



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

DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 86

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 deleting “, and shall become bound by the
2 limited liability company agreement” from the sixth sentence thereof and by inserting the following sentence immediately following
3 the first sentence thereof: “A member or manager of a limited liability company or an assignee of a limited liability company
4 interest is bound by the limited liability company agreement whether or not the member or manager or assignee executes the limited
5 liability company agreement.”.

6 Section 2. Amend § 18-106(a), Chapter 18, Title 6 of the Delaware Code by deleting “granting policies of insurance, or
7 assuming insurance risks or” therefrom.

8 Section 3. Amend § 18-212(i), Chapter 18, Title 6 of the Delaware Code by deleting from the second sentence thereof “or
9 as required under applicable non-Delaware law” and substituting in lieu thereof “for all purposes of the laws of the State of
10 Delaware”, by deleting the word “and” immediately before “the domestication” in the second sentence thereof, by inserting “,”
11 immediately after “dissolution of such non-United States entity” in the second sentence thereof, and by inserting “the
12 domestication” immediately prior to “shall constitute a continuation” in the second sentence thereof.

13 Section 4. Amend § 18-213(b), Chapter 18, Title 6 of the Delaware Code by deleting the first sentence thereof and
14 deleting “If all of the managers and all of the members of the limited liability company or such other vote as may be stated in a
15 limited liability company agreement shall approve the transfer or domestication described in subsection (a) of this section,” from
16 the second sentence thereof, and by substituting in lieu thereof the following:

17 “If the limited liability company agreement specifies the manner of authorizing a transfer or domestication described in
18 subsection (a) of this section, the transfer or domestication shall be authorized as specified in the limited liability company

19 agreement. If the limited liability company agreement does not specify the manner of authorizing a transfer or domestication
20 described in subsection (a) of this section and does not prohibit such a transfer or domestication, the transfer or domestication shall
21 be authorized in the same manner as is specified in the limited liability company agreement for authorizing a merger or
22 consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the limited liability
23 company agreement does not specify the manner of authorizing a transfer or domestication described in subsection (a) of this
24 section or a merger or consolidation that involves the limited liability company as a constituent party and does not prohibit such a
25 transfer or domestication, the transfer or domestication shall be authorized by the approval by the members or, if there is more than
26 one class or group of members, then by each class or group of members, in either case, by the members who own more than 50% of
27 the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or
28 by the members in each class or group, as appropriate. If a transfer or domestication described in subsection (a) of this section shall
29 be authorized as provided in this subsection (b),”.

30 Section 5. Amend § 18-214(g), Chapter 18, Title 6 of the Delaware Code by deleting from the first sentence thereof “or as
31 required under applicable non-Delaware law” and substituting in lieu thereof “for all purposes of the laws of the State of Delaware”,
32 deleting the word “and” immediately before “the conversion” in the first sentence thereof, by inserting “,” immediately after
33 “dissolution of such other entity” in the first sentence thereof, and by inserting “the conversion” immediately prior to “shall
34 constitute a continuation” in the first sentence thereof.

35 Section 6. Amend § 18-301(b)(3), Chapter 18, Title 6 of the Delaware Code by deleting said subsection in its entirety and
36 substituting in lieu thereof the following:

37 “(3) In the case of a person being admitted as a member of a surviving or resulting limited liability company pursuant to a
38 merger or consolidation approved in accordance with Section 18-209(b) of this title, as provided in the limited liability company
39 agreement of the surviving or resulting limited liability company or in the agreement of merger or consolidation, and in the event of
40 any inconsistency, the terms of the agreement of merger or consolidation shall control; and in the case of a person being admitted as
41 a member of a limited liability company pursuant to a merger or consolidation in which such limited liability company is not the
42 surviving or resulting limited liability company in the merger or consolidation, as provided in the limited liability company
43 agreement of such limited liability company.”

44 Section 7. Amend § 18-301(c), Chapter 18, Title 6 of the Delaware Code by deleting “at the time provided in and upon
45 compliance with the limited liability company agreement” and substituting in lieu thereof “as provided in the limited liability
46 company agreement”.

47 Section 8. Amend § 18-406, Chapter 18, Title 6 of the Delaware Code by deleting “or” immediately following “A
48 member” and substituting in lieu thereof “,”, by inserting “or liquidating trustee” immediately prior to “of a limited liability
49 company shall”, by deleting “such” immediately following “upon”, by deleting “to” immediately following “presented” and
50 substituting in lieu thereof “by another manager, member or liquidating trustee, an officer or employee of”, by deleting “by any of
51 its managers, members, officers, employees” and substituting in lieu thereof a “,”, by inserting “members or managers,”
52 immediately prior to “or by any other person”, by deleting the “,” immediately following “or by any other person”, by deleting “or”
53 immediately following “as to matters the member” and substituting in lieu thereof a “,”, by inserting “or liquidating trustees”
54 immediately prior to “reasonably believes”, by deleting “and who has been selected with reasonable care by or on behalf of the
55 limited liability company”, by inserting “, or the value and amount of assets or reserves or contracts, agreements or other
56 undertakings that would be sufficient to pay claims and obligations of the limited liability company or to make reasonable provision
57 to pay such claims and obligations,” immediately prior to “or any other facts pertinent”, and by inserting “or creditors” immediately
58 prior to “might properly be paid”.

59 Section 9. Amend § 18-703(a), Chapter 18, Title 6 of the Delaware Code by deleting the second sentence thereto and
60 substituting in lieu thereof “To the extent so charged, the judgment creditor has only the right to receive any distribution or
61 distributions to which the judgment debtor would otherwise have been entitled in respect of such limited liability company
62 interest.”.

63 Section 10. Amend § 18-703(b), Chapter 18, Title 6 of the Delaware Code by deleting the second and third sentences
64 thereto.

65 Section 11. Amend § 18-703(c), Chapter 18, Title 6 of the Delaware Code by deleting said subsection.

66 Section 12. Amend § 18-703(d), Chapter 18, Title 6 of the Delaware Code by re-designating said subsection as subsection
67 (c) and by inserting “or member’s assignee” immediately prior to “of a right” and by deleting “member’s” and substituting in lieu
68 thereof “judgment debtor’s”.

69 Section 13. Amend § 18-703(e), Chapter 18, Title 6 of the Delaware Code by re-designating said subsection as subsection
70 (d) and by deleting “This section provides” and by inserting in lieu thereof “The entry of a charging order is” and by inserting “of a”
71 immediately prior to “member’s assignee”.

72 Section 14. Amend § 18-703(f), Chapter 18, Title 6 of the Delaware Code by re-designating said subsection as subsection
73 (e) and by inserting “or of a member’s assignee” immediately following “No creditor of a member”.

74 Section 15. Amend § 18-703, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (f) to read as
75 follows:

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

77 Section 16. Amend Subchapter VIII of Chapter 18, Title 6 of the Delaware Code by adding thereto, immediately
78 following § 18-805, a new § 18-806 reading as follows:

79 “§ 18-806 Revocation of Dissolution. Notwithstanding the occurrence of an event set forth in Section 18-801(a)(1), (2),
80 (3) or (4) of this chapter, the limited liability company shall not be dissolved and its affairs shall not be wound up if, prior to the
81 filing of a certificate of cancellation in the office of the Secretary of State, the limited liability company is continued, effective as of
82 the occurrence of such event, pursuant to the affirmative vote or written consent of all remaining members of the limited liability
83 company or the personal representative of the last remaining member of the limited liability company if there is no remaining
84 member (and any other person whose approval is required under the limited liability company agreement to revoke a dissolution
85 pursuant to this section), provided, however, if the dissolution was caused by a vote or written consent, the dissolution shall not be
86 revoked unless each member and other person (or their respective personal representatives) who voted in favor of, or consented to,
87 the dissolution has voted or consented in writing to continue the limited liability company. If there is no remaining member of the
88 limited liability company and the personal representative of the last remaining member votes in favor of or consents to the
89 continuation of the limited liability company, such personal representative shall be required to agree in writing to the admission of
90 the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of
91 the occurrence of the event that terminated the continued membership of the last remaining member.”

92 Section 17. Amend § 18-902, Chapter 18, Title 6 of the Delaware Code by deleting “(a)” immediately prior to the first
93 sentence thereto and by deleting Subsection (b) thereto in its entirety.

94 Section 18. Amend Subchapter IX of Chapter 18, Title 6 of the Delaware Code by adding thereto, immediately following
95 § 18-911, a new § 18-912 reading as follows:

96 “§ 18-912. Activities not constituting doing business.

97 (a) Activities of a foreign limited liability company in the State of Delaware that do not constitute doing business for the
98 purpose of this subchapter include:

99 (1) maintaining, defending or settling an action or proceeding;

100 (2) holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;

101 (3) maintaining bank accounts;

102 (4) maintaining offices or agencies for the transfer, exchange or registration of the limited liability company’s own
103 securities or maintaining trustees or depositories with respect to those securities;

104 (5) selling through independent contractors;

- 105 (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require
106 acceptance outside the State of Delaware before they become contracts;
- 107 (7) selling, by contract consummated outside the State of Delaware, and agreeing, by the contract, to deliver into the State
108 of Delaware, machinery, plants or equipment, the construction, erection or installation of which within the State of Delaware
109 requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the
110 contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or
111 installation;
- 112 (8) creating, as borrower or lender, or acquiring indebtedness with or without a mortgage or other security interest in
113 property;
- 114 (9) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding,
115 protecting and maintaining property so acquired;
- 116 (10) conducting an isolated transaction that is not one in the course of similar transactions;
- 117 (11) doing business in interstate commerce; and
- 118 (12) doing business in the State of Delaware as an insurance company.
- 119 (b) A person shall not be deemed to be doing business in the State of Delaware solely by reason of being a member or
120 manager of a domestic limited liability company or a foreign limited liability company.
- 121 (c) This section does not apply in determining whether a foreign limited liability company is subject to service of process,
122 taxation or regulation under any other law of the State of Delaware.”
- 123 Section 19. This Act shall become effective August 1, 2005.

SYNOPSIS

This bill continues the practice of amending periodically the Delaware Limited Liability Company 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.

Section 1. This section amends § 18-101(7) of the Act to confirm that a member and manager of a limited liability company and an assignee of a limited liability company interest are bound by the limited liability company agreement.

Section 2. This section amends § 18-106(a) of the Act to expand the permitted purposes of a limited liability company.

Sections 3 and 5. These sections amend § 18-212(i) and § 18-214(g) of the Act to confirm that these sections of the Act address the effect of domestication and conversion, respectively, as a matter of Delaware law.

Section 4. This section amends § 18-213(b) to conform the approval requirements for the transfer of a domestic limited liability company to the requirements for the conversion of a domestic limited liability company.

Section 6. This section amends § 18-301(b)(3) of the Act to clarify the way in which a person is admitted as a member of a limited liability company pursuant to a merger or consolidation.

Section 7. This section amends § 18-301(c) of the Act to confirm that a person is admitted as a member of a limited liability company in connection with a domestication or a conversion as provided in the limited liability company agreement.

Section 8. This section amends § 18-406 of the Act to clarify the circumstances under which members, managers and liquidating trustees of a limited liability company may rely on the records of, or information relating to, the limited liability

company.

Sections 9, 10, 11, 12, 13, 14 and 15. These sections amend § 18-703 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 the limited liability company interest of a member or a member's assignee. 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 member (other than the right to receive the distribution or distributions to which the member would otherwise have been entitled, to the extent charged).

Section 16. This section amends the Act to add a new § 18-806 to provide, under certain circumstances, for the revocation of the dissolution of a limited liability company.

Sections 17 and 18. These sections amend the Act to add a new § 18-912 to identify the activities of a foreign limited liability company in the State of Delaware that will not constitute doing business for purposes of Subchapter IX of the Act and move former subsection (b) of § 18-902 of the Act to new § 18-912.

Section 19. This section provides that the proposed amendments of the Act shall become effective on August 1, 2005.

Author: Senator Vaughn