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DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 91

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 (Three-fifths of all members elected to each house thereof concurring therein):

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

3 § 18-101 Definitions

4 As used in this chapter unless the context otherwise requires:

5 (4) "Document" means (i) any tangible medium on which information is inscribed, and includes handwritten, typed,  
6 printed or similar instruments, and copies of such instruments and (ii) an electronic transmission.

7 (5) "Electronic transmission" means any form of communication not directly involving the physical transmission  
8 of paper, including the use of, or participation in, 1 or more electronic networks or databases (including 1 or more  
9 distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a  
10 recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

11 ~~(10)~~ (12) "Manager" means a person who is named as a manager of a limited liability company in, or designated  
12 as a manager of a limited liability company pursuant to, a limited liability company agreement or similar instrument under  
13 which the limited liability company is formed, and includes a manager of the limited liability company generally and a  
14 manager associated with a series of the limited liability company. Unless the context otherwise requires, references in this  
15 chapter to a manager (including references in this chapter to a manager of a limited liability company) shall be deemed to  
16 be references to a manager of the limited liability company generally and to a manager associated with a series with respect  
17 to such series.

18 ~~(11)~~ (13) "Member" means a person who is admitted to a limited liability company as a member as provided in §  
19 18-301 of this title, and includes a member of the limited liability company generally and a member associated with a series  
20 of the limited liability company. Unless the context otherwise requires, references in this chapter to a member (including

21 references in this chapter to a member of a limited liability company) shall be deemed to be references to a member of the  
22 limited liability company generally and to a member associated with a series with respect to such series.

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

25 § 18-102 Name set forth in certificate

26 (3) Must be such as to distinguish it upon the records in the office of the Secretary of State from the name on such  
27 records of any corporation, partnership, limited partnership, statutory trust, limited liability company, ~~or registered series of~~  
28 a limited liability company or registered series of a limited partnership reserved, registered, formed or organized under the  
29 laws of the State of Delaware or qualified to do business or registered as a foreign corporation, foreign limited partnership,  
30 foreign statutory trust, foreign partnership, or foreign limited liability company in the State of Delaware; provided however,  
31 that a limited liability company may register under any name which is not such as to distinguish it upon the records in the  
32 office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, limited  
33 partnership, statutory trust, registered series of a limited liability company, registered series of a limited partnership or  
34 foreign limited liability company reserved, registered, formed or organized under the laws of the State of Delaware with the  
35 written consent of the other corporation, partnership, limited partnership, statutory trust, registered series of a limited  
36 liability company, registered series of a limited partnership or foreign limited liability company, which written consent shall  
37 be filed with the Secretary of State; provided further, that, if on July 31, 2011, a limited liability company is registered  
38 (with the consent of another limited liability company) under a name which is not such as to distinguish it upon the records  
39 in the office of the Secretary of State from the name on such records of such other domestic limited liability company, it  
40 shall not be necessary for any such limited liability company to amend its certificate of formation to comply with this  
41 subsection;

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

44 § 18-104 Registered office; registered agent

45 (d) The registered agent of ~~1 or more limited liability companies~~ a limited liability company, including a limited  
46 liability company whose certificate of formation has been cancelled pursuant to § 18-1108 of this title, may resign without  
47 appointing a successor registered agent by paying a fee as set forth in § 18-1105(a)(2) of this title and filing a certificate of  
48 resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is  
49 filed. The certificate shall contain a statement that written notice of resignation was given to ~~each affected~~ the limited  
50 liability company at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the limited

51 liability company at its address last known to the registered agent and shall set forth the date of such notice. The certificate  
52 shall include such information last provided to the registered agent pursuant to Section 18-104(g) of this title for a  
53 communications contact for the limited liability company. Such information regarding the communications contact shall  
54 not be deemed public. A certificate filed pursuant to this Section 18-104(d) must be on the form prescribed by the Secretary  
55 of State. After receipt of the notice of the resignation of its registered agent, the limited liability company for which such  
56 registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so  
57 resigning. If such limited liability company fails to obtain and designate a new registered agent as aforesaid prior to the  
58 expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, the certificate of  
59 formation of such limited liability company shall be canceled. After the resignation of the registered agent shall have  
60 become effective as provided in this section and if no new registered agent shall have been obtained and designated in the  
61 time and manner aforesaid, service of legal process against each limited liability company (and each protected series and  
62 each registered series thereof) for which the resigned registered agent had been acting shall thereafter be upon the Secretary  
63 of State in accordance with § 18-105 of this title.

64 (g) Every domestic limited liability company and every foreign limited liability company qualified to do business  
65 in the State of Delaware shall provide to its registered agent and update from time to time as necessary the name, business  
66 address and business telephone number of a natural person who is a member, manager, officer, employee or designated  
67 agent of the domestic or foreign limited liability company who is then authorized to receive communications from the  
68 registered agent. Such person shall be deemed the communications contact for the domestic or foreign limited liability  
69 company. A domestic limited liability company, upon receipt of a request by the communications contact delivered in  
70 writing or by electronic transmission, shall provide the communications contact with the name, business address and  
71 business telephone number of a natural person who has access to the record required to be maintained pursuant to § 18-  
72 305(h) of this title. Every registered agent shall retain (in paper or electronic form) the above information concerning the  
73 current communications contact for each domestic limited liability company and each foreign limited liability company for  
74 which that registered agent serves as registered agent. If the domestic or foreign limited liability company fails to provide  
75 the registered agent with a current communications contact, the registered agent may resign as the registered agent for such  
76 domestic or foreign limited liability company pursuant to this section. ~~For purposes of this subsection, the term "electronic~~  
77 ~~transmission" means any form of communication not directly involving the physical transmission of paper, including the~~  
78 ~~use of, or participation in, 1 or more electronic networks or databases (including 1 or more distributed electronic networks~~  
79 ~~or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be~~  
80 ~~directly reproduced in paper form by such a recipient through an automated process.~~

81 Section 4. Amend Chapter 18, Title 6 of the Delaware Code to add a new § 18-113 as shown by underline as  
82 follows:

83 § 18-113. Document form, signature and delivery.

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

86 (1) Any act or transaction contemplated or governed by this chapter or the limited liability company agreement may  
87 be provided for in a document, and an electronic transmission is the equivalent of a written document.

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

92 (3) Unless otherwise provided in the limited liability company agreement or agreed between the sender and  
93 recipient, an electronic transmission is delivered to a person for purposes of this chapter and the limited liability company  
94 agreement when it enters an information processing system that the person has designated for the purpose of receiving  
95 electronic transmissions of the type delivered, so long as the electronic transmission is in a form capable of being processed  
96 by that system and such person is able to retrieve the electronic transmission. Whether a person has so designated an  
97 information processing system is determined by the limited liability company agreement or from the context and  
98 surrounding circumstances, including the parties' conduct. An electronic transmission is delivered under this section even if  
99 no person is aware of its receipt. Receipt of an electronic acknowledgement from an information processing system  
100 establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to  
101 the content received.

102 This chapter shall not prohibit one or more persons from conducting a transaction in accordance with chapter 12A  
103 of this title so long as the part or parts of the transaction that are governed by this chapter are documented, signed and  
104 delivered in accordance with this subsection (a) or otherwise in accordance with this chapter. This subsection (a) shall apply  
105 solely for purposes of determining whether an act or transaction has been documented, and the document has been signed  
106 and delivered, in accordance with this chapter and the limited liability company agreement.

107 (b) Subsection (a) of this section shall not apply to: (1) a document filed with or submitted to the Secretary of State,  
108 the Register in Chancery, or a court or other judicial or governmental body of this State, (2) a certificate of limited liability  
109 company interest, and (3) an act or transaction effected pursuant to Section 18-104, 18-105, or 18-109 or subchapter IX or  
110 X of this chapter. The foregoing shall not create any presumption about the lawful means to document a matter addressed

111 by this subsection (b), or the lawful means to sign or deliver a document addressed by this subsection (b). A provision of  
112 the limited liability company agreement shall not limit the application of subsection (a) of this section unless the provision  
113 expressly restricts one or more of the means of documenting an act or transaction, or of signing or delivering a document,  
114 permitted by subsection (a).

115 (c) In the event that any provision of this chapter is deemed to modify, limit or supersede the Electronic Signatures  
116 in Global and National Commerce Act, 15 U.S.C. § 7001 et. seq., the provisions of this chapter shall control to the fullest  
117 extent permitted by section 7002(a)(2) of such act.

118 Section 5. Amend § 18-206, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
119 through and insertions as shown by underline as follows:

120 § 18-206 Filing

121 (b) Notwithstanding any other provision of this chapter, any certificate filed under this chapter shall be effective at  
122 the time of its filing with the Secretary of State or at any later date or time (not later than a time on the one hundred and  
123 eightieth day after the date of its filing if such date of filing is on or after January 1, 2012) specified in the certificate. Upon  
124 the filing of a certificate of amendment (or judicial decree of amendment), certificate of correction, corrected certificate or  
125 restated certificate in the office of the Secretary of State, or upon the future effective date or time of a certificate of  
126 amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation or  
127 certificate of registered series, as applicable, shall be amended, corrected or restated as set forth therein. Upon the filing of a  
128 certificate of cancellation (or a judicial decree thereof), a certificate of merger or consolidation or a certificate of ownership  
129 and merger or a certificate of division which acts as a certificate of cancellation, ~~or~~ a certificate of transfer, a certificate of  
130 conversion to a non-Delaware entity, or a certificate of conversion of registered series to protected series, or upon the future  
131 effective date or time of a certificate of cancellation (or a judicial decree thereof), a certificate of merger or consolidation or  
132 a certificate of ownership and merger or a certificate of division which acts as a certificate of cancellation, ~~or~~ a certificate of  
133 transfer, ~~or~~ a certificate of conversion to a non-Delaware entity, or a certificate of conversion of registered series to  
134 protected series, as provided for therein, or as specified in § 18-104(d), § 18-104(i)(4), § 18-112 or § 18-1108 of this title,  
135 the certificate of formation or certificate of registered series, as applicable, is canceled. Upon the filing of a certificate of  
136 limited liability company domestication or upon the future effective date or time of a certificate of limited liability company  
137 domestication, the entity filing the certificate of limited liability company domestication is domesticated as a limited  
138 liability company with the effect provided in § 18-212 of this title. Upon the filing of a certificate of conversion to limited  
139 liability company or upon the future effective date or time of a certificate of conversion to limited liability company, the  
140 entity filing the certificate of conversion to limited liability company is converted to a limited liability company with the

141 effect provided in § 18-214 of this title. Upon the filing of a certificate of conversion of protected series to registered series,  
142 or upon the future effective date or time of a certificate of conversion of protected series to registered series, the protected  
143 series with respect to which such filing is made is converted to a registered series with the effect provided in § 18-219 of  
144 this title. Upon the filing of a certificate of conversion of registered series to protected series, or upon the future effective  
145 date or time of a certificate of conversion of registered series to protected series, the registered series filing such certificate  
146 is converted to a protected series with the effect provided in § 18-220 of this title. Upon the filing of a certificate of revival,  
147 a limited liability company or a registered series is revived with the effect provided in § 18-1109 or § 18-1110 of this title.  
148 Upon the filing of a certificate of transfer and domestic continuance, or upon the future effective date or time of a certificate  
149 of transfer and domestic continuance, as provided for therein, the limited liability company filing the certificate of transfer  
150 and domestic continuance shall continue to exist as a limited liability company of the State of Delaware with the effect  
151 provided in § 18-213 of this title.

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

154 § 18-210 Contractual appraisal rights.

155 A limited liability company agreement or an agreement of merger or consolidation or a plan of merger or a plan of  
156 division may provide that contractual appraisal rights with respect to a limited liability company interest or another interest  
157 in a limited liability company shall be available for any class or group or series of members or limited liability company  
158 interests in connection with any amendment of a limited liability company agreement, any merger or consolidation in which  
159 the limited liability company or a registered series of the limited liability company is a constituent party to the merger or  
160 consolidation, any division of the limited liability company, any conversion of the limited liability company to another  
161 business form, any conversion of a protected series of the limited liability company to a registered series of such limited  
162 liability company, any conversion of a registered series of the limited liability company to a protected series of such limited  
163 liability company, any transfer to or domestication or continuance in any jurisdiction by the limited liability company, or  
164 the sale of all or substantially all of the limited liability company's assets. The Court of Chancery shall have jurisdiction to  
165 hear and determine any matter relating to any such appraisal rights.

166 Section 7. Amend § 18-215, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
167 through and insertions as shown by underline as follows:

168 § 18-215 Series of members, managers, limited liability company interests or assets

169 (b) A series established in accordance with the following sentence is a protected series. Notwithstanding anything  
170 to the contrary set forth in this chapter or under other applicable law, in the event that a limited liability company agreement

171 establishes or provides for the establishment of 1 or more series, and to the extent the records maintained for any such  
172 series account for the assets associated with such series separately from the other assets of the limited liability company, or  
173 any other series thereof, and if the limited liability company agreement so provides, and if notice of the limitation on  
174 liabilities of a series as referenced in this subsection is set forth in the certificate of formation of the limited liability  
175 company, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to  
176 such series shall be enforceable against the assets of such series only, and not against the assets of the limited liability  
177 company generally or any other series thereof, and, unless otherwise provided in the limited liability company agreement,  
178 none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the  
179 limited liability company generally or any other series thereof shall be enforceable against the assets of such series. Neither  
180 the preceding sentence nor any provision pursuant thereto in a limited liability company agreement or certificate of  
181 formation shall (i) restrict a protected series or limited liability company on behalf of a protected series from agreeing in the  
182 limited liability company agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred,  
183 contracted for or otherwise existing with respect to the limited liability company generally or any other series thereof shall  
184 be enforceable against the assets of such protected series or (ii) restrict a limited liability company from agreeing in the  
185 limited liability company agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred,  
186 contracted for or otherwise existing with respect to a protected series shall be enforceable against the assets of the limited  
187 liability company generally. A limited liability company agreement does not need to use the term protected when  
188 referencing series or refer to this §18-215. Assets associated with a protected series may be held directly or indirectly,  
189 including in the name of such series, in the name of the limited liability company, through a nominee or otherwise. Records  
190 maintained for a protected series that reasonably identify its assets, including by specific listing, category, type, quantity,  
191 computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other  
192 method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated  
193 with such series separately from the other assets of the limited liability company, or any other series thereof. Notice in a  
194 certificate of formation of the limitation on liabilities of a protected series as referenced in this subsection shall be sufficient  
195 for all purposes of this subsection whether or not the limited liability company has established any protected series when  
196 such notice is included in the certificate of formation, and there shall be no requirement that (i) any specific protected series  
197 of the limited liability company be referenced in such notice, or (ii) such notice use the term protected when referencing  
198 series or include a reference to this §18-215. The fact that a certificate of formation that contains the foregoing notice of the  
199 limitation on liabilities of a protected series is on file in the office of the Secretary of State shall constitute notice of such  
200 limitation on liabilities of a protected series. As used in this chapter, a reference to assets of a protected series includes

201 assets associated with such series, a reference to assets associated with a protected series includes assets of such series, a  
202 reference to members or managers of a protected series includes members or managers associated with such series, and a  
203 reference to members or managers associated with a protected series includes members or managers of such series. The  
204 following shall apply to a protected series:

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

207 § 18-217 Division of a limited liability company.

208 (a) As used in this section and §§ 18-203, 18-301 and 18-1203:

209 (b) Pursuant to a plan of division, any domestic limited liability company may, in the manner provided in this  
210 section, be divided into 2 or more domestic limited liability companies. The division of a domestic limited liability  
211 company in accordance with this section and, if applicable, the resulting cessation of the existence of the dividing company  
212 pursuant to a certificate of division shall not be deemed to affect the personal liability of any person incurred prior to such  
213 division with respect to matters arising prior to such division, nor shall it be deemed to affect the validity or enforceability  
214 of any obligations or liabilities of the dividing company incurred prior to such division; provided, that ~~such~~ the obligations  
215 and liabilities of the dividing company shall be allocated to and vested in, and valid and enforceable obligations of, such  
216 division company or companies to which such obligations and liabilities have been allocated pursuant to the plan of  
217 division, as provided in subsection (l) of this section. Each resulting company in a division shall be formed in compliance  
218 with the requirements of this chapter and subsection (i) of this section.

219 (f) A plan of division adopted in accordance with subsection (c) of this section:

220 (3) Shall effect the adoption of a ~~new~~ limited liability company agreement for each resulting company.

221 Any amendment to a limited liability company agreement or adoption of a new limited liability company  
222 agreement for the dividing company, if it is a surviving company in the division, or adoption of a ~~new~~ limited liability  
223 company agreement for each resulting company made pursuant to the foregoing sentence shall be effective at the effective  
224 time or date of the division. Any amendment to a limited liability company agreement or adoption of a limited liability  
225 company agreement for the dividing company, if it is a surviving company in the division, shall be effective  
226 notwithstanding any provision in the limited liability company agreement of the dividing company relating to amendment  
227 or adoption of a new limited liability company agreement, other than a provision that by its terms applies to an amendment  
228 to the limited liability company agreement or the adoption of a new limited liability company agreement, in either case, in  
229 connection with a division, merger or consolidation.



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

235 (1) Upon the division of a domestic limited liability company becoming effective:

236 (1) The dividing company shall be ~~subdivided~~ divided into the distinct and independent resulting companies  
237 named in the plan of division, and, if the dividing company is not a surviving company, the existence of the dividing  
238 company shall cease.

239 (9) Any action or proceeding pending against a dividing company may be continued against the surviving  
240 company as if the division did not occur, but subject to subsection (1)(4) of this section, and against any resulting company  
241 to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated  
242 pursuant to the plan of division by adding or substituting such resulting company as a party in the action or proceeding.

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

245 § 18-218 Registered series of members, managers, limited liability company interests or assets

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

248 (3) A certificate of registered series is amended by filing a certificate of amendment thereto in the office of the  
249 Secretary of State. The certificate of amendment of certificate of registered series shall set forth:

250 (6) Unless otherwise provided in this chapter or unless a later effective date or time (which shall be a date or time  
251 certain) is provided for in the certificate of amendment of certificate of registered series, a certificate of amendment of  
252 certificate of registered series shall be effective at the time of its filing with the Secretary of State.

253 (7) A certificate of registered series shall be canceled upon the cancellation of the certificate of formation of the  
254 limited liability company named in the certificate of registered series, or upon the filing of a certificate of cancellation of  
255 the certificate of registered series or upon the future effective date or time of a certificate of cancellation of the certificate of  
256 registered series, or as provided in § 18-1108(b) of this title, or upon the filing of a certificate of merger or consolidation of  
257 registered series if the registered series is not the surviving or resulting registered series in a merger or consolidation or  
258 upon the future effective date or time of a certificate of merger or consolidation of registered series if the registered series is  
259 not the surviving or resulting registered series in a merger or consolidation, or upon the filing of a certificate of conversion

260 of registered series to protected series or upon the future effective date or time of a certificate of conversion of registered  
261 series to a protected series. A certificate of cancellation of the certificate of registered series may be filed at any time, and  
262 shall be filed, in the office of the Secretary of State to accomplish the cancellation of a certificate of registered series upon  
263 the dissolution of a registered series for which a certificate of registered series was filed and completion of the winding up  
264 of such registered series. A certificate of cancellation of the certificate of registered series shall set forth:

265 Section 10. Amend § 18-219, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
266 through and insertions as shown by underline as follows:

267 § 18-219 Approval of conversion of a protected series of a domestic limited liability company to a registered series  
268 of such domestic limited liability company

269 (e) If a protected series shall convert to a registered series in accordance with this section, a certificate of  
270 conversion of protected series to registered series executed in accordance with § 18-204 of this title shall be filed in the  
271 office of the Secretary of State in accordance with § 18-206 of this title. The certificate of conversion of protected series to  
272 a registered series shall state:

273 (6) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be  
274 effective upon the filing of the certificate of conversion of protected series to a registered series; and

275 (f) A copy of the certificate of conversion of protected series to a registered series certified by the Secretary of  
276 State shall be prima facie evidence of the conversion by such protected series to a registered series of such limited liability  
277 company.

278 Section 11. Amend § 18-220, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
279 through and insertions as shown by underline as follows:

280 § 18-220 Approval of conversion of a registered series of a domestic limited liability company to a protected series  
281 of such domestic limited liability company

282 (e) If a registered series shall convert to a protected series in accordance with this section, a certificate of  
283 conversion of registered series to protected series executed in accordance with § 18-204 of this title shall be filed in the  
284 office of the Secretary of State in accordance with § 18-206 of this title. The certificate of conversion of registered series to  
285 a protected series shall state:

286 (5) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be  
287 effective upon the filing of the certificate of conversion of registered series to a ~~registered~~ protected series; and

288 (f) Upon the filing in the office of the Secretary of State of the certificate of conversion of registered series to a  
289 protected series or upon the future effective date or time of the certificate of conversion of registered series to a protected

290 series and payment to the Secretary of State of all fees prescribed in this chapter, the Secretary of State shall certify that the  
291 registered series has filed all documents and paid all fees required by this chapter. Such certificate of the Secretary of State  
292 shall be prima facie evidence of the conversion by such registered series to a protected series of such limited liability  
293 company.

294 Section 12. Amend § 18-221, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
295 through and insertions as shown by underline as follows:

296 § 18-221 Merger and consolidation of registered series

297 (b) If a registered series is merging or consolidating under this section, the registered series surviving or resulting  
298 in or from the merger or consolidation shall file a certificate of merger or consolidation of registered series executed by 1 or  
299 more authorized persons on behalf of the registered series when it is the surviving or resulting registered series in the office  
300 of the Secretary of State. The certificate of merger or consolidation of registered series shall state:

301 (4) Such amendment, if any, to the certificate of registered series of the registered series that is the surviving ~~or~~  
302 ~~resulting~~ registered series to change the name of the surviving registered series, as is desired to be effected by the merger;

303 (5) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is  
304 not to be effective upon the filing of the certificate of merger or consolidation of registered series;

305 (c) Unless a future effective date or time is provided in a certificate of merger or consolidation of registered series,  
306 a merger or consolidation pursuant to this section shall be effective upon the filing in the office of the Secretary of State of  
307 a certificate of merger or consolidation of registered series.

308 (d) A certificate of merger or consolidation of registered series shall act as a certificate of cancellation of the  
309 certificate of registered series of the registered series which is not the surviving or resulting registered series in the merger  
310 or consolidation. A certificate of merger or consolidation of registered series that sets forth any amendment in accordance  
311 with paragraph (b)(4) of this section shall be deemed to be an amendment to the certificate of registered series of the  
312 surviving ~~or resulting~~ registered series, and no further action shall be required to amend the certificate of registered series of  
313 the surviving ~~or resulting~~ registered series under § 18-218 of this title with respect to such amendments set forth in ~~the~~ such  
314 certificate of merger or consolidation. Whenever this section requires the filing of a certificate of merger or consolidation of  
315 registered series, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation  
316 containing the information required by this section to be set forth in ~~the~~ such certificate of merger or consolidation.

317 Section 13. Amend § 18-301, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
318 through and insertions as shown by underline as follows:

319 § 18-301 Admission of members.

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

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

326 (3) In the case of a person being admitted as a member of a surviving or resulting limited liability company  
327 pursuant to a merger or consolidation approved in accordance with § 18-209(b) of this title, as provided in the limited  
328 liability company agreement of the surviving or resulting limited liability company or in the agreement of merger or  
329 consolidation or plan of merger, and in the event of any inconsistency, the terms of the agreement of merger or  
330 consolidation or plan of merger shall control; and in the case of a person being admitted as a member of a limited liability  
331 company pursuant to a merger or consolidation in which such limited liability company is not the surviving or resulting  
332 limited liability company in the merger or consolidation, as provided in the limited liability company agreement of such  
333 limited liability company; or

334 (4) In the case of a person being admitted as a member of a division company pursuant to a division approved in  
335 accordance with § 18-217(c) of this title, as provided in the limited liability company agreement of such division company  
336 or in the plan of division, and in the event of any inconsistency, the terms of the plan of division shall control; and in the  
337 case of a person being admitted as a member of a limited liability company pursuant to a division in which such limited  
338 liability company is not a division company in the division, as provided in the limited liability company agreement of such  
339 limited liability company.

340 Section 14. Amend § 18-302, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
341 through and insertions as shown by underline as follows:

342 § 18-302 Classes and voting.

343 (d) Unless otherwise provided in a limited liability company agreement, meetings of members may be held by  
344 means of conference telephone or other communications equipment by means of which all persons participating in the  
345 meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at  
346 the meeting. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on,  
347 consented to or approved by members, the members may take such action without a meeting, without prior notice and  
348 without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law,  
349 by members having not less than the minimum number of votes that would be necessary to authorize or take such action at

350 a meeting at which all members entitled to vote thereon were present and voted. Unless otherwise provided in a limited  
351 liability company agreement, if a person (whether or not then a member) consenting as a member to any matter provides  
352 that such consent will be effective at a future time (including a time determined upon the happening of an event), then such  
353 person shall be deemed to have consented as a member at such future time so long as such person is then a member. Unless  
354 otherwise provided in a limited liability company agreement, on any matter that is to be voted on by members, the members  
355 may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as  
356 otherwise permitted by applicable law. Unless otherwise provided in a limited liability company agreement, a consent  
357 transmitted by electronic transmission by a member or by a person or persons authorized to act for a member shall be  
358 deemed to be written and signed for purposes of this subsection. ~~For purposes of this subsection, the term "electronic~~  
359 ~~transmission" means any form of communication not directly involving the physical transmission of paper, including the~~  
360 ~~use of, or participation in, 1 or more electronic networks or databases (including 1 or more distributed electronic networks~~  
361 ~~or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be~~  
362 ~~directly reproduced in paper form by such a recipient through an automated process.~~

363 Section 15. Amend § 18-404, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
364 through and insertions as shown by underline as follows:

365 § 18-404 Classes and voting.

366 (d) Unless otherwise provided in a limited liability company agreement, meetings of managers may be held by  
367 means of conference telephone or other communications equipment by means of which all persons participating in the  
368 meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at  
369 the meeting. Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on,  
370 consented to or approved by managers, the managers may take such action without a meeting, without prior notice and  
371 without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law,  
372 by managers having not less than the minimum number of votes that would be necessary to authorize or take such action at  
373 a meeting at which all managers entitled to vote thereon were present and voted. Unless otherwise provided in a limited  
374 liability company agreement, if a person (whether or not then a manager) consenting as a manager to any matter provides  
375 that such consent will be effective at a future time (including a time determined upon the happening of an event), then such  
376 person shall be deemed to have consented as a manager at such future time so long as such person is then a manager.  
377 Unless otherwise provided in a limited liability company agreement, on any matter that is to be voted on by managers, the  
378 managers may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission  
379 or as otherwise permitted by applicable law. Unless otherwise provided in a limited liability company agreement, a consent

380 transmitted by electronic transmission by a manager or by a person or persons authorized to act for a manager shall be  
381 deemed to be written and signed for purposes of this subsection. ~~For purposes of this subsection, the term "electronic~~  
382 ~~transmission" means any form of communication not directly involving the physical transmission of paper, including the~~  
383 ~~use of, or participation in, 1 or more electronic networks or databases (including 1 or more distributed electronic networks~~  
384 ~~or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be~~  
385 ~~directly reproduced in paper form by such a recipient through an automated process.~~

386 Section 16. Amend § 18-1105, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
387 through and insertions as shown by underline as follows:

388 § 18-1105 Fees

389 (a) No document required to be filed under this chapter shall be effective until the applicable fee required by this  
390 section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State of  
391 Delaware:

392 (3) Upon the receipt for filing of a certificate of formation under § 18-201 of this title or a certificate of registered  
393 series under § 18-218 of this title, a fee in the amount of \$70 and upon the receipt for filing of a certificate of limited  
394 liability company domestication under § 18-212 of this title, a certificate of transfer or a certificate of transfer and domestic  
395 continuance under § 18-213 of this title, a certificate of conversion to limited liability company under § 18-214 of this title,  
396 a certificate of conversion to a non-Delaware entity under § 18-216 of this title, a certificate of amendment under § 18-202  
397 or § 18-218(d)(3) of this title (except as otherwise provided in paragraph (a)(11) of this section), a certificate of cancellation  
398 under § 18-203 or § 18-218(d)(7) of this title, a certificate of merger or consolidation or a certificate of ownership and  
399 merger under § 18-209 of this title, a restated certificate of formation or a restated certificate of registered series under § 18-  
400 208 of this title, a certificate of amendment of a certificate with a future effective date or time under § 18-206(c) of this  
401 title, a certificate of termination of a certificate with a future effective date or time under § 18-206(c) of this title, a  
402 certificate of correction under § 18-211 of this title, a certificate of division under § 18-217 of this title, a certificate of  
403 conversion of protected series to registered series under § 18-219 of this title, a certificate of conversion of registered series  
404 to protected series under § 18-220 of this title, a certificate of merger or consolidation of registered series under § 18-221 of  
405 this title or a certificate of revival under § 18-1109 or § 18-1110 of this title, a fee in the amount of \$180, plus, in the case  
406 of a certificate of cancellation under § 18-203 of this title, a fee in the amount of \$50 for each registered series of the  
407 limited liability company named in the certificate of cancellation.

408 (4) For certifying copies of any paper on file as provided for by this chapter, a fee in the amount of \$50 for each  
409 copy certified. In addition, a fee of \$2.00 per page shall be paid in each instance where the Secretary of State provides the  
410 copies of the document to be certified.

411 (5) The Secretary of State may issue photocopies or electronic image copies of instruments on file, as well as  
412 instruments, documents and other papers not on file, and for all such photocopies or electronic image copies, ~~whether~~  
413 ~~certified or not,~~ which are not certified by the Secretary of State, a fee of \$10 shall be paid for the first page and \$2.00 for  
414 each additional page. Notwithstanding Delaware's Freedom of Information Act (Chapter 100 of Title 29) or other provision  
415 of law granting access to public records, the Secretary of State upon request shall issue only photocopies or electronic  
416 image copies of public records in exchange for the fees described in this section, and in no case shall the Secretary of State  
417 be required to provide copies (or access to copies) of such public records (including without limitation bulk data, digital  
418 copies of instruments, documents and other papers, databases or other information) in an electronic medium or in any form  
419 other than photocopies or electronic image copies of such public records in exchange, as applicable, for the fees described  
420 in this section or § 2318 of Title 29 for each such record associated with a file number.

421

422 (9) For preparing and providing a written report of a record search, a fee ~~in the amount of up to \$50~~ \$100.

423 (10) For issuing any certificate of the Secretary of State, including but not limited to a certificate of good  
424 standing, other than a certification of a copy under paragraph (a)(4) of this section, a fee in the amount of \$50, except that  
425 for issuing any certificate of the Secretary of State that recites all of a limited liability company's filings with the Secretary  
426 of State, a fee of \$175 shall be paid for each such certificate. For issuing any certificate via the Secretary of State's online  
427 services, a fee of up to \$175 shall be paid for each certificate.

428 Section 17. Amend § 18-1107, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
429 through and insertions as shown by underline as follows:

430 § 18-1107 Taxation of limited liability companies and registered series

431 (n) A member or manager of a domestic limited liability company, registered series or foreign limited liability  
432 company is not liable for the debts, obligations or liabilities of such domestic limited liability company, registered series or  
433 foreign limited liability company solely by reason of the neglect, refusal or failure of such domestic limited liability  
434 company, registered series or foreign limited liability company to pay an annual tax or by reason of such domestic limited  
435 liability company, registered series or foreign limited liability company ceasing to be in good standing or duly registered. A  
436 protected series or registered series of a domestic limited liability company is not liable for the debts, obligations or  
437 liabilities of such domestic limited liability company or any other series thereof solely by reason of the neglect, refusal or

438 failure of such domestic limited liability company or other series to pay an annual tax or by reason of such domestic limited  
439 liability company or other series ceasing to be in good standing.

440 Section 18. Amend § 18-1110, Chapter 18, Title 6 of the Delaware Code by making deletions as shown by strike  
441 through and insertions as shown by underline as follows:

442 § 18-1110 Revival of a registered series

443 (a) A registered series whose certificate of registered series has been canceled pursuant to § 18-1108(b) of this  
444 title may be revived by filing in the office of the Secretary of State a certificate of revival of registered series accompanied  
445 by the payment of the fee required by § 18-1105(a)(3) of this title and payment of the annual tax due under § 18-1107 of  
446 this title and all penalties and interest thereon due at the time of the cancellation of its certificate of registered series. The  
447 certificate of revival of registered series shall set forth:

448 (4) A statement that the certificate of revival of registered series is filed by 1 or more persons authorized to  
449 execute and file ~~the~~ such certificate of revival to revive the registered series; and

450 (5) Any other matters the persons executing the certificate of revival of registered series determine to include  
451 therein.

452 (b) The certificate of revival of registered series shall be deemed to be an amendment to the certificate of  
453 registered series, and no further actions shall be required to amend its certificate of registered series under § 18-218(d)(3) of  
454 this title with respect to the matters set forth in ~~the~~ such certificate of revival.

455 (c) Upon the filing of a certificate of revival of registered series, a registered series shall be revived with the same  
456 force and effect as if its certificate of registered series had not been canceled pursuant to § 18-1108(b) of this title. Such  
457 revival shall validate all contracts, acts, matters and things made, done and performed by the registered series, its members,  
458 managers, employees and agents during the time when its certificate of registered series was canceled pursuant to § 18-  
459 1108(b) of this title, with the same force and effect and to all intents and purposes as if the certificate of registered series  
460 had remained in full force and effect. All real and personal property, and all rights and interests, which belonged to the  
461 registered series at the time its certificate of registered series was canceled pursuant to § 18-1108(b) of this title or which  
462 were acquired by the registered series following the cancellation of its certificate of registered series pursuant to § 18-  
463 1108(b) of this title, and which were not disposed of prior to the time of its revival, shall be vested in the registered series  
464 after its revival as fully as they were held by the registered series at, and after, as the case may be, the time its certificate of  
465 registered series was canceled pursuant to § 18-1108(b) of this title. After its revival, the registered series shall be as  
466 exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its



467 members, managers, employees and agents prior to its revival as if its certificate of registered series had at all times  
468 remained in full force and effect.

469 Section 19. This Act shall become effective August 1, 2019.

#### 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 Section 18-101 of the Act to include definitions for “document” and “electronic transmission,” and to amend the definitions of “manager” and “member.” The terms “document” and “electronic transmission” appear in new Section 18-113 among other places in the Act. The changes to the definition of “manager” confirm that the term includes a manager of the limited liability company generally and a manager associated with a series of the limited liability company, and the changes to the definition of “member” confirm that the term includes a member of the limited liability company generally and a member associated with a series of the limited liability company.

Section 2. This section amends Section 18-102(3) of the Act to provide that the name of a limited liability company must be such as to distinguish it from the name of any registered series of a limited partnership formed under the laws of the State of Delaware.

Section 3. This section amends Section 18-104(d) of the Act to provide that if a limited liability company’s certificate of formation has been cancelled pursuant to Section 18-1108 of the Act, its registered agent may resign without appointing a successor registered agent. The amendment also adds requirements regarding the content and form of the certificate of resignation filed with the Delaware Secretary of State when the registered agent resigns without appointing a successor, and provides that such information regarding the communications contact that must be included in such a certificate shall not be deemed public. This section also amends Section 18-104(g) to conform with the addition of the defined term “electronic transmission” in Section 18-101.

Section 4. This section adds new Section 18-113 of the Act, which establishes non-exclusive, safe harbor methods to reduce certain acts or transactions to a written or electronic document and to sign and deliver a document manually or electronically. The terminology in Section 18-113(a) is based on analogous provisions in existing Sections 18-302(d) and 18-404(d) of the Act, the Delaware Uniform Electronic Transactions Act (“UETA”), and the Model Business Corporation Act, with modifications. Section 18-113(a) permits limited liability company transactions (such as entering into agreements of merger not filed with the Secretary of State) to be documented, signed and delivered through “DocuSign” and similar electronic means.

The Section 18-113(a) safe harbor provisions apply solely for purposes of determining whether an act or transaction has been documented, and whether a document has been signed and delivered, in accordance with the Act and the limited liability company agreement. Section 18-113(a) does not preempt any statute of frauds or other law that might require actions be documented, or that documents be signed and delivered, in a specified manner.

Section 18-113(a) clarifies how its provisions operate in connection with a transaction conducted pursuant to UETA. To the extent UETA does not apply to a transaction (under Section 12A-103 of UETA) because the transaction is governed by the Act, the parties to the transaction can satisfy the Act by complying with Section 18-113(a).

Section 18-113(b) addresses certain actions and documents that are not governed by Section 18-113(a). There is no presumption that these excluded items are prohibited from being effected by electronic or other means, but Section 18-113 may not be relied on as a basis for documenting an act or transaction, or signing or delivering a document, if the exclusions set forth in Section 18-113(b) apply. Certain of these excluded items are governed by separate provisions that facilitate the use of electronic media, including documents filed with the Secretary of State (governed by Section 18-206(a)).

Section 18-113(b) permits limited liability company agreement provisions that restrict the use of Section 18-113(a), but those restrictions must be expressly stated. A provision merely specifying that an act or transaction will be documented in writing, or that a document will be signed or delivered manually, will not prohibit the application of Section 18-113(a).

Section 18-113(c) addresses the interaction between the provisions of the Act and the Electronic Signatures in Global and National Commerce Act (the “E-Sign Act”). Section 18-113(c) evidences an intent to allow the Act to govern the documentation of actions, and the signature and delivery of documents, to the fullest extent the Act is not preempted by the E-Sign Act.

Section 5. This section amends Section 18-206(b) of the Act to clarify that the certificate of formation or certificate of registered series, as applicable, shall be amended, corrected or restated upon the filing of a certificate of amendment (or judicial decree of amendment), certificate of correction, corrected certificate or restated certificate, and to confirm that a certificate of registered series is canceled upon a certificate of conversion of such registered series to protected series becoming effective.

Section 6. This section amends Section 18-210 of the Act to provide that a plan of division may provide for contractual appraisal rights and that contractual appraisal rights may be made available in connection with any merger or consolidation in which a registered series is a constituent party, any division of the limited liability company, any conversion of a protected series to a registered series of the limited liability company, and any conversion of a registered series to a protected series of the limited liability company.

Section 7. This section amends Section 18-215(b) of the Act to provide with respect to protected series that neither the limited liability company agreement nor the notice of the limitation on liabilities of a protected series in the certificate of formation must use the term protected when referencing series or refer to Section 18-215.

Section 8. This section amends: Section 18-217(a) of the Act to add a reference to Section 18-301; Section 18-217(b) to clarify that the obligations and liabilities of the dividing company shall be allocated to and vested in, and valid and enforceable obligations of, such division company or companies to which such obligations and liabilities have been allocated pursuant to the plan of division, as provided in Section 18-217(l); Sections 18-217(f) and 18-217(l)(1) to make technical changes; Section 18-217(h) to provide that a certificate of division shall be executed on behalf of, and along with the certificate of formation for each resulting company filed by, the dividing company; and Section 18-217(l)(9) to clarify and confirm the operation of 18-217(l)(4) even though a pending action or proceeding may be continued against the surviving company as if the division did not occur.

Sections 9, 11, 12, and 18. These sections amend Sections 18-218, 18-220, 18-221, and 18-1110 of the Act to make technical changes regarding certain certificates filed with respect to registered series.

Section 10. This section amends Section 18-219 of the Act to make technical changes regarding certain certificates filed with respect to protected series.

Section 13. This section amends Section 18-301 of the Act to add a new subsection (b)(4) that clarifies in connection with a division the mechanics for the admission of a member to a division company or to a limited liability company that is not a division company in the division.

Sections 14 and 15. These sections amend Sections 18-302(d) and 18-404(d) of the Act to conform with the addition of the defined term “electronic transmission” in Section 18-101.

Section 16. This section amends Section 18-1105(a)(3) of the Act to make a technical change regarding certificates of merger or consolidation filed with respect to registered series under Section 18-221 of the Act, Section 18-1105(a)(4) to provide for the fee payable where the Secretary of State provides the copies of the document to be certified, Section 18-1105(a)(5) to clarify that the fee payable thereunder is for copies that are not certified by the Secretary of State, Section 18-1105(a)(9) to provide for the fee payable for a written report of a record search, and Section 18-1105(a)(10) to provide for the fee payable for any certificate issued via the Secretary of State’s online services.

Section 17. This section amends Section 18-1107(n) of the Act to clarify and confirm that a protected series or registered series of a domestic limited liability company is not liable for the debts, obligations or liabilities of such company or any other series thereof solely by reason of the neglect, refusal or failure of another series to pay an annual tax or by reason of another series ceasing to be in good standing.

Section 19. This section provides that the proposed amendments to the Act shall become effective August 1, 2019.

Author: Senator Brown