



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

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 85

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

1 Section 1. Amend § 15-101(8), Chapter 15, Title 6 of the Delaware Code by inserting “domestic” immediately after
2 “means a” and by deleting “and does not have a similar statement in effect in any other jurisdiction” therefrom.

3 Section 2. Amend § 15-101(12), Chapter 15, Title 6 of the Delaware Code by adding the following sentence at the end
4 thereof:

5 “A partner of a partnership or a transferee of an economic interest is bound by the partnership agreement whether or not
6 the partner or transferee executes the partnership agreement.”

7 Section 3. Amend § 15-306(d), Chapter 15, Title 6 of the Delaware Code by inserting “in Delaware” immediately before
8 “in a limited liability partnership”.

9 Section 4. Amend Subchapter IV of Chapter 15, Title 6 of the Delaware Code by adding thereto, immediately following §
10 15-408, a new § 15-409 reading as follows:

11 “§ 15-409. Reliance on reports and information by partner or liquidating trustee.

12 (a) A liquidating trustee of a partnership (including a limited liability partnership) shall be fully protected in relying in
13 good faith upon the records of the partnership and upon information, opinions, reports or statements presented by a partner of the
14 partnership, an officer or employee of the partnership, another liquidating trustee, or committees of the partnership or partners, or
15 by any other person as to matters the liquidating trustee reasonably believes are within such other person’s professional or expert
16 competence, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses
17 of the partnership, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be
18 sufficient to pay claims and obligations of the partnership or to make reasonable provision to pay such claims and obligations, or

19 any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be
20 paid.

21 (b) A partner of a limited liability partnership shall be fully protected in relying in good faith upon the records of the
22 partnership and upon information, opinions, reports or statements presented by another partner of the partnership, an officer or
23 employee of the partnership, a liquidating trustee, or committees of the partnership or partners, or by any other person as to matters
24 the partner reasonably believes are within such other person's professional or expert competence, including information, opinions,
25 reports or statements as to the value and amount of assets, liabilities, profits or losses of the partnership, or the value and amount of
26 assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the
27 partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and
28 amount of assets from which distributions to partners or creditors might properly be paid.

29 (c) A partner of a partnership that is not a limited liability partnership shall be fully protected from liability to the
30 partnership, its partners or other persons party to or otherwise bound by the partnership agreement in relying in good faith upon the
31 records of the partnership and upon information, opinions, reports or statements presented by another partner of the partnership, an
32 officer or employee of the partnership, a liquidating trustee, or committees of the partnership or partners, or by any other person as
33 to matters the partner reasonably believes are within such other person's professional or expert competence, including information,
34 opinions, reports or statements as to the value and amount of assets, liabilities, profits or losses of the partnership, or the value and
35 amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of
36 the partnership or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and
37 amount of assets from which distributions to partners or creditors might properly be paid.”.

38 Section 5. Amend § 15-504(a), Chapter 15, Title 6 of the Delaware Code by deleting the second sentence thereto and
39 substituting in lieu thereof “To the extent so charged, the judgment creditor has only the right to receive any distribution or
40 distributions to which the judgment debtor would otherwise have been entitled in respect of such economic interest.”.

41 Section 6. Amend § 15-504(b), Chapter 15, Title 6 of the Delaware Code by deleting the second and third sentences
42 thereto.

43 Section 7. Amend § 15-504(c), Chapter 15, Title 6 of the Delaware Code by deleting said subsection.

44 Section 8. Amend § 15-504(d), Chapter 15, Title 6 of the Delaware Code by re-designating said subsection as subsection
45 (c) and by inserting “or a partner's transferee” immediately prior to “of a right” and by deleting “partner's” and substituting in lieu
46 thereof “judgment debtor's”.

47 Section 9. Amend § 15-504(e), Chapter 15, Title 6 of the Delaware Code by re-designating said subsection as subsection
48 (d), by deleting “This section provides” and by inserting in lieu thereof “The entry of a charging order is” and by inserting “of a”
49 immediately prior to “partner’s transferee”.

50 Section 10. Amend § 15-504(f), Chapter 15, Title 6 of the Delaware Code by re-designating said subsection as subsection
51 (e) and by inserting “or of a partner’s transferee” immediately following “No creditor of a partner”.

52 Section 11. Amend § 15-504, Chapter 17, Title 6 of the Delaware Code by inserting a new subsection (f) to read as
53 follows:

54 “(f) The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any such charging order.”.

55 Section 12. Amend § 15-901(b)(1), Chapter 15, Title 6 of the Delaware Code by deleting “and” at the end thereof.

56 Section 13. Amend § 15-901(b)(2), Chapter 15, Title 6 of the Delaware Code by deleting “.” at the end thereof and
57 substituting in lieu thereof “; and”.

58 Section 14. Amend § 15-901(b), Chapter 15, Title 6 of the Delaware Code by adding a new paragraph (3) thereto reading
59 as follows: “(3) In the case of a conversion to a limited liability partnership, a statement of qualification in accordance with
60 subsection (c) of Section 15-1001.”.

61 Section 15. Amend § 15-901(c)(3), Chapter 15, Title 6 of the Delaware Code by deleting “and” at the end thereof.

62 Section 16. Amend § 15-901(c)(4), Chapter 15, Title 6 of the Delaware Code by deleting “.” at the end thereof and
63 substituting in lieu thereof “; and”.

64 Section 17. Amend § 15-901(c), Chapter 15, Title 6 of the Delaware Code by adding a new paragraph (5) thereto reading
65 as follows: “(5) In the case of a conversion to a limited liability partnership, that the partnership agreement of the partnership states
66 that the partnership shall be a limited liability partnership.”.

67 Section 18. Amend § 15-901(d), Chapter 15, Title 6 of the Delaware Code by deleting “and” immediately following
68 “filing with the Secretary of State of the certificate of conversion to partnership” and substituting in lieu thereof “,”, by inserting
69 “and the statement of qualification (if applicable),” immediately prior to “or upon the future effective date”, by deleting “and the
70 statement of partnership existence” immediately following the words “upon the future effective date or time of the certificate of
71 conversion to partnership” and substituting in lieu thereof “, the statement of partnership existence and the statement of
72 qualification (if applicable)”, and by inserting “(including a limited liability partnership, if applicable)” immediately following
73 “converted into a domestic partnership”.

74 Section 19. Amend § 15-901(e), Chapter 15, Title 6 of the Delaware Code by inserting “(including a limited liability
75 partnership)” immediately following “into a domestic partnership”.

76 Section 20. Amend § 15-901(g), Chapter 15, Title 6 of the Delaware Code by deleting from the first sentence thereof “or
77 as required under applicable non-Delaware law” and substituting in lieu thereof “for all purposes of the laws of the State of
78 Delaware”, deleting the word “and” immediately before “the conversion” in the first sentence thereof, by inserting “,” immediately
79 after “dissolution of such other entity” in the first sentence thereof, and by inserting “the conversion” immediately prior to “shall
80 constitute a continuation” in the first sentence thereof.

81 Section 21. Amend § 15-901(j), Chapter 15, Title 6 of the Delaware Code by inserting “(including a limited liability
82 partnership)” immediately before “, a person is admitted”, by deleting “domestic” immediately after “a person is admitted as a
83 partner of the”, by deleting “at the time provided in and upon compliance with” immediately before “the partnership agreement”
84 and substituting in lieu thereof “as provided in”, and by inserting “(including a limited liability partnership)” immediately before “,
85 is a partner of the partnership”.

86 Section 22. Amend § 15-902(k), Chapter 15, Title 6 of the Delaware Code by deleting said subsection in its entirety and
87 substituting in lieu thereof the following:

88 “(k) A person is admitted as a partner of a surviving or resulting domestic partnership pursuant to a merger or
89 consolidation approved in accordance with subsection (b) of this section as provided in the partnership agreement of the surviving
90 or resulting domestic partnership or in the agreement of merger or consolidation, and in the event of any inconsistency, the terms of
91 the agreement of merger or consolidation shall control. A person is admitted as a partner of a domestic partnership pursuant to a
92 merger or consolidation in which such domestic partnership is not the surviving or resulting domestic partnership in the merger or
93 consolidation as provided in the partnership agreement of such domestic partnership.”.

94 Section 23. Amend § 15-904(i), Chapter 15, Title 6 of the Delaware Code by deleting from the second sentence thereof
95 “or as required under applicable non-Delaware law” and substituting in lieu thereof “for all purposes of the laws of the State of
96 Delaware”, by deleting the word “and” immediately before “the domestication” in the second sentence thereof, by inserting “,”
97 immediately after “dissolution of such non-United States entity” in the second sentence thereof, and by inserting “the
98 domestication” immediately prior to “shall constitute a continuation” in the second sentence thereof.

99 Section 24. Amend § 15-904(k), Chapter 15, Title 6 of the Delaware Act by inserting “domestic” immediately after “entity
100 as a”, by deleting “in the State of Delaware” immediately after “partnership” and substituting in lieu thereof “(including a limited
101 liability partnership)”, by deleting “domestic” immediately after “a person is admitted as a partner of the”, by deleting “at the time
102 provided in and upon compliance with” immediately before “the partnership agreement” and substituting in lieu thereof “as
103 provided in”, and by inserting “(including a limited liability partnership)” immediately before “, is a partner of the partnership”.

104 Section 25. Amend § 15-905(b), Chapter 15, Title 6 of the Delaware Code by deleting the first sentence thereof and
105 deleting “If all of the partners of the partnership or such other vote as may be stated in a partnership agreement shall approve the
106 transfer or domestication described in subsection (a) of this section,” from the second sentence thereof, and by substituting in lieu
107 thereof the following:

108 “If the partnership agreement specifies the manner of authorizing a transfer or domestication described in subsection (a) of
109 this section, the transfer or domestication shall be authorized as specified in the partnership agreement. If the partnership agreement
110 does not specify the manner of authorizing a transfer or domestication described in subsection (a) of this section and does not
111 prohibit such a transfer or domestication, the transfer or domestication shall be authorized in the same manner as is specified in the
112 partnership agreement for authorizing a merger or consolidation that involves the partnership as a constituent party to the merger or
113 consolidation. If the partnership agreement does not specify the manner of authorizing a transfer or domestication described in
114 subsection (a) of this section or a merger or consolidation that involves the partnership as a constituent party and does not prohibit
115 such a transfer or domestication, the transfer or domestication shall be authorized by the approval by all the partners. If a transfer or
116 domestication described in subsection (a) of this section shall be authorized as provided in this subsection (b),”.

117 Section 26. Amend § 15-1001, Chapter 15, Title 6 of the Delaware Code by inserting “of a domestic partnership”
118 immediately after “Statement of qualification” in the title thereto.

119 Section 27. Amend § 15-1001(a), Chapter 15, Title 6 of the Delaware Code by inserting “domestic” immediately prior to
120 “partnership may”, by inserting “be formed as, or may” immediately after “partnership may”, and by inserting “,” immediately after
121 “become”.

122 Section 28. Amend § 15-1001(b), Chapter 15, Title 6 of the Delaware Code by deleting “The” and substituting in lieu
123 thereof “In order to form a limited liability partnership, the original partnership agreement of the partnership shall state that the
124 partnership is formed as a limited liability partnership, and the partnership shall file a statement of qualification in accordance with
125 subsection (c) of this section. In order for an existing partnership to become a limited liability partnership, the”, by deleting “a”
126 immediately prior to “partnership becomes” and substituting in lieu thereof “the”, by deleting “except” immediately prior to “, in
127 the case of” and substituting in lieu thereof “and”, by inserting “also” immediately prior to “the vote necessary”, and by inserting “,
128 and after such approval, the partnership shall file a statement of qualification in accordance with subsection (c) of this section”
129 immediately following “amend those provisions”.

130 Section 29. Amend § 15-1001(c), Chapter 15, Title 6 of the Delaware Code by deleting the first sentence thereof.

131 Section 30. Amend § 15-1003(c), Chapter 15, Title 6 of the Delaware Code by deleting the first and second sentences
132 thereto, by deleting “The notice must be mailed to the” from the third sentence thereto and by substituting in lieu thereof “On or

133 before the last day of March in each year, the Secretary of State shall mail to each”, by deleting from the third sentence thereto the
134 “.”, and by deleting the fourth and fifth sentences thereto and substituting in lieu thereof the following:

135 “a notice specifying that the annual report together with applicable fees shall be due on June 1 of the current year and
136 stating that the statement of qualification or statement of foreign qualification of the partnership shall be deemed to be revoked
137 unless such report is filed and such filing fee is paid on or before June 1 of the following year. The Secretary of State shall not issue
138 a certificate of good standing with respect to any partnership which has not filed an annual report and paid the required filing fee
139 pursuant to this section. The statement of qualification or statement of foreign qualification of any such partnership that fails to file
140 such annual report or pay such required filing fee on or before June 1 of the following year shall be deemed to be revoked.”.

141 Section 31. Amend § 15-1003(e), Chapter 15, Title 6 of the Delaware Code by inserting “pursuant to subsection (c)”
142 immediately following “revoked” and by deleting “within three years” therefrom.

143 Section 32. Amend § 15-1104(a)(7), Chapter 15, Title 6 of the Delaware Code by inserting “, as borrower or lender,”
144 immediately after “creating”, by deleting the “,” immediately after “indebtedness” and by deleting the “,” immediately after
145 “mortgage”.

146 Section 33. Amend § 15-1104(a), Chapter 15, Title 6 of the Delaware Code by re-designating paragraph (7) as paragraph
147 (8) and by inserting a new paragraph (7) after paragraph (6) to read as follows:

148 “(7) selling, by contract consummated outside the State of Delaware, and agreeing, by the contract, to deliver into the
149 State of Delaware, machinery, plants or equipment, the construction, erection or installation of which within the State of Delaware
150 requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the
151 contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or
152 installation;”.

153 Section 34. Amend § 15-1104(a), Chapter 15, Title 6 of the Delaware Code by re-designating paragraph (8) as paragraph
154 (9).

155 Section 35. Amend § 15-1104(a), Chapter 15, Title 6 of the Delaware Code by re-designating paragraph (9) as paragraph
156 (10) and by deleting “and” at the end thereof.

157 Section 36. Amend § 15-1104(a), Chapter 15, Title 6 of the Delaware Code by re-designating paragraph (10) as paragraph
158 (11) and by deleting “.” at the end thereof and inserting in lieu thereof “; and”.

159 Section 37. Amend § 15-1104(a), Chapter 15, Title 6 of the Delaware Code by inserting a new paragraph (12) to read as
160 follows:

161 “(12) doing business in the State of Delaware as an insurance company.”.

162 Section 38. Amend § 15-1209, Chapter 15, Title 6 of the Delaware Code by adding a new paragraph (c) thereto reading as
163 follows:

164 “(c) A partnership whose statement of partnership existence has been canceled and has not been revived pursuant to
165 Section 15-1210 of this chapter shall be deemed, from the date such cancellation became effective, to be a partnership that has not
166 filed a statement of partnership existence.”.

167 Section 39. Amend § 15-1210, Chapter 15, Title 6 of the Delaware Code by deleting the title thereof and replacing the
168 same with the following new title: “Revival of statement of partnership existence.”.

169 Section 40. Amend § 15-1210(a), Chapter 15, Title 6 of the Delaware Code by deleting “partnership whose” in the first
170 sentence thereof and by inserting the word “that” immediately following “existence” the first time the word “existence” is used in
171 the first sentence thereof.

172 Section 41. Amend § 15-1210(c), Chapter 15, Title 6 of the Delaware Code by deleting “a” immediately following “Upon
173 the filing of a certificate of revival,” in the first sentence thereof and substituting in lieu thereof “the statement of partnership
174 existence of the” and by deleting all of subsection (c) after the first sentence thereof.

175 Section 42. This Act shall become effective August 1, 2005. Begin Typing here

SYNOPSIS

Section 1. This section amends § 15-101(8) of the Act to confirm that a limited liability partnership under the Act refers to a domestic partnership.

Section 2. This section amends § 15-101(12) of the Act to confirm that a partner of a partnership and a transferee of an economic interest are bound by the partnership agreement.

Section 3. This section amends § 15-306(d) of the Act to confirm the application of this section only to the practice of law in Delaware.

Section 4. This section amends the Act to add a new § 15-409 of the Act to clarify the circumstances under which partners and liquidating trustees of a partnership may rely on the records of, or information relating to, the partnership.

Sections 5, 6, 7, 8, 9, 10 and 11. These sections amend § 15-504 of the Act to clarify the nature of a charging order and provide that a charging order is the sole method by which a judgment creditor may satisfy a judgment out of a partner’s or partner’s transferee’s interest in a partnership. Attachment, garnishment, foreclosure or like remedies are not available to the judgment creditor and a judgment creditor does not have any right to become or to exercise any rights or powers of a partner (other than the right to receive the distribution or distributions to which the partner would otherwise have been entitled, to the extent charged).

Sections 12, 13, 14, 15, 16, 17, 18, 19, 26, 27, 28 and 29. These sections amend §§ 15-901 and 15-1001 of the Act to clarify the procedures for forming a limited liability partnership, causing an existing partnership to become a limited liability partnership and converting an other entity to a domestic partnership or a limited liability partnership.

Sections 20 and 23. These sections amend § 15-901(g) and § 15-904(i) of the Act to confirm that these sections of the Act address the effect of conversion and domestication, respectively, as a matter of Delaware law.

Section 21. This section amends § 15-901(j) of the Act to confirm that a person is admitted as a partner of a partnership in connection with a conversion as provided in the partnership agreement.

Section 22. This section amends § 15-902(k) of the Act to clarify the way in which a person is admitted as a partner of a partnership pursuant to a merger or conversion.

Section 24. This section amends § 15-904(k) of the Act to confirm that a person is admitted as a partner of a partnership in connection with a domestication as provided in the partnership agreement.

Section 25. This section amends § 15-905(b) of the Act to conform the approval requirements for the transfer of a domestic partnership to the requirements for the conversion of a domestic partnership.

Section 30. This section amends § 15-1003(c) of the Act to clarify the provisions relating to revocation of a statement of qualification or statement of foreign qualification.

Section 31. This section amends § 15-1003(e) of the Act to extend the period during which a partnership's statement of qualification or statement of foreign qualification may be reinstated.

Sections 32, 33, 34, 35, 36 and 37. These sections amend § 15-1104(a) of the Act to identify certain additional activities of a foreign partnership in the State of Delaware that will not constitute doing business for purposes of Subchapter XI of the Act.

Sections 38, 39, 40 and 41. These sections amend §§ 15-1209 and 15-1210 of the Act to confirm that the cancellation of a statement of partnership existence cancels the statement of partnership existence and not the partnership and the revival of a statement of partnership existence revives the statement of partnership existence and not the partnership

Section 42. This section provides that the proposed amendments of the Act shall become effective on August 1, 2005. Begin Synopsis Here

Author: Senator Vaughn