

CHAPTER 259
FORMERLY
HOUSE BILL NO. 344

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:

Section 1. Amend § 18-101, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-101 Definitions.

As used in this chapter unless the context otherwise requires:

(9) "Limited liability company agreement" means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business. A member or manager of a limited liability company or an assignee of a limited liability company interest is bound by the limited liability company agreement whether or not the member or manager or assignee executes the limited liability company agreement. A limited liability company is not required to execute its limited liability company agreement. A limited liability company is bound by its limited liability company agreement whether or not the limited liability company executes the limited liability company agreement. A limited liability company agreement of a limited liability company having only 1 member shall not be unenforceable by reason of there being only 1 person who is a party to the limited liability company agreement. A limited liability company agreement is not subject to any statute of frauds (including § 2714 of this title). A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth therein. A written limited liability company agreement or another written agreement or writing:

b. Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in paragraph ~~(7)a.~~ (9)a. of this section, or by reason of its having been signed by a representative as provided in this chapter.

Section 2. Amend § 18-102, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-102 Name set forth in certificate.

The name of each limited liability company as set forth in its certificate of formation:

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership, or foreign limited

liability company in the State of Delaware; provided however, that a limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company, which written consent shall be filed with the Secretary of State; provided further, that, if on July 31, 2011, a limited liability company is registered (with the consent of another limited liability company) under a name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of such other domestic limited liability company, it shall not be necessary for any such limited liability company to amend its certificate of formation to comply with this subsection;

Section 3. Amend § 18-104, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-104 Registered office; registered agent.

(a) Each limited liability company shall have and maintain in the State of Delaware:

(2) A registered agent for service of process on the limited liability company, having a business office identical with such registered office, which agent may be any of:

d. A foreign corporation, a foreign ~~partnership (whether general (including a limited liability partnership) or, a foreign~~ limited partnership (including a foreign limited liability limited partnership)), a foreign limited liability company, or a foreign statutory trust.

(b) A registered agent may change the address of the registered office of the limited liability company(ies) for which it is registered agent to another address in the State of Delaware by paying a fee as set forth in § 18-1105(a)(2) of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the limited liability companies for which it is a registered agent. Upon the filing of such certificate, ~~the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered office~~ in the State of Delaware of each of the limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a limited liability company, such registered agent shall file with the Secretary of State a certificate executed by such registered agent setting forth the new name of such registered agent, the name of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the limited liability companies for which it is a registered agent, and shall pay a fee

as set forth in § 18-1105(a)(2) of this title. ~~Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the certificate under the Secretary of State's own hand and seal of office.~~ A change of name of any person acting as a registered agent of a limited liability company as a result of (i) a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division, shall each be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 18-202 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited liability company affected thereby.

(c) The registered agent of 1 or more limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in § 18-1105(a)(2) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such limited liability companies as have ratified and approved such substitution, and the successor registered agent's address, as stated in such certificate, shall become the address of each such limited liability company's registered office in the State of Delaware. ~~The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the limited liability companies so ratifying and approving such change and setting out the names of such limited liability companies.~~ Filing of such certificate of resignation shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby, and each such limited liability company shall not be required to take any further action with respect thereto to amend its certificate of formation under § 18-202 of this title.

(f) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications:

(2) A domestic or foreign corporation, a domestic ~~or foreign~~ partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability partnership, a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

Section 4. Amend § 18-113, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-113 Document form, signature and delivery.

(a) Except as provided in subsection (b) of this section, without limiting the manner in which any act or transaction may be documented, or the manner in which a document may be signed or delivered:

(2) Whenever this chapter or the limited liability company agreement requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. "Electronic signature" means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to execute, authenticate or adopt the document. A person may execute a document with such person's signature.

Section 5. Amend § 18-210, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-210 ~~Contractual~~ No statutory appraisal rights.

~~A Unless otherwise provided in a limited liability company agreement or an agreement of merger or consolidation or a plan of merger or a plan of division may provide that contractual, no-appraisal rights shall be available with respect to a limited liability company interest or another interest in a limited liability company shall be available for any class or group or series of members or limited liability company interests, including~~ in connection with any amendment of a limited liability company agreement, any merger or consolidation in which the limited liability company or a registered series of the limited liability company is a constituent party to the merger or consolidation, any division of the limited liability company, any conversion of the limited liability company to another business form, any conversion of a protected series of the limited liability company to a registered series of such limited liability company, any conversion of a registered series of the limited liability company to a protected series of such limited liability company, any transfer to or domestication or continuance in any jurisdiction by the limited liability company, or the sale of all or substantially all of the limited liability company's assets. The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any ~~such~~ appraisal rights provided in a limited liability company agreement or an agreement of merger or consolidation or a plan of merger or a plan of division.

Section 6. Amend § 18-213, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-213 Transfer or continuance of domestic limited liability companies.

(c) Upon the filing in the office of the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this chapter, ~~the Secretary of State shall certify that the limited liability company has filed all documents and paid all fees required by this chapter, and thereupon~~ the limited liability company shall cease to exist as a limited liability company of the State of Delaware. ~~Such~~ A copy of the certificate of transfer certified by ~~of~~ the Secretary of State shall be prima facie evidence of the transfer or domestication or continuance by such limited liability company out of the State of Delaware. A copy of the certificate of transfer and domestic continuance certified by the Secretary of State shall be prima facie evidence of such limited liability company's transfer to or domestication or continuance in another jurisdiction and its continuance as a limited liability company in the State of Delaware.

Section 7. Amend § 18-216, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-216 Approval of conversion of a limited liability company.

(f) Upon the filing in the office of the Secretary of State of the certificate of conversion to non-Delaware entity or upon the future effective date or time of the certificate of conversion to non-Delaware entity and payment to the Secretary of State of all fees prescribed in this chapter, ~~the Secretary of State shall certify that the limited liability company has filed all documents and paid all fees required by this chapter, and thereupon~~ the limited liability company shall cease to exist as a limited liability company of the State of Delaware. Such A copy of the certificate of conversion to non-Delaware entity certified by ~~of~~ the Secretary of State shall be prima facie evidence of the conversion by such limited liability company out of the State of Delaware.

Section 8. Amend § 18-217, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-217 Division of a limited liability company.

(h) If a domestic limited liability company divides under this section, the dividing company shall file a certificate of division executed by 1 or more authorized persons on behalf of such dividing company in the office of the Secretary of State in accordance with § 18-204 of this title and a certificate of formation that complies with § 18-201 of this title for each resulting company executed by one or more authorized persons in accordance with § 18-204 of this title. The certificate of division shall state:

(7) That the plan of division is on file at a place of business of such division company as is specified therein, and shall state the address thereof; ~~and~~

(8) That a copy of the plan of division will be furnished by such division company as is specified therein, on request and without cost, to any member of the dividing company; and

(9) Any other information the dividing company determines to include therein.

Section 9. Amend § 18-218, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-218 Registered series of members, managers, limited liability company interests or assets.

(d) In order to form a registered series of a limited liability company, a certificate of registered series must be filed in accordance with this subsection.

(4) A manager of a registered series or, if there is no manager, then any member of a registered series who becomes aware that any statement in a certificate of registered series filed with respect to such registered series was false when made, or that any matter described therein has changed making the certificate of registered series false in any material respect or non-compliant with § 18-218(e)(1), shall promptly amend the certificate of registered series.

(e) The name of each registered series as set forth in its certificate of registered series:

(3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any corporation, partnership, limited partnership, statutory trust, limited liability company, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign statutory trust, foreign partnership or foreign limited

liability company in the State of Delaware; provided, however, that a registered series may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, limited partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership, or foreign limited liability company, which written consent shall be filed with the Secretary of State;

Section 10. Amend § 18-220, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-220 Approval of conversion of a registered series of a domestic limited liability company to a protected series of such domestic limited liability company.

~~(f) Upon the filing in the office of the Secretary of State of the certificate of conversion of registered series to protected series or upon the future effective date or time of the certificate of conversion of registered series to protected series and payment to the Secretary of State of all fees prescribed in this chapter, the Secretary of State shall certify that the registered series has filed all documents and paid all fees required by this chapter. Such~~ A copy of the certificate of conversion of registered series to protected series certified by ~~of~~ the Secretary of State shall be prima facie evidence of the conversion by such registered series to a protected series of such limited liability company.

Section 11. Amend § 18-301, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-301 Admission of members.

(a) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of:

(2) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when the person's admission is reflected in the records of the limited liability company or as otherwise provided in the limited liability company agreement.

(b) After the formation of a limited liability company, a person is admitted as a member of the limited liability company:

(1) In the case of a person who is not an assignee of a limited liability company interest, including a person acquiring a limited liability company interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a limited liability company interest in the limited liability company at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, upon the consent of all members ~~and when the person's admission is reflected in the records of~~ or as otherwise provided in the limited liability company agreement;

(2) In the case of an assignee of a limited liability company interest, as provided in § 18-704(a) of this title ~~and at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company;~~

Section 12. Amend § 18-305, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-305 Access to and confidentiality of information; records.

(d) A limited liability company may maintain its records in other than ~~a written paper~~ paper form, including on, by means of, or in the form of any information storage device, method, or 1 or more electronic networks or databases (including 1 or more distributed electronic networks or databases), if such form is capable of conversion into ~~written~~ paper form within a reasonable time.

Section 13. Amend § 18-904, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 18-904 Name; registered office; registered agent.

(a) A foreign limited liability company may register with the Secretary of State under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation "LLC" and that could be registered by a domestic limited liability company; provided however, that a foreign limited liability company may register under any name which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company, ~~or~~ limited partnership, registered series of a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, partnership, statutory trust, limited liability company, ~~or~~ limited partnership, registered series of a limited liability company or registered series of a limited partnership, which written consent shall be filed with the Secretary of State.

(b) Each foreign limited liability company shall have and maintain in the State of Delaware:

(2) A registered agent for service of process on the foreign limited liability company, having a business office identical with such registered office, which agent may be any of:

c. A foreign corporation, a foreign ~~partnership (whether general (including a limited liability partnership) or, a foreign~~ limited partnership (including a foreign limited liability limited partnership)), a foreign limited liability company (other than the foreign limited liability company itself), or a foreign statutory trust.

(c) A registered agent may change the address of the registered office of the foreign limited liability company or companies for which the agent is registered agent to another address in the State of Delaware by paying a fee as set forth in § 18-1105(a)(7) of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the

foreign limited liability companies for which it is a registered agent, and further certifying to the new address to which each such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the foreign limited liability companies for which it is registered agent. Upon the filing of such certificate, ~~the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or~~ until further change of address, as authorized by law, the registered office in the State of Delaware of each of the foreign limited liability companies for which the agent is a registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign limited liability company, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed and the address at which such registered agent has maintained the registered office for each of the foreign limited liability companies for which it is registered agent, and shall pay a fee as set forth in § 18-1105(a)(7) of this title. ~~Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary of State's own hand and seal of office.~~ A change of name of any person acting as a registered agent of a foreign limited liability company as a result of ~~the~~ (i) a merger or consolidation of the registered agent with or into another person which succeeds to its assets and liabilities by operation of law, (ii) the conversion of the registered agent into another person, or (iii) a division of the registered agent in which an identified resulting person succeeds to all of the assets and liabilities of the registered agent related to its registered agent business pursuant to the plan of division, as set forth in the certificate of division, shall each be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the application of each foreign limited liability company affected thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto to amend its application under § 18-905 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign limited liability company affected thereby.

(d) The registered agent of 1 or more foreign limited liability companies may resign and appoint a successor registered agent by paying a fee as set forth in § 18-1105(a)(7) of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected foreign limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign limited liability companies as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such foreign limited liability company's registered office in the State of Delaware. ~~The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the foreign limited liability companies so ratifying and approving such change and setting out the names of such foreign limited liability companies.~~ Filing of such certificate of resignation shall be deemed to be an amendment of the application of each foreign limited liability company affected

thereby and each such foreign limited liability company shall not be required to take any further action with respect thereto to amend its application under § 18-905 of this title.

(e) The registered agent of ~~1 or more~~ a foreign limited liability company, including a foreign limited liability company that has ceased to be registered as a foreign limited liability company in the State of Delaware pursuant to § 18-1107(h) of this title, may resign without appointing a successor registered agent by paying a fee as set forth in § 18-1105(a)(7) of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to ~~each affected~~ the foreign limited liability company at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the foreign limited liability company at its address last known to the registered agent and shall set forth the date of such notice. The certificate shall include such information last provided to the registered agent pursuant to Section 18-104(g) of this title for a communications contact for the foreign limited liability company. Such information regarding the communications contact shall not be deemed public. A certificate filed pursuant to this subsection must be on the form prescribed by the Secretary of State. After receipt of the notice of the resignation of its registered agent, the foreign limited liability company for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning. If such foreign limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, such foreign limited liability company shall not be permitted to do business in the State of Delaware and its registration shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each foreign limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 18-911 of this title.

Section 14. This Act shall become effective upon its enactment into law.

Approved July 16, 2020