



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5738

by Rep. David S. Olsen

SYNOPSIS AS INTRODUCED:

805 ILCS 5/13.70	from Ch. 32, par. 13.70
805 ILCS 5/14.30	from Ch. 32, par. 14.30
805 ILCS 5/15.35	from Ch. 32, par. 15.35
805 ILCS 5/15.65	from Ch. 32, par. 15.65
805 ILCS 5/15.97	from Ch. 32, par. 15.97
805 ILCS 5/16.05	from Ch. 32, par. 16.05

Amends the Business Corporation Act of 1983. Increases from \$200 to \$500 the minimum base penalty for transacting business in this State without authority. Provides that a corporation that effects a change in the number of issued shares or the amount of paid-in capital prior to January 1, 2019, rather than effecting a change at any time, shall file a report regarding the issued shares or paid-in capital. Provides that franchise taxes are not payable on or after January 1, 2019. Provides that on and after January 1, 2019, a corporation that fails to file an annual report shall pay a penalty of \$50 plus \$10 per month or part of a month that the report is delinquent.

LRB100 19651 JLS 34924 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Business Corporation Act of 1983 is amended
5 by changing Sections 13.70, 14.30, 15.35, 15.65, 15.97, and
6 16.05 as follows:

7 (805 ILCS 5/13.70) (from Ch. 32, par. 13.70)

8 Sec. 13.70. Transacting business without authority.

9 (a) No foreign corporation transacting business in this
10 State without authority to do so is permitted to maintain a
11 civil action in any court of this State, until the corporation
12 obtains that authority. Nor shall a civil action be maintained
13 in any court of this State by any successor or assignee of the
14 corporation on any right, claim or demand arising out of the
15 transaction of business by the corporation in this State, until
16 authority to transact business in this State is obtained by the
17 corporation or by a corporation that has acquired all or
18 substantially all of its assets.

19 (b) The failure of a foreign corporation to obtain
20 authority to transact business in this State does not impair
21 the validity of any contract or act of the corporation, and
22 does not prevent the corporation from defending any action in
23 any court of this State.

1 (c) A foreign corporation that transacts business in this
2 State without authority is liable to this State, for the years
3 or parts thereof during which it transacted business in this
4 State without authority, in an amount equal to all fees,
5 franchise taxes, penalties and other charges that would have
6 been imposed by this Act upon the corporation had it duly
7 applied for and received authority to transact business in this
8 State as required by this Act, but failed to pay the franchise
9 taxes that would have been computed thereon, and thereafter
10 filed all reports required by this Act; and, if a corporation
11 fails to file an application for authority within 60 days after
12 it commences business in this State, in addition thereto it is
13 liable for a penalty of either 10% of the filing fee, license
14 fee and franchise taxes or \$500 ~~\$200~~ plus \$25 ~~\$5.00~~ for each
15 month or fraction thereof in which it has continued to transact
16 business in this State without authority therefor, whichever
17 penalty is greater. The Attorney General shall bring
18 proceedings to recover all amounts due this State under this
19 Section.

20 (d) The Attorney General shall bring an action to restrain
21 a foreign corporation from transacting business in this State,
22 if the authority of the foreign corporation to transact
23 business has been revoked under subsection (m) of Section 13.50
24 of this Act.

25 (Source: P.A. 95-515, eff. 8-28-07.)

1 (805 ILCS 5/14.30) (from Ch. 32, par. 14.30)

2 Sec. 14.30. Cumulative report of changes in issued shares
3 or paid-in capital.

4 (a) Each domestic corporation and each foreign corporation
5 authorized to transact business in this State that effects any
6 change in the number of issued shares or the amount of paid-in
7 capital prior to January 1, 2019 that has not theretofore been
8 reported in any report other than an annual report, interim
9 annual report, or final transition annual report, shall execute
10 and file, in accordance with Section 1.10 of this Act, a report
11 with respect to the changes in its issued shares or paid-in
12 capital:

13 (1) that have occurred subsequent to the last day of
14 the third month preceding its anniversary month in the
15 preceding year and prior to the first day of the second
16 month immediately preceding its anniversary month in the
17 current year; or

18 (2) in the case of a corporation that has established
19 an extended filing month, that have occurred during its
20 fiscal year; or

21 (3) in the case of a statutory merger or consolidation
22 or an amendment to the corporation's articles of
23 incorporation that affects the number of issued shares or
24 the amount of paid-in capital, that have occurred between
25 the last day of the third month immediately preceding its
26 anniversary month and the date of the merger,

1 consolidation, or amendment or, in the case of a
2 corporation that has established an extended filing month,
3 that have occurred between the first day of its fiscal year
4 and the date of the merger, consolidation, or amendment; or

5 (4) in the case of a statutory merger or consolidation
6 or an amendment to the corporation's articles of
7 incorporation that affects the number of issued shares or
8 the amount of paid-in capital, that have occurred between
9 the date of the merger, consolidation, or amendment (but
10 not including the merger, consolidation, or amendment) and
11 the first day of the second month immediately preceding its
12 anniversary month in the current year, or in the case of a
13 corporation that has established an extended filing month,
14 that have occurred between the date of the merger,
15 consolidation or amendment (but not including the merger,
16 consolidation or amendment) and the last day of its fiscal
17 year.

18 (b) The corporation shall file the report required under
19 subsection (a) not later than (i) the time its annual report is
20 required to be filed in 1992 and in each subsequent year and
21 (ii) not later than the time of filing the articles of merger,
22 consolidation, or amendment to the articles of incorporation
23 that affects the number of issued shares or the amount of
24 paid-in capital of a domestic corporation or the certified copy
25 of merger of a foreign corporation.

26 (c) The report shall net decreases against increases that

1 occur during the same taxable period. The report shall set
2 forth:

3 (1) The name of the corporation and the state or
4 country under the laws of which it is organized.

5 (2) A statement of the aggregate number of shares which
6 the corporation has authority to issue, itemized by classes
7 and series, if any, within a class.

8 (3) A statement of the aggregate number of issued
9 shares as last reported to the Secretary of State in any
10 document required or permitted by this Act to be filed,
11 other than an annual report, interim annual report or final
12 transition annual report, itemized by classes and series,
13 if any, within a class.

14 (4) A statement, expressed in dollars, of the amount of
15 paid-in capital of the corporation as last reported to the
16 Secretary of State in any document required or permitted by
17 this Act to be filed, other than an annual report, interim
18 annual report or final transition annual report.

19 (5) A statement, if applicable, of the aggregate number
20 of shares issued by the corporation not theretofore
21 reported to the Secretary of State as having been issued,
22 and a statement, expressed in dollars, of the value of the
23 entire consideration received, less expenses, including
24 commissions, paid or incurred in connection with the
25 issuance, for, or on account of, the issuance of the
26 shares, itemized by classes, and series, if any, within a

1 class; and in the case of shares issued as a share
2 dividend, the amount added or transferred to the paid-in
3 capital of the corporation for, or on account of, the
4 issuance of the shares; provided, however, that the report
5 shall also include the date of each issuance made prior to
6 the current reporting period, and the number of issued
7 shares and consideration received in each case.

8 (6) A statement, if applicable, expressed in dollars,
9 of the amount added or transferred to paid-in capital of
10 the corporation without the issuance of shares; provided,
11 however, that the report shall also include the date of
12 each increase made prior to the current reporting period,
13 and the consideration received in each case.

14 (7) In case of an exchange or reclassification of
15 issued shares resulting in an increase in the amount of
16 paid-in capital, a statement of the manner in which it was
17 effected, and a statement, expressed in dollars, of the
18 amount added or transferred to the paid-in capital of the
19 corporation as a result thereof, except any portion thereof
20 reported under any other subsection of this Section as a
21 part of the consideration received by the corporation for,
22 or on account of, its issued shares; provided, however,
23 that the report shall also include the date of each
24 exchange or reclassification made prior to the current
25 reporting period and the consideration received in each
26 case.

1 (8) If the consideration received for the issuance of
2 any shares not theretofore reported as having been issued
3 consists of labor or services performed or of property,
4 other than cash, then a statement, expressed in dollars, of
5 the value of that consideration as fixed by the board of
6 directors.

7 (9) In the case of a cancellation of shares or a
8 reduction in paid-in capital made pursuant to Section 9.20,
9 the aggregate reduction in paid-in capital; provided,
10 however, that the report shall also include the date of
11 each reduction made prior to the current reporting period.

12 (10) A statement of the aggregate number of issued
13 shares itemized by classes and series, if any, within a
14 class, after giving effect to the changes reported.

15 (11) A statement, expressed in dollars, of the amount
16 of paid-in capital of the corporation after giving effect
17 to the changes reported.

18 (d) No additional license fees or franchise taxes shall be
19 payable upon the filing of the report to the extent that
20 license fees or franchise taxes shall have been previously paid
21 by the corporation in respect of shares previously issued which
22 are being exchanged for the shares the issuance of which is
23 being reported, provided those facts are shown in the report.

24 (e) The report shall be made on forms prescribed and
25 furnished by the Secretary of State.

26 (f) Until the report under this Section or a report under

1 Section 14.25 shall have been filed in the Office of the
2 Secretary of State showing a reduction in paid-in capital, the
3 basis of the annual franchise tax payable by the corporation
4 shall not be reduced, provided, however, in no event shall the
5 annual franchise tax for any taxable year be reduced if the
6 report is not filed prior to the first day of the anniversary
7 month or, in the case of a corporation which has established an
8 extended filing month, the extended filing month of the
9 corporation of that taxable year and before payment of its
10 annual franchise tax.

11 (Source: P.A. 90-421, eff. 1-1-98.)

12 (805 ILCS 5/15.35) (from Ch. 32, par. 15.35)

13 Sec. 15.35. Franchise taxes payable by domestic
14 corporations. For the privilege of exercising its franchises in
15 this State, each domestic corporation shall pay to the
16 Secretary of State the following franchise taxes, computed on
17 the basis, at the rates and for the periods prescribed in this
18 Act:

19 (a) An initial franchise tax at the time of filing its
20 first report of issuance of shares.

21 (b) An additional franchise tax at the time of filing
22 (1) a report of the issuance of additional shares, or (2) a
23 report of an increase in paid-in capital without the
24 issuance of shares, or (3) an amendment to the articles of
25 incorporation or a report of cumulative changes in paid-in

1 capital, whenever any amendment or such report discloses an
2 increase in its paid-in capital over the amount thereof
3 last reported in any document, other than an annual report,
4 interim annual report or final transition annual report
5 required by this Act to be filed in the office of the
6 Secretary of State.

7 (c) An additional franchise tax at the time of filing a
8 report of paid-in capital following a statutory merger or
9 consolidation, which discloses that the paid-in capital of
10 the surviving or new corporation immediately after the
11 merger or consolidation is greater than the sum of the
12 paid-in capital of all of the merged or consolidated
13 corporations as last reported by them in any documents,
14 other than annual reports, required by this Act to be filed
15 in the office of the Secretary of State; and in addition,
16 the surviving or new corporation shall be liable for a
17 further additional franchise tax on the paid-in capital of
18 each of the merged or consolidated corporations as last
19 reported by them in any document, other than an annual
20 report, required by this Act to be filed with the Secretary
21 of State from their taxable year end to the next succeeding
22 anniversary month or, in the case of a corporation which
23 has established an extended filing month, the extended
24 filing month of the surviving or new corporation; however
25 if the taxable year ends within the 2 month period
26 immediately preceding the anniversary month or, in the case

1 of a corporation which has established an extended filing
2 month, the extended filing month of the surviving or new
3 corporation the tax will be computed to the anniversary
4 month or, in the case of a corporation which has
5 established an extended filing month, the extended filing
6 month of the surviving or new corporation in the next
7 succeeding calendar year.

8 (d) An annual franchise tax payable each year with the
9 annual report which the corporation is required by this Act
10 to file.

11 The provisions of this Section shall not apply to require
12 the payment of any franchise tax that would otherwise have been
13 due and payable on or after January 1, 2019. There shall be no
14 refunds or proration of franchise tax for any taxes due and
15 payable prior to January 1, 2019 on the basis that a portion of
16 the corporation's taxable year extends beyond January 1, 2019.
17 This amendatory Act of the 100th General Assembly shall not
18 affect any right accrued or established, or any liability or
19 penalty incurred prior to January 1, 2019.

20 (Source: P.A. 86-985.)

21 (805 ILCS 5/15.65) (from Ch. 32, par. 15.65)

22 Sec. 15.65. Franchise taxes payable by foreign
23 corporations. For the privilege of exercising its authority to
24 transact such business in this State as set out in its
25 application therefor or any amendment thereto, each foreign

1 corporation shall pay to the Secretary of State the following
2 franchise taxes, computed on the basis, at the rates and for
3 the periods prescribed in this Act:

4 (a) An initial franchise tax at the time of filing its
5 application for authority to transact business in this
6 State.

7 (b) An additional franchise tax at the time of filing
8 (1) a report of the issuance of additional shares, or (2) a
9 report of an increase in paid-in capital without the
10 issuance of shares, or (3) a report of cumulative changes
11 in paid-in capital or a report of an exchange or
12 reclassification of shares, whenever any such report
13 discloses an increase in its paid-in capital over the
14 amount thereof last reported in any document, other than an
15 annual report, interim annual report or final transition
16 annual report, required by this Act to be filed in the
17 office of the Secretary of State.

18 (c) Whenever the corporation shall be a party to a
19 statutory merger and shall be the surviving corporation, an
20 additional franchise tax at the time of filing its report
21 following merger, if such report discloses that the amount
22 represented in this State of its paid-in capital
23 immediately after the merger is greater than the aggregate
24 of the amounts represented in this State of the paid-in
25 capital of such of the merged corporations as were
26 authorized to transact business in this State at the time

1 of the merger, as last reported by them in any documents,
2 other than annual reports, required by this Act to be filed
3 in the office of the Secretary of State; and in addition,
4 the surviving corporation shall be liable for a further
5 additional franchise tax on the paid-in capital of each of
6 the merged corporations as last reported by them in any
7 document, other than an annual report, required by this Act
8 to be filed with the Secretary of State, from their taxable
9 year end to the next succeeding anniversary month or, in
10 the case of a corporation which has established an extended
11 filing month, the extended filing month of the surviving
12 corporation; however if the taxable year ends within the 2
13 month period immediately preceding the anniversary month
14 or the extended filing month of the surviving corporation,
15 the tax will be computed to the anniversary or, extended
16 filing month of the surviving corporation in the next
17 succeeding calendar year.

18 (d) An annual franchise tax payable each year with any
19 annual report which the corporation is required by this Act
20 to file.

21 The provisions of this Section shall not apply to require
22 the payment of any franchise tax that would otherwise have been
23 due and payable on or after January 1, 2019. There shall be no
24 refunds or proration of franchise tax for any taxes due and
25 payable prior to January 1, 2019 on the basis that a portion of
26 the corporation's taxable year extends beyond January 1, 2019.

1 This amendatory Act of the 100th General Assembly shall not
2 affect any right accrued or established, or any liability or
3 penalty incurred prior to January 1, 2019.

4 (Source: P.A. 92-33, eff. 7-1-01.)

5 (805 ILCS 5/15.97) (from Ch. 32, par. 15.97)

6 Sec. 15.97. Corporate Franchise Tax Refund Fund.

7 (a) Beginning July 1, 1993, a percentage of the amounts
8 collected under Sections 15.35, 15.45, 15.65, and 15.75 of this
9 Act shall be deposited into the Corporate Franchise Tax Refund
10 Fund, a special Fund hereby created in the State treasury. From
11 July 1, 1993, until December 31, 1994, there shall be deposited
12 into the Fund 3% of the amounts received under those Sections.
13 Beginning January 1, 1995, and for each fiscal year beginning
14 thereafter, 2% of the amounts collected under those Sections
15 during the preceding fiscal year shall be deposited into the
16 Fund.

17 (b) Beginning July 1, 1993, moneys in the Fund shall be
18 expended exclusively for the purpose of paying refunds payable
19 because of overpayment of franchise taxes, penalties, or
20 interest under Sections 13.70, 15.35, 15.45, 15.65, 15.75, and
21 16.05 of this Act and making transfers authorized under this
22 Section. Refunds in accordance with the provisions of
23 subsections (f) and (g) of Section 1.15 and Section 1.17 of
24 this Act may be made from the Fund only to the extent that
25 amounts collected under Sections 15.35, 15.45, 15.65, and 15.75

1 of this Act have been deposited in the Fund and remain
2 available. On or before August 31 of each year, the balance in
3 the Fund in excess of \$100,000 shall be transferred to the
4 General Revenue Fund. Notwithstanding the above, for the period
5 commencing on the effective date of this amendatory Act of the
6 100th General Assembly and continuing through December 31,
7 2021, amounts in the fund shall not be transferred to the
8 General Revenue Fund and shall be used to pay refunds in
9 accordance with the provisions of this Act. Within a reasonable
10 time after January 1, 2022, the Secretary of State shall direct
11 and the Comptroller shall order transferred to the General
12 Revenue Fund all amounts remaining in the fund.

13 (c) This Act shall constitute an irrevocable and continuing
14 appropriation from the Corporate Franchise Tax Refund Fund for
15 the purpose of paying refunds upon the order of the Secretary
16 of State in accordance with the provisions of this Section.

17 (Source: P.A. 99-620, eff. 1-1-17.)

18 (805 ILCS 5/16.05) (from Ch. 32, par. 16.05)

19 Sec. 16.05. Penalties and interest imposed upon
20 corporations.

21 (a) Each corporation, domestic or foreign, that fails or
22 refuses to file any annual report or report of cumulative
23 changes in paid-in capital and pay any franchise tax due
24 pursuant to the report prior to the first day of its
25 anniversary month or, in the case of a corporation which has

1 established an extended filing month, the extended filing month
2 of the corporation shall pay a penalty of 10% of the amount of
3 any delinquent franchise tax due for the report. From February
4 1, 2008 through March 15, 2008, no penalty shall be imposed
5 with respect to any amount of delinquent franchise tax paid
6 pursuant to the Franchise Tax and License Fee Amnesty Act of
7 2007. Notwithstanding the above, commencing on January 1, 2019,
8 each corporation, domestic or foreign, that fails or refuses to
9 file any annual report prior to the first day of its
10 anniversary month, or in the case of a corporation which has
11 established an extended filing month, the extended filing month
12 of the corporation, shall pay a penalty of \$50 plus \$10 for
13 each calendar month or part of the month that it is delinquent.

14 (b) Each corporation, domestic or foreign, that fails or
15 refuses to file a report of issuance of shares or increase in
16 paid-in capital within the time prescribed by this Act is
17 subject to a penalty on any obligation occurring prior to
18 January 1, 1991, and interest on those obligations on or after
19 January 1, 1991, for each calendar month or part of month that
20 it is delinquent in the amount of 2% of the amount of license
21 fees and franchise taxes provided by this Act to be paid on
22 account of the issuance of shares or increase in paid-in
23 capital. From February 1, 2008 through March 15, 2008, no
24 penalty shall be imposed, or interest charged, with respect to
25 any amount of delinquent license fees and franchise taxes paid
26 pursuant to the Franchise Tax and License Fee Amnesty Act of

1 2007.

2 (c) Each corporation, domestic or foreign, that fails or
3 refuses to file a report of cumulative changes in paid-in
4 capital or report following merger within the time prescribed
5 by this Act is subject to interest on or after January 1, 1992,
6 for each calendar month or part of month that it is delinquent,
7 in the amount of 2% of the amount of franchise taxes provided
8 by this Act to be paid on account of the issuance of shares or
9 increase in paid-in capital disclosed on the report of
10 cumulative changes in paid-in capital or report following
11 merger, or \$1, whichever is greater. From February 1, 2008
12 through March 15, 2008, no interest shall be charged with
13 respect to any amount of delinquent franchise tax paid pursuant
14 to the Franchise Tax and License Fee Amnesty Act of 2007.
15 Notwithstanding the above, commencing on January 1, 2019, each
16 corporation, domestic or foreign, that fails or refuses to file
17 any report following merger within the time prescribed by this
18 Act, shall pay a penalty of \$50 plus \$10 for each calendar
19 month or part of the month that it is delinquent.

20 (d) If the annual franchise tax, or the supplemental annual
21 franchise tax for any 12-month period commencing July 1, 1968,
22 or July 1 of any subsequent year through June 30, 1983,
23 assessed in accordance with this Act, is not paid by July 31,
24 it is delinquent, and there is added a penalty prior to January
25 1, 1991, and interest on and after January 1, 1991, of 2% for
26 each month or part of month that it is delinquent commencing

1 with the month of August, or \$1, whichever is greater. From
2 February 1, 2008 through March 15, 2008, no penalty shall be
3 imposed, or interest charged, with respect to any amount of
4 delinquent franchise taxes paid pursuant to the Franchise Tax
5 and License Fee Amnesty Act of 2007.

6 (e) If the supplemental annual franchise tax assessed in
7 accordance with the provisions of this Act for the 12-month
8 period commencing July 1, 1967, is not paid by September 30,
9 1967, it is delinquent, and there is added a penalty prior to
10 January 1, 1991, and interest on and after January 1, 1991, of
11 2% for each month or part of month that it is delinquent
12 commencing with the month of October, 1967. From February 1,
13 2008 through March 15, 2008, no penalty shall be imposed, or
14 interest charged, with respect to any amount of delinquent
15 franchise taxes paid pursuant to the Franchise Tax and License
16 Fee Amnesty Act of 2007.

17 (f) If any annual franchise tax for any period beginning on
18 or after July 1, 1983, is not paid by the time period herein
19 prescribed, it is delinquent and there is added a penalty prior
20 to January 1, 1991, and interest on and after January 1, 1991,
21 of 2% for each month or part of a month that it is delinquent
22 commencing with the anniversary month or in the case of a
23 corporation that has established an extended filing month, the
24 extended filing month, or \$1, whichever is greater. From
25 February 1, 2008 through March 15, 2008, no penalty shall be
26 imposed, or interest charged, with respect to any amount of

1 delinquent franchise taxes paid pursuant to the Franchise Tax
2 and License Fee Amnesty Act of 2007.

3 (g) Any corporation, domestic or foreign, failing to pay
4 the prescribed fee for assumed corporate name renewal when due
5 and payable shall be given notice of nonpayment by the
6 Secretary of State by regular mail; and if the fee together
7 with a penalty fee of \$5 is not paid within 90 days after the
8 notice is mailed, the right to use the assumed name shall
9 cease.

10 (h) Any corporation which (i) puts forth any sign or
11 advertisement, assuming any name other than that by which it is
12 incorporated or otherwise authorized by law to act or (ii)
13 violates Section 3.25, shall be guilty of a Class C misdemeanor
14 and shall be deemed guilty of an additional offense for each
15 day it shall continue to so offend.

16 (i) Each corporation, domestic or foreign, that fails or
17 refuses (1) to answer truthfully and fully within the time
18 prescribed by this Act interrogatories propounded by the
19 Secretary of State in accordance with this Act or (2) to
20 perform any other act required by this Act to be performed by
21 the corporation, is guilty of a Class C misdemeanor.

22 (j) Each corporation that fails or refuses to file articles
23 of revocation of dissolution within the time prescribed by this
24 Act is subject to a penalty for each calendar month or part of
25 the month that it is delinquent in the amount of \$50.

26 (Source: P.A. 95-233, eff. 8-16-07; 95-707, eff. 1-11-08;

1 96-1121, eff. 1-1-11.)