



SPONSOR: Rep. George & Sen. Blevins ;
Reps. Bennett Carson Hudson J. Johnson Kovach Lavelle

HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 374

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:

1 Section 1. Amend § 15-101(2), Chapter 15, Title 6 of the Delaware Code by inserting the words "or a certificate
2 of ownership and merger" immediately after the word "consolidation".

3 Section 2. Amend § 15-101(12), Chapter 15, Title 6 of the Delaware Code by inserting the following sentence
4 after the third sentence of this subsection: "A partnership agreement is not subject to any statute of frauds (including
5 Section 2714 of this Title).".

6 Section 3. Amend § 15-105(d), Chapter 15, Title 6 of the Delaware Code by inserting the words "or a certificate
7 of ownership and merger" immediately after each occurrence of the word "consolidation" in the fourth sentence thereof,
8 and by inserting the words "or a certificate of ownership and merger" immediately after the first occurrence of the word
9 "consolidation" in the fifth sentence thereof.

10 Section 4. Amend § 15-112(b), Chapter 15, Title 6 of the Delaware Code by deleting the first two sentences
11 thereof and replacing them with the following five sentences: "In case the officer whose duty it is to serve legal process
12 cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to
13 serve the process against the partnership upon the Secretary of State, and such service shall be as effectual for all intents
14 and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be served upon the Secretary
15 of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The
16 Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State
17 deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this
18 subsection, the Secretary of State shall forthwith notify the partnership by letter, directed to the partnership at the address of
19 any partner as it appears on the records relating to such partnership on file with the Secretary of State or, if no such address
20 appears, at the last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing
21 or deposit with the courier and a record of delivery evidenced by the signature of the recipient.".

22 Section 5. Amend § 15-113(b), Chapter 15, Title 6 of the Delaware Code by deleting the first two sentences
23 thereof and replacing them with the following five sentences: "In case the officer whose duty it is to serve legal process
24 cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to
25 serve the process against the partnership upon the Secretary of State, and such service shall be as effectual for all intents
26 and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be served upon the Secretary
27 of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The
28 Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State
29 deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this
30 subsection, the Secretary of State shall forthwith notify the partnership by letter, directed to the partnership at the address of
31 any partner or the partnership as it is furnished to the Secretary of State by the person desiring to make service. Such letter
32 shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of
33 delivery evidenced by the signature of the recipient."

34 Section 6. Amend § 15-120, Chapter 15, Title 6 of the Delaware Code by inserting the words "or a plan of
35 merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

36 Section 7. Amend Subchapter I of Chapter 15, Title 6 of the Delaware Code by inserting a new § 15-123 at the
37 end of such Subchapter to read as follows:

38 "§ 15-123. Irrevocable Power of Attorney.

39 For all purposes of the laws of the State of Delaware, a power of attorney with respect to matters relating to the
40 organization, internal affairs or termination of a partnership or granted by a person as a partner or a transferee of an
41 economic interest or by a person seeking to become a partner or a transferee of an economic interest shall be irrevocable if
42 it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power. Such
43 irrevocable power of attorney, unless otherwise provided therein, shall not be affected by subsequent death, disability,
44 incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of
45 attorney with respect to matters relating to the organization, internal affairs or termination of a partnership or granted by a
46 person as a partner or a transferee of an economic interest or by a person seeking to become a partner or a transferee of an
47 economic interest and, in either case, granted to the partnership, a partner thereof, or any of their respective officers,
48 directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in
49 law to support an irrevocable power."

50 Section 8. Amend § 15-202, Chapter 15, Title 6 of the Delaware Code by inserting a new subsection (f) at the end
51 of such section to read as follows: "(f) Unless otherwise provided in a partnership agreement, a partnership has the
52 power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney."

53 Section 9. Amend § 15-403(e), Chapter 15, Title 6 of the Delaware Code by deleting the reference to "(3)" after
54 the words "subsection (a)" wherever it appears in this subsection and by inserting the following language after the words "5
55 business days" in the second sentence of this subsection: "(or such shorter or longer period of time as is provided for in a
56 partnership agreement but not longer than 30 business days)".

57 Section 10. Amend § 15-403(f), Chapter 15, Title 6 of the Delaware Code by deleting the word "and" and
58 substituting in lieu thereof the word "or" immediately after the words "adopted by all of the partners".

59 Section 11. Amend § 15-902(a), Chapter 15, Title 6 of the Delaware Code by inserting the following sentence at
60 the end thereof: "As used in this section and in § 15-120 of this title, "plan of merger" means a writing approved by a
61 domestic partnership, in the form of resolutions or otherwise, that states the terms and conditions of a merger under
62 subsection (m) of this section."

63 Section 12. Amend § 15-902(b), Chapter 15, Title 6 of the Delaware Code by deleting the word "a" immediately
64 before the word "merger" in the second sentence thereof and substituting in lieu thereof the words "an agreement of", by
65 inserting the words "or a plan of merger" immediately after the word "consolidation" in the second sentence thereof, by
66 inserting the words "or a plan of merger" immediately after the first occurrence of the word "consolidation" in the fourth
67 sentence thereof, and by inserting the words "or plan of merger" immediately after the second occurrence of the word
68 "consolidation" in the fourth sentence thereof.

69 Section 13. Amend § 15-902(c), Chapter 15, Title 6 of the Delaware Code by deleting the word "If" at the
70 beginning of the first sentence thereof and substituting in lieu thereof the words "Except in the case of a merger under
71 subsection (m) of this section, if", and by inserting the words "or by 1 or more authorized persons" immediately after the
72 words "1 partner" in the first sentence thereof.

73 Section 14. Amend § 15-902(e), Chapter 15, Title 6 of the Delaware Code by inserting the words "or in the case
74 of a merger under subsection (m) of this section in a certificate of ownership and merger," immediately after the first
75 occurrence of the word "consolidation," and by inserting the words "or a certificate of ownership and merger" immediately
76 before the "." at the end thereof.

77 Section 15. Amend § 15-902(f), Chapter 15, Title 6 of the Delaware Code by inserting the words "or a certificate
78 of ownership and merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

79 Section 16. Amend § 15-902(g), Chapter 15, Title 6 of the Delaware Code by inserting the words "or a plan of
80 merger" immediately after the first occurrence of the word "consolidation" in the first sentence thereof.

81 Section 17. Amend § 15-902(k), Chapter 15, Title 6 of the Delaware Code by inserting the words "or the plan of
82 merger" immediately after the second and third occurrences of the word "consolidation" in the first sentence thereof.

83 Section 18. Amend § 15-902, Chapter 15, Title 6 of the Delaware Code by inserting a new subsection (m) at the
84 end of such section to read as follows: "(m) In any case in which (x) at least 90% of the outstanding shares of each class of
85 the stock of a corporation or corporations (other than a corporation which has in its certificate of incorporation the provision
86 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
87 entitled to vote on such merger, is owned by a domestic partnership, (y) 1 or more of such corporations is a corporation of
88 the State of Delaware, and (z) any corporation that is not a corporation of the State of Delaware is a corporation of any
89 other state or the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic
90 partnership having such stock ownership may either merge the corporation or corporations into itself and assume all of its
91 or their obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to
92 a plan of merger. If a domestic partnership is causing a merger under this subsection, the domestic partnership shall file a
93 certificate of ownership and merger executed by at least 1 partner or by 1 or more authorized persons on behalf of the
94 domestic partnership in the office of the Secretary of State. The certificate of ownership and merger shall certify that such
95 merger was authorized in accordance with the domestic partnership's partnership agreement and this chapter, and if the
96 domestic partnership shall not own all the outstanding stock of all the corporations that are parties to the merger, shall state
97 the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or
98 granted by the surviving domestic partnership or corporation upon surrender of each share of the corporation or
99 corporations not owned by the domestic partnership, or the cancellation of some or all of such shares. The terms and
100 conditions of the merger may not result in a holder of stock in a corporation becoming a partner in a surviving domestic
101 partnership (other than a limited liability partnership). If a corporation surviving a merger under this subsection is not a
102 corporation organized under the laws of the State of Delaware, then the terms and conditions of the merger shall obligate
103 such corporation to agree that it may be served with process in the State of Delaware in any proceeding for enforcement of
104 any obligation of the domestic partnership or any obligation of any constituent corporation of the State of Delaware, as well
105 as for enforcement of any obligation of the surviving corporation, including any suit or other proceeding to enforce the right
106 of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title 8, and to irrevocably appoint the
107 Secretary of State as its agent to accept service of process in any such suit or other proceedings, and to specify the address
108 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 service setting forth the name of the plaintiff and the defendant, the title, docket number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required to retain such information longer than 5 years from receipt of the service of process."

Section 19. Amend § 15-1102(a), Chapter 15, Title 6 of the Delaware Code by inserting a ":" immediately after the word "filing" in the first sentence thereof, by deleting the words "a statement of foreign qualification. The statement of foreign qualification must contain:", and by inserting the following in lieu thereof: "(1) a statement of foreign qualification which must contain:", by redesignating subsections "(1)" through "(4)" thereof as "(A)" through "(D)", by deleting the "." at the end of new subsection (D) thereof and inserting the following in lieu thereof "; and" and by inserting a new subsection (2) at the end thereof to read as follows: "(2) 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. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto."

Section 20. This Act shall become effective August 2, 2010.

SYNOPSIS

This bill continues the practice of amending periodically the Delaware Revised Uniform Partnership 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.

Sections 1, 3, 6, 11, 12, 13, 14, 15, 16, 17 and 18. Sections 1, 3, 6, 11, 12, 13, 14, 15, 16, 17 and 18 amend §§ 15-102(2), 15-105(d), 15-120, 15-902(a), 15-902(b), 15-902(c), 15-902(e), 15-902(f), 15-902(g), 15-902(k) and 15-902 of the Act to provide a mechanism to implement a short form merger under new Section 267 of Title 8 where a

domestic partnership is the parent Entity (as defined in new Section 267(e)(2) of Title 8).

Section 2. This section amends § 15-101(12) 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), which dealt with a limited liability company agreement, but may apply to a partnership agreement by analogy, that a partnership agreement is not subject to any statute of frauds.

Sections 4 and 5. Sections 4 and 5 amend §§ 15-112(b) and 15-113(b) 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 7. This section amends the Act to add a new § 15-123 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.

Section 8. This section amends § 15-202 of the Act to confirm the broad powers of a partnership.

Section 9. This section amends § 15-403(e) 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 partnership agreement.

Section 10. This section amends § 15-403(f) 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 partnership agreement.

Section 19. This section amends § 15-1102(a) of the Act to require that a foreign limited liability partnership 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 20. This section provides that the proposed amendments of the Act shall become effective August 2, 2010.