

The Department of State is pleased to announce the Adoption of Transparency and Sustainability Standards through the passing of House Bill 310 which will be effective on October 1, 2018.

The Certification of Adoption of Sustainability and Transparency Standards Act (the “Act”) establishes a voluntary disclosure regime to foster dialogue around sustainability and responsibility among participating Delaware business entities and their various stakeholders. Because issues relating to sustainability and responsibility are fact-specific and fact-intensive and may vary greatly depending on, among other things, the size of the entity, the nature of its business and operations, and the industry in which it operates, the Act does not prescribe specific standards, measures of performance or criteria for evaluating performance. Rather, consistent with the enabling approach of Delaware business laws generally, the Act requires the governing body of each entity seeking certification under the Act to adopt principles, guidelines and standards to guide its business activities in a sustainable and responsible manner, as well as metrics for assessing whether it has met its objectives.

Although Section 5003D of the Act grants the Secretary of State of the State of Delaware (the “Secretary of State”) the authority and discretion to provide the form of application for certification under the Act, the Act does not contemplate that State officers will make qualitative judgments regarding the standards or metrics that an entity adopts. The Act also does not contemplate or require that State officers determine qualitatively whether an entity has been operated in a sustainable and responsible manner. The Secretary of State's certification is focused on information acknowledged by an authorized representative of the entity regarding its adoption of procedures to operate sustainably and responsibly and its commitment to disclose, at least annually, such procedures. To that end, Section 5003D of the Act requires an entity applying for certification under the Act to make disclosures regarding the sustainability and responsibility standards it has adopted, the metrics it uses to evaluate whether it has met those standards, and its performance in meeting those standards.

The Act is entirely voluntary. The decision whether to seek certification is in the sole discretion of each entity. The Act imposes no obligations on any Delaware entities that have not elected certification. (Of course, any person or entity that misrepresents an entity's certified status may be subject to civil or criminal fines or penalties.) The Act does not impose fines or penalties on entities that elect not to seek certification, nor does it impose penalties or fines on entities that, having become certified, fail to satisfy their own performance standards. Moreover, the Act specifies that fiduciary liability shall not be imposed as a result of, among other things, the decision whether or not to seek certification or the failure to meet specific sustainability and responsibility standards.

The Division will launch a new “listing” web page to post each entity that is issued a certificate, along with the entities provided internet link to a copy of their Report. A copy of the enabling legislation may be viewed at the following link.

<http://www.legis.delaware.gov/BillDetail?legislationId=26304>.