



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2860

by Rep. Lamont J. Robinson, Jr.

SYNOPSIS AS INTRODUCED:

805 ILCS 415/103
805 ILCS 415/110 new
805 ILCS 415/111 new
805 ILCS 415/202
805 ILCS 415/203
805 ILCS 415/205
805 ILCS 415/206
805 ILCS 415/302
805 ILCS 415/305
805 ILCS 415/306

Amends the Entity Omnibus Act. Provides that the organic law of the entity, in addition to the Act, may displace the principles of law and equity. Provides that the Secretary of State may propound interrogatories as may be reasonably necessary to ascertain whether entities subject to the Act have complied with the Act. Provides process for the response to and filing of interrogatories by the Secretary. Provides that the Act controls in the event of any conflict with the provisions of other specified Acts applicable to business organizations. Provides that an entity shall maintain a plan of conversion or domestication in accordance with the entity's policy for maintaining books and records. Deletes language exempting certain entities from the requirement that a plan of conversion be approved in a record. Deletes language allowing the filing of a plan of conversion, instead of a statement of conversion, under certain circumstances. Makes other changes concerning: the effect of conversion or domestication on the name of an entity; and the effective date of a domestication. Effective July 1, 2019.

LRB101 05042 TAE 50052 b

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 Entity Omnibus Act is amended by changing
5 Sections 103, 202, 203, 205, 206, 302, 305, and 306 and by
6 adding Sections 110 and 111 as follows:

7 (805 ILCS 415/103)

8 Sec. 103. Relationship of Act to other laws.

9 (a) Unless displaced by particular provisions of this Act
10 or the organic law, the principles of law and equity supplement
11 this Act.

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

15 (c) A transaction effected under this Act may not create or
16 impair any right or obligation on the part of a person under a
17 provision of the law of this State other than this Act relating
18 to a transaction involving a converting or domesticating entity
19 unless:

20 (1) in the event the entity does not survive the
21 transaction, the transaction satisfies any requirements of
22 the provision; or

23 (2) in the event the entity survives the transaction,

1 the approval of the plan is by a vote of the interest
2 holders or governors which would be sufficient to create or
3 impair the right or obligation directly under the
4 provision.

5 (Source: P.A. 100-561, eff. 7-1-18.)

6 (805 ILCS 415/110 new)

7 Sec. 110. Interrogatories to be propounded by the Secretary
8 of State.

9 (a) The Secretary of State may propound to any entity,
10 domestic or foreign, subject to the provisions of this Act, and
11 to any governor or interest holder thereof, such
12 interrogatories as may be reasonably necessary and proper to
13 enable the Secretary to ascertain whether the entity has
14 complied with all the provisions of this Act applicable to the
15 entity. The interrogatories shall be answered within 30 days
16 after the mailing thereof, or within such additional time as
17 shall be fixed by the Secretary of State, and the answers
18 thereto shall be full and complete and shall be made in writing
19 and under oath. If the interrogatories are directed to an
20 individual, they shall be answered by him or her, and if
21 directed to an entity, they shall be answered by the governor
22 or interest holder thereof. The Secretary of State need not
23 file any document to which the interrogatories relate until the
24 interrogatories are answered as herein provided, and not then
25 if the answers thereto disclose that the document is not in

1 conformity with the provisions of this Act. The Secretary of
2 State shall certify to the Attorney General, for such action as
3 the Attorney General may deem appropriate, all interrogatories
4 and answers thereto that disclose a violation of any of the
5 provisions of this Act.

6 (b) Interrogatories propounded by the Secretary of State
7 and the answers thereto shall not be open to public inspection
8 nor shall the Secretary of State disclose any facts or
9 information obtained therefrom except in so far as official
10 duty may require the same to be made public or if the
11 interrogatories or the answers thereto are required for
12 evidence in any criminal proceeding or in any other action by
13 the State.

14 (805 ILCS 415/111 new)

15 Sec. 111. Application of other Acts. The Business
16 Corporation Act of 1983, the General Not For Profit Corporation
17 Act of 1986, the Limited Liability Company Act, the Uniform
18 Limited Partnership Act (2001), and the Uniform Partnership Act
19 (1997), as now or hereafter amended, shall govern all matters
20 related to the entities named in each of those Acts and in this
21 Act except where inconsistent with the letter and purpose of
22 this Act. This Act controls in the event of any conflict with
23 the provisions of the above-named Acts or other laws.

24 (805 ILCS 415/202)

1 Sec. 202. Plan of conversion.

2 (a) A domestic entity may convert to a different type of
3 entity under this Article by approving a plan of conversion.

4 The plan must be in a record and contain:

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

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

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

12 (4) the proposed public organic document of the
13 converted entity if it will be a filing entity;

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

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

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

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

22 (c) The entity shall maintain the plan of conversion in
23 accordance with the entity's policy for maintaining books and
24 records.

25 (Source: P.A. 100-561, eff. 7-1-18.)

1 (805 ILCS 415/203)

2 Sec. 203. Approval of conversion.

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

5 (1) by a domestic converting entity:

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

8 (B) if its organic rules do not provide for
9 approval of a conversion, in accordance with the
10 requirements, if any, in its organic law and organic
11 rules for approval of:

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

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

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

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

1 effective, ~~, unless, in the case of an entity that is not a~~
2 ~~business or nonprofit corporation.~~

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

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

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

16 (Source: P.A. 100-561, eff. 7-1-18.)

17 (805 ILCS 415/205)

18 Sec. 205. Statement of conversion; effective date.

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

21 (b) A statement of conversion must contain:

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

23 (2) the name and type of the converted entity;

24 (3) if the statement of conversion is not to be
25 effective upon filing, the later date and time on which it

1 will become effective, which may not be more than 90 days
2 after the date of filing;

3 (4) a statement that the plan of conversion was
4 approved in accordance with this Article;

5 (5) the text of the converted entity's public organic
6 document, as an attachment, signed by a person authorized
7 by the entity; and

8 (6) if the converted entity is a domestic limited
9 liability partnership, the text of its statement of
10 qualification, as an attachment, signed by a person
11 authorized by the entity.

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

15 (d) If the converted entity is a domestic entity, its
16 public organic document, if any, must satisfy the requirements
17 of the law of this State and may omit any provision that is not
18 required to be included in a restatement of the public organic
19 document.

20 (e) (Blank). ~~A plan of conversion that is signed on behalf~~
21 ~~of a domestic converting entity and meets all of the~~
22 ~~requirements of subsection (b) may be filed with the Secretary~~
23 ~~of State instead of a statement of conversion and upon filing~~
24 ~~has the same effect. If a plan of conversion is filed as~~
25 ~~provided in this subsection, references in this Act to a~~
26 ~~statement of conversion refer to the plan of conversion filed~~

1 ~~under this subsection.~~

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

5 (Source: P.A. 100-561, eff. 7-1-18.)

6 (805 ILCS 415/206)

7 Sec. 206. Effect of conversion.

8 (a) When a conversion becomes effective:

9 (1) the converted entity is:

10 (A) organized under and subject to the organic law
11 of the converted entity; and

12 (B) the same entity without interruption as the
13 converting entity, even though the organic law of the
14 converted entity ~~to may~~ require or allow the name of
15 the converted entity may be modified ~~based on the type~~
16 ~~of entity;~~

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

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

22 (4) except as provided by law other than this Act or
23 the plan of conversion, all of the rights, privileges,
24 immunities, powers, and purposes of the converting entity
25 remain in the converted entity;

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

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

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

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

14 (A) its interest holders; and

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

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

25 (b) Except as otherwise provided in the organic law or
26 organic rules of the converting entity, the conversion does not

1 give rise to any rights that an interest holder, governor, or
2 third party would otherwise have upon a dissolution,
3 liquidation, or winding-up of the converting entity.

4 (c) When a conversion becomes effective, a person that did
5 not have interest holder liability with respect to the
6 converting entity and that becomes subject to interest holder
7 liability with respect to a domestic entity as a result of a
8 conversion has interest holder liability only to the extent
9 provided by the organic law of the entity and only for those
10 liabilities that arise after the conversion becomes effective.

11 (d) When a conversion becomes effective:

12 (1) the conversion does not discharge any interest
13 holder liability under the organic law of a domestic
14 converting entity to the extent the interest holder
15 liability arose before the conversion became effective;

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

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

24 (4) a person has whatever rights of contribution from
25 any other person as are provided by the organic law or
26 organic rules of the domestic converting entity with

1 respect to any interest holder liability preserved under
2 paragraph (1) as if the conversion had not occurred.

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

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

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

10 (f) If the converting entity is a qualified foreign entity,
11 the certificate of authority or other foreign qualification of
12 the converting entity is canceled when the conversion becomes
13 effective.

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

17 (Source: P.A. 100-561, eff. 7-1-18.)

18 (805 ILCS 415/302)

19 Sec. 302. Plan of domestication.

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

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

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

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

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

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

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

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

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

16 (c) The entity shall maintain the plan of domestication in
17 accordance with the entity's policy for maintaining books and
18 records.

19 (Source: P.A. 100-561, eff. 7-1-18.)

20 (805 ILCS 415/305)

21 Sec. 305. Statement of domestication; effective date.

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

25 (b) A statement of domestication must contain:

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

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

5 (3) if the statement of domestication is not to be
6 effective upon filing, the later date and time on which it
7 will become effective, which may not be more than 30 ~~90~~
8 days after the date of filing;

9 (4) if the domesticating entity is a domestic entity, a
10 statement that the plan of domestication was approved in
11 accordance with this Article or, if the domesticating
12 entity is a foreign entity, a statement that the
13 domestication was approved in accordance with the law of
14 its jurisdiction of organization;

15 (5) if the domesticated entity is a domestic filing
16 entity, its public organic document, as an attachment
17 signed by a person authorized by the entity;

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

21 (7) if the domesticated entity is a foreign entity that
22 is not a qualified foreign entity, a mailing address to
23 which the Secretary of State may send any process served on
24 the Secretary of State pursuant to subsection (e) of
25 Section 306.

26 (c) In addition to the requirements of subsection (b), a

1 statement of domestication may contain any other provision not
2 prohibited by law.

3 (d) If the domesticated entity is a domestic entity, its
4 public organic document, if any, must satisfy the requirements
5 of the law of this State and may omit any provision that is not
6 required to be included in a restatement of the public organic
7 document.

8 (e) A statement of domestication becomes effective upon the
9 date and time of filing or the later date and time specified in
10 the statement of domestication.

11 (Source: P.A. 100-561, eff. 7-1-18.)

12 (805 ILCS 415/306)

13 Sec. 306. Effect of domestication.

14 (a) When a domestication becomes effective:

15 (1) the domesticated entity is:

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

18 (B) the same entity without interruption as the
19 domesticating entity, even though the organic law of
20 the domesticated entity may require or allow the name
21 of the domesticated entity to be modified;

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

25 (3) all liabilities of the domesticating entity

1 continue as liabilities of the domesticated entity;

2 (4) except as provided by law other than this Act or
3 the plan of domestication, all of the rights, privileges,
4 immunities, powers, and purposes of the domesticating
5 entity remain in the domesticated entity;

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

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

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

16 (A) its interest holders; and

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

22 (8) the interests in the domesticating entity are
23 converted to the extent and as approved in connection with
24 the domestication, and the interest holders of the
25 domesticating entity are entitled only to the rights
26 provided to them under the plan of domestication and to any

1 appraisal rights they have under Section 109 and the
2 domesticating entity's organic law.

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

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

17 (d) When a domestication becomes effective:

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

22 (2) a person does not have interest holder liability
23 under the organic law of a domestic domesticating entity
24 for any liability that arises after the domestication
25 becomes effective;

26 (3) the organic law of a domestic domesticating entity

1 continues to apply to the release, collection, or discharge
2 of any interest holder liability preserved under paragraph
3 (1) as if the domestication had not occurred; and

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

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

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

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

16 (f) If the domesticating entity is a qualified foreign
17 entity, the certificate of authority or other foreign
18 qualification of the domesticating entity is canceled when the
19 domestication becomes effective.

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

23 (Source: P.A. 100-561, eff. 7-1-18.)

24 Section 99. Effective date. This Act takes effect July 1,
25 2019.