



SPONSOR: Rep. George & Sen. Blevins;  
Reps. Bennett, Carson, Hudson, Kovach, Lavelle;  
Sen. Sorenson

HOUSE OF REPRESENTATIVES  
145th GENERAL ASSEMBLY

HOUSE BILL NO. 372

AN ACT TO AMEND CHAPTER 18, 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:

1           Section 1. Amend § 18-101(7), Chapter 18, Title 6 of the Delaware Code by inserting the following sentence after  
2 the fifth sentence of this subsection: "A limited liability company agreement is not subject to any statute of frauds  
3 (including Section 2714 of this Title).".

4           Section 2. Amend § 18-105(b), Chapter 18, Title 6 of the Delaware Code by deleting the first two sentences  
5 thereof and replacing them with the following five sentences: "In case the officer whose duty it is to serve legal process  
6 cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to  
7 serve the process against the limited liability company upon the Secretary of State, and such service shall be as effectual for  
8 all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be served upon  
9 the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of  
10 State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary  
11 of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance  
12 with this subsection, the Secretary of State shall forthwith notify the limited liability company by letter, directed to the  
13 limited liability company at its address as it appears on the records relating to such limited liability company on file with  
14 the Secretary of State or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or  
15 courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the  
16 signature of the recipient.".

17           Section 3. Amend § 18-106, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (d) at the end  
18 of such section to read as follows: "(d)       Unless otherwise provided in a limited liability company agreement, a limited  
19 liability company has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power  
20 of attorney.".

21 Section 4. Amend § 18-203, Chapter 18, Title 6 of the Delaware Code by inserting the words "or a certificate of  
22 ownership and merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof, and  
23 by inserting the words "or a certificate of ownership and merger" immediately after the third occurrence of the word  
24 "consolidation" in the first sentence thereof.

25 Section 5. Amend § 18-204, Chapter 18, Title 6 of the Delaware Code by redesignating subsection "(c)" thereof as  
26 subsection "(d)" and inserting a new subsection (c) thereto to read as follows: "(c) For all purposes of the laws of the  
27 State of Delaware, a power of attorney with respect to matters relating to the organization, internal affairs or termination of  
28 a limited liability company or granted by a person as a member or assignee of a limited liability company interest or by a  
29 person seeking to become a member or an assignee of a limited liability company interest shall be irrevocable if it states  
30 that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power. Such irrevocable  
31 power of attorney, unless otherwise provided therein, shall not be affected by subsequent death, disability, incapacity,  
32 dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney  
33 with respect to matters relating to the organization, internal affairs or termination of a limited liability company or granted  
34 by a person as a member or an assignee of a limited liability company interest or by a person seeking to become a member  
35 or an assignee of a limited liability company interest and, in either case, granted to the limited liability company, a manager  
36 or member thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents  
37 shall be deemed coupled with an interest sufficient in law to support an irrevocable power."

38 Section 6. Amend § 18-206(a), Chapter 18, Title 6 of the Delaware Code by inserting the words "any certificate of  
39 ownership and merger," immediately after the word "consolidation," in the first sentence thereof, and by inserting the words  
40 "the certificate of ownership and merger," immediately after the word "consolidation," in the first sentence of subparagraph  
41 (1) of the fifth sentence thereof.

42 Section 7. Amend § 18-206(b), Chapter 18, Title 6 of the Delaware Code by inserting the words "or certificate of  
43 ownership and merger" immediately after each occurrence of the word "consolidation" in the second sentence thereof.

44 Section 8. Amend § 18-206(d), Chapter 18, Title 6 of the Delaware Code by inserting the words "a certificate of  
45 ownership and merger," immediately after the word "consolidation,".

46 Section 9. Amend § 18-209(a), Chapter 18, Title 6 of the Delaware Code by inserting the following sentence at  
47 the end thereof: "As used in this section and in §§ 18-210 and 18-301 of this title, "plan of merger" means a writing  
48 approved by a domestic limited liability company, in the form of resolutions or otherwise, that states the terms and  
49 conditions of a merger under subsection (i) of this section."

50           Section 10. Amend § 18-209(b), Chapter 18, Title 6 of the Delaware Code by deleting the word "a" immediately  
51 before the word "merger" in the second sentence thereof and substituting in lieu thereof the words "an agreement of", by  
52 inserting the words "or a plan of merger" immediately after the word "consolidation" in the second sentence thereof, by  
53 inserting the words "or a plan of merger" immediately after the first occurrence of the word "consolidation" in the fourth  
54 sentence thereof, and by inserting the words "or plan of merger" immediately after the second occurrence of the word  
55 "consolidation" in the fourth sentence thereof.

56           Section 11. Amend § 18-209(c), Chapter 18, Title 6 of the Delaware Code by deleting the word "If" at the  
57 beginning of the first sentence thereof, and by substituting in lieu thereof the words "Except in the case of a merger under  
58 subsection (i) of this section, if".

59           Section 12. Amend § 18-209(c)(8), Chapter 18, Title 6 of the Delaware Code by inserting two new sentences  
60 immediately after the first sentence thereof worded as follows: "Process may be served upon the Secretary of State under  
61 this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State  
62 is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or  
63 appropriate."

64           Section 13. Amend § 18-209(d), Chapter 18, Title 6 of the Delaware Code by inserting the words "or in the case  
65 of a merger under subsection (i) of this section in a certificate of ownership and merger," immediately after the first  
66 occurrence of the word "consolidation," and by inserting the words "or a certificate of ownership and merger" immediately  
67 before the "." at the end thereof.

68           Section 14. Amend § 18-209(e), Chapter 18, Title 6 of the Delaware Code by inserting the words "or a certificate  
69 of ownership and merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

70           Section 15. Amend § 18-209(f), Chapter 18, Title 6 of the Delaware Code by inserting the words "or a plan of  
71 merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

72           Section 16. Amend § 18-209, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (i) at the  
73 end of such section to read as follows: " (i) In any case in which (x) at least 90% of the outstanding shares of each class of  
74 the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision  
75 required by § 251(g)(7)(i) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be  
76 entitled to vote on such merger, is owned by a domestic limited liability company, (y) 1 or more of such corporations is a  
77 corporation of the State of Delaware, and (z) any corporation that is not a corporation of the State of Delaware is a  
78 corporation of any other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such  
79 merger, the domestic limited liability company having such stock ownership may either merge the corporation or

corporations into itself and assume all of its or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan of merger. If a domestic limited liability company is causing a merger under this subsection, the domestic limited liability company shall file a certificate of ownership and merger executed by 1 or more authorized persons on behalf of the domestic limited liability company in the office of the Secretary of State. The certificate of ownership and merger shall certify that such merger was authorized in accordance with the domestic limited liability company's limited liability company agreement and this chapter, and if the domestic limited liability company shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the surviving domestic limited liability company or corporation upon surrender of each share of the corporation or corporations not owned by the domestic limited liability company, or the cancellation of some or all of such shares. If a corporation surviving a merger under this subsection is not a corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate such corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of any obligation of the domestic limited liability company or any obligation of any constituent corporation of the State of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title 8, and to irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify such surviving corporation thereof by letter, directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such

110 service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in  
111 which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof,  
112 and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than  
113 5 years from receipt of the service of process."

114 Section 17. Amend § 18-210, Chapter 18, Title 6 of the Delaware Code by inserting the words "or a plan  
115 of merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

116 Section 18. Amend § 18-213(b)(7), Chapter 18, Title 6 of the Delaware Code by inserting two new sentences  
117 immediately after the first sentence thereof worded as follows: "Process may be served upon the Secretary of State under  
118 subsection (b)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The  
119 Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State  
120 deems necessary or appropriate."

121 Section 19. Amend § 18-216(e)(7), Chapter 18, Title 6 of the Delaware Code by inserting two new sentences  
122 immediately after the first sentence thereof worded as follows: "Process may be served upon the Secretary of State under  
123 paragraph (6) of this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The  
124 Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State  
125 deems necessary or appropriate."

126 Section 20. Amend § 18-301(b), Chapter 18, Title 6 of the Delaware Code by inserting the words "or  
127 plan of merger" immediately after the second and third occurrences of the word "consolidation" in the first sentence of  
128 subparagraph (3) thereof.

129 Section 21. Amend § 18-305(f), Chapter 18, Title 6 of the Delaware Code by deleting the reference to "(3)" after  
130 the words "subsection (a)" wherever it appears in this subsection and by inserting the following language after the words "5  
131 business days" in the second sentence of this subsection: "(or such shorter or longer period of time as is provided for in a  
132 limited liability company agreement but not longer than 30 business days)".

133 Section 22. Amend § 18-305(g), Chapter 18, Title 6 of the Delaware Code by deleting the word "and" and  
134 substituting in lieu thereof the word "or" immediately after the words "adopted by all of the members" in the first sentence  
135 thereof and by deleting the word "section" and substituting in lieu thereof the word "chapter" immediately before the "." in  
136 the second sentence thereof.

137 Section 23. Amend § 18-702(a), Chapter 18, Title 6 of the Delaware Code by deleting the words "and upon: (1)  
138 The approval" from the second sentence thereof and substituting in lieu thereof the words "or, unless otherwise provided in  
139 the limited liability company agreement, upon the affirmative vote or written consent" and by deleting the words "other

140 than the member assigning the limited liability company interest; or (2) Compliance with any procedure provided for in the  
141 limited liability company agreement" from the second sentence thereof.

142 Section 24. Amend § 18-704(a), Chapter 18, Title 6 of the Delaware Code by deleting the words "as provided in a  
143 limited liability company agreement and upon", by deleting the words "The approval of all of the members of the limited  
144 liability company other than the member assigning limited liability company interest" and substituting in lieu thereof the  
145 words "As provided in the limited liability company agreement", and by deleting the words "Compliance with any  
146 procedure provided for in the limited liability company agreement" and substituting in lieu thereof "Unless otherwise  
147 provided in the limited liability company agreement, upon the affirmative vote or written consent of all of the members of  
148 the limited liability company".

149 Section 25. Amend § 18-902, Chapter 18, Title 6 of the Delaware Code by renumbering subsection "(2)" thereof  
150 as subsection "(3)" and inserting a new subsection (2) thereto to read as follows: "(2) A certificate, as of a date not  
151 earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its formation evidencing  
152 its existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached  
153 thereto."

154 Section 26. Amend § 18-910(b), Chapter 18, Title 6 of the Delaware Code by deleting the first two sentences  
155 thereof and replacing them with the following five sentences: "In case the officer whose duty it is to serve legal process  
156 cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to  
157 serve the process against the foreign limited liability company upon the Secretary of State, and such service shall be as  
158 effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be  
159 served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the  
160 Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as  
161 the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in  
162 accordance with this subsection, the Secretary of State shall forthwith notify the foreign limited liability company by letter,  
163 directed to the foreign limited liability company at its last registered office. Such letter shall be sent by a mail or courier  
164 service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of  
165 the recipient."

166 Section 27. Amend § 18-911(a), Chapter 18, Title 6 of the Delaware Code by adding the following two sentences  
167 at the end thereof as follows: "Process may be served upon the Secretary of State under this subsection by means of  
168 electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such  
169 rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate."

170 Section 28. Amend § 18-911(c), Chapter 18, Title 6 of the Delaware Code by deleting the words "certified mail,  
171 return receipt requested," in the first sentence thereof and by inserting a new sentence immediately after the first sentence  
172 thereof worded as follows: "Such letter shall be sent by a mail or courier service that includes a record of mailing or  
173 deposit with the courier and a record of delivery evidenced by the signature of the recipient."

174 Section 29. Amend § 18-1101, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (i) at the  
175 end of such section to read as follows: "(i) A limited liability company agreement that provides for the application of  
176 Delaware law shall be governed by and construed under the laws of the State of Delaware in accordance with its terms."

177 Section 30. Amend § 18-1105(a), Chapter 18, Title 6 of the Delaware Code by inserting the words "or a certificate  
178 of ownership and merger" immediately after the word "consolidation" in subparagraph (3) thereof.

179 Section 31. This Act shall become effective August 2, 2010.

#### 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 proposed amendments of the Act.

Section 1. This section amends § 18-101(7) of the Act to provide, in light of the decision of the Delaware Supreme Court in *Olson v. Halvorsen*, C.A. No. 1884 (Del. Supr. Dec. 15, 2009), that a limited liability company agreement is not subject to any statute of frauds.

Sections 2, 26, 27 and 28. Sections 2, 26, 27 and 28 amend §§ 18-105(b), 18-910(b), 18-911(a) and 18-911(c) of the Act to allow for service of process upon the Secretary of State thereunder by means of electronic transmission but only as prescribed by the Secretary of State, to authorize the Secretary of State to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate, and to enable the Secretary of State, in the event that service is effected through the Secretary of State in accordance therewith, to provide notice of service by letter sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.

Section 3. This section amends § 18-106 of the Act to confirm the broad powers of a limited liability company.

Sections 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 20 and 30. Sections 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 20 and 30 amend §§ 18-203, 18-206(a), 18-206(b), 18-206(d), 18-209(a), 18-209(b), 18-209(c), 18-209(d), 18-209(e), 18-209(f), 18-209, 18-210, 18-301(b) and 18-1105(a) of the Act to provide a mechanism to implement a short form merger under new Section 267 of Title 8 where a domestic limited liability company is the parent Entity (as defined in new Section 267(e)(2) of Title 8).

Section 5. This section amends § 18-204 of the Act to clarify, for purposes of the laws of the State of Delaware, when a power of attorney will be irrevocable, and the effects of such irrevocability.

Sections 12, 18 and 19. Sections 12, 18 and 19 amend §§ 18-209(c)(8), 18-213(b)(7), and 18-216(e)(7) of the Act to allow for service of process upon the Secretary of State thereunder by means of electronic transmission but only as prescribed by the Secretary of State, and to authorize the Secretary of State to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate.

Section 21. This section amends § 18-305(f) of the Act to clarify both the categories of information that are within its scope and that the prescribed time period for responding to an information demand may be varied by a limited liability company agreement.

Section 22. This section amends § 18-305(g) of the Act to make it consistent with other sections of the Act and to clarify and confirm that all amendments are valid if adopted in the manner provided for in the limited liability company agreement.

Section 23. This section amends § 18-702(a) of the Act to confirm the circumstances in which an

assignee of a limited liability company interest has the right to participate in the management of the business and affairs of a limited liability company.

Section 24. This section amends § 18-704(a) of the Act to confirm the circumstances in which an assignee of a limited liability company interest may become a member.

Section 25. This section amends § 18-902 of the Act to require that a foreign limited liability company registering with the Secretary of State must file a certificate, as of a date not earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its formation evidencing its existence, along with, if applicable, a translation thereof under oath.

Section 29. This section amends § 18-1101 of the Act to provide that a limited liability company agreement that provides for the application of Delaware law shall be governed by and construed under the laws of the State of Delaware in accordance with its terms. This amendment is not intended to negate the application of Delaware law to the interpretation and enforcement of a limited liability company agreement that does not explicitly provide for the application of Delaware law or to negate the application of the internal affairs doctrine to Delaware limited liability companies.

Section 31. This section provides that the proposed amendments of the Act shall become effective August 2, 2010.