



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

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 151

AN ACT TO AMEND CHAPTER 17, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED 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 § 17-101(12), Chapter 17, Title 6 of the Delaware Code by deleting the phrase “, and shall become
2 bound by the partnership agreement” from the fifth sentence thereof and by inserting the following sentence immediately following
3 the first sentence thereof: “A partner of a limited partnership or an assignee of a partnership interest is bound by the partnership
4 agreement whether or not the partner or assignee executes the partnership agreement.”.

5 Section 2. Amend § 17-106(a), Chapter 17, Title 6 of the Delaware Code by deleting in its entirety the phrase “granting
6 policies of insurance, or assuming insurance risks or”.

7 Section 3. Amend § 17-211(g), Chapter 17, Title 6 of the Delaware Code by deleting from the first sentence thereof the
8 phrase “Notwithstanding anything to the contrary contained in a partnership agreement, a partnership agreement containing a
9 specific reference to this subsection may provide that an”, by substituting in lieu thereof the word “An”, and by inserting at the end
10 of said subsection the following:

11 “Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate
12 of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2005, shall
13 continue to be governed by this subsection as in effect on July 31, 2005.”.

14 Section 4. Amend § 17-215(i), Chapter 17, Title 6 of the Delaware Code by deleting from the second sentence thereof the
15 phrase “or as required under applicable non-Delaware law” and by substituting in lieu thereof “for all purposes of the laws of the
16 State of Delaware”, by deleting the word “and” as it appears therein immediately before “the domestication” in the second sentence
17 thereof, by inserting a comma (“,”) immediately after the phrase “dissolution of such non-United States entity” in the second
18 sentence thereof, and by inserting the words “the domestication” immediately prior to the phrase “shall constitute a continuation” in
19 the second sentence thereof.

20 Section 5. Amend § 17-216(b), Chapter 17, Title 6 of the Delaware Code by deleting the first sentence thereof in its
21 entirety, by deleting the phrase “If all of the partners of the limited partnership or such other vote as may be stated in a partnership
22 agreement shall approve the transfer or domestication described in subsection (a) of this section,” from the second sentence thereof,
23 and by substituting in lieu thereof the following:

24 “If the partnership agreement specifies the manner of authorizing a transfer or domestication described in
25 subsection (a) of this section, the transfer or domestication shall be authorized as specified in the partnership
26 agreement. If the partnership agreement does not specify the manner of authorizing a transfer or domestication
27 described in subsection (a) of this section and does not prohibit such a transfer or domestication, the transfer or
28 domestication shall be authorized in the same manner as is specified in the partnership agreement for authorizing
29 a merger or consolidation that involves the limited partnership as a constituent party to the merger or
30 consolidation. If the partnership agreement does not specify the manner of authorizing a transfer or domestication
31 described in subsection (a) of this section or a merger or consolidation that involves the limited partnership as a
32 constituent party and does not prohibit such a transfer or domestication, the transfer or domestication shall be
33 authorized by the approval by (1) all general partners and (2) the limited partners or, if there is more than 1 class
34 or group of limited partners, then by each class or group of limited partners, in either case, by limited partners
35 who own more than 50 percent of the then current percentage or other interest in the profits of the domestic
36 limited partnership owned by all of the limited partners or by the limited partners in each class or group, as
37 appropriate. If a transfer or domestication described in subsection (a) of this section shall be authorized as
38 provided in this subsection (b).”

39 Section 6. Amend § 17-217(g), Chapter 17, Title 6 of the Delaware Code by deleting from the first sentence thereof the
40 phrase “or as required under applicable non-Delaware law”, by substituting in lieu thereof the phrase “for all purposes of the laws of
41 the State of Delaware”, by deleting the word “and” as it appears immediately before the words “the conversion” in the first sentence
42 thereof, by inserting a comma (“;”) immediately after the phrase “dissolution of such other entity” in the first sentence thereof, and
43 by inserting the words “the conversion” immediately prior to the phrase “shall constitute a continuation” in the first sentence
44 thereof.

45 Section 7. Amend § 17-301(b)(3), Chapter 17, Title 6 of the Delaware Code by deleting said paragraph in its entirety and
46 substituting in lieu thereof the following:

47 “(3) In the case of a person being admitted as a partner of a surviving or resulting limited partnership
48 pursuant to a merger or consolidation approved in accordance with § 17-211(b) of this title, as

49 provided in the partnership agreement of the surviving or resulting limited partnership or in the
50 agreement of merger or consolidation, and in the event of any inconsistency, the terms of the
51 agreement of merger or consolidation shall control; and in the case of a person being admitted
52 as a partner of a limited partnership pursuant to a merger or consolidation in which such limited
53 partnership is not the surviving or resulting limited partnership in the merger or consolidation,
54 as provided in the partnership agreement of such limited partnership.”.

55 Section 8. Amend § 17-301(c), Chapter 17, Title 6 of the Delaware Code by deleting the phrase “at the time provided in
56 and upon compliance with the partnership agreement” and by substituting in lieu thereof the phrase “as provided in the partnership
57 agreement”.

58 Section 9. Amend Subchapter IV of Chapter 17, Title 6 of the Delaware Code by adding thereto, immediately following §
59 17-406, a new § 17-407 to read as follows:

60 “§ 17-407. Reliance on reports and information by limited partners, liquidating trustees, and general partners.

61 (a) A limited partner or liquidating trustee of a limited partnership shall be fully protected in
62 relying in good faith upon the records of the limited partnership and upon information,
63 opinions, reports or statements presented by a general partner of the limited partnership, an
64 officer or employee of a general partner of the limited partnership, another liquidating trustee,
65 or committees of the limited partnership, limited partners or partners, or by any other person as
66 to matters the limited partner or liquidating trustee reasonably believes are within such other
67 person’s professional or expert competence, including information, opinions, reports or
68 statements as to the value and amount of the assets, liabilities, profits or losses of the limited
69 partnership, or the value and amount of assets or reserves or contracts, agreements or other
70 undertakings that would be sufficient to pay claims and obligations of the limited partnership or
71 to make reasonable provision to pay such claims and obligations, or any other facts pertinent to
72 the existence and amount of assets from which distributions to partners or creditors might
73 properly be paid.

74 (b) A general partner of a limited liability limited partnership shall be fully protected in relying in
75 good faith upon the records of the limited partnership and upon information, opinions, reports
76 or statements presented by another general partner of the limited partnership, an officer or
77 employee of the limited partnership, a liquidating trustee, or committees of the limited

78 partnership, limited partners or partners, or by any other person as to matters the general partner
79 reasonably believes are within such other person’s professional or expert competence, including
80 information, opinions, reports or statements as to the value and amount of the assets, liabilities,
81 profits or losses of the limited partnership, or the value and amount of assets or reserves or
82 contracts, agreements or other undertakings that would be sufficient to pay claims and
83 obligations of the limited partnership or to make reasonable provision to pay such claims and
84 obligations, or any other facts pertinent to the existence and amount of assets from which
85 distributions to partners or creditors might properly be paid.

86 (c) A general partner of a limited partnership that is not a limited liability limited partnership shall
87 be fully protected from liability to the limited partnership, its partners or other persons party to
88 or otherwise bound by the partnership agreement in relying in good faith upon the records of the
89 limited partnership and upon information, opinions, reports or statements presented by another
90 general partner of the limited partnership, an officer or employee of the limited partnership, a
91 liquidating trustee, or committees of the limited partnership, limited partners or partners, or by
92 any other person as to matters the general partner reasonably believes are within such other
93 person’s professional or expert competence, including information, opinions, reports or
94 statements as to the value and amount of the assets, liabilities, profits or losses of the limited
95 partnership, or the value and amount of assets or reserves or contracts, agreements or other
96 undertakings that would be sufficient to pay claims and obligations of the limited partnership or
97 to make reasonable provision to pay such claims and obligations, or any other facts pertinent to
98 the existence and amount of assets from which distributions to partners or creditors might
99 properly be paid.”.

100 Section 10. Amend § 17-703(a), Chapter 17, Title 6 of the Delaware Code by deleting the second sentence thereof and
101 substituting in lieu thereof the following: “To the extent so charged, the judgment creditor has only the right to receive any
102 distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such partnership
103 interest.”.

104 Section 11. Amend § 17-703(b), Chapter 17, Title 6 of the Delaware Code by deleting the second and third sentences
105 thereof in their entirety.

106 Section 12. Amend § 17-703(c), Chapter 17, Title 6 of the Delaware Code by deleting said subsection in its entirety.

107 Section 13. Amend § 17-703(d), Chapter 17, Title 6 of the Delaware Code by re-designating said subsection as subsection
108 (c), by inserting the words “or partner’s assignee” immediately prior to the phrase “of a right”, and by deleting the word “partner’s”
109 and substituting in lieu thereof the words “judgment debtor’s”.

110 Section 14. Amend § 17-703(e), Chapter 17, Title 6 of the Delaware Code by re-designating said subsection as subsection
111 (d), by deleting the phrase “This section provides” and by inserting in lieu thereof the phrase “The entry of a charging order is”, and
112 by inserting the words “of a” immediately prior to the words “partner’s assignee”.

113 Section 15. Amend § 17-703(f), Chapter 17, Title 6 of the Delaware Code by re-designating said subsection as subsection
114 (e) and by inserting the words “or of a partner’s assignee” immediately following the phrase “No creditor of a partner”.

115 Section 16. Amend § 17-703, Chapter 17, Title 6 of the Delaware Code by inserting therein a new subsection (f) to read as
116 follows:

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

119 Section 17. Amend Subchapter VIII of Chapter 17, Title 6 of the Delaware Code by adding thereto, immediately
120 following § 17-805, a new § 17-806 to read as follows:

121 “§ 17-806. Revocation of Dissolution.

122 Notwithstanding the occurrence of an event set forth in Section 17-801(1), (2), (3), (4) or (5) of
123 this chapter, the limited partnership shall not be dissolved and its affairs shall not be wound up if, prior to
124 the filing of a certificate of cancellation in the office of the Secretary of State, the business of the limited
125 partnership is continued, effective as of the occurrence of such event, pursuant to the affirmative vote or
126 written consent of (i) all remaining general partners and all remaining limited partners of the limited
127 partnership, (ii) all remaining general partners and the personal representative of the last remaining
128 limited partner of the limited partnership if there is no remaining limited partner, (iii) all remaining
129 limited partners if there is no remaining general partner or (iv) the personal representative of the last
130 remaining limited partner if there is no remaining limited partner and no remaining general partner (and,
131 in each instance, any other person whose approval is required under the partnership agreement to revoke
132 a dissolution pursuant to this section), provided, however, if the dissolution was caused by a vote or
133 written consent, the dissolution shall not be revoked unless each general partner and limited partner and
134 other person (or their respective personal representatives) who voted in favor of, or consented to, the
135 dissolution has voted or consented in writing to continue the business of the limited partnership. If there

136 is no remaining general partner of the limited partnership and all remaining limited partners or, if there is
137 no remaining limited partner, the personal representative of the last remaining limited partner, vote in
138 favor of or consent to the continuation of the business of the limited partnership, such limited partners or
139 personal representative, as applicable, shall be required to agree in writing to appoint 1 or more general
140 partners effective as of the date of withdrawal of the last general partner, and if there is no remaining
141 limited partner of the limited partnership and the personal representative of the last remaining limited
142 partner votes in favor of or consents to the continuation of the business of the limited partnership, such
143 personal representative shall be required to agree in writing to the admission of the personal
144 representative of such limited partner or its nominee or designee to the limited partnership as a limited
145 partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease
146 to be a limited partner.”

147 Section 18. Amend § 17-902, Chapter 17, Title 6 of the Delaware Code by deleting Subsection (b) thereof in its entirety
148 and by deleting the designation “(a)” as it appears immediately prior to the first sentence thereof.

149 Section 19. Amend Subchapter IX of Chapter 17, Title 6 of the Delaware Code by adding thereto, immediately following
150 § 17-911, a new § 17-912 to read as follows:

151 “§ 17-912. Activities not constituting doing business.

152 (a) Activities of a foreign limited partnership in the State of Delaware that do not constitute doing
153 business for the purpose of this subchapter include:

- 154 (1) maintaining, defending or settling an action or proceeding;
- 155 (2) holding meetings of its partners or carrying on any other activity concerning its
156 internal affairs;
- 157 (3) maintaining bank accounts;
- 158 (4) maintaining offices or agencies for the transfer, exchange or registration of the limited
159 partnership’s own securities or maintaining trustees or depositories with respect to
160 those securities;
- 161 (5) selling through independent contractors;
- 162 (6) soliciting or obtaining orders, whether by mail or through employees or agents or
163 otherwise, if the orders require acceptance outside the State of Delaware before they
164 become contracts;

- 165 (7) selling, by contract consummated outside the State of Delaware, and agreeing, by the
166 contract, to deliver into the State of Delaware, machinery, plants or equipment, the
167 construction, erection or installation of which within the State of Delaware requires the
168 supervision of technical engineers or skilled employees performing services not
169 generally available, and as part of the contract of sale agreeing to furnish such services,
170 and such services only, to the vendee at the time of construction, erection or
171 installation;
- 172 (8) creating, as borrower or lender, or acquiring indebtedness with or without a mortgage
173 or other security interest in property;
- 174 (9) collecting debts or foreclosing mortgages or other security interests in property
175 securing the debts, and holding, protecting and maintaining property so acquired;
- 176 (10) conducting an isolated transaction that is not one in the course of similar transactions;
- 177 (11) doing business in interstate commerce; and
- 178 (12) doing business in the State of Delaware as an insurance company.
- 179 (b) A person shall not be deemed to be doing business in the State of Delaware solely by reason of
180 being a partner of a domestic limited partnership or a foreign limited partnership.
- 181 (c) This section does not apply in determining whether a foreign limited partnership is subject to
182 service of process, taxation or regulation under any other law of the State of Delaware.”

183 Section 20. This Act shall become effective August 1, 2005.

SYNOPSIS

This Act continues the practice of amending periodically the Delaware Revised Uniform Limited Partnership 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 amends § 17-101(12) of the Act to confirm that a partner of a limited partnership and an assignee of an interest in a limited partnership are bound by the partnership agreement.

Section 2 amends § 17-106(a) of the Act to expand the permitted purposes of a limited partnership.

Section 3 amends § 17-211(g) of the Act to increase the flexibility permitted in the Act regarding amendments to partnership agreements and the adoption of new partnership agreements in connection with mergers and consolidations.

Sections 4 and 6 amend § 17-215(i) and § 17-217(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 5 amends § 17-216(b) to conform the approval requirements for the transfer of a domestic limited

partnership to the requirements for the conversion of a domestic limited partnership.

Section 7 amends § 17-301(b)(3) of the Act to clarify the way in which a person is admitted as a partner of a limited partnership pursuant to a merger or consolidation.

Section 8 amends § 17-301(c) of the Act to confirm that a person is admitted as a partner of a limited partnership in connection with a domestication or a conversion as provided in the partnership agreement.

Section 9 amends the Act to add a new § 17-407 to clarify the circumstances under which limited partners, general partners and liquidating trustees of a limited partnership may rely on the records of, or information relating to, the limited partnership.

Sections 10, 11, 12, 13, 14, 15 and 16 amend § 17-703 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 partnership interest of a partner or partner'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 partner (other than the right to receive the distribution or distributions to which the partner would otherwise have been entitled, to the extent charged).

Section 17 amends the Act to add a new § 17-806 to provide, under certain circumstances, for the revocation of the dissolution of a limited partnership.

Sections 18 and 19 amend the Act to add a new § 17-912 to identify the activities of a foreign limited partnership 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 § 17-902 of the Act to new § 17-912.

Section 20 provides that the proposed amendments of the Act shall become effective on August 1, 2005.

This Act was submitted for sponsorship and consideration by the General Assembly by the Delaware Bar Association.