



SPONSOR: Sen. Vaughn & Rep. Wagner &
Rep. Valihura

DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 274

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

1 Section 1. Amend § 15-101(12), Chapter 15, Title 6 of the Delaware Code by adding at the end thereof the following
2 new sentence: "A partnership agreement may provide rights to any person, including a person who is not a party to the
3 partnership agreement, to the extent set forth therein."

4 Section 2. Amend § 15-103(b)(3), Chapter 15, Title 6 of the Delaware Code by deleting said subsection in its entirety
5 and substituting in lieu thereof the following:

6 "(3) Eliminate the implied contractual covenant of good faith and fair dealing;"

7 Section 3. Amend § 15-103(e), Chapter 15, Title 6 of the Delaware Code by deleting said subsection in its entirety
8 and substituting in lieu thereof the following:

9 "(e) A partner or other person shall not be liable to a partnership or to another partner or to an other person that is
10 a party to or is otherwise bound by a partnership agreement for breach of fiduciary duty for the partner's or other
11 person's good faith reliance on the provisions of the partnership agreement. "

12 Section 4. Amend § 15-103, Chapter 15, Title 6 of the Delaware Code by adding at the end thereof ~ new subsection
13 (f) thereto reading as follows:

14 "(f) A partnership agreement may provide for the limitation or elimination of any and all liabilities for breach of
15 contract and breach of duties (including fiduciary duties) of a partner or other person to a partnership or to another
16 partner or to an other person that is a party to or is otherwise bound by a partnership agreement; provided that a
17 partnership agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation
18 of the implied contractual covenant of good faith and fair dealing. "

19 Section 5. Amend § 15-404(d), Chapter 15, Title 6 of the Delaware Code by deleting such subsection in its entirety
20 and re-designating subsections (e), (f) and (g) thereof as (d), (e) and (f) respectively.

21 Section 6. Amend § 15-407(e), Chapter 15, Title 6 of the Delaware Code by deleting the first sentence in said
22 subsection in its entirety and substituting in lieu thereof the following:

23 "(e) If a partnership agreement provides for the manner in which it may be amended, including by requiring the
24 approval of a person who is not a party to the partnership agreement or the satisfaction of conditions, it may be
25 amended only in that manner or as otherwise permitted by law (provided that the approval of any person may be
26 waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions
27 were intended).".

28 Section 7. Amend § 15-901(i), Chapter 15, Title 6 of the Delaware Code by inserting "or may be cancelled"
29 immediately before the "." at the end thereof.

30 Section 8. Amend § 15-902(b), Chapter 15, Title 6 of the Delaware Code by inserting "or may be cancelled"
31 immediately before the "." at the end of the third sentence thereof.

32 Section 9. Amend § 15-902(c), Chapter 15, Title 6 of the Delaware Code by re-designating paragraphs (4), (5), (6),
33 and (7) thereof as paragraphs (5), (6), (7), and (8) respectively, and by inserting new paragraph (4) thereof immediately prior to
34 the newly designated paragraph (5) thereof reading as follows:

35 "(4) In the case of a merger in which a domestic partnership is the surviving entity, such amendments, if any, to
36 the statement of partnership existence of the surviving domestic partnership (and in the case of a surviving domestic
37 partnership that is a limited liability partnership, to the statement of qualification of such surviving domestic
38 partnership) to change its name as are desired to be effected by the merger;".

39 Section 10. Amend § 15-902(f), Chapter 15, Title 6 of the Delaware Code by inserting the following sentence
40 immediately after the first sentence thereof: "A certificate of merger that sets forth any amendment in accordance with
41 subsection (c)(4) of this section shall be deemed to be an amendment to the statement of partnership existence (and if
42 applicable to the statement of qualification) of the domestic partnership, and the domestic partnership shall not be required to
43 take any further action to amend its statement of partnership existence (or if applicable its statement of qualification) under §
44 15-105 of this title with respect to such amendments set forth in the certificate of merger. ".

45 Section 11. Amend § 15-903(d), Chapter IS, Title 6 of the Delaware Code by inserting "or may be cancelled"
46 immediately before the "." at the end thereof.

47 Section 12. Amend § 15-903, Chapter 15, Title 6 of the Delaware Code by adding at the end thereof a new subsection

48 (h) thereto reading as follows:

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

64 Section 13. Amend § 15-904(j), Chapter 15, Title 6 of the Delaware Code by inserting "or may be cancelled"
65 immediately before the "." at the end thereof.

66 Section 14. Amend § 15-905(f), Chapter 15, Title 6 of the Delaware Code by inserting "or may be cancelled"
67 immediately before the "." at the end thereof.

68 Section 15. Amend § 15-905, Chapter 15, Title 6 of the Delaware Code by adding at the end thereof a new subsection
69 (g) thereto reading as follows:

70 "(g) When a domestic partnership has transferred or domesticated out of the State of Delaware pursuant to this
71 section, the transferred or domesticated business form shall, for all purposes of the laws of the State of Delaware, be
72 deemed to be the same entity as the domestic partnership. When any transfer or domestication of a domestic
73 partnership out of the State of Delaware shall have become effective under this section, for all purposes of the laws of
74 the State of Delaware, all of the rights, privileges and powers of the domestic partnership that has transferred or
75 domesticated, and all property, real, personal and mixed, and all debts due to such partnership, as well as all other

76 things and causes of action belonging to such partnership, shall remain vested in the transferred or domesticated
77 business form and shall be the property of such transferred or domesticated business form, and the title to any real
78 property vested by deed or otherwise in such partnership shall not revert or be in any way impaired by reason of this
79 chapter, but all rights of creditors and all liens upon any property of such partnership shall be preserved unimpaired,
80 and all debts, liabilities and duties of the domestic partnership that has transferred or domesticated shall remain
81 attached to the transferred or domesticated business form, and may be enforced against it to the same extent as if said
82 debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the transferred or
83 domesticated business form. The rights, privileges, powers and interests in property of the domestic partnership that
84 has transferred or domesticated, as well as the debts, liabilities and duties of such partnership, shall not be deemed, as
85 a consequence of the transfer or domestication out of the State of Delaware, to have been transferred to the transferred
86 or domesticated business form for any purpose of the laws of the State of Delaware.".

87 Section 16. This Act shall become effective August 1,2004.

SYNOPSIS

This Bill continues the practice of amending periodically the Delaware Revised Uniform Partnership 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 6. These amendments confirm the flexibility permitted in drafting a partnership agreement, including providing for the manner in which it may be amended.

Sections 2 and 5. These amendments confirm that duties (including fiduciary duties) may be expanded, restricted and eliminated in a partnership agreement. These amendments confirm that a partnership agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

Section 3. This amendment clarifies the default exculpation provision in the Act by providing that it only applies with respect to breaches of fiduciary duties.

Section 4. This amendment confirms the flexibility permitted in the Act regarding exculpation.

Section 7. This amendment confirms the flexibility permitted in the Act regarding a conversion to a domestic partnership.

Section 8. This amendment confirms the flexibility permitted in the Act regarding a merger or consolidation.

Sections 9 and 10. These amendments permit a change of the name of a surviving domestic partnership to be set forth in a certificate of merger.

Section 11. This amendment confirms the flexibility permitted in the Act regarding a conversion of a domestic partnership.

Section 12. This amendment confirms the treatment under Delaware law of domestic partnerships that have converted to another business form.

Section 13. This amendment confirms the flexibility permitted in the Act regarding a domestication as a domestic partnership.

Section 14. This amendment confirms the flexibility permitted in the Act regarding a transfer or domestication of a domestic partnership.

Section 15. This amendment confirms the treatment under Delaware law of domestic partnerships that have transferred or domesticated out of the State of Delaware.

Section 16. This section provides that the proposed amendments of the Act shall become effective on August 1, 2004
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