



SPONSOR: Rep. Griffith & Sen. Gay & Sen. Townsend & Sen. Brown
Reps. Bush, Cooke, Matthews, Schwartzkopf, Spiegelman; Sens. Hansen, Hoffner, S. McBride, Pettyjohn, Sokola, Walsh

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 339

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE DELAWARE REVISED UNIFORM PARTNERSHIP ACT.

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 § 15-902, Title 6 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 15-902. Merger or consolidation.

4 (c) Except in the case of a merger under subsection (m) of this section, if a domestic partnership is merging or
5 consolidating under this section, (i) if the domestic partnership has not filed a statement of partnership existence, then the
6 domestic partnership shall file a statement of partnership existence and (ii) the domestic partnership or other business entity
7 surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation executed by
8 at least 1 partner or by 1 or more authorized persons on behalf of the domestic partnership when it is the surviving or
9 resulting entity with the Secretary of State. The certificate of merger or consolidation shall state:

10 (4) In the case of a merger in which a domestic partnership is the surviving entity, such amendments, if any, to
11 the statement of partnership existence of the surviving domestic partnership (and in the case of a surviving domestic
12 partnership that is a limited liability partnership, to the statement of qualification of such surviving domestic
13 partnership) ~~to change its name, registered office or registered agent~~ as are desired to be effected by the merger; merger
14 (which amendments may amend and restate the statement of partnership existence of the surviving domestic
15 partnership in its entirety);

16 (f) A certificate of merger or consolidation or a certificate of ownership and merger shall act as a statement of
17 cancellation of the statement of partnership existence (and if applicable the statement of qualification) for a domestic
18 partnership which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger or a
19 certificate of ownership and merger that sets forth any amendment in accordance with paragraph (c)(4) or subsection (m) of
20 this section shall be deemed to be an amendment to the statement of partnership existence (and if applicable to the

21 statement of qualification) of the domestic partnership, and the domestic partnership shall not be required to take any
22 further action to amend its statement of partnership existence (or if applicable its statement of qualification) under § 15-105
23 or § 15-116 of this title with respect to such amendments set forth in the certificate of ~~merger~~ merger or certificate of
24 ownership and merger. Whenever this section requires the filing of a certificate of merger or consolidation, such
25 requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information
26 required by this section to be set forth in the certificate of merger or consolidation.

27 (m) In any case in which (i) at least 90% of the outstanding shares of each class of the stock of a corporation or
28 corporations (other than a corporation which has in its certificate of incorporation the provision required by § 251(g)(7)(A)
29 and (B) of Title 8), of which class there are outstanding shares that, absent § 267(a) of Title 8, would be entitled to vote on
30 such merger, is owned by a domestic partnership, (ii) 1 or more of such corporations is a corporation of the State of
31 Delaware, and (iii) any corporation that is not a corporation of the State of Delaware is a corporation of any other state or
32 the District of Columbia or another jurisdiction, the laws of which do not forbid such merger, the domestic partnership
33 having such stock ownership may either merge the corporation or corporations into itself and assume all of its or their
34 obligations, or merge itself, or itself and 1 or more of such corporations, into 1 of the other corporations, pursuant to a plan
35 of merger. If a domestic partnership is causing a merger under this subsection, (i) if the domestic partnership has not filed a
36 statement of partnership existence, then the domestic partnership shall file a statement of partnership existence, and (ii) the
37 domestic partnership shall file a certificate of ownership and merger executed by at least 1 partner or by 1 or more
38 authorized persons on behalf of the domestic partnership in the office of the Secretary of State. The certificate of ownership
39 and merger shall certify that such merger was authorized in accordance with the domestic partnership's partnership
40 agreement and this chapter, and if the domestic partnership shall not own all the outstanding stock of all the corporations
41 that are parties to the merger, shall state the terms and conditions of the merger, including the securities, cash, property, or
42 rights to be issued, paid, delivered or granted by the surviving domestic partnership or corporation upon surrender of each
43 share of the corporation or corporations not owned by the domestic partnership, or the cancellation of some or all of such
44 shares. The terms and conditions of the merger may not result in a holder of stock in a corporation becoming a partner in a
45 surviving domestic partnership (other than a limited liability partnership). In the case of a merger under this subsection in
46 which a domestic partnership is the surviving entity, the certificate of ownership and merger may also state such
47 amendments, if any, to the statement of partnership existence of the surviving domestic partnership (and in the case of a
48 surviving domestic partnership that is a limited liability partnership, to the statement of qualification of such surviving
49 domestic partnership) as are desired to be effected by the merger (which amendments may amend and restate the statement
50 of partnership existence of the surviving domestic partnership in its entirety). If a corporation surviving a merger under this

51 subsection is not a corporation organized under the laws of the State of Delaware, then the terms and conditions of the
52 merger shall obligate such corporation to agree that it may be served with process in the State of Delaware in any
53 proceeding for enforcement of any obligation of the domestic partnership or any obligation of any constituent corporation
54 of the State of Delaware, as well as for enforcement of any obligation of the surviving corporation, including any suit or
55 other proceeding to enforce the right of any stockholders as determined in appraisal proceedings pursuant to § 262 of Title
56 8, and to irrevocably appoint the Secretary of State as its agent to accept service of process in any such suit or other
57 proceedings, and to specify the address to which a copy of such process shall be mailed by the Secretary of State. Process
58 may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed
59 by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such
60 service as the Secretary of State deems necessary or appropriate. In the event of such service upon the Secretary of State in
61 accordance with this subsection, the Secretary of State shall forthwith notify such surviving corporation thereof by letter,
62 directed to such surviving corporation at its address so specified, unless such surviving corporation shall have designated in
63 writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so
64 designated. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier
65 and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any
66 other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of
67 such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected
68 pursuant to this subsection and to pay the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum
69 shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall
70 maintain an alphabetical record of any such service setting forth the name of the plaintiff and the defendant, the title, docket
71 number and nature of the proceeding in which process has been served, the fact that service has been effected pursuant to
72 this subsection, the return date thereof, and the day and hour service was made. The Secretary of State shall not be required
73 to retain such information longer than 5 years from receipt of the service of process.

74 Section 2. This Act takes effect on August 1, 2024.

SYNOPSIS

This Act continues the practice of amending periodically the Delaware Revised Uniform Partnership Act (the “GP Act”) to keep it current and to maintain its national preeminence. The following is a section-by-section review of the proposed amendments to the GP Act:

Section 1 amends § 15-902 of the GP Act to permit a certificate of merger or a certificate of ownership and merger to state any amendments to the statement of partnership existence of a surviving domestic partnership in a merger (and in the case of a surviving domestic partnership that is a limited liability partnership, to the statement of qualification of such surviving domestic partnership) as are desired to be effected by the merger. This section also amends § 15-902 of the GP Act to require a domestic partnership that is causing a merger under § 15-902(m) of the GP Act to file a statement of partnership existence (if it has not already filed a statement of partnership existence).

Section 2 provides that the amendments to the GP Act take effect on August 1, 2024.

This Act requires a greater than majority vote for passage because § 11 of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly to impose or levy a tax or license fee.