

MODEL ENTITY TRANSACTIONS ACT *

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-THIRTEENTH YEAR
PORTLAND, OREGON

JULY 30 - AUGUST 6, 2004

AMERICAN BAR ASSOCIATION

MODEL ENTITY TRANSACTIONS ACT

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MODEL ENTITY TRANSACTIONS ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the [State] Entity Transactions Act.

SECTION 102. DEFINITIONS. In this [act]:

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

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

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

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

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

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

(4) “Conversion” means a transaction of the kind authorized by [Article] 4.

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

(6) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to Section 403 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of organization.

(7) “Domestic entity” means an entity whose internal affairs are governed by the law of this state.

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

(9) “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.

(10) “Domestication” means a transaction of the kind authorized by [Article] 5.

(11) “Entity” means a person other than an individual that either has a separate legal existence or has the power to acquire an interest in real property in its own name. The term does not include a testamentary, inter vivos, or charitable trust, but does include a business trust or similar trust. The term also does not include:

(A) an association or relationship that is not a partnership by reason of [Section 202(c) of the Uniform Partnership Act (1997)] or a similar provision of the law of any other jurisdiction;

(B) a decedent’s estate; or

(C) a government, a governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality.

(12) “Filing entity” means an entity that is created by the filing of a public organic document.

(13) “Foreign entity” means an entity other than a domestic entity.

(14) “Governance interest” means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

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

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

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

(15) “Governor” means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(16) “Interest” means:

(A) a governance interest in an unincorporated entity;

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

(C) a share or membership in a corporation.

(17) “Interest exchange” means a transaction of the kind authorized by [Article] 3.

(18) “Interest holder” means a person that is the direct holder of an interest.

(19) “Interest holder liability” means personal liability for a liability of an entity that is imposed on a person:

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

(B) by the organic rules of the entity pursuant to a provision of the organic law authorizing the organic rules to make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity.

(20) “Jurisdiction of organization” of an entity means the jurisdiction whose law includes the organic law of the entity.

(21) “Liability” means a debt, obligation, or any other kind of liability arising in any manner and whether or not secured.

(22) “Merger” means a transaction of the kind authorized by [Article] 2.

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

(24) “Organic law” means the statutes, if any, other than this [act] governing the internal affairs of an entity.

(25) “Organic rules” means the public organic document and private organic rules of an entity.

(26) “Person” means an individual, corporation, business or similar trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

(28) “Private organic rules” mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(29) “Protected agreement” means:

(A) a debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, issued or signed by an entity that is unpaid, in whole or in part, on the effective date of this [act];

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

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

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

(30) “Public organic document” means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

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

(32) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(33) “Sign” means:

(A) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(B) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

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

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

(36) “Type,” with regard to an entity, means a generic form of entity:

(A) recognized at common law; or

(B) organized under an organic law, whether or not some entities organized under that organic law may also be subject to certain provisions of that law that create different categories of the form of entity organized under that law.

SECTION 103. RELATIONSHIP OF [ACT] TO OTHER LAWS.

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

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

(c) A transaction effected under this [act] may not create or impair any right or obligation on the part of a person under a provision of the law of this state other than this [act] relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, converting, or domesticating corporation unless either:

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

(2) if the corporation survives the transaction, the approval of the plan would also be sufficient to create or impair the right or obligation directly under the provision.

SECTION 104. REQUIRED NOTICE OR APPROVAL.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer in order to sell some or all of its assets, be a party to a merger, or change its purposes or form of organization must give such notice, or obtain such approval, to be a party to a transaction under this [act].

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

SECTION 105. STATUS OF FILINGS. A filing under this [act] by a domestic entity becomes part of the public organic document of the entity if the organic law of the entity provides that similar filings under that law become part of the public organic document of the entity.

SECTION 106. NONEXCLUSIVITY. The fact that a transaction under this [act] produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this [act].

SECTION 107. REFERENCE TO EXTERNAL FACTS. A plan may refer to facts ascertainable outside of the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include, without limitation, the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

[SECTION 108. APPRAISAL RIGHTS. Except as otherwise provided in the entity's organic law or organic rules, an interest holder of a domestic merging, acquired, converting, or domesticating entity shall be entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights in the event the entity were a party to a merger under its organic law.]

[SECTION 109. EXCLUDED ENTITIES AND TRANSACTIONS.

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

(1)

(2)

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

(1)

(2)

(3)]

Legislative Notes: Subsection (a) may be used by states that have special statutes restricted to the organization of certain types of entities. A common example is banking statutes that prohibit banks from engaging in transactions other than pursuant to those statutes.

Subsection (b) may be used to exclude certain types of transactions governed by more specific statutes. A common example is the conversion of an insurance company from mutual to stock form. There may be other types of transactions that vary greatly among the states.

[ARTICLE] 2
MERGER

SECTION 201. MERGER AUTHORIZED.

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

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

(2) two or more foreign entities may be parties to a merger in which the surviving entity is a domestic entity.

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

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

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

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

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

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

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

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

(7)

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

(1)

(2)]

SECTION 202. PLAN OF MERGER.

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

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

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

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

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

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

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

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

(b) A plan of merger may contain any provision not prohibited by law other than this [act].

SECTION 203. APPROVAL OF MERGER.

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

(1) by a domestic merging entity:

(A) in accordance with the requirements, if any, in its organic law and organic rules for approval of a merger; or

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

(2) in a record by each interest holder of a domestic merging entity that will have interest holder liability for liabilities that arise after the merger becomes effective, unless:

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

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

(b) Each merging entity that is a foreign entity shall approve the merger in accordance with the law of the foreign entity's jurisdiction of organization.

SECTION 204. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.

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

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

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

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

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

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

(b) After a plan of merger has been approved by a domestic merging entity and before a statement of merger 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 merger is abandoned after a statement of merger has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of a merging entity, must be filed with the [Secretary of State] before the statement of merger becomes effective. The statement of abandonment takes effect upon filing and the merger is abandoned and does not become effective. The statement of abandonment must contain:

- (1) the name of each merging or surviving entity that is a domestic entity or a qualified foreign entity;
- (2) the date on which the statement of merger was filed; and
- (3) a statement that the merger has been abandoned in accordance with this section.

SECTION 205. STATEMENT OF MERGER; EFFECTIVE DATE.

(a) A statement of merger must be signed on behalf of each merging entity and filed with the [Secretary of State].

(b) A statement of merger must contain:

- (1) the name, jurisdiction of organization, and type of entity of each merging entity that is not the surviving entity;
- (2) the name, jurisdiction of organization, and type of entity of the surviving entity;
- (3) if the statement of merger 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 the date of filing;
- (4) a statement that the merger was approved by each domestic merging entity, if any, in accordance with this [article] and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of organization;
- (5) if the surviving entity exists before the merger and is a domestic filing entity, any amendments to its public organic document approved as part of the plan of merger;
- (6) if the surviving entity is created by the merger and is a domestic filing entity, a copy of its public organic document, as an attachment; and
- (7) if the surviving entity is created by the merger and is a domestic limited liability partnership, a copy of its [statement of qualification], as an attachment.

(c) In addition to the provisions required by subsection (b), a statement of merger may contain any other provision not prohibited by law other than this [act].

(d) If the surviving entity is a domestic entity, the name of the surviving entity must satisfy the requirements of the law of this state. If the surviving entity is to be a qualified foreign entity, its name must be available for use in this state or it must adopt an available name for that purpose.

(e) A plan of merger that is signed on behalf of all of the merging entities and contains all of the provisions required by subsection (b) may be filed with the [Secretary of State] instead of a statement of merger and upon filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this [act] to a statement of merger mean the plan of merger filed under this subsection.

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

SECTION 206. EFFECT OF MERGER.

(a) When a merger becomes effective:

- (1) The surviving entity continues or comes into existence.
- (2) Each merging entity that is not the surviving entity ceases to exist.
- (3) All property and contract rights of each merging entity vest in the surviving entity without assignment, reversion, or impairment.
- (4) All liabilities of each merging entity are liabilities of the surviving entity.
- (5) Except as otherwise provided by law other than this [act] or the plan of merger, all of the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity.
- (6) If the surviving entity exists before the merger:
 - (A) all of its property and contract rights continue to be vested in it without reversion or impairment; and
 - (B) it remains subject to all of its liabilities.
- (7) The name of the surviving entity may be substituted in any pending action or proceeding for the name of any merging entity.
- (8) If the surviving entity exists before the merger, its public organic document, if any, and its private organic rules are amended to the extent provided in the plan of merger and are binding upon the interest holders of the surviving entity.
- (9) If the surviving entity is created by the merger, its public organic document, if any, and its private organic rules are effective and are binding upon the interest holders of the surviving entity.

(10) The interests in each merging entity that are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger [and to any appraisal rights they have under Section 108].

(b) A person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of a merger has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the merger becomes effective.

(c) Upon a merger, the interest holder liability of a person that ceases to hold an interest in a domestic merging entity with respect to which the person had interest holder liability is as follows:

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

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

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

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

(d) A foreign entity that is the surviving entity:

(1) may be served with process in this state for the collection and enforcement of any liabilities of a domestic merging entity; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(e) When a merger becomes effective, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is canceled.

[ARTICLE] 3
INTEREST EXCHANGE

SECTION 301. INTEREST EXCHANGE AUTHORIZED.

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

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

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

(b) Except as otherwise provided in this section, by complying with this [article] a foreign entity may be the acquired entity in an interest exchange under this [article] if the interest exchange is authorized by the law of the foreign entity's jurisdiction of organization.

(c) This [article] does not apply to an interest exchange under:

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

(2)

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

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

(1)

(2)]

SECTION 302. PLAN OF INTEREST EXCHANGE.

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

- (1) the name and type of entity of the acquired entity;
- (2) the name, jurisdiction of organization, and type of entity of the acquiring entity;
- (3) the manner and basis of converting the interests in the acquired entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (4) any proposed amendments to the public organic document or private organic rules that are, or are proposed to be, in a record of the acquired entity;
- (5) the other terms and conditions of the interest exchange; and
- (6) any other provision required by the law of this state or the organic rules of the acquired entity.

(b) A plan of interest exchange may contain any provision not prohibited by law other than this [act].

SECTION 303. APPROVAL OF INTEREST EXCHANGE.

(a) Except as otherwise provided in subsection (d), a plan of interest exchange is not effective unless it has been approved:

- (1) by a domestic acquired entity:
 - (A) in accordance with the requirements, if any, in its organic law and organic rules for approval of an interest exchange;
 - (B) if neither its organic law nor organic rules provide for approval of an interest exchange, in accordance with the requirements, if any, for approval of a merger in its organic law and organic rules as if the interest exchange were a merger; or
 - (C) if neither its organic law nor organic rules provide for approval of an interest exchange or a merger, by all of the interest holders of the entity entitled to vote on or consent to any matter; and

(2) in a record by each interest holder of a domestic acquired entity that will have interest holder liability for liabilities that arise after the interest exchange becomes effective, unless:

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

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

(b) An acquired entity that is a foreign entity shall approve the interest exchange in accordance with the law of the foreign entity's jurisdiction of organization.

(c) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

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

SECTION 304. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE.

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

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

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

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

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

(C) any of the other terms or conditions of the plan if the change would 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 an interest exchange is abandoned after a statement of interest exchange has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the acquired entity, must be filed with the [Secretary of State] before 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 a domestic acquired entity and filed with the [Secretary of State].

(b) A statement of interest exchange must contain:

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

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

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

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

(c) In addition to the provisions required by subsection (b), a statement of interest exchange may contain any other provision not prohibited by law other than this [act].

(d) A plan of interest exchange that is signed on behalf of a domestic acquired entity and contains all of the provisions required by subsection (b) may be filed with the [Secretary of State] instead of a statement of interest exchange and upon filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this [act] to a statement of interest exchange mean the plan of interest exchange filed under this subsection.

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

SECTION 306. EFFECT OF INTEREST EXCHANGE.

(a) When an interest exchange becomes effective:

(1) The interests in the acquired entity that are the subject of the interest exchange cease to exist or are converted or exchanged, and the interest holders of those interests are entitled only to the rights provided to them under the plan of interest exchange [and to any appraisal rights they have under Section 108].

(2) The acquiring entity becomes the interest holder of the interests in the acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity.

(3) The public organic document, if any, of the acquired entity is amended to the extent provided in the plan of interest exchange and is binding upon the interest holders of the acquired entity.

(4) The private organic rules of the acquired entity that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange and are binding upon the interest holders of the acquired entity.

(b) A person that did not have interest holder liability with respect to the acquired entity and that becomes subject to interest holder liability with respect to a domestic entity as a result

of an interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the interest exchange becomes effective.

(c) Upon an interest exchange, the interest holder liability of a person that ceases to hold an interest in a domestic acquired entity with respect to which the person had interest holder liability is as follows:

(1) The interest exchange does not discharge any interest holder liability under the organic law of the domestic acquired entity to the extent the interest holder liability arose before the interest exchange became effective.

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

(3) The organic law of the domestic acquired entity continues to apply to the release, collection, or discharge of any interest holder liability preserved by paragraph (1) as if the interest exchange had not occurred.

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

[ARTICLE] 4
CONVERSION

SECTION 401. CONVERSION AUTHORIZED.

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

- (1) a domestic entity of a different type; or
- (2) a foreign entity of a different type, if the conversion is authorized by the law of the foreign jurisdiction.

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

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

[(d) The following entities may not engage in a conversion under this [article]:

- (1)
- (2)]

SECTION 402. PLAN OF CONVERSION.

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

- (1) the name and type of entity of the converting entity;
- (2) the name, jurisdiction of organization, and type of entity of the converted entity;
- (3) the manner and basis of converting the interests in the converting entity into interests, securities, obligations, rights to acquire interests or securities, cash, or other property, or any combination of the foregoing;
- (4) the proposed public organic document of the converted entity if it will be a filing entity;

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

(6) the other terms and conditions of the conversion; and

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

(b) A plan of conversion may contain any provision not prohibited by law other than this [act].

SECTION 403. APPROVAL OF CONVERSION.

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

(1) by a domestic converting entity:

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

(B) if its organic rules do not provide for approval of a conversion, in accordance with the requirements, if any, for approval of a merger in its organic law and organic rules as if the conversion were a merger; or

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

(2) in a record by each interest holder of a domestic converting entity that will have interest holder liability for liabilities that arise after the conversion becomes effective, unless:

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

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

(b) A foreign converting entity shall approve the conversion in accordance with the law of the foreign entity's jurisdiction of organization.

SECTION 404. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.

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

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

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

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

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

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

(b) After a plan of conversion has been approved by a domestic converting entity and before a statement of conversion 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 conversion is abandoned after a statement of conversion has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the [Secretary of State] before the statement of conversion becomes effective. The statement of abandonment takes effect upon filing and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the converting entity;

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

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

SECTION 405. STATEMENT OF CONVERSION; EFFECTIVE DATE.

(a) A statement of conversion must be signed on behalf of the converting entity and filed with the [Secretary of State].

(b) A statement of conversion must contain:

(1) the name, jurisdiction of organization, and type of entity of the converting entity;
(2) the name, jurisdiction of organization, and type of entity of the converted entity;
(3) if the statement of conversion 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 the date of filing;

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

(5) if the converted entity is a domestic filing entity, a copy of its public organic document, as an attachment; and

(6) if the converted entity is a domestic limited liability partnership, a copy of its [statement of qualification], as an attachment.

(c) In addition to the provisions required by subsection (b), a statement of conversion may contain any other provision not prohibited by law other than this [act].

(d) If the converted entity is a domestic entity, its name must satisfy the requirements of the law of this state.

(e) A plan of conversion that is signed on behalf of a domestic converting entity and contains all of the provisions required by subsection (b) may be filed with the [Secretary of State] instead of a statement of conversion and upon filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this [act] to a statement of conversion mean the plan of conversion filed under this subsection.

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

SECTION 406. EFFECT OF CONVERSION.

- (a) When a conversion becomes effective:
- (1) The converted entity is:
 - (A) organized under and subject to the organic law of the converted entity; and
 - (B) the same entity without interruption as the converting entity.
 - (2) All property and contract rights of the converting entity continue to be vested in the entity without assignment, reversion, or impairment.
 - (3) All liabilities of the converting entity continue as liabilities of the entity.
 - (4) Except as provided by law other than this [act] or the plan of 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 in any pending action or proceeding for the name of the converting entity.
 - (6) Unless otherwise provided by the organic law of the converting entity, the conversion does not cause the dissolution of the converting entity.
 - (7) If a converted entity is a filing entity, its public organic document is effective and is binding upon the interest holders of the converted entity.
 - (8) If the converted entity is a limited liability partnership, its [statement of qualification] is effective simultaneously.
 - (9) The private organic rules of the converted entity approved as part of the plan of conversion are effective and are binding upon the interest holders of the converted entity.
 - (10) 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 108].
- (b) A person that did not have interest holder liability with respect to the converting entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of a conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the conversion becomes effective.
- (c) When a conversion becomes effective:

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

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

(3) The organic law of a domestic converting entity continues to apply to the release, collection, or discharge of any interest holder liability preserved by paragraph (1) as if the conversion had not occurred.

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

(d) A foreign entity that is the converted entity:

(1) may be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(e) If the converting entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the converting entity is canceled when the conversion becomes effective.

[ARTICLE] 5
DOMESTICATION

SECTION 501. DOMESTICATION AUTHORIZED.

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

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

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

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

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

(1)

(2)]

SECTION 502. PLAN OF DOMESTICATION.

(a) A domestic entity may become a foreign entity in a domestication under this [article] by approving a plan of domestication. The plan of domestication must be in a record and contain:

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

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

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

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

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

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

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

(b) A plan of domestication may contain any provision not prohibited by law other than this [act].

SECTION 503. APPROVAL OF DOMESTICATION.

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

(1) by a domestic domesticating entity:

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

(B) if its organic rules do not provide for approval of a domestication, in accordance with the requirements, if any, for approval of a merger in its organic law and organic rules as if the domestication were a merger; or

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

(2) in a record by each interest holder of a domestic domesticating entity that will have interest holder liability for liabilities that arise after the domestication becomes effective, unless:

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

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

(b) A foreign domesticating entity shall approve the domestication in accordance with the law of the foreign entity's jurisdiction of organization.

SECTION 504. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION.

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

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

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

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

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

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

(b) After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication 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 domestication is abandoned after a statement of domestication has been filed with the [Secretary of State] and before the filing becomes effective, a statement of abandonment, signed on behalf of the entity, must be filed with the [Secretary of State] before the statement of domestication becomes effective. The statement of abandonment takes effect upon filing and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

- (1) the name of the domesticating entity;
- (2) the date on which the statement of domestication was filed; and
- (3) a statement that the domestication has been abandoned in accordance with this section.

SECTION 505. STATEMENT OF DOMESTICATION; EFFECTIVE DATE.

(a) A statement of domestication must be signed on behalf of the domesticating entity and filed with the [Secretary of State].

(b) A statement of domestication must contain:

- (1) the name, jurisdiction of organization, and type of entity of the domesticating entity;
- (2) the name and jurisdiction of organization of the domesticated entity;
- (3) if the statement of domestication 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 the date of filing;
- (4) if the domesticating entity is a domestic entity, a statement that the plan of domestication was approved in accordance with this [article] or, if the domesticating entity is a foreign entity, a statement that the domestication was approved by the foreign domesticating entity in accordance with the law of its jurisdiction of organization;
- (5) if the domesticated entity is a domestic filing entity, a copy of its public organic document, as an attachment; and
- (6) if the domesticated entity is a domestic limited liability partnership, a copy of its [statement of qualification], as an attachment.

(c) In addition to the provisions required by subsection (b), a statement of domestication may contain any other provision not prohibited by law other than this [act].

(d) If the domesticated entity is a domestic entity, its name must satisfy the requirements of the law of this state.

(e) A plan of domestication that is signed on behalf of a domesticating domestic entity and contains all of the provisions required by subsection (b) may be filed with the [Secretary of State] instead of a statement of domestication and upon filing has the same effect. If a plan of

domestication is filed as provided in this subsection, references in this [act] to a statement of domestication mean the plan of domestication filed under this subsection.

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

SECTION 506. EFFECT OF DOMESTICATION.

(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 and contract rights of the domesticating entity continue to be vested in the entity without assignment, reversion, or impairment.

(3) All liabilities of the domesticating entity continue as liabilities of the entity.

(4) Except as 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 in any pending action or proceeding for the name of the domesticating entity.

(6) Unless otherwise provided by the organic law of the domesticating entity, the domestication does not cause the dissolution of the domesticating entity.

(7) If the domesticated entity is a filing entity, its public organic document is effective and is binding upon the interest holders of the domesticated entity.

(8) If the domesticated entity is a limited liability partnership, its [statement of qualification] is effective simultaneously.

(9) The private organic rules of the domesticated entity approved as part of the plan of domestication are effective and are binding upon the interest holders of the domesticated entity.

(10) The interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the interest holders of the domesticating

entity are entitled only to the rights provided to them under the plan of domestication [and to any appraisal rights they have under Section 108].

(b) A person that did not have interest holder liability with respect to the domesticating entity and that becomes subject to interest holder liability with respect to a domestic entity as a result of a domestication has interest holder liability only to the extent provided by the organic law of the entity and only for those liabilities that arise after the domestication becomes effective.

(c) When a domestication becomes effective:

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

(2) A person does not have interest holder liability under the organic law of a domestic domesticating entity for any liability that arises after the domestication becomes effective.

(3) The organic law of a domestic domesticating entity continues to apply to the release, collection, or discharge of any interest holder liability preserved by paragraph (1) as if the domestication had not occurred.

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

(d) A foreign entity that is the domesticated entity:

(1) may be served with process in this state for the collection and enforcement of any of its liabilities; and

(2) appoints the [Secretary of State] as its agent for service of process for collecting or enforcing those liabilities.

(e) If the domesticating entity is a qualified foreign entity, the certificate of authority or other foreign qualification of the domesticating entity is canceled when the domestication becomes effective.

[ARTICLE] 6
DIVISIONS [RESERVED]

[ARTICLE] 7
MISCELLANEOUS PROVISIONS

SECTION 701. UNIFORMITY OF APPLICATION. In applying and construing this [act], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 702. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.), but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION 703. CONFORMING AMENDMENTS AND REPEALS. [See Appendix 2.]

SECTION 704. EFFECTIVE DATE. This [act] takes effect [January 1, 200__.]

SECTION 705. SAVINGS CLAUSE. This [act] does not affect an action or proceeding commenced or right accrued before the effective date of this [act].