

## 2008 AMENDMENTS TO DELAWARE CORPORATE LAWS

*Tuesday, July 22, 2008*

### General Assembly Approves 2008 Amendments to Corporate Laws

Dover - The Delaware General Assembly approved the following legislation in 2008 affecting Delaware's business entity laws:

[SB 244](#) – Corporate Amendments

[HB 427](#) – Limited Partnership Amendments

[HB 429](#) – Limited Liability Company Amendments

[HB 519](#) – Corporate Franchise Tax Amendments

[HB 520](#) – Alternative Entity Annual Tax Amendments

*Click on each bill to view in PDF format.*

**Highlights of this year's legislation, which is effective upon signature, except as noted, are summarized below:**

***NOTE: THE FOLLOWING SUMMARY OF 2008 LEGISLATION AFFECTING DELAWARE BUSINESS ENTITY LAWS IS NEITHER AUTHORITATIVE NOR ALL-INCLUSIVE. THIS SUMMARY DOES NOT REPRESENT OFFICIAL POLICY OF THE STATE OF DELAWARE AND HAS BEEN PREPARED ONLY FOR GENERAL INFORMATION PURPOSES AND NOT FOR LEGAL ADVICE.***

### AMENDMENTS TO THE DELAWARE GENERAL CORPORATION LAW

Section 219 (a) of the Delaware General Corporation Law (DGCL) has been amended to replace the word “inspected” with the word “examined” in order to remove any suggestion that there is an intentional distinction between the right to inspect versus the right to examine the list of eligible voting stockholders at a stockholder meeting.

Section 219 (b) has been amended by extending a tradition under the DGCL of expanding the flexibility of the Court of Chancery to fashion appropriate relief in disputes. Under previous law, if directors willfully neglected or refused to provide access to the stockholder list at a stockholder meeting, the Court's only sanction was to prevent such directors from standing for election. This year's amendment eliminates the standard of “willful neglect” and the burden of proof is put on the corporation to prove that a stockholder should not have access to the list. It also allows the Court to fashion other sanctions such as postponing the meeting or voiding the results of an election.

Section 225 has been amended to allow the corporation itself, in addition to stockholders, to bring disputes before the Court of Chancery involving contested votes on matters other than the election of directors or officers.

## **AMENDMENTS RELATING TO ALTERNATIVE BUSINESS ENTITIES**

The Delaware Limited Liability Company Act and the Revised Uniform Limited Partnership Act have been amended in several ways including provisions that:

1. Confirm the broad scope of the use of the term "trust" to include common law trusts, business trusts and other forms of trust.
2. Clarify that certificates of conversion or domestication may be executed by persons authorized to act on behalf of the other entity involved in the conversion or domestication.
3. Clarify the meaning of the term "manager" for a limited liability company for purposes of service of process in certain contested matters.
4. Confirm that certain activities relating to the selection or removal of persons managing the affairs of a limited partnership will not cause a limited partner to be deemed to be participating in the control of the business of a limited partnership.

## **AMENDMENTS RELATING TO FRANCHISE AND ANNUAL TAXES**

The Corporate Franchise Tax has been amended to increase the minimum franchise tax rate for corporations using the Authorized Shares Method. The franchise tax for corporations with 5,000 or fewer shares is now \$75. The franchise tax for corporations with 5,001 shares to 10,000 shares is now \$150. Corporations with more than 10,000 shares will be assessed \$75 for each 10,000 shares or part thereof above the initial 10,000. There are no changes to the maximum franchise tax (\$165,000) or the method used to calculate the alternative tax using the Assumed Par Value Capital Method.

Annual taxes for general partnerships, limited partnerships, and limited liability companies registered with the Secretary of State have increased from \$200 to \$250.

The tax amendments are effective on January 1, 2008.

***NOTE: THE ABOVE SUMMARY OF 2008 LEGISLATION AFFECTING DELAWARE BUSINESS ENTITY LAWS IS NEITHER AUTHORITATIVE NOR ALL-INCLUSIVE. THIS SUMMARY DOES NOT REPRESENT OFFICIAL POLICY OF THE STATE OF DELAWARE AND HAS BEEN PREPARED ONLY FOR GENERAL INFORMATION PURPOSES AND NOT FOR LEGAL ADVICE.***