

DRAFT

FOR DISCUSSION ONLY

HARMONIZED
MODEL ENTITY TRANSACTIONS ACT
(Amendments to Model Entity Transactions Act (2007))

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

AMERICAN BAR ASSOCIATION

For March 4-6, 2011 Drafting Committee Meeting
on Harmonization of Business Entity Acts

Without Comments, but with Reporters' Notes

Strike and Score Version

Copyright © 2004, 2005, 2007, 2011
Jointly By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
and
AMERICAN BAR ASSOCIATION

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

February 21, 2011

DRAFTING COMMITTEE ON HARMONIZATION OF BUSINESS ENTITY ACTS

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

HARRY J. HAYNSWORTH, 2200 IDS Center, 80 S. 8th St., Minneapolis, MN 55402, *Chair*
WILLIAM H. CLARK, One Logan Square, 18th and Cherry Sts., Philadelphia, PA 19103-6996,
Vice-Chair
ANN E. CONAWAY, Widener University School of Law, 4601 Concord Pike, Wilmington, DE
19803
THOMAS E. GEU, University of South Dakota School of Law, 414 Clark St., Suite 214,
Vermillion, SD 57069-2390
DALE G. HIGER, 1302 Warm Springs Ave., Boise, ID 83712
JAMES C. MCKAY, Office of the Attorney General for the District of Columbia, 441 Fourth St.
NW, 6th Floor S., Washington, DC 20001
MARILYN E. PHELAN, 306 Peninsula Ct., Granbury, TX 76048
WILLIAM J. QUINLAN, Two First National Plaza, 20 S. Clark St., Suite 2900, Chicago, IL
60603
KEVIN P. SUMIDA, 735 Bishop St., Suite 411, Honolulu, HI 96813
JUSTIN L. VIGDOR, 2400 Chase Sq., Rochester, NY 14604
DAVID S. WALKER, Drake University Law School, 2507 University Ave., Des Moines, IA
50311
CARTER G. BISHOP, Suffolk University Law School, 120 Tremont St., Boston, MA 02108-
4977, *Co-Reporter*
DANIEL S. KLEINBERGER, William Mitchell College of Law, 875 Summit Ave., St. Paul,
MN 55105, *Co-Reporter*

EX OFFICIO

ROBERT A. STEIN, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN
55455, *President*
MARILYN E. PHELAN, 306 Peninsula Ct., Granbury, TX 76048, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

ROBERT R. KEATINGE, 555 17th St., Suite 3200, Denver, CO 80202-3979, *ABA Advisor*
WILLIAM J. CALLISON, 3200 Wells Fargo Center, 1700 Lincoln St., Denver, CO 80203, *ABA*
Section Advisor
ALLAN G. DONN, Wells Fargo Center, 440 Monticello Ave., Suite 2200, Norfolk, VA 23510-
2243, *ABA Section Advisor*
WILLIAM S. FORSBERG, 150 S. Fifth St., Suite 2300, Minneapolis, MN 55402-4238, *ABA*
Section Advisor
BARRY B. NEKRITZ, 8000 Willis Tower, 233 S. Wacker Dr., Chicago, IL 60606, *ABA Section*
Advisor
JAMES J. WHEATON, 222 Central Park Ave., Suite 2000, Virginia Beach, VA 23462, *ABA*
Section Advisor

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

111 N. Wabash Ave., Suite 1010

Chicago, Illinois 60602

312/450-6600

www.uniformlaws.org

HARMONIZED MODEL ENTITY TRANSACTIONS ACT

TABLE OF CONTENTS

<u>Introductory Reporters' Note</u>	1
---	---

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE.	2
SECTION 102. DEFINITIONS.	2
SECTION 103. RELATIONSHIP OF [ACT] TO OTHER LAWS.	11
SECTION 104. REQUIRED NOTICE OR APPROVAL.	12
SECTION 105. STATUS OF FILINGS.	12
SECTION 106. NONEXCLUSIVITY.	12
SECTION 107. REFERENCE TO EXTERNAL FACTS.	13
SECTION 108. ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS.	13
SECTION 109. APPRAISAL RIGHTS.	13
[SECTION 110. EXCLUDED ENTITIES AND TRANSACTIONS.	14

[ARTICLE] 2

MERGER

SECTION 201. MERGER AUTHORIZED.	15
SECTION 202. PLAN OF MERGER.	16
SECTION 203. APPROVAL OF MERGER.	16
SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.	18
SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.	19
SECTION 206. EFFECT OF MERGER.	20

[ARTICLE] 3

INTEREST EXCHANGE

SECTION 301. INTEREST EXCHANGE AUTHORIZED.	25
SECTION 302. PLAN OF INTEREST EXCHANGE.	26
SECTION 303. APPROVAL OF INTEREST EXCHANGE.	26
SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST	

EXCHANGE.	28
SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE.	29
SECTION 306. EFFECT OF INTEREST EXCHANGE.	30

[ARTICLE] 4

CONVERSION

SECTION 401. CONVERSION AUTHORIZED.	33
SECTION 402. PLAN OF CONVERSION.	33
SECTION 403. APPROVAL OF CONVERSION.....	34
SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.....	35
SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE.	37
SECTION 406. EFFECT OF CONVERSION.	38

[ARTICLE] 5

DOMESTICATION

SECTION 501. DOMESTICATION AUTHORIZED.	42
SECTION 502. PLAN OF DOMESTICATION.	43
SECTION 503. APPROVAL OF DOMESTICATION.....	43
SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION.	45
SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.	46
SECTION 506. EFFECT OF DOMESTICATION.	47

[ARTICLE] 6

MISCELLANEOUS PROVISIONS

SECTION 601. CONSISTENCY OF APPLICATION.....	51
SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	51
SECTION 603. CONFORMING AMENDMENTS AND REPEALS.....	51
SECTION 604. SAVINGS CLAUSE.....	51
SECTION 605. EFFECTIVE DATE.....	51

Introductory Reporters' Note

The proposed revisions to the text of the act set forth in this document have been prepared as part of a project that has two purposes: (i) to harmonize the language of all of the unincorporated entity laws, and (ii) to revise the language of each of those acts in a manner that permits their integration into a single code of entity laws.

The Reporters' Notes in this document are limited to explaining the source of certain of the proposed changes. Following the approval of the changes in this document by the Conference, the Reporters' Notes will be replaced with more usual comments that explain the provisions of the act.

The harmonization process has involved the revision of the following acts, some of which are referred to in the Reporters' Notes by the abbreviations listed below:

HUB	Business Organizations Act
META	Model Entity Transactions Act
MORAA	Model Registered Agents Act
UPA	Uniform Partnership Act (1997)
ULPA	Uniform Limited Partnership Act (2001)
ULLCA	Uniform Limited Liability Company Act (200_)
USTEA	Uniform Statutory Trust Entity Act
Coop Act	Uniform Limited Cooperative Association Act
UUNAA	Uniform Unincorporated Nonprofit Association Act (200_)

Changes to the currently effective text of the act are shown by ~~striking through text to be deleted~~ and underlining text to be added. Changes that adopt language from the HUB or MORAA, or are merely relocations of current language or corrections to cross references, are shown in black type. **Changes that adopt language from other unincorporated entity laws are shown in blue type.** **Changes that do not have a source in one of the existing unincorporated entity laws are shown in red type.** The "red" changes made in this act are replicated in other acts as a matter of harmonization and are shown in those acts in black type.

1 **HARMONIZED MODEL ENTITY TRANSACTIONS ACT**

2
3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS**

5 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Model Entity
6 Transactions Act.

7 **SECTION 102. DEFINITIONS.** In this [act]:

8 (1) “Acquired entity” means the entity, all of one or more classes or series of interests in
9 which are acquired in an interest exchange.

10 (2) “Acquiring entity” means the entity that acquires all of one or more classes or series
11 of interests of the acquired entity in an interest exchange.

12 (3) “Approve” means, in the case of an entity, for its governors and interest holders to
13 take whatever steps are necessary under its organic rules, organic law, and other law to:

14 (A) propose a transaction subject to this [act];

15 (B) adopt and approve the terms and conditions of the transaction; and

16 (C) conduct any required proceedings or otherwise obtain any required votes or
17 consents of the governors or interest holders.

18 (4) “Business corporation” means a corporation whose internal affairs are governed by
19 [the Model Business Corporation Act].

20 (5) “Conversion” means a transaction authorized by [Article] 4.

21 (6) “Converted entity” means the converting entity as it continues in existence after a
22 conversion.

23 (7) “Converting entity” means the domestic entity that approves a plan of conversion
24 pursuant to Section 403 or the foreign entity that approves a conversion pursuant to the law of its

jurisdiction of organization.

(8) “Distributional interest” means the right under an unincorporated entity’s organic law to receive distributions from the entity.

~~(8)~~ (9) “Domestic entity”, ~~means~~ with respect to an entity, whose means governed as to its internal affairs are governed by the law of this state.

~~(9)~~ (10) “Domesticated entity” means the domesticating entity as it continues in existence after a domestication.

~~(10)~~ (11) “Domesticating entity” means the domestic entity that approves a plan of domestication pursuant to Section 503 or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of organization.

~~(11)~~ (12) “Domestication” means a transaction authorized by [Article] 5.

~~(12)~~ (13) “Entity” ~~means:~~

(A) means:

~~(A)~~ (i) a business corporation;

~~(B)~~ (ii) a nonprofit corporation;

~~(C)~~ (iii) a general partnership, ~~including a limited liability partnership;~~

~~(D)~~ (iv) a limited partnership, ~~including a limited liability limited partnership;~~

~~(E)~~ (v) a limited liability company;

[(vi) a general cooperative association;]

(vii) a limited cooperative association;

(viii) an unincorporated nonprofit association;

~~(F)~~ (ix) a statutory trust, business trust, or common-law business trust or

1 ~~statutory trust entity;~~

2 ~~(G) an unincorporated nonprofit association;~~

3 ~~(H) a cooperative; or~~

4 ~~(I) (x) any other person that has a legal existence separate legal existence~~
5 ~~from any interest holder of that person or that has the power to acquire an interest in real~~
6 ~~property in its own name other than; and~~

7 (B) does not include:

8 (i) an individual;

9 (ii) a testamentary, inter vivos, or charitable trust, ~~with the exception of~~
10 ~~except a business trust, statutory trust, business trust, or common-law business trust entity or~~
11 ~~similar trust;~~

12 (iii) an association or relationship that is not a partnership solely by
13 reason of [Section 202(c) of the Revised Uniform Partnership Act ~~(1997)~~] [Section 7 of the
14 Uniform Partnership Act] or a similar provision of the law of ~~any other~~ another jurisdiction;

15 (iv) a decedent's estate; [or]

16 (v) a government, or a governmental subdivision, agency, or
17 instrumentality, [~~or~~ or] ~~a quasi-governmental instrumentality.~~

18 (vi) a person excluded under Section 110.]

19 ~~(13)~~ (14) "Filing entity" means an entity that is ~~created~~ formed by the filing of a public
20 organic ~~document~~ record.

21 ~~(14)~~ (15) "Foreign ~~entity~~", with respect to an entity, means an entity governed as to its
22 internal affairs by the law of a jurisdiction other than a ~~domestic entity~~ this state.

23 ~~(15)~~ (16) "Governance interest" means the right under the organic law or organic rules

1 of an entity, other than as a governor, agent, assignee, or proxy, to:

2 (A) receive or demand access to information concerning, or the books and
3 records of, the entity;

4 (B) vote for the election of the governors of the entity; or

5 (C) receive notice of or vote on any ~~or all issues~~ issue involving the internal
6 affairs of the entity.

7 ~~(16)~~ (17) “Governor” means:

8 (A) a director of a business corporation;

9 (B) a director or trustee of a nonprofit corporation;

10 (C) a general partner of a general partnership;

11 (D) a general partner of a limited partnership;

12 (E) a manager of a manager-managed limited liability company;

13 (F) a member of a member-managed limited liability company;

14 [(G) a director of a general cooperative association;]

15 (H) a director of a limited cooperative association;

16 (I) a manager of an unincorporated nonprofit association;

17 (J) a trustee of a statutory trust, business trust, or common-law business trust; or

18 (K) ~~any other~~ person by or under whose authority the powers of an entity are
19 exercised and under whose direction the ~~business activities~~ and affairs of the entity are managed
20 pursuant to the organic law and organic rules of the entity.

21 ~~(17)~~ (18) “Interest” means:

22 ~~(A) a governance interest in an unincorporated entity;~~

23 ~~(B) a transferable interest in an unincorporated entity; or~~

1 ~~(C) a share or membership in a corporation.~~

2 (A) a share in a business corporation;

3 (B) a membership in a nonprofit corporation;

4 (C) a partnership interest in a general partnership;

5 (D) a partnership interest in a limited partnership;

6 (E) a membership interest in a limited liability company;

7 [(F) a share in a general cooperative association;]

8 (G) a member's interest in a limited cooperative association;

9 (H) a membership in an unincorporated nonprofit association;

10 (I) a beneficial interest in a statutory trust, business trust, or common-law

11 business trust;

12 (J) a governance interest in any other type of unincorporated entity; or

13 (K) a distributional interest in an unincorporated entity.

14 ~~(18)~~ (19) "Interest exchange" means a transaction authorized by [Article] 3.

15 ~~(19)~~ (20) "Interest holder" means: ~~a direct holder of an interest.~~

16 (A) a shareholder of a business corporation;

17 (B) a member of a nonprofit corporation;

18 (C) a general partner of a general partnership;

19 (D) a general partner of a limited partnership;

20 (E) a limited partner of a limited partnership;

21 (F) a member of a limited liability company;

22 [(G) a shareholder of a general cooperative association;]

23 (H) a member of a limited cooperative association;

1 (I) a member of an unincorporated nonprofit association;

2 (J) a beneficiary of a statutory trust, business trust, or common-law business
3 trust; or

4 (K) any other direct holder of an interest.

5 (20) (21) “Interest holder liability” means:

6 (A) personal liability for a liability of an entity that is imposed on a person:

7 (i) solely by reason of the status of the person as an interest holder; or

8 (ii) by the organic rules of the entity ~~pursuant to a provision of the~~
9 ~~organic law authorizing the organic rules to~~ that make one or more specified interest holders or
10 categories of interest holders liable in their capacity as interest holders for all or specified
11 liabilities of the entity; or

12 (B) an obligation of an interest holder under the organic rules of an entity to
13 contribute to the entity.

14 (24) (22) “Jurisdiction of ~~organization-formation~~” ~~of an entity~~ means the jurisdiction
15 whose law includes the organic law of ~~the~~ an entity.

16 ~~(22) “Liability” means a debt, obligation, or any other liability arising in any manner,~~
17 ~~regardless of whether it is secured or whether it is contingent.~~

18 (23) “Merger” means a transaction in which two or more merging entities are combined
19 into a surviving entity pursuant to a ~~filing with~~ record filed by the [Secretary of State].

20 (24) “Merging entity” means an entity that is a party to a merger and exists immediately
21 before the merger becomes effective.

22 (25) “Nonprofit corporation” means a corporation whose internal affairs are governed by
23 [the Model Nonprofit Corporation Act].

1 (26) “Organic law” means the ~~statutes, if any, other than this [act],~~ law of an entity’s
2 jurisdiction of formation governing the internal affairs of ~~an~~ the entity.

3 (27) “Organic rules” means the public organic ~~document~~ record and private organic rules
4 of an entity.

5 (28) “Person” means an individual, business corporation, nonprofit corporation, estate,
6 ~~trust,~~ partnership, limited partnership, limited liability company, [general cooperative
7 association,] limited cooperative association, unincorporated nonprofit association, statutory
8 trust, business or similar trust; or common-law business trust, estate, trust, association, joint
9 venture, public corporation, government, or governmental subdivision, agency, or
10 instrumentality, or any other legal or commercial entity.

11 (29) “Plan” means a plan of merger, interest exchange, conversion, or domestication.

12 (30) “Private organic rules” mean the rules, whether or not in a record, that govern the
13 internal affairs of an entity, are binding on all of its interest holders, and are not part of its public
14 organic ~~document~~ record, if any. The term includes:

15 (A) the bylaws of a business corporation;

16 (B) the bylaws of a nonprofit corporation;

17 (C) the partnership agreement of a general partnership;

18 (D) the partnership agreement of a limited partnership;

19 (E) the operating agreement of a limited liability company;

20 [(F) the bylaws of a general cooperative association;]

21 (G) the bylaws of a limited cooperative association;

22 (H) the governing principles of an unincorporated nonprofit association; and

23 (I) the trust instrument of a statutory trust, business trust, or common-law

1 business trust.

2 (31) “Protected agreement” means:

3 (A) a record evidencing indebtedness and any related agreement in effect on the
4 effective date of this [act];

5 (B) an agreement that is binding on an entity on the effective date of this [act];

6 (C) the organic rules of an entity in effect on the effective date of this [act]; or

7 (D) an agreement that is binding on any of the governors or interest holders of an
8 entity on the effective date of this [act].

9 (32) “Public organic ~~document record~~” means the ~~public~~ record the filing of which ~~by~~
10 ~~the [Secretary of State] creates forms~~ an entity, and any amendment to or restatement of that
11 record. The term includes the:

12 (A) articles of incorporation of a business corporation;

13 (B) articles of incorporation of a nonprofit corporation;

14 (C) certificate of limited partnership of a limited partnership;

15 (D) certificate of organization of a limited liability company;

16 [(E) articles of incorporation of a general cooperative association;]

17 (F) articles of organization of a limited cooperative association; and

18 (G) certificate of trust of a statutory trust or business trust.

19 ~~(33) “Qualified foreign entity” means a foreign entity that is authorized to transact~~
20 ~~business in this state pursuant to a filing with the [Secretary of State].~~

21 ~~(34)~~ (33) “Record”, used as a noun, means information that is inscribed on a tangible
22 medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

23 (34) “Registered foreign entity” means a foreign entity that is registered or otherwise

1 qualified to do business in this state pursuant to a record filed by the [Secretary of State].

2 (35) “Sign” means, with present intent to authenticate or adopt a record:

3 (A) to execute or adopt a tangible symbol; or

4 (B) to attach to or logically associate with the record an electronic symbol,
5 sound, ~~symbol~~, or process.

6 (36) “Surviving entity” means the entity that continues in existence after or is created by
7 a merger.

8 ~~(37) “Transferable interest” means the right under an entity’s organic law to receive~~
9 ~~distributions from the entity.~~

10 (37) “Transfer” includes:

11 (A) an assignment;

12 (B) a conveyance;

13 (C) a sale;

14 (D) a lease;

15 (E) an encumbrance, including by mortgaging or granting a security interest;

16 (F) a gift; and

17 (G) a transfer by operation of law.

18 (38) “Type of entity;” ~~with regard to an entity~~, means a generic form of entity:

19 (A) recognized at common law; or

20 (B) ~~organized~~ formed under an organic law, whether or not some entities
21 ~~organized~~ formed under that organic law are subject to provisions of that law that create different
22 categories of the form of entity.

1 **Reporters' Note**

2 Substitution of “distributional interest” for “transferable interest” made for purposes of
3 clarity. Similar change made in HUB § 1-102.

4
5 “Entity” conformed to HUB § 1-102.

6
7 “Governor” conformed to HUB § 1-102.

8 “Interest” conformed to HUB § 1-102.

9 “Jurisdiction of organization” changed to “jurisdiction of formation” to track HUB § 1-
10 102. Conforming changes have been made throughout this act.

11
12 “Liability” deleted as unnecessary.

13
14 “Organic law” conformed to HUB § 1-102.

15
16 “Person” conformed to HUB § 1-102.

17
18 “Private organic rules” conformed to HUB § 1-102.

19
20 “Public organic document” changed to “public organic record to track HUB § 1-102 and
21 current usage by the Conference. Conforming changes have been made throughout this act.

22
23 “Qualified foreign entity” changed to “registered foreign entity” to track HUB § 1-102.
24 Conforming changes have been made throughout this act.

25
26 “Transfer” added to conform to HUB § 1-102 which patterned the definition after
27 harmonized ULLCA § 102.

28
29 **SECTION 103. RELATIONSHIP OF [ACT] TO OTHER LAWS.**

30 (a) Unless displaced by particular provisions of this [act], the principles of law and
31 equity supplement this [act].

32 (b) This [act] does not authorize an act prohibited by, and does not affect the application
33 or requirements of, law other than this [act].

34 (c) A transaction effected under this [act] may not create or impair any right or
35 obligation on the part of a person under a provision of the law of this state other than this [act]
36 relating to a change in control, takeover, business combination, control-share acquisition, or

1 similar transaction involving a domestic merging, acquired, converting, or domesticating
2 corporation unless:

3 (1) if the corporation does not survive the transaction, the transaction satisfies
4 any requirements of the provision; or

5 (2) if the corporation survives the transaction, the approval of the plan is by a
6 vote of the shareholders or directors which would be sufficient to create or impair the right or
7 obligation directly under the provision.

8 **SECTION 104. REQUIRED NOTICE OR APPROVAL.**

9 (a) A domestic or foreign entity that is required to give notice to, or obtain the approval
10 of, a governmental agency or officer of this state in order to be a party to a merger must give the
11 notice or obtain the approval in order to be a party to an interest exchange, conversion, or
12 domestication.

13 (b) Property held for a charitable purpose under the law of this state by a domestic or
14 foreign entity immediately before a transaction under this [act] becomes effective may not, as a
15 result of the transaction, be diverted from the objects for which it was donated, granted, or
16 devised unless, to the extent required by or pursuant to the law of this state concerning cy pres or
17 other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order
18 of [name of court] [the attorney general] specifying the disposition of the property.

19 **SECTION 105. STATUS OF FILINGS.** A filing under this [act] signed by a domestic
20 entity becomes part of the public organic ~~document~~ record of the entity if the entity's organic
21 law provides that similar filings under that law become part of the public organic ~~document~~
22 record of the entity.

23 **SECTION 106. NONEXCLUSIVITY.** The fact that a transaction under this [act]

1 produces a certain result does not preclude the same result from being accomplished in any other
2 manner permitted by law other than this [act].

3 **SECTION 107. REFERENCE TO EXTERNAL FACTS.** A plan may refer to facts
4 ascertainable outside of the plan if the manner in which the facts will operate upon the plan is
5 specified in the plan. The facts may include the occurrence of an event or a determination or
6 action by a person, whether or not the event, determination, or action is within the control of a
7 party to the transaction.

8 **SECTION 108. ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS.**
9 Except as otherwise provided in the organic law or organic rules of a domestic entity, approval
10 of a transaction under this [act] by the unanimous vote or consent of its interest holders satisfies
11 the requirements of this [act] for approval of the transaction.

12 **SECTION 109. APPRAISAL RIGHTS.**

13 (a) An interest holder of a domestic merging, acquired, converting, or domesticating
14 entity is entitled to appraisal rights in connection with the transaction if the interest holder would
15 have been entitled to appraisal rights under the entity's organic law in connection with a merger
16 in which the interest of the interest holder was changed, converted, or exchanged unless:

17 (1) the organic law permits the organic rules to limit the availability of appraisal
18 rights; and

19 (2) the organic rules provide such a limit.

20 (b) An interest holder of a domestic merging, acquired, converting, or domesticating
21 entity is entitled to contractual appraisal rights in connection with a transaction under this [act] to
22 the extent provided:

23 (1) in the entity's organic rules;

(2) in the plan; or

(3) in the case of a business corporation, by action of its governors.

(c) If an interest holder is entitled to contractual appraisal rights under subsection (b) and the entity's organic law does not provide procedures for the conduct of an appraisal rights proceeding, [Chapter 13 of the Model Business Corporation Act] applies to the extent practicable or as otherwise provided in the entity's organic rules or the plan.

[SECTION 110. EXCLUDED ENTITIES AND TRANSACTIONS.

(a) The following entities may not participate in a transaction under this [act]:

(1)

(2).₂

(b) This [act] may not be used to effect a transaction that:

(1)

(2)

(3).]

1 [ARTICLE] 2

2 MERGER

3 SECTION 201. MERGER AUTHORIZED.

4 (a) Except as otherwise provided in this section, by complying with this [article]:

5 (1) one or more domestic entities may merge with one or more domestic or
6 foreign entities into a domestic or foreign surviving entity; and

7 (2) two or more foreign entities may merge into a domestic entity.

8 (b) Except as otherwise provided in this section, by complying with the provisions of
9 this [article] applicable to foreign entities a foreign entity may be a party to a merger under this
10 [article] or may be the surviving entity in such a merger if the merger is authorized by the law of
11 the foreign entity's jurisdiction of organization.

12 (c) This [article] does not apply to a transaction under:

13 (1) [Chapter 11 of the Model Business Corporation Act];

14 (2) [Chapter 11 of the Model Nonprofit Corporation Act];

15 (3) [Article 9 of the Uniform Partnership Act (1997)];

16 (4) [Article 11 of the Uniform Limited Partnership Act (2001)];

17 (5) [Article 12 of the Prototype Limited Liability Company Act];

18 (6) [Article 9 of the Uniform Limited Liability Company Act (1996)];

19 (7) [Article 10 of the Uniform Limited Liability Company Act (2006)]; [or]

20 (8) [Article 15 of the Uniform Limited Cooperative Association Act (2007)] [; or

21 (9) Cite provisions of any other organic law that has merger provisions for
22 entities of the same type].

23 [(d) The following entities may not participate in a merger under this [article]:

1 (1)

2 (2).]

3 **SECTION 202. PLAN OF MERGER.**

4 (a) A domestic entity may become a party to a merger under this [article] by approving a
5 plan of merger. The plan must be in a record and contain:

6 (1) as to each merging entity, its name, jurisdiction of organization, and type;

7 (2) if the surviving entity is to be created in the merger, a statement to that effect
8 and its name, jurisdiction of organization, and type;

9 (3) the manner of converting the interests in each party to the merger into
10 interests, securities, obligations, rights to acquire interests or securities, cash, or other property,
11 or any combination of the foregoing;

12 (4) if the surviving entity exists before the merger, any proposed amendments to
13 its public organic ~~document~~ record or to its private organic rules that are, or are proposed to be,
14 in a record;

15 (5) if the surviving entity is to be created in the merger, its proposed public
16 organic ~~document~~ record, if any, and the full text of its private organic rules that are proposed to
17 be in a record;

18 (6) the other terms and conditions of the merger; and

19 (7) any other provision required by the law of a merging entity's jurisdiction of
20 organization or the organic rules of a merging entity.

21 (b) A plan of merger may contain any other provision not prohibited by law.

22 **SECTION 203. APPROVAL OF MERGER.**

23 (a) A plan of merger is not effective unless it has been approved:

1 (1) by a domestic merging entity:

2 (A) in accordance with the requirements, if any, in its organic law and
3 organic rules for approval of:

4 (i) in the case of an entity that is not a business corporation, a
5 merger; or

6 (ii) in the case of a business corporation, a merger requiring
7 approval by a vote of the interest holders of the business corporation; or

8 (B) if neither its organic law nor organic rules provide for approval of a
9 merger described in subparagraph (A)(ii), by all of the interest holders of the entity entitled to
10 vote on or consent to any matter; and

11 (2) in a record, by each interest holder of a domestic merging entity that will
12 have interest holder liability for debts, obligations, and other liabilities that arise after the merger
13 becomes effective, unless, in the case of an entity that is not a business corporation or nonprofit
14 corporation:

15 (A) the organic rules of the entity provide in a record for the approval of a
16 merger in which some or all of its interest holders become subject to interest holder liability by
17 the vote or consent of fewer than all of the interest holders; and

18 (B) the interest holder voted for or consented in a record to that provision
19 of the organic rules or became an interest holder after the adoption of that provision.

20 (b) A merger involving a foreign merging entity is not effective unless ~~it~~ the merger is
21 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of
22 organization.

1 **SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.**

2 (a) A plan of merger of a domestic merging entity may be amended:

3 (1) in the same manner as the plan was approved, if the plan does not provide for
4 the manner in which it may be amended; or

5 (2) by the governors or interest holders of the entity in the manner provided in
6 the plan, but an interest holder that was entitled to vote on or consent to approval of the merger is
7 entitled to vote on or consent to any amendment of the plan that will change:

8 (A) the amount or kind of interests, securities, obligations, rights to
9 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
10 received by the interest holders of any party to the plan;

11 (B) the public organic ~~document~~ record or private organic rules of the
12 surviving entity that will be in effect immediately after the merger becomes effective, except for
13 changes that do not require approval of the interest holders of the surviving entity under its
14 organic law or organic rules; or

15 (C) any other terms or conditions of the plan, if the change would
16 adversely affect the interest holder in any material respect.

17 (b) After a plan of merger has been approved by a domestic merging entity and before a
18 statement of merger becomes effective, the plan may be abandoned:

19 (1) as provided in the plan; or

20 (2) unless prohibited by the plan, in the same manner as the plan was approved.

21 (c) If a plan of merger is abandoned after a statement of merger has been ~~filed with~~
22 delivered to the [Secretary of State] for filing and before the ~~filing statement~~ becomes effective,
23 a statement of abandonment, signed ~~on behalf of~~ by a merging entity, must be ~~filed with~~

1 ~~delivered to the~~ [Secretary of State] for filing ~~before the time~~ the statement of merger becomes
2 effective. The statement of abandonment takes effect upon filing, and the merger is abandoned
3 and does not become effective. The statement of abandonment must contain:

4 (1) the name of each merging or surviving entity that is a domestic entity or a
5 ~~qualified~~ registered foreign entity;

6 (2) the date on which the statement of merger was ~~filed~~ delivered to the
7 [Secretary of State] for filing; and

8 (3) a statement that the merger has been abandoned in accordance with this
9 section.

10 **SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.**

11 (a) A statement of merger must be signed ~~on behalf of~~ by each merging entity and ~~filed~~
12 ~~with~~ delivered to the [Secretary of State] for filing.

13 (b) A statement of merger must contain:

14 (1) the name, jurisdiction of organization, and type of each merging entity that is
15 not the surviving entity;

16 (2) the name, jurisdiction of organization, and type of the surviving entity;

17 (3) if the statement of merger is not to be effective upon filing, the later date and
18 time on which it will become effective, which may not be more than 90 days after the date of
19 filing;

20 (4) a statement that the merger was approved by each domestic merging entity, if
21 any, in accordance with this [article] and by each foreign merging entity, if any, in accordance
22 with the law of its jurisdiction of organization;

23 (5) if the surviving entity exists before the merger and is a domestic filing entity,

1 any amendment to its public organic ~~document~~ record approved as part of the plan of merger;

2 (6) if the surviving entity is created by the merger and is a domestic filing entity,
3 its public organic ~~document~~ record, as an attachment;

4 (7) if the surviving entity is created by the merger and is a domestic limited
5 liability partnership, its [statement of qualification], as an attachment; and

6 (8) if the surviving entity is a foreign entity that is not a ~~qualified~~ registered
7 foreign entity, a mailing address to which the [Secretary of State] may send any process served
8 on the [Secretary of State] pursuant to Section 206(e).

9 (c) In addition to the requirements of subsection (b), a statement of merger may contain
10 any other provision not prohibited by law.

11 (d) If the surviving entity is a domestic entity, its public organic ~~document~~ record, if any,
12 must satisfy the requirements of the law of this state, except that it does not need to be signed
13 and may omit any provision that is not required to be included in a restatement of the public
14 organic ~~document~~ record.

15 (e) A plan of merger that is signed ~~on behalf of~~ by all of the merging entities and meets
16 all of the requirements of subsection (b) may be ~~filed with~~ delivered to the [Secretary of State]
17 for filing instead of a statement of merger and upon filing has the same effect. If a plan of
18 merger is filed as provided in this subsection, references in this [act] to a statement of merger
19 refer to the plan of merger filed under this subsection.

20 (f) A statement of merger becomes effective upon the date and time of filing or the later
21 date and time specified in the statement of merger.

22 **SECTION 206. EFFECT OF MERGER.**

23 (a) When a merger becomes effective:

- 1 (1) the surviving entity continues or comes into existence;
- 2 (2) each merging entity that is not the surviving entity ceases to exist;
- 3 (3) all property of each merging entity vests in the surviving entity without
- 4 transfer, assignment, reversion, or impairment;
- 5 (4) all debts, obligations, and other liabilities of each merging entity are debts,
- 6 obligations, and other liabilities of the surviving entity;
- 7 (5) except as otherwise provided by law ~~other than this [act]~~ or the plan of
- 8 merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity
- 9 vest in the surviving entity;
- 10 (6) if the surviving entity exists before the merger:
 - 11 (A) all of its property continues to be vested in it without transfer,
 - 12 reversion, or impairment;
 - 13 (B) it remains subject to all of its debts, obligations, and other liabilities;
 - 14 and
 - 15 (C) all of its rights, privileges, immunities, powers, and purposes continue
 - 16 to be vested in it;
- 17 (7) the name of the surviving entity may be substituted for the name of any
- 18 merging entity that is a party to any pending action or proceeding;
- 19 (8) if the surviving entity exists before the merger:
 - 20 (A) its public organic ~~document~~ record, if any, is amended as provided in
 - 21 the statement of merger ~~and is binding on its interest holders~~; and
 - 22 (B) its private organic rules that are to be in a record, if any, are amended
 - 23 to the extent provided in the plan of merger ~~and are binding on and enforceable by:~~

1 ~~(i) its interest holders; and~~
2 ~~(ii) in the case of a surviving entity that is not a business~~
3 ~~corporation or a nonprofit corporation, any other person that is a party to an agreement that is~~
4 ~~part of the surviving entity's private organic rules;~~

5 (9) if the surviving entity is created by the merger:

6 (A) its public organic ~~document~~ record, if any, is effective ~~and is binding~~
7 ~~on its interest holders;~~ and

8 (B) its private organic rules are effective ~~and are binding on and~~
9 ~~enforceable by:~~

10 ~~(i) its interest holders; and~~
11 ~~(ii) in the case of a surviving entity that is not a business~~
12 ~~corporation or a nonprofit corporation, any other person that was a party to an agreement that~~
13 ~~was part of the organic rules of a merging entity if that person has agreed to be a party to an~~
14 ~~agreement that is part of the surviving entity's private organic rules; and~~

15 (10) the interests in each merging entity that are to be converted in the merger are
16 converted, and the interest holders of those interests are entitled only to the rights provided to
17 them under the plan of merger and to any appraisal rights they have under Section 109 and the
18 merging entity's organic law.

19 (b) Except as otherwise provided in the organic law or organic rules of a merging entity,
20 the merger does not give rise to any rights that an interest holder, governor, or third party would
21 otherwise have upon a dissolution, liquidation, or winding-up of the merging entity.

22 (c) When a merger becomes effective, a person that did not have interest holder liability
23 with respect to any of the merging entities and that becomes subject to interest holder liability

1 with respect to a domestic entity as a result of a merger has interest holder liability only to the
2 extent provided by the organic law of ~~the~~ that entity and only for those debts, obligations, and
3 other liabilities that arise after the merger becomes effective.

4 (d) When a merger becomes effective, the interest holder liability of a person that ceases
5 to hold an interest in a domestic merging entity with respect to which the person had interest
6 holder liability is as follows:

7 (1) the merger does not discharge any interest holder liability under the organic
8 law of the domestic merging entity to the extent the interest holder liability arose before the
9 merger became effective;

10 (2) the person does not have interest holder liability under the organic law of the
11 domestic merging entity for any liability that arises after the merger becomes effective;

12 (3) the organic law of the domestic merging entity continues to apply to the
13 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
14 if the merger had not occurred and the surviving entity were the domestic merging entity; and

15 (4) the person has whatever rights of contribution from any other person as are
16 provided by other law or the organic law or organic rules of the domestic merging entity with
17 respect to any interest holder liability preserved under paragraph (1) as if the merger had not
18 occurred.

19 (e) When a merger becomes effective, a foreign entity that is the surviving entity:

20 (1) may be served with process in this state for the collection and enforcement of
21 any debts, obligations, or other liabilities of a domestic merging entity; and

22 (2) appoints the [Secretary of State] as its agent for service of process for
23 collecting or enforcing those debts, obligations, and other liabilities.

1 (f) When a merger becomes effective, the ~~certificate of authority~~ registration to do
2 business in this state or other foreign qualification of any foreign merging entity that is not the
3 surviving entity is canceled.

4 **Reporters' Note**

5 Subsection (a)(8) and (9): These provisions have been simplified without change in
6 substance. When an amendment to the public organic record or private organic rules takes
7 effect, the amendment will be binding on the interest holders of the entity under the organic law
8 of the entity. Similarly, when a new entity is created in a merger, its public organic record and
9 private organic rules will be binding on its interest holders under the organic law of the entity.
10 Similar change have been made in other provisions of this act; see §§ 306, 406, and 506.
11

1 [ARTICLE] 3

2 INTEREST EXCHANGE

3 SECTION 301. INTEREST EXCHANGE AUTHORIZED.

4 (a) Except as otherwise provided in this section, by complying with this [article]:

5 (1) a domestic entity may acquire all of one or more classes or series of interests
6 of another domestic or foreign entity in exchange for interests, securities, obligations, rights to
7 acquire interests or securities, cash, or other property, or any combination of the foregoing; or

8 (2) all of one or more classes or series of interests of a domestic entity may be
9 acquired by another domestic or foreign entity in exchange for interests, securities, obligations,
10 rights to acquire interests or securities, cash, or other property, or any combination of the
11 foregoing.

12 (b) Except as otherwise provided in this section, by complying with the provisions of
13 this [article] applicable to foreign entities a foreign entity may be the acquiring or acquired entity
14 in an interest exchange under this [article] if the interest exchange is authorized by the law of the
15 foreign entity's jurisdiction of organization.

16 (c) If a protected agreement contains a provision that applies to a merger of a domestic
17 entity but does not refer to an interest exchange, the provision applies to an interest exchange in
18 which the domestic entity is the acquired entity as if the interest exchange were a merger until
19 the provision is amended after the effective date of this [act].

20 [(d) This [article] does not apply to a transaction under:

21 (1) [Chapter 11 of the Model Business Corporation Act]; or

22 (2).]

23 [(e) The following entities may not participate in an interest exchange under this

1 [article]:

2 (1)

3 (2).]

4 **SECTION 302. PLAN OF INTEREST EXCHANGE.**

5 (a) A domestic entity may be the acquired entity in an interest exchange under this
6 [article] by approving a plan of interest exchange. The plan must be in a record and contain:

7 (1) the name and type of the acquired entity;

8 (2) the name, jurisdiction of organization, and type of the acquiring entity;

9 (3) the manner of converting the interests in the acquired entity into interests,
10 securities, obligations, rights to acquire interests or securities, cash, or other property, or any
11 combination of the foregoing;

12 (4) any proposed amendments to the public organic ~~document~~ record or private
13 organic rules that are, or are proposed to be, in a record of the acquired entity;

14 (5) the other terms and conditions of the interest exchange; and

15 (6) any other provision required by the law of this state or the organic rules of the
16 acquired entity.

17 (b) A plan of interest exchange may contain any other provision not prohibited by law.

18 **SECTION 303. APPROVAL OF INTEREST EXCHANGE.**

19 (a) A plan of interest exchange is not effective unless it has been approved:

20 (1) by a domestic acquired entity:

21 (A) in accordance with the requirements, if any, in its organic law and
22 organic rules for approval of an interest exchange;

23 (B) except as otherwise provided in subsection (d), if neither its organic

1 law nor organic rules provide for approval of an interest exchange, in accordance with the
2 requirements, if any, in its organic law and organic rules for approval of:

3 (i) in the case of an entity that is not a business corporation, a
4 merger, as if the interest exchange were a merger; or

5 (ii) in the case of a business corporation, a merger requiring
6 approval by a vote of the interest holders of the business corporation, as if the interest exchange
7 were that type of merger; or

8 (C) if neither its organic law nor organic rules provide for approval of an
9 interest exchange or a merger described in subparagraph (B)(ii), by all of the interest holders of
10 the entity entitled to vote on or consent to any matter; and

11 (2) in a record, by each interest holder of a domestic acquired entity that will
12 have interest holder liability for debts, obligations, and other liabilities that arise after the interest
13 exchange becomes effective, unless, in the case of an entity that is not a business corporation or
14 nonprofit corporation:

15 (A) the organic rules of the entity provide in a record for the approval of
16 an interest exchange or a merger in which some or all of its interest holders become subject to
17 interest holder liability by the vote or consent of fewer than all of the interest holders; and

18 (B) the interest holder voted for or consented in a record to that provision
19 of the organic rules or became an interest holder after the adoption of that provision.

20 (b) An interest exchange involving a foreign acquired entity is not effective unless it is
21 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of
22 organization.

23 (c) Except as otherwise provided in its organic law or organic rules, the interest holders

1 of the acquiring entity are not required to approve the interest exchange.

2 (d) A provision of the organic law of a domestic acquired entity that would permit a
3 merger between the acquired entity and the acquiring entity to be approved without the vote or
4 consent of the interest holders of the acquired entity because of the percentage of interests in the
5 acquired entity held by the acquiring entity does not apply to approval of an interest exchange
6 under subsection (a)(1)(B).

7 **SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST**
8 **EXCHANGE.**

9 (a) A plan of interest exchange of a domestic acquired entity may be amended:

10 (1) in the same manner as the plan was approved, if the plan does not provide for
11 the manner in which it may be amended; or

12 (2) by the governors or interest holders of the entity in the manner provided in
13 the plan, but an interest holder that was entitled to vote on or consent to approval of the interest
14 exchange is entitled to vote on or consent to any amendment of the plan that will change:

15 (A) the amount or kind of interests, securities, obligations, rights to
16 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
17 received by any of the interest holders of the acquired entity under the plan;

18 (B) the public organic ~~document~~ record or private organic rules of the
19 acquired entity that will be in effect immediately after the interest exchange becomes effective,
20 except for changes that do not require approval of the interest holders of the acquired entity
21 under its organic law or organic rules; or

22 (C) any other terms or conditions of the plan, if the change would
23 adversely affect the interest holder in any material respect.

(b) After a plan of interest exchange has been approved by a domestic acquired entity and before a statement of interest exchange becomes effective, the plan may be abandoned:

(1) as provided in the plan; or

(2) unless prohibited by the plan, in the same manner as the plan was approved.

(c) If a plan of interest exchange is abandoned after a statement of interest exchange has been ~~filed with~~ delivered to the [Secretary of State] for filing and before the filing becomes effective, a statement of abandonment, signed ~~on behalf of~~ by the acquired entity, must be ~~filed with~~ delivered to the [Secretary of State] for filing ~~before the time~~ the statement of interest exchange becomes effective. The statement of abandonment takes effect upon filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the acquired entity;

(2) the date on which the statement of interest exchange was filed; and

(3) a statement that the interest exchange has been abandoned in accordance with this section.

SECTION 305. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE.

(a) A statement of interest exchange must be signed ~~on behalf of~~ by a domestic acquired entity and ~~filed with~~ delivered to the [Secretary of State] for filing.

(b) A statement of interest exchange must contain:

(1) the name and type of the acquired entity;

(2) the name, jurisdiction of organization, and type of the acquiring entity;

(3) if the statement of interest exchange is not to be effective upon filing, the later date and time on which it will become effective, which may not be more than 90 days after

1 the date of filing;

2 (4) a statement that the plan of interest exchange was approved by the acquired
3 entity in accordance with this [article]; and

4 (5) any amendments to the acquired entity's public organic ~~document~~ record
5 approved as part of the plan of interest exchange.

6 (c) In addition to the requirements of subsection (b), a statement of interest exchange
7 may contain any other provision not prohibited by law.

8 (d) A plan of interest exchange that is signed ~~on behalf of~~ by a domestic acquired entity
9 and meets all of the requirements of subsection (b) may be ~~filed with~~ delivered to the [Secretary
10 of State] for filing instead of a statement of interest exchange and upon filing has the same
11 effect. If a plan of interest exchange is ~~filed~~ delivered to the [Secretary of State] for filing as
12 provided in this subsection, references in this [act] to a statement of interest exchange refer to the
13 plan of interest exchange filed under this subsection.

14 (e) A statement of interest exchange becomes effective upon the date and time of filing
15 or the later date and time specified in the statement of interest exchange.

16 **SECTION 306. EFFECT OF INTEREST EXCHANGE.**

17 (a) When an interest exchange becomes effective:

18 (1) the interests in the acquired entity that are the subject of the interest exchange
19 cease to exist or are converted or exchanged, and the interest holders of those interests are
20 entitled only to the rights provided to them under the plan of interest exchange and to any
21 appraisal rights they have under Section 109 and the acquired entity's organic law;

22 (2) the acquiring entity becomes the interest holder of the interests in the
23 acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity;

1 (3) the public organic ~~document~~ record, if any, of the acquired entity is amended
2 as provided in the statement of interest exchange ~~and is binding on its interest holders~~; and

3 (4) the private organic rules of the acquired entity that are to be in a record, if
4 any, are amended to the extent provided in the plan of interest exchange ~~and are binding on and~~
5 ~~enforceable by:~~

6 (A) ~~its interest holders; and~~

7 (B) ~~in the case of an acquired entity that is not a business corporation or~~
8 ~~nonprofit corporation, any other person that is a party to an agreement that is part of the acquired~~
9 ~~entity's private organic rules.~~

10 (b) Except as otherwise provided in the organic law or organic rules of the acquired
11 entity, the interest exchange does not give rise to any rights that an interest holder, governor, or
12 third party would otherwise have upon a dissolution, liquidation, or winding-up of the acquired
13 entity.

14 (c) When an interest exchange becomes effective, a person that did not have interest
15 holder liability with respect to the acquired entity and that becomes subject to interest holder
16 liability with respect to a domestic entity as a result of the interest exchange has interest holder
17 liability only to the extent provided by the organic law of the entity and only for those debts,
18 obligations, and other liabilities that arise after the interest exchange becomes effective.

19 (d) When an interest exchange becomes effective, the interest holder liability of a person
20 that ceases to hold an interest in a domestic acquired entity with respect to which the person had
21 interest holder liability is as follows:

22 (1) the interest exchange does not discharge any interest holder liability under the
23 organic law of the domestic acquired entity to the extent the interest holder liability arose before

1 the interest exchange became effective;

2 (2) the person does not have interest holder liability under the organic law of the
3 domestic acquired entity for any liability that arises after the interest exchange becomes
4 effective;

5 (3) the organic law of the domestic acquired entity continues to apply to the
6 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
7 if the interest exchange had not occurred; and

8 (4) the person has whatever rights of contribution from any other person as are
9 provided by other law or the organic law or organic rules of the domestic acquired entity with
10 respect to any interest holder liability preserved under paragraph (1) as if the interest exchange
11 had not occurred.

12

1 [ARTICLE] 4

2 CONVERSION

3 SECTION 401. CONVERSION AUTHORIZED.

4 (a) Except as otherwise provided in this section, by complying with this [article], a
5 domestic entity may become:

6 (1) a domestic entity of a different type; or

7 (2) a foreign entity of a different type, if the conversion is authorized by the law
8 of the foreign jurisdiction.

9 (b) Except as otherwise provided in this section, by complying with the provisions of
10 this [article] applicable to foreign entities a foreign entity may become a domestic entity of a
11 different type if the conversion is authorized by the law of the foreign entity's jurisdiction of
12 organization.

13 (c) If a protected agreement contains a provision that applies to a merger of a domestic
14 entity but does not refer to a conversion, the provision applies to a conversion of the entity as if
15 the conversion were a merger until the provision is amended after [the effective date of this
16 [act]].

17 [(d) The following entities may not engage in a conversion:

18 (1)

19 (2).]

20 SECTION 402. PLAN OF CONVERSION.

21 (a) A domestic entity may convert to a different type of entity under this [article] by
22 approving a plan of conversion. The plan must be in a record and contain:

23 (1) the name and type of the converting entity;

- 1 (2) the name, jurisdiction of organization, and type of the converted entity;
- 2 (3) the manner of converting the interests in the converting entity into interests,
- 3 securities, obligations, rights to acquire interests or securities, cash, or other property, or any
- 4 combination of the foregoing;
- 5 (4) the proposed public organic ~~document~~ record of the converted entity if it will
- 6 be a filing entity;
- 7 (5) the full text of the private organic rules of the converted entity that are
- 8 proposed to be in a record;
- 9 (6) the other terms and conditions of the conversion; and
- 10 (7) any other provision required by the law of this state or the organic rules of the
- 11 converting entity.

12 (b) A plan of conversion may contain any other provision not prohibited by law.

13 **SECTION 403. APPROVAL OF CONVERSION.**

14 (a) A plan of conversion is not effective unless it has been approved:

15 (1) by a domestic converting entity:

16 (A) in accordance with the requirements, if any, in its organic rules for

17 approval of a conversion;

18 (B) if its organic rules do not provide for approval of a conversion, in

19 accordance with the requirements, if any, in its organic law and organic rules for approval of:

20 (i) in the case of an entity that is not a business corporation, a

21 merger, as if the conversion were a merger; or

22 (ii) in the case of a business corporation, a merger requiring

23 approval by a vote of the interest holders of the business corporation, as if the conversion were

1 that type of merger; or

2 (C) if neither its organic law nor organic rules provide for approval of a
3 conversion or a merger described in subparagraph (B)(ii), by all of the interest holders of the
4 entity entitled to vote on or consent to any matter; and

5 (2) in a record, by each interest holder of a domestic converting entity that will
6 have interest holder liability for debts, obligations, and other liabilities that arise after the
7 conversion becomes effective, unless, in the case of an entity that is not a business or nonprofit
8 corporation:

9 (A) the organic rules of the entity provide in a record for the approval of a
10 conversion or a merger in which some or all of its interest holders become subject to interest
11 holder liability by the vote or consent of fewer than all of the interest holders; and

12 (B) the interest holder voted for or consented in a record to that provision
13 of the organic rules or became an interest holder after the adoption of that provision.

14 (b) A conversion of a foreign converting entity is not effective unless it is approved by
15 the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

16 **SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF**
17 **CONVERSION.**

18 (a) A plan of conversion of a domestic converting entity may be amended:

19 (1) in the same manner as the plan was approved, if the plan does not provide for
20 the manner in which it may be amended; or

21 (2) by the governors or interest holders of the entity in the manner provided in
22 the plan, but an interest holder that was entitled to vote on or consent to approval of the
23 conversion is entitled to vote on or consent to any amendment of the plan that will change:

1 (A) the amount or kind of interests, securities, obligations, rights to
2 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
3 received by any of the interest holders of the converting entity under the plan;

4 (B) the public organic ~~document~~ record or private organic rules of the
5 converted entity that will be in effect immediately after the conversion becomes effective, except
6 for changes that do not require approval of the interest holders of the converted entity under its
7 organic law or organic rules; or

8 (C) any other terms or conditions of the plan, if the change would
9 adversely affect the interest holder in any material respect.

10 (b) After a plan of conversion has been approved by a domestic converting entity and
11 before a statement of conversion becomes effective, the plan may be abandoned:

12 (1) as provided in the plan; or

13 (2) unless prohibited by the plan, in the same manner as the plan was approved.

14 (c) If a plan of conversion is abandoned after a statement of conversion has been ~~filed~~
15 ~~with~~ delivered to the [Secretary of State] for filing and before the filing becomes effective, a
16 statement of abandonment, signed ~~on behalf of~~ by the entity, must be ~~filed with~~ delivered to the
17 [Secretary of State] for filing ~~before the time~~ the statement of conversion becomes effective.

18 The statement of abandonment takes effect upon filing, and the conversion is abandoned and
19 does not become effective. The statement of abandonment must contain:

20 (1) the name of the converting entity;

21 (2) the date on which the statement of conversion was ~~filed~~ delivered to the
22 [Secretary of State] for filing; and

23 (3) a statement that the conversion has been abandoned in accordance with this

1 section.

2 **SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE.**

3 (a) A statement of conversion must be signed ~~on behalf of~~ by the converting entity and
4 ~~filed with~~ delivered to the [Secretary of State] for filing.

5 (b) A statement of conversion must contain:

6 (1) the name, jurisdiction of organization, and type of the converting entity;

7 (2) the name, jurisdiction of organization, and type of the converted entity;

8 (3) if the statement of conversion is not to be effective upon filing, the later date
9 and time on which it will become effective, which may not be more than 90 days after the date of
10 filing;

11 (4) if the converting entity is a domestic entity, a statement that the plan of
12 conversion was approved in accordance with this [article] or, if the converting entity is a foreign
13 entity, a statement that the conversion was approved by the foreign converting entity in
14 accordance with the law of its jurisdiction of organization;

15 (5) if the converted entity is a domestic filing entity, the text of its public organic
16 ~~document~~ record, as an attachment;

17 (6) if the converted entity is a domestic limited liability partnership, the text of its
18 [statement of qualification], as an attachment; and

19 (7) if the converted entity is a foreign entity that is not a ~~qualified~~ registered
20 foreign entity, a mailing address to which the [Secretary of State] may send any process served
21 on the [Secretary of State] pursuant to Section 406(e).

22 (c) In addition to the requirements of subsection (b), a statement of conversion may
23 contain any other provision not prohibited by law.

1 (d) If the converted entity is a domestic entity, its public organic ~~document~~ record, if
2 any, must satisfy the requirements of the law of this state, except that it does not need to be
3 signed and may omit any provision that is not required to be included in a restatement of the
4 public organic ~~document~~ record.

5 (e) A plan of conversion that is signed ~~on behalf of~~ by a domestic converting entity and
6 meets all of the requirements of subsection (b) may be ~~filed with~~ delivered to the [Secretary of
7 State] for filing instead of a statement of conversion and upon filing has the same effect. If a
8 plan of conversion is filed as provided in this subsection, references in this [act] to a statement of
9 conversion refer to the plan of conversion filed under this subsection.

10 (f) A statement of conversion becomes effective upon the date and time of filing or the
11 later date and time specified in the statement of conversion.

12 **SECTION 406. EFFECT OF CONVERSION.**

13 (a) When a conversion becomes effective:

14 (1) the converted entity is:

15 (A) organized under and subject to the organic law of the converted
16 entity; and

17 (B) the same entity without interruption as the converting entity;

18 (2) all property of the converting entity continues to be vested in the converted
19 entity without ~~assignment~~ transfer, reversion, or impairment;

20 (3) all debts, obligations, and other liabilities of the converting entity continue as
21 debts, obligations, and other liabilities of the converted entity;

22 (4) except as otherwise provided by law ~~other than this [act]~~ or the plan of
23 conversion, all of the rights, privileges, immunities, powers, and purposes of the converting

entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) if a converted entity is a filing entity, its public organic ~~document~~ record is effective ~~and is binding on its interest holders~~;

(7) if the converted entity is a limited liability partnership, its [statement of qualification] is effective simultaneously;

(8) the private organic rules of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective ~~and are binding on and enforceable by~~:

~~(A) its interest holders; and~~

~~(B) in the case of a converted entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the entity's private organic rules; and~~

(9) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 109 and the converting entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the converting entity, the conversion does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon a dissolution, liquidation, or winding-up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability

1 with respect to a domestic entity as a result of a conversion has interest holder liability only to
2 the extent provided by the organic law of the entity and only for those debts, obligations, and
3 other liabilities that arise after the conversion becomes effective.

4 (d) When a conversion becomes effective:

5 (1) the conversion does not discharge any interest holder liability under the
6 organic law of a domestic converting entity to the extent the interest holder liability arose before
7 the conversion became effective;

8 (2) a person does not have interest holder liability under the organic law of a
9 domestic converting entity for any liability that arises after the conversion becomes effective;

10 (3) the organic law of a domestic converting entity continues to apply to the
11 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
12 if the conversion had not occurred; and

13 (4) a person has whatever rights of contribution from any other person as are
14 provided by other law or the organic law or organic rules of the domestic converting entity with
15 respect to any interest holder liability preserved under paragraph (1) as if the conversion had not
16 occurred.

17 (e) When a conversion becomes effective, a foreign entity that is the converted entity:

18 (1) may be served with process in this state for the collection and enforcement of
19 any of its debts, obligations, and other liabilities; and

20 (2) appoints the [Secretary of State] as its agent for service of process for
21 collecting or enforcing those debts, obligations, and other liabilities.

22 (f) If the converting entity is a ~~qualified~~ registered foreign entity, the ~~certificate of~~
23 ~~authority~~ registration to do business in this state or other foreign qualification of the converting

- 1 entity is canceled when the conversion becomes effective.
- 2 (g) A conversion does not require the entity to wind up its affairs and does not constitute
- 3 or cause the dissolution of the entity.
- 4

1 [ARTICLE] 5

2 DOMESTICATION

3 SECTION 501. DOMESTICATION AUTHORIZED.

4 (a) Except as otherwise provided in this section, by complying with this [article], a
5 domestic entity may become a domestic entity of the same type in a foreign jurisdiction if the
6 domestication is authorized by the law of the foreign jurisdiction.

7 (b) Except as otherwise provided in this section, by complying with the provisions of
8 this [article] applicable to foreign entities a foreign entity may become a domestic entity of the
9 same type in this state if the domestication is authorized by the law of the foreign entity's
10 jurisdiction of organization.

11 ~~(c) When the term domestic entity is used in this [article] with reference to a foreign~~
12 ~~jurisdiction, it means an entity whose internal affairs are governed by the law of the foreign~~
13 ~~jurisdiction.~~

14 ~~(d)~~ (c) If a protected agreement contains a provision that applies to a merger of a
15 domestic entity but does not refer to a domestication, the provision applies to a domestication of
16 the entity as if the domestication were a merger until the provision is amended after the effective
17 date of this [act].

18 ~~(e)~~ (d) The following entities may not engage in a domestication under this [article]:

19 (1) [a business corporation – if the state has adopted Subchapter 9B of the Model
20 Business Corporation Act];

21 (2) a limited liability company, if the state has enacted Article 10 of the Uniform
22 Limited Liability Company Act (2006)]; or

23 (3)

1 **Comment**

2 Subsection (c) deleted because the situation it contemplates never occurs and thus it is
3 not needed.

4
5 **SECTION 502. PLAN OF DOMESTICATION.**

6 (a) A domestic entity may become a foreign entity in a domestication by approving a
7 plan of domestication. The plan must be in a record and contain:

8 (1) the name and type of the domesticating entity;

9 (2) the name and jurisdiction of organization of the domesticated entity;

10 (3) the manner of converting the interests in the domesticating entity into
11 interests, securities, obligations, rights to acquire interests or securities, cash, or other property,
12 or any combination of the foregoing;

13 (4) the proposed public organic ~~document~~ record of the domesticated entity if it
14 is a filing entity;

15 (5) the full text of the private organic rules of the domesticated entity that are
16 proposed to be in a record;

17 (6) the other terms and conditions of the domestication; and

18 (7) any other provision required by the law of this state or the organic rules of the
19 domesticating entity.

20 (b) A plan of domestication may contain any other provision not prohibited by law.

21 **SECTION 503. APPROVAL OF DOMESTICATION.**

22 (a) A plan of domestication is not effective unless it has been approved:

23 (1) by a domestic domesticating entity:

24 (A) in accordance with the requirements, if any, in its organic rules for
25 approval of a domestication;

1 (B) if its organic rules do not provide for approval of a domestication, in
2 accordance with the requirements, if any, in its organic law and organic rules for approval of:

3 (i) in the case of an entity that is not a business corporation, a
4 merger, as if the domestication were a merger; or

5 (ii) in the case of a business corporation, a merger requiring
6 approval by a vote of the interest holders of the business corporation, as if the domestication
7 were that type of merger; or

8 (C) if neither its organic law nor organic rules provide for approval of a
9 domestication or a merger described in subparagraph (B)(ii), by all of the interest holders of the
10 entity entitled to vote on or consent to any matter; and

11 (2) in a record, by each interest holder of a domestic domesticating entity that
12 will have interest holder liability for debts, obligations, and other liabilities that arise after the
13 domestication becomes effective, unless, in the case of an entity that is not a business
14 corporation or nonprofit corporation:

15 (A) the organic rules of the entity in a record provide for the approval of a
16 domestication or merger in which some or all of its interest holders become subject to interest
17 holder liability by the vote or consent of fewer than all of the interest holders; and

18 (B) the interest holder voted for or consented in a record to that provision
19 of the organic rules or became an interest holder after the adoption of that provision.

20 (b) A domestication of a foreign domesticating entity is not effective unless it is
21 approved in accordance with the law of the foreign entity's jurisdiction of organization.

1 **SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF**
2 **DOMESTICATION.**

3 (a) A plan of domestication of a domestic domesticating entity may be amended:

4 (1) in the same manner as the plan was approved, if the plan does not provide for
5 the manner in which it may be amended; or

6 (2) by the governors or interest holders of the entity in the manner provided in
7 the plan, but an interest holder that was entitled to vote on or consent to approval of the
8 domestication is entitled to vote on or consent to any amendment of the plan that will change:

9 (A) the amount or kind of interests, securities, obligations, rights to
10 acquire interests or securities, cash, or other property, or any combination of the foregoing, to be
11 received by any of the interest holders of the domesticating entity under the plan;

12 (B) the public organic ~~document~~ record or private organic rules of the
13 domesticated entity that will be in effect immediately after the domestication becomes effective,
14 except for changes that do not require approval of the interest holders of the domesticated entity
15 under its organic law or organic rules; or

16 (C) any other terms or conditions of the plan, if the change would
17 adversely affect the interest holder in any material respect.

18 (b) After a plan of domestication has been approved by a domestic domesticating entity
19 and before a statement of domestication becomes effective, the plan may be abandoned:

20 (1) as provided in the plan; or

21 (2) unless prohibited by the plan, in the same manner as the plan was approved.

22 (c) If a plan of domestication is abandoned after a statement of domestication has been
23 ~~filed with~~ delivered to the [Secretary of State] for filing and before the filing becomes effective,

1 a statement of abandonment, signed ~~on behalf of~~ by the entity, must be ~~filed with~~ delivered to the
2 [Secretary of State] for filing ~~before the time~~ the statement of domestication becomes effective.

3 The statement of abandonment takes effect upon filing, and the domestication is abandoned and
4 does not become effective. The statement of abandonment must contain:

5 (1) the name of the domesticating entity;

6 (2) the date on which the statement of domestication was filed; and

7 (3) a statement that the domestication has been abandoned in accordance with
8 this section.

9 **SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.**

10 (a) A statement of domestication must be signed ~~on behalf of~~ by the domesticating entity
11 and ~~filed with~~ delivered to the [Secretary of State] for filing.

12 (b) A statement of domestication must contain:

13 (1) the name, jurisdiction of ~~organization~~ formation, and type of the
14 domesticating entity;

15 (2) the name and jurisdiction of ~~organization~~ formation of the domesticated
16 entity;

17 (3) if the statement of domestication is not to be effective upon filing, the later
18 date and time on which it will become effective, which may not be more than 90 days after the
19 date of filing;

20 (4) if the domesticating entity is a domestic entity, a statement that the plan of
21 domestication was approved in accordance with this [article] or, if the domesticating entity is a
22 foreign entity, a statement that the domestication was approved in accordance with the law of its
23 jurisdiction of organization;

1 (5) if the domesticated entity is a domestic filing entity, its public organic
2 ~~document~~ record, as an attachment;

3 (6) if the domesticated entity is a domestic limited liability partnership, its
4 [statement of qualification], as an attachment; and

5 (7) if the domesticated entity is a foreign entity that is not a ~~qualified~~ registered
6 foreign entity, a mailing address to which the [Secretary of State] may send any process served
7 on the [Secretary of State] pursuant to Section 506(e).

8 (c) In addition to the requirements of subsection (b), a statement of domestication may
9 contain any other provision not prohibited by law.

10 (d) If the domesticated entity is a domestic entity, its public organic ~~document~~ record, if
11 any, must satisfy the requirements of the law of this state, except that it does not need to be
12 signed and may omit any provision that is not required to be included in a restatement of the
13 public organic ~~document~~ record.

14 (e) A plan of domestication that is signed ~~on behalf of~~ by a domesticating domestic
15 entity and meets all of the requirements of subsection (b) may be ~~filed with~~ delivered to the
16 [Secretary of State] for filing instead of a statement of domestication and upon filing has the
17 same effect. If a plan of domestication is filed as provided in this subsection, references in this
18 [act] to a statement of domestication refer to the plan of domestication filed under this
19 subsection.

20 (f) A statement of domestication becomes effective upon the date and time of filing or
21 the later date and time specified in the statement of domestication.

22 **SECTION 506. EFFECT OF DOMESTICATION.**

23 (a) When a domestication becomes effective:

(1) the domesticated entity is:

(A) organized under and subject to the organic law of the domesticated entity; and

(B) the same entity without interruption as the domesticating entity;

(2) all property of the domesticating entity continues to be vested in the domesticated entity without ~~assignment~~ transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated entity;

(4) except as otherwise provided by law ~~other than this [act]~~ or the plan of domestication, all of the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) if the domesticated entity is a filing entity, its public organic ~~document~~ record is effective ~~and is binding on its interest holders~~;

(7) if the domesticated entity is a limited liability partnership, its [statement of qualification] is effective simultaneously;

(8) the private organic rules of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication are effective ~~and are binding on and enforceable by:~~

(A) ~~its interest holders; and~~

(B) ~~in the case of a domesticated entity that is not a business corporation or nonprofit corporation, any other person that is a party to an agreement that is part of the~~

1 ~~domesticated entity's private organic rules~~; and

2 (9) the interests in the domesticating entity are converted to the extent and as
3 approved in connection with the domestication, and the interest holders of the domesticating
4 entity are entitled only to the rights provided to them under the plan of domestication and to any
5 appraisal rights they have under Section 109 and the domesticating entity's organic law.

6 (b) Except as otherwise provided in the organic law or organic rules of the domesticating
7 entity, the domestication does not give rise to any rights that an interest holder, governor, or third
8 party would otherwise have upon a dissolution, liquidation, or winding-up of the domesticating
9 entity.

10 (c) When a domestication becomes effective, a person that did not have interest holder
11 liability with respect to the domesticating entity and that becomes subject to interest holder
12 liability with respect to a domestic entity as a result of the domestication has interest holder
13 liability only to the extent provided by the organic law of the entity and only for those debts,
14 obligations, and other liabilities that arise after the domestication becomes effective.

15 (d) When a domestication becomes effective:

16 (1) the domestication does not discharge any interest holder liability under the
17 organic law of a domesticating domestic entity to the extent the interest holder liability arose
18 before the domestication became effective;

19 (2) a person does not have interest holder liability under the organic law of a
20 domestic domesticating entity for any debt, obligation, or other liability that arises after the
21 domestication becomes effective;

22 (3) the organic law of a domestic domesticating entity continues to apply to the
23 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as

1 if the domestication had not occurred; and

2 (4) a person has whatever rights of contribution from any other person as are
3 provided by other law or the organic law or organic rules of a domestic domesticating entity with
4 respect to any interest holder liability preserved under paragraph (1) as if the domestication had
5 not occurred.

6 (e) When a domestication becomes effective, a foreign entity that is the domesticated
7 entity:

8 (1) may be served with process in this state for the collection and enforcement of
9 any of its debts, obligations, and other liabilities; and

10 (2) appoints the [Secretary of State] as its agent for service of process for
11 collecting or enforcing those debts, obligations, and other liabilities.

12 (f) If the domesticating entity is a ~~qualified~~ registered foreign entity, the ~~certificate of~~
13 ~~authority~~ registration to do business in this state or other foreign qualification of the
14 domesticating entity is canceled when the domestication becomes effective.

15 (g) A domestication does not require the entity to wind up its affairs and does not
16 constitute or cause the dissolution of the entity.

1 [ARTICLE] 6

2 MISCELLANEOUS PROVISIONS

3 **SECTION 601. CONSISTENCY OF APPLICATION.** In applying and construing
4 this [act], consideration must be given to the need to promote consistency of the law with respect
5 to its subject matter among states that enact it.

6 **SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
7 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
8 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does
9 not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize
10 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. §
11 7003(b).

12 **SECTION 603. CONFORMING AMENDMENTS AND REPEALS.** [See Appendix
13 2.]

14 **SECTION 604. SAVINGS CLAUSE.** This [act] does not affect an action or
15 proceeding commenced or right accrued before [the effective date of this [act]].

16 **SECTION 605. EFFECTIVE DATE.** This [act] takes effect [January 1, 20__.]