SPONSOR: Sen. Blevins & Rep. George

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 76

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:

Section 1. Amend § 18-102(3), Chapter 18, Title 6 of the Delaware Code by inserting the word "or" immediately after the words "domestic or foreign corporation, partnership, limited partnership," in such subsection, by inserting the word "foreign" immediately before the fourth and fifth appearances of the words "limited liability company" in such subsection, and by inserting the words "provided further, that, if on July 31, 2011 a limited liability company is registered (with the consent of another limited liability company) under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of such other domestic limited liability company, it shall not be necessary for any such limited liability company to amend its certificate of formation to comply with this subsection;" immediately after the second ";" in such subsection.

Section 2. Amend § 18-104, Chapter 18, Title 6 of the Delaware Code by adding a new subsection (k) at the end of such section reading as follows: "(k) As contained in any certificate of formation, application for registration as a foreign limited liability company, or other document filed in the office of the Secretary of State under this chapter, the address of a registered agent or registered office shall include the street, number, city and postal code.".

Section 3. Amend § 18-203, Chapter 18, Title 6 of the Delaware Code by designating all but the final sentence thereof as subsection (a), designating the final sentence thereof as subsection (c), and adding a new subsection (b) immediately prior to the new subsection (c) reading as follows: "(b) A certificate of cancellation that is filed in the office of the Secretary of State prior to the dissolution or the completion of winding up of a limited liability company may be corrected as an erroneously executed certificate of cancellation by filing with the office of the Secretary of State a certificate of correction of such certificate of cancellation in accordance with § 18-211.".

Section 4. Amend § 18-206(b), Chapter 18, Title 6 of the Delaware Code by inserting a new sentence immediately before the first sentence of such subsection reading as follows: "Notwithstanding any other provision of this chapter, any certificate filed under this chapter shall be effective at the time of its filing with the Secretary of State or at any later date or

time (not later than a time on the 180th day after the date of its filing if such date of filing is on or after January 1, 2012) specified in the certificate.".

Section 5. Amend § 18-206, Chapter 18, Title 6 of the Delaware Code by adding a new subsection (g) at the end of such section reading as follows: "(g) Notwithstanding any other provision of this chapter, it shall not be necessary for any limited liability company or foreign limited liability company to amend its certificate of formation, its application for registration as a foreign limited liability company, or any other document that has been filed in the office of the Secretary of State prior to August 1, 2011, to comply with § 18-104(k) of this chapter; notwithstanding the foregoing, any certificate or other document filed under this chapter on or after August 1, 2011 and changing the address of a registered agent or registered office shall comply with § 18-104(k) of this chapter.".

Section 6. Amend § 18-212(b), Chapter 18, Title 6 of the Delaware Code by inserting a new sentence at the end of such subsection reading as follows: "Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 18-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 18-206(b) of this title.".

Section 7. Amend § 18-214(b), Chapter 18, Title 6 of the Delaware Code by inserting a new sentence at the end of such subsection reading as follows: "Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 18-206(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 18-206(b) of this title.".

Section 8. Amend § 18-302(d), Chapter 18, Title 6 of the Delaware Code by deleting the words "a consent or consents in writing, setting forth the action so taken, shall be signed by the" in the second sentence thereof and by inserting in lieu thereof the words "consented to, in writing or by electronic transmission, by".

Section 9. Amend § 18-302(e), Chapter 18, Title 6 of the Delaware Code by inserting two new sentences at the end of such subsection reading as follows: "Unless otherwise provided in a limited liability company agreement, a supermajority amendment provision shall only apply to provisions of the limited liability company agreement that are expressly included in the limited liability company agreement. As used in this section, "supermajority amendment provision" means any amendment provision set forth in a limited liability company agreement requiring that an amendment to a provision of the limited liability company agreement be adopted by no less than the vote or consent required to take action under such latter provision.".

Section 10. Amend § 18-302, Chapter 18, Title 6 of the Delaware Code by adding a new subsection (f) at the end of such section reading as follows: "(f) If a limited liability company agreement does not provide for the manner in which it may be amended, the limited liability company agreement may be amended with the approval of all of the members or as otherwise permitted by law, including as permitted by § 18-209(f) of this title. This subsection shall only apply to a limited liability company whose original certificate of formation was filed with the Secretary of State on or after January 1, 2012.".

Section 11. Amend § 18-404(d), Chapter 18, Title 6 of the Delaware Code by deleting the words "a consent or consents in writing, setting forth the action so taken, shall be signed by the" in the second sentence thereof and by inserting in lieu thereof the words "consented to, in writing or by electronic transmission, by".

Section 12. Amend § 18-1105(a)(2), Chapter 18, Title 6 of the Delaware Code by inserting the words "for each limited liability company whose registered agent has resigned by such certificate" immediately after "$2.00" in such subsection.

Section 13. Amend § 18-1105(a)(3), Chapter 18, Title 6 of the Delaware Code by inserting the words "(except as otherwise provided in paragraph (11) of this subsection)" immediately after the words "§ 18-202 of this title" in such subsection.

Section 14. Amend § 18-1105(a)(7), Chapter 18, Title 6 of the Delaware Code by inserting the words "for each foreign limited liability company whose registered agent has resigned by such certificate" immediately after "$2.00" in such subsection.

Section 15. Amend § 18-1105(a)(11), Chapter 18, Title 6 of the Delaware Code by inserting the words "and is specifically captioned as a certificate of amendment changing only the registered office or registered agent" immediately after the words "registered agent" in the second sentence thereof and by inserting "18-" immediately before the words "206(e) of this title" in the second sentence thereof.

Section 16. This Act shall become effective August 1, 2011.

Ssynopsis

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 sections amends § 18-102(3) of the Act to provide that a limited liability company may not register under a name that is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of another domestic limited liability company, provided that a limited liability company registered as of July 31, 2011 under such a name need not amend its certificate of formation to comply with this subsection.

Section 2. This section adds a new subsection (k) to § 18-104 of the Act providing that, in any certificate or other document filed with the Secretary of State, the address of the registered agent or registered office of the limited liability company must include the street, number, city and postal code.

Section 3. This section designates all but the final sentence of § 18-203 of the Act as a new subsection (a), designates the final sentence of § 18-203 of the Act as a new subsection (c), and adds a new subsection (b) confirming that a certificate of correction may be filed to correct a certificate of cancellation that has been filed prior to the dissolution or the completion of winding up of a limited liability company.

Section 4. This section amends § 18-206(b) of the Act to confirm that a certificate may be made effective at a date or time later than its filing as specified in the certificate and to provide, for filings made on or after January 1, 2012, that such later date or time shall not be later than a time on the 180th day after the filing date.

Section 5. This section amends § 18-206 of the Act by adding a new subsection (g) to provide that there is no need for an amendment to a certificate of formation or any other document on file with the Secretary of State before August 1, 2011, to comply with new § 18-104(k) of the Act, but that any certificate or other document filed on or after August 1, 2011 and changing the address of a registered agent or registered office must comply with § 18-104(k) of the Act.

Section 6. This section amends § 18-212 of the Act to clarify that the certificate of limited liability company domestication and the certificate of formation of a non-United States entity domesticating to Delaware as a Delaware limited liability company must be filed simultaneously in the office of the Secretary of State and, to the extent such certificates are to have a post-filing effective date or time, such certificates must provide for the same effective date or time.

Section 7. This section amends § 18-214 of the Act to clarify that the certificate of conversion to limited liability company and the certificate of formation of an other entity converting to a Delaware limited liability company must be filed simultaneously in the office of the Secretary of State and, to the extent such certificates are to have a post-filing effective date or time, such certificates must provide for the same effective date or time.

Section 8. This section amends § 18-302(d) of the Act to clarify the manner in which members of a limited liability company may take action without a meeting.

Section 9. This section amends § 18-302(e) of the Act to adopt a rule different from the approach articulated in In re LJM2 Co-Investment, L.P. Limited Partners Litigation, 866 A.2d 762 (Del. Ch. 2004) with respect to the application of the type of amendment provision contained in the partnership agreement at issue in that case. This amendment provides that such amendment provisions only apply to provisions expressly included in the limited liability company agreement and do not apply to default voting provisions of the statute unless otherwise provided in the limited liability company agreement. This amendment is not intended to affect the interpretation of such amendment provisions as applied to provisions expressly included in the limited liability company agreement.

Section 10. This section adds a new subsection (f) to § 18-302 of the Act to provide a default rule for the manner of amending a limited liability company agreement where the limited liability company agreement does not provide for the manner in which it may be amended. This subsection shall only apply to a limited liability company whose original certificate of formation was filed with the Secretary of State on or after January 1, 2012.

Section 11. This section amends § 18-404(d) of the Act to clarify the manner in which managers of a limited liability company may take action without a meeting.

Sections 12 and 14. These sections amend §§ 18-1105(a)(2) and (a)(7) of the Act to clarify that a registered agent filing a single certificate of resignation to resign from more than one limited liability company or foreign limited liability company must pay a $2.00 fee to the Secretary of State for each limited liability company or foreign limited liability company from which the registered agent is resigning.

Sections 13 and 15. These sections amend §§ 18-1105(a)(3) and (a)(11) of the Act to clarify the type of instrument to be filed by a limited liability company that changes only the registered office or registered agent of the limited liability company for a fee of $50.

Section 16. This section provides that the proposed amendments of the Act shall become effective August 1, 2011.

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