



SPONSOR: Rep. M. Smith & Sen. Blevins
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D.P. Williams, Willis, Wilson; Sen. DeLuca, Henry,
McDowell, Simpson, Sorenson

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 338

AN ACT TO AMEND 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 § 18-102, Title 6 of the Delaware Code by making insertions as shown by underlining and
2 deletions as shown by strike through as follows:

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

4 (1) Shall contain the words "Limited Liability Company" or the abbreviation "L.L.C." or the designation
5 "LLC";

6 (2) May contain the name of a member or manager;

7 (3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name
8 on such records of any corporation, partnership, limited partnership, statutory trust or limited liability company reserved,
9 registered, formed or organized under the laws of the State of Delaware or qualified to do business or registered as a foreign
10 corporation, foreign limited partnership, foreign statutory trust, foreign partnership, or foreign limited liability company in
11 the State of Delaware; provided however, that a limited liability company may register under any name which is not such as
12 to distinguish it upon the records in the office of the Secretary of State from the name on such records of any domestic or
13 foreign corporation, partnership, limited partnership, or statutory trust or foreign limited liability company reserved,
14 registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation,
15 partnership, limited partnership, statutory trust or foreign limited liability company, which written consent shall be filed
16 with the Secretary of State; provided further, that, if on July 31, 2011, a limited liability company is registered (with the
17 consent of another limited liability company) under a name which is not such as to distinguish it upon the records in the
18 office of the Secretary of State from the name on such records of such other domestic limited liability company, it shall not
19 be necessary for any such limited liability company to amend its certificate of formation to comply with this subsection;

20 and

21 (4) May contain the following words: "Company," "Association," "Club," "Foundation," "Fund,"
22 "Institute," "Society," "Union," "Syndicate," "Limited" or "Trust" (or abbreviations of like import); and
23 (5) Shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to
24 and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as
25 those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a limited liability
26 company regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home
27 Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to
28 prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking
29 business or otherwise likely to mislead the public about the nature of the business of the limited liability company or to lead
30 to a pattern and practice of abuse that might cause harm to the interests of the public or the State as determined by the
31 Division of Corporations in the Department of State.

32 Section 2. Amend § 18-201(d), Title 6 of the Delaware Code by making insertions as shown by underlining and
33 deletions as shown by strike through as follows:

34 (d) A limited liability company agreement shall be entered into or otherwise existing either before, after or at the
35 time of the filing of a certificate of formation and, whether entered into or otherwise existing before, after or at the time of
36 such filing, may be made effective as of the ~~formation of the limited liability company~~ effective time of such filing or at
37 such other time or date as provided in or reflected by the limited liability company agreement.

38 Section 3. Amend § 18-209(c)(1), Title 6 of the Delaware Code by making insertions as shown by underlining and
39 deletions as shown by strike through as follows:

40 (1) The name, ~~and jurisdiction of formation or organization~~ and type of entity of each of the domestic limited
41 liability companies and other business entities which is to merge or consolidate;

42 Section 4. Amend § 18-213(b)(7), Title 6 of the Delaware Code by making insertions as shown by underlining as
43 follows:

44 (7) The address (which may not be that of the limited liability company's registered agent without the written
45 consent of the limited liability company's registered agent, such consent to be filed with the certificate of transfer) to which
46 a copy of the process referred to in paragraph (b)(6) of this section shall be mailed to it by the Secretary of State. Process
47 may be served upon the Secretary of State under paragraph (b)(6) of this section by means of electronic transmission but
48 only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with
49 respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the
50 Secretary of State, the procedures set forth in § 18-911(c) of this title shall be applicable, except that the plaintiff in any

51 such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection and any
52 other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of
53 State, and the Secretary of State shall notify the limited liability company that has transferred or domesticated or continued
54 out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in §
55 18-911(c) of this title; and

56 Section 5. Amend § 18-214(c)(2), Title 6 of the Delaware Code by making insertions as shown by underlining as
57 follows:

58 (2) The name and type of entity of the other entity immediately prior to the filing of the certificate of conversion to
59 limited liability company;

60 Section 6. Amend § 18-215(1), Title 6 of the Delaware Code by making insertions as shown by underlining as
61 follows:

62 (1) Notwithstanding § 18-803(a) of this title, unless otherwise provided in the limited liability company agreement,
63 a manager associated with a series who has not wrongfully terminated the series or, if none, the members associated with
64 the series or a person approved by the members associated with the series or, if there is more than 1 class or group of
65 members associated with the series, then by each class or group of members associated with the series, in either case, by
66 members who own more than 50 percent of the then current percentage or other interest in the profits of the series owned
67 by all of the members associated with the series or by the members in each class or group associated with the series, as
68 appropriate, may wind up the affairs of the series; but, if the series has been established in accordance with subsection (b)
69 of this section, the Court of Chancery, upon cause shown, may wind up the affairs of the series upon application of any
70 member or manager associated with the series, or the member's personal representative or assignee, and in connection
71 therewith, may appoint a liquidating trustee. The persons winding up the affairs of a series may, in the name of the limited
72 liability company and for and on behalf of the limited liability company and such series, take all actions with respect to the
73 series as are permitted under § 18-803(b) of this title. The persons winding up the affairs of a series shall provide for the
74 claims and obligations of the series and distribute the assets of the series as provided in § 18-804 of this title, which section
75 shall apply to the winding up and distribution of assets of a series. Actions taken in accordance with this subsection shall
76 not affect the liability of members and shall not impose liability on a liquidating trustee.

77 Section 7. Amend § 18-505, Title 6 of the Delaware Code by making insertions as shown by underlining as
78 follows:

79 No obligation of a member or manager of a limited liability company to the limited liability company, or to a
80 member or manager of the limited liability company, arising under the limited liability company agreement or a separate

81 agreement or writing, and no note, instrument or other writing evidencing any such obligation of a member or manager,
82 shall be subject to the defense of usury, and no member or manager shall interpose the defense of usury with respect to any
83 such obligation in any action.

84 Section 8. Amend § 18-803(a), Title 6 of the Delaware Code by making insertions as shown by underlining and
85 deletions as shown by strike through as follows:

86 (a) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully
87 dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more
88 than 1 class or group of members, then by each class or group of members, in either case, by members who own more than
89 50 percent of the then current percentage or other interest in the profits of the limited liability company owned by all of the
90 members or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs; but
91 the Court of Chancery, upon cause shown, may wind up the limited liability company's affairs upon application of any
92 member or manager, or the member's or manager's personal representative or assignee, and in connection therewith, may
93 appoint a liquidating trustee.

94 Section 9. This Act shall become effective August 1, 2012.

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 amends § 18-102 of the Act to confirm the practice of restricting the use of the word "bank" or any variation thereof in the name of a limited liability company.

Section 2 amends § 18-201(d) of the Act to clarify as of when a limited liability company agreement may be made effective.

Section 3 amends § 18-209(c)(1) of the Act by adding a new requirement to provide the type of business entity involved in a merger or consolidation.

Section 4 amends § 18-213(b)(7) of the Act to clarify that the address provided for service of process may not be that of the limited liability company's registered agent without the written consent of such registered agent.

Section 5 amends § 18-214(c)(2) of the Act by adding a new requirement to provide the type of entity converting to a Delaware limited liability company.

Section 6 amends § 18-215(l) of the Act to provide that a manager associated with a series established in accordance with § 18-215(b) of the Act may apply to the Court of Chancery to wind up the affairs of the series following its termination.

Section 7 amends § 18-505 of the Act to provide that obligations between or among members and/or managers arising under a limited liability company agreement or other writing are not subject to the defense of usury.

Section 8 amends § 18-803(a) of the Act to clarify that the right to apply to the Court of Chancery to wind up the affairs of a limited liability company following its dissolution does not apply to a manager's personal representative or assignee.

Section 9 provides that the proposed amendments of the Act shall become effective August 1, 2012.