



SPONSOR: Sen. Vaughn & Reps. Valihura & Wagner ;
Reps. George & Johnson

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 85
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 15, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED LIABILITY 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 § 15-101(8), Chapter 15, Title 6 of the Delaware Code by inserting “domestic” immediately after “means a” and by deleting “and does not have a similar statement in effect in any other jurisdiction” therefrom.

Section 2. Amend § 15-101(12), Chapter 15, Title 6 of the Delaware Code by adding the following sentence at the end thereof:

“A partner of a partnership or a transferee of an economic interest is bound by the partnership agreement whether or not the partner or transferee executes the partnership agreement.”

Section 3. Amend § 15-306(d), Chapter 15, Title 6 of the Delaware Code by inserting “in Delaware” immediately before “in a limited liability partnership”.

Section 4. Amend Subchapter IV of Chapter 15, Title 6 of the Delaware Code by adding thereto, immediately following § 15-408, a new § 15-409 reading as follows:

“§ 15-409. Reliance on reports and information by partner or liquidating trustee.

(a) A liquidating trustee of a partnership (including a limited liability partnership) shall be fully protected in relying in good faith upon the records of the partnership and upon information, opinions, reports or statements presented by a partner of the partnership, an officer or employee of the partnership, another liquidating trustee, or committees of the partnership or partners, or by any other person as to matters the liquidating trustee reasonably believes are within such other person’s professional or expert competence, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses

of the partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

(b) A partner of a limited liability partnership shall be fully protected in relying in good faith upon the records of the partnership and upon information, opinions, reports or statements presented by another partner of the partnership, an officer or employee of the partnership, a liquidating trustee, or committees of the partnership or partners, or by any other person as to matters the partner reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses of the partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

(c) A partner of a partnership that is not a limited liability partnership shall be fully protected from liability to the partnership, its partners or other persons party to or otherwise bound by the partnership agreement in relying in good faith upon the records of the partnership and upon information, opinions, reports or statements presented by another partner of the partnership, an officer or employee of the partnership, a liquidating trustee, or committees of the partnership or partners, or by any other person as to matters the partner reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses of the partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.”.

Section 5. Amend § 15-504(a), Chapter 15, Title 6 of the Delaware Code by deleting the second sentence thereto and substituting in lieu thereof “To the extent so charged, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such economic interest.”.

Section 6. Amend § 15-504(b), Chapter 15, Title 6 of the Delaware Code by deleting the second and third sentences thereto.

Section 7. Amend § 15-504(c), Chapter 15, Title 6 of the Delaware Code by deleting said subsection.

Section 8. Amend § 15-504(d), Chapter 15, Title 6 of the Delaware Code by re-designating said subsection as subsection (c) and by inserting “or a partner’s transferee” immediately prior to “of a right” and by deleting “partner’s” and substituting in lieu thereof “judgment debtor’s”.

Section 9. Amend § 15-504(e), Chapter 15, Title 6 of the Delaware Code by re-designating said subsection as subsection (d), by deleting “This section provides” and by inserting in lieu thereof “The entry of a charging order is” and by inserting “of a” immediately prior to “partner’s transferee”.

Section 10. Amend § 15-504(f), Chapter 15, Title 6 of the Delaware Code by re-designating said subsection as subsection (e) and by inserting “or of a partner’s transferee” immediately following “No creditor of a partner”.

Section 11. Amend § 15-504, Chapter 17, Title 6 of the Delaware Code by inserting a new subsection (f) to read as follows:

“(f) The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any such charging order.”.

Section 12. Amend § 15-901(b)(1), Chapter 15, Title 6 of the Delaware Code by deleting “and” at the end thereof.

Section 13. Amend § 15-901(b)(2), Chapter 15, Title 6 of the Delaware Code by deleting “.” at the end thereof and substituting in lieu thereof “; and”.

Section 14. Amend § 15-901(b), Chapter 15, Title 6 of the Delaware Code by adding a new paragraph (3) thereto reading as follows: “(3) In the case of a conversion to a limited liability partnership, a statement of qualification in accordance with subsection (c) of Section 15-1001.”.

Section 15. Amend § 15-901(c)(3), Chapter 15, Title 6 of the Delaware Code by deleting “and” at the end thereof.

Section 16. Amend § 15-901(c)(4), Chapter 15, Title 6 of the Delaware Code by deleting “.” at the end thereof and substituting in lieu thereof “; and”.

Section 17. Amend § 15-901(c), Chapter 15, Title 6 of the Delaware Code by adding a new paragraph (5) thereto reading as follows: “(5) In the case of a conversion to a limited liability partnership, that the partnership agreement of the partnership states that the partnership shall be a limited liability partnership.”.

Section 18. Amend § 15-901(d), Chapter 15, Title 6 of the Delaware Code by deleting “and” immediately following “filing with the Secretary of State of the certificate of conversion to partnership” and substituting in lieu thereof “,” by inserting “and the statement of qualification (if applicable),” immediately prior to “or upon the future effective date”, by deleting “and the statement of partnership existence” immediately following the words “upon the future effective date or time of the certificate of conversion to partnership” and substituting in lieu thereof “, the statement of partnership existence and the statement of

qualification (if applicable)”, and by inserting “(including a limited liability partnership, if applicable)” immediately following “converted into a domestic partnership”.

Section 19. Amend § 15-901(e), Chapter 15, Title 6 of the Delaware Code by inserting “(including a limited liability partnership)” immediately following “into a domestic partnership”.

Section 20. Amend § 15-901(g), Chapter 15, Title 6 of the Delaware Code by deleting from the first sentence thereof “or as required under applicable non-Delaware law” and substituting in lieu thereof “for all purposes of the laws of the State of Delaware”, deleting the word “and” immediately before “the conversion” in the first sentence thereof, by inserting “,” immediately after “dissolution of such other entity” in the first sentence thereof, and by inserting “the conversion” immediately prior to “shall constitute a continuation” in the first sentence thereof.

Section 21. Amend § 15-901(j), Chapter 15, Title 6 of the Delaware Code by inserting “(including a limited liability partnership)” immediately before “, a person is admitted”, by deleting “domestic” immediately after “a person is admitted as a partner of the”, by deleting “at the time provided in and upon compliance with” immediately before “the partnership agreement” and substituting in lieu thereof “as provided in”, and by inserting “(including a limited liability partnership)” immediately before “, is a partner of the partnership”.

Section 22. Amend § 15-902(k), Chapter 15, Title 6 of the Delaware Code by deleting said subsection in its entirety and substituting in lieu thereof the following:

“(k) A person is admitted as a partner of a surviving or resulting domestic partnership pursuant to a merger or consolidation approved in accordance with subsection (b) of this section as provided in the partnership agreement of the surviving or resulting domestic partnership or in the agreement of merger or consolidation, and in the event of any inconsistency, the terms of the agreement of merger or consolidation shall control. A person is admitted as a partner of a domestic partnership pursuant to a merger or consolidation in which such domestic partnership is not the surviving or resulting domestic partnership in the merger or consolidation as provided in the partnership agreement of such domestic partnership.”.

Section 23. Amend § 15-904(i), Chapter 15, Title 6 of the Delaware Code by deleting from the second sentence thereof “or as required under applicable non-Delaware law” and substituting in lieu thereof “for all purposes of the laws of the State of Delaware”, by deleting the word “and” immediately before “the domestication” in the second sentence thereof, by inserting “,” immediately after “dissolution of such non-United States entity” in the second sentence thereof, and by inserting “the domestication” immediately prior to “shall constitute a continuation” in the second sentence thereof.

Section 24. Amend § 15-904(k), Chapter 15, Title 6 of the Delaware Act by inserting “domestic” immediately after “entity as a”, by deleting “in the State of Delaware” immediately after “partnership” and substituting in lieu thereof “(including a limited

liability partnership)", by deleting "domestic" immediately after "a person is admitted as a partner of the", by deleting "at the time provided in and upon compliance with" immediately before "the partnership agreement" and substituting in lieu thereof "as provided in", and by inserting "(including a limited liability partnership)" immediately before ", is a partner of the partnership".

Section 25. Amend § 15-905(b), Chapter 15, Title 6 of the Delaware Code by deleting the first sentence thereof and deleting "If all of the partners of the partnership or such other vote as may be stated in a partnership agreement shall approve the transfer or domestication described in subsection (a) of this section," from the second sentence thereof, and by substituting in lieu thereof the following:

"If the partnership agreement specifies the manner of authorizing a transfer or domestication described in subsection (a) of this section, the transfer or domestication shall be authorized as specified in the partnership agreement. If the partnership agreement does not specify the manner of authorizing a transfer or domestication described in subsection (a) of this section and does not prohibit such a transfer or domestication, the transfer or domestication shall be authorized in the same manner as is specified in the partnership agreement for authorizing a merger or consolidation that involves the partnership as a constituent party to the merger or consolidation. If the partnership agreement does not specify the manner of authorizing a transfer or domestication described in subsection (a) of this section or a merger or consolidation that involves the partnership as a constituent party and does not prohibit such a transfer or domestication, the transfer or domestication shall be authorized by the approval by all the partners. If a transfer or domestication described in subsection (a) of this section shall be authorized as provided in this subsection (b),".

Section 26. Amend § 15-1001, Chapter 15, Title 6 of the Delaware Code by inserting "of a domestic partnership" immediately after "Statement of qualification" in the title thereto.

Section 27. Amend § 15-1001(a), Chapter 15, Title 6 of the Delaware Code by inserting "domestic" immediately prior to "partnership may", by inserting "be formed as, or may" immediately after "partnership may", and by inserting "," immediately after "become".

Section 28. Amend § 15-1001(b), Chapter 15, Title 6 of the Delaware Code by deleting "The" and substituting in lieu thereof "In order to form a limited liability partnership, the original partnership agreement of the partnership shall state that the partnership is formed as a limited liability partnership, and the partnership shall file a statement of qualification in accordance with subsection (c) of this section. In order for an existing partnership to become a limited liability partnership, the", by deleting "a" immediately prior to "partnership becomes" and substituting in lieu thereof "the", by deleting "except" immediately prior to ", in the case of" and substituting in lieu thereof "and", by inserting "also" immediately prior to "the vote necessary", and by inserting ", and after such approval, the partnership shall file a statement of qualification in accordance with subsection (c) of this section" immediately following "amend those provisions".

Section 29. Amend § 15-1001(c), Chapter 15, Title 6 of the Delaware Code by deleting the first sentence thereof.

Section 30. Amend § 15-1003(c), Chapter 15, Title 6 of the Delaware Code by deleting the first and second sentences thereto, by deleting “The notice must be mailed to the” from the third sentence thereto and by substituting in lieu thereof “On or before the last day of March in each year, the Secretary of State shall mail to each”, by deleting from the third sentence thereto the “.”, and by deleting the fourth and fifth sentences thereto and substituting in lieu thereof the following:

“a notice specifying that the annual report together with applicable fees shall be due on June 1 of the current year and stating that the statement of qualification or statement of foreign qualification of the partnership shall be deemed to be revoked unless such report is filed and such filing fee is paid on or before June 1 of the following year. The Secretary of State shall not issue a certificate of good standing with respect to any partnership which has not filed an annual report and paid the required filing fee pursuant to this section. The statement of qualification or statement of foreign qualification of any such partnership that fails to file such annual report or pay such required filing fee on or before June 1 of the following year shall be deemed to be revoked.”.

Section 31. Amend § 15-1003(e), Chapter 15, Title 6 of the Delaware Code by inserting “pursuant to subsection (c)” immediately following “revoked” and by deleting “within three years” therefrom.

Section 32. Amend § 15-1104(a)(7), Chapter 15, Title 6 of the Delaware Code by inserting “, as borrower or lender,” immediately after “creating”, by deleting the “,” immediately after “indebtedness” and by deleting the “,” immediately after “mortgage”.

Section 33. Amend § 15-1104(a), Chapter 15, Title 6 of the Delaware Code by re-designating paragraph (7) as paragraph (8) and by inserting a new paragraph (7) after paragraph (6) to read as follows:

“(7) selling, by contract consummated outside the State of Delaware, and agreeing, by the contract, to deliver into the State of Delaware, machinery, plants or equipment, the construction, erection or installation of which within the State of Delaware requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;”.

Section 34. Amend § 15-1104(a), Chapter 15, Title 6 of the Delaware Code by re-designating paragraph (8) as paragraph (9).

Section 35. Amend § 15-1104(a), Chapter 15, Title 6 of the Delaware Code by re-designating paragraph (9) as paragraph (10) and by deleting “and” at the end thereof.

Section 36. Amend § 15-1104(a), Chapter 15, Title 6 of the Delaware Code by re-designating paragraph (10) as paragraph (11) and by deleting “.” at the end thereof and inserting in lieu thereof “; and”.

Section 37. Amend § 15-1104(a), Chapter 15, Title 6 of the Delaware Code by inserting a new paragraph (12) to read as follows:

“(12) doing business in the State of Delaware as an insurance company.”.

Section 38. Amend § 15-1209, Chapter 15, Title 6 of the Delaware Code by adding a new paragraph (c) thereto reading as follows:

“(c) A partnership whose statement of partnership existence has been canceled and has not been revived pursuant to Section 15-1210 of this chapter shall be deemed, from the date such cancellation became effective, to be a partnership that has not filed a statement of partnership existence.”.

Section 39. Amend § 15-1210, Chapter 15, Title 6 of the Delaware Code by deleting the title thereof and replacing the same with the following new title: “Revival of statement of partnership existence.”.

Section 40. Amend § 15-1210(a), Chapter 15, Title 6 of the Delaware Code by deleting “partnership whose” in the first sentence thereof and by inserting the word “that” immediately following “existence” the first time the word “existence” is used in the first sentence thereof.

Section 41. Amend § 15-1210(c), Chapter 15, Title 6 of the Delaware Code by deleting “a” immediately following “Upon the filing of a certificate of revival,” in the first sentence thereof and substituting in lieu thereof “the statement of partnership existence of the” and by deleting all of subsection (c) after the first sentence thereof.

Section 42. This Act shall become effective August 1, 2005.