnership shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such limited partnership shall be preserved unimpaired, and all debts, liabilities and duties of the limited partnership that has converted shall remain attached to the other business form to which such limited partnership has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such other business form. The rights, privileges, powers and interests in property of the limited partnership that has converted, as well as the debts, liabilities and duties of such limited partnership, shall not be deemed, as a consequence of the conversion, to have been transferred to the other business form to which such limited partnership has converted for any purpose of the laws of the State of Delaware."

Section 12. Amend § 17-302(f), Chapter 17, Title 6 of the Delaware Code by deleting the first sentence thereof in its entirety and substituting in lieu thereof the following:

"If a partnership agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the partnership agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended)."

Section 13. Amend § 17-303(b)(1), Chapter 17, Title 6 of the Delaware Code by deleting the word "limited" immediately prior to the words "partner of a partnership that is a general partner of the limited partnership".

76 Section 14. Amend § 17-303(b)(9), Chapter 17, Title 6 of the Delaware Code by deleting "(other than a general
77 partner of a general partner of the limited partnership)".

78 Section 15. Amend § 17-1101(d), Chapter 17, Title 6 of the Delaware Code by deleting said subsection in its entirety
79 and substituting in lieu thereof the following:

80 "(d) To the extent that, at law or in equity, a partner or other person has duties (including fiduciary duties) to a
81 limited partnership or to another partner or to an other person that is a party to or is otherwise bound by a partnership
82 agreement, the partner's or other person's duties may be expanded or restricted or eliminated by provisions in the
83 partnership agreement; provided that the partnership agreement may not eliminate the implied contractual covenant of
84 good faith and fair dealing."

85 Section 16. Amend § 17-1101, Chapter 17, Title 6 of the Delaware Code by re-designating subsection (e) thereof as
86 subsection (g), and by inserting new subsections (e) and (f) thereto immediately prior to the newly designated subsection (g)
87 thereof reading as follows:

88 "(e) Unless otherwise provided in a partnership agreement, a partner or other person shall not be liable to a
89 limited partnership or to another partner or to an other person that is a party to or is otherwise bound by a partnership
90 agreement for breach of fiduciary duty for the partner's or other person's good faith reliance on the provisions of the
91 partnership agreement.

92 (f) A partnership agreement may provide for the limitation or elimination of any and all liabilities for breach of
93 contract and breach of duties (including fiduciary duties) of a partner or other person to a limited partnership or to
94 another partner or to an other person that is a party to or is otherwise bound by a partnership agreement; provided that
95 a partnership agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith
96 violation of the implied contractual covenant of good faith and fair dealing."

97 Section 17. This Act shall become effective August 1, 2004.

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 national preeminence. The following is a section-by-section review of the proposed amendments of the Act.

Sections 1 and 12. These amendments confirm the flexibility permitted in drafting a partnership agreement, including providing for the manner in which it may be amended.

Section 2. This amendment confirms the flexibility permitted in the Act regarding a merger or consolidation.

Sections 3 and 4. These amendments permit a change of the name of a surviving domestic limited partnership to be

set forth in a certificate of merger.

Section 5. This amendment confirms the flexibility permitted in the Act regarding a domestication as a domestic limited partnership.

Section 6. This amendment confirms the flexibility permitted in the Act regarding a transfer or domestication of a domestic limited partnership.

Section 7. This amendment confirms the treatment under Delaware law of limited partnerships that have transferred or domesticated out of the State of Delaware.

Section 8. This amendment confirms the flexibility permitted in the Act regarding a conversion to a domestic limited partnership.

Section 9. This amendment confirms the manner in which assets may be held and accounted for pursuant to such section.

Section 10. This amendment confirms the flexibility permitted in the Act regarding a conversion of a domestic limited partnership.

Section 11. This amendment confirms the treatment under Delaware law of limited partnerships that have converted to another business form.

Sections 13 and 14. These amendments expand the protections of the limited partners consistent with the policy of §17-303 of the Act.

Section 15. This amendment clarifies that duties (including fiduciary duties) may be expanded, restricted and eliminated in a partnership agreement. This amendment confirms that a partnership agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

Section 16. The amendment in new subsection 17-1101(e) of the Act clarifies the default exculpation provision in the Act by providing that it only applies with respect to breaches of fiduciary duties. The amendment in new subsection 17-1101(f) of the Act confirms the flexibility permitted in the Act regarding exculpation.

Section 17. This section provides that the proposed amendments of the Act shall become effective on August 1, 2004
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