



SPONSOR: Rep. B. Short & Rep. George & Rep. Hudson; Sen.
DeLuca
Reps. Bennett, Keeley, Willis; Sens. Blevins, Bonini,
Hall-Long

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 115

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO STATUTORY TRUSTS.

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 Section 3807, Chapter 38, Title 12 of the Delaware Code by adding “; registered agent”
2 immediately after the words “Trustee in State” in the title of such section and by adding new subsections (f), (g) and (h) as
3 follows:

4 “(f) The registered agent of 1 or more statutory trusts may resign and appoint a successor registered agent
5 by paying a fee as set forth in § 3813(a)(5) of this title and filing a certificate with the Secretary of State stating that it
6 resigns and providing the name and address of the successor registered agent. There shall be attached to such certificate a
7 statement of each affected statutory trust ratifying and approving such change of registered agent. Upon such filing, or upon
8 the future effective date or time of such certificate if it is not to be effective upon filing, the successor registered agent shall
9 become the registered agent of such statutory trusts as have ratified and approved such succession, and the successor
10 registered agent's address, as stated in such certificate, shall become the address of each such statutory trust's registered
11 office in the State of Delaware. The Secretary of State shall then issue a certificate that the successor registered agent has
12 become the registered agent of the statutory trusts so ratifying and approving such change and setting out the names of such
13 statutory trusts. Filing of such certificate of resignation shall be deemed to be an amendment to the certificate of trust of
14 each statutory trust affected thereby, and no further action with respect thereto to amend its certificate of trust under § 3810
15 of this title shall be required.

16 “(g) The registered agent of 1 or more statutory trusts may resign without appointing a successor registered
17 agent by paying a fee as set forth in § 3813(a)(5) of this title and filing a certificate of resignation with the Secretary of
18 State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain
19 a statement that written notice of resignation was given to each affected statutory trust at least 30 days prior to the filing of
20 the certificate by mailing or delivering such notice to each statutory trust at its address last known to the registered agent
21 and shall set forth the date of such notice. After receipt of the notice of the resignation of its registered agent, each statutory

trust for which such registered agent was maintaining a registered office and registered agent in this State under subsection (b) of this section shall obtain and designate a new registered agent, to take the place of the registered agent so resigning, or shall appoint a trustee meeting the requirements of subsection (a) of this section. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each statutory trust for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 3804 of this title.

(h) As contained in any certificate of trust, application for registration as a foreign statutory trust, or other document filed in the office of the Secretary of State under this chapter, the address of a trustee and a registered agent or registered office shall include the street, number, city and postal code.”.

Section 2. Amend Section 3812, Chapter 38, Title 12 of the Delaware Code by deleting subsection (b) therein in its entirety and substituting in lieu thereof the following:

“(b) Notwithstanding any other provision of this chapter, any certificate filed in the office of the Secretary of State 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. Upon the effective time of a certificate of amendment (or judicial decree of amendment), certificate of correction, corrected certificate, or restated certificate, the certificate of trust shall be amended or restated as set forth therein. Upon the effective time of a certificate of cancellation (or a judicial decree thereof) or a certificate of merger or consolidation which acts as a certificate of cancellation or a certificate of transfer or a certificate of conversion to a non-Delaware entity, as provided for therein, the certificate of trust shall be canceled. Upon the effective time of a certificate of termination or amendment, the original certificate identified in the certificate of termination or amendment shall be terminated or amended, as the case may be.”.

Section 3. Amend Section 3812, Chapter 38, Title 12 of the Delaware Code by adding a new subsection (g) as follows:

“(g) Notwithstanding any other provision of this chapter, it shall not be necessary for any statutory trust or foreign statutory trust to amend its certificate of trust, its application for registration as a foreign statutory trust, or any other document that has been filed in the office of the Secretary of State prior to August 1, 2011, to comply with § 3807(h) 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 trustee or registered agent or registered office shall comply with § 3807(h) of this chapter.”.

Section 4. Amend Section 3813(a)(5), Chapter 38, Title 12 of the Delaware Code by inserting after the phrase “\$200” but before the period [.] the following language:

“, upon the receipt for filing of a certificate under § 3807(f) of this title, a fee in the amount of \$200, and upon the receipt for filing of a certificate under § 3807(g) of this title, a fee in the amount of \$2.00 for each statutory trust whose registered agent has resigned by such certificate”.

Section 5. Amend Section 3814(a), Chapter 38, Title 12 of the Delaware Code by inserting the word “or” immediately after the words “domestic or foreign corporation, partnership, limited partnership,” by inserting the word “foreign” immediately before each of the fifth and sixth appearances of the words “statutory trust”, and by inserting the following immediately before the period [.] at the end thereof: “; provided further, that, if on July 31, 2011 a statutory trust is registered (with the consent of another statutory trust) 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 statutory trust, it shall not be necessary for any such statutory trust to amend its certificate of trust to comply with this subsection”.

Section 6. Amend Section 3815(f), Chapter 38, Title 12 of the Delaware Code by deleting the phrase “a governing instrument of a statutory trust may provide that” in the first sentence thereof.

Section 7. Amend Section 3820(a), Chapter 38, Title 12 of the Delaware Code by adding the following sentence to the end thereof:

“Each of the certificates required by this subsection (a) 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 § 3812(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 3812(b) of this title.”.

Section 8. Amend Section 3822(b), Chapter 38, Title 12 of the Delaware Code by adding the following sentence to the end thereof:

“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 § 3812(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 3812(b) of this title.”.

Section 9. Amend Section 3862, Chapter 38, Title 12 of the Delaware Code by deleting subsection (2) therein in its entirety and substituting in lieu thereof the following:

“(2) Upon the receipt for filing of a certificate under § 3854(c) of this title, a fee in the amount of \$200, upon the receipt for filing of a certificate under § 3854(d) of this title, a fee in the amount of \$200, and upon the receipt for filing of a certificate under § 3854(e) of this title, a fee in the amount of \$2.00 for each statutory trust whose registered agent has resigned by such certificate.”.

SYNOPSIS

This Bill makes the following changes to Delaware statutory trust law [Chapter 38, Title 12 of the Delaware Code]:

Section 1 of the Bill amends § 3807 by adding three new subsections to provide that (i) the registered agent of one or more statutory trusts may resign as registered agent and appoint a successor [3807(f)], (ii) the registered agent of one or more statutory trusts may resign as registered agent without appointing a successor [3807(g)], and (iii) in any certificate or other document filed with the Secretary of State pursuant to Chapter 38, the address of the trustee and the registered agent or registered office of the statutory trust must include the street, number, city and postal code [3807(h)].

Section 2 of the Bill confirms that a certificate filed under Chapter 38 may be made effective at a date or time later than its filing as specified in the certificate; however, for filings made on or after January 1, 2012, the effective date or time cannot be later than the 180th day after the filing date of the certificate.

Section 3 of the Bill amends § 3812 by adding a new subsection (g) to provide that there is no need to amend a certificate of trust or other document on file before August 1, 2011 in order to comply with new § 3807(h), but that any certificate or other document filed on or after August 1, 2011 and changing the address of a trustee or registered agent or office must comply with new § 3807(h).

Section 4 of the Bill provides that a registered agent filing a certificate under new § 3807(f) shall pay a fee in the amount of \$200, and a registered agent filing a certificate under new § 3807(g) shall pay a fee in the amount of \$2.00 for each statutory trust whose registered agent has resigned by such certificate.

Section 5 of the Bill amends § 3814(a) to provide that a domestic statutory trust may not register under a name that is not such as to distinguish it upon the records of the Secretary of State from the name of another domestic statutory trust unless the domestic statutory trust is registered as of July 31, 2011 and has obtained the consent of the other domestic statutory trust. Section 5 of the Bill further amends § 3814(a) to clarify that a domestic statutory trust may register under the same name as a foreign statutory trust registered under the laws of this State, regardless of when the domestic statutory trust is registered, as long as the foreign statutory trust consents in writing to the use of its name and the consent is filed with the Secretary of State.

Section 6 of the Bill provides that notwithstanding anything to the contrary contained in the governing instrument of the statutory trust, an agreement of merger or consolidation approved in accordance with § 3815(a) may (i) effect an amendment to the governing instrument of the statutory trust, or (ii) effect the adoption of a new governing instrument to the statutory trust if the statutory trust is the surviving or resulting statutory trust in the merger or consolidation.

Section 7 of the Bill clarifies that the filing of a certificate of conversion to statutory trust and the filing of a certificate of trust--both of which are required to be filed with the Secretary of State in order to convert another entity to a statutory trust--must be filed simultaneously with the Secretary of State. Likewise, to the extent such certificates are to have post-filing dates or times, the certificates must provide for the same effective date or time.

Section 8 of the Bill clarifies that the filing of a certificate of statutory trust domestication and the filing of a certificate of trust--both of which are required to be filed with the Secretary of State in order to domesticate a non-United States entity as a Delaware statutory trust--must be filed simultaneously with the Secretary of State. Likewise, to the extent such certificates are to have post-filing dates or times, the certificates must provide for the same effective date or time.

Section 9 of the Bill amends § 3862 to provide that (i) a registered agent filing a certificate under § 3854(c) shall pay a fee in the amount of \$200, (ii) a registered agent filing a certificate under § 3854(d) shall pay a fee in the amount of \$200, and (iii) a registered agent filing a certificate under § 3854(e) shall pay a fee in the amount of \$2.00 for each statutory trust whose registered agent has resigned by such certificate.