

LAWS
OF THE
STATE OF DELAWARE

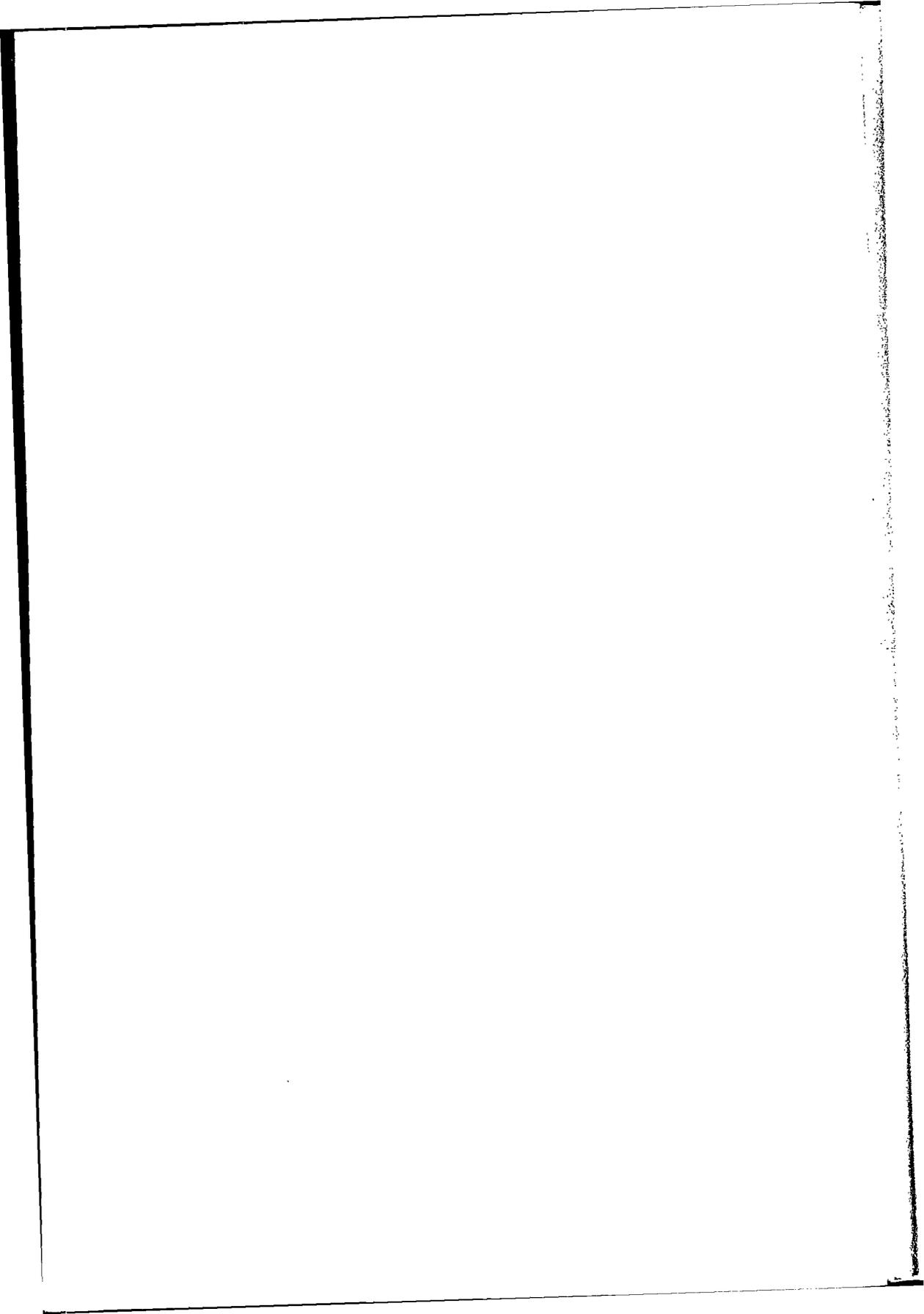
ONE HUNDRED AND THIRTY-SEVENTH
GENERAL ASSEMBLY
FIRST SESSION COMMENCED AND HELD AT DOVER

On Tuesday, January 7, A.D.
1993

SECOND SESSION COMMENCED AND HELD AT DOVER

On Tuesday, January 11, A.D.
1994

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CHAPTER 259

FORMERLY

SENATE BILL NO. 311

AN ACT TO AMEND CHAPTER 15 OF TITLE 6 OF THE DELAWARE CODE RELATING TO THE REGISTRATION AND REGULATION OF REGISTERED LIMITED LIABILITY PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereof concurring therein):

Section 1. Amend § 1502(6), Chapter 15, Title 6 of the Delaware Code by (a) deleting the word "and" immediately following the reference to "1545", and substituting therefor the punctuation mark ",", and (b) adding the words "and 1549" immediately following the reference to "1546".

Section 2. Amend § 1515(b), Chapter 15, Title 6 of the Delaware Code by (a) deleting the words "for debts and obligations of the partnership" immediately before the words "arising from negligence", and (b) adding immediately following the words "registered limited liability partnership is not liable", the words ", either directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for debts, obligations and liabilities of or chargeable to the partnership.", and (c) adding immediately following the word "misconduct", the words ", whether characterized as tort, contract or otherwise,".

Section 3. Amend § 1544(a), Chapter 15, Title 6 of the Delaware Code by (a) deleting (i) the words "the address of its principal office; if the partnership's principal office is not located in this state," (ii) the words "in this state which the partnership shall be required to maintain", and (iii) immediately preceding the words "that the partnership thereby" the word "and", and (b) adding (i) immediately following the words "service of process" the words "required to be maintained by § 1549 of this title", (ii) immediately following the words "as the case may be, as a registered limited liability partnership" the words "; and any other matters the partnership determines to include therein", and (iii) two new sentences immediately following the last sentence of § 1544(a) reading as follows: "A partnership becomes a registered limited liability partnership at the time of the filing of the initial application in the Office of the Secretary of State or at any later date or time specified in the application if, in either case, there has been substantial compliance with the requirements of this chapter. A partnership continues as a registered limited liability partnership if there has been substantial compliance with the requirements of this chapter."

Section 4. Amend § 1544(f), Chapter 15, Title 6 of the Delaware Code by deleting the current text of subsection "(f)" and substituting in lieu thereof the following: "If a person is included in the number of partners of a registered limited liability partnership set forth in an application, a renewal application or a certificate of amendment of an application or a renewal application, the inclusion of such person shall not be admissible as evidence in any action, suit or proceeding, whether civil, criminal, administrative or investigative, for the purpose of determining whether such person is liable as a partner of such registered limited liability partnership. The status of a partnership as a registered limited liability partnership and the liability of a partner of such registered limited liability partnership shall not be adversely affected if the number of partners stated in an application, a renewal application or a certificate of amendment of an application or a renewal application is erroneously stated provided that the application, renewal application or certificate of amendment of an application or a renewal application was filed in good faith."

Section 5. Amend § 1544, Chapter 15, Title 6 of the Delaware Code by adding a new § 1544(h) reading as follows:

"(h) The filing of an application or a renewal application in the Office of the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of this title."

Section 6. Amend § 1545 by adding the words "or the designation 'LLP'" following the words "or the abbreviation 'L.L.P.'", and by inserting the

following new sentence at the end of § 1545: "The name of a registered limited liability partnership must be such as to distinguish it upon the records in the Office of the Secretary of State from the name of any corporation, limited partnership, limited liability company, business trust or registered limited liability 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 or foreign limited liability company in the State of Delaware; provided, however, that a registered limited liability partnership 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 of any domestic or foreign corporation, limited partnership, limited liability company, business trust or registered limited liability partnership reserved, registered, formed or organized under the laws of the State of Delaware with the written consent of the other corporation, limited partnership, limited liability company, business trust or registered limited liability partnership, which written consent shall be filed with the Secretary of State."

Section 7. Amend Chapter 15, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 1548" reading as follows:

"§ 1548. Reservation of Name.

(a) The exclusive right to the use of a name of a registered limited liability partnership may be reserved by:

(1) Any person intending to become a registered limited liability partnership under this chapter and to adopt that name; and

(2) Any registered limited liability partnership which proposes to change its name.

(b) The reservation of a specified name shall be made by filing with the Secretary of State an application, executed by the applicant, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use by a registered limited liability partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120 day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the Office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be canceled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, specifying the name reservation to be canceled and the name and address of the applicant or transferee.

(c) A fee in the amount of \$75 shall be paid to the Secretary of State for the use of the State of Delaware upon receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation pursuant to this § 1548."

Section 8. Amend Chapter 15, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 1549" reading as follows:

"§ 1549. Registered Office; Registered Agent.

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

(1) A registered office, which may but need not be a place of its business in the State of Delaware; and

(2) A registered agent for service of process on the registered limited liability partnership, which agent may be either an individual resident of the State of Delaware whose business office is identical with the registered limited liability partnership's registered office, or a domestic corporation, or a foreign corporation authorized to do business in the State of Delaware having a business office identical with such registered office, or the registered limited liability partnership itself.

(b) A registered agent may change the address of the registered office of the registered limited liability partnerships for which he is registered agent to another address in the State of Delaware by paying a fee in the amount of \$50, and a further fee in the amount of \$2 for each registered limited liability partnership affected thereby, to the Secretary of State for the use of the State of Delaware and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the names of all the registered limited liability partnerships represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such registered limited liability partnerships, and further certifying to the new address to which 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 registered limited liability partnerships recited in the certificate. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under his 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 registered limited liability partnerships recited in the certificate 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 registered limited liability partnership, 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, the names of all the registered limited liability partnerships represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such registered limited liability partnerships, and shall pay a fee in the amount of \$50, and a further fee in the amount of \$2 for each registered limited liability partnership affected thereby, to the Secretary of State for the use of the State of Delaware. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under his hand and seal of office. Filing a certificate under this section shall be deemed to be an amendment of the application or renewal application, as the case may be, of each registered limited liability partnership affected thereby, and each such registered limited liability partnership shall not be required to take any further action with respect thereto, to amend its application or renewal application, as the case may be, pursuant to § 1550 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 registered limited liability partnership affected thereby.

(c) The registered agent of 1 or more registered limited liability partnerships may resign and appoint a successor registered agent by paying a fee in the amount of \$50, and a further fee in the amount of \$2 for each registered limited liability partnership affected thereby, to the Secretary of State for the use of the State of Delaware 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 executed by each affected registered limited liability partnership ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such registered limited liability partnerships 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 registered limited liability partnership's registered office in the State of Delaware. The Secretary of State shall furnish to the successor registered agent a certified copy of the certificate of resignation. Filing of such certificate of resignation shall be deemed to be an amendment of the application or renewal application, as the case may be, of each registered limited liability partnership affected thereby, and each such registered limited liability partnership shall not be required to take any further action with respect thereto, to amend its application or renewal application, as the case may be, pursuant to § 1550 of this title.

(d) The registered agent of a registered limited liability partnership may resign without appointing a successor registered agent by paying a fee in the amount of \$10 to the Secretary of State for the use of the State of Delaware and filing a certificate with the Secretary of State stating that it resigns as registered agent for the registered limited liability partnership identified in the certificate, but such resignation shall not become effective until 120 days after the certificate is filed. There shall be attached to

such certificate an affidavit of such registered agent, if an individual, or the president, a vice-president or the secretary thereof if a corporation, that at least 30 days prior to and on or about the date of the filing of said certificate, notices were sent by certified or registered mail to the registered limited liability partnership for which such registered agent is resigning as registered agent, at the principal office thereof within or outside the State of Delaware, if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such registered limited liability partnership, of the resignation of such registered agent. After receipt of the notice of the resignation of its registered agent, the registered limited liability partnership 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 registered limited liability partnership fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 120 days after the filing by the registered agent of the certificate of resignation, the application or renewal application of such registered limited liability partnership shall be deemed to be canceled."

Section 9. Amend Chapter 15, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 1550" reading as follows:

"§ 1550. Amendment of Application or Renewal Application.

(a) An application or a renewal application is amended by filing a certificate of amendment thereto in the Office of the Secretary of State. The certificate of amendment of an application or a renewal application shall set forth:

- (1) The name of the registered limited liability partnership; and
- (2) The amendment to the application or renewal application.

(b) No later than 90 days after the happening of any of the following events an amendment to an application or a renewal application reflecting the occurrence of the event or events shall be executed and filed by a majority in interest of the partners or by one or more partners authorized to execute an amendment to the application or renewal application:

(1) A change in the name of the registered limited liability partnership; or

(2) Except as provided in § 1549(b) and (c) of this title, a change in the address of the registered office or a change in the name or address of the registered agent of the registered limited liability partnership.

(c) No amendment of an application or a renewal application is required as a result of a change after the application or renewal application is filed in the number of partners of the registered limited liability partnership or in the business in which the registered limited liability partnership engages. The status of a partnership as a registered limited liability partnership shall not be affected by changes after the filing of an application or a renewal application in the information stated in the application or renewal application.

(d) An application or a renewal application may be amended at any time for any other proper purpose as determined by a majority in interest of the partners of the registered limited liability partnership or by one or more partners authorized to amend the application or renewal application.

(e) Unless otherwise provided in this title or in the certificate of amendment of an application or a renewal application or in a withdrawal notice of an application or a renewal application, a certificate of amendment of an application or a renewal application or a withdrawal notice of an application or a renewal application shall be effective at the time of its filing with the Secretary of State.

(f) A fee in the amount of \$100 shall be paid to the Secretary of State for the use of the State of Delaware upon the receipt for filing of a certificate of amendment of an application or a renewal application or a withdrawal notice of an application or a renewal application."

Section 10. Amend Chapter 15, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 1551" reading as follows:

"§ 1551. Notice.

The fact that an application, a renewal application or a certificate of amendment of an application or a renewal application is on file in the Office of the Secretary of State is notice that the partnership is a registered limited liability partnership and is notice of all other facts set forth in the application, renewal application or certificate of amendment of an application or a renewal application."

Section 11. Amend Chapter 15, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 1552" reading as follows:

"§ 1552. Procedures Concerning Filing of Documents and Issuance of Good Standing Certificates.

(a) The original signed copy of the application, renewal application, certificate of amendment of an application or a renewal application, and of any withdrawal notice of an application or a renewal application, shall be delivered to the Secretary of State. A person who executes an application, a renewal application, a certificate of amendment of an application or a renewal application, or any withdrawal notice of an application or a renewal application, as an agent or fiduciary, need not exhibit evidence of his authority as a prerequisite to filing. Any signature on any application, renewal application, certificate of amendment of an application or a renewal application, or any withdrawal notice of an application or a renewal application, filed with the Secretary of State under any provision of this chapter may be a facsimile. Unless the Secretary of State finds that any application, renewal application, certificate of amendment of an application or a renewal application, or any withdrawal notice of an application or a renewal application, does not conform to law, upon receipt of all filing fees required by law he shall:

(1) Certify that the application, renewal application, certificate of amendment of an application or a renewal application, or any withdrawal notice of an application or a renewal application, has been filed in his office by endorsing upon the application, renewal application, or certificate of amendment of an application or a renewal application, or any withdrawal notice of an application or a renewal application, the word "Filed", and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed application, renewal application, certificate of amendment of an application or a renewal application, or any written withdrawal notice of an application or a renewal application; and

(3) Prepare and return to the person who filed it or his representative a copy of the original signed instrument, similarly endorsed, and shall certify such copy as a true copy of the original signed instrument.

(b) A fee in the amount of \$20 shall be paid to the Secretary of State for use of the State of Delaware for a certified copy of any paper on file as provided for by this chapter, and a fee in the amount of \$5 for the first page and \$1 for each additional page shall be paid to the Secretary of State for the use of the State of Delaware for each page copied.

(c) The Secretary of State may issue certificates of good standing relating to registered limited liability partnerships for a fee in the amount of \$20 for the use of the State of Delaware, except that for issuing a certificate of good standing that recites all of the registered limited liability partnership's filings with the Secretary of State, a fee of \$100 shall be paid to the Secretary of State for the use of the State of Delaware."

Section 12. Amend Chapter 15, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§ 1553" reading as follows:

"§ 1553. Limited Partnerships as Registered Limited Liability Limited Partnerships.

A domestic limited partnership may become a registered limited liability limited partnership by complying with the applicable provisions of the Delaware Revised Uniform Limited Partnership Act (6 Del. C. § 17-101, et seq.)."

Section 13. This Act shall become effective on August 1, 1994.

Approved June 27, 1994.

CHAPTER 260

FORMERLY

SENATE BILL NO. 312

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):

Section 1. Amend §18-101, Chapter 18, Title 6 of the Delaware Code by redesignating paragraphs "(5)" through "(13)", as paragraphs "(6)" through "(14)", and by adding a new paragraph designated as paragraph "(5)" in its appropriate numerical order reading as follows:

"(5) 'Knowledge' means a person's actual knowledge of a fact, rather than the person's constructive knowledge of the fact."

Section 2. Amend §18-102(3), Chapter 18, Title 6 of the Delaware Code by adding at three places in the subsection immediately following the words "business trust", the words ", registered limited liability partnership".

Section 3. Amend §18-103(b), Chapter 18, Title 6 of the Delaware Code by deleting the words "together with a duplicate copy, which may be either a signed or conformed copy," in the three places where such words are contained in §18-103(b), and the last sentence of §18-103(b) in its entirety, and by adding a new sentence immediately following the last sentence of §18-103(b) reading as follows:

"Unless the Secretary of State finds that any application, notice of transfer, or notice of cancellation filed with the Secretary of State as required by this subsection does not conform to law, upon receipt of all filing fees required by law he shall prepare and return to the person who filed such instrument a copy of the filed instrument with a notation thereon of the action taken by the Secretary of State."

Section 4. Amend §18-107, Chapter 18, Title 6 of the Delaware Code by deleting the word "specific" contained therein, and by adding the punctuation mark ",," immediately following the words "and transact other business with".

Section 5. Amend Subchapter I, Chapter 18, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§18-110" to read as follows:

"§18-110. Contested Matters Relating to Managers; Contested Votes.

(a) Upon application of any member or manager, the Court of Chancery may hear and determine the validity of any admission, election, appointment or withdrawal of a manager of a limited liability company, and the right of any person to be a manager of a limited liability company, and, in case the right to serve as a manager is claimed by more than 1 person, may determine the person or persons entitled to serve as managers; and to that end make such order or decree in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the limited liability company relating to the issue. In any such application, service of copies of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company and upon the person or persons whose right to serve as a manager is contested and upon the person or persons, if any, claiming to be a manager or claiming the right to be a manager; and the registered agent shall forward immediately a copy of the application to the limited liability company and to the person or persons whose right to serve as a manager is contested and to the person or persons, if any, claiming to be a manager or the right to be a manager, in a postpaid, sealed, registered letter addressed to such limited liability company and such person or persons at their post-office addresses last known to the registered agent or furnished to the registered agent by the applicant member or manager. The Court may

make such order respecting further or other notice of such application as it deems proper under these circumstances.

(b) Upon application of any member or manager, the Court of Chancery may hear and determine the result of any vote of members or managers upon matters as to which the members or managers of the limited liability company, or any class or group of members or managers, have the right to vote pursuant to the limited liability company agreement or other agreement or this chapter (other than the admission, election, appointment or withdrawal of managers). Service of the application upon the registered agent of the limited liability company shall be deemed to be service upon the limited liability company, and no other party need be joined in order for the Court to adjudicate the result of the vote. The Court may make such order respecting further or other notice of such application as it deems proper under these circumstances.

(c) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents."

Section 6. Amend Subchapter I, Chapter 18, Title 6 of the Delaware Code by adding thereto a new section to be designated as "§18-111" to read as follows:

"§18-111. Interpretation and Enforcement of Limited Liability Company Agreement.

Any action to interpret, apply or enforce the provisions of a limited liability company agreement, or the duties, obligations or liabilities of a limited liability company to the members or managers of the limited liability company, or the duties, obligations or liabilities among members or managers and of members or managers to the limited liability company, or the rights or powers of, or restrictions on, the limited liability company, members or managers, may be brought in the Court of Chancery."

Section 7. Amend §18-201(a), Chapter 18, Title 6 of the Delaware Code by adding immediately after the punctuation mark ";" appearing at the end of subsection 18-201(a)(2) the word "and", by deleting subsection 18-201(a)(3) in its entirety, and by redesignating paragraph "(4)" as paragraph "(3)".

Section 8. Amend §18-206(a), Chapter 18, Title 6 of the Delaware Code by adding after the words "certificates of amendment", the words ", correction, termination of a merger or consolidation".

Section 9. Amend §18-206(a)(1), Chapter 18, Title 6 of the Delaware Code by adding after the words "certificate of amendment," the words "the certificate of correction, the certificate of termination of a merger or consolidation,".

Section 10. Amend §18-206(b), Chapter 18, Title 6 of the Delaware Code by adding immediately following "(or judicial decree of amendment)", the words ", certificate of correction", and by adding the following sentence at the end of said subsection:

"Upon the filing of a certificate of termination of a merger or consolidation, the certificate of merger or consolidation identified in the certificate of termination of a merger or consolidation is terminated."

Section 11. Amend §18-206(c), Chapter 18, Title 6 of the Delaware Code by adding immediately following the words "certificate of amendment," the words "a certificate of correction, a certificate of termination of a merger or consolidation,".

Section 12. Amend §18-209(a), Chapter 18, Title 6 of the Delaware Code by adding after the word "general", the words "(including a registered limited liability partnership)".

Section 13. Amend §18-209(d), Chapter 18, Title 6 of the Delaware Code by adding the following sentence at the end of said subsection:

"If a certificate of merger or consolidation provides for a future effective date or time and if an agreement of merger or consolidation is