



SPONSOR: Rep. Wagner & Rep. Valihura &
Rep. George & Sen. Vaughn; Reps. Lee,
Buckworth, DiPinto, D. Ennis, Hudson, Lavelle,
Miro, IDbrich

HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 411

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 (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 18-101(7), Chapter 18, Title 6 of the Delaware Code by adding after the end of the fourth
2 sentence thereof the following new sentence:

3 "A limited liability company agreement may provide rights to any person, including a person who is not a
4 party to the limited liability company agreement, to the extent set forth therein."

5 Section 2. Amend § 18-209(b), Chapter 18, Title 6 of the Delaware Code by inserting "or may be cancelled"
6 immediately before the "." at the end of the third sentence thereof.

7 Section 3. Amend § 18-209(c), Chapter 18, Title 6 of the Delaware Code by re-designating paragraphs (4), (5), (6),
8 and (7) thereof as paragraphs (5), (6), (7), and (8) respectively, and by inserting a new paragraph (4) thereof immediately prior
9 to the newly designated paragraph (5) thereof to read as follows:

10 "(4) In the case of a merger in which a domestic limited liability company is the surviving entity, such
11 amendments, if any, to the certificate of formation of the surviving domestic limited liability company to
12 change its name as are desired to be effected by the merger;"

13 Section 4. Amend § 18-209(e), Chapter 18, Title 6 of the Delaware Code by inserting the following sentence
14 immediately after the first sentence thereof:

15 "A certificate of merger that sets forth any amendment in accordance with Subsection (c)(4) of this Section
16 shall be deemed to be an amendment to the certificate of formation of the limited liability company, and the
17 limited liability company shall not be required to take any further action to amend its certificate of formation
18 under § 18-202 of this Title with respect to such amendments set forth in the certificate of merger."

19 Section 5. Amend § 18-212(j), Chapter 18, Title 6 of the Delaware Code by inserting <'or may be cancelled"
20 immediately before the "." at the end thereof.

21 Section 6. Amend § 18-213(f), Chapter 18, Title 6 of the Delaware Code by inserting "or may be cancelled"
22 immediately before the "." at the end thereof.

23 Section 7. Amend § 18-213, Chapter 18, Title 6 of the Delaware Code by adding at the end thereof a new Subsection
24 (g) thereto to read as follows:

25 "(g) When a limited liability company has transferred or domesticated out of the State of Delaware pursuant
26 to this Section, the transferred or domesticated business form shall, for all purposes of the laws of the State of
27 Delaware, be deemed to be the same entity as the limited liability company. When any transfer or
28 domestication of a limited liability company out of the State of Delaware shall have become effective under
29 this Section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of
30 the limited liability company that has transferred or domesticated, and all property, real, personal and mixed,
31 and all debts due to such limited liability company, as well as all other things and causes of action belonging
32 to such limited liability company, shall remain vested in the transferred or domesticated business form and
33 shall be the property of such transferred or domesticated business form, and the title to any real property
34 vested by deed or otherwise in such limited liability company shall not revert or be in any way impaired by
35 reason of this Chapter; but all rights of creditors and all liens upon any property of such limited liability
36 company shall be preserved unimpaired, and all debts, liabilities and duties of the limited liability company
37 that has transferred or domesticated shall remain attached to the transferred or domesticated business form,
38 and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been
39 incurred or contracted by it in its capacity as the transferred or domesticated business form. The rights,
40 privileges, powers and interests in property of the limited liability company that has transferred or
41 domesticated, as well as the debts, liabilities and duties of such limited liability company? shall not be
42 deemed, as a consequence of the transfer or domestication out of the State of Delaware, to have been
43 transferred to the transferred or domesticated business form for any purpose of the laws of the State of
44 Delaware." .

45 Section 8. Amend § 18-214(i), Chapter 18, Title 6 of the Delaware Code by inserting "or may be cancelled"
46 immediately before the "." at the end thereof.

47 Section 9. Amend § 18-215(b), Chapter 18, Title 6 of the Delaware Code by inserting "in such separate and distinct
48 records" immediately after "any such series are held" and by inserting "in such separate and distinct records" immediately after
49 "and accounted for" in the first sentence thereof.

50 Section 10. Amend § 18-216(d), Chapter 18, Title 6 of the Delaware Code by inserting "or may be cancelled"
51 immediately before the "." at the end thereof.

52 Section 11. Amend § 18-216, Chapter 18, Title 6 of the Delaware Code by adding at the end thereof a new Subsection
53 (h) thereto to read as follows:

54 "(h) When a limited liability company has been converted to another business form pursuant to this Section,
55 the other business form shall, for all purposes of the laws of the State of Delaware, be deemed to be the same
56 entity as the limited liability company. When any conversion shall have become effective under this Section,
57 for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the limited
58 liability company that has converted, and all property, real, personal and mixed, and all debts due to such
59 limited liability company, as well as all other things and causes of action belonging to such limited liability
60 company, shall remain vested in the other business form to which such limited liability company has
61 converted and shall be the property of such other business form, and the title to any real property vested by
62 deed or otherwise in such limited liability company shall not revert or be in any way impaired by reason of
63 this Chapter; but all rights of creditors and all liens upon any property of such limited liability company shall
64 be preserved unimpaired, and all debts, liabilities and duties of the limited liability company that has
65 converted shall remain attached to the other business form to which such limited liability company has
66 converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had
67 originally been incurred or contracted by it in its capacity as such other business form. The rights, privileges,
68 powers and interest in property of the limited liability company that has converted, as well as the debts,
69 liabilities and duties of such limited liability company, shall not be deemed, as a consequence of the
70 conversion, to have been transferred to the other business form to which such limited liability company has
71 converted for any purpose of the laws of the State of Delaware."

72 Section 12. Amend § 18-302, Chapter 18, Title 6 of the Delaware Code by adding at the end thereof a new Subsection
73 (e) thereto to read as follows:

74 "(e) If a limited liability company agreement provides for the manner in which it may be amended, including
75 by requiring the approval of a person who is not a party to the limited liability company agreement or the satisfaction

76 of conditions, it may be amended only in that manner or as otherwise permitted by law (provided that the approval of
77 any person may be waived by such person and that any such conditions may be waived by all persons for whose
78 benefit such conditions were intended).".

79 Section 13. Amend § 18-1101 (c), Chapter 18, Title 6 of the Delaware Code by deleting said subsection in its entirety
80 and substituting in lieu thereof the following:

81 "(c) To the extent that, at law or in equity, a member or manager or other person has duties (including
82 fiduciary duties) to a limited liability company or to another member or manager or to another person that is
83 a party to or is otherwise bound by a limited liability company agreement, the member's or manager's or
84 other person's duties may be expanded or restricted or eliminated by provisions in the limited liability
85 company agreement; provided that the limited liability company agreement may not eliminate the implied
86 contractual covenant of good faith and fair dealing.".

87 Section 14. Amend § 18-1101, Chapter 18, Title 6 of the Delaware Code by re-designating subsections (d) and (e)
88 thereof as subsections (f) and (g) respectively, and by inserting new subsections (d) and (e) thereto immediately prior to the
89 newly designated subsection (f) thereof to read as follows:

90 "(d) Unless otherwise provided in a limited liability company agreement, a member or manager or other
91 person shall not be liable to a limited liability company or to another member or manager or to another
92 person that is a party to or is otherwise bound by a limited liability company agreement for breach of
93 fiduciary duty for the member's or manager's or other person's good faith reliance on the provisions of the
94 limited liability company agreement.

95 (e) A limited liability company agreement may provide for the limitation or elimination of any and all
96 liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or
97 other person to a limited liability company or to another member or manager or to another person that is a
98 party to or is otherwise bound by a limited liability company agreement, provided that a limited liability
99 company agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith
100 violation of the implied contractual covenant of good faith and fair dealing.".

101 Section 15. This Act shall become effective August 1, 2004.

SYNOPSIS

This bill continues the practice of amending periodically the Delaware Limited Liability Company Act (the "Act") to keep it current and to maintain national preeminence. The following is a section-by-section review of the proposed amendments of the Act.

Sections 1 and 12. These amendments confirm the flexibility pennitted in drafting a limited liability company agreement, including providing for the manner in which it may be amended

Section 2. This amendment confirms the flexibility pennitted in the Act regarding a merger or consolidation.

Sections 3 and 4. These amendments pennit a change of the name of a surviving domestic limited liability company to be set forth in a certificate of merger.

Section 5. This amendment confirms the flexibility pennitted in the Act regarding domestication as a domestic limited liability company.

Section 6. This amendment confirms the flexibility pennitted in the Act regarding a transfer or domestication of a domestic limited liability company.

Section 7. This amendment confirms the treatment under Delaware law of limited liability companies that have transferred or domesticated out of the State of Delaware.

Section 8. This amendment confirms the flexibility pennitted in the Act regarding a conversion to a domestic limited liability company.

Section 9. This amendment confirms the manner in which assets may be held and accounted for pursuant to such section.

Section 10. This amendment confirms the flexibility pennitted in the Act regarding a conversion of a domestic limited liability company.

Section 11. This amendment confirms the treatment under Delaware law of limited liability companies that have converted to another business form.

Section 13. This amendment clarifies that duties (including fiduciary duties) may be expanded, restricted and eliminated in a limited liability company agreement This amendment confirms that a limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

Section 14. The amendment in new Subsection 18-1101 (d) of the Act clarifies the default exculpation provision in the Act by providing that it only applies with respect to breaches of fiduciary duties. The amendment in new Subsection 181101 (e) of the Act confirms the flexibility pennitted in the Act regarding exculpation.

Section 15. This section provides that the proposed amendments of the Act shall become effective on August 1, 2004.