



SPONSOR: Sen. DeLuca, Rep. B. Short & Rep. George

DELAWARE STATE SENATE  
145th GENERAL ASSEMBLY

SENATE BILL NO. 302

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):

Section 1. Amend Section 3801(e), Chapter 38, Title 12 of the Delaware Code by inserting the words “or entity” immediately after the words “or any other unincorporated business”.

Section 2. Amend Section 3801(f), Chapter 38, Title 12 of the Delaware Code by inserting the words “(including a common law trust, business trust, statutory trust, voting trust or any other form of trust)” immediately after the words “limited liability company, trust”.

Section 3. Amend Section 3806(b)(2), Chapter 38, Title 12 of the Delaware Code by inserting “, assets” after the words “beneficial owners” in such subsection.

Section 4. Amend Section 3806(b)(9), Chapter 38, Title 12 of the Delaware Code by inserting “, including as permitted by § 3815(f) of this title” immediately after the words “permitted by law” in such subsection.

Section 5. Amend Section 3808(b), Chapter 38, Title 12 of the Delaware Code by inserting the words “or a trustee” immediately after the words “beneficial owner” in such subsection.

Section 6. Amend Section 3810(a)(1)b., Chapter 38, Title 12 of the Delaware Code by (i) deleting the words “the business” immediately prior to the word “address” in such subsection and (ii) inserting the words “in this State” immediately after the word “address” in such subsection.

Section 7. Amend Section 3810(d), Chapter 38, Title 12 of the Delaware Code by (i) deleting the words “shall be deemed to be cancelled” in the first sentence of such subsection, (ii) by inserting the words “trust is not the surviving or resulting entity in a merger or consolidation, or upon the future effective date or time of a certificate of merger or consolidation if the” immediately after the second instance of the word “statutory” in the first sentence of such subsection, (iii) inserting the words “of a certificate of transfer, or upon the future effective date or time” after the second instance of the word “filing” in the first sentence of such subsection, (iv) deleting the word “a” after the words “conversion to” in the first sentence of such subsection, (v) inserting the words “entity or upon the future effective date or time of a certificate of conversion to non-Delaware” immediately after the word “business” in the first sentence of such subsection

23 and (vi) adding the following sentence as a new last sentence of such subsection: “The Secretary of State shall not issue a  
24 certificate of good standing with respect to a statutory trust if its certificate of trust is cancelled.”.

25           Section 8. Amend Section 3810(e), Chapter 38, Title 12 of the Delaware Code by inserting the following  
26 sentence after the second sentence thereof: “The certificate of correction shall be effective as of the date the original  
27 certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to  
28 those persons the certificate of correction shall be effective from the filing date.”.

29           Section 9. Amend Section 3811(a)(4), Chapter 38, Title 12 of the Delaware Code by (i) deleting the  
30 following words in the last two instances in which they appear in such subsection: “, certificate of transfer, certificate of  
31 transfer and continuance” and (ii) inserting “or non-United States entity (as such term is defined in § 3822 hereof)”  
32 immediately after the words “other business entity” in each of the two instances in which such words appear in such  
33 subsection.

34           Section 10. Amend Section 3811(c), Chapter 38, Title 12 of the Delaware Code by (i) inserting “, or  
35 other person authorized pursuant to (a) above,” immediately after the word “trustee” in such subsection and (ii) inserting  
36 the words “, or other person authorized pursuant to (a) above,” immediately after the word “trustee’s” in such subsection.

37           Section 11. Amend Section 3815(b)(4), Chapter 38, Title 12 of the Delaware Code by inserting the  
38 words “, registered office or registered agent” immediately after the word “name” in such subsection.

39           Section 12. Amend Section 3815(b)(8), Chapter 38, Title 12 of the Delaware Code, by deleting the first  
40 two sentences thereof and replacing them with the following five sentences: “If the surviving or resulting entity is not a  
41 statutory trust or other business entity formed or organized or existing under the laws of the State of Delaware, a statement  
42 that such surviving or resulting other business entity agrees that it may be served with process in the State in any action,  
43 suit or proceeding for the enforcement of any obligation of any statutory trust which is to merge or consolidate, irrevocably  
44 appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and  
45 specifying the address to which a copy of such process shall be mailed to it by the Secretary of State. Process may be  
46 served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the  
47 Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as  
48 the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the  
49 plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in the  
50 certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to  
51 furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify  
52 such surviving or resulting other business entity thereof at all such addresses furnished by the plaintiff by letter. 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.”.

Section 13. Amend Section 3815(f), Chapter 38, Title 12 of the Delaware Code by (i) deleting the words “containing a specific reference to this § 3815(f)”, (ii) inserting the following words: “merger or consolidation and shall be effective notwithstanding any provision of the governing instrument relating to amendment or adoption of a new governing instrument, other than a provision that by its terms applies to an amendment to the governing instrument or the adoption of a new governing instrument, in either case, in connection with a” immediately after the words “or date of the” in the second sentence of such subsection and (iii) inserting a new last sentence as follows: “Unless otherwise provided in a governing instrument, a statutory trust whose original certificate of trust was filed with the Secretary of State and effective on or prior to July 31, 2010, shall continue to be governed by this subsection as in effect on July 31, 2010.”.

Section 14. Amend Section 3815(g), Chapter 38, Title 12 of the Delaware Code by adding the following after the last sentence of such subsection: “Unless otherwise agreed, a merger or consolidation of a statutory trust, including a statutory trust which is not the surviving or resulting entity in the merger or consolidation, shall not require such statutory trust to wind up its affairs under Section 3808(d) of this title or pay any of its liabilities and distribute its assets under Section 3808(e) of this title, and the merger or consolidation shall not constitute the dissolution of such statutory trust”.

Section 15. Amend Section 3815(h), Chapter 38, Title 12 of the Delaware Code by deleting the words “class or group” in the first sentence of such subsection and inserting the words “class, group or series” in lieu thereof.

Section 16. Amend Section 3815, Chapter 38, Title 12 of the Delaware Code by adding a new subsection (i) as follows:

“(i) A governing instrument may provide that a statutory trust shall not have the power to merge or consolidate as set forth in this section.”

Section 17. Amend Section 3820(a)(1), Chapter 38, Title 12 of the Delaware Code by deleting the words “by the trustees” in such subsection.

Section 18. Amend Section 3821(e)(7), Chapter 38, Title 12 of the Delaware Code by inserting two new sentences immediately after the first sentence thereof worded as follows: “Process may be served upon the Secretary of State under subsection (e)(6) of this section 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.”.

Section 19. Amend Section 3821, Chapter 38, Title 12 of the Delaware Code by adding a new subsection (i) as follows:

82                   “(i)     A governing instrument may provide that a statutory trust shall not have the power to convert as  
83 set forth in this section.”

84                   Section 20. Amend Section 3823(b)(7), Chapter 38, Title 12 of the Delaware Code by inserting two new  
85 sentences immediately after the first sentence thereof worded as follows: “Process may be served upon the Secretary of  
86 State under subsection (b)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of  
87 State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary  
88 of State deems necessary or appropriate.”.

89                   Section 21 Amend Section 3823, Chapter 38, Title 12 of the Delaware Code by adding a new subsection  
90 (h) as follows:

91                   “(h)     A governing instrument may provide that a statutory trust shall not have the power to transfer,  
92 domesticate or continue as set forth in this section.”

93                   Section 22. Amend Section 3825, Chapter 38, Title 12 of the Delaware Code by adding a new subsection  
94 (c) as follows:

95                   “(c)     Action validly taken pursuant to one provision of this chapter shall not be deemed invalid solely  
96 because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of  
97 this chapter but fails to satisfy one or more requirements prescribed by such other provision.”

98                   Section 23. Amend Section 3852(a), Chapter 38, Title 12 of the Delaware Code by renumbering  
99 subsection “(2)” thereof as subsection “(3)” and inserting a new subsection (2) thereto to read as follows:

100                   “(2)     A certificate, as of a date not earlier than six months prior to the filing date, issued by an  
101 authorized officer of the jurisdiction of its formation evidencing its existence. If such certificate is in a foreign language, a  
102 translation thereof, under oath of the translator, shall be attached thereto.”.

103                   Section 24. Amend Section 3852, Chapter 38, Title 12 of the Delaware Code by adding a new subsection  
104 (b) as follows:

105                   “(b)     If a foreign statutory trust that is registering to do business in the State of Delaware in  
106 accordance with § 3852(a) of this title is governed by a governing instrument that establishes or provides for the  
107 establishment of designated series of trustees, beneficial owners, beneficial interests or assets having separate rights,  
108 powers or duties with respect to specified property or obligations of the foreign statutory trust or profits and losses  
109 associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign  
110 statutory trust. In addition, the foreign statutory trust shall state on such application whether the debts, liabilities and  
111 obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable

112 against the assets of such series only, and not against the assets of the foreign statutory trust generally or any other series  
113 thereof, and whether any of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing  
114 with respect to the foreign statutory trust generally or any series thereof shall be enforceable against the assets of such  
115 series.”

116 Section 25. Amend Section 3854(b), Chapter 38, Title 12 of the Delaware Code by deleting  
117 subparagraph (2) in its entirety and substituting the following in lieu thereof:

118 “(2) A registered agent for service of process on the foreign statutory trust, having a business office  
119 identical with such registered office which agent may be any of:

120 a. An individual resident of the State of Delaware,

121 b. A domestic limited liability company, a domestic corporation, a domestic partnership (whether general  
122 (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic  
123 statutory trust, or

124 c. A foreign corporation, a foreign partnership (whether general (including a limited liability partnership)  
125 or limited (including a limited liability limited partnership)), a foreign limited liability company or a foreign statutory trust  
126 (other than the foreign statutory trust itself).”

127 Section 26. Amend Section 3854(c), Chapter 38, Title 12 of the Delaware Code by deleting the word “he”  
128 in the first sentence of such subsection and substituting the words “the agent” in lieu thereof in such subsection.

129 Section 27. Amend Section 3854(e), Chapter 38, Title 12 of the Delaware Code by deleting the words  
130 “be deemed to” in the fourth sentence of such subsection.

131 Section 28. Amend § 3860(b), Chapter 38, Title 12 of the Delaware Code by deleting the first two  
132 sentences thereof and replacing them with the following five sentences: “In case the officer whose duty it is to serve legal  
133 process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be  
134 lawful to serve the process against the foreign statutory trust upon the Secretary of State, and such service shall be as  
135 effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) hereof. Process may be  
136 served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the  
137 Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as  
138 the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in  
139 accordance with this subsection, the Secretary of State shall forthwith notify the foreign statutory trust by letter, directed to  
140 the foreign statutory trust at its last registered office. Such letter shall be sent by a mail or courier service that includes a  
141 record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

142                   Section 29. Amend Section 3861(a), Chapter 38, Title 12 of the Delaware Code by adding the following  
143   two sentences at the end thereof as follows: “Process may be served upon the Secretary of State under this subsection by  
144   means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to  
145   issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate.”.

146                   Section 30. Amend Section 3861(c), Chapter 38, Title 12 of the Delaware Code by (i) deleting the words  
147   “certified mail, return receipt requested,” in the first sentence thereof and (ii) inserting a new sentence immediately after the  
148   first sentence thereof worded as follows: “Such letter shall be sent by a mail or courier service that includes a record of  
149   mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient.”.

150                   Section 31. This Act shall become effective on August 1, 2010.

### SYNOPSIS

This bill continues the practice of amending periodically the Delaware Statutory Trust Act (the “Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of the amendments of the Act.

Sections 1 and 2. These amendments make some clarifying expansions to the defined terms used in the Act.

Section 3. This amendment confirms that pools of assets may constitute series under the Act.

Sections 4, 6 and 17. These amendments make some technical changes to the Act.

Section 5. This amendment confirms that a statutory trust will not be void for lack of a trustee.

Sections 7 and 8. These amendments make some clarifying changes to the Act relating to the time of dissolution of a statutory trust that is not the surviving entity in a merger and to the effective time of a certificate of correction. In addition, the Act is amended to provide that the Secretary of State may not issue a good standing certificate with respect to a statutory trust if its certificate of trust has been cancelled.

Sections 9, 10 and 11. These amendments make some clarifying changes to the Act.

Sections 12 and 28. These amendments amend the Act to allow for service of process upon the Secretary of State 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 13. This amendment increases the flexibility to amend a governing instrument or adopt a new governing instrument in connection with a merger or consolidation by, among other things, no longer requiring a specific reference to Section 3815(f) of the Act in the governing instrument agreement. This amendment provides that the amendments do not apply to statutory trusts formed prior to the effectiveness of the amendments unless the governing instruments of such statutory trusts provide otherwise.

Section 14. This amendment clarifies that a statutory trust that is not the surviving or resulting entity in a merger is not considered to have dissolved and is not required to wind-up its affairs.

Section 15. This amendment clarifies that appraisal rights can be extended to series of beneficial interests.

Sections 16, 19 and 21. These amendments clarify that a governing instrument may provide that a statutory trust does not have the power to merge, convert, transfer, domesticate or continue, as applicable.

Sections 18, 20 and 29. These amendments 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 22. This amendment is intended to make clear that the doctrine of “independent legal significance” applies to statutory trusts.

Section 23. This amendment mandates that a foreign statutory trust provide a current good standing certificate from its formation jurisdiction as part of its registration with the Secretary of State.

Section 24. This amendment requires a foreign statutory trust organized in series to provide notice of that fact when registering with the Secretary of State and to disclose whether there is a limitation on inter-series liability.

Sections 25, 26 and 27. These amendments makes some clarifying amendments with respect to registered agents of foreign statutory trusts.

Section 31. This section provides that the proposed amendments of the Act shall become effective on August 1,

2010.

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