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# ~~MODEL~~ MISSISSIPPI ENTITY TRANSACTIONS ACT

## {ARTICLE} 1

### GENERAL PROVISIONS

**SECTION 101. SHORT TITLE.** This {aet} chapter may be cited as the ~~Model~~ Mississippi Entity Transactions Act.

#### **SECTION 102. REQUIREMENTS FOR DOCUMENTS.**

(a) To be entitled to filing by the {Secretary of State}, a document must satisfy the following requirements and the requirements of any other provision of this {aet} chapter that adds to or varies these requirements:

(1) This {aet} chapter requires or permits filing the document in the ~~o~~Office of the {Secretary of State}.

(2) The document contains the information required by this {aet} chapter and may contain other information.

(3) The document is in a record.

(4) The document is in the English language, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(5) The document is signed:

(A) by an officer of a domestic or foreign corporation;

(B) by a person authorized by a domestic or foreign entity that is not a corporation; or

(C) if the entity is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(6) The document must state the name and capacity of the person that signed it. The document may contain a corporate seal, attestation, acknowledgment, or verification.

(7) The document must be delivered to the office of the {Secretary of State} for filing.

(b) When a document is delivered to the office of the {Secretary of State} for filing, the correct filing fee, and any franchise tax, license fee, or penalty required to be paid therewith by this {aet} chapter or other law must be paid or provision for payment made in a manner permitted by the {Secretary of State}.

**SECTION 103. FILING, SERVICE, AND COPYING FEES.**

(a) The [Secretary of State] shall collect a fee of \$25.00 each time process is served on the [Secretary of State] under this [act] chapter. The party to a proceeding causing service of process may recover this fee as costs if the party prevails in the proceeding.

(b) The [Secretary of State] shall collect the following fees for copying and certifying the copy of any document filed under this [act] chapter:

- (1) \$1.00 a page for copying; and
- (2) \$10.00 for the certificate.

(c) The [Secretary of State] shall collect the following fees when the documents described are delivered for filing:

<del>(1) Statement of merger .....</del>	<del>\$ _____</del>
<del>(2) Statement of abandonment of merger.....</del>	<del>\$ _____</del>
<del>(3) Statement of interest exchange.....</del>	<del>\$ _____</del>
<del>(4) Statement of abandonment of interest exchange.....</del>	<del>\$ _____</del>
<del>(5) Statement of conversion .....</del>	<del>\$<u>50.00</u></del>
<del>(6) Statement of abandonment of conversion.....</del>	<del>\$<u>25.00</u></del>
<del>(7) Statement of domestication .....</del>	<del>\$<u>50.00</u></del>
<del>(8) Statement of abandonment of domestication.....</del>	<del>\$<u>25.00</u></del>
<del>(9) Statement of division.....</del>	<del>\$ _____</del>
<del>(10) Statement of abandonment of division.....</del>	<del>\$ _____</del>

**SECTION 104. EFFECTIVE TIME AND DATE OF DOCUMENT.** Except as provided in Section ~~A1-5~~ 105, a document accepted for filing is effective:

- (1) at the date and time of filing, as evidenced by the means used by the [Secretary of State] for recording the date and time of filing;
- (2) at the time specified in the document as its effective time on the date it is filed;
- (3) at a specified delayed effective time and date if permitted by this [act]chapter; or
- (4) if a delayed effective date but no time is specified, at the close of business on the date specified.

**SECTION 105. CORRECTING FILED DOCUMENT.**

(a) A domestic or foreign entity may correct a document filed by the {Secretary of State} if:

- (1) the document contains an inaccuracy;
- (2) the document was defectively signed; or
- (3) the electronic transmission of the document to the {Secretary of State} was

defective.

(b) A document is corrected by filing with the {Secretary of State} a statement of correction that:

- (1) describes the document to be corrected and states its filing date or has attached a copy of the document;
- (2) specifies the inaccuracy or defect to be corrected; and
- (3) corrects the inaccuracy or defect.

(c) A statement of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a statement of correction is effective when filed.

**SECTION 106. FILING DUTY OF {SECRETARY OF STATE}.**

(a) A document delivered to the office of the {Secretary of State} for filing that satisfies the requirements of Section ~~A1-1~~ 102 must be filed by the {Secretary of State}.

(b) The {Secretary of State} files a document by recording it as filed on the date and time of receipt. After filing a document, the {Secretary of State} shall deliver to the domestic or foreign entity or its representative a copy of the document with an acknowledgement of the date and time of filing.

(c) If the {Secretary of State} refuses to file a document, the {Secretary of State} shall return the document to the domestic or foreign entity or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

(d) The duty of the {Secretary of State} to file documents under this section is ministerial. The filing or refusal to file a document does not:

- (1) affect the validity or invalidity of the document in whole or in part;

(2) relate to the correctness or incorrectness of information contained in the document; or

(3) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**SECTION 107. APPEAL FROM REFUSAL TO FILE A DOCUMENT.**

(a) If the {Secretary of State} refuses to file a document delivered for filing, the domestic or foreign entity that submitted the document for filing may appeal the refusal within thirty (30) days after the return of the document to the ~~{name or describe}~~ chancery court {of the county where the entity's principal office (or, if none in this state, its registered office) is or will be located} ~~{of \_\_\_\_\_ county}~~ or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the entity does not have a principal office in this state. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the explanation of the {Secretary of State} for the refusal to file.

(b) The court may summarily order the {Secretary of State} to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**SECTION 108. EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.** A certificate from the {Secretary of State}, delivered with a copy of a document filed by the {Secretary of State}, conclusively establishes that the original document is on file with the {Secretary of State}.

**SECTION 109. PENALTY FOR SIGNING FALSE DOCUMENT.** ~~A person commits a [\_\_\_\_\_] misdemeanor [punishable by a fine of not to exceed \$\_\_\_\_\_] if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the [Secretary of State] for filing.~~

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed One Thousand Dollars (\$1,000.00).

**SECTION 110. POWERS OF {SECRETARY OF STATE}.** The {Secretary of State} has the power reasonably necessary to perform the duties required by this ~~{aet}~~ chapter.

**SECTION ~~102~~ 111. DEFINITIONS.** ~~In this [act]~~ As used in this chapter, unless the context otherwise requires:

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

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

(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]~~ chapter;

(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) “Business corporation” means a corporation whose internal affairs are governed by ~~the Model Mississippi~~ Business Corporation Act.

(5) “Conversion” means a transaction authorized by ~~[Article]~~ 4 2.

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

(7) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to Section ~~403~~ 203 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of organization.

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

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

(10) “Domesticating entity” means the domestic entity that approves a plan of domestication pursuant to Section ~~503~~ 303 or the foreign entity that approves a domestication pursuant to the law of its jurisdiction of organization.

(11) “Domestication” means a transaction authorized by ~~[Article]~~ 5 3.

(12) “Entity” means:

(A) A business corporation;

- (B) A nonprofit corporation;
- (C) A general partnership, including a limited liability partnership;
- (D) A limited partnership, including a limited liability limited partnership;
- (E) A limited liability company;
- (F) A business trust or statutory trust entity;
- (G) ~~an unincorporated nonprofit association~~ [Reserved];
- (H) A cooperative; ~~or~~

(I) An agricultural association; or

(J) Any other person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(i) An individual;

(ii) A testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust entity or similar trust;

(iii) An association or relationship that is not a partnership solely by reason of ~~[Section 202(c) of the Uniform Partnership Act (1997)]~~ Section 79-13-202(c) or a similar provision of the law of any other jurisdiction;

(iv) A decedent's estate; or

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

(13) "Filing entity" means an entity that is created by the filing of a public organic document.

(14) "Foreign entity" means an entity other than a domestic entity.

(15) "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.

(16) "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.

(17) “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.

(18) ~~“Interest exchange” means a transaction authorized by [Article] 3. [Reserved]~~

(19) “Interest holder” means a direct holder of an interest.

(20) “Interest holder liability” means:

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

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

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

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

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

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

(24) ~~“Merging entity” means an entity that is a party to a merger and exists immediately before the merger becomes effective. [Reserved]~~

(25) “Nonprofit corporation” means a corporation whose internal affairs are governed by ~~the Model Mississippi Nonprofit Corporation Act~~.

(26) ~~“Nonqualified foreign entity” means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the Secretary of State.~~

~~(26)~~ (27) “Organic law” means the statutes, if any, other than this ~~act~~ chapter,



governing the internal affairs of an entity.

~~(27)~~ (28) “Organic rules” means the public organic document and private organic rules of an entity.

~~(28)~~ (29) “Person” means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

~~(29)~~ (30) “Plan” means a plan of ~~merger, interest exchange,~~ conversion, or domestication.

~~(30)~~ (31) “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.

~~(31)~~ (32) “Protected agreement” means:

(A) a record evidencing indebtedness and any related agreement in effect on the effective date of this ~~{aet}~~ chapter;

(B) an agreement that is binding on an entity on the effective date of this ~~{aet}~~ chapter;

(C) the organic rules of an entity in effect on the effective date of this ~~{aet}~~ chapter; or

(D) an agreement that is binding on any of the governors or interest holders of an entity on the effective date of this ~~{aet}~~ chapter.

~~(32)~~ (33) “Public organic document” means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

~~(33)~~ (34) “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}~~.

~~(34)~~ (35) “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.

~~(35)~~ (36) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound,

symbol, or process.

~~(36)~~ (37) “Surviving entity” means the entity that continues in existence after or is created by a merger. [Reserved]

~~(37)~~ (38) “Transferable interest” means the right under an entity’s organic law to receive distributions from the entity.

~~(38)~~ (39) “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 are subject to provisions of that law that create different categories of the form of entity.

#### **SECTION ~~103~~ 112. RELATIONSHIP OF ~~{act}~~ CHAPTER TO OTHER LAWS.**

(a) Unless displaced by particular provisions of this ~~{act}~~ chapter, the principles of law and equity supplement this ~~{act}~~ chapter.

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

(c) A transaction effected under this ~~{act}~~ chapter 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}~~ chapter 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:

(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 is by a vote of the shareholders or directors which would be sufficient to create or impair the right or obligation directly under the provision.

#### **SECTION ~~104~~ 113. 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 be a party to a merger must give the notice or obtain the approval in order to be a party to ~~an interest exchange,~~ a conversion, or domestication.

(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}~~ chapter becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, or devised unless, to the extent required by or pursuant to ~~{cite state statutory cy pres or other nondiversion law}~~ the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an ~~appropriate~~ order of the appropriate court ~~{name of court}~~ ~~{the attorney general}~~ specifying the disposition of the property.

**SECTION ~~105~~ 114. STATUS OF FILINGS.** A filing under this ~~{act}~~ chapter signed by a domestic entity becomes part of the public organic document of the entity if the entity's organic law provides that similar filings under that law become part of the public organic document of the entity.

**SECTION ~~106~~ 115. NONEXCLUSIVITY.** The fact that a transaction under this ~~{act}~~ chapter produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this ~~{act}~~ chapter.

**SECTION ~~107~~ 116. 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 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~~ 117. ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS.** Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this ~~{act}~~ chapter by the unanimous vote or consent of its interest holders satisfies the requirements of this ~~{act}~~ chapter for approval of the transaction.

**SECTION ~~109~~ 118. APPRAISAL RIGHTS.**

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

- (1) the organic law permits the organic rules to limit the availability of appraisal

rights; and

(2) the organic rules provide such a limit.

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

(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 Mississippi 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] chapter:~~

~~———— (1)~~

~~———— (2)~~

~~———— (b) This [Act] chapter may not be used to effect a transaction that:~~

~~———— (1)~~

~~———— (2)~~

~~———— (3).]~~

**{ARTICLE} 4 2**

**CONVERSION**

**SECTION ~~401~~ 201. 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 the provisions of this {article} applicable to foreign entities 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~~ chapter.

~~{(d) The following entities may not engage in a conversion:~~

- ~~——(1)~~
- ~~——(2).}~~

**SECTION ~~402~~ 202. 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 must be in a record and contain:

- (1) the name and type of the converting entity;
- (2) the name, jurisdiction of organization, and type of the converted entity;
- (3) the manner 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 other provision not prohibited by law.

**SECTION ~~403~~ 203. 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, in its organic law and organic rules for approval of:
      - (i) in the case of an entity that is not a business corporation, a merger, as if the conversion were a merger; or
      - (ii) in the case of a business corporation, a merger requiring approval by a vote of the interest holders of the business corporation, as if the conversion were that type of merger; or
    - (C) if neither its organic law nor organic rules provide for approval of a conversion or a merger described in subparagraph (B)(ii), 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, in the case of an entity that is not a business or nonprofit corporation:
    - (A) the organic rules of the entity provide in a record for the approval of a conversion or 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 voter 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 conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of organization.

**SECTION ~~404~~ 204. 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, but 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 do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) any 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 plan of 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 time 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~~ 205. 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 the converting entity;
- (2) the name, jurisdiction of organization, and type 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, the text of its public organic document, as an attachment;

- (6) if the converted entity is a domestic limited liability partnership, the text of its ~~{statement of qualification}~~, as an attachment; and

- (7) if the converted entity is a foreign entity that is not a qualified foreign entity, a mailing address to which the ~~{Secretary of State}~~ may send any process served on the ~~{Secretary of State}~~ pursuant to Section ~~406(e)~~ 206(e).

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

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



document.

(e) A plan of conversion that is signed on behalf of a domestic converting entity and meets all of the requirements of 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 [aet] chapter to a statement of conversion refer to 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~~ 206. 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 of the converting entity continues to be vested in the converted entity without assignment, reversion, or impairment;

(3) all liabilities of the converting entity continue as liabilities of the converted entity;

(4) except as provided by law other than this [aet] chapter 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 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 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~~ 118 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 the 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.

(d) 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 under paragraph (1) as if the conversion had not occurred; and

(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 under paragraph (1) as if the conversion had not occurred.

(e) ~~When a conversion becomes effective, 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.~~ When a conversion becomes effective, a foreign entity  
that is the converted entity may be served with process in this state for the collection and  
enforcement of any of its debts, obligations, and other liabilities in accordance with applicable  
law.

(f) 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.

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

**{ARTICLE} 5 3**

**DOMESTICATION**

**SECTION ~~501~~ 301. 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 the provisions of this {article} applicable to foreign entities 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} chapter.

~~(e) The following entities may not engage in a domestication under this {article}:~~

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

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

~~—————(3).~~

**SECTION ~~502~~ 302. PLAN OF DOMESTICATION.**

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

- (1) the name and type of the domesticating entity;
- (2) the name and jurisdiction of organization of the domesticated entity;
- (3) the manner 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 other provision not prohibited by law.

### **SECTION ~~503~~ 303. 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, in its organic law and organic rules for approval of:

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

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

(C) if neither its organic law nor organic rules provide for approval of a domestication or a merger described in subparagraph (B)(ii), 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, in the case of an entity that is not a business corporation or nonprofit corporation:

(A) the organic rules of the entity in a record provide for the approval of a

domestication or 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 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 domestication of a foreign domesticating entity is not effective unless it is approved in accordance with the law of the foreign entity's jurisdiction of organization.

#### **SECTION ~~504~~ 304. 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, but 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 do not require approval of the interest holders of the domesticated entity under its organic law or organic rules; or

(C) any 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 plan of 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 time 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~~ 305. 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 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 in accordance with the law of its jurisdiction of organization;

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

(6) if the domesticated entity is a domestic limited liability partnership, its {statement of qualification}, as an attachment; and

(7) if the domesticated entity is a nonqualified foreign entity ~~that is not a qualified foreign entity~~, a mailing address to which the {Secretary of State} may send any process served on the {Secretary of State} pursuant to Section ~~506(e)~~ 306(e).

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

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

(e) A plan of domestication that is signed on behalf of a domesticating domestic entity and meets all of the requirements of 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}~~ chapter to a statement of domestication refer to 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~~ 306. 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 of the domesticating entity continues to be vested in the domesticated entity without assignment, reversion, or impairment;

(3) all liabilities of the domesticating entity continue as liabilities of the domesticated entity;

(4) except as provided by law other than this ~~{act}~~ chapter 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 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 domesticated entity's private organic rules; and

(9) 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 ~~109~~ 118 and the domesticating entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of the domesticating entity, the domestication 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 domesticating entity.

(c) When a domestication becomes effective, 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 the 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.

(d) 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 under paragraph (1) as if

the domestication had not occurred; and

(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 under paragraph (1) as if the domestication had not occurred.

(e) ~~When a domestication becomes effective, 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. When a domestication becomes effective, a foreign entity that is the domesticated entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities in accordance with applicable law.~~

(f) 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.

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

**{ARTICLE} 6 4**

**MISCELLANEOUS PROVISIONS**

**SECTION ~~601~~ 401. CONSISTENCY OF APPLICATION.** In applying and construing this ~~{aet}~~ chapter, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

**SECTION ~~602~~ 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This ~~{aet}~~ chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

**SECTION ~~603~~ 403. CONFORMING AMENDMENTS AND REPEALS.**

See separate attachment.

**SECTION ~~604~~ 404. SAVINGS CLAUSE.** This ~~{aet}~~ chapter does not affect an action or proceeding commenced or right accrued before the effective date of this ~~{aet}~~ chapter.

**SECTION ~~605~~ 405. EFFECTIVE DATE.** This ~~{aet}~~ chapter takes effect [January 1, 20\_\_.]