

**ANALYSIS OF 2003 AMENDMENTS TO THE
DELAWARE STATUTORY TRUST ACT**

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Introduction

The Delaware Statutory Trust Act, 12 *Del. C.* § 3801 *et seq.* (the “DST Act”), was amended in 2003, as it is periodically. These amendments to the DST Act were contained in Delaware State House Bill No. 268, and became effective August 1, 2003. *See* 74 *Del. Laws*, c. 52. The 2003 amendments were not substantive; House Bill No. 268 only amended provisions of the DST Act concerning Delaware Secretary of State fees and services. House Bill No. 202, however, separately amended Section 2704 of Title 6 of the Delaware Code relating to exculpatory clauses in certain contracts including trust agreements and governing instruments of Delaware statutory trusts. *See* 74 *Del. Laws*, c. 105.

Delaware Secretary of State Fees and Services [§§ 3813 and 3862]. House Bill No. 268 amended Sections 3813 and 3862 of the DST Act to adjust certain fees charged by the Delaware Secretary of State. The 2003 amendments also enable the Secretary of State to offer one-hour and two-hour expedited service.

Exculpatory Provisions in Trust Agreements and Governing Instruments [6 *Del. C.* § 2704]. Section 2704(a) of Title 6 of the Delaware Code renders void and unenforceable certain contractual provisions whereby a contracting party undertakes to indemnify or hold harmless another. Among other things, amendments to Section 2704 contained in House Bill No. 202 confirm the limited application of Section 2704(a) and clarify, in a new subsection (c), that Section 2704(a) does not apply to a covenant, promise, agreement, understanding, or other provision in a trust agreement or governing instrument of a Delaware statutory trust. The 2003 amendments to Section 2704 became effective August 1, 2003.