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SPONSOR: Sen. DeLuca & Rep. M. Marshall

DELAWARE STATE SENATE
145th GENERAL ASSEMBLY

SENATE BILL NO. 82

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:

1 Section 1. Amend § 18-111, Chapter 18, Title 6 of the Delaware Code by inserting the words "or any provision of
2 this chapter, or any other instrument, document, agreement or certificate contemplated by any provision of this chapter,"
3 immediately before the words "may be brought" in the first sentence thereof.

4 Section 2. Amend § 18-204(a), Chapter 18, Title 6 of the Delaware Code by inserting the words ", except that a
5 certificate of merger or consolidation filed by a surviving or resulting other business entity shall be executed by any person
6 authorized to execute such certificate on behalf of such other business entity" immediately before the ".".

7 Section 3. Amend § 18-209(a), Chapter 18, Title 6 of the Delaware Code by inserting the words "and in § 18-204
8 of this title" immediately after the words "As used in this section" and before the first ",".

9 Section 4. Amend § 18-209(c)(4), Chapter 18, Title 6 of the Delaware Code by inserting the words ", registered
10 office or registered agent" immediately after the words "to change its name".

11 Section 5. Amend § 18-209(f), Chapter 18, Title 6 of the Delaware Code by inserting the words "and shall be
12 effective notwithstanding any provision of the limited liability company agreement relating to amendment or adoption of a
13 new limited liability company agreement, other than a provision that by its terms applies to an amendment to the limited
14 liability company agreement or the adoption of a new limited liability company agreement, in either case, in connection
15 with a merger or consolidation" immediately before the "." in the second sentence thereof.

16 Section 6. Amend § 18-302(e), Chapter 18, Title 6 of the Delaware Code by inserting the words ", including as
17 permitted by § 18-209(f) of this title" immediately after the words "as otherwise permitted by law".

18 Section 7. Amend § 18-1101, Chapter 18, Title 6 of the Delaware Code by inserting a new subsection (h) at the
19 end of such section reading as follows:

20 "(h) Action validly taken pursuant to one provision of this chapter shall not be deemed invalid solely
21 because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of

22 this chapter but fails to satisfy one or more requirements prescribed by such other provision."

23 Section 8. This Act shall become effective August 1, 2009.

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 § 18-111 of the Act to clarify the jurisdiction of the Court of Chancery with respect to matters pertaining to Delaware limited liability companies.

Section 2. This section amends § 18-204(a) of the Act to clarify that a certificate of merger or consolidation filed by a surviving or resulting other business entity must be executed by any person authorized to execute such certificate on behalf of such other business entity.

Section 3. This section amends § 18-209(a) of the Act to make changes conforming to the amendment to § 18-204(a) of the Act.

Section 4. This section amends § 18-209(c)(4) of the Act to permit a change of the registered office or registered agent to be set forth in a certificate of merger filed by a surviving domestic limited liability company.

Section 5. This section amends § 18-209(f) of the Act to confirm the ability by merger or consolidation to amend a limited liability company agreement or adopt a new limited liability company agreement for a limited liability company that is the surviving or resulting limited liability company in a merger or consolidation by obtaining the approval required by § 18-209(b) of the Act, unless the limited liability company agreement by its terms limits such amendment or adoption.

Section 6. This section amends § 18-302(e) of the Act to confirm that the reference in such section to "as otherwise permitted by law" includes an amendment made as permitted by § 18-209(f) of the Act.

Section 7. This section amends § 18-1101 of the Act to clarify that the doctrine of independent legal significance, as developed in Delaware corporation law, applies in the context of Delaware limited liability companies. The amendment is not intended to limit development or application, with respect to Delaware limited liability companies, of the doctrine of independent legal significance as developed in cases arising under Delaware corporation law.

Section 8. This section provides that the proposed amendments of the Act shall become effective August 1, 2009.

Author: Senator DeLuca