

CHAPTER 269
FORMERLY
HOUSE BILL NO. 367

AN ACT TO AMEND CHAPTER 17, TITLE 6 OF THE DELAWARE CODE RELATING TO THE CREATION, REGULATION, OPERATION AND DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIPS AND THE REGISTRATION AND REGULATION OF FOREIGN LIMITED PARTNERSHIPS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 17-105, Chapter 17, Title 6 of the Delaware Code as follows:

§ 17-105. Service of process on domestic limited partnerships and series thereof.

(a) Service of legal process upon any domestic limited partnership or any series thereof established pursuant to § 17-218(b) of this title shall be made by delivering a copy personally to any managing or general agent or general partner of the limited partnership in the State of Delaware, or the registered agent of the limited partnership in the State of Delaware, or by leaving it at the dwelling house or usual place of abode in the State of Delaware of any such managing or general agent, general partner or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the limited partnership in the State of Delaware. If service of legal process is made upon the registered agent of the limited partnership in the State of Delaware on behalf of any such series, such process shall include the name of the limited partnership and the name of such series. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State of Delaware, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of an officer, managing or general agent, general partner or registered agent, or at the registered office or other place of business of the limited partnership in the State of Delaware, to be effective, must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in his or her return thereto. Process returnable forthwith must be delivered personally to the officer, managing or general agent, general partner or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the limited partnership or any series thereof established pursuant to § 17-218(b) of this title upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. If service of legal process is made upon the Secretary of State on behalf of any such series, such process shall include the name of the limited partnership and the name of such series. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the limited partnership by letter, directed to the limited partnership at the address of a general partner as it appears on the records relating to such limited partnership on file with the Secretary of State or, if no such address appears, at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay the Secretary of State the sum of \$50 for the use of the State of Delaware, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from the receipt of the service of process.

Section 2. Amend § 17-218(b), Chapter 17, Title 6 of the Delaware Code as follows:

§ 17-218. Series of limited partners, general partners, partnership interests or assets.

(b) Notwithstanding anything to the contrary set forth in this chapter or under other applicable law, in the event that a partnership agreement establishes or provides for the establishment of 1 or more series or states that the liabilities of a general partner are limited to the liabilities of a designated series, and if the records maintained for any such series account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof, and if the partnership agreement so provides, and if notice of the limitation on liabilities of a series or a general partner as referenced in this subsection is set forth in the certificate of limited partnership, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series or general partner shall be enforceable only against the assets of such series or a general partner associated with such series and not against the assets of the limited partnership generally, any other series thereof, or any general partner not associated with such series, and, unless otherwise provided in the partnership agreement, none of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or a general partner associated with such series. Neither the preceding sentence nor any provision pursuant thereto in a partnership agreement or certificate of limited partnership shall (i) restrict a series or limited partnership on behalf of a series or a general partner associated with a series from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the limited partnership generally or any other series thereof shall be enforceable against the assets of such series or a general partner associated with such series or (ii) restrict a limited partnership or a general partner of the limited partnership from agreeing in the partnership agreement or otherwise that any or all of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a series shall be enforceable against the assets of the limited partnership generally or the assets of the general partner. Assets associated with a series may be held directly or indirectly, including in the name of such series, in the name of the limited partnership, through a nominee or otherwise. Records maintained for a series that reasonably identify its assets, including by specific listing, category, type, quantity, computational or allocational formula or procedure (including a percentage or share of any asset or assets) or by any other method where the identity of such assets is objectively determinable, will be deemed to account for the assets associated with such series separately from the other assets of the limited partnership, or any other series thereof. As used in this chapter, a reference to assets of a series includes assets associated with a series and a reference to assets associated with a series includes assets of a series.

Section 3. Amend § 17-218(k), Chapter 17, Title 6 of the Delaware Code as follows:

§ 17-218. Series of limited partners, general partners, partnership interests or assets.

(k) Subject to § 17-801 of this title, except to the extent otherwise provided in the partnership agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited partnership. The termination of a series established in accordance with subsection (b) of this section shall not affect the limitation on liabilities of such series provided by subsection (b) of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited partnership under § 17-801 of this title or otherwise upon the first to occur of the following:

- (1) At the time specified in the partnership agreement;
- (2) Upon the happening of events specified in the partnership agreement;
- (3) Unless otherwise provided in the partnership agreement, upon the vote or consent of (i) all general partners associated with such series and (ii) limited partners associated with such series who own more than 2/3 of the then-current percentage or other interest in the profits of the limited partnership associated with such series owned by all of the limited partners associated with such series;
- (4) An event of withdrawal of a general partner associated with the series unless at the time there is at least 1 other general partner associated with the series and the partnership agreement permits the business of the series to be carried on by the remaining general partner and that partner does so, but the series is not terminated and is not required to be wound up by reason of any event of withdrawal if (i) within 90 days or such other period as is

provided for in the partnership agreement after the withdrawal either (A) if provided for in the partnership agreement, the then-current percentage or other interest in the profits of the series specified in the partnership agreement owned by the remaining partners associated with the series agree or vote to continue the business of the series and to appoint, effective as of the date of withdrawal, 1 or more additional general partners for the series if necessary or desired, or (B) if no such right to agree or vote to continue the business of the series of the limited partnership and to appoint 1 or more additional general partners for such series is provided for in the partnership agreement, then more than 50 percent of the then-current percentage or other interest in the profits of the series owned by the remaining partners associated with the series agree or vote to continue the business of the series and to appoint, effective as of the date of withdrawal, 1 or more additional general partners for the series if necessary or desired, or (ii) the business of the series is continued pursuant to a right to continue stated in the partnership agreement and the appointment, effective as of the date of withdrawal, of 1 or more additional general partners to be associated with the series if necessary or desired; or

(5) The termination of such series under subsection (m) of this section.

Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by clause (ii) of paragraph (k)(3) of this section and clause (i)(B) of paragraph (k)(4) of this section as in effect on July 31, 2015 (except that "in writing" shall be deleted from such clause (i)(B) of paragraph (k)(4)).

Section 4. Amend § 17-302(e), Chapter 17, Title 6 of the Delaware Code as follows:

§ 17-302. Classes and voting.

(e) Unless otherwise provided in a partnership agreement, meetings of limited partners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on, consented to or approved by limited partners, the limited partners may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law, by limited partners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all limited partners entitled to vote thereon were present and voted. Unless otherwise provided in a partnership agreement, if a person (whether or not then a limited partner) consenting as a limited partner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a limited partner at such future time so long as such person is then a limited partner. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on by limited partners, the limited partners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a partnership agreement, a consent transmitted by electronic transmission by a limited partner or by a person or persons authorized to act for a limited partner shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 5. Amend § 17-401(b), Chapter 17, Title 6 of the Delaware Code as follows:

§ 17-401. Admission of general partners.

(b) After the filing of a limited partnership's initial certificate of limited partnership, unless otherwise provided in the partnership agreement, additional general partners may be admitted only with the consent of each partner.

Section 6. Amend § 17-402(a), Chapter 17, Title 6 of the Delaware Code as follows:

§ 17-402. Events of withdrawal.

(a) A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(4) Unless otherwise provided in the partnership agreement, or with the consent of all partners, the general partner:

- a. Makes an assignment for the benefit of creditors;
- b. Files a voluntary petition in bankruptcy;
- c. Is adjudged a bankrupt or insolvent, or has entered against him or her an order for relief in any bankruptcy or insolvency proceeding;
- d. Files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
- e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of this nature; or
- f. Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his or her properties;

(5) Unless otherwise provided in the partnership agreement, or with the consent of all partners, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without the general partner's consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his or her properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;

(10) Unless otherwise provided in the partnership agreement, or with the consent of all partners, in the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership;

Section 7. Amend § 17-405(d), Chapter 17, Title 6 of the Delaware Code as follows:

§ 17-405. Classes and voting.

(d) Unless otherwise provided in a partnership agreement, meetings of general partners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on, consented to or approved by general partners, the general partners may take such action without a meeting, without prior notice and without a vote if consented to or approved, in writing, by electronic transmission or by any other means permitted by law, by general partners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all general partners entitled to vote thereon were present and voted. Unless otherwise provided in a partnership agreement, if a person (whether or not then a general partner) consenting as a general partner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a general partner at such future time so long as such person is then a general partner. Unless otherwise provided in a partnership agreement, on any matter that is to be voted on by general partners, the general partners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Unless otherwise provided in a partnership agreement, a consent transmitted by electronic transmission by a general partner or by a person or persons authorized to act for a general partner shall be deemed to be written and signed for purposes of this subsection (d). For purposes of this subsection (d), the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 8. Amend § 17-704(a), Chapter 17, Title 6 of the Delaware Code as follows:

§ 17-704. Right of assignee to become limited partner.

(a) An assignee of a partnership interest, including an assignee of a general partner, becomes a limited partner:

- (1) As provided in the partnership agreement; or
- (2) Unless otherwise provided in the partnership agreement, upon the vote or consent of all partners.

Section 9. Amend § 17-801, Chapter 17, Title 6 of the Delaware Code as follows:

§ 17-801. Nonjudicial dissolution.

A limited partnership is dissolved and its affairs shall be wound up upon the first to occur of the following:

- (1) At the time specified in a partnership agreement, but if no such time is set forth in the partnership agreement, then the limited partnership shall have a perpetual existence;

- (2) Unless otherwise provided in a partnership agreement, upon the vote or consent of (i) all general partners and (ii) limited partners who own more than 2/3 of the then-current percentage or other interest in the profits of the limited partnership owned by all of the limited partners;

- (3) An event of withdrawal of a general partner unless at the time there is at least 1 other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if (i) within 90 days or such other period as is provided for in a partnership agreement after the withdrawal either (A) if provided for in the partnership agreement, the then-current percentage or other interest in the profits of the limited partnership specified in the partnership agreement owned by the remaining partners agree or vote to continue the business of the limited partnership and to appoint, effective as of the date of withdrawal, 1 or more additional general partners if necessary or desired, or (B) if no such right to agree or vote to continue the business of the limited partnership and to appoint 1 or more additional general partners is provided for in the partnership agreement, then more than 50 percent of the then-current percentage or other interest in the profits of the limited partnership owned by the remaining partners agree or vote to continue the business of the limited partnership and to appoint, effective as of the date of withdrawal, 1 or more additional general partners if necessary or desired, or (ii) the business of the limited partnership is continued pursuant to a right to continue stated in the partnership agreement and; the appointment, effective as of the date of withdrawal, of 1 or more additional general partners if necessary or desired;

- (4) At the time there are no limited partners; provided, that the limited partnership is not dissolved and is not required to be wound up if:

- a. Unless otherwise provided in a partnership agreement, within 90 days or such other period as is provided for in the partnership agreement after the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, the personal representative of the last remaining limited partner and all of the general partners agree or vote to continue the business of the limited partnership and to the admission of the personal representative of such limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner; provided, that a partnership agreement may provide that the general partners or the personal representative of the last remaining limited partner shall be obligated to agree to continue the business of the limited partnership and to the admission of the personal representative of such limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last limited partner to cease to be a limited partner; or

- b. A limited partner is admitted to the limited partnership in the manner provided for in the partnership agreement, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, within 90 days or such other period as is provided for in the partnership agreement after the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, pursuant to a provision of the partnership agreement that specifically provides for the admission of a limited partner to the limited partnership after there is no longer a remaining limited partner of the limited partnership.

- (5) Upon the happening of events specified in a partnership agreement; or
- (6) Entry of a decree of judicial dissolution under § 17-802 of this title.

Unless otherwise provided in a partnership agreement, a limited partnership whose original certificate of limited partnership was filed with the Secretary of State and effective on or prior to July 31, 2015, shall continue to be governed by clause (ii) of paragraph (2) of this section and clause (i)(B) of paragraph (3) of this section as in effect on July 31, 2015 (except that "in writing" shall be deleted from such clause (i)(B) of paragraph (3)).

Section 10. Amend § 17-806, Chapter 17, Title 6 of the Delaware Code as follows:

§ 17-806. Revocation of dissolution.

If a partnership agreement provides the manner in which a dissolution may be revoked, it may be revoked in that manner and, unless a partnership agreement prohibits revocation of dissolution, then notwithstanding the occurrence of an event set forth in § 17-801(1), (2), (3), (4) or (5) of this title, the limited partnership shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation in the office of the Secretary of State, the business of the limited partnership is continued, effective as of the occurrence of such event:

(1) In the case of dissolution effected by the vote or consent of the partners or other persons, pursuant to such vote or consent (and the approval of any partners or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph);

(2) In the case of dissolution under § 17-801(1) or (5) of this title (other than a dissolution effected by the vote or consent of the partners or other persons, an event of withdrawal of a general partner or the occurrence of an event that causes the last remaining limited partner to cease to be a limited partner), pursuant to such vote or consent that, pursuant to the terms of the partnership agreement, is required to amend the provision of the partnership agreement effecting such dissolution (and the approval of any partners or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph); and

(3) In the case of dissolution effected by an event of withdrawal of a general partner or the occurrence of an event that causes the last remaining limited partner to cease to be a limited partner, pursuant to the vote or consent of:

a. All remaining general partners; and

b. Limited partners who own more than $\frac{2}{3}$ of the then-current percentage or other interest in the profits of the limited partnership owned by all of the limited partners, or if there is no remaining limited partner the personal representative of the last remaining limited partner of the limited partnership or the assignee of all of the limited partners' partnership interests in the limited partnership (and the approval of any partners or other persons whose approval is required under the partnership agreement to revoke a dissolution contemplated by this paragraph).

If dissolution is revoked pursuant to paragraph (3) of this section above and there is no remaining general partner of the limited partnership, 1 or more general partners shall be appointed, effective as of the date of withdrawal of the last remaining general partner, by the vote or consent of the limited partners of the limited partnership who own more than $\frac{2}{3}$ of the then-current percentage or other interest in the profits of the limited partnership owned by all of the limited partners. If dissolution is revoked pursuant to paragraph (3) of this section above and there is no remaining limited partner of the limited partnership, a nominee or designee of such personal representative or such assignee, as applicable, shall be appointed as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, by the vote or consent of the remaining general partners and such personal representative or such assignee, as applicable. If dissolution is revoked pursuant to paragraph (3) of this section above and there is no remaining general partner of the limited partnership and no remaining limited partner of the limited partnership, 1 or more general partners shall be appointed, effective as of the date of withdrawal of the last remaining general partner, and a nominee or designee of such personal representative or such assignee, as applicable, shall be appointed as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner, in each case, by the vote

or consent of such personal representative or such assignee, as applicable. The provisions of this section shall not be construed to limit the accomplishment of a revocation of dissolution by other means permitted by law.

Section 11. This Act shall become effective August 1, 2016.

Approved June 22, 2016